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April 30, 2009

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

RE: Deadlock on the Federal Election Commission

Dear Mr. President:

Tomorrow you will have an opportunity to repair the damage to the enforcement of federal campaign finance law that has been done by a series of highly partisan and politically charged appointments to the Federal Election Commission (FEC) by the Bush Administration. The terms of three of the Commission's six members expire on May 1, affording you the chance to break the deadlock that has immobilized the FEC over the past year by appointing new leaders to the agency.

Since the Commission was reestablished in mid-2008, partisan 3-to-3 deadlocks on important enforcement matters have increased dramatically. A principal force behind these deadlocks is Commissioner Don McGahn, a former ethics advisor to Rep. Tom DeLay who resigned from Congress under criminal indictment. McGahn has coalesced the Republican members of the FEC into a voting bloc committed to reversing established regulations to implement the law and preventing critical enforcement actions. The reconstituted Commission in 2008 has produced the largest percentage of dismissed enforcement cases and the lowest percentage of substantive enforcement actions in recent history.¹

At least a dozen key enforcement actions have been stymied by deadlocked votes under the current FEC, undermining several crucial regulatory policies. The FEC's three Republican commissioners have voted in unison to block staff-recommended enforcement actions against, for example, a Washington state party official who allegedly embezzled party funds; a Section 527 group charged with soliciting unlimited "soft money" used in the 2008 presidential primaries; and Mitt Romney's 2008 presidential campaign, which allegedly accepted illegal in-kind contributions. The Republican bloc even rejected two conciliation agreements to which the parties had already agreed, which is tantamount to a refusal to enforce the law.

In one of the more recent deadlocks, preventing the investigation of a Public Citizen complaint charging that Americans for Job Security is evading federal disclosure requirements and contribution limits, the three Republican commissioners wrote of their disdain for established FEC regulations implementing federal campaign finance laws. They questioned whether the regulation that defines

¹ Federal Election Commission, OGC Enforcement Statistics for Fiscal Years 2003-2008 (Jan. 13, 2009).

when a group becomes a “political committee” subject to the disclosure requirements and contribution limits is constitutional, noting that they plan on issuing another statement to address the regulation itself, and then dismissed the complaint contrary to the general counsel’s recommendation.

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, however, that in reality 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.”² The result has too often been the appointment of commissioners who adhere to a very truncated view of the law, reflecting the interests of congressional or party leaders.

Public Citizen repeats that call today, asking you take this opportunity to fix the FEC. The Obama Administration need not function as a mere pass-through on FEC appointments. Instead, it should select independent experts dedicated to implementing and enforcing the law.

The Republican bloc on the Commission shows no sign of letting up in its obstructionism. It seems that the immediate future of the FEC will follow one of two paths: either current federal campaign finance laws will be largely torn asunder by a deadlocked FEC, or you will appoint commissioners who are committed to carrying out the agency’s mission.

We encourage the Administration to pursue the latter path of appointing commissioners who will pursue their regulatory duties responsibly and professionally – and we encourage you to make these appointments soon.

Sincerely,

David Arkush
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Public Citizen

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Government Affairs Lobbyist,
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² Letter to the Federal Election Commission, Re: Notice 2008-13, Rulemaking on Agency Procedures (Feb. 12, 2009)