

Federal Court Strikes Down FEC Regulation, Requires Broad Disclosures for Organizations Making Electioneering Communications

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If you haven't already heard, watch out. Unless an appellate court intervenes, organizations making electioneering communications from their general treasury funds may be required to disclose the identity of all donors who have contributed an aggregate of \$1,000 or more since January 1, 2011, or perhaps since March 30, 2012.

In *Van Hollen v. Federal Election Commission*, Representative Chris Van Hollen (D-MD) sued the Federal Election Commission (FEC) for failing to enforce an electioneering communication disclosure provision in the Bipartisan Campaign Reform Act (BCRA). Van Hollen claimed the FEC's current regulations and interpretations, which required the disclosure of donors only if they gave to a separate bank account for making electioneering communications or if their donations were made specifically for the purpose of making electioneering communications, were contrary to BCRA. On March 30, 2012, the U.S. District Court ruled in favor of Van Hollen's motion for summary judgment, holding that the FEC's current electioneering communication regulation was invalid. On April 27, 2012, the U.S. District Court denied a motion to stay its decision pending appeal and clarified that the FEC's prior electioneering communication regulation, which was in effect from 2003-2007, now governs the disclosure of electioneering communications until the FEC rewrites the regulation.

On Monday, May 14, a motions panel of the D.C. Circuit also denied a request for a stay of the district court's decision pending appeal by a 2-1 vote. A separate panel of D.C. Circuit judges will hear arguments on the merits this September.

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Importantly, the 2003 electioneering communication regulation requires all entities making electioneering communications from their general treasury to disclose on their electioneering communication reports all donors who have contributed an aggregate of \$1,000 or more since the first day of the preceding calendar year. Although there is an option to establish a separate bank account for the purpose of making an electioneering communication-and thus to partially limit the invasiveness of the disclosure requirements-that option is currently available only to donations from individuals.

Wiley Rein attorneys are available to discuss the impact of this decision on your organization's voter education plans both this fall and beyond.