

**Opening Statement
Ellen L. Weintraub
Chair, Federal Election Commission
Before the
Committee on House Administration**

October 16, 2003

Good afternoon, Mr. Chairman and Members of the Committee, and thank you for inviting me here today.

I am pleased to appear before you to discuss the Federal Election Commission's enforcement procedures. As someone who practiced election law before joining the Commission last December, I am particularly interested in seeing that the Commission enforces the law fairly and efficiently. I have the good fortune of having arrived at the Commission at a time when there is a great deal of interest, on the parts of Commissioners, agency staff, and those who practice before the Commission, in improving the enforcement process.

I was therefore happy to convene an unusual hearing on June 11 of this year, focusing on the Commission's enforcement procedures. We invited the regulated and reform communities in to critique our performance and offer suggestions on how we can improve. I am not aware of other agencies so frankly inviting criticism in this way, and I think it is a tribute to

our General Counsel and his staff that all of the testimony was received without defensiveness and with an open mind. This reflects our current General Counsel's enforcement philosophy that the investigative process is not an adversary proceeding, and that his primary responsibility in that process is to provide the Commission with objective recommendations based on a fair reading of the record, and careful, thorough consideration of the issues.

The Commission received a number of thoughtful, sensible suggestions, both in writing and through oral testimony. We may not adopt every suggestion that has been made but all of the testimony is being given serious consideration. At the hearing, we discussed such topics as the timeliness of investigations; whether the Commission should adopt a publicly available civil penalty schedule; the appropriate scope of treasurer liability; the method by which respondents are identified; the agency's discovery practices; and concerns about the statutory trigger for initiating an investigation, which is a finding by the Commission that there is "reason to believe" that the law has been violated. Although I do not share all of Vice Chairman Smith's views, I join him in urging you to consider amending the language of the statute so that the trigger for an investigation would be a

Commission finding of “reason to investigate,” which would more accurately reflect the status of our knowledge at that preliminary stage.

In response to that hearing, the Commission has already made several modifications to its enforcement procedures. Witnesses are now given access to their deposition transcripts. The Office of General Counsel is currently drafting recommendations for changing our practices with respect to naming treasurers as respondents. Our staff is developing new language for our confidentiality advisement, to clarify that there are no statutory restrictions on witnesses’ cooperation with respondents’ counsel. We are developing a new policy on *sua sponte* submissions. The Commission is implementing a variety of internal management controls to speed the disposition of cases. We are also on track to have the public records for closed Matters Under Review, or “MURs,” available on the FEC’s website by the end of the year. It is my personal belief that increased efficiency and increased transparency will go a long way towards alleviating any remaining concerns of the regulated community about the agency’s enforcement practices.

Now is an ideal time for the Commission to make as much headway as possible on these issues, as we await the Supreme Court’s opinion on the constitutionality of the Bipartisan Campaign Reform Act. We appreciate

the interest that the House Administration Committee has shown in the FEC's enforcement procedures. I would be happy to answer any questions that you have.