

GUEST OBSERVER

By Caroline C. Hunter

FEC Enforces Law As It Is, Not as Some Wish It to Be

According to recent press reports, Sens. John McCain (R-Ariz.) and Russ Feingold (D-Wis.) have blocked President Barack Obama's nominee to the Federal Election Commission because they believe the agency "is currently mired in anti-enforcement gridlock." Their pronouncement is only the latest in a string of breathless editorials in the New York Times and the Washington Post, and news releases from "reform groups," alleging the same.

Without commenting on the nomination, the agency's record over the past year conclusively shows the contrary. During that time, the agency has resolved more than 350 matters, resulting in close to \$2 million in civil penalties. A small number of those cases have resulted in "deadlocks" among the commissioners. Most of those "deadlocks" have occurred in the thorniest cases, where the law is least clear, and the threat to citizens' core First Amendment political rights is greatest.

Notwithstanding the legal shoals of danger, critics have implored us to move full speed ahead in those very cases and to decide the law according to how they wish it to be. That is a mistake. It is not how our government works, and it is not what the agency was created to do.

FEC commissioners take an oath of office to "support and defend the Constitution" and to "faithfully discharge the duties of the office." Since being confirmed by the Senate one year ago, this is exactly what I have done. I can defend each of the votes I have cast at the commission. I have pressed for, and will continue to press for, an open and transparent process that administers the laws Congress wrote and the regulations properly promulgated by the commission in a fair, nonpartisan manner.

Any superficial allegations about what has happened over the past year reflect fundamental misperceptions about why the commission exists and how the

commission operates. As borne out by the FEC's deliberately crafted and statutorily prescribed structure, limitations and powers, the law is not currently as some envision it.

Congress made an affirmative choice not to create an odd-numbered commission, which would increase the likelihood of majority decisions and fewer "deadlocks." Instead, the statute set the agency at six members, and no more than three members may be affiliated with the same political party.

Congress made an affirmative choice not to mandate strict compliance with (and, conversely, enforcement of) the law. Instead, the statute charges the agency with "encouraging voluntary compliance." Congress made an affirmative choice not to have the FEC levy fines. Instead, with the exception of the administrative fines program, the agency must conciliate with those accused of violating the law. Only if conciliation is unsuccessful may the FEC go to court to seek enforcement of the law.

Congress made an affirmative choice not to give the FEC authority through the enforcement process to create new rules that regulate political speech. Instead, the statute prohibits the agency from promulgating any rule of law except through a rulemaking process, with adequate notice and comment from the public. Only then can the public have adequate notice of the rules of the game before the game begins.

When the law is unclear and critics implore the agency to move forward with draconian enforcement, I have not, and will not, acquiesce to their demands to proceed in a manner that is grossly unfair or contrary to the law. When levying a substantial civil penalty does nothing to encourage the statutory mandate for voluntary compliance, we should not approve.

We have great respect for Sens. McCain and Feingold and the reform activists for their longstanding involvement in campaign finance issues. However, it is high time to move beyond the rhetoric and remember the law is the product of laborious and carefully crafted compromises that directly affect vital First Amendment rights. Many of these rights are still being resolved in court. Just recently, the Supreme



Court asked for reargument in Citizens United v. FEC. The court ordered the parties to address the constitutionality of the prohibition on corporate political expenditures — one of the cornerstones of modern campaign finance law.

Resolving competing interests in campaign finance regulation is rarely easy, and the law is not clear and absolute in many cases. The FEC has a duty to carefully weigh the competing interests of enforcement against undue punishment of

citizens exercising their political rights. I will not violate our oath of office by getting ahead of the law.

Caroline C. Hunter is a commissioner on the Federal Election Commission. The views expressed are her own and not those of the commission.

LETTERS

All Atwitter

In your July 6 article "As Twitter Expands, So Will Its Need for Lobbyist," Twitter's growth shows its mettle as a revolutionary breakthrough in communications. To make mention of the multiple benefits of Twitter, perhaps the most relevant to the Hill: the increasing use of Twitter and other social media technologies in government, providing information and transparency to the public on a mass scale.

In a society that is increasingly interconnected, Twitter allows the public to stay instantly informed on current events around the world.

Many "tweets" from officials include links to pertinent policy topics. Those intrigued can click and be immediately informed. Not long ago, people would have to scour the Web to find relevant policy articles. Now it is tweeted in all-too-timely fashion.

All this encourages a more informed society. The instant access to information provided by Twitter feeds creates a web of ideas and concepts that not even in-depth Google searching and monitoring can do for you.

This is especially critical in government, where a more informed public can hold its elected officials more accountable.

Another noteworthy Twitter trait is that it provides a humanizing element. The nature of the personalized Twitter feed encourages a communication style that shows that these officials are people with feelings, too.

This benefit is not to be underestimated, as humanizing elected officials goes a long way in removing the stigma many constituents have about contacting their representatives. This in turn further encourages the public to hold their elected officials more accountable.

Web 2.0 is indeed a powerful tool. Be it Twitter today, one can only guess what awaits us tomorrow.

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