



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Written Testimony of Sean J. Cooksey
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United States Committee on House Administration
“Oversight of the Federal Election Commission”
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Chairman Steil, Ranking Member Morelle, and Members of the Committee on House Administration, it is an honor to appear before you to testify about the work of the Federal Election Commission and to answer your questions. My name is Sean Cooksey, and I currently serve as the Commission’s Vice Chairman.

The Federal Election Commission is the only agency that “has as its sole purpose the regulation of core constitutionally protected activity”—political speech.¹ Our job is to administer and enforce the campaign-finance laws that Congress has passed, consistent with our obligations under the First Amendment, to ensure the integrity and transparency of political campaigns for federal office. It is important and sensitive work that carries significant consequences for our democratic system of government.

It was for that reason Congress wisely chose to give the Federal Election Commission its bipartisan structure. By statute, the Commission is designed to have six Commissioners, with no more than three from any one political party.² Any major action the Commission takes—whether pursuing enforcement or issuing an advisory opinion—requires four affirmative votes, meaning that everything of substance that the Commission does must have bipartisan backing.³ And for almost fifty years, the

¹ *AFL-CIO v. FEC*, 333 F.3d 168, 170 (D.C. Cir. 2003).

² 52 U.S.C. § 30106(a)(1).

³ 52 U.S.C. § 30106(c).

Commission has done its work to administer and enforce our nation's campaign-finance laws.

That mission of bipartisan work was made more difficult, however, beginning in March 2017, when one of the six Commissioners departed without a replacement,⁴ and it became impossible by 2019, when two more Commissioners had left the agency and the Commission lacked a quorum for nearly sixteen months.⁵ The Commission was restored to a full complement of Commissioners in December 2020, when I and two of my colleagues joined.

When we were appointed, the agency faced many challenges, including an enormous backlog of 446 enforcement matters.⁶ But I am happy to report that, in the nearly three years since regaining a full slate of Commissioners, the FEC is back to work. Let me give you just a few examples:

- From January 1, 2021, to the end of last month, the Commission has closed more than 500 enforcement matters—known as Matters Under Review—and reduced the number of enforcement reports pending before the Commissioners from 223 down to just 19.
 - In those closed enforcement cases, the Commission was able to reach bipartisan agreement in 90 percent of them.

⁴ *Ann Ravel departs Federal Election Commission*, FEC (Feb. 28, 2017), <https://www.fec.gov/updates/ann-ravel-departs-federal-election-commission>.

⁵ *Lee Goodman to depart Federal Election Commission*, FEC (Feb. 7, 2018), *available at* <https://www.fec.gov/updates/lee-goodman-depart-federal-election-commission>; *Matthew Petersen to depart Federal Election Commission*, FEC (Aug. 26, 2019), *available at* <https://www.fec.gov/updates/matthew-petersen-depart-federal-election-commission>.

The Commission briefly regained a quorum when Commissioner Trey Trainor was appointed on June 5, 2020, but it was lost again four weeks later when Commissioner Caroline Hunter departed the Commission without a replacement. *Caroline C. Hunter to depart Federal Election Commission*, FEC (June 26, 2020), *available at* <https://www.fec.gov/updates/caroline-c-hunter-depart-federal-election-commission>.

⁶ *Statement of Commissioner Ellen L. Weintraub on the Senate's Votes to Restore the Federal Election Commission to Full Strength*, FEC (Dec. 9, 2020), *available at* <https://www.fec.gov/resources/cms-content/documents/2020-12-Quorum-Restoration-Statement.pdf>.

- And those enforcement matters—along with other assessed fines—have amounted to over \$7.7 million in penalties.
- In that same period, the Commission received 45 requests for advisory opinions, and we were able to issue 41 bipartisan answers—for an agreement rate of 91 percent.
- The Commission has issued 5 final rules on substantive issues, issued 2 notices of proposed rulemaking, held 2 regulatory hearings, and issued 8 notices of availability or disposition.
- The Commission has updated our policies and procedures on topics ranging from committee audits, to agency litigation, to cooperation with the Department of Justice,⁷ and more.

The Commissioners’ joint testimony and answers submitted to the Committee contain many more facts and figures to inform Congress of our work.

This is not to say Commissioners do not have disagreements—we do. We come to the agency from different backgrounds, with different experiences, and with different, often strongly held views of the law. But what I think these data points show is that, despite the agency’s equally divided bipartisan structure, my colleagues and I are doing our level best to work together, to apply the law to the facts before us, and to craft policies that fulfill our agency’s mission for the American people.

