

D.C. Circuit Upholds FEC Disclosure Rule in *Van Hollen v. FEC*

January 27, 2016

On January 21, the U.S. Court of Appeals for the D.C. Circuit handed down a unanimous decision by Judges Janice Rogers Brown, David Sentelle, and Raymond Randolph in favor of Wiley Rein client the Center for Individual Freedom (CFIF) in *Van Hollen v. FEC*. It is the second time in the case that the D.C. Circuit reversed a decision by District Court Judge Amy Berman Jackson, who twice struck down a Federal Election Commission (FEC) disclosure rule. The D.C. Circuit upheld the FEC rule because, consistent with the requirements of *Chevron* and the Administrative Procedure Act (APA), it advanced campaign finance disclosure without unduly burdening tax exempt groups or other corporations and labor unions. In so ruling, the court stressed the burdens that compelled disclosure imposes on First Amendment free speech.

This case was shepherded and argued at all levels by Election Law & Government Ethics Practice senior counsel Thomas W. Kirby. The Wiley Rein team included partner and practice chair Jan Witold Baran, partner Caleb P. Burns, and associate Stephen J. Kenny; partner Claire J. Evans helped moot the case.

Commenting on the ruling, Mr. Baran said: "This victory is particularly impressive in light of the fact that the FEC did not appeal either of the adverse district court decisions. We successfully moved to intervene early on, because we anticipated the adverse rulings would not be appealed or reversed without CFIF's presence as a party in the trial court."

In 2011, Representative Chris Van Hollen (D-Md.) filed a lawsuit against the FEC alleging that federal election laws governing campaign advertising were unclear when it came to mandating the

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disclosure of the donors behind such ads. He claimed they created a loophole that allowed non-profit groups registered under section 501(c) of the tax code to air attack ads in the weeks leading up to Election Day without disclosing their donors' names.

The District Court ruled in Van Hollen's favor, which is when Wiley Rein stepped in as defendant-intervenor on behalf of the CFIF to appeal the decision. The D.C. Circuit overturned the lower court decision, disagreeing that the federal statute was unambiguous and holding that the district court should have instead analyzed whether the rule was a reasonable interpretation of the statute under a more deferential mode of judicial review. The case was remanded back to the district court, which found that the rule promulgated by the FEC was not a reasonable interpretation of the McCain-Feingold law. The case was appealed a second time before the D.C. Circuit, resulting in last week's decision.