



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

RESPONSES TO QUESTIONS FROM
REP. RODNEY DAVIS, RANKING MEMBER,
COMMITTEE ON HOUSE ADMINISTRATION
SEPTEMBER 20, 2019

This constitutes the FEC's response to Representative Davis's letter dated August 26, 2019. Individual Commissioners may supplement these answers.

1. *The stated mission of the Commission is "To protect the integrity of the federal campaign finance process by providing transparency and fairly enforcing and administering federal campaign finance laws." However, it has been asserted that this seemingly straightforward mission can be read to include issues of election administration.*
 - a. *Do you believe the Commission has the legislative and/or regulatory authority over the administration of elections?*
 - i. *If yes, please identify where that authority exists.*
 - b. *Does the FEC have the resources necessary to assist states in their administration of elections?*
 - c. *Please describe any and all election administration experience. Each Commissioner is invited to answer this question separately.*

The Federal Election Commission looks to the statutes passed by Congress for its authority and strives to administer, interpret and enforce those statutes in a manner consistent with Congressional intent and any judicial decisions affecting those statutes. The Federal Election Campaign Act of 1971, as amended,¹ is the primary source of the FEC's statutory authority, along with the Presidential Election Campaign Fund Act² and the Presidential Primary Matching Payment Account Act.³ Pursuant to that authority, the Commission has promulgated regulations, which can be found in Federal Elections, Title 11 of the Code of Federal Regulations.

¹ Federal Election Campaign Act of 1971, Public Law 92-225, 86 Stat. 3 (1972) (*codified at 52 U.S.C. §§ 30101-45*).

² Presidential Election Campaign Fund Act, Public Law 92-178, 85 Stat. 562 (1971) (*codified at 26 U.S.C. §§ 9001-13*).

³ Presidential Primary Matching Payment Account Act, Public Law 93-443, 88 Stat. 1297 (1974) (*codified at 26 U.S.C. §§ 9031-42*).

2. *5 C.F.R. §2635.704 states that Commissioners have a duty to protect and conserve Government property and shall not use such property, or allow its use, for other than authorized purposes. Property in this context includes, official time, official resources, use of Commission staff, and the use of Commission letterhead.*
 - a. *Would authorized purposes include casting doubt, in an official capacity, on the validity of a federal election?*
 - b. *Would authorized purposes include publicly supporting or opposing a candidate, in an official capacity, based on positions held on campaign finance and/or election security legislation?*
 - c. *Would authorized purposes include rebutting, in an official capacity, statements made by candidates for office on topics related to election administration and/or election security?*
 - d. *Would authorized purposes include rebutting, in an official capacity, statements made by federal office holders on topics related to election administration and/or election security?*
 - e. *Would authorized purposes include asking for candidates or federal office holders to release information to the public other than reports or documents that are required by law to be filed with the Commission?*

The Commission does not have a joint response to Question 2.

3. *The Commission is charged with certain investigatory responsibilities, please provide an outline and examples of these responsibilities.*

Investigations are part of enforcing FECA, which is one of the FEC's primary responsibilities. In fact, the FEC has exclusive jurisdiction over the civil enforcement of federal campaign finance laws, and it maintains an enforcement program to ensure that the campaign finance laws are fairly enforced. FECA specifies procedures for the FEC's traditional enforcement program which applies to FEC enforcement cases known as Matters Under Review ("MURs").⁴

FECA requires the Commission to find reason to believe a violation occurred prior to conducting an investigation into alleged campaign finance violations.⁵ Prior to that required Commission finding, the enforcement process specified in FECA begins when a complaint or referral is made alleging that a violation of the federal election campaign laws or FEC regulations has occurred or is about to occur.⁶ Respondents are notified of the filing of a

⁴ FECA, § 309, codified at 52 U.S.C. § 30109. For information about aspects of the FEC's enforcement program other than investigations, see FEC, Guidebook for Complainants and Respondents on the FEC Enforcement Process (May 2012), available at https://transition.fec.gov/em/respondent_guide.pdf; and Documents About the Enforcement and Compliance Practices on the FEC's website available at https://transition.fec.gov/law/procedural_materials.shtml.

⁵ FECA, § 309(a)(2), codified at 52 U.S.C. § 30109(a)(2).

⁶ Any person can file a complaint, including individuals who make a voluntary submission indicating they themselves may have violated campaign finance laws, which are known as *sua sponte* submissions. Internal

complaint or referral and have an opportunity to respond in writing.⁷ Professional staff in the Office of General Counsel reviews and analyzes complaints, referrals, and *sua sponte* submissions; respondents' responses to them; and publicly available information to formulate a recommended course of action for the Commission. The Commission then reviews the General Counsel's report and recommendations, the complaint, referral, or *sua sponte* submission and any respondents' responses. If the Commission finds reason to believe a violation occurred and authorizes an investigation by a vote of at least four Commissioners, the Office of General Counsel may proceed with an investigation into the alleged campaign finance violations.

The Commission's investigation may be conducted through informal and formal methods.⁸ Informal methods may include such activities as in-person or telephone interviews with persons, including respondents or third-party witnesses, and informal requests for information and documents. Formal methods (also called "compulsory process") may include subpoenas and orders for information, documents, or depositions.

At the conclusion of an investigation and in light of the information obtained, OGC will again recommend a course of action to the Commission. The Commission may dismiss the matter, seek to conciliate the matter with the respondents, or proceed to a finding of probable cause to believe a violation occurred. In certain circumstances, the Commission may also refer a matter to the U.S. Department of Justice for criminal prosecution under FECA.⁹

The Commission utilized its investigatory responsibilities in several recently resolved MURs, as discussed below.

In MUR 6893 (Winning the Senate PAC), the Commission investigated allegations of fraudulent solicitations of funds. The Commission issued two subpoenas for written answers and documents, and also interviewed witnesses. As a result of the investigation, the Commission entered into a conciliation agreement in which the respondent agreed to pay a civil penalty of \$15,000, admitted the violation and agreed to cease and desist from any further such violations. See <https://www.fec.gov/data/legal/matter-under-review/6893/>.

referrals for enforcement are made by the Commission's Reports Analysis Division and Audit Division in the normal course of exercising their supervisory responsibilities. External referrals come from another government agency.

⁷ A respondent is a person or entity who is the subject of a complaint, referral, or *sua sponte* submission that alleges the person or entity violated FECA, another statutory provision within the Commission's jurisdiction such as the inaugural committee foreign national provision, or an FEC regulation.

⁸ FECA, § 307(a)(1)-(5) & (9), *codified at* 52 U.S.C. § 30107(a)(1)-(5) & (9).

