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Federal Election Commission: Membership and Policymaking Quorum, In Brief

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SUMMARY

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Federal Election Commission: Membership and Policymaking Quorum, In Brief

The Federal Election Commission (FEC) is the nation's civil campaign finance regulator. The agency ensures that campaign fundraising and spending is publicly reported; that those covered by the Federal Election Campaign Act (FECA) and by commission regulations comply and have access to guidance; and that publicly financed presidential campaigns receive funding.

As of this writing, two of six FEC commissioners remain in office. Four commission vacancies, one of which has been disputed, occurred during 2025. Initial developments left three commissioners remaining in office, thus precluding a policymaking quorum of at least four votes, through September 2025. Due to a resignation, a fourth commissioner departed the agency effective October 3, 2025, leaving two commissioners remaining in office. FECA requires at least four agreeing votes from commissioners to take various policymaking, regulatory, and enforcement actions. The quorum loss that began in April 2025 marked the fourth—and the longest such episode, more than 18 months, as of this writing—in the FEC's history. The first lasted six months in 2008. The second lasted for approximately nine months and spanned parts of 2019 and 2020. The third lasted for approximately six months during the second half of 2020.

FEC commissioners are presidential appointees who are subject to Senate advice and consent. Commissioners may remain in office in holdover status beyond the end of their six-year statutory terms. On February 11, 2026, President Trump sent two FEC nominations to the Senate. The Senate Rules and Administration Committee held a hearing on both nominees on November 17, 2026. If both nominees are confirmed and no other vacancies occur, the commission's policymaking quorum would be restored.

This CRS report briefly explains the kinds of actions that FECA precludes when a quorum is not possible because fewer than four FEC members are in office. Among other powers, without a quorum, the commission cannot hold hearings, issue rules, or enforce campaign finance law and regulation. Campaign finance law and regulation remain in effect and may be enforced once a quorum is restored. (An FEC quorum loss does not affect Department of Justice criminal enforcement.) Agency operations continue with remaining commissioners and staff.

This report will be updated in the event of substantial changes in the Federal Election Commission's policymaking quorum or the status of commission nominations.

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Introduction

The Federal Election Commission (FEC) is an independent regulatory agency headed by six commissioners. Congress created the FEC in 1974, after controversial fundraising during presidential campaigns in the 1960s and the early 1970s Watergate scandal. The FEC is responsible for administering federal campaign finance law and for civil enforcement of the Federal Election Campaign Act (FECA).[1] The FEC also discloses campaign finance data to the public, conducts compliance training, and administers public financing for participating presidential campaigns.

FECA establishes six-year terms for commission members. Commissioners may continue in "holdover" status after those terms end. Commissioners are appointed by the President and are subject to Senate confirmation. FECA requires that at least four of the six commissioners vote to make decisions on substantive actions. This includes deciding on enforcement actions, advisory opinions, and rulemaking matters. Because FECA also requires commission membership representing more than one political party, achieving at least four agreeing votes is sometimes difficult, even with six members present. Vacancies make the task harder by reducing opportunities for a coalition of at least four votes.

The loss of the FEC's policymaking quorum that began in 2025 marks the fourth such episode in the agency's history, and the first since 2020. FECA and agency procedure affect operations during quorum losses. Before the agency's first loss of its policymaking quorum in 2008, the commission adopted special provisions, outlined in a document known as Directive 10, that govern agency procedure when fewer than four commissioners remain in office.

This report provides a brief overview of policymaking implications when fewer than four Federal Election Commissioners remain in office.[2] An **Appendix** provides historical information about vacancies and nominations activity that occurred between 2017 and 2020; some of that material was previously contained in the body of this report. Other CRS products provide additional information about campaign finance policy.[3] This report does not provide legal analysis.

A Note on Terminology

The terms *FEC*, *commission*, and *agency* often—including in some other CRS products—are used interchangeably to refer to the Federal Election Commission. Because this report emphasizes policymaking and enforcement duties specified in statute, it generally reserves *commission* to denote appointed members of the FEC, as opposed to agency staff. In this report, *agency* and *FEC* generally refer to the commission and staff collectively.

