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**Written Testimony of Chair Ellen L. Weintraub
Before the Committee on House Administration
U.S. House of Representatives
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Chairperson Lofgren, Ranking Member Davis, and members of the Committee, thank you for inviting me to testify today. I am pleased to be here on behalf of the Federal Election Commission to discuss the agency, and I look forward to the Committee’s continued oversight of the FEC.

As of September 1 this year, the Federal Election Commission lost its quorum. Under the Federal Election Campaign Act (the “Act” or “FECA”), the Commission is supposed to have six members, with no more than three commissioners from the same political party.¹ In order to exercise some of the Commission’s most important duties and powers, the Act requires at least four affirmative votes from members of the Commission.² With only three commissioners presently serving, the agency charged with administering and enforcing federal campaign-finance law may no longer conduct some of its most consequential business.

We cannot launch investigations.

We cannot issue advisory opinions.

We cannot promulgate rules.

We cannot render decisions on pending enforcement actions.

Other FEC operations nevertheless continue in full force, and the agency’s public servants continue to work for the American people. As we sit here this morning, they are analyzing millions of transactions reported by roughly 15,000 political committees and other filers currently registered with the Commission. They are posting disclosure reports to the FEC website for public review. Our staff are answering the phones, responding to questions from the public, and educating the regulated community. They are analyzing incoming allegations of potential FECA violations. And they are pursuing already-approved audits and enforcement

¹ 52 U.S.C. § 30106(a).

² 52 U.S.C. § 30106(c).

actions, issuing subpoenas, and conducting investigations. I am thankful to the dedicated staff of the FEC who continually work to fulfill the agency's mission, even during challenging times.

I would also like to thank Chairperson Lofgren and Ranking Member Davis for meeting with then-Vice Chairman Matthew Petersen and me earlier this year to discuss our legislative recommendations, which enjoy the unanimous and bipartisan support of the Commission.³ In our recommendations, we proposed to Congress that it extend the prohibition against the personal use of campaign funds to reach all political committees, not just those connected to candidates for federal office.⁴ We proposed legislative changes that would stem the proliferation of “scam PACs,” prohibiting crooked political committees from defrauding donors and pocketing most or all of the money intended for political candidates.⁵ We proposed protecting more political organizations from fraudsters who would pretend to act on their behalf.⁶ We asked that Congress require the electronic filing of electioneering communications reports, which are currently filed on paper.⁷ (Thanks to Congress, Senate reports are now filed electronically, increasing efficiency and saving taxpayer money.) We also asked that Congress enable the FEC to create Senior Executive Service positions and allow the Commission to elevate our Staff Director and General Counsel to SES, which would substantially enhance our ability to fill key leadership positions.⁸ These legislative solutions would improve federal campaign-finance law and the agency tasked with administering it.

I share the Committee's desire to improve the FEC, and we are taking steps in that direction. I have prioritized filling acting positions on a permanent basis and worked with my colleagues to hire a permanent Inspector General, who is promoting accountability and good governance at the agency,⁹ as well as a permanent Chief Financial Officer, who is providing sound financial leadership. The managers in charge of the Office of General Counsel's Policy Division and Administrative Law Team now lead their staffs on a permanent basis. We were in the process of filling other positions on a permanent basis, but without a quorum to approve the hires, this is now on hold. Employee morale is improving, and we have a plan to build on the gains we made in 2018.¹⁰

³ *Legislative Recommendations of the Federal Election Commission 2018*, FEC (Dec. 13, 2018), <https://go.usa.gov/xVVd3> (recommending legislative changes supported by Commissioners Weintraub, Petersen, Walther, and Hunter).

⁴ *Id.* at 8.

⁵ *Id.* at 5.

⁶ *Id.* at 6.

⁷ *Id.* at 1.

⁸ *Id.* at 2–4.

⁹ Press Release, *FEC names Christopher Skinner Inspector General*, FEC, July 12, 2019, <https://go.usa.gov/xVyGe>.

¹⁰ 2018 Federal Employee Viewpoint Survey, OPM, <https://go.usa.gov/xVyGJ>; *Responses to Questions from the Committee on House Administration* at 9, FEC (May 1, 2019), [hereinafter *FEC Resps. to House Admin.*] <https://go.usa.gov/xVyM5>.

As Chair, one of my top priorities has been to reduce the Commission's enforcement backlog. To that end, I sought an aggressive meeting schedule, with ambitious enforcement agendas that focused on matters of national importance.¹¹ I prioritized potential campaign-finance violations involving foreign nationals and matters that were imperiled due to looming statutes of limitations.¹² More detail on the foreign national cases is provided in Attachment A to this statement.

