



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 Trey Trainor, and I have served on the Commission since June 2020.

In thinking about what to talk about at this oversight hearing, I was inclined to provide an overview of the accomplishments of the Federal Election Commission over the past few years. On a bipartisan basis, we reformed an onerous and outdated audit process into one that allows for greater due process and quicker resolutions and issued a significant number of advisory opinions surrounding the use of resources for the safety and security of members of Congress. We also tackled several novel and complex questions of law through the advisory opinion process, which is a critical agency function that fills some of the gaps in the statute created by its tortured history. I also contemplated addressing our push back against the recent scheme, hatched by opponents of free speech, to hide from courts and the public certain information related to the disposition of enforcement matters considered by the Commission. I believe the new policies we have adopted will help right the ship. I am also hopeful that our actions will, going forward, stem the waste of taxpayer money spent to compensate aggrieved parties for the agency’s violations of its obligations under the Freedom of Information Act.

Such topics evidence the good work being done by my colleagues and me and are the stuff that oversight hearings are usually made of. Unfortunately, I am compelled instead draw the attention of this Committee, and thereby that of the American people, to a more disturbing situation that has become increasingly prevalent in in today’s political day and age. To those who have been paying attention, the problem is stark: it’s the growing weaponization of the apparatuses of

government to harass and hinder the political participation of our citizenry in the democratic processes that make America, as President Reagan stated, “the last best hope of mankind...”

The Federal Election Commission has become a weapon, in two specific ways. First, the Commission adopted new procedures that I believe are inconsistent with our statute and, in application, may be violative of the 1st, 5th, and 6th Amendments, and are the gateway to criminalizing ordinary campaign activity. Second, the Commission entertains vague complaints regarding alleged violations of the Federal Election Campaign Act (“FECA”) to the detriment of the rights of innocent respondents, and often while meandering near or over the boundaries of this agency’s jurisdiction.

Make no mistake, the current headlines about the criminal prosecution of political actors reflect a trend that is going to continue for the foreseeable future. Unfortunately, the Commission has become part of that problem. Earlier this year, after significant back and forth, the Commission and the Department of Justice (“DOJ”) entered a new Memorandum of Understanding (“MOU”) regarding how information will be shared between the two agencies. I opposed the adoption of the MOU because I believe that it violates the Constitutional rights of the citizens with whom the Commission interacts.¹

The Commission was established to be an independent executive agency.² As such, the Commission operates outside the normal procedures of the executive branch, and specifically, in a bipartisan manner (the so-called four vote requirement) free of political pressures. However, the new MOU brings the Commission squarely into the fold of other executive agencies that routinely share information amongst themselves. The MOU is harmful to the free, public discourse of ideas, and the mission of transparency at the Commission. Members of the public interacting with the Commission are not given notice that their interactions are memorialized by bureaucrats and could become the basis of a criminal investigation by another law enforcement agency.

This is not just a hypothetical situation. Requests by DOJ for us to stand aside so that they can pursue a target who is also the subject of a complaint before the FEC (“abatement requests”), and for access to documents in the Commission’s possession related to those matters, are on the rise. Since June of 2020, when I joined the Commission, there have been 18 abatement requests related to 33 different matters. Seventeen of those abatement requests, all of which I opposed,

¹ See attached statement from the minutes of the April 19, 2023, meeting of the FEC.

² 52 U.S.C. § 30106(a).

were granted by the Commission, and most of which also included document requests. Critically, in these cases, the Commission acquiesced to DOJ's request not to alert those being investigated that their information had been requested by and provided to DOJ.

As I stated previously, I believe this new MOU retards the 1st, 5th, and 6th Amendment rights of citizens who are actively engaged in the political process. I strongly believe that this information sharing should be halted and that the independence of the FEC should be reaffirmed as the corruption prevention agency that it was originally envisioned. Moreover, the practice of filing complaints with the FEC based on facts and allegations that have already been adjudicated by another entity, such as a state law enforcement or other agency, state attorney general, or congressional committee needs to stop – it's both unfair and a waste of resources.

Secondly, the Commission is seeing a significant number of complaints against a so-called “unknown respondent”; that is a complaint alleging that some person or entity, the identity of whom is unknown to the person filing the complaint, has done something illegal. The Commission has received over 30 of these complaints since 2020. These complaints are problematic for two distinct reasons.

First, an unknown respondent complaint is effectively an outsourcing of the complainant's obligation back to the government, which is not what Congress had in mind when it laid out very specific requirements for a filing of a complaint under FECA. Compounding the problem is that such complaints are typically filed by ideological organizations that see an opportunity to have their leg work done on the taxpayers' tab without regard as to whether the allegations are true, or even if true are within the Commission's statutory jurisdiction.

Take for example the case of Mr. Derek Utley. Mr. Utley was an “unknown respondent” in a matter that ultimately took four and half years to dispose of, and which likely soured him on ever participating in the political process again. What was Mr. Utley's heinous act? He engaged in the constitutionally protected right to anonymous free speech by publishing a Facebook page. His Facebook page, entitled “Elect Trump 2020,” contained his personal views on supporting Donald Trump. So how did this happen? Well, a poorly sourced news article alleged that an unknown person, later identified as Mr. Utley, had spent over \$34,000 on shady Facebook ads. In 2017 a complaint was filed by Common Cause based on this reporting, and in 2019, based solely on the news article, the Commission found reason to believe a violation had occurred and launched

an investigation. The result of the investigation – Mr. Utley had spent \$483 on the Facebook ads, which is protected activity under *Talley v. California*³ and *McIntyre v. Ohio Election Commission*⁴.

Mr. Utley’s case is the textbook example of how the process is becoming the punishment. The ultimate outcome of Mr. Utley’s four- and half-year harassment by the FEC was that his case was closed. It was not closed with an exoneration that that previous finding of reason to believe was erroneous, it was not closed with an apology for him having to expend time and money to respond to bureaucrat’s inquiries about his political activity. It was just unceremoniously closed. All the while, the media outlet that misreported the facts, and the group that filed the complaint without doing its own research, walked away having made an example of Mr. Utley to anyone who dares to share his political views.

In conclusion, I am proud of the bipartisan accomplishments we have made at the FEC; however, at the same time, I am fearful of the continued weaponization of the government against political participation. If this weaponization continues, I fear that American citizens will ultimately choose to forgo in participating in the political process, which would be unfortunate, as their participation is the foundation of our American democracy. Sitting here as an FEC Commissioner, I urge Congress to halt the sharing of information between the FEC and the Department of Justice, and to clarify that only complaints based on actual evidence of a violation by a known respondent can be investigated by the Commission.

Thank you for inviting me to be here today, and I welcome any questions.

³ 362 U.S. 60 (1960).

⁴ 514 U.S. 334 (1995).