

As for Commissioner Ravel's departing report:

To my knowledge, Commissioner Ravel first published her report on the AltFEC twitter account on Sunday at Noon, so I have had very little time to study her data. However, what I have seen in Commissioner Ravel's data jumps off the page as misleading and sophistic in several areas. The data compiled in Commissioner Ravel's report are misleading and do not accurately reflect the state of enforcement decisions at the FEC. I assume that Commissioner Ravel has manipulated her statistics purposely in order to advance her philosophical narrative that First Amendment rights should be severely restricted.

Here are just a few shortcomings in Commissioner Ravel's data.

1. Commissioner Ravel's report purports to compile all 3 to 3 "substantive votes" in "enforcement matters closed" during 2016. The data point she cites, 37.5%, is contrived to exaggerate the number of cases decided by a vote of 3 to 3. Here's how:

-- Ravel does not count any votes to find reason to believe and proceed with an investigation. By excluding these votes in 2016, and counting only "matters closed" or dismissed, she has magnified the percentage of 3 to 3 votes in enforcement cases overall.

-- Ravel counts all 3 to 3 votes, even if there were a number of 3 to 3 votes on discrete issues in a single enforcement matter that ended in a majority position to compromise. In one matter, the Commission voted 6 to 0 to accept 6 general counsel recommendations to close a file. That's one vote to dismiss one matter. In another matter, the Commission cast three 3 to 3 votes on discrete issues, breaking up the general counsel's recommendations into several discrete motions and votes, and ultimately voted 6 to 0 to move forward on one issue. Ravel counts that case as three 3 to 3 votes and one 6 to 0 votes. In some cases, the Commission has voted 6 to 0 to dismiss a case, but then cast a 3 to 3 on approving a

factual and legal analysis. By counting all of these "substantive" 3 to 3 votes, she has exaggerated actual enforcement disagreement. Furthermore, counting all 3-3 votes on the way to a final resolution that results in a majority vote discounts compromise.

By way of comparison, here are my figures for 2016:

-- The Commission closed 164 enforcement cases in 2016 (matters in office of general counsel and alternative dispute resolution).

-- Of the 164 cases closed, the final vote to dismiss the matter was 3 to 3 in only 16 cases, or 9.7%. Note that I do not count every discrete vote along the way to a final dismissal. I just count the ultimate 3 to 3 vote: proceed with enforcement or dismiss.

-- Of the 16 cases dismissed by a vote of 3 to 3, in 7 of those cases, the general counsel recommended dismissal, three Republican Commissioners voted in agreement with the general counsel, and three Democratic Commissioners voted to proceed with enforcement. This is one check against Commissioner Ravel's narrative that all 3 to 3 votes are evidence of Republican lawlessness.

-- Of the 16 cases dismissed by a vote of 3 to 3, in 9 of those cases the general counsel recommended enforcement, three Republicans voted to dismiss, and three Democrats voted in favor of the general counsel's recommendation to enforce. That's just 5.5% of the entire 164 cases closed in 2016.

-- My percentage statistic of 9.7% drops to about 8.8% when I include in the total case count the MURs where the the Commission voted by majority vote to find reason to believe and open an enforcement case. Commissioner Ravel chose to exclude from her statistics the cases where the Commission voted to move forward with enforcement. According to data provided by FEC staff, the Commission voted to find reason to believe a violation occurred and to proceed with

enforcement in 39 cases involving 59 respondents. (There are a few machinations one must account for to control for double counting of enforcement cases opened with a RTB finding and closed in the same calendar year to derive the 8.8% figure. I can explain this detail if you are interested.)

2. Commissioner Ravel also cites civil penalties collected as her measure of effective regulation. I disagree with the premise that we should judge the effectiveness of the FEC by how much it punishes citizens, in monetary terms, for exercising First Amendment rights.

-- Ravel compares total civil penalties in 2016 to total civil penalties in 2006. That is a highly selective 11-year comparison. Why choose an 11-year comparison? Ravel apparently chose 2006 as her base year because in that year the Commission received the highest civil penalties in the history of the Commission -- all due to one \$3.8 million civil penalty paid by Freddie Mac that year. It was the highest penalty ever paid to the FEC. No other year has come close to that year. So she selected the highest base year she could find to exaggerate her philosophical narrative.

-- Civil penalties collected in 2016 increased over civil penalties collected in 2015 and 2014. Civil penalties in 2016 were 32% higher than in 2014. This runs counter Ravel's narrative.

