



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

October 27, 2023

The Honorable Bryan Steil  
Chairman  
Committee on House Administration  
1309 Longworth House Office Building  
Washington, D.C. 20515

Dear Chairman Steil:

Thank you for the opportunity to testify before the Committee on House Administration on September 20, 2023, and for the opportunity to address the additional questions for the record dated October 13, 2023. The questions are very insightful and, as requested, I hereby provide my answers below.

**Majority**

1. Earlier this year, Manhattan District Attorney Alvin Bragg indicted former President Donald Trump alleging he falsified business records. To prove this crime, Mr. Bragg needs to show former President Trump acted with the intent to commit or conceal another crime. While Mr. Bragg to date still has not told the public what the crime is, the common belief is it is a violation of federal or state campaign finance law.
  - a. What role, if any, do State Attorneys General or District Attorneys have in enforcing federal civil or criminal campaign finance law?

**None. This is a matter of federal law.**

**Federal campaign finance law comprises, an extraordinarily complex web of statutes, regulations, and an overlay of 50 years of supreme court constitutional jurisprudence. Often, these rules address highly specialized accounting conventions and customary practice. This sometimes-impenetrable thicket of rules encircles activity and speech at the very core of the First Amendment, and often to decisions that must be made quickly by volunteers or even lawyers without the requisite professional experience. State attorneys general should not use ambiguous provisions of state law as a back door to implement fifty-one different interpretations of federal law.**

**Congress entrusted the delicate balancing act of administering and enforcing these rules to the FEC, which is not only familiar with the law and political practice but is also structured to avoid partisan abuse of the law. To be blunt, a local district attorney is not qualified to interpret these rules, much less experiment with novel theories in a criminal prosecution before a local**

**municipal court which itself has no competence or experience in resolving these issues. That a local prosecutor is also an elected official compounds the actual and apparent danger.**

- b. The Federal Election Commission (“FEC”) was asked to investigate this matter and declined to do so. Can you discuss why the agency chose not to be mired in a partisan political dispute?

**I have attached a copy of the Statement of Reason (SOR) which is controlling in the matter and discusses the reason the FEC declined to investigate.**

- c. How does the FEC’s decision not to investigate affect Mr. Bragg’s case, if at all?

**The FEC’s decision not to prosecute must be understood as either the considered judgment of an agency with the appropriate degree of sensitivity to the myriad practical and legal issues involved, or the decision of an agency specifically designed to avoid the dangers of partisan weaponization of our election laws.**

2. With the First Amendment being the backdrop of all campaign finance laws, how does that govern your actions as a commissioner?

**The First Amendment is the touchstone of all the actions that I take as a Commissioner when enforcing campaign finance laws. My highest duty is to uphold the Constitution as promulgated by the American citizenry.**

- a. Does this lead to a narrow interpretation of campaign finance laws?

**Arguably yes. Every law enforced by the FEC must first pass through the crucible of strict scrutiny because all such laws touch upon and burden, in some form or fashion, a fundamental right to speak. If application of a campaign finance law does not further a compelling government interest that is narrowly tailored to achieve that interest, the matter must be dismissed. Fortunately, a great deal of litigation has taken place regarding settling constitutional questions surrounding FECA, but there are always new questions or nuances that require Commission evaluation.**

- b. In several actions, the general counsel and the Democrat Commissioners have interpreted the phrase “thing of value” very broadly, debatably to reach absolutely anything. Is that the correct interpretation, or does it only reach things that are “of a specific monetary value and are available on the market”?

**The Supreme Court in *Buckley v. Valeo*, 424 U.S. 1, 23, n.24 (1976) imposed a limited construction on the Federal Election Campaign Act’s (FECA) terms, and the phrase “anything of value” must be read through a limited connotation created by a general understanding of what constitutes a political**

**contribution. For a thorough analysis on *Buckley* and the application to FECA, please see the attached Statement of Reasons (SOR) in MURs 7645, 7663, and 7705 (Donald J. Trump, *et al.*).**

3. Two terms ago in *West Virginia v. EPA*, the Supreme Court cautioned federal agencies that they should read their enabling statutes narrowly and seek a clear textual basis for their actions. This doctrine is commonly referred to as the major questions doctrine.

- a. What role does it play in how the FEC interprets campaign finance law?

**It is binding Supreme Court precedent.**

- b. Would it be reasonable for the FEC to decline an investigation or action because of the major questions doctrine?

**Yes. Not only reasonable, but appropriate where the Court's decision calls for such restraint by the FEC -- such as when such an investigation or action would inject the Commission into extraordinarily sensitive areas of foreign and national security policy, or be based upon reading FECA to expand the agency's regulatory reach into areas beyond its traditional regulatory expertise.**

- c. Have you cited the major questions doctrine when declining to get the agency involved in some actions? If so, when?

**Yes. Please see the attached Statement of Reasons (SOR) in MURs 7645, 7663, and 7705 (Donald J. Trump, *et al.*).**

#### Minority

##### *Question from Rep. Torres (CA-35)*

1. Commissioner Trainor, you mentioned in your testimony the matter of Mr. Derek Utley. In that matter (MUR 7280), the Commission unanimously voted to find reason to believe violation occurred and authorized an investigation. The allegations involved potentially serious violations of the law – at least \$34,100 in unreported independent expenditures on Facebook, which promoted content on a Trump 2020 Page and nine other unidentified “pro-Trump” Facebook pages. The statutory threshold for reporting independent expenditures is \$250. The investigation demonstrated that Mr. Utley spent \$483 on the Trump 2020 Facebook page. For this reason, notwithstanding the violations of law documented by the investigation, the nonpartisan career staff recommended the Commission exercise its prosecutorial discretion to take no further action in this matter, which the Commission adopted.
  - a. Do you believe that allegations of \$34,100 in unreported expenditures should not be investigated by the FEC?

**Whether there was \$34,100 in unreported expenditures was not the question before the commission at the initial stage of the enforcement process. Rather,**

**the Commission had to determine whether, based on the complaint and response, there was reason to believe that a violation of law had occurred. The only evidence of a potential violation was a poorly sourced news article written by an obscure media outlet. It is important for the FEC to uphold the standards of evidence when considering whether reason to believe should be found and initiating an investigation. A media article, standing alone, is nothing more than hearsay and would not meet any evidentiary standard under federal legal practice or at common law. I would point you to my in-depth discussion of this problem in the attached Statement of Reasons (SOR) in MUR 7280 (Derek Utley).**

- b. Do you think the public would benefit from timely and accurate reporting of such spending?

**What I think is irrelevant. As I stated in both my written and oral testimony, the actions of Mr. Utley were protected under the First Amendment and the binding Supreme Court precedence in *McIntyre v. Ohio Election Commission*, 514 U.S. 334 (1995). Given that Mr. Utley's activities were protected in such a strong manner, the Commission had no choice other than to act in the manner it did.**

Once again, I appreciate your leadership, and that of the Committee, on the important and complex issues of campaign finance that are the subject of your authority. If I can be of any further assistance, please do not hesitate to call upon me at any time.

Respectfully,

A handwritten signature in black ink that reads "J.E. Trainor, III". The signature is written in a cursive, flowing style.

James E. "Trey" Trainor, III  
Commissioner

Enclosures