⁹ While the Federal Election Commission has exclusive civil enforcement authority over the Federal Election Campaign Act, the U.S. Department of Justice has criminal enforcement authority over knowing and willful violations of FECA. See FECA, § 309(d)(1); *codified at* 52 U.S.C. § 30109(d)(1); *Fieger v. U.S. Attorney General*, 542 F.3d 1111, 1116-17 (6th Cir. 2008). As a result, the Commission has an ongoing relationship with the Department of Justice through a formal Memorandum of Understanding that establishes a framework for the two agencies with respect to the discharge of their respective responsibilities. See *Memorandum of Understanding with Department of Justice*, 43 Fed. Reg. 5441 (Feb. 8, 1978).

In two other MURs, the Commission investigated allegations of prohibited foreign national contributions, and the investigations produced the information sought by the Commission. As a result, in one of the MURs, two respondents signed conciliation agreements under which they paid total civil penalties of \$940,000, admitted the violations, and agreed to cease and desist from future foreign national contribution violations. *See* MUR 7122 (Right to Rise USA), <https://www.fec.gov/data/legal/matter-under-review/7122/>. In the other MUR, two respondents signed conciliation agreements under which they paid total civil penalties of \$29,000, agreed not to further contest the Commission’s findings, and agreed to cease and desist from future foreign national contribution violations. *See* MUR 7035 (Australian Labor Party), <https://www.fec.gov/data/legal/matter-under-review/7035/>.

In response to a *sua sponte* submission, the Commission investigated contributions made in the name of another. As a result, three respondents signed separate conciliation agreements, which included admissions to violations of the Act, total civil penalties of \$81,000, and agreement to cease and desist from any further such violations. *See* MUR 7221 (Mepco Holdings, LLC), <https://www.fec.gov/data/legal/matter-under-review/7221/>.

For other examples of recent investigations, see MUR 6920 (American Conservative Union), <https://www.fec.gov/data/legal/matter-under-review/6920/>, MURs 7005 and 7056 (Victor), <https://www.fec.gov/data/legal/matter-under-review/7005/>, and MUR 7286 (Indivisible Kentucky), <https://www.fec.gov/data/legal/matter-under-review/7286/>.

- a. *In cases of voter fraud, who would be the appropriate investigatory entity?*
- b. *What resources does the Commission have in place to investigate allegations of voter fraud?*

The Commission does not have a joint response to Question 3 a-b.

- c. *Outside of federal campaign finance law, please describe all areas of law the Commission believes it would have investigatory power over.*

The Commission has investigatory power over any alleged violation of the FECA and the Presidential public funding program statutes.

- d. *Please include separately any and all examples of individual Commissioners, in their official capacity, calling for the public disclosure of information from candidates for federal office, or from federal office holders, since 2013.*

FECA requires federal candidates and officeholders seeking re-election to disclose campaign finance information publicly, and there are innumerable examples of Commissioners encouraging compliance with FECA, including its disclosure requirements.

Commissioners' official actions include written documents issued by the Commissioner or the agency, but also include oral communications by the Commissioners, which can take place in public at Commission events or in private at the Commission or even away from the Commission's offices. For some, no written record was ever created. The Commission does not maintain a complete archive of Commissioners' official actions.

4. *One of the primary roles of the FEC is to educate the public on Campaign finance law and regulations thereby promoting voluntary compliance, to this end:*
 - a. *Please provide a comprehensive list of ways the Commission is carrying out this requirement.*

The FEC engages in a number of educational outreach efforts to promote voluntary compliance with the FECA's requirements. The agency strives to reduce the number of inadvertent violations by issuing clear guidance to the public, such as compliance information available on the FEC website, <https://www.fec.gov/>. The agency offers other online resources, including the FEC Record and Weekly Digest, to detail developments in the campaign finance law and Commission decisions, and publishes a series of Campaign Guides and other materials written in plain language to help political committee representatives and others comply with the campaign finance laws.¹⁰ Campaign finance analysts in the FEC's Reports Analysis Division provide assistance to political committees that file disclosure reports, and Weekly Tips for Treasurers provide timely reminders and concise instruction on selected topics.

The FEC also hosts regional conferences and interactive webinars where Commissioners and staff explain the FECA's requirements, staffs a toll-free information line to answer callers' questions, and responds to compliance inquiries sent by email. Commissioners and staff also speak to groups visiting the agency and at various professional conferences, colleges and other venues. Upon request, agency staff also conduct individualized training for groups, in person or online.

Additionally, the agency posts educational videos on its YouTube channel, which can be found at <https://www.youtube.com/FECTube>, and the E-Learning page offers a variety of instructional materials, including video workshops and interactive presentations that allow users to test their knowledge on filing requirements. As of 2019, the most popular program on the Commission's YouTube channel, "The FEC and the Federal Campaign Finance Law," had been viewed almost 10,000 times. All public guidance is regularly reviewed for any necessary revisions.

In some cases, the Commission provides remedial education for enforcement respondents. At the conclusion of all enforcement cases, the FEC makes a variety of related documents public on its website in a searchable database. These documents explain the Commission's application of federal campaign finance law to the facts and circumstances of each case, and include Factual and Legal Analyses, Conciliation Agreements and Statements of Reasons. Similarly, published audit reports include explanations of applicable provisions of

¹⁰ See <https://www.fec.gov/help-candidates-and-committees/>.

federal campaign finance law. Advisory Opinions (AOs) present the Commission's application of federal campaign finance law to particular circumstances. AOs are considered in public session and are on the Commission's website in a searchable database with related documents.¹¹

b. Does this requirement for public education require official travel by Commissioners and staff?

FEC Commissioners and staff travel as part of the Commission's objectives of promoting voluntary compliance with FECA and related statutes and engaging and informing the public about campaign finance data, including, but not limited to, the instructional conferences mentioned above.

i. If yes, please identify all official domestic travel taken and travel costs (including amounts) incurred by all Commissioners and Commission staff that have served or continue to serve since 2013 that was paid for by the Commission.

Attachment A provides all official travel costs paid by the FEC for the period October 1, 2012, through August 31, 2019. The document specifies the traveler's name, the dates of travel, the destination and the amount paid by fiscal year. A total for each fiscal year is also provided. Official domestic travel incurred by either the Commissioners or staff that was paid for by the Commission is included on the document provided in Attachment A, along with all such foreign travel, as indicated in the response to Question 4.b.iii.

ii. If yes, please identify all official domestic travel taken and travel-related expenses incurred by all Commissioners and Commission staff that have served or continue to serve since 2013 that was paid for by private organizations (including sources and amounts).

