



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**Press Statement by Chairman Matthew S. Petersen  
And Commissioners Caroline Hunter and Lee E. Goodman**

NBC-4 has requested our response to assertions by Commissioner Ravel that the Federal Election Commission is not operating effectively. Such accusations from Commissioner Ravel are nothing new and have been refuted by us on numerous occasions.<sup>1</sup> Though the Commission continues to operate effectively, Commissioner Ravel has once again mischaracterized a disagreement over the proper role of the First Amendment in the Commission's enforcement decisions as agency dysfunction. This disingenuous allegation disserves both the public and the men and women who work for the FEC and diligently carry out its important responsibilities.

***The FEC is Functioning Effectively***

The premise that the Commission is in a state of "dysfunction" is demonstrably false. By any objective measure, the Commission is operating effectively and as contemplated by Congress. For example:

- So far in 2016, the Commission has taken 458 certified votes, counting every kind of issue that has been put before the Commission. Fully **394 (86%)** of all votes taken this year have reflected bipartisan agreement of a majority of Commissioners.<sup>2</sup> (In fact, 356 (78%) of Commission votes were *unanimous*.)
- A majority of Commissioners did not agree in only 56 of the 458 votes this year, resulting in votes of 3-3 (or 3-2 in some cases). Even this modest figure overstates the frequency or significance of split votes in enforcement, because it includes votes on non-enforcement matters, multiple votes within single enforcement matters, and votes on recommendations within matters in which the Office of General Counsel's recommendation was to close the file and to which the Democrat commissioners dissented.
- In 2016, only 9 enforcement matters have been closed following 3-3 votes.

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<sup>1</sup> See, e.g., "Chiding an FEC Colleague," *New York Times*, Apr. 9, 2014; "Dissension at the Federal Election Commission," *New York Times*, May 8, 2015; "The FEC's Problems Aren't With the GOP," *Politico*, May 10, 2015; "FEC Commissioner Ann Ravel: It's Not My Role to Apply Constitutional Principles," *The Daily Caller*, Aug. 16, 2016.

<sup>2</sup> In 2014, the Commission decided 93% of all certified votes by a bipartisan majority. "The FEC's Problems Aren't With the GOP," *Politico*, May 10, 2015.

- Notably, one of the 9 enforcement matters dismissed by 3-3 votes was a press freedom case in which Commissioner Ravel voted to find that Fox News violated the law for engaging in wholly bona fide press activity.<sup>3</sup>
- For the 9 cases dismissed this year following 3-3 votes, we reconciled the facts of each matter with the law and relevant court precedents and thoroughly explained our reasons for dismissing. Our written statements are or shortly will be available on the Commission's website, and our decisions are subject to judicial review in a federal court.
- This year's return to productivity stands in sharp contrast with Commissioner Ravel's tenure as Chair. When Commissioner Ravel ended her term as Chair last year, the backlog consisted of 62 enforcement cases. But after just eight months under the current Chairman, the Commission has resolved over 100 issues submitted for its decision on its enforcement docket. There are now approximately 38 enforcement cases pending before the Commission for a vote at some stage of the enforcement process, and approximately half of those pending matters were presented to the Commission for decision in just the last two months. These cases include 17 cases awaiting Commission discussion due to objections lodged by Commissioner Ravel.
- Over the past ten years, the Commission has enhanced proactive compliance programs, which have dramatically increased compliance and correspondingly decreased the number of enforcement matters. For example, the Commission has expanded its Information Division's compliance educational programs. In addition, the Commission's Reports Analysis Division (RAD) revised its mission from reviewing reports and initiating enforcement to providing proactive advice to committees. Together, the Information Division and RAD answer over 10,000 questions annually, which in turn has resulted in greater compliance.
- Additionally, in fulfilling a key mandate, our agency posted on the Internet data about \$7.3 billion in federal election expenditures in the 2012 cycle and \$5.5 billion for the 2014 cycle. We are developing a new website to make this information more easily accessible to the public.

***Our Commitment to First Amendment Rights Should Not Be Misconstrued as "Dysfunction"***

Commissioner Ravel's criticism should be understood for what it really is: lashing out against those who disagree with her preferred policies. In broad strokes, there are four identifiable differences in priorities which are often reflected in our Statements of Reasons:

- First and foremost is our sensitivity to the fact that we are regulating, investigating, and sometimes punishing people for speaking and associating while participating in our

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<sup>3</sup> Matter Under Review 6952 (Fox News); Erik Wemple, "The FEC Has No Business Judging Fox News' Debate," *Washington Post*, June 30, 2016; Editorial, "Progressives Target the Press," *Wall Street Journal*, June 30, 2016.

democratic processes—that is, core First Amendment protected activity. This is not our invention or a ruse; it is the law as explained by the courts that we are bound to apply.<sup>4</sup>

