The original documents are located in Box C17, folder "Presidential Handwriting, 4/8/1975 (2)" of the Presidential Handwriting File at the Gerald R. Ford Presidential Library.

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THE WHITE HOUSE

WASHINGTON

April 8, 1975

MEMORANDUM FOR DONALD RUMSFELD

THROUGH: WILLIAM N. WALKER

FROM: HOWARD A. COHEN

Subject: Swearing In of the Federal Election Commission

Mr. Curtis and I have discussed the possibilities of the President being involved in the swearing in ceremony of the FEC. The six nominees met informally last week and Mr. Curtis has been asked to investigate the prospects of a swearing in ceremony, particularly the involvement of the President and the Chief Justice. The purpose of this memorandum is to present the relevant background information necessary for a decision to be made regarding those issues.

Current Status:

The Senate is expected to confirm the six members of the FEC sometime this week. The members and the source of their appointment are:

- Tom Curtis of Missouri - President
- Neil Staebler of Michigan - President
- Robert O. Tiernan of Rhode Island - Representative Tip O'Neil
- Vernon Thomson of Wisconsin - Representative John Rhodes
- Joan D. Aikens of Pennsylvania - Senator Scott
- Thomas E. Harris of the AFL-CIO - Senator Mansfield

The House approved all six prospective members before they recessed.

The Lawsuit:

The constitutionality of the law creating the FEC is being challenged in the Federal District Court in the District of Columbia by Senator James Buckley, Gene McCarthy, Congressman Bill Steiger, Stewart Mott, and a number of organizations, including the New York Civil Liberties

Union and the American Conservative Union. Their lawsuit will be successful, in my opinion.

The lawsuit is an important factor to be considered in evaluating the participation of the President and the Chief Justice in the swearing in ceremony. To the best of my knowledge, there is no precedent for swearing in a Commission when their constitutionality is being litigated and the President did not push for the legislation.

While it is traditional for oaths to be administered by the judiciary, one may not want to support such a tradition for a matter pending in the courts. However, a law is presumed to be constitutional until the Supreme Court rules otherwise.

The Chairmanship:

Mr. Curtis has been approached by three of the nominees with regard to his willingess to serve as Chairman. Under the law, "[T]he Commission shall elect a Chairman and a Vice Chairman from among its members (. . .) for a term of one year." Note, however, that no member may serve as Chairman more often than once during any six year term. Therefore, if Mr. Curtis is elected Chairman sometime in April, 1975, his term would expire in April, 1976.

The Vice Chairman may not be of the same political party as the Chairman. It is possible for a natural feeling to develop among the members that the Vice Chairman would become Chairman. A predictable, alternating system between the two parties would evolve. In short, the issue is whether you want to start-up under Mr. Curtis and have a Democratic Chairperson in 1976 or vice versa. Because I believe the law is invalid, I would recommend going with Mr. Curtis as Chairman now.

Options for a Swearing In Ceremony:

All of the options set forth have the individual Commissoners taking their oath in unison. That not only emphasizes the unity of the FEC, but, in my opinion, any other process would be awkward.

The ceremony should be at a high level with no fanfare. Press coverage should be limited to the White House pool, if possible. A dignified, low key ceremony should be the objective.

Option I: FEC members sworn in by Chief Justice at the White House. Congressional delegation attends. President Ford is the host.

Pros:

- The American governmental hierarchy stands together for improving and cleansing the electoral process.
- The stature of the FEC is assured.
- The optics are that a big step on the road back from Watergate is taken.
- President Ford is out in front on the clean elections issue. This is especially true since the ceremony is at the White House.

Cons:

- The Chief Justice may appear to be giving approval to a law which is almost certain to be decided by the Supreme Court.
- We perpetuate the President's identification with a questionable law.
- Identification with the FEC is too exclusively with the President.

Option II: Capitol Hill ceremony. Chief Justice administers the oath. President attends.

Pros and Cons: See Option I. This option would have the President in attendance, but he does not dominate the situation as he would if it were at the White House.

Option III: Capitol Hill ceremony. Speaker administers the oath. The Vice President, Majority Leader, or President Pro Tempore (Senator James O. Eastland) holds the Bible. Chief Justice does not attend. President attends.

Pros:

- The American political hierarchy stands together for improving and cleansing the electoral process.
- Avoids involving the Supreme Court, which will eventually decide the case.

- Stature of FEC assured.

- The optics are that a big step on the road back from Watergate is taken.

- President is not way out in front and does not dominate as in Option I.

Cons:

- We perpetuate the President's identification with a questionable law.

- Might highlight the constitutional issue because Supreme Court is not involved.

Option IV: Any ceremony which does not involve the President.

Pros:

- Identification of the President with a questionable law ends.

- The President does not sanction the FEC.

Cons:

- Neither the American political hierarchy nor the governmental hierarchy stand together for improving and cleansing the electoral process.

- The FEC is not given exceptional stature.

- President Ford loses any identification with cleaner elections he might have had.

Option V: A ceremony with the Congressional leadership and the Vice President, the only officer in the American system who is of the Executive and Legislative Branches.

Pros:

- The Administration remains identified with cleaner elections.

- Most of the political hierarchy stands together. The Vice President can make clear in his remarks the President's belief in cleaner elections laws.

- The President retains his options to comment on the issue during the campaign.

- The stature of the FEC is secured, but not at a level greater than that necessary for it to be credible.

- The Supreme Court is not identified with a law now being challenged in the Courts.

Cons: See Option IV.

OPINIONS

FEC:

Mr. Curtis, speaking for the FEC, would prefer to involve the President, but is uncertain about the Chief Justice because of the litigation. His colleagues want Option I or II.

President's Congressional Office:

They will discuss it at their staff meeting on Tuesday, April 8.

HAC: Option II

The Chief Justice can administer the oaths without losing his capacity to sit on the case if and when it gets to the Court.

The President should be identified with the work of the FEC. He signed the law and will not be able to disavow it without a clear statement of disavowal.

The law is presumed to be constitutional until the Court, the appropriate branch in our government for these matters, says otherwise.