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One Hundred Seventeenth Congress of the United States

House of Representatives

COMMITTEE ON HOUSE ADMINISTRATION

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July 18, 2022

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The Hon. Shana M. Broussard
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The Hon. Ellen L. Weintraub
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1050 First Street NE
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Dear Commissioners:

As Chairperson of the Committee charged with Federal Election Commission oversight, I write to request your attention to the matters discussed herein.

The Commission has a central role in administering federal campaign finance law, including public disclosure of funds raised and spent to influence federal elections and enforcement of source and contribution limits. Federal campaign finance jurisprudence, fundraising tactics, and technology have evolved significantly in recent election cycles. The Commission itself has changed over the years, with several Commissioners joining and departing.

In 2019, the Committee provided the Commission with a set of questions regarding its opportunities and challenges, and an interest in being made aware of the Commission’s plans for preparing for the 2020 federal election cycle. The Commission’s answers were forthcoming and valuable. The Committee has also benefitted from the Office of Inspector General’s semiannual reports to Congress and a recent bipartisan staff-level meeting with the Inspector General and his staff.

In anticipation of the 2022 federal election cycle, the Committee again is interested in information regarding the Commission's opportunities and challenges and would benefit from being apprised of the Commission's plans as it prepares for this year's elections.

Enclosed are questions to the Commission. Please transmit your responses by August 19, 2022.

Sincerely,

A handwritten signature in blue ink, appearing to read "Zoe Lofgren", with a long horizontal flourish extending to the right.

Zoe Lofgren
Chairperson

Cc: Ranking Member Rodney Davis

QUESTIONS

1. According to the Office of the Inspector General's ("OIG") Semiannual Report to Congress released in May 2022,¹ there are currently eight outstanding recommendations that are older than six months. Two of these recommendations are more than eight years old and the rest are more than two years old.
 - a. How many of these recommendations are still outstanding?
 - b. Why have these recommendations gone unaddressed for so long?
 - c. How does the Commission plan to address these recommendations?
 - d. How does the Commission plan to ensure that future recommendations are addressed in a timely manner?
2. The FEC recently suffered an information system breach because of issues pertaining to Personal Identity Verification (PIV) cards.² The OIG has provided various recommendations to the Commission regarding PIV cards and relations with contractors. Have those recommendations been implemented?
3. The OIG Semiannual Report also observed that political spending has exploded in recent years, with total spending on federal election campaigns increasing from \$1.6 billion in 1998 to roughly \$14.5 billion in 2020, while the Commission's budget has remained largely static (and has even decreased when adjusting for inflation).
 - a. How, if at all, has the tremendous growth in campaign spending affected the Commission's work?
 - b. If it has affected the Commission's work, are there specific offices or divisions particularly impacted by such growth?
 - c. How would an increase in FEC funding be used to improve the Commission's fulfillment of its mission?
4. Are current policies and procedures for the review of campaign contributions sufficient for the increasing workload the Commission faces? If not, what steps are being taken to update these policies and procedures?
5. The OIG's Semiannual Report also stated that the Commission's reliance on filers to self-identify unlawful foreign contributions poses a national security risk.
 - a. Does the Commission use any other method to identify unlawful foreign contributions?
 - b. How does the Commission plan to address this risk and ensure that the Commission is adequately enforcing the federal ban on foreign contributions?
6. The OIG included cybersecurity in its most recent list of the Commission's "Top Management Challenges."
 - a. What are the top cybersecurity challenges currently facing the Commission?

¹ Off. of the Inspector Gen., Fed. Election Comm'n, *Semiannual Report to Congress* at 12 (May 2022), https://www.fec.gov/resources/cms-content/documents/FEC_OIG_SAR_Oct21-Mar22.pdf.

² Off. of the Inspector Gen., Fed. Election Comm'n, *Investigate Summary I211NV00063: HSPD-12 Personal Identity Verification (PIV) Card Incident* (Nov. 23, 2021).

