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"Rummaging in the government's attic"

Description of document: Federal Election Commission (FEC) emails resulting from an electronic search of emails TO and/or FROM and/or CC selected individuals which contain the words PROBLEM, PROBLEMATIC, PURSUE, DOJ, UNETHICAL, 2019

Requested date: 20-October-2019

Release date: 07-December-2020

Posted date: 08-February-2021

Source of document: FOIA Request
Federal Election Commission
Attn: FOIA Requester Service Center
1050 First Street, NE
Washington, DC 20463
Fax: 202-219-1043
Email: FOIA@fec.gov

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VIA ELECTRONIC MAIL

Re: Your Freedom of Information Act Request to the Federal Election Commission FOIA [2020-006]

This email is in response to the request you filed for information under the Freedom of Information Act (FOIA) dated and received by the Federal Election Commission's (FEC) FOIA Requester Service Center on October 20, 2019. Specifically, you requested:

A copy of the results of a search of emails TO or FROM or CC each of the following individuals: Lisa J. Stevenson and/or Lawrence L. Calvert Jr., for emails containing the following keywords, during the time period January 1, 2019 to present: white, Trump, President, administration, problem, problematic, concern, concerns, political, violation, referral, referred, pursue, DOJ, unethical, or prohibited.

After discussing the scope of your FOIA request with me twice, you agreed to narrow the scope to no longer include: white, concern, concerns, referral, referred, political, Trump, President, administration, violation, and prohibited.

We have searched our records and have located responsive documents, which we are releasing in part. Attached to this letter are 824 pages of responsive records the Agency located that are not exempt from disclosure. We have withheld approximately 9,988 pages of responsive records in their entirety under FOIA Exemptions b(5), 472 pages under b(7)(C), and 357 pages under b(6). Please note that our response to your request does not include documents or publications publicly available on our website or compilations of publicly available news articles, which in this case comprised the majority of the responsive records.

Exemption 5 protects from disclosure inter- or intra-agency memoranda or letters that would not be available by law to a party other than an agency in litigation with the agency, including documents covered by the attorney work-product, deliberative process, and attorney-client privileges. *See* 5 U.S.C. § 552(b)(5).

Exemption 6 protects personal information, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. *See* 5 U.S.C. § 552(b)(6).

Exemption 7(C) protects from disclosure records or information compiled for law enforcement purposes that if released could reasonably be expected to constitute an unwarranted invasion of personal privacy. *See* 5 U.S.C. § 552(b)(7)(C).

Accordingly, your FOIA request has been granted in part.

You may contact our Acting FOIA Public Liaison, Hina Hussain at (202) 694-1357, for any further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

You may appeal any adverse FOIA determination. Any such appeal must be filed in writing and should follow the guidelines set forth in 11 C.F.R. § 4.8. If you have any questions, please contact the FOIA Requester Service Center at FOIA@fec.gov, or (202) 694-1650.

Sincerely,

Katrina Sutphin
FOIA/PA Attorney

From:Afzal Bari
To:lstevenson@fec.gov
Sent:2019-06-05T12:04:07.0000000Z
Subject:Does Washington have a Twitter problem? Requesting your perspective

Good morning,

Ten years ago, only 20% of Washington insiders used Twitter, with many questioning its impact and staying power. Since then, **Twitter usage has tripled** among the same community of professionals. What implications does this have for **policymaking** and **trust** in media today?

These are questions many are asking, and National Journal is once again partnering with policy professionals across the city to develop the answers.

Please accept this invitation to contribute your opinions to our annual study, Washington in the Information Age. [Participate Here](#).

As we discover what's changing inside the Beltway this year, we hope you'll take **15 minutes** to add your voice to our growing number of federal government participants. Your **confidential responses** will only be presented in the aggregate, **without** names, offices or other **identifying information**.

We are grateful for your time, and in exchange for your consideration, we will provide you with priority access to the study's executive summary.

Kind regards,

Afzal Bari
Vice President, Strategy & Operations
National Journal

If you have trouble accessing the survey above, please use [this link](#).

PRIVACY AND CONFIDENTIALITY: This study is conducted by National Journal Research. National Journal maintains a strict firewall between its research and newsroom; journalists do not have access to these data. If you participate, your identity and responses will remain confidential.

This email was sent to lstevenson@fec.gov. If you no longer wish to receive these emails you may [unsubscribe](#) at any time.

From:Stephen Gura
To:Tracey Ligon ; Seth Nesin ; Nora Mejia ; Adrienne Baranowicz ; Lisa Stevenson ; Heather Filemyr ; Haven Ward ; Justine di Giovanni ; Thaddeus Ewald ; Mark Allen ; Joanna Waldstreicher ; Hina Hussain ; Ana Pena-Wallace ; Anthony Bell
Sent:2019-05-22T15:55:02.0000000Z
Subject:RE: Instructions for SOME Volunteers

It worked for me.

From: Tracey Ligon
Sent: Wednesday, May 22, 2019 11:09 AM
To: Seth Nesin <SNesin@fec.gov>; Nora Mejia <NWheatley-Mejia@fec.gov>; Adrienne Baranowicz <abaranowicz@fec.gov>; Stephen Gura <SGura@fec.gov>; Lisa Stevenson <LStevenson@fec.gov>; Heather Filemyr <HFilemyr@fec.gov>; Haven Ward <HWard@fec.gov>; Justine di Giovanni <jdigiovanni@fec.gov>; Thaddeus Ewald <tewald@fec.gov>; Mark Allen <mallen@fec.gov>; Joanna Waldstreicher <JWaldstreicher@fec.gov>; Hina Hussain <HHussain@fec.gov>; Ana Pena-Wallace <APena-Wallace@fec.gov>; Anthony Bell <ABell@fec.gov>
Subject: RE: Instructions for SOME Volunteers

I heard back from SOME. They found an issue in their system and want you to see if you can sign up now. If you still cannot, they have another method to try. So let me know if you have any problems. Thanks.

Tracey L. Ligon
Attorney and Deputy Ethics Official
Federal Election Commission
1050 First Street, NE
Washington, DC 20463
202.694.1554

From: Tracey Ligon
Sent: Wednesday, May 22, 2019 9:51 AM
To: Seth Nesin <SNesin@fec.gov>; Nora Mejia <NWheatley-Mejia@fec.gov>; Adrienne Baranowicz <abaranowicz@fec.gov>; Stephen Gura <SGura@fec.gov>; Lisa Stevenson <LStevenson@fec.gov>; Heather Filemyr <hfilemyr@fec.gov>; Haven Ward <hward@fec.gov>; Justine di Giovanni <jdigiovanni@fec.gov>; Thaddeus Ewald <tewald@fec.gov>; Mark Allen <mallen@fec.gov>; Joanna Waldstreicher <JWaldstreicher@fec.gov>; Hina Hussain <HHussain@fec.gov>; Ana Pena-Wallace <APena-Wallace@fec.gov>; Anthony Bell <ABell@fec.gov>
Subject: RE: Instructions for SOME Volunteers

All,

There appears to a problem with registering for our event. I have left a message at SOME and am awaiting their response. Stay tuned ...

Tracey L. Ligon
Attorney and Deputy Ethics Official
Federal Election Commission
1050 First Street, NE
Washington, DC 20463
202.694.1554

From: Tracey Ligon
Sent: Tuesday, May 21, 2019 8:06 PM
To: Seth Nesin <SNesin@fec.gov>; Nora Mejia <NWheatley-Mejia@fec.gov>; Adrienne Baranowicz <abaranowicz@fec.gov>; Stephen Gura <SGura@fec.gov>; Lisa Stevenson <LStevenson@fec.gov>; Heather Filemyr <hfilemyr@fec.gov>; Haven Ward <hward@fec.gov>; Justine di Giovanni <jdigiovanni@fec.gov>; Thaddeus Ewald <tewald@fec.gov>; Mark Allen <mallen@fec.gov>; Joanna Waldstreicher <JWaldstreicher@fec.gov>; Hina Hussain <HHussain@fec.gov>; Ana Pena-Wallace <APena-Wallace@fec.gov>; Anthony Bell <ABell@fec.gov>



Hello,

Thank you for expressing interest in volunteering at SOME. Please note that the May 29 service date I originally sought was not available, so **our new service date is Wednesday, June 12, 2019**. To serve lunch at SOME on June 12, you must click on the following link and create your own account (if you don't already have one) ***and*** register for the event:

FEC : <http://vhub.at/FECneighbors>

Please register as soon as possible because the link will expire a week before our service date. I will send out general information about the SOME volunteer experience closer to our service date.

If you have any questions, please let me know.

Thanks,
Tracey

*** This volunteer service is dedicated to the memory of Stephen Gura's dear wife Cristi, who held SOME as a favorite charity.**

From:Peter Blumberg
To:Lynn Tran ; Nicholas Bamman
Sent:2019-05-16T13:38:27.0000000Z
CC:Charles Kitcher ; Lisa Stevenson
Subject:FW: News and Views from the FEC's Press Office

Interesting Boston Globe article about the Thornton MUR in N&V.

From: BNA Convergence [mailto:convergence@bna.com]
Sent: Thursday, May 16, 2019 7:52 AM
To: Peter Blumberg <pblumberg@fec.gov>
Subject: News and Views from the FEC's Press Office

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News and Views from the FEC's Press Office

News and Views from the FEC's Press Office

FEC, Federal Campaign Finance and Election News
State and Local (and International) Campaign Finance News
Federal Employee and Government News
Editorials, Blogs and OpEds
FEC Staff Quotes and References
Tweets to @FEC from verified users 

FEC, Federal Campaign Finance and Election News
Evidence of illegal campaign donations by Boston’s law firm found, case dismissed anyway Boston Globe (Boston, MA) - 05/16/2019 05:20 Lawyers at the Federal Election Commission found that Boston’s TH law firm likely used a phony program to repay partners for political dona case was dismissed after commissioners deadlocked on whether to FEC staff...
Grasswho? Members raised hundreds of thousands, none from small donors Roll Call Online (Washington, DC) - 05/15/2019 14:35 Democrats have long touted the importance of raising small amount from a large number of donors as a sign of political strength on the and in Congress. But recent campaign finance disclosures show so — both...
Mueller Report Stirs Fresh Senate Interest in Election Bloomberg - 05/15/2019 11:48 Some senior Senate Republicans say they want Congress to help s their election systems from foreign hackers -- if their own party’s lea

a floor vote.

[Election Agency Resources Shrink as Foreign Hacking Rise](#)

Bloomberg - 05/16/2019 07:18

The tiny federal agency charged with helping to secure U.S. elections is being squeezed even further as the threat of foreign interference has grown.

[Booker campaign official urges donations for Gillibrand to ensure debate spot](#)

Politico - 05/16/2019 07:37

Sen. Cory Booker's deputy presidential campaign manager announced Wednesday night that she donated to the campaign of rival 2020 candidate Kirsten Gillibrand, urging others to do the same to ensure that Gillibrand has a shot for next...

[Mueller Report Elicited A Lot Of Conversation — But No Election Legislation](#)

NPR [National Public Radio] (United States) - 05/16/2019 06:58

Sen. James Lankford is worried about election apathy. Not that people aren't caring about politics, but as the weeks and months pass after the release of special counsel Robert Mueller's redacted report on Russian interference in the 2016 election, Oklahoma...

[Top Republican says Senate unlikely to vote on any election security bills](#)

MSN News US - 05/15/2019 19:15

Sen. Roy Blunt (R-Mo.), a member of Senate GOP leadership, said Wednesday that the chamber is unlikely to vote on any election security legislation in response to requests from a federal agency for more funding to improve election security nationwide. Blunt...

[Post-Russiagate, Trump Continues To Spend Millions On Facebook Ads](#)

Medium.com - 05/15/2019 19:09

After nearly three years of stories about "Russian interference" in the 2016 presidential elections — including widespread claims that a Russian agent influenced the elections through "meme warfare" on Facebook — Trump's partnership with the...

[New York City Mayor De Blasio to Announce Bid for Democratic Presidential Nomination](#)

NEW YORK — New York City Mayor Bill de Blasio, an unapologetic progressive Democrat who has been a frequent critic of the Trump administration's policies, has decided to go after the president's job. 57, will announce his candidacy for...

[Bill de Blasio Expected to Announce 2020 Presidential](#)

Fortune - 05/15/2019 21:24

New York City Mayor Bill de Blasio is expected to announce Thursday jumping in to the 2020 presidential race, making him the 23rd Democratic candidate of note in a crowded field of hundreds. De Blasio will make his move before...

[Bill de Blasio officially launches 2020 presidential campaign](#)

New York Post (New York, NY) - 05/16/2019 06:49

He's late—again. After nearly half a year of hemming and hawing, Mayor Bill de Blasio on Thursday entered the 2020 presidential race, becoming the latest Democrat to join the jam-packed field. The termed-out politician, known for his habitual tardiness,...

[9 things to know about Bill de Blasio](#)

Center For Public Integrity (Washington, DC) - 05/16/2019 07:10

New York City Mayor Bill de Blasio announced today that he is running for president. "Don't back down in the face of a bully. Confront him, take on the bully," Blasio said in a campaign kickoff video. "As president, I will take on the bully and will...

[Why are there so many candidates for president?](#)

The Conversation - 05/16/2019 06:53

Seven Democratic presidential candidates gathered on national television for the 1988 campaign to debate each other. The field of candidates, dominated by Republicans as the "Seven Dwarfs," pales in comparison to the 24 Democratic candidates who...

[Biden Grows His Lead in Democratic Field Early in Race](#)

Voice of America News (VOA) - 05/16/2019 06:34

WASHINGTON — Former Vice President Joe Biden has surged into the lead among the Democratic presidential contenders for 2020. The latest poll shows Biden with a healthy lead over Vermont Senator Bernie Sanders and the rest of the large, diverse field...

[Gordon, de Blasio play a game of votes](#)

Newsday (Melville, NY) - 05/15/2019 17:13

Gordon throws her hat in the ring The 2020 race for New York's 2nd Congressional District heated up Wednesday with the entry of Baby Councilwoman Jackie Gordon. Her launch puts pressure on other D get in the race and catch up, and...

Steve Bullock raises \$1 million in first 24 hours, campaign

CNN - 05/15/2019 17:42

(CNN)Montana Gov. Steve Bullock raised \$1 million from voters in the 24 hours after he launched his 2020 presidential bid, his campaign Wednesday. Not included in the release: The number of donors who Bullock's...

Women Comprise Nearly Half Of Individual Contributions To Trump's Re-Election Campaign

Daily Wire - 05/15/2019 14:29

We can expect Democrats to, once again, revive the "war on women" against Republicans in 2020. It served them well in 2012, but hasn't well since then. They keep trying though. They're going to have a hard pretending that...

Trump supporters who donated to GoFundMe wall now they got scammed

Salon (San Francisco, CA) - 05/15/2019 09:34

Trump supporters who donated to a GoFundMe campaign aiming to build of the president's proposed border wall are worried they were scammed wrote that he launched the campaign because he was upset by "too... taking...

Joe Biden plans first New York fundraising blitz as a candidate for president

CNBC (United States) - 05/15/2019 16:00

Joe Biden is preparing to come to New York City for his first round of fundraisers. New York Gov. Andrew Cuomo is likely to be invited and manager Jim Chanos is set to attend. Former Vice President Joe Biden ready for...

President Trump Will Provide a Rare Look Into His Financials With His Disclosure Report

Time Magazine - 05/16/2019 03:01

(NEW YORK) — President Donald Trump's latest financial disclosure is expected to provide a rare glimpse into whether his presidency has cost his hotels, golf resorts and other parts of his business empire. The n

is filed...

Trump's wealth in the spotlight with new disclosure fo

CNN - 05/16/2019 07:19

Washington (CNN) America is about to get a tantalizing look into the fortune on which Donald Trump made his name but is at the root of most mysterious unresolved questions about his presidency .

Could Democrats actually win this do-over congressional in North Carolina?

 **Washington Post (Washington, DC)** - 05/15/2019 14:15

By Amber Phillips Amber Phillips Reporter for The Fix covering Congress statehouses Email Bio Follow May 15 at 2:08 PM Here's why a special election for a congressional seat in North Carolina matters, politically speaking. Carolina Republicans...

[back to top](#)

State and Local (and International) Campaign Finance

GOP lawmaker indicted for trying to trade his vote for cash, lying to the FBI, authorities say

Washington Post (Washington, DC) - 05/15/2019 22:54

The text message, which allegedly offered up a lawmaker's vote in exchange for cash, ended with a famous five-word phrase: "We never had this done before." A federal grand jury has accused a Michigan Republican of doing just that, charging state...

Michigan lawmaker has been charged with seeking a favor from a labor union in exchange for a favorable vote on a

FOX : WSYM-TV 47 (Lansing, MI) - 05/15/2019 13:00

LANSING, MICH. — A Michigan lawmaker charged with seeking a favor from a labor union in exchange for campaign contributions says he's surprised to hear about the indictment. Larry Inman tells The Detroit News that he spoke to the FBI last summer. Legislature...

Was Rep. Larry Inman selling his votes?

Michigan NBC 25 - 05/15/2019 14:58

UPDATED: 1:05 p.m. GRAND TRAVERSE COUNTY, Mich., (WPB) — Was Michigan State Representative Larry C. Inman in the market for cash? On Wednesday, a federal grand jury indicated it thought so the Republican on...

Did campaign donors pay for Casada's parties?

Channel 5 Nashville - 05/15/2019 18:46

NASHVILLE, Tenn. (WTVF) — If you give your money to your favorite politician, do you expect them to use that money to party with their friends? A Channel 5 investigation has discovered that's exactly what House Speaker Garret

Trump pardons Pat Nolan, former GOP lawmaker caught in 'Shrimpscam' sting

The Week Magazine (New York, NY) - 05/15/2019 23:03

President Trump on Wednesday pardoned Pat Nolan, a former Republican lawmaker from California who was convicted in the 1990s as part of an operation dubbed "Shrimpscam." Nolan was elected to the California State Assembly in 1978, and served...

Despite 2008 'gold standard' reforms, Louisiana legislators rarely face ethics charges

The Advocate Online - 05/16/2019 06:02

Of the six lawmakers who have been charged by the Ethics Board of the Louisiana Legislature since the reforms championed by former Gov. Bob Beaupre, former state Sen. Robert Marionneaux Jr.'s case has gone on the longest. The Ethics Board charged...

Illinois' Democratic Leaders Spent \$420K on Sports Tickets Last Year

Chicago NBC 5 TV - 05/15/2019 23:13

Want tickets to a Cubs game? Check with Illinois House Speaker Michael Madigan. From April 1, 2018, through March 31, 2019, Friends of Michael Madigan - the speaker's political committee - made five purchases of tickets totaling \$184,392,...

Who Is Patrick Nolan? Trump Pardons Ex-California Legislator Convicted Of Campaign Violations

International Business Times (United States) - 05/16/2019 01:2

Patrick Nolan, a former Republican legislator in the California State Assembly who pleaded guilty in an FBI sting targeting illegal campaign contributions in 1994, was granted a full pardon by President Donald Trump, the White House announced...

Campaign finance reform backers ask court to hear Multnomah County case

Portland Tribune (Portland, OR) - 05/16/2019 03:24

Contribution limits at crux of Multnomah County measure being considered by Oregon Supreme Court. In 2018, Portland City Council candidate Catherine Cook beat incumbent Steve Novick handily, even though he outspent her 6-1 — proving...

[back to top](#)

Federal Employee and Government News

Agencies Could Weed Out Poor Managers Early, But Rarely Do

Government Executive - 05/15/2019 15:39

Read the comments on just about any story in Government Executive will come away with one clear impression (besides the fact that the federal government appears to be as politically divided as the country): A lot of government employees think...

What Changes to the Thrift Savings Plan Mean for IRAs

Morningstar - 05/16/2019 06:24

Some funds in the retirement plan for federal employees are shifting from a conservative glide path to a more typical one.

OPM Chief to Propose Legislation for Merger With GSA by Week's End

Government Executive - 05/14/2019 17:19

Nearly a year after the Trump administration announced its proposal to bulk of the Office of Personnel Management's functions to the General Services Administration, acting OPM Director Margaret Weichert said Tuesday that it will be...

Hatch Act complaints jumped nearly 30 percent Trump's first year in office: report

The Hill (Washington, DC) - 05/15/2019 09:59

Donald John Trump De Blasio heckled by Trump supporters at new rally inside Trump Tower Trump officials slow-walk president order to cut American aid: report MORE's first year in office, formal Hatch Act co...

the Office of...

[back to top](#)

Editorials, Blogs and OpEds

[The Federal Election Commission is Bad Enough](#)

Cato-at-liberty - 05/15/2019 10:43

Chris Hughes, a founder of Facebook, has proposed Congress create an agency to “create guidelines for acceptable speech on social media.” In his notes, this proposal “may seem un-American.” That’s because it is. At the least, Hughes’ plan...

[Trump Super PAC Endorsement Lays Bare Illegal Op Trump’s Outside Groups](#)

Common Cause Blog - 05/15/2019 13:59

Donald Trump’s official endorsement of the super PAC America First Action as the sole “approved” outside group of the President fully validates Common Cause’s 2018 Department of Justice (DOJ) and Federal Election Commission (FEC) complaints that the...

[Level playing field presented for campaign donation t](#)

Sun, The (Lowell, MA) - 05/15/2019 17:04

Finally, the political contribution game in this state will be played on a level playing field. Starting next month, unions and nonprofits now v to contributing \$1,000 a year to a candidate for public office after the

[back to top](#)

FEC Staff Quotes and References


[Evidence of illegal campaign donations by Boston’s T law firm found, case dismissed anyway](#)

Boston Globe (Boston, MA) - 05/16/2019 05:20

Lawyers at the Federal Election Commission found that Boston’s TH law firm likely used a phony program to repay partners for political dona

case was dismissed after commissioners deadlocked on whether to
FEC staff...

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Tweets to @FEC from verified users  [Explore & Analyze](#)

[Zach C. Cohen](#) [@Zachary_Cohen](#)

[@davelevinthal](#) [@SenGillibrand](#) [@FEC](#) [@gillibrandny](#) Similar to the Senate, also due today. <https://t.co/1iCltAcFEE>

5/15/2019 4:00:28 PM

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[Dave Levinthal](#) [@davelevinthal](#)

[@BernieSanders](#) [@FEC](#) [@SenSanders](#) [@Publicl](#) [@vtdigger](#) on [@BernieSanders](#)' personal and political finances,... <https://t.co/Gmdm7SVNV3>

5/15/2019 3:49:43 PM

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[@BernieSanders](#) [@FEC](#) [@SenSanders](#) [@Publicl](#) [@vtdigger](#) [@BernieSanders](#) filing his personal financial disclosure on ti... <https://t.co/HBFZhFA3Ib>

5/15/2019 3:48:49 PM

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[Dave Levinthal](#) [@davelevinthal](#)

[@BernieSanders](#) [@FEC](#) [@SenSanders](#) [@Publicl](#) 2/ [@Bernie](#) reported on his new personal financial disclosure:...

<https://t.co/Cgcuak6RBA>

5/15/2019 3:47:27 PM

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[Dave Levinthal](#) [@davelevinthal](#)

1/ NEW: [@BernieSanders](#) just filed his annual, presidential p...
financial disclosure w/ [@FEC](#). Of note, Sanders:... <https://t.co>

5/15/2019 3:43:50 PM

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[Alex Kotch](#) * [@alexkotch](#)

[@davelevinthal](#) [@SenGillibrand](#) [@FEC](#) [@gillibrandny](#) Interest...
despite criticism she's holding onto the investme...
<https://t.co/eMDW85Qqr9>

5/15/2019 3:33:59 PM

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[Dave Levinthal](#) [@davelevinthal](#)

[@SenGillibrand](#) [@FEC](#) [@gillibrandny](#) 2/ For more on [@SenG](#)...
personal and political finances, [@levinecarrie](#) of... <https://t.co>

5/15/2019 3:33:26 PM

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[Issue One](#) [@IssueOneReform](#)

Questions around internal [@FEC](#) conflicts "come at a time wh...
money' and the specter of foreign election infl... <https://t.co/qe>

5/15/2019 3:33:00 PM

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[Dave Levinthal](#) [@davelevinthal](#)

1/ NEW: [@SenGillibrand](#) files mandatory, annual presidential personal financial disclosure w/ [@FEC](#). It's p... <https://t.co/gV>

5/15/2019 3:32:29 PM

[Reply](#) [Retweet](#) [Favorite](#) [View](#)

[Anna Massoglia](#) [@annalecta](#)

New personal financial disclosures for 2020 presidential candidates released by the [@FEC](#) awaiting [@OfficeGovEthics](#)... <https://t.co/gfvJrIhYGA>

5/15/2019 2:13:58 PM

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[Dave Levinthal](#) [@davelevinthal](#)

[@JayInslee](#) [@FEC](#) [@Boeing](#) [@amazon](#) [@Starbucks](#) [@Microsoft](#) [@Expedia](#) [@TMobile](#) [@GovInslee](#) 2/ More on [@JayInslee's](#) p... <https://t.co/CkHI0x9INs>

5/15/2019 1:41:06 PM

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[Dave Levinthal](#) [@davelevinthal](#)

1/ NEW: D presidential candidate [@JayInslee](#) has filed his annual financial disclosure report w/ [@FEC](#). Of n... <https://t.co/6LLgp>

5/15/2019 1:40:17 PM

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[@BetoORourke](#) [@FEC](#) 2/ More on [@BetoORourke](#)'s personal finances from [@levinecarrie](#) of @publici <https://t.co/Sk0915N>

5/15/2019 1:29:21 PM

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1/ NEW: [@BetoORourke](#) just filed his mandatory, annual personal disclosure w/ the [@FEC](#). Of note: * O'Rourke... <https://t.co/Eygh>

5/15/2019 1:27:31 PM

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[Issue One](#) [@IssueOneReform](#)

Greatly exceeding the 6-year term limit has become the new normal for [@FEC](#) commissioners, as neither Democrats nor... <https://t.co/>

5/15/2019 1:20:04 PM

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1/ NEW: [@PeteButtigieg](#)'s personal financial disclosure form, filed this morning with the [@FEC](#), shows he: * Has lot... <https://t.co/1C>

5/15/2019 11:21:13 AM

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We won't see [@Hickenlooper](#)'s mandatory personal financial disclosure for a while — he asked the [@FEC](#) for a 45-day fi... <https://t.co/7IM>

5/15/2019 11:11:45 AM

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[Issue One](#) [@IssueOneReform](#)

"We can all agree that clear violations of law should be met with reasonable, proportionate punishment. Enforcement...
<https://t.co/lym1Eob7gn>

5/15/2019 10:59:01 AM

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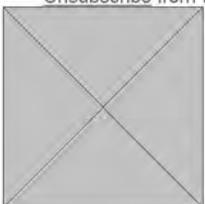
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Shared Neutrals

Shared Neutrals (SN), *also known as Sharing Neutrals*, is an interagency mediation program in the National Capital Region (including the Washington, DC and Baltimore area), that first began as a pilot in the mid-1990s. Management of the program was transferred from the Department of Health and Human Services (HHS) to the Federal Mediation and Conciliation Service (FMCS) in December, 2018. Upon request, SN assists participating federal agencies through a pool of trained, collateral-duty federal employees who provide mediation services to agencies other than their own in exchange for like services to the program from the recipient agency.

What is mediation?

Mediation is assisted negotiation. In mediation, a trained, neutral third party helps two or more parties negotiate to resolve their dispute. Mediation typically employs a problem-solving approach to address conflict rather than the traditional, adversarial method. Mediators are trained in communication and problem solving skills, which they use to help parties make the best possible decisions about whether to, and how to, resolve their dispute.

Mediation is a **voluntary**, informal process. Rules of evidence do not apply. Testimony is not taken. Mediation allows parties to control the dispute resolution process, rather than having a judge or some other official control it for them. Mediation is typically faster and more economical than adjudication, and even if mediation does not resolve the dispute, it almost always helps parties clarify and narrow the issues so that adjudication can proceed more rapidly.

Mediators are not decision-makers or judges and have no personal interest in the substantive outcome of a case. Mediators use their expertise in communication and negotiation to help the parties make effective, informed decisions for themselves.

Who is involved?

More than fifty (50) federal agencies and sub-agencies currently participate in SN. The roster primarily serves the Washington-Baltimore metropolitan area although SN will mediate elsewhere if travel costs are paid by the requesting agency. In some regions of the country, Federal Executive Boards (FEBs) have organized programs that they administer separately for agencies within their geographic area. FMCS can handle program administration in coordination with any FEB that requests it.

Who are the mediators?

Shared Neutrals Roster members are federal employees who mediate as a collateral duty or are government retirees who volunteer their services. Each start out as a “co-mediator,” trained in basic mediation skills but with limited experience. To become a “lead” mediator in the program, a co-mediator must have: (1) at least 40 hours of basic mediation skills training; (2) at least three co-mediations with a qualified mediator or five independent mediations and positive evaluations from a qualified trainer/evaluator; and (3) at least two references from two qualified mediators or trainer/evaluators.

Currently, the FEC’s certified SN mediator is Krista Roche (ADRO). The collateral duty service she has provided to other agencies in past years has helped enable our present SN partnership.

What is a co-mediator?

A co-mediator is trained in basic mediation skills but has limited mediation experience. SN maintains a registry of co-mediators who team with those who have mediated at least three cases.

After a mentoring period, and successful completion of three mediations, co-mediators are eligible to become lead mediators.

What are the logistics for the process?

The agency coordinator (typically an EEO officer or ADR coordinator) requests a mediator by emailing sharedneutrals@fmcs.gov. FMCS will promptly identify an available mediator and co-mediator and will notify the coordinator and the mediators when a match is secured. Requests should include the following:

- Name of the agency coordinator;
- Location of the mediation;
- Preferred date(s) of mediation: provide at least three (3) dates or date ranges
- Brief description of the type of case/dispute (specify whether formal EEO complaint, informal EEO complaint, other workplace dispute or any other matter in dispute)
- Number of participants and whether legal representatives will be present;
- Any specific needs or requests that might affect the selection of referrals (e.g., language skills or special needs).

The requesting agency is responsible for coordinating logistics, such as:

- Locating an appropriate room for the mediation;
- Providing supplies, such as flip charts and markers;
- Providing rooms for private caucuses;
- Reimbursing travel expenses, if any, incurred by the mediators; and
- Providing additional contact information of the agency coordinator to the parties and mediators in the event of logistical problems.

Who is the contact person?

Requests for a mediator referral should be made through the agency's current administrative Shared Neutrals contact (Kevin Salley - EEO). If possible, agency requests for mediator referral should be made 10-14 days business days prior to the proposed date for the mediation session.

What are the principles and standards used?

Every individual and agency participating in SN agrees to abide by principles of confidentiality, as outlined in [Section 574](#) of the Administrative Dispute Resolution Act as amended in 1996 and the [Shared Neutrals Standards of Practice](#).

What final action takes place at the close of a case?

Mediation agreements are generally drafted by the mediator or agency counsel and signed by the parties. If mediation ends without an agreement, the case is referred back to the requesting agency for the next steps in the agency processes; mediation does not limit other formal rights. At the close of mediation, the shared neutral provides the parties with evaluation forms and asks parties to return the forms to the SN program at sharedneutrals@fmcs.gov. For tracking purposes, the SN program asks members to report the outcome. To ensure confidentiality, the SN group receives limited substantive information about the case and keeps no record of names of individuals involved other than coordinators and mediators.

For more information about the program, please email Shared Neutrals staff at sharedneutrals@fmcs.gov.

From:Lawrence Calvert
To:Lisa Stevenson ; Gregory Baker ; Charles Kitcher
Sent:2019-08-22T16:36:11.0000000Z
Subject:Re: Open mtg

I think we've let those kinds of references go in the past so long as you can't figure out from the context who the respondent being referenced is.

From: Lisa Stevenson <LStevenson@fec.gov>
Sent: Thursday, August 22, 2019 11:09:47 AM
To: Gregory Baker <gbaker@fec.gov>; Lawrence Calvert <LCalvert@fec.gov>; Charles Kitcher <CKitcher@fec.gov>
Subject: Open mtg

Caroline made a reference to recently finding RTB in a scam pac matter in the public meeting. She didn't give more details than that but did refer to it as a scam pac which seed problematic to me.



PLI CORPORATE POLITICAL ACTIVITIES 2019

COMPLYING WITH CAMPAIGN FINANCE, LOBBYING, AND ETHICS LAWS

Lisa J. Stevenson

Acting General Counsel, Federal Election Commission

FEDERAL ELECTION CAMPAIGN ACT

FEC Has Exclusive Civil Jurisdiction

- All violations of the FECA, 52 U.S.C. §§ 30101 to 30146.
- Violations of Commission implementing regulations, 11 C.F.R. §§ 1 to 9039.3.
- Civil enforcement of FECA violations does not require scienter.

DOJ Has Exclusive Criminal Jurisdiction

- Knowing and willful violations:
 - Offender knew what the law prohibited and violated it notwithstanding that knowledge.
 - Usually, the aggregate amount must exceed \$2,000 during the calendar year (some exceptions to this general rule).

CONTRIBUTIONS IN THE NAME OF ANOTHER: MEPCO HOLDINGS, LLC

- Reimbursed nine executives for political contributions made in the executives' and their spouses' names.
- Bankruptcy restructuring counsel discovered, parent corporation started investigation and initiated a *sua sponte* submission to the Commission.
- The Commission found reimbursement scheme violated the FECA by making contributions in name of another, excessive corporate contributions.
- Mepco Holdings paid \$54,000 civil penalty; CEO James Laurita paid \$18,000 civil penalty; executive Karen Hughes paid \$9,000 civil penalty.

COORDINATION BETWEEN FEC & DOJ

- Sharing of Investigative Materials
- Providing Witnesses
- Abeyance Requests

ORIGINATION OF FEC ENFORCEMENT MATTERS

- Complaints
 - Any person
 - Personal knowledge not required
 - Must be signed and sworn (no anonymous complaints)
- Internal Referrals
- External Referrals
- *Sua Sponte* Submissions (self-reporting)

POSSIBLE OUTCOMES TO FEC ENFORCEMENT MATTERS

- Finding there is no “reason to believe” that the FECA was violated
- Dismissal based on prosecutorial discretion
- Close the file based on split vote
- Finding there is “reason to believe” that the FECA was violated
- Possibilities if there is “reason to believe” that the FECA was violated:
 - No further action following investigation
 - Conciliation: pre-probable and post-probable
 - “Probable cause to believe” that the FECA was violated
 - Federal civil suit (five-year civil statute of limitations)

FEC STATISTICS – 2018

Total Matters Under Review (MURs) Closed	Total MUR Civil Penalties	Total MURs w/ Conciliation Agreement	Average Civil Penalty per MUR w/ Conciliation Agreement
167	\$595,200	19	\$29,747

FEC STATISTICS – 2019*

Total Matters Under Review (MURs) Closed	Total MUR Civil Penalties	Total MURs w/ Conciliation Agreement	Average Civil Penalty per MUR w/ Conciliation Agreement
91	\$1,493,400	19	\$78,600

* Data through April 30, 2019

DOMESTIC SUBSIDIARIES OF FOREIGN PARENTS: APIC & RIGHT TO RISE USA

- Neil Bush solicited \$1.3M in contributions to Right to Rise USA (Jeb Bush's Super PAC) from APIC, a domestic subsidiary of foreign parent corporation. Bush was also an APIC board member.
- Bush spoke with APIC's Board Chairman—a foreign national and majority owner of APIC's foreign parent—who referred the request to APIC's U.S. director to follow up.
- The Commission found the contribution violated the FECA's foreign national prohibition.
- \$940,000 combined civil penalty: APIC paid \$550,000; Right to Rise paid \$390,000.

LLCS AS STRAW DONORS: DE FIRST HOLDINGS & DÉCOR SERVICES, LLC

- Making a contribution in the name of another is prohibited.
 - If David gives Sally money so that she can make a contribution to candidate X, then David is making a contribution in the name of Sally – both of them have violated FECA, and we refer to Sally as a “straw donor.”
- The allegation in these cases is that LLCs are being used as straw donors to make contributions to super PACs that are actually attributable to other sources, so that the “true source” of the funds doesn’t have to be disclosed.
- Example – Vivek Garipalli, DE First Holdings / Unknown Respondent, Décor Services, LLC

POTENTIAL FEC PENALTIES

- Civil Penalties
 - Up to 100%
 - 200% if knowing and willful
 - 300-1000% if knowing and willful straw donor
- Cease & Desist
- Amendments to Reports, Training, Certifications
- Factual and Legal Admissions
- Disgorgement

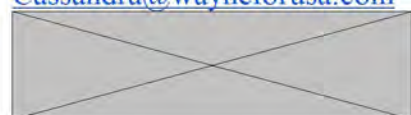
QUESTIONS?

From:Cassandra Fenelon
To:Lisa Stevenson
Sent:2019-05-30T17:18:32.0000000Z
CC:wayne@wayneforusa.com ; Lawrence Calvert ; Tracey Ligon
Subject:Re: Personal Finance Disclosure of Wayne Messam Extension

Hi Lisa,
It is not a problem. Thank you so much.

Sincerely,

Cassandra
Communications Advisor
1 877-WAYNE20 ex 800
1 877-929-6320 ex 800
Cassandra@wayneforusa.com



On Thu, May 30, 2019 at 1:08 PM Lisa Stevenson <LStevenson@fec.gov> wrote:

Cassandra

You are correct, and we apologize for the error. Mayor Messam's disclosure report is now due July 1, 2019 and therefore is not overdue. We have withdrawn the late filer notice letter that you received.

Thank you for reaching out to us so quickly.

Lisa

Lisa J. Stevenson

Acting General Counsel and DAEO

Federal Election Commission

lstevenson@fec.gov

202-694-1613

From: Cassandra Fenelon [<mailto:cassandra@wayneforusa.com>]
Sent: Thursday, May 30, 2019 12:46 PM

To: Lawrence Calvert <LCalvert@fec.gov>
Cc: Wayne Messam <wayne@wayneforusa.com>
Subject: Personal Finance Disclosure of Wayne Messam Extension

Hello Lawrence Calvert,

I received your email stating that Mayor Wayne Messam's filing of his personal financial disclosure with the FEC is overdue. Regarding the filing, on May 15 we received an extension of 45 days to file it. I have attached a copy of the extension approval to this email. Thank you for your time and if you have any questions please feel free to contact me.

Sincerely,

Cassandra
Communications Advisor

1 877-WAYNE20 ex 800

1 877-929-6320 ex 800

Cassandra@wayneforusa.com



From:Gregory Baker
To:Lisa Stevenson ; Robert Kahn
Sent:2019-02-04T19:13:55.0000000Z
Subject:FW: Chief FOIA Officer Designations

FYI



Gregory R. Baker
Deputy General Counsel – Administration
Federal Election Commission

From: DOJ.OIP.FOIA (SMO) [mailto:DOJ.OIP.FOIA@usdoj.gov]
Sent: Monday, February 04, 2019 2:09 PM
To: smcgibbon@acus.gov; jmarques@achp.gov; cerutim@abmc.gov; udha@amtrak.com; alice@asc.gov; Maurice.Swinton@afrrh.gov; margaret.m.shanks@frb.gov; kara.wenzel@csb.gov; flindstrom@cfa.gov; tballard@abilityone.gov; Katherine.Fulton@cfpb.gov; tnoelker@cns.gov; mark.jones@cigie.gov; Viktoria.Z.Seale@ceq.eop.gov; sheila.stokes@csosa.gov; chrisr@dnfsb.gov; jwhittington@denali.gov; CAROL.MIASKOFF@EEOC.GOV; Lisa.Terry@exim.gov; virgaj@fca.gov; Thomas.Johnson@fcc.gov; cyi@fdic.gov; Gregory Baker <gbaker@fec.gov>; Leonard.Tao@ferc.gov; jdubre@fdic.gov; david.lee@fhfa.gov; fjacob@flra.gov; Secretary@fmc.gov; mbartlett@fmcs.gov; SDemps-Barrett@fmshrc.gov; matthew.m.luecke@frb.gov; stefanie.george@tsp.gov; hhippsley@ftc.gov; bob.stafford@gsa.gov; buck.sutter@restorethegulf.gov; tyglesias@truman.gov; nweiss@imls.gov; darren.g.franklin@usich.gov; pzimmerman@iaf.gov; lray@jamesmadison.com; flaggr@lsc.gov; mgosliner@mmc.gov; william.spencer@mspb.gov; watkinstn@mcc.gov; zimmt-mack@udall.gov; garym.stern@nara.gov; anne.schuyler@ncpc.gov; rachel.l.rikleen@inspire2serve.gov; jdurocher@ncd.gov; Irodriguez@ncua.gov; pinkneyi@arts.gov; cdiazrosillo@neh.gov; Tim_Osumi@nigc.gov; nancy.platt@nlrb.gov; johnson@nmb.gov; angel.santa@ntsb.gov; gsharmaholt@nw.org; david.nelson@nrc.gov; nmancini@oshrc.gov; Diana.veilleux@oge.gov; Mark.C.Bigley@omb.eop.gov; Michael_J_Passante@ondcp.eop.gov; skuhr@onhir.gov; Rachael_L._Leonard@ostp.eop.gov; khendricks@osc.gov; deirdre.walsh@dni.gov; jharrington@peacecorps.gov; Hertz.philip@pbgc.gov; ruth.a.abrams@prc.gov; aandersen@presidiotrust.gov; Lynn.parker.dupree@pclob.gov; ana.kocur@rrb.gov; roderick.hubbard@sss.gov; claire.green@ssab.gov; james.a.wachter.civ@mail.mil; keatsc@stb.dot.gov; jjbrewer@tva.gov; jacobs@access-board.gov; jbrown@usadf.gov; bwalch@usccr.gov; amosheim@cpsc.gov; crowland@loc.gov; bwhitener@eac.gov; kross@usip.org; rebecca.rizzuti@ibwc.gov; lisa.barton@usitc.gov; slater-chandler@nwtrb.gov; Michael.J.Elston@usps.gov
Cc: Pustay, Melanie A (OIP) <Melanie.A.Pustay@usdoj.gov>
Subject: Chief FOIA Officer Designations

To Agency Chief FOIA Officers –

Please find attached a memorandum concerning Chief FOIA Officer designations to agency General Counsels and Chief FOIA Officers from the Principal Deputy Associate Attorney General. Please kindly forward this memo to your agency General Counsel.



U. S. Department of Justice

Office of the Associate Attorney General


Deputy Associate Attorney General

Washington, D.C. 20530

January 30, 2019

MEMORANDUM FOR: AGENCY GENERAL COUNSELS AND CHIEF FOIA
OFFICERS OF EXECUTIVE DEPARTMENTS AND
AGENCIES

CC: COUNSEL TO THE PRESIDENT

FROM: THE PRINCIPAL DEPUTY ASSOCIATE ATTORNEY
GENERAL 

SUBJECT: Chief FOIA Officer Designations

The Freedom of Information Act requires agencies to designate a Chief FOIA Officer who is charged with “agency-wide responsibility for efficient and appropriate compliance” with the Act. 5 U.S.C. § 552(j)(2)(A) (2012 & Supp. V 2017). The Act directs that these Chief FOIA Officers “shall be a senior official of such agency (at the Assistant Secretary or equivalent level).” *Id.* § (j)(1). In keeping with that statutory mandate, the Associate Attorney General has served as the Chief FOIA Officer for the Department of Justice.

The Department of Justice has long maintained that “[i]mproving FOIA performance requires the active participation of agency Chief FOIA Officers.” Department of Justice FOIA Guidelines, 74 Fed. Reg. 51879 (Oct. 8, 2009). Experience has proven that a proper exercise of the oversight role assigned to a Chief FOIA Officer requires appropriate authority and accountability. Accordingly, I respectfully request that each agency review its Chief FOIA Officer designation and make any necessary adjustments to ensure that the designated official is at the Assistant Secretary level or its equivalent, as required by the Freedom of Information Act. The Department of Justice will require agencies to report whether their designations meet this statutory requirement in their 2019 Chief FOIA Officer Reports.

If you have questions about the administration of the FOIA, please contact the Office of Information Policy at DOJ.OIP.FOIA@usdoj.gov.

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or equity by any party against the United States, its departments, agencies, instrumentalities or entities, its officers, employees, agents, or any other person.

FEDERAL ELECTION COMMISSION

FISCAL YEAR 2020

CONGRESSIONAL BUDGET JUSTIFICATION



March 18, 2019

Concurrently submitted to Congress and the Office of Management and Budget

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SUMMARY OF FY 2020 BUDGET JUSTIFICATION

The Federal Election Commission (FEC) is an independent regulatory agency responsible for administering, enforcing, defending and interpreting the *Federal Election Campaign Act of 1971* (“FECA” or the “Act”), as amended.¹ As the foundation of Federal campaign finance regulation, FECA reflects Congress’s efforts to prevent corruption through two principal means. First, it ensures that voters have access to information about the sources of financial support for Federal candidates, political party committees and other political committees. Second, FECA imposes amount limitations and source prohibitions on contributions received by certain types of political committees. The Commission’s responsibilities also include overseeing the Federal public funding programs for Presidential campaigns.²

Over the past several years, the FEC has made significant progress to modernize its IT systems and processes. These efforts include the redesign of the FEC website and the migration to a cloud environment of the FEC’s campaign finance database, which contains over forty years of transaction-level campaign finance data reported to the agency. As a result, the FEC was able to shut down one of its four physical data centers during 2018 and begin to realize lower annual costs for maintaining that database, despite a steep rise in the number of reported financial transactions each year. The FEC has also continued to develop and maintain a robust cyber security plan to meet emerging threats to the security and integrity of its data. At the same time, the FEC has continued to prioritize improving the customer service it provides to the public. The FEC has developed a campaign finance API that allows users to access campaign finance data directly. The FEC has also developed more user-friendly website interfaces for public use and new internal tools to ensure FEC staff provide an efficient, fair and satisfying customer experience to individuals who interact with the agency, either in person or through FEC.GOV.

For the Fiscal Year (FY) 2020 Budget Submission, the FEC’s requested funding level is \$70,537,500, a 1% decrease from the FYs 2019 and 2018 baselines. This funding level is consistent with the President’s Budget for FY 2020, and it recognizes the challenging Federal budget conditions. Funding at this reduced level would nonetheless allow the agency to continue on-going IT modernization projects, ensuring the realization of value from previous IT investments, as well as future savings the projects will create. This funding level would also allow the agency to maintain its commitment to providing excellent service to the public by funding service improvements. These service improvements are necessary to support the increased volume of campaign finance data the agency anticipates receiving and processing during the presidential election year.

FEC Budget Submission

The FEC protects the integrity of the Federal campaign finance process by providing the public with accurate and accessible information about how candidates raise and spend funds to support

¹ Public Law 92-225, 86 Stat. 3 (1972) (*codified at* 52 U.S.C. §§ 30101-45).

² The Commission’s responsibilities for the Federal public funding programs are contained in the *Presidential Election Campaign Fund Act*, Public Law 92-178, 85 Stat. 562 (1971) (*codified at* 26 U.S.C. §§ 9001-13) and the *Presidential Primary Matching Payment Account Act*, Public Law 93-443, 88 Stat. 1297 (1974) (*codified at* 26 U.S.C. §§ 9031-42).

their campaigns. In an average fiscal year, the FEC receives campaign finance reports, statements and other disclosure documents from more than 12,000 political committees and other filers. During FY 2018, these filers reported more than 140 million financial transactions, which were reviewed by FEC staff and disclosed to the public on the FEC's website. The agency has already begun to implement new programs and systems to ensure the timely disclosure of campaign finance data despite a steep increase in the volume of activity reported. These programs include the migration of campaign finance data to a cloud environment and efforts to modernize the FEC's eFiling system. Adequate funding for FY 2020 will be crucial to ensuring the FEC meets its mission to provide transparency in the campaign finance process.

By providing the public with transparency regarding campaign financing and ensuring that campaign finance law is fairly and effectively enforced and administered, the Commission provides the public with crucial information. To support this mission, the FEC provides the public with campaign finance information and gives timely advice and support so that candidates, committees and the public can fully understand and comply with the requirements of campaign finance law. The Commission is committed to providing excellent service to the American people by offering timely and comprehensive access to reported campaign finance data and ensuring that information and data are provided in an intuitive and easy-to-use manner.

IT Modernization

In order to make certain that campaign finance disclosure data are quickly available and easily accessible to the public and that the Commission makes the best use of its limited resources, the Commission is undertaking multiyear efforts to modernize and redesign the agency's eFiling system and website, as well as the infrastructure that supports the FEC's IT systems. The modernization efforts will provide for seamless integration with the website. Moreover, the FEC's modernized eFiling platform, which will be hosted in a cloud environment, will be administered by existing FEC staff, reducing costs associated with contractor support. Funding at the \$70.5 million full request level in FY 2020 would allow the FEC to continue work as planned on the system redesign.

Building on the success of the FEC's large-scale initiative to migrate the campaign finance database to a cloud environment and continuing work to modernize the eFiling system, the FEC will work in FY 2020 to reduce reliance on legacy systems. Moving to a cloud-hosted model provides the Commission opportunities to continue to reduce its dependency on costly legacy systems, including mission-critical systems affecting both internal and external users. Funding at the \$70.5 million level for FY 2020 would ensure the FEC can continue projects to reduce long-term data hosting costs and lower the costs of maintaining legacy systems, while also ensuring the integrity and accessibility of the agency's information. Funding at this level would also support planned upgrades to server and network hardware and ensure the FEC is well positioned to protect systems, networks and data from cyber security threats.

Customer Experience

The Commission has a long-standing commitment to providing excellent customer service to individuals and groups who do business with the agency, including filers, journalists, legal practitioners, researchers and other members of the public, whether they call the FEC directly or visit the agency only through FEC.GOV. Funding at the \$70.5 million request level would allow

the FEC to maintain the tools, staffing and expected level of performance to improve customer experience and ensure the public has confidence and trust in the services the agency provides.

The FEC's FY 2020 request includes funds to continue these projects to increase the efficiency and effectiveness of the agency's service delivery to the public. These efforts will not only provide better and more accessible information to the public, but will also aid in the agency's consistent priority to improve its cyber security posture.

An appropriation for the FEC at the full request amount of \$70.5 million for FY 2020 would position the agency to carry out its mission and accomplish the IT modernization, cyber security and customer service priorities described herein during the 2020 presidential election year.

MISSION STATEMENT

**To protect the integrity of the Federal campaign finance process
by providing transparency and fairly enforcing and administering
Federal campaign finance laws**

Congress created the FEC to administer, enforce and formulate policy with respect to *FECA*. The *Act* reflects Congress's efforts to ensure that voters are fully informed of the sources of financial support for Federal candidates, political committees and others and to prevent corruption. Public confidence in the political process depends not only on laws and regulations to ensure transparency, but also on the knowledge that those who disregard the campaign finance laws will face consequences.

The primary objectives of the FEC are: (1) to engage and inform the public about campaign finance data; (2) to promote compliance with *FECA* and related statutes; (3) to interpret *FECA* and related statutes; and (4) to foster a culture of high performance.

Voluntary compliance with the requirements of *FECA* is a particular focus of the Commission's efforts, and its educational outreach and enforcement programs are both designed to ensure compliance with the *Act's* limits, prohibitions and disclosure provisions. Because of the large and rising number of political committees and the ever-growing number of financial disclosure reports filed with the FEC, voluntary compliance is essential to enforcing the requirements of the *Act*. Accordingly, the Commission devotes considerable resources to encouraging voluntary compliance through widespread dissemination of educational materials related to Federal campaign finance laws to the public, the press, political committees and State election officials.

This Budget Justification is organized in three sections. Section 1 addresses the agency's purpose and priorities in FY 2020. Section 2 provides an overview of the agency's request. Section 3 provides an overview of the agency's four strategic objectives and describes the agency's performance goals, indicators and targets to ensure continued progress toward meeting these objectives during FY 2020.

Section 1: Purpose and Priorities in FY 2020

1A: Commission Overview and Future Outlook

The FEC is an independent regulatory agency responsible for administering, enforcing, defending and interpreting *FECA*. The Commission is also responsible for administering the Federal public funding programs for Presidential campaigns.

The FEC is directed by six Commissioners, who are appointed by the President with the advice and consent of the Senate. By law, no more than three Commissioners can be members of the same political party. The Commissioners meet regularly to formulate policy and to vote on significant legal and administrative matters. The *Act* requires the affirmative vote of four members of the Commission to approve official actions, thus requiring bipartisan decision making.

As part of its responsibilities, the FEC makes available on its website the campaign finance disclosure reports all Federal candidates and Federal political committees must file, as required by the *Act*. These disclosure reports and the data contained in them are made available to the public through the Commission's Internet-based public disclosure system on the agency's website at www.fec.gov. The FEC also has exclusive responsibility for civil enforcement of *FECA*, including the handling of civil litigation arising from any legal actions brought by or against the Commission. Additionally, the Commission promulgates regulations implementing the *Act*. The Commission also has a statutory responsibility to issue advisory opinions responding to inquiries regarding interpretation and application of the *Act* and the Commission's regulations to specific factual situations.

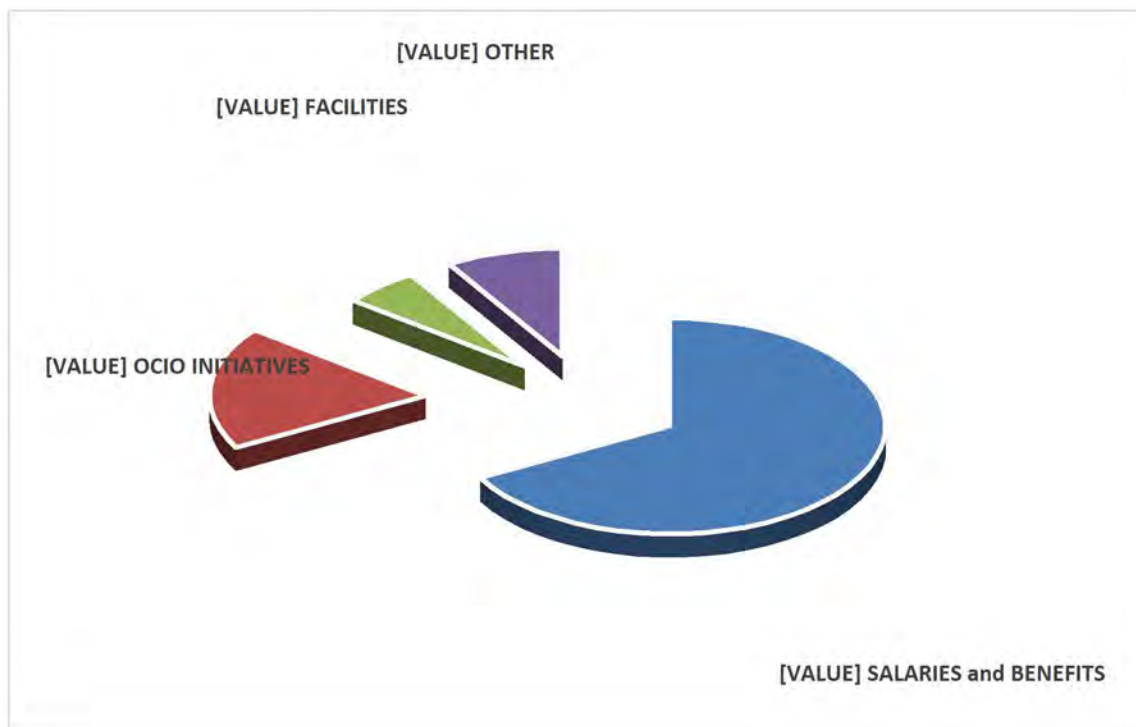
The FEC's Strategic Plan for FY 2018 through FY 2022, developed pursuant to the *Government Performance and Results Act of 1993 (GPRA)*³ and the *GPRA Modernization Act of 2010*,⁴ provides the agency's strategic management framework. This framework is designed to ensure that every employee works in support of the FEC's strategic goal and objectives and that the effectiveness of these efforts can be regularly and meaningfully measured.

³ Public Law 103-62, 107 Stat. 285 (1993) (*codified at* 31 U.S.C. § 1115 *et seq.*).

⁴ Public Law 111-352, 124 Stat. 3866 (2011) (*codified at* 31 U.S.C. §§ 1115-24).

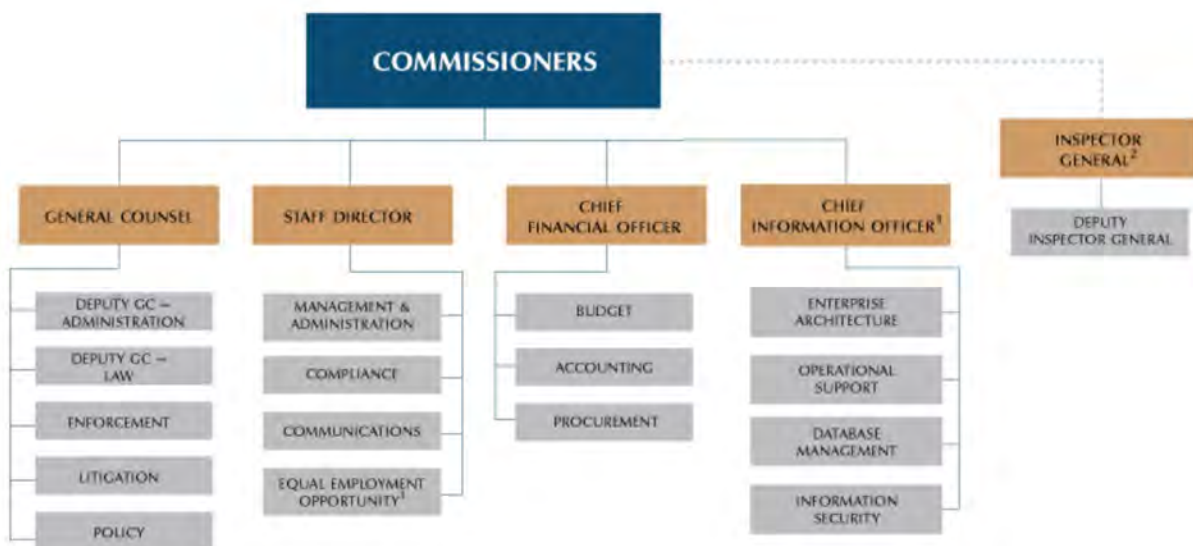
The FEC is funded by a single annual appropriation for salaries and expenses and is authorized to collect fees only to offset the costs of the agency's educational conferences. More than two-thirds of the agency's operational expenses are composed of personnel salary and benefits. Of the agency's remaining operational expenses, the largest categories are IT initiatives, which includes IT security initiatives, and facilities. These three requirements constitute over 90 percent of the agency's budget. Actual spending for FY 2018, which is shown in Figure 1 below, reflects the historical trend. The FEC expects the percentages in each category for its FY 2020 operational budget will be comparable to FY 2018.

**Figure 1 – FY 2018 Obligations by Major Category
as of September 30, 2018**



FEC Organizational Chart

The Offices of the Staff Director, General Counsel, Chief Information Officer and Chief Financial Officer support the agency in accomplishing its mission. The Office of the Inspector General, established within the FEC in 1989 under the *Inspector General Act Amendments of 1988*,⁵ is independent and reports both to the Commissioners and to Congress. The specific roles and responsibilities of each office are described in greater detail at <http://www.fec.gov/about.shtml>. As of February 2019, the FEC has filled the position of Chief Financial Officer, which was previously filled on an acting basis. The Inspector General position is vacant, and the General Counsel position is filled on an acting basis. A number of other positions lower on the organizational chart are also vacant or filled on acting bases.



¹ The position of Chief Information Officer normally reports directly to the Staff Director who, in turn, reports to the Commission itself. At present, however, the same individual is serving in both the position of the Staff Director and the position of the Chief Information Officer, pursuant to an authorization by the Commission and based, in part, on an advance decision from the Comptroller General. Accordingly, the organizational chart reflects both positions – the Staff Director and the Chief Information Officer – as reporting directly to the Commission.

² The Office of the Inspector General (OIG) independently conducts audits, evaluations, and investigations. OIG keeps the Commission and Congress informed regarding major developments associated with their work.

³ The Director for Equal Employment Opportunity reports to the Staff Director on administrative issues but has direct reporting authority to the Commission on all EEO matters. See 29 CFR 1614.102(b)(4).

⁵ Public Law 100-504, 102 Stat. 2515 (1988).

1B: FY 2020 Priorities

The FEC priorities for FY 2020 are in line with the agency's FY 2018 to 2022 strategic plan and are limited to those needs that will allow the agency to fulfill its mission as required by law. Funding at the requested amount of \$70.5 million would permit the FEC to take measures to enhance the delivery of campaign finance data and legal resources. The requested funding would also improve the agency's systems and processes, allowing the Commission to reduce dependency on costly legacy systems and improve the efficiency of the agency's IT infrastructure, including migration to cloud-hosted data and services, improvements to the eFiling platform and continued enhancements to cyber security and tools. These priorities will ensure that the agency can make the best use of limited staff resources and continue to meet increasing public demand for its services.

IT Modernization

The FEC protects the integrity of the Federal campaign finance process by providing transparency and fairly enforcing and administering Federal campaign finance laws. Fair enforcement and full disclosure of the sources and amounts of campaign funds allow the public to make informed decisions in the political process. Transparency requires that information is not only kept by the FEC but also that it is provided to the public in a way that is intuitive to users and provides the necessary context for understanding how Federal elections are funded. The FEC must make election-related reports and information accessible to the public in a timely, reliable and useful fashion. The Commission is therefore committed to providing the public with robust access to campaign finance data, compliance information and legal resources. Funding at the full requested amount of \$70.5 million would permit the FEC to improve the quality of services delivered to the public.

The FEC provides free electronic filing software, FECFile, to support political committees in reporting their campaign finance activity to the FEC. During FY 2017, the FEC completed and published a study to determine ways to modernize the agency's eFiling system, platform and software to receive better quality data, be more responsive to user needs and handle the increasing volume of data reported.⁶ The study of the FEC's eFiling system showed that 59 percent of electronic filers use the agency's software. During FYs 2018 and 2019, the FEC began implementing improvements. In this request, the agency seeks funds for FY 2020 to continue implementing improvements to its eFiling platform consistent with the study findings. Planned improvements to the eFiling platform will improve ease of filing for users by allowing greater operating system flexibility when generating filings for submission to the Commission. The FEC's new eFiling platform will also improve the process for validating filings prior to acceptance and generate modern file outputs that will provide for more flexibility in accessing data. In addition, the modernization efforts will provide for seamless integration with the data portion of the website and, therefore, more efficient use of the agency's resources. Modernizing this tool continues to be an important priority for the Commission.

In conjunction with the redesign of the agency's website, the FEC has begun the process of migrating appropriate data and systems, such as the campaign finance database, to a cloud environment. Cloud hosting offers a number of benefits for the FEC. The agency's Internet traffic

⁶ Available at <https://fec.gov/about/reports-about-fec/agency-operations/e-filing-study-2016/>.

is variable, with many more visitors accessing the website during election years and near reporting deadlines. In addition to website visitors, filers need to access the electronic filing system and Commission staff need to access applications, including the website and databases, to perform their work-day duties. With a cloud-hosted application and database infrastructure, the FEC will only need to pay for the actual usage, rather than maintaining the capacity to support peak usage, even during periods of reduced usage. Website downtime will be minimized and server maintenance will be managed by the cloud computing provider.

In addition, the move to a cloud-hosted model provides the Commission with opportunities to retire a number of costly legacy systems and reduce the agency's data center footprint.⁷ During 2018, the agency successfully migrated its campaign finance database and website to a cloud environment and shut down one of its four physical data centers. Migrating these assets to a cloud environment significantly lowers the cost of maintaining these systems, even as the campaign finance database continues to grow each year. Planned improvements to the eFiling system, which was designed in the mid-1990s, will provide an opportunity to migrate the eFiling data center to a cloud environment as well, reducing our costs for the support and maintenance of the legacy eFiling physical data center. Thus, in addition to improving service delivery to the public, migrating to a cloud environment will allow the agency to reduce the long-term costs of maintaining IT legacy systems. Funding at the requested level for FY 2020 will permit the Commission to continue the migration to cloud hosting with the goal of reducing costs associated with the agency's data center footprint and providing more responsive customer service.

The FEC is also committed to ensuring the security of its information, from protecting the integrity and accessibility of the database of campaign finance information made available to the public on the FEC website to protecting the agency's internal networks and data. During FY 2017, the FEC participated in the Department of Homeland Security (DHS) Federal Incident Response Evaluation (FIRE). The purpose of this evaluation was to review the FEC's incident response management processes and capabilities against a benchmark of defined capabilities and to provide an independent judgment of the quality of the FEC's incident management. While the FEC has tools and services in place to detect and respond to cyber intrusions, it does not currently have the capabilities to serve this function 24 hours per day. The DHS FIRE returned a strong recommendation to put in place a 24/7/365 detection and response capability. During FY 2019, the FEC will formalize a Cyber Incident Response Team supported by a Managed Detection and Response service. Funding at the full request level for FY 2020 would allow the FEC to continue to support 24/7/365 cyber security detection and response capabilities through the next election cycle.

Improve Customer Experience

Key to all of these efforts are the FEC's continuing efforts to maintain the current high performance of staff and the excellent service they provide to the public. The Commission has established a series of data-driven metrics to measure customer satisfaction with educational outreach efforts and to ensure that matters are moved efficiently and fairly through the enforcement and compliance processes, with complainants and respondents afforded sufficient transparency regarding the

⁷ The FEC's efforts to reduce spending on operation and maintenance costs is consistent with the Government Accountability Office's May 2016 report, *Federal Agencies Need to Address Aging Legacy Systems*.

processes. To improve customer service, the FEC completed work in FY 2016 on an internal tool to ensure the consistency and accuracy of responses provided by public-facing staff, and implemented a correspondence tracking tool in FY 2018 to streamline response times. This system also allows filers to quickly identify their committee's analyst in the Reports Analysis Division and to contact that analyst via web form. Throughout FYs 2018 and 2019, the FEC has pursued a plan to hire staff in public-facing offices and in the Office of the Chief Information Officer to better serve the public's information needs. The FEC continues to carefully manage attrition to ensure the agency develops a workforce for the 21st Century. Despite making these critical hires during FYs 2018 and 2019, the FY 2020 requested funding would support an anticipated 327 FTEs, representing a reduction of eight FTEs from the FY 2019 request and 18 FTEs from the FY 2018 request.

To ensure the agency continues to meet the public's needs during the run up to the 2020 elections, and that the FEC can continue to make strategic long-term decisions to lower costs and staff appropriately for the future, the FEC seeks an appropriation of \$70,537,500 for FY 2020.

Section 2: Budget Overview

2A: OMB Budget Guidance Level

In this section, pursuant to Office of Management and Budget (OMB) guidance, budget increases and decreases are identified, and the fiscal year (FY) 2020 budget request is compared to the Financial Services and General Government Appropriations Act, 2019. For FY 2020, the requested appropriation is \$712,500 less than the FY 2019 appropriation, representing a 1% reduction. The increases and decreases are shown below.

Table 1
Summary of Changes from FY 2019 to FY 2020 Agency Request

Category	Amount
FY 2019 Appropriation	\$71,250,000
Personnel Changes	
Personnel Compensation and Benefits	-959,673
Personnel Changes Subtotal:	\$-959,673
Non-Personnel Changes	
IT Contracts	-2,075,017
Contracts & Other Services	-1,192,420
Travel & Transportation	-217,812
Supplies & Materials	-200,105
Non Capitalized & Capitalized Equipment	-133,625
Federal Goods & Services	-130,597
GSA Rent	4,196,749
Non-Personnel Changes Subtotal:	\$247,173
Total Change:	-\$712,500
FY 2020 Budget Request	\$70,537,500

2A.1: Description of Budget Increases and Decreases

Program Increases and Decreases..... (\$712,500)

Personnel Decreases..... \$(959,673)/-8 FTE

The FY 2020 funding request takes into account full year funding for up to 327 full-time equivalents (FTE) for FY 2020. This is a decrease of eight FTEs from the FY 2019 budget justification. Since the FY 2017 budget justification, this marks the third reduction of FTE for a total decrease of 38 FTEs. The projected average annual salary for FY 2020 includes the increases applicable to calendar year 2019 but no funding for awards or salary increases beyond 2019.

Non-Personnel Increases..... \$247,173

IT Contracts..... (\$2,075,017)

This decrease is primarily due to the agency realizing savings from reducing high-cost IT contracts and the completion during FY 2019 of one-time investments made to improve systems that support payroll, finance and Office of Human resources processes. The majority of the decrease results from enactment of the *Energy and Water, Legislative Branch, and Military Construction and Veterans Affairs Appropriations Act, 2019*. This legislation contained a provision making the FEC the official point of entry for all Senate filings. Filers who previously submitted reports to the Secretary of the Senate must now submit all reports directly to the FEC and are now subject to the electronic filing requirements that have applied to all other filers since January 1, 2000. The resulting reduction in

the volume of paper-filed transactions will allow the agency to realize significant cost savings in contracts to support its automated data capture process to convert paper-filed reports into structured, machine readable data. Additional reductions are due to the completion of funding during FY 2019 for other projects to enhance or replace IT support systems, including improvements to systems that support payroll, finance and Office of Human resources systems.

Contracts and Other Services.....(\$1,192,420)

This decrease is primarily due to the completion of funding during FY 2019 for projects to ensure compliance with government-wide records management requirements and implementation of recommendations from Office of Personnel Management and FEC Office of Inspector General audits. Additional decreases result from planned reductions to the number of staff members authorized as subscribers to an on-line legal research tool.

Travel and Transportation.....(\$217,812)

This decrease will be realized by reducing auditor travel to conduct on-site fieldwork for Commission approved audits. Instead, FEC auditors will conduct in-house audits in some circumstances. Additionally, the agency may reduce the number of educational conferences it holds.

Supplies and Materials..... (\$200,105)

This decrease would be accomplished by reducing bulk supply orders to stock the agency centralized supply room.

Non Capitalized and Capitalized Equipment(\$133,625)

The majority of this reduction represents the postponement of hardware refreshes and upgrades to servers and equipment during FY 2020. Additional reductions are related to the agency realizing the efficiencies of the expenses associated with the website redesign.

Federal Goods & Services (\$130,597)

This estimated decrease is due to the agency realizing cost savings in the Federal Protection Services (FPS) contract for the new leased space. In addition to the agency's decreased space usage in the new building, FPS changed its rate structure, which may result in permanent overall savings.

GSA Rent.....\$4,196,749

In FY 2018, the agency moved into a new facility. Incorporated in the lease agreement were favorable free rent periods in the early years of the lease. In FY 2020, the periods of free rent will begin to expire, requiring an increase for GSA Rent.

Table 2 highlights the FEC's FY 2020 Budget Request as compared to the FY 2019 appropriation and FY 2018 actual obligations. The FEC's FY 2020 Budget Request is \$712,500 less than the amount received in the FY 2019 appropriation, a 1% overall reduction.

Table 2
FY 2020 Budget Request Object Class Data

Federal Election Commission Object Class Data		FY 2018 Actual	FY 2019 Budget	FY 2020 Budget Request	Change from FY 2019 to FY 2020	% Change from FY 2019 to FY 2020
1 1 1	Personnel Compensation	35,243,226	38,619,300	37,887,123	-732,177	-1.90%
1. 5 2 2 1	Cash Awards	518,564	-	-		0
2. 1 1	Personnel benefits	11,138,854	11,776,105	11,548,609	-227,496	-1.93%
2. 1 8	Transit Subsidy	365,925	415,745	415,745	0	0.00%
	Subtotal, Personnel	\$47,266,569	\$50,811,150	\$49,851,477	\$-959,673	-1.89%
2 1 2	Travel & transportation of persons	216,355	374,765	156,953	-217,812	58.12 %
3. 1 2	GSA Rent	4,548,451	1,006,730	5,203,479	4,196,749	416.87%
3. 3 3	Communications, Utilities & Postage	476,581	469,259	469,259	0	0.00%
2 4 2	Printing & Reproduction	109,616	106,804	106,804	0	0.00%
5. 1 1	Training, Commercial Fed. & Tuition	400,501	481,051	481,051	0	0.00%
2 5.	IT Contracts	10,145,586	8,434,728	6,359,711	-2,075,017	-24.60%

1							
4							
2							
5.	Contracts & Other Services	1,300,016	2,239,570		1,047,150	-1,192,420	-53.24%
2							
2							
5.	Federal Goods & Services	2,715,935		1,381,565	1,250,968	-130,597	-9.45%
3							
2							
6	Supplies and Materials	935,509		1,589,106	1,389,001	-200,105	12.59%
3							
1	Non-Capitalized and Capitalized Equipment	2,860,762	4,355,272		4,221,647	-133,625	-3.07%
	Subtotal, Non-Personnel	\$23,709,312		\$20,438,850	\$20,686,023	247,173	1.21%
	TOTAL	\$70,975,881	\$71,250,000		\$70,537,500	-712,500	-1.00%

In summary, the FY 2020 request comprises difficult choices that balance fiscal discipline with meeting the agency's needs. Reducing funding by 1% from FY 2019 will impact both personnel and non-personnel aspects of the Budget. In regard to personnel

, the FEC would have less flexibility to fill vacancies, which may cause certain positions to be filled in an acting capacity. In regard to non-personnel funding, the agency will have to scale back or eliminate some projects that may have had positive impacts to operations.

2B: Appropriations Language

The FEC's request includes the funding level necessary to support the agency's mission and achieves a savings of 1% of the FY 2019 and FY 2018 funding levels. The FEC is including the following Appropriations Language.

FEDERAL ELECTION COMMISSION
Federal Funds
Salaries and Expenses

For necessary expenses to carry out the provisions of the Federal Election Campaign Act of 1971, \$70,537,500, of which not to exceed \$5,000 shall be available for reception and representation expenses.

2C: Recommended Legislative Changes

On December 13, 2018, the Commission submitted legislative recommendations to Congress and the Administration.⁸ Two of these recommendations represent bold proposals to streamline processes for disclosing campaign finance data to the public and ensure that the agency can provide more timely disclosure of reported campaign finance data at a lower cost to taxpayers. These initiatives require statutory changes to be enacted through legislation, and proposed statutory language for each was approved by the Commission and provided to the Congress and the Administration.

Electronic Filing of Electioneering Communication Reports

Section: 52 U.S.C. § 30104(a)(11)(A)(i)

Recommendation: Congress should require reports of electioneering communications to be filed electronically with the Commission, rather than on paper.

Explanation: The Treasury and General Government Appropriations Act, 2000, Pub. L. No. 106-58, § 639, 113 Stat. 430, 476 (1999), required the Commission to make electronic filing mandatory for political committees and other persons required to file with the Commission who, in a calendar year, have, or have reason to expect to have, total contributions or total expenditures exceeding a threshold amount set by the Commission (which is currently \$50,000). In addition, many independent expenditure reports are already subject to mandatory electronic filing under 52 U.S.C. § 30104(a)(11)(A)(i). However, because electioneering communication reports are not filed by political committees, and because funds spent for electioneering communications are reported as “disbursements,” and not as “expenditures,” the mandatory electronic filing provisions do not apply to electioneering communication reports.

Compared to data from paper reports, data from electronically filed reports is received, processed and disseminated more easily and efficiently, resulting in better use of resources. Reports that are filed electronically are normally available to the public, and may be downloaded, within minutes. In contrast, the time between the receipt of a report filed through the paper filing system and its initial appearance on the Commission’s web site is 48 hours.

Electronic filings are not subject to delay due to post office processing or disruptions in the delivery of mail, such as those arising from security measures put in place after the discovery of anthrax powder and ricin in mail. Because of these security measures, the Commission’s receipt of mailed paper filings is delayed. In contrast, electronic filings are not subject to these delays.

Only entities that report more than \$50,000 of electioneering communications would be subject to mandatory electronic filing under the proposal. The current threshold selected by the Commission ensures that entities with limited financial resources can file reports on paper, which avoids the limited cost of internet access and a computer sufficient to file reports.

⁸ <https://www.fec.gov/resources/cms-content/documents/legrec2018.pdf>

Increase and Index for Inflation Registration and Reporting Thresholds

Sections: 52 U.S.C. §§ 30101, 30104 and 30116

Recommendation: Congress should increase and index for inflation certain registration and reporting thresholds in the Federal Election Campaign Act that have not been changed since the 1970s.

Explanation: Most of the Federal Election Campaign Act's contribution limits and registration and reporting thresholds were set in the 1970s. Because over twenty years of inflation had effectively reduced FECA's contribution limits in real dollars, the Bipartisan Campaign Reform Act of 2002 increased most of the Act's contribution limits to adjust for some of the effects of inflation. Furthermore, BCRA indexed these limits for inflation to address inflation in future. The Commission proposes extending this approach to registration and reporting thresholds, which have been effectively reduced by inflation since those thresholds were established in 1971 or 1979.

Since 1971, FECA has provided that any group of persons that receives contributions or makes expenditures in excess of \$1,000 in a calendar year must register and report as a political committee. 52 U.S.C. § 30101(4)(A). FECA also requires political committees to abide by the contribution limits and source prohibitions specified in FECA. Since 1979, FECA has provided that local political party organizations are also subject to a \$1,000 threshold for federal political committee status. 52 U.S.C. § 30101(4)(C). The Commission recommends that Congress increase these thresholds to amounts determined appropriate by Congress, and then index those amounts for inflation to prevent erosion in the future. Raising this threshold would be particularly beneficial for local and Congressional district committees of political parties. These organizations frequently breach the \$1,000 threshold. An increased threshold would permit limited spending on federal elections without triggering federal political committee status for local and Congressional district committees of political parties.

Since 1979, FECA has required persons (other than political committees) who make independent expenditures in excess of \$250 in a calendar year to report such expenditures to the Commission. 52 U.S.C. § 30104(c)(1). The Commission recommends that Congress increase this threshold to an amount determined by Congress and index this amount for inflation.

Increasing these thresholds would take into account many years of inflation and the general increase in campaign cost and ease the compliance burdens on smaller organizations and individuals. Additionally, by increasing the thresholds, Congress would exempt some individuals and small organizations that engage in only minimal spending from the Act's registration and reporting requirements. Increasing the registration and reporting thresholds to compensate for inflation would leave significant financial activity subject to regulation as intended by Congress when it enacted the FECA.

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Office of Inspector General's Fiscal Year 2020 Budget Request

The Inspector General Reform Act (Pub. L. 110-409) was signed by the President on October 14, 2008. Section 6(f)(1) of the Inspector General Act of 1978, 5 U.S.C. app., was amended to require certain specifications concerning Office of Inspector General (OIG) budget submissions each fiscal year.

Each Inspector General (IG) is required to transmit a budget request to the head of the establishment or designated Federal entity to which the IG reports specifying:

- the aggregate amount of funds requested for the operations of the OIG;
- the portion of this amount requested for OIG training, including a certification from the IG that the amount requested satisfies all OIG training requirements for that fiscal year; and

- the portion of this amount necessary to support the Council of the Inspectors General on Integrity and Efficiency (CIGIE).

The head of each establishment or designated Federal entity, in transmitting a proposed budget to the President for approval, shall include:

- an aggregate request for the OIG;
- the portion of this aggregate request for OIG training;
- the portion of this aggregate request for support of the CIGIE; and
- any comments of the affected IG with respect to the proposal.

The President shall include in each budget of the U.S. Government submitted to Congress:

- a separate statement of the budget estimate submitted by each IG;
- the amount requested by the President for each OIG;
- the amount requested by the President for training of OIGs;
- the amount requested by the President for support of the CIGIE; and
- any comments of the affected IG with respect to the proposal if the IG concludes that the budget submitted by the President would substantially inhibit the IG from performing the duties of the OIG.

Following the requirements as specified above, the OIG of the Federal Election Commission submits the following information relating to the OIG's requested budget for fiscal year 2020:

- the aggregate budget request for the operations of the OIG is \$1,526,675;
- the portion of this amount needed for OIG training is \$28,000; and
- the portion of this amount needed to support the CIGIE is an estimated \$3,959.

I, J. Cameron Thurber, certify as part of my budget request to OMB that the amount I have requested for training satisfies all OIG training needs for fiscal year 2020.

From:Robert Kahn
To:Gregory Baker ; Lisa Stevenson
Sent:2019-02-04T22:01:25.0000000Z
CC:Katrina Sutphin
Subject:RE: Chief FOIA Officer Designations

Lisa,

No, you shouldn't have to do anything. I passed this by Katrina, and this is her conclusion: That's likely because many agencies, like the USDA and FTC, designate whichever gs-14 attorney is most senior (usually the highest grade foia attorney in a foia unit) as the Chief FOIA Officer.

Thanks,
Robert

From: Gregory Baker
Sent: Monday, February 04, 2019 4:47 PM
To: Lisa Stevenson <LStevenson@fec.gov>; Robert Kahn <RKahn@fec.gov>
Subject: RE: Chief FOIA Officer Designations

I hope not. I assume I am at a level where I can do the job (or maybe I can ask for a raise). I don't know what Assistant Secretaries make, but that is the suggested level.



Gregory R. Baker
Deputy General Counsel – Administration
Federal Election Commission

From: Lisa Stevenson
Sent: Monday, February 04, 2019 4:39 PM
To: Gregory Baker <gbaker@fec.gov>; Robert Kahn <RKahn@fec.gov>
Subject: RE: Chief FOIA Officer Designations

Do I need to do anything with this?

Lisa J. Stevenson
Acting General Counsel
Federal Election Commission
lstevenson@fec.gov
202-694-1613

From: Gregory Baker
Sent: Monday, February 04, 2019 2:14 PM
To: Lisa Stevenson <LStevenson@fec.gov>; Robert Kahn <RKahn@fec.gov>
Subject: FW: Chief FOIA Officer Designations

FYI



Gregory R. Baker
Deputy General Counsel – Administration
Federal Election Commission

From: DOJ.OIP.FOIA (SMO) [<mailto:DOJ.OIP.FOIA@usdoj.gov>]

Sent: Monday, February 04, 2019 2:09 PM

To: smcgibbon@acus.gov; jmarques@achp.gov; cerutim@abmc.gov; udha@amtrak.com; alice@asc.gov; Maurice.Swinton@afrrh.gov; margaret.m.shanks@frb.gov; kara.wenzel@csb.gov; flindstrom@cfa.gov; tballard@abilityone.gov; Katherine.Fulton@cfpb.gov; tnoelker@cns.gov; mark.jones@cigie.gov; Viktoria.Z.Seale@ceq.eop.gov; sheila.stokes@csosa.gov; chrisr@dnfsb.gov; jwhittington@denali.gov; CAROL.MIASKOFF@EEOC.GOV; Lisa.Terry@exim.gov; virgaj@fca.gov; Thomas.Johnson@fcc.gov; cyi@fdic.gov; Gregory Baker <gbaker@fec.gov>; Leonard.Tao@ferc.gov; jdupre@fdic.gov; david.lee@fhfa.gov; fjacob@flra.gov; Secretary@fmc.gov; mbartlett@fmcs.gov; SDemps-Barrett@fmshrc.gov; matthew.m.luecke@frb.gov; stefanie.george@tsp.gov; hhippsley@ftc.gov; bob.stafford@gsa.gov; buck.sutter@restorethegulf.gov; tyglesias@truman.gov; nweiss@imls.gov; darren.g.franklin@usich.gov; pzimmerman@iaf.gov; Iray@jamesmadison.com; flaggr@lsc.gov; mgosliner@mmc.gov; william.spencer@mspb.gov; watkinstn@mcc.gov; zimmt-mack@udall.gov; garym.stern@nara.gov; anne.schuyler@ncpc.gov; rachel.l.rikleen@inspire2serve.gov; jdurocher@ncd.gov; lrodriguez@ncua.gov; pinkneyi@arts.gov; cdiazrosillo@neh.gov; Tim_Osumi@nigc.gov; nancy.platt@nlrb.gov; johnson@nmb.gov; angel.santa@ntsb.gov; gsharmaholt@nw.org; david.nelson@nrc.gov; nmancini@oshrc.gov; Diana.veilleux@oge.gov; Mark.C.Bigley@omb.eop.gov; Michael_J_Passante@ondcp.eop.gov; skuhr@onhir.gov; Rechael_L_Leonard@ostp.eop.gov; khendricks@osc.gov; deirdre.walsh@dni.gov; jharrington@peacecorps.gov; Hertz.philip@pbgc.gov; ruth.a.abrams@prc.gov; aandersen@presidiotrust.gov; Lynn.parker.dupree@pclob.gov; ana.kocur@rrb.gov; roderick.hubbard@sss.gov; claire.green@ssab.gov; james.a.wachter.civ@mail.mil; keatsc@stb.dot.gov; jjbrewer@tva.gov; jacobs@access-board.gov; jbrown@usadf.gov; bwalch@usccr.gov; amosheim@cpsc.gov; crowland@loc.gov; bwhitener@eac.gov; kross@usip.org; rebecca.rizzuti@ibwc.gov; lisa.barton@usitc.gov; slater-chandler@nwtrb.gov; Michael.J.Elston@usps.gov

Cc: Pustay, Melanie A (OIP) <Melanie.A.Pustay@usdoj.gov>

Subject: Chief FOIA Officer Designations

To Agency Chief FOIA Officers –

Please find attached a memorandum concerning Chief FOIA Officer designations to agency General Counsels and Chief FOIA Officers from the Principal Deputy Associate Attorney General. Please kindly forward this memo to your agency General Counsel.

From: Lisa Stevenson
To: Charles Kitcher
Sent: 2019-10-10T21:34:29.0000000Z
Subject: Fwd: Letter to DOJ and FEC from Senator Klobuchar

Begin forwarded message:

From: Duane Pugh <dpugh@fec.gov>
Date: October 10, 2019 at 5:19:42 PM EDT
To: Commissioners Office <CommissionersOffice@fec.gov>
Cc: Alec Palmer <APalmer@fec.gov>, Lisa Stevenson <LStevenson@fec.gov>, Amy Pike <APike@fec.gov>
Subject: Fwd: Letter to DOJ and FEC from Senator Klobuchar

FYI.

Sent from my iPhone

Begin forwarded message:

From: "Kerr, Lindsey (Rules)" <Lindsey_Kerr@rules.senate.gov>
To: "Duane Pugh" <dpugh@fec.gov>
Subject: Letter to DOJ and FEC from Senator Klobuchar

Hi Duane,
Please find the attached letter from Ranking Member Klobuchar to the Attorney General and the Commissioners.

Thanks,

Lindsey

AMY KLOBUCHAR
MINNESOTA

COMMITTEES:
AGRICULTURE, NUTRITION,
AND FORESTRY
COMMERCE, SCIENCE,
AND TRANSPORTATION
JOINT ECONOMIC COMMITTEE
JUDICIARY
RULES AND ADMINISTRATION

United States Senate
WASHINGTON, DC 20510

October 10, 2019

The Honorable William P. Barr
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

Commissioner Ellen L. Weintraub, Chair
Commissioner Caroline Hunter, Vice-Chair
Commissioner Steven Walther, Commissioner
Federal Election Commission
1050 First Street NE
Washington, D.C. 20463

Dear Attorney General Barr and Commissioners:

As the Ranking Member of the Senate Rules Committee with jurisdiction over federal elections, I write to express significant concern regarding the recent arrests of Lev Parnas and Igor Fruman, associates of Rudy Giuliani, for violations of U.S. campaign finance laws and to urge you to investigate who is financing Mr. Giuliani's efforts and determine whether he also violated the law by soliciting foreign assistance in U.S. elections.

Today's Department of Justice indictment details how Parnas and Fruman "conspired to circumvent the federal laws against foreign influence by engaging in a scheme to funnel foreign money to candidates for federal and state office so that the defendants could buy potential influence with the candidates, campaigns, and the candidates' governments."¹ These men allegedly worked to undermine our democracy by setting up fake corporations to launder foreign money and funnel it into our election system. Their goal was to influence U.S. policy related to Ukraine, and in furtherance of that effort they contributed to several candidates for office, including to President Trump's 2016 campaign, and to a pro-Trump super PAC.² The goal of the defendants and their ties to Ukrainian politicians and Russian businessmen should not be considered in a vacuum.

Recent public reports, whistleblower complaints, and official documents from the White House detail the President's efforts to solicit Ukrainian President Volodymyr Zelensky to investigate a political rival. In the White House's report of the July 25 call, the President makes it clear that he

¹ *United States of America v. Lev Parnas, Igor Fruman, David Correia, Andrey Kukushkin*, 19 Cr. 725 (S.D.N.Y.).

² *Id.*

would direct Mr. Giuliani to coordinate with the Ukrainians in any potential investigation. News reports connect Parnas and Fruman directly to Mr. Giuliani and his efforts to follow through on the President's orders.

Reports indicate that in the spring of 2019, Mr. Giuliani provided documents containing information on the President's political rivals to the Department of State.³ These documents also reportedly contained allegations of impropriety against former Ambassador to Ukraine, Marie Yovanovitch.⁴ Today's indictment makes it clear that it was a primary goal of defendants Parnas and Fruman to remove Ambassador Yovanovitch from office. Reports also indicate that in May, Mr. Giuliani attempted to arrange a meeting with Ukrainian President Volodymyr Zelensky, but failed.⁵ In August, Mr. Giuliani, with assistance from Ambassador Volker, arranged and held a meeting with Andriy Yermak, a top aide to President Zelensky.⁶ Mr. Giuliani has claimed he was acting on behalf of the Department of State and that he received no payment for his services.⁷

As you know, 52 U.S.C. § 30121, bans on foreign contributions to U.S. elections and the solicitation of such contributions. Federal law also places limitations on donations to campaigns and requires campaigns to disclose their expenditures. While Mr. Giuliani has stated that he is not paid by the federal government or the Trump Campaign, we have no information regarding who is funding his work. Mr. Giuliani's actions on behalf of President Trump may constitute political activity, and yet reports indicate that there are no Federal Election Commission filings of Mr. Giuliani's services being paid for by the campaign.⁸ These discrepancies point to possible criminal or civil violations of federal campaign finance laws, which is why I am asking you to investigate the sources of Mr. Giuliani's financing.

Today's unsealed indictment reveals a conspiracy that offends the most basic principles of our democracy. When the Framers were drafting our Constitution there was significant concern over foreign interference in our elections and a recognition that foreign powers would want to influence our democracy. A healthy democracy demands transparency and meaningful regulations that limit the corrupting influence of money in politics. A democracy also requires equal enforcement of the law. The indictment raises questions regarding Mr. Giuliani's

³ Rebecca Ballhaus, Michael C. Bender, and Vivian Salama, *Trump Ordered Ukraine Ambassador Removed After Complaints from Giuliani, Others*, WSJ (Oct. 3, 2019), https://www.wsj.com/articles/trump-ordered-ukraine-ambassador-removed-after-complaints-from-giuliani-others-11570137147?mod=hp_lead_pos1&ns=prod/accounts-wsj.

⁴ *Id.*

⁵ Josh Rogin, *In May, Ukrainian oligarch said Giuliani was orchestrating a 'clear conspiracy against Biden'*, Wash. Post (Oct. 3, 2019), <https://www.washingtonpost.com/opinions/2019/10/03/may-ukrainian-oligarch-said-giuliani-was-orchestrating-clear-conspiracy-against-biden/>.

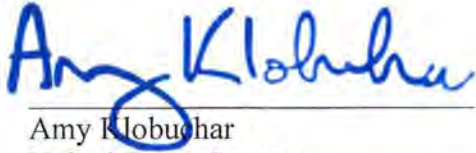
⁶ Aaron Blake, Danielle Rindler, Tim Meko, Kevin Schaul, and Kevin Uhrmacher, *Read the text message excerpts between U.S. diplomats, Giuliani and a Ukrainian aide*, Wash. Post (Oct. 4, 2019), <https://www.washingtonpost.com/politics/2019/10/04/read-text-message-excerpts-between-us-diplomats-giuliani-ukrainian-aide/?arc404=true>.

⁷ Brian Slodysko, *How Trump's Ukraine call could violate campaign finance laws*, AP (Sept. 25, 2019), <https://www.apnews.com/560b20b139d943969e17c82eda77ca8d>.

⁸ *Id.*

connections to the defendants and Americans deserve to know whether the President's lawyer is illegally soliciting the help of foreign citizens to the detriment of our democracy.

Sincerely,

A handwritten signature in blue ink, reading "Amy Klobuchar". The signature is fluid and cursive, with the first name "Amy" and last name "Klobuchar" clearly legible. A horizontal line is drawn beneath the signature.

Amy Klobuchar
United States Senator

From:Lisa Stevenson
To:Jeff Jordan
Sent:2019-10-07T13:03:56.0000000Z
CC:Charles Kitcher ; Lawrence Calvert
Subject:Referrals from DOJ

Jeff

Can you let me know how many “referrals” we have received from the Department of Justice going back to 2010 on enforcement matters?

Lisa J. Stevenson
Acting General Counsel
Federal Election Commission
l Stevenson@fec.gov
202-694-1613

Federal Election Commission Innovation Center Program

Vision

Consistent with its commitment to fostering the talents and skills of its employees and providing excellent service to the public, the FEC's Innovation Center is a cross-functional group within the agency that develops and implements user-centered, evidence-based design solutions for achieving the FEC's mission efficiently and effectively. Partnering with staff from across the agency, the core Innovation Center team will leverage staff business process knowledge and emerging technological advancements to improve the delivery of mission-critical functions. The Innovation Center will improve organizational decision making and be tasked with harnessing the creativity and ideas of agency employees, and emerging technologies, to restructure systems, tools, and processes, while modernizing IT infrastructure to better serve the American public.

Goal

The Innovation Center Program's goal is to collaborate with innovators across the FEC to generate ideas and proposals to utilize the cutting edge technologies to solve big and small problems facing the agency.

Innovation center program participants

Innovation Center facilitators

The core team will consist of a few staff members that organize and manage the Innovation Center Program's vision, goal and processes. The team will take a holistic approach to encourage idea generation and project proposals that solve problems for multiple business offices.

- Executive Sponsor
- Program Lead
- Innovation Center management and administration team
- Project facilitators: Invites participants to project teams
- Project teams: Specific skills needed for a project

Innovators

Anyone in the agency will be eligible to participate on Innovation Center Program project-based teams.

How we work

Guiding Principles

- Achieving the agency's mission: The innovation center program is a place to try new ideas, processes and technologies to help the agency achieve its mission to serve the American public.
- IT Modernization: The innovation center program will support the agency's IT strategic plan to improve systems, replace legacy systems and reduce our physical data-center hosting footprint.
- Transparency: The project selection process, work products, decisions about projects and budgeting will be available for all staff to review.
- User-centered: Projects and process changes will focus first on the user. By partnering with users throughout the project, we can be certain we are building tools and systems that meet the needs and expectations of the staff members/FEC offices who have requested them.
- Agile: Projects and process changes will be developed using an iterative process.
- Data driven: Projects and process changes must have supporting data and evidence.
- Open source first: Projects and process changes requiring new technology should look for open source options.
- Cloud first and Cloud smart: Projects and process changes requiring new technology should look for cloud-based solutions.

Code of conduct

The innovation center program and the Commission are committed to building a safe, welcoming, harassment-free culture for everyone participating in our program. We do not merely want a work environment that is free from hostility; we want one that is actively welcoming, inclusive and safe for staff and for anyone who wishes to contribute.

Project selection and prioritization

- We must meet the FEC's mission. Issues that jeopardize the successful delivery of core mission functions will be prioritized.
- We must meet the agency's enterprise architecture and support IT modernization effort.
- We consider the number of internal users impacted by a problem or who would benefit from the solution. We try to maximize the utility of our projects for internal users.
- We consider the number of external users impacted by a problem or who would benefit from the solution. We try to maximize the utility of our projects for external users.
- We try to balance enhancements across agency functions, so no workgroup is left behind in our modernization efforts
- We consider the cost of the project, balanced with expected return on investment and, of course, the availability of funding.
- We consider our team's capacity to tackle the project.
- We consider the timing of the project in the context of other planned work.
Sometimes, it's just more efficient to take on related projects in a specific order or to take on closely related projects at the same time.

Innovation center program life-cycle

1. Idea intakes.

Who:

Everyone

Activities: FEC staff members possess a wealth of knowledge about how the agency works and how we can make efficient tools, systems, and processes. We invite any FEC employee to come to the Innovation Center with questions or ideas that will help us develop more efficient IT systems and process to support their work.

(Idea submission. Information about how to submit questions and ideas will be provided at a future date.)

- a. All Ideas will be captured. All staff ideas will be considered.

- b. Recommend users to submit their ideas as user stories format.
- c. IC core team members will collaborate with the individual(s) who submitted the idea to protect the sensitive and private information.

Outcome/Deliveries:

Deliverable: IC idea bank. All ideas will be made public to FEC internal users.

2. IC Charter Review and Initial Assessment

Who:

IC Charter Review panels

Activities: The process will be fully transparent to FEC staff. Ideas that are a good fit for the Innovation Center—essentially problems or proposals the core team members believe could be addressed through the IC’s processes—will be provided with technical research. Moreover, these activities must be completed in a specific order. FEC staff members who submit proposals, questions or ideas will be full partners in this process, as we collaborate to refine and better understand the proposed project.

Deliverable: Ideas that are fit for the Innovation Center

3. Technical Research

Who:

IC Project teams: Specific technical skills and subject area experts needed for a project

Activities:

Ideas that are a good fit for the Innovation Center—essentially problems or proposals the core team members believe could be addressed through the IC’s processes—will be provided with technical research. FEC staff members who submit proposals, questions or ideas will be full partners in this process, as we collaborate to refine and better understand the proposed project.

Deliverable:

- Technical solutions demo/showcase

- Technical. The technical recommendation can be part of SOW for the project or be used for funding and resource request for the prototype and pilot implementation.

4. Recommendation and Implementation

Who:

IC Project teams: Specific technical skills and subject area experts needed for a project

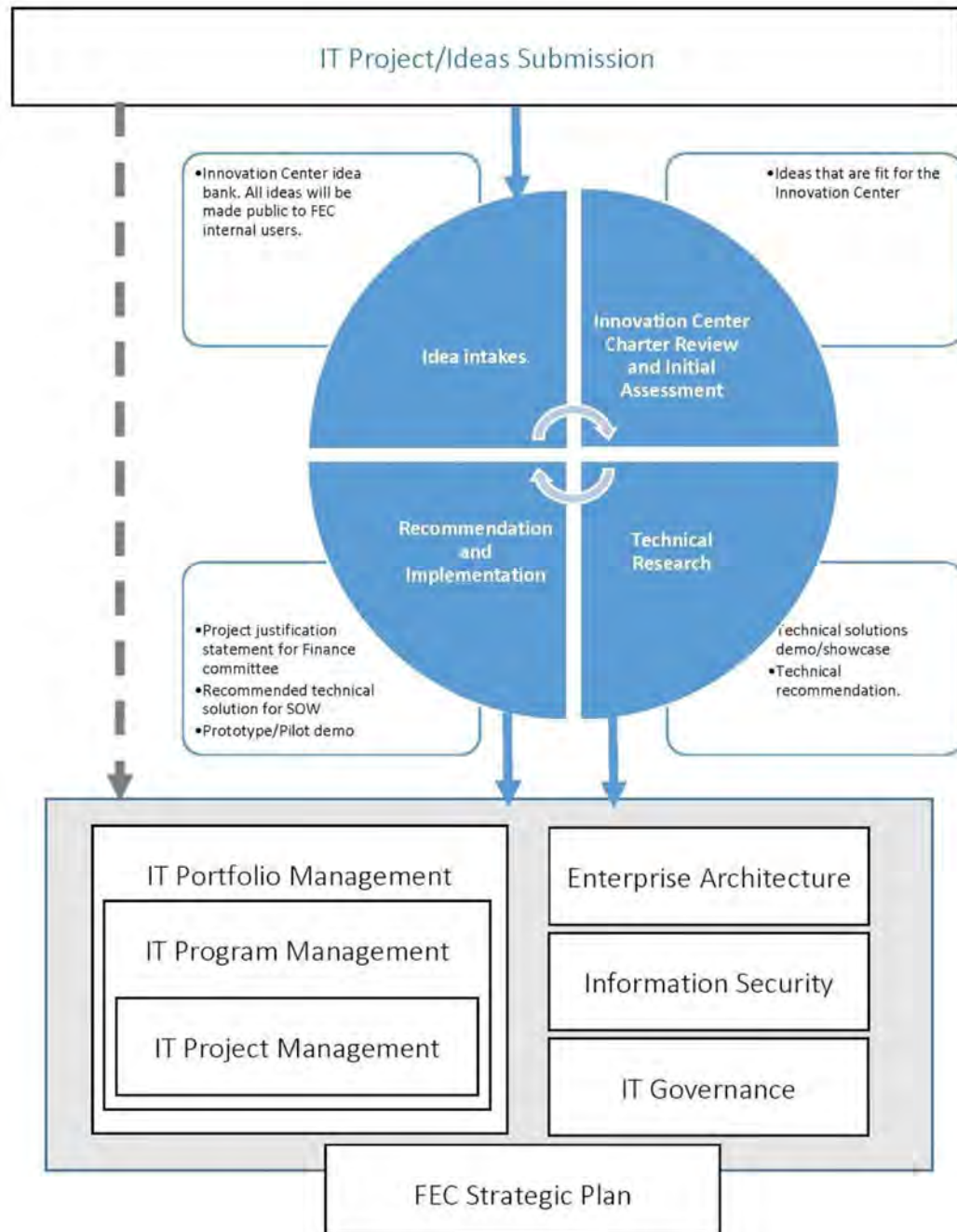
Activities:

- Workshop
- Market research
- Create a prototype
- Pilot Implementation
- Develop justification statement to support SOW

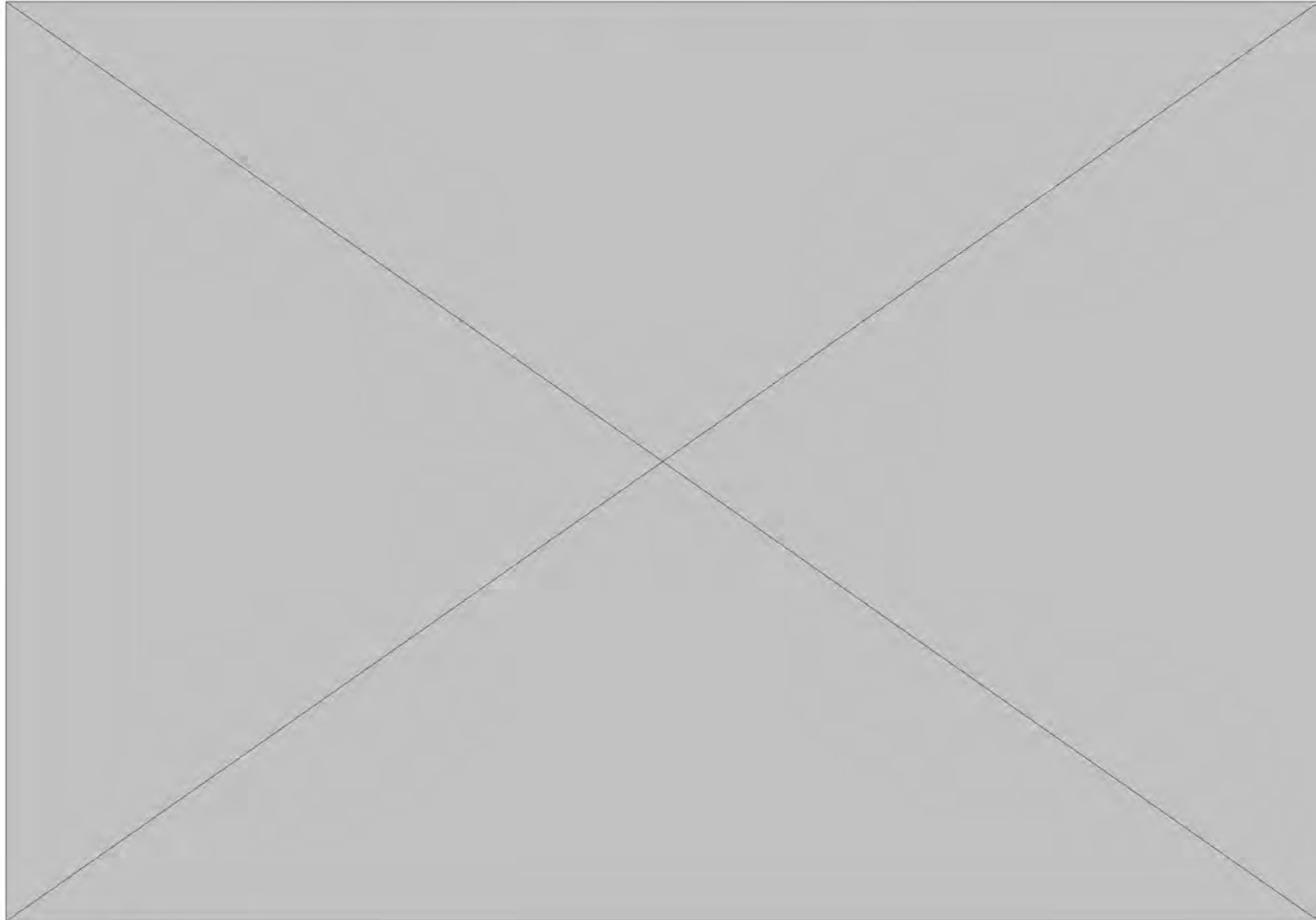
Deliverable:

- Project justification statement, including recommended technical solution and rough project budget, for Finance committee
- Recommended technical solution for SOW
- Prototype/Pilot demo

Innovation center program:



From:Sari C. Pickerall
To:Lisa Stevenson ; Gregory Baker
Sent:2019-07-26T18:36:18.0000000Z
Subject:RE: Announcement Set to Post Tuesday Paralegal GS-0950-11 VIN 10550562



Sari C. Pickerall
Office of General Counsel
Federal Election Commission
202.694.1555

From: Lisa Stevenson
Sent: Friday, July 26, 2019 2:17 PM
To: Sari C. Pickerall <SPickerall@fec.gov>; Gregory Baker <gbaker@fec.gov>
Subject: Re: Announcement Set to Post Tuesday Paralegal GS-0950-11 VIN 10550562

Blergh. That's a bit ridic. Hopefully the posting is clear enough that you don't need a PHD if you have experience as a paralegal...?

Lisa J. Stevenson
Acting General Counsel
Federal Election Commission
(202) 694-1613

l Stevenson@fec.gov

From: Sari C. Pickerall <SPickerall@fec.gov>
Sent: Friday, July 26, 2019 1:40 PM
To: Gregory Baker <gbaker@fec.gov>; Lisa Stevenson <LStevenson@fec.gov>
Subject: FW: Announcement Set to Post Tuesday Paralegal GS-0950-11 VIN 10550562

Sari C. Pickerall
Office of General Counsel
Federal Election Commission
202.694.1555

From: Sari C. Pickerall
Sent: Friday, July 26, 2019 1:40 PM
To: Rebecca Hough <RHough@fec.gov>
Subject: RE: Announcement Set to Post Tuesday Paralegal GS-0950-11 VIN 10550562

Got it! No problem. It just shocked me.

Sari C. Pickerall
Office of General Counsel
Federal Election Commission
202.694.1555

From: Rebecca Hough
Sent: Friday, July 26, 2019 1:39 PM
To: Sari C. Pickerall <SPickerall@fec.gov>
Subject: RE: Announcement Set to Post Tuesday Paralegal GS-0950-11 VIN 10550562

It's if you're qualifying solely on education. The only way you can qualify for a gs-11 govt wide is a PhD.

From: Sari C. Pickerall
Sent: Friday, July 26, 2019 1:38 PM
To: Rebecca Hough <RHough@fec.gov>
Subject: RE: Announcement Set to Post Tuesday Paralegal GS-0950-11 VIN 10550562

PHD? Was the CELA paralegal a PHD as well?

Sari C. Pickerall
Office of General Counsel
Federal Election Commission
202.694.1555

From: Rebecca Hough
Sent: Friday, July 26, 2019 1:23 PM
To: Sari C. Pickerall <SPickerall@fec.gov>
Subject: FW: Announcement Set to Post Tuesday Paralegal GS-0950-11 VIN 10550562

From: Ybarra, Christina [<mailto:Christina.Ybarra@opm.gov>]
Sent: Friday, July 26, 2019 12:20 PM
To: Neven Stipanovic <NStipanovic@fec.gov>; Rebecca Hough <RHough@fec.gov>
Subject: Announcement Set to Post Tuesday Paralegal GS-0950-11 VIN 10550562

Good Afternoon,

The announcement for the subject vacancy is set to open on USAJOBS for 10 business days. The vacancy announcement number is: FEC-10550562-OPM. You may also view it here: <https://www.usajobs.gov/GetJob/ViewDetails/540830300>.

Please review the announcement; if there are any final updates or revisions that need to be made before it opens, please let me know.

Sidenote: The only change I could not make was the education because we must follow the OPM Standards. For a GS-11 it has to be a PHD.

Thank You

Christina

Christina Ybarra
HR Consultant
San Antonio Services Branch

P: 202-422-7256| F: 210-805-2407
Christina.ybarra@opm.gov | www.opm.gov/HRS



From:MeriTalk Events
To:lstevenson@fec.gov
Sent:2019-07-25T16:12:38.0000000Z
Subject:USAF Talks Cyber – Aug. 8 Event

Lauren Knausenberger, Director, Cyberspace Innovation, U.S. Air Force is working to drive innovation across the DoD, speed adoption of emerging technologies, and create stronger partnerships between DoD, start-ups, and the venture community.

We're excited to hear Lauren speak during the "Agency Spotlight" session at the eighth annual Cyber Security Brainstorm "[Cyber Strong: The New Security Frontier](#)" on **Thursday Aug. 8**, where she will share her experience and expertise as a problem solver for national cyber security.

This complimentary program will take place from 7:45 a.m. – 1:15 p.m. at the Newseum in Washington, D.C. To Register:
<https://www.meritalk.com/event/2019-cyber-security-brainstorm/register/>

MeriTalk - P.O. Box 1356 - Alexandria, VA 22313

The email address for you is lstevenson@fec.gov.

If you no longer wish to receive email communication from MeriTalk you may [manage your subscriptions](#).

From:Lisa Stevenson
To:Lawrence Calvert
Sent:2019-05-14T18:09:28.0000000Z
Subject:enforcement manual - "written guidance"

Here is what the manual says (page 40) about other law enforcement agencies and info sharing:

The attorney must consult with the AGC (and General Counsel, as appropriate) and the team leader before contacting federal, state, or local law enforcement entities or OCE. For guidance on processing requests from other agencies, attorneys and staff should consult the Enforcement Division's memorandum on "Requests for Records or Information from Federal, State, and Local Government Entities."

Reporting violations to other agencies (page 53) :

4.4.14 Reporting Violations to Another Entity

At any time during the enforcement process, the Commission may report apparent violations to the appropriate law enforcement authorities. 2 U.S.C. § 437d(a)(9). On a related note, if the Commission finds PCTB regarding a knowing and willful violation of the Act, it may refer the matter to DOJ. 2 U.S.C. § 437g(a)(5)(C). One difference between a report and a referral is that the Commission may report apparent violations at any time, but generally only refers matters after making a PCTB finding in a matter involving knowing and willful violations.

Page 100:

7.6.3.4 Referral to DOJ

OGC may or may not recommend that the Commission refer knowing and willful violations to DOJ for criminal prosecution. 2 U.S.C. § 437g(a)(5)(C). The OGC Notice may recommend that the Commission find PCTB on a knowing and willful basis if the GC's Brief also made this recommendation. Conversely, if the GC's Brief recommended the Commission make knowing and willful PCTB findings, the OGC Notice may recommend the Commission make non-knowing and non-willful PCTB findings based on information in the reply brief.

7.6.3.5 Report to Law Enforcement Authorities

OGC may recommend that the Commission report apparent violations of laws to the appropriate law enforcement authorities. 2 U.S.C. § 437d(a)(9). Unlike referrals to DOJ, reporting does not suspend PCC. See next section

Lisa J. Stevenson
Acting General Counsel
Federal Election Commission
l Stevenson@fec.gov
202-694-1613



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Americans for Job Security

)
)
)
)
)

MUR 6538R

STATEMENT OF REASONS OF CHAIR ELLEN L. WEINTRAUB

Justice delayed is justice denied. In 2010, the dark-money group, Americans for Job Security (“AJS”), deprived American voters of information about millions of dollars in electoral spending.¹ Finally, after *more than seven years* of drawn-out legal wrangling within the Commission, almost two years of legal proceedings in federal court, and a belated investigation hobbled by lengthy delays and the lack of complete records, AJS paid no penalty and to date has still failed to disclose its 2010 election activities to the American public.² Even if they do ultimately provide some disclosure, it will be *more than nine years* too late to meaningfully inform the 2010 voters that AJS sought to influence. And to reach this inadequate outcome, my Republican colleagues had to be dragged, virtually kicking and screaming, into enforcing the disclosure laws at the heart of the agency’s mission.

Back in 2014, the Commission deadlocked on OGC’s recommendation to investigate when the Commission’s Republican commissioners refused to recognize that AJS spent the majority of its funds in 2010 for the nomination or election of a federal candidate.³ The Commission was subsequently sued in federal court.⁴ The court determined that the Republican commissioners’

¹ In March 2012, a complaint was filed with the Commission alleging that AJS spent millions of dollars in connection with the 2010 federal elections—almost \$5 million on independent expenditures and almost \$4.6 million on electioneering communications—but that it failed to register and report as a political committee. First Gen. Counsel’s Rpt. at 4–5, MUR 6538 (Americans for Job Security) (May 2, 2013) [hereinafter First GCR].

² AJS had until October 9, 2019, to complete the registration and disclosure requirements set forth in the conciliation agreement, but has requested an extension from the Office of General Counsel (“OGC”). See Closing Ltr. to William Canfield, Counsel to AJS (Sept. 9, 2019).

³ See Certification ¶ 1, MUR 6538 (Americans for Job Security) (June 26, 2014); First GCR at 21–22. Compare Statement of Reasons of Comm’rs Goodman, Hunter & Petersen at 21–26 (July 30, 2014), <https://go.usa.gov/xVeav> with Statement of Reasons of Comm’rs Ravel, Walther & Weintraub at 5–6, MUR 6538 (July 30, 2014), <https://go.usa.gov/xVeaf>.

⁴ Compl., *CREW v. FEC*, No. 14-cv-1419 (D.D.C. Aug. 20, 2014). The lawsuit was filed in connection with this and a companion matter involving another dark-money group, American Action Network (“AAN”).

refusal to find that AJS was a political committee had been contrary to law and remanded the case to the Commission.⁵

Under a court order, the Republican commissioners finally agreed to apply the appropriate legal standard and found reason to believe that AJS violated the law as OGC originally recommended (and I had supported)—by now more than seven years after AJS’s spending took place.⁶ In 2017, the Commission began its investigation into AJS’s 2010 spending. By this time AJS was practically defunct, the money was gone, and complete records were no longer available.⁷ In 2019, the Commission ultimately approved a settlement that imposed *no penalty* on AJS, but required the registration and disclosure that should have taken place in 2010.⁸ My Republican colleagues’ intransigence tied the Commission’s hands and ensured the improbability of a penalty commensurate with an over \$9 million violation.

More than seven years of procedural maneuvering produced a pale shadow of real enforcement in connection with a nine-year-old election that has since faded from the public’s memory. Justice purposefully and systematically delayed is justice obstructed. Delay means witnesses forget and evidence disappears. Delay ensures that illegal activity comes to light only after the public loses interest. Delay enables dark-money brokers to get away with keeping their political influence enshrouded. Was this the goal all along? The American people deserve transparency and information in a timely fashion, not delay and obstruction.



October 11, 2019

Ellen L. Weintraub
Chair

⁵ *CREW v. FEC*, 209 F. Supp. 3d 77, 95 (D.D.C. Sept. 19, 2016). The court explained that my Republican colleagues “relied on a faulty premise”: they incorrectly excluded electioneering communications that did not contain express advocacy from their analysis of whether the group’s major purpose was to influence a federal election, and gave undue weight to the lifetime spending of the group rather than examining the problematic time period at issue—the 2010 calendar year. *Id.* In a separate opinion involving AAN, the court noted that electioneering communications inherently have the purpose of influencing a federal election, but that the Commission can use “its case-by-case approach, to deem an *extraordinary* ‘electioneering communication’ as lacking an election-related purpose.” *CREW v. FEC*, 299 F. Supp. 3d 83, 97 (D.D.C. Mar. 20, 2018) (emphasis added).

⁶ See Certification, MUR 6538R (Americans for Job Security) (Oct. 19, 2016); See Factual & Legal Analysis, MUR 6538R (Apr. 27, 2017).

⁷ Despite incomplete records OGC uncovered substantial evidence that AJS spent the vast majority of its funds in 2010—over 83%—on federal campaign activity and that most of that spending was never reported to the Commission. Second Gen. Counsel’s Rpt. at 12-13, MUR 6538R (Feb. 15, 2019). By the time of the investigation, AJS had also already lost its corporate status in the District of Columbia in 2016, and lost its tax exempt status with the Internal Revenue Service in 2018. *Id.* at 16; Americans for Job Security (Initial File No. 973603), *Business Filings Search*, D.C. Department of Consumer and Regulatory Affairs Corp. Div., <https://corponline.dcrs.dc.gov/Home.aspx> (showing revoked status).

⁸ Certification ¶ 1, MUR 6538R (Sept. 3, 2019); Conciliation Agreement, ¶ VI.1–4 (Sept. 9, 2019). A penalty was not included in light of representations from AJS that it was defunct, with no money and no ability to raise new funds. Conciliation Agreement ¶ VI.4.

From:Gregory Baker
To:Lisa Stevenson ; Sari C. Pickerall
Sent:2019-07-19T14:15:41.0000000Z
Subject:RE: Available Non-Personnel Funds as of 6/30/19

Most of our remaining funds are Westlaw-related expenses.



Gregory R. Baker
Deputy General Counsel – Administration
Federal Election Commission

From: Lisa Stevenson
Sent: Friday, July 19, 2019 10:09 AM
To: Gregory Baker <gbaker@fec.gov>; Sari C. Pickerall <SPickerall@fec.gov>
Subject: Fwd: Available Non-Personnel Funds as of 6/30/19

?

Sent from my iPhone
Begin forwarded message:

From: "Gilbert A. Ford" <GFord@fec.gov>
Date: July 19, 2019 at 8:52:26 AM EDT
To: Alec Palmer <APalmer@fec.gov>, Lisa Stevenson <LStevenson@fec.gov>, John Quinlan <JQuinlan@fec.gov>, Tony Baptiste <tbaptiste@fec.gov>
Cc: Gregory Baker <gbaker@fec.gov>, Kimberly Humphries <khumphries@fec.gov>, Rebecca Hough <RHough@fec.gov>, "Sari C. Pickerall" <SPickerall@fec.gov>, Pamela Jones <PJones@fec.gov>, Sheri Haynes <shaynes@fec.gov>, Katie Higginbothom <KHigginbothom@fec.gov>, Patricia Orrock <POrrock@fec.gov>, Lauren H Lien <LLien@fec.gov>
Subject: Available Non-Personnel Funds as of 6/30/19

Team, just a friendly reminder of the Offices with the highest unobligated Non-Personnel Funds. As we have less than 60 days before all Non-Personnel obligations should be in, please let the Budget office know by July 26th, if you will have a problem obligating the remaining funds by August 15th. Conversely, if you need more Non personnel funds please let us know by July 26th. If you have any questions please contact me or Sheri Haynes. Thanks in advance for your cooperation.

Office	Amount as of 6/30/19
Admin	753,000
Audit	134,000
OCIO	7,061,000
OCFO	352,000
OGC	577,000
HR	280,000

OIG	389,000
Public Disclosure	125,000
Total	9,671,000

Gilbert A. Ford, Jr.

Budget Director

Federal Election Commission

1050 First Street NE

Washington DC 20463

Phone 202-694-1216

Cell 202-251-9659

Fax 202-208-1909

POSITION DESCRIPTION

1. Agency Position No.

2. Reason for Submission

☒ Redescription ☐ New

☐ Reestablishment ☐ Other

Explanation (Show any positions replaced)

Redescription of GS-14 Assistant General Counsel (team leader) position in the Enforcement Division.

3. Fair Labor Standards Act

☒ Exempt ☐ Nonexempt

4. Subject to IA Action

☒ Yes ☐ No

5. Position is

☒ Supervisory ☐ Managerial ☐ Neither

6. Competitive Level Code

7. Bargaining Unit

☐ Yes ☒ No

8. Classified/Graded by	Official Title of Position	Pay Plan	Occupational Code	Grade	Initials	Date
a. Office of Personnel Management						
b. Personnel Office	Assistant General Counsel for Enforcement	GS	0905	15	JM	3/10/03
c. Commission Approval						

9. Organizational Title of Position (if different from official title)

10. Name of Employee (if vacancy, specify)

11. Department, Agency, or Establishment

Federal Election Commission

c. Third Subdivision

a. First Subdivision

Office of the General Counsel

d. Fourth Subdivision

b. Second Subdivision

Enforcement Division

e. Fifth Subdivision

12. Employee Review. This is an accurate description of the major duties and responsibilities of my position.

Signature of Employee (optional)

3. Supervisory Certification. I certify that this is an accurate statement of the major duties and responsibilities of this position and its organizational relationships, and that the position is necessary to carry out Government functions for which I am responsible.

This certification is made with the knowledge that this information is to be used for statutory purposes relating to appointment and payment of public funds, and that false or misleading statements may constitute violations of such statutes or their implementing regulations.

a. Typed Name and Title of Immediate Supervisor

b. Typed Name and Title of Office Head

Rhonda J. Vosdinger, Associate GC, Enforcement

Lawrence H. Norton, General Counsel

Signature

Date

Signature

Date

14. Classification/Job Grading Certification. I certify that this position has been classified/graded as required by Title 5, U.S. Code, in conformance with standards published by the Office

of Personnel Management or, if no published standards apply directly, consistently with the most applicable published standards.

a. Typed Name and Title of Official Taking Action

b. Certification by Staff Director

J. Scotty McBride, Human Resources Specialist

James A. Pehrkon, Staff Director

Signature

Date

Signature

Date

15. Standards Used in Classifying/Grading Position

General Attorney Series, GS-905
General Schedule Supervisory Guide

Information for Employees. The standards, and information on their application, are available in the Personnel Office. The classification of the position may be reviewed and corrected by the agency or the Office of Personnel Management. Information on classification/job grading appeals, and complaints on exemption from FLSA, is available from the Personnel Office or the OPM.

16. Position Review	Initials	Date	Initials	Date	Initials	Date	Initials	Date
a. Employee (optional)								
b. Supervisor								
c. Classifier								

17. Remarks

Position Sensitivity - N/S

**FEDERAL ELECTION COMMISSION
OFFICE OF THE GENERAL COUNSEL
ENFORCEMENT DIVISION**

**Assistant General Counsel for Enforcement
GS-905-15**

INTRODUCTION

The incumbent serves as one of six Assistant General Counsels in the Enforcement Division in the Office of the General Counsel (OGC) at the Federal Election Commission (FEC). The incumbent has responsibility for supervising and overseeing a team of staff attorneys and paralegal specialists assigned to the Enforcement Division. As team leader, the incumbent offers effective direction to team members, maintains in-depth involvement in the matters assigned to the team, and provides prompt review of work products.

Enforcement is the largest single function within OGC with approximately half of its attorneys working in the Enforcement Division. Staff Attorneys on the enforcement teams have substantial responsibility for the investigation and analysis of the cases assigned to them. They write briefs and make oral presentations to the Commission in support of recommended actions. In conjunction with FEC investigators, they conduct investigations that include interviews, written interrogatories, depositions and preparation of subpoenas for testimony and document production. The FEC is a regulatory agency and settles most cases by negotiation and conciliation, which is required by statute. Accordingly, Enforcement staff attorneys negotiate the resolution of their cases directly with counsel for respondents. The Assistant General Counsel for Enforcement is responsible for the daily supervision of administrative and personnel matters for programs and staff under his or her control.

MAJOR DUTIES AND RESPONSIBILITIES:

The incumbent has programmatic responsibility for the development and coordination of the enforcement activities for one of the six enforcement teams in the division. He or she is responsible for providing oversight over all aspects of the compliance/enforcement process for his or her team. The incumbent stays abreast of enforcement matters handled by other team leaders, and participates in regular meetings which include the General Counsel, to discuss written recommendations that are pending before the Commission.

The incumbent supervises both attorneys and support staff (paralegal specialists or legal secretaries) in carrying out all enforcement activities. The incumbent reviews all documents (briefs, reports recommending Commission action, etc.) prepared by team attorneys for clarity, organization, and procedural correctness, and ensures that all enforcement activities such as investigation, fact analysis, discovery, depositions, briefings, etc. are thoughtfully planned out, and in compliance with Commission procedures, policies, and practices. As team leader, the incumbent is responsible for ensuring that the team's assignments and activities are proceeding on a timely basis meeting all agreed upon deadlines and completion dates.

Provides assistance and direction, as necessary, to his or her team of attorneys. Confers with respondents, attorneys and others or with the Deputy Associate or Associate General Counsel

for Enforcement in negotiating conciliation agreements and in conducting depositions. In anticipation of making a recommendation to the Commission to find "probable cause" in a matter, the incumbent participates in preparing briefs which are served on the respondents. Provides guidance and participates, as necessary, in developing legal strategy, preparing and arguing recommendations before the Commission.

The incumbent serves as an advisor to the Deputy Associate and Associate General Counsel for Enforcement and provides them with formal advice, recommendations and opinions on a range of issues relating to major policy directions, programs and initiatives, and staff assignments.

The Assistant General Counsel, under the guidance and direction of the Deputy Associate General Counsel for Enforcement, exercises, together with the other team leaders, managerial responsibility for:

- Implementing the FEC's enforcement programs;
- Coordinating enforcement activities within OGC. As necessary, consults and receives FEC staff suggestions for the preparation and handling of cases before the Commission;
- Staying current with all changes in the requirements of FEC regulations and proposing revisions, as deemed necessary;
- Monitoring legal developments in other areas of OGC such as proposed and/or new regulations and advisory opinions and the impact of these developments on the Enforcement Division and the enforcement process;
- Attends Commission meetings, as required.

As an Assistant General Counsel for one of the Enforcement Teams, the incumbent serves as the first-line supervisor to a team of staff attorneys and paralegal specialists. Responsibilities include:

- Determining position responsibilities and personnel staffing requirements;
- Planning and scheduling long-range work plans and deadlines;
- Developing overall goals and objectives for assigned staff functions and programs and determining goals and objectives that need additional emphasis;
- Integrating human capital strategies with the agency's core mission and business practices;
- Focusing the right mix of employee knowledge and skills on the job at hand;
- Fostering a performance-oriented organizational culture;
- Serving on OGC hiring panels or as rating official;
- Overseeing the Performance Management program within his or her team including establishing standards of performance and evaluating staff against performance standards that assess and reward employee performance based on organizational goals and values;
- Effectively managing and motivating staff;
- Providing for staff's continuing personal and professional development. This includes making decisions on non-routine or costly training needs and training requests;
- Recommending awards or bonuses for staff subject to approval by higher-level officials;
- Finding and implementing ways to eliminate or reduce significant bottlenecks and barriers to workflow, promote team building, or improve business practices;
- Addressing grievances;

- Taking disciplinary measures such as warnings, reprimands, suspensions and removals and other appropriate action to promote the efficiency of the service;
- Approving or disapproving leave requests;
- Being accountable for the Labor/Management Relations program within his or her team.
- Develops and maintains partnerships with other divisions and offices in the FEC.
- Promotes cross-organizational efforts to improve work quality and make more effective use of human resources.
- Uses management information systems and other technological resources to meet the current and future needs of the Enforcement Division.
- Implements and evaluates procedures and policies that promote program performance.
- Ensures compliance with Federal and FEC policy in all phases of program and staff management.
- Ensures internal controls to prevent or deter the fraud, waste, and abuse of government resources and management of government programs.
- Actively supports the Commission's EEO goals.
- Assumes responsibility for special projects as the Deputy Associate General Counsel or General Counsel for Enforcement may assign.

KNOWLEDGE REQUIRED BY THE POSITION

Knowledge and skill sufficient to provide the General Counsel with analysis, advice, and assistance in the area of federal campaign finance law. The position requires a knowledge of the Federal Election Campaign Act, as amended, Title 2 U.S.C., and Public Financing statutes found in Chapters 95 and 96 of the Internal Revenue Code sufficient to provide authoritative, constructive assistance to the General Counsel.

