



Commissioner James E. Trainor III
Commissioner Shana M. Broussard
Commissioner Allen J. Dickerson
Commissioner Dara Lindenbaum
Federal Election Commission
1050 First Street, NE
Washington, DC 20463

February 28, 2025

Re: Executive Order “Ensuring Accountability for All Agencies”

Dear Commissioners:

Campaign Legal Center (“CLC”) submits this letter to express its views on the potential impacts of President Trump’s Executive Order, “Ensuring Accountability for All Agencies,” issued February 18, 2025, which attempts to exert presidential control over the decision-making of independent federal agencies, and which is contrary to law as it purports to apply to the Federal Election Commission (“FEC”).

The President does not and may not control the FEC. To ensure the fairness of American elections, Congress designed the FEC to be independent and not beholden to any politician. We urge the FEC to quickly, unanimously, and unambiguously reject the President’s unconstitutional attempt to seize the Commission’s powers.

Congress passed the Federal Election Campaign Act (“FECA”) as a direct response to campaign contribution abuses and presidential wrongdoing in the Watergate scandal; Congress therefore took care to ensure that the agency it established to administer the Act—the Commission—was both independent and “inherently bipartisan” in structure.¹ This independence is also essential given that the Commission has jurisdiction over the highly sensitive area of elections, which includes, by necessity, a president’s past campaigns and any future campaigns, as well as the campaigns of all other federal candidates.

The Executive Order is thus particularly concerning with respect to the FEC because it is critical that the Commission maintain both the reality and appearance of impartiality and partisan balance. The FEC’s legitimacy—and the public’s confidence in

¹ *FEC v. Democratic Senatorial Campaign Comm.*, 454 U.S. 27, 37 (1981).

the integrity of our electoral system—turns on whether the Commission can fulfill its statutory mandate to administer, interpret, and enforce the federal election laws independently, impartially, and on a nonpartisan basis.

1. The Executive Order defies separation of power principles.

The scope and applicability of the February 18 Executive Order with respect to FEC is not entirely clear,² but the broad language of Section 7 applies to all employees of the executive branch and thus would appear to encompass the FEC as well. Section 7 provides that:

The President and the Attorney General’s opinions on questions of law are controlling on all employees in the conduct of their official duties. No employee of the executive branch acting in their official capacity may advance an interpretation of the law as the position of the United States that contravenes the President or the Attorney General’s opinion on a matter of law, including but not limited to the issuance of regulations, guidance, and positions advanced in litigation, unless authorized to do so by the President or in writing by the Attorney General.

Although the Order thus purports to place all executive branch agencies, including independent agencies, under the absolute control of the President, separation of powers doctrine provides that Congress has broad authority to create governmental offices and to structure those offices “as it chooses.”³ Where, as here, Congress has structured an agency to insulate its decisions from political pressure, the President oversteps the bounds of his office by attempting to arrogate a discretionary power that Congress delegated to specified agency officials. The Supreme Court has repeatedly recognized that the President does not have unchecked authority over independent agencies exercising quasi-judicial or -legislative authority, or officials to whom Congress has provided for-cause protection from removal.⁴

If Congress wants the President to have control over particular decisions by agencies—or over an agency’s interpretation of its governing statute—Congress can indicate this by expressly delegating power to the President.⁵ The text of the statute—as

² Most of the Order’s provisions apply to “independent regulatory agencies,” the definition of which does not appear to reach the FEC. *See* Exec. Order § 2(b) (citing 44 U.S.C. § 3502(5)). *But see id.* at § 3 (including FEC in definition of “agency” for purposes of Exec. Order 12866 (Sept. 30, 1993)).

³ *Buckley v. Valeo*, 424 U.S. 1, 138 (1976); Necessary and Proper Clause, U.S. Const. art. 1, § 8, cl. 18.

⁴ *Humphrey’s Executor v. United States*, 295 U.S. 602, 629 (1935). *See also* *Buckley*, 424 U.S. at 137-38, 140-41.

⁵ *See* Kevin M. Stack, *The President’s Statutory Powers to Administer the Laws*, 106 Colum. L. Rev. 263, 278-91 (2006). *See also* Peter L. Strauss, *Overseer, or “The Decider”?* *The President in Administrative Law*, 75 Geo. Wash. L. Rev. 696, 704 (2007); Robert V. Percival, *Presidential Management of the Administrative State: The Not-So-Unitary Executive*, 51 Duke L.J. 963, 1003-10 (2001).

always—is controlling in this respect. Here, FECA does not authorize the President to direct the FEC’s decision-making; to the contrary, Congress included multiple safeguards in its design of the Commission to ensure it could operate without undue pressure from either political branch.

2. The Commission was designed to be independent and nonpartisan.

FECA and its amendments were enacted in the wake of the Watergate scandal, and aimed to prevent the type of abuses that arose from the 1972 Presidential election campaign that culminated in the resignation of President Nixon.⁶ In developing the statutory scheme, Congress made clear that one of the most critical reforms was “the creation of an independent nonpartisan agency to supervise the enforcement of the law relating to the conduct of elections.”⁷

The FEC was thus created as an independent agency with exclusive jurisdiction over the administration, interpretation, and civil enforcement of the federal campaign finance laws.⁸ The legislation creating the agency stressed the need for independent Commissioners, providing that they should be “chosen on the basis of their experience, integrity, impartiality, and good judgment” and could not be “elected or appointed officers or employees” in the federal government at the time of their appointment.⁹

The February 18 Executive Order is in direct conflict with Congress’s decision to make the FEC independent, and in particular, to insulate it from presidential control. As the Supreme Court noted, “Congress’ decision to create the FEC as an independent agency” was clearly “influenced by Congress’ belief that the Justice Department, headed by a Presidential appointee, might choose to ignore infractions committed by members of the President’s own political party.”¹⁰ And it was self-evident that the “administration of the Act would undoubtedly have a bearing on any incumbent President’s campaign for re-election.”¹¹

The Executive Order also defies the clear legislative intent to protect the FEC not only from political pressure but also from partisan bias. Congress designed the FEC with a unique and “carefully balanced bipartisan structure.”¹² FECA provides that the FEC’s six Commissioners serve staggered six-year terms, thus ensuring that at least some Commissioners would carry through one presidential term. No more than three of the six

⁶ *Buckley*, 424 U.S. at 27 & n.28.

