

**From:**  
**To:**  
**Sent:**2019-09-03T14:39:45.0000000Z  
**Subject:**FW: Moving forward

-----Original Message-----

From: Ellen Weintraub  
Sent: Tuesday, September 03, 2019 10:04 AM  
To: FEC Staff <FECStaff@fec.gov>  
Subject: Moving forward

Colleagues,

Good morning. We're sailing into unusual but not entirely uncharted waters this morning without a quorum of commissioners on hand. Hopefully, the President and the Senate will waste no time in getting us back on course.

I have spent much of the last week reassuring the American people of what everyone in this agency already knows: The Federal Election Commission will continue to shine a bright spotlight on federal campaign finance. While decisions on enforcement and policy matters are – for the moment – delayed, work on those matters goes on, and we continue to provide needed transparency to the American people.

As I have been quizzed about the effects of the lack of a quorum, I have returned, again and again, to my conviction that the dedicated public servants of the FEC will continue their best efforts on behalf of our democracy. Throughout this election, the public and the press will have the information they need to evaluate those who seek to influence federal elections.

As the Chair of this agency, and as a citizen of the United States of America, I am grateful for all your efforts. I know you will continue to do this agency and the American people proud.

If anyone has any concerns that they would like to discuss, my door is always open.

Thank you, as always, for all that you do.

Ellen

**From:**CommissionerHunter (External)

**To:**

**Sent:**2019-09-06T17:54:43.0000000Z

**Subject:**FW: Interview Request

**From:** Masood Farivar [mailto:mfarivar@voanews.com]

**Sent:** Thursday, September 05, 2019 2:13 PM

**To:** CommissionerHunter (External) <CommissionerHunter@fec.gov>

**Subject:** Interview Request

Dear Commissioner Hunter,

I'm a reporter with Voice of America here in Washington. For a story on the FEC's ability to function without a quorum, we're interested in doing a brief phone interview with you. I've spoken with Chair Weintraub and wanted to get your response to some of her comments on **how the Republicans on the Commission have blocked enforcement actions and rulemaking proposed by the Democrats**. Apologies for the last minute nature of the request but I was wondering if you were available this afternoon for a 5-10 minute phone interview?

Thanks so much!

Masood Farivar  
Justice Correspondent  
Voice of America  
202 203 4428

**From:** Amy Rothstein  
**To:** Priyanka Kasireddy  
**Sent:** 2019-08-26T18:13:36.000000Z  
**CC:** ITD Web  
**Subject:** RE: Statement by Commissioner Hunter

Thanks! It looks great.

---

**From:** Priyanka Kasireddy  
**Sent:** Monday, August 26, 2019 2:00 PM  
**To:** Amy Rothstein <ARothstein@fec.gov>  
**Cc:** ITD Web <ITDWeb@fec.gov>  
**Subject:** Re: Statement by Commissioner Hunter

Hi Amy,  
The document has been posted under Commissioner Hunter's **Statements and opinions** section here:  
<https://fec-prod-proxy.app.cloud.gov/about/leadership-and-structure/caroline-c-hunter/>

Here is the link to the actual PDF file:  
[https://www.fec.gov/resources/cms-content/documents/Statement\\_of\\_Commissoner\\_Caroline\\_C.\\_Hunter\\_8\\_26\\_19\\_Q18Poan.pdf](https://www.fec.gov/resources/cms-content/documents/Statement_of_Commissoner_Caroline_C._Hunter_8_26_19_Q18Poan.pdf)

Please verify and let me know if you have any question or concerns.

Thanks,  
Priya Kasireddy

---

**From:** Priyanka Kasireddy <[PKasireddy@fec.gov](mailto:PKasireddy@fec.gov)>  
**Sent:** Monday, August 26, 2019 1:53 PM  
**To:** Amy Rothstein  
**Cc:** ITD Web  
**Subject:** Re: Statement by Commissioner Hunter

Sure. I am on it. I will let you know when the document is published.

Thanks,  
Priya Kasireddy

---

**From:** Amy Rothstein <[ARothstein@fec.gov](mailto:ARothstein@fec.gov)>  
**Sent:** Monday, August 26, 2019 1:46 PM  
**To:** Priyanka Kasireddy  
**Cc:** ITD Web  
**Subject:** RE: Statement by Commissioner Hunter

Please title the document: Statement of Commissioner Caroline C. Hunter on Departure of Vice Chairman Petersen and Loss of Quorum.  
Can you post it directly under “Statements and Opinions”? It doesn’t fit in any of the subcategories.

From: Priyanka Kasireddy  
Sent: Monday, August 26, 2019 1:30 PM  
To: Amy Rothstein <[ARothstein@fec.gov](mailto:ARothstein@fec.gov)>  
Cc: ITD Web <[ITDWeb@fec.gov](mailto:ITDWeb@fec.gov)>  
Subject: Re: Statement by Commissioner Hunter

Hi Amy,

Thank you for sending the PDF. Could you please provide below details?

1. What would you like the title of the document to be?
2. Under which section(s) you want to post this document?

Thanks,  
Priya Kasireddy

---

From: Amy Rothstein <[ARothstein@fec.gov](mailto:ARothstein@fec.gov)<<mailto:ARothstein@fec.gov>>>  
Sent: Monday, August 26, 2019 1:24 PM  
To: Priyanka Kasireddy  
Subject: FW: Statement by Commissioner Hunter

Actually, I just sent the statement to ITD Web via separate email.

-----Original Message-----

From: Amy Rothstein  
Sent: Monday, August 26, 2019 1:24 PM  
To: Priyanka Kasireddy <[PKasireddy@fec.gov](mailto:PKasireddy@fec.gov)<<mailto:PKasireddy@fec.gov>>>; ITD Web <[ITDWeb@fec.gov](mailto:ITDWeb@fec.gov)<<mailto:ITDWeb@fec.gov>>>  
Subject: RE: Statement by Commissioner Hunter

Sure, Priya. What details do you need?

-----Original Message-----

From: Priyanka Kasireddy  
Sent: Monday, August 26, 2019 1:23 PM  
To: Amy Rothstein <[ARothstein@fec.gov](mailto:ARothstein@fec.gov)<<mailto:ARothstein@fec.gov>>>; ITD Web <[ITDWeb@fec.gov](mailto:ITDWeb@fec.gov)<<mailto:ITDWeb@fec.gov>>>  
Subject: Re: Statement by Commissioner Hunter

Hi Amy,

Yes, we can post the updates on Commissioner Hunter's webpage. Could you please send us the details?

Thanks,  
Priya Kasireddy

---

From: Amy Rothstein <[ARothstein@fec.gov](mailto:ARothstein@fec.gov)<<mailto:ARothstein@fec.gov>>>

Sent: Monday, August 26, 2019 1:15 PM

To: ITD Web

Subject: Statement by Commissioner Hunter

Hi, Commissioner Hunter has a statement that she would like posted to her webpage. Who would be the best person for me to speak with about that? Thanks.

**From:**Amy Rothstein  
**To:**ITD Web  
**Sent:**2019-08-26T17:22:39.0000000Z  
**Subject:**Please post: Statement of Commissioner Caroline C. Hunter

Attached please find a statement on behalf of Commissioner Hunter for posting on her webpage. Please don't hesitate to contact me if you have any questions (X 1352). Thank you.



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**STATEMENT BY  
COMMISSIONER CAROLINE C. HUNTER**

When Matt Petersen leaves the Commission, we will lose a true gentleman-scholar and tireless defender of Americans' First Amendment rights. The Commission will also lose its quorum.

Without a quorum, certain Commission activities will not take place. For example, the Commission will not be able to hold meetings, initiate audits, vote on enforcement matters, issue advisory opinions, or engage in rulemakings.

But it will be business as usual at the Commission in other ways. Our Reports Analysis Division, Information Division, Information Technology Division, Office of Compliance, and Office of General Counsel, among others, will still be on the job, answering questions, litigating cases, maintaining our website, conducting ongoing audits, and processing complaints, disclosure reports, and other filings.

Despite the lack of quorum, I expect to be fully occupied while at the Commission reviewing case files and preparing for new Members to join the Commission.

August 26, 2019

**From:** Amy Rothstein

**To:** EmergencyContact-Amy Rothstein

**Sent:** 2019-08-26T15:47:52.000000Z

**Subject:**





FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**STATEMENT BY  
COMMISSIONER CAROLINE C. HUNTER**

When Matt Petersen leaves the Commission, we will lose a true gentleman-scholar and tireless defender of Americans' First Amendment rights. The Commission will also lose its quorum.

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Despite the lack of quorum, I expect to be fully occupied while at the Commission reviewing case files and preparing for new Members to join the Commission.