Comprehensive knowledge and understanding of the substantive aspects of OGC policies and operations, including the purposes, goals, objectives, functions, policies, and procedures that guide various OGC and FEC programs in order to conduct studies and analyses and make recommendations that affect OGC's future operations.

Mastery of pertinent research and analytical methodologies to conduct highly complex legal research. Legal work is characterized by one or more of the following features:

- 1) extremely complex and difficult legal questions or factual issues involved in the drafting, interpretation or application of legal documents and require for their resolution a high order of original and creative legal endeavor; or complex factual or policy issues are involved requiring extensive research, analysis, and obtaining and evaluating information in controversial or highly technical areas;
- 2) case or problem is such that it can have the effect of substantially broadening or restricting the activities of an agency or it has an important impact on major public or

private interests or is a problem involving unusual delicacy because of the serious consequence of error.

Ability to effectively manage and supervise a legal staff and to get work done through others. This includes the ability to: translate management and agency goals and objectives into well-coordinated and controlled work operations; analyze organizational and operational problems and develop timely and economical solutions; plan and adjust work operations to meet changing or increasing work requirements within available resources and with minimum sacrifice of quantity or quality of work.

Ability to foster a performance-oriented culture and to effectively involve and empower employees to improve operational and program performance.

Ability to establish trust, respect, diversity, and fairness in the workplace.

Skill in dealing with decision makers and their immediate staffs.

Skill in assessing the political and institutional environment in which decisions are made and implemented.

Ability to explore and present fully the many facets of a policy issue.

Ability to exercise judgment in all phases of analysis, ranging from sorting out the most important problems, to shifting evidence, and framing feasible options.

Ability to effectively express ideas orally and in writing, using appropriate language, organizing ideas, and marshaling facts in an objective manner.

Ability to work effectively under pressure of tight time-frames and rigid deadlines.

SUPERVISORY CONTROLS

The incumbent reports directly to the Deputy Associate General Counsel for Enforcement who makes assignments in terms of broadly defined objectives. He or she may also receive special assignments directly from the Associate General Counsel for Enforcement. The incumbent independently plans, coordinates, and conducts cases or carries out projects with a high degree of professional judgment and informs the supervisor of progress as appropriate. He/she alerts the supervisor of potential controversies and conflicts that may affect administrative operations and functions or negatively impact the Commission. The incumbent's work products and recommendations are accepted as authoritative and technically correct, and they are reviewed only for possible effect on broad office goals and objectives.

GUIDELINES

Guidelines consist of the legislation, regulations, and broad Commission policy statements that address, interpret, and impact federal campaign finance laws and their enforcement. These include the Federal Election Campaign Act of 1971, as amended, the Presidential Election Campaign Fund Act, the Presidential Matching Payment Account Act, Commission regulations, advisory opinions, and the Constitution of the United States. In addition, decisions by the Commission, courts, and the Comptroller General provide precedent for actions by the Commission and serve as valuable guidelines. Guidelines are rarely directly applicable to the

complex problems and situations encountered. The incumbent must exercise considerable judgment in interpreting and adapting existing precedents and in developing new and improved approaches to analyze, develop, and present authoritative information or analyses on controversial and nationally important subjects to persons or groups with conflicting views.

COMPLEXITY

The incumbent plans, organizes, and carries through to completion analytical studies as well as coordinates, conducts and represents the Commission in enforcement matters. Assigned cases are of such breadth and intensity that they require the input and assistance of a team of attorneys. The incumbent is responsible for assigning segments of the cases to various staff attorneys, coordinating the efforts of the group, and consolidating findings into a completed product. There is often extreme difficulty in discerning the intent of legislation and policy statements and understanding the legal, administrative, technical, political, economic and other implications of the FECA, and agency regulations or advisory opinions. The incumbent must consider the immediate, sequential, and long-range effects, both direct and indirect, on the regulated community, the political process, and the public. The work involves analyses of highly complex issues that require extensive researching and consideration of applicable legislation and policies, program priorities, and resource requirements. Assignments may be unique and one-of-a-kind in nature without procedural precedent and require the incumbent to employ a high degree of versatility of exercising judgment in problem solving.

The Commission is involved in a number of high profile, exceedingly complex cases, the results of which often have national impact. The incumbent must be a skilled and effective negotiator with a thorough knowledge of presenting a complex case to the Commission. In addition to possessing outstanding public speaking abilities, the incumbent must be able to exercise persuasiveness with restraint in addressing the Commission or respondents, as well demonstrate the ability to establish rapport with opposing counsel and work out settlements or significant concessions. The cases the incumbent is responsible for managing are often high profile cases and typically involve significant and complex enforcement issues. The work is often done while under time pressures caused by the Commission's schedule and, at times, the impending expiration of the statute of limitations.

SCOPE AND EFFECT

The work involves performing very broad and extensive assignments related to the interpretation and enforcement of the FECA. At the request of OGC management or the Commissioners, the incumbent has direct responsibility for managing a portion of the Commission's enforcement activities. Cases are often high profile and exceedingly complex. The outcomes directly impact the ability of the Commission to administer, interpret, regulate, and enforce the FECA. In addition to managing enforcement activities, the incumbent is sometimes directed by OGC management or the Commissioners to plan and conduct analyses of vital public policies having to do with federal campaign finance laws that are of national interest, scope, and impact. The work performed or directed by the incumbent provides policy makers with authoritative information and analyses and provides a basis for decisions affecting major current and long-range policies and proposals that affect the activities and operation of federal elections and campaign finance laws and regulations. Results of work are vital to achieving the Commission's mission and may affect staff and operations on a long-term, continuing basis, as well as the regulated community and the public.

PERSONAL CONTACTS

Contacts are with FEC senior staff including the Associate General Counsels, Deputy Associate General Counsel for Enforcement, Deputy General Counsel, General Counsel, Commissioners and their staffs, Staff Director, Deputy Staff Directors, OGC managers and staff, Assistant Staff Directors and staff, OGC team leaders and their staff, Director of Congressional Affairs, and Director of Planning and Management. Contacts may also include high-ranking officials or program officials at other agencies or congressional staff officials.

PURPOSE OF CONTACTS

The incumbent serves as one of six team leaders with primary responsibilities for handling the day-to-day programmatic responsibilities for the agency's enforcement programs. Contacts are for presenting, recommending, justifying, or settling legal matters involving significant or controversial FECA issues.

PHYSICAL DEMANDS

The work is primarily sedentary.

WORK ENVIRONMENT

The incumbent's work is performed in an office setting.



441 G St. N.W.
Washington, DC 20548

June 2, 2018

Mr. Alec Palmer
Staff Director
Federal Election Commission
999 E. Street, NW
Washington, D.C. 20463

Dear Mr. Palmer:

This letter is to inform you of a new U.S. Government Accountability Office engagement on Campaign Finance—code 102707. The enclosure provides information on the engagement. If we determine it is necessary to visit locations other than those specified in the enclosure, we will advise you.

We would appreciate your notifying the appropriate officials of this work. The next step will be to set up an entrance conference. At that meeting, we will request that your agency identify a point of contact for this engagement.

Sincerely yours,

A handwritten signature in black ink that reads "Rebecca Gambler".

Rebecca Gambler, Director
Homeland Security and Justice

Enclosure

cc: Duane Pugh, FEC (dpugh@fec.gov)

:

Enclosure

Information on New Engagement

Engagement subject: Campaign Finance

Engagement code: 102707

Source for the work: GAO is beginning this work pursuant to its authority under 31 U.S.C. 717 after receiving a request from Senator Amy Klobuchar, Ranking Member of the Senate Committee on Rules and Administration.

Issues under review/Objectives/Key questions:

- (1) What is the framework for overseeing contribution and expenditure limits, disclosure requirements, and prohibitions, including those for foreign entities, in connection with federal elections?
- (2) What types of challenges, if any, have been reported about the framework for overseeing contribution and expenditure limits, disclosure requirements, and prohibitions in connection with federal elections?

Agencies and anticipated locations (HQ and field) to be notified: Federal Election Commission.

Other departments/agencies to be contacted: Department of Justice (Criminal Division Public Integrity Section, Executive Office for United States Attorneys, and Federal Bureau of Investigation), Department of Treasury (Financial Crimes Enforcement Network, Internal Revenue Service), and U.S. Securities and Exchange Commission.

Estimated start date for the work: Immediately.

Time frame for holding the entrance conference: As soon as possible.

GAO Team(s) performing the engagement: Homeland Security and Justice.

GAO contacts:

Rebecca Gambler, Director, (202) 512-6912, gambler@gao.gov
Tom Jessor, Assistant Director, (213) 830-1157, jessor@gao.gov
Frederick Lyles, Jr., Analyst-in-Charge, (404) 679-1812, lylesf@gao.gov

GAO Review of Campaign Finance (102707)
Entrance Conference with the Federal Election Commission (FEC)
Objectives and Discussion Topics
July 16, 2018

Teleconference Line: 1-888-395-7943; Leader Passcode: 56527911; Participant Passcode: 12508934

Engagement Objectives:

- I. What is the framework for overseeing contribution and expenditure limits, disclosure requirements, and prohibitions, including those for foreign entities, in connection with federal elections?
- II. What types of challenges, if any, have been reported about the framework for overseeing contribution and expenditure limits, disclosure requirements, and prohibitions in connection with federal elections?

Discussion Topics:

1. Federal Election Commission's (FEC) role in overseeing contribution and expenditure limits, disclosure requirements, and prohibitions, including those for foreign entities, in connection with federal elections.
2. Overview of the FEC's investigative and enforcement processes used to monitor, track, and address violations of federal campaign finance laws.
3. FEC's latest updates to its regulations implementing the Federal Election Campaign Act (FECA) and other campaign finance requirements associated with federal elections.
4. Federal agency stakeholders—i.e., Securities and Exchange Commission (SEC), Financial Crimes Enforcement Network (FinCEN), and Internal Revenue Service (IRS)—involvement in overseeing and enforcing FECA and related campaign finance requirements.
5. Collaboration with other federal agencies for violations of federal campaign finance laws—including matters involving foreign funds—in connection with federal elections.
6. Any challenges FEC has identified with enforcing FECA and related campaign finance requirements associated with federal elections.
7. FEC's mechanisms for and challenges faced in detecting and preventing prohibited contributions and expenditures—including foreign contributions and expenditures—in connection with federal elections.

GAO Review of Campaign Finance (102707)
Federal Election Commission (FEC)
Questions/Information Request (#1)
August 22, 2018

Engagement Objectives

- (1) What is the framework for overseeing contribution and expenditure limits, disclosure requirements, and prohibitions, including those for foreign entities, in connection with federal elections?
- (2) What types of challenges, if any, have been reported about the framework for overseeing contribution and expenditure limits, disclosure requirements, and prohibitions in connection with federal elections?

Questions/Information Request

FEC Enforcement Guidance

1. We obtained a copy of the online version of the *Federal Election Commission's (FEC), Office of the General Counsel (OGC) Enforcement Manual*, dated June 2013. Is this the latest version of the enforcement manual? If not, please provide us with a copy of the latest version.
 - a. Please provide us with a copy of FEC's updates and revisions to the *OGC Enforcement Manual*, dated June 2013, if applicable.
 - b. Please identify the process and FEC components responsible for updating the *OGC Enforcement Manual*—including a description of the components' roles and responsibilities.
 - c. Please identify and explain planned and proposed updates/revisions to the *OGC Enforcement Manual*, dated 2013, if applicable. What is the current implementation status for each of the identified planned and proposed revisions/updates to the manual?
 - d. To what extent, if any, does FEC utilize additional guidance/interpretive rules/procedural changes/policy statements to support and/or supplement the *OGC Enforcement Manual*, dated June 2013? If applicable, please provide us with a copy of the guidance/interpretive rules/procedural changes/policy statements.
 - e. Please provide us with an updated version, if applicable, of FEC's flow chart which outlines the enforcement process—listed in section 1.4, pages 13 and 14 of the *OGC Enforcement Manual*, dated June 2013.
 - f. To what extent, if any, has FEC experienced challenges with implementing the *OGC Enforcement Manual*, dated June 2013? If applicable, please identify the challenges faced and how they are being addressed by the FEC and its components—including how the challenges impact the FEC's enforcement of the Federal Election Campaign Act (FECA) and related campaign finance requirements associated with federal elections.

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2. Based on the FEC's perspective, what additional FEC guidance and resources are needed, if any, to improve the agency's oversight and enforcement of contribution and expenditure limits, disclosure requirements, and prohibitions, including those for foreign entities, in connection with federal elections?
3. What are the FEC's enforcement priorities regarding the enforcement of the FECA and related campaign finance requirements associated with federal elections? Please identify the process/factors/variables considered when establishing the agency's enforcement priorities. Please identify the FEC's enforcement priorities for each fiscal year—2002 through 2018.
 - a. Where do you see risks and vulnerabilities, if any, in the current campaign finance framework for overseeing the enforcement of contribution and expenditure limits, disclosure requirements, and prohibitions, including those for foreign entities, in connection with federal elections?
4. Please provide us with a copy of the data dictionary for the FEC's Enforcement Query System (EQS).
 - a. Please provide us with a copy of the data dictionary for the FEC's Case Management System (CMS) and its document management system known as Enterprise Content Manager (ECM).
5. Please provide information on the following sources for FEC enforcement actions.
 - a. How many complaints were received for each fiscal year—2002 through 2017?
 - b. How many *sua sponte* submissions were received for each fiscal year—2002 through 2017?
 - c. How many external referrals were received (identify the referring agency) for each fiscal year—2002 through 2017?
 - d. How many internal referrals were received for each fiscal year—2002 through 2017?
6. To what extent, if any, has the FEC established performance measures and indicators to identify the effectiveness and efficiency of the agency's efforts related to the enforcement of FECA and related campaign finance requirements associated with federal elections? If applicable, please identify the performance measures and indicators used and provide us with a copy of the agency's performance reports related to its enforcement efforts for each fiscal year—2002 through 2017.
7. Please provide us with a copy of the data dictionary for the Enforcement Priority System (EPS). What are the criteria used by the FEC's Office of Complaints Examinations and Legal Administration (CELA) in its rating of incoming cases under EPS?

GAO Review of Campaign Finance (102707)
Federal Election Commission (FEC)
Questions/Information Request (#1)
August 22, 2018

FEC and DOJ Collaboration

8. Based on a FEC official's statement provided at the GAO/FEC entrance conference held on July 16, 2018, the signed (in 1977) memorandum of understanding (MOU) which outlines the collaboration (including referrals) between the FEC and Department of Justice (DOJ) in regards to the enforcement of the FECA and related campaign finance requirements associated with federal elections has not been updated.
 - a. Please explain why the MOU between FEC and DOJ has not been updated since 1977—including the extent to which FEC plans to update the MOU. In addition, please provide us with a copy of the current (formal and informal) guidance/procedural agreements used to assist in the FEC and DOJ collaboration efforts (including referrals) in regards to the enforcement of the FECA and related campaign finance requirements associated with federal elections
 - b. Please explain how the FEC and DOJ collaborate to investigate and enforce the FECA and related campaign finance requirements associated with federal elections.
 - c. To what extent, if any, have the FEC and DOJ collaboration efforts (including referrals) related to the enforcement of the FECA and related campaign finance requirements associated with federal elections been affected by the MOU not being updated since 1977—including how any challenges experienced are being addressed by the FEC and DOJ, if applicable?
 - d. Under the FECA (52 U.S.C. § 30121) all violations involving foreign funds are criminal, except for those involving electioneering communications. Under what circumstances would FEC and DOJ maintain parallel jurisdiction in investigations involving foreign funds? Is there a FEC mechanism in place to delay moving forward with its own proceedings in favor of the pending criminal investigation?
 - e. Please provide us with the number and types of matters referred by the FEC to DOJ for prosecution for each fiscal year—2002 through 2017.

FEC Investigations

9. For each fiscal year—2002 through 2017, please provide us with the overall number of FEC matters/cases (ongoing and closed) related to the enforcement of FECA and related campaign finance requirements associated with federal elections.
 - a. For each fiscal year—2002 through 2017, how many of FEC's closed investigations involved foreign nationals—including the associated disposition (i.e., dismissed, referred to DOJ).
 - b. How many matters/cases were enforced through civil litigation for each fiscal year—2002 through 2017?

GAO Review of Campaign Finance (102707)
Federal Election Commission (FEC)
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10. What are the FEC's issues and challenges, if any, faced with investigating matters and litigating cases related to the enforcement of FECA and related campaign finance requirements associated with federal elections?
- a. What issues and challenges, if any, does FEC experience in detecting and preventing, and investigating and prosecuting, cases involving foreign funds?
 - b. What additional FEC guidance and/or resources are needed to improve the agency's investigation of alleged violations of the FECA and related campaign finance requirements associated with federal elections—including investigations involving foreign funds?

Reports and Analysis Division (RAD)

11. How many committees registered with the FEC for each fiscal year—2002 through 2017?
12. How many committee reports were reviewed by the RAD for each fiscal year—2002 through 2017?
- a. How many RAD referrals were made to the Audit Division for each fiscal year—2002 through 2017?
 - b. How many RAD referrals were made to OGC for each fiscal year—2002 through 2017?
 - c. How many RAD referrals were made to the Alternative Dispute Resolution Program for each fiscal year—2002 through 2017?
 - d. How many RAD referrals were made to the Administrative Fine Programs for each fiscal year—2002 through 2017?
13. We have reviewed the RAD's *Review and Referral Procedures* (2017 - 2018 election cycles). Has this document been revised and/or updated? If so, please provide us with a copy of the updated documents/guidance—including a copy any additional guidance the RAD follows when reviewing reports and referring committees for enforcement.
14. To what extent, if any, has FEC experienced challenges in implementing the RAD's Review and Referral Procedures? If applicable, please identify the challenges faced and how they are being addressed by the RAD—including how the challenges impact the FEC's enforcement of the FECA and related campaign finance requirements associated with federal elections.
15. What are the FEC's priorities regarding the review of filings by the RAD? Please identify the process/factors/variables considered when establishing the agency's review priorities. Please identify the FEC's priorities for RAD reviews for each fiscal year—2002 through 2017.

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16. To what extent, if any, has the RAD experienced challenges in reviewing committee reports to ensure that the public record provides a full and accurate representation of reported campaign finance activity?

Audit Division

17. How many audits were completed and forwarded to the Commission for approval by the Audit Division for each fiscal year—2002 through 2017?
- a. How many Audit Division referrals were made to the OGC for each fiscal year—2002 through 2017?
 - b. How many Audit Division referrals were made to the Alternative Dispute Resolution Office for each fiscal year—2002 through 2017?
 - c. How many Audit Division referrals were made to the Administrative Fine Programs for each fiscal year—2002 through 2017?
18. We have reviewed *The Audit Process – What to Expect* (May 2012) and *Audit Division Materiality Thresholds* (2015 and 2016 cycles). Have these documents been revised and/or updated? If so, please provide us with a copy of the updated documents/guidance—including a copy any additional guidance the Audit Division follows when conducting audits and referring committees for enforcement.
- a. Are there any additional applicable audit guides and/or manuals that we have not identified/mentioned? If so, please provide us with a copy of the document(s).
19. What are the FEC's priorities regarding the audits conducted by the Audit Division? Please identify the process/factors/variables considered when establishing the agency's review priorities. Please identify the FEC's priorities for audits conducted by the Audit Division for each fiscal year—2002 through 2017.
20. To what extent, if any, has FEC experienced challenges with conducting audits of political committees? If applicable, please identify the challenges faced and how they are being addressed by the FEC's Audit Division—including how the challenges impact the FEC's enforcement of the FECA and related campaign finance requirements associated with federal elections.

Alternative Dispute Resolution Office

21. Please describe the process (including the criteria used) the Commissioners use to determine whether cases are processed under the Alternative Dispute Resolution (ADR) program.
- a. Please identify the number, types, and average resolution time frames for ADR cases for each fiscal year—2002 through 2017.

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Promoting Voluntary Compliance

22. We have reviewed the *Guidebooks for Congressional Candidates and Committees* (June 2014), *Political Party Committees* (August 2013), *Nonconnected Committees* (May 2008), and *Corporations and Labor Organizations* (January 2018). Are these the latest version(s) of the respective guidebooks? If not, please provide us with a copy of the latest guidebooks.
- a. Are there any additional applicable guidebooks that we have not identified and/or mentioned? If so, please provide us with a copy of the document(s).
23. Please describe any efforts and initiatives, in addition to the published guidebooks, the FEC has conducted to prevent violations and promote compliance among entities engaged in campaign activity.

Providing Information and Policy Guidance on Campaign Finance Laws

24. Please describe how the FEC provides information and guidance (i.e., contribution and expenditure limits, and disclosure requirements) on campaign finance laws to the public/committees? Please provide us with a copy of the applicable information and guidance.
25. We reviewed the FEC's web site (www.fec.gov/legal-resources/regulations/) to identify the agency's rulemaking that focuses on the enforcement of the FECA and related campaign finance requirements associated with federal elections. Please identify the additional FEC enforcement policies, practices, and procedures used to supplement the regulations listed on the agency's web site (www.fec.gov/legal-resources/regulations/) for each fiscal year—2002 through 2017.

Compliance and Enforcement Data

26. We reviewed the FEC Enforcement Profile information listed on the FEC's website (dated September 30, 2005). Is there any updated information published on the Substantive Disposition of Issues processed by FEC enforcement components for each fiscal year—2006 through 2017? Please provide updated data/information regarding substantive disposition of issues.
27. Please identify the average time frames for enforcement and compliance resolution.
- a. How many days, on average, for the resolution of a Matter Under Review (MUR), Alternative Dispute Resolution, and Administrative Fines case(s)?
- b. How many days, on average, for an audit to be completed?

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- c. How many days, on average, for a committee report to be reviewed and referred by the RAD for enforcement?

Additional Tools Needed—Investigation and Enforcement

- 28. To what extent, if any, does FEC identify the risks and/or vulnerabilities in the campaign finance framework associated with federal elections?
 - a. Does FEC have some activities designed to identify the risk/vulnerability of campaign finance framework? (2) If so, what are those activities?
- 29. What additional tools (i.e., legislation/statutes, financial resources) does the FEC need to enhance the agency's investigations and enforcement of the FECA and related campaign finance requirements associated with federal elections?

**GAO's Review of Campaign Finance
Engagement Code 102707
Federal Election Commission (FEC)
Request for Information/Data #2 - April 10, 2019**

Campaign Finance Enforcement

1. Please explain how the Matters under Review (MUR) are classified in the instances when the four affirmative votes are not provided by the FEC Commissioners at any stage of the Office of General Counsel's (OGC) enforcement process—which includes: (1) Reason to Believe, (2) Probable Cause to Believe, (3) Conciliation, and (4) Civil Suit.
2. To what extent, if any, has the FEC Commissioners' deadlock/split votes impacted/affected the FEC's efforts to enforce campaign finance laws and regulations? Please provide some specific examples (e.g., impacted/affected MUR, advisory opinion, rulemaking), if applicable.
3. Please explain how a MUR is generated based on information ascertained by the FEC in the normal course of carrying out its supervisory responsibilities (*Title 52, Voting and Elections § 30109*)?
 - a. How does this process differ from an internal referral by the Reports Analysis Division (RAD) or Audit Division?
 - b. Please provide us with a copy of the FEC's Directive 6 "*Handling of Internally Generated Matters*", April 21, 1978—or the most recent version of Directive 6.
4. What types of campaign finance violations are typically processed by the Alternative Dispute Resolution Office (ADRO)?
5. In response to GAO's Information Request, the FEC stated that *the Commission is currently considering an update of the Enforcement Priority System that is intended to enable the Enforcement Division to focus its resources on higher priority matters*. Please explain the action(s) the FEC has taken to update and implement the Enforcement Priority System.
6. What is the statute of limitations for pursuing a civil campaign finance violation?
7. When deciding an MUR, it is our understanding that among other actions, the FEC may (1) find no reason to believe a violation has occurred; (2) find reason to believe a violation has occurred, but take no further action; (3) dismiss the matter as part of prosecutorial discretion; (4) conciliate the matter with civil penalties; or (5) close the file.
 - a. Please explain the differences between (2) find reason to believe a violation has occurred, but take no further action and (3) dismiss the matter as part of prosecutorial discretion.
 - b. Under what circumstances would the FEC find reason to believe a violation has occurred, but take no further action?
 - c. Under what circumstances would the FEC dismiss the matter as part of prosecutorial discretion?
 - d. Under what circumstances, would the FEC close the file?

**GAO's Review of Campaign Finance
Engagement Code 102707
Federal Election Commission (FEC)
Request for Information/Data #2 - April 10, 2019**

OGC Enforcement Manual, Dated 2013

8. Please explain why the FEC Commissioners did not approve the OGC Enforcement Manual dated 2013?
9. To what extent, if any, have the FEC and FEC Commissioners taken actions (since 2013) to approve/formalize an enforcement manual?
10. In what ways, if any, has not formalizing the OGC Enforcement Manual (dated 2013) impacted and/or affected the FEC's efforts to enforce campaign finance laws/regulations?

FEC and Department of Justice (DOJ) Coordination/Collaboration

FEC and DOJ Memorandum of Understanding (MOU) dated 1977

11. Please explain why the FEC Commissioners did not approve the proposed MOU between FEC and DOJ (dated 2012), which was recommended for approval by OGC?
12. To what extent, if any, has the FEC taken action(s) to update the MOU with DOJ since 2012?
13. To what extent, if any, did the proposed FEC and DOJ coordination/collaboration agreements in the MOU proposed in 2012 differ/vary from the MOU approved in 1977? Please provide us with a copy of the MOU proposed in 2012.
14. To what extent, if any, has not updating the MOU since 1977 impacted/affected the two agencies' (FEC and DOJ) efforts to coordinate/collaborate in their campaign finance enforcement activities? What steps, if any, has the FEC taken to mitigate any challenges to coordination/collaboration that have arisen?
15. To what extent, if any, do the FEC and DOJ use the 1977 MOU in the agencies' efforts to coordinate/collaborate in their campaign finance enforcement activities?
16. Besides the MOU (dated 1977), what additional coordination/collaboration guidance do the FEC and DOJ utilize in their efforts to enforce campaign finance laws/regulations?

Referrals

17. Please explain the FEC's process for making referrals to DOJ regarding the enforcement of campaign finance laws/regulations. Please provide us with a copy of the applicable guidance used in this process.

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Federal Election Commission (FEC)
Request for Information/Data #2 - April 10, 2019**

Information Sharing

18. To what extent, if any, does the FEC have guidance related to sharing information with DOJ in the enforcement of campaign finance laws and regulations—including the sharing of enforcement file information? Please provide us with a copy of the available guidance.
 - a. Please explain whether the 2013 memorandum from then-General Counsel Herman, placed on the June 27, 2013 public meeting, captures the FEC's current perspective on the value of information sharing with DOJ?
 - b. The 2013 memorandum from then-General Counsel Herman references 2012 OGC Guidance to Enforcement Division staff on protocols for responding to DOJ requests for FEC enforcement-related information and records. Are these referenced protocols current? If so, please provide us with a copy. If not, what guidance, if any, exists?
19. When requests for abatement are granted by the FEC for a set term, what is the typical duration?
20. Under what circumstances would the FEC conduct a civil inquiry parallel to an active criminal investigation involving the same matter?
 - a. How often does this occur, if at all?
21. To what extent, if any, does the FEC have a tracking system to record and maintain information on the actions taken on the cases referred to the DOJ?

Foreign National Prohibition

22. Chairman Walther stated that on September 15, 2016, the Commission directed the General Counsel's Office to prioritize those cases involving allegations of foreign influence, and noted that the most recent list included roughly 15 such matters. In addition to prioritizing these matters, the Chairman requested that the Commission take some steps to provide the public with information on FEC's role in addressing the use of prohibited foreign money in the financing of campaigns.
 - a. To what extent, if any, has the FEC taken steps to ensure that cases involving allegations of foreign influence are prioritized?
 - b. To what extent, if any, has FEC taken steps to provide the public with information on FEC's role in addressing the use of prohibited foreign money in the financing of campaigns?
23. What are potential ways in which foreign funds and other prohibited political campaign contributions could enter U.S. federal elections?
 - a. What enforcement tools, if any, does the FEC use to identify and take enforcement action against such prohibited activities?

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24. To what extent, if any, has the FEC made efforts to identify and prevent foreign donations received by tax-exempt organizations from entering U.S. federal elections, for example, through the organizations' independent expenditures and/or electioneering communications?

Rulemaking

25. What is the status of rulemaking related to:
- a. Revisions to Disclaimer Regulations for Paid Online Communications (Advanced Notice of Proposed Rulemaking (NPRM) in 2011; re-opened in 2016 and 2017).
 - b. Definition of Public Communication (NPRM in 2018).

Disclosure

26. Please describe the FEC's efforts, if any, to update guidance reflecting the U.S. District Court for the District of Columbia's decision in *Citizens for Responsibility and Ethics in Washington (CREW) v. FEC and Crossroads GPS* (June 2018).

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Federal Election Commission (FEC)
Request for Data Clarification #3 - April 10, 2019**

Data Clarification

1. Which office within the Federal Election Commission (FEC) received the external complaints, *sua sponte* submissions, external referrals, and internal referrals provided in Table 1 (FEC Response Batch 1, Pages 1-4, Question 5a-d)?
 - a. Is the information provided in Table 1 the breakdown by source for the Office of General Counsel's (OGC) traditional enforcement?

Table 1: Sources of FEC Enforcement (FEC Response Batch 1, Pages 1-4, Question 5a-d)

Fiscal Year	<i>Sua Sponte</i> Submissions Received	External Complaints Received	External Referrals Received	Internal Referrals Received
2002	3	64	4	24
2003	4	59	2	17
2004	8	144	3	26
2005	4	109	1	68
2006	6	106	6	36
2007	6	90	4	35
2008	23	131	3	37
2009	10	100	5	18
2010	15	155	3	6
2011	14	97	1	13
2012	21	132	0	82
2013	13	81	3	35
2014	15	106	0	21
2015	6	81	1	33
2016	9	149	0	20
2017	6	120	0	31
Total	163	1,724	36	502

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2. Internal Referrals (FEC Response Batch 1, Page 4 – Question 5d)
 - a. Which entities made these referrals (i.e., Reports Analysis Division (RAD), Audit Division)?
 - b. Which entities received these referrals?
 - Were these referrals received by OGC for traditional enforcement, or were the referrals received by other FEC offices, and if so, how many referrals to each of these other offices?
3. How many matters are established based on information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities for fiscal years 2002 through 2017 (Title 52, Voting and Elections § 30109)?
4. RAD Referrals – Table 2 (FEC Response Batch 1, Pages 8-9 – Question 12b-d)

Table 2 – RAD Referrals (FEC Response Batch 1, Pages 8-9 – Question 12b-d)

Referrals made by the Reports Analysis Division (RAD)						
Fiscal Year	To OGC	To Alternative Dispute Resolution Office (ADRO)	To Administrative Fine Program (AFP)	Total Referrals Forwarded	Election Cycle	To Audit Division
2002	13	0	0	13	2001-2002	49
2003	5	3	8	16	2003-2004	37
2004	17	10	0	27	2005-2006	34
2005	56	9	15	80	2007-2008	31
2006	31	8	0	39	2009-2010	27
2007	28	22	8	58	2011-2012	19
2008	16	39	2	57	2013-2014	11
2009	10	31	15	56	2015-2016	31
2010	5	19	2	26		
2011	6	29	18	53		
2012	77	17	3	97		
2013	20	28	13	61		
2014	19	31	4	54		
2015	20	26	24	70		
2016	16	16	4	36		
2017	23	18	20	61		
Total tabulated by GAO	362	306	136	804		239
Total provided by FEC	284	215	84	583		243

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- a. GAO added the number of referrals made by RAD to OGC, ADRO, and AFP, and overall, provided by the FEC in Table 2 and came to different total numbers of referrals in each column made for the time period than that provided by the FEC. Please explain.
- b. GAO added the number of referrals made by RAD to Audit provided by the FEC in Table 2 and came to a different total number of referrals made for the time period than that provided by the FEC. Please explain.

5. ADRO – Table 3 (FEC Response Batch 1, Pages 13-15 – Question 21a)

Table 3 – ADRO (FEC Response Batch 1, Pages 13-15 – Question 21a)

Alternative Dispute Resolution Office (ADRO)				
Fiscal Year	Matters			FEC Enforcement Statistics https://transition.fec.gov/press/bkgnd/EnforcementStatistics.shtml
	Dismissal	Settlement	Total	Total Cases Closed
2002	2	17	19	28
2003	24	36	60	61
2004	19	26	45	43
2005	40	51	91	82
2006	16	50	66	61
2007	27	46	73	71
2008	4	9	13	11
2009	6	74	80	80
2010	4	41	45	45
2011	5	19	24	25
2012	2	38	40	41
2013	7	23	30	33
2014	5	64	69	72
2015	5	40	45	49
2016	6	26	32	38
2017	3	15	18	21
Total	175	575	750	761

- a. Please clarify the discrepancy in total number of ADRO cases provided by the FEC in Table 3 in its response to GAO's information request and that published on the FEC's website.
- b. Why were there so few cases closed by the ADRO in 2008?
- c. What does "dismissal" mean?

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6. Administrative Fine Program – Table 4 (FEC Response Batch 1, Page 18 – Question 27a)

Table 4 – AFP (FEC Response Batch 1, Page 18 – Question 27a)

Administrative Fine Program (AFP)						
Fiscal Year	Cases					FEC Enforcement Statistics https://transition.fec.gov/press/bkgnd/EnforcementStatistics.shtml
	Non-challenged (RAD)	Average Days	Challenged Cases (OAR)	Average Days	Total	Total AF Cases Closed
2002	39	115	83	305	122	122
2003	317	89	86	214	403	403
2004	65	58	73	323	138	138
2005	189	68	35	336	224	224
2006	55	66	36	458	91	91
2007	211	67	63	344	274	274
2008	3	127	25	431	28	28
2009	266	65	71	212	337	337
2010	38	54	9	169	47	47
2011	276	108	68	146	344	333
2012	35	66	2	307	37	48
2013	186	75	31	113	217	217
2014	55	88	5	130	60	60
2015	159	126	32	145	191	191
2016	33	129	11	186	44	44
2017	168	120	32	149	200	200
Total tabulated by GAO	2095	89	662	248	2757	2757
Total provided by FEC	2095	87	662	258	n/a	

- a. What does "non-challenged cases (RAD)" mean?
- b. What does "challenged cases (OAR)" mean?
- c. Please clarify the discrepancy in total number of AFP cases per year provided by the FEC in Table 4 in its response to GAO's information request and those published on the FEC's website, for fiscal years 2011 and 2012.

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7. OGC – Table 5 (FEC Response Batch 2, Page 4 – Question 9)

Table 5 – MURs (FEC Response Batch 2, Page 4 – Question 9)

Matters Under Review (MUR)				
Fiscal Year	Total Matters Received	Matters Ongoing at Outset	Total Matters Closed	FEC ENFORCEMENT STATISTICS https://transition.fec.gov/press/bkgnd/EnforcementStatistics.shtml
				Total Matters Closed
2002	95	178	106	91
2003	85	167	130	86
2004	181	122	124	72
2005	183	179	170	80
2006	160	192	171	126
2007	136	181	208	165
2008	194	109	87	71
2009	135	216	239	228
2010	179	112	146	135
2011	126	145	155	145
2012	235	116	86	77
2013	133	265	151	134
2014	142	247	174	132
2015	121	215	107	88
2016	182	229	164	148
2017	157	247	161	151
Total	2444	2920	2379	1929

- a. Please clarify the discrepancy in the number of total matters closed provided by the FEC in Table 5 in its response and the number of total matters closed published on the FEC's website.

8. Foreign Nationals (FEC Response Batch 1, Page 5 – Question 9a)

- a. What does "close the file" mean?
- b. Are the numbers presented for the total matters closed involving foreign national allegations a subset of the total number of matters closed provided in FEC Response Batch 2, Page 4 – Question 9 (Overall Number of FEC Matters/Cases (Ongoing and Closed))?
- c. What does "RTB, no further action" entail?
- d. Why would an allegation involving foreign nationals be dismissed due to prosecutorial discretion?

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- e. FEC notes that a number of the matters in the table provided for Response Batch 1, page 5, question 9 (involving foreign national allegations) are related, as highlighted in the footnotes of the chart provided. Please describe under what circumstances matters involving foreign national allegations would be related.
9. What do "other filers" refer to in FEC Response Batch 1, Page 7 – Question 11?
 - a. Would "other filers" include those corporations and labor organizations making independent expenditures and electioneering communications?
10. What do "other documents reviewed" refer to in FEC Response Batch 1, Page 8 – Question 12?
11. GAO tabulated the total filings reviewed as 1,137,014 for fiscal years 2002 through 2017, but FEC provided 826,100 as the total filings reviewed for fiscal years 2002 through 2017 in its response, Batch 1, Page 8 – Question 12. The total for column 1 (reports reviewed) and column 2 (other documents reviewed) in the information FEC provided appears to be accurate, but the total (total filings reviewed) does not appear to be the total of reports reviewed and other documents reviewed. Please clarify this discrepancy.

New Data Request (4/10/19)

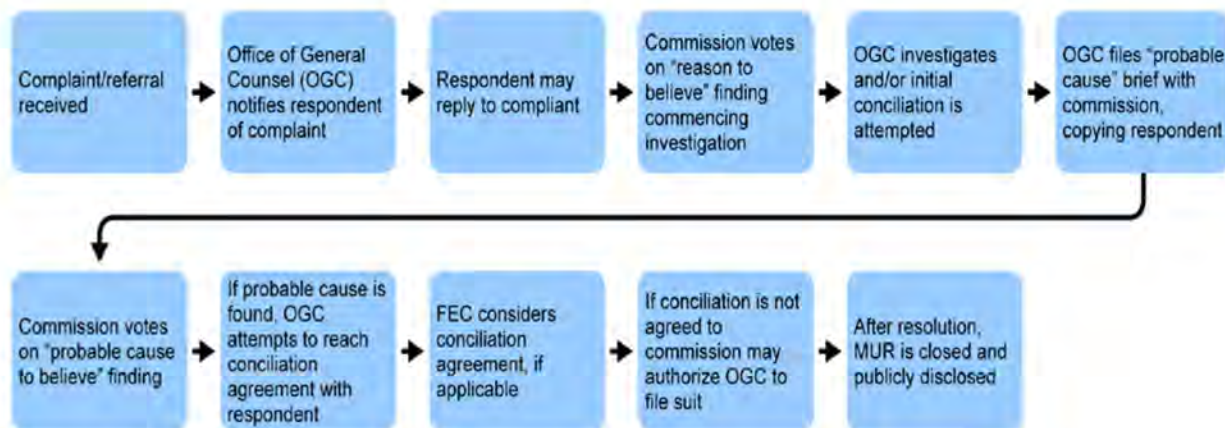
1. Please provide us with the number of closed MUR cases (in the table 5 above) by disposition for each fiscal year—2002 through 2017.
2. Please provide us with the number of closed MUR cases (in the table 5 above) by type of campaign finance violation/issue for each fiscal year—2002 through 2017.
3. For each fiscal year (row) in the table 5 above, please provide us with the number of MURs that were closed because the FEC Commissioners did not reach a consensus (four affirmative votes). Please provide the MUR numbers and MUR subject of the cases that were closed because a consensus was not reached (four affirmative votes).

**GAO's Review of Campaign Finance
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Federal Election Commission (FEC)
Request for Data Clarification #4 – May 04, 2019**

Data Clarification

1. Please confirm the accuracy of the information/process identified in figure 1—Major Steps Required for Cases Routed through FEC's Matter Under Review (MUR) Process. Modify/change as needed.

Figure 1: Major Steps Required for Cases Routed through FEC's Matter Under Review (MUR) Process^a



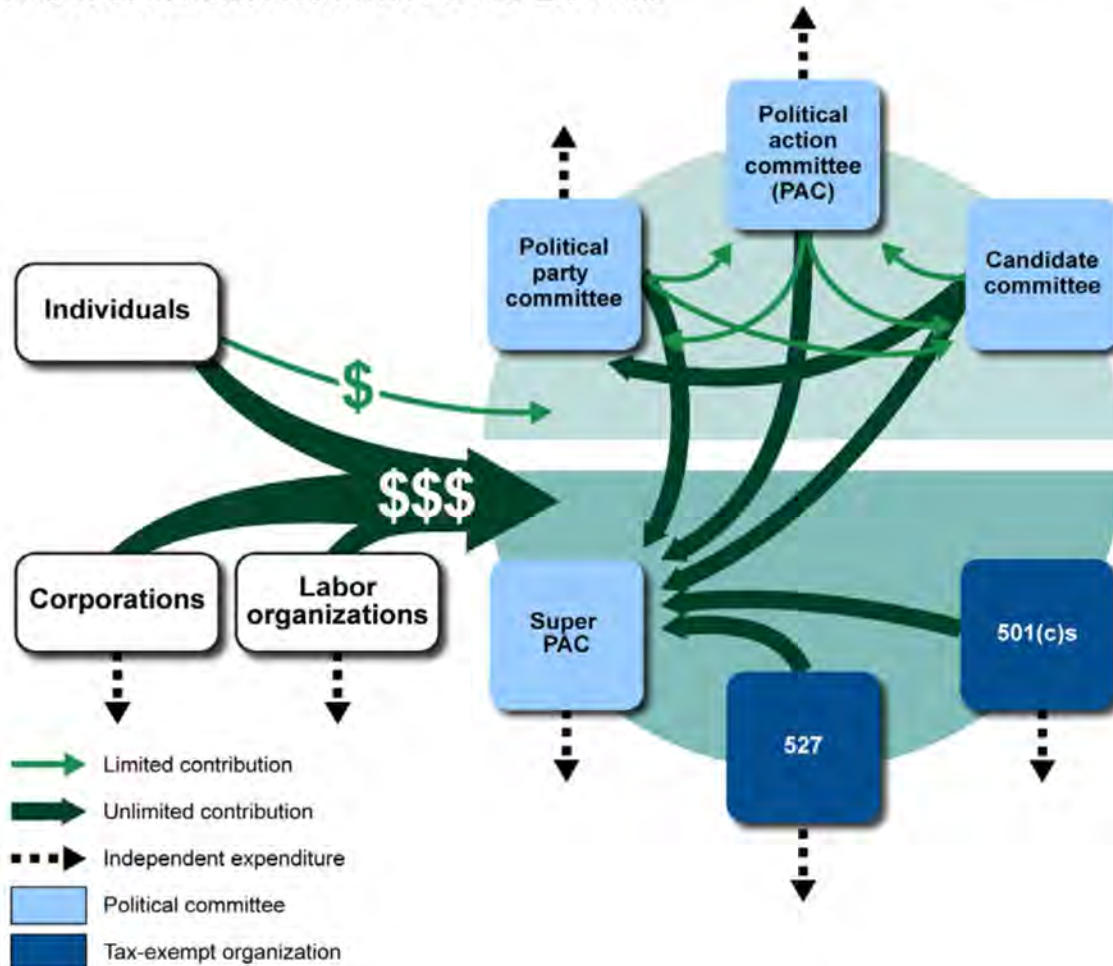
Source: Goes here | GAO-xx-xxx

^aThe figure excludes optional steps, such as hearings or presentation of legal questions to the FEC Commission.

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Request for Data Clarification #4 – May 04, 2019

2. Please confirm the accuracy of the information/process identified in figure 2—Overview of Selected Entities Campaign Finance Contribution and Expenditure Activities In Connection With Federal Elections. Modify/change as needed.

Figure 2: Overview of Selected Entities Campaign Finance Contribution and Expenditure Activities In Connection With Federal Elections



Source: Goes here. | GAO-xx-xxx

GAO Review of Campaign Finance (102707)
Discussion Topics for the Federal Election Commission (FEC)
FEC Commissioners
July 10, 2019

The U.S. Government Accountability Office (GAO) is an independent, non-partisan, federal agency that conducts research and analysis for the U.S. Congress. The Ranking Member of the Senate Committee on Rules and Administration requested that GAO review issues related to the enforcement of campaign finance laws and regulations in connection with federal elections. Specifically, this review provides information on three areas related to campaign finance: (1) overview of the campaign finance legal framework in federal elections; (2) federal agencies' roles and responsibilities, including challenges faced, if any, in enforcement efforts; and (3) the perspectives of selected organizations and literature on key aspects of the federal campaign finance framework, including the enforcement of campaign finance laws and regulations.¹

GAO is meeting with the FEC Commissioners to obtain their perspectives on key aspects of the federal campaign finance framework, including the enforcement of campaign finance laws and regulations, as FEC is the primary agency charged with administering and enforcing campaign finance laws. We have also obtained views from other entities, including federal agencies and research and advocacy organizations, as well as scholarly publications.

Discussion Topics:

1. Overview of any factors (e.g., legal and regulatory, technological, etc.) that have influenced the campaign finance framework since the passage of the Bipartisan Campaign Reform Act (BCRA) in 2002.
2. Perspectives on FEC's efforts to ensure that regulated entities and organizations comply with campaign finance laws and regulations in connection with federal elections, including any benefits or challenges.
3. Perspectives on the FEC's enforcement guidance, including any plans to update any current guidance documents.
4. Perspectives on federal agencies' administration and enforcement of campaign finance and related laws and regulations in connection with federal elections, including any benefits and challenges in interacting with the Department of Justice (DOJ) and Internal Revenue Service, among other agencies.
5. Perspectives on coordination between the FEC and DOJ in enforcement of campaign laws and regulations based on a Memorandum of Understanding (MOU) last updated in 1977.
6. Risks and emerging issues, if any, that do or could affect FEC's enforcement and oversight efforts.

¹For the purposes of this review, the "framework" includes the laws; regulations; and agency roles, policies, and procedures related to overseeing contribution limits, expenditures, disclosure requirements, and prohibitions, including those for foreign entities, in connection with federal elections.

GAO Review of Campaign Finance (102707)
Discussion Topics for the Federal Election Commission (FEC)
FEC Commissioners
July 10, 2019

7. Additional tools (i.e., statutory changes, policies/guidance, resources), if any, that could help facilitate or enhance FEC's enforcement efforts to ensure entities and organizations comply with campaign finance laws and regulations related to contributions, expenditures, disclosure, and prohibitions—in connection with federal elections.

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FEC Enforcement Guidance

5. *Please provide information on the following sources for FEC enforcement actions.*
- a. *How many complaints were received for each fiscal year—2002 through 2017?*

Fiscal Year	External Complaints Received
2002	64
2003	59
2004	144
2005	109
2006	106
2007	90
2008	131
2009	100
2010	155
2011	97
2012	132
2013	81
2014	106
2015	81
2016	148
2017	120

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- b. How many sua sponte submissions were received for each fiscal year—
2002 through 2017?*

Fiscal Year	<i>Sua Sponte</i> Submissions Received
2002	3
2003	4
2004	8
2005	4
2006	6
2007	6
2008	23
2009	10
2010	15
2011	14
2012	21
2013	13
2014	14
2015	6
2016	9
2017	6

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c. How many external referrals were received (identify the referring agency) for each fiscal year—2002 through 2017?

Fiscal Year	Number of External Referrals	Referring Entity
2002	4	2 - Comptroller of the Currency, 1 - Hawaii Campaign Spending Commission & 1 - Florida Elections Commission
2003	2	1 - Comptroller of the Currency & 1 - Arkansas Contractors Licensing Board
2004	3	1 - Comptroller of the Currency & 2 - U.S. Department of Justice
2005	1	U.S. Department of Justice
2006	6	4 - U.S. Department of Justice, 1 - National Aeronautics and Space Administration & 1 - Minnesota Campaign Finance and Public Disclosure Board
2007	4	1 - U.S. Department of Justice, 1 - Comptroller of the Currency, 1 - California Attorney General & 1 - Maumee Police Dept.
2008	3	2 - Comptroller of the Currency & 1 - Office of Thrift Supervision
2009	5	4 - U.S. Department of Justice & 1 - Office of Thrift Supervision
2010	3	2 - U.S. Department of Justice & 1 - Comptroller of the Currency
2011	1	1 - U.S. Senate Ethics Committee
2012	0	
2013	3	1 - U.S. Department of Justice, 1 - Office of Congressional Ethics & 1 - Sarasota County Sherriff
2014	0	
2015	1	1 - Comptroller of the Currency
2016	0	
2017	0	

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d. How many internal referrals were received for each fiscal year—2002 through 2017?

Fiscal Year	Internal Referrals Received
2002	24
2003	17
2004	26
2005	68
2006	36
2007	35
2008	37
2009	18
2010	6
2011	13
2012	82
2013	35
2014	21
2015	32
2016	20
2017	31

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FEC Investigations

9.a. For each fiscal year—2002 through 2017, how many of FEC’s closed investigations involved foreign nationals—including the associated disposition (i.e., dismissed, referred to DOJ).

Fiscal Year	Total Matters Closed Involving Foreign National Allegations ¹	No Reason to Believe	Dismissed, prosecutorial discretion	Close the file	RTB, no further action	Pre-probable cause conciliation	Probable cause conciliation
2002	5						5 ²
2003	3				3 ³		
2004	1					1	
2005	1	1					
2006	1	1					
2007	2	1			1		
2008	0						
2009	8	6 ⁴				2	
2010	1					1	
2011	5	4 ⁵				1	
2012	0						
2013	7 ⁶	7 ⁷	1				
2014	1		1				
2015	2		1	1			
2016	7 ⁸	5	2	1		1	
2017	8	4	3	1			

¹ The disposition reflects the outcome of the foreign national allegation. Matters may involve other allegations, which may have resulted in a different disposition.

² These five matters were related.

³ Two of these matters were related.

⁴ Three of these matters were related.

⁵ Two of these matters were related.

⁶ In one matter, the Commission found no reason to believe as to some allegations and dismissed pursuant to its prosecutorial discretion other allegations. Therefore, the number of matters reflected in the disposition categories is greater than the total number of matters.

⁷ Six of these matters were related.

⁸ In two related matters, the commission found no reason to believe as to some respondents and dismissed pursuant to its prosecutorial discretion with regards to other respondents. Therefore, the number of matters reflected in the disposition categories is greater than the total number of matters.

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9.b. How many matters/cases were enforced through civil litigation for each fiscal year—2002 through 2017?

Fiscal Year	Number of Matters in which Suit was Filed
2002	2
2003	2
2004	2
2005	2
2006	1
2007	1
2008	1
2009	1
2010	0
2011	1
2012	1
2013	0
2014	0
2015	2
2016	1
2017	1

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Reports and Analysis Division (RAD)

11. How many committees registered with the FEC for each fiscal year—2002 through 2017?

Fiscal Year	Political Committees	Other Filers
2002	8,531	165
2003	7,163	137
2004	8,702	215
2005	7,441	173
2006	8,801	204
2007	7,691	163
2008	9,299	316
2009	8,285	207
2010	10,460	293
2011	9,538	960
2012	12,308	1,044
2013	11,479	1,201
2014	13,366	1,248
2015	11,673	1,737
2016	15,479	1,850
2017	13,541	1,976
2002 – 2017	163,757	11,889

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12. How many committee reports were reviewed by the RAD for each fiscal year—2002 through 2017?

Fiscal Year	Reports Reviewed	Other Documents Reviewed	Total Filings Reviewed
2002	49,746	5,459	55,205
2003	54,646	2,271	56,917
2004	56,646	5,250	61,896
2005	58,979	5,470	64,449
2006	53,929	9,796	63,725
2007	65,143	12,426	77,569
2008	52,127	11,509	63,636
2009	66,680	11,635	78,315
2010	53,254	11,459	64,713
2011	70,842	11,005	81,847
2012	56,641	13,997	70,638
2013	75,136	12,054	87,190
2014	57,854	10,428	68,282
2015	70,673	12,034	82,707
2016	56,158	15,925	72,083
2017	74,820	13,022	87,842
2002 - 2017	973,274	163,740	826,100

a. How many RAD referrals were made to the Audit Division for each fiscal year—2002 through 2017?

Election Cycle	Audit referrals*
2001-2002	49
2003-2004	37
2005-2006	34
2007-2008	31
2009-2010	27
2011-2012	19
2013-2014	11
2015-2016	31
Total	243

* Note - audit referrals are based on and made at the end of each election cycle.

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- b. How many RAD referrals were made to OGC for each fiscal year—2002 through 2017?*
- c. How many RAD referrals were made to the Alternative Dispute Resolution Program for each fiscal year—2002 through 2017?*
- d. How many RAD referrals were made to the Administrative Fine Programs for each fiscal year—2002 through 2017?*

Fiscal Year	OGC	ADRO	AFP	Total Referrals Forwarded
2002	13	0	0	13
2003	5	3	8	16
2004	17	10	0	27
2005	56	9	15	80
2006	31	8	0	39
2007	28	22	8	58
2008	16	39	2	57
2009	10	31	15	56
2010	5	19	2	26
2011	6	29	18	53
2012	77	17	3	97
2013	20	28	13	61
2014	19	31	4	54
2015	20	26	24	70
2016	16	16	4	36
2017	23	18	20	61
Total	284	215	84	583

- 13. We have reviewed the RAD's Review and Referral Procedures (2017 - 2018 election cycles). Has this document been revised and/or updated? If so, please provide us with a copy of the updated documents/guidance—including a copy any additional guidance the RAD follows when reviewing reports and referring committees for enforcement.*

The RAD Review and Referral Procedures are revised after each two-year election cycle. The 2017-2018 RAD Review and Referral Procedures posted on the FEC website are the most current. After every election cycle, RAD makes recommendations for revisions, with input from other divisions within the agency, and circulates the recommendations for Commission approval. Upon receiving four affirmative votes from the Commission, RAD commences the review of reports for the new election cycle using the Commission approved procedures.

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Audit Division

17. How many audits were completed and forwarded to the Commission for approval by the Audit Division for each fiscal year—2002 through 2017?

Fiscal Year	Audits Completed
2002	24
2003	31
2004	32
2005	22
2006	18
2007	25
2008 ⁹	31
2009	33
2010	11
2011	25
2012	19
2013	13
2014	14
2015	14
2016	9
2017	8

⁹ The Commission lacked a quorum for six months of 2008. During that time, audit reports circulated for Commission approval were considered completed, which might have resulted in some audits counting as completed more than once during FY 2008 and FY 2009.

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- a. How many Audit Division referrals were made to the OGC for each fiscal year— 2002 through 2017?*

Fiscal Year	Referral to OGC
2002	9
2003	12
2004	13
2005	12
2006	5
2007	9
2008	17
2009	6
2010	1
2011	6
2012	5
2013	6
2014	1
2015	9
2016	2
2017	6

- b. How many Audit Division referrals were made to the Alternative Dispute Resolution Office for each fiscal year—2002 through 2017?*

Fiscal Year	Referral to ADRO
2002	0
2003	2
2004	6
2005	5
2006	3
2007	1
2008	0
2009	2
2010	1
2011	6
2012	4
2013	2
2014	3
2015	2
2016	1
2017	1

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- c. *How many Audit Division referrals were made to the Administrative Fine Programs for each fiscal year—2002 through 2017?*

Fiscal Year	Referral to AFP
2002	0
2003	0
2004	0
2005	0
2006	0
2007	2
2008	0
2009	1
2010	0
2011	0
2012	1
2013	4
2014	0
2015	0
2016	0
2017	0

Alternative Dispute Resolution Office

21. *Please describe the process (including the criteria used) the Commissioners use to determine whether cases are processed under the Alternative Dispute Resolution (ADR) program.*

The ADR Office (ADRO) receives matters from the Reports Analysis Division (RAD), the Audit Division (Audit), the Office of General Counsel (OGC), and the Commissioners directly. RAD refers matters to ADRO based upon thresholds established within the applicable RAD Review and Referral Procedures, which is approved by the Commission each election cycle before reports are reviewed. Audit referrals occur after approval of the Final Audit Report of the Commission if there are findings that breach Materiality Thresholds. The Audit Program and Materiality Thresholds are approved by the Commission prior to conducting audits for each election cycle. OGC transfers matters to the ADRO based upon Commission-approved criteria set forth within the Enforcement Priority System (EPS). Additionally, the Commission may, with the affirmative vote of four Commissioners, transfer any matter to the ADRO for processing.

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a. Please identify the number, types, and average resolution time frames for ADR cases for each fiscal year—2002 through 2017.

Fiscal Year	Resolution	Matters	Total Days	Average Days
2002				
	Dismissal	2	506	253
	Settlement	17	4,386	258
	TOTAL	19	4892	257
2003				
	Dismissal	24	2691	112
	Settlement	36	7463	207
	TOTAL	60	10154	169
2004				
	Dismissal	19	915	51
	Settlement	26	4101	158
	TOTAL	45	5016	111
2005				
	Dismissal	40	4497	112
	Settlement	51	8207	160
	TOTAL	91	12704	140
2006				
	Dismissal	16	1401	88
	Settlement	50	8408	168
	TOTAL	66	9809	149

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Fiscal Year	Resolution	Matters	Total Days	Average Days
2007				
	Dismissal	27	2348	87
	Settlement	46	9871	215
	TOTAL	73	12219	167
2008				
	Dismissal	4	442	111
	Settlement	9	1388	154
	TOTAL	13	1830	141
2009				
	Dismissal	6	1426	238
	Settlement	74	20664	279
	TOTAL	80	22090	276
2010				
	Dismissal	4	229	57
	Settlement	41	6900	168
	TOTAL	45	7129	158
2011				
	Dismissal	5	122	24
	Settlement	19	2310	122
	TOTAL	24	2432	101
2012				
	Dismissal	2	85	43
	Settlement	38	6318	166
	TOTAL	40	6403	160

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Fiscal Year	Resolution	Matters	Total Days	Average Days
2013				
	Dismissal	7	520	74
	Settlement	23	4284	186
	TOTAL	30	4804	160
2014				
	Dismissal	5	417	83
	Settlement	64	10031	157
	TOTAL	69	10448	151
2015				
	Dismissal	5	595	119
	Settlement	40	6270	157
	TOTAL	45	6865	153
2016				
	Dismissal	6	548	91
	Settlement	26	4245	163
	TOTAL	32	4793	150
2017				
	Dismissal	3	213	71
	Settlement	15	2857	190
	TOTAL	18	3070	170

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Promoting Voluntary Compliance

22. *We have reviewed the Guidebooks for Congressional Candidates and Committees (June 2014), Political Party Committees (August 2013), Nonconnected Committees (May 2008), and Corporations and Labor Organizations (January 2018). Are these the latest version(s) of the respective guidebooks? If not, please provide us with a copy of the latest guidebooks.*

The referenced Campaign Guides are the most current Commission-approved publications available for each type of committee.

a. Are there any additional applicable guidebooks that we have not identified and/or mentioned? If so, please provide us with a copy of the document(s).

The Campaign Guides are supplemented by additional written material posted on our Help for candidates and committees web pages (<https://www.fec.gov/help-candidates-and-committees/>), FEC Record news pages (https://www.fec.gov/updates/?update_type=fec-record) and in our weekly tips for treasurers (https://www.fec.gov/updates/?update_type=tips-for-treasurers).

23. *Please describe any efforts and initiatives, in addition to the published guidebooks, the FEC has conducted to prevent violations and promote compliance among entities engaged in campaign activity.*

The FEC offers an extensive educational outreach program that includes regional conferences and live webinars for all types of committees (<https://transition.fec.gov/info/outreach.shtml>). Sample materials from one of our recent regional conferences are available at https://transition.fec.gov/info/conference_materials/conferencematerials.shtml. The Commission also has its own YouTube channel that features instructional videos on a variety of campaign finance topics, and includes playlists designed specifically for candidates, parties and PACs, as well as for individual citizens (<https://www.youtube.com/FECTube>). Additionally, the agency staffs a toll-free information line (800-424-9530), responds to email inquiries regarding the law (info@fec.gov) and offers website visitors the option to receive automatic email updates on topics of their choice (https://public.govdelivery.com/accounts/USFEC/subscriber/new?qsp=CODE_RED). Finally, as part of ADR and conciliation agreements, the Commission often seeks to prevent repeat violations by requiring respondents to attend an FEC conference or webinar or to participate in a one-on-one training session designed to address the committee's specific needs.

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24. Please describe how the FEC provides information and guidance (i.e., contribution and expenditure limits, and disclosure requirements) on campaign finance laws to the public/committees? Please provide us with a copy of the applicable information and guidance.

In addition to the resources described above in response to questions 22 and 23, the Commission provides quick access to the contribution limits and disclosure requirements directly from FEC.gov home page (see below). The limits and reporting deadlines are available at <https://www.fec.gov/help-candidates-and-committees/candidate-taking-receipts/contribution-limits/> and <https://www.fec.gov/help-candidates-and-committees/dates-and-deadlines/>, respectively. The agency also posts reporting periods and associated filing deadlines on its online calendar (<https://www.fec.gov/calendar/>) and emails reporting reminders to committees shortly before their reports are due (e.g., https://transition.fec.gov/pages/report_notices/2018/q3.shtml).

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Next filing deadline: **August 30** | NH Pre-Primary Report Due

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Next public comment deadline: **September 4** | ADR 2018-11 Comments Due

All meetings All filing deadlines All outreach All legal events

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Including making contributions, volunteering, internet activities and filing complaints
Start learning

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Learn about how much contributors can give to different types of committees
File your report

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Compliance and Enforcement Data

27. Please identify the average time frames for enforcement and compliance resolution.

a. How many days, on average, for the resolution of a Matter Under Review (MUR), Alternative Dispute Resolution, and Administrative Fines case(s)?

The requested information about MURs will be provided in a later submission.

For ADR cases, the requested information was provided in response to question 21.a.

The following chart presents the requested information for the Administrative Fine Program.

Year	Non-Challenged Cases(RAD)			Challenged Cases(OAR)		
	Cases	Total Days	Average Days	Cases	Total Days	Average Days
FY2002	39	4,495	115	83	25,323	305
FY2003	317	28,247	89	86	18,375	214
FY2004	65	3,794	58	73	23,572	323
FY2005	189	12,822	68	35	11,762	336
FY2006	55	3,640	66	36	16,474	458
FY2007	211	14,166	67	63	21,668	344
FY2008	3	382	127	25	10,764	431
FY2009	266	17,290	65	71	15,057	212
FY2010	38	2,053	54	9	1,519	169
FY2011	276	29,918	108	68	9,946	146
FY2012	35	2,301	66	2	614	307
FY2013	186	13,948	75	31	3,492	113
FY2014	55	4,828	88	5	648	130
FY2015	159	19,979	126	32	4,634	145
FY2016	33	4,265	129	11	2,046	186
FY2017	168	20,102	120	32	4,753	149
FY02-FY17	2,095	182,230	87	662	170,647	258

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We have three revisions to the responses provided on September 10, 2018, to questions 5.a., b. and d.: in FY 2016, 149 external complaints were filed; in FY 2014, 15 *sua sponte* submissions were received; and in FY 2015, 33 internal referrals were received.

6. *To what extent, if any, has the FEC established performance measures and indicators to identify the effectiveness and efficiency of the agency's efforts related to the enforcement of FECA and related campaign finance requirements associated with federal elections? If applicable, please identify the performance measures and indicators used and provide us with a copy of the agency's performance reports related to its enforcement efforts for each fiscal year—2002 through 2017.*

The FEC has established performance measures and indicators related to the effectiveness and efficiency of its enforcement and compliance programs. For each of the fiscal years in the question, the agency's performance reports are stated below; the sections concerning enforcement and compliance are identified; and a link to the document is provided.

FEC Performance Reports for each fiscal year, 2002-2017

FY 2017

Annual Performance Report, see section 3: https://www.fec.gov/resources/cms-content/documents/FEC_FY_2019_Congressional_Budget_Justification.pdf

Agency Financial Report, see section 1B: <https://www.fec.gov/resources/cms-content/documents/FY2017.FEC.AgencyFinancialReportAFR.pdf>

FY 2016

Annual Performance Report, see section 3: https://www.fec.gov/resources/cms-content/documents/FEC_FY_2018_Congressional_Budget_Justification.pdf

Agency Financial Report, see section 1B: https://www.fec.gov/resources/about-fec/reports/budget/fy2016/FY2016_AFR.pdf

FY 2015

Annual Performance Report, see section 3: https://www.fec.gov/resources/about-fec/reports/budget/fy2017/fy_2017_Congressional_budget.pdf

Agency Financial Report, see section 1B: https://www.fec.gov/resources/about-fec/reports/budget/fy2015/FY2015_AFR.pdf

Summary of Performance and Financial Information: <https://www.fec.gov/resources/about-fec/reports/budget/fy2015/FY2015-SummaryOfPerformanceAndFinancialInformation.pdf>

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FY 2014

Annual Performance Report, see section 3: https://www.fec.gov/resources/about-fec/reports/budget/fy2016/fy_2016_Congressional_budget.pdf

Agency Financial Report, see section 1B: https://www.fec.gov/resources/about-fec/reports/budget/fy2014/FY2014_AFR.pdf

Summary of Performance and Financial Information: <https://www.fec.gov/resources/about-fec/reports/budget/fy2014/FY2014-SummaryOfPerformanceAndFinancialInformation.pdf>

FY 2013

Performance and Accountability Report, see section II: https://www.fec.gov/resources/about-fec/reports/budget/fy2013/FEC_Final_PAR_2013_121613.pdf

FY 2012

Performance and Accountability Report, see section II: https://www.fec.gov/resources/about-fec/reports/budget/fy2012/FEC_PAR_FY_2012-Final.pdf

FY 2011

Performance and Accountability Report, see section II: https://www.fec.gov/resources/about-fec/reports/budget/fy2011/par_2011.pdf

FY 2010

Performance and Accountability Report, see section II: https://www.fec.gov/resources/about-fec/reports/budget/fy2010/par_2010.pdf

FY 2009

Performance and Accountability Report, see section II: https://www.fec.gov/resources/about-fec/reports/budget/fy2009/par_2009.pdf

FY 2008

Performance and Accountability Report, see section II: https://www.fec.gov/resources/about-fec/reports/budget/fy2008/par_2008.pdf

FY 2007

Performance and Accountability Report, see section II: https://www.fec.gov/resources/about-fec/reports/budget/fy2007/par_2007.pdf

FY 2006

Performance and Accountability Report, see section II: https://www.fec.gov/resources/about-fec/reports/budget/fy2006/par_2006.pdf

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FY 2005

Performance and Accountability Report, see section II: https://www.fec.gov/resources/about-fec/reports/budget/fy2005/par_2005.pdf

FY 2004

Performance and Accountability Report, see section II: https://www.fec.gov/resources/about-fec/reports/budget/fy2004/par_2004.pdf

FY 2003

Congressional Budget Justification: <https://classic.fec.gov/pages/budget/fy2005/brj2005/brj.pdf>

FY 2002

Congressional Budget Justification, see Program II: Compliance (core program):
<https://classic.fec.gov/pages/budget/fy2004/brj2004/brj2004a.pdf>

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9. *For each fiscal year—2002 through 2017, please provide us with the overall number of FEC matters/cases (ongoing and closed) related to the enforcement of FECA and related campaign finance requirements associated with federal elections.*

Overall Number of FEC Matters/Cases (Ongoing and Closed)

Fiscal Year	Matters Ongoing at Outset	Total Matters Received ¹	Total Matters Closed ²
2002	178	95	106
2003	167	85	130
2004	122	181	124
2005	179	183	170
2006	192	160	171
2007	181	136	208
2008	109	194	87
2009	216	135	239
2010	112	179	146
2011	145	126	155
2012	116	235	86
2013	265	133	151
2014	247	142	174
2015	215	121	107
2016	229	182	164
2017	247	157	161

¹ Total Matters Received includes: External Complaints, *Sua Sponte* Submissions, External Referrals (e.g., Department of Justice Referrals), Internal Referrals (i.e., Referrals from the Reports Analysis and Audit Divisions and the Alternative Dispute Resolution Office), and Other Internal Matters Created by the Commission (e.g., Directive 6 Commission Initiated Matters, and Matters created by administrative action severing a single complaint into multiple matters).

² Total Matters Closed includes matters formally closed by the Commission and transfers to other agency divisions (e.g., Alternative Dispute Resolution Office).

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27. Please identify the average time frames for enforcement and compliance resolution.

a. How many days, on average, for the resolution of a Matter Under Review (MUR)?

Stated below are the average number of days for the resolution of MURs that closed during each of the fiscal years.

Fiscal Year	Average Days
2002	730
2003	787
2004	767
2005	516
2006	500
2007	428
2008	508
2009	418
2010	340
2011	304
2012	426
2013	486
2014	521
2015	625
2016	666
2017	461

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FEC Enforcement Guidance

2. *Based on the FEC's perspective, what additional FEC guidance and resources are needed, if any, to improve the agency's oversight and enforcement of contribution and expenditure limits, disclosure requirements, and prohibitions, including those for foreign entities, in connection with federal elections?*

For the response to this question, please see the response to question 29, below, as discussed by Frederick Lyles, GAO, and Duane Pugh, FEC.

- 3.a. *Where do you see risks and vulnerabilities, if any, in the current campaign finance framework for overseeing the enforcement of contribution and expenditure limits, disclosure requirements, and prohibitions, including those for foreign entities, in connection with federal elections?*

Please see the response to question 28, below.

FEC Investigations

- 10.b. *What additional FEC guidance and/or resources are needed to improve the agency's investigation of alleged violations of the FECA and related campaign finance requirements associated with federal elections—including investigations involving foreign funds?*

For the response to this question, please see the response to question 29, below, as discussed by Frederick Lyles, GAO, and Duane Pugh, FEC.

Reports and Analysis Division (RAD)

15. *What are the FEC's priorities regarding the review of filings by the RAD? Please identify the process/factors/variables considered when establishing the agency's review priorities. Please identify the FEC's priorities for RAD reviews for each fiscal year—2002 through 2017.*

RAD's review priorities are outlined in the Commission-approved *RAD Review and Referral Procedures*. The thresholds that determine the review priorities vary based on the committee type (Authorized or Unauthorized). For Authorized Committees (or candidates' principal campaign committees), the review priority is based on financial activity, and in some cases, election results, with committees involved in close elections receiving a higher priority. For Unauthorized Committees, the review priority is based on financial activity. The review priorities have remained consistent throughout the requested timeframe.

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16. To what extent, if any, has the RAD experienced challenges in reviewing committee reports to ensure that the public record provides a full and accurate representation of reported campaign finance activity?

RAD has experienced a number of challenges in reviewing committee reports to ensure the accuracy of the information on the public record, including:

- Paper Filing: Some filers submit campaign finance reports on paper. In order to transfer the data from the paper reports to the FEC disclosure database, the Commission has implemented the Paper Automation process, which uses software to read the data and convert it into an electronic format. Due to the varying quality of paper reports and format issues, a small percentage of data is not transferred correctly, creating review challenges. Prior to September 21, 2018, committees supporting Senate campaigns filed campaign finance reports on paper and with the Secretary of Senate. Effective September 21, 2018, FECA was amended so that all campaign finance filings must be filed with the FEC, which vastly reduces the amount of paper filings that the Commission will need to transfer to electronic form after that date.
- Frivolous and Fictitious Filers: Frivolous and fictitious filings skew the disclosure data on the FEC website and hinder the RAD review process. During the past two election cycles, RAD has observed a rise in the number of fictitious and frivolous filings. To address this challenge, the Commission approved new provisions in the *RAD Review and Referral Procedures* to verify apparently frivolous and fictitious filers and to remove unverified filings from the FEC's disclosure database.
- Electronic Filing System: Currently, many filers submit reports with missing fields, mathematical discrepancies, and other omissions caused by inexperience with the FEC forms. To help address this, the Commission is in the process of revamping its electronic filing system. The new system will include automated detection to prevent missing fields and limit mathematical discrepancies, which should help filers submit complete and accurate reports.

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Audit Division

18. *We have reviewed The Audit Process – What to Expect (May 2012) and Audit Division Materiality Thresholds (2015 and 2016 cycles). Have these documents been revised and/or updated? If so, please provide us with a copy of the updated documents/guidance—including a copy any additional guidance the Audit Division follows when conducting audits and referring committees for enforcement.*

The Audit Process—What to Expect was published in May 2012, and no significant changes to the audit process have occurred since that time to warrant an update. *The Audit Division Materiality Thresholds* were updated for the 2016 election cycle and have not been revised or updated since then.

a. Are there any additional applicable audit guides and/or manuals that we have not identified/mentioned? If so, please provide us with a copy of the document(s).

The Commission has also issued a *Guideline for Presentation in Good Order* (2008) for presidential campaigns seeking public funding, and it is available here:

<https://www.fec.gov/introduction-campaign-finance/understanding-ways-support-federal-candidates/presidential-elections/public-funding-presidential-elections/#primary-matching-funds>.

Although not in manual format, some of the Commission's Directives address the work of the Audit Division. They include:

- Directive 23—Conventions and General Election Certification Procedures;
- Directive 24—Internal Procedures Related to Public Financing of Presidential Primary Candidates;
- Directive 68—Enforcement Procedures; and
- Directive 70—Processing Audit Reports.

Each of these Directives are available on the FEC website at:

<https://www.fec.gov/about/leadership-and-structure/>.

In addition, the Commission has issued a procedural rule for audit hearings, and a policy statement on a program for Commission consideration of legal questions raised by committees undergoing an audit, among others. The Procedures for Audit Hearings can be found here:

https://transition.fec.gov/law/cfr/ej_compilation/2009/notice_2009-12.pdf, and the Program for Requesting Consideration of Legal Questions by the Commission here:
<https://transition.fec.gov/law/legalconsideration.shtml#policy>.

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- 19. What are the FEC's priorities regarding the audits conducted by the Audit Division? Please identify the process/factors/variables considered when establishing the agency's review priorities. Please identify the FEC's priorities for audits conducted by the Audit Division for each fiscal year—2002 through 2017.*

The priorities for the Commission's audit work are established by FECA, the Presidential Election Campaign Fund Act, the Commission-approved *RAD Review and Referral Procedures*, and an assessment of the capacity of the Audit Division.

FECA authorizes the Commission to conduct audits of any political committee required to file campaign finance reports under FECA. Prior to conducting such an audit, the Commission must conduct an internal review of committee reports "to determine if the reports filed by a particular committee meet the threshold requirement for substantial compliance" with FECA. 52 U.S.C. § 30111(b). Under the *RAD Review and Referral Procedures*, RAD conducts the internal review and decides whether to refer committees to the Audit Division. Before initiating an audit, the Audit Division considers its workload and resources and must seek Commission approval to initiate audits.

The Presidential Election Campaign Fund Act and the Presidential Primary Matching Payment Account Act require the Commission to conduct an audit of all committees that receive public funding under the Presidential public funding programs. See 26 U.S.C. §§ 9007(a), 9008(g) and 9038(a). FECA also specifies that all audits of committees that receive public funding must be given priority over any audits of other political committees. 52 U.S.C. § 30111(b). Since the 2008 cycle, fewer candidates have participated in the public funding program, and thus the Commission has conducted fewer Title 26 audits. In 2014, legislation was enacted that eliminated public funding for national nominating conventions. As such, audits of these committees have not occurred since that time.

- 20. To what extent, if any, has FEC experienced challenges with conducting audits of political committees? If applicable, please identify the challenges faced and how they are being addressed by the FEC's Audit Division—including how the challenges impact the FEC's enforcement of the FECA and related campaign finance requirements associated with federal elections.*

A review of committee records is a core component of an audit and, at times, records are not readily available and may require extensive efforts to acquire. Additionally, political committees often have high attrition rates of paid personnel or are staffed by volunteers which can lead to challenges in communication and obtaining committee records. The Audit Division has experienced these challenges and has procedures in place to seek approval from the Commission for subpoena action if records are not provided.

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Compliance and Enforcement Data

27b. *How many days, on average, for an audit to be completed?*

Stated below are the average number of days for completion of the audits that were approved during each of the fiscal years.

Fiscal Year	Average Days
2002	342
2003	366
2004	230
2005	379
2006	330
2007	428
2008	414
2009	508
2010	353
2011	700
2012	534
2013	848
2014	579
2015	815
2016	694
2017	876

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c. How many days, on average, for a committee report to be reviewed by RAD and referred to OGC Enforcement?

The time it takes to review a report varies based on the number of pages and the type of filer. Once a report is reviewed, a Request for Additional Information (RAI) may be sent and a committee is given 35 days to provide a response. If there is no response to an RAI or the response does not resolve an issue that meets an OGC referral threshold per the RAD Procedures, a referral to OGC may be made. The average time for an OGC referral from the RAI date is noted below by fiscal year.

Fiscal Year	Average Days
2002	198
2003	408
2004	79
2005	150
2006	180
2007	138
2008	189
2009	260
2010	82
2011	127
2012	177
2013	149
2014	338
2015	271
2016	236
2017	167

Additional Tools Needed—Investigation and Enforcement

28. To what extent, if any, does FEC identify the risks and/or vulnerabilities in the campaign finance framework associated with federal elections?

a. Does FEC have some activities designed to identify the risk/vulnerability of campaign finance framework? (2) If so, what are those activities?

FECA does not require the Commission to assess risks and vulnerabilities in the campaign finance framework associated with federal elections. The closest activity of the Commission to issues like those raised by question 28 is the legislative recommendation process, which is described below in response to question 29.

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29. What additional tools (i.e., legislation/statutes, financial resources) does the FEC need to enhance the agency's investigations and enforcement of the FECA and related campaign finance requirements associated with federal elections?

When the Commission identifies legislative changes that would enhance its enforcement of FECA or its carrying out any of its other responsibilities, it issues a legislative recommendation. FECA provides authority for the Commission to make “any recommendations for any legislative or other action the Commission considers appropriate” and to transmit the recommendations to the President and Congress. See 52 U.S.C. § 30111(a)(9). Since 1976, the Commission has issued many legislative recommendations, all of which are available on the FEC website at <http://www.fec.gov/law/feca/feca.shtml#legrec>, including the most recent Legislative Recommendations that were approved December 14, 2017, <https://www.fec.gov/resources/cms-content/documents/legrec2017.pdf>.

With respect to financial resources, the FEC seeks an appropriation for each fiscal year, and explains in its budget justifications how it will use the requested financial resources to carry out its mission. FECA requires that the Commission concurrently submit any budget requests to Congress anytime it submits a budget request to the Office of Management and Budget. 52 U.S.C. § 30107(d). The Commission’s Congressional Budget Justifications are available on the FEC website here: <https://www.fec.gov/about/reports-about-fec/strategy-budget-and-performance/?category=congressional+submission&=>.

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FEC and DOJ Collaboration

8. *Based on a FEC official's statement provided at the GAO/FEC entrance conference held on July 16, 2018, the signed (in 1977) memorandum of understanding (MOU) which outlines the collaboration (including referrals) between the FEC and Department of Justice (DOJ) in regards to the enforcement of the FECA and related campaign finance requirements associated with federal elections has not been updated.*

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e. Please provide us with the number and types of matters referred by the FEC to DOJ for prosecution for each fiscal year—2002 through 2017.

Fiscal Year	Number of matters referred to U.S. DOJ	Source	Type of violation
2002	3	external complaint	excessive contributions, contributions in the name of another, and reporting violations
		RAD referral	excessive contributions, contributions in the name of another, and reporting violations (related to external complaint above)
		state government referral	fraudulent misrepresentation
2003	0		
2004	1	state government referral	prohibited union contributions
2005	0		
2006	0		
2007	1	external complaint	contributions in the name of another
2008	0		
2009	1	external complaint	fraudulent misrepresentation
2010	0		
2011	0		
2012	0		
2013	0		
2014	0		
2015	0		
2016	0		
2017	0		

Providing Information and Policy Guidance on Campaign Finance Laws

25. We reviewed the FEC's web site (www.fec.gov/legal-resources/regulations/) to identify the agency's rulemaking that focuses on the enforcement of the FECA and related campaign finance requirements associated with federal elections. Please identify the additional FEC enforcement policies, practices, and procedures used to supplement the

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regulations listed on the agency's web site (www.fec.gov/legal-resources/regulations/) for each fiscal year—2002 through 2017.

The Commission has adopted various policies and procedures concerning the enforcement process and those are available on the Commission's website on the "Policy Statements, Interpretive Rules and Other Guidance" webpage at <https://transition.fec.gov/law/policy.shtml>. These policies and procedures include the following:

- Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files (2003);
- Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings (2005);
- Statement of Policy Regarding Treasurers' Best Efforts To Obtain, Maintain, and Submit Information (2007);
- Statement of Policy; Safe Harbor for Misreporting Due to Embezzlement (2007);
- Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process (2007);
- Agency Procedure for Disclosure of Documents and Information in the Enforcement Process (2007);
- Procedural Rules for Probable Cause Hearings (2007);
- Policy Statement Establishing a Pilot Program for Probable Cause Hearings (2007);
- Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record (2009);
- Amendment of Agency Procedures for Probable Cause Hearings (2009);
- Agency Procedure Following the Submission of Probable Cause Briefs by the Office of General Counsel (2011); and
- Disclosure of Certain Documents in Enforcement and Other Matters (2016).

Further, in May 2012, the Commission published the *Guidebook for Complainants and Respondents on the FEC Enforcement Process*, and it reflects many of these new enforcement-related policies adopted by the Commission. This guidebook is also available on the Commission website at https://transition.fec.gov/em/respondent_guide.pdf.

Information regarding additional FEC enforcement policies, practices, and procedures can be found on the Commission's website at https://transition.fec.gov/pdf/Additional_Enforcement_Materials.pdf under item "(1) Enforcement Documents." Included in these documents are practices and procedures that were compiled as internal guidance to Office of General Counsel staff. Many of these documents pre-date the time frame of your request, but the collection includes documents dated through 2011. These materials are not a definitive or binding set of procedures, and were neither reviewed nor adopted by the Commission. Rather they are historical enforcement procedures and practices. The collection, initiated in 1986 and compiled periodically, includes documents that might serve as reminders or guidance for Enforcement Division staff on a variety of substantive and procedural aspects of their

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work. The types of documents in this collection include emails, internal memoranda, summaries of Commission sessions and staff meetings, and Commission-approved procedures and directives. These materials reference past, non-binding practices and informal guidance within the agency. Enforcement staff no longer refer to these materials, and enforcement procedures were no longer collected in this manner after 2011. As discussed in the response to Question 1, the Office of General Counsel uses the June 26, 2013 Enforcement Manual as its primary guide on questions of process and procedure.

Compliance and Enforcement Data

26. We reviewed the FEC Enforcement Profile information listed on the FEC's website (dated September 30, 2005). Is there any updated information published on the Substantive Disposition of Issues processed by FEC enforcement components for each fiscal year—2006 through 2017? Please provide updated data/information regarding substantive disposition of issues.

No updated information on the Substantive Disposition of Issues processed by OGC's Enforcement Division for fiscal years 2006 through 2017 has been published, nor have we compiled the information internally since publication of the document GAO cited above. The feature in our case management system that allowed for the automatic generation of this information in 2005 has since been discontinued. As a result, generating this data now would require more significant resources to be spent in a manual collection and compilation of the data, and it is not regularly done.

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FEC Enforcement Guidance

4. *Please provide us with a copy of the data dictionary for the FEC's Enforcement Query System (EQS).*

Included in this response are documents that may contain proprietary information that is legally protected from disclosure. *See, e.g., Procurement Integrity Act*, 41 U.S.C. §§ 2101 *et seq.* and *Trade Secrets Act*, 18 U.S.C. § 1905.

Pursuant to 31 U.S.C. § 716(e), 4 C.F.R. §§ 81.5 and 81.6 and GAO's protocols, the FEC respectfully requests that GAO not release any of the documents provided in response to this request outside of GAO, and that access be limited to GAO staff who have an official "need to know." In the event that GAO determines a need to provide documents outside of GAO, we ask that GAO provide the FEC a reasonable opportunity to review the documents and to provide redacted copies, if necessary.

The data dictionary for the FEC's Enforcement Query System (EQS) is in the zip file entitled FEC EQS Data Dictionary.zip, which will be emailed with this response.

- a. *Please provide us with a copy of the data dictionary for the FEC's Case Management System (CMS) and its document management system known as Enterprise Content Manager (ECM).*

Included in this response are documents that may contain proprietary information that is legally protected from disclosure. *See, e.g., Procurement Integrity Act*, 41 U.S.C. §§ 2101 *et seq.* and *Trade Secrets Act*, 18 U.S.C. § 1905.

Pursuant to 31 U.S.C. § 716(e), 4 C.F.R. §§ 81.5 and 81.6 and GAO's protocols, the FEC respectfully requests that GAO not release any of the documents provided in response to this request outside of GAO, and that access be limited to GAO staff who have an official "need to know." In the event that GAO determines a need to provide documents outside of GAO, we ask that GAO provide the FEC a reasonable opportunity to review the documents and to provide redacted copies, if necessary.

The data dictionary for the FEC's Case Management System (CMS) is in the PDF entitled: FEC CMS Data Dictionary for GAO.pdf, which will be emailed with this response.

The data dictionary for the FEC's Enterprise Content Manager (ECM) is in the PDF entitled: FEC Content Management Data Dictionary for GAO.pdf, which will be emailed with this response.

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7. *Please provide us with a copy of the data dictionary for the Enforcement Priority System (EPS). What are the criteria used by the FEC's Office of Complaints Examinations and Legal Administration (CELA) in its rating of incoming cases under EPS?*

The criteria used by CELA in rating incoming cases are listed on its Enforcement Priority System ("EPS") rating sheet. The rating sheet therefore includes law enforcement sensitive information that the Commission keeps privileged and confidential. A copy of the EPS rating sheet is attached with the most sensitive information redacted in a manner consistent with other documents provided to GAO, as discussed by Frederick Lyles, GAO, and Duane Pugh, FEC. In light of the law enforcement privileged information on the EPS rating sheet, the FEC respectfully requests that GAO not release any of the documents provided in response to this request outside of GAO, and that access be limited to GAO staff who have an official "need to know." In the event that GAO determines a need to provide documents outside of GAO, we ask that GAO provide the FEC a reasonable opportunity to review the documents and to provide further redacted copies, if necessary.

This request also seeks the data dictionary for EPS. The EPS Data Dictionary includes the same law enforcement sensitive information that is on the EPS rating sheet and is privileged and confidential. A redacted copy of the EPS Data Dictionary has been prepared to preserve the confidentiality of the most sensitive information. In addition to law enforcement privilege issues, the EPS Data Dictionary may contain proprietary information that is legally protected from disclosure. *See, e.g., Procurement Integrity Act*, 41 U.S.C. §§ 2101 *et seq.* and *Trade Secrets Act*, 18 U.S.C. § 1905.

Pursuant to 31 U.S.C. §716(e), 4 C.F.R. §§ 81.5 and 81.6 and GAO's protocols, the FEC respectfully requests that GAO not release any of the documents provided in response to this request outside of GAO, and that access be limited to GAO staff who have an official "need to know." In the event that GAO determines a need to provide documents outside of GAO, we ask that GAO provide the FEC a reasonable opportunity to review the documents and to provide further redacted copies, if necessary.

The data dictionary for the FEC's Enforcement Priority System is in the PDF entitled: FEC EPS Data Dictionary for GAO.pdf, which will be emailed with this response.

The EPS Case Rating Sheet is attached.

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ENFORCEMENT PRIORITIZATION SYSTEM

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FEC Enforcement Guidance

1. *We obtained a copy of the online version of the Federal Election Commission's (FEC), Office of the General Counsel (OGC) Enforcement Manual, dated June 2013. Is this the latest version of the enforcement manual? If not, please provide us with a copy of the latest version.*

The June 26, 2013, version is the latest version of the OGC Enforcement Manual.¹

- a. *Please provide us with a copy of FEC's updates and revisions to the OGC Enforcement Manual, dated June 2013, if applicable.*

There have been no updates or revisions to the *Enforcement Manual* following the release of the June 26, 2013 version.

- b. *Please identify the process and FEC components responsible for updating the OGC Enforcement Manual—including a description of the components' roles and responsibilities.*

The Enforcement Division of the Office of General Counsel, operating under the supervision of the General Counsel, is responsible for updating the *Enforcement Manual*, which is used as a guide by the Enforcement Division in conducting its daily activities. As noted above, the *Enforcement Manual* has not been updated since June 26, 2013. Other than technical developments in our administrative processes and structure, the procedures set forth therein remain largely unchanged, as they are based on processes and procedures set forth in the Federal Election Campaign Act, Commission regulations or Commission-approved Policy Statements and Directives, or standard practices developed over time that have remained consistent. As such, there has not been a need to update the *Enforcement Manual* since June 26, 2013.

¹ Three versions of the Enforcement Manual were dated June 2013. One written by OGC, a second by then-Vice Chair McGahn and Commissioners Hunter and Petersen, and a third written by OGC, incorporating some changes from the McGahn draft and other changes. On December 11, 2014, the Commission voted 3 to 3, defeating a motion to approve the McGahn draft. Under these circumstances, the Office of General Counsel advises that it continues to use the June 26, 2013, version of the Enforcement Manual, which is the latest version and can be found here: https://www.fec.gov/resources/updates/agendas/2013/mtgdoc_13-21-b.pdf.

For additional background on prior versions of the Enforcement Manual, see *Federal Election Commission: Reviewing Policies, Processes and Procedures: Hearing Before the Subcomm. on Elections of the Comm. on House Admin.*, 2, 50, 59-60, 132-33, 169 & 181 (2011).

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- c. Please identify and explain planned and proposed updates/revisions to the OGC Enforcement Manual, dated 2013, if applicable. What is the current implementation status for each of the identified planned and proposed revisions/updates to the manual?*

As explained in the answer to 1.b. above, due to the lack of significant changes to the Enforcement processes described in the *Enforcement Manual*, there are no proposed updates or revisions to the manual planned at this time. Over time, OGC has identified a small number of technical changes in our process that are not reflected in the manual (e.g., citations to the Federal Election Campaign Act have not been changed Title 2 to Title 52; circulation procedures described in section 1.5.1 do not reflect our current electronic submission process; the organizational chart in Section 1.5.2 does not reflect some limited structural changes that were made in OGC) but these changes are universally known within OGC's Enforcement Division and do not directly impact substantive actions taken in the enforcement process. The Office of General Counsel intends to make these minor changes when more significant changes require an update.

- d. To what extent, if any, does FEC utilize additional guidance/interpretive rules/procedural changes/policy statements to support and/or supplement the OGC Enforcement Manual, dated June 2013? If applicable, please provide us with a copy of the guidance/interpretive rules/procedural changes/policy statements.*

The *Enforcement Manual* was created to distill and record regular practice in OGC. The document was designed to stand on its own with minimal reliance on information that was not otherwise publicly available. The *Enforcement Manual*, however, draws authority from numerous publicly available sources, including Commission-approved Policy Statements and Directives, the *Guidebook for Complainants and Respondents on the FEC Enforcement Process* (May 2012), *FEC Campaign Guides*, and Commission-approved actions in enforcement matters, all of which are available on the Commission's website.

- e. Please provide us with an updated version, if applicable, of FEC's flow chart which outlines the enforcement process—listed in section 1.4, pages 13 and 14 of the OGC Enforcement Manual, dated June 2013.*

We have not updated the flow chart outlining the enforcement process because the process has not changed.

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- f. To what extent, if any, has FEC experienced challenges with implementing the OGC Enforcement Manual, dated June 2013? If applicable, please identify the challenges faced and how they are being addressed by the FEC and its components—including how the challenges impact the FEC's enforcement of the Federal Election Campaign Act (FECA) and related campaign finance requirements associated with federal elections.*

As mentioned above, the *Enforcement Manual* merely describes the Enforcement Division's standard practices, and for the most part, those practices were implemented via Commission regulations or policy statements, not the *Enforcement Manual*. Generally speaking, the Division has not faced challenges implementing those processes reflected in the *Enforcement Manual*. However, at least one direction in the *Manual* (Section 3.4.1.5 on "Clarification of Response" which informs staff that with supervisory approval they can contact respondents to clarify their written responses to complaints) is not currently used because the practice lacks the support of a majority of Commissioners.

- 3. What are the FEC's enforcement priorities regarding the enforcement of the FECA and related campaign finance requirements associated with federal elections? Please identify the process/factors/variables considered when establishing the agency's enforcement priorities. Please identify the FEC's enforcement priorities for each fiscal year—2002 through 2018.*

The Commission's enforcement priorities are embodied in its Enforcement Priority System ("EPS"), which is used to triage the Commission's enforcement caseload. Matters that are deemed higher priority under EPS are assigned to a staff attorney for the preparation of a First General Counsel's Report with recommendations to the Commission for action. These higher-priority cases usually present substantial amounts in potential violation, high legal complexity, apparent knowing and willful activity, or issues that the Commission has previously identified as priorities. Such priorities include, but are not limited to, foreign national activity, fraudulent misrepresentations, and contributions in the names of others. Conversely, matters deemed lower priority under EPS are identified as candidates for prompt dismissal. Such dismissal cases are presented to the Commission *via* short written reports. B7

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The Commission is currently considering an update of the Enforcement Priority System that is intended to enable the Enforcement Division to focus its resources on higher priority matters.

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FEC Investigations

10. What are the FEC's issues and challenge, if any, faced with investigating matters and litigating cases related to the enforcement of FECA and related campaign finance requirements associated with federal elections?

a. What issues and challenge, if any, does the FEC experience in detecting and preventing, and investigating and prosecuting, cases involving foreign funds?

The Commission faces a number of challenges in investigating matters related to the enforcement of FECA and related campaign finance requirements associated with federal elections.

The Commission faces enforcement challenges with respect to several areas where the Commission believes that specific provisions of the FECA do not allow it to adequately protect contributors and committees from potentially fraudulent or otherwise illegal activity. The Commission has specifically identified the following three areas of concern: (1) the potentially fraudulent PAC practice of soliciting contributions with a promise to use the funds in support of certain named candidates but then using the funds primarily to support its ongoing fundraising, (2) fraudulent misrepresentation of campaign authority by individuals who are not candidates, agents of candidates, or employees of a campaign, and (3) the conversion of campaign funds of political committees that are not authorized political committees of candidates. These areas have been the subject of legislative recommendations submitted to Congress by the Commission, including in its most recent submission in 2017, which was adopted by the Commission on December 14, 2017. The 2017 submission, which can be found at <https://www.fec.gov/resources/cms-content/documents/legrec2017.pdf>, includes a full discussion of the Commission's concerns in these three areas at pages 7 through 10. Congressional action on these legislative recommendations would provide the Commission with the additional authority to improve the agency's investigation of alleged violations of the FECA and related campaign finance requirements in these areas.

When enforcing federal campaign finance requirements in court, the Commission confronts the challenges typically associated with ideologically charged issues, sometimes receiving pointed rulings from different ideological poles. The FEC does not face any other atypical challenges when litigating actions related to enforcement.

With regard to the enforcement of matters involving potential foreign national contributions, the Commission recently reported to the House and Senate Appropriations Committees about enforcing the foreign national prohibition. Included in the Commission's Report is a discussion of recent enforcement actions that concerned the foreign national prohibition. A copy of that report is enclosed. Additionally, FEC Vice Chair Ellen L. Weintraub has recently provided her individual views of these issues in a letter to the Appropriations Committees, which is also attached.

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Reports and Analysis Division (RAD)

14. To what extent, if any, has FEC experienced challenges in implementing the RAD's Review and Referral Procedures? If applicable, please identify the challenges faced and how they are being addressed by the RAD—including how the challenges impact the FEC's enforcement of the FECA and related campaign finance requirements associated with federal elections.

RAD has experienced challenges in implementing its *Review and Referral Procedures* that are similar to the challenges described in response to question 10. The revisions to FECA proposed by the Commission in its Legislative Recommendations would also enhance the effectiveness of the RAD review and referral processes.

One challenge to implementing the RAD *Review and Referral Procedures* recently addressed concerns dormant committees. Permissible uses of campaign funds by committees of deceased and inactive candidates are not separately addressed in FECA or in Commission regulations. Relying on more general principals, RAD recently revised its procedures to include provisions for questioning certain uses of campaign funds by dormant committees, and the Commission approved these revisions, which enhance the effectiveness of RAD's reviews in this particular context.

More generally, the Commission has a process in place for RAD to seek informal guidance from OGC when a situation is not addressed in the RAD Procedures. In addition, Commission Directive 69 allows OGC to pose a question concerning a matter of law to the Commission. Furthermore, committees may request consideration of legal issues arising during the Commission's report review and audit processes through the FEC's Program for Requesting the Commission's Consideration of Legal Questions.

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Request for Data Clarification (#3)**

Data Clarification

1. Which office within the Federal Election Commission (FEC) received the external complaints, sua sponte submissions, external referrals, and internal referrals provided in Table 1 (FEC Response Batch 1, Pages 1-4, Question 5a-d)?

FEC Response: The external complaints (5.a.), the sua sponte submissions (5.b.), the external referrals (5.c.) and the internal referrals (5.d.) were received by the Federal Election Commission's Office of General Counsel (OGC) Enforcement Division. Within OGC's Enforcement Division, these documents are subject to an intake process upon receipt, which is handled by OGC Enforcement Division's Complaints Examination and Legal Administration team.

- a. Is the information provided in Table 1 the breakdown by source for the Office of General Counsel's (OGC) traditional enforcement?

Table 1: Sources of FEC Enforcement (FEC Response Batch 1, Pages 1-4, Question 5a-d)

<i>Fiscal Year</i>	<i>Sua Sponte Submissions Received</i>	<i>External Complaints Received</i>	<i>External Referrals Received</i>	<i>Internal Referrals Received</i>
2002	3	64	4	24
2003	4	59	2	17
2004	8	144	3	26
2005	4	109	1	68
2006	6	106	6	36
2007	6	90	4	35
2008	23	131	3	37
2009	10	100	5	18
2010	15	155	3	6
2011	14	97	1	13
2012	21	132	0	82

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<i>2013</i>	<i>13</i>	<i>81</i>	<i>3</i>	<i>35</i>
<i>2014</i>	<i>15</i>	<i>106</i>	<i>0</i>	<i>21</i>
<i>2015</i>	<i>6</i>	<i>81</i>	<i>1</i>	<i>33</i>
<i>2016</i>	<i>9</i>	<i>149</i>	<i>0</i>	<i>20</i>
<i>2017</i>	<i>6</i>	<i>120</i>	<i>0</i>	<i>31</i>
<i>Total</i>	<i>163</i>	<i>1,724</i>	<i>36</i>	<i>502</i>

FEC Response: Yes.

3. *How many matters are established based on information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities for fiscal years 2002 through 2017 (Title 52, Voting and Elections § 30109)?*

FEC Response: FECA refers to the Commission acting “on the basis of information ascertained in the normal course of carrying out its supervisory responsibilities.” See FECA, § 309(a)(2), codified at 52 U.S.C. § 30109(a)(2). All cases subject to an internal referral are based on information ascertained in the normal course of carrying out the Commission’s supervisory responsibilities, except for external complaints received by OGC’s Enforcement Division that are referred to ADRO. The question asks for the number of “matters” that are established on this basis. With respect to cases handled by the Enforcement Division of OGC subject to the enforcement procedures specified by section 309 of FECA, 52 U.S.C. § 30109, the information in the chart above counts those cases.

4. *RAD Referrals – Table 2 (FEC Response Batch 1, Pages 8-9 – Question 12b-d)*

Table 2 – RAD Referrals (FEC Response Batch 1, Pages 8-9 – Question 12b-d)

<i>Referrals made by the Reports Analysis Division (RAD)</i>						
<i>Fiscal Year</i>	<i>To OGC</i>	<i>To Alternative Dispute Resolution Office (ADRO)</i>	<i>To Administrative Fine Program (AFP)</i>	<i>Total Referrals Forwarded</i>	<i>Election Cycle</i>	<i>To Audit Division</i>
<i>2002</i>	<i>13</i>	<i>0</i>	<i>0</i>	<i>13</i>	<i>2001-2002</i>	<i>49</i>

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2003	5	3	8	16	2003-2004	37
2004	17	10	0	27	2005-2006	34
2005	56	9	15	80	2007-2008	31
2006	31	8	0	39	2009-2010	27
2007	28	22	8	58	2011-2012	19
2008	16	39	2	57	2013-2014	11
2009	10	31	15	56	2015-2016	31
2010	5	19	2	26		
2011	6	29	18	53		
2012	77	17	3	97		
2013	20	28	13	61		
2014	19	31	4	54		
2015	20	26	24	70		
2016	16	16	4	36		
2017	23	18	20	61		
Total tabulated by GAO	362	306	136	804		239
Total provided by FEC	284	215	84	583		243

- a. GAO added the number of referrals made by RAD to OGC, ADRO, and AFP, and overall, provided by the FEC in Table 2 and came to different total numbers of referrals in each column made for the time period than that provided by the FEC. Please explain.

FEC Response: The totals provided by the FEC erroneously reflected referrals only through 2013. GAO's calculations for the entire period are correct.

- b. GAO added the number of referrals made by RAD to Audit provided by the FEC in Table 2 and came to a different total number of referrals made for the time period than that provided by the FEC. Please explain.

FEC Response: Due to a summation error, the number of referrals from RAD to the Audit Division was overstated by four. GAO's calculations are correct.

5. b. Why were there so few cases closed by the ADRO in 2008?

FEC Response: The recess appointments of three Commissioners expired at the end of 2007. For the first six months of 2008, the Commission lacked a quorum of Commissioners and could

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not take any action that required the affirmative vote of four Commissioners, which includes closing ADRO cases by accepting a negotiated agreement or otherwise dismissing an ADRO case. Five Commissioners were confirmed by the U.S. Senate on June 24, 2008, and a large backlog of enforcement and compliance cases was acted on by the Commissioners by March 2009.

c. What does "dismissal" mean?

FEC Response: The category of dismissal includes matters in which the Commission approved ADRO's recommendation that a matter be dismissed.

6. Administrative Fine Program – Table 4 (FEC Response Batch 1, Page 18 – Question 27a)

Table 4 – AFP (FEC Response Batch 1, Page 18 – Question 27a)

<i>Administrative Fine Program (AFP)</i>						
<i>Fiscal Year</i>	<i>Cases</i>					<i>FEC Enforcement Statistics</i> https://transition.fec.gov/press/bkgnd/EnforcementStatistics.shtml
	<i>Non-challenged (RAD)</i>	<i>Average Days</i>	<i>Challenged Cases (OAR)</i>	<i>Average Days</i>	<i>Total</i>	<i>Total AF Cases Closed</i>
2002	39	115	83	305	122	122
2003	317	89	86	214	403	403
2004	65	58	73	323	138	138
2005	189	68	35	336	224	224
2006	55	66	36	458	91	91
2007	211	67	63	344	274	274
2008	3	127	25	431	28	28
2009	266	65	71	212	337	337
2010	38	54	9	169	47	47
2011	276	108	68 57	146 132	344 333	333
2012	35	66	2 13	307 232	37 48	48
2013	186	75	31	113	217	217
2014	55	88	5	130	60	60

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<i>2015</i>	<i>159</i>	<i>126</i>	<i>32</i>	<i>145</i>	<i>191</i>	<i>191</i>
<i>2016</i>	<i>33</i>	<i>129</i>	<i>11</i>	<i>186</i>	<i>44</i>	<i>44</i>
<i>2017</i>	<i>168</i>	<i>120</i>	<i>32</i>	<i>149</i>	<i>200</i>	<i>200</i>
<i>Total tabulated by GAO</i>	<i>2095</i>	<i>89</i>	<i>662</i>	<i>248</i>	<i>2757</i>	<i>2757</i>
<i>Total provided by FEC</i>	<i>2095</i>	<i>87</i>	<i>662</i>	<i>258</i>	<i>n/a</i>	

a. What does “non-challenged cases (RAD)” mean?

FEC Response: In an Administrative Fine case, respondents may challenge the Commission’s reason to believe finding. 11 C.F.R. § 111.35. RAD processes the final determination recommendations in cases that were not challenged by the respondents, and these are the cases identified above as “non-challenged (RAD).”

b. What does “challenged cases (OAR)” mean?

FEC Response: The Commission’s Office of Administrative Review (OAR) processes the final determination recommendations in Administrative Fine cases that were challenged by the respondents, and these are identified above as “challenged cases (OAR).”

c. Please clarify the discrepancy in total number of AFP cases per year provided by the FEC in Table 4 in its response to GAO’s information request and those published on the FEC’s website, for fiscal years 2011 and 2012.

FEC Response: The data for fiscal year 2011 incorrectly captured 11 cases that should have been captured in fiscal year 2012. This resulted in fiscal year 2011 totals being overstated by 11 cases and fiscal year 2012 totals being understated by 11 cases. The totals have been corrected in track changes in the chart above and are now consistent with the data published on the FEC website.

8. *b. Are the numbers presented for the total matters closed involving foreign national allegations a subset of the total number of matters closed provided in FEC Response Batch 2, Page 4 – Question 9 (Overall Number of FEC Matters/Cases (Ongoing and Closed))?*

FEC Response: Yes.

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9. *What do “other filers” refer to in FEC Response Batch 1, Page 7 – Question 11?*

FEC Response: “Other filers” include every person, group of persons or organization, other than a political committee, that make certain communications.

a. *Would “other filers” include those corporations and labor organizations making independent expenditures and electioneering communications?*

FEC Response: Yes, corporations and labor organizations that make independent expenditures and electioneering communications are included in the “other filers” category.

10. *What do “other documents reviewed” refer to in FEC Response Batch 1, Page 8 – Question 12?*

FEC Response: “Other documents reviewed” includes any documents other than reports such as FEC Form 99s (miscellaneous electronic submission), miscellaneous paper documents, statements, and designations. .

11. *GAO tabulated the total filings reviewed as 1,137,014 for fiscal years 2002 through 2017, but FEC provided 826,100 as the total filings reviewed for fiscal years 2002 through 2017 in its response, Batch 1, Page 8 – Question 12. The total for column 1 (reports reviewed) and column 2 (other documents reviewed) in the information FEC provided appears to be accurate, but the total (total filings reviewed) does not appear to be the total of reports reviewed and other documents reviewed. Please clarify this discrepancy.*

FEC Response: Due to a summation error, the total filings reviewed number for fiscal years 2002 through 2017 was understated. GAO’s calculations are correct.

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5. *ADRO – Table 3 (FEC Response Batch 1, Pages 13-15 – Question 21a)*

Table 3 – ADRO (FEC Response Batch 1, Pages 13-15 – Question 21a)

Alternative Dispute Resolution Office (ADRO)				
Fiscal Year	Matters			FEC Enforcement Statistics https://transition.fec.gov/press/bkgnd/EnforcementStatistics.shtml
	Dismissal	Settlement	Total	Total Cases Closed
2002	2	17	19	2819
2003	2417	3632	6049	6149
2004	1917	26	4543	43
2005	4030	5150	9180	8280
2006	1612	5048	6660	6160
2007	2725	46	7371	71
2008	42	9	1311	11
2009	6	74	80	80
2010	4	41	45	45
2011	5	19	24	2524
2012	2	38	40	4140
2013	7	23	30	3330
2014	5	64	69	7269
2015	5	40	45	4945
2016	6	26	32	3832
2017	3	15	18	2118
Total	475148	575568	750716	761716

- a. *Please clarify the discrepancy in total number of ADRO cases provided by the FEC in Table 3 in its response to GAO's information request and that published on the FEC's website.*

FEC Response: In light of this discrepancy, ADRO conducted a thorough review of its statistical reports and uncovered two factors that contributed to the differences in the totals. First, a software flaw created a situation in which multiple resolutions appeared per ADR case number, depending on the number of respondents in each matter among other factors. ADRO reviewed each matter in which a duplicate report entry occurred and revised totals to only reflect a single resolution per ADR case number. Second, the discrepancy was related to the inclusion or exclusion of matters that were transferred or returned within the agency. Those matters are considered closed in the ADRO software, but a final resolution has not been reached by the Commission. The statistics provided to GAO did not include returns and transfers. The ADRO will be submitting revised statistics for web publication to exclude returns and transfers from closed cases. All revisions are reflected in track changes in the chart above.

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7. a. *Please clarify the discrepancy in the number of total matters closed provided by the FEC in Table 5 in its response and the number of total matters closed provided by the FEC in Table 5 in its response and the number of total matters closed published on the FEC's website.*

FEC Response: The “total matters closed column” in the table provided by OGC include matters that were transferred by OGC to ADRO and therefore marked as “closed” within OGC’s internal case management system, as noted. (See FEC’s September 14, 2018, Batch 2 Response to GAO Question 9, page 4, note 2.) Table 5 of FEC’s September 14, 2018, Batch 2 Response to GAO Question 9, page 4, dealt only with OGC’s workload. It provided no separate breakout of data on ADR matters. The chart on the website at <https://transition.fec.gov/press/bkgnd/EnforcementStatistics.shtml> is a chart showing agency-wide compliance data. It contains columns about ADR matters, whether or not those matters originate as complaints—in which case their intake is handled by OGC-CELA, they are assigned MUR numbers, and then are transferred to ADRO—or whether they originate as direct referrals to ADRO by the Audit Division or RAD. In the public chart, matters that originate in OGC but are later transferred to ADRO and are resolved by that office are not included in the “Total MUR Cases Closed” column; rather, they are included within the totals for “Total ADR Matters Closed.” This accounts for the discrepancy between the total matters closed as reported to GAO and the “Total MUR Cases Closed” column in the public chart.

8. *Foreign Nationals (FEC Response Batch 1, Page 5 – Question 9a)*

- a. *What does “close the file” mean?*

FEC Response: Close the file means no additional action will be taken in a case. The chart on page 5 of FEC’s September 10, 2018, Batch 1 Response in response to GAO Question 9.a., lists three such cases. In two of these matters, MURs 6678 (Mindgeek S.A.R.L.) (closed in FY 2015), and MUR 6976 (Streets) (closed in FY 2017), the Commission voted to close the files after it was unable to obtain four affirmative votes to take any substantive action in the matters. In the third, MUR 6528 (Grimm), after an investigation the Commission voted to close the file in view of the imminent expiration of the statute of limitations regarding the allegations in the complaint.

- c. *What does “RTB, no further action” entail?*

FEC Response: The chart on page 5 of FEC’s September 10, 2018, Batch 1 Response in response to GAO Question 9.a., lists four matters under “RTB, no further action.” In each of

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these four matters, the Commission specifically voted to take no further action after previously finding reason to believe and initiating an investigation or attempting to conciliate.

--MUR 5295 (Elnitiarta), closed in FY 2003, was the last open fact pattern arising from the Democratic National Committee's acceptance of foreign national contributions in the 1996 election cycle. It had already been severed from the main DNC MUR, MUR 4530, and placed in a new MUR to permit the rest of MUR 4530 to be closed and made public. In early 2003, the Commission voted to take no further action and close the file in MUR 5295 because the principal individual respondent had returned to Indonesia, which is outside the range of the Commission's ability to serve process, and in light of possible U.S. criminal liability that person had no incentive ever to return to the United States; and because it was unclear whether the principal domestic corporate respondent had any remaining assets from which to obtain a civil penalty.

--The foreign national allegation in MURs 4935 and 5057 (Dear), also closed in FY 2003, involved a single apparent foreign national contribution in a very large case involving many more conduit contributions from domestic sources. The Commission voted to take no further action with respect to the contributor after finding reason to believe and attempting conciliation. The public record does not show the reason for the Commission's action with respect to the contributor.

--In MUR 5437 (SEIU Local 250), closed in FY 2007, the Commission found reason to believe and initiated an investigation. The investigation found insufficient evidence to proceed on the foreign national allegation, and the Commission voted to take no further action.

d. Why would an allegation involving foreign nationals be dismissed due to prosecutorial discretion?

FEC Response: The particular eight matters referred to in the chart on page 5 of FEC's September 10, 2018, Batch 1 Response in response to GAO Question 9.a., were dismissed for reasons relating to the limited scope of the activity, the relative importance of the activity related to other matters before the Commission, the weakness of the evidence, or some combination of the above:

--Three matters (MURs 6687 (Obama) (dismissed in FY 2013) and MURs 6962 and 6982 (Hillary for America/Project Veritas) (dismissed in FY 2017)) involved extremely small contributions (\$3 in MUR 6687; the sale of one t-shirt in MURs 6962 and 6982) that were instigated by complainants themselves in attempted "stings" on the recipient committees.

--One matter (MUR 6481 (RTTV) (dismissed in FY 2014)) focused on the content of a program on the RT cable television channel; the evidence indicated that an individual U.S. citizen and a U.S. limited liability company not owned or controlled by any foreign national were entirely responsible for the content of the show, and the Commission therefore determined that the circumstances did not warrant investigation.

--Three matters (MURs 6931 and 6933 (Laffen) (dismissed in FY 2016) and MUR 6944 (Farias) (dismissed in FY 2017)) were dismissed as lower priority matters under the Commission's Enforcement Priority System.

--MUR 7081 (Floridians for a Strong Middle Class) (dismissed in FY 2017) was dismissed because, in the words of the Commission's Factual and Legal Analysis in the matter,

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the “evidence did not provide a sufficient evidentiary basis to establish that the contributions at issue were foreign national contributions.”

In preparing this answer, we discovered an error in the chart’s listing of foreign national cases that were dismissed due to prosecutorial discretion. The number of such dismissals in FY 2015 should have been zero instead of one, and the number of such dismissals in FY 2017 should have been four, instead of three, with the “Total Matters Closed” adjusted accordingly.

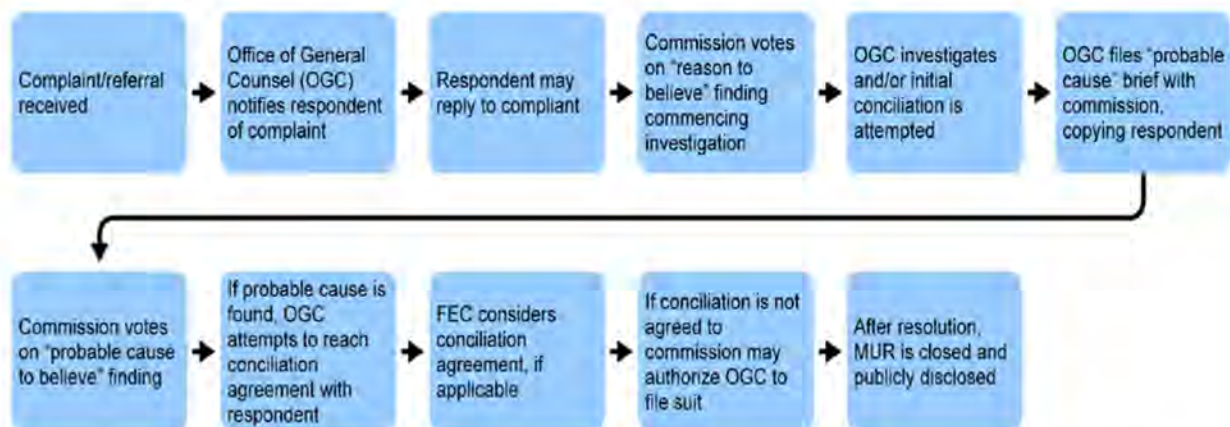
- e. FEC notes that a number of the matters in the table provided for Response Batch 1, page 5, question 9 (involving foreign national allegations) are related, as highlighted in the footnotes of the chart provided. Please describe under what circumstances matters involving foreign national allegations would be related.*

FEC Response: In these particular cases, the footnotes described the matters as “related” because in each instance the FEC received a number of complaints and/or referrals that covered identical, or at least similar and overlapping, activity. Each complaint or referral counted as a separate matter in data about matters handled, but in each instance the multiple matters were handled together for practical purposes as one case.

Data Clarification

- 1. Please confirm the accuracy of the information/process identified in figure 1—Major Steps Required for Cases Routed through FEC’s Matter Under Review (MUR) Process. Modify/change as needed.*

Figure 1: Major Steps Required for Cases Routed through FEC’s Matter Under Review (MUR) Process^a



Source: Goes here | GAO-xx-xxx

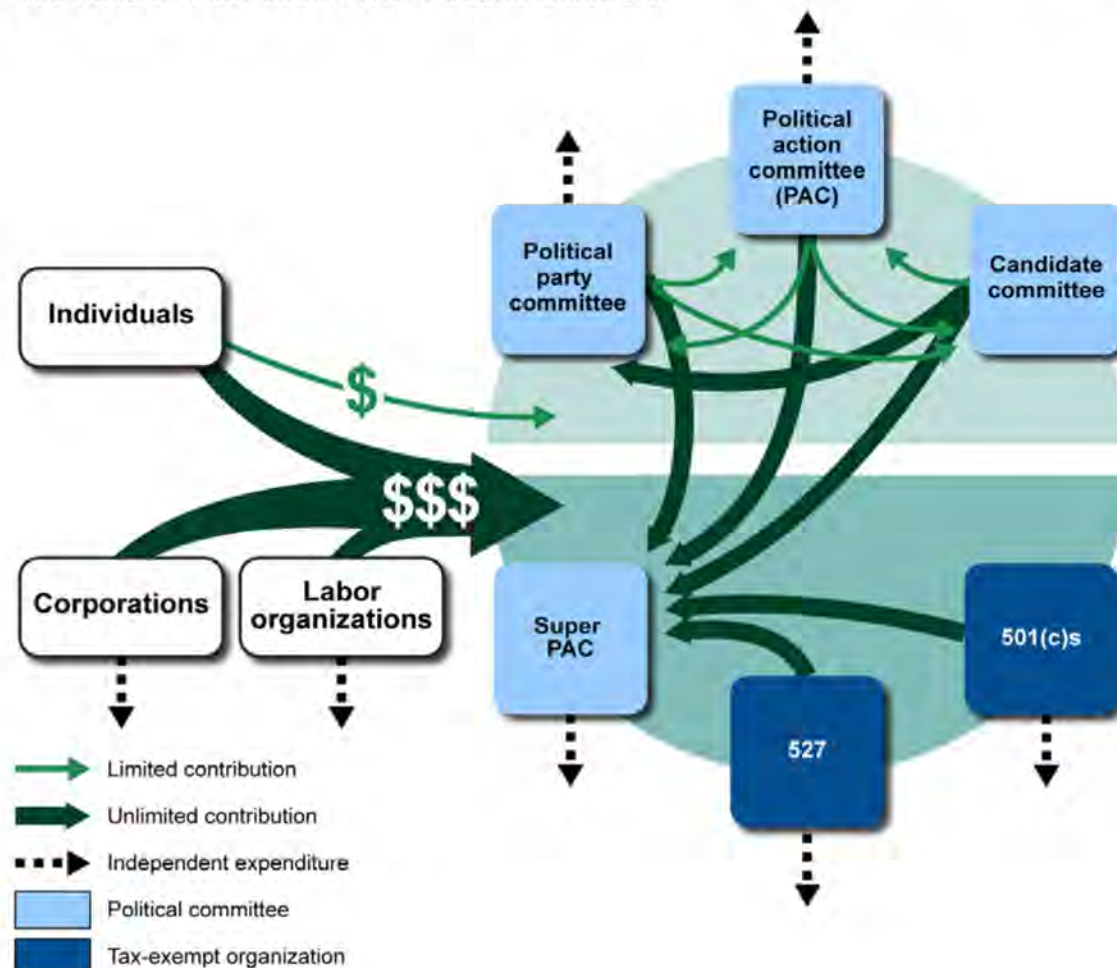
^aThe figure excludes optional steps, such as hearings or presentation of legal questions to the FEC Commission.

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FEC Response: Probable cause responsive briefs from respondents and probable cause hearings are major steps for respondents and the Commission that should be added to the flow chart. Presentation of legal questions to the Commission is not part of the MUR process.

2. Please confirm the accuracy of the information/process identified in figure 2—Overview of Selected Entities Campaign Finance Contribution and Expenditure Activities In Connection With Federal Elections. Modify/change as needed.

Figure 2: Overview of Selected Entities Campaign Finance Contribution and Expenditure Activities In Connection With Federal Elections



Source: Goes here. | GAO-xx-xxx

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FEC Response: Individuals can and do make Independent Expenditures, so the figure should be amended to reflect that fact.

Three arrows showing unlimited contributions cross the divide from three types of political committees to show unlimited contributions to Super PACs. While no legal provision prohibits such contributions, they seem unlikely to occur as the three political committees are limited to raising funds from sources permitted by FECA and in amounts subject to FECA's contribution limits. In contrast, Super PACs are permitted to raise funds in unlimited amounts, including from some of the sources prohibited under FECA.

"501(c)s" should not be understood to include organizations exempt from Federal taxation under 26 U.S.C. § 501(c)(3), because such organizations are prohibited from "political campaign activity."

We note that leadership PACs are not reflected on Figure 2.

GAO might consider clarifying that political committees are also exempt from Federal income tax.

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Request for Information/Data #2
Campaign Finance Enforcement

1. *Please explain how the Matters under Review (MUR) are classified in the instances when the four affirmative votes are not provided by the FEC Commissioners at any stage of the Office of General Counsel's (OGC) enforcement process—which includes: (1) Reason to Believe, (2) Probable Cause to Believe, (3) Conciliation, and (4) Civil Suit.*

FEC Response: FECA requires four affirmative votes for an enforcement action to proceed. See FECA, § 309, codified at 52 U.S.C. § 30109. When a motion to act in an enforcement case receives the support of only three or fewer Commissioners, the subsequent actions in that case can vary.

In some instances, the objection is limited to taking a particular action in the case, or pursuing part of the case, while other actions or parts of the case might have the support of four or more Commissioners. For example, some cases can involve multiple alleged violations by multiple respondents, and four or more Commissioners could support pursuing some or all of the alleged violations against some or all of the respondents, even while only three or fewer Commissioners support pursuing one allegation or one respondent. In such cases, motions are made, votes are recorded, and then the case can proceed with the portions that have the support of four or more Commissioners. For example, a vote could be three to three on whether to find reason to believe a violation occurred with respect to one respondent, while six Commissioners might support a reason to believe finding with respect to other respondents. Such cases proceed through the enforcement process, and at the conclusion, documents are made public, including certifications showing the votes in the case.

In other cases, Commissioners disagree about whether to pursue a case in its entirety. In such situations, once the Commissioners determine that pursuing no part of the case will receive four or more Commissioners' votes, the Commissioners agree to close the file, which ends the case. At the conclusion of such MURs, documents are made public, including certifications showing the votes in the case.

2. *To what extent, if any, has the FEC Commissioners' deadlock/split votes impacted/affected the FEC's efforts to enforce campaign finance laws and regulations? Please provide some specific examples (e.g., impacted/affected MUR, advisory opinion, rulemaking), if applicable.*

FEC Response: The FEC recently responded to a number of questions from the Committee on House Administration. Some of the questions concerned split votes. For the Commission's answers to these questions, see FEC, "Responses to Questions from the Committee on House Administration," 19-23 (May 1, 2019) ("FEC Responses") (responses to questions 25 through 28); available at: https://www.fec.gov/resources/cms-content/documents/FEC_Response_to_House_Admin.pdf. Three of the Commissioners addressed the effects of split votes. For the views of Chair Weintraub, see Attachment A by Chair Ellen L. Weintraub, 4 & 6-7; available at:

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https://www.fec.gov/resources/cms-content/documents/FEC_Response_to_House_Admin_Attachment_A_Weintraub.pdf. For the views of Vice Chairman Petersen and Commissioner Hunter, see Attachment B by Vice Chairman Matthew S. Petersen and Caroline C. Hunter, 1-5; available at: https://www.fec.gov/resources/cms-content/documents/FEC_Response_to_House_Admin_Attachment_B_Petersen_Hunter.pdf; and Response of Vice Chairman Petersen and Commissioner Hunter to Question 46, 1-3; available at: https://www.fec.gov/resources/cms-content/documents/FEC_Response_Petersen_Hunter_Q46.pdf.

For examples of MURs with one or more split votes, see FEC Responses, at 20-23 (responses to questions 27 and 28); and FEC Exhibit to Question 27 Response: List of MURs with One or More Split Votes; available at: https://www.fec.gov/resources/cms-content/documents/FEC_Exhibit_Q27_Some_Split.pdf; and FEC Exhibit to Question 28 Response: List of MURs with Only Split Votes; available at: https://www.fec.gov/resources/cms-content/documents/FEC_Exhibit_Q28_All_Split.pdf.

Advisory opinions and rulemakings are not part of the FEC's enforcement efforts; however, they can be subject to split votes. For examples of advisory opinions with split votes, see FEC Responses, at 38-40 (response to question 39). For examples of rulemakings and related proceedings, see FEC Responses, at 26-37 (responses to questions 33 through 37); split votes are noted in the response to questions 34 and 36, at pages 30, 33 and 35.

3. *Please explain how a MUR is generated based on information ascertained by the FEC in the normal course of carrying out its supervisory responsibilities (Title 52, Voting and Elections § 30109)?*
 - a. *How does this process differ from an internal referral by the Reports Analysis Division (RAD) or Audit Division?*

FEC Response: Matters generated “on the basis of information ascertained in the normal course of carrying out [the Commission’s] supervisory responsibilities,” include MURs generated based on internal referrals, external referrals and *sua sponte* submissions. Internal referrals come from RAD, the Audit Division, and rarely from elsewhere in the agency pursuant to FEC Directive 6. External referrals come from other law enforcement agencies. Essentially, any MUR not generated by an external complaint is generated “on the basis of information ascertained in the normal course of carrying out [the Commission’s] supervisory responsibilities.” Additionally, even in a matter generated by a complaint, the Commission may make findings related to additional respondents not complained of based on information it comes across in the course of the matter; such respondents are added “on the basis of information ascertained in the normal course of carrying out [the Commission’s] supervisory responsibilities.”

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- b. *Please provide us with a copy of the FEC's Directive 6 "Handling of Internally Generated Matters", April 21, 1978—or the most recent version of Directive 6.*

FEC Response: Directive 6, like all of the FEC's directives, is available on the Commission's website. Directive 6 can be found here: https://www.fec.gov/resources/cms-content/documents/directive_06.pdf. Please note it is dated April 21, 1978 and does not reflect current practices.

The Reports Analysis Division ("RAD") of the FEC's Office of Compliance reviews all federal campaign finance reports to track compliance with FECA and to ensure that the public record provides a full and accurate representation of reported campaign finance activity.¹ RAD bases its review of reports on Commission-approved *Review and Referral Procedures* that have categories of review with specific thresholds for determining when an RFAI should be sent to a filer. These procedures are updated and approved by the Commission every two years, with content based on input from both staff and Commissioners.² The *RAD Review and Referral Procedures* provide thresholds for further Commission action, including assessment of audit points (which could result in a referral for an FEC audit), referral for enforcement action to the Alternative Dispute Resolution Office or to the Office of General Counsel. RAD referrals for enforcement action are the primary source of MURs generated based on information ascertained by the FEC in the normal course of carrying out its supervisory responsibilities. After analysis by the Office of General Counsel's Enforcement Division and recommendation to the Commission, the Commission may determine to "open a MUR" and pursue the matter.

The FEC's Audit Division conducts audits of committees that, according to the *RAD Review and Referral Procedures*, have not substantially complied with the law. As required by the public funding statutes, the FEC also audits all Presidential campaigns that receive public funds. Subject to Commission-approved thresholds, FECA violations discovered by the Audit Division can result in an Audit Referral to OGC Enforcement or to the ADR Office. The thresholds for such actions are specified in the *Materiality Thresholds for Authorized Committees, Unauthorized Committees and Title 26 Presidential Candidates*, which are updated for each applicable election cycle and are approved by the Commission.

4. *What types of campaign finance violations are typically processed by the Alternative Dispute Resolution Office (ADRO)?*

FEC Response: The ADRO processes cases of alleged campaign finance violations typically involving the failure to disclose all financial activity, the failure to timely file independent expenditure reports, the receipt of contributions in excess of the limit, the receipt of prohibited contributions, disclaimer violations, and the determination that reports do not meet threshold

¹ FECA, § 311(b), codified at 52 U.S.C. § 30111(b).

² *RAD Review and Referral Procedures for the 2017-2018 Election Cycle*, subject to limited redactions, are available on the FEC website: https://transition.fec.gov/pdf/2017-2018_rad_review_referral_procedures.pdf.

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requirements for substantial compliance. Additionally, the ADRO processes other types of violations that the Commissioners vote to transfer to the ADRO or that are directly transmitted from other parts of the agency in accordance with Commission-approved guidelines.

