



California Corporate & Securities Law

Business Roundtable v. SEC – Winners And Losers

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Last week, I wrote about the D.C. Circuit Court of Appeal's decision in *Business Roundtable v. SEC* which vacated Rule 14a-11. Obviously, the decision was a victory for the Business Roundtable and the Chamber of Commerce and a stinging loss for the SEC.

Other Winners

Other winners include Commissioners [Troy Paredes](#) and [Kathleen Casey](#) (whose term expires this year) who voted against the rule and the American Bar Association's [Committee on Federal Regulation of Securities](#) whose comment letter was cited twice by the Court of Appeals.

Other Losers

The decision is clearly a set back for Chairwoman [Mary L. Schapiro](#) who has forced through this and other rule changes over the objections of Commissioners Paredes and Casey. Union and state pension funds (such as CalPERS and CalSTRS) are also losers because they would have been likely candidates to use the rule. The Court of Appeals, however, found that the SEC acted arbitrarily “[b]y ducking serious evaluation of the costs that could be imposed upon companies from use of the rule by shareholders representing special interests, particularly union and government pension funds”

One More Winner

The use of the Latin language also received a small bump with Judge Ginsburg using phrases such as “in haec verba” and “ipse dixit”. Judge Ginsburg also correctly recognized that “data” is plural (“than were the data upon which it had based its estimate in the Proposing Release.”) and “datum” is singular (“Without this crucial datum”). As Marc-Antoine Muret (1526-85) observed:

Italice loquentem soli Itali intelligent; qui tantum Hispanice loquatur inter Germanos pro muto habebitur; Germanus inter Italos nutu ac manibus pro lingua uti cogetur; qui Gallico sermone peritissime ac scientissime utatur, ubi e Gallia exierit, saepe ultro irridebitur; que Graece Latineque sciat, is, quocunque terrarum venerit, apud plerosque admirationi erit. (“Only Italians understand someone speaking in Italian; whoever speaks Spanish amongst the Germans is as mute; a German is able to be understood amongst Italians by nod and gestures rather than language; who is able to employ the most expert and intelligent French language, when he leaves France, is often mocked abroad; and whoever knows Greek or Latin, wherever in the world she shall go, will be admired by everyone.”)

Please contact [Keith Paul Bishop](#) at Allen Matkins for more information kbishop@allenmatkins.com

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