We were making progress this year on whittling away at the Commission's significant enforcement backlog. We started the year with about 350 matters on our enforcement docket, with about 100 of those matters pending before the Commission for a vote.¹³ By the time we lost the quorum in September, the backlog of cases pending before the Commission for a vote had been reduced from about 100 to approximately 60 matters. We resolved approximately 200 of the original 350 matters in the first eight months of this year. All this despite a government shutdown that disabled the FEC and other federal agencies for most of January.

This, however, has not been nearly enough to right the ship. Reducing the backlog of enforcement actions does not mean that the Commission has enforced the law. The Commission frequently closed matters without so much as a phone call to investigate potential wrongdoing.¹⁴ Enforcement actions pending before the Commission have languished for months or years at the request of my Republican colleagues, causing some to near the end of their statutory limitations, only for these Commissioners to then decline to investigate at all.¹⁵

¹¹ Earlier this year I proposed adding ten Executive Session meetings to address the enforcement backlog, which Commissioner Walther supported. The Republican Commissioners agreed to only one additional meeting, which took the place of another meeting that had to be cancelled. *Chair Ellen L. Weintraub's Supplementary Response to Question 17D from the Committee on House Administration* (May 10, 2019), <https://go.usa.gov/xVVvq>.

¹² *FEC Resps. to House Admin.* at 41–42; *Chair Ellen L. Weintraub's Supplementary Responses to Questions from the Committee on House Administration* at 6 (May 1, 2019), <https://go.usa.gov/xVVvR>.

¹³ As of January 1, 2019, there were about 350 matters on our enforcement docket, including external complaints filed with the Commission and internally generated matters. Of those 350 matters, about 100 were pending before the Commission for a vote. About 90 matters involved alleged violations that were due to expire under the statute of limitations within a year and a half, absent tolling; more than 30 of these matters were pending before us for a vote. Of the 350 matters, about 30 alleged a violation of the prohibition against foreign national contributions; about 10 of those foreign-national matters were before the Commission for a vote.

¹⁴ *See, e.g.*, Statement of Reasons of Chair Ellen L. Weintraub at 3, MUR 7314 (NRA, Torshin, Butina, *et al.*), <https://go.usa.gov/xVV9Y>. The Commission received a credible allegation indicating that the FBI was investigating whether Russian nationals had illegally funneled millions of dollars into the 2016 presidential election. My Republican colleagues refused to allow so much as a phone call to the FBI to determine whether such an investigation existed.

¹⁵ Statement of Reasons of Chair Ann M. Ravel and Commissioner Ellen L. Weintraub, MURs 6391 & 6471 (Commission on Hope, Growth & Opportunity), <https://eqs.fec.gov/eqsdocsMUR/15044381181.pdf>; Statement of Vice Chair Ellen L. Weintraub on the D.C. Circuit's Decision in *CREW v. FEC* (June 22, 2018), <https://go.usa.gov/xVyhS>. *See also* Statement of Reasons of Chair Ellen L. Weintraub, MUR 6908 (NRCC), https://eqs.fec.gov/eqsdocsMUR/6908_2.pdf; Statement of Reasons of Commissioners Ann M. Ravel and Ellen L. Weintraub, MURs 6487, 6488, 6485, 6711, 6930 (F8 LLC, W Spann LLC, Specialty Investment Group, Inc., & Prakazrel "Pras" Michel), <http://eqs.fec.gov/eqsdocsMUR/16044392258.pdf>.

Some of the most alarming allegations of campaign-finance violations have ended in deadlocked votes. Alleged violations involving foreign nationals and Russian interference ended in a deadlock and without investigation.¹⁶ Similarly, allegations of massive joint fundraising operations that appeared to circumvent the limits on individual contributions in connection with the 2016 Democratic and Republican presidential candidates were ignored.¹⁷ The Commission also split on serious allegations regarding coordinated communications and expenditures¹⁸ and whether certain organizations improperly failed to register as political committees.¹⁹ And those examples are just from the cases we closed this year. In each of these matters, I voted to take action, but there were not the requisite four votes to proceed.

By the time we lost the quorum in September, we had almost 275 matters on our enforcement docket. About 60 of those 275 matters involve alleged violations due to expire under the statute of limitations within a year and a half. More than 30 of those 275 matters allege a violation of the foreign national prohibition. Approximately 60 of the 275 matters are before the Commission itself—a number that continues to grow every day as new complaints are filed, the staff finalizes more recommendations for the Commission, and the Commission cannot act on them. We cannot launch new investigations for any of them, even if the three remaining Commissioners agreed to do so.