5. *In response to GAO's Information Request, the FEC stated that the Commission is currently considering an update of the Enforcement Priority System that is intended to enable the Enforcement Division to focus its resources on higher priority matters. Please explain the action(s) the FEC has taken to update and implement the Enforcement Priority System.*

FEC Response: In December 2018, the Commission revised the Enforcement Priority System's rating system, which is used by OGC's Enforcement Division to prioritize and activate MURs. These changes will allow more low-priority matters to be handled through Alternative Dispute Resolution, educational programs, or streamlined Enforcement Priority System Dismissals. Shifting these matters away from the Enforcement Division's active docket will allow for more Enforcement Division resources to be devoted to complex, high-priority Matters Under Review. Additionally, in order to increase the efficiency of the EPS Dismissal process, the Commission also in December 2018 instructed the Enforcement Division to use "short-form" reports (two to three page summaries) exclusively in the EPS Dismissal process, rather than more expansive analyses.

6. *What is the statute of limitations for pursuing a civil campaign finance violation?*

FEC Response: The statute of limitations for commencing a civil action to enforce FECA is five years under 28 U.S.C. § 2462.

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7. *When deciding an MUR, it is our understanding that among other actions, the FEC may (1) find no reason to believe a violation has occurred; (2) find reason to believe a violation has occurred, but take no further action; (3) dismiss the matter as part of prosecutorial discretion; (4) conciliate the matter with civil penalties; or (5) close the file.*
- a. *Please explain the differences between (2) find reason to believe a violation has occurred, but take no further action and (3) dismiss the matter as part of prosecutorial discretion.*
 - b. *Under what circumstances would the FEC find reason to believe a violation has occurred, but take no further action?*
 - c. *Under what circumstances would the FEC dismiss the matter as part of prosecutorial discretion?*

FEC Response: An explanation of the differences between the terms inquired about in questions 7.a. through 7.c. is found in the Commission's *Statement of Policy Regarding Commission Action in Matters at the Initial Stage of the Enforcement Process*, 72 Fed. Reg. 12545 (Mar. 16, 2007); available at: https://transition.fec.gov/law/cfr/ej_compilation/2007/notice_2007-6.pdf. After describing the "reason to believe" threshold required to begin an investigation, the Commission explained that it had:

previously used the finding "reason to believe, but take no further action" in cases where the Commission finds that there is a basis for investigating the matter or attempting conciliation, but the Commission declines to proceed for prudential reasons. As discussed below, the Commission believes that resolving these matters through dismissal or dismissal with admonishment more clearly conveys the Commission's intentions and avoids possible confusion about the meaning of a reason to believe finding.

In the subsequent section, entitled "Dismissal and Dismissal With Admonishment," the Commission went on to describe the nature of its prosecutorial discretion and gave examples of situations in which it might be used not to pursue a matter.

Some matters closed subsequent to the 2007 Statement of Policy are still recorded in Commission databases as containing a disposition of "Reason to Believe – No Further Action." However, those matters generally involved situations where the Commission found reason to believe and undertook an investigation, and after investigation determined for any of a variety of reasons to take no further action and close the file.

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d. Under what circumstances, would the FEC close the file?

FEC Response: Assuming that the Commission opened a MUR in the first place,³ the Commission always votes to “close the file” to signify the end of a matter. The “close the file” vote effectively directs OGC staff to advise the complainant and the respondents that the matter is over, and to prepare the file of the matter for release to the public.

Some information provided to GAO in an earlier response shows “close the file” as a particular type of disposition of a matter, as opposed to other types such as no reason to believe, reason to believe/no further action, dismissal as prosecutorial discretion, or conciliation. See FEC’s September 10, 2018, Batch 1 Response to GAO Question 9.a., page 5. Where the outcome of a matter is listed as “close the file” in this material, it generally indicates that there were not four affirmative votes for any other type of disposition, and that the Commission accordingly voted to close the file.

OGC Enforcement Manual, Dated 2013

8. *Please explain why the FEC Commissioners did not approve the OGC Enforcement Manual dated 2013?*

FEC Response: The Commission lacked four affirmative votes to approve the Enforcement Manual dated 2013. As stated in FEC’s November 16, 2018, Batch 6 Response to GAO Question 1, page 1, note 1:

Three versions of the Enforcement Manual were dated June 2013. One written by OGC, a second by then-Vice Chair McGahn and Commissioners Hunter and Petersen, and a third written by OGC, incorporating some changes from the McGahn draft and other changes. On December 11, 2014, the Commission voted 3 to 3, defeating a motion to approve the McGahn draft. Under these circumstances, the Office of General Counsel advises that it continues to use the June 26, 2013, version of the Enforcement Manual, which is the latest version and can be found here: https://www.fec.gov/resources/updates/agendas/2013/mtgdoc_13-21-b.pdf.

For the explanations Commissioners provided for their votes on December 11, 2014, see the audio discussion of that agenda item, available at <https://www.fec.gov/resources/audio/2014/2014121105.mp3>. For the views of one of the three Commissioners who proposed the edits, who had left the Commission by December 11, 2014, see Agenda Document 13-21-K (memorandum from Vice Chairman McGahn) (available at <https://www.fec.gov/updates/september-12-2013-open-meeting>).

³ If the Commission declines to proceed at the initial stage of a non-complaint-generated matter, the action it generally takes is “Decline to Open a MUR.”

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9. *To what extent, if any, have the FEC and FEC Commissioners taken actions (since 2013) to approve/formalize an enforcement manual?*

FEC Response: No such actions have been taken.

10. *In what ways, if any, has not formalizing the OGC Enforcement Manual (dated 2013) impacted and/or affected the FEC's efforts to enforce campaign finance laws/regulations?*

FEC Response: Please see FEC's November 16, 2018, Batch 6 Response to GAO Question 1.f., page 3.

11. *Please explain why the FEC Commissioners did not approve the proposed MOU between FEC and DOJ (dated 2012), which was recommended for approval by OGC?*

FEC Response: Although no formal vote was taken, it was clear from informal discussions that there were not four affirmative votes on the Commission to approve the proposed MOU. See Agenda Document 13-21-D (Memorandum to the Commission from Anthony Herman, General Counsel, June 17, 2013), available at https://www.fec.gov/resources/updates/agendas/2013/mtgdoc_13-21-d.pdf, at 11 ("OGC submitted the MOU to the Commission last January. At least three Commissioners have informally voiced disapproval.") For the views of one of those Commissioners, see Agenda Document 13-21-K (memorandum from Vice Chairman McGahn) at 14-16 (internet link provided *supra*).

12. *To what extent, if any, has the FEC taken action(s) to update the MOU with DOJ since 2012?*

FEC Response: No such actions have been taken.

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Foreign National Prohibition

22. *Chairman Walther stated that on September 15, 2016, the Commission directed the General Counsel's Office to prioritize those cases involving allegations of foreign influence, and noted that the most recent list included roughly 15 such matters. In addition to prioritizing these matters, the Chairman requested that the Commission take some steps to provide the public with information on FEC's role in addressing the use of prohibited foreign money in the financing of campaigns.*

a. To what extent, if any, has the FEC taken steps to ensure that cases involving allegations of foreign influence are prioritized?

In the FEC recent response to the Committee on House Administration, it addressed the prioritization of cases involving allegations of foreign influence. *See* FEC Responses, 41-43 (responses to questions 41 and 42). That response references the FEC's Report to the Appropriations Committees on Enforcing the Foreign National Prohibition, which can be found here: https://www.fec.gov/resources/cms-content/documents/Foreign_National_Report_To_Congress.pdf. Additionally, then-Vice Chair Ellen L. Weintraub wrote separately to express her own views on this topic. Her letter is available here: <https://www.fec.gov/resources/cms-content/documents/2018-09-28-ELW-Approps-Committees-reply.pdf>.

Rulemaking

25. *What is the status of rulemaking related to:*

- a. Revisions to Disclaimer Regulations for Paid Online Communications (Advanced Notice of Proposed Rulemaking (NPRM) in 2011; re-opened in 2016 and 2017).*
- b. Definition of Public Communication (NPRM in 2018).*

In 2011, the Commission issued an Advance Notice of Proposed Rulemaking ("ANPRM") to seek public input on whether to open a rulemaking revising its disclaimer regulations for paid online communications.⁴ The Commission re-opened the comment period on this ANPRM twice, in 2016 and 2017.⁵ In response to the 2017 re-opening of the comment period, the Commission received more than 149,000 comments.

⁴ See Internet Disclaimer Communications, 76 Fed. Reg. 63,567 (Oct. 13, 2011), <http://sers.fec.gov/fosers/showpdf.htm?docid=353587>.

⁵ See Internet Communication Disclaimers, 81 Fed. Reg. 71,647 (Oct. 18, 2016), <http://sers.fec.gov/fosers/showpdf.htm?docid=353586>; Internet Communication Disclaimers, 82 Fed. Reg. 46,937 (Oct. 10, 2017), <http://sers.fec.gov/fosers/showpdf.htm?docid=357882>.

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On March 26, 2018, the Commission issued a Notice of Proposed Rulemaking (“NPRM”) requesting comment on revisions to the definition of “public communication” and on two alternative proposals to amend its regulations concerning disclaimers on public communications on the internet that contain express advocacy, solicit contributions, or are made by political committees.⁶ By the close of the comment period, the Commission received more than 165,000 comments on the NPRM.

The Commission held a two-day public hearing on June 27 and 28, 2018, at which it received testimony from 18 persons who had requested to appear.⁷

Since the hearing, the Commissioners have taken steps to obtain additional information. Some Commissioners have participated in two information sessions, one on July 30, 2018, by the Interactive Advertising Bureau and another on August 27, 2018, by the Campaign Legal Center. Additionally, on December 13, 2018, a Commissioner wrote to one commenter, seeking clarification of information that commenter provided to the Commission in oral testimony and in written comments.⁸ The Commission is currently considering the comments and testimony it has received in order to consider a final rule. It is not at this time clear whether there will be four affirmative votes to adopt a final rule.

Request for Data Clarification #3

2. Internal Referrals (FEC Response Batch 1, Page 4 – Question 5d)

a. Which entities made these referrals (i.e., Reports Analysis Division (RAD), Audit Division)?

FEC Response: The chart below identifies the internal referrals and specifies the originating office that made the referrals. The number from each originating office or division is specified in the chart below, which is the FEC’s September 10, 2018, Batch 1 Response to GAO Question 5.d., page 4, modified to add the additional information. The numbers in the column marked “RAD Referrals to OGC” were also provided to GAO in response to 12.b. on page 9 of

⁶ See Internet Communication Disclaimers, 83 Fed. Reg. 12,864 (Mar. 26, 2018), <http://sers.fec.gov/fosers/showpdf.htm?docid=373521>.

⁷ See Agenda, June 27-28, 2018 Public Hearing: Internet Communication Disclaimers and Definition of “Public Communication,” available at <https://www.fec.gov/updates/june-27-28-2018-public-hearing/>. Additional information about this rulemaking is available on the FEC website by searching for rulemaking 2011-02 here: <https://sers.fec.gov/fosers/>.

⁸ Then-Chair Hunter’s letter is disclosed on the FEC website as a comment on this rulemaking: See Letter from Caroline C. Hunter to Young Mie Kim (Dec. 13, 2018) available at: <https://sers.fec.gov/fosers/showpdf.htm?docid=400106>.

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the FEC's September 10, 2018, response. The numbers in the column marked "Audit Referrals to OGC" were also provided to GAO in response to 17.a. on page 11 of the FEC's September 10, 2018, response. Referrals from ADRO to OGC are also listed, as is one referral from OGC's General Law and Advice Division (which no longer exists) to OGC's Enforcement Division in 2011. Corrections to information provided previously are shown in track changes.

Fiscal Year	RAD Referrals to OGC	Audit Referrals to OGC	ADRO Referrals to OGC	Referrals Under Directive 6	Total Internal Referrals Received by OGC
2002	43 11	9 13	0	0	24
2003	5	12	0	0	17
2004	47 13	13	0	0	26
2005	56	12	0	0	68
2006	31	5	0	0	36
2007	28 26	9	0	0	35
2008	46 20	17	1	0	37*
2009	10	6	1	0	18*
2010	5	1	0	0	6
2011	6	6	0	1	13
2012	77	5	0	0	82
2013	20 27	6	2	0	35
2014	19	1	1	0	21
2015	20	9	4	0	33
2016	16	2	2	0	20
2017	23 25	6	1	0	31 32

* RAD made a referral on September 30, 2008, and OGC received it on October 1, 2008, which are in separate fiscal years.

b. Which entities received these referrals?

FEC Response: All of the internal referrals counted in 5.d. and in the chart above were cases referred to the FEC's OGC Enforcement Division

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- *Were these referrals received by OGC for traditional enforcement, or were the referrals received by other FEC offices, and if so, how many referrals to each of these other offices?*

FEC Response: All of the internal referrals counted in 5.d. were cases referred to the FEC's OGC Enforcement Division from the Reports Analysis Division, the Audit Division, the Office of Alternative Dispute Resolution (ADRO) and in one instance the OGC General Law and Advice Division. For referrals to offices other than OGC Enforcement Division, please see FEC's September 10, 2018 Response to GAO Question 12.a. on page 8, Question 12.c. and 12.d. on page 9, Question 17.a., 17.b., on page 11, and 17.c. on page 12.

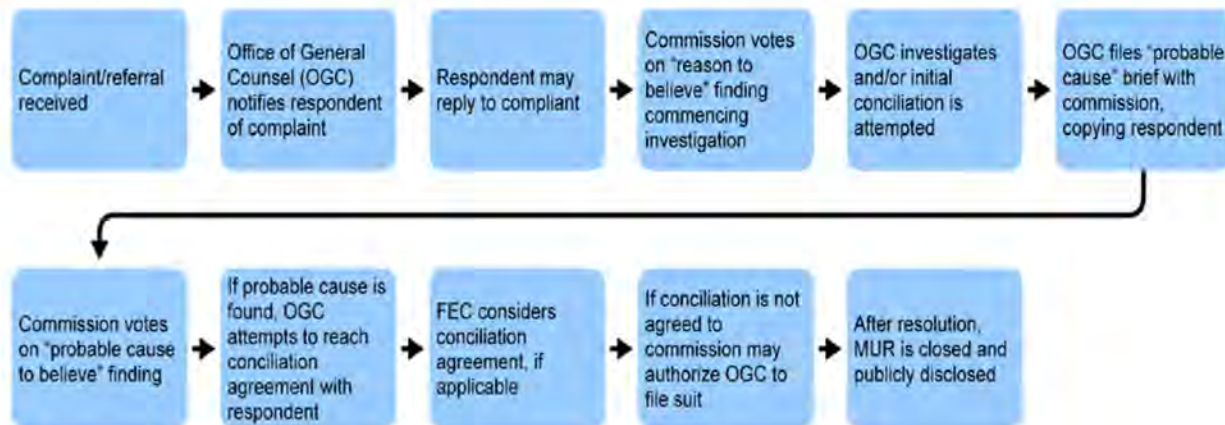
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FEC Follow Up Response: The FEC provided comments on two GAO drafted figures in the May 14, 2019 (Batch 8) Response, at 4-6. Those comments are repeated below, and as requested, are illustrated on the figures on pages 3 and 4.

Data Clarification

1. Please confirm the accuracy of the information/process identified in figure 1—Major Steps Required for Cases Routed through FEC's Matter Under Review (MUR) Process. Modify/change as needed.

Figure 1: Major Steps Required for Cases Routed through FEC's Matter Under Review (MUR) Process^a



Source: Goes here | GAO-xx-xxx

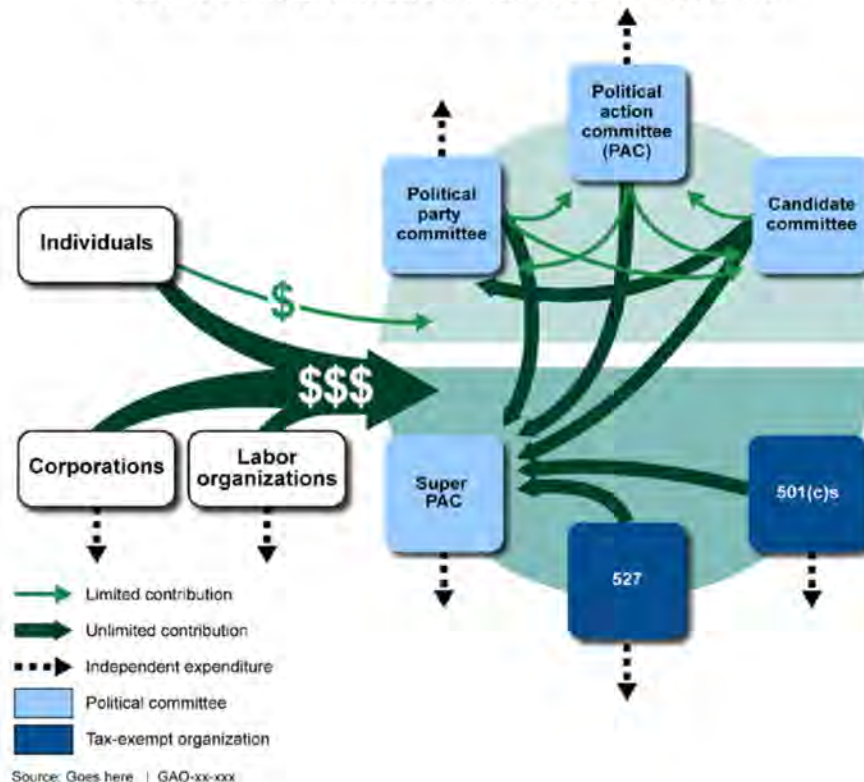
^aThe figure excludes optional steps, such as hearings or presentation of legal questions to the FEC Commission.

FEC Response: Probable cause responsive briefs from respondents and probable cause hearings are major steps for respondents and the Commission that should be added to the flow chart. Presentation of legal questions to the Commission is not part of the MUR process.

2. Please confirm the accuracy of the information/process identified in figure 2—Overview of Selected Entities Campaign Finance Contribution and Expenditure Activities In Connection With Federal Elections. Modify/change as needed.

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Figure 2: Overview of Selected Entities Campaign Finance Contribution and Expenditure Activities In Connection With Federal Elections



FEC Response: Individuals can and do make Independent Expenditures, so the figure should be amended to reflect that fact.

Three arrows showing unlimited contributions cross the divide from three types of political committees to show unlimited contributions to Super PACs. While no legal provision prohibits such contributions, they seem unlikely to occur as the three political committees are limited to raising funds from sources permitted by FECA and in amounts subject to FECA's contribution limits. In contrast, Super PACs are permitted to raise funds in unlimited amounts, including from some of the sources prohibited under FECA.

"501(c)s" should not be understood to include organizations exempt from Federal taxation under 26 U.S.C. § 501(c)(3), because such organizations are prohibited from "political campaign activity."

We note that leadership PACs are not reflected on Figure 2.

GAO might consider clarifying that political committees are also exempt from Federal income tax.

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13. *To what extent, if any, did the proposed FEC and DOJ coordination/collaboration agreements in the MOU proposed in 2012 differ/vary from the MOU approved in 1977? Please provide us with a copy of the MOU proposed in 2012.*

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14. *To what extent, if any, has not updating the MOU since 1977 impacted/affected the two agencies' (FEC and DOJ) efforts to coordinate/collaborate in their campaign finance enforcement activities? What steps, if any, has the FEC taken to mitigate any challenges to coordination/collaboration that have arisen?*
15. *To what extent, if any, do the FEC and DOJ use the 1977 MOU in the agencies' efforts to coordinate/collaborate in their campaign finance enforcement activities?*
16. *Besides the MOU (dated 1977), what additional coordination/collaboration guidance do the FEC and DOJ utilize in their efforts to enforce campaign finance laws/regulations?*

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17. Please explain the FEC's process for making referrals to DOJ regarding the enforcement of campaign finance laws/regulations. Please provide us with a copy of the applicable guidance used in this process.

FEC Response: FECA contains a provision for the **referral** of FECA violations by the FEC to DOJ for criminal prosecution, and it contains a separate provision for the **reporting** of apparent violations of other laws, not within the Commission's jurisdiction, to DOJ or to any other appropriate law enforcement authority.

Pursuant to FECA's section 309(a)(5)(C), the Commission may refer certain FECA violations to the Attorney General. (FECA section 309 is codified at 52 U.S.C. § 30109.) Such referrals may be made only after the Commission, by four or more affirmative votes, has determined that there is probable cause to believe that a knowing and willful violation of the Act has occurred, or is about to occur. The violation must also be subject to section 309(d), which sets forth certain monetary thresholds that must be met for a knowing and willful FECA violation to be prosecuted as a crime. In the event that the Commission makes a criminal referral of a FECA violation, the normal statutory requirement of a 30-90 day period of post-probable cause conciliation, in section 309(a)(4)(A), is set aside.

Pursuant to FECA section 307(a)(9), the Commission has the power "to report apparent violations to the appropriate law enforcement authorities." (FECA section 307 is codified at 52 U.S.C. § 30107.) The exercise of this power requires four affirmative votes. *See* FECA, § 306, *codified at* 52 U.S.C. § 30106. In light of FECA section 309(a)(5) and its detailed prerequisites

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for referral of FECA violations to DOJ, the Commission has traditionally interpreted section 307(a)(9) to cover reporting of apparent violations of other laws, but not FECA. Knowing and willful FECA violations may sometimes involve the violation of other criminal statutes—for instance, the prohibition on aiding and abetting crimes in 18 U.S.C. § 2, the prohibition on conspiracy in 18 U.S.C. § 371, and the prohibition on making material false statements to the government in 18 U.S.C. § 1001—and the Commission can vote to report apparent violations of these statutes to DOJ at any time, pursuant to section 307(a)(9). But it can refer a FECA violation itself only if it has found probable cause to believe the violation occurred (or is about to occur), if it has found that the violation was knowing and willful, and if the monetary thresholds for criminal liability are met.

It is also important to note that section 307(a)(9) is not limited to the reporting of non-FECA Federal crimes to DOJ; it permits the Commission, upon four affirmative votes, to report *any* apparent violation of *any* law other than FECA—whether criminal or administrative—to the appropriate law enforcement authority, whether Federal, state or local.

Other than the detailed guidance set forth in the statute, which is summarized above, guidance on referral and reporting is set forth in paragraphs 7.6.3.4 and 7.6.3.5 of the June 26, 2013 version of the Enforcement Manual. As we noted in footnote 1 of our November 16, 2018 (Batch 6) Response to your question 1, the June 26, 2013 version of the Enforcement Manual is located at this link: https://www.fec.gov/resources/updates/agendas/2013/mtgdoc_13-21-b.pdf.

18. To what extent, if any, does the FEC have guidance related to sharing information with DOJ in the enforcement of campaign laws and regulations – including the sharing of enforcement file information? Please provide us with a copy of the available guidance.

- a. Please explain whether the 2013 memorandum from then-General Counsel Herman, placed on the June 27, 2013 public meeting, captures the FEC's current perspective on the value of information sharing with DOJ?*
- b. The 2013 memorandum from then-General Counsel Herman references 2012 OGC Guidance to Enforcement Division staff on protocols for responding to DOJ requests for FEC enforcement-related information and records. Are these referenced protocols current? If so, please provide us with a copy. If not, what guidance, if any, exists.*

FEC Response: As noted above in response to questions 14-16, there is no current written guidance on information sharing between the DOJ and FEC other than the 1977 MOU. All requests from DOJ for non-public enforcement-related information and records are made in writing and directed to the General Counsel or Associate General Counsel for Enforcement, on behalf of the Commission. Current practice on information sharing with DOJ, as well as the Commission's current perspective on information sharing with DOJ, is reflected in the response to questions 14-16.

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19. *When requests for abatement are granted by the FEC for a set term, what is the typical duration?*

FEC Response: Three months. As noted above in response to questions 14-16, these requests may be renewed by DOJ, and the Commission will apply the same factors to a request for renewal as it does to an original request.

20. *Under what circumstances would the FEC conduct a civil inquiry parallel to an active criminal investigation involving the same matter?*

FEC Response: We assume the question is asking under what circumstances the FEC would conduct such an inquiry in a matter in which the Commission has found reason to believe and authorized an investigation or conciliation without abatement. The FEC would conduct a parallel investigation without abatement if DOJ does not make a request for abatement and/or the Commission determines that an investigation is necessary to vindicate the agency's interests under FECA. Beyond that, for the factors that the Commission considers in determining whether to grant or renew a request for abatement, see the response to questions 14-16 above.

a. *How often does this occur, if at all?*

FEC Response: Parallel civil investigations involving the same matter without abatement are unusual, and occur infrequently.

22. b. *To what extent, if any, has FEC taken steps to provide the public with information on FEC's role in addressing the use of prohibited foreign money in the financing of campaigns?*

FEC Response: On September 18, 2018, then-Chair Hunter submitted on behalf of the Commission the [FEC Report to the Committees on Appropriations on Enforcing the Foreign National Prohibition](https://www.fec.gov/resources/cms-content/documents/Foreign_National_Report_To_Congress.pdf), outlining the Commission's role in enforcing the foreign national prohibition, how the Commission identifies foreign contributions to elections, and the agency's future plans to continue these efforts. The URL for this document is: https://www.fec.gov/resources/cms-content/documents/Foreign_National_Report_To_Congress.pdf Information about the FEC's efforts to provide the public with information on the foreign national ban and the FEC's role with respect to it may be found at page 4 and in parts I.B and I.C (pages 11-15) of the Report. On September 28, 2018, then-Vice Chair Ellen L. Weintraub wrote separately to express her own views in her Letter to Congressional Appropriations Committees Regarding Enforcing the Foreign National Prohibition. The URL for this document is: <https://www.fec.gov/documents/896/2018-09-28-ELW-Approps-Committees-reply.pdf>.

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21. To what extent, if any, does the FEC have a tracking system to record and maintain information on the actions taken on the cases referred to the DOJ?

FEC Response: Under FECA, “refer” is a term of art that extends to actions taken to refer FECA violations to DOJ pursuant to section 309(a), following a knowing and willful probable cause determination by the Commission, as described more fully in the FEC’s June 26, 2019, Batch 11 response to GAO’s Question 17. Such referrals are rare, as reflected in the data provided in the FEC’s October 12, 2018, Batch 4 response to GAO’s Question 8.e., which show six referrals since FY 2002, with the most recent occurring in FY 2009. No tracking system to record and maintain information on the actions taken in the cases referred to DOJ is maintained by the FEC. The comparative rarity of such referrals is not surprising, given that most enforcement matters before the Commission are resolved prior to the probable cause stage; of those that are not, most do not involve knowing and willful violations; and of those few matters that both reach the probable cause stage and involve knowing and willful violations, many, and perhaps most, are already the subject of ongoing or completed parallel criminal proceedings of which the Commission is aware—thus obviating any need to make a referral to DOJ.

23. What are potential ways in which foreign funds and other prohibited political campaign contributions could enter U.S. federal elections?

a. What enforcement tools, if any, does the FEC use to identify and take enforcement action against such prohibited activities?

FEC Response: The Commission’s September 18, 2018 report to the House and Senate Committees on Appropriations, cited in the FEC’s May 29, 2019, Batch 9 response to GAO’s Question 22.a., addresses these questions as it relates to the foreign national prohibition. (As noted there, then-Vice Chair Ellen L. Weintraub wrote separately to express her own views on this topic, and her letter is cited and linked in response to Question 22.a.) In particular, the tools used to identify foreign national contributions and donations are discussed in Part II of that report (pages 16-17). Enforcement of the foreign national prohibition is discussed in Part I of that report (pages 3-11).

Part I of the report describes a number of specific enforcement matters that serve not only as examples of how the FEC enforces the foreign national prohibition, but as examples of scenarios in which foreign funds, or contributions and expenditures (or, in the case of state and local elections, donations and disbursements) with impermissible foreign involvement, can enter elections at all levels of government. Subsequent to the Report, the Commission has made public two additional significant enforcement matters concerning the foreign national prohibition. One involved a solicitation of a foreign national contribution. Right to Rise USA, an independent expenditure-only committee (commonly known as a “super PAC”) that supported Governor John E. “Jeb” Bush’s 2016 presidential campaign signed a conciliation agreement agreeing that it violated the foreign national prohibition when its agent solicited a

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foreign national for a political contribution, and when it accepted the funds. It agreed to cease and desist from violating the foreign national prohibition and paid a \$390,000 civil penalty. In a separate conciliation agreement, the contributors agreed that they violated the foreign national prohibition in making or substantially assisting in the making of the contributions to Right to Rise USA. They also agreed to cease and desist from violating the foreign national prohibition and paid a \$550,000 civil penalty. *See* MUR 7122 (Right to Rise USA), <https://www.fec.gov/data/legal/matter-under-review/7122/>. Another MUR involved allegations of foreign national contributions of \$30 to state and local candidates in Texas. Consistent with the advice of the General Counsel, the Commission voted unanimously to exercise its prosecutorial discretion to dismiss the complaints, given the small amounts at issue and the difficulties posed by a potential investigation to identify unknown respondents. *See* MUR 7430, 7444 & 7445 (Unknown Respondent), <https://www.fec.gov/data/legal/matter-under-review/7430/>.

24. *To what extent, if any, has the FEC made efforts to identify and prevent foreign donations received by tax-exempt organizations from entering U.S. federal elections, for example, through the organizations' independent expenditures and/or electioneering communications?*

FEC Response: The FEC's efforts to identify and prevent violations of the foreign national prohibition involving tax-exempt organizations are no different from its efforts to identify and prevent violations involving other types of actors, as described in the portions of the FEC's September 18, 2018, Report to the Appropriations Committees, which is cited above.

Disclosure

26. *Please describe the FEC's efforts, if any, to update guidance reflecting the U.S. District Court for the District of Columbia's decision in Citizens for Responsibility and Ethics in Washington (CREW) v. FEC and Crossroads GPS (June 2018).*

FEC Response: On August 3, 2018, the U.S. District Court of the District of Columbia vacated the independent expenditure reporting requirements at 11 C.F.R. § 109.10(e)(1)(vi). The court stayed its *vacatur* for 45 days.

On October 4, 2018, the Commission issued a press release offering guidance on how to properly report independent expenditures in compliance with the underlying statutory provisions—FECA § 304(c)(1) and (c)(2)(C), *codified at* 52 U.S.C. § 30104(c)(1) and (c)(2)(C)—in light of the *vacatur* of the Commission's regulation. As the guidance explained, these statutory provisions require any person (other than a political committee) who makes independent expenditures in excess of \$250 during a calendar year to report the following information: the identification of each person (other than a political committee) whose contribution or contributions to the reporting person had an aggregate amount or value in excess of \$200 in a calendar year, together with the date and amount of any such contribution(s); and the identification of each of these

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persons whose contribution(s) in excess of \$200 to the reporting person was made for the purpose of furthering any independent expenditure. The press release can be found at this link: <https://www.fec.gov/updates/fec-provides-guidance-following-us-district-court-decision-crew-v-fec-316-f-supp-3d-349-ddc-2018/>.

The issue of whether the Commission's regulation at 11 C.F.R. § 109.10(e)(1)(vi) is valid is still being litigated, without the Commission's participation, by CREW and Crossroads GPS. At this time, the District Court's order is on appeal to the U.S. Court of Appeals for the D.C. Circuit. See https://transition.fec.gov/law/litigation/cgps_185261.shtml. Once the matter is finally resolved, the Commission may offer additional guidance.

For a fuller explanation of the procedural history of this case and all of the issues involved, see the Commission's website: https://transition.fec.gov/law/litigation/crew_16259.shtml.

New Data Request (4/10/19)

- 1. Please provide us with the number of closed MUR cases (in the table 5 above) by disposition for each fiscal year—2002 through 2017.*

FEC Response: The data in the charts below comes with a number of caveats and explanations. First, the data provided below include Fiscal Years 2012 through 2017. This period is consistent with the period under review in the FEC's recent responses to the Committee on House Administration. As discussed by Frederick Lyles, GAO, and Duane Pugh, FEC, GAO is considering data from this period in order to avoid the delay associated with compiling similar data for the longer period.

Second, there is not a one to one relationship between cases and dispositions. Each case will have one or more respondents, and each respondent in each case will be the subject of one or more allegations or charges on which the Commission will take action. A case may have more than one disposition as a result of having more than one issue or more than one respondent; in the data below, the number of dispositions in one case ranges from one to six dispositions. On the other hand, because of limitations in the data entry process, the figures below do not perfectly reflect the total number of dispositions related to the total number of respondents. If two or more respondents in a case have the same disposition on the same date—for instance, each was the subject of a conciliation agreement prior to a finding of probable cause to believe—this chart would reflect only one disposition.

Third, dispositions are assigned to the fiscal year in which the entire case closed and was made public, not necessarily the fiscal year in which the particular disposition occurred. For instance, previous answers to GAO indicated that the Commission has not referred a case to the Department of Justice since fiscal year 2009. However, in one case where referral of a respondent to DOJ occurred in FY 2007, the entire case did not close until FY 2013. The disposition is reflected in the table below for FY 2013.

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Definitions for the various types of dispositions follow:

- “Close the File” – Generally, though not exclusively, where the Commission failed to obtain majority support for any particular action or disposition and then voted simply to close the file.
- “Conciliation – PC” – Respondent signed a conciliation agreement after a finding of probable cause to believe.
- “Conciliation –PPC” – Respondent signed a conciliation agreement prior to a finding of probable cause to believe.
- “Decline to Open a MUR” – Used in internally generated matters when the Commission votes not to proceed at the initial stage of the case. See FEC May 29, 2019 response to GAO Question 7.d., page 6, note 3.
- “Dismiss and Caution” – Commission dismissed a respondent or allegation, but cautioned the respondent that their conduct appeared to violate the FECA.
- “Dismiss and Remind” – Commission dismissed a respondent or allegation, and reminded the respondent of the applicable statutory provision.
- “Dismiss Pursuant to Prosecutorial Discretion” – Commission dismissed a respondent or allegation, and specifically stated that the dismissal was an exercise of its prosecutorial discretion.
- “Dismiss Pursuant to Prosecutorial Discretion and Caution” – Commission dismissed a respondent or allegation, specifically stated that the dismissal was an exercise of its prosecutorial discretion, and cautioned the respondent that its conduct appeared to violate the FECA.
- “Dismissed – Other” -- Commission dismissed a respondent or allegation, did not send a letter of caution or reminder, and did not specifically state that the dismissal was an exercise of its prosecutorial discretion.
- “No RTB” – Commission found no reason to believe.
- “Other” – Disposition did not fit any other category.
- “PC/NFA” – Commission found probable cause to believe, but took no further action.
- “PC/Referred to DOJ” – Commission found probable cause to believe a knowing and willful violation occurred, and referred violation to DOJ for possible criminal prosecution.
- “RTB/NFA” – Commission found reason to believe, but subsequently took no further action.
- “Suit Authorization” – Respondent or allegation proceeded through entire enforcement process, at the end of which Commission authorized civil enforcement litigation pursuant to 52 U.S.C. § 30109(a)(6).
- “Take No Action” – Commission disposed of an allegation or respondent at the initial stage of a matter and explicitly voted to take no action at all.
- “Take No Further Action” – Similar to RTB/No Further Action.
- “Transferred to ADR” – Respondent or allegation transferred to the Alternative Dispute Resolution Program.

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The statistics follow:

	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
Total Cases Closed	86	151	174	107	164	161
Total Dispositions	108	181	219	126	206	209

FY 2012	
Close the File	6
Conciliation-PC	1
Conciliation-PPC	23
Decline to open a MUR	4
Dismiss and Caution	0
Dismiss and Remind	0
Dismiss pursuant to prosecutorial discretion	13
Dismiss pursuant to prosecutorial discretion, and caution	0
Dismiss - Other	8
No RTB	34
Other	3
PC/NFA	0
PC/Referred to DOJ	0
RTB/NFA	5
Suit Authorization	2
Take no action	0
Take no further action	0
Transferred to ADR	9

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FY 2013	
Close the File	17
Conciliation-PC	1
Conciliation-PPC	36
Decline to open a MUR	3
Dismiss and Caution	2
Dismiss and Remind	1
Dismiss pursuant to prosecutorial discretion	17
Dismiss pursuant to prosecutorial discretion, and caution	0
Dismiss – Other	23
No RTB	52
Other	2
PC/NFA	2
PC/Referred to DOJ	1
RTB/NFA	7
Suit Authorization	0
Take no action	0
Take no further action	0
Transferred to ADR	17

FY 2014	
Close the File	15
Conciliation-PC	1
Conciliation-PPC	15
Decline to open a MUR	49
Dismiss and Caution	2
Dismiss and Remind	2
Dismiss pursuant to prosecutorial discretion	17
Dismiss pursuant to prosecutorial discretion, and caution	4
Dismiss – Other	23
No RTB	33
Other	2
PC/NFA	0
PC/Referred to DOJ	0
RTB/NFA	3
Suit Authorization	0
Take no action	10
Take no further action	2
Transferred to ADR	41

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FY 2015	
Close the File	12
Conciliation-PC	1
Conciliation-PPC	13
Decline to open a MUR	3
Dismiss and Caution	1
Dismiss and Remind	5
Dismiss pursuant to prosecutorial discretion	13
Dismiss pursuant to prosecutorial discretion, and caution	0
Dismiss – Other	20
No RTB	29
Other	2
PC/NFA	0
PC/Referred to DOJ	0
RTB/NFA	2
Suit Authorization	1
Take no action	5
Take no further action	1
Transferred to ADR	18

FY 2016	
Close the File	28
Conciliation-PC	1
Conciliation-PPC	29
Decline to open a MUR	12
Dismiss and Caution	5
Dismiss and Remind	2
Dismiss pursuant to prosecutorial discretion	20
Dismiss pursuant to prosecutorial discretion, and caution	1
Dismiss – Other	39
No RTB	46
Other	3
PC/NFA	0
PC/Referred to DOJ	0
RTB/NFA	0
Suit Authorization	2
Take no action	2
Take no further action	0
Transferred to ADR	16

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FY 2017	
Close the File	8
Conciliation-PC	0
Conciliation-PPC	26
Decline to open a MUR	5
Dismiss and Caution	4
Dismiss and Remind	7
Dismiss pursuant to prosecutorial discretion	29
Dismiss pursuant to prosecutorial discretion, and caution	2
Dismiss – Other	42
No RTB	68
Other	0
PC/NFA	0
PC/Referred to DOJ	0
RTB/NFA	0
Suit Authorization	0
Take no action	5
Take no further action	3
Transferred to ADR	10

2. *Please provide us with the number of closed MUR cases (in the table 5 above) by type of campaign finance violation/issue for each fiscal year—2002 through 2017.*

FEC Response: As with the answer to question 1, the data in the chart below comes with a number of caveats and explanations.

First, as with the answer to question 1, we are providing data at this time only back to Fiscal Year 2012. All of the comments on this point in our response to question 1 apply equally to this response.

Second, the data in the chart below was drawn from a database designed to assist searches on the Enforcement Query System (“EQS”) on the Commission’s website, not a database designed to produce high-level statistics about the Commission’s workload of the type sought by question 2. The Commission does not maintain a database specifically designed for the latter purpose.

The database used to produce the response to Question 2 is called “SMURs.” When a matter is closed, the Office of General Counsel’s Complaints Examination and Legal Administration team reviews the documents in the case file that are designated to be placed on the public record of the matter on EQS, paying particular attention to the certification(s) of any Commission votes in the matter. The staff member reviewing the case selects from an issues list identical to the list in the chart below those issues that in the staff person’s judgment apply to the case at hand. **There**

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may be, and frequently are, more than one issue per case. These issues are then “tagged” to, or associated with, that case in the SMURs database. Contractors then transfer the SMURs data into EQS for access by the general public.

Not only is there frequently more than one issue per case, but the same legal question in a case may be reflected in more than one “issue” from the “issues” list. For example, a “political committee status” issue – that is, whether an organization was required to register with the Commission as a political committee under 52 U.S.C. § 30103 and to periodically report to the Commission all of its receipts and disbursements under 52 U.S.C. § 30104 – might be tallied in the chart below under both “Committees – Political” and “Reporting; ” in another example, whether a committee had received excessive contributions might be tallied under “Contributions – Excessive” and “Contributions – Limitations.” This makes sense when considering that the purpose of the database is to facilitate searches on EQS, and someone searching EQS for political committee status cases or excessive contribution cases might search under either term. However, this sort of “double entry” limits the utility of the chart below in providing a picture of the Commission’s enforcement workload by issue. These limitations are compounded by the fact that this sort of “double entry” apparently has not been done consistently. This data, however, is the best we have.

Below are definitions of those “issues” that did not seem to us self-explanatory:

Committees – Candidate: involves allegations that a candidate failed to timely file a statement of candidacy.

Committees – Political: involves a variety of different allegations, such as, for example, that a political committee failed to register and report; that a political committee inappropriately registered as a non-connected committee when it was a separate segregated fund; and that a committee had an impermissible name.

Contributions: involves allegations that a committee accepted prohibited contributions, such as soft money, foreign national, government contractor, or contributions in the name of another.

Disbursements: involves allegations that a committee disguised expenditures so as to hide the recipient, or that a committee failed to report operating expenditures and debts.

Loans: involves allegations that illegal loans were made to committees, or that legal loans were misreported.

Non-Federal: involves the solicitation or use of funds by non-federal accounts of political committees, or by committees registered with state election authorities but not the FEC (such as the committees of candidates for state office).

Other: involves a wide variety of allegations that don’t fit other categories, such as alleged violation of the noncommercial air travel rules and rules about paycheck deductions from corporate or labor separate segregated funds.

Solicitation: involves the solicitation of impermissible funds, such as soft money for a PAC by a federal candidate or from those outside a SSF’s restricted class, or coercively solicited contributions.

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The data follow:

	FY17	FY16	FY15	FY14	FY13	FY12
Total Cases:	161	164	107	174	151	86
Allocation	1	2	0	0	0	0
Committees-Candidate	1	5	0	0	0	0
Committees-Multi-candidate	0	0	0	0	0	0
Committees-Non-Party	0	0	0	0	0	0
Committee-PAC	0	0	0	0	0	0
Committees-Party	0	2	0	0	0	0
Committees-Political	2	5	1	3	1	0
Contributions	10	0	0	0	0	0
Contributions-Corporations	19	16	11	14	12	6
Contributions-Excessive	15	13	8	11	26	8
Contributions-In the name of another	12	7	5	1	12	8
Contributions-Labor Unions	0	5	1	0	0	1
Contributions-Limitations	14	27	4	3	13	7
Contributions-National Bank	1	6	0	0	0	1
Contributions-Prohibited	6	32	12	10	19	17
Disbursements	1	1	0	1	0	0
Disclaimer	27	31	16	15	20	20
Electioneering	0	2	0	1	0	1
Expenditures-Exemptions	0	5	0	0	0	1
Expenditures-Coordinated	1	1	0	0	2	0
Expenditures-Limits	0	2	2	0	0	1
Express Advocacy	1	2	0	0	0	0
Foreign Nationals	7	3	1	1	6	0
Fraudulent misrepresentation	6	1	2	5	3	2
Knowing and Willful	1	2	0	0	2	2
Loans	1	0	0	0	1	1
Non-federal	1	2	0	0	0	0
Other	27	40	23	21	20	16
Presidential	0	0	1	0	1	0
Personal use	8	7	7	9	6	1
Reporting	53	79	37	44	69	33
Soft Money	11	11	4	5	2	2
Solicitation	5	0	1	1	0	0

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3. *For each fiscal year (row) in the table 5 above, please provide us with the number of MURs that were closed because the FEC Commissioners did not reach a consensus (four affirmative votes). Please provide the MUR numbers and MUR subject of the cases that were closed because a consensus was not reached (four affirmative votes).*

FEC Response: The FEC recently responded to similar questions from the Committee on House Administration. Those materials are available on the FEC website at the following link, which was also provided to GAO on May 21, 2019: <https://www.fec.gov/about/committee-on-house-administration-april-2019-questions/>.

In response to the Committee's questions 27 and 28, the FEC addressed Commission votes where there were not four votes in favor of any position. During the period January 1, 2012, to April 1, 2019, the Commission identified 269 MURs that had at least one such vote among the cases closed during that period. Of these MURs, 84 had "split votes" on all votes taken during the executive session, other than a vote to close the file. Additional information including the MUR number of each case is included in the FEC's Exhibits to Questions 27 and 28 Responses, and the subjects of the MURs is listed in the FEC's Exhibit to Question 28 Response. Furthermore, Chair Weintraub Vice Chairman Petersen and Commissioner Hunter provided additional comments in response to these questions in Attachments A and B, as noted in the FEC's responses to the questions. Vice Chairman Petersen and Commissioners Hunter and Walther also addressed the topic in their responses to Question 46.

As discussed by Frederick Lyles, GAO, and Duane Pugh, FEC, GAO is considering this data from the FEC's response to the Committee on House Administration in order to avoid the delay associated with compiling similar data for the longer period initially sought by GAO.

REG_2011_02_Holman_Craig_07_08_2019_16_50_09_CommentText.txt

Please accept the attached comments on behalf of Public Citizen regarding the July 10, 2019, rulemaking on disclaimers for Internet campaign ads.

Comments provided by :
Holman, Craig



215 Pennsylvania Avenue, SE • Washington, D.C. 20003 • 202/546-4996 • www.citizen.org

July 9, 2019

Submitted Electronically

Federal Election Commission

Attn: Neven F. Stipanovic

1050 First Street, NE

Washington, D.C. 20463

RE: REG 2011-02, Internet Communication Disclaimers

On May 24, 2018, Public Citizen and Free Speech for People submitted comments in response to the Federal Election Commission's ANPRM 2018-06, "Internet Communication Disclaimers and Definition of 'Public Communication,'" available [here](#).

Despite extensive public comments on several occasions and a formal hearing, the Federal Election Commission (FEC) has yet to act on this rulemaking. Another effort to address the growing problem of the lack of adequate disclaimers and disclosures for Internet campaign advertising is before the Commission on July 10, 2019.

Public Citizen takes this opportunity to repeat briefly some of our earlier comments and to express a preference for Disclaimers Rulemaking Proposal A.

Two proposals for Internet disclaimers rulemaking are being considered by the Commission: Proposal A sponsored by Chairperson Ellen Weintraub and Proposal B sponsored by Vice Chairman Matthew Petersen. Both proposals are scaled way back from earlier expectations and fall short of what is needed to grapple with the "dark money" loophole in Internet political advertising that is being so abused by political operatives and foreign interests. The disclaimer proposals are limited simply to express advocacy ads placed for a fee on another person's website, digital device or platform. Most campaign and political communications on the Internet – including those sponsored by foreign interests – will not be captured by such limited disclaimers proposals.

Nevertheless, faced with two proposals to enhance the disclaimer requirements for paid campaign advertising on the Internet, Proposal A (Weintraub) offers a better disclosure regiment over proposal B (Petersen).

Both proposals are remarkably similar in breadth and scope, and both offer an improvement over the current disclosure requirements. Proposal B, however, provides an unnecessary exemption for an adequate disclaimer on an Internet public communication that "cannot reasonably be provided on the face of the communication because of character or space constraints." Proposal A offers no such blanket exemption and instead relies on the innovation of Internet technology and communications to find a way to provide at least an adapted disclaimer that includes a description that the ad is "paid for by..." and the name of the sponsor in all cases, and a link to access a full disclaimer.

It is critically important that even the shortest Internet campaign ads include at the very least an “adapted” disclaimer (“Paid for by ...”) in letters of a size that are clearly readable by the recipients, followed with an indicator that may consist of an active and descriptive hyperlink that ties directly to the full disclosure information required on another web page, pop-up message, or other clear and conspicuous informational medium.

Simply providing a link – particularly a non-descriptive link or symbol – to access the disclosure information, as proposed in Alternative B, would deny many recipients of needed information about the ad.

According to a study by computer scientists at Columbia University and the French National Institute, 59 percent of links shared on social media have never actually been clicked. In other words, most people retweet or share social media news without ever clicking on to the sources.¹ If the disclaimer of “Paid for by ...” is not included in the ad itself, most people are likely to remain oblivious as to who sponsored the message or, worse yet, whether it is even a paid message as opposed to objective news.

The adapted disclaimer requirement would make it clear that the Internet communication is a paid campaign message and alert the recipient as to the person or group sponsoring the message. The accompanying indicator will provide the more inquisitive recipients with additional disclosure information.

It is also practical in all cases to require at least an abbreviated disclaimer. If there is enough space for a campaign ad, there is enough space for “paid for by ...” The Internet is a medium that encourages flexibility and innovation. Indeed, technological innovations shaping Internet advertisements can easily find ways to accommodate disclaimer requirements in a practical and clear and conspicuous manner, if compelled to do so.

All Internet campaign ads, regardless of size or form, should be required to provide adequate disclaimers of sponsors, with an abbreviated disclaimer serving as the minimum standard that notes the ad is “Paid for by,” the name of the sponsor and a link to a full disclaimer.

Proposal A best achieves this standard of disclosure.

Sincerely,

Craig Holman, Ph.D.
Government affairs lobbyist
Public Citizen’s Congress Watch division
215 Pennsylvania Avenue S.E.
Washington, D.C. 20003
(202) 454-5182

¹ Maksym Gabielkov, Arthi Ramachandran, Augustin Chaintreau and Arnaud Legout, “Social clicks: What and who gets read on twitter?” ACM SIGMETRICS/IFIP Performance 2016 (June 2016), available at: <https://hal.inria.fr/hal-01281190/document>

From:Sarah Rozensky
To:Lawrence Calvert ; Weintraub Office
Sent:2019-10-10T20:56:10.0000000Z
CC:Lisa Stevenson
Subject:RE: Number of Referrals from DOJ

Thanks, Larry.

From: Lawrence Calvert
Sent: Thursday, October 10, 2019 2:37 PM
To: Weintraub Office <WeintraubOffice@fec.gov>
Cc: Lisa Stevenson <LStevenson@fec.gov>
Subject: Number of Referrals from DOJ

Per your request, here are statistics by fiscal year on the number of referrals received from DOJ in matters that are now closed, along with suggested language emphasizing that the data is limited to closed matters.

Fiscal Year	Number of Referrals Received From DOJ In Cases That Are Now Closed
FY 2005	0
FY 2006	4
FY 2007	1
FY 2008	0
FY 2009	4
FY 2010	2
FY 2011	0
FY 2012	0
FY 2013	1
FY 2014	0
FY 2015	0
FY 2016	0
FY 2017	0
FY 2018	0
FY 2019	0
FY 2020 to date	0

These statistics reflect the number of referrals received by the Commission from the Department of Justice in each fiscal year **to the extent the Commission has closed the case resulting from the referral.** The Federal Election Campaign Act requires the Commission to keep confidential any complaints or referrals it has received until the enforcement matter is resolved and the case is formally closed. In light of this and other considerations, the Commission does not generally confirm or deny the agency's receipt of a notice or a referral from the Department of Justice. Therefore, for recent years in particular, the reader should not infer from this data either that the Commission received or did not receive any referrals from the Department in cases that remain open.

Referrals are shown by the year of the referral, not the year in which the case closed.

From:Duane Pugh
To:Lawrence Calvert
Sent:2019-10-10T20:55:56.0000000Z
CC:Lisa Stevenson
Subject:Re: FYI -- Link taken off Wapo website; Senate Dems letter to DOJ

Thanks.

Sent from my iPhone

On Oct 10, 2019, at 4:30 PM, Lawrence Calvert <LCalvert@fec.gov> wrote:

https://www.feinstein.senate.gov/public/_cache/files/2/3/2306e1d5-5d41-4083-9642-3150ddf32d88/5F6C5D7B433FA67A01A3CC1294CB1BCD.2019.10.10-benczkowski-letter.pdf



June 21, 2019

Federal Election Commission
Lisa J. Stevenson, Acting General Counsel
Office of General Counsel
1050 First Street NE
Washington, DC 20463

RE: Comment on Advisory Opinion Request 2019-11 (Pro-Life Democratic Candidate PAC)

Dear Ms. Stevenson,

Campaign Legal Center respectfully submits these comments to highlight for your consideration several potential problems with the requestor's proposal in Advisory Opinion Request 2019-11 (Pro-Life Democratic Candidate PAC).

The Pro-Life Democratic Candidate PAC's ("PAC") plan to receive donations as an intermediary for a "pro-life" Democratic candidate for President raises a number of serious concerns. First, the requestor proposes to condition contributions on a subjective and admittedly contested criterion—a candidate's "pro-life" status—which fails to ensure that the PAC will not exercise any direction or control over the selection of the recipient of the earmarked contributions and risks confusion among donors. Second, the proposed solution to the vague and subjective definition of "pro-life" is to outsource the determination of which candidate satisfies that condition to Democrats for Life of America ("DFLA"), a section 501(c)(4) nonprofit corporation. But the relationship between the PAC and DFLA is far from clear, and allowing a 501(c)(4) to dictate which candidate will receive all of a PAC's contributions could create a loophole by which corporate nonprofits can effectively circumvent the corporate contribution ban.

Conditional Donations to Unspecified Candidates

Under the Federal Election Campaign Act, a contribution from a person that is earmarked or otherwise directed to the candidate through an intermediary or conduit is a contribution from that person to the candidate. 52 U.S.C. § 30116(a)(8); 11 C.F.R. § 110.6(a). If an intermediary or conduit "exercises any direction or control

over the choice of the recipient candidate,” then the contribution is attributed to both the original contributor and the conduit, and the conduit is subject to the contribution limits for the full amount of donations for which it acted as an intermediary. 11 C.F.R. 110.6(d).¹ On the other hand, if a conduit merely forwards the earmarked contribution to the candidate without exercising any direction or control, then the contribution is considered a contribution only by the original contributor and not the intermediary or conduit. *Id.*

Consistent with these rules, the FEC has allowed political committees to earmark contributions for as-yet-unidentified candidates using pre-determined criteria that: (1) are objectively determined and outside the control of the committee, (2) time-limited, (3) provide a backup in case no one meets the criteria, and (4) are conveyed to individual donors at the time of the donation. Advisory Opinion 2016-15 (Gary Johnson Victory Fund) at 4. This comment concerns the first condition.

Requestor’s Proposal

The PAC proposes to raise money for a “credible,” “pro-life” Democratic candidate for president to encourage such a candidate to enter the race. Request for Advisory Opinion 2019-11 at 1. The request appears to define “credible” as “having some significant political or military experience.” *Id.* at 2, 4 (suggesting that a “credible” candidate is one who holds one of several, enumerated, political or military titles). The PAC’s definition of “pro-life” is even less clear.

The PAC suggests that it defines pro-life as “hold[ing] positions significantly at odds with the [Democratic] party’s platform on abortion rights.” *Id.* The PAC then suggests that “it can rely on objective criteria, such as endorsement by an outside group like the Democrats for Life of America.” *Id.* However, the request includes a screen shot of a disclaimer that states a candidate must be “pro-life” and receive DFLA’s endorsement, which suggests that in addition to the endorsement, a candidate must satisfy the PAC’s internal definition of “pro-life” as well. *See id.* at 4. Even assuming the PAC will rely on an endorsement by DFLA as determinative, it is entirely unclear what criteria, if any, DFLA will use to determine if a candidate is “pro-life.”

The Proposal Is Inconsistent with the Requirements for Conditional Contributions

The PAC’s proposal is problematic because the PAC’s criteria for determining whether a candidate is “pro-life” are not objective, nor are they clearly outside of the PAC’s control. In addition, the PAC’s proposal to rely on DFLA’s endorsement could

¹ Pro-Life Democratic PAC is a multicandidate political committee subject to a \$5,000 contribution limit. *See* Pro-Life Democratic PAC, Statement of Organization, FEC Form 1 (filed April 29, 2019), <https://docquery.fec.gov/cgi-bin/forms/C00704486/1329025>; “Contribution Limits,” FEC, <https://www.fec.gov/help-candidates-and-committees/candidate-taking-receipts/contribution-limits/>.

allow the PAC to exert implicit influence over the endorsement process and open the door to future abuse by PACs and section 501(c)(4)s.

“Pro-Life” Is Not an Objective Criterion

The “pro-life” criterion is different from all others previously allowed by the Commission for conditional donations because it is not objective. In the past, the Commission has allowed PACs to serve as conduits for recipients of conditional contributions by using objective, easily-determined criteria such as winning a party’s nomination for a particular election, Advisory Opinion 1982-23 (Westchester Citizens for Good Government); winning enough pledged convention delegates to secure a nomination, Advisory Opinion 2003-23 (WE LEAD); and a party’s nominee for president being a woman, Advisory Opinion 2014-19 (ActBlue). The Commission has also allowed PACs to identify the recipient by name and impose an objective “triggering condition,” such as state recognition of a party committee, Advisory Opinion 2016-15 (Gary Johnson Victory Fund), or when a potential candidate files to run for office, Advisory Opinion 2006-30 (ActBlue).

These conditions left no room for ambiguity: either they occurred, or they did not. Either Missouri would recognize the Missouri State Libertarian Party, or it would not. *See* Advisory Opinion 2016-15 at 2. Either the 2016 Democratic presidential nominee would be a woman, or not. *See* Advisory Opinion 2014-19. Only one person could win the 1982 Republican nomination for Congress for the 24th Congressional District of New York. *See* Advisory Opinion 1982-23.

But the condition proposed here—being “pro-life”—is neither objective nor easily defined. The PAC even admits that, “[o]bviously, the definition of ‘pro-life’ is contested.” Request for Advisory Opinion 2019-11 at 2. As discussed above, it provides multiple definitions for pro-life, including having a position on abortion rights “significantly at odds” with the Democratic Party. (How significantly? In what way?) It then suggests that, to make this criteria objective, it “can” rely on the endorsement of DFLA, a section 501(c)(4) nonprofit corporation.

But nowhere does the PAC say it will rely *solely* on DFLA’s endorsement. In its disclaimer to donors, it says the money will go to “the first *pro-life* Democrat” who is credible “and who receives the endorsement of the Democrats for Life of America.” Request for Advisory Opinion 2019-11 at 4 (emphasis added). This suggests that winning the endorsement is not enough—a candidate must also be “pro-life” in the eyes of the PAC.

It is unclear what would happen if DFLA endorses a candidate who has crusaded against the death penalty (another of its priorities²) but has a more moderate stance on abortion. Furthermore, donors may be surprised to learn that if DFLA endorses a candidate that the PAC deems to be non-credible, the donors’ contributions would go

² *See* “About Democrats for Life of America,” Democrats for Life of America, <https://www.democratsforlife.org/index.php/about-us>.

to a Congressman from Illinois, even if a different, “credible,” “pro-life” Democratic presidential candidate emerged.

The Proposal Presents Other Opportunities for Abuse

Another key difference between the “pro-life” condition proposed here and other conditions previously approved by the Commission is that the PAC is effectively fundraising for the winner of a nonprofit corporation’s endorsement. This creates at least three potential problems.

First, the relationship between the PAC and DFLA is far from clear. The request merely states that the PAC “has no *formal* relationship with the DFLA and no influence over its endorsement process.” Request for Advisory Opinion 2019-11 at 2 (emphasis added). Does it have an informal relationship with DFLA? Does it exercise influence over DFLA in other ways? Unlike PACs, section 501(c)(4) nonprofit corporations are not required to disclose their donors,³ which means that neither the FEC nor the public would know if the same group of donors is behind a 501(c)(4) and a PAC that is raising money for its endorsee. Such a scenario could enable the PAC to evade the restrictions that ensure a PAC acting as a conduit does not exercise any direction or control over earmarked contributions, and circumvent the contribution limits that should apply to its contributions for its chosen candidate. Even in good faith, a group of activists or donors could effectively control both groups by encouraging the PAC to raise money for the 501(c)(4)’s endorsee and encouraging the 501(c)(4) to endorse a particular candidate.

Second, the fact that a PAC has raised money for a candidate endorsed by a 501(c)(4) will inherently affect the endorsement process. Candidates may seek an endorsement for the sole purpose of getting the money, or they may change their policy positions to make an endorsement more likely. Furthermore, the 501(c)(4) may choose to endorse the candidate who it thinks is favored by the PAC to encourage the same mutually-beneficial arrangement in future elections.

In this case, DFLA may be influenced by the PAC’s “credibility” requirement and endorse a different candidate than it otherwise would, so that in future election cycles, DFLA’s endorsement is seen as (literally) more valuable. This possibility creates an opportunity for the PAC to exercise a level of implicit control over DFLA’s endorsement process that is absent in the nomination of a candidate for president (which has far broader implications and many more stakeholders), *see* Advisory Opinion 2014-19 (ActBlue), or a state’s decision to recognize a party committee (where the state receives no benefit from the money), *see* Advisory Opinion 2016-15 (Gary Johnson Victory Fund).

This is another way in which the PAC could evade the requirements that ensure a conduit does not exercise any direction or control over earmarked contributions, by using financial incentives to influence the endorsement process of a 501(c)(4).

³ “Treasury Department and IRS Announce Significant Reform to Protect Personal Donor Information to Certain Tax-Exempt Organizations,” U.S. Department of the Treasury (July 16, 2018), <https://home.treasury.gov/news/press-releases/sm426>.

Third, the proposal invites the FEC to create a loophole by which 501(c)(4) nonprofits could effectively make prohibited contributions to federal candidates. An ally of a 501(c)(4) could create a PAC that raises money for candidates who are endorsed by the 501(c)(4). The PAC could lawfully donate up to \$5,000 to each endorsee,⁴ but under the proposal here, it could raise and donate an unlimited sum, under the pretext of the funds being “earmarked.”

Respectfully submitted,

/s/ Adav Noti

Adav Noti
Solomon Miller
Campaign Legal Center
1101 14th Street NW, Suite 400
Washington, DC 20005

⁴ “Contribution Limits,” FEC, <https://www.fec.gov/help-candidates-and-committees/candidate-taking-receipts/contribution-limits/>.

From:Gregory Baker
To:Sari C. Pickerall
Sent:2019-06-28T14:33:11.0000000Z
CC:Lisa Stevenson ; Katie Higginbothom
Subject:Re: Just for the record...

Hmmmmmm. Blerghhhhh

Sent from my iPhone

On Jun 27, 2019, at 1:26 PM, Sari C. Pickerall <SPickerall@fec.gov> wrote:

Update - Stanley from Admin came by and said they worked on my door last night. I just thanks and we have moved on.

Sari C. Pickerall
Office of General Counsel
Federal Election Commission
202.694.1555

From: Lisa Stevenson
Sent: Thursday, June 27, 2019 9:29 AM
To: Sari C. Pickerall <SPickerall@fec.gov>; Gregory Baker <gbaker@fec.gov>
Cc: Katie Higginbothom <KHigginbothom@fec.gov>
Subject: RE: Just for the record...

Stupid elves.

Lisa J. Stevenson
Acting General Counsel
Federal Election Commission
l Stevenson@fec.gov
202-694-1613

From: Sari C. Pickerall
Sent: Thursday, June 27, 2019 8:15 AM
To: Gregory Baker <gbaker@fec.gov>
Cc: Lisa Stevenson <LStevenson@fec.gov>; Katie Higginbothom <KHigginbothom@fec.gov>
Subject: Just for the record...

This morning when I came in my workstation door (shower door) had a much larger gap than when I left last night – at least three inches. I don't think anyone was able to get through and nothing seems disturbed. I try to lock anything up that is confidential in drawers each night just to be safe. Not saying it is an issue but just wanted to put it in the record in case something comes up. I have fixed the problem with the door myself.

What is going on this week?!?!?

Sari C. Pickerall
Office of General Counsel
Federal Election Commission
202.694.1555

From:Alec Palmer
To:Ellen Weintraub
Sent:2019-06-27T10:45:02.0000000Z
CC:Matthew Petersen ; Kimberly Humphries ; John Quinlan ; Lisa Stevenson ; Katie Higginbothom ; Lauren H Lien
Subject:RE: Seeking Permission

Thank you

From: Ellen Weintraub
Sent: Wednesday, June 26, 2019 8:48 PM
To: Alec Palmer <APalmer@fec.gov>
Cc: Matthew Petersen <MPetersen@fec.gov>; Kimberly Humphries <khumphries@fec.gov>; John Quinlan <JQuinlan@fec.gov>; Lisa Stevenson <LStevenson@fec.gov>; Katie Higginbothom <KHigginbothom@fec.gov>; Lauren H Lien <LLien@fec.gov>
Subject: Re: Seeking Permission

Sure.

Ellen L. Weintraub
Chair
Federal Election Commission
202.694.1035
@EllenLWeintraub

On Jun 26, 2019, at 2:09 PM, Alec Palmer <APalmer@fec.gov> wrote:

Good Afternoon Ellen and Matt

In light of the recent news that Vickie Allen will be detailed to the Commission Secretary Office this creates a huge problem for our IT support activities. Our ability to respond to IT help desk requests especially anything relate to our phones will take an immediate hit.

I am seeking permission to post for an internal detail backfill for Vickie's GS 12 position. I would like something to go out tomorrow to FEC staff to determine if anyone is interested.

Thanks

Alec Palmer
Staff Director and CIO
Federal Election Commission
1050 First Street NE
Washington DC
202 694 1007

From:Stephen Gura
To:General Counsel Staff
Sent:2019-02-19T14:03:41.0000000Z
Subject:Water pressure issue -- reported

You may have noticed that the water pressure on our floor is greatly reduced. The problem has been reported.

From:Robert Kahn
To:Gilbert A. Ford
Sent:2019-02-14T12:35:10.0000000Z
CC:Alec Palmer ; Gregory Baker ; Lawrence Calvert ; Katie Higginbothom ; Rebecca Hough
Subject:Re:

Makes sense to me. Hopefully now everyone knows their password.
Robert

Sent from my iPhone

On Feb 14, 2019, at 7:31 AM, Gilbert A. Ford <GFord@fec.gov> wrote:

Sounds ok. Thanks.

Sent from my iPhone

On Feb 14, 2019, at 7:26 AM, Alec Palmer <APalmer@fec.gov> wrote:

Does anyone have a problem with me reminding managers and staff for those that are not telework capable or approved (like new employees) they can access there furlough notice through the web version of outlook on their own personal devices. This will remove the need for them to come into the office to receive their notice.

Alec Palmer
Staff Director and CIO
Federal Election Commission
1050 First Street NE
Washington DC
202 694 1007

*United States
Office of Government Ethics*

2018 AGENCY ETHICS PROGRAM QUESTIONNAIRE

PART 1. INTRODUCTION

Executive branch agencies are required to submit an annual report to the United States Office of Government Ethics (OGE) concerning certain aspects of their ethics programs (Section 402(e)(1) of the Ethics in Government Act of 1978, as amended). Your response to OGE's Annual Ethics Program Questionnaire (the Questionnaire) serves as your annual report.

OGE uses the data collected through the Questionnaire in many ways, including sharing information about the entire executive branch ethics program with the public, Congress, and the ethics community. OGE also uses the information to carry out its oversight role, to gain knowledge about individual programs as well as the overall ethics program, and to make informed decisions about resource allocations and priorities. OGE posts a summary of Questionnaire responses as well as each agency's unedited responses on OGE's website. Therefore, please ensure your responses are suitable for publication.

OGE encourages each agency to use the annual exercise of completing the Questionnaire as an opportunity to evaluate your ethics program.

DUE DATE: By regulation, the Questionnaire is due to OGE by **February 1, 2019**. (5 C.F.R. 2638.207(a)). However, because of the government shutdown, OGE has extended the deadline to March 15, 2019.

PART 2. INSTRUCTIONS

Your response to this Questionnaire should reflect the 2018 calendar year (i.e., 1/1/2018 through 12/31/2018), except where specified. The answers provided should reflect the aggregated numbers for **your agency in total**. OGE will only accept **one submission per agency**.

Throughout the Questionnaire you will be offered an opportunity to provide comments or explanations for your responses. Please use these comment sections to explain any discrepancies between levels of required activity and actual activity. These comment sections should also be used to explain significant changes from your 2017 report. After OGE has reviewed your Questionnaire submission, you may be contacted for follow-up.

FAQs:

Which Internet browser should I use?

How do I save a draft of my response?

How do I access my saved draft and edit the Questionnaire?

Why is the field highlighted yellow?

How do I save a copy of my Questionnaire for my records?

I submitted the Questionnaire but then realized I made an error. Can I still edit my response?

The font is small, can I increase the size?

Can more than one person work on the Questionnaire response?

I accidentally created more than one agency response. Which one should I use?

If you have any questions, please contact Wendy Pond at wgpond@oge.gov.

PART 3. DEFINITIONS

Agency Head: For purposes of this Questionnaire, in the case of an agency headed by more than one person, the chair or comparable member of such agency.

D.C Metro Area: For purposes of this Questionnaire, D.C. Metro Area means the District of Columbia, DC; Calvert County, MD; Charles County, MD; Prince George's County, MD; Arlington County, VA; Clarke County, VA; Culpeper County, VA; Fairfax County, VA; Fauquier County, VA; Loudoun County, VA; Prince William County, VA; Rappahannock County, VA; Spotsylvania County, VA; Stafford County, VA; Warren County, VA; Alexandria city, VA; Fairfax city, VA; Falls Church city, VA; Fredericksburg city, VA; Manassas city, VA; Manassas Park city, VA; Jefferson County, WV; and, Silver Spring-Frederick-Rockville, MD Metropolitan Division Frederick County, and Montgomery County.

Full-time Agency Employees: For purposes of this Questionnaire, the term “full-time agency employees” includes employees detailed to another agency. It also includes officers, but not enlisted members, of the uniformed services.

Special Government Employee (SGE): For purposes of this Questionnaire, the term “special Government employee” (SGE) means an officer or employee who is retained, designated, appointed, or employed, to perform temporary duties either on a full-time or intermittent basis, with or without compensation, for not more than 130 days during any period of 365 consecutive days. The term “SGE” does not include enlisted members of the Armed Forces. It does, however, include these categories of officers or employees:

- Part-time United States commissioners;
- Reserve officers of the Armed Forces and officers of the National Guard of the United States (unless otherwise officers or employees of the United States) while on active duty solely for training or serving involuntarily.

PART 4. PROGRAM RESOURCES AND ADMINISTRATION

1. Agency: _____
2. Number of full-time agency employees as of December 31, 2018: _____
3. Information about the Designated Agency Ethics Official (DAEO):

a. Vacant (as of December 31, 2018)?	* Yes <i>(skip to #4a)</i> * No
b. Time in current DAEO position	* Less than 1 year * 1-4 years * 5-9 years * 10 or more years
c. Total years performing ethics duties	* Less than 1 year * 1-4 years * 5-9 years * 10 or more years
d. Percent of time spent on ethics	* 0-25% * 26-50% * 51-75% * 76-100%
e. Is the DAEO a career employee or a political appointee?	* career employee * political appointee
f. Number of reporting levels between the DAEO and the agency head.	

4. Information about the Alternate Designated Agency Ethics Official (ADAEO)

5. Number of employees, including the DAEO and ADAEO, who performed ethics program duties in 2018 (e.g., financial disclosure, education and training, advice and counseling, program administration).

	Number of employees by hours worked each week	
--	---	--

a. Vacant (as of December 31, 2018)?	* Yes <i>(skip to #5)</i> * No
--------------------------------------	-----------------------------------

	<ul style="list-style-type: none"> * 26-50% * 51-75% * 76-100%
e. Is the ADAEO a career employee or a political appointee?	<ul style="list-style-type: none"> * career employee * political appointee

5. Number of employees, including the DAEO and ADAEO, who performed ethics program duties in 2018 (e.g., financial disclosure, education and training, advice and counseling, program administration).

	Number of employees by hours worked each week					
Duty Station	Less than 1 hour per week (up to .025 FTE*)	1-10 hours per week (up to .25 FTE*)	11-20 hours per week (up to .5 FTE*)	21-30 hours per week (up to .75 FTE*)	31-40 hours per week (up to 1 FTE*)	TOTAL
a. D.C. Metro area						
b. Outside the D.C. Metro area						
TOTAL						

*FTE = Full Time Equivalent

Example: The table below provides an example of an agency with 13 employees that performed ethics program duties in 2018.

	Number of employees by hours worked each week					
Duty Station	Less than 1 hour per week (up to .025 FTE*)	1-10 hours per week (up to .25 FTE*)	11-20 hours per week (up to .5 FTE*)	21-30 hours per week (up to .75 FTE*)	31-40 hours per week (up to 1 FTE*)	TOTAL
a. D.C. Metro area	1	0	2	2	1	6
b. Outside the D.C. Metro area	1	3	3	0	0	7
TOTAL	2	3	5	2	1	13

6. In what areas did contractors support the ethics program? Select all that apply.

* Not applicable (no contractors supported the ethics program)

- * IT services (e.g., developing or supporting electronic filing systems, applications, websites, and/or databases, etc.)
 - * Administrative support (e.g., tracking filing or training requirements, sending reminders, data entry, etc.)
 - * Substantive ethics support (e.g., providing training, initial review of financial disclosures, drafting advice for further review, etc.)
 - * Other (please describe)
7. Did another federal agency or federal entity provide ethics services or support to your agency? Do not include contractors, OGE support, or OMB support of MAX.gov.
- * Yes (please provide the name of the federal agency or entity and describe the services or support provided) _____
 - * No
8. Does your agency's ethics program need additional resources? Check all that apply.
- * No additional resources needed
 - * Budgetary
 - * Human Capital
 - * Technology
 - * Other (specify) _____
9. Did the agency head meet with the ethics staff to discuss the strengths and weaknesses of the ethics program in 2018?
- * Yes
 - * No
 - * Not applicable (specify why) _____
10. Did your agency (e.g., ethics office, Inspector General, General Counsel, etc.) conduct a self-assessment to evaluate any aspect of the ethics program in 2018?
- * Yes
 - * No (*skip to #13*)
11. To whom were the results reported? Select all that apply.
- * Agency Head
 - * DAEO
 - * Inspector General
 - * Other (specify) _____

12. What kind of changes resulted from the assessment?

- * Programmatic changes (please describe) _____
- * Policy changes (please describe) _____
- * No changes resulted (specify why not) _____
- * Not applicable (specify why) _____

13. Of the following required written procedures, which did you have in place? Check all that apply:

- * Collection of confidential financial disclosure reports (5 C.F.R. 2638.104(c)(8)(i))
- * Collection of public financial disclosure reports (5 C.F.R. 2638.104(c)(8)(i))
- * Follow up with delinquent confidential financial disclosure filers (DA-09-03-92)
- * Follow up with delinquent public financial disclosure filers (DA-09-03-92)
- * Public availability of public financial disclosure reports (5 C.F.R. 2638.104(c)(8)(i))
- * Review/evaluation of confidential financial disclosure reports (5 C.F.R. 2638.104(c)(8)(i))
- * Review/evaluation of public financial disclosure reports (5 C.F.R. 2638.104(c)(8)(i))
- * Issuance of notice of ethical obligations in written offers of employment (5 C.F.R. 2638.303)
- * Provision of initial ethics training (5 C.F.R. 2638.304)
- * Issuance of ethics notice to new supervisors (5 C.F.R. 2638.306)
- * None

ADDITIONAL COMMENTS FOR PART 4. Please indicate the question number to which the comment corresponds. *(not required)*

PART 5. EDUCATION AND TRAINING

14. Did all of the office(s) responsible for issuing ethics notices to prospective employees, pursuant to 5 C.F.R. 2638.303, provide the DAEO with the certification required pursuant to 5 C.F.R. 2638.310?

- * All of the offices provided the certification to the DAEO
- * Some of the offices provided the certification to the DAEO (explain why not all offices) _____
- * None of the offices provided the certification to the DAEO (explain why not all offices) _____
- * Not applicable because my agency has less than 1,000 employees
- * Not applicable because the DAEO's office is responsible for issuing ethics notices to prospective employees

15. How many new agency leaders, as defined in 5 C.F.R. 2638.305(a), were required to receive ethics briefings by December 31, 2018? _____

- a. How many of those leaders received their briefing within 15 days of their appointment? _____
- b. How many of those leaders received their briefing beyond the 15-day requirement? _____
- c. How many of those leaders have yet to receive their briefing as of today?

If applicable, please explain why some of the leaders received their briefing beyond the 15-day requirement or have yet to receive their briefing. _____

16. How many employees, ***including SGEs***, were required to receive Initial Ethics Training (IET) by December 31, 2018 (5 C.F.R. 2638.304)? Include employees who were excluded, under 5 C.F.R. 2638.304(a), from the requirement to receive the interactive portion of the IET. _____

- a. How many of those employees received IET within the 3-month requirement? _____
- b. How many of those employees received IET beyond the 3-month requirement?

- c. How many of those employee have not received IET as of today? _____

If applicable, please explain why some employees received IET beyond the 3-month requirement or have yet to receive IET. _____

Example: If an employee started at the agency on December 15, 2018, and the employee completed IET prior to the end of the calendar year, include the employee in your required and received numbers. If, on January 1, the employee has not completed IET, do not count that employee in your required numbers. Instead, include the employee in your 2019 Questionnaire response in 2020.

17. How many non-supervisory positions at or below the GS-8 grade level, or the equivalent, were excluded from the requirement to receive the *interactive* portion of their initial ethics training during 2018, pursuant to 5 C.F.R. 2638.304(a) (i.e., they received only *written materials*)? _____
18. Did all of the office(s) delegated the responsibility for providing initial ethics training (IET) provide the required certification to the DAEO, pursuant to 5 C.F.R. 2638.310?
- * All of the offices provided the certification to the DAEO
 - * Some of the offices provided the certification to the DAEO (specify why) _____
 - * None of the offices provided the certification to the DAEO (specify why) _____
 - * Not applicable because my agency has less than 1,000 employees
 - * Not applicable because all IET was provided by an office under the DAEO's supervision
19. Did the head of the agency complete either initial ethics training and/or annual ethics training in 2018?
- * Yes
 - * No (specify why) _____
 - * Not Applicable (specify why) _____

20. Required Annual Ethics Training

Type of covered employees (Include SGE filers)	# Required	# Received (of those required)
a. Executive Schedule Level I or Level II public filers (OGE Form 278e)		
b. All other public filers (OGE Form 278e)		
c. Confidential filers (OGE Form 450, 450A, and OGE-approved alternative confidential financial disclosure forms)		
d. Other employees required by 5 C.F.R. 2638.307(a) (employees appointed by the President; employees of the Executive Office of the President; Contracting Officers; or, other employees designated by the head of the agency.)		
TOTAL		

If applicable, please explain discrepancies between the number of employees who were required to receive training and the number of employees who received training: _____

21. Did you provide **annual** ethics training to other employees *not otherwise required by regulation to receive training* (i.e., any other employees not covered by the chart above)?

- * Yes (please specify who) _____
- * No

22. Did you provide additional, specialized ethics training during 2018 (i.e., beyond any required initial ethics training or annual ethics training)?

- * Yes
- * No (*skip to next Part*)

23. Which groups did you target for additional, specialized ethics training? Check all that apply.

- * All agency personnel (including individuals not required by regulation to receive annual training)
- * HR personnel
- * IT personnel
- * Procurement personnel
- * Supervisors
- * Other (specify all)

ADDITIONAL COMMENTS FOR PART 5. Please indicate the question number to which the comment corresponds. *(not required)*

PART 6. ADVICE, COUNSELING, AND REMEDIES

24. From the list below, select the three topics that your employees most **frequently** sought guidance on in 2018. Please rate them in order, such that the first topic was the topic on which employees sought guidance the most frequently.

Conflicting financial interests
Gift acceptance
Financial disclosure reporting
Impartiality in performance of official duties
Misuse of position, government resources, and information
Outside employment/activities
Post-employment restrictions
Travel, subsistence, and related expenses from non-federal sources
Other (specify) _____

25. Number of notification statements of negotiation or recusal under section 17(a) of the STOCK Act submitted to the ethics office in 2018: _____
26. Number of public financial disclosure filers who, in 2018, took specific remedial actions (e.g., divestiture, resignation from outside position, written disqualification, 18 U.S.C. section 208 waiver, reassignment, etc.) because of information on a new entrant, annual, periodic transaction, or termination report (OGE Form 278e or 278-T): _____

* Don't know/don't track

27. Number of individual remedial actions taken in 2018 because of information on a new entrant, annual, periodic transaction, or termination public financial disclosure report: ____

a. Recusals _____ Number
 _____ Don't know/don't track

b. Divestitures _____ Number
 _____ Don't know/don't track

c. Resignations from _____ Number
outside positions _____ Don't know/don't track

d. Reassignments _____ Number
 _____ Don't know/don't track

e. Other not listed _____ Number
(specify) _____ Don't know/don't track

If Other, specify _____

28. Number of 18 U.S.C. 208 waivers granted in 2018:

	Number Granted in 2018	Number Sent to OGE
a. 208(b)(1) waivers		
b. 208(b)(3) waivers		

If applicable, please explain discrepancies between the number of waivers granted and the number provided to OGE. _____

ADDITIONAL COMMENTS FOR PART 6. Please indicate the question number to which the comment corresponds. *(not required)*

PART 7. FINANCIAL DISCLOSURE PROGRAM MANAGEMENT AND ELECTRONIC FILING SYSTEMS

29. How often, within the 15-day deadline, did the human resources office(s) notify the DAEO of appointments to public and confidential financial disclosure filing positions (5 C.F.R. 2638.105(a)(1))?

	In all Cases	In Most Cases	In Some Cases	Never	Not Applicable (specify why, below)
a. Public Filers					
b. Confidential Filers					

If not applicable, specify why. _____

30. How often, within the 15-day deadline, did the human resources office(s) notify the DAEO of terminations from public financial disclosure filing positions (5 C.F.R. 2638.105(a)(2))?

	In all Cases	In Most Cases	In Some Cases	Never	Not Applicable (specify why, below)
Public Filers					

If not applicable, specify why. _____

31. Did your agency use an electronic financial disclosure filing system (e-filing system) in calendar year 2018? Note: This includes *Integrity*.

- * Yes
- * No (*skip to next Part*)

32. Which system did your agency use?

- * *Integrity* ONLY (*skip to next Part*)
- * *Integrity* AND Other (specify) _____
- * Other ONLY (specify) _____

33. Indicate for which forms your agency used the “Other” e-filing system. Check all that apply.

- * Public Financial Disclosure (OGE Form 278e)
- * Periodic Transactions (OGE Form 278-T)
- * Confidential Financial Disclosure (OGE Form 450, 450A, or OGE-approved alternative form)

34. Indicate your FY 2018 actual costs for using the e-filing system. Note: Because OGE does not charge fees to use *Integrity*, there are no reportable costs associated with the use of *Integrity*.

	Public (do not include <i>Integrity</i>)	Confidential	
a. Amount paid to a non-federal vendor in FY 2018			
b. Amount paid to a federal agency in FY 2018			
c. Amount for all internal costs associated with operating an e-filing system (e.g., FTE, overhead, etc.) in FY 2018			
Total FY 2018 actual costs			

35. Indicate the number of filers who filed electronically in fiscal year 2018.

	Public (excluding filers in <i>Integrity</i>)	Confidential
Number of financial disclosure filers, not reports, who filed electronically in FY 2018		

ADDITIONAL COMMENTS FOR PART 7. Please indicate the question number to which the comment corresponds. *(not required)*

PART 8. PUBLIC FINANCIAL DISCLOSURE

36. Report the number of public financial disclosure reports (OGE Form 278e) required to be filed by December 31, 2018, ***excluding SGEs***, and the number of reports actually filed (i.e., received in hand) by December 31, 2018.

OGE Form 278e Reports		PAS ²	Non-Career SES ³	Career SES ³	Schedule C	Other ⁴	TOTAL
a. Nominee/ New Entrant	Required						
	Filed						
b. Annual	Required						
	Filed						
c. Termination	Required						
	Filed						
d. Combination ¹	Required						
	Filed						
Total	Required						
	Filed						

¹ Includes reports filed to satisfy both annual and termination requirements, as well as new entrant and termination requirements.

² Presidential appointees confirmed by the Senate.

³ Senior Executive Service, Senior Foreign Service, Senior Cryptologic Service, Defense Intelligence Senior Executive Service, etc.

⁴ Includes members of the Uniformed Services, Administrative Law Judges, Senior Level employees (SES Equivalent), administratively-determined positions, officials in the Executive Office of the President who do not otherwise meet the criteria of another section, etc.

Example for new entrant and termination reports: If an employee started/left the agency on December 15, 2018, and the employee filed a new entrant/termination report prior to the end of the calendar year, include the report in your required and filed numbers. If, on January 1, the employee has not filed a new entrant/termination report, do not count that report in your required numbers. Instead, include the employee in your 2019 Questionnaire response in 2020.

If applicable, please explain discrepancies between the number of reports required to be filed and the actual number of reports filed.

37. Number of periodic transaction reports filed, *excluding those filed by SGEs*: _____

Note: Count the total number of periodic transaction reports filed. *Example 1*: If two employees each file 5 periodic transaction reports during the calendar year, report “10” in the table above. *Example 2*: If an employee files one report each month, each report is counted separately. Report “12” in the table.

38. Extension and late fees for new entrant, annual, termination, and combination public financial disclosure reports and periodic transaction reports, *excluding those for reports filed by SGEs*.

	Granted Filing Extension	Granted Waiver of Late Filing Fee	Paid Late Filing Fee
a. Number of OGE Form 278e Reports			
b. Number of OGE Form 278-T Reports			

39. Number of public financial disclosure filers reported in calendar year 2018 to the Attorney General for failure to file: _____
40. How many requests for public financial disclosure reports did you receive in 2018? Count each OGE Form 201 as one request, even if it contains a request for documents for multiple individuals. _____

ADDITIONAL COMMENTS FOR PART 8. Please indicate the question number to which the comment corresponds. *(not required)*

PART 9. CONFIDENTIAL FINANCIAL DISCLOSURE

41. Report the number of confidential financial disclosure reports required to be filed by December 31, 2018, *excluding SGEs*, and the number of reports actually filed by December 31, 2018.

	Required	Filed	
		450	
		450A	
		OGE-approved alternative form	
Total			

Example for new entrant reports: If an employee started at the agency on December 15, 2018, and filed a new entrant report prior to the end of the calendar year, include the report in your required and filed numbers. If, on January 1, the employee has not filed a new entrant report, do not count that report in your required numbers. Instead, include the employee in your 2019 Questionnaire's new entrant numbers in 2020.

If applicable, please explain discrepancies between the number of reports required to be filed and the actual number of reports filed. _____

42. Number of OGE 450, 450A, or OGE-approved alternative forms granted filing extensions in 2018: _____

ADDITIONAL COMMENTS PART 9. Please indicate the question number to which the comment corresponds. *(not required)*

PART 10. ENFORCEMENT OF STANDARDS OF CONDUCT AND CRIMINAL AND CIVIL STATUTES

43. Number of disciplinary actions taken based wholly or in part upon violations of the Standards of Conduct provisions (5 C.F.R. part 2635) or your agency's supplemental Standards (if applicable) in 2018. For purposes of this question, disciplinary actions include removals, demotions, suspensions, and written reprimands or their equivalents: _____

Of those, how many were disciplinary actions were taken wholly or in part upon violations of:

- _____ Subpart A (General Provisions)
- _____ Subpart B (Gifts from Outside Sources)
- _____ Subpart C (Gifts Between Employees)
- _____ Subpart D (Conflicting Financial Interests)
- _____ Subpart E (Impartiality in Performing Official Duties)
- _____ Subpart F (Seeking Other Employment)
- _____ Subpart G (Misuse of Position)
- _____ Subpart H (Outside Activities)
- _____ Your agency's supplemental Standards

44. Number of disciplinary actions taken based wholly or in part upon violations of the criminal conflict of interest statutes, 18 U.S.C. sections 203, 205, 208, and 209, in 2018. For purposes of this question, disciplinary actions include removals, demotions, suspensions, and written reprimands or their equivalents: _____

Of those, how many were disciplinary actions taken based wholly or in part upon violations of:

- 18 U.S.C. section 203 (Compensation in Matters Affecting the Government)_____
- 18 U.S.C. section 205 (Claims Against and Matters Affecting the Government)_____
- 18 U.S.C. section 208 (Acts Affecting a Personal Financial Interest)_____
- 18 U.S.C. section 209 (Supplementation of Salary)_____

45. Number of referrals made to the Department of Justice of potential violations of the conflict of interest statutes (18 U.S.C. sections 203, 205, 207, 208, 209), failure to file or filing false public financial disclosures (5 U.S.C. app. section 104 or 18 U.S.C. section 1001), a civil matter involving outside earned income under 5 U.S.C. app. section 501, or outside activities under 5 U.S.C. app. section 502 in 2018: _____

DOJ Referrals

- a. How many of those referrals were accepted for prosecution _____
- b. How many of those referrals were declined for prosecution _____
- c. How many of those referrals were pending DOJ's decision as of December 31, 2018 _____

Disciplinary Action

- a. How many of those referrals resulted in disciplinary or corrective action _____
- b. How many of those referrals resulted in a determination not to take disciplinary or corrective action _____
- c. How many of those referrals are pending a determination as to whether disciplinary or corrective action will be taken _____

46. Did your agency submit all referral(s) and disposition(s) of the referral(s) to OGE via OGE Form 202 (as required by 5 C.F.R. 2638.206(a))?

- * Yes
- * No (specify why) _____
- * Not Applicable (specify why) _____

ADDITIONAL COMMENTS FOR PART 10. Please indicate the question number to which the comment corresponds. *(not required)*

PART 11. ETHICS PLEDGE ASSESSMENT

47. Were any full-time non-career appointees (e.g., Presidentially Appointed Senate Confirmed (PAS), Presidentially Appointed (PA), non-career Senior Executive Service (SES), Schedule C, etc.) appointed to or by your agency from January 1 through December 31, 2018?

- ☐ Yes
☐ No (*skip to #51*)

Note: For guidance on what constitutes a full-time non-career appointee for purposes of the Ethics Pledge, see [LA-17-03](#) available at www.oge.gov.

48. For each category of appointee, provide the number of full-time non-career appointees appointed between January 1 and December 31, 2018, and indicate the number who did and did not sign the Ethics Pledge. Note: Please include all appointees who did not sign, regardless of whether or not they were required to sign. Additional explanatory information is requested in the next question.

Number of Full-Time Non-Career Appointees	Type of Full-Time Non-Career Appointees by Category					
	PAS	PA	Non-career SES	Schedule C	Other	Total
a. Appointed 01/01/2018 – 12/31/2018						
i. Signed the Ethics Pledge						
ii. Did not sign the Ethics Pledge						

If applicable, please explain discrepancies between the number appointed and the number who signed or did not sign the Pledge. _____

If all appointees signed, skip to question 50

49. For each appointee who did not sign the Ethics Pledge, find the appropriate rationale(s) and indicate the total number of appointees who fit into that category.

Rationale for Not Signing the Ethics Pledge	Number and Type of Full-Time Non-Career Appointees Who Did Not Sign the Ethics Pledge					
	PAS	PA	Non-career SES	Schedule C	Other	Total
a. Occupy an exempt non-policymaking position (Schedule C or other comparable authority)						
b. Appointed without break in service after serving in another position for which the Ethics Pledge was already signed						
c. Other (please explain)						

If other, please explain. _____

50. How many appointees appointed between January 1 and December 31, 2018 and subject to the Ethics Pledge were registered lobbyists during the two years prior to their appointment? _____

51. Section 3 of Executive Order 13770 provides a waiver mechanism for the restrictions contained in the Ethics Pledge. Indicate below how many waivers were granted to appointees in your agency in 2018, the names of those individuals granted waivers in 2018, and which of the Pledge paragraphs were implicated.

	Number of Ethics Pledge Waivers Granted By Pledge Paragraph	Name(s) of Individual(s) Granted Ethics Pledge Waivers
a. Paragraph 1		
b. Paragraph 2		
c. Paragraph 3		
d. Paragraph 4		
e. Paragraph 5		
f. Paragraph 6		
g. Paragraph 7		
h. Paragraph 8		
i. Paragraph 9		
j. Other (please explain)		

If other, please explain. _____

52. Were there any violations of the Ethics Pledge during 2018?

- * Yes
- * No (*skip to next Part*)

53. Please provide information on enforcement actions taken as a result of violations of the Pledge. _____

ADDITIONAL COMMENTS FOR PART 11. Please indicate the question number to which the comment corresponds. (*not required*)

PART 12. SPECIAL GOVERNMENT EMPLOYEES (SGEs)

54. How many Special Government Employees (SGEs) did your agency have, in total, during calendar year 2018? _____ *(if zero, skip to Additional Comments for Part 12)*
55. How many SGEs serving on a board, commission, or committee were required to receive Initial Ethics Training (IET) by December 31, 2018 (5 C.F.R. 2638.304(b)(2))? _____
- a. How many of those SGEs received IET before or at the beginning of the first meeting? _____
 - b. How many of those SGEs received IET after the first meeting? _____
 - c. How many of those SGEs have not received IET as of today? _____

If applicable, please explain why some SGEs received IET after the first meeting or have yet to receive IET. _____

Report the number of SGE public and confidential financial disclosure reports required to be filed by December 31, 2018 and the number of reports actually filed by December 31, 2018.

Public Reports (OGE Form 278e)	Confidential Reports (OGE Form 450 or OGE- Approved Alternative Form)		Public Reports (OGE Form 278e)	
	Required	Filed	Required	Filed
a. Advisory Committee Members (FACA)				
b. Advisory Committee Members (non-FACA)				
c. Experts/Consultants				
d. Board Members				
e. Commissioners				
f. Other				
TOTAL				

Example for new entrant and termination reports: If an employee started with the agency on December 15, 2018, and filed a new entrant report prior to the end of the calendar year, include the report in your required and filed numbers. If, on January 1, the employee has not filed a new entrant report, do not count that report in your required numbers. Instead, include the employee in your 2019 Questionnaire response numbers in 2020.

If applicable, please explain discrepancies between the number of reports required to be filed and the actual number of reports filed. _____

56. Number of SGEs excluded from all or a portion of the confidential filing requirements per 5 C.F.R. 2634.904(b): _____

57. Extensions and late filing fees for SGE financial disclosure reports:

	Granted filing extension	Granted waiver of late filing fee	Paid late filing fee
a. Number of OGE Form 278e Reports			
b. Number of OGE Form 450 or OGE-Approved Alternative Forms			

ADDITIONAL COMMENTS FOR PART 12. Please indicate the question number to which the comment corresponds. *(not required)*

ADDITIONAL QUESTIONNAIRE COMMENTS:

Point of contact to answer OGE follow-up questions regarding this Questionnaire:

Name: _____

Title/Position: _____

Email Address: _____

Phone Number: _____

What is the preferred mailing address for the Agency Head, Designated Agency Ethics Official, Chief Human Capital Officer, and Inspector General:

Agency Head *(not required)*

Street:
City:
State:
Zipcode:

DAEO *(not required)*

Street:
City:
State:
Zipcode:

Chief Human Capital Officer *(not required)*

Street:
City:
State:
Zipcode:

Inspector General *(not required)*

Street:
City:
State:
Zipcode:

From: Lisa Stevenson
To: Kevin Deeley ; Charles Kitcher ; Neven Stipanovic ; Gregory Baker
Sent: 2019-09-11T13:22:11.0000000Z
CC: Lawrence Calvert
Subject: RE: Symposium Invitation: Digital Disinformation and the Threat to Democracy: Information Integrity in the 2020 Elections

No. According to EW she had previously mentioned it to MP and he did not raise objections, but CH since MP's departure has.

Lisa J. Stevenson
Acting General Counsel
Federal Election Commission
l Stevenson@fec.gov
202-694-1613

From: Kevin Deeley
Sent: Wednesday, September 11, 2019 9:20 AM
To: Lisa Stevenson <LStevenson@fec.gov>; Charles Kitcher <CKitcher@fec.gov>; Neven Stipanovic <NStipanovic@fec.gov>; Gregory Baker <gbaker@fec.gov>
Cc: Lawrence Calvert <LCalvert@fec.gov>
Subject: RE: Symposium Invitation: Digital Disinformation and the Threat to Democracy: Information Integrity in the 2020 Elections

I take it a bipartisan agreement to hold this symposium here was never reached?

From: Lisa Stevenson
Sent: Wednesday, September 11, 2019 9:10 AM
To: Charles Kitcher <CKitcher@fec.gov>; Kevin Deeley <kdeeley@fec.gov>; Neven Stipanovic <NStipanovic@fec.gov>; Gregory Baker <gbaker@fec.gov>
Cc: Lawrence Calvert <LCalvert@fec.gov>
Subject: FW: Symposium Invitation: Digital Disinformation and the Threat to Democracy: Information Integrity in the 2020 Elections

Not sure what the distribution list was on this, but an FYI.

Lisa J. Stevenson
Acting General Counsel
Federal Election Commission
l Stevenson@fec.gov
202-694-1613

From: Tom Moore
Sent: Tuesday, September 10, 2019 5:30 PM
To: FEC Chair Ellen L. Weintraub <CommissionerWeintraub@fec.gov>
Subject: Symposium Invitation: Digital Disinformation and the Threat to Democracy: Information Integrity in the 2020 Elections

SYMPOSIUM:

Digital Disinformation and the Threat to Democracy: Information Integrity in the 2020 Elections

As the technology for manipulation of information steadily advances, and malicious outsiders and foreign influence operators resort to the dissemination of false and altered content, the threat to our democratic process grows. If we collectively fail to contain this problem in 2020, disclosure will be undermined and public faith in our elections may be difficult to restore.

Please join me for an exciting and very topical symposium, *Digital Disinformation and the Threat to Democracy: Information Integrity in the 2020 Elections*. I'm hosting the event with PEN America and the Global Digital Policy Incubator of Stanford's Cyber Policy Center. The symposium will be held at the FEC's headquarters in Washington, D.C.

(1050 First Street, NE) on Tuesday, September 17, from 8:30 AM to 1 PM.

This symposium will bring together leading figures from major tech companies and social media platforms, scholars, researchers, journalists, and national political organizations for an in-depth and solutions-oriented discussion on fighting the disinformation that risks further corroding our democracy. Among the speakers will be **Sen. Mark Warner** (D-Va.) and **Rep. Stephanie Murphy** (D-Fla.), who have each advanced proposals addressing deep fakes and enhancing election security, and **former DHS Secretary Michael Chertoff**. Also participating will be Camille Francois of Graphika, Katie Harbath of Facebook, Kevin Kane of Twitter, Ginny Badanes of Microsoft, Nate Miller of Avaaz, and Laura Rosenberger of the Alliance for Securing Democracy, and Clement Wolf of Google.

Doors open at 8 AM. We encourage you to arrive early to leave time for security procedures. Please RSVP here by Friday, September 13: <https://pen.org/event/digital-disinformation-2020-elections/>

The event will be live-streamed at: <https://www.fec.gov/disinformation>

AGENDA

8:00 Doors open

8:30 – 9:00 Coffee & registration

9:00 – 9:15 Introduction: Framing the challenge

9:15 – 9:45 Keynote: Senator Mark Warner of Virginia

9:45 – 11:00 Session 1: Understanding the challenge: How disinformation and new technologies affect the way we think & what we have learned from the international experience

11:00 – 12:45 Session 2: Facing the challenge in the U.S.: Solutions in the fight to save the 2020 elections

12:45 – 1:00 Closing and next steps

October 8, 2019

The Honorable Amy J. Klobuchar
Ranking Member, Committee on Rules and Administration
U.S. Senate
3 Russell Senate Office Building
Washington, DC 20510

Dear Ranking Member Klobuchar:

Thank you for your letter of October 2, 2019, which discusses the 1977 Memorandum of Understanding (MOU) between the Federal Election Commission (FEC or Commission) and the U.S. Department of Justice (Department) and asks three questions.

1. *Did the Department notify you that it received a campaign finance complaint against the President?*
2. *Did the Department refer the matter to you after it declined to pursue the complaint?*

The Federal Election Campaign Act (FECA or the Act) provides the FEC with exclusive jurisdiction with respect to the civil enforcement of FECA¹ while the Department has criminal enforcement authority over knowing and willful violations of FECA.² In light of the concurrent jurisdiction, the Commission and the Department entered into a formal MOU in 1977.³ The MOU acknowledges the Commission's exclusive jurisdiction in the civil enforcement of FECA, and establishes a framework for the two agencies with respect to the discharge of their respective responsibilities.

¹ See FECA § 306(b)(1); codified at 52 U.S.C. § 30106(b)(1). See generally FECA §§ 306, 307, 309 and 311; codified at 52 U.S.C. §§ 30106, 30107, 30109 and 30111.

² See FECA § 309(d)(1); codified at 52 U.S.C. § 30109(d)(1); *Fieger v. U.S. Attorney General*, 542 F.3d 1111, 1116-17 (6th Cir. 2008).

³ See U.S. Dep't of Justice & FEC, Memorandum of Understanding, 43 Fed. Reg. 5441 (Feb. 8, 1978).

FECA also authorizes any person who believes a violation of the Act has occurred to file a complaint with the FEC.⁴ Additionally, FECA requires the Commission to keep confidential any complaints or referrals it has received until the enforcement matter is resolved and the case is formally closed.⁵ Thus, the Commission is limited in the information it may reveal about its enforcement activities.⁶

In light of this and other considerations, the Commission does not generally confirm or deny the agency's receipt of notice or a referral from the Department of Justice.

3. *Do you agree with the Department's assessment that a foreign government's investigation of the President's political rival could not be quantified as a "thing of value"?*

As of September 1, 2019, the FEC has only three commissioners. Because FECA requires the affirmative votes of four or more commissioners to take certain actions, including rendering advisory opinions or making specified decisions in enforcement actions, the Commission cannot take such actions until its minimum quorum of four commissioners has been restored. Your third question seeks the Commission's view about the application of the law to particular past actions by identified individuals. The Commission typically resolves questions about the application of the law to particular actors and particular facts as advisory opinions when the questions are posed by the actor about its present or intended future conduct, or in its enforcement process, when complaints, referrals from other government agencies, or other information is presented about other actors' past actions.⁷ In light of these considerations, the Commission does not offer a legal opinion on the application of the Act to the Department's reported position.

We appreciate your interest in any matters over which the Commission may have jurisdiction. Should you or your staff members wish to communicate further on these or any other matters at any time, please do not hesitate to contact Duane Pugh, the Commission's Director of Congressional Affairs, at (202) 694-1002 or dpugh@fec.gov.

⁴ See FECA § 319; *codified at* 52 U.S.C. § 30121 (requiring that complaints be in writing, signed, notarized and sworn to under penalty of perjury and subject to the provisions of 18 U.S.C. § 1001 by the person filing such complaint). We do not understand your letter to be an effort to make the Commission aware of alleged violations of FECA, but if that understanding is mistaken, Commission staff are available to assist you or your staff in filing a complaint that meets the statute's requirements.

⁵ FECA § 309(a)(12); *codified at* 52 U.S.C. § 30109(a)(12).

⁶ We note, however, that a third party has publicly announced that it filed a complaint on these facts. The documents that the Commission releases publicly at the conclusion of an enforcement action reflect the careful consideration each complaint receives first from the staff in the Office of General Counsel, and then from the Commissioners. The documents also provide a basis for Congressional oversight of the Commission's enforcement results.

⁷ See 52 U.S.C. § 30109; FECA § 308(b); *codified at* 52 U.S.C. § 30108(b); *see also* Guidebook for Complainants and Respondents on the FEC Enforcement Process, *available at* https://transition.fec.gov/em/respondent_guide.pdf.

The Honorable Amy J. Klobuchar
October 8, 2019
Page 3

On behalf of the Commission,

Ellen L. Weintraub
Chair

Caroline C. Hunter
Commissioner

Steven T. Walther
Commissioner

From: Sari C. Pickerall
To: Lisa Stevenson ; Gregory Baker
Sent: 2019-10-08T15:52:04.0000000Z
Subject: RE: room 1160C today

Lisa,

I spoke to Peter about this. It appears that Stephanie did request the room, but it is showing that it was not approved (although Stephanie said it was. I had the problem previously with Donna Smith and I checked with Tiffany. I will ask Tiffany about it.

Sari C. Pickerall
Office of General Counsel
Federal Election Commission
202.694.1555

From: Lisa Stevenson
Sent: Tuesday, October 08, 2019 11:16 AM
To: Gregory Baker <gbaker@fec.gov>; Sari C. Pickerall <SPickerall@fec.gov>
Subject: FW: room 1160C today

FYI. Sounds like Sari is in the loop but so you have the background.

Lisa J. Stevenson
Acting General Counsel
Federal Election Commission
l Stevenson@fec.gov
202-694-1613

From: Peter Blumberg
Sent: Tuesday, October 08, 2019 10:57 AM
To: Mark Allen <mallen@fec.gov>; Lisa Stevenson <LStevenson@fec.gov>; Charles Kitcher <CKitcher@fec.gov>
Cc: Stephen Gura <SGura@fec.gov>
Subject: RE: room 1160C today

Well ... there's more to the story. I asked Nick if he thought 1190C would yield a better depo result and he said yes, so I went in there and kicked the people out (they were wrapping up anyway, but insisted that they had a confirmed booking). I was polite-ish about it, but you might hear some complaints down the road haha. Sari is helping me look into why the system is allowing double-booking and we will consult with Tiffany. Fwiw, the monitor outside the room clearly showed that it was reserved for ENF, so someone up the chain in IT should be made aware that there is this double-booking problem.

If we didn't have an alt room for the depo, or if the folks using 1190C refused to move, we would have had an embarrassing situation on our hands.

From: Mark Allen
Sent: Tuesday, October 08, 2019 10:49 AM
To: Lisa Stevenson <LStevenson@fec.gov>; Charles Kitcher <CKitcher@fec.gov>
Cc: Stephen Gura <SGura@fec.gov>; Peter Blumberg <pblumberg@fec.gov>; Nicholas Mueller <nmueller@fec.gov>
Subject: FW: room 1160C today

Never mind. Back to 1190C. Thanks.

From: Mark Allen
Sent: Tuesday, October 08, 2019 10:35 AM
To: Stephen Gura <SGura@fec.gov> <SGura@fec.gov>; Lisa Stevenson <LStevenson@fec.gov>; Charles Kitcher <CKitcher@fec.gov>; Peter Blumberg <pblumberg@fec.gov>
Cc: Nicholas Mueller <nmueller@fec.gov>

Subject: room 1160C today

Good morning. Stephanie reserved room 1190C for our deposition today but other users are in that room now. While she is contacting Tiffany about the on-line room reservation system, the court reporter is setting up in room 1160C, the management conference room next to Stephen’s office, for the depo starting at 11 a.m.

RECEIVED

By Office of General Counsel at 1:49 pm, Jun 05, 2019



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*Please reply to DANIEL A. PETALAS
dpetalas@gsblaw.com
Direct Dial 202 298 1791*

June 5, 2019

VIA EMAIL

Lisa J. Stevenson
Acting General Counsel
Federal Election Commission
1050 First Street NE
Washington, DC 20463

Re: Advisory Opinion Request 2019-07, Comment from Area 1 Security

Dear Ms. Stevenson:

This firm represents Area 1 Security, Inc. ("Area 1"). We submit this Comment in response to Draft Advisory Opinions A and B, issued by the Commission on June 3, 2019. The Drafts each take issue with the applied business judgment of Area 1 in setting its prices for certain clients—both political and non-political—based on its reasonable assessment of that client's ability to pay, the desired longevity of the client relationship, and the perceived value to Area 1 in research and development and employee motivation or "pride." These legitimate business considerations are entirely consistent with the modern valuation framework adopted by many of the most successful providers of software as a service ("SaaS"). Not only do the two Drafts essentially substitute the Commission's judgment about the value of the consideration to be received for that of the Requestor, they misapply the relevant prior advisory opinions. We respectfully urge the Commission to reject both Drafts A and B and vote to approve the Request for the reasons stated in the Request and in this supplemental submission.

1. Draft A—Legal Adequacy of Consideration

Draft A would conclude that the legitimate business justifications recited in the request—research and development and the value of enhanced employee motivation or "pride"—when taken together with the targeted client's assessed ability to pay and length of the proposed relationship, cannot constitute an adequate commercial consideration for Area 1's services. That conclusion is inaccurate as a matter of fact and inconsistent with the prior advisory opinions on which it relies.



A. Research and Development as Applied to Area 1's SaaS Business Model

Draft A misapprehends the considerable economic benefit that flows to a company that was formed for the specific purpose of detecting and mitigating phishing attacks by providing its services to the most vulnerable and highly-targeted prospective clients, irrespective of the amount of monetary payment received. Draft A also ignores the considerable economic advantage that Area 1 would reap from affording its employees the opportunity to address the most urgent and compelling problem presented in their chosen field of expertise. Properly understood, those substantial business interests generate far more revenue in the long term for Area 1 than a straight monetary payment, and constitute more than adequate consideration to Area 1 for pricing its services as proposed, as perfectly illustrated by Area 1's decision to offer the same services for the same rates to non-political clients when doing so serves the same interests.

As noted in the Request, the research and development opportunity is significant consideration to Area 1. Federal candidates and political committees are uniquely targeted by foreign government cyber actors. Area 1 benefits from applying and improving its cutting edge and proprietary technical approaches through applied research and development to defend against these foreign cyber actors, particularly given the special vulnerability of political candidates and committees to such attacks. Area 1 would therefore benefit immensely from the unique cybersecurity opportunity that occurs only during U.S. elections and only with respect to these types of prospective clients. Indeed, the Commission expressly recognized the value of research and development in the context of cybersecurity services when granting the request in Advisory Opinion 2018-12 (Microsoft), as did the requestor in that case, notwithstanding Draft A's attempt to dismiss the importance of that factor after the fact.

Indeed, more so than other commercial clients, federal candidates and political committees present a particularly valuable R&D opportunity to Area 1. Foreign government and state-sponsored cyber actors are at the forefront of offensive cybersecurity. They employ particular tactics, techniques, and procedures in specific national security contexts, and in particular in the demonstrated efforts of foreign governments to influence U.S. elections through phishing into political parties and candidate committees. Those national-security related activities are far less likely to be observed in other non-political contexts. As in elections past, the 2020 U.S. elections will be subject to new forms of phishing that are unlikely to be seen by commercial organizations for some time. In return for proposing to service these types of clients, Area 1 accordingly gains much more timely—and far more valuable—threat assessment, intelligence, analysis, and testing opportunities than in the ordinary, non-political commercial context.

Moreover, the specific research and development opportunity presented here is directly related to Area 1's core product and its specific organizational purpose—anti-phishing services—which has been its central mission for years before filing the present Request. As such, the research and development interest identified in the Request is tied directly to that pre-existing and well-established business purpose. Therefore, to whatever extent the Commission may be concerned that the consideration drawn from research and development could in some hypothetical future case serve as a pretext for making a prohibited



corporate contribution to a candidate, that concern is not presented in any respect under the facts of this Request. It would be unfair and improper to deny an advisory opinion where the facts presented raise no basis to conclude that the proposed activity of the particular Requestor is intended to circumvent any concern about corporate influence on federal elections.

In addition, as the Commission likely is well aware, research and development is a particularly valuable commodity in the software technology and SaaS fields in which Area 1 operates. Unlike some other consumer goods, advanced research, development, and continuous testing is core to the development of the software product being offered in the dynamic and ever-changing cybersecurity context. It is thus critical to the effort both to create and to continue to improve new versions of the product as the threat environment continues to evolve and adapt to countermeasures. The immediate financial value of that fact should be plain: better products assure the retention of existing customers and are more likely to attract new customers, all of which tends to generate additional revenues. Indeed, this research and development component of producing the most advanced cybersecurity solution in a highly competitive field is more important to the valuation of the company than is the immediate recognition of revenue. By way of analogy, a company formed to create a cancer drug does not require immediate or continuous monetization. All of the risk, and subsequent reward, is in the science: if the drug works, it's valuable. The business focus on the science—i.e., the research and development investment—is paramount to the company's ability to prove effectiveness and thus subsequently to generate revenues.

Area 1 is in a similar position. The company generates monetizable value via continuous applied research and development, even without the immediate recognition of revenue on every sale. This is true of many modern technology companies that, like Area 1, deliver SaaS. The modern SaaS business model prioritizes customer adoption, retention, product effectiveness, and continuous deployment—all of which hinge on research and development, not immediate revenue streams.

But in the end, the cybersecurity research and development that is critical to Area 1's success depends on its ability to apply its work to the most sophisticated and targeted phishing attacks. In the same way that pharmaceutical research and development relies on a targeted population of patients to prove effectiveness, Area 1's research and development requires that the company address a specific set of customers who are most at risk to test and prove its effectiveness, learn from the experience, and iterate new and improved versions of its software and service. In this particular instance, because the company would be harmed if it were unable to test and continually improve the effectiveness of its products, working with the organizations most at risk—election-sensitive organizations—is a critical driver of Area 1's revenue growth, and is a fundamental interest of the company and of its shareholders. To say that the company's assessment of the value of the research and development information to be gained from servicing these particular clients is not sufficient consideration, as Draft A purports to do, is simply counterfactual and inconsistent with the representations in the Request on which any resulting advisory opinion would be premised.



B. Economic Value of Employee Pride and Satisfaction

Like “R&D,” the economic value attributable to the pride factor is also significant in the circumstances presented in this Request, and entirely consistent with modern technology-company business models. Modern technology corporations focus significant attention and resources on acquiring and retaining the most highly skilled computer science talent available in order to further their business interests in an extremely competitive field. Recruiting and retaining the best engineering talent is exceedingly difficult in the present technology economy, and engineering talent is absolutely fundamental to developing and maintaining products that attract and retain customers and generate revenue growth. Perhaps nowhere is that more the case than in the high-risk and evolving cybersecurity space. And for such highly-recruited cybersecurity professionals, the opportunity to protect the most actively targeted and important organizations—federal candidates and political committees—is an essential and extremely meaningful opportunity in the field. The quadrennial presidential elections offer unprecedented opportunity to prove and advance Area 1’s mission in that respect. If Area 1 can provide its employees the ability to work on that problem, it will increase their intrinsic motivation to excel and remain committed to the company and its mission. The power and value of intrinsic motivation for its employees is critical in a highly competitive industry like cybersecurity. Intrinsic motivation is what leads the company’s employees to work long into the night in order to develop new and better ways of solving the most difficult problems—the source of the financial performance and success of the organization. And this is particularly so where the product is SaaS, as the software is the corporate product and subject to the need for continual revision and improvement, which can only be achieved through the sacrifice and commitment of the talented employees Area 1 seeks to hire, motive, and retain.

C. Prior Advisory Opinions do not Support the Approach in Draft A

In addition to these factual issues, Draft A takes a highly restrictive view of what constitutes legitimate business considerations that is both out of touch with actual business practice and inconsistent with the past Commission advisory opinions that the Draft recites. As explained above and in the Request itself, Area 1 clearly identified the consideration that it receives in return for its services, and represented that those business considerations are of considerable financial value to Area 1, consistent with other tech companies that also provide software-based business services for free or at low cost to certain clients in the modern marketplace. Nonetheless, without any real analysis of the concept, Draft A asserts that “Area 1 must show that its business considerations are sufficient to justify its charges regardless of its ordinary business.”¹ Draft A apparently interprets that to mean that the stated consideration must “provide value,”² although it does not further attempt to explain what amounts to “value,” why research and development and employee motivation isn’t valuable, or how much value is needed for the particular service offerings

¹ Draft A at 8, ll. 5-7.

² *Id.*, ll. 7-8.



here. Regardless, Area 1 in fact satisfied that value requirement. The Request represented that the research and development opportunity associated with servicing federal candidates and political committees was substantial, and that it is highly valuable to Area 1. The Commission recognized the same in Advisory Op. 2018-12, as did Microsoft itself in its own request. And the same is true of the value to Area 1 provided by the enhanced ability to recruit, motivate, and retain a highly skilled and educated workforce in a hotly competitive tech market that comes from providing those employees the opportunity to address the most pressing and interesting problem in their chosen field. As Area 1 has explained, that pride factor is a highly valuable part of the consideration it received as well, from which Area 1 directly benefits monetarily.

In response to the Request's showing, however, Draft A simply asserts, without actual analysis, that "Like the publicity and goodwill asserted by CompuServe, research and development and pride do not provide the type of consideration that is sufficient to adequately compensate Area 1 for the potentially highly valuable services it would provide federal candidates and political committees."³ In this, the Draft simply offers a conclusion with reasoning, notwithstanding the express representations made in the Request concerning the substantial value of these factors, as well as the public experience of many other technology companies that also justify the sale of their "potentially highly valuable services" without monetary charge when it returns the same types of valuable benefits that Draft A here rejects out of hand as inadequate consideration.

Draft A, if adopted, would expand the decision in Advisory Opinion 1996-02 (CompuServe) far beyond that decision's stated parameters. The rationale actually applied in CompuServe was that "The Commission has permitted a number of the proposed transactions on the basis that the discount or rebate is made available *in the ordinary course of business, and on the same terms and conditions.*"⁴ Unlike the approach taken in Draft A, that statement of the law is consistent with the language of the relevant regulation,⁵ and is precisely what Area 1 in fact proposed in its Request—to apply the same pricing model under the same terms and conditions that it uses in the ordinary course of its business for non-political clientele. Draft A's much broader reformulation of the relevant standard would essentially read the exception out of existence, without any applicable limiting principle or explanation of what constitutes legitimate business consideration other than that it "provide value."

The only justifications for the proposal in the CompuServe AO was publicity and good will. The opinion did not reach any other business consideration, and the Draft's attempt to stretch the opinion to also cover other

³ *Id.* at 8, ll. 9-12.

⁴ Advisory Op. 1996-02 (CompuServe) at 2.

⁵ 11 C.F.R. § 100.52(d).



measurable value propositions, like research and development or employee satisfaction, is not based on the Commission's holding.

For all of these reasons, on the law and the facts, the Commission should reject Draft A.

2. Draft B—Application of Pricing Model

Draft B expresses skepticism about how Area 1 applies its pricing model, notwithstanding the specific representations made in the Request and the well-established similar practices of many technology companies that offer similar cloud-based SaaS business services. As explained, the operative pricing factors applied by Area 1 are: (1) the client's financial resources, (2) the potential longevity of the relationship, (3) research and development benefits, and (4) the pride interest. If a client has limited financial resources, that counsels in favor of lower pricing. If the proposed relationship with a client would be short, that counsels in favor of lower or eliminated pricing. When Area 1 desires to enter into a short-term relationship with a client, the motive generally is not generating immediate revenue. If a client presents a research and development opportunity where Area 1 would gain significant and valuable insight and threat analysis, that counsels in favor of lower or eliminated pricing. And if a client presents a special opportunity to attract, motivate, and retain top employees, then that, too, counsels in favor of lower or eliminated pricing.

As noted, Area 1 currently provides its software services at little to no cost to a variety of non-political, commercial clients based on its assessment of the same factors described in the Request. Some of these clients are working on the latest advances in biogenomics and aerospace, and are of significant interest to foreign cyber actors seeking to obtain their technologies illicitly. Some of these clients are non-profit and humanitarian organizations also actively targeted by hostile foreign cyber actors. Area 1 has gained incalculable research and development benefits from working with these non-political organizations, which in turn has led to new patents, enhanced detection algorithms, and new product features. Further, in addressing and resolving the threat of phishing attacks on these companies, Area 1 has identified specific employee measurements that confirm the value that flows from the enhanced employee morale and willingness to make additional contributions to the company as a result of the pride factor. In deciding to offer its services to these clients at little to no cost, Area 1 passed these entities through the same pricing framework it proposes to apply to prospective federal candidate and political committee clients if they choose to adopt its solution and qualify.⁶

⁶ Area 1 did not submit the Request because it was proposing any sort of new or special "election-related" pricing plan. This is yet a further distinction from the case in the CompuServe AO, where CompuServe intended to create a "nonpartisan online election headquarters," named "The Election Connection '96." Advisory Op. 1996-2 at 1. To the contrary, the prices Area 1 proposes to charge candidates and political committees, as is represented in the Request, is the same that it would charge similarly-situated non-political clients who present the same set of non-political business considerations. The Request was submitted simply because Area 1 wants to provide further assurance and create clarity for federal candidates and political committees that its offering of anti-phishing software at little to no cost—entirely consistent with its ordinary business practices



The skepticism stated in Draft B also ignores the prevalence of similar pricing models in modern business practice in the technology field. Establishing tiers of low-cost pricing is a well-established practice in technology startups, and the largest- and fastest-growing software companies in the United States have benefited from the same approach that Area 1 pursues. The messaging tool, Slack, for example, in its S-1 filed with the Securities and Exchange Commission in April 2019,⁷ stated that it had 600,000 customers, more than 500,000 of which received the product at no cost. Dropbox, the file storage company, in its S-1 filed in February 2018⁸ stated it had over 500 million users, but only 11 million paying users. Zoom, the video conferencing service, in its S-1 filed in March 2019⁹ stated that “Our rapid adoption is driven by a virtuous cycle of positive user experiences . . . when attendees experience our platform and realize the benefits.” Slack, Dropbox and Zoom established tiers of free pricing and have seen the same research and development benefits, as well as the economic value of employee pride, that Area 1 has experienced and is confident it would continue to experience in servicing political candidates and committees, regardless of the lack of an immediate or substantial monetary charge imposed for such services. It should be revealing and further comfort to the Commission in assessing the credibility of Area 1’s representation as to the value of these business considerations, that these companies—among the most successful startups in recent years—have actively promoted the same business strategy in their government filings as Area 1 sets forth here.

Nor is Draft B correct in its contention that Area 1 would “categorically” except from its four-factor price assessment the entire category of political clients.¹⁰ To the contrary, Area 1 fully intends to assess each potential client as it finds it, both political and non-political, and according to the identical pricing criteria. The Request is clear on this point, and Area 1 reiterates it again here. Nonetheless, it is Area 1’s experience that federal candidates and political committees on the whole are not able or are otherwise unwilling to expend the amount for cybersecurity services that other commercial entities provide. Indeed, this is a fact that the Commission itself has explored in connection with its recent advisory opinion involving a two-party effort to provide certain discounted cybersecurity services to candidates and others, and as is further

for non-political clients and on the same terms and conditions, and based on commercial and not political considerations—is consistent with law.

⁷ Slack Technologies, Inc., SEC Form S-1 Registration Statement at 4 (April 26, 2019), *available at* <https://www.sec.gov/Archives/edgar/data/1764925/000162828019004786/slacks-1.htm>.

⁸ Dropbox, Inc., Form SEC Form S-1 Registration Statement at 1 (Feb. 23, 2018), *available at* <https://www.sec.gov/Archives/edgar/data/1467623/000119312518055809/d451946ds1.htm>

⁹ Zoom Video Communications, Inc., SEC Form S-1 Registration Statement at 4 (Mar. 22, 2019), *available at* <https://www.sec.gov/Archives/edgar/data/1585521/000119312519083351/d642624ds1.htm>

¹⁰ Draft B at 5.



reflected in a recently discussed potential draft interpretive notice proposed by a Commissioner.¹¹ Moreover, although it is true that some candidates and committees span many years, the proposed service offering is necessarily focused on the milestones of the presidential election cycles to the extent that those are the landmarks by which foreign threat actors time their phishing attacks, and further the period during which the other relevant business considerations, research and development opportunities and the pride benefit in doing the work—which also are part of the analysis and must be taken into account—are at their peak. Accordingly, Area 1 anticipates that the federal candidates and political committees that may seek to retain its services will qualify for the same pricing as similarly situated non-political entities that receive services at reduced prices or without a monetary payment. This is not, however, a wholesale “election” discount in any respect. Rather, it is merely the anticipated result of the application of Area 1’s traditional pricing strategy to the circumstances presented in this relatively unique area within the anti-phishing industry and premised on Area 1’s practical experience to date. Draft B’s inference to the contrary is unsupported in the Request and factually incorrect.¹²

Regardless, as a legal matter and as the Commission is well aware, an advisory opinion provides no benefit or value to the requestor whatsoever, unless the material factual representations on which the opinion is premised hold true. Here, Area 1 has represented that it applies its pricing strategy across the board, for both political and non-political clients alike, and that its application of the same, legitimate business considerations identified in the Request have led it to price its services to non-political clients at reduced rates or at no charge at all, as it anticipates will happen when assessing potential political clients. Draft B provides no basis for discounting that factual assertion, which is consistent with the marketplace and business valuation standards across the industry in which Area 1 competes, nor does it provide any reason to substitute the Commission’s own view about the appropriate value of the market for Area 1’s services that should differ from Area 1’s considered business judgment.

Accordingly, the Commission should also reject Draft B as inconsistent with the basis of the Request presently before the Commission.

3. Conclusion

Area 1 was formed several years ago for the specific purpose of providing the most sophisticated and effective anti-phishing service available. Had its services been employed during the presidential contest in 2016, it would most certainly have prevented the phishing attacks that prevailed against both candidate and political party committees, to the great detriment of public confidence in our democratic election

¹¹ See Advisory Op. 2018-12 (DDC); Agenda Doc. No. 19-21-A, Draft Interpretive Rule on Paying for Cybersecurity Using Party Segregated Accounts, May 20, 2019.

¹² Further, so as to leave no doubt that the same four-factor cost-assessment model described in the Request applies to all clients, both political and non-political, Area 1 has broadened its brand marketing to identify that pricing option expressly on its outward-facing website. See <https://www.area1security.com/overview/pricing/>.



G A R V E Y S C H U B E R T B A R E R

Ms. Stevenson
June 5, 2019
Page 9

system. The Commission, like the U.S. intelligence community, has recognized the devastating effect and continuing vulnerability posed by foreign state cyber-attacks against the U.S. political system. The Commission now has an opportunity to affirmatively act to help protect that system by recognizing that Area 1's provision of services under the same pricing formula that it employs for all of its clients, irrespective of their political nature, would not constitute an impermissible corporate contribution of provided to federal candidates and committees on the same terms and on a non-partisan basis, as described in the Request. We therefore again ask that the Commission vote to approve the pending Request.

Very truly yours,

GARVEY SCHUBERT BARER, P.C.

By

Daniel A. Petalas

Attachments

cc: Ellen L. Weintraub, Chair
Matthew S. Petersen, Vice Chairman
Caroline C. Hunter, Commissioner
Steven T. Walther, Commissioner

From: Shellie Purnell-Brown
To: Lisa Stevenson
Sent: 2019-06-04T21:29:18.0000000Z
Subject: RE: OGC attendees at A-123 reccs meeting

NO problem, it is done.

From: Lisa Stevenson
Sent: Tuesday, June 04, 2019 5:28 PM
To: Shellie Purnell-Brown <SPurnell-Brown@fec.gov>
Subject: RE: OGC attendees at A-123 reccs meeting

Hah. I've clearly had a long day. Let me try that again. Mr. Kahn.

Lisa J. Stevenson
Acting General Counsel
Federal Election Commission
l Stevenson@fec.gov
202-694-1613

From: Shellie Purnell-Brown
Sent: Tuesday, June 04, 2019 5:24 PM
To: Lisa Stevenson <LStevenson@fec.gov>
Subject: RE: OGC attendees at A-123 reccs meeting

So should the evite go to Mr. Kahn or Mr. Knop?

From: Lisa Stevenson
Sent: Tuesday, June 04, 2019 5:10 PM
To: Shellie Purnell-Brown <SPurnell-Brown@fec.gov>
Cc: Gregory Baker <gbaker@fec.gov>; Robert Kahn <RKahn@fec.gov>
Subject: OGC attendees at A-123 reccs meeting

Shellie

I just noticed that my email to you auto-filled in Robert Knop rather than Robert Kahn. Can you please send invite to Mr. Knop, instead? Thanks and sorry for the error.

Lisa J. Stevenson
Acting General Counsel
Federal Election Commission
l Stevenson@fec.gov
202-694-1613

From: Lisa Stevenson
To: Lawrence Calvert
Sent: 2019-08-30T12:54:00.0000000Z
Subject: Fwd: News and Views from the FEC's Press Office

See the politico article.

Begin forwarded message:

From: "BNA Convergence" <convergence@bna.com>
Date: August 30, 2019 at 7:33:17 AM EDT
To: LStevenson@fec.gov
Subject: News and Views from the FEC's Press Office
Reply-To: convergence@bna.com

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News and Views from the FEC's Press Office

News and Views from the FEC's Press Office

[FEC, Federal Campaign Finance and Election News](#)

[State and Local \(and International\) Campaign Finance News](#)

[Federal Employee and Government News](#)

[Editorials, Blogs and OpEds](#)

[FEC Staff Quotes and References](#)

[Tweets to @FEC from verified users](#) 

FEC, Federal Campaign Finance and Election News

[As FEC Nears Shutdown, Priorities Such As Stopping Election On Hold](#)

NPR [National Public Radio] (United States) - 08/30/2019 06:30
The seal of the Federal Election Commission is printed on windows outside its headquarters in a file photo. The campaign finance agency effectively prevented from doing much of its work at the end of the month, it loses a quorum of...

