

April 11, 2023

President Joseph R. Biden  
The White House  
1600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20500

The Honorable Charles E. Schumer  
Majority Leader  
United States Senate  
Washington, DC 20510

Dear President Biden and Senate Majority Schumer,

We write to you regarding the status of vacancies on several independent federal agencies. As you know, a number of independent agencies have statutory restrictions pertaining to party composition to prevent a body from being dominated by one party.<sup>1</sup> There are several vacant “minority party” seats — perhaps most notably with the Federal Trade Commission now being occupied exclusively by Democratic commissioners, pursuant to two recent Republican retirements.

Under longstanding norms, the President largely defers to the Senate leader of the opposite party for recommendations of whom to nominate to fill such vacancies. We write to remind you, however, that this has not always been the case in recent years: Under the Trump administration and the last Republican Senate Majority, the nominations of Democrats to independent agencies were routinely stalled or blocked for ideological reasons — forcing Democrats to spend undue political capital to ensure that seats were filled, or even leaving them vacant for years on end. As such, neither the White House nor Senate Democrats should feel compelled to expedite the nomination and/or confirmation of Republicans to independent agencies.

Some examples of recent Republican efforts to stall the nominations of Democrats to independent agencies include:

- The **Federal Elections Commission (FEC)**, where then-President Donald Trump broke precedent by nominating Republican Trey Trainor without pairing his selection with a Democrat. This move was a clear effort to maintain quorum—and Republican partisan dominance—just months before the 2020 election.<sup>2</sup>

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<sup>1</sup> This includes, to name just two examples, the five-member Federal Trade Commission’s (FTC) requirement that no more than two members can be members of the same party, and the six-member Federal Election Commission’s (FEC) requirement that no more than three members can be members of the same party

<sup>2</sup> <https://www.nytimes.com/2020/05/19/us/federal-election-commission-.html>

- The **Federal Deposit Insurance Corporation (FDIC)**, to which Donald Trump offered no Democratic nominees over the course of his tenure. Trump refused to nominate Martin J. Gruenberg, who had already served as the Senate-confirmed vice chair and chair, despite Senator Schumer’s recommendation as early as 2018.<sup>3</sup>
- The **National Labor Relations Board (NLRB)**, where Trump moved to swiftly nominate two Republicans to maintain a quorum on the board, all while stalling on renominating Democrats Mark Gaston Pearce and Lauren McFerran.<sup>4</sup> This coincided with the Trump administration’s unprecedented attacks on the NLRB’s functions and the labor movement more generally.<sup>5</sup>
- The **Federal Energy Regulatory Commission (FERC)**, where Trump nominated a Republican to the agency in October 2019 while failing to pair him with a Democratic nominee, even though a Democratic vacancy had emerged just two months prior.<sup>6</sup>
- The **Securities and Exchange Commission (SEC)**, where Trump nominated Republican Elad Roisman in June 2018 while failing to pair his nomination with Democrat Allison Lee. It took until April 2019 for Trump to nominate Lee to replace a former Democratic commissioner who left office three months prior.<sup>7</sup>

With a divided Congress, the Executive Branch will be the locus of most policymaking over the next two years. Before expediting the nominations of Republicans to independent agencies, we urge you to prioritize confirming Democratic nominees whose nominations have been stalled by Republican obstruction.<sup>8</sup> Personnel is policy, and confirming qualified leaders with proven records of concern for the public interest is crucial for fulfilling the Biden administration’s policy agenda.

Sincerely,

Demand Progress  
Revolving Door Project

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<sup>3</sup> <https://www.politico.com/newsletters/morning-money/2018/05/15/white-house-not-keen-on-gruenberg-219018>

<sup>4</sup> <https://prospect.org/power/quiet-seizure-of-independent-federal-agencies/>

<sup>5</sup> <https://www.epi.org/publication/unprecedented-the-trump-nlrbs-attack-on-workers-rights/>

<sup>6</sup> <https://rollcall.com/2019/11/05/manchin-backs-ferc-nominee-despite-schumers-opposition/>

<sup>7</sup>

<https://www.bloomberg.com/news/articles/2019-03-20/allison-lee-is-said-to-be-pick-for-sec-s-vacant-democratic-se>  
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<sup>8</sup>

<https://thehill.com/policy/technology/3845719-lgbtq-groups-condemn-identity-based-attacks-on-gigi-sohn-urge-conf>  
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