- b. How are these challenges being addressed?
 - c. What proactive steps are being taken by the Commission to ensure the integrity of its systems in a dynamic cybersecurity environment?
- 7. The OIG recently released a report on an incident in which a Commission employee lost control of a laptop for an extended period.³ Has the Commission updated FEC Policy Number 58-4.3 in the manner recommended by the OIG's report?
- 8. Is there a Memorandum of Understanding between the Commission and the OIG? If no, why not?
- 9. The budget for the Office of the Inspector General is currently included within the larger budget of the Commission. The OIG has pointed to this as a potential independence concern for their office. Do you agree with this assessment? If so, do you have any recommendations on how to address this concern?
- 10. The General Counsel position has been vacant or filled in an "acting" capacity since July 2013. According to the OIG's most recent Semiannual Report, this vacancy "has the potential to put the agency at risk and inhibit the agency to effectively and efficiently meet its mission requirements."
 - a. Do you agree with this assessment?
 - b. What effect has the lack of a permanent General Counsel had on the Commission?
 - c. Earlier this year, the Commission posted for the position of General Counsel. What is the status of that job posting? Is the Commission still looking to fill the role on a permanent basis? Why or why not?
- 11. The Chief Information Office ("CIO") and Staff Director positions have been occupied by the same individual for over a decade. According to the OIG's most recent Semiannual Report, "without a fully dedicated CIO to focus on technological issues to ensure resources are properly allocated and adequate processes are in place for the protection and safeguards of the agency, the agency will remain at risk." This is particularly concerning considering the cybersecurity risks that the Commission currently faces. Do you agree with the OIG's assessment?
- 12. What effect has the lack of a permanent CIO had on the Commission, including on the Commission's ability to protect its information systems from cybersecurity threats?
- 13. Has the Commission posted, or will it post, an opening to hire a CIO? If no, why not?
- 14. What are the Commission's current vacancies in staffing, and what, if anything, is being done to fill those vacancies?

³ Off. of the Inspector Gen., Fed. Election Comm'n, *Investigative Summary I22INV00010: Lost FEC Laptop Reported by an Agency Employee* (June 13, 2022).

15. What effects, if any, has the prevalence of “acting” officers within positions of leadership in the agency had on morale? What effects has it had on organizational decision-making?
16. In 2019, it was reported that the Commission had five vacancies and various officials serving in “acting” capacities among the leadership-level staff.⁴ Many of these openings had apparently gone unfilled for years. Since then, all but one has been filled. How was this accomplished in such a short period of time after such a long delay?
17. How many attorneys are currently serving in the Office of General Counsel (“OGC”), and in the Litigation, Enforcement, Policy, and Administrative Law divisions, respectively? How do those numbers compare to the size of each of those Divisions 10 years ago?
18. If given the authority to create Senior Executive Service (“SES”) Positions as recommended in the 2021 Legislative Recommendations, how would the Commission utilize this authority? How would this help fulfill the mission of the Commission? How would the Commission ensure that requiring approval from the Office of Personnel Management for the Commission’s SES placements does not compromise the Commission’s independence?
19. What committees exist at the Commission, and what is each committee’s purpose?
20. For each committee listed in Question 19, how many times has it met each year since 2019? Please provide a copy of any agendas and minutes from these committee meetings.
21. According to the “Status of Enforcement – Fiscal Year 2022, First Quarter” memorandum from the Office of General Counsel, as of February 8, 2022, there was a caseload of 289 enforcement cases, 119 of which were awaiting Commission action.
 - a. How many enforcement cases are on the Commission’s enforcement docket as of the date of this letter?
 - b. How many of those cases are awaiting Commission action?
 - c. How would the Commission characterize its progress in reducing its enforcement backlog since May 2019?
 - d. How does the Commission plan to address its remaining enforcement backlog?
22. In the Minutes of an Open Meeting from Sept. 15, 2016, then-Chair Petersen stated that, without objection, the OGC was “directed to prioritize cases involving allegations of foreign influence.” What is the status of this direction to the OGC? Does the Commission have other enforcement priorities?
23. How many Matters Under Review (“MURs”) are considered in a typical Executive Session? Please provide an estimate of the percentage of matters that are held over between Executive Sessions.