⁷ Final Report of the Select Committee on Presidential Campaign Activities, S. Rep. No. 93–981, 93d Cong., 2d Sess., 564 (1974).

⁸ *See* 52 U.S.C. §§ 30106(b)(1), 30107(a), 30109.

⁹ *Id.* § 30106(a)(3).

¹⁰ *FEC v. NRA Pol. Victory Fund*, 513 U.S. 88, 95-96 (1994).

¹¹ *Buckley*, 424 U.S. at 134 (recognizing that one might also “fear a Commission which was unduly responsive to members of Congress whom [challengers] were seeking to unseat”); *FEC v. National Right to Work Comm.*, 459 U.S. 197, 198, n. 2 (1982) (describing FEC as “an independent administrative agency vested with exclusive jurisdiction over civil enforcement of [FECA].”).

¹² *Common Cause v. FEC*, 842 F.2d 436, 449 n.32 (D.C. Cir. 1988).

Commissioners “may be affiliated with the same political party.”¹³ To further diminish partisan influence, FECA provides for a rotating chairmanship and instructs that the FEC Chairman and Vice-Chairman may not be affiliated with the same political party.¹⁴ Any decision of the Commission to exercise its duties and powers must, at minimum, be made by a majority vote of Commissioners, and significant decisions in FEC enforcement and rulemaking processes require *four* votes or more.¹⁵ Congress thereby “designed the Commission to ensure that every important action it takes is bipartisan.”¹⁶

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President Trump’s attempt to bring the FEC under his direct control is thus an unprecedented breach of separation of powers principles, and a dangerous usurpation of authority that Congress specifically granted an independent agency and carefully shielded from political or partisan influence. This attempt to exert presidential control over the FEC’s “issuance of regulations, guidance, and positions advanced in litigation” runs counter to the statutory design of the agency, and defeats the partisan balance that is crucial to the Commission’s legitimacy.¹⁷ The Executive Order attempts to do exactly what Congress intended to *prevent* when it designed the FEC to be independent and nonpartisan: to bring an agency whose independence is crucial to fair elections under the control of an officer whose campaign activity the FEC is mandated to oversee.

Indeed, numerous administrative complaints were filed against Trump’s 2020 presidential campaign—and additional complaints were filed against Trump’s 2024 campaign, which are pending before the FEC.¹⁸ For instance, CLC is currently challenging the FEC’s dismissal of a complaint it filed alleging that Trump’s 2020 campaign committee (and an associated joint fundraising committee) failed to fully disclose all of its expenditures, including their ultimate recipients.¹⁹ The Trump

¹³ 52 U.S.C. § 30106(a)(1), (a)(2)(a).

¹⁴ *Id.* § 30106(a)(3).

¹⁵ *Id.* § 30106(c).

¹⁶ *Combat Veterans for Cong. PAC v. FEC*, 795 F.3d 151, 153 (D.C. Cir. 2015).

¹⁷ The Executive Order also is irreconcilable with the FEC’s authority to independently interpret FECA and make recommendations for the Act’s revision. *See* 52 U.S.C. § 30107(d)(2) (providing that “no officer or agency of the United States shall have any authority to require the Commission to submit its legislative recommendations, testimony, or comments on legislation, to any office or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress”).

¹⁸ Sara Wiatrak, *GOP commissioners have single-handedly blocked FEC action against Trump 29 times*, CREW (March 14, 2024), <https://www.citizensforethics.org/reports-investigations/crew-investigations/gop-commissioners-have-single-handedly-blocked-fec-action-against-trump-29-times/> (finding that as of December 2023, the FEC had received 59 allegations that Trump or his committees violated FECA).

¹⁹ CLC, *Challenging the FEC’s Dismissal of Campaign Finance Disclosure Violations by the Trump Campaign*, <https://campaignlegal.org/cases-actions/challenging-fecs-dismissal-campaign-finance-disclosure-violations-trump-campaign-clc>.

campaign has also reportedly filed FEC complaints, including against his opponent Kamala Harris’s campaign, alleging that her committee could not receive transfers of money raised by President Joe Biden’s reelection campaign.²⁰ In order to impartially handle these complaints and fulfill its statutory responsibility to faithfully interpret and enforce FECA, the FEC cannot be answerable to the President.

FEC Commissioners are chosen for their “integrity [and] impartiality”²¹ and confirmed by the U.S. Senate. FECA vests the obligation and authority to make legal decisions in these Commissioners—and no one else. The President’s asserted powers would render effectively meaningless the Commissioners, their Senate confirmations, and even FECA. All Commissioners must reject any attempt by the President—whether through this Executive Order or otherwise—to compromise their independence and capacity to administer and enforce the law free of political or partisan influence.

Sincerely,

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²⁰ Kristen Holmes, Kate Sullivan & Fredreka Schouten, *Trump campaign files FEC complaint trying to block Biden funds transferring to Harris*, CNN (July 23, 2024), <https://www.cnn.com/2024/07/23/politics/trump-campaign-fec-complaint-block-biden-harris-funds/index.html>.

²¹ 52 U.S.C. § 30106(a)(3).