



CHAIR ELLEN L. WEINTRAUB  
FEDERAL ELECTION COMMISSION  
WASHINGTON, D. C. 20463

January 25, 2019

The Honorable Amy Klobuchar  
The Honorable Dianne Feinstein  
The Honorable Tom Udall  
The Honorable Patrick Leahy  
The Honorable Catherine Cortez Masto

The Honorable Charles E. Schumer  
The Honorable Richard J. Durbin  
The Honorable Mark R. Warner  
The Honorable Angus S. King, Jr.

Committee on Rules and Administration  
United States Senate  
Washington, DC 20510

Dear Senators:

Thank you for your letter of January 16, 2019, expressing your concern about the government shutdown's effect on the Federal Election Commission (FEC), its employees, and the Commission's ability to enforce campaign finance law and ensure transparency in our democratic process. I emphatically share that concern. The 2020 cycle is off to a fast start. This is no time for the Federal Election Commission to be shut down.

You have asked a number of specific questions about Commission operations, which I address below. But you also inquired about the FEC's employees, which I appreciate. I am deeply concerned for the welfare of FEC staff, who are being penalized in a battle that has nothing to do with us and our work. The FEC is fortunate to have a staff that is dedicated to the important mission of the agency. I know they want to get back to work. But these are also human beings with families, mortgage and rent payments, student loan debts, car payments, medical expenses. Some of our employees are the sole support of their families.

As relieved as federal employees are to know that they will get paid eventually, that doesn't pay the bills now, nor will it necessarily make them whole. Interest is stacking up on credit cards. Several individuals had accepted offers of employment from the FEC and gave notice to prior employers, but were prevented from beginning their FEC service because their agreed upon start date occurred during the shutdown. These people will not receive back pay, and I worry that they may seek other employment and we will lose the benefit of their good services. I worry as well for the people who clean our offices at night. They were told their services were not needed during the shutdown, and since they are not government employees, they too will not receive back pay.

The FEC had started to see an uptick in employee morale, but the devastating effect on morale of this shutdown is likely to have long-term consequences on the operations of this and all other affected agencies. Recruiting talented staff will become more difficult. No one wants to be viewed as acceptable collateral damage in an unrelated fight. FEC employees are public-spirited and committed to their work, but they did not come here as volunteers. They expect and deserve to be paid.

1. *How has the government shutdown impacted the FEC's ability to exercise its core functions?*

The simple answer is that during the shutdown, the FEC is *not* exercising its core functions. The Commission has been advised that under the Anti-Deficiency Act, 31 U.S.C. § 1341, in the absence of an appropriation, government agencies are basically limited to activities to protect life and property (with certain limited exceptions not applicable to the FEC's core functions). The FEC's mission is to protect the integrity of our elections by fairly administering and enforcing the Federal Election Campaign Act (FECA). Our job is to ensure the campaign finance transparency that Congress has mandated and the Supreme Court has upheld as critical to an informed electorate and to enable citizens to hold public officials accountable. This is a vital mission for our democracy, but in the absence of an appropriation, with 90% of our employees furloughed, we cannot fulfill it.

Specifically, campaign finance enforcement has ground to a halt. No one is reviewing complaints, conducting investigations, or negotiating conciliation agreements. The mail is not even being delivered. The statute of limitations clock, however, has not stopped with the shutdown.

Information is less available. The website remains up, but our analysts, press office, information specialists, and government affairs staff have all been furloughed. There is no one to answer questions for anyone who is trying to comply with the law but needs guidance. FOIA requests languish unanswered.

The formal methods by which the FEC provides legal guidance are totally unavailable. We have pending advisory opinion requests, rulemakings, and petitions for rulemakings that have all been stopped in their tracks.

Litigation is affected. The FEC is party to a number of lawsuits that have the potential to resolve disputed questions of law, but our litigators have been furloughed.

Disclosure is impeded. The 2018 year-end reports are due at the end of the month, and have begun to be filed. The electronic filing portal is operational, and under a pre-paid contract, contractors are available to provide some technical support. But the analysts who normally work extended hours to assist filers with substantive questions about their obligations are all furloughed. To the extent people are able to file electronically, images of the reports will be posted to the website and summary information will be fully available. The accompanying transactional data (detailing contributions, expenditures, and independent expenditures) normally goes through a coding process. The coders have been furloughed, so this data will not be processed and thus will not be fully searchable.

