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COMMITTEE ON EDUCATION AND LABOR

COMMITTEE ON HOMELAND SECURITY

COMMITTEE ON VETERANS AFFAIRS

Congress of the United States
House of Representatives
Washington, DC 20515

February 25, 2020

The Hon. Caroline C. Hunter
Chair
Federal Election Commission
1050 First Street NE
Washington, D.C. 20463

The Hon. Steven T. Walther
Vice Chairman
Federal Election Commission
1050 First Street NE
Washington, D.C. 20463

The Hon. Ellen L. Weintraub
Commissioner
Federal Election Commission
1050 First Street NE
Washington, D.C. 20463

Dear Chair Hunter, Vice Chairman Walther, and Commissioner Weintraub:

I am writing to request information on the Federal Election Commission's (FEC) administration and enforcement of the foreign national prohibition in the Federal Election Campaign Act (FECA). I am gravely concerned that existing gaps in regulations surrounding the foreign national prohibition, coupled with the FEC's persistent lack of a quorum of Commissioners, pose a threat to the integrity of our elections and the strength of our republic.

As you know, FECA generally prohibits foreign nationals from donating or spending money in connection with any American election.¹ The FEC is charged with ensuring the integrity of American elections by administering and enforcing campaign finance laws, including FECA.² The September 2018 *FEC Report to the Committees on Appropriations on Enforcing the Foreign National Prohibition* details five methods that the FEC uses to enforce the foreign national prohibition.³

¹ Congressional Research Service, *Foreign Money and U.S. Campaign Finance Policy* (March 2019).

² Federal Election Commission, *Mission and History* (www.fec.gov/about/mission-and-history/) (accessed Jan. 28, 2020).

³ Letter from the Federal Election Commission to Rep. Rodney P. Frelinghuysen, Chair, House Committee on Appropriations; Rep. Nita M. Lowey, Ranking Member, House Committee on Appropriations; Senator Richard C. Shelby, Chairman, Senate Committee on Appropriations; and

1. Matters Under Review (MURs).
2. The Alternative Dispute Resolution (ADR) Program.
3. Advisory opinions guiding voluntary compliance.
4. Enforcement through litigation.
5. Publishing and maintaining online guidance and resources on compliance, and conducting outreach.

Guided by the 1997 Memorandum of Understanding between the two agencies, the FEC also works with the U.S. Department of Justice (DOJ) to enforce FECA, with the FEC maintaining exclusive civil enforcement authority and DOJ maintaining criminal enforcement authority.⁴ In addition, the FEC plays an important role in reviewing and responding to questions from campaigns and from congressional authorities.

However, the FEC has been operating without a quorum of four Commissioners since September 1, 2019, effectively neutering its ability to take meaningful action to enforce violations of the foreign national prohibition and many other campaign finance regulations.⁵ Despite the FEC's announcement that it is "open for business," absent a quorum, the FEC has limited access to many of its most important enforcement mechanisms.

U.S. intelligence agencies have identified threats of malicious foreign interference in our 2020 elections and beyond.⁶ It is critical that the FEC have the capabilities and resources it needs to prevent election interference from foreign nationals. Therefore, I respectfully request responses in writing to the following questions by March 6, 2020:

1. Please describe how a lack of a quorum affects or precludes the FEC's ability to take each of the five enforcement actions below:
 - a. Matters Under Review (MURs).
 - b. The Alternative Dispute Resolution (ADR) Program.
 - c. Advisory opinions guiding voluntary compliance.
 - d. Enforcement through litigation.
 - e. Publishing and maintaining online guidance and resources on compliance, and conducting outreach.
2. How is the FEC's ability to coordinate and refer cases to DOJ affected by the lack of a quorum?

Senator Patrick J. Leahy, Vice Chair, Senate Committee on Appropriations (September 18, 2018) (https://www.fec.gov/resources/cms-content/documents/Foreign_National_Report_To_Congress.pdf).

⁴*Id.*; Letter from the Federal Election Commission to the House Committee on Administration (May 1, 2019) (https://www.fec.gov/resources/cms-content/documents/FEC_Response_to_House_Admin.pdf).

⁵ Federal Election Commission, *FEC remains open for business, despite lack of quorum* (September 2019) (www.fec.gov/updates/fec-remains-open-business-despite-lack-quorum).

⁶ Politico, *Intelligence heads warn of more aggressive election meddling in 2020* (January 2020) (www.politico.com/story/2019/01/29/dan-coats-2020-election-foreign-interference-1126077).

3. Please describe any other effects that the lack of a quorum has on the FEC's ability to enforce the foreign national prohibition.
4. A September 11, 2019, FEC press release states that the FEC staff continue to "process new enforcement complaints and responses" despite the lack of a quorum. Please detail the actions FEC staff can take to process enforcement complaints and responses while the FEC is operating without a quorum.
5. Does the FEC intend to issue future regulations, guidance, or other material regarding the foreign national prohibition after a quorum is reestablished?
6. The 2018 *FEC Report to the Committees on Appropriations on Enforcing the Foreign National Prohibition* states that the FEC is "currently engaged in a rulemaking proceeding concerning potential revisions to the regulations on disclaimers required on certain internet communications, which could have implications related to the foreign national prohibition." Please provide an update on the status of this rulemaking, and an estimated timeline for completion once a quorum is reestablished.
7. A 2015 news report indicated that the FEC had not referred any campaign finance enforcement cases to DOJ since 2008.⁷ To date, how many campaign finance enforcement referrals has the FEC made to DOJ since 2008?
8. Please provide the following information about enforcement matters currently pending before the Commission that implicate an alleged violation of the foreign national ban:
 - a. The total number of such matters.
 - b. The number of such pending enforcement matters that are currently active.
 - c. The number of such active matters in which the FEC has found "reason to believe" (RTB) that the foreign national ban was violated.
 - d. The number of such active matters in which the FEC has found RTB that are currently being investigated.
9. Since the Commissioners unanimously directed the Office of General Counsel to prioritize cases involving allegations of foreign influence in September 2016, how many cases has the Commission closed?⁸
10. To date, how many of the cases involving allegations of foreign influence on the FEC's enforcement docket are imperiled by a looming statute of limitations?

Thank you for your prompt attention to this matter. Please contact Caroline Paris-Behr in my office at caroline.paris-behr@mail.house.gov or (202) 225-2976 with any questions.

Sincerely,


Lauren Underwood

⁷ Kenneth P. Doyle, *FEC Rarely Votes to Refer Criminal Cases to Justice*, BNA Daily Report for Executives (July 29, 2015).

⁸ See note 3.