⁴ Dave Levinthal, *At the Federal Election Commission, No Watchdog for the Watchdogs*, CTR. FOR PUB. INTEGRITY (Apr. 3, 2019), <https://publicintegrity.org/politics/fec-elections-watchdog/>.

24. Please list all enforcement matters, excluding alternative dispute resolution and administrative fines matters, in which the Commission has imposed a civil penalty since May 1, 2019 as a result of violations detected by the Commission “in the normal course of carrying out its supervisory responsibilities”? 52 U.S.C. § 30109(a)(2). For each such matter, provide the MUR number and the amount of the civil penalty imposed.
25. From May 1, 2019 to the present, how many enforcement actions were initiated as a result of:
- Complaint-generated matters?
 - Internally-generated matters?
 - External referrals?
 - Sua sponte* submissions?
26. How many enforcement cases, organized by election cycle, are still unresolved and not yet closed?
27. How many Administrative Fines cases has the Commission closed since May 1, 2019? What is the total civil penalty amount imposed by the Administrative Fines program since May 1, 2019?
28. How many MURs has the Commission closed since May 1, 2019?
29. How many and what percentage of the MURs in Question 28 were resolved exclusively on a tally vote?
30. For purposes of this question, assume a “deadlocked vote” is an equally divided vote of the Commission or any other vote that lacks four affirmative votes. Of MURs considered in Executive Session since May 1, 2019 and that are now closed, how many and what percentage of the MURs included at least one deadlocked vote of the Commission during Executive Session? Please provide, categorized by year since 2019, the count and percentages. Please also provide the MUR number for each MUR that included at least one deadlocked vote.
31. For purposes of this question, assume a “deadlocked vote” is an equally divided vote of the Commission or any other vote that lacks four affirmative votes. Of MURs considered in Executive Session since May 1, 2019 and that are now closed, how many and what percentage of the MURs deadlocked on all votes taken during Executive Session, other than a vote to close the file and send the appropriate letter(s)? Please provide, categorized by year since 2019, the count and percentages. Please also provide the MUR numbers and MUR subject of the cases that deadlocked on all votes taken in Executive Session (other than a vote to close the file and send the appropriate letter(s)).
32. Once the Commission deadlocks on a recommendation from the Office of General Counsel, is it the Commission’s position that the Office of General Counsel should not make the same recommendation in an analogous case?

33. Since the Supreme Court’s decision in *Citizens United*, how many times has the Commission found a violation of the coordination regulations? Please provide the MUR numbers.
34. Since May 1, 2019, how many enforcement cases has the Commission pursued through litigation after attempting conciliation?
35. What is the current relationship between the Commission and the Department of Justice regarding enforcement matters? Do Commission enforcement staff have the ability to consult with Department of Justice staff where appropriate?
36. The Memorandum of Understanding (“MOU”) between the Department of Justice and Commission was executed in 1977. Following passage of the Bipartisan Campaign Reform Act, according to a GAO report, Department of Justice officials “abrogated” the MOU, but have continued to follow the “spirit of the agreement.”⁵ There have been efforts to update the MOU in 2003, 2007, and 2012, but the agencies were not able to agree on proposed revisions.⁶ What is the status of negotiations with the Department of Justice on an updated MOU, if any?
37. Excluding civil monetary penalty adjustments for inflation, how many rulemakings has the Commission completed since May 1, 2019?
38. REG 2020-05 regarding Independent Expenditure Reporting currently has an Interim Final Rule in place. Comments were being accepted on this proposal until July 14, 2022. When will the Commission announce the changes (if any) being made to the Interim Final Rule in light of those comments?
39. What further action does the Commission anticipate taking on REG 2011-02 concerning internet communication disclaimers? When does it anticipate taking this further action, if any?
40. Campaign advertising on streaming television (including but not limited to connected television and over-the-top television services) is increasing dramatically. What steps are the Commission taking to ensure transparency of paid campaign advertising on these forms of television, particularly in the 2022 and 2024 election cycles?
41. What steps are the Commission taking to provide clarity regarding the receipt and spending of cryptocurrency by federal committees?
42. In the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283, 134 Stat. 3388, Congress directed that certain beneficial ownership information be reported to the Treasury Department and be made available