Under the Ethics Reform Act of 1989, the FEC is required to report to the Office of Government Ethics (OGE) payments of more than \$250 accepted from non-federal sources for travel, subsistence, and related expenses with respect to attendance at any meeting or similar function relating to the official duties of an employee.¹² Attached as Attachment B are copies of the FEC's Semiannual Reports of Payments Accepted from a Non-Federal Source filed with

¹¹ Briefs filed in litigation and Requests for Additional Information are additional resources posted on the FEC website that can help to explain federal campaign law in particular circumstances.

¹² Ethics Reform Act of 1989, as amended, Pub. Law 101-194, § 302, 103 Stat. 1745, (1989), *codified at* 31 U.S.C. § 1353. It is therefore possible that additional official travel involving total payments of \$250 or less was paid for by private organizations.

OGE.¹³ This attachment includes documentation for all domestic travel paid for by private organizations, along with all such foreign travel, including that paid for by a foreign government or other foreign national.

The Commission's Information Division processes and the Designated Agency Ethics Official reviews offers by a private organization to pay for travel-related expenses to be incurred by Commissioners and staff.¹⁴ The Designated Agency Ethics Official determines pursuant to the Federal Travel Regulation (specifically, 41 C.F.R. §§ 304-5.1 and 304-5.3) whether there is a conflict of interest that would prevent the Commission from accepting the payment. The Commission then determines by no-objection ballot that the travel is in the interest of the government and that it relates to the employee's official duties.¹⁵ This process applies to both domestic and international travel paid for by a non-Federal source.

With respect to each of the domestic trips described in Attachment B, the Commissioners approved receipt of these travel-related expenses with a no-objection vote following circulation of information about the proposed reimbursement and travel, as well as a conflict of interest analysis.

- iii. *Separately, please identify all official international travel taken and travel-related expenses (including amounts) incurred by either the Commissioners or staff since 2013 that was paid for by the Commission.*

Official international travel incurred by either the Commissioners or staff since 2013 that was paid for by the Commission is included on the document provided in Attachment A, along with all such domestic travel, as indicated in the response to Question 4.b.i.

- iv. *Separately, please identify all official international travel taken and travel-related expenses incurred by either the Commissioners or staff since 2013 that was paid for by a foreign government or other foreign national, as defined by 52 U.S.C. § 3012I(b) (including sources and amounts)*

As discussed above, the reports in Attachment B, the FEC's Semiannual Reports of Payments Accepted from a Non-Federal Source filed with OGE, document all official international travel by Commissioners and staff since October 1, 2012 that was paid for by any non-federal source. The sources of payments are listed on the reports and include foreign governments, international intergovernmental groups and nonprofit organizations. The reports in Attachment B cover travel undertaken in the period October 1, 2012, through March 31, 2019.

¹³ OGE makes these reports publicly available on the OGE website here: <https://www.oge.gov/web/oge/nsf/Travel%20Reports>.

¹⁴ FEC Directive No. 30, Circulation Authority; Invitation Policy (Oct. 5, 2006), available at https://www.fec.gov/resources/cms-content/documents/directive_30.pdf.

¹⁵ See 41 C.F.R. § 304.5.1(b) and (c).

The only other travel expenses that have not yet been reported are reflected on Attachment C.

The Commission determines that this travel is in the interest of the government and that it relates to the employee's official duties. With respect to each of the international trips described in Attachment B, the Commissioners made this determination by a no-objection vote following circulation of information about the proposed reimbursement and travel, as well as a conflict of interest analysis.

- v. *Was any domestic or international travel by Commissioners or Commission staff in their official capacity not related to the FEC's role of educating the public on campaign finance law and regulations and promoting voluntary compliance? If not, please explain the purposes of such travel.*

Other purposes for travel include staff travel to conduct audits, often for longer periods; FEC attorneys travel for litigation and enforcement investigations; some employee training involves travel expenses; and staff have appeared as witnesses, although this was usually at the expense of U.S. Department of Justice. Commissioners and staff also travel to present at or attend other conferences, including particularly the annual Conference on Governmental Ethics Laws (COGEL) in the United States or Canada, and to speak at events at educational institutions. For decades, FEC Commissioners and staff have attended national nominating conventions. In addition, Commissioners and staff occasionally have traveled to observe elections and attend meetings of governmental officials with other election related responsibilities.

- c. *Is there a policy or other procedure at the FEC to establish travel budgets for each Commissioner and staff?*

When the Commission receives an appropriation of funds for a fiscal year, it considers and votes to approve a Management Plan for that fiscal year. Specified on each Management Plan is an allocation of funds for Commissioner travel expenses. Separately, an amount is approved for travel expenses of the Office of Communications, and this amount covers expenses related to travel for regional conferences. The FEC's Office of Chief Financial Officer also has an FEC Travel Manual that governs all official travel expenses by FEC Commissioners and staff. It is attached as Attachment D.



CHAIR ELLEN L. WEINTRAUB
FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SUPPLEMENTARY RESPONSES FROM CHAIR ELLEN L. WEINTRAUB
TO QUESTIONS FROM REP. RODNEY DAVIS,
RANKING MEMBER, COMMITTEE ON HOUSE ADMINISTRATION
SEPTEMBER 20, 2019

1. *The stated mission of the Commission is “To protect the integrity of the federal campaign finance process by providing transparency and fairly enforcing and administering federal campaign finance laws.” However, it has been asserted that this seemingly straightforward mission can be read to include issues of election administration.*
 - a. *Do you believe the Commission has the legislative and/or regulatory authority over the administration of elections?*
 - i. *If yes, please identify where that authority exists.*
 - b. *Does the FEC have the resources necessary to assist states in their administration of elections?*
 - c. *Please describe any and all election administration experience. Each Commissioner is invited to answer this question separately.*

Robust enforcement of campaign finance laws is essential to the integrity of our elections. But it is not the only aspect of protecting the integrity of our elections. Recent developments in U.S. elections have caused quite a bit of overlap between the Federal Election Commission’s statutory campaign-finance jurisdiction and issues of election administration. Take two issues: allegations of voter fraud in federal elections, and the threat of foreign interference in federal, state, and local elections. The FEC does not administer elections, nor does it assist states directly with their administration of elections, but in most instances, voter fraud or foreign interference will entail money being spent. And the moment money is spent for the purposes of influencing a U.S. election (and, most likely, not reported), it becomes a matter within the mission and statutory jurisdiction of the Commission.¹

Further, one important task of the Commission is to make legislative recommendations to Congress about how federal election law should be changed. The Commission sends a list of such recommendations to Congress each year. As presidentially appointed and Senate-confirmed public officials, individual FEC commissioners think about, speak about, and advocate for

¹ See, e.g., “Report of Investigation INV-17-04,” Federal Election Commission Office of Inspector General (December 21, 2017), at 11, found at <https://causeofaction.org/wp-content/uploads/2019/08/FEC-IG-Report-of-Investigation-INV-17-04.pdf> (“If President Trump’s scenario of bused individuals is correct, then the funds used to bus the individuals could be a possible violation of campaign finance laws, thus an issue under the purview of the FEC”).

improvements in the law. By definition, advocating for changes in federal election law involves advocating for things that are not currently contained in federal election law.

