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WASHINGTON, D.C. 20463

The State of the Federal Election Commission 2019 END OF YEAR REPORT

Chair Ellen L. Weintraub

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2019 has been a tough year for the Federal Election Commission (“FEC”). We lost the first month to a government shutdown. We have spent the last four months without enough commissioners to do our most important work.¹ And the seven months in between were burdened by the ideological obstruction that has plagued the Commission since 2008.

Still, the FEC managed to score some significant successes this year, and we continue to press ahead even as we await more commissioners from the President and the Senate:

- **Reduced the enforcement backlog.** At the beginning of 2019, the Commission had 344 enforcement matters in the building, with 101 of them awaiting Commission action.² By the beginning of September, the backlog of cases pending before the Commission for a vote had been whittled down to 63 matters, a trend that likely would have continued but for a resignation at the beginning of September that left the Commission without enough votes to decide enforcement matters.³ In the intervening seven months, we resolved about 200 of the year’s original 344 enforcement matters.⁴

Regrettably, our commissioner shortage has erased every bit of the progress we made on the backlog. As of December 1, 2019, that stack of 63 matters pending before the Commission had grown right back to 101⁵, and until we get more commissioners, it has nowhere to go but up.

- **Launched investigations.** The Commission voted to pursue matters involving allegations of some of the most serious types of violations within our jurisdiction. By August, we had more than doubled the number of active FEC investigations. Regardless of the number of commissioners left in the building, these investigations remain fully authorized: Witness interviews, depositions, and document subpoenas are proceeding.
- **Enforced foreign-national matters.**⁶ As of December 1, 2019, thirty-five foreign-national matters are under consideration. The Commission has voted in nine of those matters to find reason to believe the law may have been violated,⁷ and seven matters await a vote from a reconstituted Commission.
- **Protected campaigns from cyberattack.** We approved a significant advisory opinion

that will allow critical cybersecurity resources to flow to federal campaigns in 2020.⁸ This step was especially important as my colleagues remained unwilling throughout the year to consider the regulatory proposals I have put forward to help protect our elections from foreign interference.

Some of the FEC's most significant successes are the hardest to spot. Fortunately, two examples of these everyday miracles require no Commission votes and are thus unhindered by Commission vacancies:

1. The ongoing excellence with which FEC staff received, analyzed, and made available to the public more than 22 million financial transactions and the more than 38 million pages of campaign-finance data we received from the roughly 15,000 political committees and other entities currently disclosing their finances with the Commission, and
2. The expert advice we were able to provide through more than 24,000 compliance calls and emails handled this year with the regulated community and general inquiries from the public, the press, and Congress.

Obviously, though, all is not well at the FEC. As in most of the last 11 years, the Commission frequently closed matters without so much as making a phone call to investigate potential wrongdoing.⁹ Enforcement actions pending before the Commission languished for months or years at the request of my Republican colleagues, causing some to near the end of their statutory limitations, only for these Commissioners to then decline to investigate at all – or for us to end up with inadequate outcomes years too late to make a meaningful difference to the public.¹⁰

In fact, my Republican colleagues blocked any investigation of some of the most alarming allegations of campaign-finance violations we considered in 2019. They shot down two matters regarding alleged Russian interference in the 2016 elections.¹¹ Allegations of massive joint fundraising operations that appeared to circumvent the limits on individual contributions in connection with the 2016 Democratic and Republican presidential candidates were also ignored.¹² My Republican colleagues blocked investigation of serious allegations regarding coordinated communications and expenditures¹³ and whether certain organizations improperly failed to register as political committees.¹⁴ In each of these matters, I voted to take action, but there were not the requisite four votes to proceed.

While the overwhelming credit for the Commission's successes can be laid at the feet of the FEC's hardworking staff, and the overwhelming share of our failures belong to the Commissioners, I am wrapping up my shortened year as Chair with some achievements I am proud of. My concerted efforts to reduce the Commission's enforcement backlog were quite successful during the seven months we were meeting and voting. I was able to keep focus on matters involving foreign nationals and matters imperiled by statute-of-limitation issues. I furthered the FEC's public education and outreach mission: I convened two public symposiums with outside experts at the FEC (one looking back at the 2018 election and one addressing digital disinformation).¹⁵ I provided significant testimony before local, national and international

audiences.¹⁶ I gave voice to the law of foreign election interference,¹⁷ ‘things of value,’¹⁸ and internet ad disclaimers¹⁹ to ensure that those engaged in politics and the public have ready access to the information they need to be informed and active participants in our democracy. I moved the nation’s public conversation forward on the microtargeting of online political advertisements.²⁰

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Today, we are 319 days from the 2020 presidential election. The nation is bitterly split along partisan lines and our democracy remains under sustained attack from foreign adversaries. And the agency charged with administering and enforcing the federal campaign laws that will govern the 2020 election remains without the four Commissioners it needs to make most of its major decisions. It is, to be charitable, less than ideal.