At the same time, we have more work to do to make our campaign-finance system better, fairer, and more efficient, while protecting Americans’ First Amendment rights to engage in the political process. This work will require more effort at the Commission, but we also need help from Congress.

The Commission regularly submits legislative recommendations to this Committee and to the U.S. Senate Committee on Rules and Administration,

⁷ Memorandum of Understanding Regarding the Enforcement of Federal Campaign Finance Laws, 88 Fed. Reg. 24,986 (Apr. 25, 2023).

highlighting issues and policy proposals that only Congress can address through legislation.⁸ These are proposals that the Commissioners support unanimously, and I encourage this Committee to consider all of them.⁹

I would like to highlight one in particular. The Commission's Administrative Fine Program was first authorized by Congress in 1999 to allow the Commission to assess standardized fines for basic campaign-finance reporting violations, and to thereby avoid putting committees through the Commission's slower, more costly enforcement process.¹⁰ The program works well. In 2022, the Commission issued over \$1 million in fines under the program.¹¹ It saves government and taxpayer resources, and it promotes fast and fair enforcement of the law.

Since the Administrative Fine Program began, Congress has extended it six times, but it is now due to expire at the end of this year.¹² The Commission has consistently urged Congress to further extend the program or to make it permanent.¹³ Indeed, every member of this Committee has cosponsored legislation that contains a

⁸ *Legislative Recommendations of the Federal Election Commission 2022*, FEC (Dec. 15, 2022), available at <https://www.fec.gov/resources/cms-content/documents/legrec2022.pdf>.

⁹ *Legislative Recommendations of the Federal Election Commission 2022*, FEC (Dec. 15, 2022), available at <https://www.fec.gov/resources/cms-content/documents/legrec2022.pdf>.

¹⁰ Pub. L. No. 106-58, § 640, 113 Stat. 476 (1999) (creating the administrative fine program as part of FY2000 appropriations).

¹¹ R. Sam. Garrett, *Federal Election Commission Administrative Fine Program*, Congressional Research Service (Sept. 12, 2023), available at <https://crsreports.congress.gov/product/pdf/IN/IN12198>.

¹² Pub. L. No. 107-67, § 642, 115 Stat. 514, 555 (2001) (extending program through 2003 reports), Pub. L. No. 108-199, § 639, 118 Stat. 3, 359 (2004) (extending program through 2005 reports, leaving gap in coverage from January 1 to February 10, 2004); Pub. L. No. 109-155, § 721, 119 Stat. 2396, 2493-94 (2005) (extending program through 2008 reports); Pub. L. No. 110-433, 122 Stat. 4971 (2008) (extending program through 2013 reports); Pub. L. No. 113-72, 127 Stat. 1210 (2013) (extending program through 2018 reports); Pub. L. No. 115-386, 132 Stat. 5161 (2018) (extending program through 2023 reports). *See also* 52 U.S.C. § 30109(a)(4)(C)(v) ("This subparagraph shall apply with respect to violations that relate to reporting periods that begin on or after January 1, 2000, and that end on or before December 31, 2023.").

¹³ *Legislative Recommendations of the Federal Election Commission 2022*, FEC (Dec. 15, 2022), available at <https://www.fec.gov/resources/cms-content/documents/legrec2022.pdf>.

provision making the program permanent.¹⁴ And as of last week, the House of Representatives was sent legislation, already unanimously passed by the U.S. Senate, that would extend the Administrative Fine Program for another ten years. I urge the House of Representatives to pass S.2747 and to send it to the President's desk.¹⁵ That legislation is, I would submit, the most direct and immediate way that this Committee can help to improve the FEC.

Let me end with a note of thanks. First, I would like to thank the career staff at the FEC. Without them, the work of the agency would not be possible, and we owe them all a debt of gratitude for their dedicated civil service. Second, I would like to thank the Members of this Committee and their staffs. Congress's oversight of the executive branch, and especially of independent agencies like the FEC, is critical to ensuring the democratic accountability of our government. I know firsthand that this would not be possible without the tireless efforts of dedicated staffers in each of your offices, and that work too should not go unacknowledged.

With that, thank you again for the opportunity to testify. I look forward to answering the Committee's questions.

¹⁴ See American Confidence in Elections Act, H.R. 4563, 118th Cong. § 351 (2023) (making the Administrative Fine Program permanent); For the People Act of 2021, H.R. 1, 117th Cong. § 6006 (2021) (same).

¹⁵ A bill to amend the Federal Election Campaign Act of 1971 to extend the Administrative Fine Program for certain reporting violations, S.2747, 118th Cong. (2023).