Some agency resources are routinely allocated to provide the Commission's expertise related to elections. For example, as members of the Conference on Governmental Ethics Laws (COGEL), the agency's Commissioners and staff regularly communicate with other federal, state, local, and international officials. Additionally, agency resources are allocated to publish the Combined Federal/State Disclosure and Election Directory.² This FEC publication identifies the state and federal agencies responsible for the disclosure of campaign finances, public financing, candidate ballot access, election results, state initiatives, and other financial filings. It includes contact information for national and international associations that deal with campaign finance and elections. It has been a popular reference tool used by election officials, the media, and the general public for over 30 years. This directory is available on the Commission's website and printed copies are available at the Commission's Public Records Office. The Commission has the resources necessary to produce and distribute this directory annually.

As to my election administration experience, before my tenure on the Commission, I served as part of a nationally recognized political law practice, advising clients on all aspects of political law. During the election contest arising out of the 1996 election of Sen. Mary Landrieu (D-La.), I served on the legal team that advised the Senate Rules Committee. I was also part of the team that successfully represented former Senate Majority Leader Harry Reid in his 1998 recount.

Like many commissioners on both sides of the aisle, I have for many years observed foreign elections throughout the world, always with the approval of (and sometimes at the request of) the State Department. In January 2005, at the request of the International Mission for Iraqi Elections, I took a leading role in organizing and conducting the local observation of Iraqi-out-of-country registration and voting in New Carrollton, Maryland. The groups who invite commissioners on observation missions appreciate the knowledge of FEC commissioners about campaign finance, but also value our expertise in American democracy.

In addition, I have participated in national and international meetings of both intergovernmental and nongovernmental organizations regarding campaign finance, election administration, and anti-corruption topics. In my time on the Commission, I have spoken to thousands of people at home and abroad about the Federal Election Commission and its work, and our democracy and system of governance. The State Department regularly brings visitors to the Federal Election Commission as part of its International Visitor Leadership Program. ("Through short-term visits to the United States, current and emerging foreign leaders in a variety of fields experience this country firsthand and cultivate lasting relationships with their American counterparts."³) Whenever I can, I speak to these groups. Our exchanges are wide-ranging and invigorating.

² See FEC, Combined Federal/State Disclosure and Election Directory (July 2019), available at <https://www.fec.gov/introduction-campaign-finance/how-to-research-public-records/combined-federalstate-disclosure-and-election-directory/>.

³ <https://www.iie.org/Programs/IVLP>

2. *5 C.F.R. §2635.704 states that Commissioners have a duty to protect and conserve Government property and shall not use such property, or allow its use, for other than authorized purposes. Property in this context includes, official time, official resources, use of Commission staff, and the use of Commission letterhead.*
 - a. *Would authorized purposes include casting doubt, in an official capacity, on the validity of a federal election?*
 - b. *Would authorized purposes include publicly supporting or opposing a candidate, in an official capacity, based on positions held on campaign finance and/or election security legislation?*
 - c. *Would authorized purposes include rebutting, in an official capacity, statements made by candidates for office on topics related to election administration and/or election security?*
 - d. *Would authorized purposes include rebutting, in an official capacity, statements made by federal office holders on topics related to election administration and/or election security?*
 - e. *Would authorized purposes include asking for candidates or federal office holders to release information to the public other than reports or documents that are required by law to be filed with the Commission?*

I share the concern that underlies your Question 2a. In May, when the Committee on House Oversight Subcommittee on National Security held a hearing on securing America’s election infrastructure and political discourse, I was pleased to be called upon to testify. I spoke then about how the infrastructure of our elections is not just the physical electoral apparatus run by state and local governments but, more fundamentally, the faith that American citizens have in our elections. And I spoke about how that faith has been under malicious attack from our foreign foes through disinformation campaigns. That faith can also be damaged by domestic actors who cast doubt on the validity of federal elections with unsubstantiated voter fraud allegations. I have spoken out quite publicly and repeatedly on this issue, first in February 2017, and most recently this past August.

Whether or not the activities described in question 2.b are included in “authorized purposes” may depend on an evaluation of current Hatch Act guidance. The Hatch Act, however, does not preclude public officials from speaking out on issues of public concern.

As it happens, to the extent you believe my conduct is implicated in the questions you raise in 2.c, 2.d, and 2.e, my actual conduct in this regard was addressed by the FEC’s Office of Inspector General in 2017.⁴ The OIG was asked to look into my February 2017 statements calling upon the President to substantiate his claims of voter fraud in New Hampshire in 2016.

The Office of Inspector General, in a report issued Dec. 21, 2017, concluded that it had “found no evidence that Commissioner Weintraub violated ethical standards outlined in 5 C.F.R Part 2635 or 11 C.F.R. Part 7”⁵ and further stated:

⁴ “Report of Investigation INV-17-04,” *supra* n. 1.

⁵ *Id.* at 12.

As a government employee, Commissioner Weintraub is tasked with ensuring the public the integrity of the government and as a FEC Commissioner she is to ensure campaign finance laws are administered. The OIG investigation disclosed that Commissioners have been allowed to express their opinions and make statements in the past to reporters and at conferences, and author articles on a variety of election topics (voting trends, women’s rights, foreign elections and political agendas), without being disciplined or found to violate 5 C.F.R. Part 2635 standards.⁶

I appreciated the OIG’s description of my job. I swore an oath to “support and defend the Constitution of the United States against all enemies, foreign and domestic.”⁷ That task has taken on far more urgency as America’s elections have come under sustained attack by Russia and potentially other foreign adversaries. We all need to work together to protect the integrity of our elections and the faith of all Americans that our elections will be conducted freely and fairly.

3. *The Commission is charged with certain investigatory responsibilities, please provide an outline and examples of these responsibilities.*

a. *In cases of voter fraud, who would be the appropriate investigatory entity?*

According to the U.S. Department of Justice, “The principal responsibility for overseeing the election process rests with the states. With the significant exception of the Voting Rights Act involving denigration of the right to vote based on race, ethnicity, or language minority status, the federal government plays a role secondary to that of the states in election matters. It is the states that have the primary authority to ensure that only qualified individuals register and vote, that the polling process is conducted fairly, and that the candidate who received the most valid votes is certified as the winner.”⁸ The U.S. Department of Justice’s Civil Rights Division and the Criminal Division’s Public Integrity Section are responsible for the federal aspects of these responsibilities.