[A campaign finance referee is leaving the field](#)

Federal Times - 08/29/2019 14:42
The federal agency responsible for enforcing federal campaign finance rules soon have too few members to officially make decisions, as the agency announced Aug. 26 that its vice chairman, Matthew Petersen, was leaving at the end of the month....

[The FEC Is Officially Broken. It Might Not Matter.](#)

The Daily Beast - 08/29/2019 13:02
The resignation of a Republican Federal Election Commissioner could be the impetus to remake the nation's campaign finance law. For all intents and purposes, it might not make a difference. Republican...

commissioner Matthew Peterson...

[Why the FEC can't probe Ilhan Omar's campaign finances anytime](#)

New York Post (New York, NY) - 08/29/2019 12:50

WASHINGTON – The federal agency charged with probing the finance complaint against Rep. Ilhan Omar won't be able to act on it soon. The Federal Election Commission no longer has a quorum in business when Commissioner Matthew...

[Ilhan Omar says questions about alleged affair, misuse of campaign funds 'stupid'](#)

FOX : News - 08/29/2019 20:00

Rep. Omar refuses to answer questions related to campaign fund allegations. Rep. Ilhan Omar, D-Minn., dismissed what she called "stupid questions" from reporters on Wednesday about allegations she misused campaign funds to reimburse her...

[FEC chair summons Facebook, Twitter, Google to disinformation symposium](#)

Politico - 08/29/2019 12:20

The chair of the FEC is summoning Facebook, Google and Twitter to a meeting next month on digital disinformation amid concerns that Russian-style social media manipulation will target the 2020 elections. The goal of the symposium will be...

[Google, Twitter to Discuss 2020 Disinformation: Campaign Update](#)

Bloomberg News Feed - 08/29/2019 15:52

(Bloomberg) -- Google, Facebook and Twitter have been invited to a meeting of the Federal Election Commission to explore ways to combat digital disinformation in the 2020 elections. The all-day symposium on Sept. 17 will examine new types of false...

[Facebook, Twitter to attend disinformation event at federal election commission](#)

CNET - 08/29/2019 16:11

Facebook and Twitter plan to attend an event this month at the Federal Election Commission's office in Washington, DC, about digital disinformation, the companies said Thursday. The FEC is co-hosting the Sept. 17 event, titled "The Global Digital Policy..."

[Google, Twitter to discuss 2020 disinformation with Federal Election Commission](#)

Advertising Age (New York, NY) - 08/29/2019 16:34

Google, Facebook and Twitter have been invited by the head of the Federal Election Commission to explore ways to combat digital disinformation in the 2020 elections. The all-day symposium on Sept. 17 will examine how to combat false information spread...

[Former Highland Heights mayor admits to stealing \\$150,000 from Dave Joyce's campaign](#)

Cleveland Plain Dealer - [Cleveland.com](#) (Cleveland, OH) - 08/29/2019 10:00

15:27

CHARDON, Ohio — Former Highland Heights Mayor Scott Coleman admitted in court Thursday that he embezzled about \$160,000 from Dave Joyce's campaign when he worked as the Northeast Ohio campaign treasurer. Coleman, 58, pleaded...

[Facebook clamping down on political ads](#)

fecgov : Forbes - 08/30/2019 07:18

Facing mounting scrutiny of its advertising policies ahead of next presidential election, Facebook is once again tightening its rules relating to politics and social issues.

[Trump Super PAC Turns Over Docs Linked to Sketchy Donations](#)

Daily Beast (New York, NY) - 08/29/2019 14:45

A leading pro-Trump super PAC, facing a subpoena, has turned over documents related to a six-figure corporate contribution that ethics groups say have violated federal law. The contribution to America First Action Fund, the company Global...

[The FEC Asks Bernie Sanders About 69 Pages Of Prohibited or Questionable Campaign Contributions](#)

Politicus USA - 08/29/2019 09:46

The FEC is looking into 69 pages of potentially illegal contributions to Bernie Sanders presidential campaign. Dave Levinthal reported: It is not uncommon for the @FEC to flag presidential candidates for accounting issues,...

['Offensive': Rivals fume at DSCC's Hickenlooper endorsement](#)

Politico - 08/30/2019 05:13

When the Senate Democratic campaign arm endorsed John Hickenlooper Monday after he announced he would challenge GOP Sen. Cory Gardner, backlash was swift. A half dozen women already running penned a letter attacking the committee for...

[DSCC Raked In Cash From Health Care and Fossil Fuel Lobbyists Endorsing Hickenlooper](#)

Sludge - 08/29/2019 12:04

The Democratic Senatorial Campaign Committee is intervening in a crowded Senate primary to boost a candidate who opposes Medicaid and the Green New Deal. This story is a collaboration between Slate and MapLight, a nonpartisan...

[Iowa Democrats stress rural roots as they vie to take on Sen. Joni Ernst](#)

Roll Call Online (Washington, DC) - 08/30/2019 05:03

GREENFIELD, Iowa — Facing a group of Democrats gathered at a park shelter here, Theresa Greenfield pitched herself as the best candidate to take on Iowa Republican Sen. Joni Ernst. “I am a businesswoman, mother of four, and I am a...

[Why Kirsten Gillibrand's presidential campaign went nowhere](#)

Buffalo News (Buffalo, NY) - 08/30/2019 06:45

WASHINGTON – The slow and agonizing death of Sen. Kirsten Gillibrand's presidential dream began in the bright lights of Rachel Maddow's MSNBC studio just two days after the New York Democrat announced her campaign in January. "She has been on her...

[Gillibrand ends campaign with \\$800k in cash on hand. What happened to the money?](#)

FOX : Business - 08/29/2019 12:43

Biden gaffes continue on 2020 campaign trail Right Turn Strategist Chris Barron, Michael Starr Hopkins, national press secretary for Joe Biden, Delaney, and "The Jamie Weinstein Show" podcast host Jamie Weinstein, and former Vice President Joe...

[Questions surround Gillibrand's future after campaign ends](#)

Press Republican (Plattsburgh, NY) - 08/30/2019 02:32

ALBANY — After spending nearly \$800,000 on Facebook ads and other expenses, Gillibrand (D-NY) found herself stuck in neutral while pointed up in a crowded race for the Democratic...

[Full Lane and Sparse Support: How Gillibrand's Run Fizzled](#)

New York Times, The (New York, NY) - 08/30/2019 00:00

Senator Kirsten Gillibrand was in a bind. With less than three weeks left, she had a deadline to get into the fall presidential debates -- which she deemed essential for keeping her campaign alive -- she was on track to fall well short. Neither the...

[The undeniable Al Franken connection to Kirsten Gillibrand's failed presidential bid](#)

Washington Post (Washington, DC) - 08/29/2019 10:54

By Amber Phillips Reporter for The Fix covering Congress, state politics, and the 2020 Bio Follow August 29 at 10:47 AM There are multiple reasons why Senator Kirsten Gillibrand's (D-N.Y.) presidential campaign failed. But one of the most prominent anchors for her was a...

[Why Gillibrand crashed and burned](#)

fecgov : Politico - 08/30/2019 07:00

On Tuesday night, Kirsten Gillibrand gathered her family and her campaign manager, Jess Fassler, at her home in Troy, N.Y., for a reality check.

[DNC rejects Nevada, Iowa Democrats' virtual caucus plan, first-in-state status in question](#)

Mason Valley News - 08/30/2019 00:56

CLOSE The Iowa caucuses are not first because they're important, they're important because they're first. Register opinion editor Kathie O'Connell

gives a brief history lesson on the Iowa caucus. Kelsey Kremer, kkremer@dmreg.com The Democratic...

[In search for campaign cash, de Blasio lands in middle of Orthodox](#)

NY Playbook - 08/29/2019 20:42

Mayor Bill de Blasio's quest for campaign donations has entangled his presidential bid in a decades-long dispute over succession rights with the City's Orthodox Jewish Satmar community. What began as a request for contributions to qualify for the...

[Mayor de Blasio doesn't make the cut for third Democratic debate](#)

Daily News (New York, NY) - 08/29/2019 14:48

It's official: Mayor de Blasio won't be on stage next month with the Democratic candidates hoping to become their party's presidential nominee. De Blasio, whose long-shot presidential bid has been marred by low poll numbers and slumping...

[New super PAC set to take down Democrats in U.S. Senate race](#)

Colorado Politics - 08/29/2019 18:34


The conservative advocacy organization Colorado Rising Action Fund has a political cousin with money: Colorado Rising PAC. Run by the son of the founder in charge of the advocacy organization, the new political action committee shares the same relative mission:...

[Woman's \\$500,000 Ad Buy Against Joe Biden Uses Misleading Footage](#)

Huffington Post (United States) - 08/29/2019 18:26

Biden's campaign wants the video taken down. So does Elizabeth Warren. An investor recently embroiled in a years-long legal battle has reportedly purchased \$500,000 worth of ads against former Vice President Joe Biden that attempts to tie the 2020...

[Is there still time for a candidate to surge?](#)

 Washington Post (Washington, DC) - 08/29/2019 18:20

By David Weigel David Weigel National reporter covering politics Follow August 29 at 6:07 PM In this edition: The myths of the presidential election, a talk with (another one of) the president's potential primary challengers, and the last...

[Issa weighs return to the House — through Duncan Hunter](#)

Politico - 08/29/2019 14:45

Former Rep. Darrell Issa wants to make a comeback, and is eyeing a path that would put him head-on with embattled Republican Rep. Duncan Hunter. A California Republican has launched an exploratory committee, and a website that recently...

[Tim Ryan misses next presidential debate, but has a backup plan](#)

Roll Call Online (Washington, DC) - 08/29/2019 14:39

After failing to qualify for next month's televised Democratic primary debate, Rep. Tim Ryan pledged to keep his White House bid going. His simultaneous congressional campaign is gearing up for an upcoming primary at a Capitol Hill...

[Liberal House Majority PAC's New 'Dark Money' Arm Spending on TV Ads](#)

NewsBusters - 08/29/2019 12:29

A new liberal 501(c)(4) "dark money" group linked to the liberal House Majority PAC intends to spend millions on TV and digital ads to help Democrats maintain control of the House of Representatives. Internal Revenue Service rules stipulate that...

[Campaign wants to stop corporate PACs funding anti-LGBT politicians](#)

Philadelphia Gay News (Philadelphia, PA) - 08/29/2019 13:28

A newly-launched national initiative is calling on corporations to stop funding anti-LGBTQ members of Congress. Zero for Zeros Campaign, which launched in June, uses...

['Well heck, I'm not doing anything': This Arizona couple moved to volunteer for Tulsi Gabbard](#)

USA Today (Washington, DC) - 08/29/2019 13:28

Comments This conversation is moderated according to USA Today's community rules. Please read the rules before joining the discussion. Opsahl, Des Moines Register Published 1:26 p.m. ET Aug. 29, 2019. Updated 2:05 p.m. ET Aug. 29, 2019...

[10-strong Democratic 2020 debate lineup announced: Biden and Clinton face off in Houston](#)

Washington Examiner (Washington, DC) - 08/29/2019 13:21

The Democratic National Committee on Thursday announced the lineup for the Democratic presidential primary debate on Sept. 12 in Houston. Ten candidates will take the debate stage on one night: Former Vice President Joe Biden New Jersey Sen....

[Final lineup set for sole night of ABC Democratic primary debate](#)

ABC : News (New York, NY) - 08/29/2019 13:09

The final lineup for the third Democratic debate is set for a single night in Houston in two weeks on Sept. 12. Interested in Democratic Party news, video, and... Democratic Party as an interest to stay up to date on the latest Democratic Party news, video, and...

[Sports radio host to form exploratory committee on Senate bid against McConnell](#)

USA Today (Washington, DC) - 08/29/2019 10:25

Comments This conversation is moderated according to USA Today's community rules. Please read the rules before joining the discussion. Sonka, Louisville Courier Journal Published 10:17 a.m. ET Aug. 29, 2019.

CLOSE Rachael Denhollander was...

[Recode Daily: Facebook wants even more info on who is buying](#)

Recode - 08/29/2019 08:48

Facebook wants even more information about who's paying for ads. Facebook said this week that it will tighten some of its rules on political ads and will require more information about these ads' funding, as well as verification of the ads...

[Issa launches exploratory committee to challenge GOP Rep. Duncan](#)

The Hill (Washington, DC) - 08/29/2019 10:22

Former Rep. Darrell Issa (R-Calif.) has taken his first formal step to return to Congress. The former House Oversight Committee chairman has created an exploratory committee to run for the San Diego-area seat by his GOP colleague, Rep. Duncan....

[Matt Jones forming exploratory committee, taking him one step closer to Senate bid](#)

Lexington Herald-Leader (Lexington, KY) - 08/29/2019 09:59

Kentucky Sports Radio host Matt Jones is taking another step toward a bid for U.S. Senate. Jones, a Democrat, said Thursday he is forming an exploratory committee for a potential Senate bid. Candidates thinking about running for office can not spend...

[Warren lovefest ending as 2020 competitors fear her rise](#)

fecgov : Politico - 08/30/2019 06:59

The Elizabeth Warren honeymoon may be coming to an end.

[Biden has said Warren gave him hell. Now they'll debate together again.](#)

Politico - 08/29/2019 13:44

As Elizabeth Warren battled Joe Biden over a bankruptcy bill more than a decade ago, she confided her frustrations with the Delaware senator, a progressive ally. Then a Harvard law professor with a limited national profile, Warren had publicly...

[The next debate will bring a new challenger on stage with Joe Biden](#)

CNN - 08/29/2019 08:09

(CNN)Joe Biden and Elizabeth Warren have been circling for months, but battleships just out of range. We now know that will change in the next week of September, when the Democratic front-runner and the challenger will be stirring the loudest buzz on...

[back to top](#)

[More states are letting candidates use campaign dollars for child about Pennsylvania?](#)

Pennsylvania Capital-Star - 08/30/2019 06:40

The 2018 election was deemed the “ Year of the Woman .” But easily been called the Year of the Mom. The number of women v kids in Congress nearly doubled this year, while Democrats vying Democratic nomination for...

[Group challenges Montana’s ‘dark money’ order](#)

Lewiston Tribune (Lewiston, ID) - 08/30/2019 05:03

HELENA, Mont.— A conservative advocacy group is challenging Gov. Steve Bullock’ s executive order that requires organizations large state contracts to report political contributions that exceed if those disclosures...

[Michigan House, by a 98-8 vote, wants Republican lawmaker face in alleged vote-for-campaign-money](#)

Chicago Tribune (Chicago, IL) - 08/29/2019 15:23

The Michigan House approved a resolution Thursday urging the a lawmaker who is facing federal charges over an alleged scheme votes for campaign money. In the measure, which passed 98-8, t reserved the right to take...

[He was accused of sexual harassment. Now, one California lawmaker investigation for campaign misspending](#)

Sacramento Bee (Sacramento, CA) - 08/29/2019 20:12

Meet the members of the California Fair Political Practices Comm California Fair Political Practices Commission is charged with en state’s laws on campaign finance, conflicts of interest, lobbying a governmental ethics. The...

[Allegations of O.C. Assemblyman Lavishly Spending Campaign Scrutiny From Watchdog](#)

CW : KTLA-TV 5 (Los Angeles, CA) - 08/29/2019 23:00

California’s campaign watchdog said Thursday that it’s investiga allegations that a sitting state lawmaker used campaign funds to to a Boston Red Sox baseball game, among other purported exa lavish spending. The Fair...

[Donor Threatens to Sue Candidate for Not Spending Money Du](#)

Election Law Blog - 08/29/2019 21:33

Orlando Sentinel: John Morgan, a political rainmaker, on Wedne threatened to sue Andrew Gillum, if the Florida Democratic gubern candidate runs for office again. Morgan’s remarks to the Tiger B Tallahassee were an escalation of a...

[Key witness: Alison Lundergan Grimes' father made illegal contr her 2011 race](#)

Louisville Courier-Journal (Louisville, KY) - 08/29/2019 19:3

FRANKFORT — Democratic political consultant Jonathan Hurs Thursday that he noticed a problem weeks after Alison Lundergan won the 2011 campaign for secretary of state. He said the campaign reimbursed Grimes' father, Jerry...

[After Post-Dispatch inquiry, new Missouri political group files state paperwork](#)

St. Louis Post-Dispatch (St. Louis, MO) - 08/29/2019 11:46

JEFFERSON CITY — That was fast. On Friday, the Post-Dispatch officials with the new Liberty Alliance USA why they had not filed paperwork with the attorney general's office. On Monday, paper owner was hand-delivered to...

[Gov. Abbott says 'mistakes were made' in anti-illegal immigration letter](#)

✉ Houston Chronicle, The (Houston, TX) - 08/29/2019 16:43

Gov. Greg Abbott said Thursday he erred when his campaign sent a fundraising letter the day before the deadly attack in El Paso, telling supporters they needed to "defend Texas" from waves of illegal immigrants. "Mistakes were made, and course..."

[back to top](#)

Federal Employee and Government News

[Turning On Your Retirement Benefits](#)

Government Executive - 08/29/2019 15:02

One of the great things about a three-part retirement plan like the Employees Retirement System is its flexibility. Under FERS, there are distinct benefits that can be "turned on" at different times: Among the advantages of this...

[What's taking so long on those new administrative leave options](#)

Federal News Radio 1500 AM (Washington, DC) - 08/29/2019

It's been more than two years since Congress agreed to overhaul administrative leave policies, but agencies are still missing the regulatory changes needed to implement some of the more transformative changes. The changes originally came in the...

[back to top](#)

Editorials, Blogs and OpEds

[The Election Watchdog That Can't Bark](#)

☒ New York Times, The (New York, NY) - 08/29/2019 17:00

The United States is headed into what promises to be among the most contentious and expensive campaign cycles in modern history — and domestic actors eager to make mischief — without the chief executive on the beat. Sure, presidents...

[Filling the Empty Seats at the F.E.C. Won't Fix America's Corruption](#)

New Yorker (New York, NY) - 08/29/2019 19:09

If the law of diminishing returns applied to American politics, the appointment of the vice-chair of the Federal Election Commission (F.E.C.), Mark Petersen, on Monday, would be a single data point on the downward trend of democracy. The F.E.C. is the...

[Hans von Spakovsky: Ilhan Omar protected – for now – against enforcement of campaign finance law violations](#)

FOX : News - 08/30/2019 04:05

Rep. Ilhan Omar under fire from Federal Election Commission; CBO has the details. Rep. Ilhan Omar, D-Minn., who is accused of improperly using political campaign funds to reimburse her alleged lover for travel expenses, doesn't need to...

[Facebook's Ad Policy is Being Weaponized](#)

Center for Competitive Politics (Blog) - 08/29/2019 14:42

Facebook recently removed an ad run by the Trump campaign. Before we get to why it is shockingly stupid for Facebook to remove it's worth clarifying that Facebook has every right to ban this ad and the ad that its moderators...

[Federal Election Commission Shuts Down Ahead of Most Expensive Election in History](#)

Public Citizen - 08/29/2019 13:15

Statement of Craig Holman, Government Affairs Lobbyist, Public Citizen
Note: As the nation heads into the 2020 election cycle – an election cycle that will reach an all-time spending record – the agency that monitors campaign finance compliance with...

[Political campaigns are the first line of defense in election security](#)

Brookings Institution (Washington, DC) - 08/29/2019 09:40

By No matter how many governments and law enforcement agencies are scrutinizing elections for illegal interference, candidates, campaign staff, and party officials are likely to be the first to notice disinformation campaigns and voter suppression...

[OpEd: A renewed attack on the First Amendment](#)

Manchester Journal (VT) - 08/29/2019 14:46

The 2010 Supreme Court decision in Citizens United v. FEC unleashed...

rhetorically violent attack from the left, notably including Gov. P and Vermont's three members of Congress. In that case the court part of a 2002 campaign...

[David Schultz: When are the private lives of public officials our](#)

Pioneer Press (St. Paul, MN) - 08/29/2019 13:25

When are elected officials' personal lives a matter of legitimate public concern? U.S. Rep. Ilhan Omar of Minneapolis refuses to discuss her life, including her marriage and possible extramarital romantic relationships. She declares it is not...

[Pro-Business Nonprofit Became A Major Dark Money Funder in](#)

CREW - 08/29/2019 11:30

The Main Street Growth & Opportunity Coalition (MSGOC), a group representing business interests, provided millions of dollars in 2018 to politically-active nonprofits that don't disclose their donors, according to its most recent tax return. The...

[What are joint fundraising committees, and how are they helping](#)

Open Secrets (Blog) - 08/29/2019 08:42

A Republican fundraiser in the Hamptons in early August featuring an appearance by President Donald Trump sold tickets for as much as \$1,000. Earlier this year, two sisters from Indiana each gave \$865,000 to the Democratic Grassroots Victory Fund —...

[Campaign Legal Center Joins Michigan's Fight to Protect Citizens' Redistricting Commission](#)

Campaign Legal Center - 08/28/2019 17:32

Date Wed, 08/28/2019 - 12:00 cgoldstone Wed, 08/28/2019 - 14:00
CLC is serving as co-counsel with Voters Not Politicians GRANT MICH. – A federal district court today has granted Campaign Legal Center (CLC)'s motion to intervene in two...

[Kirsten Gillibrand knew when to exit](#)

Washington Post (Washington, DC) - 08/29/2019 09:58

Sen. Kirsten Gillibrand, D-N.Y., exited the presidential race on Tuesday after failing to qualify for next month's debate, as others (Rep. Elizabeth Warren, Gov. Jay Inslee, John Hickenlooper and Rep. Seth Moulton) have. Gillibrand focused...

[Gun control groups outspend NRA in push for Senate vote on g](#)

Open Secrets (Blog) - 08/29/2019 11:19

Prominent gun control groups are airing six-figure ad campaigns targeting Republican Senators to take up gun bills, while the nation's leading gun organization is practically invisible. In the wake of back-to-back mass shootings in early...

[Why Gillibrand didn't connect](#)

Daily News (New York, NY) - 08/29/2019 15:39

If you're the kind of person who subscribes to political emails lis

exercise. Search the names of presidential candidates and re-read
Search for Kirsten Gillibrand specifically and you'll find a consis
Go back...

[back to top](#)

FEC Staff Quotes and References

[As FEC Nears Shutdown, Priorities Such As Stopping Election J On Hold](#)

NPR [National Public Radio] (United States) - 08/30/2019 06:
The seal of the Federal Election Commission is printed on windo
outside its headquarters in a file photo. The campaign finance ag
effectively prevented from doing much of its work at the end of
its loses a quorum of...

[The Election Watchdog That Can't Bark](#)

☒ New York Times, The (New York, NY) - 08/29/2019 17:00

The United States is headed into what promises to be among the
contentious and expensive campaign cycles in modern history —
and domestic actors eager to make mischief — without the chief
on the beat. Sure, presidents...

[Filling the Empty Seats at the F.E.C. Won't Fix America's Corru](#)

New Yorker (New York, NY) - 08/29/2019 19:09

If the law of diminishing returns applied to American politics, the
of the vice-chair of the Federal Election Commission (F.E.C.), M
Petersen, on Monday, would be a single data point on the downs
democracy. The F.E.C. is the...

[A campaign finance referee is leaving the field](#)

Federal Times - 08/29/2019 14:42

The federal agency responsible for enforcing federal campaign fi
soon have too few members to officially make decisions, as the a
announced Aug. 26 that its vice chairman, Matthew Petersen, w
leaving at the end of the month....

[The FEC Is Officially Broken. It Might Not Matter.](#)

The Daily Beast - 08/29/2019 13:02

The resignation of a Republican Federal Election Commissioner
could be the impetus to remake the nation's campaign finance w
for all intents and purposes, it might not make a difference. Repu
commissioner Matthew Peterson...

[Why the FEC can't probe Ilhan Omar's campaign finances anytin](#)

New York Post (New York, NY) - 08/29/2019 12:50

WASHINGTON – The federal agency charged with probing the finance complaint against Rep. Ilhan Omar won't be able to act soon. The Federal Election Commission no longer has a quorum in business when Commissioner Matthew...

[FEC chair summons Facebook, Twitter, Google to disinformation](#)

Politico - 08/29/2019 12:20

The chair of the FEC is summoning Facebook, Google and Twitter to a meeting next month on digital disinformation amid concerns that Russian-style social media manipulation will target the 2020 election. The goal of the symposium will be...

[Google, Twitter to Discuss 2020 Disinformation: Campaign Update](#)

Bloomberg News Feed - 08/29/2019 15:52

(Bloomberg) -- Google, Facebook and Twitter have been invited to a meeting of the Federal Election Commission to explore ways to combat digital disinformation in the 2020 elections. The all-day symposium on Sept. 1 will examine new types of false...

[Facebook, Twitter to attend disinformation event at federal election](#)

CNET - 08/29/2019 16:11

Facebook and Twitter plan to attend an event this month at the Federal Election Commission's office in Washington, DC, about digital disinformation, the companies said Thursday. The FEC is co-hosting the Sept. 17 event, titled the Global Digital Policy...

[Google, Twitter to discuss 2020 disinformation with Federal Election Commission](#)

Advertising Age (New York, NY) - 08/29/2019 16:34


Google, Facebook and Twitter have been invited by the head of the Federal Election Commission to explore ways to combat digital disinformation in the 2020 elections. The all-day symposium on Sept. 17 will examine how to combat false information spread...

[Facebook clamping down on political ads](#)

fecgov : Forbes - 08/30/2019 07:18

Facing mounting scrutiny of its advertising policies ahead of next year's presidential election, Facebook is once again tightening its rules relating to politics and social issues.

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Tweets to @FEC from verified users  [Explore & Analyze](#)

There's bipartisan consensus that the [@FEC](#) is dysfunctional. Congress can help fix it. So why is [#HRI](#) - why...
<https://t.co/fPA8JjopI4>

8/29/2019 2:40:08 PM

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[Dave Levinthal](#) [@davelevinthal](#)

[@FEC](#) [@EllenLWeintraub](#) [@nancyscola](#) [@politico](#) 2/ The likely take place in the midst of the [@FEC](#) being un...
<https://t.co/R4idy85HuE>

8/29/2019 2:06:43 PM

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1/ Chair of the [@FEC](#), Democrat [@EllenLWeintraub](#), "is s...
Facebook, Google and Twitter to a meeting next month...
<https://t.co/mP17vogMhr>

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[The Epoch Times](#) [@EpochTimes](#)

"Recently, I believe this tone of partisanship has been amplified at the Commission." [@FEC](#) Chairman... <https://t.co/YI6T>

8/29/2019 1:55:00 PM

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2/ Details on the situation at the [@FEC](#): <https://t.co/XCQI>

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1/ This statement from [@Public_Citizen](#) on the [@FEC](#) losing doesn't pull any punches. <https://t.co/cGrWT0P2wz>

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available BOTH in bulk & through an API. [@Facebook...](#)
<https://t.co/vWe7S5iZU1>

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[@FEC](#) [@BernieSanders](#) 2/ While it's not uncommon for th
flag presidential candidates for such accounting iss...
<https://t.co/R5zEkbmK07>

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1/ The [@FEC](#) is asking the [@BernieSanders](#) campaign to a
says are 69 pages worth of suspected "excessiv...
<https://t.co/ZZ3APSstOu>

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[Sara A. Carter](#) [@SaraCarterDC](#)

[@NLPC](#) Files [@FEC](#) Complaint Against Rep. [@IlhanMN](#)
Her Lover Tim Mynett. Click below to read the full com...
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Subject:FW: News and Views from the FEC's Press Office


Monday, August 12.

From: BNA Convergence [mailto:convergence@bna.com]
Sent: Monday, August 12, 2019 7:37 AM
To: Press Office <press@fec.gov>
Subject: News and Views from the FEC's Press Office

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News and Views from the FEC's Press Office

News and Views from the FEC's Press Office

FEC, Federal Campaign Finance and Election News	FEC, Federal Campaign Finance and Election News
State and Local (and International) Campaign Finance News	FEC Slams Donald Trump Campaign With Huge, 26 Of 'Excessive, Prohibited, Impermissible' Donations fecgov : Inquisitr - 08/12/2019 07:27 The Donald Trump presidential campaign has been raking in potential donations by the thousands, according to a new letter sent Friday by the Election Commission.
Federal Employee and Government News	Election panel complaint focuses on Castro release of donor IDs fecgov : Fox News - 08/12/2019 07:25 First he drew the ire of Twitter and Republican lawmakers when he named names and employers of Trump donors in Texas; now Rep. Joaquín Castro, Texas, has been hit with an official Federal Election Commission (FEC) complaint over the...
Editorials, Blogs and OpEds	FEC concludes audit of state Democratic Party The Oklahoman - 08/12/2019 02:19 The Federal Election Commission recently completed an audit of the Democratic Party's finances and found the party misstated some figures and did not keep required payroll logs for employees during the 2016 election cycle. The...
Tweets to @FEC from verified users 	

Seven Republicans call for Ethics Committee investigation of Castro

Roll Call Online (Washington, DC) - 08/10/2019 13:00

Seven Republicans wrote to the House Ethics Committee on Friday asking for an investigation into Texas Rep. Joaquin Castro for publicizing the names of constituents who donated to President Donald Trump. (Tom Williams photo) Seven...

Republicans call for investigation of Castro tweet

Washington Examiner (Washington, DC) - 08/09/2019 22:25

In a letter to the leaders of the House Ethics Committee, Republican Reps. Louie Gohmert, Louie Gohmert, Jody Hice, Debbie Lesko, Jeff Duncan, Randy Weber, and Tom Witt calling for the committee to investigate Rep. Joaquin Castro after he tweeted the names of...

How to find out if the CEOs of your favorite brands have donated to political campaigns

CNBC (United States) - 08/09/2019 17:13

Consumers identify strongly with their favorite brands. Millennials, especially, prefer companies that share their social and political values: Nearly 70% of the generation says they won't buy from a business that has different political...

Republican plans to cancel Trump primaries on some states to see push back

Washington Times (Washington, DC) - 08/11/2019 20:32

As California Democrats try to keep President Trump off the state's primary ballot next year, Republicans in other states are pondering whether to cancel or modify their own 2020 presidential nominating contests and affirm the...

Here's What Foreign Interference Will Look Like in 2020

Atlantic Monthly, The - 08/09/2019 10:18

The scene at a polling station in Las Vegas, Nevada during the 2016 presidential election. David Becker / Reuters Russia is "doing it as well as it can." This stray line, buried in seven hours of testimony on Capitol Hill, was Robert...

On the Soapbox, Bill de Blasio says 'We will overturn Trump in United States'

Des Moines Register (Des Moines, IA) - 08/11/2019 19:51

"We need to be the party that says 'We will overturn Citizens United,'" the mayor of New York City, said from the Register's Political Soapbox on Sunday, Aug. 11, 2019.

Trump campaign hopes rally will turn fans into volunteer donors

Union Leader (Manchester, NH) - 08/11/2019 15:17

MANCHESTER -- State Rep. Fred Doucette, R-Salem, has witnessed President Donald Trump's campaign rallies during his tenure as co-chairman of Trump's 2016 campaign in New Hampshire. The rallies have been fun and a little...

Man who hosted a fundraiser for Donald Trump in 2016 he's never lost a friend over politics

FOX : News - 08/11/2019 10:15

This is a rush transcript from "Your World," August 9, 2019. This content is in its final form and may be updated. NEIL CAVUTO, ANCHOR: Unhappily, protesters greeting President Trump once he arrived on Long Island the...

Rep. Al Green wants Trump impeached to help shrink president's 2020 donor list

FOX : News - 08/11/2019 18:55

Reaction and analysis from Fox News contributor Guy Benson and Richard Fowler. Anti-Trump Rep. Al Green, D-Texas, said House Democrats should impeach the president to curb his political donor list and stifle the campaign's fundraising...

Trump-McConnell 2020? Senate leader glues himself to president

Honolulu Star-Advertiser (Honolulu, HI) - 08/11/2019 06:08

President Donald Trump walks down the steps of Air Force One at LGA's John F. Kennedy Airport in Westhampton Beach, N.Y. Trump is in the Hamptons to attend a pair of fundraisers before heading to his golf club in New Jersey for vacation. Senate Majority...

Incumbents in Congress raising cash for '20 vote

Journal-Gazette (Fort Wayne, IN) - 08/11/2019 01:45

U.S. House members representing northeast Indiana have challenged the 2020 elections – but also sizable leads in fundraising. Rep. Jim Barlow raised more than \$130,000 in the second quarter, bringing his total to \$294,000 for the...

[“Top DHS cyber official calls paper ballot backups ne 2020 election”](#)

Election Law Blog - 08/11/2019 00:34

CNN: The top cybersecurity official at the Department of Homeland Friday that backup paper ballots would be a necessary part of 2020 security. “Ultimately when I look at 2020, the top priority for me is er and wide...

[Moulton says he’s still in running](#)

Boston Globe (Boston, MA) - 08/11/2019 00:00

US Representative Seth Moulton has been running for president for months. During that time he has made repeated stops in the early p been a frequent guest on national cable news programs, and raised dollars. But the...

[Bernie Sanders dominates Democratic field in Pittsbo donors](#)

Pittsburgh Post-Gazette (Pittsburgh, PA) - 08/11/2019 00:01

Vermont Sen. Bernie Sanders’ position in Democratic primary polls since early in the year, both in Pennsylvania and nationally, but one campaign remains very strong: his fundraising ability. August filings Federal...

[Other Texas candidates can't touch his war chest](#)

 **Houston Chronicle, The (Houston, TX)** - 08/10/2019 21:49

Nobody in Texas is raising more money this year to run for Congress Rep. Dan Crenshaw. Although he’s been in Congress just seven m former Navy SEAL has parlayed his rising political star into an eye-p million fundraising...

[Michigan restaurant chain Anna's House under fire fr customers for donations to Trump](#)

Detroit Free Press (Detroit, MI) - 08/10/2019 13:53

Breakfast turned political in Michigan this week when the all-natural friendly restaurant chain, Anna's House, got online backlash for its e monetary contributions to President Donald Trump's re-election can high-end breakfast...

[Records show Arkansas Democratic Party owes nea](#)

Associated Press News (AP) - 08/10/2019 13:18

LITTLE ROCK, Ark. (AP) — Reports to the Federal Election Commi

the Arkansas Democratic Party has nearly \$80,000 in debt. Party Chair Michael John Gray told the Arkansas Democrat-Gazette that contributions are difficult to obtain because...

Records lay bare debt load of party; state Democrats fundraising

North West Arkansas Times (Fayetteville, AR) - 08/10/2019 10:00

As Arkansas Democrats saw their fortunes in state politics shift over the decade, the party spent a lot of money in an attempt to maintain its presence, struggling to pay off its long-standing debts, reports to the Federal Election Commission...

Sanders leads Democratic presidential hopefuls in Arkansas fundraising

KTAR - 08/10/2019 07:48

Democratic candidate, Bernie Sanders, I-Vt., speaks during a town hall at Ahavat Shalom in Northridge, Calif., on Tuesday, Aug. 6, 2019. More than 100 supporters crowded into the temple to hear Sanders discuss affordable housing issues. (Dean...

How completely unknown Andrew Yang made a place for himself in the Democratic field

Dickinson Press, The (Dickinson, ND) - 08/09/2019 21:14

The table was set for perhaps 15 people when Andrew Yang arrived at a Manhattan dinner party in the summer of 2017. The dinner's sponsor was a group that describes its purpose as "exploring the big, bold ideas" of "American problem solvers."...

Attempts to shame, boycott Trump donors may not have the desired effect

Fox 42 Omaha - 08/09/2019 17:51

WASHINGTON (Sinclair Broadcast Group) — President Donald Trump's campaign a campaign donor under fire for putting his money behind the Trump campaign as the president's critics look to shame his supporters and warn weaponizing campaign...

Find out which Floridians have given big money to presidential candidates you support -- or hate

South Florida Sun-Sentinel (Fort Lauderdale, FL) - 08/09/2019

Aug. 9 --In reviewing the Floridians that have donated the full \$2,800 to a presidential candidate, you'll find few of the megadonors that raise tens of millions for partisans. No Sheldon Adelsons or Koch brothers for liberals to gnaw at the teeth...

Anna's House, Mich. restaurant chain, defends free speech amid backlash over Trump donations

Washington Times (Washington, DC) - 08/09/2019 11:25

A popular Michigan restaurant chain is firing back in defense of free speech after internet sleuths uncovered its political donations to President Trump. Anna's House, which has eight locations across Michigan, made two donations to...

Equinox gym protest called in West Hollywood over campaign fundraising for Trump fundraiser

U-T San Diego [San Diego Union-Tribune] (San Diego, CA) - 08/09/2019 14:29

When news broke this week that the billionaire who owns the parent company of luxury gym Equinox and fitness company SoulCycle would be hosting a fundraiser for President Trump, the fitness community — and more specifically the Los Angeles community — did...

Texas Republicans brace for 2020 drubbing

Politico - 08/12/2019 05:32

As bad as it's been for Texas Republicans lately, some members of the party are warning that 2020 could be even worse. The rash of recent House Committee retirements is just the latest sign of a state party in distress: In last year's midterms, Democrats...

Collins Greeted By Protesters Outside Fundraiser Hosted by Trump's 'Judge Whisperer'

MPBN - 08/09/2019 11:15

Republican U.S. Sen. Susan Collins was greeted by protesters Thursday as she arrived for a campaign fundraiser in Northeast Harbor hosted by a man often described as President Donald Trump's "judge whisperer." @SenatorCollins...

Armie Hammer calls out Marvel executive's Trump contributions

The Hill (Washington, DC) - 08/09/2019 10:15

Armie Hammer on Friday called out one of the most powerful men in Hollywood for his involvement in entertainment over his politics. The actor tweeted that Marvel Entertainment Chairman Isaac Perlmutter donates to President Trump. The tweet calls to boycott fitness chains...

Equinox gym protest called in West Hollywood over campaign fundraising for Trump

Los Angeles Times (Los Angeles, CA) - 08/09/2019 09:36

When news broke this week that the billionaire who owns the parent company of luxury gym Equinox and fitness company SoulCycle would be hosting a fundraiser for President Trump, the fitness community — and more specifically the LGBTQ+ community — did...

[Man wrongly outed as Trump donor by Castro, forced to come out over 'situational awareness' with wife, kids](#)

FOX : News - 08/09/2019 09:29

Harper Huddleston, whose name mistakenly appeared on Rep. Joaquin Castro's Trump donor list, says what the Democrat did has actually galvanized him to support the 'Make America Great Again' message. A San Antonio man was outed on Twitter as a...

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State and Local (and International) Campaign Finance

[Jerry Lundergan's trial over illegal contributions to democratic campaign begins Tuesday](#)

Courier Journal (Florence, AL) - 08/12/2019 06:40

FRANKFORT — The trial for Jerry Lundergan, a prominent player in Alabama Democratic Party politics for 40 years, opens in federal court on Tuesday. Lundergan is charged with conspiring to funnel illegal corporate contributions to the party of his...

[After intraparty GOP spat becomes public, Baker funnels money to state party canceled](#)

Boston Globe (Boston, MA) - 08/09/2019 14:26

Governor Charlie Baker will no longer attend a Saturday fundraiser for the Republican Party, an aide confirmed Friday, a day after a clash over a fundraising database between the conservative MassGOP and the party's executive committee of...

[Illinois Republicans recoil over possible Trump commutation of Blagojevich prison term](#)

St. Louis Post-Dispatch (St. Louis, MO) - 08/10/2019 18:59

Leading elected Illinois Republicans — including 3 Congressmen representing parts of metro St. Louis — are recoiling at the prospect that President Donald Trump would commute disgraced former Gov. Rod Blagojevich's 14-year prison sentence. Some of the...

Outside PAC directs money into Travis DA's race, targets Margaret Moore

Austin American-Statesman (Austin, TX) - 08/10/2019 19:38

A national political action committee designed to unseat big-city prosecutors who considers unreasonably tough on crime has targeted embattled Travis County District Attorney Margaret Moore. The Real Justice PAC, which has targeted district attorney...

After Greitens ally drained state GOP's coffers, money goes to ex-Greitens consultants

St. Louis Post-Dispatch (St. Louis, MO) - 08/09/2019 08:03

JEFFERSON CITY — Fair Missouri, a political action committee backed by a former Greitens ally to scrap the state's new redistricting system, spent \$43,098 last financial quarter, with much of the money going to political firms tied to former Governor Greitens....

[back to top](#)

Federal Employee and Government News

D-Day for pay raise, health premiums, retiree COLA

Federal News Radio 1500 AM (Washington, DC) - 08/09/2019 10:00

The size and purchasing power of your 2020 biweekly paycheck or annuity payment will be decided in a couple of months. Inflation (or deflation), politics and increasing medical costs will all play a hand in how much more or less you...

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Editorials, Blogs and OpEds

Texas Is Bracing for a Blue Wave in 2020. Yes, Texas

New Republic, The - 08/12/2019 06:04

When Beto O'Rourke proclaimed, during the second round of Democratic presidential debates, that "there's a new battleground state, Texas, where Electoral College votes," eyes rolled in unison across America. We've

that nonsense...

[How an NC lawmaker who committed 7 years of campaign finance fraud got no days in jail](#)

Charlotte Observer (Charlotte, NC) - 08/11/2019 05:03

How did a North Carolina legislator commit at least seven years of campaign finance reporting fraud, yet plead to just one crime that resulted in zero days in jail? We asked, and the answer is troubling. Earlier this month, former Rep....

[Infesting San Antonio With the Washington Twitter V](#)

Rivard Report (San Antonio, TX) - 08/11/2019 01:11

Count me among those who cringed after reading U.S. Rep. Joaquin Castro's tweet calling out San Antonio's 44 leading donors to President Donald Trump's tweet, presumably intended to help the Democratic presidential primary ambitions of twin...

[No, sharing political donations data is not McCarthyism being ridiculous](#)

Independent, The (UK) - 08/10/2019 14:30

Earlier this week, it was revealed that Stephen Ross, the billionaire behind brands such as Equinox and SoulCycle, would host a fundraiser for Donald Trump on Friday 9 August at his home in Southampton. At the time, Ross's name might not...

[Do conservatives have a point when they complain about disclosing Trump donations?](#)

Daily Kos (Blog) - 08/10/2019 13:06

Liberals are boycotting Equinox and SoulCycle because the owner, Stephen Ross, is hosting a fundraiser for Donald Trump. Rep. Joaquin Castro released a list of donors to Trump. What should liberals make of this? The New York Times just ran an...

[There's a difference between public disclosure and public shaming](#)

Bangor Daily News (Bangor, ME) - 08/10/2019 11:51

Campaign finance disclosure provisions, though still woefully limited in some instances, exist to inform voters and the general public about who is donating to politicians and political speech generally. Disclosure is a critical component of our...

[Blowback From the SoulCycle Boycott](#)

New York Times, The (New York, NY) - 08/10/2019 00:00

It has been an unsettling week for some of President Trump's political contributors. On Tuesday, it was revealed that Stephen Ross, the billionaire estate developer whose firm owns SoulCycle and Equinox gym, was a money fund-raiser...

SoulCycle owner can't have it both ways on Trump

CNN - 08/09/2019 16:43

Roxanne Jones, a founding editor of ESPN Magazine and former vice president at ESPN, has been a producer, reporter and editor at the New York Times and The Philadelphia Inquirer. Jones is co-author of "Say it Loud: A History of the...

Doxing Trump Donors Is Just the Beginning

National Review (New York, NY) - 08/09/2019 15:08

President Trump talks at the White House in Washington, D.C., August 8 (Leah Millis/Reuters) Government should be transparent; the people have a right to privacy. Representative Joaquin Castro, doxing Trump donors on Twitter. "Sad to see so...

Tom Steyer spends more than \$7 million on ads in first four states hammers early primary states

Open Secrets (Blog) - 08/09/2019 14:29

In the month since Tom Steyer jumped into the Democratic presidential race, a promise to spend \$100 million on his own campaign, the billionaire former hedge fund manager has made his name known across early primary states with...

Don't worry, Trump opponents: Your fast food options are still robust

 Washington Post (Washington, DC) - 08/09/2019 14:06

By Philip Bump Philip Bump National correspondent focused largely on the numbers behind politics Email Bio Follow August 9 at 1:58 PM President Trump attending fundraisers Friday in the Hamptons, the high-dollar Long Island destination of...

RNC Chair Explains Why The GOP Stopped Ad Buying on Twitter

Crooks and Liars (Blog) - 08/09/2019 13:41

After Twitter yanked a tweet and locked the @TeamMitch account, the Republican's conservatives-as-victims-of-big-bad-liberal-media operation went into overdrive, as it is wont to do. It's one of their easiest and safest strategies, and...

Rich Republicans sell a woe-is-me story seeking to hoard dollar campaign contributions

Daily Kos (Blog) - 08/09/2019 11:32

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TAGS CampaignFinance DonaldTrump NewYorkTimes Recommen
Republicans Edit Tags Tag History × Tag History CampaignFinance
Laura Clawson at 08/09/2019 07:24 AM...

"A Better Hope for Campaign Finance Reform"

 Election Law Blog - 08/09/2019 10:05

Ed McCaffery has posted this draft on SSRN. Here is the abstract: "Too much money in American politics, and too much of it comes from too few Mega-donors like Sheldon Adelson or Tom Steyer make \$100 million in expenditures..."

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<https://t.co/Ht28VzRqKe>

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.[@BilldeBlasio](#)'s presidential fundraising allowed a "small number of wealthy donors to support de Blasio's presiden... <https://t.co/b>

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After the [@FEC](#)'s decision allowing certain groups to provide security services to 2020 presidential c... <https://t.co/jFJ9pW9>

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Attracting individual donors is particularly important for Democratic 2020 US presidential race. The [@nytimes](#)... <https://t.co/2Drkr>

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[Issue One](#) [@IssueOneReform](#)

In response to the [@FEC](#)'s dismissal of a 2016 lawsuit filed against Clinton's campaign, [@CampaignLegal](#) sues... <https://t.co/Ru>

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News and Views from the FEC's Press Office

News and Views from the FEC's Press Office

- FEC, Federal Campaign Finance and Election News
- State and Local (and International) Campaign Finance News
- Federal Employee and Government News
- Editorials, Blogs and OpEds
- Tweets to @FEC from verified users 

FEC, Federal Campaign Finance and Election News

[Few candidates have loyal small-dollar donor bases](#)
fecgov : The Washington Post - 08/07/2019 07:25
About one-fifth of Democratic donors have given to multiple candidates, suggesting many haven't settled on a favorite in a crowded field of presidential contenders.

[Rep. Joaquin Castro tweets names, employers of Trump donors in San Antonio](#)
CNN - 08/06/2019 19:32
Washington (CNN)President Donald Trump's campaign aides on Tuesday criticized Texas Rep. Joaquin Castro for posting to social media the names and employers of some of the President's largest donors in San Antonio. Castro represents the...

[Rep. Joaquin Castro posts names, employers of prominent San Antonio Trump donors](#)
Houston Chronicle, The (Houston, TX) - 08/06/2019 23:48
President Donald Trump's re-election campaign clapped back at U.S. Rep. Joaquin Castro, D-San Antonio, after Castro posted online the names and employers of San Antonio's 44 most influential Trump donors. "Sad to see so many San Antonians as 2019...

[Trump campaign: Rep Joaquin Castro inciting violence, publicizing donors](#)

Roll Call Online (Washington, DC) - 08/06/2019 18:04

President Donald Trump's campaign, under fire for depictions of Latin American immigrants that were apparently appropriated by the accused mass shooter in El Paso, Texas, blasted back at Rep. Joaquin Castro on Tuesday for publicizing the names of the...

['This is a target list': Joaquin Castro facing backlash for tweeting the names of Texas Trump donors](#)

Des Moines Register (Des Moines, IA) - 08/06/2019 20:13

WASHINGTON – President Donald Trump's campaign and several Republican lawmakers on Tuesday slammed Rep. Joaquin Castro, the twin brother of the campaign chairman of 2020 presidential hopeful Julián Castro, after he tweeted a list of Texas Trump donors and...

[Small dollars a big deal as GOP sees untapped potential among Trump supporters](#)

Roll Call Online (Washington, DC) - 08/07/2019 05:35

Convinced there is untapped potential with conservative grassroots Republicans have long bemoaned their lack of a fundraising tool for soliciting small donations as pervasive as the Democrats' ActBlue. But since Republicans have not figured out their own...

[Watchdog Sues After Clinton Camp, Brock PAC Lettuce for Illegal Coordination](#)

Washington Free Beacon (Washington, DC) - 08/06/2019 14:20

A watchdog group has filed a lawsuit against the Federal Election Commission (FEC) after its commissioners dismissed a complaint alleging illegal coordination between Hillary Clinton's 2016 presidential campaign and a Super PAC, Media Matters...

[Judge Asked To Reschedule Sentencing Of Rep. Duncan Hunter's Wife In Campaign Finance Case](#)

San Diego KPBS - 08/06/2019 18:53

Above: Margaret Hunter, wife of Rep. Duncan Hunter, exits the San Diego Federal Courthouse after changing her plea to guilty, June 13, 2019. Prosecutors and lawyers representing Margaret Hunter, the wife of Rep. Hunter, R-Alpine, asked...

[Google, Amazon, Apple, and Facebook pay \\$350 million in campaign contributions, lobbying](#)

The "Big 4" tech companies – Amazon, Apple, Facebook, and Google – spent nearly \$350 million on lobbying and campaign contributions to lawmakers over the past eight years, according to a report issued by Public Citizen....

["Misinformation haunts 2020 primaries"](#)

Election Law Blog - 08/06/2019 10:50

Axios reports. ... Continue reading →

[Report: Ocasio-Cortez's Former Chief Of Staff Faces Campaign Finance Investigation](#)

Washington Free Beacon (Washington, DC) - 08/06/2019 10:3

The Federal Election Commission is investigating Rep. Alexandria Ocasio-Cortez's (D., N.Y.) former chief of staff for potential campaign finance violations, according to a report from The New York Post . The investigation involves Chakrabarti, who...

[Iowa fair can make - or break - a candidate](#)

Washington Post (Washington, DC) - 08/06/2019 19:28

DES MOINES, Iowa - It was the 2011 Iowa State Fair, and things went wrong for Mitt Romney . After poor reviews of his visit four years earlier, Romney dressed more casually and trimmed down his entourage. He gamely took the chops, posed...

[Ohio lawmaker seeks constitutional amendment to undo Citizens United](#) [Ohio lawmaker seeks constitutional](#)

Daily Reporter (Columbus, OH) - 08/07/2019 01:02

Lakewood Democrat Rep. Michael Skindell is seeking help from his colleagues in other states and in the U.S. Congress to support an effort to legislate against the Citizens United holding of the U.S. Supreme Court. Filed as House Bill 140,...

[Wednesday August 07, 2019 Democratic dark money](#) [Iowa Sen. Joni Ernst](#)

Washington Examiner (Washington, DC) - 08/07/2019 00:08

A Democratic nonprofit organization shelling out what gets derided as "dark money" when spent by Republicans is investing heavily to defeat Iowa Sen. Joni Ernst, even though she is not one of the most endangered Republican incumbents for reelection....

[Kamala Harris Relies on Coastal Elite Donor Base to](#)

2020 Campaign

Breitbart News - 08/06/2019 21:34

Despite her attacks on the top one percent, Sen. Kamala Harris (D-) primarily on an elite group of coastal donors to fund her 2020 Democratic presidential campaign. Harris, who has attempted to adopt the anti- deployed by...

[‘Sue me,’ says Nunes challenger. He’ll help raise money for constituents in lawsuit](#)

Sacramento Bee (Sacramento, CA) - 08/06/2019 19:47

A challenger to Devin Nunes will help raise money for a legal defense for residents being sued by the Republican congressman’s campaign. lawyers already have ... Click to Continue »

[No Billionaires for Bernie: Alone Among Democratic Frontrunners, Sanders Gets No Cash From Wealthier Americans](#)

Common Dreams - 08/06/2019 12:34

Not a single billionaire to date has donated to Sen. Bernie Sanders’ 2020 Democratic nomination, according to a new analysis, making him among primary frontrunners. "Zero billionaire donors," wrote Splinter "None....

[Texas Democratic Rep. Henry Cuellar doesn't plan to make NRA donation in aftermath of gun massacres](#)

CNBC (United States) - 08/06/2019 15:50

Democratic Rep. Henry Cuellar of Texas doesn't plan on giving back from the NRA's political action committee, despite his party's opposition to gun lobby. "Why would he do that?" said Cuellar's campaign spokesman Strother, when...

[Trump has run over 2,000 Facebook ads warning of invasion](#)

CNN - 08/06/2019 18:29

(CNN)President Donald Trump has run roughly 2,200 Facebook ads warning of an "invasion" at the US border, according to a CNN analysis of Facebook's political ads. The term is cited more frequently in Trump's ads than "Obama,"...

[“How the Trump Campaign Used Facebook Ads to Amplify ‘Invasion’ Claim”](#)

Election Law Blog - 08/06/2019 11:00

NYT: President Trump's re-election campaign has harnessed Facebook advertising to push the idea of an "invasion" at the southern border, fear-inducing language about immigrants that he has also voiced at rallies and on Twitter....

[DeMaio Reports Raising \\$250,000 in First 24 Hours Congressional Candidate](#)

Times of San Diego (San Diego, CA) - 08/06/2019 15:53

Share This Article: Carl DeMaio at his campaign kickoff on Monday, the campaign Carl DeMaio 's campaign reported Tuesday raising \$250,000 in the first 24 hours since the former San Diego City Councilman announced he was running for Congress in...

[Bernie Sanders Boasts Zero Billionaire Donors](#)

Truthdig - 08/06/2019 15:30

Not a single billionaire to date has donated to Sen. Bernie Sanders' 2020 Democratic nomination, according to a new analysis, making him the only among primary frontrunners. "Zero billionaire donors," wrote Splinter News. "None...."

[Price tag for Minnesota's 2020 presidential primary election rises](#)

APM : Minnesota Public Radio (MPR) (Saint Paul, MN) - 08/06/2019 14:41

The return of a presidential primary seven months from now won't cost Secretary of State Steve Simon, Minnesota's top elections official, as much as the March 3rd primary to cost several million dollars. Simon, a DFLer, said this week to...

[FBI and DOJ sued by Peter Strzok, agent who was fired over Trump-related texts](#)

PBS - 08/06/2019 14:41

WASHINGTON (AP) — A veteran FBI agent who wrote derogatory messages about Donald Trump filed a lawsuit Tuesday charging that he caved to "unrelenting pressure" from the president when it fired him. Peter Strzok also alleges...

["Trump sues over California law forcing candidates to disclose tax returns"](#)

Election Law Blog - 08/06/2019 13:57

CNN reports. ... Continue reading →

["Legal scholars say life lobbying ban might not be co](#)

Politico reports. ... Continue reading →

[Kellyanne Conway criticizes Democratic candidates' to shootings](#)

Washington Post (Washington, DC) - 08/06/2019 14:35

WASHINGTON - Kellyanne Conway criticized several Democratic p candidates by name during a television interview on Wednesday m another potential violation of a federal law known as the Hatch Act. Fox News in her...

[Mitch McConnell's campaign keeps creating controversy. Why?](#)

 **Washington Post (Washington, DC)** - 08/06/2019 12:27

By Amber Phillips Amber Phillips Reporter for The Fix covering Cor statehouses Email Bio Follow August 6 at 12:15 PM His campaign l shirts making light of drug use. His supporters built tombstones with opponent's name on one of...

[A California Republican wants a comeback in 2020. How to hit him with blue wave playbook](#)

Knight Ridder Tribune Washington Bureau (Washington, DC)
08:03

WASHINGTON The Democratic Congressional Campaign Committ bat early for one of the party's most vulnerable California members, even though the freshman lawmaker technically doesn't have an op campaign arm for House...

[DNC, Candidates Solicit Donations After Shootings](#)

NewsMax.com - 08/06/2019 09:20

The Democratic National Committee, through shooting victim Gabb well as presidential candidates Sen. Kamala Harris and Sen. Elizab are asking supporters to respond to weekend shootings in El Paso a making political...

[Days after giving up on a recount for reelection, former Lake County Sheriff Mark Curran to seek GOP nomination](#)

Chicago Tribune (Chicago, IL) - 08/07/2019 06:04

Just days after giving up on a recount over the post he lost in Nover Lake County Sheriff Mark Curran said Tuesday he is setting his sigh higher public office and will seek the Republican nomination for the and the...

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State and Local (and International) Campaign Finance

[Conservative judicial group is top donor to GOP state arm](#)

Roll Call Online (Washington, DC) - 08/06/2019 08:51

Judicial Crisis Network previously spent millions to support Trump's Court nominees The dark money group that spent millions on ads s Gorsuch and Brett Kavanaugh for the Supreme Court was the biggest to Republicans'...

[New campaign finance laws take effect in Colorado](#)

Colorado Springs Independent (Colorado Springs, CO) - 08/06/2019 08:51

click to enlarge Shutterstock Three new campaign finance laws, meant to increase transparency in Colorado's elections, took effect Aug. 1. • House Bill 10-1000 dubbed "The Clean Campaign Act of 2019" — prohibits foreign government corporations, as...

[Egan Orion Claims "No PAC Money," Despite Receiving \\$123,000 in PAC Help](#)

The Stranger - 08/06/2019 14:16

If you're walking around Capitol Hill right now you may come across a Egan Orion campaign poster advertising a bold "NO CORPORATE PAC MONEY" claim. The strategy being the poster is obvious. What Seattle voters don't know is a big, ambiguous "no..."

[Dark money restrictions remain in place . . . for now](#)

Arizona Range News - 08/06/2019 11:06

PHOENIX — A judge won't let the state enforce a law opening the door to "dark money" in campaigns while it appeals his ruling that the statute is unconstitutional. In a new ruling, Maricopa County Superior Court Judge John Palmer rejected...

[Judge rules on evidence allowed in trial of Grimes' father](#)

Associated Press News (AP) - 08/06/2019 08:15

LEXINGTON, Ky. (AP) — A federal judge has ruled on evidence that the father of Kentucky Gov. Alison Lundergan Grimes can present when the trial begins next week for the father of Kentucky Gov. of State Alison Lundergan Grimes . Former state Democratic Party...

Lundergan is...

Coming to Oregon Elections: Free Mail Ballots and Finance Disclosure

Governing - 08/06/2019 08:10

By Dirk VanderHart Oregon still doesn't have campaign finance regulations, but the 2020 elections will include some important differences from past elections. Bills signed into law by Gov. Kate Brown on Friday. Flanked by men, Oregon's...

Shadow Money Arrives in Virginia

Washington Free Beacon (Washington, DC) - 08/06/2019 05:1

A new federal political action committee with ties to a shadowy network of billionaires has contributed \$200,000 to help Virginia Democrats retake the statehouse, according to FEC filings from the organization. The Virginia was...

Can Small-Money Democracy Vouchers Balance Out Big Money PACs in Seattle's Municipal Elections?

Next City - 08/06/2019 08:03

Seattle's median strips, front yards, and telephone poles are plastered with colorful signs this week, which can mean only one thing: election season. Today is Tuesday, August 6 for a city council election with seven seats up for grabs and only...

Schaaf faces fine for illegal campaign contributions

East Bay Times (San Francisco, CA) - 08/06/2019 14:42

OAKLAND — Oakland Mayor Libby Schaaf faces a \$1,000 fine for making illegal campaign contributions four times the legal limit from local development partners — whose properties include American Steel Studios in West Oakland and much of Old Oakland....

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Federal Employee and Government News

Here's What 12 Democratic Presidential Candidates Say About Public Servants and Their Unions

Government Executive - 08/06/2019 15:24

Nineteen Democrats running for president pledged to support public employees and their collective bargaining efforts at a forum in Las Vegas on Saturday, often drawing from their own experiences managing government workers to demonstrate that...

[Union: Mulvaney comments confirm agency moves may include layoffs, cut](#)

Associated Press News (AP) - 08/06/2019 17:16

TOPEKA, Kan. (AP) — A federal employees union charged Tuesday that Mulvaney's comments by acting White House chief of staff Mick Mulvaney confirmed the administration's "grand strategy" to cut the federal workforce by relocating offices out of...

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Editorials, Blogs and OpEds

[Slew of GOP retirements set up spending showdown](#)

Open Secrets (Blog) - 08/06/2019 17:46

Nine Republicans in the House of Representatives have already announced they will retire rather than seek reelection in 2020, opening up a handful of seats in suburban districts across the country. The trend portends a costly and expensive...

[Secretive front group targets vulnerable senators with \\$2.3 million ad blitz over surprise medical bills fight](#)

Open Secrets (Blog) - 08/06/2019 12:46

A secretive "dark money" group, which claims to represent doctors and medical professionals, has engaged in a TV advertising blitz totaling at least \$2.3 million from late July through mid-August. Its ads urge vulnerable senators to reject surprise medical bills...

[Contribution Limits Harm State and Local Leaders Running for President](#)

Center for Competitive Politics (Blog) - 08/06/2019 16:44

In the crowded field of Democratic candidates, presidential hopefuls are battling to secure much-needed donations. Running for office is expensive, and in order to run an effective campaign, candidates must hire staff and buy advertisements to...

[Here are the top politicians getting cash from the NR](#)

[standing in the way of gun law reforms](#)

Daily Kos (Blog) - 08/06/2019 21:02

There's so much money in violence. Add to Blog RSS Update Edit A
Un-Rescue Rescue PUBLISHED TO TAGS PaytoPlay Greed GunL
GunControl Money NRA Oligarchy PublicHealth PublicSafety Recor
RepublicanHypocrisy RepublicanParty trump...

[Mueller's Hail Mary: How He Foxed Barr and Rescue](#)

Medium.com - 08/06/2019 23:32

Robert Mueller's no-frills Congressional testimony on July 24 left me
with the same two questions that have haunted me ever since he is
report: Why did he abstain from indicting Trump for obstruction, offer
judgment at all?...

[Montana view: Court right to throw out dark-money r](#)

✉Montana Standard, The (Butte, MT) - 08/06/2019 08:04

The public comment and review process isn't optional; it's the law. I
that's what U.S. District Judge Brian Morris said in throwing out an I
Revenue Service rule that the Trump administration unilaterally impo
new rule told...

[Florida Republican is finished with his party, tells vote every single one of them!](#)

Daily Kos (Blog) - 08/06/2019 14:49

Former Florida Republican Rep. David Jolly has never had a great
with his party . Pointing out how beholden to big donors GOP officia
Minutes went down like a lead balloon filled with Republican integrit
on MSNBC...

[Bloomberg opinion: How not to make government me](#)

Sun Journal (Lewiston, ME) - 08/07/2019 00:08

The Trump administration is planning to move hundreds of federal j
Washington. In principle, this idea could make sense — so long as
competently executed and done for the right reasons. In practice, th
likely to fail...

[Joe Henderson: Climate change is real, whether Ros believes so or not](#)

Florida Politics - 08/06/2019 19:32

U.S. Rep. Ross Spano apparently understands as much about glob
change as he does U.S. campaign finance law. In other words, not
an interview on WFLA's "Politics on Your Side" with host Evan Dono

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News and Views from the FEC's Press Office

News and Views from the FEC's Press Office


FEC, Federal Campaign Finance and Election News	FEC, Federal Campaign Finance and Election News
State and Local (and International) Campaign Finance News	How small-dollar donors are reshaping the Democratic Party  Washington Post (Washington, DC) - 08/03/2019 10:34 By Anu Narayanswamy , Anu Narayanswamy Database reporter for enterprise team Email Bio Follow Kate Rabinowitz , Kate Rabinowitz reporter Email Bio Follow Hailey Fuchs and Hailey Fuchs National reporter Email Bio Follow...
Federal Employee and Government News	1 in 5 Democratic donors are giving to multiple presidential candidates Center For Public Integrity (Washington, DC) - 08/02/2019 11:00 Small-dollar campaign fundraising is a notorious black box. The Federal Election Commission releases candidates' fundraising data regularly, but candidates are only required to reveal the names of donors who give more than \$200 to a presidential...
Editorials, Blogs and OpEds	Candidates Rush for Small Donors fecgov : The Wall Street Journal - 08/05/2019 07:30 At least 2.3 million small donors contributed to Democratic presidential contenders in the first half of the year, according to a Wall Street Journal analysis of new data from ActBlue, the online payment processor used by the candidates.
FEC Staff Quotes and References	
Tweets to @FEC from verified users 	

Gray areas remain in campaign finance laws

Post & Courier (Charleston, SC) - 08/05/2019 00:01

The Federal Election Commission wanted to know exactly what Elizabeth Busch was still doing with the more than \$200,000 in her 2013 congressional campaign account. The \$206,353.31, to be exact, is what remains since Stephen Colbert's...

Manhattan district attorney seeks documents related to Daniels hush money payment

 Washington Post (Washington, DC) - 08/02/2019 12:39

By Tom Hamburger Tom Hamburger Investigative reporter focused on the intersection of money and politics in Washington Email Bio Follow A 12:20 PM President Trump's private company has received a subpoena for documents related to a hush money...

Trump organization subpoenaed over hush money payments

CBS : News (New York, NY) - 08/02/2019 08:41

Just weeks after federal prosecutors revealed they were through investigating hush money paid to protect President Donald Trump from allegations, the probe has been picked back up by state prosecutors in New York over the president's...

De Blasio's Money Moves Broke Campaign Finance Watchdog Says

Ditmas Park Patch (Ditmas Park, NY) - 08/02/2019 10:48

NEW YORK — Mayor Bill de Blasio ran afoul of federal law by using a city election fund to help his cash-strapped presidential campaign, a government group says. The Democratic mayor busted a federal campaign law and wrongly spent state...

Kris Kobach's Senate campaign ridicules 'baseless' campaign finance complaint

Topeka Capital Journal (Topeka, KS) - 08/03/2019 15:08

U.S. Senate candidate Kris Kobach's campaign labeled as a frivolous by liberals the complaint alleging violation of federal law after We Build Back donor list was used by Kobach to solicit contributions to his fledgling campaign in...

Kobach Campaign Can't Get Its Story Straight on Alleged Illegal Fundraising Tactic

The Daily Beast - 08/05/2019 05:39

Former Kansas Secretary of State Kris Kobach is being accused of a nonprofit group he advises to raise money for his 2020 Senate run. The accusations, Kobach's campaign can't seem to get its story straight. Beast...

Gideon campaign says error led to campaign finance

Journal Tribune (Biddeford, ME) - 08/04/2019 05:23

Sara Gideon Joe Phelan/Kennebec Journal A spokeswoman for House Rep. Sara Gideon said Thursday that the candidate was given incorrect reimbursements for political contributions she made in 2015 and 2016, which resulted in federal campaign...

Sen. Collins' Senate Staff May Have Violated Campaign

National Memo - 08/04/2019 22:22

Taxpayer-funded staff working for Sen. Susan Collins (R-ME) may have taken illegal campaign contributions worth more than \$2,600, according to a report from American Bridge, a liberal research organization. American Bridge examined federal...

Susan Collins' Campaign Busted For Taking Illegal Donations From People Who Work For Her: Report

Political Dig - 08/03/2019 09:43

According to official records obtained by American Bridge, Sen. Susan Collins' campaign has been taking illegal donations from people who work for her, a violation of federal campaign finance laws. A Thursday report from American Bridge, a liberal...

Feds probing AOC's chief of staff Saikat Chakrabarti's sudden resignation

New York Post (New York, NY) - 08/03/2019 21:43

The Feds are looking into possible campaign finance misdeeds by Rep. Alexandria Ocasio-Cortez's chief of staff and lead rainmaker, who she fired after his sudden resignation Friday, federal sources told The Post. The inquiry centers on action committees...

Ocasio-Cortez's embattled chief of staff leaving post amid controversies

FOX : News - 08/02/2019 21:29

Raw video: Democrat freshman lawmaker Alexandria Ocasio-Cortez gave an opening statement at House Oversight hearing on 'The Trump Administration's Child Separation Policy: Substantiated Allegations of Mistreatment.' Saikat Chakrabarti, the embattled...

Justice Democrats PAC Paid \$200K to Cofounders' Firm

Washington Free Beacon (Washington, DC) - 08/05/2019 05:30

The political action committee for Justice Democrats disbursed hundreds of thousands of dollars to a consulting firm that was co-launched by one of its founders, Federal Election Commission filings show. The Justice Democrats PAC, the committee...

The GOP senator who hasn't raised any campaign money yet

Roll Call Online (Washington, DC) - 08/05/2019 05:03

Appropriations Chairman Richard C. Shelby has raised no money from individuals or PACs for his personal campaign account since he won re-election in 2016, which could fuel speculation that the 85-year-old is planning to run for a second last term....

Super PAC backing Inslee raises \$2.2 million

Columbian (Vancouver, WA) - 08/05/2019 01:44

SEATTLE — After operating for five months without disclosing who was bankrolling it, a super PAC supporting Washington Gov. Jay Inslee's re-election bid revealed its donors in a just-before-midnight filing Wednesday. A Climate raised about...

Democrats' focus on the White House may be crowding out state house — and it might cost them big

NBC - 08/04/2019 06:07

WASHINGTON — The political map will be set for the next decade by the 2020 elections, but the outcome of the biggest race on the ballot — the one that has most of the Democratic Party's attention and donor dollars — will hang on where the...

The case of Al Franken ... campaign cash, waiting to be played in the game

Florida Politics - 08/04/2019 19:34

As sympathetic as a recent New Yorker profile was to Al Franken and how he defended him during the sexual misconduct scandal that led to his resignation in January 2018, there is little indication the comedian-turned-Senator is planning to run...

3 years after Russian hackers tapped Illinois voter data, state officials spending millions to safeguard 2020

Chicago Tribune (Chicago, IL) - 08/05/2019 06:04

Three years after Illinois' voter registration database was infiltrated by hackers, Illinois and local officials are spending millions to upgrade defenses protecting voters and their ballots leading up to the 2020 election.

[PAC for 'The Squad' Launches Facebook Ads Hitting Over Diversity Fiasco](#)

Washington Free Beacon (Washington, DC) - 08/04/2019 05:31

The political action committee that helped cement the rise of the four congresswomen who eventually became known as "the Squad" has set of Facebook ads fundraising off the recent diversity fiasco at the Congressional...

[Lots Of D.C. Donors Are Giving Their Money To May](#)

fecgov : DCist - 08/05/2019 07:28

With Federal Election Commission data in through the end of June, the New York Times created a series of maps showing where Democratic presidential contenders are raising their money from. Individual donors serve as a barometer of how much candidates...

[Watchdog complaint alleges Kobach fundraising email violated federal law](#)

Kansas City Star, The (Kansas City, MO) - 08/03/2019 06:02

A government oversight group is asking the Department of Justice to determine whether Republican Kris Kobach's Senate campaign violated federal law by using an email list maintained by the nonprofit where Kobach serves as general counsel. Kobach...

[Dem Opponents Seize on Sara Gideon's Campaign Violations](#)

Washington Free Beacon (Washington, DC) - 08/03/2019 05:31

Democratic opponents of Sara Gideon in Maine seized on her recent violation of federal election laws to question her stated commitment to get money out of politics, and also the party's decision to back her challenger Susan...

[Minnesota politicians past and present expand influence through leadership PACs](#)

Minneapolis Star Tribune (Minneapolis, MN) - 08/02/2019 22:10

Al Franken left the Senate in 2017, but his political organization lives on. The Minnesota Democrat spent tens of thousands of dollars on political legal fees and expenses related to the May launch of his eponymous organization over the first...

[Not for nothing: 20 years ago, Granny D walked across the country to fight big money in politics](#)

Keene Sentinel [New Hampshire Sentinel Source] (Kenne, NH)
20:13

"Our first priority today ... is to defeat utterly those forces of greed and corruption that have come between us and our self-governance." — Doris Haddock Twenty years ago today, Doris Haddock of Dublin, then 89, walked across the country from Springfield, Ark., in...

[Alleged embezzlement prompts resignation of Vermont Democratic Party staffer](#)

Times Argus (Barre, VT) - 08/02/2019 19:21

BARRE — Former City Councilor Brandon Batham's voice is still on an answering machine at the Vermont Democratic Party, but sources say his employment there abruptly ended last month when he resigned amid allegations of embezzlement. Though Batham,...

[Carper, Coons join colleagues introducing amendment to overturn Citizens United](#)

Dover Post (Dover, DE) - 08/02/2019 19:02

Sens. Tom Carper and Chris Coons, both D-Delaware, joined Sens. Martin Heinrich, D-New Mexico; Jeanne Shaheen, D-New Hampshire; Senate Democratic Whip Chuck Schumer, D-New York, and the entire Senate Democratic Caucus in introducing the Democracy for All...

[‘Political hit job’: Trump Org subpoenaed by Manhattan DA over nondisclosure payment to Stormy Daniels](#)

BizPac Review (Florida) - 08/02/2019 14:35

For President Donald Trump, the wolf is always at the door, be it in Washington, D.C., or home in New York City. Following the cue of congressional Republicans set on rehashing the Russian collusion investigation, the Manhattan District Attorney's...

[Senator Kamala Harris's Rise Fueled by Big Money Donors, Including Donald Trump](#)

Epoch Times - 08/02/2019 16:41

Senator Kamala Harris's success in politics has been in large part thanks to well-connected donors including California law firms, the Bay Area venture capital industry, Hollywood A-listers and donors, like Trump. Both President Trump and his daughter, Ivanka Trump...

[Proposed Bill Would Let People Opt Out Of Targeted Political Campaigns](#)

Media Post - Media - 08/02/2019 14:25

by Wendy Davis @wendyndavis, 17 minutes ago A bill proposed by Feinstein (D-California) would allow consumers to wield more power over their data is used by political campaigns. The "Voter Privacy Act of 2019" was introduced this week,...

[Joe Biden's PAC, American Possibilities, is slated to launch within months](#)

CNBC (United States) - 08/02/2019 12:29

Former Vice President Joe Biden is working on shutting down his political committee within the next few months. According to a senior Biden aide confirmed that the PAC, American Possibilities, had slowly started to shut down during...

[The aggressive fundraising and spending of the Democratic presidential hopefuls — in one chart](#)

Morningstar - 08/02/2019 11:07

By Victor Reklaitis, MarketWatch Sanders, Buttigieg and Warren have raised the most money so far As the 2020 White House race sparks massive fundraising and spending by a crowded Democratic field, every campaign's financial strategy is being...

[Election 2020 Vermont Democratic Party Staffer Ousted Over Alleged Embezzlement](#)

Seven Days - 08/02/2019 09:59

A top Vermont Democratic Party staffer resigned last month over allegations he embezzled party funds. In a statement issued to Seven Days, the party confirmed that officials uncovered seven "instances of improper use of party funds for personal..."

[Democratic Party's operations director forced out over embezzlement allegations](#)

VTDigger.org (Vermont) - 08/02/2019 10:38

Brandon Batham's Twitter profile pic. His account has now been deactivated. Vermont Democratic Party's operations director was forced to resign after officials found he allegedly used about \$3000 of party expense for personal use. Brandon...

[Rep. Will Hurd's surprise retirement is big, bad news for GOP](#)

NBC - 08/02/2019 08:52

WASHINGTON — For all of the attention on the divided Democrats in this week's presidential debates, the GOP might have received worse

Thursday. Rep. Will Hurd, R-Texas, announced he won't seek re-election -- the biggest House...

[Devin Nunes sues over 'fake farmer' challenge. He says money was behind it](#)

Knight Ridder Tribune Washington Bureau (Washington, DC)
19:22

Rep. Devin Nunes' campaign is suing the people who accused the congressman of being a "fake farmer" and tried to get his ballot designation removed. They conspired with "dark money" groups to injure the campaign. The lawsuit was filed in Tulare...

[Kenny Marchant becomes fourth Texas congressman as GOP exodus grows](#)

Dallas Morning News, The (Dallas, TX) - 08/05/2019 03:20

Eight-term Rep. Kenny Marchant, who narrowly won reelection last year, is now the fourth Texas Republican congressman to pick retirement over another fight for survival next year. The growing exodus--or "Texodus," as Democrats have gleefully...

[Michael Avenatti is mulling a run for president again, but is declaring he would not seek nomination](#)

CNBC (United States) - 08/03/2019 11:48

Michael Avenatti, who in the past represented porn star Stormy Daniels and the likes of President Donald Trump and his then fixer Michael Cohen, announced late on Friday that he is yet again contemplating entering the expansion of...

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[State and Local \(and International\) Campaign Finance](#)

[Drive to get assault weapons ban on Florida ballot raises money from handful of wealthy donors](#)

South Florida Sun-Sentinel (Fort Lauderdale, FL) - 08/05/2019

Aug. 5 --A baker's dozen of big-money contributors, including a couple of billionaires, have provided extensive financial support for the effort to get a proposed assault-weapons ban on the Florida election ballot in 2020. The contributions from the...

[Money in politics: Lawmakers fundraise during legislative session](#)

session

Hawaii Tribune-Herald (Hilo, HI) - 08/05/2019 06:08

Elections are more than a year away — and for some senators three — but that hasn't kept state lawmakers from holding fundraisers during legislative session and collecting money from the very people who are supposed to influence their...

Suffolk public campaign finance system is still a work in progress

Newsday (Melville, NY) - 08/03/2019 06:07

A Suffolk law creating a system to publicly finance county campaigns is finally to be up and running in a little over three months. But a three-member finance board, which was supposed to start meeting last Jan. 15 to develop myriad rules...

PACs with big money launch negative, other ads as voters complete ballots in Seattle City Council primary

Seattle Times (Seattle, WA) - 08/03/2019 03:40

Aug. 3 -- Seattle voters have seen their mailboxes stuffed not only with mail from City Council candidates in the Aug. 6 primary election but also with ads and slick pamphlets from independent political-action committees with...

Todd Gloria returns scandal-tainted Hertzberg cash

San Diego Reader (San Diego, CA) - 08/02/2019 17:15

Assembly Democrat Todd Gloria, running to replace termed-out Rep. Scott Faulconer for San Diego mayor next year, has plenty of support among legislative colleagues, judging by the ex-city councilman's campaign finance report filed with the...

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Federal Employee and Government News

With the 2-year budget deal signed into law, what's next for federal employees?

Federal News Radio 1500 AM (Washington, DC) - 08/02/2019 10:00

The two-year, bipartisan budget deal the President signed on Friday brings a slight sense of security to federal employees and their agencies.

topline spending figures for 2020 and 2021. The Bipartisan Budget Act raises...

2020 pay raise: What are the odds?

fecgov : Federal News Radio - 08/05/2019 07:30

When it comes to the 2020 federal pay raise, most white collar hope one of three camps. Where do you fit in? Are you...

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Editorials, Blogs and OpEds

Cracking down on 'zombie' campaigns

Ocala Star-Banner (Ocala, FL) - 08/03/2019 21:30

Cliff Stearns exemplifies the "zombie campaign," referring to former whose campaign funds keep spending years after they leave office, F. Scott Fitzgerald once wrote, "There are no second acts in American politics,..."

Campaigns say they'll match political contributions. If how they would do that.

Open Secrets (Blog) - 08/02/2019 13:25

An email from President Donald Trump's campaign on July 31 gave reason to believe their political contributions would go further than they otherwise think. "There has NEVER been a more important time for us to step up," the campaign...

Top Republican super PAC gets 2020 head start with money'

Open Secrets (Blog) - 07/31/2019 14:52

A powerful Republican super PAC received nearly half of its contributions in the first half of 2019 from a dark money group that shares its Washington office. The Congressional Leadership Fund raised \$7.6 million during the first two...

America's Opioid Epidemic is Directly Linked to Its Capital Finance Issues

Long Island Press - 08/04/2019 13:05


More than 200,000 Americans have died from prescription opioids between 2000 and 2017. Personally, I know a mother who lost her son to an overdose of a friend who is now gone, and I'm sure I'll know more to come. The loved one...

[DOJ & FEC Complaints Filed Against Kris Kobach & the Wall, Inc. for Illegal Campaign Solicitation](#)

Common Cause Blog - 08/02/2019 15:50

Today, Common Cause filed complaints with the Department of Justice and the Federal Election Commission (FEC) alleging reason to believe solicitations for campaign contributions to former Kansas Secretary of State Kris Kobach's Senate...

[A smart way to keep Putin out of the next U.S. election](#)

 **Washington Post (Washington, DC)** - 08/02/2019 19:25

By Editorial Board August 2 at 7:23 PM THERE IS a lot Congress can do to better protect U.S. elections, and a lot Senate Majority Leader Mitch McConnell (Ky.) has not allowed lawmakers to achieve. Now, two senators are working to...

[Getting access to Trump's tax returns is important. So is fighting for them within the bounds of the Constitution](#)

 **Washington Post (Washington, DC)** - 08/03/2019 17:17

By Editorial Board August 3 at 5:03 PM ESTABLISHED IN the mid-20th century in response to a controversy involving tax deductions taken by President Richard Nixon, the U.S. tradition of the voluntary release of tax return information is a presidential...

[Granny D and the Evil "Dark Money" in Politics](#)

Granite Grok (Blog) - 08/03/2019 07:38

by Christopher Maidment | The 'Granny D' walk to get money out of politics, as you guessed it, Peterborough, will happen this Sunday. According to the Monadnock Ledger-Transcript, Related: Senate Democrats Announce Plan to Amend the First Amendment...

[King Of The Hill-- Disclosure Alone Won't Topple Campaign Finance Money As The Ruler Of Congress.](#)

Down With Tyranny - 08/03/2019 00:36

Legislating Legislation by Nancy Ohanian by Skip Kaltenheuser In Washington, the more things change, the more they stay the same. Except when they don't. Worse. The recent Democratic Party Presidential Debates had me thinking about the enclosed essay on...

[“California’s new law requiring candidates’ tax returns unconstitutional — or does it?”](#)

Election Law Blog - 08/03/2019 13:27

Bob Egelko for the SF Chronicle. ... Continue reading →

[Portland would benefit from public campaign financing](#)

Portland Press Herald (Portland, ME) - 08/03/2019 04:06

Before I moved to Portland, I worked on a number of political campaigns across the country, from Alabama to Wisconsin, and North Carolina to Nevada. In these races was dominated by candidates fighting to out-fundraise each other to win by...

[Sizable core of independents speaks volumes about party system](#)

Boston Globe (Boston, MA) - 08/04/2019 00:00

Re “Power in the rubble of the American dream”: I was intrigued by the article of David Scharfenberg’s July 28 Ideas article. I too feel that meaning could come from this deplorable president’s (hopefully) single term. Unlike...

[It looks like Kansas’ Kris Kobach is illegally using non-border group to raise campaign funds](#)

AlterNet - 08/02/2019 13:31

Former (hallelujah!) Kansas Secretary of State Kris Kobach may have broken the law in his latest bid to attain higher office. Kobach suffered a humiliating defeat in November 2018’s gubernatorial race in Kansas, losing to Laura Kelly....

[4 Pinocchios: “Booker’s claim that Democrats lost Michigan because of Russian and GOP suppression”](#)

Election Law Blog - 08/02/2019 10:37

WaPo fact checker: We lost the state of Michigan because everybody told Republicans to Russians were targeting the suppression of African American voters.” — Sen. Cory Booker (D-N.J.), in remarks during the second primary debate, July 31...

[Representative Tulsi Gabbard Lawsuit Against Google Case For Regulating Online Political Ads](#)

Forbes.com (New York, NY) - 08/02/2019 12:53

Representative Tulsi Gabbard (D-Haw.) recently sued Google for terminating and suspending her campaign’s Google Ads account after her appearance...

month's Democratic presidential debate, when she was one of Google's searched candidates....

Guidelines for voting systems are nothing new

📧 Washington Post (Washington, DC) - 08/02/2019 17:28

By Letters to the Editor August 2 at 5:21 PM Regarding the July 28 "elections are still at risk": The initial effort to establish federal technical and software standards for all voting systems used in federal elections is still in the early stages. The initial effort to establish federal technical and software standards for all voting systems used in federal elections is still in the early stages. 44...

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FEC Staff Quotes and References

Gray areas remain in campaign finance laws

Post & Courier (Charleston, SC) - 08/05/2019 00:01

The Federal Election Commission wanted to know exactly what Elizabeth Busch was still doing with the more than \$200,000 in her 2013 congressional campaign account. The \$206,353.31, to be exact, is what remains of Stephen Colbert's...

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Tweets to @FEC from verified users 📧 [Explore & Analyze](#)

[KPBS News](#) [@KPBSnews](#)

The [@FEC](#) is considering new language to tighten restrictions on campaign involvement as lawmakers continue pushing for reform. <https://t.co/nl...>

8/1/2019 7:07:02 PM

[Reply](#) [Retweet](#) [Favorite](#) [View](#)

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Sent By: [Press Office](#)

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From: Lisa Stevenson
To: Neven Stipanovic
Sent: 2019-08-06T17:54:16.0000000Z
Subject: RE: Staffing

Ok.

Lisa J. Stevenson
Acting General Counsel
Federal Election Commission
l Stevenson@fec.gov
202-694-1613

From: Neven Stipanovic
Sent: Tuesday, August 06, 2019 1:53 PM
To: Lisa Stevenson <LStevenson@fec.gov>
Subject: RE: Staffing

I have a meeting with Enforcement at 2:00; I'll stop by afterwards if that's ok.

From: Lisa Stevenson
Sent: Tuesday, August 06, 2019 1:52 PM
To: Neven Stipanovic <NStipanovic@fec.gov>
Subject: RE: Staffing

I'm back so whenever works for you.

Lisa J. Stevenson
Acting General Counsel
Federal Election Commission
l Stevenson@fec.gov
202-694-1613

From: Neven Stipanovic
Sent: Tuesday, August 06, 2019 12:46 PM
To: Lisa Stevenson <LStevenson@fec.gov>
Subject: RE: Staffing

Yes, no problem, I'll stop by after lunch.

From: Lisa Stevenson
Sent: Tuesday, August 06, 2019 12:35 PM
To: Neven Stipanovic <NStipanovic@fec.gov>
Subject: Staffing

When you are free this afternoon, after lunch, can you come talk to me about what Policy teams would look like if fully staffed?
Need to give CFO an FTE number for 2021 budget.

Lisa J. Stevenson
Acting General Counsel
Federal Election Commission
l Stevenson@fec.gov
202-694-1613

From:Lisa Stevenson
To:John Quinlan ; Katie Higginbothom
Sent:2019-07-30T20:51:18.0000000Z
CC:Robert Kahn ; Gregory Baker
Subject:RE: follow up contacts

Shirley Jones is the name and number that Tony just gave me as a second contact at GAO, so we should go with that. I had the same result when I checked Google/directory, so odd.

Lisa J. Stevenson
Acting General Counsel
Federal Election Commission
l Stevenson@fec.gov
202-694-1613

From: John Quinlan
Sent: Tuesday, July 30, 2019 4:50 PM
To: Lisa Stevenson <LStevenson@fec.gov>; Katie Higginbothom <KHigginbothom@fec.gov>
Cc: Robert Kahn <RKahn@fec.gov>; Gregory Baker <gbaker@fec.gov>
Subject: RE: follow up contacts

I'm not sure that Susan Poling is still with GAO. I did a quick google search and it looks like she was the General Counsel. Attached is a letter with her supposed phone number, identifying her as the GC. The phone directory lists a another GC. I'm not sure the GC is the appropriate contract in any case. This seems like an appropriations law question for a staff attorney. When I typed appropriations law into the "find an expert," I got the contact below. I'm a bit puzzled on how to approach.

Shirley Jones:
jonesa@gao.gov
202-512-5644

John Quinlan
Chief Financial Officer
Federal Election Commission
1050 First Street NE
Washington DC 20463
Phone 202-694-1217
Cell 202-213-7686
jquinlan@fec.gov

From: Lisa Stevenson
Sent: Tuesday, July 30, 2019 4:30 PM
To: Katie Higginbothom <KHigginbothom@fec.gov>
Cc: John Quinlan <JQuinlan@fec.gov>; Robert Kahn <RKahn@fec.gov>; Gregory Baker <gbaker@fec.gov>
Subject: RE: follow up contacts

I have sent an email asking him. I did find a directory for GAO and I couldn't find anyone with that name on it.
<https://www.gao.gov/about.gao/phonebook/orgphonebook.pdf>

Lisa J. Stevenson
Acting General Counsel
Federal Election Commission
l Stevenson@fec.gov
202-694-1613

From: Katie Higginbothom
Sent: Tuesday, July 30, 2019 4:06 PM

To: Lisa Stevenson <LStevenson@fec.gov>
Cc: John Quinlan <JQuinlan@fec.gov>; Robert Kahn <RKahn@fec.gov>; Gregory Baker <gbaker@fec.gov>
Subject: RE: follow up contacts

Hi Lisa,

Can you ask Tony if he has a phone number for the contact at GAO? I attempted to send her an email and received an automated bounce-back email saying that the email address was invalid. I ran into a similar problem when I was attempting to email the National Science Foundation, so the email address he gave may be correct but I can't seem to get a message through to that address.

Thanks,
Kate

From: Lisa Stevenson
Sent: Tuesday, July 30, 2019 1:59 PM
To: John Quinlan <JQuinlan@fec.gov>; Katie Higginbothom <KHigginbothom@fec.gov>; Robert Kahn <RKahn@fec.gov>; Gregory Baker <gbaker@fec.gov>
Subject: FW: follow up contacts

Let's get together after I go to Policy meeting at 2.

Lisa J. Stevenson
Acting General Counsel
Federal Election Commission
lstevenson@fec.gov
202-694-1613

From: Tony Baptiste
Sent: Tuesday, July 30, 2019 1:58 PM
To: Lisa Stevenson <LStevenson@fec.gov>
Subject: follow up contacts

Lisa,
Please anticipate a call today from Ms. Allison Lerner—Vice Chair—CIGIE

Also listed below is the GAO contact regarding appropriation law issues

Ms. Susan A. Poling, Managing Associate General Counsel
Government Accountability Office
441 G Street, NW
Washington, DC 20548
polings@gao.gov

/r
Tony

From: Lisa Stevenson
To: Katie Higginbotham
Sent: 2019-07-30T20:48:22.0000000Z
Subject: FW: Request to schedule call on Appropriations question about training costs

So much for that theory.

Lisa J. Stevenson
Acting General Counsel
Federal Election Commission
l Stevenson@fec.gov
202-694-1613

From: Microsoft Outlook
Sent: Tuesday, July 30, 2019 4:47 PM
To: Lisa Stevenson
Subject: Undeliverable: Request to schedule call on Appropriations question about training costs



Your message to polings@gao.gov couldn't be delivered.

[polings](#) wasn't found at [gao.gov](#).

LStevenson	Office 365	polings
Action Required		Recipient
<div></div>	<div></div>	<div></div>
Unknown To address		

How to Fix It

The address may be misspelled or may not exist. Try one or more of the following:

- Send the message again following these steps: In Outlook, open this non-delivery report (NDR) and choose **Send Again** from the Report ribbon. In Outlook on the web, select this NDR, then select the link **"To send this message again, click here."** Then delete and retype the entire recipient address. If prompted with an Auto-Complete List suggestion don't select it. After typing the complete address, click **Send**.
- Contact the recipient (by phone, for example) to check that the address exists and is correct.

- The recipient may have set up email forwarding to an incorrect address. Ask them to check that any forwarding they've set up is working correctly.
- Clear the recipient Auto-Complete List in Outlook or Outlook on the web by following the steps in this article: [Fix email delivery issues for error code 5.1.1 in Office 365](#), and then send the message again. Retype the entire recipient address before selecting **Send**.

If the problem continues, forward this message to your email admin. If you're an email admin, refer to the **More Info for Email Admins** section below.

Was this helpful? [Send feedback to Microsoft](#).

More Info for Email Admins

Status code: 550 5.1.1

This error occurs because the sender sent a message to an email address outside of Office 365, but the address is incorrect or doesn't exist at the destination domain. The error is reported by the recipient domain's email server, but most often it must be fixed by the person who sent the message. If the steps in the **How to Fix It** section above don't fix the problem, and you're the email admin for the recipient, try one or more of the following:

The email address exists and is correct - Confirm that the recipient address exists, is correct, and is accepting messages.

Synchronize your directories - If you have a hybrid environment and are using directory synchronization make sure the recipient's email address is synced correctly in both Office 365 and in your on-premises directory.

Errant forwarding rule - Check for forwarding rules that aren't behaving as expected. Forwarding can be set up by an admin via mail flow rules or mailbox forwarding address settings, or by the recipient via the Inbox Rules feature.

Mail flow settings and MX records are not correct - Misconfigured mail flow or MX record settings can cause this error. Check your Office 365 mail flow settings to make sure your domain and any mail flow connectors are set up correctly. Also, work with your domain registrar to make sure the MX records for your domain are configured correctly.

For more information and additional tips to fix this issue, see [Fix email delivery issues for error code 550 5.1.1 in Office 365](#).

Original Message Details

Created Date: 7/30/2019 8:46:52 PM

Sender Address: LStevenson@fec.gov

Recipient Address: polings@gao.gov

Subject: Request to schedule call on Appropriations question about training costs

Error Details

Reported error: 550 5.1.1 User Unknown

DSN generated by: MN2PR09MB3870.namprd09.prod.outlook.com

Remote server: mx0a-0030d401.pphosted.com

Message Hops

HOP	TIME (UTC)	FROM	TO	WITH
1	7/30/2019 8:46:52 PM	MN2PR09MB3391.namprd09.prod.outlook.com	MN2PR09MB3391.namprd09.prod.outlook.com	mapi
2	7/30/2019 8:46:52 PM	MN2PR09MB3391.namprd09.prod.outlook.com	MN2PR09MB3870.namprd09.prod.outlook.com	Microsoft SMTP Server (version=TLS1_2, cipher=TLS_ECDHE_RSA_WITH_AES_256_GCM_SHA384)

Original Message Headers

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ARC-Authentication-Results: i=1; mx.microsoft.com 1; spf=pass

smtp.mailfrom=fec.gov;dmarc=pass action=none header.from=fec.gov;dkim=pass

header.d=fec.gov;arc=none

DKIM-Signature: v=1; a=rsa-sha256; c=relaxed/relaxed; d=fec.gov; s=selector2;

h=From:Date:Subject:Message-ID:Content-Type:MIME-Version:X-MS-Exchange-SenderADCheck;

bh=nRzvd6GsDsLMobTmkQc4xDSs/OB+AAqUuby8/Y9DFPc=;

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MN2PR09MB3870.namprd09.prod.outlook.com (10.255.7.83) with Microsoft SMTP

Server (version=TLS1_2, cipher=TLS_ECDHE_RSA_WITH_AES_256_GCM_SHA384) id

15.20.2115.15; Tue, 30 Jul 2019 20:46:52 +0000

Received: from MN2PR09MB3391.namprd09.prod.outlook.com

([fe80::4d62:b0c4:3d74:cc66]) by MN2PR09MB3391.namprd09.prod.outlook.com

([fe80::4d62:b0c4:3d74:cc66%5]) with mapi id 15.20.2115.005; Tue, 30 Jul 2019

20:46:52 +0000

From: Lisa Stevenson <LStevenson@fec.gov>

To: "polings@gao.gov" <polings@gao.gov>

CC: Katie Higginbotham <KHigginbotham@fec.gov>

Subject: Request to schedule call on Appropriations question about training

costs

Thread-Topic: Request to schedule call on Appropriations question about

training costs

Thread-Index: AdvHF70/iaUHe3QWSJKgMIXhXpYOFQ==

Date: Tue, 30 Jul 2019 20:46:52 +0000

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Content-Language: en-US

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X-MS-TNEF-Correlator:

authentication-results: spf=none (sender IP is)

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x-originating-ip: [65.132.39.244]

x-ms-publictraffictype: Email

x-ms-office365-filtering-correlation-id: ee0e23e5-8900-4bed-5bd8-08d7152f0d12

x-microsoft-antispam:

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x-forefront-prvs: 0114FF88F6

x-forefront-antispam-report:

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received-spf: None (protection.outlook.com: fec.gov does not designate

permitted sender hosts)

x-ms-exchange-senderadcheck: 1

x-microsoft-antispam-message-info:

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X-MS-Exchange-CrossTenant-originalarrivaltime: 30 Jul 2019 20:46:52.1668

(UTC)

X-MS-Exchange-CrossTenant-fromentityheader: Hosted

X-MS-Exchange-CrossTenant-id: ee91fa70-6c9d-45e0-bb08-4a355de91010

X-MS-Exchange-CrossTenant-mailboxtype: HOSTED

X-MS-Exchange-CrossTenant-userprincipalname: lstevenson@fec.gov

X-MS-Exchange-Transport-CrossTenantHeadersStamped: MN2PR09MB3870



September 30, 2019

Via Electronic Submission System

Esther Gyory
Acting Assistant General Counsel
Federal Election Commission
1050 First Street, N.E.
Washington, D.C. 20463

RE: Comments on REG 2019-01: Rulemaking Petition to Amend the Definition of Contribution to Include “Valuable Information”

Dear Ms. Gyory:

On behalf of the Institute for Free Speech (“the Institute”),¹ we respectfully submit the following comments regarding the Notification of Availability on a Petition for Rulemaking² to amend the definition of contribution to include a new category of “Valuable Information.” The Federal Election Commission (“FEC” or “Commission”) should decline to open a rulemaking on this Petition.

The impetus for the Petition’s request was allegations of foreign – particularly Russian – involvement in the last election cycles.³ The Institute recognizes the clear mandate of the courts “that foreign citizens do not have a constitutional right to participate in, and thus may be excluded from, activities of democratic self-government.”⁴ And the Institute is on record “applaud[ing] and support[ing] the investigation and prosecution of foreign nationals who impersonate Americans to interfere in U.S. elections.”⁵

But the FEC plainly lacks credible expertise in deterring foreign intelligence services, and its actions are unlikely to have any impact on nefarious foreign actors. It will, however, place very real burdens on Americans speaking to and about their government. Accordingly, the Commission

¹ The Institute is a nonpartisan, nonprofit § 501(c)(3) organization that promotes and protects the First Amendment political rights of speech, press, assembly, and petition. Originally known as the Center for Competitive Politics, it was founded in 2005 by Bradley A. Smith, a former chairman of the Commission. In addition to scholarly and educational work, the Institute is actively involved in targeted litigation against unconstitutional laws at both the state and federal levels.

² Fed. Election Comm’n, Notice 2019-01: Rulemaking Petition: Amending the Definition of Contribution to Include “Valuable Information,” 54 Fed. Reg. 37154 (July 31, 2019) (“Notification”); Sai, Petition for Rulemaking to Add 11 C.F.R. § 100.57 (Apr. 27, 2019) (“Petition”) available at <https://sers.fec.gov/fosers/showpdf.htm?docid=408296>.

³ Petition at 1 (using the Russian term, “kompromat,” in explaining “compromising material”). Google Translate defines “kompromat” as “incriminating evidence.” Google Translate, “kompromat” (last accessed Aug. 21, 2019) <https://translate.google.com/#view=home&op=translate&sl=ru&tl=en&text=kompromat>.

⁴ *Bluman v. FEC*, 800 F. Supp. 2d 281, 288 (D.D.C. 2011) (three-judge court) *summ. aff’d* 565 U.S. 1104 (2012).

⁵ Inst. for Free Speech, “Statement on Indictments of 13 Russians for Interfering in 2016 Election” (Feb. 16, 2018).

should defer to the national security apparatus and criminal enforcement agencies.⁶ And it should particularly avoid adopting a rule with the many deficiencies of the Petition's.

I. The Petition seeks to upset the Congressionally mandated process for enforcement of campaign finance violations.

The Petition proposes more than a vague change to what may be a “contribution” (see Section II, *infra*); it also asks the Commissioners to tie their own hands and create an automatic investigation process for those accused of receiving improper “valuable information.” This is contrary to the Commission’s enabling statute.

Proposed 11 C.F.R. § 100.57(f)(i) mandates that the FEC, “upon learning of any Foreign or Compromising Information . . . automatically and immediately, without any Commission vote” initiate an investigation, report to law enforcement, contact witnesses, and begin public reporting of the allegations.⁷ The law is to the contrary:

All decisions of the Commission with respect to the exercise of its duties and powers under the provisions of this Act *shall be made by a majority vote of the members of the Commission*. A member of the Commission may not delegate to any person his or her vote or any decisionmaking authority or duty vested in the Commission.⁸

Furthermore, the Act specifically demands the affirmative votes of four of the Commissioners to open investigations and “report apparent violations to the appropriate law enforcement authorities.”⁹ There is no basis for the Petition’s attempts to modify this legally-mandated process.

The Commission cannot write a rule that delegates its authority to initiate investigations to private complainants. The courts have long limited the authority of administrative agencies to tinker with the clear terms of a governing statute. Under the Supreme Court’s landmark decision in *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, a court first asks “whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress.”¹⁰ But even if Congressional intent is not clear, *Chevron*’s second

⁶ Testimony of Allen Dickerson, Legal Director, Center for Competitive Politics, before the United States House of Representatives Oversight and Government Reform Committee’s Subcommittee on Information Technology on Internet Speech Regulation at 4 (Oct. 24, 2017) *available at* https://www.ifs.org/wp-content/uploads/2017/10/2017-10-24_Dickerson-Written-Testimony_Internet-Speech-Regulation_House-Oversight-Subcommittee-Hearing.pdf. (“Nevertheless, regardless of the problem’s scope, the deterrence of foreign powers is a mission for which campaign finance law and the FEC are poorly suited. Counterintelligence and diplomatic efforts, and the criminal authority of the Department of Justice (‘DOJ’), are a better fit.”).

⁷ Petition at 4.

⁸ 52 U.S.C. § 30106(c) (emphasis added); *see also* 52 U.S.C. § 30109(a)(2).

⁹ *Compare* 52 U.S.C. § 30106(c) (“the affirmative vote of 4 members of the Commission shall be required in order for the Commission to take any action in accordance with paragraph (6), (7), (8), or (9) of [52 U.S.C. § 30107(a)]”) (emphasis added) *with* 52 U.S.C. § 30107(a)(9) (granting the power “to conduct investigations and hearings expeditiously, to encourage voluntary compliance, and to report apparent violations to the appropriate law enforcement authorities”).

¹⁰ 467 U.S. 837, 842-43 (1984).

step asks “whether the agency’s answer is based on a permissible construction of the statute.”¹¹ The agency must satisfy step one before moving to step two. Administrative agencies, including the FEC, are not free to contradict or go beyond the statute.¹²

Here, Congress – in multiple statutory sections – specifically required the Commissioners to vote on investigations and other enforcement matters.¹³ This is a necessary corollary to the Commission’s bipartisan structure, an important guarantor of its legitimacy, and a structural check on its ability to pursue any particular enforcement matter (and the many costs imposed upon respondents).¹⁴ States that have outsourced the initiation of investigations to private complainants have found their agencies hijacked for political revenge.¹⁵ And federal courts have begun to scrutinize systems that allow for such gamesmanship.¹⁶ The sometimes-cumbersome structure of the FEC is an important bulwark for the rights of engaged Americans, and it cannot be set aside by administrative rule.

Additionally, the Petition calls for the Commission to set up a system in which it must regularly report the status of the investigation of any allegation surrounding “foreign” or “compromising” information.¹⁷ Setting aside the costs and labor required to report this material, such a requirement creates a concrete danger that the Commission will undermine the work of intelligence services or law enforcement by blundering into parallel investigations of which it has no knowledge, and binding itself to make the progress of those investigations public despite statutory protections for this information.¹⁸ Furthermore, this provision conflicts with other Congressional commands on the FEC, which impose sharp limits on the Commission’s ability to discuss ongoing investigations.¹⁹ Finally, the FEC is commanded by Congress to seek conciliation agreements²⁰ as an alternative to full litigation on campaign finance enforcement, and regular reporting concerning these investigations may hinder such efforts.

¹¹ *Id.* at 843.

¹² *FEC v. Swallow*, 304 F. Supp. 3d 1113, 1117 (D. Utah 2018) (“The first step in the *Chevron* analysis asks whether the underlying statute is ambiguous and only if it is does the court consider (and give deference to) the Agency’s interpretation. Here the statute is unambiguous.”).

¹³ 52 U.S.C. § 30106(c); 52 U.S.C. § 30107(a)(9); 52 U.S.C. §§ 30109(a)(2) and (a)(4).

¹⁴ Luke Wachob, *Bipartisanship works for the FEC*, Washington Examiner (Oct. 19, 2014) *available at* <https://www.washingtonexaminer.com/bipartisanship-works-for-the-fec> (“A partisan election watchdog is no watchdog at all – it is an attack dog.”).

¹⁵ *See, e.g., Campaign Integrity Watchdog v. Coloradans for a Better Future*, 411 P.3d 173, 174 (Colo. 2016) (“This is the fourth in a series of complaints brought by claimant, Campaign Integrity Watchdog (CIW), or its principal officer, Matthew Arnold . . . [i]n 2012, Arnold lost the Republican primary election for University of Colorado Regent to Brian Davidson.”).

¹⁶ *Susan B. Anthony List v. Driehaus*, 573 U.S. ___, ___, 134 S. Ct. 2334, 2345 (2014) (criticizing a statute that “allow[ed] ‘any person’ with knowledge of the purported violation to file a complaint” as “not restricted to state officials who are constrained by explicit guidelines or ethical obligations,” and recognizing “a real risk of complaints from, for example, political opponents”); *Holland v. Williams*, No. 16-cv-00138-RM-MLC, 2018 U.S. Dist. LEXIS 98946 at *32 (D. Colo. June 12, 2018) (finding Colorado’s private complainant system facially unconstitutional).

¹⁷ Petition at 4 (Proposed 11 C.F.R. § 100.57(f)).

¹⁸ *See, e.g.,* 5 U.S.C. § 552(b)(7) (FOIA disclosure exemption for law enforcement investigations).

¹⁹ 52 U.S.C. §§ 30109(a)(4)(B)(i); 30109(a)(12)(A) (“Any notification or investigation made under this section shall not be made public by the Commission or by any person without the written consent of the person receiving such notification or the person with respect to whom such investigation is made.”).

²⁰ 52 U.S.C. § 30109(a)(4)(A)(i) (“the Commission shall attempt, for a period of at least 30 days, to correct or prevent such violation by informal methods of conference, conciliation, and persuasion, and to enter into a conciliation

Because a major feature of the Petition's proposed rulemaking would contravene the campaign enforcement process established by Congress, and do so only for a specific subset of cases, the Commission should not open a rulemaking on the merits of the Petition.

II. The vague definitions of the proposed rule fail to give sufficient notice to speakers.

The Commission should tread lightly where the Petition asks it to go, because “[u]nique among federal administrative agencies, the Federal Election Commission has as its sole purpose the regulation of core constitutionally protected activity.”²¹ The Petition asks that this Commission consider the regulation of speech within new categories of “information.” All the related terms are vague and overbroad, but to the extent these terms have any real meaning, they are likely already covered by *existing* FEC regulations. Because the proposed rule is either unconstitutional or duplicative, it should not be adopted.

As the courts have long recognized, “there is practically universal agreement that a major purpose of [the First] Amendment was to protect the free discussion of governmental affairs,”²² and the Court has long held that speech surrounding electoral campaigns “commands the highest level of First Amendment protection.”²³ Therefore, “[l]aws that burden political speech are subject to strict scrutiny, which requires the Government to prove that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest.”²⁴

The *Buckley* Court observed that laws regulating campaign speech inevitably discourage speakers from speaking plainly, and that the First Amendment does not allow speakers to be forced to “hedge and trim” their preferred message.²⁵ Therefore, the Commission should make every effort to ensure its regulations do not “cover[] so much speech” as to undermine “the values protected by the First Amendment.”²⁶

The Petition seeks to create a category of contribution called “Valuable Information,” defined by a multifactor test that uses language like “non-trivial” and “traditional[]” in the place of actionable definitions.²⁷ This alone is problematic, for the regulation does not give adequate notice on what will be trivial, traditional, or traditionally trivial.

Moreover, existing law already covers much of this material – and does so with far less ambiguity and opportunity for gamesmanship. A contribution is “any gift, subscription, loan, advance, or deposit of money or anything of value made by any person.”²⁸ The Commission

agreement with any person involved.”).

²¹ *AFL-CIO v. FEC*, 333 F.3d 168, 170 (D.C. Cir. 2003).

²² *Buckley v. Valeo*, 424 U.S. 1, 14 (1976) (per curiam) (quoting *Mills v. Ala.*, 384 U.S. 214, 218 (1966)).

²³ *Williams-Yulee v. Fla. Bar*, 575 U.S. ___, ___, 135 S. Ct. 1656, 1665 (2015).

²⁴ *Citizens United v. Fed. Election Comm’n*, 558 U.S. 310, 340 (2010) (citation and quotation marks omitted); *Williams-Yulee*, 135 S. Ct. at 1665 (“A State may restrict the speech of a judicial candidate only if the restriction is narrowly tailored to serve a compelling interest.”); *Ariz. Free Enter. Club’s Freedom Club PAC v. Bennett*, 564 U.S. 721, 734 (2011) (collecting cases).

²⁵ *Buckley*, 424 U.S. at 43 (quoting *Thomas v. Collins*, 323 U.S. 516, 535 (1945)).

²⁶ *Watchtower Bible & Tract Soc’y of N.Y., Inc. v. Vill. of Stratton*, 536 U.S. 150, 165-166 (2002).

²⁷ Petition at 3 (Proposed 11 C.F.R. § 100.57(a)).

²⁸ 52 U.S.C. § 30101(8)(A)(i); cf. 52 U.S.C. §§ 30118(b)(2).

interprets the scope of “contribution” to include “the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services.”²⁹ Any difference “between the usual and normal charge for the goods or services at the time of the contribution and the amount charged the political committee” is treated as an in-kind contribution.³⁰ This works for things like polling data because we can calculate the cost of polling and the statistical analysis – and polling data is already regulated.³¹

To the extent “Valuable Information” goes beyond 11 C.F.R. § 100.52(d)(1) and related provisions, the proposed regulation runs into trouble. Terms like a “non-trivial amount for the recipient to obtain”³² is not a workable standard for the regulated community. What is trivial? How much effort is too much effort? The same questions apply to the term “not freely available to the public.”³³ If a committee could point to a small corner of the Internet with the information, is that enough to defeat the definition? The FEC will be inundated with advisory opinion requests³⁴ trying to figure out what is and is not “trivial” or “not freely available to the public.” These ambiguities are especially troubling since, as already discussed, the Petition seeks to initiate investigations premised on these vague concepts while bypassing a vote of the Commission itself.

In effect, either the term “Valuable Information” is already covered by the statute, in which case a rulemaking is unnecessary, or it is not covered by the statute, in which case the rulemaking would conflict with the statute.

Additionally, the Petition seeks to regulate speech based on its content (“compromising information”).³⁵ In the context of “compromising information,” the definition of “valuable information” requires the speaker to know whether specific information “would likely have the effect of influencing any election.”³⁶ Vagueness concerns aside, this approach poses practical enforcement problems. At best, one can only *know* whether information had an effect on the election, and was therefore valuable, after the fact. Until then, the Commission is being asked to make assumptions, which may be colored by personal experience or partisan background, none of which is a recipe for proper notice and even-handed enforcement.

Predicting what sort of “information” will “have the effect of influencing” an election can be hard to determine even in very prominent cases. For example, then-candidate Trump was the subject of scandal surrounding a tape held by Access Hollywood.³⁷ But even in that famous example, exit polls showed that “70 percent of voters found Trump’s treatment of women troubling – but 29 percent of them voted for him anyway.”³⁸ Similarly, during the 2016 election, Hillary

²⁹ 11 C.F.R. § 100.52(d)(1).

³⁰ *Id.*

³¹ *See, e.g.*, 11 C.F.R. § 106.4.

³² Petition at 3 (Proposed 11 C.F.R. § 100.57(a)(iii)).

³³ *Id.* (Proposed 11 C.F.R. § 100.57(a)(i)).

³⁴ 52 U.S.C. § 30108.

³⁵ Petition at 3 (Proposed 11 C.F.R. § 100.57(c)).

³⁶ *Id.* (Proposed 11 C.F.R. § 100.57(a)(iv)(1)).

³⁷ Access Hollywood, “Donald Trump: The Comments On Women You Hadn’t Heard” (Oct. 7, 2016) <https://www.accessonline.com/videos/donald-trump-the-comments-on-women-you-hadnt-heard> (discussing the taping of the interview that was the source of the original comments).

³⁸ Phillip Bump, *How the ‘Access Hollywood’ incident gave us the Trump we recognize today*, The Washington Post (July 10, 2019) available at <https://www.washingtonpost.com/politics/2019/07/10/how-access-hollywood-incident->

Clinton made several speeches before financial firm Goldman Sachs, which were later leaked, against the candidate's wishes.³⁹ Were these two examples of "compromising information?" Were they "likely to have the effect" of influencing an election? Would a foreign executive at Goldman Sachs or Access Hollywood be in legal jeopardy for providing these tapes or transcripts to the opposing campaign? Would a campaign staffer be in danger if he or she solicited them?

Fundamentally, the Commission is being asked to write a rule that regulates speech, as opposed to finance or conduct. This is inherently hazardous and ill-advised, especially because trading information with actual, marketable value is covered by existing regulations. The Petition's efforts to inject the Commission into an inherently subjective question, and to treat trade in information as though it were the purchase of bumper stickers, should be rebuffed.

* * *

The Notification expressly disclaimed any consideration of the Petition's merits until this comment period ends.⁴⁰ But as the foregoing demonstrates, every aspect of the Petition is inappropriate for Commission rulemaking. The Institute, therefore, believes that a rulemaking on this topic is not appropriate at this time and certainly not under the proposed language in the Petition.

Thank you for considering these comments. Should you have any further questions regarding this or related proposals, please contact the Institute at (703) 894-6800 or by email at dkeating@ifs.org.

Respectfully submitted,



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[gave-us-trump-we-recognize-today/](#).

³⁹ See, e.g., Seth Abramson, *Release of Clinton's Wall Street Speeches Could End Her Candidacy for President*, Huffington Post (Apr. 15, 2016) https://www.huffpost.com/entry/release-of-clintons-wall-street-speeches_b_9698632; Jim Zarroli, *Emails Reveal Clinton's Mixed Relationship With Wall Street*, National Public Radio: The Two-Way (Oct. 8, 2016) <https://www.npr.org/sections/thetwo-way/2016/10/08/497204286/emails-reveal-clintons-mixed-relationship-with-wall-street>.

⁴⁰ 84 Fed. Reg. at 37155.

ORAL ARGUMENT NOT YET SCHEDULED**No. 18-5261**

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

CITIZENS FOR RESPONSIBILITY AND ETHICS IN WASHINGTON and
NICHOLAS MEZLAK,
Plaintiffs-Appellees,

v.

FEDERAL ELECTION COMMISSION,
Defendant-Appellee,

CROSSROADS GRASSROOTS POLICY STRATEGIES,
Intervenor-Defendant Appellant.

On Appeal from a Final Judgment of the
United States District Court for the District of Columbia,
The Hon. Beryl A. Howell, Chief District Judge
Case No. 1:16-cv-121-BAH

**BRIEF OF *AMICUS CURIAE* CAMPAIGN LEGAL CENTER
IN SUPPORT OF PLAINTIFFS-APPELLEES AND AFFIRMANCE**

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Tara Malloy, a member of the D.C. bar.*

CERTIFICATE AS TO PARTIES, RULINGS AND RELATED CASES

(A) Parties and Amici. Citizens for Responsibility and Ethics in Washington and Nicholas Mezlak (collectively, “CREW”) were the plaintiffs in the district court and are appellees in this direct appeal. The Federal Election Commission (“FEC” or “Commission”) was the defendant in the district court but did not appeal, and has filed notice that it does not intend to participate before this Court.

The appellant is Crossroads Grassroots Policy Strategies (“Crossroads”), which was an intervenor-defendant in the district court.

No person filed as amicus curiae before the district court. Senate Majority Leader Mitch McConnell; the U.S. Chamber of Commerce; the Institute for Free Speech; and Free Speech Coalition, Free Speech Defense and Education Fund, Citizens United, Citizens United Foundation, DownsizeDC.org, Downsize DC Foundation, National Right to Work Committee, U.S. Constitutional Rights Legal Defense Fund, Gun Owners of America, Inc., Gun Owners Foundation, Public Advocates of the United States, Policy Analysis Center, Conservative Legal Defense and Education Fund, and the Senior Citizens League have filed briefs as amici curiae in support of Intervenor-Defendant Appellant before this Court.

Senators Sheldon Whitehouse, Jon Tester, and Richard Blumenthal have filed as amici curiae in support of Appellees.

(B) Rulings Under Review. The rulings under review are the district court's March 22, 2017 order and accompanying memorandum opinion, ECF Dkt. Nos. 21, 22, and the district court's August 3, 2018 judgment and memorandum opinion, ECF Dkt. Nos. 42, 43, in *CREW v. FEC*, No. 16-cv-00259-BAH (Howell, J.). The March 22, 2017 memorandum opinion is available at 243 F. Supp. 3d 91. The August 3, 2018 memorandum opinion is available at 316 F. Supp. 3d 349. Joint appendix references to both decisions appear in CREW's Certificate as to Parties, Rulings, and Related Cases.

(C) Related Cases. References to previous decisions in this case and related cases appear in CREW's Certificate as to Parties, Rulings, and Related Cases.

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**CORPORATE DISCLOSURE STATEMENT
OF AMICUS CURIAE CAMPAIGN LEGAL CENTER**

Pursuant to Federal Rule of Appellate Procedure 26.1, amicus curiae Campaign Legal Center makes the following disclosure regarding ITS corporate status:

Campaign Legal Center (“CLC”) is a nonprofit, nonpartisan corporation working in the areas of campaign finance reform, voting rights, and media law. CLC has no parent corporation and no publicly held corporation has any form of ownership interest in CLC.

/s/ Tara Malloy

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GLOSSARY OF ABBREVIATIONS

BCRA	Bipartisan Campaign Reform Act
CREW	Citizens for Responsibility and Ethics in Washington
CRP	Center for Responsive Politics
FEC	Federal Election Commission
FECA	Federal Election Campaign Act
IE	Independent Expenditure
IFS	Institute for Free Speech
MCFL	Massachusetts Citizens for Life
SSF	Separate Segregated Fund

STATEMENT OF INTEREST¹

Amicus curiae Campaign Legal Center (“CLC”) is a nonprofit organization dedicated to promoting sound campaign finance reforms and the important democratic principles they advance. CLC regularly participates in litigation to defend campaign finance laws, including *McConnell v. FEC*, 540 U.S. 93 (2003), and *Citizens United v. FEC*, 558 U.S. 310 (2010). All parties have consented to CLC’s participation.

SUMMARY OF ARGUMENT

For more than a century, Congress has sought to “shed the light of publicity” on campaign-related spending by requiring disclosure of its sources. *Buckley v. Valeo*, 424 U.S. 1, 81 (1976) (per curiam). To that end, Congress enacted the forerunner of the current “independent expenditure” (“IE”) disclosure regime in the Federal Election Campaign Act of 1971 (“FECA”), Pub. L. No. 92-225, 86 Stat. 3 (1972), and the FECA Amendments of 1974, Pub. L. No. 93-443, 88 Stat. 1263.

Crossroads now argues that the Federal Election Commission has the authority to ignore this unambiguous statutory directive—as the Commission did in 1980, by adopting an IE disclosure rule, currently codified at 11 C.F.R.

¹ No person, other than amicus, authored this brief in whole or part, or contributed money to fund its preparation or submission.

§ 109.10(e)(1)(vi), that flouts the plain text of the disclosure requirements in 52 U.S.C. § 30104(c)(1) and (c)(2)(C) (“IE disclosure provisions”).

As the district court held, this case is properly resolved at step one of the two-step framework in *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). See *CREW v. FEC*, 316 F. Supp. 3d 349, 387, 410-11 (D.D.C. 2018). Whereas *FECA* unambiguously requires disclosure of all contributors of more than \$200 to the person making independent expenditures, 52 U.S.C. § 30104(c)(1), and separately, “identification of each person who made a contribution in excess of \$200 . . . for the purpose of furthering *an* independent expenditure,” *id.* § 30104(c)(2)(C), the *regulation* requires disclosure only of those contributors who state a specific intent to fund a specific (“*the reported*”) independent expenditure, 11 C.F.R. § 109.10(e)(1)(vi) (emphases added).

The Commission thus rewrote one statutory provision (subsection (c)(2)(C)) and read the other out of existence entirely (subsection (c)(1)). See *CREW Br.* 2-9, 20-35. The resulting rule “blatantly undercuts the congressional goal of fully disclosing the sources of money flowing into federal political campaigns, and thereby suppresses the benefits intended to accrue from disclosure.” *CREW v. FEC*, 316 F. Supp. 3d 349, 423 (D.D.C. 2018). And Crossroads and its amici effectively concede that that the regulation requires less disclosure than the statute it purports to implement: Crossroads’ entire theory of appellate standing depends

on the “injury” inflicted by the prospect of disclosing what *FECA*, rather than the regulation, requires.

Crossroads advances a tenuous alternative construction of the statute at *Chevron* step one, resorting to extra-textual arguments in an attempt to conjure up ambiguity where there is none. Principally, however, Crossroads focuses on *Chevron*’s second step, and so too will this memorandum. At step two, which the Court need not reach, Crossroads invokes “a host of other considerations” that supposedly justify the rule’s departure from Congress’s expressed purpose, *e.g.*: the rule “operated without controversy for decades” before this lawsuit; Congress “acquiesced” to the rule by failing to veto it when it was promulgated, or amend it thereafter; and the rule accords with “[i]mportant First Amendment [p]rinciples” by limiting the reach of the statute. Crossroads Br. 20, 50.

These step two arguments are not just irrelevant—the statute is unambiguous—but incorrect. First, even if Crossroads’ “acquiescence” arguments could change the plain meaning of the statute or the congressional purpose it reflects, *see CREW*, 316 F. Supp. at 410 n.47, they are founded on an inaccurate history of FECA. Congress has never “ratified” the FEC’s unduly narrow IE disclosure rule. And even if it were otherwise possible to “read[] the tea leaves of congressional inaction,” *Rapanos v. United States*, 547 U.S. 715, 749 (2006), legislative inaction in this area could only be ascribed to the rule’s limited

applicability in the decades between its promulgation and *Citizens United*. Non-committee independent spending was trivial throughout that period, obscuring the conflict between the rule and “the unambiguously expressed intent of Congress.” *City of Arlington v. FCC*, 569 U.S. 290, 296 (2013).

The constitutional arguments put forward by Crossroads and its amici are equally irrelevant and wrong. The Commission did not cite First Amendment concerns as a reason for adopting the challenged rule in 1980, nor did it do so in this litigation. More importantly, Crossroads’ arguments have been rejected by the Supreme Court, which has repeatedly validated the language and scope of the contributor disclosure required by FECA’s IE disclosure provisions. *FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 262 (1986) (“*MCFL*”); *Buckley*, 424 U.S. at 60-84.

Lastly, contrary to Crossroads’ complaints about the justiciability of this case, the district court properly exercised jurisdiction over CREW’s challenge to the regulation. The well-established precedents of this Court permit judicial review of Commission regulations under the APA when the regulations are applied to an administrative complaint. *See Weaver v. Fed. Motor Carrier Safety Admin.*, 744 F.3d 142, 145 (D.C. Cir. 2014); *Shays v. FEC*, 414 F.3d 76, 95-96 (D.C. Cir. 2005). The need for judicial review is also particularly acute in this setting, where the mere existence of the offending regulation precludes the possibility of relief

from the agency, even for clear violations of FECA, and enables groups like Crossroads to permanently withhold the disclosure that FECA demands. *See Shays*, 414 F.3d at 95.

ARGUMENT

I. Crossroads' Congressional Acquiescence Arguments Are Unfounded and Cannot Overcome the Textual Conflict Between the Regulation and the Statute.

From the date of its adoption in 1980, the rule created a major loophole in FECA's IE disclosure regime and frustrated Congress's clearly expressed intent to achieve "full disclosure" of the sources of campaign spending. *Buckley*, 424 U.S. at 78. But because the rule had limited applicability before 2010, these defects largely escaped notice. Congressional inaction over this period signifies, at most, Congress's "unawareness" of the problem, or its "preoccupation" with others. *Zuber v. Allen*, 396 U.S. 168, 185-86 & n.21 (1969).² And on its own, the rule's vintage is "a slender reed" upon which to justify the Commission's wholesale revision of the statutory text; "[a]rbitrary agency action becomes no less so by simple dint of repetition." *Judulang v. Holder*, 565 U.S. 42, 61 (2011).

² Crossroads' reliance on the Commission's contemporaneous involvement in the legislative process is likewise unavailing: whether or not the agency "understood" the 1979 FECA Amendments, it was not authorized to rewrite them. Even if it had "drafted the [statutory] provisions" itself, "neither antiquity nor contemporaneity with the statute is a condition of [a regulation's] validity." *Smiley v. Citibank (South Dakota), N.A.*, 517 U.S. 735 (1996).

First, before it was invalidated in *Citizens United*, the longstanding corporate and union expenditure ban, *see* 52 U.S.C. § 30118(a), meant that the universe of “persons” reporting under the rule was largely limited to individuals (*i.e.*, natural persons), and that the overall volume of such spending was trivial. Second, Congress had more urgent concerns about the growth of undisclosed “soft money” and “sham issue advocacy”—activity that had entirely escaped regulation under the campaign finance laws as they existed in the 1980s and 1990s—and these problems monopolized congressional attention in the years preceding its passage of the Bipartisan Campaign Reform Act of 2002 (“BCRA”), Pub. L. No. 107-155, 116 Stat. 81. Therefore, congressional “inaction” with respect to a rule of such limited applicability is hardly the “important substantive point” that Crossroads claims. *See* Crossroads Br. 16.

A. The longstanding ban on the use of corporate and union treasury funds for independent expenditures masked the regulation’s defects.

In *Buckley*, the Supreme Court upheld provisions of FECA that required “[e]very person” making a minimum amount of “expenditures” to disclose, among other things, the name and address of each person who made one or more “contributions” in a calendar year of at least \$100. 424 U.S. at 74-84; *see also id.* at 157-58, 160 (quoting former version of 2 U.S.C. § 434(b), (e)). Fearing that the definition of “expenditure” was potentially vague, the Court narrowly construed the term to reach “only funds used for communications that expressly advocate the

election or defeat of a clearly identified candidate,” *id.* at 79-80, using “express words of advocacy” such as “vote for,” “vote against,” and “elect,” *id.* at 44 n.52. As a result, these disclosure requirements had very limited reach. Not only were they circumscribed by the “express advocacy” test, but they also had no application to corporations or labor unions, which had long been prohibited from using treasury funds to make expenditures in connection with any federal election. *See* Tillman Act, ch. 420, 34 Stat. 864 (1907); War Labor Disputes Act, ch. 144, § 9, 57 Stat. 167 (1943); Taft-Hartley Act, ch. 120, § 304, 61 Stat. 159 (1947).

Even after *MCFL* authorized a narrowly defined subgroup of corporations to make expenditures, the IE disclosure provisions had limited applicability. Ten years after *Buckley*, the Supreme Court was asked to reconsider the corporate expenditure ban as applied to an incorporated advocacy organization. *MCFL*, 479 U.S. at 241. It held that the prohibition could not be applied to nonprofit corporations like *MCFL* that were organized for the purpose of promoting political ideas rather than for business purposes and that raised their funds only from individuals. *Id.* at 263-64.³

³ The FEC later adopted a regulation to implement the ruling, terming organizations that met the exception’s narrow requirements “Qualified Nonprofit Corporations,” or “QNCs.” FEC, Express Advocacy; Independent Expenditures; Corporate and Labor Organization Expenditures, 60 Fed. Reg. 35292, 35296-35302 (July 6, 1995).

Notably, while creating this carve-out from the corporate expenditure ban, the Court validated the IE disclosure regime at issue here, juxtaposing the IE disclosure provisions that would apply to MCFL “[i]f it were not incorporated,” *i.e.*, “those specified by § 434(c),” with the “more extensive requirements and more stringent restrictions” applicable to political committees. *Id.* at 252-54 (plurality op.).⁴ The *MCFL* Court’s understanding of the contributor disclosure requirements in subsections (c)(1) and (c)(2)(C) mirrors the district court’s here.⁵ And on the basis of that understanding, it dismissed the FEC’s concerns that relaxing the corporate expenditure prohibition for groups like MCFL “would open

⁴ Justice O’Connor did not join Part III-A of the decision, but neither did she disagree with the substance or characterization of the IE disclosure requirements. *See id.* at 266 (O’Connor, J., concurring in part and concurring in the judgment); *see also* CREW Br. 25 n.7.

