



January 23, 2023

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Office of the General Counsel  
Federal Election Commission  
1050 First St. NE  
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By email to: [audit2023@fec.gov](mailto:audit2023@fec.gov)

**Re: Audit Procedures**

Dear Ms. Rothstein and Ms. Waldstreicher:

Campaign Legal Center respectfully submits these comments in response to the Commission's *Notice of Public Hearing and Request for Public Comments*, 88 Fed. Reg. 1228 (Jan. 9, 2023) ("Notice").

The FEC's audit procedures are overly complicated and have resulted in the Commission's micro-management of its auditors. Simplifying these procedures would enhance the audit process, as well as the agency's detection, review, and referral for enforcement of material misreporting by federal candidates and committees.<sup>1</sup>

But just as importantly, we write to call attention to a concerning trend in the Commission's recent public statements — a trend exemplified by the Notice.

The Commission is charged by law with regulating the conduct of federal political committees: requiring committees to take certain actions, and prohibiting other conduct, all to safeguard the constitutional and statutory rights of voters. The audit process is part of this regulatory framework.

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<sup>1</sup> The Commission's apparent failure to audit Representative George Santos's campaign, despite sending that committee 20 RFAs covering dozens of obvious and uncorrected reporting violations, presents a timely example of the need for the Commission to reassess its audit criteria and processes.

Yet if someone unfamiliar with the Commission’s statutory mission were to read the Notice and other recent Commissioner [statements](#), the reader might be forgiven for inferring that the FEC’s mission is to ensure that the entities it regulates are content with their regulation. The Notice presents three exemplar questions:

“[A]re committees being given sufficient opportunity to be heard by the Commission during the audit process? Has the audit process become more complex, costly, or inefficient? What can the Commission do to improve the audit process?”

Starkly absent from those questions is any reference to protecting the *public* through the audit process. The “complex[ity]” or “cost[ ]” of an audit cannot be assessed in a vacuum; those factors must be weighed against the *benefits* of audits in protecting the rights of voters and the public.

Underscoring the apparent disconnect between the Commission’s current focus and its statutory charge to protect voters, the Notice explicitly states that “[t]he Commission is particularly interested in hearing from committees that have directly interacted with the Commission in the audit process, and their counsel.”<sup>2</sup> Is the FEC not “particularly interested” in hearing from voters whose rights are affected by the misreporting and illegality uncovered through audits? Or from reporters, law enforcement agencies, watchdog groups, and others who rely on the Commission to do its job of policing elected officials’ campaign funding?

The Notice reflects a backwards approach to carrying out the FEC’s mission: the agency is solicitous of the interests of the entities it is supposed to regulate and audit, but expresses little concern about its statutory obligation to protect voters by enforcing federal law. We urge the Commission to reverse course and reorient itself towards the public interest.

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<sup>2</sup> The Notice also asks about “substantive and procedural due process” in the audit process, but the Commission has no power to deprive audited committees—or even enforcement respondents—of liberty or property within the meaning of the Fifth Amendment so as to trigger due process implications. *See Hettinga v. United States*, 677 F.3d 471, 480 (D.C. Cir. 2012) (affirming dismissal of due process claim because regulated entities “have no liberty or property interest in the regulatory status quo,” and noting that governmental decision to “subject[ entities] to certain regulations if they choose to continue to operate under their current business model” implicates neither liberty nor property interests for due process purposes).

We respectfully request to testify at the hearing in this matter.

Respectfully submitted,

*/s/ Adav Noti*

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