

March 15, 2011

The President  
The White House  
Washington, D.C. 20500

Dear Mr. President:

Our organizations are writing to express our grave concern about the dysfunctional Federal Election Commission which is spectacularly failing to meet its statutory responsibilities to administer and enforce the nation's campaign finance laws.

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

As a result of its failures, the FEC itself has become a national campaign finance scandal.

Solving this scandal, in the first instance, rests in your hands and in the statutory power you have to appoint FEC Commissioners.

As a 2009 *Washington Post* editorial explained about the FEC:

The commission was designed to have power shared equally between the two parties, so that neither would have the upper hand in taking potentially politically inspired action against the other. This unusual setup has often produced 3-3 splits between Republican and Democratic appointees. But those deadlocks have tended to arise sporadically, and in ideologically or politically charged cases, not in run-of-the-mill enforcement actions.

That's no longer true. The three Republican appointees are turning the commission into The Little Agency That Wouldn't: wouldn't launch investigations, wouldn't bring cases, wouldn't even accept settlements that the staff had already negotiated. This is not a matter of partisan politics. These commissioners simply appear not to believe in the law they have been entrusted with enforcing.

The FEC problems described in the *Washington Post* editorial in 2009 remain true today.

As of April 30, 2011, the terms of five of the six current FEC Commissioners will have expired and you will be in a position to nominate five new Commissioners for the agency. By

statute, none of the five current Commissioners whose terms will have expired are eligible to be reappointed.

Our organizations urge you to expeditiously exercise your powers to nominate five new Commissioners to serve on the FEC and to give the Commission a new start. We also call on you to discard the past practice of allowing party leaders in Congress, in essence, to name the FEC Commissioners, the result of which all too often has been Commissioners who either serve partisan interests or are ideologically opposed to the laws.

We also request that you begin steps now to help ensure that five new Commissioners are in place as rapidly as possible, rather than allowing the current Commission to remain in place a day longer than is necessary.

Over the years, there have been serious failings at the FEC caused by both Democratic and Republican Commissioners.

However, nothing in the past history of the agency compares with the current situation in which three FEC Commissioners, Don McGahn, Matthew Petersen and Caroline Hunter, who are ideologically opposed to the campaign finance laws, have paralyzed the agency by consistently blocking enforcement of the laws and repeatedly misinterpreting the laws.

The actions of these Commissioners have turned the FEC into a rogue, non-functioning enforcement agency.

A *St. Louis Post-Dispatch* editorial last week aptly captured the current situation at the FEC in stating that there is “no doubt that the FEC is completely useless as a watchdog agency.”

Given the fact that the votes of three of the six FEC Commissioners can block any action by the agency, the regulated community has been given a blanket license to ignore the campaign finance laws. Everyone knows that as long as these three Commissioners remain on the FEC, the campaign finance laws can be violated at will and they will block enforcement actions.

This is a travesty for the American people who reasonably expect that laws that protect against government corruption will be vigorously enforced. It also is an outrageous abuse of office and an abdication of responsibility by the three Commissioners.

As an editorial in *The New York Times* last week stated:

The message to candidates entering the new era of unlimited big-money campaigning is clear. So long as the Republican members of the F.E.C. get their way, nobody’s minding the store and anything goes. ...

With 2012 in sight, more, not less, reform is urgently needed. Five of the six F.E.C. seats come up for replacement next month. The Senate’s preference will be to confirm safe loyalists chosen by party bigwigs. President Obama can make a real difference if he

breaks the tradition by selecting truly independent watchdogs as the two parties' nominees — ones committed to enforcing the law — and fights for their confirmation.

Earlier this month, the dysfunctional state of the FEC was demonstrated once again.

According to a *BNA Report* (March 4, 2011), the FEC professional staff found through audits that the Kansas Republican party and a unit of Georgia Democratic party each had improperly used campaign funds.

Three Commissioners voted to support the FEC staff's findings in both cases. The three obstructionist Commissioners, however, voted to reject the staff's recommendations in both cases and thereby blocked findings that the Republican and Democratic Party committees each had committed campaign finance violations.

This is not an isolated instance. It is but one of numerous examples of a destructive pattern and practice on the part of the obstructionist Commissioners who have repeatedly blocked efforts by the FEC professional staff to enforce the campaign finance laws.

While the terms of five Commissioners will have expired as of April 30, 2011, and none of them are eligible for reappointment, all of these Commissioners will be able to remain on the Commission indefinitely until replacements are sworn in to take their seats.

Three of the FEC Commissioners are already in lame duck status as holdovers, including two whose terms expired nearly two years ago and one whose term expired nearly four years ago. The terms of two other Commissioners will expire on April 30 and, like the three lame duck Commissioners, they are not eligible for reappointment.

These circumstances provide a unique opportunity for you to nominate five new Commissioners and take steps to fundamentally change what is commonly recognized as the worst functioning government agency in Washington.

It is essential that you nominate new Commissioners based on merit, skills, qualifications, experience, background and professional reputation. It is also essential that the nominees have a basic commitment to enforcing the campaign finance laws as written by Congress and interpreted by the courts. Individuals who are ideologically opposed to the campaign finance laws must not be given the responsibility to enforce these laws.

One possible approach to nominating FEC Commissioners based on merit would be to establish a bipartisan advisory group of distinguished individuals who could find and recommend potential qualified nominees for each available seat on the Commission. This would be similar to the way that some Senators use outside advisory groups to surface the names of potential nominees for a judgeship.

You could then choose nominees based on these recommendations, in compliance, of course, with the statutory requirement that no more than three members of a political party can serve on the Commission at the same time.

We are well aware that in nominating FEC Commissioners based on merit and qualifications you would create a conflict with congressional leaders who are accustomed to choosing the Commissioners themselves.

Given the completely dysfunctional state of the FEC that has resulted from a business-as-usual appointments process, however, and given the enormous damage that has been done as a result to our campaign finance laws which protect against corruption, it is essential to end this national scandal by moving forward with a new approach to nominating Commissioners and with five nominees to fill the vacancies on the FEC.

If you proceed to nominate new Commissioners based on merit and qualifications, then it would be up to the Senate to address the FEC scandal. Each Senator would be faced with a clear choice: vote to confirm new FEC Commissioners selected on the basis of merit and qualifications or vote to take personal responsibility for perpetuating a scandal that is severely damaging the nation's anti-corruption campaign finance laws.

We recognize that nominating new Commissioners may well lead to Senate filibusters against the nominees. If it does, that is a battle that must be fought.

The effort to remake the FEC and restore the integrity of our campaign finance laws cannot begin until you nominate new Commissioners. Our organizations strongly urge you to expeditiously nominate five new FEC Commissioners.

Thank you for your consideration of our views.

Respectfully,

Americans for Campaign Reform  
Campaign Legal Center  
Common Cause  
CREW

Democracy 21  
League of Women Voters  
Public Citizen  
U.S. PIRG