



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

STATEMENT OF VICE CHAIR ANN M. RAVEL ON THE *VAN HOLLEN V. FEC* DISTRICT COURT DECISION

December 3, 2014

Last week, the U.S. District Court for the District of Columbia vacated the Commission's 2007 rule limiting donor disclosure for corporations and labor unions that fund electioneering communications. *Van Hollen v. Federal Election Commission*, No. 11-0766 (ABJ), 2014 WL 6657240 (D.D.C. November 25, 2014). In the *Van Hollen* decision, Judge Amy Berman Jackson held that the Commission's narrow disclosure rule contravened Congress' purposes in enacting the Bipartisan Campaign Reform Act ("BCRA"), and was arbitrary, capricious, and contrary to law. While BCRA was enacted to "promote transparency and to ensure that members of the public would be aware of who was trying to influence their votes just before an election," the court found that the Commission's regulation implementing the law created "an easily exploited loophole that allows the true sponsors of advertisements to hide behind dubious and misleading names." The Commission's decision to create such a loophole, the court held, was therefore inconsistent with the clear policy and purpose of BCRA.

The *Van Hollen* decision provides a sobering account of the Commission's 2007 rulemaking process. As described by Judge Jackson, the Commission's development of the electioneering communications rule is a cautionary tale on how *not* to involve the public in formulating policy with far-reaching consequences. The court notes, for example, that the Commission announced the donor disclosure rule language that was ultimately adopted only after the public notice and comment period had ended. The public was therefore unable to comment in a meaningful way on the rule, which substantially changed key disclosure requirements and departed from the statutory text. Because the Commission delayed in disclosing this core change in policy to the public, the rulemaking record is "largely devoid of evidence" supporting the Commission's decision to narrowly limit corporations' and labor organizations' donor disclosure requirements for electioneering communications. In part due to the sparse rulemaking record and lack of data supporting the limited donor disclosure rule, the court held that the Commission's rule was arbitrary and contrary to law.

Judge Jackson's critique of the Commission's rulemaking process is a very timely one. For the first time in years, the Commission is now accepting wide-ranging public comment on issues fundamental to campaign finance, in response to the Supreme Court's direction in *McCutcheon v. Federal Election Commission*. Individuals have until January 15, 2015 to express their views and submit proposed policy solutions on how best to strengthen and improve our rules on public disclosure of campaign funding, earmarking of contributions, joint

fundraising, and political committee affiliation factors. Then, on February 11, 2015, the Commission will hold a public hearing where commenters will have an opportunity to speak directly to the Commission. In order for individuals to testify at the hearing, they must submit a comment by January 15th, and include in the comment a request to testify at the hearing.

After reviewing the public's comments and testimony, the Commission will propose draft rule language for further public input. I firmly believe that the Commission needs to hear from the public before it even begins formulating rules—and that the public needs to remain involved every step of the way, until the rulemaking is final. Listening to the public and soliciting feedback from individual citizens is well worth the investment. Perhaps if the Commission had embraced public input on policymaking back in 2007, the Commission would not now be mired in lengthy and expensive litigation defending a rule that the court found to be flawed and contrary to law.

The *Van Hollen* decision is a call to action. Submit comments and join us for the public hearing in February. For the Commission to do its job right, we need to hear from you.

Here's how to submit written comments and testify at the public hearing:

Online: <http://sers.fec.gov/forces/addcomments.htm?pid=93617>

Paper: Federal Election Commission
Attn.: Amy L. Rothstein, Assistant General Counsel
999 E Street, NW
Washington, DC 20463

Be Sure to
Include: Each commenter's full name and postal address

Deadline for
Comments: January 15, 2015

To Testify at
the Hearing: File a written comment by January 15, 2015, that includes a request to testify at the public hearing.