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One Hundred Eighteenth  
**Congress of the United States**  
House of Representatives

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May 24, 2023

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The Hon. Ellen L. Weintraub  
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Dear Commissioners:

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

In 2022, 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 2022 federal election cycle. The Committee is again interested in information regarding the Commission's opportunities and challenges, as well as updated information in response to our prior questions.

Enclosed are questions to the Commission. Please be sure to respond to each question and sub-question asked and transmit your responses by June 16, 2023.

Sincerely,



Joseph D. Morelle  
Democratic Ranking Member

Cc: Chairman Bryan Steil

## QUESTIONS

1. According to the Office of the Inspector General's ("OIG") Semiannual Report to Congress released in November 2022,<sup>1</sup> there are currently seven outstanding recommendations that are older than six months.
  - a. How many of these recommendations are still outstanding? For how long have they been 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 OIG Semiannual Report listed the five top management challenges that it believes the Commission faces.
  - a. Does the Commission agree with the OIG's assessment?
  - b. The OIG included cybersecurity in its most recent list of the Commission's "Top Management Challenges." What are the top cybersecurity challenges currently facing the Commission?
  - c. 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. The Commission's September 12, 2022, response to the Committee's question on unlawful foreign contributions identified several methods the Commission utilizes to investigate and identify such donors beyond reliance on filers to self-disclose. From May 1, 2019, to present, how many unlawful foreign contributions has the Commission identified through these methods?
3. The Partnership for Public Service's 2022 Best Places to Work in the Federal Government report ranks the Commission as 26 out of 30 among small agencies.<sup>2</sup> While this is a modest increase from the 2021 rankings, there is ample room for improvement. What challenges contribute to this poor ranking, its impact on Commission's management of human capital, and the Commission's ability to further its mission? What is the Commission doing to address these concerns?
4. What committees exist at the Commission, and what is each committee's purpose?
5. For each committee listed in Question 4, how many times has it met each year since 2019? Please provide a copy of any agendas and minutes from these committee meetings.
6. The Committee's July 18, 2022, letter and Commission responses discussed the acting status of the General Counsel position, which has been in an "acting" capacity since July 2013. Specifically, the letter noted that early in 2022, the Commission posted for the position of General Counsel.

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<sup>1</sup> OFF. OF THE INSPECTOR GEN., FED. ELECTION COMM'N, SEMIANNUAL REPORT TO CONGRESS 11 (November 2022), [https://www.fec.gov/resources/cms-content/documents/FEC\\_OIG\\_SAR\\_Apr-Sep\\_2022.pdf](https://www.fec.gov/resources/cms-content/documents/FEC_OIG_SAR_Apr-Sep_2022.pdf).

<sup>2</sup> See *Fed. Election Comm'n*, P'SHIP FOR PUB. SERV., <https://bestplacetowork.org/rankings/detail/?c=LF00> (last accessed May 18, 2023).

- a. Responding to the inquiry about the status of that job posting, the Commission noted that, “On September 30, 2021, the Commission began the hiring process for a permanent General Counsel. Applications have been received and remain under active consideration at the Commission. Consequently, the Commission is limited in what further information about its intentions with respect to the pending applications can be provided at this time. The Commission anticipates a decision about the pending applications soon.” What is the status of that job posting?
  - b. Is the Commission still looking to fill the role on a permanent basis? Why or why not?
7. According to Status of Enforcement—Fiscal Year 2023, Second Quarter (01/01/23-03/31/23), memorandum from the Office of General Counsel, as of April 28, 2023, there was a caseload of 184 enforcement cases, 19 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 cases are active and inactive. Please explain how you designate a case as “inactive” or “active.”
  - c. How many of those cases are awaiting Commission action? How long have those matters been awaiting Commission action?
  - d. The Status of Enforcement notes that the Office of General Counsel met its internal circulation goal for First General Counsel Reports (“FGCR”) 74% of the time, which is down from the prior quarter. What contributes to delayed circulation of FGCRs?
  - e. How would the Commission characterize its progress in reducing its enforcement backlog since September 2022? What hurdles has the Commission faced in reducing the enforcement backlog?
  - f. When quorum was restored in December 2020, the Commission’s backlog was 446 cases. Since then, how many matters has the Commission dismissed where OGC recommended a reason to believe finding? How many matters did the Commission deadlock<sup>3</sup> and then subsequently closed the file? Please provide MUR numbers.
8. 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 matter, provide the MUR number and the amount of the civil penalty imposed.
9. From May 1, 2019, to the present, how many enforcement actions were initiated as a result of:
  - a. Complaint-generated matters?
  - b. Internally-generated matters?
  - c. External referrals?
  - d. *Sua sponte* submissions?

