FEDERAL ELECTION COMMISSION
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Chairman Steil, Ranking Member Morelle, and members of the Committee, I want to begin by thanking you for holding today's hearing. The Federal Election Commission has been given an especially delicate mission regulating activity at the core of the First Amendment's protections for political speech and association. Precisely because that work is difficult, we do it best in dialogue with Congress and the courts. After more than a decade without a formal oversight hearing, I am honored and gratified to join my colleagues in discussing our efforts with you today.

This is a new Commission. On a body designed for staggered six-year terms, all but one of us have served for less than four. We inherited an agency that had lacked a quorum for virtually the entirety of the 2020 election cycle and where a backlog of enforcement cases and dormant regulatory work had grown to an unprecedented level.

Today, the situation is very different. Taking the gavel on virtually her first day as a commissioner, Shana Broussard drove hard to resolve hundreds of stale enforcement matters and clear the decks for future work. That vital effort has allowed the Commission to focus on long-needed reforms. More than a decade after the D.C. Circuit's decision in *SpeechNow.org v. FEC*, we amended our PAC organizational forms to recognize the existence of Super PACs. We successfully concluded a rulemaking on internet disclaimers that had lain dormant since 2011. We completed

a top-to-bottom review of our auditing procedures. Each of these decisions was made on a resoundingly bipartisan basis.

These successes illustrate the leadership of my colleagues and our willingness to work with each other to find common ground against a challenging legal backdrop.

It is common to begin discussions of the FEC by invoking Judge David Tatel's pointed observation in *AFL-CIO v. FEC* that the Commission is "unique" in that it "has as its sole purpose the regulation of core constitutionally protected activity."[1] That is certainly true. But the late Justice Antonin Scalia put his finger on a deeper problem when he observed that campaign finance law is "so intricate" that he couldn't figure it out.[2]

That complexity is the result of Congress's consistent failure to update the law to respect judicial precedent, with the Commission – and ordinary Americans – caught in the middle.

And it is not new. Back in 1976, in *Buckley v. Valeo,* seven members of the Supreme Court – including Chief Justice Burger and Justices Thurgood Marshall and William Brennan – held that the phrase "for the purpose of influencing an election," the keystone term in the Federal Election Campaign Act, was unconstitutionally vague. "Such a distinction," they noted, "offers no security for free discussion. In these conditions it blankets with uncertainty whatever may be said. It compels the speaker to hedge and trim."[3]

As a result, we are "unique" in another way: we are the only federal agency whose governing statute has been in judicial receivership since its inception. So much of the Act has been held unconstitutional over so long a period of time that, with every

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[1] *Am. Fed'n of Labor-Congress of Indus. Orgs. v. Fed. Election Comm'n*, 333 F.3d 168, 170 (D.C. Cir. 2003).

[2] Tr. of Oral Arg. at 17, *McCutcheon v. Fed. Election Comm'n*, 572 U.S. 185 (Oct. 8, 2013).

[3] *Buckley v. Valeo*, 424 U.S. 1, 43 (1976) (*per curiam*) (internal citation and quotation marks omitted).

passing year, it becomes harder for ordinary Americans – or even most specialists – to understand what is and is not permitted.

There are many downsides to this state of affairs, but I would like to note just one more. Because the text of the Act and the reality of the law are so qualitatively different, it is easy to fall into false certainty about what the law actually is – and all too easy to perceive illegality rather than thorny questions of law, especially where one's political opponents are concerned. Because the Commission's enforcement efforts are driven, in large part, by third-party complaints, there is a clear incentive to use the complaint process and to suggest, either from ignorance or malice, that novel legal theories are in fact "clear" or "obvious," and to blame the Commission when it takes seriously its legal duty to ensure, as the Supreme Court instructed, that "the tie goes to the speaker, not the censor."[4]

Fortunately, while my colleagues and I sometimes disagree on the correct interpretation of the law in particular cases, I believe we share a commitment to simplifying and clarifying the law so that average Americans who wish to participate in the political process may do so without peril. As Justice Anthony Kennedy, writing for the Court in 2010 properly stated, "The First Amendment does not permit laws that force speakers to retain a campaign finance attorney…before discussing the most salient political issues of our day."[5]

Once again, thank you for holding this important hearing. I look forward to the Committee's questions.

[4] *Fed. Election Comm'n v. Wisc. Right to Life, Inc.*, 551 U.S. 449, 474 (2007).

[5] *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 324 (2010).