

August 2, 2013

By Email

Ellen L. Weintraub
Chair
Federal Election Commission
999 E Street NW
Washington, DC 20463

**Re: Statement of Representative Miller regarding the
FEC Enforcement Manual**

Dear Chair Weintraub:

Our organizations are writing to express our strong opposition to the position taken by Representative Candice Miller (R-MI), Chairman of the House Administration Committee, in which she criticized the FEC for failing to adopt an agency Enforcement Manual and urged the Commission to act promptly on the matter.

Our organizations include Americans for Campaign Reform, the Brennan Center for Justice, the Campaign Legal Center, Citizens for Responsibility and Ethics in Washington, Common Cause, Democracy 21, Demos, the League of Women Voters, Public Citizen, Sunlight Foundation and U.S. PIRG.

As we stated in a July 19, 2013 letter to Commissioners, we believe that the FEC should not consider adoption of the agency's Enforcement Manual, and whether to accept proposed changes to the General Counsel's draft of the Manual, until the two recently nominated Commissioners have been confirmed by the Senate. Once that occurs the FEC will again have a full complement of six Commissioners – including three Commissioners chosen by Republicans and three Commissioners chosen by Democrats.

The makeup of the FEC is currently unbalanced because of a vacancy in one of the Democratic seats. Given that the Senate Rules Committee has held hearings on the two pending FEC nominees, and the nominations appear to be non-controversial, there is every reason to believe their confirmations will occur in the near future and the imbalance will be ended.

Waiting until there are six Commissioners to act on the Enforcement Manual will ensure that decisions on the Manual will not be made on a partisan basis. These decisions include the major changes proposed to the General Counsel's draft by the three Republican Commissioners.

Defenders of the FEC's current structure often point to the need for bipartisan decision making as one of the strengths of the statutory requirements that no more than three of the six Commissioners can be from the same party and that four votes are needed for significant Commission actions. These requirements ensure that decisions to take action on significant matters will be made only if there is at least one vote from a Commissioner of each party.

Yet when it comes to considering the proposed Enforcement Manual, Representative Miller is urging the agency to act right now – while there are only five Commissioners in office, including three Republican Commissioners.

Although we believe the matter is open to serious legal question, some claim that the current situation would allow the agency to act on the basis of a three-vote "majority," and thus to adopt the Enforcement Manual by a purely partisan vote. This would allow the three Republican Commissioners, one of whom is expected to leave the Commission shortly, to adopt their proposed changes to the Enforcement Manual without the support of any Democratic Commissioner.

Furthermore, this would deny the Democratic and Republican nominees who are expected to be seated on the agency soon, the opportunity to participate in an important agency decision whose consequences they will have to live with. And it would do so at a time when there is no pressing need for the FEC to act on this matter.

We believe that Representative Miller is wrong in urging you and the Commission to vote on the Enforcement Manual during the window of time in which one party holds a temporary partisan majority on the Commission. Representative Miller's position goes against the very premise of the way in which the agency has long been structured, which is to require bipartisan support for agency actions.

We believe that once the two new Commissioners are seated the FEC should consider the agency Enforcement Manual. But as spelled out in our letter of July 19th, we strongly disagree with key changes in the Enforcement Manual that have been proposed by the three Republican Commissioners.

These proposed changes would hobble the ability of the General Counsel's office to work with other federal enforcement agencies, and would require the General Counsel staff to willfully blind itself to publicly available information in making recommendation to the Commissioners on whether to undertake enforcement investigations. These proposals would seriously undermine effective enforcement of the nation's campaign finance laws.

The Enforcement Manual, and any proposed changes to it, should be considered by the Commission only after there is a full complement of six Commissioners to act on the matter and should be adopted only if four Commissioners vote to do so.

Scheduling the matter for a vote now, absent six commissioners, is tantamount to ceding control of future agency enforcement procedures to a partisan decision made by just three Commissioners.

We strongly urge you and the Commission not to take such ill-advised and inappropriate action. We strongly urge that no consideration of the Enforcement Manual take place until the pending nominees are seated and the Commission is at full strength with six Commissioners.

Sincerely,

Americans for Campaign Reform
Brennan Center for Justice
Campaign Legal Center
Citizens for Responsibility
and Ethics in Washington
Common Cause

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

Copy to:

Representative Candice Miller
Commissioner Donald F. McGahn, Vice Chair
Commissioner Caroline C. Hunter
Commissioner Matthew S. Petersen
Commissioner Steven T. Walther