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NCLA Asks the U.S. District Court for the District of Columbia Not to Assume the FEC’s Role

Campaign Legal Center v. Federal Election Commission

Washington, DC (May 22, 2020) – The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, filed an [amicus brief](#) today in the U.S. District Court for the District of Columbia in *Campaign Legal Center v. Federal Election Commission*. The Campaign Legal Center alleges the Federal Election Commission has taken no action on an administrative complaint CLC filed and that FEC’s “failure to act” is “contrary to law.” NCLA’s brief, in support of neither party, asks the Court to remain within the boundaries of its constitutional and statutory authority and to dismiss the case without prejudice for lack of subject-matter jurisdiction.

This case matters mostly because a violation of the Constitution’s separation of powers between Article II executive activity and Article III courts hangs in the balance. CLC filed suit at a time when it knew FEC lacked a quorum and therefore could not defend itself in court. CLC hopes that this gambit will cause the district court to enter a default judgment against FEC. If it does, the effect would be to transfer executive power, at the request of a private party, from FEC to the federal courts.

FEC is made up of six commissioners, appointed by the President with Senate approval. Until Tuesday, May 19, it had lacked a quorum making it practically incapable of obtaining four votes to either act on CLC’s complaint or to defend this suit. Decisions as to whether to investigate and prosecute complaints are inherently and exclusively discretionary *executive* functions that a judge cannot perform. But if CLC obtains a default judgment, a federal judge, in effect, would be performing an executive function by ordering FEC to proceed with CLC’s complaint.

Yet CLC has failed to demonstrate that it suffered a legally cognizable injury as a result of FEC’s inaction, so it lacks standing to maintain its suit. The Court should recognize CLC’s lack of standing and dismiss this suit. It should not step into the inherently political dispute where the President and the Senate have been unable to fill Commission seats.

NCLA released the following statements:

“An election law group has asked an Article III judge to cast the votes of four Article II FEC commissioners. Federal courts cannot award such a remedy, however—not without disregarding *Marbury v. Madison*.”

— **Adi Dynar, Litigation Counsel, NCLA**

“For almost 25 years, the D.C. Circuit has recognized that a party must have standing to sue under FECA. It is not enough to argue that a violation has occurred, because there is no justiciable interest in enforcing the law. Under FECA, FEC’s inaction on CLC’s administrative complaint is not sufficient to establish that CLC has been harmed. CLC does not have standing, and the Court should dismiss this case for want of jurisdiction.”

— **Kara Rollins, Litigation Counsel, NCLA**

ABOUT NCLA

NCLA is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar [Philip Hamburger](#) to protect constitutional freedoms from violations by the Administrative State. NCLA’s public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans’ fundamental rights.

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