The Commission does not have authority to extend statutory filing deadlines, but it has announced that it will not issue fines for late reports as long as they are filed within 24 hours of the agency's re-opening. It is difficult to predict how many filers who seek to comply with the law may be precluded from doing so. Almost certainly, some reports will get filed late. As a result, information that the law requires to be disclosed and to which the public is entitled will not be available to the public in a timely manner.

The entire workload of the agency is getting backed up. For example, we have a staff of analysts who review all the reports that get filed. It is a huge undertaking and losing a month or more of productivity is going to have long-term direct and indirect effects. Similarly, all audits have been suspended, to the detriment of audited committees that await their conclusion.

*2. What steps are being taken to ensure that there are sufficient cybersecurity protections to prevent another attack on the FEC's network?*

As noted above, even in the absence of an appropriation, the Anti-Deficiency Act allows agencies to incur obligations that are necessary to prevent imminent threats to human life or property, including the government's property. The government's property includes electronically stored data. As a result, certain staff who have cybersecurity responsibilities have been deemed essential and placed in non-furlough status to focus on protecting the FEC's systems and data. Furthermore, certain contractors who are funded through pre-paid contracts are augmenting the Commission's efforts to protect mission critical applications. These individuals have increased their attention to IT security threats. Security and operations teams are meeting, security scans are ongoing, and corrective actions are being taken as needed to address any vulnerabilities.

In addition, the FEC's IT security staff continue to have regular meetings and discussions with the Department of Homeland Security and other government cybersecurity groups to share information and receive recommendations with respect to ongoing attack campaigns and security assessments. The FEC is taking cybersecurity concerns seriously and has taken steps to protect its network and data. Those steps, however, rely on the continued dedicated service of FEC employees who are not being paid.

*3. The Commission has a number of ongoing investigations of potential violations of campaign finance laws. Some of these laws have statutes of limitation. How will the shutdown impact these cases and are there potential violations of the law that are at risk of going unaddressed due to a statute of limitation passing during the shutdown?*

This question raises one of my most serious concerns about the FEC shutdown. On our enforcement docket, there are more than 50 cases involving claims that may become unenforceable due to a looming statute of limitations that begins to expire within the year. Some of these cases may involve significant violations of law, such as high priority cases related to foreign national spending in our elections. As we enter the 2020 cycle, resolution of some cases arising out of the 2016 election has been stymied. The statute of limitations is not extended by a government shutdown. The FECA requires the FEC to attempt to resolve most enforcement cases through a conciliation process. As the statute of limitations approaches, it becomes more challenging to negotiate robust conciliation agreements. Respondents know that time is on their

side. Every day that the Commission remains shut down makes it less likely that we will be able to effectively vindicate the law in these statute of limitations-imperiled cases.

4. *How will the Commission's current inability to fully enforce campaign finance law affect its capacity to fulfill that role when the government reopens? Will the shutdown put the commission substantially behind in its work on overseeing the 2020 election process?*

In a word, yes. In FY 2018, the FEC received more than 81 thousand campaign finance disclosure documents, disclosing more than 162 million transactions. The FEC's Reports Analysis Division reviews these reports to track compliance with the law and to ensure that the public record provides a full and accurate representation of reported campaign finance activity. This review process sometimes leads to audits and enforcement actions. All of those measures will be delayed as a result of the shutdown and will further delay our activities to oversee the 2020 election.

Addressing the backlog in enforcement is one of my highest priorities as Chair. As noted above, all enforcement actions have been halted. We have now had to cancel the first four Commission meetings of the year, thus depriving the Commission of opportunities to deliberate and make decisions on our enforcement caseload. And when the agency re-opens and the mail is once again delivered, there will undoubtedly be new complaints to add to the queue.

Elections in the 21<sup>st</sup> century have become multi-billion dollar events. We have every reason to believe that 2020 will be another record-breaking cycle. As the agency charged with administering and enforcing the Federal Election Campaign Act, we need to get back to work.

Again, thank you for your concern and for your commitment to the important mission of the Federal Election Commission.

On behalf of the Commission,



Ellen L. Weintraub  
Chair

cc: The Honorable Roy Blunt  
The Honorable Mitch McConnell  
The Honorable Lamar Alexander  
The Honorable Pat Roberts  
The Honorable Richard Shelby  
The Honorable Ted Cruz

The Honorable Shelley Moore Capito  
The Honorable Roger Wicker  
The Honorable Deb Fischer  
The Honorable Cindy Hyde-Smith  
The Honorable Zoe Lofgren  
The Honorable Rodney Davis