

C A M P A I G N F O R

ACCOUNTABILITY

September 12, 2023

VIA E-MAIL

Federal Election Commissioners
Federal Election Commission
1050 First Street, NE
Washington, DC

Re: Agenda Document No. 23-21-A - “Proposed Directive Regarding Investigations Conducted by the Office of General Counsel.”

Dear Commissioners,

On behalf of Campaign for Accountability—a nonprofit watchdog group whose campaign finance complaints have garnered notable findings from investigations conducted by the Office of General Counsel (OGC)—I’m writing to express serious concern with the “*Proposed Directive Regarding Investigations Conducted by the Office of General Counsel*” recently introduced into the Commission’s agenda by Commissioner Dickerson.¹ Plainly, the proposal appears to be an attempt to gut the FEC’s enforcement arm by subjecting OGC fact-finding investigations to the same partisanship that has engulfed the rest of the agency.

The fact that the six FEC commissioners increasingly, in recent years, deadlock along party lines when deciding whether to fully investigate alleged violations flagged in initial OGC reports has been well documented.² Since it takes at least a 4-2 majority to proceed to a full investigation, any action requires at least one Democratic or Republican commissioner to buck partisanship in choosing to proceed down a path that may end with one of their own being held accountable.

Ideally, the facts of a case should overcome such partisanship—but there is no sense in pretending that we can fully trust either elected or appointed officials to act in our current political climate without *any* partisan considerations. As a result of these biases, only the most flagrant campaign finance violations proceed all the way to a full FEC investigation and are fully and properly judged by the Commission.

¹ CPR News, Caitlin Kim, May 13, 2022, “Feds dismiss campaign finance complaint against Colorado Rep. Lauren Boebert,” available at <https://www.cpr.org/2022/05/13/lauren-boebert-campaign-finance-complaint-dismisses/> and Federal Election Commission, Statement Of Reasons Of Commissioners Shana M. Broussard And Ellen L. Weintraub In the Matter of Iowa Values, et al., Sept. 28, 2022, available at https://www.fec.gov/files/legal/murs/7672/7672_22.pdf.

² Former FEC Commissioner Ann M. Ravel, “Dysfunction and Deadlock: The Enforcement Crisis at the Federal Election Commission Reveals the Unlikelihood of Draining the Swamp,” available at https://www.fec.gov/resources/about-fec/commissioners/ravel/statements/ravelreport_feb2017.pdf.

This extraordinary bar is higher than our own organization would prefer, but it is at least understandable why it might be preferable to a system that gives one party sole authority to determine who should be held accountable. Nonetheless, there should not exist this same high bar for the initiation of OGC *fact-finding* investigations. The non-partisan OGC provides an invaluable resource for the public: it documents for posterity—and for current constituents and voters—the elected officials who at the very least *appear* to skirt the rules by which others abide.

That this information should be widely known does not sound like a controversial opinion. Yet, those strictly opposed to the idea of campaign finance restrictions may hold a contemptuous view of the OGC’s investigatory outputs—which may occasionally paint these ideologues and their political allies as wrongdoers.

We fear that this proposal is an attempt to appease that crowd. That it is an effort to prevent the public from knowing the details of an official’s or entity’s bad behavior.

Still, the Commissioner’s claims deserve a careful examination as to their merit. In introducing this change, Commissioner Dickerson stated it would encourage “regular communication,” manage “increasingly scarce enforcement resources,” and “empower the OGC” to plan and execute investigations while “preserving the Commission’s oversight role.”

“Empower the OGC” to plan and execute investigations.

To say that the proposal is simply “preserving” the Commission’s oversight role falsely implies that the details of the proposal maintain or protect the current level of oversight the Commission already enjoys. Rather, the proposal very clearly imposes a level of OGC oversight far greater than the status quo. Also, to describe the OGC as “empowered” by anything contained within the proposal rings even more dishonest.

Under the proposal, every action the OGC takes in an investigation would have to be conceived and approved ahead of time, rather than through a fair analysis of where already gathered evidence leads investigators. It is foolish to pretend that Commissioners cannot use the same reasoning to roughly anticipate which subpoenas or witnesses may be most damning to a member of their own party and reject any Investigative Plan (or revised Investigative Plan) which drifts into that territory.