⁵ Gov’t Accountability Off., *Campaign Finance: Federal Framework, Agency Roles and Responsibilities, and Perspectives* 38, GAO-20-66R Campaign Finance (Feb. 3, 2020), available at <https://www.gao.gov/assets/gao-20-66r.pdf>.

⁶ *Id.*

through appropriate requests to federal agencies engaged in law enforcement. 134 Stat. at 4614. Given the use of shell companies and other corporate pass-throughs by their beneficial owners to engage in serious violations of campaign finance law,⁷ how is the Commission collaborating with the Treasury Department to utilize the beneficial ownership information reported under this provision?

43. Since 2019, eight different proposed rulemakings have been opened for public comment and received comments, only for the Commission to take no further action.⁸
 - a. What is the status of these and other similar proposed rulemakings?
 - b. Does the Commission anticipate taking any further action on these matters?
44. The Commission recently failed to approve an interim final rule implementing the Supreme Court's recent decision in *Federal Election Commission v. Cruz*. Why did the Commission fail to approve what appears to be a straightforward vote to implement a Supreme Court ruling?
45. Since May 1, 2019, how many requests for advisory opinions lacked four affirmative votes to provide an answer? Please provide the numbers and advisory opinion citations by year, if any.
46. Why does the Commission permit advisory opinion requesters to appear before the Commission but does not permit advisory opinion commenters to do so?
47. In Advisory Opinion 2017-07 (Sergeant at Arms), the Commission considered information from the House Sergeant at Arms about the threats faced by Members of Congress due to their status as federal officeholders, and the recommendation of the Capitol Police that Members of Congress install or upgrade residential security systems to protect themselves and their families. In light of that information, the Commission concluded that certain costs of installing or upgrading home security systems would constitute ordinary and necessary expenses incurred in connection with Members' duties as federal officeholders, and that therefore Members of Congress may use campaign funds to pay for reasonable costs associated with home security systems.⁹ More recently, the Commission has evaluated both the heightened threat environment faced by Members of Congress collectively, and specific incidents of threats to members individually, to determine that other security-related expenses could be paid for with campaign funds.¹⁰ Is it an accurate summary of the Commission's advisory opinion guidance that the use of campaign funds for certain

⁷ See, e.g., Press Release, Dep't of Justice, *Former Government Contractor Executives Indicted for Unlawful Campaign Contributions* (Feb. 10, 2022), <https://www.justice.gov/opa/pr/former-government-contractor-executives-indicted-unlawful-campaign-contributions>; Press Release, Dep't of Justice, *Lev Parnas And Igor Fruman Charged With Conspiring To Violate Straw And Foreign Donor Bans* (Oct. 10, 2019), <https://www.justice.gov/usao-sdny/pr/lev-parnas-and-igor-fruman-charged-conspiring-violate-straw-and-foreign-donor-bans>; Liam Stack, *Fugees Rapper Pras Michel and Financier Charged in Illegal Scheme to Raise Money for Obama*, N.Y. TIMES (May 10, 2019), <https://www.nytimes.com/2019/05/10/us/pras-michel-jho-low-campaign-finance.html>.

⁸ See, e.g., REG 2021-01; REG 2020-02; REG 2019-01.

⁹ See Advisory Opinion 2017-07 (Sergeant at Arms) at 3.

