CREW

CITIZENS FOR
RESPONSIBILITY &
ETHICS IN WASHINGTON

November 16, 2026

The Honorable Mitch McConnell
Chairman, Senate Rules Committee
399 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Alex Padilla
Ranking Member, Senate Rules Committee
399 Russell Senate Office Building
Washington, D.C. 20510

Dear Chairman McConnell and Ranking Member Padilla:

This week the Senate Rules Committee will consider the confirmation of two nominees to the Federal Election Commission ("FEC"), the independent nonpartisan agency that sits at the "front line of campaign finance law enforcement."[1] On behalf of Citizens for Responsibility and Ethics in Washington ("CREW"), a nonpartisan nonprofit organization committed to ethics, transparency and accountability in government, we write to you to urge this Committee to ensure that these nominees commit to restoring the Commission's impartiality and reversing the partisan entrenchment which has left the FEC largely ineffectual.

For some time now, the Federal Election Commission has been mired in partisan gridlock,[2] as the provisions meant to safeguard it from partisan capture[3] have been weaponized to license impunity for partisan allies. For example, as of March 2025, although the FEC's nonpartisan staff has recommended opening investigations into President Trump, his committees, or his family in 32 separate matters dating from before the 2024 election, the Republican FEC commissioners voted against opening an investigation into their partisan ally in every single one, deadlocking the Commission

[1] *CREW v. FEC*, 923 F.3d 1141, 1143 (D.C. Cir. 2019) (Pillard, J., dissenting).
[2] *See* Ann Ravel, Dysfunction and Deadlock: The Enforcement Crisis at the Federal Election Commission Reveals the Unlikelihood of Draining the Swamp, Feb. 2017, https://www.fec.gov/resources/about-fec/commissioners/ravel/statements/ravelreport_feb2017.pdf; *see also* FEC, Responses to Questions from The Committee on House Administration 39–40, Sept. 12, 2022, https://democrats-cha.house.gov/sites/evo-subsites/democrats-cha.house.gov/files/evo-media-document/fec-responses-2022.pdf (stating approximately 63% of cases before FEC closed between April 1, 2019 and July 31, 2022, involved a deadlock).
[3] *See* 52 U.S.C. § 30106(a)(3), (c); *Combat Veterans for Congress Political Action Committee v. FEC*, 795 F.3d 151, 153 (D.C. Cir. 2015) ("Congress designed the commission to ensure that every important action it takes is bipartisan.")

and preventing enforcement.[4] In one particular example, a Republican commissioner voted to block an investigation after having voted to fine a Democratic group for comparable actions.[5]

The partisan breakdown has effectively brought enforcement at the agency to a standstill. Since *Citizens United v. FEC*, the Commission has blocked 80% of the investigations into dark money that its own nonpartisan expert staff recommended pursuing.[6] Similarly, the Commission opened investigations into only 12% of cases its expert staff recommended concerning alleged unlawful coordination between campaigns and so-called "independent" committees,[7] notwithstanding the central importance of non-coordination to the Supreme Court's approval of unlimited spending by those supposedly-independent committees in *Citizens United*.[8] This stalemate has led dark money to flood our elections, with a record of more than $1.9 billion inundating the 2024 federal elections alone,[9] and dark money in the 2026 midterms likely surpassing $1.5 billion.[10]

This Committee must take steps to ensure that FEC commissioners exercise "integrity, impartiality, and good judgment," and correct this institutional decline by securing three crucial commitments from the nominees: recusal, transparency and independence.[11]

Recusal

The FEC lacks any mechanism by which to request, consider, or enforce recusal for a commissioner where "circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter."[12] This is

[4] Staff Report at 20 & n.129, supra note 6; *see also* Attachment G, https://democrats-cha.house.gov/sites/evo-subsites/democrats-cha.house.gov/files/evo-media-document/2025_attachment-g.pdf.
[5] *Compare* Certification, MUR 7291 and 7449 (DNC Services Corp.), Feb. 17, 2022, https://www.fec.gov/files/legal/murs/7291/7291_52.pdf; Certification, MUR 7784 (MAGA PAC), May 10, 2022, https://www.fec.gov/files/legal/murs/7784/7784_32.pdf.
[6] Staff Report on the Federal Election Commission at 50: The Deregulators are Winning, p. 2, May 2025, https://democrats-cha.house.gov/sites/evo-subsites/democrats-cha.house.gov/files/evo-media-document/Report-The-Deregulators-Are-Winning.pdf.
[7] *Id.*
[8] *See Citizens United v. FEC*, 558 U.S. 310, 357 (2010).
[9] Anna Massoglia, Dark Money Hit a Record High of $1.9 Billion in 2024 Federal Races, Brennan Center for Justice, May 7, 2025, https://www.brennancenter.org/our-work/research-reports/dark-money-hit-record-high-19-billion-2024-federal-races.
[10] Brendan Glavin, Andrew Mayersohn, Doug Weber, and Jackie Mitchell, OpenSecrets predicts record $12 billion in midterm election spending, OpenSecrets, Oct. 30, 2026, https://www.opensecrets.org/news/2026/10/opensecrets-predicts-record-12-billion-in-midterm-election-spending/.
[11] 52 U.S.C. § 30106(a)(3).
[12] *Cinderella Career & Finishing Schs., Inc. v. FTC* , 425 F.2d 583, 591 (D.C. Cir. 1970).