To empower the OGC, perhaps the Commission could appoint a General Counsel, which has been filled by an acting General Counsel since 2013.³

“Regular communication.”

Even *if* commissioners resist partisanship to willingly allow an investigation to pursue evidence and witnesses which may shine poorly on members of their own party, the additional

³ The Center for Public Integrity, Dave Levinthal and Suhauna Hussain, July 5, 2018, *available at* <https://publicintegrity.org/politics/five-years-ago-the-fecs-top-lawyer-resigned-no-permanent-replacement-has-yet-been-named/>.

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“communication” requirements will drag on the length of investigations longer than proper enforcement allows.

In his letter opposing this proposal, Rep. Joseph D. Morelle, Ranking Member of the Committee on House Administration, correctly notes:

“Because the new requirements will create additional, labor-intensive work for OGC, more matters will not be ready for timely circulation. Delayed consideration of enforcement matters not only impacts government efficiency, but also can cause the statute of limitations to expire before the OGC has an opportunity to investigate potential violations.”⁴

This concern that the statute of limitations alone might thwart accountability is very real. The average length of an FEC enforcement case closed in FY 2022 was 811 days—over two years long.⁵ Given that the statute of limitations for campaign finance violations is five years from the time of the violation, and often offenses are only discovered and brought to the agency’s attention years after they occur, stretching these investigations out even longer would make enforcement even harder.

In fact, it was only last year that Commissioner Dickerson joined Commissioners Cooksey and Trainor in blaming the Commission’s inability to complete an investigation before the statute of limitations expired as the reason why they felt compelled to dismiss complaints made against Brand New Congress and Justice Democrats PAC.⁶

If time is an acknowledged burden preventing Commissioners from fully and effectively carrying out their enforcement duties, why would they want to potentially make that even worse?

“Increasingly scarce enforcement resources.”

Commissioner Dickerson acknowledges that “the volume of complaints and internally-referred matters continues to grow,” but nowhere does he suggest meeting this increased workload with increased resources. Rather than simply asking Congress for more money, the proposal essentially suggests reducing the percentage of complaints that the commission will thoughtfully consider. Simply ignoring potential wrongdoing is not the answer. Enforcement is important both to hold accountable those who break the law and to show those who may that there are consequences.

⁴ Rep. Joe Morelle, “Re: Agenda Document No. 23-21-A (Proposed Directive Regarding Investigations Conducted by the Office of General Counsel), Aug. 28, 2023 available at <https://www.fec.gov/resources/cms-content/documents/comment-from-Representative-Joseph-D-Morelle-dated-8-28-23.pdf>

⁵ Federal Election Commission, Fiscal Year 2024 Congressional Budget Justification, March 13, 2023 available at <https://www.fec.gov/resources/cms-content/documents/fy24-fec-congressional-budget-justification.pdf>.

⁶ Federal Election Commission, In the Matters of Brand New Congress, et al. MURs 7575, 7580, 7592 & 7626 Statement Of Reasons Of Chairman Allen Dickerson And Commissioners Sean J. Cooksey And James E. “Trey” Trainor, III, March 22, 2022 available at https://www.fec.gov/files/legal/murs/7575/7575_18.pdf.

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It is a perfectly reasonable for a commissioner to hold the personal belief that, in an ideal world, federal agencies should use fewer, not more tax dollars. But in that ideal world we would also have fewer politicians attempting to break the law. Since we do not currently enjoy the latter, it is absurd to expect the former.

Conclusion

The given reasons for adopting the changes outlined in this proposal strain credulity. If any commissioners feel that the current campaign finance laws that the OGC is tasked with investigating are too burdensome, they may work toward changing them. While existing laws remain on the books, however, enforcement cannot be treated as optional.

Sincerely,

A handwritten signature in black ink that reads "Michelle Koppersmith". The signature is written in a cursive, slightly slanted style.

Michelle Koppersmith
Executive Director

CC:

Rep. Bryan Steil, Chairperson, Committee on House Administration

Rep. Joe Morelle, Ranking Member, Committee on House Administration

Senator Amy Klobuchar, Chairwoman, U.S. Senate Committee on Rules & Administration

Senator Deb Fischer, Ranking Member, U.S. Senate Committee on Rules & Administration