[1] 52 U.S.C. §§30101-30146.

[2] This report supersedes CRS Report RS22780, *The Federal Election Commission (FEC) With Fewer than Four Members: Overview of Policy Implications*, by R. Sam Garrett.

[3] See, respectively, CRS Report R41542, *The State of Campaign Finance Policy: Recent Developments and Issues for Congress*, by R. Sam Garrett; see also archived CRS Report R44318, *The Federal Election Commission: Overview and Selected Issues for Congress*, by R. Sam Garrett; archived CRS Report R44319, *The Federal Election Commission: Enforcement Process and Selected Issues for Congress*, by R. Sam Garrett; and CRS Report RL31980, *Senate Consideration of Presidential Nominations: Committee and Floor Procedure*, by Elizabeth Rybicki.

Recent Vacancies and Nomination Activity

Table 1 below reflects the latest action on FEC nominations, as of this writing. On February 11, 2026, President Trump nominated Ashley Stow and Andrew Woodson to the commission.[4] The Senate Rules and Administration Committee held a hearing on both nominees on November 17, 2026. If both individuals are confirmed and no other vacancies occur, the commission would be restored to a policymaking quorum of four votes.

Table 1. Federal Election Commissioners and Recent Vacancies

(data are current as of November 23, 2026)

Commissioner	Term Expiration	Date Confirmed	Party Affiliation	Recent Vacancy Notes
Shana M. Broussard	04/30/2023 (remains in holdover status)	12/09/2020	Democrat	—
Dara Lindenbaum	04/30/2027	05/24/2022	Democrat	—
[Vacant]	[new occupant's term would expire 04/30/2029]	—	—	Previous occupant James E. "Trey" Trainor III (R); resignation effective 10/03/2025; Ashley Stow nominated 02/11/2026; Senate Rules and Administration Committee hearing held 11/17/2026
[Vacant]	[new occupant's term would expire 04/30/2027]	—	—	Previous occupant Sean J. Cooksey (R); resignation effective 01/20/2025
[Vacant]	[new occupant's term would expire 04/30/2031]	—	—	Previous occupant Allen Dickerson (R); resignation effective 04/30/2025; Andrew Woodson nominated 02/11/2026; Senate Rules and Administration Committee hearing held 11/17/2026
[Vacant]	[new occupant's term would expire 04/30/2031]	—	—	Previous occupant Ellen L. Weintraub (D); dismissed effective 01/31/2025[a]

Source: Legislative Information System/Congress.gov nominations database. CRS added party affiliation based on FEC publications and press accounts.

a. Weintraub announced on social media on February 6, 2025, that she had received a January 31, 2025, letter from President Trump "purporting to remove me." See Ellen L. Weintraub (@EllenWeintraub), X post, February 6, 2025, https://x.com/EllenLWeintraub/status/1887648967300694270. A group of Democratic Senators wrote to President Trump on February 12, 2025, objecting to the dismissal and calling it an "illegal attempt to remove Chair Ellen Weintraub." See Letter from Senators Alex Padilla et al. to Donald J. Trump, President, February 12, 2025, https://www.padilla.senate.gov/wp-content/uploads/02.12.25_Letter-to-

[4] See PN806-10 (Stow), https://www.congress.gov/nomination/119th-congress/806/10; and PN806-11 (Woodson), https://www.congress.gov/nomination/119th-congress/806/11.

POTUS-on-Removal-of-FEC-Chair-Weintraub.pdf. For another Member statement on the dismissal, see, for example, Committee on House Administration (Minority), "Morelle Statement on President Trump Firing Federal Election Commission Chair," press release, February 6, 2025, https://democrats-cha.house.gov/media/press-releases/morelle-statement-president-trump-firing-federal-election-commission-chair. According to a February 6, 2025, media report, a White House spokesperson stated, in part, "'The President has made a decision on who he'd like to chair the Federal Election Commission (FEC), and it's not [Weintraub].'" See Ross O'Keefe, "FEC Chairwoman Rejects Trump's Attempt to Remove Her," *Washington Examiner*, February 6, 2025, https://www.washingtonexaminer.com/news/white-house/3313625/fec-chairwoman-rejects-trump-attempt-remove-her/. Legal analysis of the dismissal dispute is beyond the scope of this report.

