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February 18, 2011

President Barack Obama
The White House
1600 Pennsylvania Avenue, NW
Washington, D.C. 20500

RE: The FEC: An enforcement agency walking away from enforcement

Dear Mr. President:

Public Citizen once again appeals to you to repair the broken Federal Election Commission (FEC).

On April 30, 2009, we encouraged you to mend the damage done to federal campaign finance law by replacing some of the commissioners whose terms were about to expire and who have sought to prevent the agency from enforcing the law. On the following day, the terms of three of the six FEC commissioners expired. Unfortunately, our words went unheeded and no changes in the composition of the elections agency were made.

Following this April, two years later, the terms of five of the six FEC commissioners will have expired. We urge you to assert your constitutional authority and break the deadlock that has immobilized the FEC over the last several years by appointing new leaders to the agency.

Especially since 2009, the FEC has become hopelessly dysfunctional, tied up in a wave of 3-to-3 partisan deadlocks that prevents the agency from promulgating rules, issuing advisory opinions and enforcing the law. We have seen a dramatic rise in deadlocked votes in the last couple years that had rarely existed over the rest of the agency's history. The most pronounced and damaging rise in deadlocked votes has occurred in enforcement actions. Historically fewer than 2 percent of all enforcement actions were stymied by deadlocked votes. In 2009, that percentage skyrocketed eight-fold – with 16 percent of all enforcement actions stalled by deadlocked votes that year and 11 percent in 2010.

Many of these deadlocks on enforcement matters amount to nothing less than an abrogation of the law. In several recent enforcement actions, for example, all parties had consented to conciliation agreements and to pay civil penalties. But the three Republican commissioners – Don McGahn (whose term expired), Matthew Petersen and Caroline Hunter – chose not to accept the conciliation agreements. In the case of The November Fund, a 527 group created by the Chamber of Commerce which spent heavily on campaign ads but refused to register as a political committee, the Republican commissioners simply refused to approve any

enforcement action.¹ In another case in which an aide to the Washington Democratic party admitted to “knowing and willful” embezzlement of campaign funds, the Republican commissioners voted as a bloc to drop the matter.² In the case of a Democratic congressional candidate who failed to disclose 90 percent of the campaign’s donors, the Republican commissioners blocked the plea bargain and returned the civil penalty check to the campaign committee.³

These are just a few of the enforcement cases prevented by deadlocked votes. Over the last two years there have been at least 62 enforcement actions blocked by agency deadlocks. The unwillingness of the agency to pursue enforcement actions appears to have given a “green light” to some political operatives to ignore federal election law altogether. In the 2010 election, for example, such groups as the “Commission on Hope, Growth & Opportunity,” the “Taxpayer Network” and others appear to have sponsored campaign ads but failed to declare any campaign expenditures, as required by law.

A principal force behind these deadlocks is Commissioner Don McGahn, who recently issued a 45-page statement of reasons in an effort to justify blocking so many enforcement actions. In the matter of *Softer Voices*, McGahn argued that the FEC is too strict in enforcing the law and has sowed fear in the regulated community – a charge that runs contrary to the far more common allegation that the agency is too lenient. McGahn coalesced the Republican members of the FEC into a voting bloc committed to reversing established regulations and preventing critical enforcement actions.

On February 12, 2009, Public Citizen joined with the Brennan Center for Justice, Campaign Legal Center, Common Cause, Democracy 21, League of Women Voters and U.S. PIRG in calling for the Obama Administration to modify the appointment process for the FEC. Under the Constitution, the President appoints members of the Commission, with the advice and consent of the Senate. The letter observed that past presidents have “simply served as a pass-through, receiving names provided by congressional and party leaders, and passing them on to the Senate as nominees for confirmation as FEC commissioners.”⁴ The result too often has been the appointment of commissioners who adhere to a very truncated view of the law, reflecting the interests of congressional or party leaders rather than the public.

Public Citizen repeats that call today, asking you take this opportunity to fix the FEC. The Republican bloc on the Commission shows no sign of letting up in its obstructionism. The 2012 elections are just around the corner. It is imperative that these elections be overseen by an elections agency committed to promoting compliance with the law and ensuring full disclosure of money in politics.

As nearly all FEC commissioners are about to exceed their statutory terms, the time is long overdue for the Obama Administration to give due diligence to the agency that is supposed

¹ In the matter of *The November Fund*, MUR #5541 (2009).

² In the matter of the *Washington State Democratic Central Committee*, MUR # 5898 (2008).

³ In the matter of the *Committee to Elect Sekhon for Congress*, MUR #5957 (2009).

⁴ Letter to the Federal Election Commission, Re: Notice 2008-13, Rulemaking on Agency Procedures (Feb. 12, 2009)

to enforce our campaign finance laws. The President must appoint new commissioners who will pursue their regulatory duties responsibly and professionally.

Sincerely,



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