August 26, 2019

**From:**Amy Rothstein  
**To:**Judith Ingram  
**Sent:**2019-08-26T15:40:31.0000000Z  
**CC:**Hunter Office ; Petersen Office  
**Subject:**Statement of Commissioner Caroline C. Hunter

Attached please find a statement on behalf of Commissioner Hunter. Following release of the Vice Chairman's statement, please disseminate this publicly via the usual channels and circulate it for posting to Commissioner Hunter's webpage. Thank you.



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**STATEMENT BY  
COMMISSIONER CAROLINE C. HUNTER**

When Matt Petersen leaves the Commission, we will lose a true gentleman-scholar and tireless defender of Americans' First Amendment rights. The Commission will also lose its quorum.

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Despite the lack of quorum, I expect to be fully occupied while at the Commission reviewing case files and preparing for new Members to join the Commission.

August 26, 2019

**From:**Duane Pugh  
**To:**Commissioners Office  
**Sent:**2019-09-05T18:38:42.0000000Z  
**CC:**Alec Palmer ; Lisa Stevenson ; John Quinlan ; Amy Pike ; Judith Ingram  
**Subject:**CRS on FEC's lack of quorum

A newly revised CRS report entitled: "FEC: Membership and Policymaking Quorum, In Brief," is attached.

Thanks,  
Duane

J. Duane Pugh Jr.  
Director  
Congressional, Legislative and Intergovernmental Affairs  
FEDERAL ELECTION COMMISSION  
[dpugh@fec.gov](mailto:dpugh@fec.gov)  
(202) 694-1002



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# **Federal Election Commission: Membership and Policymaking Quorum, In Brief**

**R. Sam Garrett**

Specialist in American National Government

Updated September 5, 2019

**Congressional Research Service**

7-5700

[www.crs.gov](http://www.crs.gov)

R45160

## Summary

The Federal Election Commission (FEC) is the nation's civil campaign finance regulator. The agency ensures that campaign fundraising and spending is publicly reported; that those regulated by the Federal Election Campaign Act (FECA) and by commission regulations comply and have access to guidance; and that publicly financed presidential campaigns receive funding.

As of August 31, 2019, the Federal Election Commission is operating without a policymaking quorum. FECA requires that at least four of six commissioners agree to undertake many of the agency's key policymaking duties. As of August 31, 2019, three of six commissioners remain in office, after the fourth remaining commissioner resigned. Also as of this writing, one commission nomination is pending in the Senate.

This CRS report briefly explains the kinds of actions that FECA precludes when a quorum is not possible because fewer than four FEC members are in office. This episode marks the second quorum loss in the agency's history—the first occurred for six months in 2008—leaving the commission unable to hold hearings, issue rules, and enforce campaign finance law and regulation. The agency remains open for business with remaining commissioners and regular staff, but new policy decisions and enforcement actions cannot be advanced or finalized.

This report will be updated in the event of substantial changes in the Federal Election Commission's policymaking quorum or the status of commission nominations.

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## Introduction

The Federal Election Commission (FEC) is an independent regulatory agency that is headed by six commissioners. Congress created the FEC in 1974, after controversial fundraising during 1960s presidential campaigns and the early 1970s Watergate scandal. The FEC is responsible for administering federal campaign finance law and for civil enforcement of the Federal Election Campaign Act (FECA).<sup>1</sup> The FEC also discloses campaign finance data to the public, conducts compliance training, and administers public financing for participating presidential campaigns.

FECA establishes six-year terms for commission members. Commissioners may continue in “holdover” status after those terms end. Commissioners are appointed by the President and are subject to Senate confirmation. FECA requires that at least four of the six commissioners vote to make decisions on substantive actions. This includes deciding on enforcement actions, advisory opinions, and rulemaking matters. Because FECA also requires commission membership representing more than one political party, achieving at least four agreeing votes is sometimes difficult, even with six members present. Vacancies make the task harder by reducing opportunities for a coalition of at least four votes.

In 2008, the FEC lost its policymaking quorum for six months. As of August 31, 2019, the agency remains open and operating, but no quorum of commissioners is present to consider certain policymaking or enforcement matters.

It is unclear when or whether the President might nominate new Federal Election Commissioners or such nominations might receive Senate consideration.<sup>2</sup> At the time of Commissioner Matthew S. Petersen’s resignation, effective August 31, 2019, the President had submitted one FEC nomination to the Senate during the 116<sup>th</sup> Congress. At the beginning of the 116<sup>th</sup> Congress, President Trump renominated James E. “Trey” Trainor III to the Petersen seat; Trainor’s nominations during the 115<sup>th</sup> Congress did not advance.

This report provides a brief overview of policymaking implications when fewer than four Federal Election Commissioners remain in office.<sup>3</sup> The topic may be relevant for congressional oversight of the agency and for Senate consideration of nominees. Other CRS products provide additional information about campaign finance policy, the FEC, and procedural issues.<sup>4</sup> This report does not provide legal analysis.

## A Note on Terminology

The terms *FEC*, *commission*, and *agency* often—including in other CRS products—are used interchangeably to refer to the Federal Election Commission. Because this report emphasizes policymaking and enforcement duties specified in statute, it generally reserves *commission* to

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<sup>1</sup> 52 U.S.C. §§30101-30146.

<sup>2</sup> On reported disagreements about whether to fill single or multiple commission vacancies, see, Kenneth P. Doyle, “Congressional Standoff Could Delay Federal Election Oversight,” September 4, 2019, Bloomberg Government, accessed via CRS subscription.

<sup>3</sup> This report supersedes CRS Report RS22780, *The Federal Election Commission (FEC) With Fewer than Four Members: Overview of Policy Implications*, by R. Sam Garrett.

<sup>4</sup> See, respectively, CRS Report R41542, *The State of Campaign Finance Policy: Recent Developments and Issues for Congress*, by R. Sam Garrett; CRS Report R44318, *The Federal Election Commission: Overview and Selected Issues for Congress*, by R. Sam Garrett; CRS Report R44319, *The Federal Election Commission: Enforcement Process and Selected Issues for Congress*, by R. Sam Garrett; and CRS Report RL31980, *Senate Consideration of Presidential Nominations: Committee and Floor Procedure*, by Elizabeth Rybicki.



denote appointed members of the FEC, as opposed to agency staff. In this report, *agency* and *FEC* generally refer to the commission and staff collectively.

## Recent Vacancies and Nomination Activity

As of August 31, 2019, the FEC is operating with three commissioners instead of six, as shown in **Table 1** below.

**Table 1. Current Federal Election Commissioners and Vacancies**

Commissioner	Term Expired	Date Confirmed	Party Affiliation	Vacancy Notes
Caroline C. Hunter	04/30/2013 (remains in holdover status)	06/24/2008	Republican	—
Steven T. Walther	04/30/2009 (remains in holdover status)	06/24/2008	Independent	—
Ellen L. Weintraub	04/30/2007 (remains in holdover status)	03/18/2003	Democrat	—
Vacancy	—	—	—	Previous occupant Ann M. Ravel (D); resignation effective 02/28/2017
Vacancy	—	—	—	Previous occupant Lee E. Goodman (R); resignation effective 02/16/2018
Vacancy	—	—	—	Previous occupant Matthew S. Petersen (R); resignation effective 08/31/2019; James E. “Trey” Trainor III (R) renominated to seat, 01/16/2019 and 01/08/2018 (initially nominated 09/14/2017); if confirmed, term would expire 04/30/2023

**Source:** Legislative Information System/Congress.gov nominations database. CRS added party affiliation based on FEC publications and press accounts.

The current vacancies developed as follows:

- Effective February 28, 2017, Democratic Commissioner Ann M. Ravel resigned, leaving the commission with five members.<sup>5</sup> Ravel’s term would have expired on April 30, 2017. No nominee for the Ravel seat has been announced.

<sup>5</sup> Federal Election Commission, “Ann Ravel Departs Federal Election Commission,” press release, February 28, 2017, <https://www.fec.gov/updates/ann-ravel-departs-federal-election-commission/>.

- On February 7, 2018, Republican Commissioner Lee Goodman announced his intention to resign, effective February 16, 2018.<sup>6</sup> Once Goodman left the FEC, the commission had four remaining members. No nominee for the Goodman seat has been announced.
- As discussed in more detail below, President Trump nominated James E. “Trey” Trainor III to Republican Commissioner Matthew S. Petersen’s seat during the 115<sup>th</sup> and 116<sup>th</sup> Congresses, but the nomination did not advance (or has not advanced), and Petersen remained in office. Petersen resigned effective August 31, 2019.<sup>7</sup> The commission dropped to three members, thus losing its policymaking quorum.

It is unclear whether any other commissioners currently plan to leave. For several years, periodic reports have suggested that one or more other commissioners also plan to depart.<sup>8</sup>

## Background on Circumstances Surrounding the Petersen Vacancy

Commissioner Petersen’s departure from the FEC ends a two-year period of uncertainty about when a vacancy in his seat might occur. A brief description appears below for historical reference, but it is unclear whether additional activity will occur on a previously submitted nomination, or others.

