



COMMISSIONER ELLEN L. WEINTRAUB  
FEDERAL ELECTION COMMISSION

WASHINGTON, D.C.

## **Minority**

### ***Questions from Rep. Derek Kilmer (WA-06)***

In the coming weeks, I will be reintroducing the Restoring Integrity to America's Elections Act -a bill that has been bipartisan for the last decade.

In years past, we've seen the FEC's deadlocking on critically important decisions because of the partisan divide of its commissioners. At a basic level, the Commission needs to be able to tell Republicans and Democrats, incumbents and challengers, what the basic rules of the road are. Without a functioning civil enforcement agency, modest violations of the law will go unpunished, hurting those candidates who are trying to follow the letter of the law. With that in mind, the Restoring Integrity to America's Elections Act will revitalize the FEC by breaking the deadlock of its leadership structure and strengthening its enforcement actions through faster and more efficient processes. Importantly, the legislation also creates a Blue-Ribbon Advisory Panel, convened by the president to recommend individuals for appointment to the Commission. I'd like to highlight this particular provision of the bill for a few important reasons.

First, the means through which FEC commissioners receive appointments is largely through political appointments. By promoting an impartial and bipartisan process for selecting FEC nominees, a Blue-Ribbon Commission - which would consist of people with federal election law backgrounds – we would be able to promote fair recommendations of potential nominees.

Next, the advisory panel would be bipartisan, and it would be required to include individuals who represent each major political party and individuals who are independent of a political party, and it would consist of retired federal judges, former law enforcement officials, or individuals with the experience in election law. Simply put, this is about trying to ensure that the people who serve on the Federal Election Commission, who are nominated to serve on the Federal Election Commission, know something about federal election law.

Additionally, the bill even creates a clearer job description for commission appointees so those who serve have the independence and experience to make judgments related to campaign finance violations. Meaningful, substantial reforms at the commission need to happen so it can get back to weeding out campaign finance abuse and holding those who skirt the rules accountable. In other words, it's time to get the referee back on the field.

**Question:** How do you see the establishment of a Blue Ribbon Commission as aligning with FEC's independence in administrating and enforcing federal campaign finance laws, and its recommendation about the recruitment and retention of quality positions?

***Answer from Commissioner Weintraub:***

I fully support the proposed legislative change of establishing a Blue-Ribbon Advisory Panel, which would bolster the FEC's independence and strengthen the recruitment of future commissioners.

It is impossible to eliminate the role of sitting officeholders, whose campaign activity is regulated by the FEC, from the appointment process. The President nominates and the Senate confirms the commissioners. But in adopting an inclusive, independent, bipartisan process to vet potential nominees, Congress could build in a degree of separation between the regulators and the regulated that is absent now. In addition to helping to ensure highly qualified candidates, this process could boost public confidence in the FEC.

As the question notes, requiring the president to convene a Blue-Ribbon Advisory Panel to help vet potential nominees is a policy solution with bipartisan support. Such an Advisory Panel would focus the appointment process on potential applicant's knowledge and merit.

In establishing such a Blue-Ribbon Advisory Panel, I encourage Congress to consider adding specificity to the legislation. Additional details such as the size of the Advisory Panel, how quickly the President must assemble the Advisory Panel, how the members are to be chosen, the timelines that would govern its deliberations, and what information is provided to the public following the making of recommendations, among other details, would be helpful in making the Advisory Panel a successful body. And creating such a process for vetting FEC nominees could serve as a model for improving the selection process for appointees to other bodies.

***Questions from Rep. Derek Kilmer (WA-06)***

I am encouraged by the FEC's unanimous decision to advance Public Citizen's petition, which requests a rulemaking to address the use of generative artificial intelligence in deceptive campaign advertisements. I was among the 50 Members of Congress who signed onto a letter, led by Congressman Adam Schiff, urging FEC to reconsider its initial decision not to seek public comment, and I'm grateful for your attention to what I and many of my colleagues perceive as real threats to our democratic institutions, and the further proliferation of mis- and dis-information impacting the American electorate.

Already, we have seen the dangerous use of generative artificial intelligence to impersonate candidates and public figures. The potential for deception is a real and current threat. Indeed, in a report, the U.S. Department of Homeland Security has highlighted this liability, offering an example where synthetic media such as deepfakes, often created using generative AI, could be employed to shift the tide of an election or cause civic unrest close to a voting day [footnote omitted]. The increased presence of this kind of media, in combination with a significant election next year, is alarming.

It is in my view that the FEC is the governing body with the authority to conduct oversight of these challenges involving the use of generative artificial intelligence in deceptive campaign advertisements, and I continue to urge action, including requirements to disclose campaign advertisements created by generative AI, as well as a prohibition on deliberately deceptive content in campaign ads created by generative AI.

**Question:** What can you do with your existing authority over deliberately deceptive content in campaign advertisements created by generative AI? Where do you perceive the gaps in oversight over the full scope of issues that this technology presents to campaign advertisements and election law?

