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Congress of the United States

House of Representatives COMMITTEE ON HOUSE ADMINISTRATION

1309 Longworth House Office Building
Washington, D.C. 20515-6157
(202) 225-8281
<http://cha.house.gov>

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ONE HUNDRED THIRTEENTH
CONGRESS

KYLE ANDERSON, MINORITY STAFF
DIRECTOR

July 19, 2013

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

Dear Chair Weintraub,

Following up on two letters sent to you earlier this year by Chairman Miller, we are writing regarding the Federal Election Commission's failure to issue an updated Enforcement Manual following the Committee's hearing on November 3, 2011 and the Commission's statement in May 2012 that the revised manual was scheduled to be completed early in 2013. The Committee's belief that the FEC should have a current, Commission-approved, public enforcement manual that governs and accurately reflects the actions of the Commission's staff was made abundantly clear in 2011. Nearly two years later, such a manual still does not exist.

Since Chairman Miller wrote to you on January 22 of this year, on:

- February 5 – you stated in a letter to Chairman Miller that a staff draft of a new manual was circulated to the Commissioners on January 29;
- April 19 – the Commission received public comments on that manual;
- May 20 – you stated in a letter to Chairman Miller that the Enforcement Manual would be placed on a meeting agenda for a discussion in June, conspicuously avoiding a commitment regarding finalization of the manual;
- June 12 – edits to the manual made by Commissioners were released in anticipation of the manual being considered at the Commission's June 13 meeting;
- June 13 – consideration of the manual was held over;
- June 26 – a series of additional documents related to the Enforcement Manual were publicly released in preparation for consideration of the manual at the Commission's June 27 meeting;
- June 27 – consideration of the manual was held over; and
- July 11 – a Commission meeting occurred; the Enforcement Manual was not on the agenda.

Merely placing the Enforcement Manual on an agenda clearly is not what the Committee had in mind when we raised the issue in 2011, nor is it what Chairman Miller had in mind when she wrote to you on January 22 and May 10. We will be deeply disappointed if the Enforcement Manual is not fully considered at the Commission's July 25 meeting.

We are aware of claims that the FEC should not act on the Enforcement Manual because it has only five serving Commissioners. This flies in the face of both logic and the FEC's history. In

January 2008 the Commission had only two serving members – including you – and voted on an advisory opinion request from SpeechNow.org (resulting in a 1-1 deadlock). The Commission was voting without the presence of even a quorum, much less the statutory maximum number of Commissioners. Since the departure of former Commissioner Bauerly on February 1, 2013, the Commission has voted on three advisory opinion requests and published an interpretive rule in the Federal Register – all with five serving Commissioners. Indeed, it appears one seat on the Commission was vacant from 1995 – 1998. Surely it would not have been appropriate for the Commission to stop doing business for those three years.

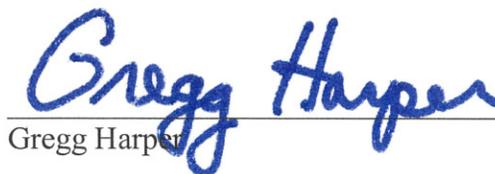
Your May 20 letter to Chairman Miller came nearly four months after Commissioner Bauerly's departure left the Commission with five members. When you stated that the Enforcement Manual would be placed on the agenda for a meeting in June, you did not express any concern or hesitation about the number of serving Commissioners, and with no nominees pending it would have been impossible for a sixth Commissioner to arrive between your letter and a June meeting. Because the last nominee for the Commission was nominated on May 1, 2009 and the nomination was withdrawn on August 5, 2010 without action by the Senate, the fact that two nominees are pending provides no assurance that the number of serving Commissioners will change in the near future. Further delays in considering the Enforcement Manual cannot be justified by the number of serving Commissioners.

In the event the Enforcement Manual is not to be considered at the July 25 meeting, we ask that you notify Chairman Miller in writing no later than 10:00 am on July 25 and that you explain the reason it will not be considered, including identifying any Commissioner(s) who asked that it be excluded from the agenda. At that time the Committee will consider whether it is necessary to hear directly from you when and how the Commission will complete its work on the Enforcement Manual.

Sincerely,



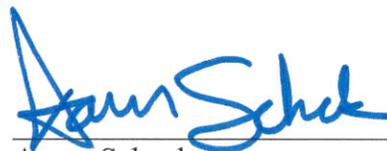
Candice S. Miller, Chairman



Gregg Harper



Phil Gingrey



Aaron Schock



Todd Rokita



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