- On September 11, 2017, President Trump nominated Petersen for a federal judgeship.<sup>9</sup> Petersen subsequently withdrew from consideration for the judgeship, reportedly writing, “until the time is otherwise appropriate, I look forward to returning to my duties at the Federal Election Commission.”<sup>10</sup> Petersen remained on the commission in holdover status until his resignation.
- After Petersen was nominated<sup>11</sup> to the federal judgeship, but before he withdrew from consideration for that position, President Trump nominated a replacement for Petersen at the FEC. On September 14, 2017, President Trump nominated James E. “Trey” Trainor III to the Petersen seat. Petersen continued serving at the commission, and the Trainor nomination was returned to the President at the end of the first session.<sup>12</sup> The White House resubmitted the nomination on January 8,

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<sup>6</sup> Federal Election Commission, “Lee Goodman to Depart Federal Election Commission,” press release, February 7, 2018, <https://www.fec.gov/updates/lee-goodman-depart-federal-election-commission/>.

<sup>7</sup> Federal Election Commission, “Matthew Petersen to Depart Federal Election Commission,” press release, August 26, 2019, <https://www.fec.gov/updates/matthew-petersen-depart-federal-election-commission/>.

<sup>8</sup> See, for example, Dave Levinthal, “New Hope, New Problem: Will the Federal Election Commission Shut Down?” *Center for Public Integrity*, December 20, 2017, updated February 7, 2018, <https://www.publicintegrity.org/2017/12/20/21410/new-hope-new-problem-will-federal-election-commission-shut-down>.

<sup>9</sup> See Presidential Nomination (PN) 1017, <http://www.lis.gov/nomis/>; or [congress.gov](http://congress.gov), selecting the “nominations” filter.

<sup>10</sup> Dave Levinthal, “New Hope, New Problem: Will the Federal Election Commission Shut Down?” *Center for Public Integrity*, December 20, 2017, updated February 7, 2018, <https://www.publicintegrity.org/2017/12/20/21410/new-hope-new-problem-will-federal-election-commission-shut-down>. For additional discussion, see, for example, Kenneth P. Doyle, “Lawyer With No Courtroom Experience Withdraws as Judge Nominee,” *Daily Report for Executives*, December 19, 2017, obtained via CRS electronic subscription. The circumstances surrounding the judicial nomination and withdrawal are beyond the scope of this report.

<sup>11</sup> See Presidential Nomination (PN) 1017, <http://www.lis.gov/nomis/>.

<sup>12</sup> See “Nominations Returned to the Senate,” *Congressional Record*, daily edition, vol. 163, no. 216 (January 3, 2018), pp. S25-S26. The September 2017 Trainor nomination was one of a large group returned to the President at the end of

2018, at the start of the second session of the 115<sup>th</sup> Congress, and the nomination was returned to the President at the end of the Congress.<sup>13</sup> The White House resubmitted the Trainor nomination at the beginning of the 116<sup>th</sup> Congress.<sup>14</sup>

## The Commission, Policymaking, and Appointments

### Original, Invalidated Appointment Structure

Congress originally designed eight positions for the FEC: six commissioners and two nonvoting *ex officio* members (the Clerk of the House and Secretary of the Senate). Under that structure, two commissioners were appointed by the President, two by the President pro tempore of the Senate, and two by the Speaker of the House.

Two federal court decisions altered the FEC's original design. First and most significantly, in *Buckley v. Valeo* (1976) the Supreme Court of the United States invalidated the original appointments method, holding that congressional appointments violated the Constitution's Appointments Clause.<sup>15</sup> Almost 20 years later, a federal court again found fault with the FEC's appointment structure. In 1993, the U.S. Court of Appeals for the District of Columbia held in *FEC v. NRA Political Victory Fund* that the presence of the two congressional *ex officio* members violated constitutional separation of powers.<sup>16</sup> Congress did not amend FECA responding to this decision, although the *ex officio* members are no longer appointed.

### Current Appointment Structure

In a broad revision of FECA in 1976, undertaken in response to the *Buckley* decision, Congress adopted the current appointment method. Today, all commissioners are presidentially appointed subject to Senate advice and consent.<sup>17</sup> Members of the congressional leadership or committees of jurisdiction (the House Committee on House Administration and Senate Rules and Administration Committee) apparently continue to influence the appointment process.<sup>18</sup>

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the first session under Senate Rule XXXI. However, this rule was waived for another group of nominations, and these were kept in status quo into the second session. See Sen. Mitch McConnell, "Nominations Remaining in Status Quo," remarks in the Senate, *Congressional Record*, daily edition, vol. 163, no. 209 (December 21, 2017), p. S8241; and Sen. Mitch McConnell, "Nominations Remaining in Status Quo," remarks in the Senate, *Congressional Record*, daily edition, vol. 163, no. 215 (January 2, 2018), p. S8289. CRS Specialist Henry Hogue provided consultations on this information.

<sup>13</sup> See PNs 1024 and 1425, <http://www.lis.gov/nomis/>.

<sup>14</sup> See PN 197, <https://www.lis.gov/nomis>.

<sup>15</sup> *Buckley* is 424 U.S. 1 (1976). For a brief discussion of the ruling's implications for congressional appointments, see Congressional Research Service, *Constitution of the United States of America: Analysis and Interpretation*, "Article II- Executive Department," <http://www.crs.gov/conan/default.aspx?doc=Article02.xml&mode=topic&s=2&c=2&t=3|2>.

<sup>16</sup> 6 F.3d 821 (D.C. Cir. 1993); cert. denied (513 U.S. 88 (1994)). For legal analysis for *Buckley* and campaign finance issues, see CRS Report R43719, *Campaign Finance: Constitutionality of Limits on Contributions and Expenditures*, by L. Paige Whitaker.

<sup>17</sup> 52 U.S.C. §30106(a)(1).

<sup>18</sup> Members of the congressional leadership reportedly suggest nominees, although documentation of the practice is sparse. In one example, from 2005, Sen. Reid stated that he was "very pleased that the president acted today upon my two recommendations for Commissioners." See Sen. Harry Reid, "Reid Statement on Nominations to the Federal Election Commission," press release, December 16, 2005, <http://democrats.senate.gov/2005/12/16/reid-statement-on-nominations-to-the-federal-election-commission/#.Vk9Kbis4hjZ>. On congressional influence on presidential appointments generally, see CRS Report R44083, *Appointment and Confirmation of Executive Branch Leadership: An*

FECA specifies few qualifications for FEC commissioners, noting simply that they “shall be chosen on the basis of their experience, integrity, impartiality, and good judgment.”<sup>19</sup> As one former general counsel notes, although many commissioners are lawyers, “a commissioner does not have to be a lawyer and the commission has a long history of having non-lawyers serve as members.”<sup>20</sup> Commissioners typically have experience as congressional staffers, political professionals, election lawyers, or some combination thereof.

## Party Balance and Terms

No more than three commissioners may be affiliated with the same political party.<sup>21</sup> In practice, the commission has been divided equally among Democrats and Republicans, although one current commissioner identifies as an independent.<sup>22</sup> FECA staggers commissioner terms so that two expire every other April 30 during odd-numbered years (e.g., 2019, 2021, etc.).<sup>23</sup> This arrangement means that, at least as designed, two new commissioners would assume office biennially. However, the President is under no obligation to make biennial nominations.

## Expired Terms and Holdover Status

Currently, FEC commissioners may serve a single six-year term.<sup>24</sup> As another CRS report explains, for some federal boards and commissions, including the FEC, “[a]n individual may be nominated and confirmed for a seat for the remainder of an unexpired term in order to replace an appointee who has resigned (or died). Alternatively, an individual might be nominated for an upcoming term with the expectation that the new term will be underway by the time of confirmation.”<sup>25</sup> Some FEC commissioners have assumed office when the term for which they were nominated was well underway. For example, on June 24, 2008, the Senate confirmed Donald F. McGahn and Steven T. Walther to terms that expired just 10 months later, on April 30, 2009.<sup>26</sup> Both continued serving in their seats past the expiration of their terms, although they could have been replaced through subsequent appointments.

These and other commissioners could remain in office because FECA permits FEC members to serve in “holdover” status, exercising full powers of the office, after their terms expire “until his

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Overview, by Henry B. Hogue and Maeve P. Carey.

<sup>19</sup> 52 U.S.C. §30106(a)(3).

<sup>20</sup> Larry Noble, “In Search of Qualified FEC Commissioners,” Campaign Legal Center blog posting, June 30, 2015, <http://www.campaignlegalcenter.org/news/blog/clc-blog-search-qualified-fec-commissioners>. David Mason (1998-2008) was the most recent non-lawyer, at the time of service, appointed to the commission.

<sup>21</sup> 52 U.S.C. §30106(a)(1).

