

Chief justice puts donor-disclosure ruling on hold

By Amy Howe, 9-16-18

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Last month a federal district court invalidated a Federal Election Commission regulation governing when political nonprofit groups, sometimes referred to as “dark money” groups, must disclose their donors. On Friday, one of the groups at the center of the ruling urged the Supreme Court to put the decision on hold, calling the district court’s ruling “unprecedented” and its timing – so close to the November elections – “extraordinary.” On Saturday, Chief Justice John Roberts granted the group’s request, allowing the existing regulation to stay in effect for at least the foreseeable future.

The emergency application came from Crossroads Grassroots Policy Strategy, a nonprofit linked to American Crossroads, a “super PAC” started by Karl Rove. The Internal Revenue Service allows groups like Crossroads Grassroots to spend money on elections as long as it is not their “primary purpose.” The FEC has long interpreted federal election laws to require such groups to disclose their donors only when the donors’ contributions were earmarked for a specific “independent expenditure” – communications that expressly urge voters to vote for or against candidates. (The ruling does not affect communications known as “issue ads,” which may discuss policies or candidates but don’t explicitly support or oppose a candidate.)

But U.S. District Judge Beryl Howell rejected the FEC’s interpretation on August 3, concluding that nonprofits like Crossroads Grassroots should be required to disclose any donors who give at least \$200 toward any independent expenditures. If allowed to stand, the ruling would be significant: Political nonprofits have spent over \$700 million on “independent expenditures” since 2010.

Howell stayed her order for 45 days, but neither Howell nor the U.S. Court of Appeals for the District of Columbia Circuit would further extend the stay, which ends on Monday, September 17. On Friday, Crossroads Grassroots went to the Supreme Court for relief, telling Roberts (who is responsible for emergency appeals from Washington, D.C.) that the FEC regulation had been used in 19 previous elections, “and there is no compelling reason to hastily throw the clear reporting standards it provides to donors and speakers into confusion just prior to a national election.” Roberts could have referred the request to the full court, as justices often do, but instead he opted to act alone, [in a brief one-sentence disposition](#) that indicated that the district court’s decision was “stayed pending further order of the undersigned or of the Court.” Roberts’ quick action may have stemmed from a desire to bring clarity to the situation as far in advance of the Monday deadline as possible, but it may also reflect his frustration at the D.C. Circuit’s failure to act on Crossroads Grassroots’ request.