The Commission’s jurisdiction and investigatory responsibilities as outlined in the FECA include spending made for the purpose of influencing a federal election, and there are instances in which campaign finance violations are intertwined with violations of other federal and state laws, including voter fraud laws. The Commission may assert its jurisdiction whenever there is an alleged violation of the FECA and the Presidential public funding program statutes.

For example, if an alleged fraud involves money spent in a federal election (for example, money allegedly spent on buses transporting people across state lines to vote illegally in a federal election), the FEC has investigatory jurisdiction over the federal civil campaign-finance aspects

⁶ *Id.* at 10.

⁷ 5 USC §3331.

⁸ U.S. Department of Justice, Criminal Division, Public Integrity Section, Federal Prosecution of Election Offenses, 8th edition, 8 (Dec. 2017). The Department of Justice notes: “Of course, U.S. presidential elections are an exception.” *Id.*

of the matter, and the Department of Justice has investigatory jurisdiction over the federal criminal campaign-finance aspects. To the extent that the behavior alleged may also violate state and local law, or if it involves non-federal elections, law-enforcement bodies at those levels would have investigatory and enforcement jurisdiction.

If the alleged fraud involves spending by foreign nationals in connection with an American election, the FEC and DOJ have investigatory jurisdiction, regardless of whether the election is at the federal, state, or local level.

b. What resources does the Commission have in place to investigate allegations of voter fraud?

The Commission has resources to investigate instances in which FECA violations or violations of the Presidential public funding program statutes are intertwined with violations of other federal and state laws, including voter fraud laws. The Enforcement Division of the FEC's Office of General Counsel is well-equipped to investigate any such allegations, as it handles all enforcement matters within our authority.

c. Outside of federal campaign finance law, please describe all areas of law the Commission believes it would have investigatory power over.

As noted in the FEC's consensus response, the Commission has statutory authority to investigate any alleged violation of the FECA and the Presidential public funding program statutes. As a matter of statute, Congress has also given the Commission investigatory and enforcement authority over certain financial aspects of Presidential inaugural committees.⁹

d. Please include separately any and all examples of individual Commissioners, in their official capacity, calling for the public disclosure of information from candidates for federal office, or from federal office holders, since 2013.

Given that one of the main jobs of the FEC and its commissioners, individually and collectively, is to call for the public disclosure of information from candidates for federal office, regardless of whether they are federal officeholders, it would be impossible to provide a full listing. Most of the millions of pieces of information that candidates for federal office have disclosed to the FEC since 2013 are housed on the Commission's website, found at fec.gov.

4. Question 4 contains a number of inquiries regarding the FEC's role in educating the public on campaign finance and regarding travel undertaken by commissioners and staff.

The Commission's consensus answer to Question 4 largely suffices. I will note, however, that I have gone out of my way in my individual capacity as an election commissioner to conduct

⁹ 36 U.S.C. § 510.

outreach and public education efforts. Recently, I have been particularly concerned to ensure the public’s understanding of and compliance with the foreign-national political-spending ban. For example, in June 2019, I issued a widely distributed statement that began: “Let me make something 100% clear to the American public and anyone running for public office: It is illegal for any person to solicit, accept, or receive anything of value from a foreign national in connection with a U.S. election.”¹⁰ I spoke to many news outlets following the resignation of my colleague, former Vice Chairman Matthew Petersen, to assure the American public that the Federal Election Commission is still open for business and that many of our core functions would continue unimpeded.

This is nothing new for me. Back when I worked for the House Ethics Committee, I had major responsibility for the Committee’s public education initiatives. Since I have been serving on the Commission, I am proud to say that I have taken a leading role in our public outreach. For example, for a number of years before he left, Commissioner Petersen and I provided widely appreciated commentary at the FEC’s regional conferences. I have spoken to thousands of foreign visitors over the years, often at the behest of the State Department, to educate them on our system of governance.

As noted above, historically, FEC commissioners are often invited to represent the United States as part of election observation missions. I have been proud to represent the United States on such missions (always with the approval of, and sometimes at the request of, the State Department) and as a speaker and participant at international meetings of both intergovernmental and nongovernmental organizations on topics such as campaign finance, election administration, anti-corruption measures, and governance.

¹⁰ “Statement Regarding Illegal Contributions From Foreign Governments” (June 13, 2019), *found at* https://www.fec.gov/resources/cms-content/documents/Chair_Weintraub_on_Illegal_Foreign_Contributions.pdf.



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

Supplemental Response of Caroline C. Hunter
Commissioner, Federal Election Commission
to Questions from the Honorable Rodney Davis
Ranking Member, Committee on House Administration
September 20, 2019

Question 1. The stated mission of the Commission is “To protect the integrity of the federal campaign finance process by providing transparency and fairly enforcing and administering federal campaign finance laws.” However, it has been asserted that this seemingly straightforward mission can be read to include issues of election administration.

(a) Do you believe the Commission has the legislative and/or regulatory authority over the administration of elections?

(b) If yes, please identify where that authority exists.

(c) Does the FEC have the resources necessary to assist states in their administration of elections?

The Federal Election Commission (“FEC” or “Commission”) does not have legislative and/or regulatory authority over the administration of elections, nor does it have the resources necessary to assist states in their administration of elections.

(d) Please describe any and all election administration experience. Each Commissioner is invited to answer this question separately.

I served as a Commissioner of the U.S. Election Assistance Commission in from February 2007 until June 2008. I was Vice Chair of the Commission in 2008.

Previously, I had served as deputy counsel and associate counsel at the Republican National Committee from 2001-2005. As such, my responsibilities included providing guidance on election law and implementation of the Help America Vote Act.

Question 2. 5 C.F.R. §2635.704 states that Commissioners have a duty to protect and conserve Government property and shall not use such property, or allow its use, for other than authorized purposes. Property in this context includes, official time, official resources, use of Commission staff, and the use of Commission letterhead.

(a) Would authorized purposes include casting doubt, in an official capacity, on the validity of a federal election?

(b) Would authorized purposes include publicly supporting or opposing a candidate, in an official capacity, based on positions held on campaign finance and/or election security legislation?

(c) Would authorized purposes include rebutting, in an official capacity, statements made by candidates for office on topics related to election administration and/or election security?

(d) Would authorized purposes include rebutting, in an official capacity, statements made by federal office holders on topics related to election administration and/or election security?

(e) Would authorized purposes include asking for candidates or federal office holders to release information to the public other than reports or documents that are required by law to be filed with the Commission?