<sup>22</sup> Steven T. Walther identifies himself as an independent. Sen. Reid recommended Walther to the commission and Walther reportedly worked for Democratic clients before joining the FEC. Walther often votes with Democrats on the FEC, although he has emphasized his independence since early in his commission tenure. See, for example, Matthew Murray, “Walther Takes on Washington,” *Roll Call* online, January 13, 2009, <http://www.rollcall.com/news/-31322-1.html>.

<sup>23</sup> 52 U.S.C. §30106(a)(2)(A).

<sup>24</sup> 52 U.S.C. §30106(a)(2)(A).

<sup>25</sup> CRS Report R44083, *Appointment and Confirmation of Executive Branch Leadership: An Overview*, by Henry B. Hogue and Maeve P. Carey, p. 11.

<sup>26</sup> “Confirmations,” *Congressional Record*, vol. 154, part 10 (June 24, 2008), p. 13696.

or her successor has taken office as a Commissioner.<sup>27</sup> As **Table 1** above shows, as of this writing, all current commissioners are serving in holdover status.

## At Least Four Agreeing Votes Required for Most Policymaking

FECA requires affirmative votes from at least four commissioners to authorize most policymaking or enforcement activity. In particular, this includes

- holding hearings;
- making, amending, or repealing rules;
- initiating litigation or defending the agency in litigation, including appeals;
- issuing advisory opinions;
- conducting investigations, and making referrals to other enforcement agencies;
- approving enforcement actions and audits; and
- issuing and amending forms (e.g., those used in the disclosure process).<sup>28</sup>

Matters without at least four votes for or against an action can have the effect of leaving questions of law, regulation, or enforcement unresolved, as some view the issues in question as having been neither approved nor rejected.<sup>29</sup>

With fewer than four commissioners, existing campaign law and regulation remain in effect. Agency staff and remaining commissioners may continue to provide general information, and to prepare for a repopulated commission. In addition, as explained below, the commission revised its internal procedures before it last lost a policymaking quorum to clarify functions during a quorum loss.

## Loss of Policymaking Quorum in 2008

The significance of the four-vote threshold became particularly evident in 2008. Following expired recess appointments and amid ongoing Senate consideration of FEC nominations, the agency had just two commissioners for the first six months of the year. In late 2007, in anticipation of only two commissioners remaining in office in 2008, commissioners amended the

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<sup>27</sup> A commissioner may remain in office after the expiration of his or her term unless or until (1) the President nominates, and the Senate confirms, a replacement; or (2) the President, as conditions permit, makes a recess appointment to the position. For additional discussion of recess appointments generally, see CRS Report RS21308, *Recess Appointments: Frequently Asked Questions*, by Henry B. Hogue. On ability to remain in office until a successor takes office, see 52 U.S.C. §30106(a)(2)(B). Commissioners appointed before December 31, 1997, or announced as intended nominees before November 30, 1997, were eligible for reappointment. See 111 Stat. 1305 and 111 Stat. 2523.

<sup>28</sup> See 52 U.S.C. §30106(c); 52 U.S.C. §30107(a)(6)-52 U.S.C. §30107(a)(9); and 52 U.S.C. §30109(a).

<sup>29</sup> Campaign lawyers and some former commissioners have different interpretations of deadlocked votes. In enforcement matters, for example, some practitioners view deadlocks as an opportunity to challenge the boundaries of the law (because no violation was found), whereas others regard deadlocks as leaving the issue unresolved. For additional discussion, see CRS Report R44319, *The Federal Election Commission: Enforcement Process and Selected Issues for Congress*, by R. Sam Garrett. See also Kenneth P. Doyle, “Increasing Prevalence of Split FEC Votes On Key Issues Could Shape Next Campaigns,” *Daily Report for Executives*, April 9, 2009, p. C-1; Nicholas Confessore, “Election Panel Enacts Policies by Not Acting,” *The New York Times*, August 26, 2014, p. A1; Brad Smith, *What does it mean when the Federal Election Commission “Deadlocks”*, Center for Competitive Politics blog posting, April 14, 2009, <http://www.campaignfreedom.org/2009/04/14/what-does-it-mean-when-the-federal-election-commission-deadlocks/>; and Bob Bauer, *‘Desperate’ at the FEC, Part II: The Risks of Unintended Consequences*, More Soft Money Hard Law blog posting, June 11, 2015, <http://www.moresoftmoneyhardlaw.com/2015/06/desperate-fec-part-ii-risks-unintended-consequences/>.

FEC's rules of internal procedure to permit executing some duties if the commission lost its four-member policymaking quorum. These revisions to the FEC's Directive 10 permit the commission to continue meeting with fewer than four members to approve general public information, such as educational guides; appoint certain staff; and approve other basic administrative and employment matters.<sup>30</sup>

During the loss of the commission's policymaking quorum in 2008, the two remaining commissioners (David Mason (R) and Ellen Weintraub (D)) met publicly to discuss advisory opinions, but could not vote to approve or disapprove those opinions. At the time, the commissioners explained that although they recognized that the commission lacked a quorum, they were attempting to provide general feedback, particularly given the ongoing 2008 election cycle. That practice generated some controversy, however, as some practitioners contended that remaining commissioners did not have the authority to meet and provide guidance.<sup>31</sup>

After the Senate confirmed nominees in June 2008, the new commissioners faced a backlog of enforcement matters, litigation, advisory opinions, and rulemakings to implement portions of the Honest Leadership and Open Government Act (HLOGA).<sup>32</sup> The commission returned to normal operations during the rest of 2008 and throughout 2009.

## Concluding Comments

Without a policymaking quorum among members of the FEC, the commission is unable to execute its most consequential duties. Among others, current matters before the FEC include a proposed rulemaking on disclosure requirements for certain online political advertising,<sup>33</sup> as well as responding to developments during the 2018 election cycle and preparing for 2020.<sup>34</sup> Particularly during election years, advisory opinion requests are common.

Despite the lack of a policymaking quorum, FEC operations do not cease. The agency remains open for business with remaining commissioners and its regular staff. Although new enforcement or policy matters cannot advance until a quorum is reconstituted, a repopulated commission could

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<sup>30</sup> Federal Election Commission, "Rules of Procedure," 73 *Federal Register* 5568, January 30, 2008. Section L (p. 5570) of the document refers to operations with fewer than four commissioners; that language was adopted in December 2007.

<sup>31</sup> See, for example, Letter from Donald F. McGahn II, Counsel, People for Pete Domenici, to Thomesenia P. Duncan, Office of General Counsel, Federal Election Commission, January 23, 2008, withdrawing advisory opinion request 2007-36, <https://www.fec.gov/data/legal/advisory-opinions/2007-36/>. (McGahn was later appointed to the commission.) See also, for example, CBS News, "FEC Fight Leaves Candidates Hanging," April 23, 2008, <https://www.cbsnews.com/news/fec-fight-leaves-candidates-hanging/>. The FEC's obligations under the Administrative Procedure Act (APA) are beyond the scope of this report.

<sup>32</sup> For historical background, see archived CRS Report RL34324, *Campaign Finance: Legislative Developments and Policy Issues in the 110th Congress*, by R. Sam Garrett; and CRS Report RS22780, *The Federal Election Commission (FEC) With Fewer than Four Members: Overview of Policy Implications*, by R. Sam Garrett.

<sup>33</sup> For brief discussion, see CRS In Focus IF10758, *Online Political Advertising: Disclaimers and Policy Issues*, by R. Sam Garrett. See also Federal Election Commission, "Internet Communication Disclaimers and Definition of "Public Communication," 83 *Federal Register* 12864, March 26, 2018.

<sup>34</sup> Several entities have publicized filing complaints with the commission related to 2016 and 2018. In these and other cases, even with a quorum, the commission might not find sufficient reason to proceed with enforcement. FECA prohibits the commission from disclosing information about ongoing enforcement matters. For additional discussion, see CRS Report R44319, *The Federal Election Commission: Enforcement Process and Selected Issues for Congress*, by R. Sam Garrett.

consider older matters.<sup>35</sup> In addition, the Justice Department may pursue criminal enforcement on its own authority, regardless of the FEC's operating capacity for civil matters.<sup>36</sup>

## **Author Contact Information**

R. Sam Garrett  
Specialist in American National Government  
rgarrett@crs.loc.gov, 7-6443

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<sup>35</sup> The statute of limitations for civil and criminal violations is five years. See 28 U.S.C. §2462 and 52 U.S.C. §30145, respectively. Other actions, such as rulemaking activities that are already under way, may continue indefinitely. However, as noted above, new rulemakings could not be initiated or finalized without a quorum.

<sup>36</sup> For an overview of various civil versus criminal provisions and administration/enforcement in campaigns and elections, see CRS Report R45302, *Federal Role in U.S. Campaigns and Elections: An Overview*, by R. Sam Garrett.

