



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

Office of Commissioner Steven T. Walther

May 1, 2019

Re: Response of Commissioner Steven T. Walther to Question 46 of  
April 1, 2019 Letter to Federal Election Commission from Committee  
on House Administration, Zoe Lofgren, Chairperson

Dear Chairperson Lofgren and Members of the Committee on House Administration:

Thank you very much for your ongoing interest in the Federal Election Commission and your desire to hear from the Commission regarding its concerns and challenges and to be apprised of our plans for the current election cycle.

Much of the credit in researching and compiling the information for our responses goes to the FEC team assembled by Duane Pugh, the Commission's Director of Congressional, Legislative and Intergovernmental Affairs. The FEC team toiled for many hours over this past month to provide detailed and accurate responses to the Committee's inquiries in a timely manner.

Thank you also for offering an opportunity for each of the Commissioners to provide comments individually in addition to providing collective responses to your questions. While I concur with the Commission's collective responses, there are some minor issues on which I would like to elaborate; I welcome this opportunity to offer my views concerning these issues.

*Priority and Timing of Enforcement Matters*

A major focus of my efforts as a Commissioner has been to improve the processing of enforcement matters that come before the Commission, while promoting fairness, efficiency and transparency. Unfortunately, all too often significant amounts of monetary activity in violation (or potential violation) of the FECA in enforcement matters before the Commission are lost due to the expiration of the applicable statute of limitations. These situations might have been avoided or ameliorated if the Commission had policies in place to handle cases more efficiently. To address these ongoing concerns, I have made four separate motions (dated July 16, 2015, September 15, 2015, November 10, 2015, and August 16, 2016), culminating in a November 15, 2017 memorandum entitled "Assessment of Commission Action in Enforcement Matters

Awaiting Reason to Believe Consideration.” *See* Document A.<sup>1</sup> These memoranda and accompanying motions included detailed charts and deadlines for appropriate action to be taken by the Commission.

Although the priority motions were not approved by the Commission, the charts and method of disclosure used in those motions were adopted in the amendments to Directive 68 on December 14, 2017.<sup>2</sup> The amended directive, which was unanimously approved by the Commission, greatly improved transparency and accountability regarding the Commission’s performance on enforcement matters. Each Status of Enforcement report is now placed on the Commission’s website and available to the public in redacted form within 15 days of circulation of the report to the Commission. In fact, the Committee included a chart from a recent Status of Enforcement document in Question 20.

The Commission still has not, however, approved procedures to speed up the enforcement process as proposed in the priority motions. For example, as indicated in the charts in the Status of Enforcement reports, enforcement matters are often delayed for several months or even years due to the numerous holdover requests by Commissioners. I believe there should be strict limits regarding the terms of holdover requests, and I will be asking the Commission to adopt further amendments to Directive 68 to establish deadlines for the timely processing of enforcement matters before the Commission. *See* Document B.

#### *The Commission’s Audit Process*

To improve the efficiency of processing audits and avoid losing potential violations to the statute of limitations, I believe that Directive 70 should be amended to require that no audit may be commenced unless, at the outset, Audit staff submits to the Commission a comprehensive plan of how it intends to complete the audit in a sufficient amount of time. Such a plan would include (a) an analysis of the need for the audit, (b) a projection of the time and effort to complete the audit, and (c) a conclusion as to whether the audit can be completed – including transfer to OGC for further enforcement proceedings as appropriate – prior to 18 months before the statute of limitations starts to run.

#### *Legislative Cures*

The massive amount of money that has been injected into the electoral process resulting from *Citizens United* and its judicial progeny has left the Commission with a lack of clear jurisdiction to regulate in this new area. The Commission is currently confronted with regulatory issues involving unlimited amounts of corporate and union funds spent independently (including money from foreign sources), including how these sources should be disclosed and the extent to which they should be disclosed; I believe that Congress should pass legislation to address these issues. Some aspects of current bills before Congress are laudable to the extent they directly

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<sup>1</sup> The document is also available on the Commission’s website at [https://www.fec.gov/resources/cms-content/documents/mtgdoc\\_17-53-a.pdf](https://www.fec.gov/resources/cms-content/documents/mtgdoc_17-53-a.pdf).

<sup>2</sup> The amended directive is available on the Commission’s website at [https://www.fec.gov/resources/cms-content/documents/directive\\_68.pdf](https://www.fec.gov/resources/cms-content/documents/directive_68.pdf).

target the current problems associated with so-called “Super PACs,” “dark money” and the influx of foreign spending on American elections.

*FEC Composition*

Other aspects of pending legislation address concerns about Commission indecision, as manifested in frequent deadlocks on enforcement and policy matters. For example, one proposal would modify the structure of the Commission through the FECA so that the Commission would be comprised of an odd number of Commissioners with no single party holding a majority of seats. The idea is that deadlocked votes might be avoided if there were, say, five Commissioners with a majority of three required for approving most decisions. I believe there is greater wisdom in retaining the structure that exists now; *i.e.*, that most formal actions require the approval of four Commissioners, which must include at least one vote from a Commissioner not of the same party as the other three. If this were not the case, there could very well be accusations of partisan motives, whether or not justified, based upon one’s view of the political leanings of the “tie-breaking” Commissioner. In many instances, Commission deadlocks can be instructive in the sense that persons or parties that come before the Commission, and others who are interested, can learn from the arguments presented and then determine how to conduct themselves in the absence of formal guidance.

In closing, even though exercises such as these frequently raise discomfoting views and negative comments, we should not lose sight of the fact that the FEC, with all its flaws, still remains the finest disclosure agency worldwide regarding campaign finance information. No other agency in the United States or any other country provides the scope of disclosure that the FEC ensures on a timely and accurate basis.

Thank you once again for this opportunity to submit this response; I am happy to supplement my answers or to provide further information as needed.

Sincerely,



Steven T. Walther  
Commissioner

Attached documents (2)