FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

Statement of Vice Chair Weintraub and Commissioner Bauerly regarding the Commission's decision not to appeal the decision in *Van Hollen v. FEC*

April 27, 2012

On March 30, 2012, the United States District Court for the District of Columbia issued its opinion and order granting summary judgment to the Plaintiff in *Van Hollen v. FEC*.[1] Yesterday the Commission apprised the District Court that it does not intend to appeal the Court's order.[2] We supported the decision not to appeal.

The case, brought by U.S. Representative Chris Van Hollen, challenged a regulation defining the disclosure requirements for corporations and labor unions that fund electioneering communications. Rep. Van Hollen argued that the regulation was contrary to the disclosure regime set forth in the Bipartisan Campaign Reform Act (BCRA) and should therefore be declared invalid. The District Court's decision granted Rep. Van Hollen's motion for summary judgment.

We believe in the general presumption that the regulations promulgated by the Commission should be defended, including, if necessary, by appealing an adverse district court decision. However, it has not been the Commission's practice automatically to appeal any adverse ruling. On the contrary, in some cases, the costs of prolonged defensive litigation, to both the Commission and the public as a whole, outweigh its potential benefits. That was the conclusion we reached here.[3]

All told, the District Court's opinion in this case is thorough and well-reasoned, and does not have sufficient weakness to suggest it is likely to be reversed on appeal. Nor does this case raise significant constitutional issues or require further guidance from the courts.[4] It presents a straight-forward application of the plain language of the statute.

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[1] *Van Hollen v. FEC*, __ F. Supp. 2d __, 2012 WL 1066717 (D.D.C. Mar. 30, 2012).

[2] *See* Notice, Dkt. No. 60, *Van Hollen v. FEC*, No. 11-cv-00766-ABJ (D.D.C. Apr. 26, 2012).

[3] It is also the conclusion that we recently reached when we, along with our colleagues, decided not to appeal the District Court's ruling in *Carey v. FEC*, 791 F. Supp. 2d 121 (D.D.C. 2011), and instead enter into a negotiated final stipulated judgment. This is consistent with earlier decisions by the Commission, such as the decision not to appeal the invalidation of a number of regulations in *Shays v. FEC*, 337 F. Supp. 2d 28 (D.D.C. 2004); the Commission instead proceeded through rulemakings.

[4] Despite the "sky is falling" rhetoric adopted by some with respect to the District Court's decision, the Commission need not throw up its hands and declare that it cannot offer meaningful advice on how to

Consequently, we could not support expending the significant resources necessary for an appeal. Rather, the wisest and most efficient course of action is to quickly bring our regulations into conformity with the statute.

In addition, we also would have preferred to inform the District Court and the D.C. Circuit that the Commission opposed the motion for stay pending the appeal being attempted by the two intervenors. In any event, the District Court today denied that motion, noting that the intervenors failed to show both likelihood of success on the merits of their appeal and a threat of irreparable harm.[5] We also continue to believe – as the Commission articulated before the District Court[6] – that only the Commission has the right to appeal. The Commission has now determined not to appeal.

We note finally that we have attempted on several occasions to seek public input on the regulation invalidated by the District Court and others concerning disclosure of campaign finance information. As the Supreme Court explained in *Citizens United*, "effective disclosure" is what "enables the electorate to make informed decisions and give proper weight to different speakers and messages."[7] We now welcome the opportunity to work with our colleagues to bring our regulations governing the reporting of electioneering communications into compliance with the Act, guided by the Supreme Court's teaching.

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comply with the Act. For several years prior to adoption of the rule at issue in 2007, the Commission administered a rule that clearly and simply applied the Act's requirements of disclosing those who give more than $1000 to Qualified Nonprofit Corporations.

[5] *See* Memorandum Opinion & Order, Dkt. No. 61, *Van Hollen v. FEC*, No. 11-cv-00766-ABJ (D.D.C. Apr. 27, 2012).

[6] *See* Defendant FEC's Response to the Motion to Intervene at 1-2, Dkt. No. 18, *Van Hollen v. FEC*, No. 11-cv-00766-ABJ (D.D.C. June 30, 2011).

[7] *Citizens United v. FEC*, 558 U.S. __, 138 S. Ct. 876, 916 (2010).