**From:**Caroline Hunter  
**To:**Katie Higginbothom  
**Sent:**2019-09-04T17:18:07.000000Z  
**CC:**Hunter Office  
**Subject:**RE: Potential Date for Townhall Meeting

Thanks, Katie, let's talk about this

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**From:** Katie Higginbothom  
**Sent:** Tuesday, September 03, 2019 2:40 PM  
**To:** Caroline Hunter <CHunter@fec.gov>  
**Cc:** Hunter Office <HunterOffice@fec.gov>  
**Subject:** Potential Date for Townhall Meeting

Good afternoon Commissioner Hunter,

Recently, we have received feedback both directly from employees and through OPM's audit report that staff would like to receive more direct communication from senior management, including through periodic agency-wide townhall meetings. As such, we're looking to resume the practice of having more regular agency-wide staff meetings (possibly on a biannual basis) with a meeting sometime this month. I've talked informally to some managers about potential agenda items, and they have mentioned that staff would be interested to hear more about how the lack of quorum may impact operations. The meeting would also provide an opportunity to formally introduce our new IG to the entire staff.

I've mentioned this idea to the Chair and she has suggested September 18<sup>th</sup> as a potential date, so I wanted to see if this date would work for your schedule. The meeting would be held in the Hearing Room and streamed to TVs in the 12<sup>th</sup> Floor Conference Room and break rooms on floors 9 through 11. We're also looking into the feasibility of streaming the meeting through FECNet, so that employees who are teleworking can tune in from home if they're unable to come in that day.

Thanks,  
Kate

Katie A. Higginbothom  
Deputy Staff Director for Management & Administration  
Federal Election Commission  
1050 First Street, NE  
Washington, DC 20463  
(202) 694-1594 (p)  
(202) 213-4874 (c)



**From:**Judith Ingram  
**To:**Weintraub Office ; Hunter Office ; Commissioners Office  
**Sent:**2019-09-04T21:14:47.0000000Z  
**CC:**Press Staff ; Office of Communications (Staff Leaders) ; Alec Palmer ; Lisa Stevenson  
**Subject:**FW: Alert: Congressional Standoff Could Delay Federal Election Oversight

Good afternoon.

Bloomberg Government has just published this Ken Doyle article concerning the FEC.

Judith Ingram  
Press Officer  
Federal Election Commission  
1050 First Street, N.E.  
Washington, D.C. 20463

202/694-1219 (o)  
202/531-2882 (m)

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## Congressional Standoff Could Delay Federal Election Oversight

- Democrats, Republicans at odds over number of replacements
- Without a quorum, panel can't take enforcement actions

By Kenneth P. Doyle | September 4, 2019 05:10PM ET | Bloomberg Government

The Federal Election Commission's paralysis on key campaign-finance matters could be extended indefinitely as leaders in Congress skirmish over how to appoint new commissioners.

Senate Republicans, led by Majority Leader [Mitch McConnell](#) (R-Ky.), want to install six new commissioners. The move would fill vacancies and replace current commissioners, including Ellen Weintraub, the FEC's Democratic chairwoman, who has frequently criticized President Donald Trump. A clean slate of members will go a long way toward fixing some of the perceived dysfunction at the commission, said a Senate Republican aide, who asked not to be named. Democrats, meanwhile, say the Senate should move quickly to fill existing vacancies, restoring a quorum and allowing the commission to function fully.

Democrats aren't calling for immediate replacement of the current commissioners.

The standoff could delay for weeks or months restoring the FEC's ability to enforce campaign-finance laws as the 2020 election approaches. Federal campaign spending is projected to approach \$8 billion to \$10 billion. The departure of Republican commissioner Matthew Petersen on Aug. 31 reduced the FEC to three commissioners with three seats vacant. At least four are needed to approve regulations, advisory opinions and enforcement actions.

Ken Doyle, Bloomberg Government  
Federal Election Commission

Weintraub said the decision about how to proceed is for others to make, though she hopes a commission quorum is restored as soon as possible. “I will continue to do the job to the best of my ability as long as I am in the job,” she added.

A candidate to fill the single Democratic vacancy on the commission has been recommended by Democratic Senate leaders but not yet approved for nomination by Trump, Sen. [Amy Klobuchar](#) (D-Minn.) said in an [Aug. 31 letter](#) to the president. The letter didn’t name the prospective new commissioner, but Klobuchar asked Trump to “swiftly complete the vetting process on the Democratic candidate for the Commission and put forward a nominee so that the Senate can move forward with the confirmation process.”

### **Klobuchar: Functioning FEC Needed**

Klobuchar is a Democratic presidential candidate and the ranking member on the Senate Rules and Administration Committee, which has jurisdiction over the FEC. “A fully functioning FEC is critical to safeguarding our political system from corruption and foreign influence,” she said in the letter to Trump. “The Rules Committee is ready to act quickly restore a quorum to the FEC.”

In addition to the Democrat’s FEC candidate, there is a pending Trump nominee for a Republican seat on the FEC. Texas election lawyer James Trainor was first nominated in 2017, but no action has been taken in the Senate to confirm him. In the past, FEC nominees have been approved in bipartisan pairs.

Petersen’s departure left Weintraub serving on the commission, along with Steven Walther, an independent holding a Democratic seat, and Republican Caroline Hunter. Weintraub’s term expired in 2007, Walther’s in 2009, and Hunter’s in 2013. The law that created the FEC, however, allows commissioners to remain indefinitely until replaced.

Even before Petersen left, the FEC was unable to reach consensus on key issues. The commissioners divided along party lines on questions such as disclosure of sources of campaign spending and coordination between candidates and supposedly independent outside spending groups, which have poured hundreds of millions of dollars into recent elections.

### **Weintraub: FEC Still Working**

Weintraub said the commission will continue its most visible task of collecting and making public campaign finance disclosure reports, even if it doesn’t have a quorum to perform its other functions. The FEC “will continue to shine a bright spotlight on federal campaign finance,” she said in a memo Tuesday to FEC staff.

Weintraub has been criticized by Republicans for her increasingly outspoken role at the FEC, including televised appearances responding to Trump’s comments minimizing foreign election interference and emphasizing threats of voter fraud.

Rep. [Rodney Davis](#) (R-Ill.) sent a [letter](#) to Weintraub and other FEC commissioners last month that included thinly veiled criticism of the Democratic chairwoman. Davis is the top Republican on the House Administration Committee, which has jurisdiction over campaign finance and FEC matters. He warned that “partisan attacks only serve to undermine your work.”

### **Pressure Increasing**

Adav Noti, a former FEC staff attorney now with the nonprofit Campaign Legal Center said in a phone interview that public pressure to deal with commission’s long-standing problems is increasing because the FEC has lost its quorum and is unable even theoretically to enforce campaign finance laws going into the 2020 election.

The country needs a debate over the role of the FEC, Noti said, adding that “the current situation provides an opportunity to have that debate.” He said the

commission could be revamped by appointing six new commissioners, “ideally commissioners who believe in the mission” of the FEC. It is “absolutely” realistic to expect the administration and the Senate to act, Noti added, even though the FEC has often been ignored in the past.

Another FEC critic, Craig Holman of the watchdog group Public Citizen, was more skeptical.

“In ordinary times, we’d call on the president and the U.S. Senate to immediately fill the vacant FEC positions to prepare for the expected \$8 billion in political spending in the 2020 elections,” Holman said. “But who are we kidding? We already know they won’t.”

To contact the reporter on this story: Kenneth P. Doyle in Washington at [kdoyle@bgov.com](mailto:kdoyle@bgov.com)

To contact the editors responsible for this story: Adam Schank at [aschank@bgov.com](mailto:aschank@bgov.com); Robin Meszoly at [rmeszoly@bgov.com](mailto:rmeszoly@bgov.com)

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## Ken Doyle Alert News Alert

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[Privacy Policy](#) [Manage Alerts](#)

**From:**Laura Sinram  
**To:**Christopher Curran ; Amy Rothstein  
**Sent:**2019-09-03T20:49:38.000000Z  
**Subject:**Directive 10

Good Afternoon Chris and Amy,

I wanted to share with Commissioner Hunter's Office information about some of the impacts Directive 10 could have on Commission meetings.

The Commission is required to hold one meeting per month (as per Directive 10 and USC 437c(d)). It does not specify whether this has to be an executive or open meeting. For September 2019, there are meetings currently scheduled for September 10 and 12 (as well as September 24 and 26). I have attached Directive 10 to this email for your reference, which outlines, among other items, the special rules that apply only when the Commission has fewer than 4 members (Section L).

We have audio files, agendas, and minutes from 2008 when there was a lack of a four Commissioner quorum. The minutes are available in the Voting Ballot Matters folder and are organized by year.

