United States Senate
WASHINGTON, DC 20510

July 15, 2013

The Honorable Ellen L. Weintraub
Chair

The Honorable Donald F. McGahn II
Vice Chairman

Federal Election Commission
999 E Street NW
Washington, DC 20463

Dear Chairwoman Weintraub and Vice Chairman McGahn:

We write to express our opposition to proposed changes to the FEC's policies on sharing information pertaining to potential criminal violations of campaign finance laws with the Department of Justice.

As detailed in the June 17, 2013 memorandum to the Commission from General Counsel Anthony Herman and Associate General Counsel for Enforcement Daniel A. Petalas, the long history of cooperation and information sharing between the FEC and the Department of Justice has been beneficial to both sides, has aided both criminal and civil enforcement efforts, and has never before been found controversial.[1] The policy change proposed – requiring that each Department of Justice request for information be accompanied by a subpoena or other written request, and approved by a Commission vote – would hinder enforcement and would be inconsistent with practices across the federal government.[2]

The Department of Justice relies on information provided by the FEC to take timely action on criminal campaign finance violations. In written testimony prepared for a hearing before the Senate Judiciary Committee Subcommittee on Crime and Terrorism on April 9 of this year, Acting Assistant Attorney General for the Criminal Division of the Department of Justice Mythili Raman described several major campaign finance prosecutions, many if not all of them assisted by information sharing from the FEC. Limiting such information sharing would reverse a longstanding and effective example of inter-agency cooperation.

Such a reversal also seems unwarranted in light of the fact that the Office of General Counsel's current guidance to enforcement staff includes clear protocols for "tracking, memorializing, and

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[1] Herman and Petalas succinctly describe the FEC policy that has spanned "at least two decades of freely cooperating with DOJ" as follows: "*when, in connection with a criminal investigation, DOJ has requested information on a pending Commission enforcement matter, OGC has provided that information*" (emphasis in original). They note that this "neutral policy . . . has never before been questioned by the Commission." Anthony Herman and Daniel A. Petalas, Federal Election Commission Memorandum: Information Sharing with the Department of Justice, June 17, 2013, p. 2.

[2] Herman and Petalas note that "*OGC has been unable to identify a single federal agency that requires subpoenas or Commissioner approval in every case, as members of the Commission have proposed here*" (emphasis in original). *Id.* at 11.

approving DOJ requests, protecting the confidentiality of shared enforcement records, and informing the Commission of certain types of requests."[3]

Finally, if the Commission is to consider such a significant change to its longstanding policies, we suggest that it would be more appropriate to do so with a full complement of Commissioners following the confirmation of nominees currently pending before the Senate.

Sincerely,

Sheldon Whitehouse
United States Senator

Charles E. Schumer
United States Senator

Jeanne Shaheen
United States Senator

Jeff Merkley
United States Senator

Al Franken
United States Senator

Tom Udall
United States Senator

Cc: Commissioners Caroline C. Hunter, Matthew S. Petersen, and Steven T. Walther; General Counsel Anthony Herman; Associate General Counsel for Enforcement Daniel A. Petalas

[3] *Id.* at 5.