-- Finally, Ravel makes a comparison with 2006 without acknowledging critical context -- that the entire field of First Amendment regulation has been deregulated by the courts, the Commission, Congress, and presidential campaigns opting out of public funding since 2006. Why would civil penalties go up during a decade of increasing deregulation? To wit:

---- Supreme Court decision in Wisconsin Right to Life deregulated corporate and labor union electioneering communications in 2007

- Supreme Court decision in *Davis*, which struck the millionaire amendment in 2008 (which had generated hundreds of thousands of dollars in civil penalties)
- Supreme Court decision in *Citizens United* deregulated corporate, labor union and non-profit corporation independent expenditures in 2010
- Supreme Court decision in *McCutcheon* deregulated aggregate contribution limits in 2014
- U.S. Court of Appeals for the District of Columbia decision in *SpeechNow* recognized free speech rights of Super PACs in 2010
- U.S. Court of Appeals for the District of Columbia decision in *Van Hollen* deregulated donor disclosure for electioneering communications in 2015
- FEC deregulated all free political speech on the Internet in the Internet Freedom Rulemaking in 2006
- FEC deregulated Super PACs in the Commonsense 10 Advisory Opinion in 2010
- FEC deregulated Super PACs further in Senate Majority PAC Advisory Opinion in 2015
- Congress eliminated public funding for Conventions in 2014 (this deregulated national conventions and eliminated audits and fines for conventions)
- FEC deregulated national conventions further in the RNC / DNC Advisory Opinion on Convention funding in 2014
- Congress established new accounts for national parties in 2015
- Only 2 or 3 presidential candidates accepted federal funds in 2015/16 (so there will be fewer audits of presidential campaigns and fewer enforcement actions and fines arising from presidential campaigns than at any time in FEC history)

There are others. The upshot is that nearly half of what the FEC regulated and punished in the mid-2000s at the height of BCRA has been deregulated. **Deregulation explains lower civil penalties, not Commissioner Ravel's tired meme of "dysfunction" within the Commission.**

3. Finally, a few observations about the specific subjects and cases discussed in Commissioner Ravel's report:

First, in the cases mentioned, the Republicans have explained our reasons for voting as we did in detailed written statements open for public and judicial review. They are available for public reading on the FEC's website.

Second, noticeably absent from Commissioner Ravel's list of important issues are her efforts to regulate and punish free speech on the Internet and in the press.

Commissioner Ravel voted at least a half dozen times to punish or otherwise regulate YouTube videos, tweets, and websites. She should have included her efforts to regulate free postings on the Internet in her departure report because Internet regulation is an important part of her legacy at the FEC.

Commissioner Ravel voted to punish Fox News for making a newsroom editorial decision to include additional candidates on its debate stage. Commissioner Ravel should have included her efforts to regulate and punish American newsrooms in her departure report, because that will remain part of her lasting legacy.

Of the 16 cases dismissed by a vote of 3 to 3, free press rights were under attack in the Fox News debate case and the Gilbert documentary film case, while free speech on the Internet was at issue in the Frankel case. That's three of the 16 cases decided by a vote of 3 to 3.

Some important historical perspective on Commissioner Ravel's legacy with respect to free press and Internet rights can be read here:

<https://www.washingtonpost.com/blogs/erik-wemple/wp/2016/06/30/the-fec-has-no-business-judging-fox-newss->

[debate/?utm_term=.5649eddbd22d](#)

[http://www.foxnews.com/politics/2016/06/30/fec-democrats-tried-to-punish-fox-news-over-debate-changes-files-show.html](#)

[http://www.foxnews.com/politics/2016/08/19/fec-opening-door-to-internet-regulation-again.html](#)

Third, Commissioner Ravel's report misrepresents the substance or background of several cases featured as poster cases. Here are some examples:

-- The only foreign national case Ravel features is the Mindgeek case (MUR 6678). Mindgeek dealt not with an election for public office, but a California ballot measure. Therefore, Republicans voted to dismiss for lack of FEC jurisdiction, but we noted that California law prohibited foreign nationals from contributing to ballot measure campaigns. Ironically, the Mindgeek case came to the FEC due to Commissioner Ravel's inaction as chair of the California Fair Political Practices Commission. A complaint was filed with the FPPC in 2012 alleging that a foreign national had spent money in a local ballot measure campaign. FPPC Chair Ravel did not enforce California's prohibition against the foreign national and the complaint was dismissed. Ravel joined the FEC and a year later started to demagogue the Mindgeek case as an example of FEC Republican recalcitrance. After the case was dismissed at the FEC, the California FPPC reconsidered the case and punished the foreign national.

-- Ravel cites the CHGO case (MUR 6391/6471). Ravel states that the Republicans refused to find a violation. Not true. First, it's misleading. Republicans had voted to find reason to believe and open and investigation. Second, after the investigation, Republican Commissioners were ready to find substantial reporting violations at one stage of the proceeding. But, Democrats insisted on further investigation to prove a broader legal theory of "political committee"

status. That investigation ensued, but as the U.S. District Court ruled today (Feb. 22, 2017), the case was properly dismissed because the statute of limitations ran as to the clear violations the Republicans were prepared to enforce a year earlier, and the Commission was justified in declining to initiate prosecution of a defunct organization.

Sincerely,

Lee Goodman
Commissioner