[\\ntsrv1\Voting Ballot Matters\Meeting Minutes\Executive Session\2008](#)

Thanks,  
Laura

Laura Sinram  
Acting Secretary and Clerk of the Commission  
Office of the Commission Secretary  
Suite 1290  
Office: 202-694-1038/cell: 202-213-3347

<b>FEDERAL ELECTION COMMISSION</b>		
<b>MANUAL OF DIRECTIVES</b>	<b>COMMISSION DIRECTIVE</b>	
	<b>REVOKES:</b>	<b>NO. 10</b>
	<b>EFFECTIVE DATE: June 8, 1978 Amended December 20, 2007</b>	
<b>RULES OF PROCEDURE OF THE FEDERAL ELECTION COMMISSION PURSUANT TO 2 U.S.C. 437c(e)</b>		

A. Meetings

The Commission shall meet at least once every month and also at the call of any Member, pursuant to U.S.C. 437c(d).

1. For the purpose of these rules, the word Member means a Commissioner appointed by the President with the advice and consent of the Senate pursuant to 2 U.S.C. 437c(a)(1).
2. For the purpose of these rules, the word meeting means the collegiate deliberation of at least four Members of the Commission pursuant to 2 U.S.C. 437c(d).

B. Quorum

Four Members of the Commission shall constitute a quorum for the consideration and resolution of matters that involve the exercise of its duties and powers under the Federal Election Campaign Act of 1971 as amended and Chapters 95 and 96 of the Internal Revenue Code of 1954 (the Act). If less than four Members of the Commission are present at any time during a Commission meeting, the Chairman shall declare a temporary recess until a quorum is again present at which time the meeting may resume.

C. Presiding Officer

1. The Chairman of the Commission shall be the presiding officer over meetings of the Commission.
2. He or she shall call meetings to order.

3. The Vice-Chairman shall act as presiding officer in the absence or disability of the Chairman or in the event of a vacancy in the office of Chairman. In the absence of the Chairman and Vice-Chairman, the Members of the Commission present shall select a presiding officer, to act during the absence of the Chairman and Vice-Chairman.

D. Introduction of Business

1. Meetings of the Commission shall be called to order by the Chairman.
2. The Chairman shall ascertain the presence of a quorum before proceeding with the business of any meeting.
3. All business before the Commission shall be brought by the presiding officer.

E. Motions

1. Any motion shall be reduced to writing at the request of any Member of the Commission.
2. Any motion may be withdrawn or modified by the movant at any time before it is amended or voted upon.
3. Any principal or secondary motion that exercises a duty or power of the Commission under the Act shall require four votes for approval.
4. Any motion to adjourn or recess shall require a majority vote of at least three Members of the Commission for approval.
5. Any principal or secondary motion regarding a procedural matter shall require a majority vote of at least three Members of the Commission for approval.
6. For the purpose of these rules, a procedural motion is any matter not exercising the powers of the Commission under the Federal Election Campaign Act, as amended or Chapter 95 or 96 of the Internal Revenue Code of 1954, including but not limited to any motion to delay a vote on a matter to any subsequent meeting; or any motion requesting a status report; or directing further studies, information and reports from the

General Counsel, the Staff Director or any division thereof; or any motion to waive the timely submission requirement for circulation of material for the agenda of the Commission.

7. Motions to Consider

The introduction of a principal motion puts a matter before the Commission for deliberation. When any such matter is under debate the Chairman shall entertain no motion except:

(a) A motion to adjourn.

(b) A motion to recess.

(c) A motion to call for the order of the day.

(d) Motion to Reconsider. The effect of the adoption of a motion to reconsider is to place before the Commission again the question on which the vote to reconsider was taken in the exact position in which it was before the original vote. Four votes are necessary to adopt a motion to reconsider. It is in order for any such motion to be offered by a member who was on the prevailing side of the question when it was initially adopted.

(e) A motion to lay a matter over. Any such motion shall require a majority vote of at least three members of the Commission; at least three votes will be required for any subsequent motion to take any such matter from the table. Any such motion shall be undebatable. Any such matter which is laid on the table pursuant to these rules shall be taken from the table pursuant to these rules at the next subsequent meeting or the matter dies. In order to table any agenda item which was placed on the agenda for a particular meeting by a Member of the Commission who is absent at that meeting a vote of a majority of at least three members of the Commission is required for approval. A motion to lay a matter over takes precedence over any motion to move the previous question.

(f) A motion to postpone consideration of a matter to a date certain. Any such motion shall require a majority vote of at least three members of the Commission.

(g) A motion to move the previous question.

(h) A motion in the nature of a substitute.

(i) A motion to amend. Any motion to amend takes precedence over the motion that it proposes to amend but is subordinate to all other motions. The effect of the foregoing is that the adoption of any such motion to amend does not result in the adoption of the motion to be amended; instead, that motion remains pending in its modified form. Rejection of a motion to amend leaves the pending motion as it was before the amendment was offered.

F. Personal Privilege

Any Commissioner may as a matter of personal privilege obtain recognition to speak upon any subject matter which in his or her judgment may affect the Commission or the Commissioner.

G. General Consent

In cases where there appear to be no opposition, the Chairman may state that in the absence of objection, action shall be considered taken on a matter.

H. Members Subsequently Recorded as Voting

Whenever any Member of the Commission who was absent when a vote was taken subsequently requests consent to be recorded as having voted on the matter, he or she shall place the reason for his or her absence on the record. Any such request shall be in order only on the same day on which the vote was taken.

I. Points of Order

Points of order shall be debatable at the discretion of the chair. Any Member of the Commission may appeal any decision of the chair but for any such appeal to prevail it must receive a majority vote of at least three Members of the Commission.



J. Proxies

No vote by any Member of the Commission with respect to any matter may be cast by proxy; 2 U.S.C. 437c(c).

K. Miscellany

Any parliamentary situation or circumstance not addressed in these Rules shall be governed by Roberts Rules of Order, Newly Revised or if not covered therein by a decision of the Chairman. Any Member of the Commission may appeal any such decision of the Chair but for any such appeal to prevail it must receive a majority vote of at least three Members of the Commission.

L. Special Rules to apply only when the Commission has fewer than four Members

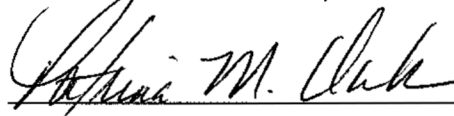
When the Commission has fewer than four Members, all of the foregoing provisions of this directive shall apply, except as follows:

1. Notwithstanding section A.2 of this directive, the word "meeting" shall mean the collegiate deliberation of two or more Members.
2. Notwithstanding section B of this directive, all Members of the Commission must be present to constitute a quorum for the consideration or resolution of any matter. If any Member of the Commission is absent at any time during a Commission meeting, the Chairman shall automatically declare a temporary recess (notwithstanding the absence of a call for a quorum) until a quorum is again present at which time the meeting may resume.
3. When these special rules are in effect, the Commission may discuss any matter otherwise in order for discussion pursuant to the other provisions of this Directive. However, the Commission may not act on any matter except for the following:

- (a) Documents such as *Campaign Guides* and any other brochures or public education materials that may customarily be voted on by the Commission;
- (b) Notices of filing dates, including filing dates for special elections;
- (c) Any action otherwise requiring Commission approval with respect to FEC Conferences or invitations for public appearances;
- (d) Election of which Members shall serve as chairman and vice chairman solely for the period during which the Commission has fewer than four Members, provided that in each instance that there is a Member eligible to hold the position pursuant to the eligibility requirements of 2 U.S.C. § 437c(a)(5);
- (e) Appointment of an acting general counsel, an acting staff director, an acting chief financial officer or an acting inspector general, approval of temporary personnel actions at the GS-15 level and above, and approval of other personnel actions;
- (f) Budget estimates or requests for concurrent submission to the President and Congress, and other budget related matters requiring Commission approval;
- (g) Minutes of previous meetings;
- (h) Non-filer notices issued pursuant to 2 U.S.C. § 438(a)(7);
- (i) Debt settlement plans pursuant to 11 C.F.R. Part 116;
- (j) Administrative terminations pursuant to 11 C.F.R. § 102.4 and Commission Directive 45;
- (k) Systems of Records Notices pursuant to the Privacy Act;
- (l) Policies, procedures and directives pursuant to the Privacy Act or Section 522 of the Consolidated Appropriations Act, 2005;
- (m) Agency head review of labor-management agreements;
- (n) Any other action where a statute imposes a duty of “agency head review” on the Commission;
- (o) Appeals under the Freedom of Information and Privacy Acts;
- (p) Sunshine Act recommendations for items on an agenda;

- (q) Contracts;
  - (r) The FEC Management Plan, pursuant to OMB Circular A-123 and the Federal Managers' Financial Integrity Act;
  - (s) Corrective action plans prepared in response to audits both financial and non-financial pursuant to FEC Directive 50 and/or the Accountability of Tax Dollars Act; or,
  - (t) EEO-related Federal Register notices.
4. Notwithstanding any provision of sections E, I or K of this directive, approval of any motion or appeal properly before the Commission under this section L shall require the affirmative vote of a majority of the Members of the Commission. However, if such majority comprises exclusively the affirmative votes of Members affiliated with the same political party (or Members whose positions are aligned for the purpose of nomination by the President), then the motion or appeal shall be deemed not approved.
5. Section H of this directive shall not be operative during any period in which these special rules are in effect.

