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By Office of the Commission Secretary at 9:55 am, Apr 12, 2023



April 12, 2023

Office of the Commission Secretary
Federal Election Commission
1050 First St. NE
Washington, DC 20463

Re: Complaint Secrecy

Dear Commissioners:

Campaign Legal Center respectfully writes in opposition to the proposal to increase complaint secrecy (“Proposal”) that has been placed on the Commission’s meeting agenda for April 19. *See* Agenda Doc. No. 23-06-A.

First, the Proposal is not consistent with the Commission’s enabling statute. Section 30109(a)(12) requires confidentiality for a “notification or investigation made under this section.” The words “notify” and “notification” are specifically used in sections 30109(a)(1), (a)(2), (a)(3), (a)(4), and (b) to refer to particular communications from the Commission to respondents: those are the “notifications” that the Commission may not make public. *See also* 52 U.S.C. 30109(a)(1)-(2) (describing “investigations”). Thus, by definition, the mere filing of a complaint is neither a “notification” nor an “investigation.”

Second, the Proposal is not consistent with the Commission’s regulations. The Proposal relies on section 111.21(a)’s provision that “no complaint filed with the Commission ... shall be made public.” But this is irrelevant. Non-publication of complaints has been the Commission’s practice for many years and is not at issue here. Rather, the Proposal seeks to prohibit acknowledgement or denial of the *filing* of a complaint. There is nothing in the regulation that supports such a rule.

Third, as a policy matter, it is not clear that the Proposal would benefit anyone. Certainly it would not benefit complainants. Nor would it benefit the Commission’s press office, subjecting staff to civil and criminal penalties if they let a word slip about the existence of a complaint that might well already be

known to the entire country. Presumably the intent of the Proposal is to benefit respondents, but is a respondent actually better off when anyone can claim to have filed an FEC complaint against them and no one can determine if that's true? There have been instances in which organizations for partisan reasons have put out press releases trumpeting their filing of supposed FEC complaints against political opponents – complaints that never in fact materialized. Under the proposal, respondents will have no recourse in such situations: they will remain under suspicion for years, given that the FEC will never be able to refute the claim that the complaint was filed.¹

For these reasons, we urge the Commission to reject the secrecy proposal as both unlawful and unwise.

Respectfully submitted,

/s/ Adav Noti

Adav Noti
Erin Chlopak
Saurav Ghosh
Campaign Legal Center
1101 14th St. NW, Suite 400
Washington, DC 20005

¹ We note that submitting a confidentiality waiver is not an option here: only the person against whom a complaint is filed can waive confidentiality, 11 C.F.R. 111.21(a), and in this scenario there is no such person.