



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Questions for the Record for Sean J. Cooksey
Vice Chairman, Federal Election Commission

United States Committee on House Administration
“Oversight of the Federal Election Commission”
September 20, 2023

Majority

1. Why is it important that the Federal Election Commission (“FEC”) remain a bipartisan, even-numbered commission?

Answer: The Federal Election Commission has the important job of administering and enforcing the campaign-finance laws passed by Congress, consistent with the First Amendment’s protections for political speech and association. The Commission is comprised of six commissioners, with no more than three commissioners from any one political party, and every major action by the Commission requires at least four affirmative votes, meaning every significant decision must have some degree of bipartisan agreement. Congress created the FEC’s bipartisan structure to ensure that the Commission could not be weaponized for partisan purposes and that its decisions are not perceived by the public to be politically motivated. This structure is therefore critical to promoting public confidence in the integrity and enforcement of campaign-finance laws.

2. During the hearing, we heard discussion about the career FEC staff and how some believe it is “unfortunate” that the commissioners do not agree with more of their recommendations.

a. Are any career staff at the FEC confirmed by the United States Senate?

Answer: No, the only presidentially appointed and Senate-confirmed positions at the Federal Election Commission are the six commissioners.

b. What decisions, if any, are career staff allowed to make on behalf of the FEC?

Answer: While career staff often carry out their individual work responsibilities independent of direct Commission supervision, ultimately all decisions and actions by the Commission are made by, and the responsibility of, the

appointed commissioners. The exercise of the Commission's major authorities generally requires the affirmative vote of at least four commissioners.

c. Why do you think the Federal Election Campaign Act empowered the six commissioners and not the career staff to make legally binding decisions on behalf of the FEC?

Answer: Consistent with the Constitution, Congress vested the six commissioners of the FEC with sole decision-making authority for the agency to ensure political accountability. As officers of an independent agency, FEC commissioners must be presidentially appointed and confirmed by the U.S. Senate. They are further subject to six-year term limits and can be removed from their positions. These constitutional and statutory requirements ensure that the FEC's leadership is answerable to our government's democratically elected representatives, and ultimately, to the American people, and they prevent against abuse and mismanagement of the agency's authorities.

3. Last December, the FEC implemented its digital advertisement disclosure rule. Can you discuss what that rule does and why digital ads are different than ads on broadcast or print media?

a. How has the public reacted, if at all, to the rule? How has the regulated community reacted to it?

Answer: The FEC's final rule on internet communications disclaimers requires that disclaimers appear on certain public communications made over the internet. Specifically, the rule requires a clear and conspicuous disclaimer to appear on certain public communications placed for a fee on another person's website, digital device, application, or advertising platform. Some communications will be permitted to include an "adapted disclaimer" when a full disclaimer cannot be provided or would occupy more than 25 percent of the communication due to space or character constraints. The adapted disclaimer permits a person who paid for the communication to be identified by a commonly understood abbreviation or acronym, provided that the full disclaimer is available through a mechanism such as hover-over text, pop-up screens, scrolling text, rotating panels, or hyperlinks to a landing page. The rule also revises the Commission's definition of "public communication."

The rulemaking is designed to adapt the Federal Election Campaign Act's disclaimer requirements to the particular needs and realities of internet communications. Specifically, by allowing for adapted disclaimers, the new regulations give campaigns and political committees greater flexibility in meeting disclaimer requirements while still ensuring that viewers are provided with appropriate disclaimer information. The regulation has largely been received

positively by the regulated community for bringing clarity and transparency to online political advertising.

Minority

1. Vice Chair Cooksey, looking forward to your chair year, this question addresses FEC personnel. In its May 2023 semi-annual report to Congress, the FEC Office of Inspector General identified “human capital management,” including the Commission’s difficulties with acquiring, managing, training, and retaining talented staff, as one of the top five managerial issues facing the FEC.

a. What is the Commission doing to hire and retain high-quality staff?

Answer: To ensure the Commission can recruit and retain the best talent in support of its mission, the agency is working to increase strategic outreach and recruitment efforts and to provide a fair, impartial, inclusive, and accessible work environment. The FEC is also committed to continuously improving the performance of staff in support of the agency’s mission objectives. To ensure staff development opportunities and trainings are provided fairly, effectively, and strategically in support of mission objectives, the FEC is working to develop and implement an agency-wide training program.

b. What is the Commission doing currently to recruit and retain a diverse workforce, especially amongst upper-level staff?

Answer: During FYs 2022 and 2023, the FEC identified additional strategic outreach platforms and partnerships to better ensure the agency’s hiring efforts reach diverse and highly talented potential employees. During FY 2024 the agency will assess the results of these efforts in helping the Commission continue to build its diverse and high performing staff, so that the most successful strategies can be fully implemented in FY 2025. In addition, the FEC has continued work to ensure staff retention by providing a fair, impartial, inclusive, and accessible work environment.

Agency employees, with the support of management, also have initiated significant efforts to increase morale and employee satisfaction across the agency, including by establishing an Employee Engagement Steering Committee and by supporting the establishment of the agency’s Diversity, Equity, Inclusion and Accessibility Council (“DEIA Council”).

2. One of the personnel-related accomplishments the Commission has touted is the establishment of the employee-led Diversity, Equity, Inclusion, and Accessibility Council (“DEIA Council”).

a. What is the goal of the DEIA Council and what specifically is the DEIA Council tasked with?

Answer: According to the DEIA Council’s Charter, the DEIA Council “was created to provide advice and recommendations to all levels of leadership, raise significant issues affecting staff such as internal promotions, hiring, awards/recognition, training and compensation, and influence diversity, equity, inclusion, and accessibility (“DEIA”) decisions with senior-level management officials and communicate these issues and decisions to the Agency.”

The DEIA Council’s Charter also provides that its mission is “to promote and integrate effective DEIA practices throughout the Agency and serve as a forum to discuss DEIA issues, share ideas and information, identify and model effective practices, use innovative approaches and ideas, and implement DEIA initiatives that are consistent with law, regulation, and FEC policies and procedures.”

b. What support is management providing to the DEIA Council to ensure it meets its goals?

Answer: The FEC’s DEIA Council is a collaborative engagement of agency employees that is staff-led and staff-driven. During the DEIA Council’s first year, the Acting General Counsel served as Executive Sponsor/Advisor, which involved providing guidance and facilitating communication of the DEIA Council’s recommendations to the agency’s leadership. The FEC’s Director of the Office of Equal Employment Opportunity (“OEEO”) serves as a nonvoting member of the DEIA Council.

3. In your oral testimony, you indicated that the practice of continuing to serve on the FEC once one’s term of service is complete—or continuing to serve on a “holdover” term—should be disfavored. Indeed, almost the entire Commission is currently serving a holdover term, and the Federal Election Campaign Act (“FECA”) does not distinguish between holdovers that have served more than six years and those whose term expired prior to six years of service. You further opined that Commissioners on holdover terms should “always be on the lookout” for prospective commissioners to replace them. Please indicate whether you have had conversations with each of the following entities regarding your replacement:

a. The President of the United States. (If yes, please indicate which president.)

Answer: I have not had conversations with any U.S. president regarding my replacement.

b. White House staff.

Answer: I have not had conversations with White House staff regarding my replacement.

c. A United States Senator. (If yes, please indicate which senator(s).)

Answer: I have not had conversations with any U.S. senator regarding my replacement.

d. Senate staff. (If yes, please indicate from which Senate office.)

Answer: I have not had conversations with any U.S. Senate staff regarding my replacement.