The Commission approved the amendment to Directive 10 on December 20, 2008.



PATRINA M. CLARK  
STAFF DIRECTOR

**From:**Christian J. Hilland  
**To:**FEC Staff  
**Sent:**2019-08-30T19:07:00.000000Z  
**Subject:**FEC Weekly Digest for the Week of August 26–30, 2019

Contact: Judith Ingram  
Christian Hilland  
Myles Martin

**Weekly Digest**  
**Week of August 26 - 30, 2019**

**Commission meetings and hearings**

No open meetings or executive sessions were scheduled this week.

**Advisory opinions**

Request Received

[Advisory Opinion Request 2019-17 \(Government Accountability Institute\)](#)

On August 26, 2019, the Commission made public Advisory Opinion Request 2019-17. The requestor, the Government Accountability Institute, asks whether its articles and commentary on issues relating to government corruption and fraud qualify for the media exemption from the definitions of “contribution,” “expenditure,” and “electioneering communication.” The Commission will accept written comments on the request during the 10-day period following publication of the request (no later than September 5, 2019) and must issue a response no later than 60 days after the receipt of the complete request, that is, by October 18, 2019.

**Enforcement**

The Commission made public eight closed cases and three Statements of Reasons, as follows. For more information, see the case documents in the [Enforcement Query System](#).

[MUR 7148](#)

COMPLAINANT: Kim Savage

RESPONDENTS: Liberty Principles PAC, Inc. and Dan Proft, in his official capacity as treasurer (Liberty Principles); Khouri for Congress and Paul Kilgore, in his official capacity as treasurer (Khouri Committee); Tonia Khouri; Local Government Information Services, Inc. (LGIS); and Locality Labs, LLC (Local Labs)

SUBJECT: The complaint alleged that Liberty Principles violated the Federal Election Campaign Act of 1971, as amended (the Act), by making in-kind contributions to the Khouri Committee in the form of coordinated communications that republished Khouri Committee campaign materials in a format designed to look like local community newspapers. The complaint further alleged that the Khouri Committee accepted and failed to report the in-kind contributions. Tonia Khouri was a 2016 candidate for Illinois’s 11<sup>th</sup> Congressional District.

DISPOSITION: The Commission exercised its prosecutorial discretion and dismissed the complaint in consideration of Commission priorities. The Commission observed the modest amounts at issue and that there was insufficient information to infer that LGIS (which published the materials in question), Local Labs (which was contracted by LGIS), or Liberty Principles coordinated the content of its publications with the Khouri Committee.

[MUR 7384](#)

COMPLAINANT: Donald Scott Priest

RESPONDENTS: Andrew Janz for Congress and Jay Petterson, in his official capacity as treasurer (Janz Committee); and Santa Clara County United Democratic Campaign and Prameela Bartholomeusz, in her official capacity as treasurer (Santa

Clara Committee)

**SUBJECT:** The complaint alleged that a handwritten postcard supporting the election of Andrew Janz, a 2018 candidate for California's 22<sup>nd</sup> Congressional District, did not contain a required disclaimer and constituted either an undisclosed in-kind contribution or unreported activity by the Janz Committee.

**DISPOSITION:** The Commission exercised its prosecutorial discretion and dismissed the allegations in consideration of Commission priorities.

#### [MUR 7448](#)

**COMPLAINANT:** Thomas J. Anderson

**RESPONDENTS:** California Democratic Party and Katherine Moret, in her official capacity as treasurer (CDP); Citizens for Waters and David Gould, in his official capacity as treasurer (Waters Committee); and Kamala Harris for Senate and Stephen J. Kaufman, in his official capacity as treasurer (Harris Committee)

**SUBJECT:** The complaint alleged that a slate mailer paid for by the Waters Committee and CDP resulted in an excessive contribution to the Harris Committee.

**DISPOSITION:** The Commission found no reason to believe that the Waters Committee and CDP made or the Harris Committee accepted excessive contributions. The Commission noted that (1) CDP used its coordinated party expenditure limitations to pay approximately \$35,000 for the cost of the mailer on behalf of the Harris Committee and reported the payments, (2) this payment did not cause CDP to exceed its coordinated party expenditure limit for the 2016 California Senate election, and (3) the Waters Committee was timely reimbursed (CDP reimbursed the Waters Committee for the mailer within two days of the Waters Committee's request for reimbursement and two weeks before the mailer was distributed), so the mailer did not constitute an in-kind contribution to the Harris Committee.

#### [MUR 7503](#)

**COMPLAINANT:** Kansas Democratic Party

**RESPONDENTS:** Kansas Republican Party and Richard L. Todd, in his official capacity as treasurer (The Party); and Congressional Leadership Fund and Caleb Crosby, in his official capacity as treasurer (CLF)

**SUBJECT:** The complaint alleged that CLF made, and the Party accepted and failed to report, a prohibited in-kind contribution in the form of a coordinated communication, citing the appearance by the then-Party Secretary in a television ad paid for by CLF.

**DISPOSITION:** The Commission exercised its prosecutorial discretion and dismissed the complaint in furtherance of Commission priorities. The Commission observed that the information indicated that Party Secretary appeared in CLF's ad in a personal capacity and not as a representative of the Party.

#### [MUR 7533](#)

**COMPLAINANT:** Selina Vickers

**RESPONDENTS:** Unknown Respondent; Rupert Phillips; and Richard Abraham

**SUBJECT:** The complaint alleged that an unknown respondent created and distributed signs opposing a congressional candidate that failed to contain a disclaimer.

**DISPOSITION:** The Commission exercised its prosecutorial discretion and dismissed the complaint in consideration of Commission priorities.

#### [MUR 7541](#)

**COMPLAINANT:** Libertarian Party of Ohio

**RESPONDENT:** Columbus Metropolitan Club (CMC); Rick Neal for Congress and Jason H. Calhoun, in his official capacity as treasurer; and Stivers for Congress and Matthew J. Yuskewich, in his official capacity as treasurer

**SUBJECT:** The complaint alleged that a candidate debate sponsored by CMC featuring Stivers and Neal, two 2018 candidates for Ohio's 15<sup>th</sup> Congressional District, violated the Act since CMC invited only major-party candidates and excluded Libertarian Party candidate Jonathan Miller. The complaint alleged that by excluding Miller, CMC made and the Stivers and Neal Committees received impermissible corporate contributions.

**DISPOSITION:** The Commission exercised its prosecutorial discretion and dismissed the allegations that CMC and the Neal and Stivers Committees violated the Act's prohibition on making and receiving corporate contributions. The Commission observed that (1) Miller was no longer a candidate under the Act when the debate took place, (2) the amount of potential contributions from CMC to the Stivers and Neal Committees was relatively modest, (3) the record was not clear as to what criteria CMC used to select the debate participants, and (4) the potential violations did not warrant further expenditure of Commission resources.

## [MUR 7597](#)

COMPLAINANT: FEC-Initiated

RESPONDENT: Texas Democratic Party and Gilberto Hinojosa, in his official capacity as treasurer (the Committee)  
SUBJECT: In the normal course of carrying out its supervisory responsibilities, the Commission initiated proceedings to determine whether there was reason to believe the Committee failed to report joint fundraising receipts from the Hillary Victory Fund and transfers to the Democratic National Committee.  
DISPOSITION: The Commission entered into a conciliation agreement providing for the Committee to pay a civil penalty of \$17,000.

## [MUR 7617](#)

COMPLAINANT: Angie Hall

RESPONDENTS: Supporters of Judy Herschel and Judith Herschel, in her official capacity as treasurer (the Committee); and Rachel Thomas  
SUBJECT: The complaint alleged that the Committee reported 20 in-kind contributions from Thomas, an attorney, and that the value of those services exceeded the individual contribution limit. Judith Herschel was a 2018 candidate for Pennsylvania's 10th Congressional District.  
DISPOSITION: The Commission exercised its prosecutorial discretion and dismissed the complaint in consideration of Commission priorities.

[MUR 6932](#) (Hillary Rodham Clinton; Hillary for America and Jose H. Villarreal, in his official capacity as treasurer; Ready PAC and Amy Wills Gray in her official capacity as treasurer ; and Unknown Respondent. On August 30, Vice Chairman Matthew S. Petersen and Commissioner Caroline C. Hunter issued a [Statement of Reasons](#).

[MUR 7416](#) (Unknown respondents). On August 30, Vice Chairman Matthew S. Petersen and Commissioner Caroline C. Hunter issued a [Statement of Reasons](#).

[MUR 7432](#) (John James for Senate, Inc. and Timothy Caughlin, in his official capacity as treasurer; and Outsider PAC and Julie Dozier, in her official capacity as treasurer. On August 30, Vice Chairman Matthew S. Petersen and Commissioner Caroline C. Hunter issued a [Statement of Reasons](#).