We also cannot render official guidance to the public or the regulated community. In the last year, the Commission fielded four requests for advisory opinions regarding cybersecurity for political committees or officeholders. In each case, the Commission was able to provide the requestors with guidance. But future requestors with similar questions cannot expect the same. Without a quorum, the Commission cannot help requestors determine whether their plans run the risk of violating the law. Political committees may be reluctant to retain services that have not been approved by the Commission, potentially foregoing additional protections for their campaigns and contributors because the legal ramifications are unclear without Commission guidance. The FEC's inability to issue this guidance may cause confusion and disjointed approaches to problems common to political committees of every party. It also means that campaign-related cybersecurity vulnerabilities may remain needlessly exposed, awaiting another hacking incident like we saw in 2016.

With the loss of quorum, all progress has stopped. Regulatory initiatives cannot be pursued. Advisory opinion requests will go unanswered. Work on the enforcement docket can proceed, but nothing can get resolved. This means that some of the most pressing issues facing

¹⁶ See, e.g., Statement of Reasons of Chair Ellen L. Weintraub, MUR 7272 (Party of Regions, *et al.*); <https://go.usa.gov/xVVfa>; Statement of Reasons of Chair Ellen L. Weintraub, MUR 7314 (NRA, Torshin, Butina, *et al.*), <https://go.usa.gov/xVVfr>.

¹⁷ See Statement of Reasons of Chair Ellen L. Weintraub, MUR 7304, *et al.* (Hillary Victory Fund, *et al.*) & MUR 7339 (Trump Victory, *et al.*), <https://go.usa.gov/xVVfb>.

¹⁸ Statement of Reasons of Chair Ellen L. Weintraub, MUR 6940, *et al.* (Correct the Record, *et al.*), <https://go.usa.gov/xVV6V>; Statement of Reasons of Chair Ellen L. Weintraub, MUR 6908 (NRCC, *et al.*), <https://go.usa.gov/xVV6y>.

¹⁹ Statement of Reasons of Chair Ellen L. Weintraub, MUR 6596 (Crossroads GPS), <https://go.usa.gov/xVV6d>; First Gen. Counsel's Rpt., MUR 6596 (Crossroads GPS), <https://go.usa.gov/xVV6G>.

this agency cannot be addressed. But the reality is, many of those pressing issues were unlikely to be resolved, even with a quorum. I have been trying for years to get agreement on new rules on online political advertising, a project first started in 2011. Hundreds of thousands of Americans wrote to us in support of this effort, but it has been stalled, with virtually no action since our public hearing over a year ago. Months of efforts to engage with my colleagues to move this project forward have been met with a brick wall. This important rulemaking was a small step, but it was the only step I was able to persuade my colleagues to even consider in order to address the paucity of information available to Americans about the political information they are receiving over the internet. It cannot move forward in the absence of a quorum, but the sad truth is, it wasn't going anywhere with a quorum, either.²⁰

The President and the Senate need to act to restore the FEC's quorum. The House of Representatives can help by passing legislation that improves on- and off-line disclosure, legislation that protects America's elections from foreign interference and, most of all, legislation that reforms the FEC into an agency that can administer the nation's campaign-finance laws fairly and effectively.

Thank you again for inviting me to testify here today. I look forward to your questions.

²⁰ Fortunately, in 2017, the Commission was able to provide key clarification on the applicability of disclaimer requirements to Facebook advertisements. *See* AO 2017-12 (Take Back Action Fund).

ATTACHMENT A **FOREIGN NATIONAL MATTERS**

As of September 15, 2016, the Commission had 14 enforcement matters in-house that included alleged violations of the foreign national political spending prohibition. All 14 of those have been closed:

- Two matters were resolved through conciliation agreements containing civil penalties totaling \$969,000.²¹
- Two matters were closed after the Commission found no reason to believe any of the respondents had violated the law.²²
- Three matters were, with respect to the majority of respondents, dismissed; other respondents were the subject of “no reason to believe” findings.²³
- One matter was dismissed after being further prioritized for early dismissal under the Commission’s Enforcement Priority System.²⁴
- Four matters were closed after split votes.²⁵
- One matter was dismissed with respect to the principal respondent, after a previous finding of reason to believe, on the basis that the criminal conviction of the principal respondent for the same activity and the sentence imposed therefor (three years’ imprisonment, a fine of \$3,700, and restitution of \$560,995) adequately resolved the matter.²⁶
- And in one matter, the Commission found no reason to believe the foreign national provision of the Act was violated, while closing the matter after finding no reason to