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<sup>3</sup> For purposes of this question, assume a “deadlock” is an equally divided vote of the Commission or any other vote that lacks four affirmative votes.

10. How many enforcement cases, organized by election cycle, are still unresolved and not yet closed?
11. 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?
12. How many MURs has the Commission closed since May 1, 2019?
13. How many and what percentage of the MURs in Question 12 were resolved exclusively on a tally vote?
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.
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)).
16. Since the Supreme Court’s decision in *Citizens United v. Federal Election Commission*,<sup>4</sup> how many times has the Commission found a violation of the coordination regulations?<sup>5</sup> How many times has OGC recommended reason to believe a violation of the coordination regulations occurred, but the Commission did not adopt the recommendation? Please provide the MUR numbers and votes by commissioner name.
17. Since the Supreme Court’s decision in *Citizens United v. Federal Election Commission*, how many times has the Commission found a violation involving corporate contributions? How many times has OGC recommended reason to believe a prohibited corporate contribution occurred, but the Commission did not adopt those recommendations? Please provide the MUR numbers and votes by commissioner name.

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<sup>4</sup> *Citizens United v. Fed. Election Comm’n*, 558 U.S. 310 (2010).

<sup>5</sup> For this question, please include cases in which the Commission found reason to believe that a respondent violated the coordination regulations, as well as cases where the Commission found violations of other provisions, such as the amount limitations or corporate contribution prohibition, based on the definition of coordination under 11 C.F.R. § 109.20 or coordinated communication under 11 C.F.R. § 109.21 in the regulations being satisfied, thus resulting in an excessive or prohibited in-kind contribution.

18. Since the Supreme Court’s decision in *Citizens United v. Federal Election Commission*, how many times has the Commission found a violation of the political committee status rules (e.g., registration and reporting obligations)? How many times has OGC recommended reason to believe a violation of the political committee status rules occurred, but the Commission did not adopt those recommendations? Please provide the MUR numbers and votes by commissioner name.
19. Since *Bluman v. Federal Election Commission*,<sup>6</sup> how many times has the Commission found a violation of the foreign nationals prohibition? How many times has OGC recommended reason to believe a violation of the foreign nationals prohibition occurred, but the Commission did not adopt those recommendations? Please provide the MUR numbers and votes by commissioner name.
20. Several Commissioners have cited looming statutes of limitations as a justification to vote against finding a reason to believe that a violation has occurred.<sup>7</sup> How many cases on the Commission’s enforcement docket are imperiled by a looming statute of limitations?
21. In the Commission’s September 12, 2022, responses, the Commission avowed that “[r]ecusal rules under the Standards of Ethical Conduct for Employees of the Executive Branch serve the interest of ensuring that every citizen can have complete confidence in the integrity of the Federal Government.” In recent months, Commissioner Trainor has either “liked”<sup>8</sup> or “retweeted”<sup>9</sup> several social media posts that support or endorse the 2024 campaign of former President Trump. Commissioner Trainor also “liked” a social media post critiquing the April indictment and arrest of the former president related to, among other things, alleged campaign finance violations in New York.<sup>10</sup>
- Are the interests of ensuring the American public’s confidence served by the appearance of partiality on the part of commissioners?
  - Do the Commission’s ethics rules apply to social media activity of the commissioners or other senior staff?
  - What rules or standards, if any, apply to Commissioners’ comments related to ongoing criminal investigations or prosecutions?

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<sup>6</sup> *Bluman v. Fed. Election Comm’n*, 800 F. Supp. 2d 281 (D.D.C. 2011), *aff’d* 132 S. Ct. 1087 (2012).

<sup>7</sup> 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).

<sup>8</sup> @ByronDonalds, TWITTER (May 11, 2023, 12:21 AM), <https://twitter.com/ByronDonalds/status/1656514884517896193>.

<sup>9</sup> @BuckSexton, TWITTER (Feb. 23, 2023, 9:31AM), <https://twitter.com/BuckSexton/status/1628764615143301120>.

<sup>10</sup> @JackPosobiec, TWITTER (Apr. 3, 2023, 9:06 PM), <https://twitter.com/JackPosobiec/status/1643057313727627265>.