¹⁰ See Advisory Opinions 2022-02 (W. Gregory Steube); 2021-03 (NRSC & NRCC).

security-related expenses is permissible under the Act and Commission regulations and would not constitute a prohibited conversion of campaign funds to personal use?

48. Several Commissioners have cited looming statutes of limitations as a justification to vote against finding a reason to believe that a violation has occurred.¹¹

- a. How many cases on the Commission's enforcement docket are imperiled by a looming statute of limitations?
- b. Does the Commission support extending the applicable statute of limitations?
- c. If so, what does the Commission believe a reasonable statute of limitations would be?

49. In at least 22 cases, the Commission's Office of General Counsel recommended that the Commission find reason to believe that former President Trump, his committee, or his family members violated federal election laws.¹² In each instance, three commissioners voted against finding reason to believe that a violation occurred. This indicates a significant disconnect between the Commission's non-partisan staff and those three commissioners. To what does the Commission attribute these repeated disagreements between the Office of General Counsel and its commissioners?

50. These 22 cases create the appearance that the three commissioners are voting with partisan considerations in mind. For example, the Commission did not find reason to believe a violation occurred in a case alleging misreported vendor payments by former President Trump's committee, with all three commissioners voting against the Office of General Counsel's recommendation to proceed.¹³ The Commission did, however, find reason to believe that a violation occurred in an apparently analogous fact pattern involving Hillary Clinton's presidential campaign committee.¹⁴ How does the Commission plan to combat the perception that it selectively enforces (or fails to enforce) the law based on partisan considerations?

51. *Citizens for Responsibility and Ethics in Washington v. FEC* invalidated and vacated a longstanding Commission regulation governing disclosure of contributions received by persons, other than political committees, which make independent expenditures.¹⁵ Vacatur

¹¹ See, e.g., Stmt. of Reasons of Chair Dickerson & Comm'rs Cooksey & Trainor at 1, MUR 7425 (Donald J. Trump Found.) (Feb. 22, 2022); Stmt. of Reasons of Vice Chair Dickerson & Comm'rs Cooksey & Trainor at 2, MUR 7623 (Make Am. Great Again PAC (F/K/A Donald J. Trump for President, Inc.)) (Nov. 22, 2021); Stmt. of Reasons of Vice Chair Dickerson & Comm'rs Cooksey & Trainor at 1, MUR 7324 (A360 Media, LLC F/K/A Am. Media, Inc.) (June 28, 2021); Stmt. Of Reasons of Comm'rs Cooksey & Trainor at 1, MUR 7313 (Make Am. Great Again PAC (F/K/A Donald J. Trump for President, Inc.)) (Apr. 26, 2021); Stmt. of Reasons of Chairman Trainor at 4-5, MUR 7422 (Greitens for Missouri, *et al.*) (Aug. 28, 2020).

¹² See Matters Under Review 6961, 6992, 7037, 7094, 7096, 7098, 7100, 7111, 7119, 7135, 7147, 7151, 7159, 7207, 7220, 7255, 7265, 7266, 7313, 7319, 7324, 7332, 7339, 7340, 7350, 7351, 7364, 7366, 7379, 7390, 7407, 7425, 7540, 7571, 7609, 7623, 7637, 7736, 7737, 7758, 7784, Pre-MUR 611. See also Roger Sollenberger, *How the Hell Is Trump 43-0 vs. Campaign Finance Watchdogs?*, DAILY BEAST (Mar. 2, 2022), <https://www.thedailybeast.com/donald-trump-isnow-miraculously-43-0-against-partisan-fec>.

¹³ Certification ¶ 1, MUR 7784 (Make Am. Great Again PAC) (May 10, 2022).

¹⁴ See Certification, MURs 7291 & 7449 (DNC Servs. Corp., *et al.*) (Feb. 17, 2022); Conciliation Agreement, MURs 7291 & 7449 (DNC Servs. Corp., *et al.*) (Feb. 22, 2022).

