March 11, 2025

Commissioner James E. Trainor III
Commissioner Shana M. Broussard
Commissioner Allen J. Dickerson
Commissioner Dara Lindenbaum
Federal Election Commission
1050 First St. NE
Washington, DC 20463

Re: Statement of Policy Regarding the Notification of Respondents in Matters Under Review Remanded from a Challenge Pursuant to 52 U.S.C. § 30109(a)(8)

Dear Commissioners:

On December 19, 2024, the Federal Election Commission (the "Commission" or "FEC") adopted a policy statement on the handling of enforcement matters remanded to the Commission following a federal court ruling in a 52 U.S.C. § 30109(a)(8) suit challenging the Commission's dismissal or failure to act in a matter under review ("MUR") (hereinafter, "FEC challenge suit").[1] Under this new policy, when a federal court adjudicating an FEC challenge suit finds the Commission's dismissal or failure to act to be contrary to law, and requires the Commission to conform to its opinion, the Commission will notify the respondents in the MUR of the court's decision. The new policy also affords respondents a new and unique privilege: the opportunity to file a supplemental response that may address "facts and circumstances [that] may have changed with the passage of time," as well as arguments about how the Commission should implement the court's decision.[2]

The new policy, however, does not provide complainants with a corresponding opportunity to address intervening factual developments or present arguments

[1] *See* Statement of Policy Regarding the Notification of Respondents in Matters Under Review Remanded from a Challenge Pursuant to 52 U.S.C. § 30109(a)(8), 90 Fed. Reg. 5566, 5566 (Jan. 17, 2025), https://www.fec.gov/resources/cms-content/documents/policy-guidance/fedreg_notice_2024-30_EO13892.pdf.

[2] *Id.*

about how the Commission should implement the court's decision, creating an obvious imbalance.

The Commission's policy statement indicates that because FEC challenge suits "are brought by Complainants against the Commission, Respondents may not be aware of actions taken in these cases." But that factually dubious assertion would only support providing respondents with *notice* of the court's decision, not a one-sided opportunity to articulate how the Commission should resolve the underlying MUR. Instead, the Commission's new policy affords respondents a unique, unjustified advantage, putting a proverbial thumb on the scale as the Commission determines how to resolve the MUR.

The Commission's other rationale for providing respondents with this additional opportunity to raise factual and legal arguments applies with equal force to the complainants. The policy statement asserts that facts and circumstances relevant to the allegations raised in the MUR may have changed during the pendency of the FEC challenge suit—a period that typically extends years beyond the initiation of the MUR—such that "any response previously provided by a Respondent may be stale."[3] Yet the same applies to complaints: additional facts and circumstances relevant to the FECA violations alleged in the complaint may have been uncovered during the intervening time, and a complainant's legal arguments may need to take into account a federal court's legal views. Accordingly, it is both illogical and inequitable to invite only respondents, but not complainants, to file a new submission after a court remands an enforcement matter to the FEC.

We respectfully urge the Commission to revise this inequitable policy by expressly affording complainants the same opportunity afforded to respondents to file a supplemental submission within the court-mandated period for the Commission to conform with its decision in an FEC challenge suit.

Respectfully submitted,

/s/ Saurav Ghosh

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[3] *Id.*