22. In a statement dated April 19, 2023, Commissioner Trainor wrote, in reference to the Memorandum of Understanding (“MOU”) between the Commission and the Department of Justice, that “[n]ot since the Alien and Sedition Acts of 1789 has there been a more grievous affront to the First Amendment than what we have before us today.”<sup>11</sup>
- What value does the Commission derive from the MOU?
  - Will the MOU enhance the Commission’s ability to fulfil its legal obligations and pursue its strategic objectives?
23. The Commission’s September 12, 2022, response to a question about the Corporate Transparency Act (“CTA”)<sup>12</sup> noted that further information would be forthcoming following the publication of a FinCEN NPRM, which would include whether agencies like the Commission are “engaged in . . . law enforcement activity.” What updates does the Commission have to share on implementing the CTA?
24. The Commission adopted revised audit procedures during the May 4, 2023, open meeting, which significantly revised the audit and accompanying legal review processes. The relevant documents for this meeting were released approximately 7 days before the open meeting, and the final, adopted drafts were released less than 24-hours before the open meeting. The Commission received a comment from a member of Congress requesting that the Commission delay final consideration and provide for additional public comment. The Commission, however, rejected a motion to delay the final vote and provide for a public comment period.
- The relevant changes are not effective until the following election cycle. Given the significant period between potential adoption and implementation of the procedures, what basis was there for rejecting the proposal to authorize a comment period on the final documents?
  - How does the Commission balance between the availability of public comment and the approval of late submitted documents, like the revised audit procedures documents?
25. 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.
26. The Committee’s Chair submitted two separate statements opining on the substance of the request in Advisory Opinion 2023-01 (Barragán).<sup>13</sup> Communications related to this request were disclosed as *ex parte* communications on the Commission’s website. Other independent agencies, notably the Federal Communications Commission (“FCC”), impose rules governing *ex parte* communications with FCC Members and employees, and those

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<sup>11</sup> Stmt. of Comm’r James E. “Trey” Trainor III regarding the Memorandum of Understanding between the Dep’t of Justice and the Fed. Election Comm’n (Apr. 19, 2023), [https://www.fec.gov/resources/cms-content/documents/Trainor-Comments-on-MOU-between-FEC-and-DOJ-for-19-April-2023-FINAL-FOR-PUBLICATION\\_2.pdf](https://www.fec.gov/resources/cms-content/documents/Trainor-Comments-on-MOU-between-FEC-and-DOJ-for-19-April-2023-FINAL-FOR-PUBLICATION_2.pdf).

<sup>12</sup> Pub. L. 116-283 §§ 6401-6403, 134 Stat. 3388, 4604-4625 (2021).

<sup>13</sup> The Commission, by a 6-0 vote, did not adopt the legal position advanced by the Chair. *See* Vote, Advisory Opinion 2023-01 (Barragán) (Apr. 20, 2023).

rules “play an important role in protecting the fairness”<sup>14</sup> of the FCC proceedings. Has the Commission considered crafting similar formal procedures, and if so, what is the status of that effort? Alternatively, what is the Commission’s position on a legislative requirement for the Commission to craft formal *ex parte* procedures?

27. The Committee’s July 18, 2022, letter referenced 22 cases where the 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.<sup>15</sup> In each instance, three commissioners voted against finding reason to believe that a violation occurred, demonstrating a significant disconnect between the Commission’s non-partisan staff and those three commissioners. The Committee is interested in additional information related to those earlier questions.
- a. How many enforcement matters filed with the Commission involve former President Trump, his committees, or his family members?
  - b. Please list each MUR number, name, identify OGC’s recommendations, and how the Commission voted. Please provide votes by commissioner name.
28. The Commission included permanently extending the Administrative Fines program as a top legislative recommendation.<sup>16</sup> What is the consequence of failing to extend this program?
29. The Commission included increasing the rate of pay for the Staff Director and General Counsel as a top legislative recommendation.<sup>17</sup> Please explain why this is critical. Additionally, Commissioner compensation is set at Executive Schedule IV. While the 2023 ES-IV official rate is \$183,500, the payable rate for certain officials, including FEC Commissioners, is frozen at the 2013 compensation level of \$158,500. Should Congress also consider increasing Commissioner compensation?

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<sup>14</sup> *Ex Parte*, FED. COMMUNICATIONS COMM’N, <https://www.fcc.gov/proceedings-actions/ex-parte> (last accessed May 18, 2023).

<sup>15</sup> See Matters Under Review 6961, 6992, 7037, 7094, 7096, 7098, 7100, 7111, 7119, 7135, 7147, 7151, 7159, 7207, 7220, 7255, 7265, 7266, 7268, 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>.

<sup>16</sup> *Legislative Recommendations of the Fed. Election Comm’n 2022*, FED. ELECTION COMM’N (Dec. 15, 2022), <https://www.fec.gov/resources/cms-content/documents/legrec2022.pdf>.

<sup>17</sup> *Id.*