⁵ As described in *MCFL*, any unincorporated non-committee “person” spending more than \$250 on IEs was required to “identify all contributors who contribute in a given year over \$200 in the aggregate in funds to influence elections, § 434(c)(1); . . . [and] any persons who make contributions over \$200 that are earmarked for the purpose of furthering independent expenditures, § 434(c)(2)(C).” *Id.* at 252. Because MCFL was incorporated, it was required to “establish a ‘separate segregated fund’ [SSF] if it wishe[d] to engage in any independent spending,” *id.* at 253, and its SSF would be subject to “several [political committee] requirements *in addition to those mentioned*” in § 434(c) for independent spenders, *see id.* at 253-54 (exhaustively surveying committee registration, recordkeeping, and reporting requirements in then-sections 431, 432, and 433 *without repeating* requirement cross-referenced in subsection (c)(1) to identify all contributors above \$200 [§ 431(b)(3)(A)]) (emphasis added).

the door to massive undisclosed political spending by similar entities, and to their use as conduits for undisclosed spending by business corporations and unions”:

We see no such danger. Even if § 441b is inapplicable, an independent expenditure of as little as \$250 by MCFL will trigger the disclosure provisions of § 434(c). As a result, MCFL will be required to identify all contributors who annually provide in the aggregate \$200 in funds intended to influence elections . . . and will be bound to identify all persons making contributions over \$200 who request that the money be used for independent expenditures.

Id. at 262. The Court concluded that these IE disclosure provisions “provide precisely the information necessary to monitor MCFL’s independent spending activity and its receipt of contributions.” *Id.*

Although *MCFL* freed a narrowly defined group of nonprofit corporations to make IEs, the corporate expenditure prohibition remained intact—albeit in a narrower form—so there was still very little independent spending reported to the FEC by “persons other than political committees.”⁶ Throughout this period, non-committee IEs also comprised a minute fraction of campaign spending overall (and of IEs specifically), and most were made by individuals, for whom contributor

⁶ In 2000, when the Commission implemented an electronic filing requirement for filers raising or spending above \$50,000, it described the total number of non-committee IE filers as “very small”; the number above the threshold was smaller still. FEC, Electronic Filing of Reports by Political Committees, 65 Fed. Reg. 38415, 38418 (2000) (noting that “[t]he effect of the final rules” on “individuals or [MCFL corporations]” making IEs “will be small because historical data show that the number of these other filings is very small,” and only a few exceeded \$50,000 in any given cycle).

disclosure is largely inapplicable.⁷ The great majority of IE spending reported to the FEC was by political committees—*e.g.*, parties,⁸ PACs, and SSFs—which are required to disclose all of their receipts and disbursements. 52 U.S.C. §§ 30101, 30102, 30103.

Until *Citizens United*, non-committee IEs reported under 11 C.F.R. § 109.10(e)(1)(vi) thus remained a vanishingly small piece of the pie. So it is hardly surprising that Congress failed to correct, or perhaps even to notice, the inconsistency between the IE disclosure regulation and the statute. Instead, the “giant loophole” after *MCFL* was that corporations, unions, and others “could expend hundreds of millions of dollars in unregulated funds on broadcasts that

⁷ See, *e.g.*, Press Release, FEC, *FEC Study Shows Independent Expenditures Top \$16 Million* (Nov. 29, 1981), https://classic.fec.gov/press/archive/1981/19811129_IEActivity.pdf (summarizing IEs in 1979-80 cycle by 105 PACs (\$14.1 million), 33 individuals (\$1.2 million), and 80 other groups (\$0.7 million); Press Release, FEC, *FEC Reports 1983-84 Independent Spending Activity* (Oct. 4, 1985), https://classic.fec.gov/press/archive/1985/19851004_RevIndepSpend.pdf (noting IEs by 155 PACs, 24 individuals and 24 other groups); FEC, *1987-88 Election Cycle Data Summary Press Releases*, <https://classic.fec.gov/press/summaries/1988/ElectionCycle/1988DataTitle.shtml#IE88> (\$20.77 million in IEs by PACs and just under \$650,000 in IEs by individuals and other groups in 1987-88); FEC, *1989-90 Independent Expenditure 24-Month Data Summaries (Jan. 1, 1989 – Dec. 30, 1990)*, https://classic.fec.gov/press/summaries/1990/ElectionCycle/24m_IE.shtml (\$5.21 million in PAC IEs and just under \$500,000 from individuals and others).

⁸ See, *e.g.*, Michael J. Malbin & Brendan Glavin, *CFI's Guide to Money in Federal Elections*, Campaign Finance Institute, at 21 (2018), http://www.cfinst.org/pdf/federal/2016Report/CFIGuide_MoneyinFederalElections.pdf (“[N]on-party IEs made up only a small portion of federal campaign spending from 1974 through 2010.”).

appeared ‘functionally identical’ to ordinary campaign advertising” by avoiding the so-called “magic words” of express advocacy. *Shays*, 414 F.3d at 107. This is where Congress turned its attention during the extended reform effort that culminated in the passage of BCRA.

B. BCRA was focused on closing the soft-money loophole and reining in “sham issue advocacy,” not on revisiting a disclosure law with very limited applicability at that time.

In the decades after *Buckley*, Congress determined that FECA’s disclosure requirements for independent spenders remained vulnerable to evasion—not because they failed to require non-committee spenders to disclose their contributors, but because they enabled most spenders to escape regulation entirely by avoiding words of express advocacy. Even the *Buckley* Court recognized this risk. *See FEC v. Furgatch*, 807 F.2d 857, 862 (9th Cir. 1987) (noting *Buckley*’s recognition “that efforts had been made in the past to avoid disclosure requirements by the routing of campaign contributions through unregulated independent advertising”).

By the late 1990s, Congress could no longer ignore the “two perceived evils” then plaguing the federal campaign finance system: “the corrupting influence of large, unregulated donations called ‘soft money,’ and the use of ‘issue ads’ purportedly aimed at influencing people’s policy views but actually directed at swaying their views of candidates.” *Shays v. FEC*, 528 F.3d 914, 916 (D.C. Cir.

2008). Congress concluded that the campaign finance system had suffered a “meltdown,” and responded by enacting BCRA. *See Shays*, 414 F.3d at 81-82.

In passing BCRA, Congress was focused on bringing these two kinds of activity into FECA’s regulatory ambit, not on securing contributor disclosure from the relative handful of non-committee, non-individual “persons” who were then permitted to make independent expenditures. The immediate concern was that groups were spending millions on *non-express* advocacy campaign ads calculated to have the same electoral effect as IEs without triggering *any* regulation under FECA—to the tune of more than \$500 million by the 2000 elections. *McConnell*, 540 U.S. at 127-28 & n.20.

BCRA did not implicitly “ratify” the regulation in BCRA, *see Crossroads Br.* 45-49, simply because it defined a new category of election-related expenditures and subjected them to new disclosure provisions without addressing IE disclosure. To combat “sham issue ads,” Congress created a new category of campaign spending, called “electioneering communications”: broadcast, cable, or satellite communications made shortly before an election that refer to a clearly identified federal candidate and, for House and Senate candidates, are geographically targeted to the relevant electorate. *See* 52 U.S.C. § 30104(f)(3). But the fact that Congress left the IE disclosure rule untouched proves nothing, and indeed, “it is not surprising that Congress failed to take a close look at the FEC’s

independent expenditure disclosure rule, which at the time was little more than federal campaign finance law's equivalent of a dark corner in a dusty attic." Trevor Potter & Bryson B. Morgan, *The History of Undisclosed Spending in U.S. Elections & How 2012 Became the "Dark Money" Election*, 27 Notre Dame J.L. Ethics & Pub. Pol'y 383, 439 (2013).

There is accordingly no special significance to divine from the fact that "Congress did not express any dissatisfaction with the Regulation" when it passed BCRA. Crossroads Br. 8. In all of BCRA's voluminous legislative history, there are scant references to the IE disclosure provision, and none to the FEC's rule interpreting it. *See* Potter & Morgan, *supra*, at 436. To the extent Congress had concerns about the adequacy of disclosure requirements in connection with independent spending, they revolved around *Buckley's* narrow "express advocacy" construction of the term "expenditure," which had enabled the wholesale evasion of disclosure provisions. Moreover, by closing the soft-money loophole and expanding the kinds of communications covered by the corporate expenditure prohibition, BCRA's drafters hoped to channel more corporate electioneering activity back into fully transparent SSFs. BCRA's transparency-related reforms were thus focused on the areas of most acute concern, and hardly amount to "overwhelming evidence" that Congress considered and failed to act upon" the Commission's faulty IE disclosure rule. *Rapanos*, 547 U.S. at 750.

C. *Citizens United* exposed the rule’s inconsistency with FECA and heightened its adverse effects on the statutory disclosure regime.

Citizens United exposed what had long been hiding in plain sight: the Commission’s rule and the statute have stood in irreconcilable conflict since 1980. In the years before the rule was promulgated in 1980, “the sources of 98.3% of the funds spent on independent expenditures were disclosed.” Potter & Morgan, *supra*, at 426 & n.234. As soon as the rule took effect, that figure dropped to zero. *Id.* But because the amount of non-committee independent spending was small in absolute terms, the system-wide effects traceable to the rule were likely minimal. As long as the corporate/union expenditure prohibition was in place, the conflict remained obscure.

Before *Citizens United*, therefore, Congress had no reason to attend to the unduly narrow scope of contributor disclosure required under the rule. Instead, between 1976 and 2001, its concern was that the Supreme Court’s narrow “express advocacy” gloss on the term “expenditure” had enabled organizations of all kinds to spend lavishly on candidate-focused campaign ads that were not subject to any disclosure at all. With BCRA, Congress focused on bringing that spending into the light. *See infra* Part I.B; *see also McConnell*, 540 U.S. at 196-97 (upholding BCRA disclosure requirements as measure to prevent organizations from avoiding “the scrutiny of the voting public” by “hiding behind dubious and misleading names”).

Now, in the wake of *Citizens United*, there is more outside spending coursing through the campaign finance system than ever before—much of it once again, thanks to the FEC’s IE disclosure rule, coming from groups “hiding behind dubious and misleading names” and disclosing no contributors. The effects of the decision were immediately apparent: the amount of independent spending by outside groups quadrupled between the 2006 and 2010 elections.⁹ Much of the spending was anonymous, and estimates suggest that since *Citizens United*, the FEC rule has kept as much as \$769 million of IEs in the dark.¹⁰

This is a long way from the campaign finance system envisioned by the Supreme Court in *Citizens United*, which hinged on the “pair[ing]” of “corporate independent expenditures with effective disclosure.” 558 U.S. at 370. As the Court emphasized, “transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages.” *Id.* at 371. The

⁹ Spencer MacColl, *Citizens United Decision Profoundly Affects Political Landscape*, Ctr. For Responsive Politics (“CRP”) (May 5, 2011), <http://www.opensecrets.org/news/2011/05/citizens-united-decision-profoundly-affects-political-landscape.html>.

¹⁰ *CLC Analysis: FEC Rule Kept As Much As \$769 Million In Political Spending In The Dark* (Oct. 4, 2018), <https://campaignlegal.org/update/clc-analysis-fec-rule-kept-much-769-million-political-spending-dark>; see also CRP, *Political Nonprofits (Dark Money)*, https://www.opensecrets.org/outsidespending/nonprof_summ.php (“[S]pending by organizations that do not disclose their donors has increased from less than \$5.2 million in 2006 to well over \$300 million in the 2012 presidential cycle and more than \$174 million in the 2014 midterms.”).

Commission's unduly narrow rule impedes that goal, and frustrates Congress's clear purpose—as unambiguously expressed in FECA's text, structure, and history—of securing complete disclosure of the sources of campaign-related spending.

II. Invoking the First Amendment Does Not Save the Regulation.

In addition to its arguments pertaining to the statutory text and history, Crossroads implies that constitutional avoidance justifies the facially invalid regulation. Crossroads Br. 50-53. Made more explicit by its amici, this theory suggests that FECA's IE disclosure provisions, absent the narrowing construction of the regulation, would be unconstitutionally overbroad and vague. Crossroads Br. 52 (suggesting a broad reading of FECA “would lead to . . . the imposition of reporting burdens on core political speech that are not clearly necessary”). But even if this rationale had been asserted by the FEC in the 1980 rulemaking or this litigation—and it was not—its underlying premise is wrong. Neither FECA's IE disclosure provisions, nor the statutory terms upon which they rest, are constitutionally suspect; on the contrary, it is well settled that this law vindicates the electorate's compelling interest in knowing “where political campaign money comes from.” *Buckley*, 424 U.S. at 66.

A. Crossroads' First Amendment argument is nothing more than a post hoc rationalization for the rule.

At no point has the Commission cited the First Amendment as a reason for adopting the challenged rule. The FEC's explanation for the 1980 rule did not articulate any constitutional concerns. AR 1503 (45 Fed. Reg. 14831, 15087) (Mar. 7, 1980)). Nor was there anything in the rulemaking record raising First Amendment or donor privacy issues. *Id.*; *see also* AR 1330-31 (Memorandum from Charles N. Steele & Patricia Ann Fiori to the Comm'n through Orlando B. Potter 68-69 (Feb. 11, 1980)); *CREW*, 316 F. Supp. 3d at 378-80. Even in this litigation, the Commission has not made this case. To be sure, it has suggested that its rule provides additional guidance to the regulated community. *See, e.g.*, FEC Summ. J. Mem. 43 (Doc. 30) ("Had the FEC promulgated a rule with language identical to the statute, or not promulgated one at all, a group . . . might not understand as clearly what contributors to include on its reports."). But this is a far cry from a claim that the statute is unconstitutionally vague or overbroad in the rule's absence. A court generally may not uphold an agency rule on grounds the agency did not itself articulate. *SEC v. Chenery Corp.*, 332 U.S. 194, 196 (1947) ("[A] reviewing court, in dealing with a determination or judgment which an administrative agency alone is authorized to make, must judge the propriety of such action solely by the grounds invoked by the agency."); *see also Ass'n of*

Civilian Technicians v. FLRA, 269 F.3d 1112, 1117 (D.C. Cir. 2001) (“Agency decisions must generally be affirmed on the grounds stated in them.”).

Amici supporting Crossroads—39 years after the adoption of the challenged rule—now attempt to fill in the gaps, arguing that “carefully constructed Commission regulations” like 11 C.F.R. § 109.10(e)(1)(vi) are the only things “keep[ing] these unconstitutional statutes from collapsing in on themselves.” Inst. for Free Speech (“IFS”) Br. 7; *see also* McConnell Br. 33-34; Chamber Br. 18-20. But even if this constitutional rationale had been asserted in this case by the Commission, rather than non-parties, the Court cannot credit a post hoc litigation position that does not reflect the actual basis for the agency’s decision. *See, e.g., Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 213 (1988) (“Deference to what appears to be nothing more than an agency’s convenient litigation position would be entirely inappropriate.”).

Nor is it clear exactly how these constitutional arguments, assuming they were properly presented, should bear upon the *Chevron* analysis here. Crossroads suggests that constitutional concerns are relevant to an inquiry under *Chevron* step two as to whether the regulation was a reasonable construction of an ambiguous statute. Crossroads Br. 43-53. But Crossroads does not explain how its First Amendment arguments change the analysis at *Chevron* step one, where

congressional intent is unambiguous,¹¹ nor does it argue that the challenged rule is the *only* constitutional way to construe the statute.

Indeed, none of the First Amendment arguments asserted by Crossroads or its amici seek to defend the validity of the rule as much as they attempt to relitigate the constitutionality of FECA's IE disclosure provisions. *See* IFS Br. 8 (arguing FECA demonstrates "an unconstitutional Congressional intent"). The correct vehicle for that endeavor is a direct constitutional challenge to FECA, not an administrative review action seeking to reinstate an allegedly invalid regulation;

¹¹ Crossroads attempts to bolster its constitutional avoidance argument by citing *Van Hollen* as supposedly authorizing the FEC to consider, in rulemaking, "the conflicting privacy interests that hang in the balance." Crossroads Br. 51. But unlike in *Van Hollen*, the Commission did not base 11 C.F.R. § 109.10(e)(1)(vi) on constitutional or privacy considerations, nor defend it on these grounds. *See Van Hollen v. FEC*, 811 F.3d 486, 498, 499 (D.C. Cir. 2016) (noting that FEC's explanation for "electioneering communications" disclosure rule cited "individual donor privacy" concerns). This Court cannot consider rationales for challenged agency action that the agency itself has not claimed.

Further, insofar as *Van Hollen* can be read as allowing—but not requiring—the FEC to take constitutional considerations into account in interpreting FECA, *Van Hollen* arrived at that point only after concluding that the operative statutory provisions were ambiguous. *Ctr. for Individual Freedom v. Van Hollen*, 694 F.3d 108, 110 (D.C. Cir. 2012) (noting effect of intervening Supreme Court decisions on potential scope of statutory electioneering communications disclosure provisions). Having determined that *Chevron* step one review was not appropriate, *Van Hollen* instead considered "whether the rule survives step two and *State Farm*'s 'arbitrary and capricious' test." 811 F.3d at 488-89. Here, the district court correctly found that FECA's IE disclosure provisions are unambiguous, so *Van Hollen*'s *Chevron* step two analysis and dicta about First Amendment privacy concerns do not apply.

Crossroads is free to file the former, if and when it develops concrete plans to make IEs potentially subject to disclosure under 52 U.S.C. § 30104(c).¹² See CREW Mot. to Dismiss 3-4.

B. Crossroads' constitutional arguments are inconsistent with Supreme Court precedent.

The crux of the First Amendment arguments asserted by Crossroads and its amici is that the rule is reasonable because it had the effect of curing the constitutional defects of FECA's IE disclosure provisions, and in particular, their reliance on the "vaguely-worded" statutory term "contribution." Crossroads Br. 53. But *Buckley* addressed and rejected the contention that FECA's definition of "contribution" was impermissibly vague.

Buckley reviewed whether the federal definitions of "expenditure" and "contribution" were unconstitutionally vague and overbroad because both definitions relied on the operative phrase "for the purpose of influencing any election for Federal office." *Id.* at 79; *see also* 52 U.S.C. § 30101(8)(A)(i) (defining "contribution"); *id.* § 30101(9)(A)(i) (defining "expenditure"). Amicus

¹² Even if the FEC had claimed that constitutional considerations had originally motivated its adoption of the regulation, its analysis of judicial decisions and "constitutional question[s]" would receive no deference. *J.J. Cassone Bakery, Inc. v. NLRB*, 554 F.3d 1041, 1044 (D.C. Cir. 2009); *CREW v. FEC*, 209 F. Supp. 3d 77, 87 (D.D.C. 2016). This is an "area of presumed judicial, rather than administrative, competence." *Univ. of Great Falls v. NLRB*, 278 F.3d 1335, 1341 (D.C. Cir. 2002).

IFS contends that the “*Buckley* Court facially narrowed [both] those provisions to cordon their reach,” IFS Br. 6, but this is wrong: the Court’s “cordoned” this phrase only in the context of *independent expenditures*. There, it concluded that “for the purpose of influencing” language was vague because it potentially “encompass[ed] both issue discussion and advocacy of a political result.” 424 U.S. at 79. Consequently, where the actor was not a “political committee,” the Court narrowly construed the term “expenditure” to reach only “funds used for communications that expressly advocate the election or defeat of a clearly identified candidate.” *Id.* at 79-80.

But the Court simultaneously found that this phrase “presents fewer problems in connection with the *definition of a contribution* because of the limiting connotation created by the general understanding of what constitutes a political contribution.” *Id.* at 24 (emphasis added). Instead of imposing an “express advocacy” construction on “contribution,” the Court merely clarified that a contribution includes: (1) “contributions made directly or indirectly to a candidate, political party, or campaign committee,” and (2) “contributions made to other organizations or individuals but *earmarked for political purposes*.” *Id.* at 78 (emphasis added). In light of this “general understanding” of what constitutes a political contribution, the FECA provision defining contributions was neither vague nor overbroad and the limiting construction of “express advocacy” was

unnecessary. It follows that FECA's IE disclosure provisions, insofar as they rely upon the definition of contribution, are equally permissible.

Although the Supreme Court endorsed this aspect of the IE disclosure provisions, Crossroads and its amici conjure up a procession of potentially unconstitutional or confusing disclosures that they believe the statute, particularly section 30104(c)(1), would require absent the challenged rule. But the district court rejected the suggestion that subsection (c)(1) was “unbounded” without the narrowing gloss of the regulation, reasoning that that its contributor disclosure requirement covered only “all *contributions* received,” 52 U.S.C. § 30104(c)(1), and “contributions,” by definition, were only those donations made “for the purpose of influencing any election for Federal office,” *id.* § 30101(8)(A)(i), and “earmarked for political purposes.” *See CREW*, 316 F. Supp. 3d at 388-89 (emphasis added) (citing *Buckley*, 424 U.S. at 80). Crossroads cannot tenably claim that a “New York resident who . . . gives to an animal welfare organization to lobby the local city council” will be disclosed when that organization “run[s] an independent expenditure against a California candidate.” Crossroads Br. 52. Only those donations made “for the purpose of influencing any election for Federal office” and “earmarked for political purposes” —a construction endorsed in *Buckley*—would trigger the statutory disclosure requirement in 52 U.S.C. § 30104(c)(1).

III. The District Court Properly Exercised Jurisdiction Over CREW's Challenge to the Regulation.

Crossroads strives to insulate this facially invalid regulation from judicial review by leveling assorted attacks against the justiciability of CREW's claim. None has merit. Well-established circuit precedent allows for judicial review of Commission regulations under the APA when the regulations are applied to an administrative complaint. *See Weaver*, 744 F.3d at 145; *Shays*, 414 F.3d at 96. Judicial review is particularly appropriate in a context like this one, where the offending regulation would otherwise be applied to dismiss FEC administrative complaints involving clear statutory violations. *See Shays*, 414 F.3d at 95. If the rule were revived as Crossroads demands, FECA's safe harbor provision would perpetually insulate non-disclosing groups from their obligation to conform with the statutory requirements. In the meantime, elections would come and go, spenders like Crossroads would continue to withhold the "meaningful disclosure" Congress prescribed, and voters would remain in the dark. Legislative History of [FECA] Amendments of 1979 at 139 (1983), http://classic.fec.gov/pdf/legislative_hist/legislative_history_1979.pdf ("1979 FECA History").

First, Crossroads incorrectly asserts that the district court lacked jurisdiction to consider CREW's APA claim, and that this Court likewise cannot adjudicate this dispute, because the Commission did not evaluate the lawfulness of the regulation first. Crossroads Br. 22, 32-34. This Court has long recognized that a

“purely legal” question, like the interpretive one presented here, is “presumptively suitable to judicial review.” *Shays*, 414 F.3d at 95 (quoting *AT&T Corp. v. FCC*, 349 F.3d 692, 699 (D.C. Cir. 2003)); *Chamber of Commerce v. FEC*, 69 F.3d 600, 604 (D.C. Cir. 1995). And “[i]t is well established that a rule may be reviewed when it is applied in an adjudication—an agency need not explicitly reassess the validity of a rule to subject the rule to challenge on review.” *AT&T Co. v. FCC*, 978 F.2d 727, 734 (D.C. Cir. 1992); *see also Shays*, 414 F.3d at 95-96.

CREW’s challenge to the regulation was ripe for review because neither the court nor the agency would “benefit from postponing review until the policy in question has sufficiently ‘crystallized’ by taking on a more definite form.” *AT&T Corp.*, 349 F.3d at 699-700 (citation omitted). And as in *Shays*, no further “‘crystallization’ of the disputed policies will ever occur” because “conduct protected by the [FECA] safe harbors will *never* be subject to enforcement proceedings.” 414 F.3d at 95 (citation omitted). This is precisely why this Court has said that judicial review under FECA is insufficient for evaluating the validity of Commission regulations. *Id.* at 96. Crossroads admits as much in explaining that the Commission can dismiss a complaint on the basis of the safe harbor provision without evaluating whether the regulation is lawful. Crossroads Br. 33. This Court permits APA suits in these circumstances to ensure that FECA regulations are not permanently shielded from review. *Id.*; *see also AT&T Corp.*, 349 F.3d at 700.

Moreover, because CREW challenged the validity of the rule after it was applied in the dismissal of its complaint, its claim is not foreclosed by the usual statute of limitations for bringing a standalone facial challenge to an administrative regulation. *See Weaver*, 744 F.3d at 145; *see also Genuine Parts Co. v. EPA*, 890 F.3d 304, 315-16 (D.C. Cir. 2018); *Murphy Expl. & Prod. Co. v. U.S. Dep't of Interior*, 270 F.3d 957, 958-59 (D.C. Cir. 2001). Simply put, CREW's challenge to the regulation was properly brought, reviewed, and decided by the district court.

Judicial review is particularly appropriate in this context, where the overriding purpose of the statutory regime is to ensure broad disclosure. FECA requires contributor disclosure from independent spenders because Congress intended “to insure that the voters are fully informed and to achieve through publicity the maximum deterrence to corruption.” *Buckley*, 424 U.S. at 76; *see also Citizens United*, 558 U.S. at 366-71; 1979 FECA History at 139 (describing the 1979 amendments to the IE disclosure provisions as aimed at “[s]implif[ying] reporting without affecting meaningful disclosure”).

Nor was CREW's claim precluded because it failed to comment on a 2011 rulemaking petition that the Commission could not even agree to take up.¹³ *See*

¹³ FEC Open Meeting Minutes at 4-5 (Dec. 15, 2011), <https://sers.fec.gov/fosers/showpdf.htm?docid=114910>; Rep. Van Hollen, *Petition for Rulemaking to Revise and Amend Regulations Relating to Disclosure of Independent Expenditures* (Apr. 21, 2011), <https://sers.fec.gov/fosers/showpdf.htm?docid=61143>.

Crossroads Br. 34. Postponing review to allow the Commission to conduct a rulemaking likely means postponing it forever. Even if the Commission agreed to *initiate* a rulemaking, recent history suggests that the prospects it will actually adopt a new rule are very slim¹⁴—and accordingly, any future challenge to the rule’s validity would arrive in substantially the same form as CREW’s. Punting the question to the Commission would all but ensure that outside spenders would continue to flout the statute and shield the identities of their contributors, secure in the virtual guarantee of the agency’s “dysfunction and deadlock.”¹⁵ Meanwhile, the public would be less able to make informed choices at the ballot box because it would be deprived of the disclosure that Congress required—disclosure that has become increasingly necessary to illuminate the sources of independent spending since *Citizens United*. *See supra Part I*. Given the futility of further administrative proceedings, the district court’s intervention was warranted. *Cf. Ass’n of Flight Attendants-CWA v. Chao*, 493 F.3d 155, 159 (D.C. Cir. 2007).¹⁶

¹⁴ See generally, e.g., Issue One, *Busted and Broke: Why the Federal Election Commission Doesn’t Work* (Apr. 23, 2019), <https://www.issueone.org/wp-content/uploads/2019/04/FEC-REPORT-2019.pdf>.

¹⁵ Office of Comm’r Ann M. Ravel, FEC, *Dysfunction and Deadlock: The Enforcement Crisis at the Federal Election Commission Reveals the Unlikelihood of Draining the Swamp* (2017), https://www.fec.gov/resources/about-fec/commissioners/ravel/statements/ravelreport_feb2017.pdf.

¹⁶ As this Court explained in *Shays*, the Commission may never reach a regulation’s validity given FECA’s safe harbor provision, making judicial rulings on the validity of Commission regulations particularly vital to the public interest.

CONCLUSION

This Court should deny Crossroads' request to vacate the judgments of the district court below, and if it reaches the merits of this case, it should affirm.

414 F.3d at 95; *cf. United States v. Bancorp Mortg. Co. v. Bonner Mall P'ship*, 513 U.S. 18, 26-27 (1994) ("Judicial precedents are presumptively correct and valuable to the legal community as a whole[,] . . . and should stand unless a court concludes that the public interest would be served by vacatur."); *Chamber of Commerce v. EPA*, 642 F.3d 192, 211 (D.C. Cir. 2011) (declining to vacate agency action where vacatur would be "akin to vacating a district court decision that was not appealed by either of the principal parties but rather by an intervenor whose particular interest in the matter had evaporated").

As this Court recognized in denying Crossroads' emergency motion to stay the district court's ruling, the Commission's routine dismissals of complaints like CREW's "continu[es] to deprive [them] of the information [they] seek and certainly is capable of repetition." Stay Order at 5. Vacating the ruling below would simply prolong this dispute—inviting another challenge to the unlawful regulation in precisely the same posture.

Dated: April 24, 2019

Respectfully submitted,

/s/ Tara Malloy

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 6405 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2007 in Times New Roman 14 point font.

/s/ Tara Malloy

Tara Malloy

Dated: April 24, 2019

CERTIFICATE OF SERVICE

I hereby certify that on April 24, 2019, I electronically filed the BRIEF *AMICUS CURIAE* with the Clerk of Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system, thereby serving all counsel required to be served.

I further certify that I will also cause the requisite number of paper copies of the brief to be filed with the Clerk.

/s/ Tara Malloy

Tara Malloy

From:Duane Pugh
To:Commissioners Office
Sent:2019-10-17T20:20:28.0000000Z
CC:Alec Palmer ; Lisa Stevenson ; Lawrence Calvert ; Amy Pike
Subject:FW: Letter from Senator Klobuchar

FYI.

Thanks,
Duane

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From: Kerr, Lindsey (Rules) [mailto:Lindsey_Kerr@rules.senate.gov]
Sent: Thursday, October 17, 2019 1:46 PM
To: Duane Pugh <dpugh@fec.gov>
Subject: RE: Letter from Senator Klobuchar

Hi Duane –
I wanted to follow up on our call and clarify. As I mentioned in the email, we are asking for the Chair to respond. In our call you mentioned that because we are asking for documents, it may be necessary for multiple responses – we understand that commissioners may want to send their own documents per our request for any documents/communications between any Commissioners/FEC employees and DOJ regarding violations of 30121. That’s fine – but the Ranking Member specifically requested a response to questions in the letter from the Chair. Obviously we are open to receiving all communications from Commissioners. Let me know if there’s any confusion – happy to talk through by phone.

Lindsey

B6

From: Kerr, Lindsey (Rules)
Sent: Tuesday, October 8, 2019 3:34 PM
To: 'Duane Pugh' <dpugh@fec.gov>
Subject: Letter from Senator Klobuchar

Hi Duane – please find the attached letter from Senator Klobuchar. This letter specifically requests Chair Weintraub’s response in her capacity as Chair of the Commission. I wanted to make sure you had it to circulate to the other Commissioners for awareness.

Thank you!

Lindsey

LINDSEY KERR
Staff Director and Chief Counsel
Ranking Member Amy Klobuchar
U.S. SENATE COMMITTEE ON RULES AND ADMINISTRATION

Oral Argument Not Yet Scheduled

19-5117

IN THE

**United States Court Of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

LEVEL THE PLAYING FIELD, PETER ACKERMAN, GREEN PARTY OF THE UNITED STATES
AND LIBERTARIAN NATIONAL COMMITTEE, INC.

Plaintiffs-Appellants,

—v.—

FEDERAL ELECTIONS COMMISSION,

Defendant-Respondent.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

***CORRECTED* BRIEF OF AMICI CURIAE INDEPENDENT VOTER
PROJECT, ADMIRAL JAMES STAVRIDIS, SENATOR JOSEPH ROBERT
KERREY, SENATOR JOSEPH ISADORE LIEBERMAN, THE
HONORABLE CLARINE NARDI RIDDLE, THE HONORABLE DAVID M.
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**CERTIFICATE AS TO PARTIES, RULINGS UNDER REVIEW, AND
RELATED CASES**

A. Parties and Amici

Pursuant to Circuit Rule 28(a)(1)(A), Amici Curiae certify that the parties and amici curiae in this case are as follows: Plaintiffs-Appellants Level the Playing Field, Dr. Peter Ackerman, Green Party of the United States, Libertarian National Committee, Inc.; Defendant-Appellee is the Federal Elections Commission (“FEC”); and Amici FairVote, Coalition for Free and Open Elections, Independent Voter Project, Norman R. Augustine, Dennis C. Blair, Scott Blackmun, Mary McInnis Boise, W. Bowman Cutter, James J. Fishman, Carla A. Hills, Daniel L. Kurtz, Vali R. Nasr, Nancy E. Roman, James Stavridis, Joseph Robert Kerrey, Joseph I. Lieberman, Honorable Clarine N. Riddle, Hon. David M. Walker, Honorable Christine Todd Whitman, and the Commission on Presidential Debates.

B. Rulings Under Review

The rulings under review, each entered by the Honorable Tanya S. Chutkan, are (i) the Order, dated March 31, 2019, denying Appellants’ motion for summary judgment, denying Appellants’ motion to supplement the record, granting FEC’s motion for summary judgment, and granting in part and denying in part FEC’s motion to strike (Docket no. 111); and (ii) the Memorandum Opinion dated March 31, 2019, addressing these motions (Docket no. 110), which appears at 381 F. Supp. 3d 78.

C. No Related Cases

This case has not previously been before this Court or any other court except for the district court. Counsel for Amici Curiae is not aware of any related cases within the meaning of Circuit Rule 28(a)(1)(C).

Dated: September 27, 2019

Respectfully submitted,

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, Amicus Independent Voter Project makes the following disclosure:

1. Amicus is not a publicly held corporation or other publicly held entity.
2. Amicus has no parent corporation.
3. No publicly held corporation or other publicly held entity owns 10% or more of Amicus.
4. Amicus is not a trade association.

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STATEMENT OF IDENTITY, INTEREST, AND AUTHORITY TO FILE**Cory J. Briggs and Stephen Chad Peace**

Cory J. Briggs is admitted as a member of this Court. Stephen Chad Peace is a member of the California State Bar and is pending admission to this Court. They are attorneys for the Independent Voter Project (“IVP”) and represent the additional amici for purposes of this brief of amici curiae. They have no other financial or client interest in the outcome of this litigation, and no attorney for a party has helped write this brief or defrayed the cost of its preparation.

Independent Voter Project (“IVP”)

Founded in 2006, IVP is a 501(c)(4) organization that seeks to educate voters about voters’ non-partisan rights and other important public policy issues, to create a climate for otherwise disenfranchised voters to engage in the political process, and to encourage non-partisan voters to vote and participate in the democratic process. IVP is most well-known for authoring California’s “top-two” non-partisan primary, passed by the voters in 2010.

Admiral James Stavridis

Admiral Stavridis is a retired Navy admiral. He was 15th Commander, U.S. European Command and NATO’s 16th Supreme Allied Commander Europe. Admiral Stavridis has been working for several years to change the 15% rule.

Senator Joseph Robert Kerrey

Senator Kerrey served as the Governor of Nebraska from 1983 to 1987 and as a

United States Senator from Nebraska from 1989 to 2001. He has been a leading advocate for changing the 15% rule for several years.

Senator Joseph Isadore Lieberman

Senator Lieberman served as a United States Senator from Connecticut from 1989 to 2013. He has been working to remove the 15% rule for over 3 years.

The Honorable Clarine Nardi Riddle

Clarine Nardi Riddle served as the Attorney General of Connecticut from 1989 to 1991. She served as chief of staff for Senator Lieberman from 2003 until 2013. She co-founded and works with No Labels, an organization of Republicans, Democrats and Independents dedicated to addressing issues of hyper-partisanship in the United States to promote problem-solving.

The Honorable David M. Walker

David M. Walker served as the seventh Comptroller General of the United States from 1998 to 2008. He is also a national co-founder of No Labels and an original signatory on the “Change the Rule” letter to modify the 15% rule.

The Honorable Christine Todd Whitman

Christine Todd Whitman served as the Governor of New Jersey from 1994 to 2001 and was the Administrator of the Environmental Protection Agency from 2001 to 2003. Whitman was an original signatory of the “Change the Rule” letter that challenged the 15% rule.

This brief is timely filed and is submitted with amici's Motion for Leave to Participate.

INTRODUCTION

A healthy democracy promotes the free flow of ideas and embraces different perspectives. The presidential debates are the most important conversation between candidates for the Presidency of the United States of America and the American people. The Commission on Presidential Debates ("CPD") has established a 15% rule of entry to presidential debates that, in practice, prevents popular third-party and independent candidates from participating in the debates, narrows the flow of ideas in our political discourse, and insulates well-heeled major party candidates from the hazard of confronting different perspectives.

Limitations on the participation of third-party and independent candidates from our presidential debates exacerbates divisions in America. A substantial plurality of American voters no longer identifies with either the Republican or Democratic Parties.¹ As hyper-partisanship plagues our media, our political discourse, and our electoral options, the non-partisan plurality of voters is forced to either embrace one side of this artificial division or not participate in the national dialogue at all.

The more pernicious consequence of the 15% rule is its shaping of the American mind. By many estimates, audiences neared 100 million viewers for the most recent

¹ *Party Affiliation*, GALLUP (2017), <http://www.gallup.com/poll/15370/party-affiliation.aspx>.

CPD 2016 presidential general election debates. Nearly one-third of all Americans were exposed to the calculated barbs traded by the Republican candidate Donald J. Trump and the Democratic candidate Hillary Clinton. This was pugilism by personal attack and not a debate of ideas about the state of our country and its future. As stated by Mrs. Clinton herself—this was reality television.² It's the consequence of limiting the governing flow of participants and ideas. And, although the spectacle may drive media ratings up, its consequence is devastating to the body politic, as perception drives real behaviors.

A study published in September of 2017 by the Harvard Business School concluded that the public's distrust in government is directly connected to the lack of real competition in the electoral process:

By nearly every measure, the *industry* of politics, itself, is thriving. There's just one problem. The people whom the politics industry is supposed to serve have never been more dissatisfied. Public trust in the federal government is hovering at a near 60-year low. [¶] Competition in politics appears intense, which is usually good for customers. But today's competition is failing, delivering gridlock and growing division instead of offering practical solutions to the nation's problems. The parties compete on ideology and unrealistic promises, not on action and results. The parties compete to divide voters and serve special interests, rather than weigh and balance the interests of all citizens and find common ground to move the country forward. And there is no accountability for results. . . . The underlying root cause is the kind of political competition that the parties have created, including their insulation from new competition that would better serve the public interest.

² Heidi M. Przybyla, *Hillary Clinton prepares for 'Reality Show' debates*, USA TODAY (Sept. 15, 2016), <https://www.usatoday.com/story/news/politics/elections/2016/09/21/hillary-clinton-donald-trump-debates/90310878/>.

Katherine M. Gehl and Michael E. Porter, *Why Competition in the Politics Industry is Failing America 2* (Harvard Business School ed., 2017) (emphasis in original).

The rules of our republic should support civil disagreement rather than encourage hostile behavior in political discourse or undermine confidence in our government. CPD defends its 15% rule as a reasonable and objective measure of candidate viability. CPD's purpose, however, is not to choose winners. CPD has failed to articulate how the 15% rule supports its organizational mission to "provide the best possible information to viewers and listeners." Limiting participation by the arbitrary 15% rule undermines this objective by providing a pedestal for the major party candidates and their platforms that exacerbates the perception that the American people have only binary policy and candidate choices. CPD's candidate viability based defense of its 15% rule is a model of the contrived political competition dissected by Gehl and Porter to its root purpose of limiting any competition of new ideas.

CPD is an extra-governmental organization originally sponsored by the major political parties and sanctioned by the federal government, the effect of which is to calcify an existing ruling political class. Our forefathers never could have contemplated such a system for controlling presidential debates and, given their predisposition to oppose political parties, would have opposed any such granting of governmental powers to a private corporation simply because it enjoyed the mantle of the major political parties. The insidiousness of this husbanding of the duopoly is so perverse that even in academia the American system is regularly referred to as a "two-

party system.”

Nowhere in the Constitution, the documents published in preparation of its establishment, or its successor amendments is there an allusion to, or contemplation of, our form of government being a “two-party system.” Yet, CPD’s 15% rule results in our presidential debates accommodating only the two major political parties’ candidates *and* it was designed to produce this outcome.

It’s important to recognize that much of what constitutes today’s political system has no basis in the Constitution. As our system evolved, the parties—and a larger political industrial complex that surrounds them—established and optimized a set of rules and practices that enhanced their power and diminished our democracy. These changes—often created behind closed doors and largely invisible to the average citizen—continue to take their toll at both the federal and the state levels.

Gehl and Porter, at 2.

There is a difference between a natural result of constitutional construction that has led to the *ebb and flow* of societal change being channeled into coalitions of two broadly defined political parties and the institutionalization of two *particular* parties as permanent impermeable forces. CPD’s 15% rule serves the latter rather than the former. Rather than accommodate the *ebb and flow* of societal change that has been at the heart of the Constitution’s survival, CPD’s 15% rule acts as an agent to suppress debate, limit access, and, ultimately, alienate the public from their government.

With these considerations, amici argue in support of Appellants.

ARGUMENT

I. CPD’S 15% RULE CONFLICTS WITH ITS MISSION STATEMENT AND IGNORES THE IMPORTANT ROLE THAT THIRD-PARTY CANDIDATES PLAY IN A HEALTHY REPUBLIC

CPD’s nonprofit and “non-partisan” mission is to, “provide the best possible information to viewers and listeners.”³ Throughout this case, however, the CPD has defended its 15% rule without regard to how the rule supports or subverts its own mission statement. Instead, and by CPD’s admission, the 15% rule is designed to determine a candidate’s viability to win the general election. This determination does not have a qualitative component as it relates to the information the candidates may provide to the viewers.

As the Supreme Court has recognized time and again,⁴ a healthy republic is one that embraces debate about minority opinions as well as more popular ones. *Anderson v. Celebrezze*, 460 U.S. 780, 794 (1983) (citing *Illinois Elections Bd. v. Socialist Workers Party*, 440 U.S. 173, 186 (1979)) (“Historically political figures outside the two major parties have been fertile sources of new ideas and new programs; many of their challenges to the status quo have in time made their way into the political

³ *Our Mission*, CPD, <http://www.debates.org/index.php?page=about-cpd> (last visited Sept. 15, 2017).

⁴ *See, e.g., Williams v. Rhodes*, 393 U.S. 23, 32 (1968) (“The fact is, however, that [it] does not merely favor a ‘two-party system’; it favors two particular parties -- the Republicans and the Democrats -- and in effect tends to give them a complete monopoly.”); *Anderson v. Celebrezze*, 460 U.S. 780, 794 (1983) (“In short, the primary values protected by the First Amendment ... are served when election campaigns are not monopolized by the existing political parties.”) (citing *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964)) .

mainstream.”). Many of the ideas viewed today as fundamentally American were first introduced by third parties or candidates. The Socialist Party, for example, introduced women’s suffrage as an issue in the late 1800s.⁵ Abraham Lincoln was elected from a third party (at the time) on an anti-slavery platform.⁶

H. Ross Perot is one of only two third-party candidates to ever qualify for a place on the presidential debate stage when he ran as an independent candidate for president in 1992.⁷ Perot ultimately received 18.9% of the popular vote in the general election.⁸ Many of Perot’s ideas were incorporated into legislation and even the major parties’ political platforms.⁹ Yet, had the 15% rule been in place in 1992, Perot would have been barred from participating in any of the presidential debates.¹⁰ Although Perot did not win the presidency, and even if he didn’t have a chance of being the winner, the value of his ideas improved the health of our democracy.

⁵ *Socialist Labor Party Platform -1896* (Jul. 4, 1896), <http://projects.vassar.edu/1896/slpplatform.html>.

⁶ *Republican Party Platform of 1860*, THE AMERICAN PRESIDENCY PROJECT (May 17, 1860), <http://www.presidency.ucsb.edu/ws/index.php?pid=29620>.

⁷ *Debate History*, CPD, <http://www.debates.org/index.php?page=debate-history> (last visited Sept. 15, 2017).

⁸ *Gallup Presidential Election Trial-Heat Trends, 1936-2008*, GALLUP, <http://www.gallup.com/poll/110548/gallup-presidential-election-trialheat-trends-19362004.aspx#4> (last visited Sept. 15, 2017).

⁹ Ted G. Jelen, *Ross For Boss: The Perot Phenomenon and Beyond* (2001).

¹⁰ Although CPD argues he would not have been barred as his support had been over 15% at other points in the race, in September (prior to the debates when the polling determination is made), he was only at 8% support. *Gallup Presidential Election Trial-Heat Trends, 1936-2008*, *supra* note 8.

II. CPD's 15% RULE HAS, AND WILL CONTINUE TO, PREVENT THIRD-PARTY AND INDEPENDENT CANDIDATES FROM PARTICIPATING IN THE DEMOCRATIC PROCESS, LEAVING NON-PARTISAN VOTERS UNREPRESENTED

CPD's 15% rule has prevented every third-party and independent candidate from participating in the presidential debates since its adoption nearly two decades ago. In 2016, the 15% rule prevented an alternative voice from participating despite both major party candidates having record-setting disapproval ratings¹¹ and 76% of voters wanting to see a third-party candidate in the debates.¹² We should not deny voters their desired, more inclusive debate process, and we should not rely on the partisan CPD's 15% rule to predict potential victors of our democratic process.

Institutional barriers can be such a powerful force that they render the measurement of their impact impossible. The number of qualified candidates that would run for President of the United States absent the 15% rule cannot be quantified. Several amici to this brief are amongst those who would be judged as credible candidates for President of the United States as either third-party or independent candidates, but for the practical institutional barrier presented by the 15% rule.

¹¹ David Wright, *Poll: Trump, Clinton score historic unfavorable ratings*, CNN (Mar. 22, 2016), <http://www.cnn.com/2016/03/22/politics/2016-election-poll-donald-trump-hillary-clinton/index.html>.

¹² David Paleologos, *Paleologos on the poll: Voters want third-party candidates on debate stage*, USA TODAY (Sept. 1, 2016), <https://www.usatoday.com/story/news/politics/elections/2016/09/01/paleologos-poll-johnson-stein-debates/89710228/>.

Admiral James Stavridis served as the Commander of U.S. European Command and 16th NATO Supreme Allied Commander from 2009 to 2013. He was vetted as a potential running mate for Hillary Clinton in July 2016 and later interviewed as a possible U.S. Secretary of State and Director of National Intelligence by President-elect Donald J. Trump in December 2016. He was approached to run as an independent in the 2016 election, but, in part due to CPD's 15% rule, declined. With the 15% rule in place, Stavridis had no reasonable expectations that he could achieve the name recognition necessary to be a competitive candidate. Stavridis believes many qualified candidates would consider running for President in 2020 if the debate rules were changed to allow unaffiliated candidates a fair chance to compete with the nominees of the two major parties.

Former Governor and United States Senator Joseph Robert Kerrey, a Navy Seal and Medal of Honor recipient, sought the Democratic Party nomination for president in 1992. Based upon his experience, he would not consider an independent candidacy viable in 2020, absent a change in the CPD rules.

Senator Joseph Isadore Lieberman was the Democratic Party nominee for Vice President in the 2000 election. He sought the Democratic nomination in 2004. In 2006, Lieberman was elected as an Independent. He believes that independents do not seek the presidency, in great part, because access to the presidential debate is critical and the CPD's 15% rule pre-emptively disqualifies even serious challengers from such access.

The Honorable Clarine Nardi Riddle was the first female Attorney General of Connecticut and is a co-founder of No Labels, an organization of Republicans, Democrats and Independents that promotes the politics of problem-solving. She argues that the 15% rule blocks not only independent and non-partisan candidates, but even has the effect of excluding the consideration of independent and non-partisan ideas.

The Honorable David M. Walker is the immediate former Comptroller General of the United States and head of the U.S. Government Accountability Office. He was urged to consider running as an independent for President or Vice President in 2012 but ultimately decided against doing so, in part due to the fact he knew it would be vitrually impossible to draw the support necessary in the polls to get into the fall presidential debates. He then embarked on a nationwide tour promoting sensible solutions to our nation's serious fiscal challenge.

In 2012, the Honorable Christine Todd Whitman, former two-term Governor of New Jersey, was asked to consider running for President or Vice President as an independent candidate. While other personal factors may have gone into that decision, ultimately, it is her judgment that the 15% rule precluded any practical expectation of access to the debates.

These highly qualified Americans represent the tip of the iceberg. It is impossible to know how many others whose ideas, energy, and hopes for America's future are held captive by the arbitrary and impenetrable barrier to participation represented by the CPD's 15% rule.

III. CPD'S 15% RULE IS INCONSISTENT WITH THE MANNER IN WHICH WE ELECT OUR PRESIDENT AND OUTSOURCES DETERMINATION FOR PARTICIPATION TO PRIVATE COMPANIES

Given the well-documented declining accuracy of polling, it is difficult to miss the irony of CPD's decision to, in effect, outsource the enforcement of its 15% rule by relying on five national political polls conducted by media organizations. Such polls are a measurement, at best, of a candidate's pre-debate popularity on a national level. Rightly or wrongly, presidential elections are determined not by popular vote, but by the Electoral College in a methodology that is fundamentally different.

For example, a candidate may hold viewpoints that resonate with a substantial portion of the population in states that are most directly impacted by those viewpoints or the issues that underlie them. But, on a national level, he or she may not achieve the 15% threshold across the five national polls required to participate in the presidential debates. The 15% rule, in that regard, artificially homogenizes public discourse, having the perverse effect of discouraging the diversity of ideas critical to a rational public debate.

Just as importantly, by relying on privately constructed and controlled polls, CPD has assigned the gatekeeper function to a democratic process with no public oversight as to methodology, policy bias, or conflicts of interest (real or perceived). Conferring the power to limit access to private media corporations is both inappropriate and, inevitably, subject to a level of public skepticism that only serves

to undermine the public's confidence in the system and to reinforce a growing belief that "the system is rigged."

A. CPD'S 15% RULE OFFENDS THE VERY DEMOCRATIC PRINCIPLES THE UNITED STATES PROMOTES ABROAD

The United States of America spends hundreds of millions of dollars promoting democracy abroad.¹³ A centerpiece of those programs is to introduce and spread democratic best practices, including "the promotion of free, transparent and fair political competition."¹⁴ The goal of these programs is to ensure "that all have the opportunity to participate and have a voice in how they will be governed," so "citizens' preferences are represented."¹⁵

At the heart of any democracy is political competition. As the Supreme Court recognized when it struck down an Ohio law that effectively gave the two major parties a "total monopoly" on ballot access, "[c]ompetition in ideas and governmental policies is at the core of our electoral process and of the First Amendment freedoms." *Rhodes*, 393 U.S. at 32. Today, however, a vast plurality of American voters now self-identifies as independent of the two major parties.¹⁶ Yet, these voters are not represented at all on the presidential debate stage because independent and third-party candidates cannot gain access.

¹³ *DRL Programs*, U.S. DEPT. OF STATE, <https://www.state.gov/j/drl/p/> (last visited Sept. 15, 2017).

¹⁴ *Democracy, Human Rights and Governance*, USAID (Aug. 17, 2017), <https://www.usaid.gov/democracy>.

¹⁵ *Id.*

¹⁶ *Party Affiliation*, *supra* note 1.

Similar to the onerous ballot access requirements in *Rhodes*, CPD's 15% rule has prevented a single voice outside of the two major parties from participating in the presidential debates since the rule was first adopted in 2000. On this fact alone, we should embrace the democratic policies we promote abroad, consider our own Supreme Court precedent recognizing the importance of political competition, and reject the monopoly CPD's 15% rule has given the Republican and Democratic Parties over our presidential debates.

B. CPD'S 15% RULE IS PART OF AN ANTICOMPETITIVE ELECTION FRAMEWORK THAT DISENFRANCHISES A PLURALITY OF AMERICAN VOTERS

The framework of our entire election process, including the presidential debates, gives the two major parties and their members a decided advantage. Politics is an industry, and many of the rules governing our election process were established not by a neutral arbitrator to achieve fair competition, but by the major political parties to distort the rules of competition in their favor. If CPD's defense of its 15% rule is rooted in a bright-line test of "candidate viability," then it can only be fully understood within the broader context of the rules that govern the candidate nomination process and voter access to that process.¹⁷

The interplay of CPD's 15% rule with primary elections provides a good example of this systematic distortion of competition in our electoral process. Presidential primaries and caucuses, in every state, are private activities that serve

¹⁷ Gehl and Porter, at 9.

political parties.¹⁸ In many states, only major political party members can participate at all.¹⁹ The primary election season now runs nearly a full year, and there is near constant media coverage directed almost exclusively on the major party candidates. These primary elections are finalized less than two months prior to CPD's presidential debates. And the polls used by CPD to determine whether a candidate is qualified to participate in the "non-partisan" presidential debates are conducted right after the grand finale: the nationally televised Republican and Democratic Party conventions.

As summarized by Gehl and Porter:

One of these hidden rules involves access to the fall presidential debates. A person running as a Democrat or Republican knows that if they win the nomination they will be guaranteed a place in the debates. The Commission on Presidential Debates (CPD), a private organization dominated by partisan loyalists, requires every other candidate to meet a 15% polling hurdle in a three-way race decided just seven weeks before the election. While 15% may seem reasonable, the poll taken so late in the election cycle creates an insurmountable "Catch-22." The practical effect of this rule is to create a major anticompetitive barrier to any candidates outside the duopoly, and that is why there hasn't been a third candidate on the Presidential debate stage since 1992.

Gehl and Porter, at 40.

At a time when voter turnout is declining, we must change CPD's 15% rule to

¹⁸ Notwithstanding taxpayer funding of primary elections, they serve the private purpose of selecting party nominees. *See Cal. Democratic Party v. Jones*, 530 U.S. 567, 574 (2000), (holding that political parties have the right to exclude nonmembers from their primary elections because the corollary of the private right of association is the right to not associate.); *see also, Nader v. Schaffer*, 429 U.S. 989 (1976).

¹⁹ *See* National Conference of State Legislatures. *State Primary Election Types*, <http://www.ncsl.org/research/elections-and-campaigns/primary-types.aspx> (last visited Sept. 15, 2017).

allow a broader spectrum of ideas on the presidential debate stage. CPD's 15% rule is the ultimate affirmation of a broader set of preliminary rules designed to limit true electoral competition. While CPD's 15% rule may measure candidate viability in a system that promotes the two major political parties, its relationship to the viability of a candidate's views in a competition of ideas is lacking, at best.

IV. CONCLUSION

CPD has the sober responsibility of promulgating the rules that govern the most important political conversation candidates can have with the American people: the presidential debates. As part of this responsibility, it is CPD's duty to embrace the true competition of ideas in our political discourse and electoral process. CPD, in conflict with its stated mission, has abdicated this responsibility by defending a rule that is so limiting on the marketplace for new ideas that no third-party or independent candidate has qualified for the presidential debates in more than two decades. When a significant plurality of voters does not feel represented by either major party, we have a heightened obligation to change the rule.

Therefore, the Court should rule in favor of Appellants.

[Signatures on following page.]

Dated this 25th day of September, 2019.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. This document complies with the word limit of the Fed. R. App. P. Rule 29(a)(5) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), this document contains 3,927 words.
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DATED: September 26, 2019

CERTIFICATE OF SERVICE

I hereby certify that on September 27, 2019, I electronically filed the foregoing *amici* brief with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system. The participants in this case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

Dated: September 27, 2019

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Subject:Re: Request for Information: Evidence-Based Policymaking Act of 2018

Thanks very much Timi.

Sent from my iPhone

On Sep 24, 2019, at 5:38 PM, Timi Kenealy [TKenealy@Abilityone.gov] <tkenealy@abilityone.gov> wrote:

Tim,

When I was at a different agency 10 years ago, we had a case that was referred to the OIG for investigation and then the IG, in turn, referred it to DOJ for prosecution. At the time DOJ made the decision to prosecute, then OGC was involved again. So the AUSA coordinated the briefings, court dates for making witnesses available, and settlement negotiations, etc. through OGC.

The IG cannot coordinate on settlement since the IG does not engage in the agency's operations activities.

Timi

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From: Noelker, Timothy [<mailto:TNoelker@cns.gov>]

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Subject: RE: Request for Information: Evidence-Based Policymaking Act of 2018

All,

We have a question concerning our relationship with outside counsel, usually DOJ lawyers and AUSAs. We routinely refer grant fraud and related cases for civil recovery. Our Office of Inspector General does as well. Recently we learned that our OIG considers itself to be in the lead representing our Agency on all of these matters. This includes participation in settlement negotiations. We believe Agency OGC represents the Agency and should be fully engaged, and are happy to keep our OIG informed.

We wonder how this works with you. Appreciate your thoughts.

Thanks,
Tim

Timothy F. Noelker

General Counsel & White House Liaison

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No. 19-5117-cv

**In The
UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA CIRCUIT**

LEVEL THE PLAYING FIELD, ET AL.,

Plaintiffs-Appellants,

v.

FEDERAL ELECTION COMMISSION,

Defendant-Appellee.

**ON APPEAL FROM JUDGMENT OF THE
U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA
(HON. TANYA S. CHUTKAN PRESIDING)**

**CORRECTED BRIEF OF AMICI CURIAE NONPROFIT
LEADERS, SCHOLARS AND PRACTITIONERS IN SUPPORT
OF PLAINTIFFS-APPELLANTS**

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CERTIFICATE AS TO PARTIES, RULINGS AND RELATED CASES

Parties and Amici. All parties, intervenors, and *amici* appearing before this Court are listed in the Certificate as to Parties, Rulings, and Related Cases filed by Level the Playing Field.

Rulings Under Review. The rulings under review are set forth in the Certificate as to Parties, Rulings, and Related Cases filed by Level the Playing Field.

Related Cases. Counsel for *amici* is unaware of any related cases before this Court.

/s/David B. Bergman

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September 26, 2019

CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Pursuant to Circuit Rule 29(b), Fed. R. App. P. 26.1, and Circuit Rule 26.1, the undersigned counsel states that proposed *amici curiae* are eight individuals with experience in the nonprofit sector. They are as follows:

- Norman R. Augustine is a recently retired member of the Bipartisan Policy Center's Board of Directors. He served as chairman and principal officer of the American Red Cross for nine years, and as chairman of the National Academy of Engineering, the Aerospace Industries Association, and the Defense Science Board. Mr. Augustine is a former president of the American Institute of Aeronautics and Astronautics and the Boy Scouts of America.
- Admiral Dennis C. Blair is the Knott Distinguished Visiting Professor at the University of North Carolina, Chapel Hill. He is the former United States Director of National Intelligence and a retired United States Navy admiral. He currently serves as the Chairman of the Board and Distinguished Senior Fellow of Sasakawa Peace Foundation USA. He also serves as a member of the Energy Security Leadership Council and is on the boards of Freedom House, the National Bureau of Asian Research, the National Committee on U.S.-China Relations, and the Atlantic Council.
- Mary McInnis Boies serves as counsel to Boies Schiller Flexner LLP. She is a member of the Board of Directors of the Council on Foreign Relations and

chairs its Committee on Nominations and Governance. She is a former Second Circuit representative to the American Bar Association's Standing Committee of Federal Judiciary.

- W. Bowman Cutter is a Senior Fellow and Director of the Next American Economy Project at the Roosevelt Institute. He is the immediate past chairman of CARE, a global development organization, and has served as a board member for 18 years. Mr. Cutter is also the chairman of MicroVest; the chairman of the Tunisian American Enterprise Fund; a board member of SeaChange; a member of the Governing Council of the IFMR Trust in India; a member of the executive committee and immediate past co-chairman of the Committee for Economic Development; a board member and immediate past chair of Resources for the Future; and a board member of the Russell Sage Foundation.
- Dr. James J. Fishman is a professor of law *Emeritus* at the Elisabeth Haub School of Law at Pace University and has authored numerous books and articles on nonprofit tax law and regulation. He is a co-author of *New York Nonprofit Law and Practice: With Tax Analysis* and a leading law school casebook, *Nonprofit Organizations: Cases and Materials*, now in its fifth edition. He previously served as the executive director of the Council of New York Law Associates (now The Lawyers Alliance for New York) and

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- Carla A. Hills is the chairman and CEO of Hills & Company, International Consultants, which advises companies on global trade and investment issues. Ms. Hill serves as co-chair *Emeritus* of the Council on Foreign Relations and of the Inter-American Dialogue; chair of the Advisory Board of the Center for Strategic & International Studies, chair of the National Committee on U.S.-China Relations, member of the executive committees of the Trilateral Commission, of the Gerald R. Ford Presidential Foundation, and a member of Yale's President's Council on International Activities. She also serves as honorary board member of the Peterson Institute for International Economics.
- Dr. Vali R. Nasr is the Dean of the Johns Hopkins University Paul H. Nitze School of Advanced International Studies and a Nonresident Senior Fellow at the Brookings Institution. He is a life member of the Council on Foreign Relations. Dr. Nasr was previously a Senior Advisor to the U.S. Special Representative for Afghanistan and Pakistan and a member of the U.S. Department of State's Foreign Affairs Policy Board.
- Nancy E. Roman is the President and CEO of Partnership for a Healthier America ("PHA"). Prior to joining PHA, she was the President and CEO of the Capital Area Food Bank, an \$80 million NGO addressing hunger and its companion problems of obesity and diet-related disease. She has served on the

leadership team of the United Nation's World Food Programme and as Vice President of the Council on Foreign Relations. Ms. Roman currently serves on the board of Global Communities, a \$125 million NGO working on global development issues in 25 countries, and on the board of the Millennial Action Project, an NGO that seeks to engage and work with millennials serving in government nationwide.

Pursuant to Circuit Rule 26.1(b), these eight individuals describe their purpose as follows: they are dedicated to ensuring public trust in the nonprofit organizations with which they are affiliated, or to the study or practice of nonprofit law. They have no financial ties with any party to this appeal.

Respectfully submitted,

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Dated: September 26, 2019

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STATEMENT OF INTEREST

The eight (8) individual *amici* jointly submitting this brief in support of the Brief of Plaintiffs-Appellants represent a broad array of prominent leaders, scholars, and practitioners with considerable experience in the nonprofit sector.¹ All *amici* are dedicated to ensuring public trust in the nonprofit organizations with which they are affiliated, or to the study or practice of nonprofit law, and they therefore have a direct stake in the implications of this litigation for public trust in the nonprofit community at large. Their backgrounds are set forth briefly below:²

- Norman R. Augustine is a recently retired member of the Bipartisan Policy Center's Board of Directors. He served as chairman and principal officer of the American Red Cross for nine years, and as chairman of the National Academy of Engineering, the Aerospace Industries Association, and the Defense Science Board. Mr. Augustine is a former president of the American Institute of Aeronautics and Astronautics and the Boy Scouts of America.
- Admiral Dennis C. Blair is the Knott Distinguished Visiting Professor at the University of North Carolina, Chapel Hill. He is the former United States

¹ *Amici* state that no party's counsel authored this brief in whole or in part, and that no party or person other than *amici* contributed money toward the preparation or filing of this brief.

² *Amici* include for the Court's reference their current and former professional and personal affiliations, but each *amicus* submits this brief in his or her personal capacity only.

Director of National Intelligence and a retired United States Navy admiral. He currently serves as the Chairman of the Board and Distinguished Senior Fellow of Sasakawa Peace Foundation USA. He also serves as a member of the Energy Security Leadership Council and is on the boards of Freedom House, the National Bureau of Asian Research, the National Committee on U.S.-China Relations, and the Atlantic Council.

- Mary McInnis Boies serves as counsel to Boies Schiller Flexner LLP. She is a member of the Board of Directors of the Council on Foreign Relations and chairs its Committee on Nominations and Governance. She is a former Second Circuit representative to the American Bar Association's Standing Committee of Federal Judiciary.
- W. Bowman Cutter is a Senior Fellow and Director of the Next American Economy Project at the Roosevelt Institute. He is the immediate past chairman of CARE, a global development organization, and has served as a board member for 18 years. Mr. Cutter is also the chairman of MicroVest; the chairman of the Tunisian American Enterprise Fund; a board member of SeaChange; a member of the Governing Council of the IFMR Trust in India; a member of the executive committee and immediate past co-chairman of the Committee for Economic Development; a board member and immediate past chair of Resources for the Future; and a board member of the Russell Sage

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- Carla A. Hills is the chairman and CEO of Hills & Company, International Consultants, which advises companies on global trade and investment issues. Ms. Hill serves as co-chair *Emeritus* of the Council on Foreign Relations and of the Inter-American Dialogue; chair of the Advisory Board of the Center for Strategic & International Studies, chair of the National Committee on U.S.-China Relations, member of the executive committees of the Trilateral Commission, of the Gerald R. Ford Presidential Foundation, and a member of Yale's President's Council on International Activities. She also serves as honorary board member of the Peterson Institute for International Economics.
- Dr. Vali R. Nasr is the Dean of the Johns Hopkins University Paul H. Nitze School of Advanced International Studies and a Nonresident Senior Fellow at

the Brookings Institution. He is a life member of the Council on Foreign Relations. Dr. Nasr was previously a Senior Advisor to the U.S. Special Representative for Afghanistan and Pakistan and a member of the U.S. Department of State's Foreign Affairs Policy Board.

- Nancy E. Roman is the President and CEO of Partnership for a Healthier America (“PHA”). Prior to joining PHA, she was the President and CEO of the Capital Area Food Bank, an \$80 million NGO addressing hunger and its companion problems of obesity and diet-related disease. She has served on the leadership team of the United Nation's World Food Programme and as Vice President of the Council on Foreign Relations. Ms. Roman currently serves on the board of Global Communities, a \$125 million NGO working on global development issues in 25 countries, and on the board of the Millennial Action Project, an NGO that seeks to engage and work with millennials serving in government nationwide.

For decades, the individual *amici* have studied, developed, implemented and promoted specific standards of governance and accountability within the nonprofit community, including with respect to identification and management of apparent and actual conflicts of interests, to strengthen public confidence in nonprofit organizations. *Amici* believe that an understanding of these standards in the

context of the prevailing policies and practices of the Commission on Presidential Debates (“CPD”) will assist the Court’s resolution of this case.

INTRODUCTION AND SUMMARY OF ARGUMENT

Plaintiffs-Appellants have demonstrated throughout the course of this litigation that the CPD is not, as it claims to be, nonpartisan.³ Indeed, the CPD leaders and many of its board members have been extensively involved in highly partisan activities for both the Republican and Democratic parties, including participating in events for presidential and vice-presidential candidates from both such parties. The Executive Director of the CPD claims that an “informal” conflict-of-interest policy, allegedly supplemented by a terse “Political Activities Policy” that has not even been produced by the CPD and, at most, merely “intend[s] to *deter*,” rather than *prohibit*, partisan activities, prevents the CPD board members from serving in an “official” capacity in a political campaign.⁴ This “policy,” even if supplemented with some portion in writing (which remains in doubt), remains wholly inadequate to prevent actual conflicts of interest, much less the appearance thereof. The *amici* would still consider the CPD to be, improperly, operating under an informal, unwritten conflict-of-interest policy.

³ See generally Dkt. No. 1807168, Brief for Plaintiffs-Appellants Level the Playing Field, Peter Ackerman, Green Party of the United States, and Libertarian National Committee Inc. (“App. Br.”).

⁴ A-1357-58 (emphasis added).

The Federal Election Commission (“FEC”) acted contrary to law when it credited the CPD’s reliance upon these policies. As the district court observed, the FEC has “ignored” a “mountain of submitted evidence” that is probative of the CPD board members’ partisan conduct.⁵ Such conduct likely stems from the absence of proper governance at the CPD. Because the CPD refuses to follow established best practices for conflict-of interest policies in the nonprofit sector, it was arbitrary and capricious for the FEC to conclude that the CPD’s purported policies sufficiently address actual or potential conflicts arising from partisanship at the CPD.⁶ Indeed, by eschewing *formal* conflict-of-interest policies that are explicit, in writing, accessible, and, importantly, appropriately monitored for compliance, the CPD has contravened an essential tenet of responsible governance for a nonprofit organization, thereby condoning and even encouraging the partisan activities of its board members without safeguarding its nonpartisan tax-exempt purposes. Even ignoring the notion that the integrity of the nation’s presidential and vice-presidential debates rests on informal and unenforceable conflict-of-interest policies, such policies by their own terms would permit CPD board

⁵ *Level the Playing Field v. Fed. Election Comm’n*, 232 F. Supp. 3d 130, 142-43 (D.D.C. 2017).

⁶ Many of the undersigned *amici* have had working relationships with and greatly respect the Commissioners of the FEC and the Directors of the CPD, and this brief is not intended to criticize their personal integrity. Rather, *amici* question the rules and regulations under which the FEC and CPD operate, which require and/or allow the FEC Commissioners and CPD Board of Directors to have partisan affiliations.

members to consult “unofficially” with political campaigns, contribute to fundraising efforts, and even endorse candidates.

The inadequacy of the CPD’s conflict-of-interest policy invites the CPD board members to endorse, support, or oppose political candidates and indulge in other overtly partisan conduct, and renders the FEC’s post-remand decisions holding otherwise arbitrary and capricious.⁷

ARGUMENT

The CPD offers no evidence of having a *formal, written conflict-of-interest policy* that is enforceable and monitored for compliance to govern its board members’ partisan political activities.⁸ One of the two alleged policies, according to the very description provided by the CPD, is “informal” and unwritten. Though the CPD claims to have another policy that is written, that policy was never produced and thus cannot be meaningfully evaluated.⁹ Moreover, the CPD admits that this policy does not even prohibit partisan conduct, and at most is “intended to deter” certain types of conduct. Because nothing is prohibited by this alleged policy, and no aspect of the policy is or could be enforced, the alleged written policy is, in reality, no policy at all. Consequently, even when these two

⁷ See, e.g., App. Br. at 35-38.

⁸ See A-1267 n.2.

⁹ A-1297-98.

components are considered together, the CPD's conflict-of-interest policy is entirely informal, unenforceable, and unmonitored, which renders it meaningless. The policy rests on formalistic and unrealistic distinctions between "official" and "personal" participation in political campaigns,¹⁰ and it tries to create a distinction that does not and cannot exist, at an organization whose purpose is to host the presidential debates in a nonpartisan way, regarding partisan activities undertaken in an individual capacity as opposed to an organizational capacity.

I. CPD's Informal Conflict-Of-Interest Policy Willfully Ignores Partisan Conduct By Falling Woefully Short Of Basic Standards Of Governance Applicable To Nonprofit Organizations.

The CPD's failure to establish a formal, written conflict-of-interest policy to safeguard its impartiality contravenes the basic standards and practices of good governance that are fundamental in the nonprofit community. Such failure directly inhibits the CPD's ability to ensure that its board members perform their duties in a nonpartisan manner and, pursuant to their fiduciary duties as board members, in the best interest of the CPD in furthering its mission.

That a nonprofit organization must have written and enforceable conflict-of-interest policies is hardly controversial.¹¹ In a comprehensive report issued by the

¹⁰ A-1356-58.

¹¹ The nonprofit community has been heavily influenced by the rigorous conflict-of-interest guidelines that govern publicly traded corporations and large accounting firms. The enactment of the Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204, 116 Stat. 745 ("SOX"), brought about renewed scrutiny of the governance of nonprofit organizations. See BoardSource, *The Sarbanes-Oxley Act and Implications for Nonprofit Organizations* 2, 10 (Jan. 2006), available

Panel on the Nonprofit Sector—which consisted of several leaders of the nonprofit community convened by the nonprofit coalition Independent Sector, at the encouragement of the leaders of the Finance Committee of the United States Senate—the nonprofit community emphasized that “charitable organizations should adopt and enforce a conflict-of-interest policy consistent with its state laws and organizational needs.”¹² The report, which reflected the input of “thousands of

at

<https://www.centerfornonprofitexcellence.org/sites/default/files/SarbanesOxley.BoardSource.pdf> (last accessed Sept. 10, 2019). Specifically, SOX introduced a provision pertaining to the adoption and disclosure of a formal “code of ethics” for certain officers of a reportable company “to promote . . . the ethical handling of actual or apparent conflicts of interest between personal and professional relationships.” 15 U.S.C. § 7264. Although not formally extended to nonprofit organizations, the corporate governance standards under SOX have permanently altered expectations of governance practices for nonprofit organizations. Accordingly, adoption of written conflict-of-interest policies has increased significantly in the nonprofit community during the past decade. In 2007, the Urban Institute reported that only half of the respondents in its national survey of nonprofit organizations had a written conflict-of-interest policy. See The Urban Institute, *Nonprofit Governance in the United States: Findings on Performance and Accountability from the First National Representative Study* 9 (2007), available at https://www.urban.org/research/publication/nonprofit-governance-united-states/view/full_report (last accessed Sept. 10, 2019). By contrast, only five years thereafter, the Nonprofit Governance Index 2012, compiled by BoardSource, found that 96% of nonprofit organizations surveyed had adopted a written conflict-of-interest policy. BoardSource, *Nonprofit Governance Index 2012*, at 15 (Sept. 2012), available at https://www.leadingagemn.org/assets/docs/NonProfit_Governance_Index_Report_2012.pdf (last accessed Sept. 10, 2019). In a more recent survey, out of 1,378 responding organizations, 94% had adopted a written conflict-of-interest policy. See Leading with Intent, *2017 National Index of Nonprofit Board Practices* 6, 52 (2017), available at <https://leadingwithintent.org/wp-content/uploads/2017/09/LWI2017.pdf> (last accessed Sept. 10, 2019).

¹² Panel on the Nonprofit Sector, *Strengthening Transparency Governance Accountability of Charitable Organizations: A Final Report to Congress and the Nonprofit Sector* 8 (2005), available at <http://www.kiplinger.com/members/taxlinks/071505/Nonprofit-Sector->

people representing diverse organizations from every part of the country,” instructs nonprofits to:

[a]dopt and enforce a conflict of interest policy consistent with the laws of its state and tailored to its specific organizational needs and characteristics. This policy should define conflict of interest, identify the classes of individuals within the organization covered by the policy, facilitate disclosure of information that may help identify conflicts of interest, and specify procedures to be followed in managing conflicts of interest.¹³

Independent Sector has since issued two additional reports, in 2007 and 2015, explicating its principles for good governance for nonprofit organizations.¹⁴ Both reports counsel nonprofits to adopt and implement “policies and procedures to ensure that *all* conflicts of interest (real and potential), or the appearance thereof, within the organization and the governing board are appropriately managed through disclosure, recusal, or other means.”¹⁵ The reports specifically contemplate a “*written* conflict-of-interest policy,” with periodic monitoring for compliance, to avoid or manage any financial or non-financial “conflict[] of interest that could affect the decisions of board members, staff leaders, and other employees.”¹⁶

report.pdf (last accessed Sept. 10, 2019).

¹³ *Id.* at 8, 81.

¹⁴ Independent Sector, *Principles for Good Governance and Ethical Practice* 5-6 (2015), available at <https://www.independentsector.org/wp-content/uploads/2016/11/Principles2015-Web-1.pdf> (last accessed Sept. 10, 2019).

¹⁵ *Id.* at 12 (emphasis added).

¹⁶ *Id.* (emphasis added).

In many jurisdictions, such best practices for written conflict-of-interest policies are reflected in legislation and administrative guidance applicable to nonprofit organizations. For example, New York requires nonprofit organizations to adopt a conflict-of-interest policy that defines the circumstances constituting a conflict of interest, provides procedures for disclosing such a conflict, and describes the actions that should be taken after a conflict has been identified.¹⁷ New York law recognizes that “to ensure that [the nonprofit organization’s] directors, officers, and key employees act in [such organization’s] best interest,” a conflict-of-interest policy may be required to cover “types of conflicts that may exist *even though there is no financial interest at stake*.”¹⁸

The Federal government, and in particular the U.S. Internal Revenue Service (“IRS”), also recognizes the importance for nonprofit organizations of implementing written conflict-of-interest policies to manage all actual and potential conflicts, including non-financial conflicts. In addition to routinely gathering information about the written policies of nonprofit organizations through

¹⁷ See Nonprofit Revitalization Act of 2013, N.Y. Not-for-Profit Corp. Law § 715-a(a)-(b).

¹⁸ Conflicts of Interest Policies Under the Nonprofit Revitalization Act of 2013, Guidance Document 2015-4, at 2-3 (Apr. 2015) (emphasis added).

the applicable annual information return¹⁹ and audit procedures,²⁰ the IRS emphasizes that board members of a nonprofit organization should:

adopt and regularly evaluate a written conflict of interest policy that requires directors and staff to act solely in the interests of the charity *without regard for personal interests*; include[] written procedures for determining whether *a relationship*, financial interest, or business affiliation results in a conflict of interest; and prescribe[] a course of action in the event a conflict of interest is identified.²¹

The CPD's only existing formal policy is explicitly limited to "financial conflicts of interest that could arise as a result of outside employment" and does not prevent the appearance of conflicts-of-interest by the CPD board members.²² Prohibiting financial conflicts may remove *only* one possible source of *actual* conflicts of interest; it does *nothing* to address non-financial conflicts or the appearance of conflicts. Moreover, although the informal conflict-of-interest

¹⁹ In 2007, the IRS redesigned the annual information return for tax-exempt organizations (IRS Form 990) to enumerate several types of written policies and procedures that such organizations are expected to adopt, including a written conflict-of-interest policy and regular monitoring of such policy. *See* IRS Form 990 (2018), Part VI, Section B, Questions 12a-c.

²⁰ For each audit of a tax-exempt organization, the IRS has directed its agents to gather information about the governance practices of such organization so that the IRS can determine whether the organization has a written conflict-of-interest policy and, if so, whether such policy addresses recusals and requires annual written disclosures of any conflicts. *See* IRS Form 14114 (2009), Part 5, Questions 18a-c.

²¹ IRS, *Governance and Related Topics - 501(c)(3) Organizations* (Feb. 4, 2008), at § 4(B) (emphasis added), *available at* https://www.irs.gov/pub/irs-tege/governance_practices.pdf (last accessed Sept. 10, 2019).

²² A-1358; *see* Conflict of Interest Policy, Comm'n on Presidential Debates, ¶¶ 4-5.

policy purports to “reflect[] the CPD’s view that a debate staging organization better serves the public when it . . . adopts and adheres to balanced policies designed to prevent even the potential for an erroneous appearance of partisanship” based on political activities undertaken by CPD-affiliated persons (including Board members) in a personal capacity,²³ the policy is silent as to any specific mechanism for disclosure and management of situations that give rise to a realized or potential conflict.

It is unrealistic to expect that the CPD can “operate[] completely independently of any party or political campaign,”²⁴ while governed by an unwritten and unmonitored conflict-of-interest policy with no formal procedure for disclosing actual or potential non-financial conflicts. Beyond the CPD’s self-serving claim that the unwritten policy prohibits the CPD board members from “serving in any official capacity with a political campaign,”²⁵ there is no indication as to whether the CPD has procedures to follow for enforcing the informal policy, whether the informal policy includes any reporting or monitoring requirements, or if there are consequences for violating the informal policy. Indeed, there is no suggestion that CPD enforces the informal policy at all. The failure of the CPD’s

²³ A-1357-58.

²⁴ A-1297.

²⁵ *Id.*

informal policy to conform to basic principles of nonprofit governance all but guarantees the prevalence of partisan conduct within the organization.

II. CPD's Informal Conflict-Of-Interest Policy Is Incapable Of Preventing The Appearance Of Partisanship.

It is similarly uncontroversial both within and outside the nonprofit community, that organizations charged with the public trust, such as the CPD, must prevent not only actual conflicts of interest, but also the *appearance* of such conflicts. In addition to instructing organizations to adopt written policies, Independent Sector counsels that “[a] charitable organization should adopt and implement policies and procedures to ensure that all conflicts of interest (real and potential), *or the appearance thereof*, within the organization and the governing board are appropriately managed through disclosure, recusal, or other means.”²⁶ The CPD itself recognizes that avoiding the appearance of conflicts must be part of its mandate.²⁷ But the CPD’s conflict-of-interest policy, such as it is, falls short of eliminating the appearance of conflicts.

As described by the CPD Executive Director, the CPD’s informal policy prohibits board members only from serving in an “official” capacity on a political campaign or with a political party, without any clarification as to the meaning of

²⁶ Independent Sector, *Principles for Good Governance*, *supra*, at 12 (emphasis added).

²⁷ See A-1298 (recognizing “the potential for an *erroneous appearance of partisanship* based on political activities undertaken by CPD-affiliated persons (including Board members) in a personal capacity” (emphasis added)).

“official.”²⁸ The CPD’s policy already lacks any enforcement mechanism, given that it is both unwritten and informal; and the CPD extinguishes what remains of the policy’s viability by expressly recognizing a loophole permitting board members, who make decisions about the selection of presidential and vice-presidential debate participants, to be actively involved in partisan political activities on behalf of those very same debate participants or their parties.

The CPD compounds the problem by also recognizing a distinction between partisan political activities undertaken by the board members in their “personal capacit[ies],” as opposed to their “official capacit[ies].”²⁹ For purposes of complying with a meaningful conflict-of-interest policy that should be drafted to help ensure that the CPD is engaging in its activities in a nonpartisan manner, as required pursuant to its tax-exempt status and by its specific mission of hosting the presidential and vice-presidential debates, this distinction between board members’ individual and official partisan activities is entirely unrealistic.

Even if a clear line could be drawn between individual and official partisan activities, the CPD ignores that even individual partisan conduct by CPD board members can taint the organization itself, specifically in light of the mission of the CPD. At a minimum, such conduct would create the *appearance* of a conflict of

²⁸ A-1297.

²⁹ A-1297-98.

interest; the public reasonably would interpret any overtly partisan statement by a board member as an expression of the views of the organization itself. Carried to its logical conclusion, the CPD would permit openly partisan conduct, so long as it is done in board members' ill-defined "personal capacit[ies]."

The alleged written "policy" is no more effective than the unwritten "informal policy" at avoiding the appearance of conflict. As noted above, the CPD failed to disclose this policy, making it impossible to confirm that it would actually avoid the appearance of conflict. The CPD's own description evinces that it would not because it only "intends to deter" partisan activities, instead of prohibiting them. Thus, the CPD's leadership may continue to, and apparently does, actively support and oppose partisan causes, notwithstanding any supposed "deterrence" from the alleged written policy.

CONCLUSION

Having a conflict-of-interest policy that is merely informal and unwritten is tantamount to having no policy at all. It is readily apparent that the CPD's current provision of informal and incomplete conflict-of-interest policies fails to meet the basic standard of governance adopted by the nonprofit community at large. CPD board members have engaged in the endorsement of (and opposition to) political campaigns and other partisan conduct, while at the same time bearing responsibility for ensuring that the CPD conducts its activities in a nonpartisan way

in accordance with its tax-exempt purposes. For an organization like the CPD that is charged with safeguarding the integrity of the nation's presidential and vice-presidential debates, more should and must be demanded by the FEC.

Accordingly, the *amici* respectfully request that this Court reverse the order of the United States District Court for the District of Columbia.

Dated: September 26, 2019

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Dated: September 26, 2019

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CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of September, 2019, I caused true and correct copies of the foregoing Corrected Brief *Amici Curiae* in support of Plaintiffs-Appellants, to be served via electronic mail upon all counsel of record, by operation of the Court's ECF system.

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Oral Argument Not Yet Scheduled

19-5117

IN THE

**United States Court Of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

LEVEL THE PLAYING FIELD, PETER ACKERMAN, GREEN PARTY OF THE UNITED STATES
AND LIBERTARIAN NATIONAL COMMITTEE, INC.

Plaintiffs-Appellants,

—v.—

FEDERAL ELECTIONS COMMISSION,

Defendant-Respondent.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

**BRIEF OF AMICI CURIAE INDEPENDENT VOTER PROJECT, ADMIRAL
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JOSEPH ISADORE LIEBERMAN, THE HONORABLE CLARINE NARDI
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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, Amicus Independent Voter Project makes the following disclosure:

1. Amicus is not a publicly held corporation or other publicly held entity.
2. Amicus has no parent corporation.
3. No publicly held corporation or other publicly held entity owns 10% or more of Amicus.
4. Amicus is not a trade association.

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STATEMENT OF IDENTITY, INTEREST, AND AUTHORITY TO FILE**Cory J. Briggs and Stephen Chad Peace**

Cory J. Briggs is admitted as a member of this Court. Stephen Chad Peace is a member of the California State Bar and is pending admission to this Court. They are attorneys for the Independent Voter Project (“IVP”) and represent the additional amici for purposes of this brief of amici curiae. They have no other financial or client interest in the outcome of this litigation, and no attorney for a party has helped write this brief or defrayed the cost of its preparation.

Independent Voter Project (“IVP”)

Founded in 2006, IVP is a 501(c)(4) organization that seeks to educate voters about voters’ non-partisan rights and other important public policy issues, to create a climate for otherwise disenfranchised voters to engage in the political process, and to encourage non-partisan voters to vote and participate in the democratic process. IVP is most well-known for authoring California’s “top-two” non-partisan primary, passed by the voters in 2010.

Admiral James Stavridis

Admiral Stavridis is a retired Navy admiral. He was 15th Commander, U.S. European Command and NATO’s 16th Supreme Allied Commander Europe. Admiral Stavridis has been working for several years to change the 15% rule.

Senator Joseph Robert Kerrey

Senator Kerrey served as the Governor of Nebraska from 1983 to 1987 and as a

United States Senator from Nebraska from 1989 to 2001. He has been a leading advocate for changing the 15% rule for several years.

Senator Joseph Isadore Lieberman

Senator Lieberman served as a United States Senator from Connecticut from 1989 to 2013. He has been working to remove the 15% rule for over 3 years.

The Honorable Clarine Nardi Riddle

Clarine Nardi Riddle served as the Attorney General of Connecticut from 1989 to 1991. She served as chief of staff for Senator Lieberman from 2003 until 2013. She co-founded and works with No Labels, an organization of Republicans, Democrats and Independents dedicated to addressing issues of hyper-partisanship in the United States to promote problem-solving.

The Honorable David M. Walker

David M. Walker served as the seventh Comptroller General of the United States from 1998 to 2008. He is also a national co-founder of No Labels and an original signatory on the “Change the Rule” letter to modify the 15% rule.

The Honorable Christine Todd Whitman

Christine Todd Whitman served as the Governor of New Jersey from 1994 to 2001 and was the Administrator of the Environmental Protection Agency from 2001 to 2003. Whitman was an original signatory of the “Change the Rule” letter that challenged the 15% rule.

This brief is timely filed and is submitted with amici's Motion for Leave to Participate.

INTRODUCTION

A healthy democracy promotes the free flow of ideas and embraces different perspectives. The presidential debates are the most important conversation between candidates for the Presidency of the United States of America and the American people. The Commission on Presidential Debates ("CPD") has established a 15% rule of entry to presidential debates that, in practice, prevents popular third-party and independent candidates from participating in the debates, narrows the flow of ideas in our political discourse, and insulates well-heeled major party candidates from the hazard of confronting different perspectives.

Limitations on the participation of third-party and independent candidates from our presidential debates exacerbates divisions in America. A substantial plurality of American voters no longer identifies with either the Republican or Democratic Parties.¹ As hyper-partisanship plagues our media, our political discourse, and our electoral options, the non-partisan plurality of voters is forced to either embrace one side of this artificial division or not participate in the national dialogue at all.

The more pernicious consequence of the 15% rule is its shaping of the American mind. By many estimates, audiences neared 100 million viewers for the most recent

¹ *Party Affiliation*, GALLUP (2017), <http://www.gallup.com/poll/15370/party-affiliation.aspx>.

CPD 2016 presidential general election debates. Nearly one-third of all Americans were exposed to the calculated barbs traded by the Republican candidate Donald J. Trump and the Democratic candidate Hillary Clinton. This was pugilism by personal attack and not a debate of ideas about the state of our country and its future. As stated by Mrs. Clinton herself—this was reality television.² It's the consequence of limiting the governing flow of participants and ideas. And, although the spectacle may drive media ratings up, its consequence is devastating to the body politic, as perception drives real behaviors.

A study published in September of 2017 by the Harvard Business School concluded that the public's distrust in government is directly connected to the lack of real competition in the electoral process:

By nearly every measure, the *industry* of politics, itself, is thriving. There's just one problem. The people whom the politics industry is supposed to serve have never been more dissatisfied. Public trust in the federal government is hovering at a near 60-year low. [¶] Competition in politics appears intense, which is usually good for customers. But today's competition is failing, delivering gridlock and growing division instead of offering practical solutions to the nation's problems. The parties compete on ideology and unrealistic promises, not on action and results. The parties compete to divide voters and serve special interests, rather than weigh and balance the interests of all citizens and find common ground to move the country forward. And there is no accountability for results. . . . The underlying root cause is the kind of political competition that the parties have created, including their insulation from new competition that would better serve the public interest.

² Heidi M. Przybyla, *Hillary Clinton prepares for 'Reality Show' debates*, USA TODAY (Sept. 15, 2016), <https://www.usatoday.com/story/news/politics/elections/2016/09/21/hillary-clinton-donald-trump-debates/90310878/>.

Katherine M. Gehl and Michael E. Porter, *Why Competition in the Politics Industry is Failing America 2* (Harvard Business School ed., 2017) (emphasis in original).

The rules of our republic should support civil disagreement rather than encourage hostile behavior in political discourse or undermine confidence in our government. CPD defends its 15% rule as a reasonable and objective measure of candidate viability. CPD's purpose, however, is not to choose winners. CPD has failed to articulate how the 15% rule supports its organizational mission to "provide the best possible information to viewers and listeners." Limiting participation by the arbitrary 15% rule undermines this objective by providing a pedestal for the major party candidates and their platforms that exacerbates the perception that the American people have only binary policy and candidate choices. CPD's candidate viability based defense of its 15% rule is a model of the contrived political competition dissected by Gehl and Porter to its root purpose of limiting any competition of new ideas.

CPD is an extra-governmental organization originally sponsored by the major political parties and sanctioned by the federal government, the effect of which is to calcify an existing ruling political class. Our forefathers never could have contemplated such a system for controlling presidential debates and, given their predisposition to oppose political parties, would have opposed any such granting of governmental powers to a private corporation simply because it enjoyed the mantle of the major political parties. The insidiousness of this husbanding of the duopoly is so perverse that even in academia the American system is regularly referred to as a "two-

party system.”

Nowhere in the Constitution, the documents published in preparation of its establishment, or its successor amendments is there an allusion to, or contemplation of, our form of government being a “two-party system.” Yet, CPD’s 15% rule results in our presidential debates accommodating only the two major political parties’ candidates *and* it was designed to produce this outcome.

It’s important to recognize that much of what constitutes today’s political system has no basis in the Constitution. As our system evolved, the parties—and a larger political industrial complex that surrounds them—established and optimized a set of rules and practices that enhanced their power and diminished our democracy. These changes—often created behind closed doors and largely invisible to the average citizen—continue to take their toll at both the federal and the state levels.

Gehl and Porter, at 2.

There is a difference between a natural result of constitutional construction that has led to the *ebb and flow* of societal change being channeled into coalitions of two broadly defined political parties and the institutionalization of two *particular* parties as permanent impermeable forces. CPD’s 15% rule serves the latter rather than the former. Rather than accommodate the *ebb and flow* of societal change that has been at the heart of the Constitution’s survival, CPD’s 15% rule acts as an agent to suppress debate, limit access, and, ultimately, alienate the public from their government.

With these considerations, amici argue in support of Appellants.

ARGUMENT

I. CPD’S 15% RULE CONFLICTS WITH ITS MISSION STATEMENT AND IGNORES THE IMPORTANT ROLE THAT THIRD-PARTY CANDIDATES PLAY IN A HEALTHY REPUBLIC

CPD’s nonprofit and “non-partisan” mission is to, “provide the best possible information to viewers and listeners.”³ Throughout this case, however, the CPD has defended its 15% rule without regard to how the rule supports or subverts its own mission statement. Instead, and by CPD’s admission, the 15% rule is designed to determine a candidate’s viability to win the general election. This determination does not have a qualitative component as it relates to the information the candidates may provide to the viewers.

As the Supreme Court has recognized time and again,⁴ a healthy republic is one that embraces debate about minority opinions as well as more popular ones. *Anderson v. Celebrezze*, 460 U.S. 780, 794 (1983) (citing *Illinois Elections Bd. v. Socialist Workers Party*, 440 U.S. 173, 186 (1979)) (“Historically political figures outside the two major parties have been fertile sources of new ideas and new programs; many of their challenges to the status quo have in time made their way into the political

³ *Our Mission*, CPD, <http://www.debates.org/index.php?page=about-cpd> (last visited Sept. 15, 2017).

⁴ *See, e.g., Williams v. Rhodes*, 393 U.S. 23, 32 (1968) (“The fact is, however, that [it] does not merely favor a ‘two-party system’; it favors two particular parties -- the Republicans and the Democrats -- and in effect tends to give them a complete monopoly.”); *Anderson v. Celebrezze*, 460 U.S. 780, 794 (1983) (“In short, the primary values protected by the First Amendment ... are served when election campaigns are not monopolized by the existing political parties.”) (citing *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964)) .

mainstream.”). Many of the ideas viewed today as fundamentally American were first introduced by third parties or candidates. The Socialist Party, for example, introduced women’s suffrage as an issue in the late 1800s.⁵ Abraham Lincoln was elected from a third party (at the time) on an anti-slavery platform.⁶

H. Ross Perot is one of only two third-party candidates to ever qualify for a place on the presidential debate stage when he ran as an independent candidate for president in 1992.⁷ Perot ultimately received 18.9% of the popular vote in the general election.⁸ Many of Perot’s ideas were incorporated into legislation and even the major parties’ political platforms.⁹ Yet, had the 15% rule been in place in 1992, Perot would have been barred from participating in any of the presidential debates.¹⁰ Although Perot did not win the presidency, and even if he didn’t have a chance of being the winner, the value of his ideas improved the health of our democracy.

⁵ *Socialist Labor Party Platform -1896* (Jul. 4, 1896), <http://projects.vassar.edu/1896/slpplatform.html>.

⁶ *Republican Party Platform of 1860*, THE AMERICAN PRESIDENCY PROJECT (May 17, 1860), <http://www.presidency.ucsb.edu/ws/index.php?pid=29620>.

⁷ *Debate History*, CPD, <http://www.debates.org/index.php?page=debate-history> (last visited Sept. 15, 2017).

⁸ *Gallup Presidential Election Trial-Heat Trends, 1936-2008*, GALLUP, <http://www.gallup.com/poll/110548/gallup-presidential-election-trialheat-trends-19362004.aspx#4> (last visited Sept. 15, 2017).

⁹ Ted G. Jelen, *Ross For Boss: The Perot Phenomenon and Beyond* (2001).

¹⁰ Although CPD argues he would not have been barred as his support had been over 15% at other points in the race, in September (prior to the debates when the polling determination is made), he was only at 8% support. *Gallup Presidential Election Trial-Heat Trends, 1936-2008*, *supra* note 8.

II. CPD's 15% RULE HAS, AND WILL CONTINUE TO, PREVENT THIRD-PARTY AND INDEPENDENT CANDIDATES FROM PARTICIPATING IN THE DEMOCRATIC PROCESS, LEAVING NON-PARTISAN VOTERS UNREPRESENTED

CPD's 15% rule has prevented every third-party and independent candidate from participating in the presidential debates since its adoption nearly two decades ago. In 2016, the 15% rule prevented an alternative voice from participating despite both major party candidates having record-setting disapproval ratings¹¹ and 76% of voters wanting to see a third-party candidate in the debates.¹² We should not deny voters their desired, more inclusive debate process, and we should not rely on the partisan CPD's 15% rule to predict potential victors of our democratic process.

Institutional barriers can be such a powerful force that they render the measurement of their impact impossible. The number of qualified candidates that would run for President of the United States absent the 15% rule cannot be quantified. Several amici to this brief are amongst those who would be judged as credible candidates for President of the United States as either third-party or independent candidates, but for the practical institutional barrier presented by the 15% rule.

¹¹ David Wright, *Poll: Trump, Clinton score historic unfavorable ratings*, CNN (Mar. 22, 2016), <http://www.cnn.com/2016/03/22/politics/2016-election-poll-donald-trump-hillary-clinton/index.html>.

¹² David Paleologos, *Paleologos on the poll: Voters want third-party candidates on debate stage*, USA TODAY (Sept. 1, 2016), <https://www.usatoday.com/story/news/politics/elections/2016/09/01/paleologos-poll-johnson-stein-debates/89710228/>.

Admiral James Stavridis served as the Commander of U.S. European Command and 16th NATO Supreme Allied Commander from 2009 to 2013. He was vetted as a potential running mate for Hillary Clinton in July 2016 and later interviewed as a possible U.S. Secretary of State and Director of National Intelligence by President-elect Donald J. Trump in December 2016. He was approached to run as an independent in the 2016 election, but, in part due to CPD's 15% rule, declined. With the 15% rule in place, Stavridis had no reasonable expectations that he could achieve the name recognition necessary to be a competitive candidate. Stavridis believes many qualified candidates would consider running for President in 2020 if the debate rules were changed to allow unaffiliated candidates a fair chance to compete with the nominees of the two major parties.

Former Governor and United States Senator Joseph Robert Kerrey, a Navy Seal and Medal of Honor recipient, sought the Democratic Party nomination for president in 1992. Based upon his experience, he would not consider an independent candidacy viable in 2020, absent a change in the CPD rules.

Senator Joseph Isadore Lieberman was the Democratic Party nominee for Vice President in the 2000 election. He sought the Democratic nomination in 2004. In 2006, Lieberman was elected as an Independent. He believes that independents do not seek the presidency, in great part, because access to the presidential debate is critical and the CPD's 15% rule pre-emptively disqualifies even serious challengers from such access.

The Honorable Clarine Nardi Riddle was the first female Attorney General of Connecticut and is a co-founder of No Labels, an organization of Republicans, Democrats and Independents that promotes the politics of problem-solving. She argues that the 15% rule blocks not only independent and non-partisan candidates, but even has the effect of excluding the consideration of independent and non-partisan ideas.

The Honorable David M. Walker is the immediate former Comptroller General of the United States and head of the U.S. Government Accountability Office. He was urged to consider running as an independent for President or Vice President in 2012 but ultimately decided against doing so, in part due to the fact he knew it would be vitrually impossible to draw the support necessary in the polls to get into the fall presidential debates. He then embarked on a nationwide tour promoting sensible solutions to our nation's serious fiscal challenge.

In 2012, the Honorable Christine Todd Whitman, former two-term Governor of New Jersey, was asked to consider running for President or Vice President as an independent candidate. While other personal factors may have gone into that decision, ultimately, it is her judgment that the 15% rule precluded any practical expectation of access to the debates.

These highly qualified Americans represent the tip of the iceberg. It is impossible to know how many others whose ideas, energy, and hopes for America's future are held captive by the arbitrary and impenetrable barrier to participation represented by the CPD's 15% rule.

III. CPD'S 15% RULE IS INCONSISTENT WITH THE MANNER IN WHICH WE ELECT OUR PRESIDENT AND OUTSOURCES DETERMINATION FOR PARTICIPATION TO PRIVATE COMPANIES

Given the well-documented declining accuracy of polling, it is difficult to miss the irony of CPD's decision to, in effect, outsource the enforcement of its 15% rule by relying on five national political polls conducted by media organizations. Such polls are a measurement, at best, of a candidate's pre-debate popularity on a national level. Rightly or wrongly, presidential elections are determined not by popular vote, but by the Electoral College in a methodology that is fundamentally different.

For example, a candidate may hold viewpoints that resonate with a substantial portion of the population in states that are most directly impacted by those viewpoints or the issues that underlie them. But, on a national level, he or she may not achieve the 15% threshold across the five national polls required to participate in the presidential debates. The 15% rule, in that regard, artificially homogenizes public discourse, having the perverse effect of discouraging the diversity of ideas critical to a rational public debate.

Just as importantly, by relying on privately constructed and controlled polls, CPD has assigned the gatekeeper function to a democratic process with no public oversight as to methodology, policy bias, or conflicts of interest (real or perceived). Conferring the power to limit access to private media corporations is both inappropriate and, inevitably, subject to a level of public skepticism that only serves

to undermine the public's confidence in the system and to reinforce a growing belief that "the system is rigged."

A. CPD'S 15% RULE OFFENDS THE VERY DEMOCRATIC PRINCIPLES THE UNITED STATES PROMOTES ABROAD

The United States of America spends hundreds of millions of dollars promoting democracy abroad.¹³ A centerpiece of those programs is to introduce and spread democratic best practices, including "the promotion of free, transparent and fair political competition."¹⁴ The goal of these programs is to ensure "that all have the opportunity to participate and have a voice in how they will be governed," so "citizens' preferences are represented."¹⁵

At the heart of any democracy is political competition. As the Supreme Court recognized when it struck down an Ohio law that effectively gave the two major parties a "total monopoly" on ballot access, "[c]ompetition in ideas and governmental policies is at the core of our electoral process and of the First Amendment freedoms." *Rhodes*, 393 U.S. at 32. Today, however, a vast plurality of American voters now self-identifies as independent of the two major parties.¹⁶ Yet, these voters are not represented at all on the presidential debate stage because independent and third-party candidates cannot gain access.

¹³ *DRL Programs*, U.S. DEPT. OF STATE, <https://www.state.gov/j/drl/p/> (last visited Sept. 15, 2017).

¹⁴ *Democracy, Human Rights and Governance*, USAID (Aug. 17, 2017), <https://www.usaid.gov/democracy>.

¹⁵ *Id.*

¹⁶ *Party Affiliation*, *supra* note 1.

Similar to the onerous ballot access requirements in *Rhodes*, CPD's 15% rule has prevented a single voice outside of the two major parties from participating in the presidential debates since the rule was first adopted in 2000. On this fact alone, we should embrace the democratic policies we promote abroad, consider our own Supreme Court precedent recognizing the importance of political competition, and reject the monopoly CPD's 15% rule has given the Republican and Democratic Parties over our presidential debates.

B. CPD'S 15% RULE IS PART OF AN ANTICOMPETITIVE ELECTION FRAMEWORK THAT DISENFRANCHISES A PLURALITY OF AMERICAN VOTERS

The framework of our entire election process, including the presidential debates, gives the two major parties and their members a decided advantage. Politics is an industry, and many of the rules governing our election process were established not by a neutral arbitrator to achieve fair competition, but by the major political parties to distort the rules of competition in their favor. If CPD's defense of its 15% rule is rooted in a bright-line test of "candidate viability," then it can only be fully understood within the broader context of the rules that govern the candidate nomination process and voter access to that process.¹⁷

The interplay of CPD's 15% rule with primary elections provides a good example of this systematic distortion of competition in our electoral process. Presidential primaries and caucuses, in every state, are private activities that serve

¹⁷ Gehl and Porter, at 9.

political parties.¹⁸ In many states, only major political party members can participate at all.¹⁹ The primary election season now runs nearly a full year, and there is near constant media coverage directed almost exclusively on the major party candidates. These primary elections are finalized less than two months prior to CPD's presidential debates. And the polls used by CPD to determine whether a candidate is qualified to participate in the "non-partisan" presidential debates are conducted right after the grand finale: the nationally televised Republican and Democratic Party conventions.

As summarized by Gehl and Porter:

One of these hidden rules involves access to the fall presidential debates. A person running as a Democrat or Republican knows that if they win the nomination they will be guaranteed a place in the debates. The Commission on Presidential Debates (CPD), a private organization dominated by partisan loyalists, requires every other candidate to meet a 15% polling hurdle in a three-way race decided just seven weeks before the election. While 15% may seem reasonable, the poll taken so late in the election cycle creates an insurmountable "Catch-22." The practical effect of this rule is to create a major anticompetitive barrier to any candidates outside the duopoly, and that is why there hasn't been a third candidate on the Presidential debate stage since 1992.

Gehl and Porter, at 40.

At a time when voter turnout is declining, we must change CPD's 15% rule to

¹⁸ Notwithstanding taxpayer funding of primary elections, they serve the private purpose of selecting party nominees. *See Cal. Democratic Party v. Jones*, 530 U.S. 567, 574 (2000), (holding that political parties have the right to exclude nonmembers from their primary elections because the corollary of the private right of association is the right to not associate.); *see also, Nader v. Schaffer*, 429 U.S. 989 (1976).

¹⁹ *See* National Conference of State Legislatures. *State Primary Election Types*, <http://www.ncsl.org/research/elections-and-campaigns/primary-types.aspx> (last visited Sept. 15, 2017).

allow a broader spectrum of ideas on the presidential debate stage. CPD's 15% rule is the ultimate affirmation of a broader set of preliminary rules designed to limit true electoral competition. While CPD's 15% rule may measure candidate viability in a system that promotes the two major political parties, its relationship to the viability of a candidate's views in a competition of ideas is lacking, at best.

IV. CONCLUSION

CPD has the sober responsibility of promulgating the rules that govern the most important political conversation candidates can have with the American people: the presidential debates. As part of this responsibility, it is CPD's duty to embrace the true competition of ideas in our political discourse and electoral process. CPD, in conflict with its stated mission, has abdicated this responsibility by defending a rule that is so limiting on the marketplace for new ideas that no third-party or independent candidate has qualified for the presidential debates in more than two decades. When a significant plurality of voters does not feel represented by either major party, we have a heightened obligation to change the rule.

Therefore, the Court should rule in favor of Appellants.

[Signatures on following page.]

Dated this 25th day of September, 2019.

Respectfully submitted,

/s/ Cory J. Briggs

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DATED: September 26, 2019

CERTIFICATE OF SERVICE

I hereby certify that on September 26, 2019, I electronically filed the foregoing *amici* brief with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system. The participants in this case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

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No. 19-5117-cv

**In The
UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA CIRCUIT**

LEVEL THE PLAYING FIELD, ET AL.,

Plaintiffs-Appellants,

v.

FEDERAL ELECTION COMMISSION,

Defendant-Appellee.

**ON APPEAL FROM JUDGMENT OF THE
U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA
(HON. TANYA S. CHUTKAN PRESIDING)**

**CORRECTED BRIEF OF AMICI CURIAE NONPROFIT
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STATEMENT OF INTEREST

The eight (8) individual *amici* jointly submitting this brief in support of the Brief of Plaintiffs-Appellants represent a broad array of prominent leaders, scholars, and practitioners with considerable experience in the nonprofit sector.¹ All *amici* are dedicated to ensuring public trust in the nonprofit organizations with which they are affiliated, or to the study or practice of nonprofit law, and they therefore have a direct stake in the implications of this litigation for public trust in the nonprofit community at large. Their backgrounds are set forth briefly below:²

- Norman R. Augustine is a recently retired member of the Bipartisan Policy Center's Board of Directors. He served as chairman and principal officer of the American Red Cross for nine years, and as chairman of the National Academy of Engineering, the Aerospace Industries Association, and the Defense Science Board. Mr. Augustine is a former president of the American Institute of Aeronautics and Astronautics and the Boy Scouts of America.
- Admiral Dennis C. Blair is the Knott Distinguished Visiting Professor at the University of North Carolina, Chapel Hill. He is the former United States

¹ *Amici* state that no party's counsel authored this brief in whole or in part, and that no party or person other than *amici* contributed money toward the preparation or filing of this brief.

² *Amici* include for the Court's reference their current and former professional and personal affiliations, but each *amicus* submits this brief in his or her personal capacity only.

Director of National Intelligence and a retired United States Navy admiral. He currently serves as the Chairman of the Board and Distinguished Senior Fellow of Sasakawa Peace Foundation USA. He also serves as a member of the Energy Security Leadership Council and is on the boards of Freedom House, the National Bureau of Asian Research, the National Committee on U.S.-China Relations, and the Atlantic Council.

- Mary McInnis Boies serves as counsel to Boies Schiller Flexner LLP. She is a member of the Board of Directors of the Council on Foreign Relations and chairs its Committee on Nominations and Governance. She is a former Second Circuit representative to the American Bar Association's Standing Committee of Federal Judiciary.
- W. Bowman Cutter is a Senior Fellow and Director of the Next American Economy Project at the Roosevelt Institute. He is the immediate past chairman of CARE, a global development organization, and has served as a board member for 18 years. Mr. Cutter is also the chairman of MicroVest; the chairman of the Tunisian American Enterprise Fund; a board member of SeaChange; a member of the Governing Council of the IFMR Trust in India; a member of the executive committee and immediate past co-chairman of the Committee for Economic Development; a board member and immediate past chair of Resources for the Future; and a board member of the Russell Sage

Foundation.

- Dr. James J. Fishman is a professor of law *Emeritus* at the Elisabeth Haub School of Law at Pace University and has authored numerous books and articles on nonprofit tax law and regulation. He is a co-author of *New York Nonprofit Law and Practice: With Tax Analysis* and a leading law school casebook, *Nonprofit Organizations: Cases and Materials*, now in its fifth edition. He previously served as the executive director of the Council of New York Law Associates (now The Lawyers Alliance for New York) and Volunteer Lawyers for the Arts.
- Carla A. Hills is the chairman and CEO of Hills & Company, International Consultants, which advises companies on global trade and investment issues. Ms. Hill serves as co-chair *Emeritus* of the Council on Foreign Relations and of the Inter-American Dialogue; chair of the Advisory Board of the Center for Strategic & International Studies, chair of the National Committee on U.S.-China Relations, member of the executive committees of the Trilateral Commission, of the Gerald R. Ford Presidential Foundation, and a member of Yale's President's Council on International Activities. She also serves as honorary board member of the Peterson Institute for International Economics.
- Dr. Vali R. Nasr is the Dean of the Johns Hopkins University Paul H. Nitze School of Advanced International Studies and a Nonresident Senior Fellow at

the Brookings Institution. He is a life member of the Council on Foreign Relations. Dr. Nasr was previously a Senior Advisor to the U.S. Special Representative for Afghanistan and Pakistan and a member of the U.S. Department of State's Foreign Affairs Policy Board.

- Nancy E. Roman is the President and CEO of Partnership for a Healthier America (“PHA”). Prior to joining PHA, she was the President and CEO of the Capital Area Food Bank, an \$80 million NGO addressing hunger and its companion problems of obesity and diet-related disease. She has served on the leadership team of the United Nation's World Food Programme and as Vice President of the Council on Foreign Relations. Ms. Roman currently serves on the board of Global Communities, a \$125 million NGO working on global development issues in 25 countries, and on the board of the Millennial Action Project, an NGO that seeks to engage and work with millennials serving in government nationwide.

For decades, the individual *amici* have studied, developed, implemented and promoted specific standards of governance and accountability within the nonprofit community, including with respect to identification and management of apparent and actual conflicts of interests, to strengthen public confidence in nonprofit organizations. *Amici* believe that an understanding of these standards in the

context of the prevailing policies and practices of the Commission on Presidential Debates (“CPD”) will assist the Court’s resolution of this case.

INTRODUCTION AND SUMMARY OF ARGUMENT

Plaintiffs-Appellants have demonstrated throughout the course of this litigation that the CPD is not, as it claims to be, nonpartisan.³ Indeed, the CPD leaders and many of its board members have been extensively involved in highly partisan activities for both the Republican and Democratic parties, including participating in events for presidential and vice-presidential candidates from both such parties. The Executive Director of the CPD claims that an “informal” conflict-of-interest policy, allegedly supplemented by a terse “Political Activities Policy” that has not even been produced by the CPD and, at most, merely “intend[s] to *deter*,” rather than *prohibit*, partisan activities, prevents the CPD board members from serving in an “official” capacity in a political campaign.⁴ This “policy,” even if supplemented with some portion in writing (which remains in doubt), remains wholly inadequate to prevent actual conflicts of interest, much less the appearance thereof. The *amici* would still consider the CPD to be, improperly, operating under an informal, unwritten conflict-of-interest policy.

³ See generally Dkt. No. 1807168, Brief for Plaintiffs-Appellants Level the Playing Field, Peter Ackerman, Green Party of the United States, and Libertarian National Committee Inc. (“App. Br.”).

⁴ A-1357-58 (emphasis added).

The Federal Election Commission (“FEC”) acted contrary to law when it credited the CPD’s reliance upon these policies. As the district court observed, the FEC has “ignored” a “mountain of submitted evidence” that is probative of the CPD board members’ partisan conduct.⁵ Such conduct likely stems from the absence of proper governance at the CPD. Because the CPD refuses to follow established best practices for conflict-of interest policies in the nonprofit sector, it was arbitrary and capricious for the FEC to conclude that the CPD’s purported policies sufficiently address actual or potential conflicts arising from partisanship at the CPD.⁶ Indeed, by eschewing *formal* conflict-of-interest policies that are explicit, in writing, accessible, and, importantly, appropriately monitored for compliance, the CPD has contravened an essential tenet of responsible governance for a nonprofit organization, thereby condoning and even encouraging the partisan activities of its board members without safeguarding its nonpartisan tax-exempt purposes. Even ignoring the notion that the integrity of the nation’s presidential and vice-presidential debates rests on informal and unenforceable conflict-of-interest policies, such policies by their own terms would permit CPD board

⁵ *Level the Playing Field v. Fed. Election Comm’n*, 232 F. Supp. 3d 130, 142-43 (D.D.C. 2017).

⁶ Many of the undersigned *amici* have had working relationships with and greatly respect the Commissioners of the FEC and the Directors of the CPD, and this brief is not intended to criticize their personal integrity. Rather, *amici* question the rules and regulations under which the FEC and CPD operate, which require and/or allow the FEC Commissioners and CPD Board of Directors to have partisan affiliations.

members to consult “unofficially” with political campaigns, contribute to fundraising efforts, and even endorse candidates.

The inadequacy of the CPD’s conflict-of-interest policy invites the CPD board members to endorse, support, or oppose political candidates and indulge in other overtly partisan conduct, and renders the FEC’s post-remand decisions holding otherwise arbitrary and capricious.⁷

ARGUMENT

The CPD offers no evidence of having a *formal, written conflict-of-interest policy* that is enforceable and monitored for compliance to govern its board members’ partisan political activities.⁸ One of the two alleged policies, according to the very description provided by the CPD, is “informal” and unwritten. Though the CPD claims to have another policy that is written, that policy was never produced and thus cannot be meaningfully evaluated.⁹ Moreover, the CPD admits that this policy does not even prohibit partisan conduct, and at most is “intended to deter” certain types of conduct. Because nothing is prohibited by this alleged policy, and no aspect of the policy is or could be enforced, the alleged written policy is, in reality, no policy at all. Consequently, even when these two

⁷ See, e.g., App. Br. at 35-38.

⁸ See A-1267 n.2.

⁹ A-1297-98.

components are considered together, the CPD's conflict-of-interest policy is entirely informal, unenforceable, and unmonitored, which renders it meaningless. The policy rests on formalistic and unrealistic distinctions between "official" and "personal" participation in political campaigns,¹⁰ and it tries to create a distinction that does not and cannot exist, at an organization whose purpose is to host the presidential debates in a nonpartisan way, regarding partisan activities undertaken in an individual capacity as opposed to an organizational capacity.

I. CPD's Informal Conflict-Of-Interest Policy Willfully Ignores Partisan Conduct By Falling Woefully Short Of Basic Standards Of Governance Applicable To Nonprofit Organizations.

The CPD's failure to establish a formal, written conflict-of-interest policy to safeguard its impartiality contravenes the basic standards and practices of good governance that are fundamental in the nonprofit community. Such failure directly inhibits the CPD's ability to ensure that its board members perform their duties in a nonpartisan manner and, pursuant to their fiduciary duties as board members, in the best interest of the CPD in furthering its mission.

That a nonprofit organization must have written and enforceable conflict-of-interest policies is hardly controversial.¹¹ In a comprehensive report issued by the

¹⁰ A-1356-58.

¹¹ The nonprofit community has been heavily influenced by the rigorous conflict-of-interest guidelines that govern publicly traded corporations and large accounting firms. The enactment of the Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204, 116 Stat. 745 ("SOX"), brought about renewed scrutiny of the governance of nonprofit organizations. See BoardSource, *The Sarbanes-Oxley Act and Implications for Nonprofit Organizations* 2, 10 (Jan. 2006), available

Panel on the Nonprofit Sector—which consisted of several leaders of the nonprofit community convened by the nonprofit coalition Independent Sector, at the encouragement of the leaders of the Finance Committee of the United States Senate—the nonprofit community emphasized that “charitable organizations should adopt and enforce a conflict-of-interest policy consistent with its state laws and organizational needs.”¹² The report, which reflected the input of “thousands of

at

<https://www.centerfornonprofitexcellence.org/sites/default/files/SarbanesOxley.BoardSource.pdf> (last accessed Sept. 10, 2019). Specifically, SOX introduced a provision pertaining to the adoption and disclosure of a formal “code of ethics” for certain officers of a reportable company “to promote . . . the ethical handling of actual or apparent conflicts of interest between personal and professional relationships.” 15 U.S.C. § 7264. Although not formally extended to nonprofit organizations, the corporate governance standards under SOX have permanently altered expectations of governance practices for nonprofit organizations. Accordingly, adoption of written conflict-of-interest policies has increased significantly in the nonprofit community during the past decade. In 2007, the Urban Institute reported that only half of the respondents in its national survey of nonprofit organizations had a written conflict-of-interest policy. See The Urban Institute, *Nonprofit Governance in the United States: Findings on Performance and Accountability from the First National Representative Study* 9 (2007), available at https://www.urban.org/research/publication/nonprofit-governance-united-states/view/full_report (last accessed Sept. 10, 2019). By contrast, only five years thereafter, the Nonprofit Governance Index 2012, compiled by BoardSource, found that 96% of nonprofit organizations surveyed had adopted a written conflict-of-interest policy. BoardSource, *Nonprofit Governance Index 2012*, at 15 (Sept. 2012), available at https://www.leadingagemn.org/assets/docs/NonProfit_Governance_Index_Report_2012.pdf (last accessed Sept. 10, 2019). In a more recent survey, out of 1,378 responding organizations, 94% had adopted a written conflict-of-interest policy. See Leading with Intent, *2017 National Index of Nonprofit Board Practices* 6, 52 (2017), available at <https://leadingwithintent.org/wp-content/uploads/2017/09/LWI2017.pdf> (last accessed Sept. 10, 2019).

¹² Panel on the Nonprofit Sector, *Strengthening Transparency Governance Accountability of Charitable Organizations: A Final Report to Congress and the Nonprofit Sector* 8 (2005), available at <http://www.kiplinger.com/members/taxlinks/071505/Nonprofit-Sector->

people representing diverse organizations from every part of the country,” instructs nonprofits to:

[a]dopt and enforce a conflict of interest policy consistent with the laws of its state and tailored to its specific organizational needs and characteristics. This policy should define conflict of interest, identify the classes of individuals within the organization covered by the policy, facilitate disclosure of information that may help identify conflicts of interest, and specify procedures to be followed in managing conflicts of interest.¹³

Independent Sector has since issued two additional reports, in 2007 and 2015, explicating its principles for good governance for nonprofit organizations.¹⁴ Both reports counsel nonprofits to adopt and implement “policies and procedures to ensure that *all* conflicts of interest (real and potential), or the appearance thereof, within the organization and the governing board are appropriately managed through disclosure, recusal, or other means.”¹⁵ The reports specifically contemplate a “*written* conflict-of-interest policy,” with periodic monitoring for compliance, to avoid or manage any financial or non-financial “conflict[] of interest that could affect the decisions of board members, staff leaders, and other employees.”¹⁶

report.pdf (last accessed Sept. 10, 2019).

¹³ *Id.* at 8, 81.

¹⁴ Independent Sector, *Principles for Good Governance and Ethical Practice* 5-6 (2015), available at <https://www.independentsector.org/wp-content/uploads/2016/11/Principles2015-Web-1.pdf> (last accessed Sept. 10, 2019).

¹⁵ *Id.* at 12 (emphasis added).

¹⁶ *Id.* (emphasis added).

In many jurisdictions, such best practices for written conflict-of-interest policies are reflected in legislation and administrative guidance applicable to nonprofit organizations. For example, New York requires nonprofit organizations to adopt a conflict-of-interest policy that defines the circumstances constituting a conflict of interest, provides procedures for disclosing such a conflict, and describes the actions that should be taken after a conflict has been identified.¹⁷ New York law recognizes that “to ensure that [the nonprofit organization’s] directors, officers, and key employees act in [such organization’s] best interest,” a conflict-of-interest policy may be required to cover “types of conflicts that may exist *even though there is no financial interest at stake*.”¹⁸

The Federal government, and in particular the U.S. Internal Revenue Service (“IRS”), also recognizes the importance for nonprofit organizations of implementing written conflict-of-interest policies to manage all actual and potential conflicts, including non-financial conflicts. In addition to routinely gathering information about the written policies of nonprofit organizations through

¹⁷ See Nonprofit Revitalization Act of 2013, N.Y. Not-for-Profit Corp. Law § 715-a(a)-(b).

¹⁸ Conflicts of Interest Policies Under the Nonprofit Revitalization Act of 2013, Guidance Document 2015-4, at 2-3 (Apr. 2015) (emphasis added).

the applicable annual information return¹⁹ and audit procedures,²⁰ the IRS emphasizes that board members of a nonprofit organization should:

adopt and regularly evaluate a written conflict of interest policy that requires directors and staff to act solely in the interests of the charity *without regard for personal interests*; include[] written procedures for determining whether *a relationship*, financial interest, or business affiliation results in a conflict of interest; and prescribe[] a course of action in the event a conflict of interest is identified.²¹

The CPD's only existing formal policy is explicitly limited to "financial conflicts of interest that could arise as a result of outside employment" and does not prevent the appearance of conflicts-of-interest by the CPD board members.²² Prohibiting financial conflicts may remove *only* one possible source of *actual* conflicts of interest; it does *nothing* to address non-financial conflicts or the appearance of conflicts. Moreover, although the informal conflict-of-interest

¹⁹ In 2007, the IRS redesigned the annual information return for tax-exempt organizations (IRS Form 990) to enumerate several types of written policies and procedures that such organizations are expected to adopt, including a written conflict-of-interest policy and regular monitoring of such policy. *See* IRS Form 990 (2018), Part VI, Section B, Questions 12a-c.

²⁰ For each audit of a tax-exempt organization, the IRS has directed its agents to gather information about the governance practices of such organization so that the IRS can determine whether the organization has a written conflict-of-interest policy and, if so, whether such policy addresses recusals and requires annual written disclosures of any conflicts. *See* IRS Form 14114 (2009), Part 5, Questions 18a-c.

²¹ IRS, *Governance and Related Topics - 501(c)(3) Organizations* (Feb. 4, 2008), at § 4(B) (emphasis added), *available at* https://www.irs.gov/pub/irs-tege/governance_practices.pdf (last accessed Sept. 10, 2019).

²² A-1358; *see* Conflict of Interest Policy, Comm'n on Presidential Debates, ¶¶ 4-5.

policy purports to “reflect[] the CPD’s view that a debate staging organization better serves the public when it . . . adopts and adheres to balanced policies designed to prevent even the potential for an erroneous appearance of partisanship” based on political activities undertaken by CPD-affiliated persons (including Board members) in a personal capacity,²³ the policy is silent as to any specific mechanism for disclosure and management of situations that give rise to a realized or potential conflict.

It is unrealistic to expect that the CPD can “operate[] completely independently of any party or political campaign,”²⁴ while governed by an unwritten and unmonitored conflict-of-interest policy with no formal procedure for disclosing actual or potential non-financial conflicts. Beyond the CPD’s self-serving claim that the unwritten policy prohibits the CPD board members from “serving in any official capacity with a political campaign,”²⁵ there is no indication as to whether the CPD has procedures to follow for enforcing the informal policy, whether the informal policy includes any reporting or monitoring requirements, or if there are consequences for violating the informal policy. Indeed, there is no suggestion that CPD enforces the informal policy at all. The failure of the CPD’s

²³ A-1357-58.

²⁴ A-1297.

²⁵ *Id.*

informal policy to conform to basic principles of nonprofit governance all but guarantees the prevalence of partisan conduct within the organization.

II. CPD's Informal Conflict-Of-Interest Policy Is Incapable Of Preventing The Appearance Of Partisanship.

It is similarly uncontroversial both within and outside the nonprofit community, that organizations charged with the public trust, such as the CPD, must prevent not only actual conflicts of interest, but also the *appearance* of such conflicts. In addition to instructing organizations to adopt written policies, Independent Sector counsels that “[a] charitable organization should adopt and implement policies and procedures to ensure that all conflicts of interest (real and potential), *or the appearance thereof*, within the organization and the governing board are appropriately managed through disclosure, recusal, or other means.”²⁶ The CPD itself recognizes that avoiding the appearance of conflicts must be part of its mandate.²⁷ But the CPD’s conflict-of-interest policy, such as it is, falls short of eliminating the appearance of conflicts.

As described by the CPD Executive Director, the CPD’s informal policy prohibits board members only from serving in an “official” capacity on a political campaign or with a political party, without any clarification as to the meaning of

²⁶ Independent Sector, *Principles for Good Governance*, *supra*, at 12 (emphasis added).

²⁷ See A-1298 (recognizing “the potential for an *erroneous appearance of partisanship* based on political activities undertaken by CPD-affiliated persons (including Board members) in a personal capacity” (emphasis added)).

“official.”²⁸ The CPD’s policy already lacks any enforcement mechanism, given that it is both unwritten and informal; and the CPD extinguishes what remains of the policy’s viability by expressly recognizing a loophole permitting board members, who make decisions about the selection of presidential and vice-presidential debate participants, to be actively involved in partisan political activities on behalf of those very same debate participants or their parties.

The CPD compounds the problem by also recognizing a distinction between partisan political activities undertaken by the board members in their “personal capacit[ies],” as opposed to their “official capacit[ies].”²⁹ For purposes of complying with a meaningful conflict-of-interest policy that should be drafted to help ensure that the CPD is engaging in its activities in a nonpartisan manner, as required pursuant to its tax-exempt status and by its specific mission of hosting the presidential and vice-presidential debates, this distinction between board members’ individual and official partisan activities is entirely unrealistic.

Even if a clear line could be drawn between individual and official partisan activities, the CPD ignores that even individual partisan conduct by CPD board members can taint the organization itself, specifically in light of the mission of the CPD. At a minimum, such conduct would create the *appearance* of a conflict of

²⁸ A-1297.

²⁹ A-1297-98.

interest; the public reasonably would interpret any overtly partisan statement by a board member as an expression of the views of the organization itself. Carried to its logical conclusion, the CPD would permit openly partisan conduct, so long as it is done in board members' ill-defined "personal capacit[ies]."

The alleged written "policy" is no more effective than the unwritten "informal policy" at avoiding the appearance of conflict. As noted above, the CPD failed to disclose this policy, making it impossible to confirm that it would actually avoid the appearance of conflict. The CPD's own description evinces that it would not because it only "intends to deter" partisan activities, instead of prohibiting them. Thus, the CPD's leadership may continue to, and apparently does, actively support and oppose partisan causes, notwithstanding any supposed "deterrence" from the alleged written policy.

CONCLUSION

Having a conflict-of-interest policy that is merely informal and unwritten is tantamount to having no policy at all. It is readily apparent that the CPD's current provision of informal and incomplete conflict-of-interest policies fails to meet the basic standard of governance adopted by the nonprofit community at large. CPD board members have engaged in the endorsement of (and opposition to) political campaigns and other partisan conduct, while at the same time bearing responsibility for ensuring that the CPD conducts its activities in a nonpartisan way

in accordance with its tax-exempt purposes. For an organization like the CPD that is charged with safeguarding the integrity of the nation's presidential and vice-presidential debates, more should and must be demanded by the FEC.

Accordingly, the *amici* respectfully request that this Court reverse the order of the United States District Court for the District of Columbia.

Dated: September 26, 2019

Respectfully submitted,

By: /s/David B. Bergman

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CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of September, 2019, I caused true and correct copies of the foregoing Corrected Brief *Amici Curiae* in support of Plaintiffs-Appellants, to be served via electronic mail upon all counsel of record, by operation of the Court's ECF system.

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ORAL ARGUMENT NOT YET SCHEDULED

No. 19-5117-cv

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA**

LEVEL THE PLAYING FIELD, et al.,

Plaintiffs-Appellants,

vs.

FEDERAL ELECTION COMMISSION,

Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**AMICUS CURIAE BRIEF OF FAIRVOTE AND THE COALITION FOR
FREE AND OPEN ELECTIONS IN SUPPORT OF PLAINTIFFS-
APPELLANTS AND IN SUPPORT OF REVERSAL**

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AMICUS CURIAE BRIEF OF FAIRVOTE AND THE COALITION FOR FREE AND OPEN ELECTIONS IN SUPPORT OF PLAINTIFFS-
APPELLANTS AND IN SUPPORT OF REVERSAL

CORPORATE DISCLOSURE STATEMENT

Amicus Curiae is a non-profit organization. It has no parent corporation and does not issue stock.

