

April 17, 2025

Federal Election Commission
1050 First St. NE
Washington, DC 20463

Re: *AOR 2025-06 (Campaign Legal Center)*

Dear Commissioners:

The Brennan Center for Justice at New York University School of Law (“the Brennan Center”)¹ respectfully submits this Comment in response to the Campaign Legal Center’s request for an advisory opinion concerning its statutory right to file a complaint with the Federal Election Commission (the “Commission”) in light of President Trump’s Executive Order “Ensuring Accountability for All Agencies” (the “EO”).² We urge the Commission to issue an advisory opinion confirming that the EO does not alter statutory rights and procedures under the Federal Election Campaign Act (“FECA” or the “Act”) and the Commission’s own regulations and policies.³

The U.S. Constitution unequivocally gives authority to regulate federal elections to the states and Congress, not the president. Specifically, the Constitution’s Elections Clause provides that the rules for running federal elections “shall be prescribed in each State by the Legislature thereof” except that “Congress may at any time by Law make or alter such Regulations.”⁴

¹ The Brennan Center is a nonpartisan public policy and law institute that focuses on the fundamental issues of democracy and justice. For more than 25 years, the Brennan Center has studied, litigated, and drafted legislative solutions regarding money in politics, voting, and election administration. The views expressed in this comment do not reflect the views, if any, of the NYU School of Law.

² See E.O. 14,215, *Ensuring Accountability for All Agencies*, 90 Fed. Reg. 10,447 (Feb. 24, 2025).

³ We note that the Commission already issued a Final Advisory Opinion ahead of the ten-day deadline for comments. See 11 C.F.R. §§ 112.3(b) (written comments may be submitted within ten days of the publication of an advisory opinion request), 112.3(e) (the Commission shall accept and consider all written comments submitted within the ten-day period before issuing an advisory opinion). Because that Opinion does not address all of the issues raised herein, we respectfully submit this Comment in the event there is any further action connected to this matter and in the interest of having a complete public record.

⁴ U.S. Const. art. I, § 4, cl. 1.

While state law continues to govern many aspects of election administration, Congress has chosen to occupy the field and preempt state law for most aspects of federal campaign finance through the FECA.⁵ Congress also created the Commission as an independent agency with a bipartisan structure to administer FECA's provisions.⁶ In doing so, Congress delegated its authority to interpret and enforce federal campaign finance laws and vested the FEC — and only the FEC — with “exclusive jurisdiction” over civil complaints under the Act.⁷

As an independent bipartisan agency exercising authority properly delegated by Congress, the FEC must follow the procedures Congress enacted in the FECA and its own duly enacted regulations and policies, regardless of any other rules the president purports to impose. This independence is consistent with the plain text of the FECA, the clear intent of Congress, and the longstanding tradition of independent, multimember agencies like the FEC in the United States.⁸

The FEC's independence pursuant to congressional design is of bedrock importance, given the agency's sensitive mission to regulate important aspects of the political process and the need to safeguard against corruption and its appearance. Above all, the public must be able to trust that election-related complaints will be handled with an evenhanded approach free from partisan manipulation or score-settling, including by politicians whose campaigns the FEC is supposed to referee.⁹ We urge the Commission to take this opportunity to reaffirm those principles.

⁵ 52 U.S.C. § 30143(a) (“[T]he provisions of this Act, and of rules prescribed under this Act, supersede and preempt any provision of State law with respect to election to Federal office.”); *see also Buckley v. Valeo*, 424 U.S. 1, 7 (1976) (describing FECA as “by far the most comprehensive reform legislation (ever) passed by Congress concerning the election of the President, Vice-President, and members of Congress” (quoting 519 F.2d 821, 831 (D.C. Cir. 1975))).

⁶ *See* 52 U.S.C. §§ 30106, 30107.

⁷ 52 U.S.C. § 30106(b).

⁸ *See Seila Law LLC v. CFPB*, 591 U.S. 197, 216–18 (2020) (citing *Humphrey's Executor v. United States*, 295 U.S. 602, 624 (1935)) (discussing how multimember, bipartisan agencies like the FEC have long been insulated from the president's removal authority); *FEC v. NRA Political Victory Fund*, 6 F.3d 821, 826 (D.C. Cir. 1993) (“The [FEC] is patterned on the classic independent regulatory agency sanctioned . . . in *Humphrey's Executor*.”).

⁹ *See Federal Election Campaign Act Amendments, 1976: Hearing on S.2911, S. 2911 – Amdt. No. 1396, S. 2912, S. 2918, S. 2958, and S. 2987 Before the Subcomm. on Privileges and Elections of the S. Comm. on Rules and Admin., 94th Cong. 69* (1976) (statement of Sen. Hugh Scott, Member, S. Comm. on Rules and Admin.); *Federal Election Campaign Act Amendments, 1976, Subcomm. on Privileges and Elections of the Comm. on Rules and Administration* (Feb. 18, 1976), Statement of Pres. Ford at 133 (“If [the FEC] becomes an empty shell, public confidence in our political process will be further eroded and the door will be opened to possible abuses in the coming elections.”).

Respectfully submitted,

/s/

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