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Chairperson Lofgren, Ranking Member Davis, and Members of the Committee, thank you for inviting me here to speak about the Federal Election Commission. I have served on the Commission for many years now, and am delighted to have the opportunity to share my thoughts about it with you.

Earlier this year, I joined my fellow Commissioners in responding to 45 questions from this Committee. The Commission's then-Vice Chairman and I submitted a separate, joint response to the 46th question, which asked about the Commission's challenges in fulfilling its mission and mandate.

As our separate response explained, one of the Commission's greatest challenges is the common misperception that Commissioners' adherence to the rule of law and sensitivity to Americans' First Amendment rights reflect opposition to enforcing the law or, even, to the Commission itself. This misperception, we wrote, feeds into a false narrative of "dysfunction" that undermines public confidence in the Commission's ability to administer and enforce campaign finance laws.

Unfortunately, this misperception and false narrative have not diminished since we wrote to you about them.

To understand better the Commission and the challenges that it faces, it may help to view the Commission in its legal and historical context. Unlike other federal agencies, the Commission's core mission involves regulating political association and speech. Virtually everything that we do — from enforcement to education — affects Americans' exercise of their First Amendment rights. For this reason, the Commission has, in the words of the U.S. Court of Appeals for the District of Columbia Circuit, a "unique prerogative to safeguard the First Amendment when implementing its congressional directives."[1]

Congress created the Commission in the aftermath of the Watergate scandal. Still reeling from revelations about the misuse of Executive Branch power for political gain, Congress deliberately structured the Commission to prevent any single political party or administration from dominating its decision-making. The Commission is an independent agency; no more than

[1] *Van Hollen v. FEC*, 811 F.3d 486, 501 (D.C. Cir. 2016) (citing *AFL-CIO v. FEC*, 333 F.3d 168, 170 (D.C. Cir. 2003)).

three Commissioners may be affiliated with the same political party; and at least four Commissioners must approve any action to regulate, interpret, or enforce the federal campaign finance laws.

As a result, and by design, Commissioners often have very different views on the same difficult issues that divide the American public, members of the judiciary, and Congress. Unfortunately, these disagreements among Commissioners are often mischaracterized as dysfunction, rather than accepted as a natural consequence of the Commission's unique structure and mandate.

Since joining the Commission, I have spent thousands of hours struggling to find the right answers to the extremely subtle and demanding questions that we Commissioners face. Not the easy or politically expedient answers, but the right answers.

The Commission's jurisprudence comprises more than 40 years of legislation, regulations, court cases, administrative enforcement decisions, advisory opinions, interpretive rules, and policy statements. Every Member of this Committee has had to negotiate that labyrinth at one time or another, not to mention the campaign guides, Tips for Treasurers, press releases, digests, and other forms of informal guidance that the Commission regularly produces in an effort to make its rules and requirements comprehensible.

This legal complexity in an area as fundamental to American democracy as political speech and association informs my actions as a Commissioner. For example, I will authorize new regulations only when they are clearly necessary. In enforcement matters, I require some credible evidence of wrongdoing before I will authorize the Commission to investigate someone's exercise of his or her First Amendment rights. Official curiosity is not enough. And, in close cases, I honor the Supreme Court's command that the tie goes to the speaker.

Any realistic appraisal of the Commission's actions should take this context into account.

If, instead, you focus only on the number of so-called "deadlocked" votes in matters considered in executive session, you will get a skewed result — not only because it reduces legitimate legal and philosophical differences among Commissioners to the equivalent of a tennis match, but also because it ignores the vast majority of Commission compliance activities. Only the most complex and controversial are voted in executive session. Many never make it that far. Since 2012, Commissioners have resolved nearly 40% of enforcement matters on tally. In addition, since 2012 the Commission has resolved more than 900 cases involving disclosure violations through its Administrative Fines program, and more than 300 cases through its Office

of Alternative Dispute Resolution, resulting in total civil penalties of nearly $2.8 million from those two programs alone.

Focusing on "deadlocked" votes also overlooks ways in which the Commission is working smarter to enhance voluntary compliance. Last year, during my year as Chair, our crack staff developed a creative new program that we like to call Commission boot camp. Several committees whose violations made them candidates for Audit were sent, instead, to the Office of Alternative Dispute Resolution, where they received compliance training tailored to each committee's particular needs and issues. So, in addition to being required to pay their penalties and fix their mistakes, these committees are now better equipped to avoid violations in the future.

But if you do focus on counting Commissioners' votes in executive session, it's important to keep in mind that the number of so-called "deadlocks" does not correlate with the outcome of an enforcement action. Commissioners often call for votes on motions even when they expect the motions to fail, to help create a record of their positions on issues, as part of the normal give-and-take before reaching consensus, or for other reasons. This is the same dynamic that you often see in Congress, or in any other situation where different people try to find agreement on difficult issues. Sometimes several false starts are needed before achieving success. Thus, tied votes in an enforcement matter may reflect the opposite of dysfunction: Commissioners staking out their ideal positions while on the path to compromise.

The Federal Election Commission is structurally sound, despite its challenges. The requirement of bipartisan approval of most formal Commission actions helps to ensure that Commissioners administer the laws as written by Congress and as interpreted by the courts fairly, while respecting the First Amendment. The American people deserve no less.

Thank you for giving me this opportunity to appear before you today.