**CERTIFICATE AS TO PARTIES, RULINGS UNDER REVIEW, AND
RELATED CASES**

A. Parties and Amici

Pursuant to Circuit Rule 28(a)(1)(A), Amicus Curiae certify that the parties and amici curiae in the case are as follows: Plaintiffs-Appellants Level the Playing Field, Dr. Peter Ackerman, Green Party of the United States, Libertarian National Committee, Inc.; Defendant-Appellee is the Federal Elections Commission; and Amici FairVote, Coalition for Free and Open Elections, Independent Voter Project, Norman R. Augustine, Dennis C. Blair, Scott Blackmun, Mary McInnis Boise, W. Bowman Cutter, James J. Fishman, Carla A. Hills, Daniel L. Kurtz, Vali R. Nasr, Nancy E. Roman, James Stavridis, Joseph Robert Kerry, Joseph I. Lieberman, Hon. Clarine N. Riddle, Hon. David M. Walker, Hon. Christine Todd Whitman, and the Commission on Presidential Debates.

B. Rulings Under Review

The rulings under review, each entered by Hon. Tanya S. Chutkan, are (1) the Order, dated March 31, 2019 (Docket No. 111), denying Appellants' motion for summary judgment, denying Appellants' motion to supplement the record, granting the FEC's motion for summary judgment, and granting in part and denying in part the FEC's motion to strike; and (2) the Memorandum Opinion,

dated March 31, 2019 (Docket No. 110) addressing these motions, which appears at 381 F. Supp. 3d 78.

C. No Related Cases

This case has not previously been before this Court or any other court except for the district court. Counsel for Amicus is not aware of any related cases within the meaning of Circuit Rule 28(a)(1)(C).

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GLOSSARY OF ABBREVIATIONS

CPD	Commission on Presidential Debates
FEC	Federal Elections Commission
COFOE	Coalition for Free and Open Elections

STATEMENT OF IDENTITY, INTEREST IN CASE, AND SOURCE OF AUTHORITY TO FILE

FairVote is a 501(c)(3) non-profit organization incorporated in the District of Columbia, whose mission is to advocate for fairer representation in government through changes to the election process. FairVote's goal is to promote the voices and views of every voter, grounded in evidence that the use of a more fair election process will help create a government that is more representative and effective. FairVote encourages public officials, judges, and the public to explore fairer and more inclusive election methods, including through litigation when appropriate.

FairVote has previously filed *amicus curiae* briefs in a variety of cases, including cases regarding voter choice in general elections, the role of primary elections, and in cases brought under the Voting Rights Act. *See* Brief for FairVote as Amicus Curiae in support of Appellees, *Higginson v. Becerra*, No. 19-55275 (9th Cir. 2019); Brief for FairVote and One Nation One Vote as Amici Curiae in Support of Appellees, *Gill v. Whitford*, No. 16-1161 (U.S. 2017); Brief for FairVote and the Center for Competitive Democracy as Amici Curiae in Support of Neither Party, *Rubin v. Padilla*, No. 15-135 (U.S. 2015); Brief for FairVote and the Center for Competitive Democracy as Amici Curiae in Support of Neither Party, *Balsam v. Guadagno*, No. 15-39 (U.S. 2015). FairVote previously participated as *amicus curiae* in this case, at an earlier stage in litigation. Brief for FairVote as

AMICUS CURIAE BRIEF OF FAIRVOTE AND THE COALITION FOR FREE AND OPEN ELECTIONS IN SUPPORT OF PLAINTIFFS-APPELLANTS AND IN SUPPORT OF REVERSAL

Amicus Curiae, Level the Playing Field v. FEC, No. 1:15-cv-01397 (TSC), available at <https://fairvote.app.box.com/file/61453602489>.

Amicus has published articles and comments advocating for and critically analyzing reforms to debate qualification rules. *See, e.g.*, Robert Richie, Re: Petition for Rulemaking from Level the Playing Field to Revise and Amend 11 C.F.R. § 110.13(c) (Dec. 15, 2014), available at <http://www.shapiroarato.com/wp-content/uploads/2014/12/FairVote-Comment-12.15.14.pdf>. Because of its familiarity with the benefits and drawbacks of debate rules, independent and third party participation in debates, and debate rule reforms, FairVote is particularly well-suited to expound on this issue.

The Coalition for Free and Open Elections (COFOE) is a nonprofit advocacy organization dedicated to the idea that full and fair access to the electoral process is central to democracy. COFOE is a group of independents and representatives from alternative parties. Since the 1980s, the group has supported efforts to remove barriers that prevent non-major-party candidates and would-be voters from fully participating in the political process.

The third-party candidates and voters that make up COFOE's constituency have an interest in the questions presented, because participation in presidential

debates is an essential way that third-party and independent candidates participate in elections.

Amici received consent from Plaintiffs-Appellants to file on August 31, 2019 and from Defendant-Appellee on September 19, 2019. Amici certify that (1) no counsel for a party authored this brief in whole or in part, and that (2) no person other than the amici curiae, their members (if applicable), or their counsel contributed money that was intended to fund the preparation or submission of this brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

FairVote agrees with the arguments made by Plaintiffs-Appellants, and files separately to expand on the important factual background that goes to the heart of the legal questions they present.

The Federal Elections Commission (“FEC”) acted arbitrarily, capriciously and contrary to law by approving of the Commission on Presidential Debates’ (“CPD”) exclusive reliance on polling as a means of assessing public support. Polling as a method of assessing public support is increasingly unreliable. Traditional polling methods relied on calling landline telephones for a sample of likely voters, and then extrapolating from that to estimate public support. These methods have become dated in a number of ways, leading to polls becoming more likely to fail, sometimes spectacularly, in correctly predicting election outcomes. This makes their use as the sole substantive exclusionary criterion for inclusion in debates for the nation’s highest executive office unacceptable, especially when compounded with the high polling threshold required for inclusion.

Further, the exclusive use of five selected polls with a minimum 15% threshold for inclusion is abnormally harsh. Both in the states and in other nations, debate inclusion rules vary, but are generally far less exclusive than those used by the CPD. Debates may be conducted by non-profit organizations operating in the

public interest, by the media directly, or by a public agency, and they may follow one set of rules or vary their rules as the election season progresses. In any case, a rule effectively limiting the debates to only two candidates is more limiting than either the state or international norms.

ARGUMENT

FairVote submits this brief to highlight important factual background which tends to suggest that the rules adopted by the CPD cannot be justified by an interest in orderly debates among serious candidates, but rather suggest an interest in preventing competition from those outside the two major parties in the general election. First, polling is too unreliable to be used as an exclusive means of testing for public support. Second, the debate inclusion rules used by the CPD are abnormal, and are out of step with recommended practices for both debates for governor in states and debates for public office in other democratic nations.

I. POLLING DATA IS INCREASINGLY UNRELIABLE

The way the CPD uses polls to determine debate eligibility fails to account for the limitations of polling data. Although polling data can be useful as one line of evidence for public support, it is insufficiently reliable to be used as the sole determinant for debate inclusion.

Polling in elections relies on asking representative samples of people their answers to various questions and then making inferences from those answers about the opinions and behaviors of the voting public in general. *See generally, What Is Public Opinion Polling and Why Is It Important?*, GALLUP WORLD POLL (2007), available at

<http://media.gallup.com/muslimwestfacts/PDF/PollingAndHowToUseItR1drevENG.pdf>.

For example, a poll may ask a “likely voter” for whom they would vote were the election held today. *See, e.g., White House 2016: General Election*, POLLINGREPORT.COM, <http://www.pollingreport.com/wh16gen.htm> (last visited April 11, 2016) (summarizing various polls that included who participants would vote for for president “if the election were held today”). Then, the polling agency would weigh respondents according to characteristics such as age, education, race and income so that their sample reflects, as closely as possible, the population in general. *Polling Fundamentals - Total Survey Error*, ROPER CENTER, CORNELL UNIVERSITY, <http://ropercenter.cornell.edu/support/polling-fundamentals-total-survey-error/> (last visited, April 11, 2016). Using these weights, responses are then aggregated to produce estimates of who likely voters actually would vote for, were the election held today, as a means of estimating how actual voters will actually vote when the election is held. *Id.* These estimates are just that: estimates. They

always have a degree of uncertainty and a margin of error. Additionally, weaknesses in polling design and execution tend to increase the error associated with polling figures.

One common problem today is that the ability to draw a representative sample can be impeded by a technological or informational barrier. For example, polls historically relied on calling people on their home phones. *See generally*, Michael W. Link, et. al., *Reaching the U.S. Cell Phone Generation*, 71 PUBLIC OPIN. Q. 814 (2007). However, increasingly people rely on mobile phones, with 40 percent of adults no longer owning a landline at all. Jill Lepore, *Politics and the New Machine*, THE NEW YORKER, Nov. 16, 2015, available at <http://www.newyorker.com/magazine/2015/11/16/politics-and-the-new-machine>.

Polling agencies have attempted to compensate for this, but either prospective pollees simply do not answer their phones or the lists are compiled from skewed or otherwise unreliable sources, given the absence of the equivalent of a phone book for mobile phones and a federal ban on autodialing to cell phones. *Id.*; Telephone Consumer Protection Act of 1991, 47 U.S.C. § 227 (1991).

Even with a perfectly representative sample, polling estimates of support have error margins, often as high as 5 to 10 percentage points. *Polling Fundamentals - Total Survey Error, supra*. When compounded with these sources

of unrepresentativeness in sampling, candidates polling below 15 percent may actually have as much as 25 percent support, certainly high enough to consider them viable candidates with a viewpoint the voting public deserves to hear in debates.

Inaccurate polls can clash with actual voting results in spectacular ways, eroding public confidence in their use. This is particularly true today, given the outcome of the 2016 presidential election compared to the predictions being made by analysts relying principally on polls. There exists no shortage of media pieces bemoaning how inaccurate such polls were. *E.g.*, Nate Cohn, *A 2016 Review: Why Key State Polls Were Wrong About Trump*, New York Times, May 31, 2017, <https://www.nytimes.com/2017/05/31/upshot/a-2016-review-why-key-state-polls-were-wrong-about-trump.html>; Danielle Kurtzleben, *4 Possible Reasons The Polls Got It So Wrong This Year*, NPR, <https://www.npr.org/2016/11/14/502014643/4-possible-reasons-the-polls-got-it-so-wrong-this-year>; Andrew Mercer, Claudia Deane and Kyley McGeeney, *Why 2016 election polls missed their mark*, Pew Research Center, <https://www.pewresearch.org/fact-tank/2016/11/09/why-2016-election-polls-missed-their-mark/>.

Signs of this unreliability had shown up in the 2016 primary campaign, and demonstrated the weaknesses of polling as a means of identifying accurate levels

of support. In March of 2016, for example, Bernie Sanders outperformed his polling by over 20 percentage points in the Michigan Democratic primary. Carl Bialik, *Why the Polls Missed Bernie Sanders' Michigan Upset*, FIVETHIRTYEIGHT, Mar. 9, 2016, <http://fivethirtyeight.com/features/why-the-polls-missed-bernie-sanders-michigan-upset/>. That upset demonstrated many of the ways polling data can fail to reflect reality. The Michigan polls did not sufficiently correct for their lack of young voters, who disproportionately favored Sanders, even while it overcompensated in attempting to correct for responses from African Americans, a population previously supporting Clinton at higher rates than it did in Michigan. *Id.* That particular example was an outlier, but it serves as an example of how bad errors can be, even when multiple polls by multiple polling agencies are used.

Reliance on polling in the 2012 presidential general election was also misplaced. Polling showed a near-tie between Mitt Romney and Barack Obama, with some—including Gallup—predicting that Mitt Romney would win. *The problem with polls*, THE WEEK, April 10, 2016, <http://theweek.com/articles/617109/problem-polls>. In fact, the president was re-elected by a nearly four percentage point margin, amounting to some 5 million votes. *Id.*

These flaws are likely to erode public confidence in the exclusive use of polling as a metric of public support, especially as reports continue to issue from popular periodicals highlighting them. *E.g.* Cliff Zukin, *What's the Matter With Polling?*, N.Y. TIMES, June 20, 2015, <http://www.nytimes.com/2015/06/21/opinion/sunday/whats-the-matter-with-polling.html>; Michael Barone, *Why Political Polls Are So Often Wrong*, The Wall Street Journal, Nov. 11, 2015, <http://www.wsj.com/articles/why-political-polls-are-so-often-wrong-1447285797>.

As Plaintiffs demonstrate in their brief, the way the CPD uses polling data to determine inclusion in the presidential general election debates virtually guarantees that only two candidates will qualify. No candidate who did not run in the Democratic or Republican primary has ever met the 15 percent threshold in the general election—not even Ross Perot, who participated in the 1992 general election debates before that threshold was instituted. That fact, combined with the unreliability of polls described here, creates a serious risk of unjustifiably excluding one or more serious and potentially viable presidential candidates from the debates.

For example, if a 15 percent threshold were applied to the first Democratic primary debates in June, 2019, only Joe Biden and Bernie Sanders—the two

candidates with the greatest name recognition—would have qualified. *See Politico, Democratic primary polls: Who's ahead in the 2020 race?*,

<https://www.politico.com/2020-election/democratic-presidential-candidates/polls/>

(setting the date to the week ending June 23, 2019). Such a result would have not only excluded several high profile candidates, including every woman candidate and every person of color, it also would have excluded the candidate the most recent polls identify as the likely frontrunner, Elizabeth Warren. *See Andrew Prokop and Christina Animashaun, Elizabeth Warren leads Joe Biden in ranked-choice poll*, Vox, Sep. 12, 2019, <https://www.vox.com/2019/9/12/20860985/poll-democratic-primary-ranked-choice-warren-biden>.

When candidates for the Republican nomination for president in 2016 began participating in debates, only Donald Trump and Ben Carson polled higher than 15 percent on average, with Marco Rubio in third polling at about 10 percent on average. Dan Balz, *The debate over debates: Why should polls pick winners and losers?*, THE WASHINGTON POST, Nov. 7, 2015,

[https://www.washingtonpost.com/politics/the-debate-over-debates-why-should-polls-pick-winners-and-losers/2015/11/07/1e107b86-84d7-11e5-9afb-](https://www.washingtonpost.com/politics/the-debate-over-debates-why-should-polls-pick-winners-and-losers/2015/11/07/1e107b86-84d7-11e5-9afb-0c971f713d0c_story.html)

[0c971f713d0c_story.html](https://www.washingtonpost.com/politics/the-debate-over-debates-why-should-polls-pick-winners-and-losers/2015/11/07/1e107b86-84d7-11e5-9afb-0c971f713d0c_story.html). This demonstrates how a large field of serious candidates can split polling totals, causing nearly every candidate to apparently

poll poorly. Under those circumstances, candidates invited to debate and candidates excluded may both be well within the margin of error of the poll from each other, effectively making the exclusions arbitrary. In the Republican primary debates, it meant that governors of New York, Louisiana, and Virginia never had a chance to present their case to Republican primary voters; in a general election to which the 15 percent threshold applies, it means the loss of important perspectives on the future of the country.

II. THE CPD INCLUSION CRITERIA ARE ABNORMALLY HARSH

The degree to which the CPD inclusion rules harshly exclude candidates who might otherwise contribute meaningfully to the debate can be seen in how out of step those rules are with recognized best practices in debates for the office of governor in states and in debates for public office in other nations.

In states, debates are often held by nonpartisan public interest organizations like the League of Women Voters, who also conducted presidential debates prior to the two major parties creating the CPD in 1987. *See*, Renee Davidson, *4 Reasons You Should Watch a Candidate Debate*, LEAGUE OF WOMEN VOTERS, Oct. 7, 2014, <http://lwv.org/blog/4-reasons-you-should-watch-candidate-debate>; *The League of Women Voters and Candidate Debates: A Changing Relationship*, League of Women Voters, <http://lwv.org/content/league-women-voters-and-candidate->

[debates-changing-relationship](#) (last visited April 11, 2016). The media also sponsors debates directly, sometimes in coordination with a particular venue. *See, e.g.,* Paul Merrill, *Maine governor hopefuls face off in first debate*, WMTW NEWS 8, Oct. 8, 2014, <http://www.wmtw.com/news/maine-governor-hopefuls-face-off-in-first-debate/29007466> (describing a gubernatorial debate between three candidates held by a media corporation and noting the plan to hold a second).

When the League of Women Voters sponsors a debate, it typically invites every candidate on the ballot, and sometimes includes write-in candidates as well. *See, e.g., Guidelines for Debates and Forums*, LEAGUE OF WOMEN VOTERS WISCONSIN, July, 2014, <http://www.lwvwi.org/Members/GuidelinesforDebates.aspx>; *League of Women Voters (LWV) Candidate Forum Guidelines*, League of Women Voters San Diego, http://www.lwvsandiego.org/files/CANDIDATE_FORUM_GUIDELINES.pdf (last visited April 11, 2016) (emphasizing to “[i]nvite all candidates”). When media sponsors debates, they adopt their own inclusion rules, presumably to maximize the newsworthiness of the event. *See, e.g.,* Lepore, *supra* (“It would make better television” to include Carly Fiorina in an early debate among Republican candidates, despite her relatively low polling numbers at the time). When a state agency sponsors debates, it ordinarily uses rules more inclusive than

those adopted by the CPD. *See, e.g.,* ARIZ. REV. STAT. ANN. § 16-956(A)(2) (2011) (instructing the Arizona Clean Elections Commission to sponsor debates and invite all candidates).

Internationally, debates are also usually the domain of the media, and they typically invite more than two candidates for presidential elections. *See Parties and Candidates*, THE ACE ENCYCLOPAEDIA, ACE, <http://aceproject.org/ace-en/topics/pc/pcc/pcc07> (last visited April 11, 2016); *see also Television debates*, ACE, <http://aceproject.org/epic-en/CDTable?view=country&question=ME059> (last visited April 11, 2016) (table listing countries along with comments on how televised debates are conducted, if at all, in that country). When countries do adopt public regulations regarding debate inclusion, they use standards more inclusive than those of the CPD. For example, Canada permits participation by any candidate from a political party with representation in the House of Commons (five parties) with a consistent polling threshold of only 5 percent. Nick Anstead, *We need to look at other parliamentary democracies for ideas about how to run televised debates*, MEDIA POLICY PROJECT BLOG, THE LONDON SCHOOL OF ECONOMICS AND POLITICAL SCIENCE, <http://blogs.lse.ac.uk/mediapolicyproject/2014/10/15/we-need-to-look-at-other->

[parliamentary-democracies-for-ideas-about-how-to-run-televised-debates/](#) (last visited April 11, 2016).

Germany follows a similar rule, allowing participation (in the first round of debates) by representatives of parties with a presence in the Bundestag, which amounts to a 5 percent threshold as well. *Id.* Germany's practice also highlights another way of balancing the goals of inclusion with an orderly and informative process common in other nations: they narrow the inclusion rules over a series of debates. Nick Anstead, *Televised Debates in Parliamentary Democracies*, MEDIA POLICY PROJECT, THE LONDON SCHOOL OF ECONOMICS AND POLITICAL SCIENCE, 10–11 (January, 2015). In the first round, representatives of any party in the Bundestag may participate, but the second round is limited to only three candidates. *Id.* In the U.S., debates also go from more inclusionary (in the primaries) to exclusionary (in the general election), but the primary debates are no exception for inclusion general election debates, when nominees from different political parties and independent candidates face each other before a national audience.

In fashioning its rules prior to the 2015 election season, the United Kingdom considered the examples of countries like Canada and Germany to adopt a best practice. *Id.* at 13. It ultimately included seven candidates in its national debate in

April, 2015. *See, Leaders' debate: ICM/Guardian poll puts Miliband ahead - just*, theguardian, April 2, 2015,

<http://www.theguardian.com/politics/blog/live/2015/apr/02/leaders-debate-cameron-and-miliband-go-head-to-head-with-other-parties-live>. More inclusive debate rules helped to change the conversation in the United Kingdom, allowing the Liberal Democrats to rise in prominence. A similar phenomenon had occurred in Canada; the New Democratic Party, traditionally a third party, rose to second-place in 2011; and in 2015, the Liberal Party went from third place to first place.

This is not to suggest that the U.S. should be bound by international norms. Instead, it is evidence that CPD has adopted a rule that is not justified by ordinary debate inclusion rules, such as orderly debates among serious candidates with viewpoints reflective of public opinion. Rather, it better reflects a rule designed to prevent competition. *See*, Larry Diamond, *Ending the Presidential-Debate Duopoly*, THE ATLANTIC, May 8, 2015,

<http://www.theatlantic.com/politics/archive/2015/05/ending-the-presidential-debate-duopoly/392480/>.

CONCLUSION

As Plaintiffs-Appellants rightfully point out, this issue goes directly to the question of the future of American democracy. Evidence suggests that the CPD

harshly excludes candidates to the extent that not only are many important viewpoints unheard in presidential debates, but viable candidates may fail to qualify or choose not to run in the first place because they would fail to qualify. The unreliability of polls is such evidence, suggesting that the CPD is less interested in testing for public support than they are with creating an artificial barrier. Similarly, the degree to which the rule is abnormally harsh suggests that it is unjustifiable by the interest in an orderly debate.

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**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME
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This brief complies with Federal Rule of Appellate Procedure 32(a)(7)(B)(i) because it contains 3,046 words.

This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in Times New Roman 14 point font.

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CERTIFICATE OF SERVICE

I hereby certify that on September 25, 2019, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the District of Columbia by using the CM/ECF system. I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/William P. Tedards, Jr.
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No. 19-5117-cv

**In The
UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA CIRCUIT**

LEVEL THE PLAYING FIELD, ET AL.,

Plaintiffs-Appellants,

v.

FEDERAL ELECTION COMMISSION,

Defendant-Appellee.

**ON APPEAL FROM JUDGMENT OF THE
U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA
(HON. TANYA S. CHUTKAN PRESIDING)**

**BRIEF OF AMICI CURIAE NONPROFIT LEADERS,
SCHOLARS AND PRACTITIONERS IN SUPPORT OF
PLAINTIFFS-APPELLANTS' MOTION FOR SUMMARY
JUDGMENT**

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STATEMENT OF INTEREST

The eight (8) individual *amici* jointly submitting this brief in support of the Brief of Appellants represent a broad array of prominent leaders, scholars, and practitioners with considerable experience in the nonprofit sector.¹ All *amici* are dedicated to ensuring public trust in the nonprofit organizations with which they are affiliated, or to the study or practice of nonprofit law, and they therefore have a direct stake in the implications of this litigation for public trust in the nonprofit community at large. Their backgrounds are set forth briefly below:²

- Norman R. Augustine is a recently retired member of the Bipartisan Policy Center's Board of Directors. He served as chairman and principal officer of the American Red Cross for nine years, and as chairman of the National Academy of Engineering, the Aerospace Industries Association, and the Defense Science Board. Mr. Augustine is a former president of the American Institute of Aeronautics and Astronautics and the Boy Scouts of America.
- Admiral Dennis C. Blair is the Knott Distinguished Visiting Professor at the University of North Carolina, Chapel Hill. He is the former United States

¹ *Amici* state that no party's counsel authored this brief in whole or in part, and that no party or person other than *amici* contributed money toward the preparation or filing of this brief.

² *Amici* include for the Court's reference their current and former professional and personal affiliations, but each *amicus* submits this brief in his or her personal capacity only.

Director of National Intelligence and a retired United States Navy admiral. He currently serves as the Chairman of the Board and Distinguished Senior Fellow of Sasakawa Peace Foundation USA. He also serves as a member of the Energy Security Leadership Council and is on the boards of Freedom House, the National Bureau of Asian Research, the National Committee on U.S.-China Relations, and the Atlantic Council.

- Mary McInnis Boies serves as counsel to Boies Schiller Flexner LLP. She is a member of the Board of Directors of the Council on Foreign Relations and chairs its Committee on Nominations and Governance. She is a former Second Circuit representative to the American Bar Association's Standing Committee of Federal Judiciary.
- W. Bowman Cutter is a Senior Fellow and Director of the Next American Economy Project at the Roosevelt Institute. He is the immediate past chairman of CARE, a global development organization, and has served as a board member for 18 years. Mr. Cutter is also the chairman of MicroVest; the chairman of the Tunisian American Enterprise Fund; a board member of SeaChange; a member of the Governing Council of the IFMR Trust in India; a member of the executive committee and immediate past co-chairman of the Committee for Economic Development; a board member and immediate past chair of Resources for the Future; and a board member of the Russell Sage

Foundation.

- Dr. James J. Fishman is a professor of law *Emeritus* at the Elisabeth Haub School of Law at Pace University and has authored numerous books and articles on nonprofit tax law and regulation. He is a co-author of *New York Nonprofit Law and Practice: With Tax Analysis* and a leading law school casebook, *Nonprofit Organizations: Cases and Materials*, now in its fifth edition. He previously served as the executive director of the Council of New York Law Associates (now The Lawyers Alliance for New York) and Volunteer Lawyers for the Arts.
- Carla A. Hills is the chairman and CEO of Hills & Company, International Consultants, which advises companies on global trade and investment issues. Ms. Hill serves as co-chair *Emeritus* of the Council on Foreign Relations and of the Inter-American Dialogue; chair of the Advisory Board of the Center for Strategic & International Studies, chair of the National Committee on U.S.-China Relations, member of the executive committees of the Trilateral Commission, of the Gerald R. Ford Presidential Foundation, and a member of Yale's President's Council on International Activities. She also serves as honorary board member of the Peterson Institute for International Economics.
- Dr. Vali R. Nasr is the Dean of the Johns Hopkins University Paul H. Nitze School of Advanced International Studies and a Nonresident Senior Fellow at

the Brookings Institution. He is a life member of the Council on Foreign Relations. Dr. Nasr was previously a Senior Advisor to the U.S. Special Representative for Afghanistan and Pakistan and a member of the U.S. Department of State's Foreign Affairs Policy Board.

- Nancy E. Roman is the President and CEO of Partnership for a Healthier America (“PHA”). Prior to joining PHA, she was the President and CEO of the Capital Area Food Bank, an \$80 million NGO addressing hunger and its companion problems of obesity and diet-related disease. She has served on the leadership team of the United Nation's World Food Programme and as Vice President of the Council on Foreign Relations. Ms. Roman currently serves on the board of Global Communities, a \$125 million NGO working on global development issues in 25 countries, and on the board of the Millennial Action Project, an NGO that seeks to engage and work with millennials serving in government nationwide.

For decades, the individual *amici* have studied, developed, implemented and promoted specific standards of governance and accountability within the nonprofit community, including with respect to identification and management of apparent and actual conflicts of interests, to strengthen public confidence in nonprofit organizations. *Amici* believe that an understanding of these standards in the

context of the prevailing policies and practices of the Commission on Presidential Debates (“CPD”) will assist the Court’s resolution of this case.

INTRODUCTION AND SUMMARY OF ARGUMENT

Appellants have demonstrated throughout the course of this litigation that the CPD is not, as it claims to be, nonpartisan.³ Indeed, the CPD leaders and many of its board members have been extensively involved in highly partisan activities for both the Republican and Democratic parties, including participating in events for presidential and vice-presidential candidates from both such parties. The Executive Director of the CPD claims that an “informal” conflict-of-interest policy, allegedly supplemented by a terse “Political Activities Policy” that has not even been produced by the CPD and, at most, merely “intend[s] to *deter*,” rather than *prohibit*, partisan activities, prevents the CPD board members from serving in an “official” capacity in a political campaign.⁴ This “policy,” even if supplemented with some portion in writing (which remains in doubt), remains wholly inadequate to prevent actual conflicts of interest, much less the appearance thereof. The *amici* would still consider the CPD to be, improperly, operating under an informal, unwritten conflict-of-interest policy.

³ See generally Dkt. No. 1807168, Brief for Plaintiffs-Appellants Level the Playing Field, Peter Ackerman, Green Party of the United States, and Libertarian National Committee Inc. (“App. Br.”).

⁴ A-1357-58 (emphasis added).

The Federal Election Commission (“FEC”) acted contrary to law when it credited the CPD’s reliance upon these policies. As the district court observed, the FEC has “ignored” a “mountain of submitted evidence” that is probative of the CPD board members’ partisan conduct.⁵ Such conduct likely stems from the absence of proper governance at the CPD. Because the CPD refuses to follow established best practices for conflict-of interest policies in the nonprofit sector, it was arbitrary and capricious for the FEC to conclude that the CPD’s purported policies sufficiently address actual or potential conflicts arising from partisanship at the CPD.⁶ Indeed, by eschewing *formal* conflict-of-interest policies that are explicit, in writing, accessible, and, importantly, appropriately monitored for compliance, the CPD has contravened an essential tenet of responsible governance for a nonprofit organization, thereby condoning and even encouraging the partisan activities of its board members without safeguarding its nonpartisan tax-exempt purposes. Even ignoring the notion that the integrity of the nation’s presidential and vice-presidential debates rests on informal and unenforceable conflict-of-interest policies, such policies by their own terms would permit CPD board

⁵ *Level the Playing Field v. Fed. Election Comm’n*, 232 F. Supp. 3d 130, 142-43 (D.D.C. 2017).

⁶ Many of the undersigned *amici* have had working relationships with and greatly respect the Commissioners of the FEC and the Directors of the CPD, and this brief is not intended to criticize their personal integrity. Rather, *amici* question the rules and regulations under which the FEC and CPD operate, which require and/or allow the FEC Commissioners and CPD Board of Directors to have partisan affiliations.

members to consult “unofficially” with political campaigns, contribute to fundraising efforts, and even endorse candidates.

The inadequacy of the CPD’s conflict-of-interest policy invites the CPD board members to endorse, support, or oppose political candidates and indulge in other overtly partisan conduct, and renders the FEC’s post-remand decisions holding otherwise arbitrary and capricious.⁷

ARGUMENT

The CPD offers no evidence of having a *formal, written conflict-of-interest policy* that is enforceable and monitored for compliance to govern its board members’ partisan political activities.⁸ One of the two alleged policies, according to the very description provided by the CPD, is “informal” and unwritten. Though the CPD claims to have another policy that is written, that policy was never produced and thus cannot be meaningfully evaluated.⁹ Moreover, the CPD admits that this policy does not even prohibit partisan conduct, and at most is “intended to deter” certain types of conduct. Because nothing is prohibited by this alleged policy, and no aspect of the policy is or could be enforced, the alleged written policy is, in reality, no policy at all. Consequently, even when these two

⁷ See, e.g., App. Br. at 35-38.

⁸ See A-1267 n.2.

⁹ A-1297-98.

components are considered together, the CPD's conflict-of-interest policy is entirely informal, unenforceable, and unmonitored, which renders it meaningless. The policy rests on formalistic and unrealistic distinctions between "official" and "personal" participation in political campaigns,¹⁰ and it tries to create a distinction that does not and cannot exist, at an organization whose purpose is to host the presidential debates in a nonpartisan way, regarding partisan activities undertaken in an individual capacity as opposed to an organizational capacity.

I. CPD's Informal Conflict-Of-Interest Policy Willfully Ignores Partisan Conduct By Falling Woefully Short Of Basic Standards Of Governance Applicable To Nonprofit Organizations.

The CPD's failure to establish a formal, written conflict-of-interest policy to safeguard its impartiality contravenes the basic standards and practices of good governance that are fundamental in the nonprofit community. Such failure directly inhibits the CPD's ability to ensure that its board members perform their duties in a nonpartisan manner and, pursuant to their fiduciary duties as board members, in the best interest of the CPD in furthering its mission.

That a nonprofit organization must have written and enforceable conflict-of-interest policies is hardly controversial.¹¹ In a comprehensive report issued by the

¹⁰ A-1356-58.

¹¹ The nonprofit community has been heavily influenced by the rigorous conflict-of-interest guidelines that govern publicly traded corporations and large accounting firms. The enactment of the Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204, 116 Stat. 745 ("SOX"), brought about renewed scrutiny of the governance of nonprofit organizations. See BoardSource, *The Sarbanes-Oxley Act and Implications for Nonprofit Organizations* 2, 10 (Jan. 2006), available

Panel on the Nonprofit Sector—which consisted of several leaders of the nonprofit community convened by the nonprofit coalition Independent Sector, at the encouragement of the leaders of the Finance Committee of the United States Senate—the nonprofit community emphasized that “charitable organizations should adopt and enforce a conflict-of-interest policy consistent with its state laws and organizational needs.”¹² The report, which reflected the input of “thousands of

at

<https://www.centerfornonprofitexcellence.org/sites/default/files/SarbanesOxley.BoardSource.pdf> (last accessed Sept. 10, 2019). Specifically, SOX introduced a provision pertaining to the adoption and disclosure of a formal “code of ethics” for certain officers of a reportable company “to promote . . . the ethical handling of actual or apparent conflicts of interest between personal and professional relationships.” 15 U.S.C. § 7264. Although not formally extended to nonprofit organizations, the corporate governance standards under SOX have permanently altered expectations of governance practices for nonprofit organizations. Accordingly, adoption of written conflict-of-interest policies has increased significantly in the nonprofit community during the past decade. In 2007, the Urban Institute reported that only half of the respondents in its national survey of nonprofit organizations had a written conflict-of-interest policy. See The Urban Institute, *Nonprofit Governance in the United States: Findings on Performance and Accountability from the First National Representative Study* 9 (2007), available at https://www.urban.org/research/publication/nonprofit-governance-united-states/view/full_report (last accessed Sept. 10, 2019). By contrast, only five years thereafter, the Nonprofit Governance Index 2012, compiled by BoardSource, found that 96% of nonprofit organizations surveyed had adopted a written conflict-of-interest policy. BoardSource, *Nonprofit Governance Index 2012*, at 15 (Sept. 2012), available at https://www.leadingagemn.org/assets/docs/NonProfit_Governance_Index_Report_2012.pdf (last accessed Sept. 10, 2019). In a more recent survey, out of 1,378 responding organizations, 94% had adopted a written conflict-of-interest policy. See Leading with Intent, *2017 National Index of Nonprofit Board Practices* 6, 52 (2017), available at <https://leadingwithintent.org/wp-content/uploads/2017/09/LWI2017.pdf> (last accessed Sept. 10, 2019).

¹² Panel on the Nonprofit Sector, *Strengthening Transparency Governance Accountability of Charitable Organizations: A Final Report to Congress and the Nonprofit Sector* 8 (2005), available at <http://www.kiplinger.com/members/taxlinks/071505/Nonprofit-Sector->

people representing diverse organizations from every part of the country,” instructs nonprofits to:

[a]dopt and enforce a conflict of interest policy consistent with the laws of its state and tailored to its specific organizational needs and characteristics. This policy should define conflict of interest, identify the classes of individuals within the organization covered by the policy, facilitate disclosure of information that may help identify conflicts of interest, and specify procedures to be followed in managing conflicts of interest.¹³

Independent Sector has since issued two additional reports, in 2007 and 2015, explicating its principles for good governance for nonprofit organizations.¹⁴ Both reports counsel nonprofits to adopt and implement “policies and procedures to ensure that *all* conflicts of interest (real and potential), or the appearance thereof, within the organization and the governing board are appropriately managed through disclosure, recusal, or other means.”¹⁵ The reports specifically contemplate a “*written* conflict-of-interest policy,” with periodic monitoring for compliance, to avoid or manage any financial or non-financial “conflict[] of interest that could affect the decisions of board members, staff leaders, and other employees.”¹⁶

report.pdf (last accessed Sept. 10, 2019).

¹³ *Id.* at 8, 81.

¹⁴ Independent Sector, *Principles for Good Governance and Ethical Practice* 5-6 (2015), available at <https://www.independentsector.org/wp-content/uploads/2016/11/Principles2015-Web-1.pdf> (last accessed Sept. 10, 2019).

¹⁵ *Id.* at 12 (emphasis added).

¹⁶ *Id.* (emphasis added).

In many jurisdictions, such best practices for written conflict-of-interest policies are reflected in legislation and administrative guidance applicable to nonprofit organizations. For example, New York requires nonprofit organizations to adopt a conflict-of-interest policy that defines the circumstances constituting a conflict of interest, provides procedures for disclosing such a conflict, and describes the actions that should be taken after a conflict has been identified.¹⁷ New York law recognizes that “to ensure that [the nonprofit organization’s] directors, officers, and key employees act in [such organization’s] best interest,” a conflict-of-interest policy may be required to cover “types of conflicts that may exist *even though there is no financial interest at stake*.”¹⁸

The Federal government, and in particular the U.S. Internal Revenue Service (“IRS”), also recognizes the importance for nonprofit organizations of implementing written conflict-of-interest policies to manage all actual and potential conflicts, including non-financial conflicts. In addition to routinely gathering information about the written policies of nonprofit organizations through

¹⁷ See Nonprofit Revitalization Act of 2013, N.Y. Not-for-Profit Corp. Law § 715-a(a)-(b).

¹⁸ Conflicts of Interest Policies Under the Nonprofit Revitalization Act of 2013, Guidance Document 2015-4, at 2-3 (Apr. 2015) (emphasis added).

the applicable annual information return¹⁹ and audit procedures,²⁰ the IRS emphasizes that board members of a nonprofit organization should:

adopt and regularly evaluate a written conflict of interest policy that requires directors and staff to act solely in the interests of the charity *without regard for personal interests*; include[] written procedures for determining whether *a relationship*, financial interest, or business affiliation results in a conflict of interest; and prescribe[] a course of action in the event a conflict of interest is identified.²¹

The CPD's only existing formal policy is explicitly limited to "financial conflicts of interest that could arise as a result of outside employment" and does not prevent the appearance of conflicts-of-interest by the CPD board members.²² Prohibiting financial conflicts may remove *only* one possible source of *actual* conflicts of interest; it does *nothing* to address non-financial conflicts or the appearance of conflicts. Moreover, although the informal conflict-of-interest

¹⁹ In 2007, the IRS redesigned the annual information return for tax-exempt organizations (IRS Form 990) to enumerate several types of written policies and procedures that such organizations are expected to adopt, including a written conflict-of-interest policy and regular monitoring of such policy. *See* IRS Form 990 (2018), Part VI, Section B, Questions 12a-c.

²⁰ For each audit of a tax-exempt organization, the IRS has directed its agents to gather information about the governance practices of such organization so that the IRS can determine whether the organization has a written conflict-of-interest policy and, if so, whether such policy addresses recusals and requires annual written disclosures of any conflicts. *See* IRS Form 14114 (2009), Part 5, Questions 18a-c.

²¹ IRS, *Governance and Related Topics - 501(c)(3) Organizations* (Feb. 4, 2008), at § 4(B) (emphasis added), *available at* https://www.irs.gov/pub/irs-tege/governance_practices.pdf (last accessed Sept. 10, 2019).

²² A-1358; *see* Conflict of Interest Policy, Comm'n on Presidential Debates, ¶¶ 4-5.

policy purports to “reflect[] the CPD’s view that a debate staging organization better serves the public when it . . . adopts and adheres to balanced policies designed to prevent even the potential for an erroneous appearance of partisanship” based on political activities undertaken by CPD-affiliated persons (including Board members) in a personal capacity,²³ the policy is silent as to any specific mechanism for disclosure and management of situations that give rise to a realized or potential conflict.

It is unrealistic to expect that the CPD can “operate[] completely independently of any party or political campaign,”²⁴ while governed by an unwritten and unmonitored conflict-of-interest policy with no formal procedure for disclosing actual or potential non-financial conflicts. Beyond the CPD’s self-serving claim that the unwritten policy prohibits the CPD board members from “serving in any official capacity with a political campaign,”²⁵ there is no indication as to whether the CPD has procedures to follow for enforcing the informal policy, whether the informal policy includes any reporting or monitoring requirements, or if there are consequences for violating the informal policy. Indeed, there is no suggestion that CPD enforces the informal policy at all. The failure of the CPD’s

²³ A-1357-58.

²⁴ A-1297.

²⁵ *Id.*

informal policy to conform to basic principles of nonprofit governance all but guarantees the prevalence of partisan conduct within the organization.

II. CPD's Informal Conflict-Of-Interest Policy Is Incapable Of Preventing The Appearance Of Partisanship.

It is similarly uncontroversial both within and outside the nonprofit community, that organizations charged with the public trust, such as the CPD, must prevent not only actual conflicts of interest, but also the *appearance* of such conflicts. In addition to instructing organizations to adopt written policies, Independent Sector counsels that “[a] charitable organization should adopt and implement policies and procedures to ensure that all conflicts of interest (real and potential), *or the appearance thereof*, within the organization and the governing board are appropriately managed through disclosure, recusal, or other means.”²⁶ The CPD itself recognizes that avoiding the appearance of conflicts must be part of its mandate.²⁷ But the CPD’s conflict-of-interest policy, such as it is, falls short of eliminating the appearance of conflicts.

As described by the CPD Executive Director, the CPD’s informal policy prohibits board members only from serving in an “official” capacity on a political campaign or with a political party, without any clarification as to the meaning of

²⁶ Independent Sector, *Principles for Good Governance*, *supra*, at 12 (emphasis added).

²⁷ See A-1298 (recognizing “the potential for *an erroneous appearance of partisanship* based on political activities undertaken by CPD-affiliated persons (including Board members) in a personal capacity” (emphasis added)).

“official.”²⁸ The CPD’s policy already lacks any enforcement mechanism, given that it is both unwritten and informal; and the CPD extinguishes what remains of the policy’s viability by expressly recognizing a loophole permitting board members, who make decisions about the selection of presidential and vice-presidential debate participants, to be actively involved in partisan political activities on behalf of those very same debate participants or their parties.

The CPD compounds the problem by also recognizing a distinction between partisan political activities undertaken by the board members in their “personal capacit[ies],” as opposed to their “official capacit[ies].”²⁹ For purposes of complying with a meaningful conflict-of-interest policy that should be drafted to help ensure that the CPD is engaging in its activities in a nonpartisan manner, as required pursuant to its tax-exempt status and by its specific mission of hosting the presidential and vice-presidential debates, this distinction between board members’ individual and official partisan activities is entirely unrealistic.

Even if a clear line could be drawn between individual and official partisan activities, the CPD ignores that even individual partisan conduct by CPD board members can taint the organization itself, specifically in light of the mission of the CPD. At a minimum, such conduct would create the *appearance* of a conflict of

²⁸ A-1297.

²⁹ A-1297-98.

interest; the public reasonably would interpret any overtly partisan statement by a board member as an expression of the views of the organization itself. Carried to its logical conclusion, the CPD would permit openly partisan conduct, so long as it is done in board members' ill-defined "personal capacit[ies]."

The alleged written "policy" is no more effective than the unwritten "informal policy" at avoiding the appearance of conflict. As noted above, the CPD failed to disclose this policy, making it impossible to confirm that it would actually avoid the appearance of conflict. The CPD's own description evinces that it would not because it only "intends to deter" partisan activities, instead of prohibiting them. Thus, the CPD's leadership may continue to, and apparently does, actively support and oppose partisan causes, notwithstanding any supposed "deterrence" from the alleged written policy.

CONCLUSION

Having a conflict-of-interest policy that is merely informal and unwritten is tantamount to having no policy at all. It is readily apparent that the CPD's current provision of informal and incomplete conflict-of-interest policies fails to meet the basic standard of governance adopted by the nonprofit community at large. CPD board members have engaged in the endorsement of (and opposition to) political campaigns and other partisan conduct, while at the same time bearing responsibility for ensuring that the CPD conducts its activities in a nonpartisan way

in accordance with its tax-exempt purposes. For an organization like the CPD that is charged with safeguarding the integrity of the nation's presidential and vice-presidential debates, more should and must be demanded by the FEC.

Accordingly, the *amici* respectfully request that this Court reverse the order of the United States District Court for the District of Columbia.

Dated: September 25, 2019

Respectfully submitted,

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No. 19-5117-cv

**In The
UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA CIRCUIT**

LEVEL THE PLAYING FIELD, ET AL.,

Plaintiffs-Appellants,

v.

FEDERAL ELECTION COMMISSION,

Defendant-Appellee.

**ON APPEAL FROM JUDGMENT OF THE
U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA
(HON. TANYA S. CHUTKAN PRESIDING)**

**BRIEF OF AMICI CURIAE NONPROFIT LEADERS,
SCHOLARS AND PRACTITIONERS IN SUPPORT OF
PLAINTIFFS-APPELLANTS' MOTION FOR SUMMARY
JUDGMENT**

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STATEMENT OF INTEREST

The eight (8) individual *amici* jointly submitting this brief in support of the Brief of Appellants represent a broad array of prominent leaders, scholars, and practitioners with considerable experience in the nonprofit sector.¹ All *amici* are dedicated to ensuring public trust in the nonprofit organizations with which they are affiliated, or to the study or practice of nonprofit law, and they therefore have a direct stake in the implications of this litigation for public trust in the nonprofit community at large. Their backgrounds are set forth briefly below:²

- Norman R. Augustine is a recently retired member of the Bipartisan Policy Center's Board of Directors. He served as chairman and principal officer of the American Red Cross for nine years, and as chairman of the National Academy of Engineering, the Aerospace Industries Association, and the Defense Science Board. Mr. Augustine is a former president of the American Institute of Aeronautics and Astronautics and the Boy Scouts of America.
- Admiral Dennis C. Blair is the Knott Distinguished Visiting Professor at the University of North Carolina, Chapel Hill. He is the former United States

¹ *Amici* state that no party's counsel authored this brief in whole or in part, and that no party or person other than *amici* contributed money toward the preparation or filing of this brief.

² *Amici* include for the Court's reference their current and former professional and personal affiliations, but each *amicus* submits this brief in his or her personal capacity only.

Director of National Intelligence and a retired United States Navy admiral. He currently serves as the Chairman of the Board and Distinguished Senior Fellow of Sasakawa Peace Foundation USA. He also serves as a member of the Energy Security Leadership Council and is on the boards of Freedom House, the National Bureau of Asian Research, the National Committee on U.S.-China Relations, and the Atlantic Council.

- Mary McInnis Boies serves as counsel to Boies Schiller Flexner LLP. She is a member of the Board of Directors of the Council on Foreign Relations and chairs its Committee on Nominations and Governance. She is a former Second Circuit representative to the American Bar Association's Standing Committee of Federal Judiciary.
- W. Bowman Cutter is a Senior Fellow and Director of the Next American Economy Project at the Roosevelt Institute. He is the immediate past chairman of CARE, a global development organization, and has served as a board member for 18 years. Mr. Cutter is also the chairman of MicroVest; the chairman of the Tunisian American Enterprise Fund; a board member of SeaChange; a member of the Governing Council of the IFMR Trust in India; a member of the executive committee and immediate past co-chairman of the Committee for Economic Development; a board member and immediate past chair of Resources for the Future; and a board member of the Russell Sage

Foundation.

- Dr. James J. Fishman is a professor of law *Emeritus* at the Elisabeth Haub School of Law at Pace University and has authored numerous books and articles on nonprofit tax law and regulation. He is a co-author of *New York Nonprofit Law and Practice: With Tax Analysis* and a leading law school casebook, *Nonprofit Organizations: Cases and Materials*, now in its fifth edition. He previously served as the executive director of the Council of New York Law Associates (now The Lawyers Alliance for New York) and Volunteer Lawyers for the Arts.
- Carla A. Hills is the chairman and CEO of Hills & Company, International Consultants, which advises companies on global trade and investment issues. Ms. Hill serves as co-chair *Emeritus* of the Council on Foreign Relations and of the Inter-American Dialogue; chair of the Advisory Board of the Center for Strategic & International Studies, chair of the National Committee on U.S.-China Relations, member of the executive committees of the Trilateral Commission, of the Gerald R. Ford Presidential Foundation, and a member of Yale's President's Council on International Activities. She also serves as honorary board member of the Peterson Institute for International Economics.
- Dr. Vali R. Nasr is the Dean of the Johns Hopkins University Paul H. Nitze School of Advanced International Studies and a Nonresident Senior Fellow at

the Brookings Institution. He is a life member of the Council on Foreign Relations. Dr. Nasr was previously a Senior Advisor to the U.S. Special Representative for Afghanistan and Pakistan and a member of the U.S. Department of State's Foreign Affairs Policy Board.

- Nancy E. Roman is the President and CEO of Partnership for a Healthier America ("PHA"). Prior to joining PHA, she was the President and CEO of the Capital Area Food Bank, an \$80 million NGO addressing hunger and its companion problems of obesity and diet-related disease. She has served on the leadership team of the United Nation's World Food Programme and as Vice President of the Council on Foreign Relations. Ms. Roman currently serves on the board of Global Communities, a \$125 million NGO working on global development issues in 25 countries, and on the board of the Millennial Action Project, an NGO that seeks to engage and work with millennials serving in government nationwide.

For decades, the individual *amici* have studied, developed, implemented and promoted specific standards of governance and accountability within the nonprofit community, including with respect to identification and management of apparent and actual conflicts of interests, to strengthen public confidence in nonprofit organizations. *Amici* believe that an understanding of these standards in the

context of the prevailing policies and practices of the Commission on Presidential Debates (“CPD”) will assist the Court’s resolution of this case.

INTRODUCTION AND SUMMARY OF ARGUMENT

Appellants have demonstrated throughout the course of this litigation that the CPD is not, as it claims to be, nonpartisan.³ Indeed, the CPD leaders and many of its board members have been extensively involved in highly partisan activities for both the Republican and Democratic parties, including participating in events for presidential and vice-presidential candidates from both such parties. The Executive Director of the CPD claims that an “informal” conflict-of-interest policy, allegedly supplemented by a terse “Political Activities Policy” that has not even been produced by the CPD and, at most, merely “intend[s] to *deter*,” rather than *prohibit*, partisan activities, prevents the CPD board members from serving in an “official” capacity in a political campaign.⁴ This “policy,” even if supplemented with some portion in writing (which remains in doubt), remains wholly inadequate to prevent actual conflicts of interest, much less the appearance thereof. The *amici* would still consider the CPD to be, improperly, operating under an informal, unwritten conflict-of-interest policy.

³ See generally Dkt. No. 1807168, Brief for Plaintiffs-Appellants Level the Playing Field, Peter Ackerman, Green Party of the United States, and Libertarian National Committee Inc. (“App. Br.”).

⁴ A-1357-58 (emphasis added).

The Federal Election Commission (“FEC”) acted contrary to law when it credited the CPD’s reliance upon these policies. As the district court observed, the FEC has “ignored” a “mountain of submitted evidence” that is probative of the CPD board members’ partisan conduct.⁵ Such conduct likely stems from the absence of proper governance at the CPD. Because the CPD refuses to follow established best practices for conflict-of interest policies in the nonprofit sector, it was arbitrary and capricious for the FEC to conclude that the CPD’s purported policies sufficiently address actual or potential conflicts arising from partisanship at the CPD.⁶ Indeed, by eschewing *formal* conflict-of-interest policies that are explicit, in writing, accessible, and, importantly, appropriately monitored for compliance, the CPD has contravened an essential tenet of responsible governance for a nonprofit organization, thereby condoning and even encouraging the partisan activities of its board members without safeguarding its nonpartisan tax-exempt purposes. Even ignoring the notion that the integrity of the nation’s presidential and vice-presidential debates rests on informal and unenforceable conflict-of-interest policies, such policies by their own terms would permit CPD board

⁵ *Level the Playing Field v. Fed. Election Comm’n*, 232 F. Supp. 3d 130, 142-43 (D.D.C. 2017).

⁶ Many of the undersigned *amici* have had working relationships with and greatly respect the Commissioners of the FEC and the Directors of the CPD, and this brief is not intended to criticize their personal integrity. Rather, *amici* question the rules and regulations under which the FEC and CPD operate, which require and/or allow the FEC Commissioners and CPD Board of Directors to have partisan affiliations.

members to consult “unofficially” with political campaigns, contribute to fundraising efforts, and even endorse candidates.

The inadequacy of the CPD’s conflict-of-interest policy invites the CPD board members to endorse, support, or oppose political candidates and indulge in other overtly partisan conduct, and renders the FEC’s post-remand decisions holding otherwise arbitrary and capricious.⁷

ARGUMENT

The CPD offers no evidence of having a *formal, written conflict-of-interest policy* that is enforceable and monitored for compliance to govern its board members’ partisan political activities.⁸ One of the two alleged policies, according to the very description provided by the CPD, is “informal” and unwritten. Though the CPD claims to have another policy that is written, that policy was never produced and thus cannot be meaningfully evaluated.⁹ Moreover, the CPD admits that this policy does not even prohibit partisan conduct, and at most is “intended to deter” certain types of conduct. Because nothing is prohibited by this alleged policy, and no aspect of the policy is or could be enforced, the alleged written policy is, in reality, no policy at all. Consequently, even when these two

⁷ See, e.g., App. Br. at 35-38.

⁸ See A-1267 n.2.

⁹ A-1297-98.

components are considered together, the CPD's conflict-of-interest policy is entirely informal, unenforceable, and unmonitored, which renders it meaningless. The policy rests on formalistic and unrealistic distinctions between "official" and "personal" participation in political campaigns,¹⁰ and it tries to create a distinction that does not and cannot exist, at an organization whose purpose is to host the presidential debates in a nonpartisan way, regarding partisan activities undertaken in an individual capacity as opposed to an organizational capacity.

I. CPD's Informal Conflict-Of-Interest Policy Willfully Ignores Partisan Conduct By Falling Woefully Short Of Basic Standards Of Governance Applicable To Nonprofit Organizations.

The CPD's failure to establish a formal, written conflict-of-interest policy to safeguard its impartiality contravenes the basic standards and practices of good governance that are fundamental in the nonprofit community. Such failure directly inhibits the CPD's ability to ensure that its board members perform their duties in a nonpartisan manner and, pursuant to their fiduciary duties as board members, in the best interest of the CPD in furthering its mission.

That a nonprofit organization must have written and enforceable conflict-of-interest policies is hardly controversial.¹¹ In a comprehensive report issued by the

¹⁰ A-1356-58.

¹¹ The nonprofit community has been heavily influenced by the rigorous conflict-of-interest guidelines that govern publicly traded corporations and large accounting firms. The enactment of the Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204, 116 Stat. 745 ("SOX"), brought about renewed scrutiny of the governance of nonprofit organizations. See BoardSource, *The Sarbanes-Oxley Act and Implications for Nonprofit Organizations* 2, 10 (Jan. 2006), available

Panel on the Nonprofit Sector—which consisted of several leaders of the nonprofit community convened by the nonprofit coalition Independent Sector, at the encouragement of the leaders of the Finance Committee of the United States Senate—the nonprofit community emphasized that “charitable organizations should adopt and enforce a conflict-of-interest policy consistent with its state laws and organizational needs.”¹² The report, which reflected the input of “thousands of

at

<https://www.centerfornonprofitexcellence.org/sites/default/files/SarbanesOxley.BoardSource.pdf> (last accessed Sept. 10, 2019). Specifically, SOX introduced a provision pertaining to the adoption and disclosure of a formal “code of ethics” for certain officers of a reportable company “to promote . . . the ethical handling of actual or apparent conflicts of interest between personal and professional relationships.” 15 U.S.C. § 7264. Although not formally extended to nonprofit organizations, the corporate governance standards under SOX have permanently altered expectations of governance practices for nonprofit organizations. Accordingly, adoption of written conflict-of-interest policies has increased significantly in the nonprofit community during the past decade. In 2007, the Urban Institute reported that only half of the respondents in its national survey of nonprofit organizations had a written conflict-of-interest policy. See The Urban Institute, *Nonprofit Governance in the United States: Findings on Performance and Accountability from the First National Representative Study* 9 (2007), available at https://www.urban.org/research/publication/nonprofit-governance-united-states/view/full_report (last accessed Sept. 10, 2019). By contrast, only five years thereafter, the Nonprofit Governance Index 2012, compiled by BoardSource, found that 96% of nonprofit organizations surveyed had adopted a written conflict-of-interest policy. BoardSource, *Nonprofit Governance Index 2012*, at 15 (Sept. 2012), available at https://www.leadingagemn.org/assets/docs/NonProfit_Governance_Index_Report_2012.pdf (last accessed Sept. 10, 2019). In a more recent survey, out of 1,378 responding organizations, 94% had adopted a written conflict-of-interest policy. See Leading with Intent, *2017 National Index of Nonprofit Board Practices* 6, 52 (2017), available at <https://leadingwithintent.org/wp-content/uploads/2017/09/LWI2017.pdf> (last accessed Sept. 10, 2019).

¹² Panel on the Nonprofit Sector, *Strengthening Transparency Governance Accountability of Charitable Organizations: A Final Report to Congress and the Nonprofit Sector* 8 (2005), available at <http://www.kiplinger.com/members/taxlinks/071505/Nonprofit-Sector->

people representing diverse organizations from every part of the country,” instructs nonprofits to:

[a]dopt and enforce a conflict of interest policy consistent with the laws of its state and tailored to its specific organizational needs and characteristics. This policy should define conflict of interest, identify the classes of individuals within the organization covered by the policy, facilitate disclosure of information that may help identify conflicts of interest, and specify procedures to be followed in managing conflicts of interest.¹³

Independent Sector has since issued two additional reports, in 2007 and 2015, explicating its principles for good governance for nonprofit organizations.¹⁴ Both reports counsel nonprofits to adopt and implement “policies and procedures to ensure that *all* conflicts of interest (real and potential), or the appearance thereof, within the organization and the governing board are appropriately managed through disclosure, recusal, or other means.”¹⁵ The reports specifically contemplate a “*written* conflict-of-interest policy,” with periodic monitoring for compliance, to avoid or manage any financial or non-financial “conflict[] of interest that could affect the decisions of board members, staff leaders, and other employees.”¹⁶

report.pdf (last accessed Sept. 10, 2019).

¹³ *Id.* at 8, 81.

¹⁴ Independent Sector, *Principles for Good Governance and Ethical Practice* 5-6 (2015), available at <https://www.independentsector.org/wp-content/uploads/2016/11/Principles2015-Web-1.pdf> (last accessed Sept. 10, 2019).

¹⁵ *Id.* at 12 (emphasis added).

¹⁶ *Id.* (emphasis added).

In many jurisdictions, such best practices for written conflict-of-interest policies are reflected in legislation and administrative guidance applicable to nonprofit organizations. For example, New York requires nonprofit organizations to adopt a conflict-of-interest policy that defines the circumstances constituting a conflict of interest, provides procedures for disclosing such a conflict, and describes the actions that should be taken after a conflict has been identified.¹⁷ New York law recognizes that “to ensure that [the nonprofit organization’s] directors, officers, and key employees act in [such organization’s] best interest,” a conflict-of-interest policy may be required to cover “types of conflicts that may exist *even though there is no financial interest at stake*.”¹⁸

The Federal government, and in particular the U.S. Internal Revenue Service (“IRS”), also recognizes the importance for nonprofit organizations of implementing written conflict-of-interest policies to manage all actual and potential conflicts, including non-financial conflicts. In addition to routinely gathering information about the written policies of nonprofit organizations through

¹⁷ See Nonprofit Revitalization Act of 2013, N.Y. Not-for-Profit Corp. Law § 715-a(a)-(b).

¹⁸ Conflicts of Interest Policies Under the Nonprofit Revitalization Act of 2013, Guidance Document 2015-4, at 2-3 (Apr. 2015) (emphasis added).

the applicable annual information return¹⁹ and audit procedures,²⁰ the IRS emphasizes that board members of a nonprofit organization should:

adopt and regularly evaluate a written conflict of interest policy that requires directors and staff to act solely in the interests of the charity *without regard for personal interests*; include[] written procedures for determining whether *a relationship*, financial interest, or business affiliation results in a conflict of interest; and prescribe[] a course of action in the event a conflict of interest is identified.²¹

The CPD's only existing formal policy is explicitly limited to "financial conflicts of interest that could arise as a result of outside employment" and does not prevent the appearance of conflicts-of-interest by the CPD board members.²² Prohibiting financial conflicts may remove *only* one possible source of *actual* conflicts of interest; it does *nothing* to address non-financial conflicts or the appearance of conflicts. Moreover, although the informal conflict-of-interest

¹⁹ In 2007, the IRS redesigned the annual information return for tax-exempt organizations (IRS Form 990) to enumerate several types of written policies and procedures that such organizations are expected to adopt, including a written conflict-of-interest policy and regular monitoring of such policy. *See* IRS Form 990 (2018), Part VI, Section B, Questions 12a-c.

²⁰ For each audit of a tax-exempt organization, the IRS has directed its agents to gather information about the governance practices of such organization so that the IRS can determine whether the organization has a written conflict-of-interest policy and, if so, whether such policy addresses recusals and requires annual written disclosures of any conflicts. *See* IRS Form 14114 (2009), Part 5, Questions 18a-c.

²¹ IRS, *Governance and Related Topics - 501(c)(3) Organizations* (Feb. 4, 2008), at § 4(B) (emphasis added), available at https://www.irs.gov/pub/irs-tege/governance_practices.pdf (last accessed Sept. 10, 2019).

²² A-1358; *see* Conflict of Interest Policy, Comm'n on Presidential Debates, ¶¶ 4-5.

policy purports to “reflect[] the CPD’s view that a debate staging organization better serves the public when it . . . adopts and adheres to balanced policies designed to prevent even the potential for an erroneous appearance of partisanship” based on political activities undertaken by CPD-affiliated persons (including Board members) in a personal capacity,²³ the policy is silent as to any specific mechanism for disclosure and management of situations that give rise to a realized or potential conflict.

It is unrealistic to expect that the CPD can “operate[] completely independently of any party or political campaign,”²⁴ while governed by an unwritten and unmonitored conflict-of-interest policy with no formal procedure for disclosing actual or potential non-financial conflicts. Beyond the CPD’s self-serving claim that the unwritten policy prohibits the CPD board members from “serving in any official capacity with a political campaign,”²⁵ there is no indication as to whether the CPD has procedures to follow for enforcing the informal policy, whether the informal policy includes any reporting or monitoring requirements, or if there are consequences for violating the informal policy. Indeed, there is no suggestion that CPD enforces the informal policy at all. The failure of the CPD’s

²³ A-1357-58.

²⁴ A-1297.

²⁵ *Id.*

informal policy to conform to basic principles of nonprofit governance all but guarantees the prevalence of partisan conduct within the organization.

II. CPD's Informal Conflict-Of-Interest Policy Is Incapable Of Preventing The Appearance Of Partisanship.

It is similarly uncontroversial both within and outside the nonprofit community, that organizations charged with the public trust, such as the CPD, must prevent not only actual conflicts of interest, but also the *appearance* of such conflicts. In addition to instructing organizations to adopt written policies, Independent Sector counsels that “[a] charitable organization should adopt and implement policies and procedures to ensure that all conflicts of interest (real and potential), *or the appearance thereof*, within the organization and the governing board are appropriately managed through disclosure, recusal, or other means.”²⁶ The CPD itself recognizes that avoiding the appearance of conflicts must be part of its mandate.²⁷ But the CPD’s conflict-of-interest policy, such as it is, falls short of eliminating the appearance of conflicts.

As described by the CPD Executive Director, the CPD’s informal policy prohibits board members only from serving in an “official” capacity on a political campaign or with a political party, without any clarification as to the meaning of

²⁶ Independent Sector, *Principles for Good Governance*, *supra*, at 12 (emphasis added).

²⁷ See A-1298 (recognizing “the potential for an *erroneous appearance of partisanship* based on political activities undertaken by CPD-affiliated persons (including Board members) in a personal capacity” (emphasis added)).

“official.”²⁸ The CPD’s policy already lacks any enforcement mechanism, given that it is both unwritten and informal; and the CPD extinguishes what remains of the policy’s viability by expressly recognizing a loophole permitting board members, who make decisions about the selection of presidential and vice-presidential debate participants, to be actively involved in partisan political activities on behalf of those very same debate participants or their parties.

The CPD compounds the problem by also recognizing a distinction between partisan political activities undertaken by the board members in their “personal capacit[ies],” as opposed to their “official capacit[ies].”²⁹ For purposes of complying with a meaningful conflict-of-interest policy that should be drafted to help ensure that the CPD is engaging in its activities in a nonpartisan manner, as required pursuant to its tax-exempt status and by its specific mission of hosting the presidential and vice-presidential debates, this distinction between board members’ individual and official partisan activities is entirely unrealistic.

Even if a clear line could be drawn between individual and official partisan activities, the CPD ignores that even individual partisan conduct by CPD board members can taint the organization itself, specifically in light of the mission of the CPD. At a minimum, such conduct would create the *appearance* of a conflict of

²⁸ A-1297.

²⁹ A-1297-98.

interest; the public reasonably would interpret any overtly partisan statement by a board member as an expression of the views of the organization itself. Carried to its logical conclusion, the CPD would permit openly partisan conduct, so long as it is done in board members' ill-defined "personal capacit[ies]."

The alleged written "policy" is no more effective than the unwritten "informal policy" at avoiding the appearance of conflict. As noted above, the CPD failed to disclose this policy, making it impossible to confirm that it would actually avoid the appearance of conflict. The CPD's own description evinces that it would not because it only "intends to deter" partisan activities, instead of prohibiting them. Thus, the CPD's leadership may continue to, and apparently does, actively support and oppose partisan causes, notwithstanding any supposed "deterrence" from the alleged written policy.

CONCLUSION

Having a conflict-of-interest policy that is merely informal and unwritten is tantamount to having no policy at all. It is readily apparent that the CPD's current provision of informal and incomplete conflict-of-interest policies fails to meet the basic standard of governance adopted by the nonprofit community at large. CPD board members have engaged in the endorsement of (and opposition to) political campaigns and other partisan conduct, while at the same time bearing responsibility for ensuring that the CPD conducts its activities in a nonpartisan way

in accordance with its tax-exempt purposes. For an organization like the CPD that is charged with safeguarding the integrity of the nation's presidential and vice-presidential debates, more should and must be demanded by the FEC.

Accordingly, the *amici* respectfully request that this Court reverse the order of the United States District Court for the District of Columbia.

Dated: September 25, 2019

Respectfully submitted,

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Dated: September 25, 2019

Respectfully submitted,

By: /s/David B. Bergman

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ORAL ARGUMENT NOT YET SCHEDULED

No. 19-5117-cv

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA**

LEVEL THE PLAYING FIELD, et al.,

Plaintiffs-Appellants,

vs.

FEDERAL ELECTION COMMISSION,

Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**AMICUS CURIAE BRIEF OF FAIRVOTE AND THE COALITION FOR
FREE AND OPEN ELECTIONS IN SUPPORT OF PLAINTIFFS-
APPELLANTS AND IN SUPPORT OF REVERSAL**

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AMICUS CURIAE BRIEF OF FAIRVOTE AND THE COALITION FOR FREE AND OPEN ELECTIONS IN SUPPORT OF PLAINTIFFS-
APPELLANTS AND IN SUPPORT OF REVERSAL

CORPORATE DISCLOSURE STATEMENT

Amicus Curiae is a non-profit organization. It has no parent corporation and does not issue stock.

**CERTIFICATE AS TO PARTIES, RULINGS UNDER REVIEW, AND
RELATED CASES**

A. Parties and Amici

Pursuant to Circuit Rule 28(a)(1)(A), Amicus Curiae certify that the parties and amici curiae in the case are as follows: Plaintiffs-Appellants Level the Playing Field, Dr. Peter Ackerman, Green Party of the United States, Libertarian National Committee, Inc.; Defendant-Appellee is the Federal Elections Commission; and Amici FairVote, Coalition for Free and Open Elections, Independent Voter Project, Norman R. Augustine, Dennis C. Blair, Scott Blackmun, Mary McInnis Boise, W. Bowman Cutter, James J. Fishman, Carla A. Hills, Daniel L. Kurtz, Vali R. Nasr, Nancy E. Roman, James Stavridis, Joseph Robert Kerry, Joseph I. Lieberman, Hon. Clarine N. Riddle, Hon. David M. Walker, Hon. Christine Todd Whitman, and the Commission on Presidential Debates.

B. Rulings Under Review

The rulings under review, each entered by Hon. Tanya S. Chutkan, are (1) the Order, dated March 31, 2019 (Docket No. 111), denying Appellants' motion for summary judgment, denying Appellants' motion to supplement the record, granting the FEC's motion for summary judgment, and granting in part and denying in part the FEC's motion to strike; and (2) the Memorandum Opinion,

dated March 31, 2019 (Docket No. 110) addressing these motions, which appears at 381 F. Supp. 3d 78.

C. No Related Cases

This case has not previously been before this Court or any other court except for the district court. Counsel for Amicus is not aware of any related cases within the meaning of Circuit Rule 28(a)(1)(C).

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GLOSSARY OF ABBREVIATIONS

CPD	Commission on Presidential Debates
FEC	Federal Elections Commission
COFOE	Coalition for Free and Open Elections

STATEMENT OF IDENTITY, INTEREST IN CASE, AND SOURCE OF AUTHORITY TO FILE

FairVote is a 501(c)(3) non-profit organization incorporated in the District of Columbia, whose mission is to advocate for fairer representation in government through changes to the election process. FairVote's goal is to promote the voices and views of every voter, grounded in evidence that the use of a more fair election process will help create a government that is more representative and effective. FairVote encourages public officials, judges, and the public to explore fairer and more inclusive election methods, including through litigation when appropriate.

FairVote has previously filed *amicus curiae* briefs in a variety of cases, including cases regarding voter choice in general elections, the role of primary elections, and in cases brought under the Voting Rights Act. *See* Brief for FairVote as Amicus Curiae in support of Appellees, *Higginson v. Becerra*, No. 19-55275 (9th Cir. 2019); Brief for FairVote and One Nation One Vote as Amici Curiae in Support of Appellees, *Gill v. Whitford*, No. 16-1161 (U.S. 2017); Brief for FairVote and the Center for Competitive Democracy as Amici Curiae in Support of Neither Party, *Rubin v. Padilla*, No. 15-135 (U.S. 2015); Brief for FairVote and the Center for Competitive Democracy as Amici Curiae in Support of Neither Party, *Balsam v. Guadagno*, No. 15-39 (U.S. 2015). FairVote previously participated as *amicus curiae* in this case, at an earlier stage in litigation. Brief for FairVote as

AMICUS CURIAE BRIEF OF FAIRVOTE AND THE COALITION FOR FREE AND OPEN ELECTIONS IN SUPPORT OF PLAINTIFFS-APPELLANTS AND IN SUPPORT OF REVERSAL

Amicus Curiae, Level the Playing Field v. FEC, No. 1:15-cv-01397 (TSC), available at <https://fairvote.app.box.com/file/61453602489>.

Amicus has published articles and comments advocating for and critically analyzing reforms to debate qualification rules. *See, e.g.*, Robert Richie, Re: Petition for Rulemaking from Level the Playing Field to Revise and Amend 11 C.F.R. § 110.13(c) (Dec. 15, 2014), available at <http://www.shapiroarato.com/wp-content/uploads/2014/12/FairVote-Comment-12.15.14.pdf>. Because of its familiarity with the benefits and drawbacks of debate rules, independent and third party participation in debates, and debate rule reforms, FairVote is particularly well-suited to expound on this issue.

The Coalition for Free and Open Elections (COFOE) is a nonprofit advocacy organization dedicated to the idea that full and fair access to the electoral process is central to democracy. COFOE is a group of independents and representatives from alternative parties. Since the 1980s, the group has supported efforts to remove barriers that prevent non-major-party candidates and would-be voters from fully participating in the political process.

The third-party candidates and voters that make up COFOE's constituency have an interest in the questions presented, because participation in presidential

debates is an essential way that third-party and independent candidates participate in elections.

Amici received consent from Plaintiffs-Appellants to file on August 31, 2019 and from Defendant-Appellee on September 19, 2019. Amici certify that (1) no counsel for a party authored this brief in whole or in part, and that (2) no person other than the amici curiae, their members (if applicable), or their counsel contributed money that was intended to fund the preparation or submission of this brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

FairVote agrees with the arguments made by Plaintiffs-Appellants, and files separately to expand on the important factual background that goes to the heart of the legal questions they present.

The Federal Elections Commission (“FEC”) acted arbitrarily, capriciously and contrary to law by approving of the Commission on Presidential Debates’ (“CPD”) exclusive reliance on polling as a means of assessing public support. Polling as a method of assessing public support is increasingly unreliable. Traditional polling methods relied on calling landline telephones for a sample of likely voters, and then extrapolating from that to estimate public support. These methods have become dated in a number of ways, leading to polls becoming more likely to fail, sometimes spectacularly, in correctly predicting election outcomes. This makes their use as the sole substantive exclusionary criterion for inclusion in debates for the nation’s highest executive office unacceptable, especially when compounded with the high polling threshold required for inclusion.

Further, the exclusive use of five selected polls with a minimum 15% threshold for inclusion is abnormally harsh. Both in the states and in other nations, debate inclusion rules vary, but are generally far less exclusive than those used by the CPD. Debates may be conducted by non-profit organizations operating in the

public interest, by the media directly, or by a public agency, and they may follow one set of rules or vary their rules as the election season progresses. In any case, a rule effectively limiting the debates to only two candidates is more limiting than either the state or international norms.

ARGUMENT

FairVote submits this brief to highlight important factual background which tends to suggest that the rules adopted by the CPD cannot be justified by an interest in orderly debates among serious candidates, but rather suggest an interest in preventing competition from those outside the two major parties in the general election. First, polling is too unreliable to be used as an exclusive means of testing for public support. Second, the debate inclusion rules used by the CPD are abnormal, and are out of step with recommended practices for both debates for governor in states and debates for public office in other democratic nations.

I. POLLING DATA IS INCREASINGLY UNRELIABLE

The way the CPD uses polls to determine debate eligibility fails to account for the limitations of polling data. Although polling data can be useful as one line of evidence for public support, it is insufficiently reliable to be used as the sole determinant for debate inclusion.

Polling in elections relies on asking representative samples of people their answers to various questions and then making inferences from those answers about the opinions and behaviors of the voting public in general. *See generally, What Is Public Opinion Polling and Why Is It Important?*, GALLUP WORLD POLL (2007), available at

<http://media.gallup.com/muslimwestfacts/PDF/PollingAndHowToUseItR1drevENG.pdf>.

For example, a poll may ask a “likely voter” for whom they would vote were the election held today. *See, e.g., White House 2016: General Election*, POLLINGREPORT.COM, <http://www.pollingreport.com/wh16gen.htm> (last visited April 11, 2016) (summarizing various polls that included who participants would vote for for president “if the election were held today”). Then, the polling agency would weigh respondents according to characteristics such as age, education, race and income so that their sample reflects, as closely as possible, the population in general. *Polling Fundamentals - Total Survey Error*, ROPER CENTER, CORNELL UNIVERSITY, <http://ropercenter.cornell.edu/support/polling-fundamentals-total-survey-error/> (last visited, April 11, 2016). Using these weights, responses are then aggregated to produce estimates of who likely voters actually would vote for, were the election held today, as a means of estimating how actual voters will actually vote when the election is held. *Id.* These estimates are just that: estimates. They

always have a degree of uncertainty and a margin of error. Additionally, weaknesses in polling design and execution tend to increase the error associated with polling figures.

One common problem today is that the ability to draw a representative sample can be impeded by a technological or informational barrier. For example, polls historically relied on calling people on their home phones. *See generally*, Michael W. Link, et. al., *Reaching the U.S. Cell Phone Generation*, 71 PUBLIC OPIN. Q. 814 (2007). However, increasingly people rely on mobile phones, with 40 percent of adults no longer owning a landline at all. Jill Lepore, *Politics and the New Machine*, THE NEW YORKER, Nov. 16, 2015, *available at* <http://www.newyorker.com/magazine/2015/11/16/politics-and-the-new-machine>.

Polling agencies have attempted to compensate for this, but either prospective pollees simply do not answer their phones or the lists are compiled from skewed or otherwise unreliable sources, given the absence of the equivalent of a phone book for mobile phones and a federal ban on autodialing to cell phones. *Id.*; Telephone Consumer Protection Act of 1991, 47 U.S.C. § 227 (1991).

Even with a perfectly representative sample, polling estimates of support have error margins, often as high as 5 to 10 percentage points. *Polling Fundamentals - Total Survey Error, supra*. When compounded with these sources

of unrepresentativeness in sampling, candidates polling below 15 percent may actually have as much as 25 percent support, certainly high enough to consider them viable candidates with a viewpoint the voting public deserves to hear in debates.

Inaccurate polls can clash with actual voting results in spectacular ways, eroding public confidence in their use. This is particularly true today, given the outcome of the 2016 presidential election compared to the predictions being made by analysts relying principally on polls. There exists no shortage of media pieces bemoaning how inaccurate such polls were. *E.g.*, Nate Cohn, *A 2016 Review: Why Key State Polls Were Wrong About Trump*, New York Times, May 31, 2017, <https://www.nytimes.com/2017/05/31/upshot/a-2016-review-why-key-state-polls-were-wrong-about-trump.html>; Danielle Kurtzleben, *4 Possible Reasons The Polls Got It So Wrong This Year*, NPR, <https://www.npr.org/2016/11/14/502014643/4-possible-reasons-the-polls-got-it-so-wrong-this-year>; Andrew Mercer, Claudia Deane and Kyley McGeeney, *Why 2016 election polls missed their mark*, Pew Research Center, <https://www.pewresearch.org/fact-tank/2016/11/09/why-2016-election-polls-missed-their-mark/>.

Signs of this unreliability had shown up in the 2016 primary campaign, and demonstrated the weaknesses of polling as a means of identifying accurate levels

of support. In March of 2016, for example, Bernie Sanders outperformed his polling by over 20 percentage points in the Michigan Democratic primary. Carl Bialik, *Why the Polls Missed Bernie Sanders' Michigan Upset*, FIVETHIRTYEIGHT, Mar. 9, 2016, <http://fivethirtyeight.com/features/why-the-polls-missed-bernie-sanders-michigan-upset/>. That upset demonstrated many of the ways polling data can fail to reflect reality. The Michigan polls did not sufficiently correct for their lack of young voters, who disproportionately favored Sanders, even while it overcompensated in attempting to correct for responses from African Americans, a population previously supporting Clinton at higher rates than it did in Michigan. *Id.* That particular example was an outlier, but it serves as an example of how bad errors can be, even when multiple polls by multiple polling agencies are used.

Reliance on polling in the 2012 presidential general election was also misplaced. Polling showed a near-tie between Mitt Romney and Barack Obama, with some—including Gallup—predicting that Mitt Romney would win. *The problem with polls*, THE WEEK, April 10, 2016, <http://theweek.com/articles/617109/problem-polls>. In fact, the president was re-elected by a nearly four percentage point margin, amounting to some 5 million votes. *Id.*

These flaws are likely to erode public confidence in the exclusive use of polling as a metric of public support, especially as reports continue to issue from popular periodicals highlighting them. *E.g.* Cliff Zukin, *What's the Matter With Polling?*, N.Y. TIMES, June 20, 2015, <http://www.nytimes.com/2015/06/21/opinion/sunday/whats-the-matter-with-polling.html>; Michael Barone, *Why Political Polls Are So Often Wrong*, The Wall Street Journal, Nov. 11, 2015, <http://www.wsj.com/articles/why-political-polls-are-so-often-wrong-1447285797>.

As Plaintiffs demonstrate in their brief, the way the CPD uses polling data to determine inclusion in the presidential general election debates virtually guarantees that only two candidates will qualify. No candidate who did not run in the Democratic or Republican primary has ever met the 15 percent threshold in the general election—not even Ross Perot, who participated in the 1992 general election debates before that threshold was instituted. That fact, combined with the unreliability of polls described here, creates a serious risk of unjustifiably excluding one or more serious and potentially viable presidential candidates from the debates.

For example, if a 15 percent threshold were applied to the first Democratic primary debates in June, 2019, only Joe Biden and Bernie Sanders—the two

candidates with the greatest name recognition—would have qualified. *See Politico, Democratic primary polls: Who's ahead in the 2020 race?*,

<https://www.politico.com/2020-election/democratic-presidential-candidates/polls/>

(setting the date to the week ending June 23, 2019). Such a result would have not only excluded several high profile candidates, including every woman candidate and every person of color, it also would have excluded the candidate the most recent polls identify as the likely frontrunner, Elizabeth Warren. *See Andrew Prokop and Christina Animashaun, Elizabeth Warren leads Joe Biden in ranked-choice poll*, Vox, Sep. 12, 2019, <https://www.vox.com/2019/9/12/20860985/poll-democratic-primary-ranked-choice-warren-biden>.

When candidates for the Republican nomination for president in 2016 began participating in debates, only Donald Trump and Ben Carson polled higher than 15 percent on average, with Marco Rubio in third polling at about 10 percent on average. Dan Balz, *The debate over debates: Why should polls pick winners and losers?*, THE WASHINGTON POST, Nov. 7, 2015,

[https://www.washingtonpost.com/politics/the-debate-over-debates-why-should-polls-pick-winners-and-losers/2015/11/07/1e107b86-84d7-11e5-9afb-](https://www.washingtonpost.com/politics/the-debate-over-debates-why-should-polls-pick-winners-and-losers/2015/11/07/1e107b86-84d7-11e5-9afb-0c971f713d0c_story.html)

[0c971f713d0c_story.html](https://www.washingtonpost.com/politics/the-debate-over-debates-why-should-polls-pick-winners-and-losers/2015/11/07/1e107b86-84d7-11e5-9afb-0c971f713d0c_story.html). This demonstrates how a large field of serious candidates can split polling totals, causing nearly every candidate to apparently

poll poorly. Under those circumstances, candidates invited to debate and candidates excluded may both be well within the margin of error of the poll from each other, effectively making the exclusions arbitrary. In the Republican primary debates, it meant that governors of New York, Louisiana, and Virginia never had a chance to present their case to Republican primary voters; in a general election to which the 15 percent threshold applies, it means the loss of important perspectives on the future of the country.

II. THE CPD INCLUSION CRITERIA ARE ABNORMALLY HARSH

The degree to which the CPD inclusion rules harshly exclude candidates who might otherwise contribute meaningfully to the debate can be seen in how out of step those rules are with recognized best practices in debates for the office of governor in states and in debates for public office in other nations.

In states, debates are often held by nonpartisan public interest organizations like the League of Women Voters, who also conducted presidential debates prior to the two major parties creating the CPD in 1987. *See*, Renee Davidson, *4 Reasons You Should Watch a Candidate Debate*, LEAGUE OF WOMEN VOTERS, Oct. 7, 2014, <http://lwv.org/blog/4-reasons-you-should-watch-candidate-debate>; *The League of Women Voters and Candidate Debates: A Changing Relationship*, League of Women Voters, <http://lwv.org/content/league-women-voters-and-candidate->

[debates-changing-relationship](#) (last visited April 11, 2016). The media also sponsors debates directly, sometimes in coordination with a particular venue. *See, e.g.,* Paul Merrill, *Maine governor hopefuls face off in first debate*, WMTW NEWS 8, Oct. 8, 2014, <http://www.wmtw.com/news/maine-governor-hopefuls-face-off-in-first-debate/29007466> (describing a gubernatorial debate between three candidates held by a media corporation and noting the plan to hold a second).

When the League of Women Voters sponsors a debate, it typically invites every candidate on the ballot, and sometimes includes write-in candidates as well. *See, e.g., Guidelines for Debates and Forums*, LEAGUE OF WOMEN VOTERS WISCONSIN, July, 2014, <http://www.lwvwi.org/Members/GuidelinesforDebates.aspx>; *League of Women Voters (LWV) Candidate Forum Guidelines*, League of Women Voters San Diego, http://www.lwvsandiego.org/files/CANDIDATE_FORUM_GUIDELINES.pdf (last visited April 11, 2016) (emphasizing to “[i]nvite all candidates”). When media sponsors debates, they adopt their own inclusion rules, presumably to maximize the newsworthiness of the event. *See, e.g.,* Lepore, *supra* (“It would make better television” to include Carly Fiorina in an early debate among Republican candidates, despite her relatively low polling numbers at the time). When a state agency sponsors debates, it ordinarily uses rules more inclusive than

those adopted by the CPD. *See, e.g.,* ARIZ. REV. STAT. ANN. § 16-956(A)(2) (2011) (instructing the Arizona Clean Elections Commission to sponsor debates and invite all candidates).

Internationally, debates are also usually the domain of the media, and they typically invite more than two candidates for presidential elections. *See Parties and Candidates*, THE ACE ENCYCLOPAEDIA, ACE, <http://aceproject.org/ace-en/topics/pc/pcc/pcc07> (last visited April 11, 2016); *see also Television debates*, ACE, <http://aceproject.org/epic-en/CDTable?view=country&question=ME059> (last visited April 11, 2016) (table listing countries along with comments on how televised debates are conducted, if at all, in that country). When countries do adopt public regulations regarding debate inclusion, they use standards more inclusive than those of the CPD. For example, Canada permits participation by any candidate from a political party with representation in the House of Commons (five parties) with a consistent polling threshold of only 5 percent. Nick Anstead, *We need to look at other parliamentary democracies for ideas about how to run televised debates*, MEDIA POLICY PROJECT BLOG, THE LONDON SCHOOL OF ECONOMICS AND POLITICAL SCIENCE, <http://blogs.lse.ac.uk/mediapolicyproject/2014/10/15/we-need-to-look-at-other->

[parliamentary-democracies-for-ideas-about-how-to-run-televised-debates/](#) (last visited April 11, 2016).

Germany follows a similar rule, allowing participation (in the first round of debates) by representatives of parties with a presence in the Bundestag, which amounts to a 5 percent threshold as well. *Id.* Germany's practice also highlights another way of balancing the goals of inclusion with an orderly and informative process common in other nations: they narrow the inclusion rules over a series of debates. Nick Anstead, *Televised Debates in Parliamentary Democracies*, MEDIA POLICY PROJECT, THE LONDON SCHOOL OF ECONOMICS AND POLITICAL SCIENCE, 10–11 (January, 2015). In the first round, representatives of any party in the Bundestag may participate, but the second round is limited to only three candidates. *Id.* In the U.S., debates also go from more inclusionary (in the primaries) to exclusionary (in the general election), but the primary debates are no exception for inclusion general election debates, when nominees from different political parties and independent candidates face each other before a national audience.

In fashioning its rules prior to the 2015 election season, the United Kingdom considered the examples of countries like Canada and Germany to adopt a best practice. *Id.* at 13. It ultimately included seven candidates in its national debate in

April, 2015. *See, Leaders' debate: ICM/Guardian poll puts Miliband ahead - just,* theguardian, April 2, 2015,

<http://www.theguardian.com/politics/blog/live/2015/apr/02/leaders-debate-cameron-and-miliband-go-head-to-head-with-other-parties-live>. More inclusive debate rules helped to change the conversation in the United Kingdom, allowing the Liberal Democrats to rise in prominence. A similar phenomenon had occurred in Canada; the New Democratic Party, traditionally a third party, rose to second-place in 2011; and in 2015, the Liberal Party went from third place to first place.

This is not to suggest that the U.S. should be bound by international norms. Instead, it is evidence that CPD has adopted a rule that is not justified by ordinary debate inclusion rules, such as orderly debates among serious candidates with viewpoints reflective of public opinion. Rather, it better reflects a rule designed to prevent competition. *See, Larry Diamond, Ending the Presidential-Debate Duopoly*, THE ATLANTIC, May 8, 2015,

<http://www.theatlantic.com/politics/archive/2015/05/ending-the-presidential-debate-duopoly/392480/>.

CONCLUSION

As Plaintiffs-Appellants rightfully point out, this issue goes directly to the question of the future of American democracy. Evidence suggests that the CPD

harshly excludes candidates to the extent that not only are many important viewpoints unheard in presidential debates, but viable candidates may fail to qualify or choose not to run in the first place because they would fail to qualify. The unreliability of polls is such evidence, suggesting that the CPD is less interested in testing for public support than they are with creating an artificial barrier. Similarly, the degree to which the rule is abnormally harsh suggests that it is unjustifiable by the interest in an orderly debate.

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Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME
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This brief complies with Federal Rule of Appellate Procedure 32(a)(7)(B)(i) because it contains 3,046 words.

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CERTIFICATE OF SERVICE

I hereby certify that on September 25, 2019, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the District of Columbia by using the CM/ECF system. I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/William P. Tedards, Jr.
William P. Tedards, Jr.

Oral Argument Not Yet Scheduled

19-5117

IN THE

**United States Court Of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

LEVEL THE PLAYING FIELD, PETER ACKERMAN, GREEN PARTY OF THE UNITED STATES
AND LIBERTARIAN NATIONAL COMMITTEE, INC.

Plaintiffs-Appellants,

—v.—

FEDERAL ELECTIONS COMMISSION,

Defendant-Respondent.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

**BRIEF OF AMICI CURIAE INDEPENDENT VOTER PROJECT, ADMIRAL
JAMES STAVRIDIS, SENATOR JOSEPH ROBERT KERREY, SENATOR
JOSEPH ISADORE LIEBERMAN, THE HONORABLE CLARINE NARDI
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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, Amicus Independent Voter Project makes the following disclosure:

1. Amicus is not a publicly held corporation or other publicly held entity.
2. Amicus has no parent corporation.
3. No publicly held corporation or other publicly held entity owns 10% or more of Amicus.
4. Amicus is not a trade association.

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STATEMENT OF IDENTITY, INTEREST, AND AUTHORITY TO FILE**Cory J. Briggs and Stephen Chad Peace**

Cory J. Briggs is admitted as a member of this Court. Stephen Chad Peace is a member of the California State Bar and is pending admission to this Court. They are attorneys for the Independent Voter Project (“IVP”) and represent the additional amici for purposes of this brief of amici curiae. They have no other financial or client interest in the outcome of this litigation, and no attorney for a party has helped write this brief or defrayed the cost of its preparation.

Independent Voter Project (“IVP”)

Founded in 2006, IVP is a 501(c)(4) organization that seeks to educate voters about voters’ non-partisan rights and other important public policy issues, to create a climate for otherwise disenfranchised voters to engage in the political process, and to encourage non-partisan voters to vote and participate in the democratic process. IVP is most well-known for authoring California’s “top-two” non-partisan primary, passed by the voters in 2010.

Admiral James Stavridis

Admiral Stavridis is a retired Navy admiral. He was 15th Commander, U.S. European Command and NATO’s 16th Supreme Allied Commander Europe. Admiral Stavridis has been working for several years to change the 15% rule.

Senator Joseph Robert Kerrey

Senator Kerrey served as the Governor of Nebraska from 1983 to 1987 and as a

United States Senator from Nebraska from 1989 to 2001. He has been a leading advocate for changing the 15% rule for several years.

Senator Joseph Isadore Lieberman

Senator Lieberman served as a United States Senator from Connecticut from 1989 to 2013. He has been working to remove the 15% rule for over 3 years.

The Honorable Clarine Nardi Riddle

Clarine Nardi Riddle served as the Attorney General of Connecticut from 1989 to 1991. She served as chief of staff for Senator Lieberman from 2003 until 2013. She co-founded and works with No Labels, an organization of Republicans, Democrats and Independents dedicated to addressing issues of hyper-partisanship in the United States to promote problem-solving.

The Honorable David M. Walker

David M. Walker served as the seventh Comptroller General of the United States from 1998 to 2008. He is also a national co-founder of No Labels and an original signatory on the “Change the Rule” letter to modify the 15% rule.

The Honorable Christine Todd Whitman

Christine Todd Whitman served as the Governor of New Jersey from 1994 to 2001 and was the Administrator of the Environmental Protection Agency from 2001 to 2003. Whitman was an original signatory of the “Change the Rule” letter that challenged the 15% rule.

This brief is timely filed and is submitted with amici's Motion for Leave to Participate.

INTRODUCTION

A healthy democracy promotes the free flow of ideas and embraces different perspectives. The presidential debates are the most important conversation between candidates for the Presidency of the United States of America and the American people. The Commission on Presidential Debates ("CPD") has established a 15% rule of entry to presidential debates that, in practice, prevents popular third-party and independent candidates from participating in the debates, narrows the flow of ideas in our political discourse, and insulates well-heeled major party candidates from the hazard of confronting different perspectives.

Limitations on the participation of third-party and independent candidates from our presidential debates exacerbates divisions in America. A substantial plurality of American voters no longer identifies with either the Republican or Democratic Parties.¹ As hyper-partisanship plagues our media, our political discourse, and our electoral options, the non-partisan plurality of voters is forced to either embrace one side of this artificial division or not participate in the national dialogue at all.

The more pernicious consequence of the 15% rule is its shaping of the American mind. By many estimates, audiences neared 100 million viewers for the most recent CPD 2016 presidential general election debates. Nearly one-third of all Americans

¹ *Party Affiliation*, GALLUP (2017), <http://www.gallup.com/poll/15370/party-affiliation.aspx>.

were exposed to the calculated barbs traded by the Republican candidate Donald J. Trump and the Democratic candidate Hillary Clinton. This was pugilism by personal attack and not a debate of ideas about the state of our country and its future. As stated by Mrs. Clinton herself—this was reality television.² It's the consequence of limiting the governing flow of participants and ideas. And, although the spectacle may drive media ratings up, its consequence is devastating to the body politic, as perception drives real behaviors.

A study published in September of 2017 by the Harvard Business School concluded that the public's distrust in government is directly connected to the lack of real competition in the electoral process:

By nearly every measure, the *industry* of politics, itself, is thriving. There's just one problem. The people whom the politics industry is supposed to serve have never been more dissatisfied. Public trust in the federal government is hovering at a near 60-year low. [¶] Competition in politics appears intense, which is usually good for customers. But today's competition is failing, delivering gridlock and growing division instead of offering practical solutions to the nation's problems. The parties compete on ideology and unrealistic promises, not on action and results. The parties compete to divide voters and serve special interests, rather than weigh and balance the interests of all citizens and find common ground to move the country forward. And there is no accountability for results. . . . The underlying root cause is the kind of political competition that the parties have created, including their insulation from new competition that would better serve the public interest.

Katherine M. Gehl and Michael E. Porter, *Why Competition in the Politics Industry is Failing America 2* (Harvard Business School ed., 2017) (emphasis in original).

² Heidi M. Przybyla, *Hillary Clinton prepares for 'Reality Show' debates*, USA TODAY (Sept. 15, 2016), <https://www.usatoday.com/story/news/politics/elections/2016/09/21/hillary-clinton-donald-trump-debates/90310878/>.

The rules of our republic should support civil disagreement rather than encourage hostile behavior in political discourse or undermine confidence in our government. CPD defends its 15% rule as a reasonable and objective measure of candidate viability. CPD's purpose, however, is not to choose winners. CPD has failed to articulate how the 15% rule supports its organizational mission to "provide the best possible information to viewers and listeners." Limiting participation by the arbitrary 15% rule undermines this objective by providing a pedestal for the major party candidates and their platforms that exacerbates the perception that the American people have only binary policy and candidate choices. CPD's candidate viability based defense of its 15% rule is a model of the contrived political competition dissected by Gehl and Porter to its root purpose of limiting any competition of new ideas.

CPD is an extra-governmental organization originally sponsored by the major political parties and sanctioned by the federal government, the effect of which is to calcify an existing ruling political class. Our forefathers never could have contemplated such a system for controlling presidential debates and, given their predisposition to oppose political parties, would have opposed any such granting of governmental powers to a private corporation simply because it enjoyed the mantle of the major political parties. The insidiousness of this husbanding of the duopoly is so perverse that even in academia the American system is regularly referred to as a "two-party system."

Nowhere in the Constitution, the documents published in preparation of its

establishment, or its successor amendments is there an allusion to, or contemplation of, our form of government being a “two-party system.” Yet, CPD’s 15% rule results in our presidential debates accommodating only the two major political parties’ candidates *and* it was designed to produce this outcome.

It’s important to recognize that much of what constitutes today’s political system has no basis in the Constitution. As our system evolved, the parties—and a larger political industrial complex that surrounds them—established and optimized a set of rules and practices that enhanced their power and diminished our democracy. These changes—often created behind closed doors and largely invisible to the average citizen—continue to take their toll at both the federal and the state levels.

Gehl and Porter, at 2.

There is a difference between a natural result of constitutional construction that has led to the *ebb and flow* of societal change being channeled into coalitions of two broadly defined political parties and the institutionalization of two *particular* parties as permanent impermeable forces. CPD’s 15% rule serves the latter rather than the former. Rather than accommodate the *ebb and flow* of societal change that has been at the heart of the Constitution’s survival, CPD’s 15% rule acts as an agent to suppress debate, limit access, and, ultimately, alienate the public from their government.

With these considerations, amici argue in support of Appellants.

ARGUMENT

I. CPD’S 15% RULE CONFLICTS WITH ITS MISSION STATEMENT AND IGNORES THE IMPORTANT ROLE THAT THIRD-PARTY CANDIDATES PLAY IN A HEALTHY REPUBLIC

CPD’s nonprofit and “non-partisan” mission is to, “provide the best possible

information to viewers and listeners.”³ Throughout this case, however, the CPD has defended its 15% rule without regard to how the rule supports or subverts its own mission statement. Instead, and by CPD’s admission, the 15% rule is designed to determine a candidate’s viability to win the general election. This determination does not have a qualitative component as it relates to the information the candidates may provide to the viewers.

As the Supreme Court has recognized time and again,⁴ a healthy republic is one that embraces debate about minority opinions as well as more popular ones. *Anderson v. Celebrezze*, 460 U.S. 780, 794 (1983) (citing *Illinois Elections Bd. v. Socialist Workers Party*, 440 U.S. 173, 186 (1979)) (“Historically political figures outside the two major parties have been fertile sources of new ideas and new programs; many of their challenges to the status quo have in time made their way into the political mainstream.”). Many of the ideas viewed today as fundamentally American were first introduced by third parties or candidates. The Socialist Party, for example, introduced

³ *Our Mission*, CPD, <http://www.debates.org/index.php?page=about-cpd> (last visited Sept. 15, 2017).

⁴ See, e.g., *Williams v. Rhodes*, 393 U.S. 23, 32 (1968) (“The fact is, however, that [it] does not merely favor a ‘two-party system’; it favors two particular parties -- the Republicans and the Democrats -- and in effect tends to give them a complete monopoly.”); *Anderson v. Celebrezze*, 460 U.S. 780, 794 (1983) (“In short, the primary values protected by the First Amendment ... are served when election campaigns are not monopolized by the existing political parties.”) (citing *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964)) .

women's suffrage as an issue in the late 1800s.⁵ Abraham Lincoln was elected from a third party (at the time) on an anti-slavery platform.⁶

H. Ross Perot is one of only two third-party candidates to ever qualify for a place on the presidential debate stage when he ran as an independent candidate for president in 1992.⁷ Perot ultimately received 18.9% of the popular vote in the general election.⁸ Many of Perot's ideas were incorporated into legislation and even the major parties' political platforms.⁹ Yet, had the 15% rule been in place in 1992, Perot would have been barred from participating in any of the presidential debates.¹⁰ Although Perot did not win the presidency, and even if he didn't have a chance of being the winner, the value of his ideas improved the health of our democracy.

II. CPD's 15% RULE HAS, AND WILL CONTINUE TO, PREVENT THIRD-PARTY AND INDEPENDENT CANDIDATES FROM PARTICIPATING IN THE DEMOCRATIC PROCESS, LEAVING NON-PARTISAN VOTERS UNREPRESENTED

CPD's 15% rule has prevented every third-party and independent candidate from participating in the presidential debates since its adoption nearly two decades

⁵ *Socialist Labor Party Platform -1896* (Jul. 4, 1896), <http://projects.vassar.edu/1896/slppplatform.html>.

⁶ *Republican Party Platform of 1860*, THE AMERICAN PRESIDENCY PROJECT (May 17, 1860), <http://www.presidency.ucsba.edu/ws/index.php?pid=29620>.

⁷ *Debate History*, CPD, <http://www.debates.org/index.php?page=debate-history> (last visited Sept. 15, 2017).

⁸ *Gallup Presidential Election Trial-Heat Trends, 1936-2008*, GALLUP, <http://www.gallup.com/poll/110548/gallup-presidential-election-trialheat-trends-19362004.aspx#4> (last visited Sept. 15, 2017).

⁹ Ted G. Jelen, *Ross For Boss: The Perot Phenomenon and Beyond* (2001).

¹⁰ Although CPD argues he would not have been barred as his support had been over 15% at other points in the race, in September (prior to the debates when the polling determination is made), he was only at 8% support. *Gallup Presidential Election Trial-Heat Trends, 1936-2008*, *supra* note 8.

ago. In 2016, the 15% rule prevented an alternative voice from participating despite both major party candidates having record-setting disapproval ratings¹¹ and 76% of voters wanting to see a third-party candidate in the debates.¹² We should not deny voters their desired, more inclusive debate process, and we should not rely on the partisan CPD's 15% rule to predict potential victors of our democratic process.

Institutional barriers can be such a powerful force that they render the measurement of their impact impossible. The number of qualified candidates that would run for President of the United States absent the 15% rule cannot be quantified. Several amici to this brief are amongst those who would be judged as credible candidates for President of the United States as either third-party or independent candidates, but for the practical institutional barrier presented by the 15% rule.

Admiral James Stavridis served as the Commander of U.S. European Command and 16th NATO Supreme Allied Commander from 2009 to 2013. He was vetted as a potential running mate for Hillary Clinton in July 2016 and later interviewed as a possible U.S. Secretary of State and Director of National Intelligence by President-elect Donald J. Trump in December 2016. He was approached to run as an independent in the 2016 election, but, in part due to CPD's 15% rule, declined. With the 15% rule

¹¹ David Wright, *Poll: Trump, Clinton score historic unfavorable ratings*, CNN (Mar. 22, 2016), <http://www.cnn.com/2016/03/22/politics/2016-election-poll-donald-trump-hillary-clinton/index.html>.

¹² David Paleologos, *Paleologos on the poll: Voters want third-party candidates on debate stage*, USA TODAY (Sept. 1, 2016), <https://www.usatoday.com/story/news/politics/elections/2016/09/01/paleologos-poll-johnson-stein-debates/89710228/>.

in place, Stavridis had no reasonable expectations that he could achieve the name recognition necessary to be a competitive candidate. Stavridis believes many qualified candidates would consider running for President in 2020 if the debate rules were changed to allow unaffiliated candidates a fair chance to compete with the nominees of the two major parties.

Former Governor and United States Senator Joseph Robert Kerrey, a Navy Seal and Medal of Honor recipient, sought the Democratic Party nomination for president in 1992. Based upon his experience, he would not consider an independent candidacy viable in 2020, absent a change in the CPD rules.

Senator Joseph Isadore Lieberman was the Democratic Party nominee for Vice President in the 2000 election. He sought the Democratic nomination in 2004. In 2006, Lieberman was elected as an Independent. He believes that independents do not seek the presidency, in great part, because access to the presidential debate is critical and the CPD's 15% rule pre-emptively disqualifies even serious challengers from such access.

The Honorable Clarine Nardi Riddle was the first female Attorney General of Connecticut and is a co-founder of No Labels, an organization of Republicans, Democrats and Independents that promotes the politics of problem-solving. She argues that the 15% rule blocks not only independent and non-partisan candidates, but even has the effect of excluding the consideration of independent and non-partisan ideas.

The Honorable David M. Walker is the immediate former Comptroller General

of the United States and head of the U.S. Government Accountability Office. He was urged to consider running as an independent for President or Vice President in 2012 but ultimately decided against doing so, in part due to the fact he knew it would be vitrually impossible to draw the support necessary in the polls to get into the fall presidential debates. He then embarked on a nationwide tour promoting sensible solutions to our nation's serious fiscal challenge.

In 2012, the Honorable Christine Todd Whitman, former two-term Governor of New Jersey, was asked to consider running for President or Vice President as an independent candidate. While other personal factors may have gone into that decision, ultimately, it is her judgment that the 15% rule precluded any practical expectation of access to the debates.

These highly qualified Americans represent the tip of the iceberg. It is impossible to know how many others whose ideas, energy, and hopes for America's future are held captive by the arbitrary and impenetrable barrier to participation represented by the CPD's 15% rule.

III. CPD'S 15% RULE IS INCONSISTENT WITH THE MANNER IN WHICH WE ELECT OUR PRESIDENT AND OUTSOURCES DETERMINATION FOR PARTICIPATION TO PRIVATE COMPANIES

Given the well-documented declining accuracy of polling, it is difficult to miss the irony of CPD's decision to, in effect, outsource the enforcement of its 15% rule by relying on five national political polls conducted by media organizations. Such polls are a measurement, at best, of a candidate's pre-debate popularity on a national level.

Rightly or wrongly, presidential elections are determined not by popular vote, but by the Electoral College in a methodology that is fundamentally different.

For example, a candidate may hold viewpoints that resonate with a substantial portion of the population in states that are most directly impacted by those viewpoints or the issues that underlie them. But, on a national level, he or she may not achieve the 15% threshold across the five national polls required to participate in the presidential debates. The 15% rule, in that regard, artificially homogenizes public discourse, having the perverse effect of discouraging the diversity of ideas critical to a rational public debate.

Just as importantly, by relying on privately constructed and controlled polls, CPD has assigned the gatekeeper function to a democratic process with no public oversight as to methodology, policy bias, or conflicts of interest (real or perceived). Conferring the power to limit access to private media corporations is both inappropriate and, inevitably, subject to a level of public skepticism that only serves to undermine the public's confidence in the system and to reinforce a growing belief that "the system is rigged."

A. CPD'S 15% RULE OFFENDS THE VERY DEMOCRATIC PRINCIPLES THE UNITED STATES PROMOTES ABROAD

The United States of America spends hundreds of millions of dollars promoting democracy abroad.¹³ A centerpiece of those programs is to introduce and spread

¹³ *DRL Programs*, U.S. DEPT. OF STATE, <https://www.state.gov/j/drl/p/> (last visited Sept. 15, 2017).

democratic best practices, including “the promotion of free, transparent and fair political competition.”¹⁴ The goal of these programs is to ensure “that all have the opportunity to participate and have a voice in how they will be governed,” so “citizens’ preferences are represented.”¹⁵

At the heart of any democracy is political competition. As the Supreme Court recognized when it struck down an Ohio law that effectively gave the two major parties a “total monopoly” on ballot access, “[c]ompetition in ideas and governmental policies is at the core of our electoral process and of the First Amendment freedoms.” *Rhodes*, 393 U.S. at 32. Today, however, a vast plurality of American voters now self-identifies as independent of the two major parties.¹⁶ Yet, these voters are not represented at all on the presidential debate stage because independent and third-party candidates cannot gain access.

Similar to the onerous ballot access requirements in *Rhodes*, CPD’s 15% rule has prevented a single voice outside of the two major parties from participating in the presidential debates since the rule was first adopted in 2000. On this fact alone, we should embrace the democratic policies we promote abroad, consider our own Supreme Court precedent recognizing the importance of political competition, and reject the monopoly CPD’s 15% rule has given the Republican and Democratic Parties over our presidential debates.

¹⁴ *Democracy, Human Rights and Governance*, USAID (Aug. 17, 2017), <https://www.usaid.gov/democracy>.

¹⁵ *Id.*

¹⁶ *Party Affiliation*, *supra* note 1.

B. CPD'S 15% RULE IS PART OF AN ANTICOMPETITIVE ELECTION FRAMEWORK THAT DISENFRANCHISES A PLURALITY OF AMERICAN VOTERS

The framework of our entire election process, including the presidential debates, gives the two major parties and their members a decided advantage. Politics is an industry, and many of the rules governing our election process were established not by a neutral arbitrator to achieve fair competition, but by the major political parties to distort the rules of competition in their favor. If CPD's defense of its 15% rule is rooted in a bright-line test of "candidate viability," then it can only be fully understood within the broader context of the rules that govern the candidate nomination process and voter access to that process.¹⁷

The interplay of CPD's 15% rule with primary elections provides a good example of this systematic distortion of competition in our electoral process. Presidential primaries and caucuses, in every state, are private activities that serve political parties.¹⁸ In many states, only major political party members can participate at all.¹⁹ The primary election season now runs nearly a full year, and there is near constant media coverage directed almost exclusively on the major party candidates.

¹⁷ Gehl and Porter, at 9.

¹⁸ Notwithstanding taxpayer funding of primary elections, they serve the private purpose of selecting party nominees. *See Cal. Democratic Party v. Jones*, 530 U.S. 567, 574 (2000), (holding that political parties have the right to exclude nonmembers from their primary elections because the corollary of the private right of association is the right to not associate.); *see also, Nader v. Schaffer*, 429 U.S. 989 (1976).

¹⁹ *See* National Conference of State Legislatures. *State Primary Election Types*, <http://www.ncsl.org/research/elections-and-campaigns/primary-types.aspx> (last visited Sept. 15, 2017).

These primary elections are finalized less than two months prior to CPD's presidential debates. And the polls used by CPD to determine whether a candidate is qualified to participate in the "non-partisan" presidential debates are conducted right after the grand finale: the nationally televised Republican and Democratic Party conventions.

As summarized by Gehl and Porter:

One of these hidden rules involves access to the fall presidential debates. A person running as a Democrat or Republican knows that if they win the nomination they will be guaranteed a place in the debates. The Commission on Presidential Debates (CPD), a private organization dominated by partisan loyalists, requires every other candidate to meet a 15% polling hurdle in a three-way race decided just seven weeks before the election. While 15% may seem reasonable, the poll taken so late in the election cycle creates an insurmountable "Catch-22." The practical effect of this rule is to create a major anticompetitive barrier to any candidates outside the duopoly, and that is why there hasn't been a third candidate on the Presidential debate stage since 1992.

Gehl and Porter, at 40.

At a time when voter turnout is declining, we must change CPD's 15% rule to allow a broader spectrum of ideas on the presidential debate stage. CPD's 15% rule is the ultimate affirmation of a broader set of preliminary rules designed to limit true electoral competition. While CPD's 15% rule may measure candidate viability in a system that promotes the two major political parties, its relationship to the viability of a candidate's views in a competition of ideas is lacking, at best.

IV. CONCLUSION

CPD has the sober responsibility of promulgating the rules that govern the most important political conversation candidates can have with the American people: the

presidential debates. As part of this responsibility, it is CPD's duty to embrace the true competition of ideas in our political discourse and electoral process. CPD, in conflict with its stated mission, has abdicated this responsibility by defending a rule that is so limiting on the marketplace for new ideas that no third-party or independent candidate has qualified for the presidential debates in more than two decades. When a significant plurality of voters does not feel represented by either major party, we have a heightened obligation to change the rule.

Therefore, the Court should rule in favor of Appellants.

Dated this 25th day of September, 2019.

Respectfully submitted,

/s/ Cory J. Briggs

Cory J. Briggs
Briggs Law Corporation
99 East "C" Street, Suite 111
Upland, CA 91786

/s/ S. Chad Peace

S. Chad Peace, CA State Bar #290274,
Pending Admission
Peace & Shea LLP
2700 Adams Avenue, Suite 204
San Diego, CA 92116

Attorneys for Amici Curiae Independent Voter Project, Admiral James Stavridis, Senator Joseph Robert Kerrey, Senator Joseph Isadore Lieberman, The Honorable Clarine Nardi Riddle, The Honorable David M. Walker, and The Honorable Christine Todd Whitman

CERTIFICATE OF SERVICE

I hereby certify that on September 25, 2019, I electronically filed the foregoing motion with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system. The participants in this case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

Dated: September 25, 2019

Respectfully submitted,

/s/ Cory J. Briggs

Cory J. Briggs
Briggs Law Corporation
99 East "C" Street, Suite 111
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/s/ S. Chad Peace

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Attorneys for Amici Curiae Independent Voter Project, Admiral James Stavridis, Senator Joseph Robert Kerrey, Senator Joseph Isadore Lieberman, The Honorable Clarine Nardi Riddle, The Honorable David M. Walker, and The Honorable Christine Todd Whitman

From:Nancy Weiss
To:Ascienzo, John
Sent:2019-09-25T17:57:16.0000000Z
CC:Sheila Stokes ; Noelker, Timothy ; Hanz, Patricia ; Osborne, Rebecca ; David Kligerman ; Starr Dawn ; Marc Rosen ; Paul (work) ; McCarthy, Richard J (OGC/OGC-ADM) ; Sanchez, Rudy ; Lisa Stevenson ; Marian.Zobler@nrc.gov ; Alfred Pollard ; Anna Kocur ; Anne Marie Wagner ; Anne Schuyler ; Bradley Jones ; Bruce Diamond ; Casey Blaine (caseyb@dnfsb.gov) ; Charles Howard ; David Pritzer ; David Trissel ; Dev Jagadesan (dev.jagadesan@opic.gov) ; Diana Veileux ; Bianchi, Dominic ; Douglas Adler (douglas.adler@exim.gov) ; Edwin Fountain ; Gary Stern ; Gregory Baker ; India Pinkney ; jamesB@dnfsb.gov ; Jennifer Helper ; Joan Durocher ; John Mackel (jmackel@presidiotrust.gov) ; Judith Starr ; Julian Saenz ; June Brown ; Kathleen Silbaugh (kathleen.silbaugh@ntsb.gov) ; Kendra Link ; Kevin Turner (kevin.turner@exim.gov) ; Lara Rodriquez ; Laura E. Hankins - Public Defender Service for the District of Columbia (LHankins@PDSDC.ORG) ; Lillian Cheng ; Linette A Lander ; Lynn Parker Dupree ; Mary Johnson ; Mary McLeod ; Maureen Rudolph ; Megan Grumbine ; Bartlett Mike ; Mike McCord ; Mike McDonald ; Mike McKenna ; Nadine Mancini ; Nancy Breuer ; Nancy Eyl ; Peter Robb ; Ray Porfiri ; Robert Hogue ; Robert Shanks (rshanks@peacecorps.gov) ; Ron Flagg ; Ronald Cuffe ; Sara Fandell - (sfandell@ustda.gov) ; Shawne McGibbon ; Shelley Finlayson ; Sonya Pass (sonya.pass@cfpb.gov) ; Susan Ullman (sullman@osc.gov) ; thomas.johnson@fcc.gov ; Timi Kenealy ; Tom Zoeller (tom.zoeller@csb.gov) ; Tristan Leavitt (Tristan.Leavitt@mspb.gov) ; Tyler Wood ; William Doffermyre ; William Shakely ; Serassio, Helen ; Grippando, Gina
Subject:Re: Request for Information: Evidence-Based Policymaking Act of 2018

Yes, will be disseminating an updated contact list and send out a new message next week.

Nancy E. Weiss
General Counsel
Institute of Museum and Library Service
202-330-6194

On Sep 25, 2019, at 13:52, Ascienzo, John <John.Ascienzo@usitc.gov> wrote:

Could whoever is the owner of this group e-mail/listserv add the following small agency attorneys:

Dominic Bianchi, the US International Trade Commission's GC -- Dominic.Bianchi@usitc.gov

Gina Grippando, the US International Trade Commission's AGC for Administration -- Gina.Grippando@usitc.gov

Both are copied to this e-mail in the CC line

Thanks, and any questions please ask

John

From: Sheila Stokes <Sheila.Stokes@csosa.gov>

Sent: Tuesday, September 24, 2019 4:27 PM

To: 'Noelker, Timothy' <TNoelker@cns.gov>; Nancy Weiss <NWeiss@imls.gov>; Hanz, Patricia <PHanz@cpsc.gov>; 'Osborne, Rebecca' <rosborne@flra.gov>; David Kligerman <dkligerman@usagm.gov>; Starr Dawn <dstarr@fmcs.gov>

Cc: Marc Rosen <rosen@udall.gov>; Paul (work) <pzimmerman@iaf.gov>; McCarthy, Richard J (OGC/OGC-ADM) <mccarthyrj@mcc.gov>; Sanchez, Rudy <Rudy.Sanchez@sss.gov>; Lisa Stevenson <LStevenson@fec.gov>; (Marian.Zobler@nrc.gov) <Marian.Zobler@nrc.gov>; Alfred Pollard <alfred.pollard@fhfa.gov>; Anna Kocur <Ana.Kocur@rrb.gov>; Anne Marie Wagner <awagner@osc.gov>; Anne Schuyler <anne.schuyler@ncpc.gov>; Bradley Jones <bradley.jone@nrc.gov>; Bruce Diamond <bruce.diamond@nnsa.doe.gov>; Casey Blaine (caseyb@dnfsb.gov) <caseyb@dnfsb.gov>; Charles Howard <choward@arc.gov>; David Pritzer <dpritzker@acus.gov>; David Trissel <david.trissell@prc.gov>; Dev Jagadesan (<dev.jagadesan@opic.gov> <dev.jagadesan@opic.gov>); Diana Veileux <djeville@oge.gov>; Bianchi, Dominic <Dominic.Bianchi@usitc.gov>; Douglas Adler (<douglas.adler@exim.gov> <douglas.adler@exim.gov>); Edwin Fountain <fontaine@abmc.gov>; Gary Stern <garym.stern@nara.gov>; Gregory

Baker <gbaker@fec.gov>; India Pinkney <pinkneyi@arts.gov>; jamesB@dnfsb.gov; Jennifer Helper <jhepler@usccr.gov>; Joan Durocher <jdurocher@ncd.gov>; John Mackel (jmackel@presidiotrust.gov) <jmackel@presidiotrust.gov>; Judith Starr <starr.judith@pbgc.gov>; Julian Saenz <j-saenz@nga.gov>; June Brown <jbrown@usadf.gov>; Kathleen Silbaugh (kathleen.silbaugh@ntsb.gov) <kathleen.silbaugh@ntsb.gov>; Kendra Link <klink@ustda.gov>; Kevin Turner (kevin.turner@exim.gov) <kevin.turner@exim.gov>; Lara Rodriguez <lrodriguez@ncua.gov>; Laura E. Hankins - Public Defender Service for the District of Columbia (LHankins@PDSDC.ORG) <LHankins@pdsdc.org>; Lillian Cheng <LCheng@usagm.gov>; Linette A Lander <Linette.Lander@psa.gov>; Lynn Parker Dupree <Lynn.Parker.Dupree@pclob.gov>; Mary Johnson <johnson@nmb.gov>; Mary McLeod <Mary.McLeod@cfpb.gov>; Maureen Rudolph <mrudolph@usccr.gov>; Megan Grumbine <Megan.Grumbine@tsp.gov>; Bartlett Mike <mbartlett@fmcs.gov>; Mike McCord <Mmccord@fmshrc.gov>; Mike McDonald <mmcdonald@neh.gov>; Mike McKenna <mmckenna@ncua.gov>; Nadine Mancini <nmancini@oshrc.gov>; Nancy Breuer <n-breuer@nga.gov>; Nancy Eyl <neyl@arc.gov>; Peter Robb <Peter.robb@nlrb.gov>; Ray Porfiri <ray.porfiri@csb.gov>; Robert Hogue <robert.d.hogue@usmc.mil>; Robert Shanks (rshanks@peacecorps.gov) <rshanks@peacecorps.gov>; Ron Flagg <flaggr@lsc.gov>; Ronald Cuffe <rcuffe@ushmm.gov>; Sara Fandell - (sfandell@ustda.gov) <sfandell@ustda.gov>; Shawne McGibbon <Smcgibbon@acus.gov>; Shelley Finlayson <skfinlay@oge.gov>; Sonya Pass (sonya.pass@cfpb.gov) <sonya.pass@cfpb.gov>; Susan Ullman (sullman@osc.gov) <sullman@osc.gov>; thomas.johnson@fcc.gov; Timi Kenealy <tkenealy@abilityone.gov>; Tom Zoeller (tom.zoeller@csb.gov) <tom.zoeller@csb.gov>; Tristan Leavitt (Tristan.Leavitt@mspb.gov) <Tristan.Leavitt@mspb.gov>; Tyler Wood <twood@fmc.gov>; William Doffermyre <william.doffermyre@opic.gov>; William Shakely <wshakely@fmc.gov>; Ascienzo, John <John.Ascienzo@usitc.gov>; Serassio, Helen <Hserassio@cns.gov>

Subject: RE: Request for Information: Evidence-Based Policymaking Act of 2018

On behalf of our agency, OGC is the only "official" agency representative. Thanks

From: Noelker, Timothy <TNoelker@cns.gov>

Sent: Tuesday, September 24, 2019 10:24 AM

To: Nancy Weiss <NWeiss@imls.gov>; Hanz, Patricia <PHanz@cpsc.gov>; 'Osborne, Rebecca' <rosborne@flra.gov>; David Kligerman <dkligerman@usagm.gov>; Starr Dawn <dstarr@fmcs.gov>

Cc: Marc Rosen <rosen@udall.gov>; Paul (work) <pzimmerman@iaf.gov>; McCarthy, Richard J (OGC/OGC-ADM) <mccarthyjr@mcc.gov>; Sanchez, Rudy <Rudy.Sanchez@sss.gov>; Lisa Stevenson <LStevenson@fec.gov>; (Marian.Zobler@nrc.gov) <Marian.Zobler@nrc.gov>; Alfred Pollard <alfred.pollard@fhfa.gov>; Anna Kocur <Ana.Kocur@rrb.gov>; Anne Marie Wagner <awagner@osc.gov>; Anne Schuyler <anne.schuyler@ncpc.gov>; Bradley Jones <bradley.jone@nrc.gov>; Bruce Diamond <bruce.diamond@nnsa.doe.gov>; Casey Blaine (caseyb@dnfsb.gov) <caseyb@dnfsb.gov>; Charles Howard <choward@arc.gov>; David Pritzer <dpritzker@acus.gov>; David Trissel <david.trissell@prc.gov>; Dev Jagadesan (dev.jagadesan@opic.gov) <dev.jagadesan@opic.gov>; Diana Veileux <djveille@oge.gov>; Dominic Bianchi <dominic.bianchi@usitc.gov>; Douglas Adler (douglas.adler@exim.gov) <douglas.adler@exim.gov>; Edwin Fountain <fontaine@abmc.gov>; Gary Stern <garym.stern@nara.gov>; Gregory Baker <gbaker@fec.gov>; India Pinkney <pinkneyi@arts.gov>; jamesB@dnfsb.gov; Jennifer Helper <jhepler@usccr.gov>; Joan Durocher <jdurocher@ncd.gov>; John Mackel (jmackel@presidiotrust.gov) <jmackel@presidiotrust.gov>; Judith Starr <starr.judith@pbgc.gov>; Julian Saenz <j-saenz@nga.gov>; June Brown <jbrown@usadf.gov>; Kathleen Silbaugh (kathleen.silbaugh@ntsb.gov) <kathleen.silbaugh@ntsb.gov>; Kendra Link <klink@ustda.gov>; Kevin Turner (kevin.turner@exim.gov) <kevin.turner@exim.gov>; Lara Rodriguez <lrodriguez@ncua.gov>; Laura E. Hankins - Public Defender Service for the District of Columbia (LHankins@PDSDC.ORG) <LHankins@pdsdc.org>; Lillian Cheng <LCheng@usagm.gov>; Linette A Lander <Linette.Lander@psa.gov>; Lynn Parker Dupree <Lynn.Parker.Dupree@pclob.gov>; Mary Johnson <johnson@nmb.gov>; Mary McLeod <Mary.McLeod@cfpb.gov>; Maureen Rudolph <mrudolph@usccr.gov>; Megan Grumbine <Megan.Grumbine@tsp.gov>; Bartlett Mike <mbartlett@fmcs.gov>; Mike McCord <Mmccord@fmshrc.gov>; Mike McDonald <mmcdonald@neh.gov>; Mike McKenna <mmckenna@ncua.gov>; Nadine Mancini <nmancini@oshrc.gov>; Nancy Breuer <n-breuer@nga.gov>; Nancy Eyl <neyl@arc.gov>; Peter Robb <Peter.robb@nlrb.gov>; Ray Porfiri <ray.porfiri@csb.gov>; Robert Hogue <robert.d.hogue@usmc.mil>; Robert Shanks (rshanks@peacecorps.gov) <rshanks@peacecorps.gov>; Ron Flagg <flaggr@lsc.gov>; Ronald Cuffe <rcuffe@ushmm.gov>; Sara Fandell - (sfandell@ustda.gov) <sfandell@ustda.gov>; Shawne McGibbon <Smcgibbon@acus.gov>; Sheila Stokes <Sheila.Stokes@csosa.gov>; Shelley Finlayson <skfinlay@oge.gov>; Sonya Pass (sonya.pass@cfpb.gov) <sonya.pass@cfpb.gov>; Susan Ullman (sullman@osc.gov) <sullman@osc.gov>; thomas.johnson@fcc.gov; Timi Kenealy <tkenealy@abilityone.gov>; Tom Zoeller (tom.zoeller@csb.gov) <tom.zoeller@csb.gov>; Tristan Leavitt (Tristan.Leavitt@mspb.gov) <Tristan.Leavitt@mspb.gov>; Tyler Wood <twood@fmc.gov>; William Doffermyre <william.doffermyre@opic.gov>; William Shakely <wshakely@fmc.gov>;

Subject: RE: Request for Information: Evidence-Based Policymaking Act of 2018

All,

We have a question concerning our relationship with outside counsel, usually DOJ lawyers and AUSAs. We routinely refer grant fraud and related cases for civil recovery. Our Office of Inspector General does as well. Recently we learned that our OIG considers itself to be in the lead representing our Agency on all of these matters. This includes participation in settlement negotiations. We believe Agency OGC represents the Agency and should be fully engaged, and are happy to keep our OIG informed.

We wonder how this works with you. Appreciate your thoughts.

Thanks,
Tim

Timothy F. Noelker

General Counsel & White House Liaison

[AmeriCorps](#) | [Senior Corps](#) | CNCS

O: (202) 606-6985 M: (202) 210-8117

--

From:M. Howard Morse – Cooley LLP
To:lstevenson@fec.gov
Sent:2019-09-16T18:03:41.0000000Z
Subject:Join me at Antitrust Counseling & Compliance 2019

Dear Lisa:

Please join me on October 18 for [Antitrust Counseling & Compliance 2019](#), where our [expert faculty](#) of antitrust attorneys and government officials will review recent antitrust developments and provide practical advice to help you and your clients stay on the right side of the law. Understand how to effectively assist your clients in accomplishing their business goals, and learn how to answer the complex antitrust questions your clients will undoubtedly ask.

Program topics will include:

- What impact is the presidential campaign having on antitrust enforcement? What policy changes are taking place in the Trump administration that you should be aware of? What changes are expected from the FTC "Hearings of Antitrust and Consumer Protection in the 21st Century"?
- When are bundled prices, loyalty discounts and exclusive dealing acceptable and when are they problematic? What about tying? Do I still need to worry about price discrimination?
- When can you expect the DOJ or FTC to block a proposed merger? What leads the government to investigate non-reportable deals? What are the implications of the failed DOJ challenge to AT&T/Time Warner for future vertical merger enforcement? Does the Tunney Act scrutiny of the Aetna/CVS consent portend a new role for the courts?
- How are the lower courts ruling on settlements of patent litigation after the Supreme Court decision in *FTC v. Actavis*?
- When do I need to worry about enforcement by the state attorneys general?
- What do you need to know about competition law enforcement outside the U.S.? What does Brexit mean for competition enforcement in the EU and UK?
- What do you do if you learn about price fixing at your company? When is it wise to self-report and seek leniency? Is extradition to the U.S. and jail time for foreign executives a real risk?
- Earn one hour of Ethics credit

And much more!

This program will take place at PLI's Conference Center in New York, as well as via Live Webcast and Groupcast. Don't miss out on this exceptional opportunity to arm yourself with tips and strategies you can rely on in your daily practice. [Reserve your spot today](#) – I look forward to seeing you this fall.

Sincerely,

M. Howard Morse
Cooley LLP
Program Chair

[Antitrust Counseling & Compliance 2019](#)

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To register by phone, please call PLI's Customer Service Department at 800.260.4754.
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From:Caroline Boyd
To:lstevenson@fec.gov
Sent:2019-09-03T16:12:15.0000000Z
Subject:Rep. Connolly and Federal CIOs at FITARA Awards – Sept. 10

Good morning,

Toast FITARA success with Congressman Gerry Connolly, and Federal CIOs from DoJ, NSF, SBA, and more on Tuesday, September 10 at MeriTalk's third [FITARA Awards](#). We'll honor the agencies that have been leading the charge in IT modernization based on the FITARA Scorecard 8.0 grades – you don't want to miss it.

Join us from 5:00 – 7:30 p.m. at the Rayburn HOB Room 2060 for a complimentary reception with your government colleagues. To register and reserve your spot, visit: <https://www.meritalk.com/event/fitara-awards-sep-2019/register/>

Check out highlights from the February FITARA Awards program here: <https://www.youtube.com/watch>

Questions? Please contact Jenny Olivero – jolivero@meritalk.com or (703) 883-9000 ext. 164.