No. I can conceive of no realistic scenario in which authorized purposes would include the use of Commission resources to cast doubt on the validity of a federal election, rebut candidates' or officeholders' statements on election administration or security, or demand candidates make public information not required to be filed with the Commission. Moreover, activities by a Commissioner that call into question the Commissioner's ability to perform his or her official duties in a fair and impartial manner are also inappropriate because they would jeopardize the integrity of the Commission.

Apparently, the view of the Commission's Office of General Counsel is that the activities described in paragraphs (a) and (c)-(e) of Question 2 possibly fall within the scope of authorized

purposes and are neither required nor prohibited under current Commission policies.¹ The question remains whether the activities violate applicable ethics rules or the Appropriations Act.²

The Commission is a creature of the post-Watergate reaction to misuse of executive power for partisan gain. Given the nature of the Commission's work, the "sole purpose" of which is "the regulation . . . of individuals and groups only insofar as they act, speak and associate for political purposes,"³ the Commission has been structured in a way that prevents any single political party or administration from dominating its decision-making, subpoena power, or rulemaking authority. Further, the Commission's jurisdiction is generally circumscribed to enforcing provisions of federal law pertaining to how candidates, parties, PACs, and certain other actors raise, spend, and disclose funds related to federal elections.

The Commission does not draw district maps, oversee voter registration or ballot access laws, administer elections, certify election results, or investigate allegations of voter fraud or

¹ According to the Commission's Office of General Counsel, the activity described in Question 2(b) (supporting or opposing candidates based on their positions) might be permissible or prohibited under the Hatch Act, depending on the circumstances.

² Generally, federal regulations bar the use of government property for activities other than those "authorized in accordance with law or regulation." 5 C.F.R. § 2635.704(a), (b)(2). Federal regulations also prohibit the use of official "position or title . . . in a manner that could reasonably be construed to imply that his agency or the Government sanctions or endorses his personal activities." 5 C.F.R. § 2635.702(b). According to the Government Accounting Office, government funds, including staff time, "may be used only" for the purposes for which Congress appropriated the funds. Government Accounting Office, *Principles of Appropriations Law*, 3d Edition, ch. 4 at 6 (citing 31 U.S.C. § 1301); *see also id.* ch. 4 at 21-22 (expense is "necessary" if it (1) bears logical relationship to appropriation charged. "In other words, it makes a direct contribution . . . to carrying out an authorized agency function for which . . . general appropriations are available"; (2) is not prohibited by law; and (3) is not otherwise provided for; "that is, it must not be an item that falls within the scope of some other appropriation or statutory funding scheme").

³ *Van Hollen v. FEC*, 811 F.3d 486, 499 (D.C. Cir. 2016) (quoting *AFL-CIO v. FEC*, 333 F.3d 168, 170 (D.C. Cir. 2003)).

intimidation.⁴ These matters are handled by state and local governments, often in conjunction with other federal agencies such as the U.S. Department of Justice and the Election Assistance Commission, and the Commission's website correctly directs individuals with questions about these issues to the appropriate state and federal agencies.⁵ If issues of election administration, ballot access, or voter fraud ever do come before the Commission, they would probably be part of the factual or legal background of a particular enforcement matter, advisory opinion, or rulemaking.

Question 3(a). In cases of voter fraud, who would be the appropriate investigatory entity?

Question 3(b). What resources does the Commission have in place to investigate allegations of voter fraud?

The FEC does not investigate allegations of voter fraud. It has no resources in place to investigate allegations of voter fraud.

Question 3(d). Please include separately any and all examples of individual Commissioners, in their official capacity, calling for the public disclosure of information from candidates for federal office, or from federal office holders, since 2013.

Since 2013, in my official capacity as FEC Commissioner, I have not called for the public disclosure of information from any candidates for federal office, or from any federal officeholders outside the normal course of administering and enforcing FECA and the

⁴ The Help America Vote Act of 2002 deprived the Commission of its limited responsibilities under the National Voter Registration Act to develop a "mail voter registration application form" for federal elections. Reorganization of National Voter Registration Act Regulations, 74 Fed. Reg. 37519, 37519 (July 29, 2009) (citing Pub. L. 107-252, 116 Stat. 1726, 42 U.S.C. § 15532 (2002)). On August 28, 2009, the Commission transferred its regulations implementing the National Voter Registration Act to the Election Assistance Commission. *Id.*

⁵ See Election Day Information, FEC, available at <https://www.fec.gov/introduction-campaign-finance/election-day-information/>.

Presidential public funding statutes.

I have been informed that the Commission does not maintain a complete archive of Commissioners' official actions. Nonetheless, I am aware of several instances in which one of my colleagues on the Commission, while purporting to act in her official capacity, called for a candidate for federal office or a federal officeholder to disclose information publicly.

In early 2017, my colleague publicly issued three statements and one letter calling on the President of the United States, who was then also a candidate for reelection, to share evidence of his allegations of voter fraud in the 2016 federal elections. My colleague sent a second letter to the President on this topic, dated August 16, 2019, in which she asserted that “[t]he American people count on [her], as the Chair of their Federal Election Commission, to protect the integrity of our elections,” and demanded the President provide any evidence he might have regarding voter fraud to “the appropriate law-enforcement authorities” (which do not include the Commission).⁶ My colleague subsequently invoked her official status to address other issues that the Commission does not deal with, such as voter integrity and the need to abolish the Electoral College.⁷ Information relating to these and other activities, including videos of public appearances, are available on the FEC’s website, at <https://www.fec.gov/about/leadership-and-structure/ellen-l-weintraub/>.

While I would welcome my colleague’s exercise of her First Amendment rights if she

⁶ See Ellen L. Weintraub (@EllenLWeintraub), Twitter (Aug. 16, 2019), <https://twitter.com/EllenLWeintraub/status/1162474973115666434> (attached as Exhibit 4). This is the Chair’s fourth public statement on the matter in two years. See Exhibits 1-3; see also <https://www.fec.gov/about/leadership-and-structure/ellen-l-weintraub/>.

⁷ The Commission does not play a role with respect to the Electoral College. Abolishing the Electoral College would require a Constitutional amendment. U.S. Const. Art. II, Sect. 1; U.S. Const. Art. V.

were to speak on these subjects in her personal capacity, instead she has consistently invoked her position as Commission Chair. Whatever her motivation might be, I am concerned that her statements create the false impression of Commission imprimatur and risk politicizing the Commission in the eyes of the public, undermining the Commission's legitimacy, and profoundly misrepresenting the Commission's actual, assigned role in this country's electoral process.

Question 4(b)(iv). Separately, please identify all official international travel taken and travel-related expenses incurred by either the Commissioners or staff since 2013 that was paid for by a foreign government or other foreign national, as defined by 52 U.S.C. § 30121(b) (including sources and amounts).

