

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 08-80736-CIV-MARRA/JOHNSON

JANE DOE #1 and JANE DOE #2,

Petitioners,

vs.

UNITED STATES,

Respondent.

UNITED STATES' RESPONSE TO PETITIONERS' NOTICE OF
NEWLY-AVAILABLE SUPPLEMENTAL AUTHORITY

Respondent, by and through its undersigned counsel, files its Response to Petitioners' Notice of Newly-Available Supplemental Authority, and states:

On June 17, 2011, petitioners filed their Notice of Newly-Available Supplemental Authority in Support of Their Motion for Finding of Violations of the Crimes Victims Rights Act (DE 85). The supplemental authority is the June 6, 2011 letter of Senator Jon Kyl to the Attorney General of the United States, regarding the issuance of an opinion by the Department of Justice's Office of Legal Counsel, in which the OLC expressed its interpretation of when rights under the CVRA applied. Senator Kyl disagreed with the interpretation of the CVRA in the OLC opinion. Petitioners ask the Court to consider Senator Kyl's June 6, 2011 in determining whether rights under the CVRA attached in the absence of a formal charge being filed.

Senator Kyl's letter cannot be considered by this Court as legislative history because it was written in 2011, seven years after the enactment of the CVRA, Pub. L. 108-405, 118 Stat. 2261 (Oct. 30, 2004). In Bruesewitz v. Wyeth, LLC, 131 S.Ct. 1068 (2011), the Supreme

Court observed:

Post-enactment legislative history (a contradiction in terms) is not a legitimate tool of statutory interpretation. See *Jones v. United States*, 526 U.S. 227, 238, 119 S.Ct. 1215, 143 L.Ed.2d 311 (1999); *United States v. Mine Workers*, 330 U.S. 258, 281-282, 67 S.Ct. 677, 91 L.Ed. 884 (1947). Real (pre-enactment) legislative history is persuasive to some because it is thought to shed light on what legislators understood an ambiguous statutory text to mean when they voted to enact it into law. See *Exxon Mobil Corp. v. Allapattah Services, Inc.*, 545 U.S. 546, 568, 125 S.Ct. 2611, 162 L.Ed.2d 502 (2005). But post-enactment legislative history by definition “could have had no effect on the congressional vote,” *District of Columbia v. Heller*, 554 U.S. 570, 605, 128 S.Ct. 2783, 171 L.Ed.2d 637 (2008).

In Clark v. Securities Industry Ass’n, 479 U.S. 388, 407 (1987), the Supreme Court refused to give substantial weight to a statement made by the sponsor of a law placed into the Congressional Record ten days after the law was passed. See also Auburn Housing Authority v. Martinez, 277 F.3d 138, 149 n.5 (2nd Cir. 2002)(“However, precedent constrains us from giving weight to such post-enactment statements”(citations omitted)). Senator Kyl’s letter is entitled to no weight in this Court’s interpretation of the CVRA.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 9, 2011, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF.

s/ Dexter A. Lee
DEXTER A. LEE
Assistant U.S. Attorney

SERVICE LIST

Jane Does 1 and 2 v. United States,
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United States District Court, Southern District of Florida

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