- Second, given the First Amendment implications, we place a premium on providing the public clear notice of what federal law requires before punishing someone for a violation. We do this because it is well-settled law that unclear laws unconstitutionally chill protected First Amendment activity.<sup>5</sup> Some of our colleagues, however, are more comfortable clarifying the law or new enforcement priorities retroactively through punishment.
- Third, we are less inclined than our colleagues to credit speculative allegations. The law requires that a higher evidentiary threshold be met before the Commission launches an investigation into a person’s political activities and associations.
- Fourth, when determining the appropriate remedy for a violation, we take into account the practical ability of the public—which often consists of part-time volunteers, inexperienced campaign staff, or first-time candidates—to understand and comply with the Act’s complex, burdensome, and evolving requirements.

We understand that Commissioner Ravel disagrees with our commitment to the First Amendment. She told the *Washington Post* that “my role in the commission is not to apply constitutional principles because I’m not on the Supreme Court.”<sup>6</sup> She likewise told Center for Public Integrity that “[i]t’s not the role of the FEC to determine constitutionality of our rules.”<sup>7</sup> And in an appearance at the Brookings Institution, she criticized our adherence to constitutional principle as an “attempt to hide behind recent Supreme Court decisions, to argue that there must be sensitivity in enforcing the remaining law.”<sup>8</sup>

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<sup>4</sup> See, e.g., *Van Hollen v. FEC*, 811 F.3d 486 (D.C. Cir. 2016) (“The FEC is unique among federal administrative agencies, having as its sole purpose the regulation of core constitutionally protected activity—the behavior of individuals and groups only insofar as they act, speak and associate for political purposes. Thus, more than other agencies whose primary task may be limited to administering a particular statute, every action the FEC takes implicates fundamental rights.... [The Commission’s] unique prerogative [is] to safeguard the First Amendment when implementing its congressional directives.”)

<sup>5</sup> See, e.g., *Federal Communications Commission v. Fox Television Stations, Inc.*, 132 S.Ct. 2307, 2317 (2012) (“Even when speech is not at issue, the void for vagueness doctrine addresses at least two connected but discrete due process concerns: first, that regulated parties should know what is required of them so that they may act accordingly; second, precision and guidance are necessary so that those enforcing the law do not act in arbitrary or discriminatory way. . . . When speech is involved, rigorous adherence to those requirements is necessary to ensure that ambiguity does not chill protected speech.”)

<sup>6</sup> Erik Wemple, “The FEC Has No Business Judging Fox News’ Debate,” *Washington Post*, June 30, 2016.

<sup>7</sup> Michael Beckel, “Why a Former IRS Commissioner Thinks the FEC is a ‘bureaucratic waste,’” CenterforPublicIntegrity.com, July 1, 2016.

<sup>8</sup> Ann Ravel, Speech at Brookings Institute, transcript available at: [https://www.brookings.edu/wp-content/uploads/2016/01/20160121\\_campaign\\_finance\\_summit\\_transcript.pdf](https://www.brookings.edu/wp-content/uploads/2016/01/20160121_campaign_finance_summit_transcript.pdf), at p. 11.

While the Commission is obviously not the final arbiter of constitutional questions, it is simply false to say the Commission may not take into account the First Amendment when making decisions. Not only is it permissible, federal courts have ruled that it is our obligation to consider the First Amendment interests at stake when deciding whether to pursue alleged violations. As presidential appointees who have taken an oath to support and defend the Constitution, we will continue to act in accordance with these commands.<sup>9</sup>

In light of her disregard for First Amendment considerations, it is not surprising that Commissioner Ravel also exhibits little respect for the federal courts. She has criticized the judiciary, hyperbolically writing in the *New York Times* that “there is little meaningful judicial review” of Commission decisions and that “the courts are undermining Congress’s intention to provide for meaningful enforcement of the nation’s election laws.”<sup>10</sup> And she has called First Amendment rulings of federal courts “misguided court decisions” on par with “my own agency’s dysfunction.”<sup>11</sup>

From these statements, we clearly see that what galls Commissioner Ravel is not agency “dysfunction” but rather that the Commission and the courts resist bending to her policy preferences. There is certainly room for robust debate over the scope of the federal campaign finance laws and how best to enforce those laws consistent with the First Amendment, and we recognize that many different perspectives and opinions exist on this subject. However, to erroneously describe a policy disagreement between commissioners as evidence of dysfunction diminishes that debate, misleads the public, and unfairly disparages the men and women who work at the Commission.

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<sup>9</sup> *Id.*

<sup>10</sup> Ann Ravel, “How Not to Enforce Campaign Finance Laws,” *New York Times*, Apr. 2, 2014.

<sup>11</sup> Ann Ravel, “States Can Bring Political ‘Dark Money’ Into the Light,” *Los Angeles Times*, July 20, 2016.