



March 16, 2009

The Honorable Eric Holder, Jr.  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Ave., N.W.  
Washington, D.C. 20530

**BY FAX:** 202-616-2665

Dear Attorney General Holder:

Citizens for Responsibility and Ethics in Washington (“CREW”) and the Campaign Legal Center (“CLC”) respectfully request that the Department of Justice initiate an investigation into whether the Chamber of Commerce (“the Chamber”) and its president, Tom Donohue engaged in criminal violations of campaign finance law.

In September 2004, CREW filed a complaint with the Federal Election Commission (“FEC”) alleging the Chamber and Mr. Donohue violated the Federal Election Campaign Act (“FECA”) by making impermissible corporate contributions to the November Fund, an entity organized under section 527 of the Internal Revenue Code.

On December 15, 2008, over four years after CREW’s complaint was filed, the FEC hand-delivered to CREW a letter describing the FEC’s actions in relation to the complaint (attached). The letter from FEC Assistant General Counsel Mark Shonkwiler states that on March 8, 2005, the FEC found reason to believe Mr. Donohue and the Chamber had violated the FECA. Two years after that, on November 27, 2007, the Commission authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement in settlement of the matter prior to a finding of probable cause to believe. A year after that, on October 21, 2008, the Commission was equally divided on whether to accept a revised conciliation agreement and whether to take any further action and, as a result, closed the matter.

The FEC’s Factual and Legal Analysis in the matter clearly states that the Chamber and Mr. Donohue violated 2 U.S.C. §441b(a) by making \$3 million in contributions to the November Fund for the purpose of influencing a federal election. As you know, 2 U.S.C. § 437g(1)(A)(I) provides that any person who knowingly and willfully commits a violation of any provision of the FECA that involves the making, receiving, or reporting of any contribution, donation, or expenditure aggregating \$25,000 or more during a calendar year shall be fined under title 18, United States Code, or imprisoned for not more than 5 years, or both.

Although the FEC's General Counsel unequivocally found that the Chamber of Commerce and Mr. Donohue violated campaign finance law by making \$3 million in corporate contributions, on October 21, 2008, the Commission deadlocked 3-3 on how to proceed and, therefore, dismissed the complaint. Following that, the FEC failed to provide CREW notice of The Honorable Eric Holder, Jr.

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the decision until December 15, 2008, leaving CREW only five days to request judicial review pursuant to 2 U.S.C. § 437g(a)(8). Yet even at that late date -- four years after CREW filed the complaint and five days before the limitations period expires -- the Commission did not provide the Statement of Reasons explaining the dismissal, information CREW clearly would have needed before filing a complaint. In fact, the Republican commissioners finally released their Statement of Reasons explaining why they voted to dismiss the action on January 21, 2009, over a month after the filing deadline expired.

Given that the FEC's actions appeared to preclude CREW from further legal action, on December 16, 2009, CREW asked the Department of Justice to initiate a criminal investigation into corporate contributions made by the Chamber of Commerce and its president Tom Donohue in willful violation of campaign finance law.

In response to CREW's letter, the Department of Justice claimed there was no role for the Department to investigate alleged violations of 2 U.S.C. §437g(d) unless there is "no doubt the Commission considers that the underlying conduct presents a FECA offense. That is not the case here. Accordingly there is no basis for this Department to conduct a criminal investigation in this matter." Letter from Craig Donsanto, Director of the Election Crimes Branch of the Public Integrity Section, to Melanie Sloan, January 16, 2009 (attached).

A review of 2 U.S.C. §437g(d) reveals no requirement that the Federal Election Commission find a violation before the Department of Justice initiates a criminal investigation into campaign finance violations. A contrary interpretation would mean that -- no matter how strong the factual basis -- the Department would be barred from prosecuting any individual who committed a campaign finance law crime simply because a majority of commissioners on the hopelessly divided, stridently partisan, and infamously non-functional Federal Election Commission refused to find a violation. Obviously this would be an absurd result.

In fact, the Department has independent authority to investigate knowing and willful violations of the law. Based on the FEC's Factual and Legal Analysis, produced by FEC attorneys well-versed in the facts of this case and the law, the situation at a minimum clearly merits further investigation by the Department of Justice.

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Vigorous enforcement of the law is required to ensure major donors do not willfully flout campaign finance laws they find inconvenient in order to influence the outcome of federal elections. Americans depend on the Department of Justice to ensure clean and fair elections.

We look forward to your response.

Sincerely,

Melanie Sloan  
Executive Director  
Citizens for Responsibility and  
Ethics in Washington

J. Gerald Hebert  
Executive Director  
Campaign Legal Center

Encl.

cc: William M. Welch, II  
Chief, Public Integrity Section