***Answer from Commissioner Weintraub:***

First of all, thank you for your letter. I, too, was disappointed that we did not move forward with the original petition and am very pleased that the Commission was able to solicit public comment on the revised petition on this important topic. As you may know, the comment period recently closed, we received robust comments from the public, and we are in the process of reviewing them. I look forward to working with my fellow commissioners to analyze these complex issues.

The issue of our statutory authority to address deliberately deceptive content generated by AI is one of the questions before the Commission in deciding how to move forward on the revised petition. I do not wish to pre-judge the issues raised in the petition or the comments. As a matter of law, though, in short, the FECA currently prohibits candidates from fraudulently misrepresenting themselves as acting for or on behalf of any other candidate or political party in a way that is damaging to the latter.<sup>1</sup> Moreover, the law prohibits anyone from fraudulently misrepresenting themselves as acting on behalf of another candidate or political party for the purposes of soliciting funds.<sup>2</sup> The Commission has made a unanimous legislative recommendation for expanding our statutory framework for regulating fraudulent misrepresentation.<sup>3</sup> The recommendation is for Congress to revise the prohibitions on fraudulent misrepresentation of campaign authority to encompass all persons purporting to act on behalf of candidates and real or fictitious political committees and political organizations. In addition, the recommendation suggests Congress should remove the requirement that the fraudulent misrepresentation must pertain to a matter that is “damaging” to another candidate or political party. This legislative recommendation predates the current focus on AI but would, if pursued by Congress, give the Commission broader scope to address deceptive uses of AI.

***Question from Rep. Derek Kilmer (WA-06)***

**Question:** How does the FEC perceive, and anticipate, threats in this space moving forward?

***Answer from Commissioner Weintraub:***

I cannot speak for the entire FEC, particularly as these issues are currently under consideration and have yet to be decided. Personally, I share your concern that deliberately deceptive content generated by AI can mislead voters, potentially perpetrating a fraud on the electorate, particularly if the use of AI is not disclosed. Transparency is the core mission and expertise of the Commission, and likely any steps the Commission takes will be informed by that expertise. In addressing AI, as always, the Commission must be mindful of First Amendment concerns. In addition to the complexities of dealing with fast-evolving technology, the Commission must take care not to intrude on protected political speech.

***Question from Rep. Norma Torres (CA-35)***

1. Commissioner Weintraub, the Federal Election Commission does not allow for more than three commissioners to be affiliated with the same political party. In practice, the Commission has been divided equally among Democrats and Republicans. The FEC also requires affirmative votes from at least four commissioners to authorize most policy making or enforcement activity, including making,

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<sup>1</sup> 52 U.S.C. § 30124(a).

<sup>2</sup> 52 U.S.C. § 30124(b).

<sup>3</sup> Legislative Recommendations of the Federal Election Commission 2022 at 10-11, Federal Election Commission (Dec. 15, 2022), <https://www.fec.gov/resources/cms-content/documents/legrec2022.pdf>.

amending, or repealing rules; initiating litigation; conducting investigations; and approving enforcement actions. As a result, the FEC has been deadlocked preventing action on important issues like combatting corruption in our elections.

- a. Is the bar of evidence to move forward into an investigation too high, or is there simply a lack of will from Commissioners to act on their responsibility to the American people?

***Answer from Commissioner Weintraub:***

The threshold for commencing enforcement action at the FEC is a finding, by the affirmative votes of at least four commissioners, that the law has been or is about to be violated.<sup>4</sup> In a *2007 Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process*, the Commission stated that it will find reason to believe “in cases where the available evidence in the matter is at least sufficient to warrant conducting an investigation, and where the seriousness of the alleged violation warrants either further investigation or immediate conciliation.” The Commission added that “an investigation would be appropriate when a complaint credibly alleges that a significant violation may have occurred, but further investigation is required to determine whether a violation in fact occurred and, if so, its exact scope.”<sup>5</sup>

As one court recently observed: “[T]he reason-to-believe” standard sets a “low bar.” In this context, it requires no more than a “credible allegation that coordinated activity yielded an impermissible contribution.” ... Still, speculation is not enough.”<sup>6</sup> This standard is reasonable, in theory. In practice, however, individual Commissioners have too often imposed a higher bar that has prevented the Commission from investigating credible allegations. I have written numerous Statements of Reasons on this issue, and courts have recognized the Commission’s failure to abide by its own standards.<sup>7</sup>

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- b. Does Congress need to step in to address the constant state of FEC deadlock and push the Commission towards action? What does Congress need to change to address this deadlock?

***Answer from Commissioner Weintraub:***

The Commission has been unable to move forward in numerous matters where our nonpartisan professional staff have recommended reason to believe findings on critical issues such as coordination,

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<sup>4</sup> 52 U.S.C. § 30109(a)(2).

<sup>5</sup> Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12,545 (Mar. 16, 2007), <https://www.govinfo.gov/content/pkg/FR-2007-03-16/pdf/E7-4868.pdf>.

<sup>6</sup> Common Cause Georgia v. F.E.C. (No. 22-cv-3067) (D.D.C.) (Sept. 29, 2023) quoting Campaign Legal Ctr., 2022 WL 17496220 at 8.

