

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

December 12, 2012

RE: Deadlock on the Federal Election Commission

Dear Mr. President:

Our organizations are writing once again to urge you to repair the grave damage to the enforcement of federal campaign finance law that has been done by the spectacularly dysfunctional Federal Election Commission (FEC). In particular three of the six Commissioners have consistently refused to properly enforce and interpret the campaign finance laws which they ideologically oppose. This has served to paralyze the Commission and minimize its enforcement of the laws.

The terms of five of the six commissioners have long expired, affording you the chance to nominate new leaders to the FEC and break the deadlock that has immobilized the agency since 2008.

Our organizations have appealed to you repeatedly in the past to replace the hold-over commissioners with new appointees of both parties who are committed to fulfilling their statutory responsibilities to administer and enforce the nation's campaign finance laws. In this regard, we strongly urge you to bypass the discredited past approach of letting congressional leaders choose the FEC Commissioners and instead to seek recommendations from a diverse, bipartisan group of nationally recognized individuals to help you find highly qualified individuals for these positions.

The current Commission is unable to do its job. Since mid-2008, partisan deadlocks have crippled the agency. In both numbers of official actions taken and immobilizing deadlocked votes, the FEC has shown a dramatic inability to perform its duties more or less in all four core mission areas – enforcement, audits, regulations and advisory opinions. The number of official actions taken by the Commission has plummeted to all-time lows in the last few years, and the percentage of deadlocked votes on the reduced number of actions it has voted on have spiked to incapacitating levels. In enforcement actions alone, perhaps the single most important mission of the agency, official actions taken by the agency in 2012 amount to about one-tenth the number pursued annually prior to 2008. Meanwhile the percentage of deadlocked votes on those enforcement actions has increased more than

eight-fold over the same time period. (To see the falling number of actions and rising deadlocked votes, go to: <http://www.citizen.org/documents/fec-deadlock-press-statement.pdf>)

Today's Federal Election Commission is a broken agency that has itself become a national campaign finance scandal. In one of its most damaging regulatory actions, the FEC voted in 2007 to gut the effective campaign finance disclosure system established for electioneering communications by the Bipartisan Campaign Reform Act (BCRA). Following the *Wisconsin Right to Life* decision,^[1] the Commission on its own initiative issued a new regulation undermining the disclosure law by exempting groups making electioneering communications from disclosing contributors' identities except where donors gave the contribution for the purpose of furthering electioneering communications.^[2]

The FEC took this position despite the fact that the statutory disclosure provision requires groups making electioneering communications to disclose all of their donors. Thus, nonprofit "social welfare" organizations, trade associations and special interest groups could spend money from their treasuries without disclosing the sources of those funds as long as the donors did not specifically state that the money was given to finance electioneering advertisements.

Just before the 2010 elections, three FEC commissioners issued a statement endorsing an even narrower interpretation of the disclosure rule. They opined that groups running electioneering communications should only have to disclose those donors who specified that their money would be used for a specific ad, aired in a specific race.^[3] Because few donors will attach such specific instructions to their contributions, the effect has been to completely gut the disclosure requirement in BCRA.

The result has been a steady reduction in disclosure of the contributions funding electioneering ads to the point where \$400 million was spent in the 2012 elections on electioneering communications and independent expenditures with no disclosure of the donors funding those expenditures.

The current FEC is incapable of correcting its mistake because of the deadlocked stalemate on the Commission, despite the public outcry against this loss of transparency of the sources of much of the money that swamped the 2012 elections.

[1] *Federal Election Commission v. Wisconsin Right to Life*, 551 U.S. 449 (2007).

[2] 11 C.F.R. § 104.20(c)(9).

[3] Statement of Reasons for Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Donald F. McGahn, Freedom's Watch, Inc., MUR 6002 (Aug. 13, 2010), available at: <http://eqs.sdrdc.com/eqsdocsMUR/10044274536.pdf>

It is imperative that the functionality and statutory duties of the FEC be restored – an action that you can help accomplish by nominating new, responsible commissioners to the agency. Furthermore, if the Senate filibusters your nominees, you can seek opportunities to make recess appointments and put the nominees on the Commission, an approach you have successfully used in the past.

The immediate future of the FEC will follow one of two paths: either federal campaign finance laws will continue to be largely unenforced by a moribund agency, or new commissioners will be appointed who are committed to carrying out the agency's mission.

We encourage you to take the latter path of nominating and seeking the final appointment of responsible commissioners who will fulfill their statutory duties – and we encourage you to make these appointments soon.

Respectfully Submitted,

Americans for Campaign Reform
Campaign Legal Center
Citizens for Responsibility and Ethics in Washington (CREW)
Common Cause
Democracy 21
League of Women Voters
Public Citizen
Sunlight Foundation
U.S. PIRG