¹⁵ See 316 F. Supp. 3d 349 (D.D.C. 2018), *aff'd*, 971 F.3d 340 (D.C. Cir. 2020).

of the rule became effective on September 18, 2018. The Commission released public guidance shortly after the District Court’s vacatur became effective on October 4, 2018.¹⁶ On June 8, 2022, Chairman Dickerson and Commissioners Cooksey and Trainor released a “Policy Statement” expressing the position that the statute is “effectively unenforceable” without the Commission pursuing “clear direction” in the form of new regulation and an intent to exercise prosecutorial discretion to dismiss matters involving conduct preceding or contemporaneous with the June 8, 2022 Statement.¹⁷

- a. Both the District Court and D.C. Circuit reviewed the now-vacated rule under the two-step framework of *Chevron U.S.A. Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984), which provides that a court will accept an agency’s reasonable construction of an ambiguous statutory provision, but “[i]f the intent of Congress is clear, that is the end of the matter.” *Chevron*, 467 U.S. at 842. Both the District Court and D.C. Circuit held that the statutory text was “unambiguous” and that the now-vacated rule conflicted with that clear statutory text. If the statute is unambiguously clear, is the position of the Policy Statement, which finds such ambiguity that the statute is “effectively unenforceable,” in conflict with the determinations of *CREW v. FEC*?
 - b. Is the Policy Statement an indication to the regulated community that the Commission will not enforce the requirements of 52 U.S.C. §§ 30104(c)(1), (c)(2)(C)?
 - c. The June 8, 2022 Statement was released 1,343 days after the October 4, 2018 Commission guidance following the vacatur of the prior regulation. Are the interests of “due process” and “fair notice” advanced by providing conflicting guidance so long after the Commission has made public its position on the impact of the ruling?
52. A recent news article discussed an appearance by Commissioner Trainor at a local county Republican party event where he was billed as a member of the “Trump Elections Team” before speaking at an “election integrity” event in November 2021.¹⁸ Commissioner Trainor has not recused himself from considering matters involving former President Trump’s campaign or related entities.
- a. What interests are served by recusal rules?
 - b. Do new commissioners receive training on their recusal obligations, including weighing the appearance of a conflict?
 - c. Are there any annual ethical training requirements imposed on commissioners that would include recusal obligations?

¹⁶ Press Release, Fed. Election Comm’n, *FEC provides guidance following U.S. District Court decision in CREW v. FEC*, 316 F. Supp. 3d 349 (D.D.C. 2018) (Oct. 4, 2018), <https://www.fec.gov/updates/fec-provides-guidance-following-us-district-court-decision-crew-v-fec-316-f-supp-3d-349-ddc-2018/>.

¹⁷ POL’Y STMT. OF CHAIRMAN ALLEN DICKERSON, & COMM’RS SEAN J. COOKSEY & JAMES E. “TREY” TRAINOR, III CONCERNING THE APPLICATION OF 52 U.S.C. § 30104(c) at 5, 6 (June 8, 2022), https://www.fec.gov/resources/cms-content/documents/CREW_contributions_earmarked_political_purposes_Dickerson_Cooksey_Trainor_06082022.pdf.

¹⁸ Madison Hall, *A Trump-appointed official who gets an important vote on whether Trump broke election laws spoke at a Texas GOP event where he was billed as a part of the 'Trump Elections Team'*, BUSINESSINSIDER (June 30, 2022, 5:44 P.M.), <https://www.businessinsider.com/trump-election-integrity-trey-trainor-federal-election-commission-fec-2022-6>.

- d. What internal procedures or mechanisms are in place to ensure recusal? Please direct the Committee to any relevant ethical rules, Directives, or procedures.
 - e. Do the commissioners take advantage of any such procedures or mechanisms?
 - f. Should the recusal obligations of commissioners be strengthened?
53. What are the greatest challenges to the Commission's ability to fulfill its mission and mandate?