## **Alternative Dispute Resolution**

The Commission made public two closed cases, as follows. For more information, see the case documents in the [Enforcement Query System](#).

### [ADR 905](#)

COMPLAINANT: FEC-Initiated

RESPONDENT: Ohio Majority Trust and Scott Pullins, in his official capacity as treasurer (the Committee)  
SUBJECT: In the normal course of exercising its supervisory responsibilities, the Commission initiated proceedings to determine if the Committee failed to file a 48-Hour Report totaling \$35,000 supporting an independent expenditure disclosed on the Committee's 2017 Year-End Report.  
DISPOSITION: The Committee agreed to participate in an FEC conference, webinar, or other program and to pay a civil penalty of \$1,750.

### [ADR 909](#)

COMPLAINANT: FEC-Initiated

RESPONDENT: Win Justice and Deepak Pateriy, in his official capacity as treasurer (the Committee)  
SUBJECT: In the normal course of exercising its supervisory responsibilities, the Commission initiated proceedings to determine if the Committee failed to file a 48-Hour Report totaling \$48,682.53 supporting an independent expenditure disclosed on the Committee's 2018 October Quarterly Report.  
DISPOSITION: The Committee agreed to develop and certify implementation of a compliance operations manual that will include procedures for determining and disclosing independent expenditures, and to pay a civil penalty of \$2,450.

## **Regulations and Agency Procedures**

On August 28, the Commission published three Rulemaking Petitions in the *Federal Register*: 1) a [Rulemaking Petition and Notification of Availability on Party Segregated Accounts](#); 2) a [Rulemaking Petition and Notification of Availability on Requiring Reporting of Exchanges of Email Lists](#); and 3) a [Rulemaking Petition and Notification of Availability on Filing Dates for Unauthorized Political Committees](#). The Commission seeks comments on all three petitions by October 28, 2019. Comments must be in writing and the Commission encourages the public to submit comments electronically on the Commission's website at <http://www.fec.gov/fosers>.

## Commissioner Statements

On August 26, Vice Chairman Matthew S. Petersen submitted his [Letter of Resignation](#).

On August 26, Chair Ellen L. Weintraub issued a [Statement on Departure of Vice Chairman Petersen](#).

On August 26, Commissioner Caroline C. Hunter issued a [Statement on Departure of Vice Chairman Petersen and Loss of Quorum](#).

## Litigation

*CREW, et al. v. FEC* (Case No. 19-1650) On August 23, Plaintiffs filed a [Response to the Commission's Partial Motion to Dismiss](#) in the U.S. District Court for the District of Columbia.

*Free Speech For People v. FEC* (Case No. 19-1722) On August 23, the Commission filed a [Motion to Dismiss](#) in the U.S. District Court for the District of Columbia.

## Outreach

On August 27 and 28, Chair Weintraub and Commission staff hosted a Regional Conference in Chicago, IL for candidates, party committees, and political action committees.

## Press Releases

[Matthew Petersen departs Federal Election Commission](#) (issued August 26)

## Upcoming Commission meetings and hearings

September 10 and 12: The Commission is scheduled to meet in [executive session](#).

September 12: The Commission is scheduled to hold an [open meeting](#).

Meeting dates are subject to change. Please contact the Press Office the week of the scheduled meeting for confirmation.

## Upcoming reporting due dates

September 20: September Monthly reports are due. For more information on monthly reporting dates, refer to the [2019 Monthly Reporting](#) page of the Commission website.

## Additional research materials

[FEC Notify](#): Want to be notified by email when campaign finance reports are received by the agency? Sign up [here](#).

Additional research materials about the agency, campaign finance information, and election results are available through the [Library section](#) of the Commission website.

Printed copies of the 2019 edition of [Title 11 of the Code of Federal Regulations \(CFR\)](#) are available. Contact the

Commission's Information Division at (202) 694-1100 or (800) 424-9530 (press 6, when prompted) to order printed copies of the CFR at no charge. You may also email the Information Division to place an order at [info@fec.gov](mailto:info@fec.gov).

The [Combined Federal State Disclosure and Election Directory](#) is available. This publication identifies the federal and state agencies responsible for the disclosure of campaign finances, lobbying, personal finances, public financing, candidates on the ballot, election results, spending on state initiatives and other financial filings.

[Federal Elections 2016: Election Results for the U.S. President, the U.S. Senate and the U.S. House of Representatives](#) is available. The data was compiled from the official vote totals published by state election offices. To order a printed copy, please contact the FEC's Public Records Office at 800/424-9530 (option 2) or 202/694-1120, or send an email to [pubrec@fec.gov](mailto:pubrec@fec.gov).

The [FEC Record](#) is available as a continuously updated online news source.

### **Join the FEC on Twitter and YouTube**

Follow [@FEC](#) on Twitter to receive the latest information on agency updates, news releases, and weekly activity. Subscribe to our YouTube channel, [FECTube: FECConnect on Demand](#), to watch instructional videos that have been designed to help candidates and committees comply with federal campaign finance laws. Note that the FEC is not currently available through other social media platforms at this time. The use of the agency's logo, name, and likeness on other media has not been authorized by the FEC.



**From:**Judith Ingram  
**To:**Christopher Curran  
**Sent:**2019-09-04T17:12:31.000000Z  
**Subject:**FW: For Press Committee: TV Interview Request

Hi, Chris.

Circling back with this request in case Commissioner Hunter is interested.

Thanks,

Judy

Judith Ingram  
Press Officer  
Federal Election Commission  
1050 First Street, N.E.  
Washington, D.C. 20463

202/694-1219 (o)  
202/531-2882 (m)

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**From:** Judith Ingram  
**Sent:** Tuesday, September 03, 2019 11:08 AM  
**To:** Weintraub Office <WeintraubOffice@fec.gov>; Hunter Office <HunterOffice@fec.gov>; Commissioners Office <CommissionersOffice@fec.gov>  
**Cc:** Press Staff <Press\_Staff@fec.gov>; Office of Communications (Staff Leaders) <CommunicationsStaffLeaders@fec.gov>; Alec Palmer <APalmer@fec.gov>  
**Subject:** For Press Committee: TV Interview Request

Good morning, Press Committee, Commissioners and Staff.

Would any Commissioner like to do a Nexstar TV interview on Thursday or Friday about the lack of a quorum? Details are below.

Please let us know.

Thanks,

Judy

Judith Ingram  
Press Officer  
Federal Election Commission  
1050 First Street, N.E.  
Washington, D.C. 20463

202/694-1219 (o)  
202/531-2882 (m)

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**From:** Morgan Wright [<mailto:MoWright@nexstar.tv>]  
**Sent:** Tuesday, September 03, 2019 10:59 AM  
**To:** Press Office <[press@fec.gov](mailto:press@fec.gov)>  
**Subject:** TV Interview Request

Good Morning,

I'm reaching out for a TV interview request regarding the resignation of FEC Vice Chairman Petersen, leaving agency unable to vote.

Would anyone be available for an interview on how the agency operates, and the role of FEC?

Please let me know if there's any availability for an interview either Thursday or Friday morning. We can accommodate you here at our bureau 400 N. Capitol St. NW, or we can travel to your location for the interview.

Look forward to hearing back from you all.

Best,

**Morgan Wright**  
**Washington Correspondent**  
**Nexstar Media Group**  
[mowright@nexstar.tv](mailto:mowright@nexstar.tv)  
Office: 202-824-6774  
Cell: 240-291-1059

**From:**Karl Evers-Hillstrom

**To:**press@fec.gov; TMoore@fec.gov; CommissionerWeintraub@fec.gov; CommissionerHunter@fec.gov

**Sent:**2019-08-26T16:41:57.000000Z

**Subject:**Inquiry about Peterson resignation

Hi there, was wondering if FEC commissioners had a response to Matthew Peterson's imminent resignation - and about the fact that the commission is down to three members and thus no longer has quorum.

I can be reached by email or phone (347-675-5527).

Thanks.

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**Karl Evers-Hillstrom**

**Money-In-Politics Reporter, OpenSecrets.org**

**347-675-5527**

**From:**Masood Farivar  
**To:**CommissionerHunter@fec.gov  
**Sent:**2019-09-05T18:13:24.0000000Z  
**Subject:**Interview Request

Dear Commissioner Hunter,

I'm a reporter with Voice of America here in Washington. For a story on the FEC's ability to function without a quorum, we're interested in doing a brief phone interview with you. I've spoken with Chair Weintraub and wanted to get your response to some of her comments on how the Republicans on the Commission have blocked enforcement actions and rulemaking proposed by the Democrats. Apologies for the last minute nature of the request but I was wondering if you were available this afternoon for a 5-10 minute phone interview?

Thanks so much!

Masood Farivar  
Justice Correspondent  
Voice of America  
202 203 4428