



October 3, 2023

Lisa J. Stevenson, Esq.
Acting General Counsel
Federal Election Commission
1050 First St. NE
Washington, DC 20463

Re: Proposed Directive on Investigations

Dear Ms. Stevenson:

Campaign Legal Center (“CLC”) respectfully submits this comment on a proposed directive regarding Office of General Counsel (“OGC”) investigations (“Directive”), which is Agenda Document 23-21-A on the Commission’s Open Meeting agenda for October 5, 2023.¹ We respectfully urge the Commission not to adopt this directive.

The Directive would require OGC to provide an investigative plan whenever OGC recommends finding reason to believe and opening an investigation, and specifies that “[n]o investigation may be conducted by OGC except as directed in an Investigative Plan approved by the affirmative vote of four or more commissioners.”² This investigative plan must provide, *inter alia*, “each witness, category of witnesses, and category of documents to be consulted” and “the proposed discovery methods OGC intends to use.”³ Moreover, OGC must provide monthly or quarterly updates to the Commission on the status of the investigation, and must seek Commission approval for any expansion of the investigation, including “the identification of new witnesses . . . or sources for third-party document requests.”⁴

These new, additional steps in the enforcement process are not required under the Federal Election Campaign Act (“FECA”), may interfere with the timely investigation of potential FECA violations, and will likely delay the ultimate resolution of enforcement matters that proceed beyond the reason-to-believe stage.

¹ Investigations Conducted by the Office of General Counsel; Enforcement Investigative Plans (Aug. 23, 2023), <https://www.fec.gov/resources/cms-content/documents/mtgdoc-23-21-A.pdf> (“Directive”).

² Directive ¶ 2.

³ Directive ¶ 3.

⁴ Directive ¶ 4-5.

Neither FECA nor Commission regulations require the level of micromanagement outlined in the Directive.

The Commission’s longstanding practice of allowing the nonpartisan professionals in OGC to conduct informal investigative discovery, including requesting documents and interviewing witnesses, after the Commission has found reason to believe is the right approach. It allows OGC to efficiently develop the factual record based on new information ascertained through the investigative process. OGC cannot always forecast at the reason to believe (“RTB”) stage how an investigation will develop, as initial witnesses and documents often lead to new paths of inquiry that were not apparent from the limited information before the Commission at the RTB stage. Indeed, the chief goal of an investigation is to fully develop the factual record, diligently and efficiently, by pursuing the trail of relevant new information wherever it leads. The Directive’s proposal for Commissioners to micromanage the investigative process by evaluating and approving every new witness or document not known at the RTB stage would—at a minimum—delay OGC’s efforts to do that.

These concerns are especially pertinent because the Commission frequently cannot muster a majority consensus on important issues. Requiring Commission approval each time OGC needs to interview a new, previously unknown witness or request additional, previously unknown documents would almost certainly throw up roadblocks in the path of an investigation. At best, investigations will be slowed considerably; at worst, they may be stymied entirely, undermining FECA’s mandate that the Commission “shall make an investigation” when it finds reason to believe the law has been violated.⁵

We respectfully urge the Commission to let the dedicated professionals in OGC do their jobs, and not to make OGC’s investigative duties more difficult and burdensome than they already are.

Respectfully submitted,

/s/ Saurav Ghosh

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⁵ 52 U.S.C. § 30109(a)(2).