particularly troubling given the commissioners role in adjudicating the complaints of private parties, over which the Commission acts as the "first," and often final, "arbiter."[13]

The actions of former FEC Commissioner Trey Trainor recently laid bare the need for such a policy. Former Commissioner Trainor, who recently admitted that he voted to block investigations into President Trump out of "loyalty," made repeated statements in support of the candidacy of President Trump and against his opponent during his time at the FEC.[14] In particular, Trainor's statements regarding the New York criminal prosecution of President Trump for falsifying business records led CREW to request his recusal from an FEC matter that concerned that same prosecution.[15] CREW never received a response to its request, and Commissioner Trainor participated in the matter without placing any explanation for refusal to recuse in the record.[16]

Commissioner Trainor is not alone in letting partisanship sway the exercise of their duties. To ensure citizens' complaints are provided a fair hearing—including complaints against a sitting President—the Commission must adopt a robust recusal policy that mandates recusal not only where a commissioner has a financial, personal, or familial connection to a matter, but also mandates recusal where the commissioner's partisan affinity impairs their ability to render impartial justice. This policy must not leave recusal up to the personal judgment of a partial commissioner. Instead, if a bona fide recusal request is filed with the Commission, that commissioner should only be allowed to participate if the full Commission gives their unanimous assent. Furthermore, the procedural rules of the FEC should be amended to make clear that if a commissioner tries to ignore or sidestep the Commission's recusal decision, any vote to dismiss a proceeding is considered "contrary to law."[17]

Transparency

FEC Commissioners have failed to provide their colleagues with their rationale for rejecting recommendations from the agency's general counsel to open investigations until after, sometimes significantly after, those colleagues agree to terminate a proceeding. This lack of disclosure means that commissioners are often voting to close

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[13] *CREW*, 923 F.3d at 1149 (Pillard, J., dissenting).
[14] Rick Hasen, *Quiet Part Out Loud Dep't: Trey Trainor Says He "Fought for" Trump "Every Single Day Throughout the Biden Presidency" When He Was an FEC Commissioner*, Election Law Blog (Feb. 5, 2026) https://tinyurl.com/jey7jwr7; *see also* @TXElectionLaw, X, Feb. 22, 2026, https://x.com/txelectionlaw/status/2025646774925615221?s=46 (campaign post by former FEC commissioner claiming he was "[t]he SOLE VOTE defending [President Trump] at the FEC").
[15] Letter from Noah Bookbinder, President & Chief Executive Officer, CREW, to James E. "Trey" Trainor III, Commissioner of the Federal Election Commission (July 26, 2024), https://www.citizensforethics.org/wp-content/uploads/2024/07/Commissioner-Trainor-Recusal-Letter.pdf.
[16] *See* Statement of Reasons of Vice Chair James E. "Trey" Trainor III and Commissioner Allen J. Dickerson, MUR 8274, Apr. 29, 2025, https://www.fec.gov/files/legal/murs/8274/8274_12.pdf (adopting fallacious allegations of collusion but finding state collusion exempt from FECA).
[17] 52 U.S.C. § 30109(a)(8)(C). Although recusal would also be warranted where a commissioner's partiality leads them to support an investigation, the already-existing requirement in the FECA to secure a bipartisan vote to open one mitigates against unfairness in opening proceedings.

cases before they have all of the relevant information and analysis from their colleagues: a quintessential arbitrary and capricious act.

Ironically, this circumstance arises because of the FEC's safeguards against partisanship. The FEC is a six-member Commission. Under federal law, no more than three commissioners can be associated with one political party, but four votes are required for the Commission to open an investigation.[18] Similarly, four votes are also needed to terminate a proceeding—meaning that in both instances you need at least one vote from a commissioner appointed by an opposing political party. [19] A commissioner who initially supported the investigation may nevertheless vote to close if they feel that further agency deliberation is unlikely to alter votes, or if they think the underlying disagreement would best be settled through judicial review of a dismissal, but to do that non-arbitrarily they must understand why their colleagues refused to open an investigation that their staff recommended.[20]

Unfortunately, commissioners routinely refuse to share this basis until after the Commission acquiesces and votes to terminate a matter. The rationales, contained in "Statements of Reason" published by the dissenting commissioners, are typically released only after the successful vote to close,[21] and the FEC recently adopted a policy formalizing this dilatory practice.[22] This permits commissioners to sandbag their colleagues with arguments that could have been addressed in committee and to invoke rationales that alter, and perhaps even preclude, the judicial review sought by the dismissal.[23]

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[18] 52 U.S.C. § 30106(a)(3), (c); *see also* 52 U.S.C. §§ 30106(c), 30107(a)(6); FEC Commission Directive 10(E)(3), https://perma.cc/8Q5X-QREN.

