

ATTACHMENT I

SUPPLEMENTAL RESPONSES OF VICE CHAIRMAN SEAN J. COOKSEY AND COMMISSIONERS ALLEN J. DICKERSON AND JAMES E. “TREY” TRAINOR, III

14. *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.*

Using a Commission vote database maintained by the Commission’s Secretary, an Enforcement Division case management database, and the Enforcement Query System on the FEC’s website, all MURs (as defined in response to Question 12 at note 22 above) that were considered by the Commission in Executive Session after April 1, 2019, and that were closed as of May 1, 2023, were examined. 451 such MURs were identified. 289 of these MURs, or 64 percent, had at least one vote after January 1, 2019, with no position receiving the support of four or more Commissioners, which the Commission has typically called a “split vote.” (Split votes are most often 3-3 or 2-2, and can also be any other combination that lacks four or more votes in the affirmative or negative.)

FECA requires four Commissioners’ votes for certain decisions, without regard to how many Commissioners are currently serving. Consequently, the Commission views any position supported by four or more Commissioners as a Commission decision for that position, and not as a “deadlocked” vote.¹ However, the question seeks information about votes where there were not four *affirmative* votes.² Under this view, Commission votes of 2-4, for example, are viewed as “deadlocked” votes. As a result of conferring with House Administration Committee staff, FEC staff agreed to compile the data related to cases with votes without four affirmative votes and present it separately in footnotes in response to Questions 14 and 15.³

¹ Congressional Research Service did not consider four or more negative votes to be a deadlocked vote in its work in 2009 or 2015. See CRS, “The Federal Election Commission: Enforcement Process and Selected Issues for Congress,” R44319, at 10 n.44 (Dec. 22, 2015) and CRS, “Deadlocked Votes Among Members of the Federal Election Commission (FEC): Overview and Potential Considerations for Congress,” R40779, at 5 & 10-11 (Oct. 6, 2009).

² In one such case, for example, an initial motion to dismiss the case as a matter of prosecutorial discretion was defeated by a vote 1-5, and the case then proceeded through multiple unanimous votes through reason-to-believe and probable-cause-to-believe findings, and was resolved by a conciliation agreement with admissions and a substantial civil penalty. See MUR 6394 (Pingree for Congress). The initial vote of 1-5 lacks four affirmative votes and is therefore responsive to this question. The Commission, however, would not consider this case an example of a “deadlocked” case.

³ If additional cases with votes that lack four affirmative votes are also considered responsive to Question 14, an additional 24 MURs would be responsive for the entire period, for a total of 313 MURs or 69 percent.

The following chart breaks down this data by calendar year. Some MURs are subject to one vote in one Executive Session, while others can be considered in multiple Executive Sessions that might fall in different years. The data below include each MUR considered by the Commission in Executive Session in each of the calendar years, so some MURs have been counted more than once.

Calendar Year	Closed MURs with At Least One Split Vote Considered in Executive Session	Closed MURs Considered in Executive Session	Percentage (At Least One Split/ Closed MURs in Exec.)
4/1-12/31 2019 ⁴	72	85	85%
2020 ⁵	8	11	73%
2021 ⁶	137	200	69%
2022 ⁷	101	173	60%
1/1-4/30 2023 ⁸	11	22	50%
Total for Entire Period ⁹	289	451	64%

⁴ The 2019 data cover the period from April 1, 2019 to December 31, 2019, which begins after the period covered in the Commission's May 1, 2019 response to questions from the Committee on House Administration.

During 2019, the Commission was without a quorum of Commissioners from September 1, 2019 to December 31, 2019.

⁵ During 2020, the Commission had a quorum from June 5 to July 3 and from December 15 to 31, 2020.

⁶ If additional cases with votes that lack four affirmative votes are also considered responsive to Question 14, an additional nine MURs would be responsive for 2021, for a total of 146 MURs or 73 percent.

⁷ If additional cases with votes that lack four affirmative votes are also considered responsive to Question 14, an additional six MURs would be responsive for 2022, for a total of 107 MURs or 62 percent.

⁸ If additional cases with votes that lack four affirmative votes are also considered responsive to Question 14, an additional nine MURs would be responsive for 2023, for a total of 20 MURs or 91 percent.

⁹ If additional cases with votes that lack four affirmative votes are also considered responsive to Question 14, an additional 24 MURs would be responsive for the entire period, for a total of 313 MURs or 69 percent.