Best,

Caroline Boyd
Director, Government Programs
MeriTalk

MeriTalk - P.O. Box 1356 - Alexandria, VA 22313
The email address for you is lstevenson@fec.gov.
If you no longer wish to receive email communication from MeriTalk you may [manage your subscriptions](#).

..

From:MeriTalk Events
To:lstevenson@fec.gov
Sent:2019-08-28T12:16:03.0000000Z
Subject:Federal CIOs Converge at FITARA Awards – Sept. 10

You're invited to join **Congressman Gerry Connolly** on the evening of **Tuesday, September 10** as we honor Federal IT excellence at the third [FITARA Awards](#). Congressman Connolly will present awards to the top Federal agencies based on their FITARA Scorecard 8.0 grades, including DoJ, NRC, Treasury, and more – you don't want to miss it.

This exclusive reception will take place from **5:00 p.m. to 7:30 p.m.** at the Rayburn HOB 2060. To register for this event, or for more information, please visit: <https://www.meritalk.com/event/fitara-awards-sep-2019/register/>

Check out highlights from the February FITARA Awards program here: <https://www.youtube.com/>.

Questions? Contact Jenny Olivero – jolivero@meritalk.com or (703) 883-9000 ext. 164.

We hope you can join us.

MeriTalk - P.O. Box 1356 - Alexandria, VA 22313
The email address for you is lstevenson@fec.gov.
If you no longer wish to receive email communication from MeriTalk you may [manage your subscriptions](#).

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OVERVIEW





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FGE Risk Management Framework (RMF) Process

FGE has a proven process of implementing RMF policies and procedures for both .mil and .gov clients. Our services include:

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FGE Risk Management Framework Process



Governance refers to the people, policies & structures that support risk-based decision-making

Risk Appetite, Process and Measurement identify risks, their priority & appropriate limits

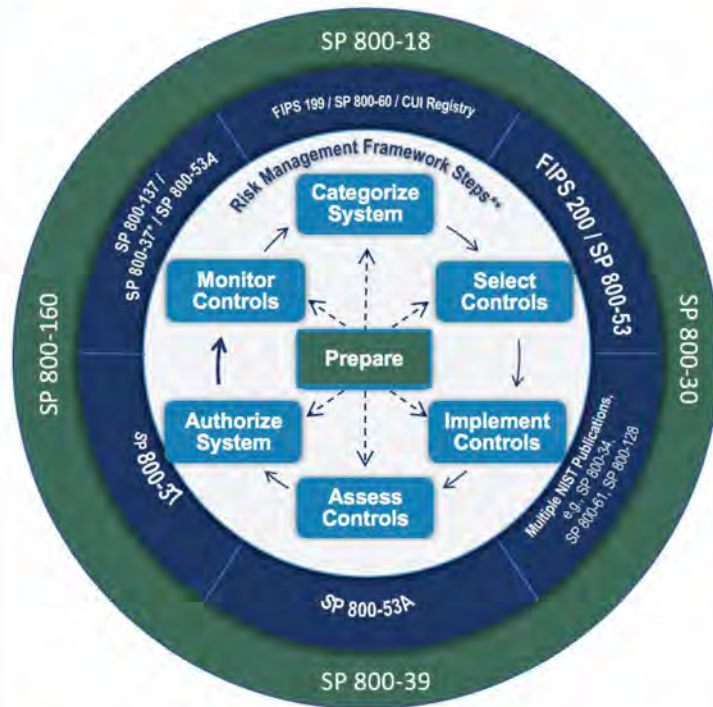
A positive risk **Culture** and key **Controls** support risk processes and reduce negative impacts

Ongoing monitoring and reporting provide **Assurance** that risk processes are working





FGE Risk Management Framework Process



Risk Management Framework (RMF) Overview

The selection and specification of security controls for a system is accomplished as part of an organization-wide information security program that involves the **management of organizational risk**---that is, the risk to the organization or to individuals associated with the operation of a system. The management of organizational risk is a key element in the organization's information security program and provides an effective framework for selecting the appropriate security controls for a system---the security controls necessary to protect individuals and the operations and assets of the organization.

Risk-Based Approach

The Risk Management Framework provides a process that integrates security and risk management activities into the system development life cycle. The risk-based approach to security control selection and specification considers effectiveness, efficiency, and constraints due to applicable laws, directives, Executive Orders, policies, standards, or regulations. The following activities related to managing organizational risk are paramount to an effective information security program and can be applied to both new and legacy systems within the context of the system development life cycle and the Federal Enterprise Architecture



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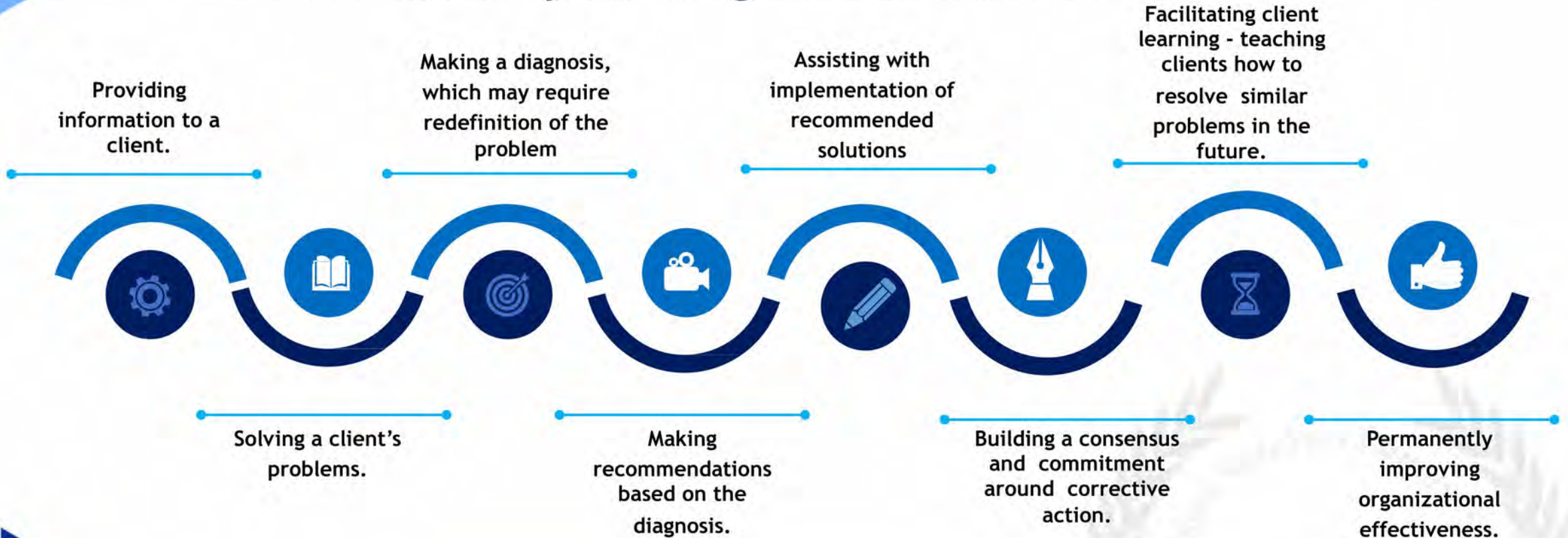
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From: Sari C. Pickerall
To: Lisa Stevenson
Sent: 2019-10-17T18:21:30.0000000Z
Subject: FW: NITA Deposition skills training

Not good news...they changed their discount policy.

Sari C. Pickerall
Office of General Counsel
Federal Election Commission
202.694.1555

From: Charlie Russell [mailto:crussell@nita.org]
Sent: Wednesday, October 16, 2019 5:05 PM
To: Sari C. Pickerall <SPickerall@fec.gov>
Subject: FW: NITA Deposition skills training

Hi Sari:

Charlie Russell here at NITA. Tom forwarded your inquiry on to me as he is moving into a role focusing more on management and I'm going to be taking on more account responsibility. I'm a recent addition to the sales and account management team here after 14+ years in the CLE and professional development business at Thomson Reuters. I'm looking forward to working with you to help meet the FEC's professional development goals.

Regarding your question, our discount policy has changed to one that is restricted to public service attorneys and solo/ small firms (3 or fewer attorneys). I've attached a copy of the policy here.

I hope this isn't too much of a problem. Please feel free to follow up with me with any questions. Otherwise, I'll follow up again with you in the near future and, the next time I'm in D.C. I'd love to meet up in person.

Is there a particular Deposition program that folks are considering?

Thanks.

Charlie

Charles Russell
Client Relationship Manager
National Institute for Trial Advocacy
Direct 303.953.6820
E-mail – crussell@nita.org



Better Advocates for a Better World

From: "Sari C. Pickerall" <SPickerall@fec.gov>
Date: October 16, 2019 at 11:05:57 AM EDT
To: Tom Hintz <thintz@nita.org>
Subject: NITA Deposition skills training

Good Morning Tom,

A few of our attorneys took this training a few years ago, but we have more who are interested. Previously, you provided me with discount rates for a group. Can you provide me with the group discount rates again if they are still available?

Thanks!

Sari C. Pickerall
Office of General Counsel
Federal Election Commission
202.694.1555

No. 19-234

In The
Supreme Court of the United States

LIBERTARIAN NATIONAL COMMITTEE, INC.,

Petitioner,

v.

FEDERAL ELECTION COMMISSION,

Respondent.

**On Petition For A Writ of Certiorari
To The United States Court Of Appeals
For The District Of Columbia Circuit**

**BRIEF AMICUS CURIAE OF
GOLDWATER INSTITUTE
IN SUPPORT OF PETITIONER**

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QUESTIONS PRESENTED

1. In the asserted interest of preventing *quid pro quo* corruption, the Federal Election Commission limits the amount of money that a political party may receive each year from a deceased donor.

Over the course of his life, Joseph Shaber made various small donations to the Libertarian Party. He was unknown to party officials and candidates. Upon his death, the party learned that Shaber had unconditionally left it \$235,575.20. Does limiting the size of Joseph Shaber's uncoordinated testamentary bequest to the party violate the party's First Amendment right to free speech?

2. In 2014, Congress imposed content-based spending restrictions on contributions to political parties. A national political party committee may now spend only 10% of an individual's maximum annual contribution on unrestricted speech. Of an individual's maximum annual contribution, 30% must be spent on presidential nominating conventions, 30% on election contests and other legal proceedings, and 30% on party headquarters buildings. 52 U.S.C. §§ 30116(a)(1)(B), (a)(9), 30125(a)(1). Money being fungible, these restrictions negligibly impact, if at all, party committees that would otherwise spend money from general funds on such government-preferred speech. Party committees that cannot or do not prioritize government-preferred spending purposes can raise and spend as little as 10% of each donor's otherwise-allowable contribution.

QUESTIONS PRESENTED—Continued

Do 52 U.S.C. §§ 30116(a)(1)(B), (a)(9) and 30125(a)(1) violate the First Amendment right of free speech by conditioning the size of contributions to a political party on the content of the party's speech?

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**IDENTITY AND INTEREST
OF *AMICUS CURIAE*¹**

The Goldwater Institute was established in 1988 as a nonpartisan public policy and research foundation devoted to advancing the principles of limited government, individual freedom, and constitutional protections through litigation, research, policy briefings, and advocacy. Through its Scharf-Norton Center for Constitutional Litigation, the Institute litigates cases and files *amicus* briefs when its or its clients' objectives are directly implicated.

The Institute devotes substantial resources to defending the vital constitutional principle of freedom of speech. The Institute has litigated and won cases challenging unconstitutional campaign-finance restrictions, including *Arizona Free Enterprise Club's Freedom Club PAC v. Bennett*, 564 U.S. 721 (2011) (matching-funds provision violated First Amendment) and *Protect My Check, Inc. v. Dilger*, 176 F. Supp. 3d 685 (E.D. Ky. 2016) (scheme imposing different limits on different classes of donors violated Equal Protection Clause).



¹ Pursuant to Supreme Court Rule 37.2(a), all parties have consented to the filing of this brief. Counsel of record for all parties received notice at least 10 days prior to the due date of the *Amicus Curiae*'s intention to file this brief. Pursuant to Supreme Court Rule 37.6, counsel for *amicus curiae* affirms that no counsel for any party authored this brief in whole or in part and that no person or entity, other than *amicus*, their members, or counsel, made a monetary contribution to the preparation or submission of this brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

“[A]bove all else, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content.” *Police Dep’t of Chi. v. Mosley*, 408 U.S. 92, 95 (1972). And “the First Amendment has its fullest and most urgent application precisely to the conduct of campaigns for political office.” *McCutcheon v. FEC*, 572 U.S. 185, 191–92 (2014) (plurality opinion) (internal marks and citation omitted). In particular, the First Amendment prohibits laws that control “the relative ability of individuals and groups to influence the outcome of elections.” *Citizens United v. FEC*, 558 U.S. 310, 350 (2010).

Given those premises, one might expect courts to require the government to carry a heavy burden to justify campaign-finance restrictions—especially those that would restrict political speech based on its content. Yet, too often, lower courts barely require the government to justify campaign-finance restrictions at all, regardless of their tendency to benefit some political candidates and groups over others.

This case illustrates the point. The lower court upheld a content-based restriction on political contributions: a rule allowing a political party to spend only 10 percent of an individual’s maximum annual contribution on unrestricted speech, while requiring 30 percent to be spent on presidential nominating conventions, another 30 percent to be spent on election contests and

other legal proceedings, and another 30 percent to be spent on party headquarters buildings. 52 U.S.C. §§ 30116(a)(1)(B), (a)(9) and 30125(a)(1).² The district court found that this restriction benefits major parties over minor ones such as Petitioner, App. 51a—but the lower court did not require the government to justify the rule, let alone provide evidence in support of a justification.

The Court should hear this case to make clear that—to protect individuals’ freedom of speech and association, and to prevent undue government interference in the political process—the First Amendment demands more.



ARGUMENT

I. The Court should grant certiorari to ensure that *all* campaign-finance restrictions receive rigorous scrutiny.

“The First Amendment creates a forum in which all may seek, without hindrance or aid from the State, to move public opinion and achieve their political goals.” *Knox v. SEIU Local 1000*, 567 U.S. 298, 322 (2012). It reflects a “profound national commitment to the principle that debate on public issues should be

² This brief addresses the second question presented by the petition for certiorari, regarding the constitutionality of the statutory provisions described here. The Court should also grant certiorari on the first question presented for the reasons stated in the petition.

uninhibited, robust, and wide-open.” *Mosley*, 408 U.S. at 95–96 (internal marks and citation omitted). That is why the Court subjects content-based restrictions on speech—whether based on the viewpoint expressed or the subject matter discussed—to strict scrutiny. *See Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2226–29 (2015).

Protection against government interference with open debate is especially important in the context of campaigns for political office, where officials might use the law to suppress competition and preserve the status quo—including their own power. *See id.* at 2233 (Alito, J., concurring) (“Limiting speech based on its ‘topic’ or ‘subject’ favors those who do not want to disturb the status quo. Such regulations may interfere with democratic self-government and the search for truth.”). “[I]ntrusion by the government into the debate over who should govern goes to the heart of First Amendment values.” *Bennett*, 564 U.S. at 750. Under the First Amendment and our republican system of government, it is the people, not elected officials, who should “mak[e] and implement[] judgments about which strengths should be permitted to contribute to the outcome of an election.” *Davis v. FEC*, 554 U.S. 724, 742 (2008). “[T]hose who govern should be the *last* people to help decide who *should* govern.” *McCutcheon*, 572 U.S. at 192.

Campaign-finance restrictions are one means by which officeholders might use the law to try to suppress some ideas and boost others. Because of that threat, this Court has required the government to

justify any campaign-finance restriction by showing that it is either narrowly tailored or closely drawn³ to prevent *quid pro quo* corruption. *Id.* “Campaign finance restrictions that pursue other objectives . . . impermissibly inject the Government into the debate over who should govern.” *Id.* (quotation marks and citation omitted).

The Court has required such rigorous scrutiny even where contribution limits are not content-based on their face. But the restrictions at issue here are content-based, and for that reason, are subject to the even stronger protection of strict scrutiny. *See Reed*, 135 S. Ct. at 2226–29.

Although the potential for lawmakers to abuse campaign-finance laws might seem obvious, courts—including the lower court here—often act as though they are blind to it. Despite this Court’s precedents calling for “rigorous” scrutiny, under which the government bears the burden to justify any infringement of First Amendment rights, *McCutcheon*, 572 U.S. at 197, lower courts too often do not require the government to justify restrictions on campaign contributions at all.

In this case, the lower court did not require the government to show that the restriction Petitioner

³ *Amicus* agrees with Petitioner that the rule challenged here is a content-based restriction on speech and therefore subject to strict scrutiny under *Reed*, 135 S. Ct. at 2226–29, not the “closely drawn” scrutiny that the Court prescribed for challenges to contribution limits in *Buckley v. Valeo*, 424 U.S. 1, 25 (1976). *See* Pet. 33–34. *Amicus*’s arguments about the need for rigorous scrutiny, however, apply under either standard.

challenges is narrowly tailored or closely drawn to prevent *quid pro quo* corruption. Instead, it analyzed the statute Petitioner challenges as though there was *nothing for the government to justify*. The court observed that, “[b]efore 2014, [a political party] could accept only a base-limit sized contribution from any one person”; with a 2014 amendment to the statute, a party could “accept ten times that amount,” provided that it restricted its use of amounts exceeding the base limit to the purposes specified in the statute. App. 35a. Therefore, the court characterized Petitioner’s claim as one impermissibly challenging “Congress’s decision to *raise* contribution limits.” App. 35a–36a. As a result, the court concluded that Petitioner could not prevail unless the statute were shown to be so underinclusive as to “raise doubts about whether the government is in fact pursuing the [anticorruption] interest it invokes.” App. 44a (quoting *Williams-Yulee v. Fla. Bar*, 135 S. Ct. 1656, 1668 (2015)). Without requiring the government to meet its burden, the court readily concluded that there was “no reason for such skepticism,” and upheld the law. App. 36a–41a.

That approach was exactly backward. The First Amendment default against which *any* campaign-finance restriction must be judged is *unlimited* political speech—including unlimited political expenditures and unlimited contributions to candidates and other political committees. See *McCutcheon*, 572 U.S. at 192 (discussing need for First Amendment scrutiny of “[a]ny regulation” of campaign contributions or expenditures). To the extent that the government limits

contributions or expenditures *at all*, it must justify its restrictions—in their entirety—by showing that they are (at a minimum) “closely drawn” to prevent *quid pro quo* corruption. *See id.* at 197.

That remains true where, as here, a plaintiff challenges restrictions on contributions that exceed a base limit that, standing alone, might survive, or has in the past survived, First Amendment scrutiny. This content-based restriction on contributions above the base limit creates the risk, just as any campaign-finance restriction does, that the government is using the law to favor some voices in politics over others—i.e., that it is committing one of the primary evils the First Amendment exists to prevent. That is exactly what is happening here: this restriction tends to benefit the major parties, which can use the restricted funds to advance their political agenda, and to hinder the minor parties, which would better pursue their political goals by using the money for other purposes. *See* Pet. 11–13; App. 50a–51a.

A court applying *meaningful* First Amendment scrutiny—placing the burden on the government, where it belongs, *McCutcheon*, 572 U.S. at 209—would at least demand that the government provide (and substantiate) a compelling explanation as to *why* contributions restricted for certain uses have so much less potential to corrupt than unrestricted contributions as to warrant the restriction. A court seeking to “‘avoid unnecessary abridgment’ of First Amendment rights,” *McCutcheon*, 572 U.S. at 199 (citation omitted), would demand that the government explain why it could not

serve its anticorruption purpose equally well without placing restrictions on the use of contributions exceeding the \$33,400 base limit. But here, the lower court required virtually nothing of the government.

The lower court was not troubled by the statute's tendency to benefit major parties over minor ones because, it said, the First Amendment does not allow the government to seek to "equalize the financial resources of candidates." App. 39a (internal marks and citations omitted). That is true—the government may not restrict contributions for the purpose of equalizing resources or otherwise leveling the political playing field, *see Bennett*, 564 U.S. at 749–50—but it also may not enact restrictions that *tilt* the playing field to favor one side over another, at least not without meeting its burden to show that the restriction is closely drawn to prevent corruption. *Cf. McCutcheon*, 572 U.S. at 192, 199. And here, again, Petitioner challenges the restriction, not the lack of one. Petitioner challenges the statute's restrictions on contributions to political parties exceeding \$33,400. *See* App. 7a.

In short, the lower court gave virtually no scrutiny to the type of restrictions that warrant the most rigorous scrutiny to prevent the government from violating a fundamental premise and purpose of the First Amendment. To conclude, as the lower court did, that a past decision upholding a base limit automatically validates future content-based restrictions on contributions that exceed the base limit creates a perverse incentive antithetical to the goals of the First Amendment: it encourages legislators to impose new

restrictions designed to skew political debates and elections in ways that will serve their interests, knowing that these new restrictions will be virtually immune from challenge.

Unfortunately, this is not the only case in which a lower court has failed to appreciate the threat posed by contribution restrictions that favor some political players over others. Courts have also failed to provide sufficient scrutiny where governments have discriminated even more overtly by imposing higher contribution limits on some donors than on others.

For example, the Massachusetts Supreme Judicial Court applied virtually no scrutiny to a statute banning for-profit businesses—but not unions and non-profits—from making political contributions in *1A Auto, Inc. v. Director of the Office of Campaign and Political Finance*, 105 N.E.3d 1175 (Mass. 2018), *cert. denied*, 139 S. Ct. 2613 (2019). That court concluded that it was enough that the restriction on business contributions, considered alone, would tend to prevent corruption stemming from such contributions. *Id.* at 1182–90. The court did not require the government to justify its lack of restrictions on union and non-profit contributions, but instead—like the lower court here—performed an “underinclusiveness” analysis under which the government was not required to prove *anything*, and the plaintiffs, to prevail, would have had to provide evidence that the restriction on business was enacted for the purpose of benefiting those who were left unrestricted. *Id.* at 1188–89.

In another recent case, the Seventh Circuit applied minimal scrutiny to an Illinois campaign finance statute that, among other things, allowed corporations and other associations to make double the political contributions that individuals may make—for example, by allowing individuals to give \$5,000 to a candidate while allowing a corporation to give \$10,000. *Ill. Liberty PAC v. Madigan*, 904 F.3d 463, 469–71 (7th Cir. 2018), *cert. denied sub nom. Ill. Liberty PAC v. Raoul*, 139 S. Ct. 1544 (2019). The court said the proper focus of analysis was only on whether the limit on individuals, considered alone, was unconstitutionally low. *Id.* at 470. It concluded that the scheme’s more favorable treatment of corporations was irrelevant—and the statute could not be deemed fatally underinclusive—in the absence of evidence “that Illinois was not *actually* concerned about corruption when it promulgated the individual contribution limits.” *Id.* at 470.

Similarly, the District of Columbia Circuit has held that if a ban on contributions by a given class of donors, considered by itself, survives First Amendment scrutiny, then the government’s failure to similarly limit other donors cannot violate the Equal Protection Clause. *Wagner v. FEC*, 793 F.3d 1, 32–33 (D.C. Cir. 2015), *cert. denied sub nom. Miller v. FEC*, 136 S. Ct. 895 (2016). And the Eighth Circuit summarily rejected an Equal Protection Clause⁴ challenge to a

⁴ Although these cases framed the issue under the Equal Protection Clause, the Court has treated the First Amendment’s requirement of equal treatment of speakers as similar if not identical. *See, e.g., Renton v. Playtime Theaters, Inc.*, 475 U.S. 41, 55

discriminatory contribution ban after concluding that the ban on corporate contributions, considered by itself, did not violate the First Amendment. *Iowa Right to Life Comm., Inc. v. Tooker*, 717 F.3d 576, 601–03 & n.11 (8th Cir. 2013).

By not requiring the government to fully justify its decisions about *who* and *what* to restrict (and not restrict) by reference to its interest in preventing corruption, the courts in these cases have disregarded the fundamental First Amendment principles requiring equal treatment of political speakers. These decisions disregard the need for content-, identity-, and motive-neutrality, and they ignore one of the most important reasons why contribution limits must be closely drawn to serve the government’s interest in preventing *quid pro quo* corruption and no other purpose: to ensure that the government does not “impermissibly inject [itself] ‘into the debate over who should govern.’” *McCutcheon*, 572 U.S. at 192 (quoting *Bennett*, 564 U.S. at 750).

If lower courts continue to ignore this Court’s requirement for rigorous scrutiny of campaign-finance restrictions, legislators will know that they may manipulate contribution limits—restricting the purpose for which contributions may be used, or overtly discriminating in favor of some donors and against others—to play favorites and improperly influence the

n.4 (1986) (summarily rejecting equal protection claim after analyzing and rejecting First Amendment claim because plaintiffs could “fare no better under the Equal Protection Clause than under the First Amendment itself”).

outcome of elections. One might hope that public servants could be trusted to resist the urge to engage in such meddling, “but experience has taught mankind the necessity of auxiliary precautions.” *The Federalist* No. 51 (J. Madison) at 349 (J. Cooke ed. 1961). The First Amendment is one of those precautions; it exists precisely because elected officials cannot be trusted to oversee the process of electing officials. See *Citizens United*, 558 U.S. at 340 (the First Amendment is “[p]remised on mistrust of governmental power”); Richard A. Epstein, *Property, Speech, and the Politics of Distrust*, 59 U. Chi. L. Rev. 41, 54 (1992) (explaining that the First Amendment exists to “control” legislators who would “stifle criticism, rig debate, and disseminate falsehoods to achieve their ends”).

To prevent this, the Court should clarify courts’ obligation to rigorously scrutinize *all* types of campaign-finance restrictions by requiring the government to fully justify any decisions that limit a donor’s ability to give money to a political candidate or committee, or that limit a candidate or political committee’s ability to use contributions for political speech.

II. The Court should grant certiorari to ensure that courts require the government to justify any campaign-finance restriction with evidence.

The lower court’s decision also reflects another common problem with courts’ analyses of First Amendment challenges to campaign-finance restrictions:

failure to require the government to justify its restrictions on First Amendment rights with *evidence* that the restriction is *actually* drawn to prevent corruption.

This Court has made clear that the government must support any purported justification for a restriction on First Amendment rights—including any restriction on campaign contributions—with evidence. See *Nixon v. Shrink Mo. Gov’t PAC*, 528 U.S. 377, 391–92 (2000) (considering contribution limits); *Edenfield v. Fane*, 507 U.S. 761, 770–71 (1993) (considering commercial speech restriction). “[M]ere conjecture” will not suffice. *Nixon*, 528 U.S. at 392.

Yet lower courts—including the lower court here—have upheld restrictions on campaign contributions based on little more than conjecture. To justify the government’s restrictions on contributions to political parties exceeding \$33,400, the court in this case speculated that Congress “*could have* permissibly concluded that unlike contributions that can be used for, say, television ads, billboards, or yard signs, contributions that fund mortgage payments, utility bills, and lawyers’ fees have a comparatively minimal impact on a party’s ability to persuade voters and win elections.” App. 37a (emphasis added). For its “evidence,” the court cited two statements from congressional leaders stating that “‘many’ of the ‘expenditures made from the [dedicated-purpose] accounts’ are ‘not for the purpose of influencing federal elections.’” *Id.* (quoting 160 Cong. Rec. S6814 (daily ed. Dec. 13, 2014))

(statement of Sen. Reid); *id.* at H9286 (daily ed. Dec. 11, 2014) (statement of Rep. Boehner)).

What does “many” mean? And, given that money is fungible—and money given to major parties’ dedicated-purpose accounts would therefore tend to free up unrestricted funds for influencing elections (*see* Pet. 11; App. 50a–51a)—why wouldn’t contributions to dedicated-purpose accounts still give rise to the same corruption concerns as unrestricted contributions? And why should a court credit assertions by politicians—who are also leaders of the major parties that stand to benefit from the restriction at issue—urging support for their own legislation? Or where such assertions might very well have been made “not primarily to inform the Members of Congress what the bill meant . . . but rather to influence judicial construction[?]” *Blanchard v. Bergeron*, 489 U.S. 87, 98–99 (1989) (Scalia, J., concurring in judgment). These are questions a court would ask if it were to meaningfully scrutinize a restriction on speech under the First Amendment. The lower court, however, save for a partial dissent (App. 44a–48a (opinion of Griffith, J.)), showed no concern for them.

The lower court’s decision is not the first to rely on statements from politicians who passed or supported a campaign-finance restriction as evidence that the law serves a legitimate anticorruption purpose. *See, e.g., Lair v. Motl*, 873 F.3d 1170, 1179–80 (9th Cir. 2017), *cert. denied sub nom. Lair v. Mangan*, 139 S. Ct. 916 (2019) (upholding contribution limit based in part on testimony from legislator); *State v. Alaska Civil*

Liberties Union, 978 P.2d 597, 615–16, 620–21 (Alaska 1999) (upholding limits on contributions by out-of-state donors based partly on affidavits from former governors that “contributions from outside the state create serious loyalty problems” with no evidence of “special corruption caused by out-of-state contributions” and upholding general contribution limits based on affidavits from officeholders regarding their purported uncertainty about their motivations for voting for or against donors’ interests). Of course this evidence is hardly reliable—it is the stuff of rational-basis review, at best, and reliance on it amounts to allowing government officials to authorize their own violations of First Amendment rights.

Along similar lines, some courts have considered voters’ approval of a ballot measure imposing contribution limits as evidence that contributions create the appearance of corruption in voters’ minds, which justifies the limits. *See, e.g., Zimmerman v. City of Austin*, 881 F.3d 378, 386 (5th Cir. 2016), *cert. denied*, 139 S. Ct. 639 (2018) (citing “the fact that 72% of voters voted in favor of the base limit” as evidence that contributions exceeding the limit create the appearance of corruption); *Ognibene v. Parkes*, 671 F.3d 174, 190 (2d Cir. 2011) (“The fact that City voters passed . . . these reforms speaks powerfully to the public perception that further regulation of campaign contributions . . . is needed.”). That not only is circular—allowing campaign-finance measures to justify themselves through their own existence—it also contradicts “the whole point of the First Amendment,” which “is to

protect speakers against unjustified government restrictions on speech, even when those restrictions reflect the will of the majority.” *Bennett*, 564 U.S. at 754; *see also McCutcheon*, 572 U.S. at 191 (Though “[m]any people . . . would be delighted to see fewer [campaign] television commercials . . . [and m]oney in politics may at times seem repugnant to some, . . . the First Amendment . . . surely protects political campaign speech despite popular opposition.”).

Sometimes, courts upholding campaign finance restrictions even cite newspaper articles alleging or implying that campaign contributions are a source of corruption as if these were evidence. *See, e.g., Minn. Citizens Concerned for Life, Inc. v. Kelley*, 427 F.3d 1106, 1114–15 (8th Cir. 2005) (upholding aggregate contribution limit based on “newspaper articles detailing special interest contributions and perceived corruption”); *Daggett v. Comm’n on Gov’t Ethics & Election Practices*, 205 F.3d 445, 457 (1st Cir. 2000) (citing “news stories and editorial comment”); Nathan Persily & Kelli Lammie, *Perceptions of Corruption and Campaign Finance: When Public Opinion Determines Constitutional Law*, 153 U. Pa. L. Rev. 119, 129 (2004) (describing newspaper evidence *Daggett* relied on as “both typical and typically vacuous”). In such cases, “[e]ditorials and opinion pieces swim alongside news reports of shady deals and influence peddling, with each journalist’s account or editorial board’s outrage used to build a case of apparent corruption.” *Id.* at 130.

Courts’ reliance on these sources as sufficient “evidence” of corruption “means that the most zealous and

aggressive advocates of restriction can make accusations, whether well founded in fact or not, and then use the very fact that some people believe the charges as a reason to justify the regulation.” Ronald M. Levin, *Fighting the Appearance of Corruption*, 6 Wash. U. J.L. & Pol’y 171, 178 (2001). True, the lower courts accepting this evidence purport to follow *Nixon*, which cited newspaper reports as evidence of corruption justifying Missouri’s scheme of campaign contributions. 528 U.S. at 393. But *Nixon* concluded that Missouri’s limits bore a “striking resemblance” to federal limits the Court had already upheld in *Buckley*, and it acknowledged that more novel or less plausible justifications would require more evidence. *Id.* at 391, 395.

In any event, whatever the merits of the evidence used in *Nixon*, courts’ acceptance of mere allegations in news stories as sufficient evidence to justify campaign contributions is inconsistent with the rigorous scrutiny the Court has called for in more recent campaign-finance decisions. If people’s *reported* belief that contributions give rise to corruption can justify contribution limits without regard to whether those beliefs are well-founded, then “the requirement of proof of need for restrictions might as well be rescinded entirely,” because “[t]he public *always* believes this,” and virtually nothing would be off-limits. Levin, *supra*, at 177 (emphasis added).

In other cases, courts have relied on evidence of activities having nothing to do with corrupt campaign contributions. See *Lair*, 873 F.3d at 1189–90 (Bea, J., dissenting) (noting that supposed instances of

corruption cited to justify restriction did not “involve[] bribery or the improper trading of official acts . . . for monetary contributions”); *1A Auto*, 105 N.E.3d at 1186 (upholding ban on business contributions, citing instances of bribery not involving campaign contributions); *Casino Ass’n of La. v. State*, 820 So.2d 494, 504–08 (La. 2002) (upholding ban on contributions by casino industry, citing general association of gambling with vice and corruption).

Finally, in some cases, courts have upheld limits based on nothing but conjecture, analogy to previous cases upholding different limits, or an apparent presumption that the government acted with a proper purpose. *See Ill. Liberty PAC*, 904 F.3d at 469–71 (upholding limits allowing corporations and other associations to give double the contributions individuals could give after the district court “dismissed this claim on the pleadings without putting the defendants to [any] evidentiary burden”); *Holmes v. FEC*, 875 F.3d 1153, 1164 (D.C. Cir. 2017), *cert. denied*, 138 S. Ct. 2018 (2018) (upholding separate \$2,600 limits for primary and general elections, noting that “Congress *could conceivably* regard a one-time contribution of \$5,200 in the general (or primary) election alone to present a greater risk of . . . corruption than two distinct contributions of \$2,600 in each of the primary and general elections”) (emphasis added); *Frank v. City of Akron*, 290 F.3d 813 (6th Cir. 2002) (upholding municipal contribution limits without citing evidence); *Ky. Right to Life, Inc. v. Terry*, 108 F.3d 637 (6th Cir. 1997) (upholding state contribution limits without citing evidence). Yet it is supposed to be one of the definitive

characteristics of First Amendment scrutiny that no presumption of constitutionality applies, and that the *government* bears the burden of justifying restrictions on such rights. *United States v. Alvarez*, 567 U.S. 709, 715–17 (2012).

None of the approaches currently being employed by lower courts—in contravention to this Court’s repeated instructions—is sufficient to avoid abridgements of First Amendment rights and to prevent undue government interference with the political process. The Court should take this opportunity to clarify the government’s burden to justify its decisions and the courts’ responsibility to safeguard fundamental constitutional rights.



CONCLUSION

The petition for certiorari should be *granted*.

Respectfully submitted,

TIMOTHY SANDEFUR

JACOB HUEBERT*

SCHARF-NORTON CENTER FOR

CONSTITUTIONAL LITIGATION

AT THE GOLDWATER INSTITUTE

500 E. Coronado Rd.

Phoenix, AZ 85004

(602) 462-5000

litigation@goldwaterinstitute.org

**Counsel of Record*

Counsel for Amicus Curiae Goldwater Institute

From:Gilbert A. Ford
To:Lisa Stevenson ; Gregory Baker
Sent:2019-09-18T15:50:05.0000000Z
CC:John Quinlan ; Carmen Robinson ; Rhiannon Magruder ; Anh Le Vuong
Subject:Re: Witness Fees - Checks 2 @ \$40.00

OK got it . Thanks

Gilbert A. Ford, Jr.
Budget Director

Federal Election Commission
1050 First Street NE
Washington DC 20463
Phone 202-694-1216
Cell 202-251-9659
Fax 202-208-1909

From: Lisa Stevenson <LStevenson@fec.gov>
Sent: Wednesday, September 18, 2019 11:37 AM
To: Gilbert A. Ford <GFord@fec.gov>; Gregory Baker <gbaker@fec.gov>
Cc: John Quinlan <JQuinlan@fec.gov>; Carmen Robinson <CRobinson@fec.gov>; Rhiannon Magruder <RMagruder@fec.gov>; Anh Le Vuong <avuong@fec.gov>
Subject: RE: Witness Fees - Checks 2 @ \$40.00

How about

At the instruction of the Office of General Counsel, we are returning these witness checks issued to Commissioner Matt Petersen and Debbie Chacona in connection with the *United States v. Lundergan* trial.

Lisa J. Stevenson
Acting General Counsel
Federal Election Commission
lstevenson@fec.gov
202-694-1613

From: Gilbert A. Ford
Sent: Wednesday, September 18, 2019 9:50 AM
To: Lisa Stevenson <LStevenson@fec.gov>; Gregory Baker <gbaker@fec.gov>
Cc: John Quinlan <JQuinlan@fec.gov>; Carmen Robinson <CRobinson@fec.gov>; Rhiannon Magruder <RMagruder@fec.gov>; Anh Le Vuong <avuong@fec.gov>
Subject: Re: Witness Fees - Checks 2 @ \$40.00

Any memo or info to include when returning

Gilbert A. Ford, Jr.
Budget Director
Federal Election Commission
1050 First Street NE
Washington DC 20463
Phone 202-694-1216
Cell 202-251-9659
Fax 202-208-1909

From: Lisa Stevenson <LStevenson@fec.gov>

Sent: Wednesday, September 18, 2019 9:44 AM

To: Gilbert A. Ford <GFord@fec.gov>; Gregory Baker <gbaker@fec.gov>

Cc: John Quinlan <JQuinlan@fec.gov>; Carmen Robinson <CRobinson@fec.gov>; Rhiannon Magruder <RMagruder@fec.gov>; Anh Le Vuong <avuong@fec.gov>

Subject: RE: Witness Fees - Checks 2 @ \$40.00

The trial is now over. Go ahead and return the checks. Thanks for checking in again.

Lisa J. Stevenson
Acting General Counsel
Federal Election Commission
Lstevenson@fec.gov
202-694-1613

From: Gilbert A. Ford

Sent: Wednesday, September 18, 2019 9:44 AM

To: Lisa Stevenson <LStevenson@fec.gov>; Gregory Baker <gbaker@fec.gov>

Cc: John Quinlan <JQuinlan@fec.gov>; Carmen Robinson <CRobinson@fec.gov>; Rhiannon Magruder <RMagruder@fec.gov>; Anh Le Vuong <avuong@fec.gov>

Subject: Re: Witness Fees - Checks 2 @ \$40.00

Just checking again on returning the checks.

Gilbert A. Ford, Jr.
Budget Director
Federal Election Commission
1050 First Street NE
Washington DC 20463
Phone 202-694-1216
Cell 202-251-9659
Fax 202-208-1909

From: Lisa Stevenson <LStevenson@fec.gov>

Sent: Monday, August 19, 2019 2:02 PM

To: Gilbert A. Ford <GFord@fec.gov>; Gregory Baker <gbaker@fec.gov>

Cc: John Quinlan <JQuinlan@fec.gov>; Carmen Robinson <CRobinson@fec.gov>; Rhiannon Magruder <RMagruder@fec.gov>

Subject: RE: Witness Fees - Summons

Please hold on to those until the trial is over or until I get a different set of instructions from DOJ.

Lisa J. Stevenson
Acting General Counsel
Federal Election Commission
Lstevenson@fec.gov
202-694-1613

From: Gilbert A. Ford

Sent: Monday, August 19, 2019 2:00 PM

To: Lisa Stevenson <LStevenson@fec.gov>; Gregory Baker <gbaker@fec.gov>

Cc: John Quinlan <JQuinlan@fec.gov>; Carmen Robinson <CRobinson@fec.gov>; Rhiannon Magruder <RMagruder@fec.gov>

Subject: Re: Witness Fees - Summons

Team just checking to see if it is OK to return the 2 witness fee checks to the sender??

Gilbert A. Ford, Jr.
Budget Director
Federal Election Commission
1050 First Street NE
Washington DC 20463
Phone 202-694-1216
Cell 202-251-9659
Fax 202-208-1909

From: Lisa Stevenson <LStevenson@fec.gov>

Sent: Friday, August 9, 2019 10:49 AM

To: Gilbert A. Ford <GFord@fec.gov>; Gregory Baker <gbaker@fec.gov>

Cc: John Quinlan <JQuinlan@fec.gov>; Carmen Robinson <CRobinson@fec.gov>; Rhiannon Magruder <RMagruder@fec.gov>

Subject: RE: Witness Fees - Summons

I have conferred with DOJ on this matter and the instruction remains the same for now - please do NOT deposit the witness checks or do anything else with them. I will circle back to you if I have any further instructions. DOJ intends to confer with the Court re quashing the subpoenas (a fancy word for saying to make them go away).

Thank you for bringing this to my attention so quickly, it helped me jump on the issue right away. So much appreciated.

Have a good weekend, all.

Lisa

Lisa J. Stevenson
Acting General Counsel
Federal Election Commission
l Stevenson@fec.gov
202-694-1613

From: Gilbert A. Ford

Sent: Thursday, August 08, 2019 4:36 PM

To: Lisa Stevenson <LStevenson@fec.gov>; Gregory Baker <gbaker@fec.gov>

Cc: John Quinlan <JQuinlan@fec.gov>; Carmen Robinson <CRobinson@fec.gov>; Rhiannon Magruder <RMagruder@fec.gov>

Subject: Re: Witness Fees - Summons

It looks like the info was attached to the 2 \$40 check(s) that we received in the mail... I am going to suggest that we hold off doing anything with the checks until we get more information..

Gilbert A. Ford, Jr.
Budget Director
Federal Election Commission
1050 First Street NE
Washington DC 20463
Phone 202-694-1216
Cell 202-251-9659
Fax 202-208-1909

From: Lisa Stevenson <LStevenson@fec.gov>

Sent: Thursday, August 8, 2019 4:12 PM
To: Gilbert A. Ford <GFord@fec.gov>; Gregory Baker <gbaker@fec.gov>
Cc: John Quinlan <JQuinlan@fec.gov>; Carmen Robinson <CRobinson@fec.gov>; Rhiannon Magruder <RMagruder@fec.gov>
Subject: Re: Witness Fees - Summons

Got it and looking it over. Were these materials actually served on us? How did we get them?

Lisa

Lisa J. Stevenson
Acting General Counsel
Federal Election Commission
(202) 694-1613
l Stevenson@fec.gov

From: Gilbert A. Ford <GFord@fec.gov>
Sent: Thursday, August 8, 2019 3:35 PM
To: Gregory Baker <gbaker@fec.gov>; Lisa Stevenson <LStevenson@fec.gov>
Cc: John Quinlan <JQuinlan@fec.gov>; Carmen Robinson <CRobinson@fec.gov>; Rhiannon Magruder <RMagruder@fec.gov>
Subject: Fw: Witness Fees - Summons

Team, I am sending to OGC to make sure they are in the loop. Thanks...

Gilbert A. Ford, Jr.
Budget Director
Federal Election Commission
1050 First Street NE
Washington DC 20463
Phone 202-694-1216
Cell 202-251-9659
Fax 202-208-1909

From: Carmen Robinson <CRobinson@fec.gov>
Sent: Thursday, August 8, 2019 3:27 PM
To: Rhiannon Magruder <RMagruder@fec.gov>
Cc: Anh Le Vuong <avuong@fec.gov>; Gilbert A. Ford <GFord@fec.gov>
Subject: Witness Fees

Hello Rhiannon,

We've received checks for witness fees made out to D. Chacona and Commissioner Peterson to appear in court in Kentucky next Tuesday. This is very new, so I was wondering if you had a clue how we should handle these. Also, are they already aware that they've been summoned? I've attached Chair Weintraub's subpoena as well.

Thank you,

Carmen Robinson
Financial Analyst
Federal Election Commission
1050 First Street NE
Washington, D.C. 20463

(202) 694-1684

This email and any attachments within it may contain Privileged/Confidential information or otherwise legally protected information. The information is intended solely for the use of the individual(s) or entity to whom it is addressed. If you have received this email in error please notify the sender and delete or otherwise destroy this email and all attachments immediately. If you are not the intended recipient you are notified that disclosing, copying, distributing or taking any action in reliance on the contents of this information is strictly prohibited.

From:Duane Pugh
To:Lisa Stevenson
Sent:2019-09-13T14:47:33.0000000Z
Subject:FW: Symposium Invitation: Digital Disinformation and the Threat to Democracy

Just FYI: I don't see anything about "not an official event."

From: Garrett, R. Sam [mailto:RGARRETT@crs.loc.gov]
Sent: Tuesday, September 10, 2019 5:07 PM
To: Amy Pike <APike@fec.gov>; Duane Pugh <dpugh@fec.gov>
Subject: FW: Symposium Invitation: Digital Disinformation and the Threat to Democracy

Hi, Amy and Duane.

I've RSVPed, but wanted to let you know that even if I can't make it, I plan to watch online.

Thanks,

Sam

From: FEC Chair Ellen L. Weintraub <CommissionerWeintraub@fec.gov>
Sent: Tuesday, September 10, 2019 4:58 PM
To: FEC Chair Ellen L. Weintraub <CommissionerWeintraub@fec.gov>
Subject: Symposium Invitation: Digital Disinformation and the Threat to Democracy

SYMPOSIUM:
***Digital Disinformation and the Threat to Democracy:
Information Integrity in the 2020 Elections***

As the technology for manipulation of information steadily advances, and malicious outsiders and foreign influence operators resort to the dissemination of false and altered content, the threat to our democratic process grows. If we collectively fail to contain this problem in 2020, disclosure will be undermined and public faith in our elections may be difficult to restore.

Please join me for an exciting and very topical symposium, *Digital Disinformation and the Threat to Democracy: Information Integrity in the 2020 Elections*. I'm hosting the event with PEN America and the Global Digital Policy Incubator of Stanford's Cyber Policy Center. The symposium will be held at the FEC's headquarters in Washington, D.C. (**1050 First Street, NE**) on **Tuesday, September 17, from 8:30 AM to 1 PM**.

This symposium will bring together leading figures from major tech companies and social media platforms, scholars, researchers, journalists, and national political organizations for an in-depth and solutions-oriented discussion on fighting the disinformation that risks further corroding our democracy. Among the speakers will be **Sen. Mark Warner (D-Va.)** and **Rep. Stephanie Murphy (D-Fla.)**, who have each advanced proposals addressing deep fakes and enhancing election security, and **former DHS Secretary Michael Chertoff**. Also participating will be Camille Francois of Graphika, Katie Harbath of Facebook, Kevin Kane of Twitter, Ginny Badanes of Microsoft, Nate Miller of Avaaz, and Laura Rosenberger of the Alliance for Securing Democracy, and Clement Wolf of Google.

Doors open at 8 AM. We encourage you to arrive early to leave time for security procedures. Please RSVP here by Friday, September 13: <https://pen.org/event/digital-disinformation-2020-elections/>

The event will be live-streamed at: <https://www.fec.gov/disinformation>

AGENDA

8:00 Doors open

8:30 – 9:00 Coffee & registration

9:00 – 9:15 Introduction: Framing the challenge

9:15 – 9:45 Keynote: Senator Mark Warner of Virginia

9:45 – 11:00 Session 1: Understanding the challenge: How disinformation and new technologies affect the way we think & what we have learned from the international experience

11:00 – 12:45 Session 2: Facing the challenge in the U.S.: Solutions in the fight to save the 2020 elections

12:45 – 1:00 Closing and next steps

From:Tom Moore
To:FEC Chair Ellen L. Weintraub
Sent:2019-09-10T21:29:54.0000000Z
Subject:Symposium Invitation: Digital Disinformation and the Threat to Democracy: Information Integrity in the 2020 Elections

SYMPOSIUM:

Digital Disinformation and the Threat to Democracy: Information Integrity in the 2020 Elections

As the technology for manipulation of information steadily advances, and malicious outsiders and foreign influence operators resort to the dissemination of false and altered content, the threat to our democratic process grows. If we collectively fail to contain this problem in 2020, disclosure will be undermined and public faith in our elections may be difficult to restore.

Please join me for an exciting and very topical symposium, *Digital Disinformation and the Threat to Democracy: Information Integrity in the 2020 Elections*. I'm hosting the event with PEN America and the Global Digital Policy Incubator of Stanford's Cyber Policy Center. The symposium will be held at the FEC's headquarters in Washington, D.C. **(1050 First Street, NE) on Tuesday, September 17, from 8:30 AM to 1 PM.**

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Doors open at 8 AM. We encourage you to arrive early to leave time for security procedures. Please RSVP here by Friday, September 13: <https://pen.org/event/digital-disinformation-2020-elections/>

The event will be live-streamed at: <https://www.fec.gov/disinformation>

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- 12:45 – 1:00 Closing and next steps

From:Jin Lee
To:Lisa Stevenson
Sent:2019-09-06T14:02:04.0000000Z
Subject:FW: News and Views from the FEC's Press Office

Lisa,

I wanted to call your attention to the important article in The Atlantic Monthly below.



From: BNA Convergence [mailto:convergence@bna.com]
Sent: Friday, September 06, 2019 7:48 AM
To: Jin Lee <JLee@fec.gov>
Subject: News and Views from the FEC's Press Office

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Sept

News and Views from the FEC's Press Office

News and Views from the FEC's Press Office

FEC, Federal Campaign Finance and Election News	FEC, Federal Campaign Finance and Election News
State and Local (and International) Campaign Finance News	Paralysis Setting in at US Election Watchdog Just What Was Needed Most
Federal Employee and Government News	Voice of America News (VOA) - 09/05/2019 20:15 Amid growing concern about the U.S. election system's vulnerability to manipulation, the nation's premiere election watchdog just suffered a setback. Last week, Matthew Petersen, the Republican vice chairman of the Federal Election Commission...
Editorials, Blogs and OpEds	Ex-FEC chairman and BYU grad takes job with D.C. law firm
FEC Staff Quotes and References	Deseret Morning News (Salt Lake City, UT) - 09/05/2019 15:01 SALT LAKE CITY — The recently resigned former chairman of the Federal Election Commission and BYU graduate has taken a job with a high-profile law firm in Washington. Matthew S. Petersen, most recently the FEC's vice chairman, resigned at the end of...
Tweets to @FEC from verified users	Former FEC chairman from Utah takes job at D.C. law firm
	Salt Lake Tribune (Salt Lake City, UT) - 09/05/2019 09:18

Washington • Utah native Matt Petersen is taking a job at a leading firm, resigning as vice chairman of the Federal Election Commission. Petersen grew up in Mapleton and served on the FEC for 11 years, announcing he would...

The FEC Won't Be Able to Reform Super PACs Before Election 'That's Kind of Crazy'

Vice News - 09/05/2019 14:48

WASHINGTON — Federal Election Commission Chairwoman Ellen Weintraub knows the agency could have done more to prevent the Russian interference in the 2016 election — but ideological differences in the agency made it difficult to get anything done....

Distrust, Staffing and Funding Shortages Imperil Election Security

Government Executive - 09/05/2019 09:04

Special Counsel Robert Mueller was emphatic when he testified before the Intelligence Committee on July 24 about Russian interference in the 2016 election: "It wasn't a single attempt. They're doing it as we sit here, and we expect to do it..."

From Cabinet to Campaign, McMahon Becomes Trump's Money Boss

 Washington Post (Washington, DC) - 09/06/2019 04:28

By | Bloomberg September 6 at 4:25 AM Linda McMahon is President Trump's anointed fundraising chief. And she wants all deep-pocketed Republicans to know it. The one-time wrestling executive left her post as Trump's head of the Small...

Authorities question congressman's campaign funds

Associated Press News (AP) - 09/05/2019 11:49

CINCINNATI (AP) — An attorney for a veteran Ohio Republican congressman says authorities are examining possible "financial malfeasance" in his campaign funds. Mark Braden says Rep. Steve Chabot of Cincinnati was "shockingly and deeply disappointed" when...

Closure of political firm as feds investigate missing money has "no impact" on local GOP races

fecgov : WCPO - 09/06/2019 07:35

CINCINNATI — The Hamilton County Republican party chair says the closure of a political strategy firm widely used in local campaigns will have "no impact" on upcoming races.

Congressmen, activists look to overturn Citizens United decision

Gazette (Chicago, IL) - 09/06/2019 07:06

Demonstrators demanding the Citizens United decision be overturned are protesting in front of the Supreme Court building in Washington, DC. Igor Studenkov U.S. Rep. Adam Schiff (D-CA-28), chair of the House Committee on...

Over 120 Groups Call on Congress to Back Constitutional Amendment Overturning Citizens United

Common Dreams - 09/05/2019 17:04

More than a 120 organizations on Thursday urged members of the House to support a constitutional amendment that aims to reverse the damage to American democracy by Citizens United, the 2010 Supreme Court ruling that effectively enabled...

Complaint vs San Nicolas over alleged illegal use of campaign funds filed with commission

Pacific Daily News - 09/06/2019 04:05

A formal complaint against Del. Mike San Nicolas was filed with the Election Commission shortly before 5 p.m. Friday, alleging he illegally used federal campaign funds to facilitate an extra-marital affair, among other things. John Paul L. Manuel...

Complaint filed against Del. Mike San Nicolas

Guam Pacific Daily News (Guam) - 09/06/2019 06:39

Published 6:00 p.m. ChT Sept. 6, 2019 | Updated 8:15 p.m. ChT Sept. 6, 2019
CLOSE John Paul Manuel, a former chief of staff for then senator and Delegate Michael San Nicolas, shares allegations about San Nicolas' behavior. He's coming forward....

People Actually Quit SoulCycle

Atlantic Monthly, The - 09/06/2019 07:02

Vasily Fedosenko / Reuters It's been nearly a month since Suzanne Venkataraman abandoned the "spiritual gangster" lifestyle. The moniker is worn across her chest, in the form of SoulCycle attire. It captures the aspiration of the stationary...

'No fossil fuel money!': Protests as Biden attends big fundraiser co-hosted by natural gas executive

Raw Story (Washington, DC) - 09/06/2019 06:55

"Biden can't expect to convince Americans that he's a leader on climate change, he's also cozying up to fossil fuel power players." Gov. Greg Abbott's denials that his words are inadequate and must be met with action signals a turn from rhetoric to policy....

[Joe Kennedy III pledges not to take cash from corporations](#)

Boston Globe (Boston, MA) - 09/05/2019 12:34

In the latest move that will be pored over by the pundits, Representative P. Kennedy III announced Thursday that he will no longer take corporate money. "Over the past year I have heard from an increasing number of constituents concerned...

[US Rep. Kennedy swearing off corporate PAC donations](#)

Attleboro Sun Chronicle (Attleboro, MA) - 09/05/2019 17:22


Joe Kennedy is swearing off contributions from corporate political action committees.

[Buttigieg Makes First TV Ad Buy of His 2020 Bid: Campaign Update](#)

fecgov : Bloomberg Government - 09/06/2019 07:41

Pete Buttigieg has booked his first television time of the 2020 campaign, reserving spots on Iowa cable systems starting Saturday.

[Doug Collins, Defending Trump in Impeachment Inquiry, Seeks Georgia Senate Seat](#)

 **New York Times, The (New York, NY)** - 09/05/2019 13:19

WASHINGTON — Representative Doug Collins, the face of President Trump's impeachment defense in the House, is quietly jockeying to convince Republican governor to appoint him to the state's soon-to-be-vacant U.S. Senate seat, according to...

[Markey faces mounting primary challenges](#)

Salem News (Salem, MA) - 09/05/2019 16:38

Elise Amendola/AP photoCongressman Joe Kennedy III, D-Mass., speaks after a news conference in Newton. Kennedy, a scion of one of America's most storied political families, is taking steps to challenge U.S. Sen. Edward Markey in the 2020...

[St. Louis billionaire writes big check to Republican funding group](#)

St. Louis Post-Dispatch (St. Louis, MO) - 09/05/2019 12:24

JEFFERSON CITY — The chairman of the board of one of St. Louis companies contributed \$735,000 to a political action committee We primarily supports electing Republicans to the Missouri Senate. The by David Steward,...

[Ethics Committee releases detail on allegations against Schweikert](#)

Roll Call Online (Washington, DC) - 09/05/2019 15:59

The House Ethics Committee has released information on an expanded set of allegations against Rep. David Schweikert, who is under investigation by a panel, which released a second referral from the Office of Congressional Ethics on the Arizona...

[Patti Blagojevich jolted by Aaron Schock's 'sweetheart deal' — 'Where is the outrage?'](#)

Chicago Sun-Times (Chicago, IL) - 09/05/2019 15:39

Weeks after President Donald Trump raised her hopes over a reduced sentence for her husband, Patti Blagojevich took to social media on Tuesday to ask about the lack of "outrage" over the dropping of charges against Aaron Schock. On...

[The Enduring Mystery of Tulsi Gabbard](#)

Atlantic Monthly, The - 09/05/2019 14:06

Tulsi Gabbard was relieved to have escaped out the back door of the Ballroom and across the parking lot. It was getting dark on a Friday night in August, and she had just finished her five-minute speech at the annual fundraising dinner...

[Liberal Dark Money Group Behind Maine News Site, Says Collins](#)

Washington Free Beacon (Washington, DC) - 09/05/2019 13:20

Maine Democrat Sara Gideon is benefitting from another multi-million-dollar dark money group as she attempts to unseat Sen. Susan Collins (R., Maine). Gideon is decrying "big money" in politics. Gideon has been receiving positive feedback from a Maine...

[Will Sen. Reed Stand Up to His Defense Donors on Saudi Arabia?](#)

Sludge - 09/05/2019 12:07

Jack Reed's campaigns and leadership PAC have taken \$362,400 from defense contractors that have sold 90% of the American weapons to Saudi Arabia. Now he has a key role in negotiations around banning companies' Saudi sales. In the...

Our latest rankings of the 2020 Democratic candidates

CNN - 09/05/2019 06:04

(This is the 19th edition of our power rankings of Democrats most likely to win their party's presidential nomination in 2020.) (CNN)There are (still) many Democrats running for the Democratic presidential nomination, but only half of them will...

John Delaney: 'I still believe in the Iowa caucus and the New Hampshire primary'

Foster's Daily Democrat (Dover, NH) - 09/05/2019 11:57

PORTSMOUTH — The first person to declare his candidacy for the Democratic presidential primary has no intention of being the next governor. John Delaney, a 56-year-old businessman and former three-term congressman for Maryland, has been...

Jay Inslee is out of the 2020 race, but his presence remains

Washington Post (Washington, DC) - 09/05/2019 08:54

Jay Inslee had a great night during CNN's climate forum. Even though he wasn't there. During the network's seven whole hours of discussion of climate change on Wednesday evening, at least four Democratic candidates for president were name-checked...

Mike Pompeo fuels speculation about Senate bid with trip to Kansas

USA Today (Washington, DC) - 09/06/2019 06:18

Comments This conversation is moderated according to USA TODAY's community rules. Please read the rules before joining the discussion. Shesgreen, USA TODAY Published 6:14 a.m. ET Sept. 6, 2019 CLO 'Celebrating Americanism in Our Foreign...

Elizabeth Warren won the summer, but still has a big challenge in front of her

NBC - 09/05/2019 08:42

WASHINGTON — The summer before the contests in Iowa and New Hampshire, a liberal candidate from a New England state is climbing in the polls, drawing big crowds (10,000-plus in Seattle), raising lots of money from small donors and campaigning in...

Cory Booker Once Owned Stock In A Russian Tech Company. So Why Didn't He Disclose It?

Forbes.com (New York, NY) - 09/06/2019 06:02

Recently released tax returns suggest that presidential contender C failed to disclose a stake in a Russian company when he was running for senate in 2013. The returns, which Booker released in April as part of his presidential...

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State and Local (and International) Campaign Finance

[Campaign money limits in 2020? Oregon Supreme Court leaves possibility open](#)

Oregonian, The [Oregonian Live] (Portland, OR) - 09/05/2019

The Oregon Supreme Court on Wednesday rejected a request to delay arguments in a major campaign finance case, a decision that leaves open the possibility that political donations could be capped in statewide races even though lawmakers...

[GOP Officials: State Legislative Races Being Overlooked](#)

NewsMax.com - 09/05/2019 20:19

Republican Party officials say state legislative races are being overlooked in favor of the 2020 election as most GOP donors are hyper-focused on keeping Donald Trump in the White House, a move that could see the GOP' Congress...

[Advocates make the case for public financing of campaigns](#)

Times Union (Albany, NY) - 09/05/2019 18:14

ALBANY — A 29-year-old critique of New York's campaign finance system is relevant now as it was then, based on a good government group's analysis of recent political fundraising. The New York Public Interest Research Group's review of campaign...

[Watchdog groups: state facing key opportunity to fix campaign finance laws](#)

Buffalo News (Buffalo, NY) - 09/05/2019 13:27

ALBANY — A trailblazing report, ordered by Gov. Cuomo, rebuked New York State's political campaign financing system as a "disgrace" and in need of change. Urgent is a relative term. The report was issued in 1988, by the Cuomo, the...

[A once-promising young lawmaker is arraigned for embezzlement](#)

WPRI Rhode Islnd - 09/05/2019 11:10

PROVIDENCE, R.I. (WPRI) — A once-promising Rhode Island den judge on an embezzlement charge. Laufton Ascencao, 26, was arra Providence District Court Thursday morning and released on \$10,000 recognizance. Ascencao, who...

[Laufton Ascencao, accused of using Sierra Club mon political campaign, released after arraignment](#)

Providence Journal (Providence, RI) - 09/05/2019 10:11

PROVIDENCE — Laufton Ascencao, a young Bristol Democrat who the General Assembly in 2018 but resigned before taking office, wa Tuesday morning in District Court, Providence, on a charge of embe PROVIDENCE — Laufton...

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Federal Employee and Government News

[5 Tips to a Quicker Retirement](#)

Government Executive - 09/05/2019 15:39

Remember the Seven Dwarfs song, "Heigh-Ho, Heigh-Ho (It's Hom We Go)"? How about the 1988 variant by David Chamberlain, "I Ow Off to Work I Go)"? You might be singing the latter tune for longer th as you try to...

[Elections and federal workers – the good and the bad](#)

Federal News Radio 1500 AM (Washington, DC) - 09/05/2019

Wall-to-wall election coverage is beginning earlier and earlier in pre election cycles. By the time the actual election rolls around, many A want it to be over. But elections are interesting times for federal wor because...

[Watchdog: Parks and food stamp decisions during s broke federal law](#)

CNN - 09/05/2019 18:20

Washington (CNN)Congress' watchdog scolded the Trump adminis Thursday for violating federal law by spending money on cleaning u national parks and on food stamps during the longest-ever governm earlier this year. The...

Trump Administration Seeks to Quash Lawsuit Over

Government Executive - 09/05/2019 16:06

The Trump administration has appealed a federal court decision granting current federal employees standing to sue the government over its failure to protect their personal information, arguing the hackers responsible for the breach want...

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Editorials, Blogs and OpEds

Correction

New York Times, The (New York, NY) - 09/06/2019 00:00

An editorial on Wednesday about paralyzing vacancies at the Federal Election Commission misstated the basis of \$940,000 in fines the agency levied in connection with contributions to a political action committee supporting Bush's 2016 presidential...

Restore the Federal Election Commission for the sake of democracy

Seattle Times (Seattle, WA) - 09/05/2019 16:54

In the wake of reports of serious financial abuses during the 1972 presidential campaigns and the ensuing Watergate scandal, Congress took action to create the Federal Election Commission (FEC). This independent agency was intended to serve as a referee...

Ex-FEC Commissioner Petersen Left FEC Without an Order to Work at Holtzman Vogel

Election Law Blog - 09/06/2019 01:53

Anna Massoglia: Ex-FEC vice chair Matthew Petersen—whose departure effectively thwarts any FEC enforcement action going into 2020 elections—has joined Holtzman Vogel Josefiak Torchinsky, a political law firm known for its legal maneuvers hiding...

He didn't make it as a judge, but now this former FEC commissioner is switching sides

MSNBC - 09/05/2019 22:31

Failed Trump judicial nominee shuts down FEC to join law firm that helps rich people and corporations influence elections in secret.

Lackey in chief

The Week Magazine (New York, NY) - 09/06/2019 06:04

Thanks to Mike Pence, Donald Trump is a little bit richer. According to Election Commission records, Pence's PAC, the Great America Committee, dropped nearly a quarter of a million dollars at Trump properties since this past...

Yasmeen Dohan: The threat to our democracy isn't Clinton, it's the United States

Michigan Daily (Ann Arbor, MI) - 09/06/2019 00:33

In 2010, the United States Supreme Court held in Citizens United v. Election Commission that it was unconstitutional for the federal government to impose any type of restriction on corporate spending for political communication provided it...

When Is It Okay to Out Political Donors?

Slate Magazine - 09/06/2019 05:00

About the Show The problem with the news right now? It's everywhere. Every day, it can feel like we're all just mindlessly scrolling. It's why we created Next. This short daily show is here to help you make sense of things that news feels...

Congress Aims "Honest Ads" at the Alternative Media

Activist Post - 09/05/2019 17:32

Op-Ed by Kurt Nimmo Lee E. Goodman, the former chairman of the Election Commission, completely misses the point in an op-ed post. Goodman says a bill working its way through Congress, the Honest Ads Act, fail to target the...

"An Op-Ed From the Future on Election Security"

Election Law Blog - 09/05/2019 14:10

Must-read Alex Stamos in Lawfare. ... Continue reading →

What President Trump understands that Democrats don't

Washington Times (Washington, DC) - 09/05/2019 13:28

ANALYSIS/OPINION: As a practitioner of public opinion polling, I've poked and analyzed opinions for more than 25 years. I've learned a lot and appreciate how fickle and malleable opinions can be. I've also come to understand through...

GOP candidate fueled by outside money complains he will lose because of opponent's outside money

Think Progress - 09/05/2019 11:20

Dan Bishop, the Republican nominee in next week's North Carolina special election, claimed on Thursday that the reason polls show he will lose in the district that President Donald Trump won easily is that so much more money is coming in from...

Far-Left Reddit Community Posts Guide to Locating Trump Donors

Breitbart.com - 09/04/2019 18:49

A far-left subreddit known for attracting posts encouraging acts of political violence has posted a guide to locating individuals who donated to President Trump. Subreddits are user-created communities that operate along with Facebook...

Congress Must Stop Big Business, Wealthy Donors From Influencing Our Elections

Public Citizen - 09/05/2019 10:14

100-Plus Groups Call on Congress to Overturn Citizens United Moratorium. Organizations, including major civil rights, environmental, labor, LGBT, and government groups, today called on members of the U.S. House of Representatives to co-sponsor...

The Supreme Court as Gerrymandering Outlier

Election Law Blog - 09/05/2019 10:57

Remarkably, yesterday's decision striking down North Carolina's state legislative maps as partisan gerrymanders was the eighth straight ruling against gerrymandering by a state or lower federal court. Florida and Pennsylvania courts preceded...

Baltimore council should pass bill implementing public financing of elections

Baltimore Messenger (Baltimore, MD) - 09/05/2019 15:59

Analysis conducted by professors at Johns Hopkins showed that a 1% increase in liquor outlets leads to a 4.2% increase in violent crime. Furthermore, liquor stores in Baltimore are not in compliance with zoning regulations. Community activists...

What's Going to Happen with a Challenge to North Carolina's Congressional District Partisan Gerrymander? Two

Election Law Blog - 09/05/2019 12:34

Democrats are now pondering a state court challenge to North Carolina's gerrymandering of the state's 13 congressional districts, following a ruling that the state legislative districts are a partisan gerrymander. Supreme...

[Sin of commission: What the state's new campaign finance panel has gotten wrong already](#)

New York Daily News (New York, NY) - 09/06/2019 04:11

Cuomo and others would be more than happy to live without the Wall Street Journal on their left sides. So, before hearing a single word of testimony, panel chair John Jacobs — who, wouldn't you know, also happens to be state Democratic Party chairman —...

[How BlackRock's Campaign Contributions Fought Off Campaign Finance Regulations](#)

Value Walk (New York, NY) - 09/05/2019 13:09

New Report Details How BlackRock , Inc. (NYSE:BLK) Fought Off Campaign Finance Regulation by Spending Big On Campaign Contributions In Washington, D.C. — Today, Campaign for Accountability (CfA), a watchdog group, which runs the...

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FEC Staff Quotes and References

[Paralysis Setting in at US Election Watchdog Just When It Was Needed Most](#)

Voice of America News (VOA) - 09/05/2019 20:15

Amid growing concern about the U.S. election system's vulnerability to manipulation, the nation's premiere election watchdog just suffered a major setback. Last week, Matthew Petersen, the Republican vice chairman of the Federal Election Commission...

[Ex-FEC chairman and BYU grad takes job with D.C. watchdog](#)

Deseret Morning News (Salt Lake City, UT) - 09/05/2019 15:01

SALT LAKE CITY — The recently resigned former chairman of the Federal Election Commission and BYU graduate has taken a job with a high-profile law firm in Washington. Matthew S. Petersen, most recently the FEC's vice chairman, resigned at the end of...

[Ex-FEC Commissioner Petersen Left FEC Without a Replacement](#)

Order to Work at Holtzman Vogel

Election Law Blog - 09/06/2019 01:53

Anna Massoglia: Ex-@FEC vice chair Matthew Petersen—whose d effectively thwarts any FEC enforcement action going into 2020 elec joining Holtzman Vogel Josefiak Torchinsky, a political law firm kno legal maneuvers hiding...

Former FEC chairman from Utah takes job at D.C. la

Salt Lake Tribune (Salt Lake City, UT) - 09/05/2019 09:18

Washington • Utah native Matt Petersen is taking a job at a leading resigning as vice chairman of the Federal Election Commission. Pe grew up in Mapleton and served on the FEC for 11 years, announce he would...

He didn't make at as a judge, but now this former FE commissioner is switching sides

MSNBC - 09/05/2019 22:31


Failed Trump judicial nominee shuts down FEC to join law firm that helping rich people and corporations influence elections in secret.

The FEC Won't Be Able to Reform Super PACs Before 'That's Kind of Crazy'

Vice News - 09/05/2019 14:48

WASHINGTON — Federal Election Commission Chairwoman Ellen knows the agency could have done more to prevent the Russian int the 2016 election — but ideological differences in the agency made to get anything done....

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Reminder that Howard Schultz never filed [@FEC](#) paperwork president, making this the formal end to somethi... <https://t.co>

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against interference in the 2020 election. But... <https://t.co/rA>

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NEW: We now know where Former [@FEC](#) Vice Chairman M Petersen — whose resignation last week left the agency una. <https://t.co/42MBIEdqLT>

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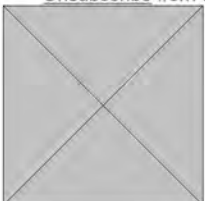
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2019 PLI Conference – Panel Discussion on Criminal and Civil Enforcement of Election and Ethics Laws

Presentation, Lisa J. Stevenson

Good morning,

It is my pleasure to speak with you today about the work that the Federal Election Commission has been doing on the civil enforcement front. You may have noticed that there have been a few headlines about the FEC in the news very recently, given that we lost our quorum at the end of last week. As I am sure most of you know, the FEC is designed as a six member Commission, with no more than three members from each party. For the last few years, we have been operating with four Commissioners, which is the minimum to have a quorum, and last week a commissioner resigned, resulting in the loss of that quorum. A fact, of course, I was not aware of when I agreed to speak today so ... thanks for that wonderful timing Jan. So I had to tweak this speech a little bit, but I can assure you that much of the work of the agency continues on. Disclosure Reports keep getting filed, enforcement complaints keep rolling in and are processed, and litigation continues so contrary to some

of those news reports, the Office of General Counsel at least is not “shutdown.” And all the lawyers in the room would probably appreciate it if I mentioned that the Statute of limitations for FECA violations is five years, so you might want to keep that in mind.

Anyway, during the seven years I have been at the FEC, the Commission has dealt with a variety of difficult issues, including those that have come to light in the wake of *Citizens United* and its progeny and the increasing interest of foreign nationals, corporations, and governments in influencing American elections. I like to think that the Office of General Counsel has done a great job of advising the Commission in working through these novel problems and trying to balance the interests of political transparency and free speech, despite the growing complexity that surrounds the campaign finance landscape. It is my sincere hope that the loss of quorum will be short-lived so that the Commission can continue to do its important work heading into the 2020 election cycle.

Today I would like to provide a short overview of the FEC's enforcement process and policies, along with a brief look into some of the recent legal developments that are particularly relevant to corporations and businesspersons. [Change slide].

The FEC has exclusive jurisdiction over civil enforcement of the Federal Election Campaign Act, also known as the FECA, whereas the Department of Justice has jurisdiction over criminal enforcement of that Act. The main difference between civil and criminal violations under FECA is obviously the intent requirement. A criminal violation occurs when a person knowingly and willfully violates the law. In other words, the offender knew what the law prohibited and violated it, notwithstanding that knowledge. Civil enforcement of FECA violations does not require scienter, which amounts to strict liability for most violations. And while it is not necessary to show scienter when determining whether a political committee or a corporation committed a civil violation of the Act, we do take intent into account during the penalty phase. [Change slide].

Take, for example, a matter that was recently resolved by the Commission involving an LLC reimbursement scheme for the company, Mepco Holdings, LLC, and two of its executives, James Laurita and Karen Hughes. Between 2010 and 2013, Mepco reimbursed Laurita, the company's CEO, and eight other executives, including Hughes, for over \$600,000 in political contributions made in the name of those executives and their spouses. The reimbursement scheme originated with the CEO, who often requested or directed the executives to make contributions to particular candidates or committees and would frequently rely upon Hughes, who handled Mepco's finances and payroll, to convey requests and administer the reimbursements. After Mepco filed for bankruptcy in 2013, its bankruptcy restructuring counsel discovered the reimbursement scheme and notified Mepco's parent company, which initiated an internal investigation and ultimately made a *sua sponte* submission to the Commission.

The Commission initially found reason to believe Mepco violated the FECA by making contributions in the name of another and making

excessive contributions and that Laurita, Hughes, and several other executives who acted as conduits knowingly and willfully violated the FECA by making contributions in the names of another. After the Office of General Counsel conducted an investigation, the Commission proceeded to conciliation with Laurita and Hughes on a non-knowing and willful basis and took no further action against the remaining executives because, unlike Laurita and Hughes, they were merely subordinate conduits and not otherwise involved in the reimbursement scheme.

Ultimately, because of these violations, the Commission entered into agreements with Mepco, Laurita, and Hughes in June of this year: Mepco agreed to pay a \$54,000 civil penalty, Laurita agreed to pay an \$18,000 civil penalty, and Hughes agreed to pay a \$9,000 civil penalty. The civil penalties Laurita and Hughes paid were substantially less than the Commission could have assessed had it proceeded on a knowing and willful basis. However, the Commission proceeded on a non-knowing and willful basis, in part based on their thorough cooperation during the

sua sponte process. The Mepco matter helps illustrate that parties' intent can make a big difference in determining Commission outcomes, as can parties' self-reporting via *sua sponte* submissions.

The Mepco matter also highlights the overlap in FECA enforcement shared between the FEC on the civil side and DOJ on the criminal side when an individual or corporation's conduct falls within both agency's jurisdictions.

Subsequent to the Commission's reason to believe findings, a federal grand jury indicted Laurita in connection with the reimbursement scheme. While the Office of General Counsel was in the midst of its investigation, the other respondents indicated they would voluntarily provide additional information to the Commission *only after* Laurita's trial was over. So, in January 2018 the Commission voted to hold the matter in abeyance in exchange for tolling agreements from the parties. Shortly thereafter, Laurita's trial ended in a hung jury, the DOJ declined to retry him and dismissed the indictment, the Office of General Counsel resumed its investigation, and the Commission

ultimately entered a conciliation agreement with him for civil violations related to the same underlying conduct.

Because the DOJ was in the midst a criminal investigation and prosecution of Laurita for the reimbursement scheme, the matter would have likely been referred to the FEC for civil enforcement eventually had Mepco's bankruptcy counsel not initiated a *sua sponte* submission. In that hypothetical, Mepco and the executives would have faced far steeper penalties than they did, further highlighting the importance of self-reporting potential FECA violations via the *sua sponte* submission process. [Change slide].

The abatement in the Mepco matter was FEC-initiated, but demonstrates the coordination that can take place between FEC and DOJ on FECA enforcement. Communications between the FEC and DOJ typically take place between me or the Associate General Counsel for Enforcement and Richard Pilger, the Director of the Election Crimes Branch at DOJ. The FEC and DOJ consult in a number of ways, but most frequently through the sharing of investigative materials. For

instance, upon written request and subject to Commission approval, the FEC will share with DOJ documents from its enforcement files. In turn, DOJ may (subject to Grand Jury secrecy rules and other applicable laws) provide the FEC investigative materials from parallel matters. DOJ typically shares such information at the end of a DOJ prosecution or after DOJ determines not to prosecute a case.

The Commission also, upon DOJ's request, may make witnesses available to assist in DOJ prosecutions. Typically, the FEC witness provides fact testimony concerning the contents of disclosure reports filed with the Commission, typically somebody from the Reports Analysis Division.

Finally, DOJ sometimes requests that the Commission hold particular Matters Under Review in abeyance pending the conclusion of a related DOJ investigation. In deciding whether to grant the request, the Commission considers the amount of time remaining on the relevant statute of limitations, whether the Commission's investigation would benefit from accessing the DOJ file at the end of the DOJ investigation,

and whether a parallel civil investigation may harm the criminal investigation by, for instance, creating conflicting witness statements.

[Change slide].

To return back to the nuts and bolts of civil enforcement, the FEC's enforcement process usually begins in one of four ways:

- (1) The filing of a sworn complaint by a person or entity;
- (2) A referral made from within the agency by either the Commission's Audit Division or Reports Analysis Division;
- (3) A referral from another government agency; or
- (4) A voluntary *sua sponte* submission made by a person or entities who believe they may have violated the FECA, like the one that was submitted by Mepco. [Change slide].

After being notified of an alleged violation, the Enforcement Division of the Office of General Counsel will then evaluate the relevant facts and law and make a recommendation to the Commission as to whether there is "reason to believe" the FECA has been violated. None of these first steps require any action by the Commission, and thus the

loss of a quorum will not impact all of this work that the Office of General Counsel routinely does. The initial steps can take four to six months, or sometimes longer, depending on the complexity of the case.

From there, matters can go in a number of different directions, including but not limited to a Commission finding that there is reason to believe that the Act has been violated, finding that there is no reason to believe that the Act has been violated, dismissal, or closing the file after a split vote. It takes four or more votes for the Commission to make a finding under the Act, so it is at this stage in the enforcement process that the loss of a quorum may likely have an impact depending on the length of time the Commission is without sufficient members.

From a finding of reason to believe a violation occurred, the Commission can proceed to attempted conciliation with the parties responding to the complaint (Respondents), an investigation by the Enforcement Division to uncover more relevant facts, or, if necessary, initiating litigation against the respondents to the matter. The slide behind me contains the possible outcomes in FEC enforcement matters, most of which are self-explanatory. [Change slide].

The 2018 election cycle brought a large amount of enforcement activity – the Commission closed 167 enforcement matters in 2018 alone, the largest number of closed enforcement matters since 2009 and the second highest number of closed enforcement matters since 1998. Of course not all of these matters resulted in violations, many were dismissed or ended with findings of no reason to believe that the law was violated. At the close of the second quarter of this fiscal year (March 2019), the Commission had a total enforcement case load of 308 matters, 215 active and 92 inactive, which is very high relative to recent years. Our quarterly Status of Enforcement Reports are now posted on the FEC website, in case you are interested in doing a deeper dive.

Of those matters where the FECA was found to have been violated, there are certain types of cases that tend to involve corporations and trade associations more often than others, so I wanted to touch on one of the recent matters involving those subjects to give you an idea of the issues that corporations should be mindful of.

[Change slide].

One line of matters that the Commission has publicly stated is a priority involves prohibited contributions by foreign nationals. This priority is particularly relevant to corporate clients when it implicates political contributions made by domestic subsidiaries of foreign parent corporations.

Take, for example, a recent matter in which American Pacific International Capital, Inc. (“APIC”)—a domestic subsidiary of a foreign corporation—made \$1.3 million in contributions to Right to Rise USA—an independent expenditure-only political committee (in FEC parlance IEOPCs, also known as super PACs) supporting 2016 presidential candidate Jeb Bush. Neil Bush, Jeb Bush’s brother and an APIC board member, solicited a campaign contribution from APIC on behalf of Right to Rise via communications with another APIC board member he knew to be a foreign national (and who also happened to be the majority owner of APIC’s foreign parent). That foreign national forwarded Bush’s solicitation to APIC’s U.S. Executive director and asked him to follow up on the solicitation. The U.S. Executive director

ultimately authorized and APIC made \$1.3 million in contributions to Right to Rise, all with funds generated solely by the domestic subsidiary. Respondents contended that they made the solicitation in a good faith belief that it was permissible, based on legal advice as well as the role of the U.S. Executive Director in approving the contributions.

The FECA prohibits foreign nationals, including foreign corporations, from directly or indirectly making contributions or donations in connection with federal, state or local elections, amongst other election-related activities. It also prohibits individuals from soliciting, accepting, or receiving such foreign national contributions.

Generally speaking, domestic subsidiaries of foreign parent corporations may permissibly make political contributions. But, there are limits to that permissibility based on the Commission's sensitivity to combatting foreign involvement in American elections. Commission precedent has highlighted two relevant scenarios in which domestic subsidiaries may not make political contributions: (1) where foreign national officers or directors participate in the domestic subsidiary's

decision-making regarding the contributions; or (2) where the domestic subsidiary uses foreign funds to make the contributions in connection with U.S. elections.

The APIC/Right to Rise matter implicated that first scenario in two ways. First, the foreign national APIC board member participated in APIC's decision to make \$1.3 million in contributions to Right to Rise by discussing the contributions with Neil Bush, a member of APIC's board, and directing APIC's U.S. director to follow up on the contributions. Second, Neil Bush solicited a foreign national contribution on behalf of Right to Rise when he spoke to the APIC board member whom he knew was a foreign national about making a contribution.

Because of these violations, the Commission entered into conciliation agreements with APIC in December of last year in which the company agreed to pay a \$550,000 civil penalty and with Right to Rise in March of this year in which the super PAC agreed to pay a \$390,000 civil penalty. The civil penalties totaled \$940,000 which was

a substantial penalty for the agency. [Refer Back to FEC Statistics – 2019 Slide].

If you do work for or represent a corporation that has foreign parent corporations or foreign corporations elsewhere in its corporate family, I encourage you to review the APIC/Right to Rise matter materials and other foreign national precedents that are publicly available on the Commission's website.

A final cautionary note if you think the foreign national prohibition may not implicate you because your corporation limits its political activity to the state and local level: the prohibition on foreign national contributions is the *one* area in which the FEC has jurisdiction over non-federal elections as well as federal elections. That is to say, if your corporation's foreign parent is involved in decision-making regarding or funding of contributions to state and local political committees, you may also yourself in the middle of the FEC civil enforcement process.

[**NEXT SLIDE** x2] This final slide represents some of the potential ranges of penalties and other terms that may be included in a Conciliation Agreement, including disgorgement, filing of corrected disclosure reports, training or other corrective action steps.

So that's an overview of our enforcement processes as well as highlight of some relevant cases and fact patterns that the Commission has seen in the last few years involving corporations or associations.

I would like to thank you all for allowing me to speak with you today to discuss these components of civil enforcement and election law.

[SKIP IF LONG]. Another significant line of matters involves political contributions from limited liability corporations to super PACs. The allegation in many of these matters is that LLCs are being used as straw donors to make contributions to these PACs. In other words, that LLCs are making contributions on behalf of others so that the true source of the funds don't have to disclose their contributions.

The Commission has received and worked through a number of complaints that have involved the making of donations through LLCs in the past few years. To be frank, the questions that OGC and the Commission have to answer in these cases are difficult ones. The Commission has analyzed the subject of straw donors for decades, but only recently have we had to assess allegations like these involving LLCs because it was only recently that LLCs gained the ability to contribute to super PACs.

One recent example of this is a matter that involved two distinct transactions between business organizations and super PACs. During the 2016 election cycle, Vivek Garipalli, a healthcare entrepreneur,

transferred funds to a Delaware statutory trust for the trust to use in making a political contribution. In a second transaction, Décor Services, LLC made a \$250,000 contribution to America Leads, a super PAC supporting Chris Christie's 2016 presidential campaign, a mere two weeks after it was formed. A week later, it made a second \$250,000 contribution to Conservative Solutions PAC, a super PAC supporting Marco Rubio's 2016 presidential campaign. The Complaints in these matters alleged that Garpialli and an unknown individual were using the trust and LLC, respectively, as straw donors.

The Office of General Counsel recommended that the Commission find reason to believe that the Act was violated regarding each transaction. In the first transaction, Garipalli acknowledged he was the true source of the funds, which originated in his personal account, and that he transferred the funds to the statutory trust for the purpose of making a political contribution. Furthermore, the trust was organized one day prior to making the contribution and did not appear to conduct any legitimate business in that one day period, suggesting that the trust

was used as a conduit contribution vehicle. In the second transaction, the Office of General Counsel concluded that the short turnaround between the LLC's formation and the contributions, combined with the size of the contributions, suggested the LLC was being used as a straw donor to hide the true source of the contribution. Furthermore, there was no indication that the LLC engaged in any other activity, let alone any non-political activity.

The Commission ultimately split in this case – two of the Commissioners voted to find no reason to believe that Garipalli and the unknown individual violated the straw donor provision, while the other Commissioners abstained or voted against that motion. The Commissioners ultimately voted to close the file and issued several statements of reason to explain their positions; those statements discussed both this matter and a number of other similar LLC matters. If you do any work on these issues, I encourage you to take some time to review these statements, and the records in other LLC straw donor matters, which are publicly available on the Commission's website.

While the Commissioners could not reach a majority consensus in the cases that were analyzed in those statements, and each set of Commissioners articulated a different legal analysis, a reading of both sets of statements suggests that the Commission could go forward on certain LLC straw donor cases in the future, especially if funds were funneled through an LLC for the purpose of making a contribution that evades the FECA's reporting requirements. Several LLC straw donor matters are in fact the subjects of ongoing litigation after the Complainants challenged the dismissal of their complaints as arbitrary and capricious [Change slide].

Going forward on such an LLC case would be consistent with other straw donor matters that the Commission has recently prosecuted. In fact, if you'll look at the slide behind me, you will see that these straw donor cases can produce some of the largest civil penalties levied by the Commission. The possible range for knowing and willful straw donor cases is between 300 and 1,000% of the amount in violation, whereas normally the maximum penalty is limited to 200% of the

amount in violation for other knowing and willful matters, and 100% of the amount in violation for non-knowing and willful matters.

To provide one brief example – in 2017 the Commission entered into a conciliation agreement with the Cancer Treatment Centers of America, which admitted to making prohibited corporate contributions and contributions in the names of others. The agreement required Cancer Treatment Centers to pay a \$288,000 civil penalty, one of the largest penalties in recent years. In its *sua sponte* submission, Cancer Treatment Centers disclosed that it ran a bonus program over a 12 year period in which corporate resources were used to conduct more than 45 fundraising initiatives for approximately 31 federal candidates. The bonus program used corporate funds to reimburse approximately \$700,000 worth of political contributions made by its executives.

[Change slide].



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

Office of Inspector General

MEMORANDUM

TO: Ellen Weintraub, Commission Chair
Matthew Petersen, Commission Vice Chair
Lisa Stevenson, Office of General Counsel

FROM: Christopher Skinner Christopher
Inspector General Skinner

Digitally signed by
Christopher Skinner
Date: 2019.08.29 11:34:25
-04'00'

SUBJECT: Time and Attendance Abuse: Management Alert

DATE: August 29, 2019

The Inspector General Act of 1978 (IG Act)¹ as amended, requires that each Inspector General (IG) keep the agency heads and the Congress “fully and currently informed” with regard to problems and deficiencies relating to the administration of agency programs and operations. Accordingly, I am alerting you to complaints that my office received, which I believe are more suitably addressed by the FEC Commission and/or Office of General Counsel (OGC) management, for the following reasons detailed herein.

During Fiscal Years 2016 - 2019, the Office of Inspector General (OIG) received more than one anonymous hotline complaint alleging that FEC staff, in particular members of the OGC,² are falsifying their time and attendance by failing to accurately account for their work time in WebTA. Specifically, the complaints allege that FEC OGC employees are regularly arriving to work late and departing earlier than the time recorded in WebTA. Additionally, the complaints allege employees are not working in an official capacity and cannot be reached when engaged in a “telework” status.

Federal employees who improperly record their time and attendance in order to receive pay for time not worked are subject to criminal penalties.³ Additionally, FEC staff shall not, among other things, knowingly or willfully falsify, or make any false fictitious, fraudulent statements or representations, to include certification of time and attendance

¹ Public Law No. 95-452 (Oct. 12, 1978) Sec. 4(a) (5), 5 U.S.C. app. 3 available at <https://www.govinfo.gov/content/pkg/STATUTE-92/pdf/STATUTE-92-Pg1101.pdf>

² The OIG received 10 complaints in the subject time period alleging a total of 18 OGC employees committing time and attendance and telework abuse.

³ See 18 U.S.C. § 641 (Public money, property, or records) (“Whoever . . . steals . . . money, or thing of value of the United States or of any department or agency thereof . . . shall be fined under this title or imprisoned not more than ten years, or both.”)

reports.⁴ Similar criminal penalties apply to false statements or claims made by the employee in furtherance of time and attendance abuse or in an attempt to cover up such abuse.⁵

The FEC OIG elects not to pursue the subject allegations due to the absence of specific details provided in the complaint(s), the inability of investigators to clarify and obtain additional complaint details,⁶ and the lack of current OIG resources. As a result, this management alert serves as a notification to the Commission and/or OGC Counsel for action deemed appropriate. The OIG kindly requests that the Commission and/or OGC Counsel provide the OIG with an update on the matter by September 25, 2019 as to any actions or decisions taken with regards to this matter.

Please let me know if you have any questions or concerns. I can be reached at extension 1017. Thank you.

⁴ See 43 CFR C.F.R. § 20.510, (Fraud or false statements in a Government matter), (“An employee shall not, in any matter within the jurisdiction of any department or agency of the United States, knowingly or willfully falsify, conceal or cover up by any trick, scheme, or device a material fact, or make any false, fictitious, fraudulent statements or representations, or make or use any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry ([18 U.S.C. 1001](#)). Special attention is required in the *certification of time and attendance reports (emphasis added)*, applications for employment, request for travel reimbursement, and purchase orders and receiving forms.”)

⁵ See 18 U.S.C. § 287 (False, fictitious or fraudulent claims) (“Whoever makes or presents . . . to any department or agency thereof, any claim upon or against the United States, or any department or agency thereof, knowing such claim to be false, fictitious, or fraudulent, shall be imprisoned not more than five years and shall be subject to a fine in the amount provided in this title.”); See 18 U.S.C. § 1001(Statements or entries generally) (“[W]hoever, in any matter within the jurisdiction of the executive . . . branch of the Government of the United States, knowingly and willfully . . . falsifies, conceals, or covers up by any trick, scheme, or device a material fact; makes any materially false, fictitious, or fraudulent statement or representation; or makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry; shall be fined . . . [and] imprisoned not more than 5 years.”)

⁶ Additional clarification and information for this matter is unobtainable due to the anonymity of the complaints.



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

OFFICE OF THE CHAIR

September 18, 2018

The Honorable Rodney P. Frelinghuysen
Chairman
U.S. House of Representatives Committee on Appropriations
Washington, DC 20515

The Honorable Nita M. Lowey
Ranking Member

The Honorable Richard C. Shelby
Chairman
U.S. Senate Committee on Appropriations
Washington, DC 20510

The Honorable Patrick J. Leahy
Vice Chairman

Dear Chairmen Frelinghuysen and Shelby, Vice Chairman Leahy and Ranking Member Lowey:

The Explanatory Statement for the Financial Services and General Government Appropriations Act, 2018, directed the Chair of the Federal Election Commission to report to the Committees on Appropriations of the House and Senate on the FEC's role in enforcing the foreign national prohibition, including how it identifies foreign contributions to elections, and what it plans to do in the future to continue these efforts. *See Explanatory Statement*, 164 Cong. Rec. H2045, H2520 (Mar. 22, 2018).

To meet this reporting requirement, FEC staff prepared a report on the agency's enforcement of the foreign national prohibition that addresses each of the questions in the Explanatory Statement. Enclosed please find that report. Thank you for this opportunity to provide this information about the agency's work to the Committees.

Should you or your staff have any additional questions, please do not hesitate to contact any of the Commissioners or Duane Pugh, the FEC's Director of Congressional Affairs, at (202) 694-1002.

On behalf of the Commission,

A handwritten signature in black ink, appearing to read "Carrie C. Hunter", written in a cursive style.

Caroline C. Hunter
Chair

Enclosure

Letter to Appropriations Committees
September 18, 2018
Page 2

cc:

The Honorable J. Thomas Graves Jr.
Chairman
Subcommittee on Financial Services
and General Government

U.S. House of Representatives Committee on Appropriations
Washington, DC 20515

The Honorable Michael B. Quigley
Ranking Member

The Honorable James Lankford
Chairman
Subcommittee on Financial Services
and General Government
U.S. Senate Committee on Appropriations

The Honorable Christopher A. Coons
Ranking Member

The Honorable Derek C. Kilmer
Member of Congress

FEC Report to the Committees on Appropriations on Enforcing the Foreign National Prohibition

The Consolidated Appropriations Act, 2018, provided the Federal Election Commission (“FEC”) with an appropriation of \$71.25 million for Fiscal Year 2018.¹ The Explanatory Statement for this Act included a reporting requirement for the FEC, which states:

Foreign Contributions. Preserving the integrity of elections, and protecting them from undue foreign influence, is an important function of government at all levels. Federal law, for example, prohibits foreign campaign contributions and expenditures. With that in mind, the [FEC] Chairman is directed to report to the Committees on Appropriations of the House and Senate no later than 180 days after the enactment of this Act on the Commission’s role in enforcing this prohibition, including how it identifies foreign contributions to elections, and what it plans to do in the future to continue these efforts.²

The President signed the Consolidated Appropriations Act, 2018, on March 23, 2018, which makes this report due by September 19, 2018. This report was prepared by FEC staff to meet that requirement. Following a discussion of the legal background, this report addresses three points:

- I. The Commission’s Role in Enforcing the Foreign National Prohibition;
- II. How the Commission Identifies Foreign National Contributions or Donations; and
- III. The Commission’s Plans for Enforcing the Foreign National Prohibition.

Legal Background

The prohibition on foreign campaign contributions and expenditures referred to in the Explanatory Statement has been a provision of the Federal Election Campaign Act (“FECA”)³ since the Federal Election Campaign Act Amendments of 1976.⁴ In 2002, Congress strengthened and clarified the law governing foreign nationals’ participation in the electoral process as part of the Bipartisan Campaign Reform Act of 2002 (“BCRA”).⁵ Since then, FECA’s foreign national prohibition has read as follows:

It shall be unlawful for—

- (1) a foreign national, directly or indirectly, to make—

¹ *Consolidated Appropriations Act, 2018*, Public Law No. 115-141, 132 Stat. 348, 566 (Mar. 23, 2018).

² *Explanatory Statement*, 164 Cong. Rec. H2045, H2520 (Mar. 22, 2018).

³ *Federal Election Campaign Act of 1971*, Pub. L. No. 92-225, 86 Stat. 3 (Feb. 7, 1972) [“FECA”], *codified at* 52 U.S.C. §§ 30101 to 30145.

⁴ *Federal Election Campaign Act Amendments of 1976*, Pub. L. No. 94-283, § 112, 90 Stat. 475, 493 (May 11, 1976).

⁵ *Bipartisan Campaign Reform Act of 2002*, Pub. L. No. 107-155, § 303, 116 Stat. 81, 96 (Mar. 27, 2002) [“BCRA”]. BCRA also prohibited presidential inaugural committees from accepting foreign national donations. BCRA, § 308, 116 Stat. at 103-04, *codified at* 36 U.S.C. § 510.

- (A) a contribution or donation of money or other thing of value, or to make an express or implied promise to make a contribution or donation, in connection with a Federal, State, or local election;
- (B) a contribution or donation to a committee of a political party; or
- (C) an expenditure, independent expenditure, or disbursement for an electioneering communication (within the meaning of section 30104(f)(3) of this title); or
- (2) a person to solicit, accept, or receive a contribution or donation described in subparagraph (A) or (B) of paragraph (1) from a foreign national.⁶

Subsection (b) of this provision defines “foreign national,” as follows:

As used in this section, the term “foreign national” means—

- (1) a foreign principal, as such term is defined by section 611(b) of title 22, except that the term “foreign national” shall not include any individual who is a citizen of the United States; or
- (2) an individual who is not a citizen of the United States or a national of the United States (as defined in section 1101(a)(22) of title 8) and who is not lawfully admitted for permanent residence, as defined by section 1101(a)(20) of title 8.⁷

In 2002, to implement BCRA, the FEC revised its regulation on the foreign national prohibition.⁸ In those revisions, the FEC incorporated the revised statutory prohibition into its regulations.⁹

In addition, the FEC adopted related definitions,¹⁰ including a three-prong definition of a knowing standard to establish the degree of knowledge required to show a violation of the foreign national prohibition, which includes actual knowledge, a “reason to know” standard, and a willful blindness standard.¹¹ The revised regulation also sets forth categories of facts that are illustrative of the types of information that should lead a recipient to question whether a contribution or donation originated from a foreign national. These include contributors or donors who: (i) use a foreign passport; (ii) provide a foreign address; (iii) use a check drawn on a foreign bank or a wire transfer from a foreign bank; or (iv) reside abroad.¹² The Commission

⁶ FECA, § 319(a), *codified at* 52 U.S.C. § 30121(a).

⁷ FECA, § 319(b), *codified at* 52 U.S.C. § 30121(b).

⁸ See 11 C.F.R. § 110.20; 67 Fed. Reg. 69,928 (Nov. 19, 2002). The FEC adopted its first regulation on the foreign national prohibition in 1976, 41 Fed. Reg. 35,950 (Aug. 25, 1976), which was codified at 11 C.F.R. § 110.4(a). In 1989, the FEC revised its regulations concerning earmarked contributions to prohibit foreign nationals from being conduits and intermediaries and further revised the foreign national regulation to add an explicit prohibition on expenditures and to clarify that foreign nationals may not participate in the election-related activities of others. 54 Fed. Reg. 34,098 (Aug. 17, 1989); 54 Fed. Reg. 48,581 (Nov. 24, 1989). In the 2002 rulemaking, the foreign national regulation was revised and recodified to 11 C.F.R. § 110.20.

⁹ 11 C.F.R. § 110.20(b), (c), (e), (f) and (g).

¹⁰ 11 C.F.R. § 110.20(a).

¹¹ 11 C.F.R. § 110.20(a)(4).

¹² 11 C.F.R. § 110.20(a)(5).

adopted a narrowly tailored safe harbor with which political committees can satisfy their duty to investigate their receipts in order to confirm that they do not come from foreign sources. Based on practices the Commission observed, the safe harbor protects any person who seeks and obtains copies of current and valid U.S. passports for any contributors or donors who meet any of the four factual criteria enumerated above.¹³

The FEC's 2002 regulation also makes explicit that the foreign national prohibition applies to donations to political parties' building funds.¹⁴ The FEC determined that a rule that prohibits persons from knowingly providing substantial assistance to foreign nationals to circumvent FECA was necessary to effectuate its foreign national prohibition; consequently, to address the issue, the Commission included such a prohibition in its regulation.¹⁵ The Commission also decided to retain the prohibition in its previous version of this regulation on participation by foreign nationals in election-related decisions made by any person, including entities such as corporations, labor organizations or political committees.¹⁶ In 2004, the FEC amended its regulations to incorporate BCRA's prohibition on foreign national donations to inaugural committees into Commission regulations.¹⁷

I. THE COMMISSION'S ROLE IN ENFORCING THE FOREIGN NATIONAL PROHIBITION.

One of the FEC's primary responsibilities is enforcing FECA, including the foreign national prohibition. In fact, the FEC has exclusive jurisdiction over the civil enforcement of federal campaign finance laws, and it maintains an enforcement program to ensure that the campaign finance laws are fairly enforced. In exercising that authority, the Commission uses a variety of methods to uncover possible campaign finance violations. Complaints alleging noncompliance with the foreign national prohibition have been handled primarily as FEC enforcement cases, or Matters Under Review ("MURs").¹⁸ The Enforcement Division of the Office of General Counsel ("OGC") handles MURs through the FEC's traditional enforcement program pursuant to the procedures set forth in FECA.¹⁹ Part A of this section first briefly describes the MUR enforcement process, and then discusses some recently closed MURs that included allegations of foreign national prohibition violations.

Another Commission enforcement and compliance program is the Alternative Dispute Resolution ("ADR") Program, which seeks to resolve less complex matters more swiftly by

¹³ 11 C.F.R. § 110.20(a)(7).

¹⁴ 11 C.F.R. § 110.20(d).

¹⁵ 11 C.F.R. § 110.20(h).

¹⁶ 11 C.F.R. § 110.20(i).

¹⁷ 11 C.F.R. §§ 104.21(b)(1)(iii) and 110.20(j); *BCRA*, § 308, 116 Stat. at 103-04, *codified at* 36 U.S.C. § 510.

¹⁸ Another enforcement or compliance program not directly relevant to the foreign national prohibition but available to the Commission is the Administrative Fine Program, which addresses violations involving the late submission of FEC reports or failure to file reports.

¹⁹ *FECA*, § 309, *codified at* 52 U.S.C. § 30109.

encouraging settlement using a streamlined process that focuses on remedial measures for candidates and political committees. Part A of this section also discusses recently closed matters that were resolved in the ADR Program.

Because of the large number of political committees and growing number and size of financial disclosure reports filed with the FEC, voluntary compliance is essential to enforcing FECA. Accordingly, the Commission devotes considerable resources to encouraging voluntary compliance. One way the Commission does so is by issuing advisory opinions. FECA directs the Commission to issue advisory opinions to answer questions about the application of FECA and FEC regulations to specific factual situations. Advisory opinions promote voluntary compliance not only by the requestors, but also by others engaged in transactions or activities that are indistinguishable in all material aspects. Part B of this section reviews many of the Commission's advisory opinions that are related to the foreign national prohibition.

Another means of promoting voluntary compliance with FECA's requirements are the Commission's educational outreach efforts. The agency strives to reduce the number of inadvertent violations by issuing clear guidance to the public through information and outreach activities, such as compliance information available on the FEC website.²⁰ The agency maintains online resources to detail developments in the campaign finance law and Commission decisions and publishes a series of Campaign Guides and brochures written in plain language to help political committee representatives comply with the campaign finance laws.²¹ Part C of this section describes the guidance the Commission makes available on its website related to the foreign national prohibition.

The Commission's enforcement responsibilities include defending the constitutionality of the foreign national prohibition, which has been challenged in litigation. This section's final part, Part D, describes this aspect of the Commission's role in enforcing the foreign national prohibition.

A. Enforcement

The enforcement process begins when a complaint or referral is made alleging that a violation of the federal election campaign laws or FEC regulations has occurred or is about to occur. Any person can file a complaint, including individuals who make a voluntary submission indicating they themselves may have violated campaign finance laws, which are known as *sua sponte* submissions. Internal referrals for enforcement are made by the Commission's Reports Analysis Division and Audit Division in the normal course of exercising their supervisory responsibilities. External referrals come from another government agency.

²⁰ The FEC also hosts instructional conferences, seminars and webinars where Commissioners and staff explain FECA's requirements. Whenever prohibited contribution sources are discussed in conference materials and presentations, the foreign national prohibition is emphasized. Additionally, the agency maintains its own YouTube channel, which can be found at <https://www.youtube.com/FECTube>. Videos about contributions emphasize the foreign national prohibition.

²¹ See <https://www.fec.gov/help-candidates-and-committees/>.

A respondent is a person or entity who is the subject of a complaint, referral, or *sua sponte* submission that alleges the person or entity violated FECA, another statutory provision within the Commission's jurisdiction such as the inaugural committee foreign national provision, or an FEC regulation. Respondents are notified of the filing of a complaint or referral and have an opportunity to respond in writing. Professional staff in the Office of General Counsel review and analyze complaints, referrals, and *sua sponte* submissions; respondents' responses to them; and publicly available information to formulate a recommended course of action for the Commission. The Commission then reviews the General Counsel's report and recommendations, the complaint, referral, or *sua sponte* submission and any respondents' responses.

The Commission can find no reason to believe a violation occurred, or it may otherwise dismiss a complaint, referral or submission at any point during its consideration of the matter. If the Commission finds reason to believe a violation occurred, it may conduct an investigation to determine if there is probable cause that a violation has occurred or proceed, prior to a finding of probable cause, to negotiations to reach a conciliation agreement, which may include a monetary civil penalty. If the Commission finds probable cause to believe a violation occurred and if the Commission fails to conciliate with a respondent,²² it may file a civil lawsuit in U.S. District Court. In certain circumstances, the Commission may also refer a matter to the U.S. Department of Justice for criminal prosecution under FECA.

While the Federal Election Commission has exclusive civil enforcement authority over the Federal Election Campaign Act, the U.S. Department of Justice has criminal enforcement authority over knowing and willful violations of FECA.²³ As a result, the Commission has an ongoing relationship with the Department of Justice through a formal Memorandum of Understanding, and, on occasion, exercises concurrent jurisdiction over certain matters. In furtherance of that relationship, the Memorandum of Understanding acknowledges the Commission's exclusive jurisdiction in the civil enforcement of the Act, and establishes a framework for the two agencies with respect to the discharge of their respective responsibilities.²⁴

The Commission has enforced the foreign national prohibition in a number of MURs. Some of the recently closed MURs that included allegations of foreign national prohibition violations are discussed below.

²² Following a finding of probable cause to believe that FECA was violated, FECA requires the Commission to attempt to conciliate the enforcement matter. *FECA*, § 309(a)(4)(A); *codified at* 52 U.S.C. § 30109(a)(4)(A). In addition, the Commission has promulgated regulations that provide for an earlier opportunity to resolve enforcement matters, which is known as pre-probable cause to believe conciliation. 11 C.F.R. § 111.18(d). The Commission provides an incentive to settle an enforcement matter earlier in the process by considering lower civil penalties at the pre-probable cause stage compared to the post-probable cause stage. *See Request for Comment on Enforcement Process*, 78 Fed. Reg. 4081 at 4086 (Jan. 18, 2013). All of the conciliation agreements described in this report were reached prior to a Commission finding of probable cause to believe a violation occurred.

²³ *See FECA*, § 309(d)(1); *codified at* 52 U.S.C. § 30109(d)(1); *Fieger v. U.S. Attorney General*, 542 F.3d 1111, 1116-17 (6th Cir. 2008).

²⁴ *See Memorandum of Understanding with Department of Justice*, 43 Fed. Reg. 5441 (Feb. 8, 1978).

1. Direct Foreign National Contributions. In certain instances, foreign national individuals or foreign national corporations have made direct contributions to candidates in violation of the ban on foreign national contributions.

In a matter that arose from an audit referral, the Commission reached a conciliation agreement with a membership organization's separate segregated fund that had violated the foreign national prohibition by knowingly receiving foreign national contributions. The committee disgorged \$13,242.14 to the U.S. Treasury, representing contributions identified by Commission auditors from a sample of committee records showing foreign resident addresses. The conciliated agreement, which, in addition to the foreign national issue, also redressed serious violations pertaining to the misstatement of financial activity in the PAC's disclosure reports, receipt of prohibited corporate contributions, and improper solicitation practices, included a \$300,000 civil penalty and an agreement to cease and desist from further violations.²⁵

The Commission conciliated another matter following a Commission audit that uncovered possible violations of the foreign national prohibition. In that matter, a federal candidate had accepted \$100,000 to his personal account from a Mexican corporation wholly owned by a Texas limited partnership controlled by the candidate and his family; the candidate then transmitted the \$100,000 from his personal account to his political committee. In a conciliated agreement, the candidate and his committee agreed to pay a civil penalty of \$22,500 and to cease and desist from violating the foreign national prohibition. Additionally, the foreign national corporation and the candidate's brother agreed to pay a civil penalty of \$40,000, to cease and desist from violating the foreign national prohibition, and to waive any right to refund of contributions.²⁶

In another instance, the Commission received a *sua sponte* submission from INVISTA, a Luxembourg-based corporation, in which it acknowledged that between November 2005 and October 2009, it made 12 campaign contributions totaling \$26,800 to seven nonfederal committees. The respondents agreed to pay a civil penalty of \$4,700 and cease and desist from violating the foreign national prohibition.²⁷

Another complaint alleged that an unregistered local Democratic party committee solicited and received a \$5,000 contribution from Canarx Services, Inc., a Canadian company.

²⁵ See MUR 6129 (American Resort Development Association Resort Owners Coalition PAC), <https://www.fec.gov/data/legal/matter-under-review/6129/>; see also Conciliation Agreement, MUR 6129 (Aug. 4, 2010), <http://eqs.fec.gov/eqsdocsMUR/10044273912.pdf>.

²⁶ See MUR 6919 (Canseco for Congress, *et al.*) Conciliation Agreement, <https://www.fec.gov/data/legal/matter-under-review/6919/>; see also Francisco Canseco and Canseco for Congress Conciliation Agreement, MUR 6919 (Apr. 29, 2016), <https://www.fec.gov/files/legal/murs/6919/16044394800.pdf>; Inmuebles Caza S.A. de C.V. and Jorge Canseco Conciliation Agreement, MUR 6919 (Sept. 3, 2016), <https://www.fec.gov/files/legal/murs/6919/16044394789.pdf>.

²⁷ See MUR 6473 (INVISTA), <https://www.fec.gov/data/legal/matter-under-review/6473/>; see also INVISTA S.A.R.L., Conciliation Agreement, MUR 6473 (June 2, 2011), <https://www.fec.gov/files/legal/murs/6473/11044293.pdf>.

In an ADR settlement agreement, the committee agreed to issue and distribute guidelines on prohibited contributions and pay a \$3,500 civil penalty.²⁸

In a *sua sponte* submission, Marsh & McLennan Companies, Inc., and its separate segregated fund (or “PAC”) admitted that an employee who is not currently a US citizen, permanent resident, or green card holder made four annual \$5,000 contributions for a total of \$20,000 to the PAC and that the PAC accepted those contributions, both violations of the foreign national prohibition. The PAC issued a refund to the employee. The matter was referred to ADR, and, in a settlement agreement, the respondents agreed to develop and circulate a policy on the eligibility and limitations on contributions to the PAC, to designate a compliance officer and to send a representative of the PAC to an FEC conference. The respondents also paid a civil penalty of \$3,000.²⁹

A recent complaint alleged that Jill Stein for President accepted foreign national donations in connection with the committee’s 2016 recount effort. The complaint cited Tweets from purported foreign nationals who stated they donated to the recount effort. Two Commissioners supported OGC’s recommendation to dismiss the allegation based on a possible low amount in violation, while two other Commissioners voted to open an investigation. The matter was therefore closed.³⁰

2. Domestic Subsidiaries of Foreign Parent Corporations. The Commission received several *sua sponte* submissions from domestic subsidiaries of foreign parent corporations that had made contributions or donations in violation of the foreign national prohibition; the Commission conciliated with these respondents. In MUR 6203 (Itinere North America), a domestic subsidiary of a Spanish corporation admitted making \$55,500 in nonfederal contributions to over 50 candidates or party committees with funds provided by its foreign parent. In the conciliated agreement, the respondents agreed to pay a civil penalty of \$10,000, cease and desist from violating the foreign national prohibition, and send follow up letters to each recipient who had not yet disgorged the contribution to the U.S. Treasury.³¹ Similarly, in MUR 6093 (Transurban Group), a domestic subsidiary of an Australian corporation admitted making \$180,750 in nonfederal contributions with funds provided by its foreign parent. In the conciliated agreement, the respondents agreed to pay a civil penalty of \$33,000, cease and

²⁸ See Schenectady County Democratic Committee Negotiated Settlement, ADR 458 (Nov 13, 2008), <http://eqs.fec.gov/eqsdocs/ADR/28190280134.pdf>.

²⁹ See Marsh & McLennan Companies Inc. PAC Negotiated Settlement, ADR 708 (Oct. 7, 2014), <http://eqs.fec.gov/eqsdocs/ADR/14190300025.pdf>.

³⁰ See MUR 7205 (Jill Stein for President, *et al.*), <https://www.fec.gov/data/legal/matter-under-review/7205/>; see also Statement of Reasons, Vice Chair Ellen L. Weintraub (Sept. 7, 2018) https://www.fec.gov/files/legal/murs/7205/7205_1.pdf.

³¹ See MUR 6203 (Itinere North America, *et al.*), <https://www.fec.gov/data/legal/matter-under-review/6203/>; see also Conciliation Agreement, MUR 6203 (July 6, 2009), <https://www.fec.gov/files/legal/murs/6203/29044250632.pdf>.

desist from violating the foreign national prohibition, and send follow up letters to each recipient who had not yet refunded the contribution.³²

In a complaint-generated matter, the Commission considered whether foreign national individuals and corporations had violated the foreign national prohibition through funding or controlling several domestic subsidiary corporations' donations to a Beverly Hills, California, ballot measure committee. Consistent with OGC recommendations, the Commission found no reason to believe the foreign national prohibition had been violated because it appeared that the domestic subsidiaries' donations originated with domestic revenues and no foreign nationals participated in the decisions to make the donations.³³

3. Foreign Participation in Domestic Corporate Contributions. The Commission has also considered matters involving prohibited foreign national control or funding of corporate contributions outside of the domestic subsidiary context. The Commission received a *sua sponte* submission from Skyway Concession Company, LLC, and its foreign national CEO indicating that the CEO had authorized and signed checks for 30 contributions totaling \$13,085 from the domestic corporation to nonfederal political committees; the foreign national CEO also had made one \$2,000 contribution from himself to a federal political committee. The Commission conciliated with the respondents, who agreed to pay a civil penalty of \$4,000 and cease and desist from violating the foreign national prohibition.³⁴

The Commission also considered a complaint asserting multiple violations of law, including that an American citizen had used funds obtained from a Chinese national to make contributions through an intermediary to a federal independent expenditure-only political committee and that the committee had knowingly accepted the foreign national contribution. The Commission dismissed the matter after concluding that the record did not provide a sufficient evidentiary basis to support an inference that the funds contributed were from a foreign national, which was consistent with OGC recommendations.³⁵

4. Volunteer Activity. The Commission considered a complaint that the Australian Labor Party impermissibly paid the expenses of Australian volunteers to travel to the United States to work on the 2016 presidential campaign of Bernie Sanders and that Sanders's committee accepted the prohibited foreign national in-kind contribution. The Commission found reason to believe the Australian Labor Party made, and Sanders's committee accepted, a \$24,422

³² See MUR 6093 (Transurban Group, *et al.*) <https://www.fec.gov/data/legal/matter-under-review/6093/>; see also Conciliation Agreement, MUR 6093 (Jan. 9, 2009), <http://eqs.fec.gov/eqsdocsMUR/29044224176.pdf>.

³³ See MUR 7141 (Beverly Hills Residents and Businesses to Preserve our City, *et al.*) (Nov. 6, 2017), <https://www.fec.gov/data/legal/matter-under-review/7141/>.

³⁴ See MUR 6184 (Skyway Concession Company, LLC, *et al.*), <https://www.fec.gov/data/legal/matter-under-review/6184/>; see also Conciliation Agreement, MUR 6184 (Oct. 5, 2009), <http://eqs.fec.gov/eqsdocsMUR/29044252724.pdf>.

³⁵ See MUR 7081 (Floridians for a Strong Middle Class) (Sept. 20, 2017), <https://www.fec.gov/data/legal/matter-under-review/7081/>; see also Statement of Reasons, Commissioners Ellen L. Weintraub and Ann M. Ravel (Feb. 28, 2017), <https://www.fec.gov/files/legal/murs/7081/17044430165.pdf>, and Factual & Legal Analysis for Floridians for a Strong Middle Class (Sept. 25, 2017), <https://www.fec.gov/files/legal/murs/7081/17044430866.pdf>.

prohibited in-kind foreign national contribution. The Commission reached conciliation agreements with both the Australian Labor Party and Bernie 2016 pursuant to which each respondent agreed to pay a civil penalty of \$14,500 and to cease and desist from violating the foreign national prohibition.³⁶

5. ***Amount in violation as a basis for dismissal.*** The amount in violation can be a factor in whether the Commission pursues a foreign national contribution. In MUR 6976, the Commission considered whether the City Council Committee for Johnny W. Streets, Jr., accepted contributions totaling \$3,000 from three foreign corporations with addresses in Halifax, Nova Scotia. Three Commissioners supported OGC's recommendation to dismiss the allegation based on the low amount in violation, while three other Commissioners voted to pursue the matter.³⁷ In light of the disagreement, the matter was closed.

Another complaint alleged that a foreign entity made donations totaling \$100 to four candidates for local office in Texas. The Commission observed the *de minimis* amount at issue, the apparent refunds of the donations before the complaint was filed, and the uncertainty of whether the donor was in fact a foreign entity. Consistent with OGC's recommendations, the Commission exercised its prosecutorial discretion and dismissed the matter in consideration of Commission priorities.³⁸

In two related complaint-generated matters, the Commission considered an allegation that Project Veritas, its president James O'Keefe, and one of its employees assisted in the making of a contribution by a foreign national, and that Hillary Clinton and her presidential campaign committee solicited and received the contribution, in violation of the foreign national prohibition, when the Project Veritas employee used \$35 or \$45 from a self-identified Canadian citizen to purchase \$75 of Clinton campaign merchandise. The Commission found no reason to believe that Clinton or O'Keefe was involved in or aware of the transaction and dismissed the allegations against the remaining respondents.³⁹

A complaint alleged that the Committee to Re-elect Gary Jensen accepted a \$700 contribution from a foreign corporation in violation of the foreign national prohibition. The ADR Office negotiated a settlement agreement; however, the Commissioners disagreed about whether it should be approved because it did not include a civil penalty. Consequently, the

³⁶ See MUR 7035 (Australian Labor Party, *et al.*), <https://www.fec.gov/data/legal/matter-under-review/7035/>; see also Australian Labor Party Conciliation Agreement, MUR 7035 (Feb. 15, 2018), <https://www.fec.gov/files/legal/murs/7035/18044437382.pdf>; Bernie 2016 Conciliation Agreement, MUR 7035 (Feb. 15, 2018), <https://www.fec.gov/files/legal/murs/7035/18044437388.pdf>.

³⁷ See MUR 6976 (City Council Committee for Johnny W. Streets, Jr., (Dec. 6, 2016), <https://www.fec.gov/data/legal/matter-under-review/6976/>. Statement of Reasons, Vice Chair Hunter and Commissioners Goodman and Petersen (Feb. 14, 2017), <https://www.fec.gov/files/legal/murs/6976/17044405949.pdf>.

³⁸ See MUR 6944 (Farias) (dismissing a \$100 foreign national contribution) (Nov. 14, 2016), <https://www.fec.gov/data/legal/matter-under-review/6944/>.

³⁹ See MURs 6962 and 6982 (Project Veritas, *et al.*) (June 21, 2017), <https://www.fec.gov/data/legal/matter-under-review/6982/>.

settlement was not accepted and the case was closed.⁴⁰ Three commissioners issued a Statement of Reasons explaining their position.⁴¹

Another complaint alleged that three candidates for local office in the Bellingham, Washington-vicinity accepted contributions from three Canadian entities or individuals that totaled \$1,100. After referral to ADR and considering the circumstances of the matter, the Commission determined to exercise its prosecutorial discretion and take no action against the Respondents, which was consistent with the ADR Office recommendations.⁴²

A 2017 complaint alleged that Maricela Arteaga, a Mexican citizen, made political contributions in violation of the foreign national prohibition. In her response, Ms. Arteaga acknowledges that she made political contributions between October 2012 and April 2013 totaling \$70 to Obama for America and Organizing for Action prior to obtaining permanent resident status in the United States. Due to the low dollar amount, the Commission agreed with ADR Office recommendations and voted to exercise its prosecutorial discretion and dismiss the matter.⁴³

6. *Screening for foreign national contributions.* The Commission considered two complaints that alleged that Obama for America accepted thousands of dollars in foreign national contributions *via* the Internet. The Commission concluded that Obama for America used proper controls to screen for domestic-only contributions and found no reason to believe that Obama for America violated the foreign national prohibitions, which was a determination recommended by OGC.⁴⁴

7. *Soliciting Foreign National Contributions.* The Commission considered a complaint that during a broadcast on a Spanish language radio station, Rep. Christopher B. Cannon (Utah-3), his legislative aide, and the host of the program encouraged listeners to make political contributions even if they were foreign nationals, or make the contributions in the name of a citizen of the United States. The Congressional committee agreed in an ADR settlement agreement to have the committee treasurer and the legislative aide attend an FEC seminar for Congressional Candidates and Committees. In addition, the radio host agreed to make himself knowledgeable about information available from the Commission on the foreign national prohibition and agreed to host at least one additional radio program, within six months, in which

⁴⁰ See ADR 592 (Committee to Re-elect Gary Jensen, Mayor of Ferndale) (Jan. 24, 2012), <http://eqs.fec.gov/eqsdocsADR/12190292128.pdf>.

⁴¹ See ADR 592 (Committee to Re-elect Gary Jensen, Mayor of Ferndale), Statement of Reasons, Vice Chair Weintraub and Commissioners Bauerly and Walther (Feb. 27, 2012), <http://eqs.fec.gov/eqsdocsADR/12190292128.pdf>.

⁴² See ADR 447 (Watts, *et al.*) (Nov. 6, 2008), <http://eqs.fec.gov/eqsdocsADR/28190274175.pdf>.

⁴³ See ADR 822 (Arteaga) (June 9, 2017), <http://eqs.fec.gov/eqsdocsADR/17190304332.pdf>.

⁴⁴ See MURs 6687 and 6772 (Obama for America, *et al.*) (July 9, 2013), <https://www.fec.gov/data/legal/matter-under-review/6687/> and <https://www.fec.gov/data/legal/matter-under-review/6772/>.

he would provide his Spanish language speaking radio audience with the resources available from the Commission about campaign finance and the political process.⁴⁵

The Commission recently considered a complaint alleging that Donald J. Trump for President, Inc., solicited foreign national contributions in the form of several solicitation emails sent to members of foreign parliaments. Two Commissioners supported OGC's recommendation to find reason to believe, and two voted to dismiss. Accordingly, the matter was closed.⁴⁶

8. State Ballot Initiatives. The Commission considered a complaint that foreign nationals made donations to a local ballot initiative committee in Los Angeles, California, in violation of the foreign national prohibition. The first donation, in the amount of \$150,000, was made by MindGeek USA, a domestic subsidiary of a Luxembourg corporation, allegedly using foreign funds and under the direction of foreign national decision makers. The second donation, in the amount of \$75,000, was made by a Cypriot corporation. In this matter, the Commissioners disagreed on whether the foreign national prohibition on donations in connection with an "election" prohibited foreign national donations to state or local ballot initiatives. Commissioners issued statements of reasons explaining their positions, and the Commission closed the file.⁴⁷

B. FEC Advisory Opinions

Supporting its efforts to promote voluntary compliance with FECA, the Commission has provided compliance guidance regarding the prohibition on foreign national contributions in the context of advisory opinions, informational publications on the Commission's public website, and rulemaking matters.

Advisory opinions are Commission responses to particularized inquiries about how federal campaign finance laws apply to specific factual situations. FECA directs the Commission to render a written advisory opinion in response to any person's complete written request concerning the application of FECA or Commission regulations to a "specific transaction or activity of the requester."⁴⁸ The Commission has issued advisory opinions in several contexts in which it considered the foreign national prohibition.

⁴⁵ See ADR 207 (Cannon)(June 3, 2005), <http://eqs.fec.gov/eqsdocsADR/00004469.pdf>.

⁴⁶ See MURs 7094, 7096, & 7098 (Donald J. Trump for President, *et al.*), <https://www.fec.gov/data/legal/matter-under-review/7094/>; see also Statement of Reasons, Vice Chair Ellen L. Weintraub (Sept. 6, 2018), https://www.fec.gov/files/legal/murs/7094/7094_1.pdf.

⁴⁷ See MUR 6678 (MindGeek S.A.R.L.), <https://www.fec.gov/data/legal/matter-under-review/6678/>; see also Statement of Reasons, Chair Ravel (Apr. 22, 2015), <http://eqs.fec.gov/eqsdocsMUR/15044372954.pdf>; Statement of Reasons, Commissioner Weintraub (Apr. 23, 2015), <http://eqs.fec.gov/eqsdocsMUR/15044372958.pdf>; Statement of Reasons, Vice Chairman Peterson and Commissioners Hunter and Goodman (Apr. 30, 2015), <http://eqs.fec.gov/eqsdocsMUR/15044372963.pdf>; Statement of Reasons, Commissioner Goodman (May 1, 2015), <http://eqs.fec.gov/eqsdocsMUR/15044372967.pdf>.

⁴⁸ FECA, § 308, codified at 52 U.S.C. § 30108.

1. Fundraising by officeholders and candidates at events. The Commission has issued an advisory opinion addressing the scope of activities that federal candidates and officeholders may undertake at events raising money outside the federal source and amount restrictions. Federal candidates and officeholders may solicit federally permissible funds at certain nonfederal fundraising events, provided that the solicitation is limited to funds that comply with FECA's amount limitations and source prohibitions, including the foreign national prohibition.⁴⁹

2. State Ballot Initiatives. FECA provides that federal candidates and officeholders may not "solicit, receive, direct, transfer or spend" funds in connection with an election for federal office or any nonfederal election unless the funds comply with the FECA's amount limitations and source prohibitions.⁵⁰ Notwithstanding these restrictions, FECA also states that federal candidates and officeholders are permitted to "attend, speak, or be a featured guest at a fundraising event for a State, district, or local committee of a political party."⁵¹ The Commission has addressed questions in this area in the context of fundraising efforts by federal candidates and officeholders on behalf of state ballot initiatives.

In 2003, the Commission stated that all activities of a ballot measure committee "established, financed, maintained or controlled" by a federal candidate are "in connection with" a nonfederal election. This includes activity in the signature-gathering and ballot-qualification stage, as well as activity to win passage of the measure after it qualifies for the ballot. Accordingly, funds solicited by a federal candidate or officeholder in connection with such nonfederal elections must fall within the amount limitations and source prohibitions, including the foreign national prohibition.⁵²

The Commission has also concluded that the source and amount restrictions, including the foreign national prohibition, did not apply to a situation in which federal officeholders and candidates proposed to raise funds for ballot measure committees involved in a special election in which no federal candidates were on the ballot, and where the ballot measure committees were not directly or indirectly established, financed, maintained, or controlled by the federal officeholders or candidates.⁵³

3. Election Recounts. The Commission has concluded that the foreign national prohibition applies to funds raised and spent on election recount activities.⁵⁴

⁴⁹ See Advisory Opinion 2015-09 (Senate Majority PAC and House Majority PAC), <https://www.fec.gov/data/legal/advisory-opinions/2015-09/>.

⁵⁰ See FECA, § 319, codified at 52 U.S.C. § 30121(e)(1)(A), (B); 11 C.F.R. §§ 300.61, 300.62.

⁵¹ See FECA, § 323, codified at 52 U.S.C. § 30125(e)(3); 11 C.F.R. § 300.64.

⁵² See Advisory Opinion 2003-12 (Flake), <https://www.fec.gov/data/legal/advisory-opinions/2003-12/>.

⁵³ Advisory Opinion 2005-10 (Berman/Doolittle), <https://www.fec.gov/data/legal/advisory-opinions/2005-10/>.

⁵⁴ Advisory Opinion 2010-14 (DSCC), <https://www.fec.gov/data/legal/advisory-opinions/2010-14/>.