As discussed in the Commission's joint response to Representative Davis, the FEC's Semiannual Reports of Payments Accepted from a Non-Federal Source show travel to 84 destinations, 30 of which were international destinations.

When a third party reimburses travel expenses of a Commissioner or other FEC employee, a no-objection ballot is circulated to Commissioners to accept the reimbursement. For several years, there has been disagreement among Commissioners as to whether international travel expenses to observe elections or improve election administration in foreign countries relate to Commissioners' official duties. Several of my former colleagues and I viewed this practice as a legacy dating back to before the Help American Vote Act transferred the Commission's election administration responsibilities to the Election Assistance Commission, and declined to participate in foreign travel. Since at least January 2018, Commission reimbursement of foreign travel expenses incurred by Commissioners and FEC staff has not been approved without assurances it involved campaign finance related activities.

EXHIBIT 1



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

**Statement of Commissioner Ellen L. Weintraub
Regarding Allegations by the President of the United States
of Widespread Voter Fraud in New Hampshire
February 10, 2017**

According to widespread news reports circulating today,¹ President Trump has alleged an astonishing voter-fraud scheme that he claims denied him and former Sen. Kelly Ayotte victory in the state of New Hampshire in the 2016 elections.

The scheme the President of the United States alleges would constitute thousands of felony criminal offenses under New Hampshire law.²

As a Commissioner on the Federal Election Commission, I am acutely aware that our democracy rests on the faith of the American people in the integrity of their elections.

The President has issued an extraordinarily serious and specific charge. Allegations of this magnitude cannot be ignored.

I therefore call upon President Trump to immediately share his evidence with the public and with the appropriate law-enforcement authorities so that his allegations may be investigated promptly and thoroughly.

¹ See, e.g., "The Latest: Trump revives claims of voter fraud," THE WASHINGTON POST (found at https://www.washingtonpost.com/politics/whitehouse/the-latest-trump-tells-xi-hell-honor-one-china-policy/2017/02/09/fa1172ac-ef48-11e6-a100-fdaaf400369a_story.html); "Trump brings up vote fraud again, this time in meeting with senators," POLITICO (found at <http://www.politico.com/story/2017/02/trump-voter-fraud-senators-meeting-234909>); "Trump: Ayotte would have won Senate reelection if not for voter fraud," THE HILL (found at <http://thehill.com/homenews/news/318986-trump-ayotte-would-have-won-reelection-if-not-for-voter-fraud>).

² RSA 659:34(I)(e) and 659:34(II).

EXHIBIT 2



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

**Statement of Commissioner Ellen L. Weintraub
Regarding Request for Investigation¹ Filed With FEC Inspector General
February 21, 2017**

As a Commissioner on the Federal Election Commission, I am acutely aware that our democracy rests on the faith of the American people in the integrity of their elections.

The President of the United States has, without providing evidence, alleged a massive conspiracy to bus thousands of voters from one state to another to cast illegal votes in the 2016 elections.

Any such allegation challenging the legitimacy of federal elections would be of great concern to me. As it happens, this particular allegation falls squarely within the jurisdiction of the Federal Election Commission, since the expense of these buses has not been accounted for on any campaign-finance filing. Accordingly, I have asked the President for his evidence.²

But let there be no doubt: It is absolutely within my official duties as a federal election official to comment publicly on any aspect of the integrity of federal elections in the United States. I will not be silenced.

¹ <http://causeofaction.org/assets/uploads/2017/02/2017.02.21-CoA-Inst.-Req.-for-Investigation-Commr-Weintraub-Ethics.pdf>.

² <http://www.fec.gov/members/weintraub/statements/ELW-POTUS-voter-fraud-statement.pdf>

EXHIBIT 3



COMMISSIONER ELLEN L. WEINTRAUB
FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 22, 2017

Dear Mr. President,

I write to you today to request again that you share your evidence of widespread voter fraud in New Hampshire with the public and with the appropriate law-enforcement authorities so that your allegations may be addressed promptly and thoroughly.

You have alleged that thousands of voters were bused from Massachusetts to New Hampshire to vote illegally on Election Day 2016. This allegation of a vast conspiracy, involving thousands of people committing felony criminal acts aimed at stealing the election, has deeply disturbed citizens throughout America. I have heard from many of them, including proud and patriotic New Englanders who are shocked by the allegation and feel that it impugns their historic role in our democracy.

Any such allegation challenging the legitimacy of federal elections would be of great concern to me. As it happens, this particular allegation falls squarely within the jurisdiction of the Federal Election Commission, since no bus expenses have been accounted for on any campaign-finance filing. Your allegations are not properly a matter for a future investigation to take up, as you cannot have responsibly alleged this scheme without already having sufficient facts in hand to do so.

As the President of the United States of America – our head of government and our head of state – your words carry considerable persuasive and legal weight. Because of the trust that Americans place in their Presidency, some lawmakers around the country may be tempted to rely on your words and move forward with unwarranted voter restrictions. Indeed, this could result in *detering* or *preventing* American citizens from voting. Given the already disappointingly low turnouts in recent American elections, I would hope that everyone can agree that *encouraging* every citizen to vote should be a government-wide priority.

This country should make policy based on facts, not unsupported statements, no matter how high-ranking the source. In these polarized times, we will never be able to find common ground on sound policy going forward if we are operating on different assumptions of what occurred in the recent past. This is why it is so important for you to provide your evidence, so we can determine the truth of what happened in New Hampshire and craft the best actions to take in response to that truth.

Our democracy depends on the American people's faith in our elections. Your voter-fraud allegations run the risk of undermining that faith.

Facts matter, Mr. President. The American people deserve to see your evidence.

Sincerely,

A handwritten signature in blue ink that reads "Ellen L. Weintraub".

Ellen L. Weintraub
Federal Election Commissioner

EXHIBIT 4



CHAIR ELLEN L. WEINTRAUB
FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 16, 2019

Mr. President,

Back in February 2017, when you first alleged a voter-fraud scheme of astonishing scale in New Hampshire in 2016, I publicly called upon you to provide your evidence to the American people and the appropriate law-enforcement authorities so that your very serious claims could be investigated. I followed up in March 2017 with a letter to you repeating my request.

You have not, so far, provided any proof of these allegations.

Last night, you repeated your claim: “New Hampshire should’ve been won last time,” you told reporters before your rally, “except we had a lot of people come in at the last moment, which was a rather strange situation, thousands and thousands of people, coming in from locations unknown. But I knew where their location was.” During your rally, you told the crowd that New Hampshire was “taken away from us.”

What I wrote to you in March 2017 is just as true now: Our democracy depends on the American people’s faith in our elections. Your voter-fraud allegations run the risk of undermining that faith. Just as seriously, baseless allegations of fraud have been used to rationalize indefensible laws that deter certain U.S. citizens from exercising their right to vote. Words matter, and facts matter.