Attachments G and H include additional information about the 289 MURs described above.

For several reasons, these figures and associated statistics overstate, and do not accurately represent, the proportion of “deadlock vote” matters at the Commission. This is principally for two reasons. First, as requested, this information reflects the percentage of matters that include at least one motion that garnered fewer than four votes, without regard to the nature, scope, and timing of the vote relative to the entire matter. For example, when considering a matter in executive session, it is common for one or more Commissioners to move a particular question that he or she knows is unlikely to garner four affirmative votes. This may be for the purpose of establishing the Commissioner’s first preferred outcome, testing a proposition’s support, or otherwise establishing a voting record. As a result, many matters for which the Commission reaches broad agreement on the ultimate outcome may contain one or more votes on issues that garner fewer than four affirmative votes. In our view, this reflects the natural consequence of serious deliberation at the Commission and is not an accurate measure of division at the Commission.

Second, the information responsive to this question further overstates the existence of evenly divided votes because it includes only those matters considered in Executive Session, not those resolved on a tally vote. As a result, it excludes 168 matters where the Commission resolves a matter on a single vote carried by at least four Commissioners—often a unanimous vote. See Question 13. Indeed, it is only matters over which there is some initial disagreement that are considered in Executive Session, and therefore such matters are not representative of the Commission’s matters as a whole. Therefore, limiting the question only to matters considered in Executive Session skews the statistic and may indicate a greater proportion of “deadlock votes” than is true. If the 168 matters resolved by a tally vote were included, the percentage of matters resolved in the subject time period with at least one “deadlock vote,” as defined by this question, would fall further from 64 percent to 46.7 percent.

15. *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)).*

Of the 451 MURs that were considered by the Commission in Executive Session after April 1, 2019, and that were closed as of May 1, 2023, 64 of these MURs, or 14 percent, had

split votes (as defined in response to Question 14) on all votes taken during the Executive Session, other than a vote to close the file.¹⁰

Calendar Year	Closed MURs with All Split Votes Considered in Executive Session	Total Closed MURs Considered in Executive Session	Percentage (All Split/ Closed MURs in Exec.)
4/1-12/31/ 2019 ¹¹	20	85	24%
2020 ¹²	3	11	27%
2021 ¹³	28	200	14%
2022 ¹⁴	22	173	13%
1/1-4/30 2023	1	21	5%
Total for Entire Period ¹⁵	64	451	14%

The MURs responsive to Question 15 consist of matters where the votes on all substantive issues were split votes, other than votes to close the files. These 64 “all split” MURs were also responsive to Question 14, as MURs with at least one split vote. Attachment F includes additional information about the 64 “all split” MURs described above.

¹⁰ If additional cases with votes that lack four affirmative votes are also considered responsive to Question 15, an additional 15 MURs would be responsive for the entire period, for a total of 79 MURs or 17 percent.

¹¹ The period from April 1, 2019 to December 31, 2019 begins after the period covered in the Commission’s May 1, 2019 response to questions from the Committee on House Administration.

During 2019, the Commission was without a quorum of Commissioners from September 1, 2019 to December 31, 2019.

¹² During 2020, the Commission had a quorum from June 5 to July 3 and from December 15 to 31, 2020.

¹³ If additional cases with votes that lack four affirmative votes are also considered responsive to Question 15, an additional five MURs would be responsive for 2021, for a total of 33 MURs or 17 percent.

¹⁴ If additional cases with votes that lack four affirmative votes are also considered responsive to Question 15, an additional five MURs would be responsive for 2022, for a total of 27 MURs or 16 percent.

¹⁵ If additional cases with votes that lack four affirmative votes are also considered responsive to Question 15, an additional 15 MURs would be responsive for the entire period, for a total of 79 MURs or 18 percent.

Consistent with our supplemental response to Question 14, we note again that this calculation of the Commission's voting record likely overstates and does not accurately reflect the proportion of matters where the Commission evenly divides on all issues. As was also true with the statistics provided in response to Question 14, the exclusion of 168 matters resolved by tally vote lowers the relevant denominator of the calculation and causes the percentage of evenly divided matters to appear higher than is true. Indeed, it is only matters over which there is some initial disagreement that are considered in Executive Session, and therefore such matters are not representative of the Commission's matters as a whole. If matters resolved by a tally vote were included, the percentage of matters resolved in the subject time period with all split votes excepting a vote to close the file would fall from 14 percent to 10.3 percent.