4. ***Screening for Foreign National Contributions.*** The Commission has examined programs proposed by requestors in which contributions could be made through affinity programs, and later, over the internet and by text message. While foreign nationals' contributions were not the main focus of these advisory opinions, the proposals each included a requirement that potential contributors attest that they were not foreign nationals. The Commission noted in these opinions that while this was a reasonable manner to assist the recipient political committee in screening for prohibited contributions, the legal obligation not to accept foreign national contributions remained with the committee, rather than the provider of the program or the platform.⁵⁵

5. ***Changes in Nationality.*** The Commission has determined that when an individual's status as a foreign national changes, so does the individual's ability to make contributions. For example, individuals who were foreign nationals, and prohibited from contributing to at the time of an election may, if they are no longer foreign nationals, contribute to the candidate's later efforts to pay obligations related to that election. Further, if a person has actual knowledge that an individual was a foreign national at some time in the past, that person may not solicit that individual for contributions unless the person is able to determine through a reasonable inquiry that the individual is no longer a foreign national.⁵⁶

6. ***Volunteer Activity.*** Responding to questions regarding volunteer activity by foreign nationals, the Commission has concluded that foreign nationals may provide volunteer services to a political committee provided that they do not participate in the management of any political committee or the committee's decisions regarding its receipts and disbursements in connection with federal and nonfederal elections. The Commission has further concluded that the value of volunteer services provided by foreign nationals is exempt from the definition of "contribution" under the volunteer services exemption.⁵⁷

7. ***What constitutes a contribution.*** The Commission has concluded that goods and services provided to political committees at the usual and normal charge by foreign nationals are permissible and do not constitute contributions.⁵⁸

⁵⁵ See, e.g., Advisory Opinion 2016-08 (eBundler.com), <https://www.fec.gov/data/legal/advisory-opinions/2016-08/>; Advisory Opinion 2012-28 (CTIA The Wireless Association), <https://www.fec.gov/data/legal/advisory-opinions/2012-28/>; Advisory Opinion 2012-09 (Points for Politics), <https://www.fec.gov/data/legal/advisory-opinions/2012-09/>; Advisory Opinion 2006-08 (Brooks), <https://www.fec.gov/data/legal/advisory-opinions/2006-08/>.

⁵⁶ See Advisory Opinion 2016-16 (Gary Johnson 2012), <https://www.fec.gov/data/legal/advisory-opinions/2016-16/>; Advisory Opinion 2016-10 (Parker), <https://www.fec.gov/data/legal/advisory-opinions/2016-10/>.

⁵⁷ See Advisory Opinion 1987-25 (Otaola), <https://www.fec.gov/data/legal/advisory-opinions/1987-25/>; Advisory Opinion 2004-26 (Weller), <https://www.fec.gov/data/legal/advisory-opinions/2004-26/>; and Advisory Opinion 2014-20 (Make Your Laws PAC, Inc.), <https://www.fec.gov/data/legal/advisory-opinions/2014-20/>.

⁵⁸ See Advisory Opinion 2007-22 (Hurysz), <https://www.fec.gov/data/legal/advisory-opinions/2007-22/>; Advisory Opinion 2010-05 (Starchannel Communications, Inc.), <https://www.fec.gov/data/legal/advisory-opinions/2010-05/>.

8. ***Domestic Subsidiaries of Foreign Parent Corporations.*** The Commission has responded to questions regarding whether proposed activities by the domestic subsidiaries of foreign corporations would constitute prohibited foreign national contributions. Generally, the Commission has determined that domestic subsidiaries of foreign parent corporations may engage in certain election-related activities, so long as the funds used are not from foreign nationals, and no foreign nationals participate in the decision-making process concerning the activities in question.⁵⁹

9. ***Matching Funds.*** The Commission has concluded that a presidential candidate who was neither a naturalized citizen of the United States nor a natural born citizen was not eligible to receive matching funds under the Matching Payment Act because he did not meet the requirements to serve as President under Article II, Section 1, Clause 5 of the U.S. Constitution.⁶⁰

10. ***Miscellaneous Reminders About the Prohibition on Foreign National Contributions.*** Finally, in various advisory opinions regarding issues such as disaffiliation of organizations and payroll deductions to a separate segregated fund, the Commission has cautioned that contributions from foreign nationals may not be solicited or accepted as part of the proposed activity.⁶¹

C. Other Guidance

The Commission provides general public guidance regarding the foreign national contribution ban *via* its website.

In June 2017, the Commission's brochure on foreign nationals, which provides a general primer on the foreign national prohibition, was updated and republished on the website.⁶²

Other pages on the Commission's website provide information on specific questions about foreign national activities. These pages discuss the definition of "foreign national," how to determine the nationality of a contributor, and address issues such as domestic subsidiaries of

⁵⁹ See Advisory Opinion 2006-15 (TransCanada Corp.), <https://www.fec.gov/data/legal/advisory-opinions/2006-15/>; Advisory Opinion 2009-14, (Mercedes-Benz USA LLC) <https://www.fec.gov/data/legal/advisory-opinions/2009-14/>.

⁶⁰ Advisory Opinion 2011-15 (Hassan), <https://www.fec.gov/data/legal/advisory-opinions/2011-15/>. This advisory opinion led to litigation in which Mr. Hassan's claims were dismissed. See *Hassan v. FEC*, 2013 WL 1164506 (D.C. Cir. Mar. 11, 2013), https://transition.fec.gov/law/litigation/hassan_ac_order3.pdf.

⁶¹ See, e.g., Advisory Opinion 2011-22 (Virginia Poultry Growers Cooperative, Inc.) <https://www.fec.gov/data/legal/advisory-opinions/2011-22/>; Advisory Opinion 2007-12 (Tyco) <https://www.fec.gov/data/legal/advisory-opinions/2007-12/>; Advisory Opinion 2004-32 (Spirit) <https://www.fec.gov/data/legal/advisory-opinions/2004-32/>.

⁶² See Foreign National Brochure, <https://www.fec.gov/updates/foreign-nationals/>.

foreign corporations and the provision of substantial assistance to a foreign national making a contribution.⁶³

Other FEC webpages provide guidance about foreign national volunteers providing services to, but not participating in the decision making of, political committees; the ability of “super PACs” and the non-contribution accounts of “hybrid PACs” to raise funds outside the contribution limits and source prohibitions, *except* for the foreign national prohibition (and certain other FECA source prohibitions); and similarly, the fact that state, district and local political party committees when accepting donations for the purpose of constructing or purchasing a national party building are not under any donation limitation, but must abide by the foreign national prohibition (along with certain other FECA source prohibitions).⁶⁴

Finally, another FEC webpage states that federal candidates may not solicit funds for nonfederal elections, outside of the limits and source prohibitions of FECA and Commission regulations. This page also provides guidance for federal candidates attending events raising funds for nonfederal elections.⁶⁵

D. Litigation

The Commission has also successfully defended constitutional challenges to the foreign national prohibition and other provisions of FECA that enable detection of violations of that prohibition. In *Bluman v. FEC*, the three-judge court upheld FECA’s prohibition on foreign nationals making contributions and expenditures in connection with elections as applied to the activities planned by the plaintiffs in that case. The plaintiffs sought to “donate money to candidates in U.S. federal and state elections, to contribute to national political parties and outside political groups, and to make expenditures expressly advocating for and against the election of candidates in U.S. elections.” The court found that “the government (federal, state, and local) may exclude foreign citizens from activities that are part of democratic self-government in the United States.” The federal ban at issue thus “readily passes constitutional muster,” the court further found, and the Supreme Court summarily affirmed the decision.⁶⁶

⁶³ See Who can and cannot contribute, <https://www.fec.gov/help-candidates-and-committees/candidate-taking-receipts/who-can-and-cannot-contribute/>.

⁶⁴ See Volunteer Activity, <https://www.fec.gov/help-candidates-and-committees/candidate-taking-receipts/volunteer-activity/>; Contributions to super PACs and hybrid PACs, <https://www.fec.gov/help-candidates-and-committees/taking-receipts-pac/contributions-to-super-pacs-and-hybrid-pacs/>; Donations to political party building funds, <https://www.fec.gov/help-candidates-and-committees/taking-receipts-political-party/building-fund-donations-party/>.

⁶⁵ See Federal candidate participation in nonfederal fundraising for party committees, <https://www.fec.gov/help-candidates-and-committees/making-disbursements-political-party/federal-candidates-participation-nonfederal-fundraising-party-committees/>.

⁶⁶ *Bluman v. FEC*, 800 F. Supp. 2d 281, 282-83 (D.D.C. 2011), *aff’d*, 565 U.S. 1104 (2012).

In other cases, the Commission has defended the constitutionality of disclosure provisions that assist the detection of violations of FECA's contribution limitations including the foreign national prohibition.⁶⁷

II. HOW THE COMMISSION IDENTIFIES FOREIGN NATIONAL CONTRIBUTIONS OR DONATIONS.

The Reports Analysis Division ("RAD") of the FEC's Office of Compliance reviews all federal campaign finance reports to track compliance with FECA and to ensure that the public record provides a full and accurate representation of reported campaign finance activity.⁶⁸ If the review identifies an apparent violation or raises questions about the information disclosed on a report, RAD sends a request for additional information ("RFAI") to the filer, affording an opportunity to take remedial action or correct the public record, if necessary.⁶⁹ RFAs sent to filers are made public, as are the filers' responses. If the filer is able to resolve the FEC's concerns, it may avoid an enforcement action. If not, the Commission has several tools available to it, including referring the filer for an audit or to the traditional enforcement program.

The Reports Analysis Division bases its review of reports on Commission-approved *Review and Referral Procedures* that have categories of review with specific thresholds for determining when an RFAI should be sent to a filer. These procedures are updated and approved by the Commission every two years, with content based on input from both staff and Commissioners.⁷⁰ The *RAD Review and Referral Procedures* include instructions to review reported receipts for contributions that may be excessive, prohibited or otherwise impermissible as Standard 5 of the *RAD Review and Referral Procedures*. FECA's foreign national prohibition is among the prohibitions considered, and the *RAD Review and Referral Procedures* specify that contributions be examined to identify those from contributors with a foreign address on an FEC report. If a RAD analyst identifies contributions with reported foreign addresses on a filer's reports in excess of the dollar amount or percentage threshold, an RFAI will be sent. Depending on the circumstances, a filer that receives such an RFAI might respond by noting that the contributor is a citizen of the United States who has a foreign address. If the filer further

⁶⁷ See, e.g., *Buckley v. Valeo*, 424 U.S. 1, 67–68 (1976) (*per curiam*) ("[R]ecordkeeping, reporting, and disclosure requirements are an essential means of gathering the data necessary to detect violations of the contribution limitations . . ."); *SpeechNow.org v. FEC*, 599 F.3d 686, 698 (D.C. Cir. 2010) (*en banc*) ("[R]equiring disclosure of such information deters and helps expose violations of other campaign finance restrictions, such as those barring contributions from foreign corporations or individuals."); *Indep. Inst. v. FEC*, 216 F. Supp. 3d 176, 191 (D.D.C. 2016), *aff'd*, 137 S. Ct. 1204 (2017) ("[D]isclosures help the Commission to enforce existing regulations and to ensure that foreign nationals or foreign governments do not seek to influence United States' elections.") (internal citations omitted).

⁶⁸ FECA, § 311(b), *codified at* 52 U.S.C. § 30111(b).

⁶⁹ In Fiscal Year 2017, for example, RAD reviewed 87,848 documents that totaled nearly 35 million pages. During that year, 77 percent of the reports were reviewed within 90 days of receipt, and 88 percent of the RFAs issued were sent within 40 days of the report review. Thus, FEC performance on both measures exceeded the goals of 75 percent.

⁷⁰ *RAD Review and Referral Procedures for the 2017-2018 Election Cycle*, subject to limited redactions, are available on the FEC website: https://transition.fec.gov/pdf/2017-2018_rad_review_referral_procedures.pdf.

responds by indicating that filer routinely obtains copies of current and valid U.S. passports for such contributors pursuant to the safe harbor regulation at 11 C.F.R. § 110.20(a)(7), then no further RFAs on this issue will be sent for the remainder of the two-year election cycle. For responses to RFAs that are not sufficient to resolve an issue, the *RAD Review and Referral Procedures* provide thresholds for further Commission action, including assessment of audit points (which could result in a referral for an FEC audit), referral for enforcement action to the Alternative Dispute Resolution Office or to the Office of General Counsel.

The FEC's Audit Division conducts audits of committees that, according to the *RAD Review and Referral Procedures*, have not substantially complied with the law. As required by the public funding statutes, the FEC also audits all Presidential campaigns that receive public funds. All of these audits include an analysis of receipts that seeks to identify contributions or donations from foreign nationals.⁷¹ Subject to Commission-approved thresholds, receipt of prohibited contributions or donations can result in a referral to OGC Enforcement or to the ADR Office. Recent audit referrals of foreign national prohibition issues that resulted in enforcement proceedings are discussed above in Part A of Section I. Earlier audits identified apparently prohibited foreign national contributions, but generally due to the refunded, small dollar amounts at issue, enforcement matters were not pursued against the audited committees. Nonetheless, publicly available FEC Audit Reports documented the Commission's finding and circumstances that resulted in no further action.⁷²

III. THE COMMISSION'S PLANS FOR ENFORCING THE FOREIGN NATIONAL PROHIBITION.

The Commission plans to continue the work described in this report to enforce the foreign national prohibition and to promote voluntary compliance with it. Specifically, complaints, referrals and *sua sponte* submissions will continue to be addressed by the Commission and its OGC Enforcement Division and the ADR Office. The Commission intends to meet its statutory obligation to answer advisory opinion requests related to the foreign national prohibition. No specific revisions are planned at this point for the guidance the agency offers on the foreign national prohibition, which was revised in June 2017, although all such guidance is regularly reviewed for any necessary revisions. The work of the Reports Analysis Division and the Audit Division will continue, as discussed in Part II above.

With respect to enforcement matters, the Commission has issued an instruction related particularly to the foreign national prohibition. Timely resolution of any enforcement matters

⁷¹ In addition, as part of the public funding program, the Audit Division reviews the receipts of Presidential primary committees that seek matching funds to look for indications of foreign national contributions.

⁷² See Friends of Corrine Brown, Final Audit Report (Nov. 17, 1994), <https://transition.fec.gov/audits/1992/Authorized/92CorinneBrownDFL.pdf>; LaRouche Campaign Audit Report (Oct. 29, 1985) (evidence of U.S. citizenship for all contributors at issue), <https://transition.fec.gov/audits/1984/Title26/84LyndonLaRouche.pdf>; National Committee for an Effective Congress, Final Audit Report (Dec. 14, 1979), <https://transition.fec.gov/audits/1978/Unauthorized/78NCEC.pdf>; Claude Pepper Campaign Committee, Audit Report (June 5, 1978), <https://transition.fec.gov/audits/1976/Authorized/ClaudePepperFLD76.pdf>.

involving allegations of prohibited activity by foreign nationals remains a particular priority for the FEC. In fact, at the Commission's public meeting on September 15, 2016, FEC Commissioners unanimously directed the Office of General Counsel to prioritize cases involving allegations of foreign influence.⁷³ As a follow-up, at the Commission's public meeting on May 25, 2017, then-Chairman Steven T. Walther called upon the FEC staff to apply their resources to continue to fulfill the prioritization of any such enforcement matters and to further the Commission's regulatory, educational, and enforcement work in this area.⁷⁴

The Commission is also currently engaged in a rulemaking proceeding concerning potential revisions to the regulations on disclaimers required on certain internet communications, which could have implications related to the foreign national prohibition.

Disclaimers on paid digital and internet-based advertisements are one tool used to expose prohibited expenditures by foreign nationals. Disclaimers "provide the electorate with information and insure that the voters are fully informed about the person or group who is speaking," to enable people "to evaluate the arguments to which they are being subjected."⁷⁵ Disclaimers serve this important function even on communications paid for by persons, like foreign nationals, prohibited from engaging in electoral expenditures; complaints about disclaimer violations can result in conciliation of violations of both disclaimer and prohibited source rules.⁷⁶

Commission regulations require disclaimers on political committees' mass emails, publicly available websites, and public communications, including communications by political committees that are placed for a fee on another person's website; disclaimers are also required on any electioneering communication by any person and on any public communication, including communications placed for a fee on another person's website, by any person containing express advocacy or a solicitation for contributions.⁷⁷

In four advisory opinions, the Commission considered the application of the general disclaimer regulations in the context of paid digital and internet advertisements.⁷⁸ The Commission also sought public comment regarding whether it should take broader action and revise its disclaimer rules for paid internet communications, as described below.

⁷³ See FEC Press Release (May 25, 2017), <https://www.fec.gov/updates/fec-approves-amended-audit-division-recommendation-memorandum-approves-advisory-opinion-and-agrees-commence-work-party-rulemaking/>.

⁷⁴ *Id.*

⁷⁵ *Citizens United v. FEC*, 558 U.S. 310, 368 (2010) (internal quotations and alterations removed).

⁷⁶ Accord Conciliation Agreement at 10, MUR 5158 (Brady Campaign to Prevent Gun Violence) (Feb. 16, 2005), <http://eqs.fec.gov/eqsdocsMUR/0000370E.pdf> (conciliating violation of disclaimer and corporate expenditure rules on express advocacy communications by a then-prohibited corporate payor).

⁷⁷ See 11 C.F.R. § 110.11(a).

⁷⁸ See Advisory Opinion 2002-09 (Target Wireless), <https://www.fec.gov/data/legal/advisory-opinions/2002-09/>, Advisory Opinion 2010-19 (Google), <https://www.fec.gov/data/legal/advisory-opinions/2010-19/>, Advisory Opinion 2011-09 (Facebook), <https://www.fec.gov/data/legal/advisory-opinions/2011-09/>, and Advisory Opinion 2017-12 (Take Back Action Fund), <https://www.fec.gov/data/legal/advisory-opinions/2017-12/>.

In 2011, the Commission issued an Advance Notice of Proposed Rulemaking (“ANPRM”) to seek public input on whether to open a rulemaking revising its disclaimer regulations for paid online communications.⁷⁹ The Commission re-opened the comment period on this ANPRM twice, in 2016 and 2017.⁸⁰ In response to the 2017 re-opening of the comment period, the Commission received more than 149,000 comments.

On March 26, 2018, the Commission issued a Notice of Proposed Rulemaking (“NPRM”) requesting comment on revisions to the definition of “public communication” and on two alternative proposals to amend its regulations concerning disclaimers on public communications on the internet that contain express advocacy, solicit contributions, or are made by political committees.⁸¹ By the close of the comment period, the Commission received more than 165,000 comments on the NPRM, which showed very strong public interest in vigorous enforcement. The Commission held a public hearing on June 27 and 28, 2018, at which it received testimony from 18 persons who had requested to appear.⁸² The Commission is currently considering the comments and testimony it has received in order to consider a final rule.

Conclusion

This report was prepared for the approval of the FEC in order to meet the reporting requirement in the Explanatory Statement for the Consolidated Appropriations Act, 2018. FEC staff are available to answer questions about the contents of this report or discuss other information related to the FEC’s efforts to enforce the foreign national prohibition. The Commissioners submitted this report to the Appropriations Committees on September 18, 2018.

⁷⁹ See Internet Disclaimer Communications, 76 Fed. Reg. 63,567 (Oct. 13, 2011), <http://sers.fec.gov/fosers/showpdf.htm?docid=353587>.

⁸⁰ See Internet Communication Disclaimers, 81 Fed. Reg. 71,647 (Oct. 18, 2016), <http://sers.fec.gov/fosers/showpdf.htm?docid=353586> ; Internet Communication Disclaimers, 82 Fed. Reg. 46,937 (Oct. 10, 2017), <http://sers.fec.gov/fosers/showpdf.htm?docid=357882>.

⁸¹ See Internet Communication Disclaimers, 83 Fed. Reg. 12,864 (Mar. 26, 2018), <http://sers.fec.gov/fosers/showpdf.htm?docid=373521>.

⁸² See Agenda, June 27-28, 2018 Public Hearing: Internet Communication Disclaimers and Definition of “Public Communication,” available at <https://www.fec.gov/updates/june-27-28-2018-public-hearing/>.

From:#Federal Employment Lawyers Group (FELG)
To:#Federal Employment Lawyers Group (FELG)
Sent:2019-10-16T14:45:40.0000000Z
Subject:FW: [EXT] Presidential Memorandum on Executive Orders 13836, 13837, and 13839

CONTROLLED

Good morning,

Please see the email below. Thanks!

From: OPM-AWR <AWR@opm.gov>
Sent: Tuesday, October 15, 2019 9:51 AM
Subject: [EXT] Presidential Memorandum on Executive Orders 13836, 13837, and 13839

CAUTION: External Sender
Do not click links or open attachments unless you recognize the sender and know the content is safe.

On Friday, October 11, 2019, the President issued a Presidential Memorandum on Executive Orders 13836, 13837, and 13839 (<https://www.whitehouse.gov/presidential-actions/presidential-memorandum-executive-orders-13836-13837-13839/>).

The text of the Presidential memorandum is located below.

**Accountability
and Workforce Relations
Employee Services
U.S. Office of Personnel Management**

Issued on: October 11, 2019

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Executive Orders 13836, 13837, and 13839

On May 25, 2018, I signed three Executive Orders requiring executive departments and agencies (agencies) to negotiate collective bargaining agreements that will reduce costs and promote government performance and accountability. These Executive Orders, Executive Order 13836 of May 25, 2018 (Developing Efficient, Effective, and Cost-Reducing Approaches to Federal Sector Collective Bargaining), Executive Order 13837 of May 25, 2018 (Ensuring Transparency, Accountability, and Efficiency in Taxpayer-Funded Union Time Use), and Executive Order 13839 of May 25, 2018 (Promoting Accountability and Streamlining Removal Procedures Consistent with Merit System Principles), were partially enjoined by the United States District Court for the District of Columbia on August 25, 2018. The District Court’s injunction barred enforcement of sections 5(a), 5(e), and 6 of Executive Order 13836, sections 3(a), 4(a), and 4(b) of Executive Order 13837, and sections 3, 4(a), and 4(c) of Executive Order 13839.

On July 16, 2019, the United States Court of Appeals for the District of Columbia Circuit held that

the District Court lacked jurisdiction and vacated its judgment, and the Court of Appeals has now issued the mandate making its judgment effective.

Provisions of the Executive Orders that had been subject to the District Court's injunction set presumptively reasonable goals that agencies must pursue during bargaining; directed agencies to refuse to bargain over permissive subjects of negotiation; and established Government-wide rules that displace agencies' duty to bargain with unions over contrary matters, regardless of whether the Federal Service Labor-Management Relations Statute would otherwise require bargaining absent those rules. Sections 4(c)(ii) and 8(a) of Executive Order 13837 and section 8(b) of Executive Order 13839, however, recognized agencies' ability to comply with collective bargaining agreements containing prohibited terms so long as such agreements were effective on the date of the Executive Orders.

While the District Court's injunction remained in effect, agencies retained the ability to bargain over subjects covered by the enjoined provisions. The Executive Orders, however, did not address collective bargaining agreements entered into during this period. As a result, it is necessary to clarify agencies' obligations with respect to such collective bargaining agreements.

Agencies shall adhere to the terms of collective bargaining agreements executed while the injunction was in effect. Agencies that remain engaged in collective-bargaining negotiations, to the extent consistent with law, shall comply with the terms of the Executive Orders. However, where, between the date of the Executive Orders and the date of the Court of Appeals's mandate, the parties to collective bargaining negotiations have executed an agreement to incorporate into a new collective bargaining agreement specific terms prohibited by the Executive Orders, an agency may execute the new collective bargaining agreement containing such terms, and terms ancillary to those specific terms, notwithstanding the Executive Orders.

To the extent it is necessary, this memorandum should be construed to amend Executive Orders 13836, 13837, and 13839.

The Director of the Office of Personnel Management is hereby authorized and directed to publish this memorandum in the *Federal Register*.

DONALD J. TRUMP

From:PinHawk NewzDigest
To:Lawrence Calvert
Sent:2019-08-23T12:14:22.0000000Z
Subject:Corporate Legal News

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Friday, August 23, 2019

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To:#Federal Employment Lawyers Group (FELG)
Sent:2019-10-08T14:27:19.0000000Z
Subject:FW: EEO Investigations

CONTROLLED

Good morning,

Please see the email request below.

From: Nichole.Jenkins@treasury.gov <Nichole.Jenkins@treasury.gov>
Sent: Monday, October 7, 2019 4:07 PM
To: #Federal Employment Lawyers Group (FELG) <FELG@fhfa.gov>
Subject: EEO Investigations

This message was sent securely using ZixCorp.

We would like for the group to response concerning their experiences regarding the below questions/observations concerning EEO Investigations. Thank you:

Recently our review of EEO Reports of Investigation (ROI) have raised several concerns regarding the below two areas:

1. The questions posed of the declarants -- The sheer volume of questions is far greater than in the past. We have recently seen a few with over 60 or 70 separate questions, often with many sub-parts that take the questions to over 100. This is taking managers many hours to complete. The questions are sometimes difficult to follow, vague, and redundant. Furthermore, many of them include "facts not in evidence", basically along the lines of when exactly did you realize this employee was being discriminated against, why did you decide to deny a previously agreed upon accommodation etc.? This is especially a problem if agencies don't review declarations because of *Josephina* fears, since the declarant may unintentionally agree to incorrect facts.
2. The process— It is our understanding that our EEO Office affords the complainant the opportunity to review a draft of the ROI and comment or supplement it with what they believe appropriate. We've seen at least a couple of ROIs that contain "rebuttal" declarations. To the best of our knowledge our EEO Office does not give this opportunity to the agency. This appears to violate MD-110 which states (noted the highlights):

X. COMPLAINANTS' OPPORTUNITY TO REVIEW THE INVESTIGATIVE FILE

Within the appropriate time frame for finishing an investigation under 29 C.F.R. § 1614.108(e), and prior to issuance of the notice required by 29 C.F.R. § 1614.108(f), **agencies are encouraged** to allow complainants and their designated representatives an opportunity to examine the investigative file and to notify the agency, in writing, of any perceived deficiencies in the investigation prior to transferring the case to the Commission for a hearing or prior to taking a final action without a hearing. A copy of the complainant's notification to the agency of perceived deficiencies must be included in the investigative file together with a written description by the agency of the corrective action taken.

If the agency agrees with alleged deficiencies in the investigation as identified by the complainant, the agency must immediately correct them. If the investigation period has ended or is about to end, the agency should request agreement from the complainant to extend the investigation period pursuant to 29 C.F.R. § 1614.108(e). If the agency does not agree with the complainant's claimed deficiencies in the investigative file, the agency will prepare a statement explaining the rationale for the disagreement and include it in the investigative file along with the complainant's notice of claimed deficiencies.

When the agency affords the complainant the opportunity to review the draft report of investigation, it should also afford the agency representative the same option.

We would be interested in hearing your thoughts on this and whether you have had similar experiences. Please send any responses to me at the below email address.

Best,

Nichole L. Jenkins
Office of Legal Counsel
Special Inspector General for the
Troubled Asset Relief Program (SIGTARP)
U.S. Department of Treasury
1801 L Street, NW
Washington, DC 20220
Nichole.jenkins@treasury.gov
202.927.9987

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**Information Technology Specialist (CUSTSPT), GS-2210-11
(Customer Help Desk Support Specialist)**

**FEDERAL ELECTION COMMISSION,
INFORMATION TECHNOLOGY DIVISION PROGRAM MANAGEMENT BRANCH,
HELP DESK TEAM**

INTRODUCTION

This position is located in the Help Desk Team, Program Management Branch (PMB) of the Information Technology Division (ITO) at the Federal Election Commission (FEC). The Program Management Branch is responsible to plan, organize, direct, and control Commission Information Technology (IT) resources and programs in accordance with the Information Technology Strategic Plan and IT Performance Plans; the branches work is led by the branch chief and directed by the Chief Information Officer and Director Information Technology Division. Specifically, the Branch is responsible for day-to-day tracking of project activities, long-term strategic planning, and managerial oversight of programs and customer support. Work is accomplished through a variety of short- and long-term projects, IT systems & programs development, software development & integration, and a wide variety of other technical areas that involve multiple IT specialties and has a primary focus on customer or user support.

The incumbent serves as a Customer Help Desk Support Specialist and performs general duties to diagnose and resolve problems in response to customer reported incidents and performs duties to install, configure, troubleshoot, repair, and maintain computer systems as required at the Federal Election Commission. The incumbent performs duties to back-up the following program areas:

- a. the User Training Group including providing Orientation as required;
- b. the Client Systems Group and assists in disassembly, movement, assembly, and configuration of computer equipment, peripherals, and accessories, and assists with disable, reinstalls, configure, and troubleshoot hand held devices and telephone moves and relocations; and,
- c. the Telecommunications group for telephone moves and re-activations.

This position is developmental to the full-performance level of GS-12.

MAJOR DUTIES AND RESPONSIBILITIES

The incumbent serves as a Customer Help Desk Support Specialist and performs general duties to diagnose and resolve problems in response to customer reported incidents. Work involves installing, configuring, troubleshooting, repairing, and maintaining computer systems to provide customer assistance and training for systems in use at FEC. The incumbent documents customer requirements that present or result of assistance visits or inquiries.

Monitors the availability and functionality of networks and systems, and detects and report problems. Participates in testing and installing systems modifications and upgrades; provides information and assistance to customers on using installed systems, and participates on teams responsible for implementing major systems changes.

The incumbent is responsible for support of the Federal Election Commission Staff in the use of Software used at the Federal Election Commission and standard software packages used on

the personal computers and local area networks. As a User Support Specialist, the incumbent works with a variety of software and supports customers in the use of word processing applications, disclosure database applications, electronic mail applications, spreadsheet applications, various indexes, time management, desk management software, and other software that may run on personal computer platforms. This support may result from monitoring Help Desk requests and may occur in small groups or on an individual in-person assistance basis, by telephone, or through use of the FEC IT Division Helpdesk Software.

As assigned, the incumbent assists users with special projects and analyzes and recommends software and application automation methods to accomplish projects. The incumbent identifies support materials required and assists in subject matter to be included. The incumbent assists in developing technical notes, procedures, and information for all levels of the user base at the FEC.

Incumbent researches, evaluates, and provides feedback and/or recommendations on problematic trends and patterns in customer support requirements. Incumbent develops and maintains problem tracking and resolution databases to monitor issues and trends.

As directed, the incumbent performs develops and monitors customer service performance requirements by gathering performance data,, developing customer support policies, procedures, and standards, and providing customer training as required. Incumbent also gathers data to assess compliance and to ensure rigorous application of information security and information assurance policies, principles, and practices in the delivery of customer support services.

Analyzes and defines client requirements for new and modified systems and services based on analysis of business needs and practices. Assists users to develop specifications for new or modified systems, and assist in planning and coordinating systems design, testing, development, acquisition, installation, and support of new and modified systems including hardware and software. Incumbent serves as primary liaison with clients on all matters related to Information Technology Customer Support Help Desk systems operations and support.

Reviews support referrals to troubleshoot and resolve a variety of referral problems. Recommends changes in standard customer support procedures where existing procedures no longer provide solutions or are outdated. Assists in the resolution of problems with software, equipment, and for systems supported with a wide variety of different platforms, operating systems, applications. and desktop configurations.

Troubleshoots post-installation software and equipment problems. Reviews, investigates and resolves incompatibilities in software packages, hardware and telecommunications equipment, coordinating efforts with users, vendors/carriers, suppliers of equipment and services, and other internal and external IT specialists and experts. Works with more experienced IT specialists to resolve more difficult problems.

Maintains adequate parts inventory to sustain daily operations. Advises supervisor and team leader of system improvements and updated requirements.

Performs back-up duties to other IT groups including the User Training Group and provides Orientation as required. Provides new arrival user computer orientation training and desk side computer orientation training to new users on commonly used software including word processing, databases, spreadsheets, etc., used in the conduct of ongoing business operations

throughout FEC. Assists with passwords management, including resetting Microsoft's ADUC and internet passwords. Develops and maintains an automated database to identify all new users, required computer training, training completed, and status of mandatory training. As back-up to the Client Systems Group, incumbent assists in disassembly, movement, assembly, and configuration of computer equipment, peripherals, and accessories, and assists with disable, reinstalls, configure, and troubleshoot hand held devices and telephone moves and relocations. Also serves as back-up to the Telecommunications group for telephone moves and re-activations; incumbent troubleshoots wireless/handheld devices system(s).

The incumbent performs other related duties as assigned.

FACTORS

FACTOR 1. KNOWLEDGE REQUIRED BY THE POSITION

Applied knowledge of a wide variety of applications, operating systems, protocols, and equipment used in customer organizations.

Knowledge of methods and practices for troubleshooting, recovering, adjusting, modifying, and improving IT systems.

Skill in applying customer support concepts and methods sufficient to provide advice and assistance to customers, troubleshoot complex problems, and provide support to minimize interruptions to business.

Knowledge of technical IT specialties related to operating systems, network systems, applications, protocols, and equipment.

Knowledge of enterprise architecture.

Knowledge of organization mission and programs, Information Technology infrastructure, and Internet technologies sufficient to analyze the potential of systems, networks, and data, sufficient to evaluate and recommend adoption of new or enhanced approaches to delivering Information Technology services.

Knowledge of, and skill in applying Information Technology principles, performance management and measurement methods, tools, and techniques sufficient to conduct analyses and recommend resolution of complex issues affecting the specialty area, and test and optimize the functionality of systems, networks, and data.

Ability to install, configure, and test software on customer workstations.

Ability to receive, respond to, and ensure resolution of Help Desk calls and to document actions taken, give needed guidance or training to prevent recurrences, and assist in resolving a variety of problems.

Knowledge of installed operating systems, network systems, applications, protocols, and equipment sufficient to prepare log-in scripts and establish network access protocols to enable customers to gain access to systems.

Ability to analyze the potential of systems, networks, and data, sufficient to evaluate and recommend adoption of new or enhanced approaches to delivering Information Technology services.

Skill in applying IT principles, performance management and measurement methods, tools, and techniques sufficient to conduct analyses and recommend resolution of multivariable issues affecting the specialty area, and test and optimize the functionality of systems, networks, and data.

Knowledge of a broad range of telecommunications operating techniques, to include local and wide area networking, digital and analog communications requirements and processes used by government and industry organizations.

General knowledge of FEC mission and core mission programs to understand basic work requirements of customers and to evaluate alternative approaches for satisfying communications and hardware requirements.

Knowledge of customary fact-finding approaches, data processing documentation procedures, and analytical and evaluative techniques.

Skill in oral communications to represent the organization in interactions with other organizations and obtain and provide technical information.

Skill in written communications to prepare and present technical reports.

Ability to provide quality customer service and support to a diverse customer base by assessing customers' needs and satisfying customers' expectations.

Ability to assist in the planning and implementing of hardware and telecommunications installation procedures involving a variety of available equipment, services, security methods and procedures, and operating techniques.

Ability to find ways to link together previously noncompatible equipment and systems, and software packages.

Ability to respond to problems and questions involving hardware and telecommunications guidelines at all Commission levels, while inspecting operating systems for adequacy, efficiency and need for improvement.

FACTOR 2. SUPERVISORY CONTROLS

The supervisor outlines overall objectives and available resources. The employee and supervisor, in consultation, discuss timeframes, scope of the assignment including possible stages, and possible approaches. The employee determines the most appropriate principles, practices, and methods to apply in all phases of assignments, including the approach to be taken, degree of intensity, and depth of research in management advisories; frequently interprets regulations on his/her own initiative, applies new methods to resolve complex and/or intricate, controversial, or unprecedented issues and problems, and resolves most of the conflicts that arise; and keeps the supervisor informed of progress and of potentially controversial matters. The supervisor reviews completed work for soundness of overall approach, effectiveness in meeting requirements or producing expected results, the feasibility of

recommendations, and adherence to requirements. The supervisor does not usually review methods used.

FACTOR 3. GUIDELINES

The employee uses a variety of reference materials and manuals that are not always directly applicable to issues and problems or have gaps in specificity. Precedents are available outlining the preferred approach to more general problems or issues. The employee uses judgment in researching, choosing, interpreting, modifying, and applying available guidelines for adaptation to specific problems or issues; for new work or issues without precedent, the employee consults with a senior specialist or supervisor, recommending an approach to take consistent with general guidelines in similar situations.

FACTOR 4. COMPLEXITY

Work consists of a variety of duties that involve many different and unrelated processes and methods pertinent to the IT field. The employee decides what needs to be done by evaluating unusual circumstances; considering different approaches; and dealing with incomplete and conflicting data. The employee uses judgment and originality by interpreting data; planning the work; and refining the methods and techniques being used. Employee ensures that local systems are consistent with the overall enterprise architecture, policies, and priorities.

The work requires that the incumbent work with the user to resolve problems from identification to resolution and to work independently until completion. The work requires the incumbent to resolve the most complex computer problems involving integration or configuration. Systems supported involve a wide variety of different platforms, operating systems, applications, and desktop configurations involving work to complete help desk functions, and applications, network, and security functions. The incumbent breaks down problems using structured problem resolution approaches and works with network specialists, applications developers, and security specialists to prevent recurring problems. The incumbent must document solutions to problems and recommend fundamental changes to systems configurations to prevent recurrences.

FACTOR 5. SCOPE AND EFFECT

Work involves a variety of common problems, questions, or situations that are dealt with in accordance with established criteria. Work affects the design, testing, implementation, operation, or support of IT systems or the quality and reliability of services. The results of the employee's work impacts systems used by all FEC and potentially affect how local systems relate to other systems throughout the agency.

Specific tasks deal with developing, updating, and maintaining a comprehensive database of technical queries and corresponding resolutions; work requires the incumbent to complete work and resolve the full range of problems in all functional areas supported by the Help Desk Team. Activities include installing, maintaining, monitoring performance and troubleshooting networks, systems, and applications installed in the customer organizations. Work also involves providing training on technical issues and new customer support technologies. Incumbent conducts trend analyses using systems to identify areas where additional customer training and assistance are needed; initiates appropriate action including defining new training requirements and providing one-on-one training for all levels of employees as required. Results of incumbent's work ensures that customer support services are provided effectively and responsively and enables employees throughout customer organizations to effectively apply IT resources to accomplish

mission requirements. Work results in the resolution of complex problems that enables customers to be more productive in carrying out assignments by minimizing downtime.

FACTOR 6. PERSONAL CONTACTS

Personal contacts are with Individuals or groups from outside the agency including consultants, contractors, vendors, or representatives of professional association. Contacts are with all levels of FEC employees and include agency officials who are several manager levels removed from the employee and contacts occur on an ad hoc basis.

FACTOR 7. PURPOSE OF CONTACTS

The purpose of contacts is to influence and persuade employees and managers to accept and implement findings and recommendations. Work may encounter resistance as a result of issues such as organizational conflict, competing objectives, and resource problems. Work requires skill to approach contacts to obtain the desired effect by persuasion or negotiation.

FACTOR 8. PHYSICAL DEMANDS

The work is sedentary. The work requires walking and the physical movement of personal computer and telephone equipment, paper and supplies. Some walking and lifting is required. The work does not require any special physical effort.

FACTOR 9. WORK ENVIRONMENT

The work area is adequately lighted, heated, and ventilated. The work environment involves everyday risk or discomforts that require normal safety precautions.

Evaluation of IT Specialist (CUSTSPT), GS-2210-12

(Customer Help Desk Support Specialist)

FEC, INFORMATION TECHNOLOGY DIVISION, PROGRAM MANAGEMENT BRANCH,
HELP DESK TEAM

Background

This position is located in the Help Desk Team, Program Management Branch (PMB) of the Information Technology Division (ITO) at the Federal Election Commission (FEC). The Program Management Branch is responsible to plan, organize, direct, and control Commission Information Technology (IT) resources and programs in accordance with the Information Technology Strategic Plan and IT Performance Plans; the branches work is led by the branch chief and directed by the Chief Information Officer and Director Information Technology Division. Specifically, the Branch is responsible for day-to-day tracking of project activities, long-term strategic planning, and managerial oversight of programs and customer support. Work is accomplished through a variety of short- and long-term projects, IT systems & programs development, software development & integration, and a wide variety of other technical areas that involve multiple IT specialties and has a primary focus on customer or user support.

The incumbent serves as a Customer Help Desk Support Specialist and performs general duties to diagnose and resolve problems in response to customer reported incidents and performs duties to install, configure, troubleshoot, repair, and maintain computer systems as required at the Federal Election Commission. The incumbent performs duties to back-up the following program areas:

- a. the User Training Group including providing Orientation as required;
- b. the Client Systems Group and assists in disassembly, movement, assembly, and configuration of computer equipment, peripherals, and accessories, and assists with disable, reinstalls, configure, and troubleshoot hand held devices and telephone moves and relocations; and,
- c. the Telecommunications group for telephone moves and re-activations.

This position is developmental to the full-performance level of GS-12.

Classification Standards referenced:

Office of Personnel Management Administrative Work in the Information Technology Group,
2200 Issued: May 2001 Revised: Aug 2003, Sept 2008, May 2011

Series Determination

The work of this position involves understanding of the interrelationships of a number of functional areas involving the operations, maintenance, analysis, and development of information technology and management support systems and programs. The work involves performing duties that involve database management, network security, local area networks, and interrelationships of local systems with the larger agency enterprise structure. A critical component of the work includes working with customers to identify systems needs and providing timely services to support mission direct programs of FEC.

The work of the position compares favorably with the series definition provided in the Information Technology Group classification standard, developed by the Office of Personnel Management. The definition for the series, 2210, states:

This series covers two-grade interval administrative positions that manage, supervise, lead, administer, develop, deliver, and support information technology (IT) systems and services. This series covers only those positions for which the paramount requirement is knowledge of IT principles, concepts, and methods; e.g., data storage, software applications, networking.

Accordingly, the recommended series for this position is the Information Technology Series, 2210.

Title Determination

Titles for positions properly assigned to the 2210 series are based on the role and nature of the work performed by the position. The authorized basic titles for work in the 2210 series are 1) *IT Program Manager*, 2) *IT Project Manager*, and 3) *Information Technology Specialist* or *IT Specialist*. The first two titles are for leadership positions assigned to the series; the classification standard describes the third option, IT Specialist (nonsupervisory), position as follows:

Work that involves developing, delivering, and supporting IT systems and services is Information Technology Specialist or IT Specialist.

This description is consistent with the work of the subject position. Therefore, the recommended basic title is Information Technology Specialist.

The basic title may be supplemented by one or more of the supplemental parenthetical specialty titles approved by OPM "to further identify duties and responsibilities performed and the special knowledge and skills needed." (OPM 2210 standard) These specialties, as approved by OPM and identified in the 2210 standard, are as follows:

- **Policy and Planning** – develop, implement, and ensure compliance with plans, policies, standards, infrastructures, and architectures that establish the framework for the management of all IT programs.
- **Enterprise Architecture** – analyze, plan, design, document, assess, and manage the IT enterprise structural framework to align IT systems with the mission, goals, and business processes of the organization.
- **Security** – plan, develop, implement, and maintain programs, policies, and procedures to protect the integrity and confidentiality of systems, networks, and data.
- **Systems Analysis** – consult with customers to refine functional requirements and translate functional requirements into technical specifications.
- **Applications Software** – translate technical specifications into programming specifications; develop, customize, or acquire applications software programs; and test, debug, and maintain software programs.
- **Operating Systems** – install, configure, and maintain the operating systems environment, including systems servers and operating systems software on which applications programs run.
- **Network Services** – test, install, configure, and maintain networks including hardware (servers, hubs, bridges, switches, and routers) and software that permit the sharing and

transmission of information.

- **Data Management** – develop and administer databases used to store and retrieve data and develop standards for the handling of data.

- **Internet** – provide services that permit the publication and transmission of information about agency programs to internal and external audiences using the Internet.

- **Systems Administration** – install, configure, troubleshoot, and maintain hardware and software to ensure the availability and functionality of systems.

- **Customer Support** – provide technical support to customers who need advice, assistance, and training in applying hardware and software systems.

The standard provides the following guidance for use of parenthetical titles:

Official Specialty or Parenthetical Titles

Specialty titles are typically displayed in parentheses and referred to as parenthetical titles.

- Parenthetical titles, as defined below, may be used with the basic title of the position to further identify the duties and responsibilities performed and the special knowledge and skills needed.
- Use the basic title without a parenthetical specialty title for positions with no established specialty or emphasis area or for positions involving work in more than two of the established specialties.
- Combine two authorized parenthetical specialty titles (e.g., Applications Software/Systems Analysis) when the two specialties are significant to the position. You may continue to use other agency-established parenthetical titles where appropriate as unofficial position titles; i.e., organizational or functional titles.

While this position is involved with multiple specialties, consideration may be given to using the generalist title (for more than two specialties), IT Specialist. However, the primary focus of this position and the reason for its existence is to provide customer support to IT systems users throughout FEC. Therefore, the recommended title for this position is Information Technology Specialist (CUSTSPT).

Grade Determination

This position is in the career ladder to the full-performance level, GS-12. The position provides operational support to all IT and telecommunications users throughout the agency. The incumbent performs a variety of duties with considerable independence and assists more senior specialists on more complex assignments.

Primary duties relate to providing direct customer contact to develop solutions to information technology problems or to develop enhancements to systems and programs. The IT Specialist partners with line users to adapt systems to evolving and new programs, new compliance requirements, and external users of agency systems.

The grade level of the duties performed by this position is determined by comparison to FES factor levels for the nine FES factors. After discussion of the factor levels, a summary table (at the end of this document) provides a one-page view of the point assignments and shows the conversion of the points total to a pay level.

The factor level assignments and discussions are provided below.

Factor 1. Knowledge Required by the Position - Level 1-7, 1250 points

The subject position is involved in multiple specialty areas of information technology to include:

- systems administration
- programming
- operating systems
- network services
- security
- internet, and
- customer support

The position also requires and uses:

- knowledge of customer organizations;
- knowledge of the enterprise architecture;
- knowledge of IT concepts, principles, methods, and practices;
- knowledge of software evaluation tools and methodologies;
- knowledge of qualitative and quantitative evaluation methods;
- knowledge of IT acquisition procedures and requirements;
- proficiency in general analysis;
- skill in performing cost-benefit analysis;
- ability to conduct requirements analysis;
- skill in oral communication;
- skill in written communication;
- applied knowledge of project planning/management principles and methods; and,
- skill in problem solving.

The knowledge, skills, and abilities indicated above are used to evaluate COTS packages or to determine the potential for programming unique systems that address customers' needs. The position plans and carries out tasks of varying difficulty and complexity and, as directed, develops new methods, approaches, and procedures, and provides advice and guidance on a variety of IT issues. The position also interprets IT policies, standards, and guidelines; conducts analyses; and recommends resolutions of complex issues affecting the specialty area. The program has impact internally throughout FEC and potentially impacts external users who access FEC systems remotely.

The subject position most closely matches level 1-7 where knowledge and other competencies to provide substantial systems development and troubleshooting support to customers; customers tend to be local and support tends to relate to post-installation issues. At this level the employee analyzes customer needs and evaluates available systems or researches the market for available applications that meet the customers' needs. The employee at this level is expected to be able to independently reach conclusions about the issues dealt with and makes recommendations that are not typically subject to change.

The work exceeds level 1-6 where the employee performs work in an assistance mode while employing knowledge and competencies that enable providing assistance to customers without seeking answers from higher-graded staff; at level 1-6, the employee is responsible for

monitoring and data gathering more than making independent decisions about problem resolution. Level 1-8 is not met because at that level the employee leads IT projects and evaluates effectiveness of systems and programs. Level 1-8 involves a higher-level involvement in the business requirements of the customers and decisions have wider-ranging impact.

This position matches requirements for level 1-7, 1250 points, described as follows:

Knowledge Required for All Positions in This Series at This Level:

Knowledge of and skill in applying:

- ☐ systems analysis concepts and methods;
- ☐ customer business requirements;
- ☐ applications software design concepts and methods;
- ☐ customer support principles, concepts, and methods; and
- ☐ analytical reasoning

sufficient to:

- ☐ develop technical requirements for new or modified applications;
- ☐ analyze and determine optimal hardware and software configurations;
- ☐ provide technical guidance in the design, coding, testing, and debugging process;
- ☐ assist customers in installing applications;
- ☐ troubleshoot post-installation problems; and
- ☐ coordinate the technical support of deployed applications.

Knowledge of, and skill in applying, most of the following:

- ☐ IT concepts, principles, methods, and practices;
- ☐ the mission and programs of customer organizations;
- ☐ the organization's IT infrastructure;
- ☐ performance management/measurement methods, tools, and techniques;
- ☐ systems testing and evaluation principles, methods, and tools;
- ☐ IT security principles and methods;
- ☐ requirement analysis principles and methods;
- ☐ COTS products and components;
- ☐ Internet technologies to analyze the Internet potential of systems, networks, and data;
- ☐ new and emerging information technologies and/or industry trends;
- ☐ acquisition management policies and procedures;
- ☐ cost-benefit analysis principles and methods;
- ☐ analytical methods and practices;
- ☐ project management principles and methods; and
- ☐ oral and written communication techniques

sufficient to:

- ☐ plan and carry out difficult and complex assignments and develop new methods, approaches, and procedures;
- ☐ provide advice and guidance on a wide range and variety of complex IT issues;
- ☐ interpret IT policies, standards, and guidelines;
- ☐ conduct analyses and recommend resolution of complex issues affecting the specialty area;
- ☐ evaluate and recommend adoption of new or enhanced approaches to delivering IT services;
- ☐ test and optimize the functionality of systems, networks, and data;

- ☐ identify and define business or technical requirements applied to the design, development, implementation, management, and support of systems and networks;
- ☐ ensure optimal use of commercially available products;
- ☐ evaluate proposals for the acquisition of IT products or services;
- ☐ prepare and present reports;
- ☐ represent the organization in interactions with other organizations; and
- ☐ provide technical leadership on group projects.

Factor 2. Supervisory Controls - Level 2-4, 450 points

This position performs work with considerable independence. The employee is assigned responsibility for an area of work, may provide guidance to more junior employees, and is able to complete assignments with only broad instructions for new work, and with few instructions for ongoing assignments. The employee handles customer interactions independently and makes recommendations and simple decisions regarding satisfaction of requests and problem solving.

This work most closely matches level 2-4 where the employee completes work independently after general discussions with the supervisor; at this level, the employee completes assignments independently, decides when alternative approaches are appropriate, and work is reviewed for satisfaction for overall objectives, and less so for technical adequacy. Work exceeds level 2-3 where the supervisor gives more detailed instruction and identifies areas of potential difficulty; at level 2-3, the employee tends to follow instructions or precedents or recommends deviations from normal practice before implementing the change. The employee does not meet level 2-5 where the employee does not receive specific assignments, but rather performs with little to no guidance and works on projects that have agency-wide impact or involvement; at this level, the employee is considered a technical expert.

The work of this position matches level 2-4, 450 points, described as:

How Work Is Assigned – The supervisor outlines overall objectives and available resources. The employee and supervisor, in consultation, discuss timeframes, scope of the assignment including possible stages, and possible approaches.

Employee Responsibility – The employee:

- ☐ determines the most appropriate principles, practices, and methods to apply in all phases of assignments, including the approach to be taken, degree of intensity, and depth of research in management advisories;
- ☐ frequently interprets regulations on his/her own initiative, applies new methods to resolve complex and/or intricate, controversial, or unprecedented issues and problems, and resolves most of the conflicts that arise; and
- ☐ keeps the supervisor informed of progress and of potentially controversial matters.

How Work Is Reviewed – The supervisor reviews completed work for soundness of overall approach, effectiveness in meeting requirements or producing expected results, the feasibility of recommendations, and adherence to requirements. The supervisor does not usually review methods used.

Factor 3. Guidelines - Level 3-3, 275 points

The employee works with programs that continually adapt to new techniques and approaches that involve databases and/or remote access and use of information by a number of staff members throughout the agency. As the methods of mission work evolve, the IT specialist works with the customer to adapt systems and requirements to new programs. Much of the

work is done without clearly applicable guidelines and, in some cases, there may be an absence on internal policy or guidelines and/or existing guidelines may need to be adapted to unusual situations. IT work is always evolving and guidance may be developed in real time, in the absence of available guidelines. The employee consults with others to adapt current systems to emerging requirements for cybersecurity, network management, etc.

The work matches level 3-3 where the employee uses a wide variety of guidelines that generally apply to work situations or, when they do not apply, the employee is able to research and find precedent situations that may indicate how to adapt guidance to the situation at hand. For new work or unyielding problems, the employee may seek advisory opinions from senior specialists before making final innovations or interpretations of difficult guidelines. This position's does not work match requirements for level 3-4 where guidelines are general in nature and may not apply to the assignments at hand; at this level, the employee uses judgment, analytical skill, and technical expertise to interpret guidelines or to develop them for others. Work exceeds level 3-2 because at that level, the employee uses guidelines that are readily available and generally apply to most work situations.

Level 3-3, 275 points, is appropriate for this position and is described as follows:

Guidelines Used – The employee uses a wide variety of reference materials and manuals; however, they are not always directly applicable to issues and problems or have gaps in specificity. Precedents are available outlining the preferred approach to more general problems or issues.

Judgment Needed – The employee uses judgment in researching, choosing, interpreting, modifying, and applying available guidelines for adaptation to specific problems or issues.

Factor 4. Complexity - Level 4-4, 225 points

The work of this position involves continually evolving protocols, software, compliance requirements, and systems used by FEC to accomplish its mission. In fact, customer requirements change rapidly as a result of advances in the IT industry. This position must account for developments in several specialty areas while balancing customer needs and changing requirements. Work may involve analysis of risk, costs, and interrelationships of programs and systems across the agency.

This complexity matches level 4-4 where the work involves several different processes and requires the employee to adjust approaches to make local systems compatible with agency systems. At this level, data must be evaluated, security concerns must be addressed, and judgment must be used to interpret plans and compliance. Level 4-3 is exceeded where, while the work involves different and unrelated processes, the work decisions are typically made from existing known alternatives and issues analyzed typically relate to the immediate assignment. The work does not meet level 4-5 where the work involves the substance of many different and unrelated IT processes and systems; at level 4-5, the employee makes decisions that have impact on major systems internal and external to the immediate organization, in addition to deciding on issues within programs that themselves are rapidly changing.

The work of this position matches requirements for level 4-4, 225 points, described as follows:

Nature of Assignment – Work consists of a variety of duties that involve many different and unrelated processes and methods pertinent to the IT field.

What Needs To Be Done – The employee decides what needs to be done by:

- ☐ evaluating unusual circumstances;
- ☐ considering different approaches; and
- ☐ dealing with incomplete and conflicting data.

Difficulty and Originality Involved – The employee uses judgment and originality by:

- ☐ interpreting data;
- ☐ planning the work; and
- ☐ refining the methods and techniques being used.

Factor 5. Scope and Effect - Level 5-3

This position is in the Information Systems Support Group that provides substantive support to all FEC programs. Users are located throughout the agency and systems must be maintained reliably to enable FEC program offices to accomplish their mission. This employee's work is considered vital to the maintenance of customer programs and needs and feeds the programs and other functional specialists involved in IT support. The position's work impacts all FEC programs and mission activities throughout the agency.

The work of the position matches level 5-3 where the employee deals with a variety of problems and issues that ensure the integrity and availability of all FEC IT systems are maintained; the issues dealt with are typical of an IT support organization and range from simple to moderately complex dealing with evaluating quality or reliability of services. Level 5-2 is exceeded because at that level the work tends to relate to a segment of a larger assignment or work product. Level 5-4 is not met because at that level the work deals with a wide range of agency activities and/or activities of other organizations and involves more complex tasks such as formulating projects or analyzing unusual conditions, problems, or issues.

Level 5-3, 150 Points, is appropriate for the work of this position and is described as follows:

Scope of the Work – Work involves a variety of common problems, questions, and/or situations that are dealt with in accordance with established criteria.

Effect of the Work – Work affects:

- ☐ the design, testing, implementation, operation, or support of IT systems; or
- ☐ the quality and reliability of services.

Factor 6. Personal Contacts - Level 6-2

Contacts are primarily with FEC employees at the headquarters location. Contacts may also be with individuals or groups from outside the agency, including consultants, contractors, vendors, or representatives of professional associations, the media, or public interest groups, in moderately unstructured settings. Contacts are related to technological information and developments applicable to assigned IT projects. Contacts may also include agency officials who are several managerial levels removed from the employee when such contacts occur on an ad hoc basis. Must recognize or learn the role and authority of each party during the course of the meeting.

This work matches level 6-2, described as follows:

Employees and managers in the agency, both inside and outside the immediate office or related units, as well as employees, representatives of private concerns, and/or the general public, in moderately structured settings. Contact with employees and managers may be from various levels in the agency, such as:

- ☐ headquarters;
- ☐ regions;
- ☐ districts;
- ☐ field offices; or
- ☐ other operating offices at the same location.

Level 6-1 is exceeded because contacts extend beyond the immediate office. Level 6-3 is not met because the contacts do not include high-ranking officials outside of the agency and roles are typically understood at the outset.

Factor 7. Purpose of Contacts - Level C, 145 points

The purpose of the contacts is to influence and persuade employees and managers to accept and implement findings and recommendations. May encounter resistance as a result of issues, such as organizational conflict, competing objectives, or resource problems. Must be skillful in approaching contacts to obtain the desired effect; e.g., gaining compliance with established policies and regulations by persuasion or negotiation.

This work matches level C, described as follows:

To influence and persuade employees and managers to accept and implement findings and recommendations. May encounter resistance as a result of issues, such as organizational conflict, competing objectives, or resource problems. Must be skillful in approaching contacts to obtain the desired effect; e.g., gaining compliance with established policies and regulations by persuasion or negotiation.

Level B is exceeded because at that level the work does not always involve working with others who agree with the goals being promoted. Level D is not met because at that level the issues dealt with are controversial, deal with substantial resources, and deal with populations with diverse viewpoints, goals, or objectives.

Factor 8. Physical Demands - Level 8-1, 5 points

The work is sedentary. Some work may require walking and standing in conjunction with travel to and attendance at meetings and conferences away from the work site. Some employees may carry light items such as papers, books, or small parts, or drive a motor vehicle. The work does not require any special physical effort.

This position meets requirements for level 8-1, 5 points, as no special physical demands are required.

Factor 9. Work Environment - Level 9-1, 5 points

The work area is adequately lighted, heated, and ventilated. The work environment involves everyday risks or discomforts that require normal safety precautions. Some employees may occasionally be exposed to uncomfortable conditions in such places as research and production facilities.

This position meets level 9-1, 5 points, as the work environment has no unusual characteristics.

POSITION CLASSIFICATION STANDARDS	
FES EVALUATION STATEMENT - Nonsupervisory	
Title Series and Grade	Information Technology Specialist (CUSTSPT), GS-2210-11
Organization	FEC, IT, PROGRAM MANAGEMENT BRANCH, HELP DESK TEAM
Position #	

Evaluation Factors		Points Assigned	BMK#, FL#, etc.	Standards Used/ Comments
1. Knowledge Required by the Position		1250	1-7	Administrative Work in the Information Technology Group, 2200
2. Supervisory Controls		450	2-4	Administrative Work in the Information Technology Group
3. Guidelines		275	3-3	Administrative Work in the Information Technology Group
4. Complexity		225	4-4	Administrative Work in the Information Technology Group
5. Scope and effect		150	5-3	Administrative Work in the Information Technology Group
6. Personal Contacts		145	6-2	Administrative Work in the Information Technology Group
7. Purpose of Contacts		--	7-C	Administrative Work in the Information Technology Group
8. Physical Demands		5	8-1	Administrative Work in the Information Technology Group
9. Work environment		5	9-1	Administrative Work in the Information Technology Group
S U M M A R Y	Total Points	2505	<u>GS-11 point range:</u> 2355-2750	
	Grade Conversion	11		

ORAL ARGUMENT NOT YET SCHEDULED

No. 19-5072

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

REPRESENTATIVE TED LIEU, ET AL.,

Plaintiffs-Appellants,

v.

FEDERAL ELECTION COMMISSION,

Defendant-Appellee.

On Appeal from the United States District Court
for the District of Columbia, No. 16-cv-2201

**BRIEF OF SENATORS SHELDON WHITEHOUSE,
RICHARD BLUMENTHAL, AND MAZIE HIRONO AS *AMICI CURIAE*
IN SUPPORT OF APPELLANTS' PETITION FOR HEARING EN BANC**

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June 28, 2019

Counsel to Amici Curiae

**CERTIFICATE AS TO PARTIES,
RULINGS, AND RELATED CASES**

A. Parties and *Amici*

To counsel's knowledge, the parties, intervenors, and *amici* appearing before this Court are listed in the Plaintiffs-Appellants' Certificate as to Parties, Rulings, and Related Cases. Counsel understands additional *amici curiae* may appear in this matter.

B. Rulings Under Review

An accurate reference to the ruling at issue appears in the Plaintiffs-Appellants' Certificate as to Parties, Rulings, and Related Cases.

C. Related Cases

The case on review was not previously before this Court. Counsel is not aware of any other related cases within the meaning of Circuit Rule 28(a)(1)(C) currently pending in this Court.

/s/ Jennifer R. Cowan
Jennifer R. Cowan

STATEMENT REGARDING SEPARATE BRIEFING

Pursuant to Circuit Rule 29(d), *amici* certify that a separate brief is necessary because *amici* share a unique perspective as elected members of the United States Senate, which may be of significant value to the Court in considering Appellants' petition for an initial hearing *en banc*. No other *amicus* is capable of providing this unique perspective.

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TABLE OF AUTHORITIES

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Aruna Viswanatha, *Rap Artist Indicted for Obama 2012 Campaign
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Bradley Jones, *Most Americans Want to Limit Campaign Spending,
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GLOSSARY OF ABBREVIATIONS

DISCLOSE Act	Democracy Is Strengthened by Casting Light On Spending in Elections Act
PAC	Political Action Committee

INTEREST OF AMICI CURAE¹

Amici curiae are United States Senators Sheldon Whitehouse of Rhode Island, Richard Blumenthal of Connecticut, and Mazie Hirono of Hawaii. The Senators are members of the Senate Judiciary Committee and Senator Whitehouse is the lead sponsor of the DISCLOSE Act. *Amici* are democratically elected legislators, with firsthand experience of the disastrous consequences that unlimited contributions to organizations that “only engage in independent expenditure political spending” inflict on our democracy. Accordingly, *amici* respectfully support Appellants’ request that the Court grant an initial hearing *en banc* to reexamine its holding in *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010).

ARGUMENT

I. *SpeechNow* has Created a New and Ever-growing Shadow Campaign Finance System in Which Corruption, or the Appearance Thereof, Is Endemic.

In *SpeechNow*, this Court held, “[i]n light of the [Supreme] Court’s holding as a matter of law [in *Citizens United v. FEC*] that independent expenditures do not corrupt or create the appearance of *quid pro quo* corruption, contributions to groups that make only independent expenditures also cannot corrupt or create the

¹ All parties have consented to the filing of this brief. No counsel for a party authored this brief in whole or in part, and no counsel for a party, nor any person other than the *amici curiae*, or their counsel, contributed money that was intended to fund the preparation or submission of this brief. See Fed. R. App. P. 29(a)(4)(E).

appearance of corruption.”² From *amici*’s perspective as active participants in political campaigns and the legislative process, this Court’s conclusion as to the effect of contributions to groups that make only independent expenditures was and remains incorrect. Under *SpeechNow*, special interest donors have used super PACs and other outside organizations to evade limitations on contributions and to exert undue influence tending to produce corruption and the appearance thereof. The safeguards the Court thought would cabin the political evil of unlimited contributions – independence of unlimited-spending organizations from campaigns and public disclosure of donors – do not and cannot protect against this risk.

A. Unlimited Contributions Have Created an End Run Around Campaign Finance Restrictions.

Super PACs are overtaking the campaign finance system, giving vastly disproportionate influence to a small number of big donors. Super PACs have received more than \$4.8 billion in contributions since 2010,³ and just eleven donors have contributed more than \$1 billion of those funds.⁴ Outside interest groups

² *SpeechNow.org*, 599 F.3d at 694. *Amici* note that whether an activity tends to corrupt appears to be an issue of fact, not of law, and in our experience it is not factual that large contributions cannot corrupt.

³ *Super PACs*, OpenSecrets.org, <https://www.opensecrets.org/pacs/superpacs.php> (last visited June 27, 2019).

⁴ Michelle Ye Hee Lee, *Eleven Donors Have Plowed \$1 Billion into Super PACs Since They Were Created*, Wash. Post (Oct. 26, 2018), <https://www.washingtonpost.com/politics/eleven-donors-plowed-1-billion-into->

have outspent the candidates themselves in 48 congressional races since *Citizens United*.⁵ Once an aberration, this form of influence is increasingly the new normal.⁶

Even if super PACs operated with “independence” and within a “regime of effective disclosure,” as the *SpeechNow* Court presumed (inaccurately, we believe), nothing prevents donors from discussing their contributions – and what they want in exchange – with candidates. This is a regime of improper influence, *quid pro quo* corruption, and the appearance thereof. The risk of *quid pro quo* corruption comes from the communication between the donor and the candidate, which can occur whether or not the PAC is “independent” of the candidate (single-candidate super PACs worsen this obvious danger). While the potential for money in politics to lead to corruption is hardly a new phenomenon, the risk of corruption posed by the unlimited contributions to super PACs permitted by *SpeechNow* is substantially greater than the risk from limited direct campaign contributions.

super-pacs-since-2010/2018/10/26/31a07510-d70a-11e8-aeb7-ddcad4a0a54e_story.html?utm_term=.2d60b5a9f21a.

⁵ Michael Beckel, *Super PACs and Dark Money Groups Outspent Candidates in a Record Number of Races in 2018*, Issue One (Dec. 18, 2018), <https://www.issueone.org/wp-content/uploads/2018/12/2018-outside-spending.pdf>.

⁶ *Id.*

Our view is broadly shared, as illustrated by two recent Republican candidates for President. President Trump said when campaigning in 2016, “these super PACs are a disaster Very corrupt. . . . There is total control of the candidates”⁷ Senator John McCain, 2008 Republican nominee for President, said in 2012, “What we have done is made a contribution limit a joke.” He added, “[t]here will be huge scandals, because there’s too much money washing around, too much of it we don’t know who’s behind it and too much corruption associated with that kind of money.”⁸ As recent investigations in North Carolina⁹ and Washington D.C.¹⁰ show, large contributions to super PACs create large opportunities for *quid pro quo* corruption and the appearance of such corruption.

⁷ Albert W. Alschuler et al., *Why Limits on Contributions to Super PACs Should Survive Citizens United*, 86 Fordham L. Rev. 2299, 2338-42 (2018).

⁸ *Id.*

⁹ Emery P. Dalesio and Gary D. Robertson, *Focus on investor’s political donations after bribery charge*, AP News (Apr. 3, 2019), <https://www.apnews.com/22ede8fe83044bbe9bd0f73aeefe103e> (allegations against investor include donating \$150,000 to a super PAC supporting a candidate he believed would pressure state regulators).

¹⁰ Aruna Viswanatha, *Rap Artist Indicted for Obama 2012 Campaign Donations*, Wall St. J. (May 10, 2019), <https://www.wsj.com/articles/former-rap-artist-indicted-for-obama-2012-campaign-donations-11557522077> (rapper indicted for allegedly funneling a foreign contribution of over \$1 million to a super PAC dedicated to President Obama’s 2012 re-election).

B. The Ability to Make Unlimited Contributions Gives Special Interests the Power to Threaten to Make or Withhold Contributions.

By giving donors the right to make unlimited contributions, the Court also gave them the power to promise or threaten to make (or not make) those contributions. This power allows large contributors another way to manipulate and influence politicians outside the public eye. Legislators tasked with exercising independent judgment instead fear uncapped spending by adverse third parties in their next campaigns.¹¹ *SpeechNow* failed to recognize the increased risk of corruption from the private threats and promises in an arena allowing unlimited campaign spending. Consequently, elected public officials face worsened pressure to answer not to their constituents, but to interests with the economic means and motive to subvert the democratic process.

Over our years in the Senate, we have seen firsthand the ways in which allowing unlimited contributions has exponentially increased the power of super PACs and threatened the integrity of the legislative process. On issues ranging from climate change, to prescription drug pricing, to campaign finance itself, we

¹¹ See generally Daniel P. Tokaji & Renata E.B. Strause, *The New Soft Money: Outside Spending in Congressional Elections*, The Ohio State University Moritz College of Law (2014), <https://moritzlaw.osu.edu/thenewsoftmoney/wp-content/uploads/sites/57/2014/06/the-new-soft-money-WEB.pdf> (“Members may perceive that if they do not take the legislative action preferred by [a given] group, then they will be targeted with retaliatory independent spending.” (Statement of Representative Steve LaTourette)).

have heard Senate colleagues lament that they cannot support legislation for fear that a super PAC donor adverse to the legislation will drop millions supporting a primary opponent. Our experiences are not unique, as the nine years since this Court decided *SpeechNow* have demonstrated the pressure that politicians face from unlimited spending flowing through super PACs.¹²

II. The Public's Declining Faith in Our Democracy is Evidence that Unlimited Contributions Give Rise to the Perception of Corruption.

Unsurprisingly, the American public witnesses the tawdry spectacle of money influencing politics and feels the untoward changes in our democracy. As elected officials, we hear these concerns from constituents all the time. Survey data confirm that Americans increasingly feel that our government is corrupt and

¹² Other members of Congress have spoken publicly about the detrimental effect of super PACs and unlimited outside spending. Former Senator Evan Bayh, explaining his decision to retire from the Senate, said, “[t]he threat of unlimited amounts of negative advertising from special interest groups will only make members more beholden to their natural constituencies and more afraid of violating party orthodoxies.” Evan Bayh, *Why I'm Leaving the Senate*, N.Y. Times (Feb. 20, 2010), <https://www.nytimes.com/2010/02/21/opinion/21bayh.html>. Former Representative Tom Davis commented, “the system today is completely discombobulated. You have the ability of these super PACs to come in or some angry billionaire to come in and get a PAC and go after you. And that has a chilling effect on members of Congress and their voting habits, not wanting to offend these groups unless there's some backup.” Michael Beckel, *Behind the Price of Power: Q&A with Former Rep. Tom Davis (R-VA)*, Issue One (July 25, 2017), <https://www.issueone.org/behind-price-power-qa-former-rep-tom-davis-r-val/>; see also Michael Beckel, *Behind the Price of Power: Q&A with Former Rep. Mike Castle (R-DE)*, Issue One (Aug. 15, 2017), <https://www.issueone.org/behind-price-power-qa-former-rep-mike-castle-r-de/> (“What super PACs are doing today is probably as problematic as anything in the financing of campaigns out there.”).

unrepresentative of ordinary citizens.¹³ *Citizens United* and *SpeechNow* have exacerbated a disturbing trend in Americans' views of corruption in their government,¹⁴ with seventy-five percent of U.S. adults perceiving corruption as "widespread" in the country's government in 2015.¹⁵ Super PACs lie at the heart of this shift in opinion; in 2012, nearly 70% thought super PACs should be

¹³ This impression that government is not responsive to ordinary citizens is accurate. For instance, Mick Mulvaney, while serving as acting Director of the Consumer Financial Protection Bureau, told an American Bankers Association conference that: "[w]e had a hierarchy in my office in Congress, [i]f you're a lobbyist who never gave us money, I didn't talk to you. If you're a lobbyist who gave us money, I might talk to you." Glenn Thrush, *Mulvaney, Watchdog Bureau's Leader, Advises Bankers on Ways to Curtail Agency*, N.Y. Times (Apr. 24, 2018), <https://www.nytimes.com/2018/04/24/us/mulvaney-consumer-financial-protection-bureau.html>. More generally, a Princeton University study found that "the views of constituents in the upper third of the income distribution received about 50% more weight [from senators] than those in the middle third (with even larger disparities on specific salient roll call votes), while the views of constituents in the bottom third of the income distribution received no weight at all in the voting decision of their senators." Larry M. Bartels, *Economic Inequality and Political Representation*, Princeton Univ. Dep't. of Pol. 4 (2005), <http://citeseerx.ist.psu.edu/viewdoc/download;jsessionid=33B7AA4E26A0F19D5A08B7AF9069E25F?doi=10.1.1.172.7597&rep=rep1&type=pdf>.

¹⁴ Joseph Carroll, *Americans Increasingly View Most Members of Congress as Corrupt*, Gallup (May 17, 2006), <https://news.gallup.com/poll/22837/americans-increasingly-view-most-members-congress-corrupt.aspx> (analyzing polling data from 1994 – 2006).

¹⁵ 75% in U.S. See *Widespread Government Corruption*, Gallup (Sept. 19, 2015), <https://news.gallup.com/poll/185759/widespread-government-corruption.aspx>.

illegal,¹⁶ and today, 72% of the public disagree with the statement that “people who give a lot of money to elected officials do not have more influence than others,” with 43% saying it describes the country “not at all well.”¹⁷

The influence of money is worse when such spending is unlimited, worse still when it is anonymous, and worst of all when it is anonymous to all except the donor and the candidate. The absence of limits on contributions to super PACs worsens all these dangers, giving a small set of influencers disproportionate influence in American politics, distorting election outcomes and causing millions of ordinary Americans to lose faith in the political process. This fundamental threat to democracy warrants initial consideration of this appeal by the Court sitting *en banc* to revisit and correct the holding in *SpeechNow*.

¹⁶ *Washington Post – ABC News Poll*, Wash. Post (Mar. 10, 2012), https://www.washingtonpost.com/wp-srv/politics/polls/postabcpoll_031012.html?tid=a_inl_manual.

¹⁷ Bradley Jones, *Most Americans Want to Limit Campaign Spending, Say Big Donors Have Greater Political Influence*, Pew Research Ctr. (May 8, 2018), <https://www.pewresearch.org/fact-tank/2018/05/08/most-americans-want-to-limit-campaign-spending-say-big-donors-have-greater-political-influence>.

III. Conclusion.

For the foregoing reasons, this Court should grant appellants' petition for initial hearing *en banc*.

Respectfully submitted,

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June 28, 2019

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CERTIFICATE OF COMPLIANCE

In accordance with Fed. R. App. P. 29(a)(5) and 32(a)(7), the undersigned certifies that this brief has been prepared in a proportionally spaced typeface, Times New Roman, in 14-point font. According to the word processing system used to prepare the brief, Microsoft Word 2010, it contains 1,888 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

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CERTIFICATE OF SERVICE

I hereby certify that, on June 28, 2019, a true and correct copy of the foregoing document was filed with the Clerk of the United States Court of Appeals for the District of Columbia via the Court's CM/ECF system. Counsel for all parties will be served electronically by the Court's CM/ECF system.

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June 28, 2019

Counsel to Amici Curiae

From:Lisa Stevenson
To:Duane Pugh
Sent:2019-09-18T16:49:18.0000000Z
Subject:RE: travel

It was US v. Fattah, if that's useful at all

Lisa J. Stevenson
Acting General Counsel
Federal Election Commission
l Stevenson@fec.gov
202-694-1613

From: Duane Pugh
Sent: Wednesday, September 18, 2019 12:46 PM
To: Lisa Stevenson <LStevenson@fec.gov>
Subject: RE: travel

That's good news. Bad year to go to Philadelphia.

From: Lisa Stevenson
Sent: Wednesday, September 18, 2019 12:21 PM
To: Duane Pugh <dpugh@fec.gov>
Subject: RE: travel

I accompanied Mike Hartsock to Philly as a testifying witness for a DOJ matter, I think that's that trip. I've never attended a convention.

Lisa J. Stevenson
Acting General Counsel
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l Stevenson@fec.gov
202-694-1613

From: Duane Pugh
Sent: Wednesday, September 18, 2019 12:16 PM
To: Lisa Stevenson <LStevenson@fec.gov>
Subject: travel

Does this look right? You were there in May, or should it be July for the Convention?

L STEVENSON		5/26/2016		PHILADELPHIA, PA		\$ 296.52
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Thanks,
Duane

J. Duane Pugh Jr.
Director
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(202) 694-1002

From:Peter Blumberg
To:Lisa Stevenson
Sent:2019-02-26T18:59:15.0000000Z
Start time:2019-02-28T18:30:00.0000000Z
End time:2019-02-28T19:00:00.0000000Z
Subject:Accepted: Telcon with Richard Pilger, DOJ

From:Lisa Stevenson
To:Charles Kitcher ; Stephen Gura ; Peter Blumberg
Sent:2019-02-26T18:58:30.0000000Z
Start time:2019-02-28T18:30:00.0000000Z
End time:2019-02-28T19:00:00.0000000Z
Subject:Telcon with Richard Pilger, DOJ

From: Lisa Stevenson
To: Stephen Gura
Sent: 2019-02-26T17:50:38.0000000Z
Subject: RE: Including Charles on call with RP

Agreed. I just can't get Pilger to respond to me at the moment.

Lisa J. Stevenson
Acting General Counsel
Federal Election Commission
l Stevenson@fec.gov
202-694-1613

From: Stephen Gura
Sent: Tuesday, February 26, 2019 12:50 PM
To: Lisa Stevenson <LStevenson@fec.gov>
Subject: Including Charles on call with RP

Seeing as Charles is going to be the point of contact with DOJ, he should probably be in on the call too. I'm happy to be on the call because Richard knows who I am and because I do have a question to ask in ASU.

**FEDERAL ELECTION COMMISSION
OFFICE OF THE GENERAL COUNSEL
ENFORCEMENT DIVISION**

**Associate General Counsel for Enforcement
SL-905**

I. INTRODUCTION

The incumbent serves as the Associate General Counsel for Enforcement in the Enforcement Division in the Office of the General Counsel (OGC) at the Federal Election Commission (FEC). This is a senior management position and reports directly to the General Counsel and Deputy General Counsel. The Associate General Counsel has primary responsibility for the overall direction, management, and effectiveness of OGC's enforcement program. The incumbent serves as a member of the General Counsel's senior management team and provides expert legal advice to the General Counsel and Deputy General Counsel on enforcement matters under his or her purview.

The Associate General Counsel for Enforcement, together with the Deputy Associate General Counsel for Enforcement, oversees the work of several enforcement teams, each headed by an Assistant General Counsel. The incumbent supervises, directly or through the Deputy Associate General Counsel and a number of Assistant General Counsels, a large staff of staff attorneys, investigators, paralegal specialists, administrative assistants and secretaries. Enforcement is the largest single function within OGC with approximately half of its attorneys working in the Enforcement Division. Staff Attorneys on the enforcement teams have substantial responsibility for the investigation and analysis of the cases assigned to them. Staff attorneys write briefs and make oral presentations to the Commission in support of recommended actions. In conjunction with FEC investigators, they conduct investigations that include interviews, written interrogatories, depositions and preparation of subpoenas for testimony and document production. The FEC is a regulatory agency and settles most cases by negotiation and conciliation, which is required by statute. Accordingly, Enforcement staff attorneys negotiate the resolution of their cases directly with counsel for respondents. The Associate General Counsel for Enforcement, together with the Deputy Associate General Counsel, are responsible for management of administrative and personnel matters for programs and staff under his or her control.

II. MAJOR DUTIES AND RESPONSIBILITIES:

Senior Advisory Responsibilities

- Serves as a member of the General Counsel's senior management team by participating in policy development and strategic planning, addressing administrative and personnel issues, building consensus for recommendations relating to enforcement and compliance activities, and presenting recommendations to the Commission.
- Serves as a senior advisor to the General Counsel, the Deputy General Counsel, the Commissioners, and other senior managers in the Commission concerning the Commission's enforcement activities and compliance program.
- Reviews for policy, legal, and technical accuracy reports, memoranda, letters, and conciliation agreements prepared by the Enforcement Division. Provides recommendations to the General Counsel and Commission on all enforcement matters. This includes making and defending recommendations to the Commission whether or not to find "reason to believe" (RTB) a violation has occurred and initiating an investigation.

- At the end of an investigation, the incumbent is responsible for overseeing the preparation of a brief with recommendations on whether or not there is “probable cause to believe” a violation has occurred. If the Commission finds there is a “probable cause to believe” the respondents violated the law, the incumbent oversees the enforcement staff’s attempts to resolve the matter by entering into a conciliation agreement with them. If conciliation attempts fail, the Associate General Counsel recommends through the General Counsel that the Commission authorize the filing of a civil suit. The General Counsel has delegated sign-off authority to the Associate General Counsel in many areas of enforcement.

Managerial Responsibilities

The Associate General Counsel has primary responsibility for the overall direction, management, and effectiveness of OGC’s enforcement program including its policies and procedures. This responsibility includes integrating human capital strategies with the agency’s core mission and business practices by fostering a performance-oriented culture and establishing performance management systems that assess and reward employee performance based on organizational goals and values.

- Plans, organizes and directs enforcement activities for OGC. Exercises final responsibility for program success by ensuring that enforcement actions are handled in a timely, efficient and effective matter. Is held accountable for monitoring and evaluating the progress of the division toward meeting goals, and for making adjustments in program operations to ensure effective coordination, legal analysis, decision-making, and office administration.
- Develops program strategies for OGC’s enforcement program including long-term and yearly goals. Oversees the development of enforcement policies and procedures, as well as evaluating the impact of these policies and procedures on improving operations.
- Provides, together with the Deputy Associate General Counsel, technical and managerial leadership to teams headed by Assistant General Counsels responsible for compliance and investigative activities involving civil or criminal law enforcement. Analyzes complex legal issues having to do with federal campaign finance law, including regulatory and constitutional issues. Serves as a national expert for all matters relating to campaign finance compliance, including compliance monitoring and pursuit of administrative and judicial enforcement actions.
- Evaluates and approves staff recommendations and reports before referral to the General Counsel, and provides guidance in establishing the course and conduct of investigations. Has overall responsibility for the development of legal theory in all assigned enforcement matters.
- Establishes divisional standards and procedures for the preparation of General Counsel’s Reports and other written work products within the Enforcement Division. Ensures reports are clear, precise, well-organized and persuasive.
- Responsible for reevaluating OGC’s compliance policies to include: policies and procedures governing the enforcement process and investigative policies and procedures.
- Represents the Commission in matters as assigned by the Deputy General Counsel and/or General Counsel.
- Responsible for ensuring the development of the legal and investigative skills of attorneys, paralegal specialists and investigators on staff. Seeks ways to reduce the administrative and reporting burdens of legal staff so that they can focus on priority enforcement activities.
- Assumes responsibility for special projects as the Deputy General Counsel and/or General Counsel may assign.
- Develops and maintains partnerships with other divisions and offices in the FEC.
- Promotes cross-organizational efforts to improve work quality and make more effective use of human resources.

- Serves as OGC's principal liaison to the Department of Justice with respect to the criminal investigation of potential campaign finance violations. Testifies in grand jury proceedings and other hearings, trials, and depositions on behalf of the Commission.
- Uses management information systems and other technological resources to meet the current and future needs of the Enforcement Division and OGC.
- Ensures compliance with Federal and FEC policy in all phases of program and staff management.
- Ensures internal controls to prevent or deter the fraud, waste, and abuse of government resources and management of government programs.
- Actively supports the Commission's EEO goals.

Supervisory Responsibilities

Together with the Deputy Associate General Counsel is responsible for the management of human resources in the Enforcement Division. Serves as first-line supervisor to the Deputy Associate General Counsel, Special Assistant to the Associate General Counsel, and executive secretary. Responsibilities include:

- Determining position responsibilities and personnel staffing requirements;
- Planning and scheduling long-range work plans and deadlines;
- Developing overall goals and objectives for assigned staff functions and programs and determining goals and objectives that need additional emphasis;
- Integrating human capital strategies with the agency's core mission and business practices;
- Focusing the right mix of employee knowledge and skills on the job at hand;
- Fostering a performance-oriented organizational culture;
- Serving on OGC hiring panels or as rating official. Making or approving attorney and team selections;
- Overseeing the Performance Management program within the Enforcement Division including establishing standards of performance and evaluating staff against performance standards that assess and reward employee performance based on organizational goals and values;
- Effectively managing and motivating staff;
- Providing for staff's continuing personal and professional development. This includes making decisions on non-routine or costly training needs and training requests;
- Recommending awards or bonuses for staff subject to approval by higher-level officials;
- Finding and implementing ways to eliminate or reduce significant bottlenecks and barriers to workflow, promote team building, or improve business practices;
- Addressing grievances;
- Taking disciplinary measures such as warnings, reprimands, suspensions and removals and other appropriate action to promote the efficiency of the service;
- Approving or disapproving leave requests from the Deputy Associate General Counsel, Special Assistant, and executive secretary. In the absence of the Deputy Associate General Counsel, approving or disapproving requests for leave for the Assistant General Counsels and investigators;
- Being accountable for the Labor/Management Relations program within the Enforcement Division.

FACTOR 1. KNOWLEDGE, SKILLS AND ABILITIES REQUIRED BY THE POSITION

Knowledge and skill sufficient to provide the General Counsel with analysis, advice, and assistance in the area of federal campaign finance law. The position requires a comprehensive knowledge of the Federal Election Campaign Act, as amended, Title 2 U.S.C., and Public Financing statutes found

in Chapters 95 and 96 of the Internal Revenue Code sufficient to provide authoritative, constructive assistance to the General Counsel.

Comprehensive knowledge and understanding of the substantive aspects of OGC policies and operations, including the purposes, goals, objectives, functions, policies, and procedures that guide various OGC and FEC programs in order to conduct studies and analyses and make recommendations that affect OGC's future operations.

Mastery of pertinent research and analytical methodologies to conduct highly complex legal research. Legal work is characterized by one or more of the following features:

- 1) extremely complex and difficult legal questions or factual issues involved in the drafting, interpretation or application of legal documents and require for their resolution a high order of original and creative legal endeavor; or complex factual or policy issues are involved requiring extensive research, analysis, and obtaining and evaluating information in controversial or highly technical areas;
- 2) case or problem is such that it can have the effect of substantially broadening or restricting the activities of an agency or it has an important impact on major public or private interests or is a problem involving unusual delicacy because of the serious consequence of error.

Knowledge and understanding of the federal and agency budget process, policies, and regulations, including planning and budget formulation, presentation, and execution sufficient to analyze and provide input to OGC's budget request and fiscal year management plans and to oversee budget execution activities in the Office of General Counsel.

Ability to effectively manage and supervise a legal staff and to get work done through others. This includes the ability to: translate management and agency goals and objectives into well-coordinated and controlled work operations; analyze organizational and operational problems and develop timely and economical solutions; plan and adjust work operations to meet changing or increasing work requirements within available resources and with minimum sacrifice of quantity or quality of work.

Ability to foster a performance-oriented culture and to effectively involve and empower employees to improve operational and program performance.

Ability to establish trust, respect, diversity, and fairness in the workplace.

Skill in dealing with decision makers and their immediate staffs.

Skill in assessing the political and institutional environment in which decisions are made and implemented.

Ability to explore and present fully the many facets of a policy issue.

Ability to exercise judgment in all phases of analysis, ranging from sorting out the most important problems, to shifting evidence, and framing feasible options.

Ability to effectively express ideas orally and in writing, using appropriate language, organizing ideas, and marshaling facts in an objective manner.

Ability to work effectively under pressure of tight time-frames and rigid deadlines.

FACTOR 2. DIRECTION AND SUPERVISION RECEIVED:

The incumbent performs under broad and administrative guidance of the Deputy General Counsel who serves as the incumbent's first-line supervisor. He or she works closely with the Deputy General Counsel and/or General Counsel in all matters related to program direction, performance evaluation, planning, and policy development. The incumbent carries out assigned responsibilities with broad independence, keeping the Deputy General Counsel and/or General Counsel informed of significant problems and operational changes. Methods and details of work are typically left to incumbent's own judgment.

The work involves identifying and defining problems, issues, and questions, and developing reports, summaries, and recommendations that influence OGC and Commission actions and policies. Oversees enforcement activities and conducts analyses of vital public policies and cases having to do with federal campaign finance laws that are of national interest, scope, and impact. The work performed by the incumbent provides policy makers with authoritative information and analyses and provides a basis for decisions affecting major current and long-range policies and proposals that affect the activities and operation of federal elections and campaign finance laws and regulations. Results of work are vital to achieving OGC's mission and may affect staff and operations on a long-term, continuing basis.

ADDENDUM TO ADD FACTOR EVALUATION SYSTEM FACTORS AND EXECUTIVE CORE QUALIFICATION FACTORS TO ASSOCIATE GENERAL COUNSEL ENFORCEMENT SL-0905

FACTOR 1. KNOWLEDGE REQUIRED BY THE POSITION (Executive Core Qualify Exceeds OPM PCS)

Mastery of and skill in applying EXECUTIVE CORE QUALIFICATION FACTORS:

- Executive Core Qualification Leading Change using the ability to develop and implement an organizational vision that integrates key national and program goals, priorities, values, and other factors.
- Executive Core Qualification Leading People using the ability to design and implement strategies that maximize employee potential and foster high ethical standards in meeting the organization's vision, mission, and goals.
- Executive Core Qualification Results Driven using accountability and continuous improvement. It includes the ability to make timely and effective decisions and produce results through strategic planning and the implementation and evaluation of programs and policies.
- *Executive Core Qualification Business Acumen using the ability to acquire and administer human, financial, material, and information resources in a manner that instills public trust and accomplishes the organization's mission, and the ability to use new technology to enhance decision making.*
- *Executive Core Qualification Building Coalitions/Communications using the ability to explain, advocate, and express facts and ideas in a convincing manner and to negotiate with individuals and groups internally and externally. It also involves the ability to develop an expansive professional network with other organizations and to identify the internal and external politics that impact the work of the organization.*

Mastery of and skill in applying:

- Advanced principles, concepts, methods, standards, and practices sufficient to: develop and interpret policies, procedures, and strategies governing the planning and delivery of services throughout the agency; provide expert technical advice, guidance, and recommendations to management and other technical specialists on critical issues; and make decisions or recommendations that significantly influence important policies or programs.

Ability to use project management principles, methods and practices including developing plans and schedules to: estimate resource requirements; define milestones and deliverables; monitor activities; and evaluate and report on accomplishments.

Ability to communicate effectively both orally and in writing to develop authoritative guidance on complex information technology issues, and work effectively with senior level staff and technical experts from other functional areas.

Supervisory abilities include the ability to:

- Assign to and review the work of subordinates;
- Train and work effectively with subordinates from a variety of backgrounds and levels of technical expertise;
- Accomplish the quality and quantity of work expected within set limits of cost and time;

- Plan and adjust work operations to meet changing or emergency programs or production requirements within available resources and with minimum sacrifice of quantity or quality of work;
- Establish program objectives or performance goals and assess progress toward their achievement;
- Coordinate and integrate the work activities and resources of several organizational segments or of several different projects;
- Analyze organizational and operational problems and develop timely and economical solutions;
- Represent assigned program areas both within and outside the agency to gain support for critical agency goals.

FACTOR 2. SUPERVISORY CONTROLS (Executive Core Qualify Exceeds OPM PCS)

The incumbent reports to the Deputy General Counsel. The supervisor provides administrative and policy direction in terms of broadly defined missions or functions of the agency. The incumbent is responsible to the Deputy General Counsel for the effective, equitable and efficient management of all initiatives, programs and resources. He/she works closely with the Deputy General Counsel in all matters related to program direction, planning and policy development. He/she carries out other assigned responsibilities with broad independence, keeping the Deputy General Counsel informed of significant problems and operational changes. The supervisor reviews the work for potential impact on broad agency policy objectives, program and performance goals. The supervisor normally accepts the work as being technically authoritative and normally accepts the work without significant change.

FACTOR 3. GUIDELINES (Executive Core Qualify Exceeds OPM PCS)

Guidelines exist in the form of general agency policy, legislation, broadly stated technical objectives or comparable guidance requiring extensive interpretation and definition. Few guidelines or standard procedures exist for anticipation of management or external users' needs for information, so the incumbent must possess a high degree of originality and conceptual ability in proving support to agency management. Top agency management officials and senior staff recognize the incumbent as a technical expert. The incumbent uses judgment and ingenuity and exercises broad latitude in developing guidelines for specific areas of work.

FACTOR 4. COMPLEXITY (Executive Core Qualify Exceeds OPM PCS)

The work requires a broad range of understanding of the Federal Election Campaign Act of 1971, as amended (the FECA) and the mission of the FEC. The incumbent is responsible for overseeing and coordinating the planning, designing, developing, testing, implementing, and managing of all major projects and initiatives for Office of General Counsel operations at the FEC including future enhancements to these programs and systems. These projects and initiatives directly assist and enable the FEC to perform its statutory mission and achieve its objectives and goals as defined in the FEC Strategic Plan. The work involves several activities being pursued concurrently or sequentially with the support of technical specialists and experts within and outside the agency. The work may involve a number of stages in a project or unusual depth of analysis. Decisions are complicated by the presence of obscure problems or special requirements for organization and coordination. The work is characterized by exceptional technical difficulties. The work requires considerable judgment to accommodate the wide range of requirements of the FEC's Strategic Plan.

FACTOR 5. SCOPE AND EFFECT (Executive Core Qualify Exceeds OPM PCS)

The work involves providing expert technical advice and guidance to senior management officials in the appropriate application of technology to agency mission and programs and the impact of emerging issues on the agency's business requirements. The incumbent is responsible for leading and directing all Office of General Counsel operations that ensure the implementation of the FEC's Strategic Plan. The successful development and delivery of new and enhanced systems and services enable all components of the FEC to more effectively accomplish critical mission, performance, and business requirements. The incumbent also oversees the maintenance and enhancement of existing systems to ensure the delivery of high quality systems that meet the need of specific offices and components of the agency to perform critical administrative or program functions.

FACTOR 6. PERSONAL CONTACTS (Executive Core Qualify Exceeds OPM PCS)

Contacts are with FEC Commissioners, Deputy Staff Directors, General Counsel, management officials, program managers, and other levels of employees, as well as vendors and contractors in moderately unstructured settings. This includes contacts with the top FEC management team and other members of the FEC program management staff.

FACTOR 7. PURPOSE OF CONTACTS (Executive Core Qualify Exceeds OPM PCS)

Managerial contacts are for providing strategic planning, technical leadership, management, and oversight over the FEC's operations and to serve as the agency's primary advisor. The incumbent works with contractors. He/she meets with experts internal and external to FEC to participate in the preparation of plans for the development of systematic solutions to needs related to the agency's compliance, disclosure, enforcement, and administrative processes. He/she maintains contacts to keep plans viable and current. The incumbent is required to influence and persuade managers and agency officials to accept and implement findings and recommendations. The incumbent must justify and defend recommended strategies and program modifications. At times the incumbent must influence others to adopt particular solutions to meet program goals and objectives, or to persuade others to cooperate in meeting objectives when there are problems in securing cooperation and/or conflicting interests or disagreements.

FACTOR 8. PHYSICAL DEMANDS (Executive Core Qualify Exceeds OPM PCS)

Work is primarily sedentary.

FACTOR 9. WORK ENVIRONMENT (Executive Core Qualify Exceeds OPM PCS)

Work is performed in an office setting.

Work for this Position requires knowledge that is equal to the OPM Executive Core Qualifications as listed under Factor 1 Knowledge required. The nine factor level definitions exceed the levels identified in the Administrative Analysis Grade Evaluation Guide and in the General Schedule Supervisor Grade Evaluation Guide based on the OPM Executive Core Qualifications Required for this Position. The OPM Executive Core Qualifications required for this position exceeds the knowledge required and other factors for the GS-0905-15 level and the correct classification is Associate General Counsel for Enforcement, SL-0905.

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FEC Enforcement Guidance

5. *Please provide information on the following sources for FEC enforcement actions.*
- a. *How many complaints were received for each fiscal year—2002 through 2017?*

Fiscal Year	External Complaints Received
2002	64
2003	59
2004	144
2005	109
2006	106
2007	90
2008	131
2009	100
2010	155
2011	97
2012	132
2013	81
2014	106
2015	81
2016	148
2017	120

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b. How many sua sponte submissions were received for each fiscal year—2002 through 2017?

Fiscal Year	<i>Sua Sponte</i> Submissions Received
2002	3
2003	4
2004	8
2005	4
2006	6
2007	6
2008	23
2009	10
2010	15
2011	14
2012	21
2013	13
2014	14
2015	6
2016	9
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c. How many external referrals were received (identify the referring agency) for each fiscal year—2002 through 2017?

Fiscal Year	Number of External Referrals	Referring Entity
2002	4	2 - Comptroller of the Currency, 1 - Hawaii Campaign Spending Commission & 1 - Florida Elections Commission
2003	2	1 - Comptroller of the Currency & 1 - Arkansas Contractors Licensing Board
2004	3	1 - Comptroller of the Currency & 2 - U.S. Department of Justice
2005	1	U.S. Department of Justice
2006	6	4 - U.S. Department of Justice, 1 - National Aeronautics and Space Administration & 1 - Minnesota Campaign Finance and Public Disclosure Board
2007	4	1 - U.S. Department of Justice, 1 - Comptroller of the Currency, 1 - California Attorney General & 1 - Maumee Police Dept.
2008	3	2 - Comptroller of the Currency & 1 - Office of Thrift Supervision
2009	5	4 - U.S. Department of Justice & 1 - Office of Thrift Supervision
2010	3	2 - U.S. Department of Justice & 1 - Comptroller of the Currency
2011	1	1 - U.S. Senate Ethics Committee
2012	0	
2013	3	1 - U.S. Department of Justice, 1 - Office of Congressional Ethics & 1 - Sarasota County Sherriff
2014	0	
2015	1	1 - Comptroller of the Currency
2016	0	
2017	0	

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d. How many internal referrals were received for each fiscal year—2002 through 2017?

Fiscal Year	Internal Referrals Received
2002	24
2003	17
2004	26
2005	68
2006	36
2007	35
2008	37
2009	18
2010	6
2011	13
2012	82
2013	35
2014	21
2015	32
2016	20
2017	31

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FEC Investigations

9.a. For each fiscal year—2002 through 2017, how many of FEC’s closed investigations involved foreign nationals—including the associated disposition (i.e., dismissed, referred to DOJ).

Fiscal Year	Total Matters Closed Involving Foreign National Allegations ¹	No Reason to Believe	Dismissed, prosecutorial discretion	Close the file	RTB, no further action	Pre-probable cause conciliation	Probable cause conciliation
2002	5						5 ²
2003	3				3 ³		
2004	1					1	
2005	1	1					
2006	1	1					
2007	2	1			1		
2008	0						
2009	8	6 ⁴				2	
2010	1					1	
2011	5	4 ⁵				1	
2012	0						
2013	7 ⁶	7 ⁷	1				
2014	1		1				
2015	2		1	1			
2016	7 ⁸	5	2	1		1	
2017	8	4	3	1			

¹ The disposition reflects the outcome of the foreign national allegation. Matters may involve other allegations, which may have resulted in a different disposition.

² These five matters were related.

³ Two of these matters were related.

⁴ Three of these matters were related.

⁵ Two of these matters were related.

⁶ In one matter, the Commission found no reason to believe as to some allegations and dismissed pursuant to its prosecutorial discretion other allegations. Therefore, the number of matters reflected in the disposition categories is greater than the total number of matters.

⁷ Six of these matters were related.

⁸ In two related matters, the commission found no reason to believe as to some respondents and dismissed pursuant to its prosecutorial discretion with regards to other respondents. Therefore, the number of matters reflected in the disposition categories is greater than the total number of matters.

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9.b. How many matters/cases were enforced through civil litigation for each fiscal year—2002 through 2017?

Fiscal Year	Number of Matters in which Suit was Filed
2002	2
2003	2
2004	2
2005	2
2006	1
2007	1
2008	1
2009	1
2010	0
2011	1
2012	1
2013	0
2014	0
2015	2
2016	1
2017	1

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Reports and Analysis Division (RAD)

11. How many committees registered with the FEC for each fiscal year—2002 through 2017?

Fiscal Year	Political Committees	Other Filers
2002	8,531	165
2003	7,163	137
2004	8,702	215
2005	7,441	173
2006	8,801	204
2007	7,691	163
2008	9,299	316
2009	8,285	207
2010	10,460	293
2011	9,538	960
2012	12,308	1,044
2013	11,479	1,201
2014	13,366	1,248
2015	11,673	1,737
2016	15,479	1,850
2017	13,541	1,976
2002 – 2017	163,757	11,889

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12. How many committee reports were reviewed by the RAD for each fiscal year—2002 through 2017?

Fiscal Year	Reports Reviewed	Other Documents Reviewed	Total Filings Reviewed
2002	49,746	5,459	55,205
2003	54,646	2,271	56,917
2004	56,646	5,250	61,896
2005	58,979	5,470	64,449
2006	53,929	9,796	63,725
2007	65,143	12,426	77,569
2008	52,127	11,509	63,636
2009	66,680	11,635	78,315
2010	53,254	11,459	64,713
2011	70,842	11,005	81,847
2012	56,641	13,997	70,638
2013	75,136	12,054	87,190
2014	57,854	10,428	68,282
2015	70,673	12,034	82,707
2016	56,158	15,925	72,083
2017	74,820	13,022	87,842
2002 - 2017	973,274	163,740	826,100

a. How many RAD referrals were made to the Audit Division for each fiscal year—2002 through 2017?

Election Cycle	Audit referrals*
2001-2002	49
2003-2004	37
2005-2006	34
2007-2008	31
2009-2010	27
2011-2012	19
2013-2014	11
2015-2016	31
Total	243

* Note - audit referrals are based on and made at the end of each election cycle.

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- b. How many RAD referrals were made to OGC for each fiscal year—2002 through 2017?*
- c. How many RAD referrals were made to the Alternative Dispute Resolution Program for each fiscal year—2002 through 2017?*
- d. How many RAD referrals were made to the Administrative Fine Programs for each fiscal year—2002 through 2017?*

Fiscal Year	OGC	ADRO	AFP	Total Referrals Forwarded
2002	13	0	0	13
2003	5	3	8	16
2004	17	10	0	27
2005	56	9	15	80
2006	31	8	0	39
2007	28	22	8	58
2008	16	39	2	57
2009	10	31	15	56
2010	5	19	2	26
2011	6	29	18	53
2012	77	17	3	97
2013	20	28	13	61
2014	19	31	4	54
2015	20	26	24	70
2016	16	16	4	36
2017	23	18	20	61
Total	284	215	84	583

- 13. We have reviewed the RAD's Review and Referral Procedures (2017 - 2018 election cycles). Has this document been revised and/or updated? If so, please provide us with a copy of the updated documents/guidance—including a copy any additional guidance the RAD follows when reviewing reports and referring committees for enforcement.*

The RAD Review and Referral Procedures are revised after each two-year election cycle. The 2017-2018 RAD Review and Referral Procedures posted on the FEC website are the most current. After every election cycle, RAD makes recommendations for revisions, with input from other divisions within the agency, and circulates the recommendations for Commission approval. Upon receiving four affirmative votes from the Commission, RAD commences the review of reports for the new election cycle using the Commission approved procedures.

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Audit Division

17. How many audits were completed and forwarded to the Commission for approval by the Audit Division for each fiscal year—2002 through 2017?

Fiscal Year	Audits Completed
2002	24
2003	31
2004	32
2005	22
2006	18
2007	25
2008 ⁹	31
2009	33
2010	11
2011	25
2012	19
2013	13
2014	14
2015	14
2016	9
2017	8

⁹ The Commission lacked a quorum for six months of 2008. During that time, audit reports circulated for Commission approval were considered completed, which might have resulted in some audits counting as completed more than once during FY 2008 and FY 2009.

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- a. How many Audit Division referrals were made to the OGC for each fiscal year— 2002 through 2017?*

Fiscal Year	Referral to OGC
2002	9
2003	12
2004	13
2005	12
2006	5
2007	9
2008	17
2009	6
2010	1
2011	6
2012	5
2013	6
2014	1
2015	9
2016	2
2017	6

- b. How many Audit Division referrals were made to the Alternative Dispute Resolution Office for each fiscal year—2002 through 2017?*

Fiscal Year	Referral to ADRO
2002	0
2003	2
2004	6
2005	5
2006	3
2007	1
2008	0
2009	2
2010	1
2011	6
2012	4
2013	2
2014	3
2015	2
2016	1
2017	1

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- c. *How many Audit Division referrals were made to the Administrative Fine Programs for each fiscal year—2002 through 2017?*

Fiscal Year	Referral to AFP
2002	0
2003	0
2004	0
2005	0
2006	0
2007	2
2008	0
2009	1
2010	0
2011	0
2012	1
2013	4
2014	0
2015	0
2016	0
2017	0

Alternative Dispute Resolution Office

21. *Please describe the process (including the criteria used) the Commissioners use to determine whether cases are processed under the Alternative Dispute Resolution (ADR) program.*

The ADR Office (ADRO) receives matters from the Reports Analysis Division (RAD), the Audit Division (Audit), the Office of General Counsel (OGC), and the Commissioners directly. RAD refers matters to ADRO based upon thresholds established within the applicable RAD Review and Referral Procedures, which is approved by the Commission each election cycle before reports are reviewed. Audit referrals occur after approval of the Final Audit Report of the Commission if there are findings that breach Materiality Thresholds. The Audit Program and Materiality Thresholds are approved by the Commission prior to conducting audits for each election cycle. OGC transfers matters to the ADRO based upon Commission-approved criteria set forth within the Enforcement Priority System (EPS). Additionally, the Commission may, with the affirmative vote of four Commissioners, transfer any matter to the ADRO for processing.

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a. Please identify the number, types, and average resolution time frames for ADR cases for each fiscal year—2002 through 2017.

Fiscal Year	Resolution	Matters	Total Days	Average Days
2002				
	Dismissal	2	506	253
	Settlement	17	4,386	258
	TOTAL	19	4892	257
2003				
	Dismissal	24	2691	112
	Settlement	36	7463	207
	TOTAL	60	10154	169
2004				
	Dismissal	19	915	51
	Settlement	26	4101	158
	TOTAL	45	5016	111
2005				
	Dismissal	40	4497	112
	Settlement	51	8207	160
	TOTAL	91	12704	140
2006				
	Dismissal	16	1401	88
	Settlement	50	8408	168
	TOTAL	66	9809	149

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Fiscal Year	Resolution	Matters	Total Days	Average Days
2007				
	Dismissal	27	2348	87
	Settlement	46	9871	215
	TOTAL	73	12219	167
2008				
	Dismissal	4	442	111
	Settlement	9	1388	154
	TOTAL	13	1830	141
2009				
	Dismissal	6	1426	238
	Settlement	74	20664	279
	TOTAL	80	22090	276
2010				
	Dismissal	4	229	57
	Settlement	41	6900	168
	TOTAL	45	7129	158
2011				
	Dismissal	5	122	24
	Settlement	19	2310	122
	TOTAL	24	2432	101
2012				
	Dismissal	2	85	43
	Settlement	38	6318	166
	TOTAL	40	6403	160

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Fiscal Year	Resolution	Matters	Total Days	Average Days
2013				
	Dismissal	7	520	74
	Settlement	23	4284	186
	TOTAL	30	4804	160
2014				
	Dismissal	5	417	83
	Settlement	64	10031	157
	TOTAL	69	10448	151
2015				
	Dismissal	5	595	119
	Settlement	40	6270	157
	TOTAL	45	6865	153
2016				
	Dismissal	6	548	91
	Settlement	26	4245	163
	TOTAL	32	4793	150
2017				
	Dismissal	3	213	71
	Settlement	15	2857	190
	TOTAL	18	3070	170

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Promoting Voluntary Compliance

22. *We have reviewed the Guidebooks for Congressional Candidates and Committees (June 2014), Political Party Committees (August 2013), Nonconnected Committees (May 2008), and Corporations and Labor Organizations (January 2018). Are these the latest version(s) of the respective guidebooks? If not, please provide us with a copy of the latest guidebooks.*

The referenced Campaign Guides are the most current Commission-approved publications available for each type of committee.

a. *Are there any additional applicable guidebooks that we have not identified and/or mentioned? If so, please provide us with a copy of the document(s).*

The Campaign Guides are supplemented by additional written material posted on our Help for candidates and committees web pages (<https://www.fec.gov/help-candidates-and-committees/>), FEC Record news pages (https://www.fec.gov/updates/?update_type=fec-record) and in our weekly tips for treasurers (https://www.fec.gov/updates/?update_type=tips-for-treasurers).

23. *Please describe any efforts and initiatives, in addition to the published guidebooks, the FEC has conducted to prevent violations and promote compliance among entities engaged in campaign activity.*

The FEC offers an extensive educational outreach program that includes regional conferences and live webinars for all types of committees (<https://transition.fec.gov/info/outreach.shtml>). Sample materials from one of our recent regional conferences are available at https://transition.fec.gov/info/conference_materials/conferencematerials.shtml. The Commission also has its own YouTube channel that features instructional videos on a variety of campaign finance topics, and includes playlists designed specifically for candidates, parties and PACs, as well as for individual citizens (<https://www.youtube.com/FECTube>). Additionally, the agency staffs a toll-free information line (800-424-9530), responds to email inquiries regarding the law (info@fec.gov) and offers website visitors the option to receive automatic email updates on topics of their choice (https://public.govdelivery.com/accounts/USFEC/subscriber/new?qsp=CODE_RED). Finally, as part of ADR and conciliation agreements, the Commission often seeks to prevent repeat violations by requiring respondents to attend an FEC conference or webinar or to participate in a one-on-one training session designed to address the committee's specific needs.

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24. Please describe how the FEC provides information and guidance (i.e., contribution and expenditure limits, and disclosure requirements) on campaign finance laws to the public/committees? Please provide us with a copy of the applicable information and guidance.

In addition to the resources described above in response to questions 22 and 23, the Commission provides quick access to the contribution limits and disclosure requirements directly from FEC.gov home page (see below). The limits and reporting deadlines are available at <https://www.fec.gov/help-candidates-and-committees/candidate-taking-receipts/contribution-limits/> and <https://www.fec.gov/help-candidates-and-committees/dates-and-deadlines/>, respectively. The agency also posts reporting periods and associated filing deadlines on its online calendar (<https://www.fec.gov/calendar/>) and emails reporting reminders to committees shortly before their reports are due (e.g., https://transition.fec.gov/pages/report_notices/2018/q3.shtml).

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27. Please identify the average time frames for enforcement and compliance resolution.

a. How many days, on average, for the resolution of a Matter Under Review (MUR), Alternative Dispute Resolution, and Administrative Fines case(s)?

The requested information about MURs will be provided in a later submission.

For ADR cases, the requested information was provided in response to question 21.a.

The following chart presents the requested information for the Administrative Fine Program.

Year	Non-Challenged Cases(RAD)			Challenged Cases(OAR)		
	Cases	Total Days	Average Days	Cases	Total Days	Average Days
FY2002	39	4,495	115	83	25,323	305
FY2003	317	28,247	89	86	18,375	214
FY2004	65	3,794	58	73	23,572	323
FY2005	189	12,822	68	35	11,762	336
FY2006	55	3,640	66	36	16,474	458
FY2007	211	14,166	67	63	21,668	344
FY2008	3	382	127	25	10,764	431
FY2009	266	17,290	65	71	15,057	212
FY2010	38	2,053	54	9	1,519	169
FY2011	276	29,918	108	68	9,946	146
FY2012	35	2,301	66	2	614	307
FY2013	186	13,948	75	31	3,492	113
FY2014	55	4,828	88	5	648	130
FY2015	159	19,979	126	32	4,634	145
FY2016	33	4,265	129	11	2,046	186
FY2017	168	20,102	120	32	4,753	149
FY02-FY17	2,095	182,230	87	662	170,647	258

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FEC and DOJ Collaboration

8. *Based on a FEC official's statement provided at the GAO/FEC entrance conference held on July 16, 2018, the signed (in 1977) memorandum of understanding (MOU) which outlines the collaboration (including referrals) between the FEC and Department of Justice (DOJ) in regards to the enforcement of the FECA and related campaign finance requirements associated with federal elections has not been updated.*
- a. *Please explain why the MOU between FEC and DOJ has not been updated since 1977—including the extent to which FEC plans to update the MOU. In addition, please provide us with a copy of the current (formal and informal) guidance/procedural agreements used to assist in the FEC and DOJ collaboration efforts (including referrals) in regards to the enforcement of the FECA and related campaign finance requirements associated with federal elections*

Since 1977, the MOU has been the subject of negotiations between DOJ and the Commission on two separate occasions. First, from 2003-2007, several draft proposals to update the MOU were exchanged between the agencies, but those negotiations did not ultimately lead to a revised MOU because the agencies were unable to come to mutually agreeable terms. The FEC's Office of General Counsel revived the discussions with DOJ in 2012, and OGC ultimately recommended that the Commission accept a revised draft agreement that it had negotiated with DOJ. This agreement, however, was never approved by the Commission and was never put into effect.

Though the MOU dates back to 1977, it remains the primary guidance/procedural agreement used by the Commission to assist in collaboration efforts (including referrals) between the Commission and DOJ regarding the enforcement of the FECA and related campaign finance requirements associated with federal elections. As requested, a copy of the MOU is attached. The MOU lays out basic principles that still guide the Commission and the DOJ in the discharge of their respective statutory duties with respect to the FECA. In particular, it recognizes the Commission's exclusive jurisdiction over the civil enforcement of the FECA, and DOJ's exclusive jurisdiction over criminal enforcement of the same, and sets forth general guidelines for the sharing of information between the agencies, including referral between the agencies.

- b. *Please explain how the FEC and DOJ collaborate to investigate and enforce the FECA and related campaign finance requirements associated with federal elections.*

The FEC and DOJ collaborate in a number of ways, but most frequently through the sharing of investigative materials. For instance, upon request and subject to Commission approval, the FEC will share with DOJ documents from its enforcement files. In turn, DOJ will (subject to Grand Jury secrecy rules and other applicable laws) provide the FEC investigative materials from

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parallel matters, *e.g.*, FBI 302s. DOJ typically shares such information at the end of a DOJ prosecution or after DOJ determines not to prosecute a case.

The Commission also routinely makes witnesses available to assist in DOJ prosecutions. Typically, the FEC witness provides testimony concerning the contents of disclosure reports filed with the Commission.

Finally, DOJ has requested that the Commission hold particular Matters Under Review in abeyance pending the conclusion of a related DOJ investigation. These requests must be submitted in writing and the Commission votes to decide whether to grant the request. In deciding whether to grant the request, the Commission considers the amount of time remaining on the relevant statute of limitations, whether the Commission's investigation would benefit from accessing the DOJ file at the end of the DOJ investigation, and whether a parallel civil investigation may harm the criminal investigation by, for instance, creating conflicting witness statements. Typically such requests are granted for a set term and then DOJ is asked to resubmit the abeyance request if it seeks continued abatement. The extension request is analyzed under the same factors as the original request.

- c. To what extent, if any, have the FEC and DOJ collaboration efforts (including referrals) related to the enforcement of the FECA and related campaign finance requirements associated with federal elections been affected by the MOU not being updated since 1977—including how any challenges experienced are being addressed by the FEC and DOJ, if applicable?*

In recent years, the FEC's collaboration with DOJ as described in 8.b. above has been ongoing and robust, and the lack of a more current MOU has not been an impediment to improved cooperation with DOJ. Moreover, the basic principles of cooperation as set forth in the original MOU continue to serve as general guidance.

- d. Under what circumstances would FEC and DOJ maintain parallel jurisdiction in investigations involving foreign funds? Is there a FEC mechanism in place to delay moving forward with its own proceedings in favor of the pending criminal investigation? [Question revised as discussed by Fred Lyles, GAO, and Duane Pugh, FEC.]*

The FEC and DOJ maintain parallel jurisdiction over any facts that present potential civil and criminal violations of the FECA. As explained in the answer to 8.b. above, there is a mechanism in place for the FEC to delay moving forward in parallel matters—DOJ can request that the Commission abate its parallel Matter Under Review. The factors considered by the Commission in reviewing an abatement request are also described in 8.b. above. Whether it abates or not, the Commission maintains its civil jurisdiction in matters involving foreign funds even if there is an active criminal parallel matter, and it may pursue civil remedies at the conclusion of the abatement period without regard to the results of the parallel criminal matter.

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e. Please provide us with the number and types of matters referred by the FEC to DOJ for prosecution for each fiscal year—2002 through 2017.

Fiscal Year	Number of matters referred to U.S. DOJ	Source	Type of violation
2002	3	external complaint	excessive contributions, contributions in the name of another, and reporting violations
		RAD referral	excessive contributions, contributions in the name of another, and reporting violations (related to external complaint above)
		state government referral	fraudulent misrepresentation
2003	0		
2004	1	state government referral	prohibited union contributions
2005	0		
2006	0		
2007	1	external complaint	contributions in the name of another
2008	0		
2009	1	external complaint	fraudulent misrepresentation
2010	0		
2011	0		
2012	0		
2013	0		
2014	0		
2015	0		
2016	0		
2017	0		

Providing Information and Policy Guidance on Campaign Finance Laws

25. We reviewed the FEC's web site (www.fec.gov/legal-resources/regulations/) to identify the agency's rulemaking that focuses on the enforcement of the FECA and related campaign finance requirements associated with federal elections. Please identify the additional FEC enforcement policies, practices, and procedures used to supplement the

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regulations listed on the agency's web site (www.fec.gov/legal-resources/regulations/) for each fiscal year—2002 through 2017.

The Commission has adopted various policies and procedures concerning the enforcement process and those are available on the Commission's website on the "Policy Statements, Interpretive Rules and Other Guidance" webpage at <https://transition.fec.gov/law/policy.shtml>. These policies and procedures include the following:

- Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files (2003);
- Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings (2005);
- Statement of Policy Regarding Treasurers' Best Efforts To Obtain, Maintain, and Submit Information (2007);
- Statement of Policy; Safe Harbor for Misreporting Due to Embezzlement (2007);
- Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process (2007);
- Agency Procedure for Disclosure of Documents and Information in the Enforcement Process (2007);
- Procedural Rules for Probable Cause Hearings (2007);
- Policy Statement Establishing a Pilot Program for Probable Cause Hearings (2007);
- Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record (2009);
- Amendment of Agency Procedures for Probable Cause Hearings (2009);
- Agency Procedure Following the Submission of Probable Cause Briefs by the Office of General Counsel (2011); and
- Disclosure of Certain Documents in Enforcement and Other Matters (2016).

Further, in May 2012, the Commission published the *Guidebook for Complainants and Respondents on the FEC Enforcement Process*, and it reflects many of these new enforcement-related policies adopted by the Commission. This guidebook is also available on the Commission website at https://transition.fec.gov/em/respondent_guide.pdf.

Information regarding additional FEC enforcement policies, practices, and procedures can be found on the Commission's website at https://transition.fec.gov/pdf/Additional_Enforcement_Materials.pdf under item "(1) Enforcement Documents." Included in these documents are practices and procedures that were compiled as internal guidance to Office of General Counsel staff. Many of these documents pre-date the time frame of your request, but the collection includes documents dated through 2011. These materials are not a definitive or binding set of procedures, and were neither reviewed nor adopted by the Commission. Rather they are historical enforcement procedures and practices. The collection, initiated in 1986 and compiled periodically, includes documents that might serve as reminders or guidance for Enforcement Division staff on a variety of substantive and procedural aspects of their

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work. The types of documents in this collection include emails, internal memoranda, summaries of Commission sessions and staff meetings, and Commission-approved procedures and directives. These materials reference past, non-binding practices and informal guidance within the agency. Enforcement staff no longer refer to these materials, and enforcement procedures were no longer collected in this manner after 2011. As discussed in the response to Question 1, the Office of General Counsel uses the June 26, 2013 Enforcement Manual as its primary guide on questions of process and procedure.

Compliance and Enforcement Data

26. We reviewed the FEC Enforcement Profile information listed on the FEC's website (dated September 30, 2005). Is there any updated information published on the Substantive Disposition of Issues processed by FEC enforcement components for each fiscal year—2006 through 2017? Please provide updated data/information regarding substantive disposition of issues.

No updated information on the Substantive Disposition of Issues processed by OGC's Enforcement Division for fiscal years 2006 through 2017 has been published, nor have we compiled the information internally since publication of the document GAO cited above. The feature in our case management system that allowed for the automatic generation of this information in 2005 has since been discontinued. As a result, generating this data now would require more significant resources to be spent in a manual collection and compilation of the data, and it is not regularly done.

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13. *To what extent, if any, did the proposed FEC and DOJ coordination/collaboration agreements in the MOU proposed in 2012 differ/vary from the MOU approved in 1977? Please provide us with a copy of the MOU proposed in 2012.*

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- 14. To what extent, if any, has not updating the MOU since 1977 impacted/affected the two agencies' (FEC and DOJ) efforts to coordinate/collaborate in their campaign finance enforcement activities? What steps, if any, has the FEC taken to mitigate any challenges to coordination/collaboration that have arisen?*
- 15. To what extent, if any, do the FEC and DOJ use the 1977 MOU in the agencies' efforts to coordinate/collaborate in their campaign finance enforcement activities?*
- 16. Besides the MOU (dated 1977), what additional coordination/collaboration guidance do the FEC and DOJ utilize in their efforts to enforce campaign finance laws/regulations?*

FEC Response: In the Commission's view, the MOU remains the primary guidance/procedural agreement used by the Commission to assist in collaboration and consultation efforts (including referrals) between the Commission and DOJ. There is no additional written guidance on this subject.

The FEC and DOJ consult in a number of ways, but most frequently through the sharing of investigative materials. For instance, upon written request and subject to Commission approval, the FEC will share with DOJ documents from its enforcement files. In turn, DOJ will (subject to Grand Jury secrecy rules and other applicable laws) provide the FEC investigative materials from parallel matters, *e.g.*, FBI 302s. DOJ typically shares such information at the end of a DOJ prosecution or after DOJ determines not to prosecute a case. The initial point of contact for consultation on parallel matters between the FEC and DOJ is usually through the General

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Counsel or Associate General Counsel for Enforcement on behalf of the Commission, and the Director of the Election Crimes Branch, Public Integrity Section of DOJ's Criminal Division on behalf of DOJ.

The Commission also routinely makes witnesses available to assist in DOJ prosecutions. Typically, the FEC witness provides testimony concerning the contents of disclosure reports filed with the Commission.

Finally, DOJ sometimes requests that the Commission hold particular Matters Under Review in abeyance pending the conclusion of a related DOJ investigation. These requests must be submitted in writing to the General Counsel or the Associate General Counsel for Enforcement, and the Commission votes to decide whether to grant the request based on OGC's recommendation. In deciding whether to grant the request, the Commission considers the amount of time remaining on the relevant statute of limitations, whether the Commission's investigation would benefit from accessing the DOJ file at the end of the DOJ investigation, and whether a parallel civil investigation may harm the criminal investigation by, for instance, creating conflicting witness statements. Typically such requests are granted for a set term, and then DOJ is asked to resubmit the abeyance request if it seeks continued abatement. The extension request is analyzed under the same factors as the original request.

17. Please explain the FEC's process for making referrals to DOJ regarding the enforcement of campaign finance laws/regulations. Please provide us with a copy of the applicable guidance used in this process.

FEC Response: FECA contains a provision for the **referral** of FECA violations by the FEC to DOJ for criminal prosecution, and it contains a separate provision for the **reporting** of apparent violations of other laws, not within the Commission's jurisdiction, to DOJ or to any other appropriate law enforcement authority.

Pursuant to FECA's section 309(a)(5)(C), the Commission may refer certain FECA violations to the Attorney General. (FECA section 309 is codified at 52 U.S.C. § 30109.) Such referrals may be made only after the Commission, by four or more affirmative votes, has determined that there is probable cause to believe that a knowing and willful violation of the Act has occurred, or is about to occur. The violation must also be subject to section 309(d), which sets forth certain monetary thresholds that must be met for a knowing and willful FECA violation to be prosecuted as a crime. In the event that the Commission makes a criminal referral of a FECA violation, the normal statutory requirement of a 30-90 day period of post-probable cause conciliation, in section 309(a)(4)(A), is set aside.

Pursuant to FECA section 307(a)(9), the Commission has the power "to report apparent violations to the appropriate law enforcement authorities." (FECA section 307 is codified at 52 U.S.C. § 30107.) The exercise of this power requires four affirmative votes. *See* FECA, § 306, *codified at* 52 U.S.C. § 30106. In light of FECA section 309(a)(5) and its detailed prerequisites

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for referral of FECA violations to DOJ, the Commission has traditionally interpreted section 307(a)(9) to cover reporting of apparent violations of other laws, but not FECA. Knowing and willful FECA violations may sometimes involve the violation of other criminal statutes—for instance, the prohibition on aiding and abetting crimes in 18 U.S.C. § 2, the prohibition on conspiracy in 18 U.S.C. § 371, and the prohibition on making material false statements to the government in 18 U.S.C. § 1001—and the Commission can vote to report apparent violations of these statutes to DOJ at any time, pursuant to section 307(a)(9). But it can refer a FECA violation itself only if it has found probable cause to believe the violation occurred (or is about to occur), if it has found that the violation was knowing and willful, and if the monetary thresholds for criminal liability are met.

It is also important to note that section 307(a)(9) is not limited to the reporting of non-FECA Federal crimes to DOJ; it permits the Commission, upon four affirmative votes, to report *any* apparent violation of *any* law other than FECA—whether criminal or administrative—to the appropriate law enforcement authority, whether Federal, state or local.

Other than the detailed guidance set forth in the statute, which is summarized above, guidance on referral and reporting is set forth in paragraphs 7.6.3.4 and 7.6.3.5 of the June 26, 2013 version of the Enforcement Manual. As we noted in footnote 1 of our November 16, 2018 (Batch 6) Response to your question 1, the June 26, 2013 version of the Enforcement Manual is located at this link: https://www.fec.gov/resources/updates/agendas/2013/mtgdoc_13-21-b.pdf.

18. To what extent, if any, does the FEC have guidance related to sharing information with DOJ in the enforcement of campaign laws and regulations – including the sharing of enforcement file information? Please provide us with a copy of the available guidance.

- a. Please explain whether the 2013 memorandum from then-General Counsel Herman, placed on the June 27, 2013 public meeting, captures the FEC's current perspective on the value of information sharing with DOJ?*
- b. The 2013 memorandum from then-General Counsel Herman references 2012 OGC Guidance to Enforcement Division staff on protocols for responding to DOJ requests for FEC enforcement-related information and records. Are these referenced protocols current? If so, please provide us with a copy. If not, what guidance, if any, exists.*

FEC Response: As noted above in response to questions 14-16, there is no current written guidance on information sharing between the DOJ and FEC other than the 1977 MOU. All requests from DOJ for non-public enforcement-related information and records are made in writing and directed to the General Counsel or Associate General Counsel for Enforcement, on behalf of the Commission. Current practice on information sharing with DOJ, as well as the Commission's current perspective on information sharing with DOJ, is reflected in the response to questions 14-16.

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19. *When requests for abatement are granted by the FEC for a set term, what is the typical duration?*

FEC Response: Three months. As noted above in response to questions 14-16, these requests may be renewed by DOJ, and the Commission will apply the same factors to a request for renewal as it does to an original request.

20. *Under what circumstances would the FEC conduct a civil inquiry parallel to an active criminal investigation involving the same matter?*

FEC Response: We assume the question is asking under what circumstances the FEC would conduct such an inquiry in a matter in which the Commission has found reason to believe and authorized an investigation or conciliation without abatement. The FEC would conduct a parallel investigation without abatement if DOJ does not make a request for abatement and/or the Commission determines that an investigation is necessary to vindicate the agency's interests under FECA. Beyond that, for the factors that the Commission considers in determining whether to grant or renew a request for abatement, see the response to questions 14-16 above.

a. *How often does this occur, if at all?*

FEC Response: Parallel civil investigations involving the same matter without abatement are unusual, and occur infrequently.

22. b. *To what extent, if any, has FEC taken steps to provide the public with information on FEC's role in addressing the use of prohibited foreign money in the financing of campaigns?*

FEC Response: On September 18, 2018, then-Chair Hunter submitted on behalf of the Commission the [FEC Report to the Committees on Appropriations on Enforcing the Foreign National Prohibition](https://www.fec.gov/resources/cms-content/documents/Foreign_National_Report_To_Congress.pdf), outlining the Commission's role in enforcing the foreign national prohibition, how the Commission identifies foreign contributions to elections, and the agency's future plans to continue these efforts. The URL for this document is: https://www.fec.gov/resources/cms-content/documents/Foreign_National_Report_To_Congress.pdf Information about the FEC's efforts to provide the public with information on the foreign national ban and the FEC's role with respect to it may be found at page 4 and in parts I.B and I.C (pages 11-15) of the Report. On September 28, 2018, then-Vice Chair Ellen L. Weintraub wrote separately to express her own views in her Letter to Congressional Appropriations Committees Regarding Enforcing the Foreign National Prohibition. The URL for this document is: <https://www.fec.gov/documents/896/2018-09-28-ELW-Approps-Committees-reply.pdf>.