



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

**STATEMENT OF COMMISSIONER SHANA M. BROUSSARD
REGARDING THE COMMISSION'S NEWLY ADOPTED DIRECTIVE CONCERNING
INVESTIGATIONS CONDUCTED BY THE OFFICE OF GENERAL COUNSEL**

I am proud of the distinction that of the six Commissioners serving today, I am the only one with direct experience as a staff attorney in the Office of General Counsel's (OGC) Enforcement Division. Like my former colleagues who draft reports and advise the Commission as they decide whether to pursue enforcement, I have extensive experience at every phase of the enforcement process, including the investigative stage, which at its best moves at a deliberative pace, but can also be frustrated by the inherently bureaucratic nature of the Federal Election Campaign Act.

Despite some time since I left the Office of General Counsel, I remember well the investigative stage of the enforcement process and still subscribe to the belief that Enforcement attorneys remain in the best position to dictate the scope, pace, and methods of investigations to reach a fair resolution of any given matter.

This is not to say the process is without flaws. In fact, based on data from FY 2022, the average investigation lasted 862 days.¹ While the average length of investigations has improved to an average of 437 days in FY 2023,² there remains room for improvement. In at least some of these, the point where OGC began its investigation was somewhat unrecognizable by its conclusion. Recognizing the need to streamline and focus the investigative process, I engaged in a proposal to improve investigations in good faith but with the healthy skepticism of any good Enforcement attorney.

¹ See Fed. Election Comm'n, Status of Enforcement – Fiscal Year 2023 (10/01/22-09/30/23) 4 tbl.3 (Oct. 30, 2023).

² See *id.*

Ultimately, I could not support the initial proposal circulated by Commissioner Dickerson on August 23, 2023,³ and later revised on October 12, 2023,⁴ because, based on my personal experience conducting investigations, and considering both internal and external feedback, I believe this earlier proposal, as revised, had the potential to delay the investigative timeline. As an alternative, Chair Lindenbaum and I introduced modifications that seek to balance the demands on OGC with the Commission’s responsibility to oversee investigations.⁵

Specifically, paragraphs 1 and 2 of the approved draft provide that OGC will submit an Investigative Plan to the Commission after the receipt of the respondent’s response to the reason to believe (“RTB”) finding.⁶ These edits reflect the fact that any response to a Commission finding of RTB could affect a proposed investigation.⁷ By waiting for the RTB response and then submitting a proposed investigative plan to the Commission, OGC has ample information to propose a deliberate and thorough investigation while avoiding a potentially arduous effort at the start of the investigative process to formally amend a plan the Commission previously adopted.

Second, paragraph 5 contains a new footnote stating that “the identification of new sources of publicly available information” is not an expansion of the scope of the investigation requiring a revised Investigative Plan and tally vote by the Commission.⁸ This reflects the long-held practice by OGC to

³ Investigations Conducted by the Office of General Counsel, Agenda Doc. 23-21-A (Aug. 23, 2023), <https://www.fec.gov/resources/cms-content/documents/mtgdoc-23-21-A.pdf>.

⁴ Investigations Conducted by the Office of General Counsel, Agenda Doc. 23-21-A1 (Oct. 12, 2023), <https://www.fec.gov/resources/cms-content/documents/mtgdoc-23-21-A1.pdf>.

⁵ Investigations Conducted by the Office of General Counsel, Agenda Doc. 23-21-B (Oct. 26, 2023) [hereinafter *Draft B*], <https://www.fec.gov/resources/cms-content/documents/mtgdoc-23-21-B.pdf>.

⁶ *See id.* at 1 ¶¶ 1-2.

⁷ Following a finding of RTB, the Commission forwards to respondents the factual and legal analysis in support of its determination that a violation of FECA has occurred. *See* 52 U.S.C. § 30109(a)(2) (requiring the Commission to notify respondents of the factual basis for the alleged violation).

⁸ *See Draft B, supra* n.5 at 2 ¶ 5.

consult and consider common sources of publicly available information, including official records from other government agencies and news sources. The directive would also require that staff supplement this new information in regular updates to the Commission.⁹ Finally, paragraph 8 establishes an earlier sunset of June 30, 2025, rather than December 31, 2025.¹⁰ This provides more than adequate time for the Commission to assess whether the process intended by this directive has been effective and should be adopted permanently or requires changes.

As a former staff attorney, I understand the challenges that lie ahead for the Enforcement Division to implement any efforts to reform the investigative process. Ultimately, I seek only to improve this agency's operations based on my varied experiences with the Commission and remain open to further suggestions on this and other agency operations.

⁹ *See id.* n.1.

¹⁰ *See id.* at 2-3 ¶ 8.