[19] *Campaign Legal Center v. 45Committee*, 118 F.4th 378 (D.C. Cir. 2024) ("[A] reason-to-believe vote resulting in a deadlock will give rise to a dismissal only if a majority of Commissioners separately votes to dismiss the complaint.").

[20] *See Statement of Commissioner Ellen L. Weintraub On the Opportunities Before the D.C. Circuit in the New Models Case To Re-Examine En Banc Its Precedents Regarding 'Deadlock Deference'* 9 (Mar. 2, 2022), https://perma.cc/3KED-EMRA (noting commissioner may vote to close despite supporting an investigation "for any number of reasons, for example, in the interests of transparency of agency operations, closure for respondents, public accountability for the nay-saying commissioners, or in hopes the complainant will sue the agency and obtain a judicial reversal."); *see also* 52 U.S.C. §30109(a)(8)(C) (permitting court to review dismissal to determine if contrary to law); *CREW v. FEC*, 209 F. Supp. 3d 77, 94 (D.D.C. 2016) (reviewing analysis of dissenting commissioners contained in their Statement of Reasons and determining legal analysis was erroneous).

[21] *See, e.g., End Citizens United PAC v. FEC*, 69 F.4th 916, 919 (D.C. Cir. 2023) (noting explanation for deadlock first appeared "[t]wo months after the dismissal of the administrative complaint"). There is no evidence these statements are shared with cross-partisan commissioners before the vote. Rather, evidence indicates they are not. *See, e.g.*, Br. of *Amicus Curiae* Citizens for Responsibility and Ethics in Washington in Support of Appellees and Dismissal or Affirmance 25, *Giffords v. FEC*, No. 25-5188 (D.C. Cir. Feb. 26, 2026), https://www.citizensforethics.org/wp-content/uploads/2026/02/CREW-Amicus-Brief-ISO-Appellee-Giffords_Redacted.pdf (citing FOIA record showing statements were not shared with the full Commission until after the matter was closed).

[22] *FEC implements new enforcement case closure procedures*, FEC, Apr. 3, 2024, https://www.fec.gov/updates/fec-implements-new-enforcement-case-closure-procedures/.

[23] *See CREW v. FEC*, 55 F.4th 918, 922 (D.C. Cir. 2022) (adopting new rule by which dissenting commissioners may unilaterally terminate judicial review by invoking magic words related to prudential justifications for dismissal).

Commissioners must abandon this practice. To ensure votes to close are conducted with a mutual understanding about the disagreement that led to deadlock, and to provide a verifiable means of ensuring as much, commissioners must commit to placing in the administrative record their justification for voting against a general counsel's recommended investigation before the Commission votes to close a case.

Independence

Threats to the FEC's impartiality are not only internal. The president recently asserted the power to fire commissioners at will,[24] notwithstanding Congress's intention for set terms for commissioners,[25] and notwithstanding the president's almost certain appearance before the tribunal as a party. That assertion is all the more threatening to the agency's independence in light of the Supreme Court's embrace of unitary executive theory.[26] The president has also ordered that commissioners, notwithstanding their intended independence, must follow the "[t]he President and the Attorney General's opinions on questions of law" as "controlling" authority, effectively permitting one side of a legal dispute to command the legal opinions of his arbiter.[27]

These concerns are not merely hypothetical. Indeed, as noted above, this president and his affiliates have been the subject of numerous FEC complaints, including more than 30 that the agency's general counsel recommended pursuing. Countless more complaints involve political allies of the president.

Commissioners must reject the president's executive order seeking to undo the FEC's longstanding independence and assure this Committee they will faithfully and independently apply the law to the facts in their best judgment, without regard to the politics of the parties in front of them or the opinions of their co-partisans. A commissioner who is open to taking legal direction from the president, particularly when that president or his allies are parties being judged by that commissioner, is unfit to hold the position.

Conclusion

This Committee has an obligation to ensure the Commission operates "not only with every element of fairness but with the very appearance of fairness."[28] This confirmation hearing, and the ability to secure commitments from nominees related to recusal, transparency, and independence, provides an opportunity to do just that. Commissioners who are unable to make these commitments to this Committee and to

[24] *See* CREW, CREW Statement on attempted Weintraub firing, Feb. 7, 2025, https://www.citizensforethics.org/news/press-releases/crew-statement-on-attempted-weintraub-firing/.
[25] 52 U.S.C. § 30106(a)(2)(A).
[26] *See Trump v. Slaughter*, 609 U.S. 422 (2026).
[27] Exec. Order No. 14215 ("E.O. 14215") § 7, 90 Fed. Reg. 10447, 10448 (Feb. 18, 2025).
[28] *Cinderella Career & Finishing Schs., Inc. v. FTC* , 425 F.2d 583, 591 (D.C. Cir. 1970)

the American public should not be trusted with the FEC's vital work on the front lines against corruption.

Sincerely,



Donald K. Sherman
President and Chief Executive Officer