But plenty of enforcement activity occurs at the FEC without a need for a Commission vote. FEC staff are continuing to process all complaints coming in the door and advance already-authorized investigations. Our lawyers are continuing to prepare their recommendations for the Commission to address as soon as the commissioner shortage is remedied.

An election lawyer would be committing professional malpractice if they advised a client to ignore federal campaign-finance laws while the Commission is short on commissioners. The FEC can pursue respondents *civilly* anytime for five years after a violation. The U.S. Department of Justice can do so *criminally* – and is fully able to do so right now. And the campaign-finance reports that FEC staff are continuing to review and post on our website will empower political opponents, the press, and the public to discover misbehavior and hold candidates accountable *politically* for it.

Still, America deserves a fully functioning FEC – one fully vigilant to all threats to the integrity of our elections, fully dedicated to enforcing existing laws and improving them with appropriate regulations, and fully committed to educating the public about their campaign-finance laws.

This is not as simple as just filling seats. If the President and Senate send over new commissioners who share the obstructionist approach that my Republican colleagues have taken since 2008, the next 11 years will look just like the last 11. The FEC’s current vacancies present the President and the Senate with an opportunity to break the gridlock and appoint commissioners who will honestly assess the state of campaign-finance law and the facts on the ground – commissioners who will work to achieve consensus to solve the tough problems that keep our elections from being as transparent and fair as they could be. This is not a problem I, nor any of the other commissioners, nor even the FEC’s dedicated staff, can solve. This really is a problem that only the President and the Senate can fix. I urge them to do so.

¹ Under the Federal Election Campaign Act, as amended (the “Act”), the Commission is comprised of six members, with no more than three commissioners from the same political party. 52 U.S.C. § 30106(a). In order to exercise some of the Commission’s most important duties and powers, the Act requires at least four affirmative votes from members of the Commission. 52 U.S.C. § 30106(c). As of September 1, 2019, the Federal Election Commission, which, when fully staffed, has six commissioners, dropped to three with the resignation of Vice Chairman Matthew S. Petersen. Since his resignation, the FEC has been unable to launch any new investigations, issue any advisory opinions, promulgate any rules, grant any matching funds request, or render any decisions on pending enforcement actions.

² Eighty-eight of those 344 enforcement matters involved alleged violations that were due to expire under the statute of limitations within a year and a half, absent tolling. Of the 344 matters, 28 alleged a violation of the prohibition against foreign-national political spending. Figures include both external complaints filed with the Commission and internally generated matters. These are matters to be resolved via both the traditional enforcement process and alternative dispute resolution.

³ At the time of Vice Chairman Petersen’s resignation, the Commission had 272 matters on its enforcement docket. Sixty-two of those 272 matters involved alleged violations due to expire under the statute of limitations within a year and a half, absent tolling. Of the 272 matters, 31 alleged a violation of the prohibition against foreign-national political spending. Figures include both external complaints filed with the Commission and internally generated matters. These are matters to be resolved via both the traditional enforcement process and alternative dispute resolution.

⁴ Penalties assessed totaled almost \$1.7 million. This included a \$940,000 civil penalty against respondents in a matter involving large donations illegally given by foreign nationals in 2016 to Right to Rise USA, a super PAC supporting Jeb Bush for President (MUR 7122 (Right to Rise USA/American Pacific International Capital, Inc.)). The Commission assessed a \$129,600 civil penalty against a state party for using over half a million dollars in non-federal funds to support federal election activity (MUR 7214 (Ohio Republican Party)), a \$100,000 civil penalty against a non-connected political committee for failing to accurately report over \$700,000 of independent expenditures and properly disclose its debt and obligations in the 2016 election (MUR 7545 (Team Party Majority Fund)), and an \$81,000 civil penalty against respondents in a matter involving an employee reimbursement scheme carried out at a West Virginia coal company (MUR 7221 (Mepco Holdings, LLC)).

⁵ Sixty-eight of the total of 313 matters involve alleged violations due to expire under the statute of limitations within a year and a half, absent tolling. Of the 313 matters, 35 allege a violation of the prohibition against foreign-national political spending. Figures include both external complaints filed with the Commission and internally generated matters. These are matters to be resolved via both the traditional enforcement process and alternative dispute resolution.

⁶ In September 2016, the Commission agreed to my proposal to direct the Office of General Counsel to “prioritize cases involving allegations of foreign influence.”

⁷ The Act requires that the Commission find “reason to believe that a person has committed, or is about to commit, a violation” of the Act as a precondition to opening an investigation into the alleged violation. 52 U.S.C. § 30109(a)(2). A “reason to believe” finding is not a finding that the respondent violated the Act, but instead simply means that the Commission believes a violation may have occurred. *See* Guidebook for Complainants and Respondents on the FEC Enforcement Process, https://transition.fec.gov/em/respondent_guide.pdf.

