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FEDERAL ELECTION COMMISSION  
1050 FIRST STREET, N.E.  
WASHINGTON, D.C. 20463

AGENDA DOCUMENT NO. 24-54-A  
AGENDA ITEM  
For the meeting of December 12, 2024

To: The Commission  
The Office of the Commission Secretary

From: Allen J. Dickerson *AD*  
Commissioner

James E. "Trey" Trainor, III *TT*  
Commissioner

Date: December 2, 2024

Subj: Recommendation that the Office of General Counsel Conduct a Review of the  
Agency's Regulations

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Last Term, the Supreme Court of the United States decided two cases with implications for the Federal Election Commission: *Loper Bright Enterprises v. Raimondo*, 603 U.S. \_\_, 144 S.Ct. 2244 (2024) ("*Loper Bright*") and *Corner Post, Inc. v. Board of Governors of the Federal Reserve System*, 603 U.S. \_\_, 144 S.Ct. 2440 (2024) ("*Corner Post*").

*Loper Bright* overturned *Chevron v. Natural Resources Defense Council*, 467 U.S. 837 (1984). Under *Chevron*, courts were required to defer to an agency's judgement where Congress "ha[d] not addressed the precise question at issue" and the agency's regulations reflected a "permissible construction" of a statute. 467 U.S. at 843. At the same time, *Corner Post* explained that the six-year statute of limitations for challenges to a regulation under the Administrative Procedure Act runs from a plaintiff's injury, not from the promulgation of the regulation itself.

Taken together, these cases create significant litigation risk for the FEC. Many of the Commission's regulations were promulgated under the *Chevron* regime and may not reflect current legal realities. Given the significant limitations on the FEC's litigation resources, we propose that the Office of General Counsel conduct a review of the Commission's regulations to ascertain their vulnerability to challenge under the Administrative Procedure Act ("APA"), 5 U.S.C. § 706, and to consider what, if any, appropriate action ought to be taken by the Commission.

Accordingly, we recommend that the Office of General Counsel be instructed to (1) conduct a review of the agency's regulations and determine their vulnerability

to legal challenge and (2) report relevant findings and recommendations to the Commission within 120 days.

We ask that this matter be placed on the agenda for the Commission's Open Meeting of December 12, 2024.