<sup>7</sup> See *id.*; Stmt. of Reasons (“SOR”) of Comm’r Ellen L. Weintraub, MUR 6589R (American Action Network) (Sept. 30, 2022), [https://www.fec.gov/files/legal/murs/6589R/6589R\\_31.pdf](https://www.fec.gov/files/legal/murs/6589R/6589R_31.pdf); SOR of Comm’r Ellen L. Weintraub, MURs 7427, 7497, 7524, 7553, 7558, 7560, 7621, 7654 & 7660 (NRA Political Victory Fund, *et al.*) (Sept. 30, 2022), [https://eqs.fec.gov/eqsdocsMUR/7427\\_66.pdf](https://eqs.fec.gov/eqsdocsMUR/7427_66.pdf); SOR of Comm’r Ellen L. Weintraub, MURs 6915 & 6927 (John Ellis Bush, Right to Rise USA, *et al.*) (Sept. 30, 2022), [https://www.fec.gov/files/legal/murs/6915/6915\\_46.pdf](https://www.fec.gov/files/legal/murs/6915/6915_46.pdf); SOR of Vice Chair Ellen L. Weintraub and Comm’rs Cynthia L. Bauerly and Steven T. Walther, MUR 6441 (Unknown Respondents) (Aug. 15, 2022), <https://eqs.fec.gov/eqsdocsMUR/12044320523.pdf>; SOR of Comm’r Ellen L. Weintraub, MUR s 7581 and 7614 (Li Juan “Cindy” Gong”) (Sept. 9, 2022), [https://www.fec.gov/files/legal/murs/7581/7581\\_21.pdf](https://www.fec.gov/files/legal/murs/7581/7581_21.pdf).

foreign national contributions, and political committee status, among others.<sup>8</sup> And certain individuals appear to be immune from any enforcement action at the FEC.<sup>9</sup>

To address frequent deadlock votes that prevent the Commission from enforcing campaign finance laws, I support the reform proposed in section 7102 of the *Freedom to Vote Act*. This reform empowers the nonpartisan Office of General Counsel to determine whether there is reason to believe that the law has been violated and to investigate, absent a majority vote of Commissioners to overrule the professional staff's recommendations.

***Question from Rep. Norma Torres (CA-35)***

2. As you may know, there is a threat of potential cuts across the board and a government shutdown looming, both of which could impact the agency. The Commission has been plagued by staffing vacancies due to lack of competitive pay and is generally viewed as dysfunctional.

a. Given the Commission's existing financial and personnel issues, how would flat funding impact agency?

***Answer from Commissioner Weintraub:***

The FEC performs its mission through the work of our staff. Nearly 70% our budget goes to cover personnel costs. We don't have any construction projects or aircraft carriers that we can postpone to save funds. And personnel costs rise every year, whether or not the budget keeps pace. A flatline budget, for an agency like ours, is effectively a budget cut. Our requested funding of \$98.3 million would allow the agency to continue to grow its staffing levels to meet its increased workload and to keep pace with needed updates to the agency's critical IT infrastructure. And we have just begun to deal with new challenges such as the potential role of artificial intelligence in campaigning. Without the requested increase to our budget, we will not be able to keep up.

***Questions from Rep. Norma Torres (CA-35)***

b. How would these financial constraints and staffing issues impact the agency's ability to address the issue of dark money in our campaign finance system?

***Answer from Commissioner Weintraub:***

Not having enough resources impacts everything the agency does, including effective enforcement of the law. It slows down review of reports that could reveal misreporting. It delays every step of the enforcement process such that cases may languish past the statute of limitations. It could affect our ability to maintain the disclosure database, without which no one would know how and where campaigns are raising and spending their funds. Financial constraints would unquestionably impair our ability to address dark money.

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<sup>8</sup> See e.g. SOR of Comm'r Ellen L. Weintraub, MURs 7427, 7497, 7524, 7553, 7558, 7560, 7621, 7654 & 7660 (NRA Political Victory Fund, *et al.*) (Sept. 30, 2022), [https://eqs.fec.gov/eqsdocsMUR/7427\\_66.pdf](https://eqs.fec.gov/eqsdocsMUR/7427_66.pdf) (failing to move forward on coordination allegations); SOR of Comm'r Ellen L. Weintraub, MUR 6589R (American Action Network) (Sept. 30, 2022) (failing to move forward on political committee status allegations); SOR of Comm'r Ellen L. Weintraub, MUR s 7581 and 7614 (Li Juan "Cindy" Gong") (Sept. 9, 2022) (failing to move forward on substantial assistance in making foreign national contributions), [https://www.fec.gov/files/legal/murs/7581/7581\\_21.pdf](https://www.fec.gov/files/legal/murs/7581/7581_21.pdf).

<sup>9</sup> SOR of Comm'rs Shana M. Broussard and Ellen L. Weintraub, MUR 7784 (Make America Great Again PAC, *et al.*) (June 15, 2022), [https://www.fec.gov/files/legal/murs/7784/7784\\_43.pdf](https://www.fec.gov/files/legal/murs/7784/7784_43.pdf).