⁸ Advisory Opinion 2018-12 (Defending Digital Campaigns) (nonprofit corporation may provide cybersecurity services, software, and hardware for free or at a reduced cost to federal candidates and national parties on a nonpartisan basis according to pre-determined, objective criteria due to unusual and exigent circumstances and the demonstrated threat of foreign cyberattacks against party and candidate committees).

⁹ See, e.g., Statement of Reasons of Chair Ellen L. Weintraub at 3, MUR 7314 (NRA, Torshin, Butina, *et al.*), <https://go.usa.gov/xVV9Y>. The Commission received a credible allegation indicating that the FBI was investigating whether Russian nationals had illegally funneled millions of dollars into the 2016 presidential election. My Republican colleagues refused to allow so much as a phone call to the FBI to determine whether such an investigation existed.

¹⁰ See, e.g., Statement of Reasons for Chair Ellen L. Weintraub, MUR 6538R (Americans for Job Security), https://eqs.fec.gov/eqsdocsMUR/6538R_1.pdf.

¹¹ See, e.g., Statement of Reasons of Chair Ellen L. Weintraub, MUR 7272 (Party of Regions, *et al.*); <https://go.usa.gov/xVVfa>; Statement of Reasons of Chair Ellen L. Weintraub, MUR 7314 (NRA, Torshin, Butina, *et al.*), <https://go.usa.gov/xVVfr>.

¹² See Statement of Reasons of Chair Ellen L. Weintraub, MUR 7304, *et al.* (Hillary Victory Fund, *et al.*) & MUR 7339 (Trump Victory, *et al.*), <https://go.usa.gov/xVVfb>.

¹³ Statement of Reasons of Chair Ellen L. Weintraub, MUR 6940, *et al.* (Correct the Record, *et al.*), <https://go.usa.gov/xVV6V>; Statement of Reasons of Chair Ellen L. Weintraub, MUR 6908 (NRCC, *et al.*), <https://go.usa.gov/xVV6y>.

¹⁴ Statement of Reasons of Chair Ellen L. Weintraub, MUR 6596 (Crossroads GPS), <https://go.usa.gov/xVV6d>; First Gen. Counsel's Rpt., MUR 6596 (Crossroads GPS), <https://go.usa.gov/xVV6G>.

¹⁵ See Feb. 21, 2019 panel discussion on 2018 campaign spending, *found at* https://www.fec.gov/resources/cms-content/documents/2019-02_Invitation_ELW-Krumholz-Malbin_Event.pdf; "Digital Disinformation and the Threat to Democracy: Information Integrity in the 2020 Elections" (Sept. 17, 2019), <https://www.fec.gov/about/leadership-and-structure/ellen-l-weintraub/symposium-digital-disinformation-and-threat-democracy-information-integrity-2020-elections/>.

¹⁶ See, e.g., Testimony Before the House Oversight and Reform Subcommittee on National Security (May 22, 2019), https://www.fec.gov/resources/cms-content/documents/Ellen_L_Weintraub_Written_Testimony_for_05-22-19_HOGR.pdf.

¹⁷ See, e.g., Statement Regarding Illegal Contributions From Foreign Governments (June 14, 2019), https://www.fec.gov/resources/cms-content/documents/Chair_Weintraub_on_Illegal_Foreign_Contributions.pdf; "Foreign spending in our elections is a threat to our national sovereignty," WASH. POST (June 20, 2019), https://www.washingtonpost.com/opinions/foreign-spending-in-our-elections-is-a-threat-to-our-national-sovereignty/2019/06/20/80ecb2a8-9372-11e9-b58a-a6a9afaa0e3e_story.html; Draft Interpretive Rule Concerning Prohibited Activities Involving Foreign Nationals (Sept. 26, 2019), https://www.fec.gov/resources/cms-content/documents/mtgdoc_19-41-A.pdf.

¹⁸ "The Law of a 'Thing of Value'" (Oct. 18, 2019) ("Federal courts have consistently applied an expansive reading to the term 'thing of value' in a variety of statutory contexts to include goods and services that have tangible, intangible, or even merely perceived benefits, for example: promises, information, testimony, conjugal visits, and commercially worthless stock"), <https://www.fec.gov/resources/cms-content/documents/2019-10-ELW-the-law-of-a-thing-of-value.pdf>.

¹⁹ "The Law of Internet Communication Disclaimers" (Dec. 18, 2019) ("So going into 2020, the existing law of internet communication disclaimers will still apply. Fortunately, the law remains simple and clear: Virtually all paid political advertising on the internet must contain a full, clear, and conspicuous disclaimer on its face"), <https://www.fec.gov/resources/cms-content/documents/2019-12-18-The-Law-of-Internet-Communication-Disclaimers.pdf>.

²⁰ "Don't abolish political ads on social media. Stop microtargeting," WASH. POST (Nov. 1, 2019), *found at* <https://www.washingtonpost.com/opinions/2019/11/01/dont-abolish-political-ads-social-media-stop-microtargeting/>.