The American people count on me, as the Chair of their Federal Election Commission, to protect the integrity of our elections. So I ask you, once again, to provide any evidence you may have to the American people and the appropriate law-enforcement authorities to substantiate your claims. The American people are ill-served when our leaders put forward unfounded allegations of voter fraud.

To put it in terms a former casino operator should understand: There comes a time when you need to lay your cards on the table or fold.

Sincerely,

A handwritten signature in blue ink that reads "Ellen L. Weintraub".

Ellen L. Weintraub
Chair, Federal Election Commission



FEDERAL ELECTION COMMISSION
Washington, DC 20463

September 20, 2019

The Honorable Rodney L. Davis
Ranking Member
Committee on House Administration
1309 Longworth House Office Building
Washington, D.C. 20515

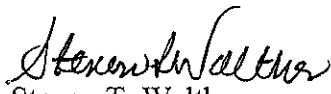
Re: Response to August 26, 2019 Letter from Ranking Member Davis

Dear Ranking Member Davis,

I am taking this opportunity to supplement certain answers to questions in your August 26, 2019 letter for which the Commissioners were unable to agree on joint responses. These answers were primarily drafted by our able staff under the direction of the Commission's Director of Congressional Affairs, Duane Pugh.

If you desire any further information, you are welcome to contact me or Duane Pugh, at (202) 694-1002 or dpugh@fec.gov.

Sincerely,


Steven T. Walther
Commissioner



FEDERAL ELECTION COMMISSION
Washington, DC 20463

Office of Commissioner Steven T. Walther

SUPPLEMENTAL RESPONSES FROM
COMMISSIONER STEVEN T. WALTHER
TO QUESTIONS FROM
REP. RODNEY DAVIS, RANKING MEMBER,
COMMITTEE ON HOUSE ADMINISTRATION
SEPTEMBER 20, 2019

2. *5 C.F.R. §2635.704 states that Commissioners have a duty to protect and conserve Government property and shall not use such property, or allow its use, for other than authorized purposes. Property in this context includes, official time, official resources, use of Commission staff, and the use of Commission letterhead.*
 - a. *Would authorized purposes include casting doubt, in an official capacity, on the validity of a federal election?*
 - b. *Would authorized purposes include publicly supporting or opposing a candidate, in an official capacity, based on positions held on campaign finance and/or election security legislation?*
 - c. *Would authorized purposes include rebutting, in an official capacity, statements made by candidates for office on topics related to election administration and/or election security?*
 - d. *Would authorized purposes include rebutting, in an official capacity, statements made by federal office holders on topics related to election administration and/or election security?*
 - e. *Would authorized purposes include asking for candidates or federal office holders to release information to the public other than reports or documents that are required by law to be filed with the Commission?*

My response to the above questions was based on consultation with Commission staff, which included input from the Office of General Counsel:

The activities described in questions 2.a., 2.c., 2.d. and 2.e. undertaken by a Commissioner may, in some instances, fall within the scope of “authorized purposes” and in such instances would not be prohibited under current Commission policies. The Commission’s direct and primary jurisdiction is to enforce and administer FECA, but that is not solely dispositive in answering the question of what is “authorized” under the Standards of Official Conduct with respect to a Commissioner. The U.S. Office of Government Ethics (OGE), which promulgated 5 C.F.R. § 2635.704, leaves within the discretion of each agency a determination of

whether activity is in an employee's official or personal capacity. The Commission has not made a determination or otherwise adopted any policy on whether the activities described in questions 2.a., 2.c., 2.d. or 2.e. when undertaken by a Commissioner are or are not included within the scope of authorized purposes.

The activities described in question 2.b. undertaken by a Commissioner are probably not included in authorized purposes under current Hatch Act guidance. The Hatch Act, see generally 5 U.S.C. § 7321-26, prohibits Federal employees from using their official authority or influence to affect the result of an election, including by using their titles or positions while engaged in political activity. Under regulations of the U.S. Office of Special Counsel (OSC), “political activity” is defined as activity directed to the success or failure of a political party, candidate for partisan political office, or partisan political group. 5 C.F.R. § 734.101. According to OSC guidance, criticism or praise of an administration's policies and actions that is directed to “the success or failure of a candidate” is considered political activity, while criticism or praise that is not so directed is not considered political activity, and whether a given statement is “so directed” depends on all the facts and circumstances of the given case. So, publicly supporting or opposing a candidate *as a candidate* based on the candidate’s positions on campaign finance or election security legislation could not be “authorized,” because such activity would likely violate the Hatch Act. But expressions of agreement or disagreement with the candidate's positions on such legislation, without more, might not by itself violate the Hatch Act and would not necessarily be considered “unauthorized.”

3. *The Commission is charged with certain investigatory responsibilities, please provide an outline and examples of these responsibilities.*
 - a. *In cases of voter fraud, who would be the appropriate investigatory entity?*
 - b. *What resources does the Commission have in place to investigate allegations of voter fraud?*

My response to the above questions was based on consultation with Commission staff, which included input from the Office of General Counsel:

According to the U.S. Department of Justice, “The principal responsibility for overseeing the election process rests with the states. With the significant exception of the Voting Rights Act involving denigration of the right to vote based on race, ethnicity, or language minority status, the federal government plays a role secondary to that of the states in election matters. It is the states that have the primary authority to ensure that only qualified individuals register and vote, that the polling process is conducted fairly, and that the candidate who received the most valid votes is certified as the winner.”¹ The U.S. Department of Justice’s Civil Rights Division and the Criminal Division’s Public Integrity Section are responsible for the federal aspects of these responsibilities.

¹ U.S. Department of Justice, Criminal Division, Public Integrity Section, Federal Prosecution of Election Offenses, 8th edition, 8 (Dec. 2017). The Department of Justice notes: “Of course, U.S. presidential elections are an exception.” *Id.*

The Commission's jurisdiction and investigatory responsibilities as outlined in the FECA include spending made for the purpose of influencing a federal election, and there may be some instances in which campaign finance violations are intertwined with violations of other federal and state laws, including voter fraud laws. In such circumstances, the Commission may assert its jurisdiction where there is an alleged violation of the FECA and the Presidential public funding program statutes. For example, it may constitute a violation of the FECA if a federally registered political committee spent money to perpetrate a voter fraud scheme and failed to disclose that spending on its FEC reports or if a foreign national perpetrated a voter fraud scheme in a federal, state, or local election. The Commission has the resources to investigate instances in which FECA violations or violations of the Presidential public funding program statutes are intertwined with violations of other federal and state laws, including voter fraud laws.