

**Session title:** Offense, Defense, or Referee? Exploring the Relationships Between a Regulatory Agency, Public Interest Groups and the Regulated Community

**Moderator/Panelists:**

Michael Sullivan, Director, Massachusetts Office of Campaign and Political Finance

Ellen Weintraub, Chair, Federal Election Commission

Ann Ravel, Commissioner, Federal Election Commission, Former Chair, California Fair Political Practices Commission

Steven Baddour, Partner, McDermott, Will and Emery and former Massachusetts State Senator

**Date and time:** Tuesday December 10 2013, 13:45 pm

**Rapporteur:** Simon Bérubé

### **Session Summary**

Keeping as a backdrop the roles of regulator, law enforcer, investigator, educator and promoter of public participation in democracy, the discussion focused on the links between agencies, the public, interest groups and lawmakers.

According to Ms. Weintraub, agencies tend to be more reactive than proactive. For example, the laws that her agency is responsible for applying must first be adopted in Congress and are then modified by the courts. An inability to be proactive can lead to a lack of information regarding legislative changes, which can potentially cause confusion and negative reactions.

According to Ms. Ravel, agencies help increase citizens' trust in democratic institutions by educating elected officials as well as the general public.

As a former lawmaker, Mr. Baddour emphasized that agencies must play a role in education and apply laws in an impartial manner. In terms of education, he underscored the importance of meeting with elected officials at the outset, in order to establish the credibility of regulatory bodies and their stakeholders.

On this topic, Ms. Weintraub compared these interactions to a constant dance between lawmakers who pass laws and who vote on organizations' budgets on the one hand, and agencies that must sometimes crack down on these same lawmakers on the other. In this respect, several participants emphasized the importance of holding information sessions and seminars for elected officials and the public about legislation pertaining to elections and ethics.

On the subject of complaints, all participants agreed that many of these complaints reflect partisan interests. Nonetheless, agencies must distance themselves from the complainant and ascertain whether the complaint is justified.

Participants also challenged lawmakers to turn to regulators more frequently throughout the process of drafting legislation. Several participants outlined the numerous problems that can occur when legislation does not meet certain minimal standards. Even though

he agreed with this suggestion, Mr. Baddour pointed out that a climate of trust has to be created at the outset in order for this type of collaboration to take place. According to several observers, this trust can be built by ensuring that the role that agencies intend to play is stable and clearly defined.

In terms of ethics, it was pointed out that regulators must sometimes use their judgment. Newspaper headlines can be devastating for a politician who has broken the law, even in the most minor way. Likewise, some laws may have become obsolete or inapplicable. For example, legislation may require that cheques be used to cover election expenses, even though bank transfers are now a common and regularized practice.

Finally, participants asked themselves who regulatory agencies' constituents really are. On this point, several participants highlighted the fact that the agencies are accountable to the general public in the sense that they are responsible for promoting increased trust in institutions.