²¹ See FEC Report to the Committees on Appropriations on Enforcing the Foreign National Prohibition, 8-9 and n. 36 (Sept. 18, 2018), *copy enclosed and available at* https://www.fec.gov/resources/cms-content/documents/Foreign_National_Report_To_Congress.pdf (“Appropriations Report”) (discussion of MUR 7035 (Australian Labor Party, *et al.*)); *id.* at 8 and n. 35 (discussion of MUR 7081 (Floridians for a Strong Middle Class)); *id.* at 9 and n.39 (discussion of MURs 6962 and 6982 (Project Veritas, *et al.*)); *id.* at 9 and n. 38 (discussion of MUR 6944 (Farias)); *id.* at 9 (discussion of MUR 6976 (City Council Committee for Johnny W. Streets, Jr.); *id.* at 11 and n.46 (discussion of MURs 7094, 7096 and 7098 (Donald J. Trump for President, *et al.*)); *see also* MUR 7122 (Right to Rise USA) <https://www.fec.gov/data/legal/matter-under-review/7122/>; MUR 6959 (DNC and Nava), <https://www.fec.gov/data/legal/matter-under-review/6959/>; MUR 7059 (Human Rights for Vietnam PAC, *et al.*), <https://www.fec.gov/data/legal/matter-under-review/7059/>; MUR 6865 (Azano), <https://www.fec.gov/data/legal/matter-under-review/6865/>; MUR 6932 (Clinton), <https://www.fec.gov/data/legal/matter-under-review/6932/>.

²² See MUR 6959 (DNC and Nava), <https://www.fec.gov/data/legal/matter-under-review/6959/>; MUR 7059 (Human Rights for Vietnam PAC, *et al.*), <https://www.fec.gov/data/legal/matter-under-review/7059/>.

²³ See Appropriations Report at 8 and n. 35 (discussion of MUR 7081 (Floridians for a Strong Middle Class) and 9 and n.39 (discussion of MURs 6962 and 6982 (Project Veritas, *et al.*)).

²⁴ See Appropriations Report at 9 and n. 38 (discussion of MUR 6944 (Farias)).

²⁵ See Appropriations Report at 9 (discussion of MUR 6976 (City Council Committee for Johnny W. Streets, Jr.) and 11 and n.46 (discussion of MURs 7094, 7096 and 7098 (Donald J. Trump for President, *et al.*)).

²⁶ See MUR 6865 (Azano), <https://www.fec.gov/data/legal/matter-under-review/6865/>.

believe pertaining to a number of other allegations and taking a split vote on one other allegation.²⁷

Subsequent to September 15, 2016, and as of September 20, 2019, the Commission received an additional 46 enforcement matters that include alleged violations of the foreign national prohibition. Of those 46, 11 have been closed and 35 remain open. Of the 11 additional matters that have been closed:

- Two matters were closed after the Commission found no reason to believe any of the respondents had violated the law.²⁸
- One matter was transferred from OGC to the Alternative Dispute Resolution Office; the Commission subsequently dismissed the matter.²⁹
- Three matters were dismissed.³⁰
- Three matters were closed after split votes.³¹
- One matter was dismissed after being further prioritized for early dismissal under the Commission's Enforcement Priority System.³²

Of the remaining 35 matters, 33 are active and assigned to OGC Enforcement attorneys, while two were recently received by the Commission and are not yet active.

²⁷ See MUR 6932 (Clinton), <https://www.fec.gov/data/legal/matter-under-review/6932/>.

²⁸ See Appropriations Report at 8 and n. 33 (discussion of MUR 7141 (Beverly Hills Residents and Businesses to Preserve Our City)); see also MUR 7144 (Jacobs, *et al.*), <https://www.fec.gov/data/legal/matter-under-review/7144/>.

²⁹ See Appropriations Report at 10 and n.43 (discussion of ADR 822 (Arteaga)).

³⁰ See MURs 7430, 7444 and 7445 (Unknown Respondents).

³¹ See Appropriations Report at 7 and n. 30 (discussion of MUR 7205 (Jill Stein for President, *et al.*)); see also MUR 7232 (Party of Regions), <https://www.fec.gov/data/legal/matter-under-review/7272/> and MUR 7314 (NRA), <https://www.fec.gov/data/legal/matter-under-review/7314/>.

³² See MUR 7414 (Doyle for Congress), <https://www.fec.gov/data/legal/matter-under-review/7414/>.