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The State of the Federal Election Commission

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As of September 1, 2019, the Federal Election Commission, which should have six commissioners, dropped to three. It takes four votes to make most major Commission decisions.¹ While the resignation of a commissioner at the end of August precipitated the loss of the quorum, this crisis was completely avoidable. The Commission has been operating with less than the full complement of commissioners for more than two and a half years.

For the last two months, the hardworking staff of the Commission have continued their work for the American people: reviewing and posting disclosure reports on the FEC's website, responding to questions from the public, educating the regulated community, and analyzing incoming allegations of potential campaign-finance violations. They continue to pursue audits and enforcement actions – conducting witness interviews and depositions and reviewing documents obtained through subpoenas – as approved by the Commission before it lost its quorum. I am thankful to the Commission's dedicated staff who continually work to fulfill the agency's mission, even during these challenging times.

However, without four commissioners, the FEC cannot conduct some of its most consequential business. For the last two months, the FEC has been unable to launch any new investigations, issue any advisory opinions, promulgate any rules, or render any decisions on pending enforcement actions. With only three commissioners presently serving, the agency charged with administering and enforcing the federal campaign-finance laws that will govern the 2020 election is hamstrung as we approach that election.

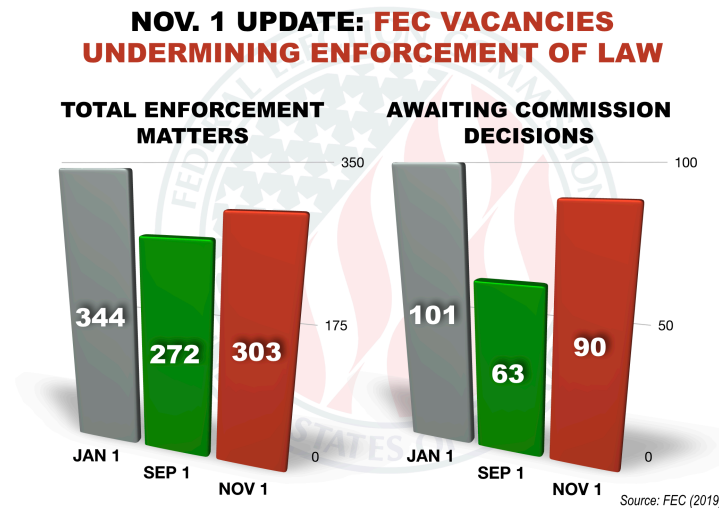
Before losing the quorum on September 1, the Commission was making progress to reduce its significant enforcement backlog (even despite the government shutdown that disabled the FEC for most of January). The year had begun with 344 matters on the enforcement docket, with 101 of those matters awaiting a decision requiring the participation of at least four Commissioners.² By the time the quorum was lost in September, the backlog of cases pending

¹ Under the Federal Election Campaign Act, as amended, 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).

² 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. Eighty-eight of the 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.

before the Commission for a vote had been reduced from 101 to 63 matters.³ We resolved approximately 200 of the original 344 matters in the first eight months of this year.

Two months after losing the quorum, the total number of matters pending on the enforcement docket has grown and continues to grow every day. New complaints are filed. The legal staff prepares their recommendations. And the Commission remains unable to act. The rate that complaints are filed will only increase as we approach the election. As of today, November 1, 2019, the Commission has 303 matters on its enforcement docket, with 90 awaiting Commission action.⁴ We cannot launch new investigations in any of them, even if the three remaining commissioners agreed to do so. And sadly, the progress we had made to reduce the Commission's significant backlog is being eroded on a daily basis.



The loss of quorum has halted the Commission's policy work as well. Regulatory initiatives cannot be pursued. Advisory opinion requests must go unanswered. Without a quorum, the Commission cannot help those active in politics determine whether their plans run the risk of violating the law. The FEC's inability to issue regulations and guidance may cause confusion and disjointed approaches to problems common to political actors of every party.

I remain fully vigilant to all threats to the integrity of our elections – and Americans' faith in them – and fully dedicated to educating the public about campaign-finance laws. But this nation requires a functioning FEC. The presidential election is just 368 days away. The President and the Senate need to act to restore the Commission's quorum immediately.

³ The Commission lost its quorum in September with 272 matters on its 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.

⁴ Sixty-two of these 303 matters involve alleged violations due to expire under the statute of limitations within a year and a half, absent tolling. Of the 303 matters, 35 allege a violation of the prohibition against foreign-national political spending.