Commission membership dropped from six to three between January and April 2025, resulting in a policymaking-quorum loss. Those vacancies developed, in chronological order, as follows:

- Commissioner Sean J. Cooksey resigned effective January 20, 2025, to serve as counsel to Vice President Vance.[5] The Cooksey resignation did not affect the policymaking quorum, as five commissioners remained in office.
- Effective January 31, 2025, President Trump reportedly removed Commissioner Ellen L. Weintraub, who was serving as the commission chairperson.[6] By February 7, 2025, the FEC website was updated to reflect two vacancies (for the Cooksey and Weintraub seats) on the commission, and four of six commissioners remaining in office.[7] Commissioner Weintraub and some Members of Congress have argued that her dismissal is impermissible.[8] Legal analysis of the dismissal dispute is beyond the scope of this report. Open commission meetings were canceled on February 13 and 27, 2025, and on March 13, 2025. Weintraub did not participate in subsequent open meetings, which began on March 27, 2025.[9] At the November 17, 2026, Senate Rules and Administration Committee hearing on the Stow and Woodson nominations, ranking member Senator Alex Padilla

[5] On Cooksey's resignation, see Letter from Sean J. Cooksey, Commissioner, Federal Election Commission, to Joseph R. Biden, President, January 13, 2025, https://www.fec.gov/resources/cms-content/documents/Letter-from-Commissioner-Sea-Cooksey-to-President-Joseph-Biden-Jan-13-2025.pdf. See also, for example, Reese Gorman, "JD Vance Is Bringing His Senior Senate Staff to His VP Office," *NOTUS*, January 17, 2025, https://www.notus.org/trump-transition/jd-vance-senior-staff-vp-office.

[6] Weintraub announced on social media on February 6, 2025, that she had received a January 31, 2025, letter from President Trump "purporting to remove me." See, for example, Ellen L. Weintraub (@EllenWeintraub), X post, February 6, 2025, https://x.com/EllenLWeintraub/status/1887648967300694270.

[7] See, for example, the February 7, 2025, Internet Archive capture of Federal Election Commission, "Commissioners," https://www.fec.gov/about/leadership-and-structure/, at https://web.archive.org/web/20250207163628/https://www.fec.gov/about/leadership-and-structure/.

[8] A group of Democratic Senators wrote to President Trump on February 12, 2025, objecting to the dismissal and calling it an "illegal attempt to remove Chair Ellen Weintraub." See Letter from Sens. Alex Padilla et al. to Donald J. Trump, President, February 12, 2025, https://www.padilla.senate.gov/wp-content/uploads/02.12.25_Letter-to-POTUS-on-Removal-of-FEC-Chair-Weintraub.pdf. For another Member statement on the dismissal, see, for example, Committee on House Administration (Minority), "Morelle Statement on President Trump Firing Federal Election Commission Chair," press release, February 6, 2025, https://democrats-cha.house.gov/media/press-releases/morelle-statement-president-trump-firing-federal-election-commission-chair. According to a February 6, 2025, media report, a White House spokesperson stated, in part, "'The President has made a decision on who he'd like to chair the Federal Election Commission (FEC), and it's not [Weintraub].'" See Ross O'Keefe, "FEC Chairwoman Rejects Trump's Attempt to Remove Her," *Washington Examiner*, February 6, 2025, https://www.washingtonexaminer.com/news/white-house/3313625/fec-chairwoman-rejects-trump-attempt-remove-her/.

[9] Meeting agendas, including cancellations, and recordings, are available on the FEC website at https://www.fec.gov/meetings/.

criticized the Weintraub dismissal and the lack of a new Democratic nominee to replace Weintraub.[10]

- Commissioner Allen Dickerson resigned effective April 30, 2025, at the end of his term.[11] Dickerson's resignation marked the departure of a third commissioner. With three commissioners remaining in office (Shana M. Broussard, Dara Lindenbaum, and James E. "Trey" Trainor), the commission lost its policymaking quorum.[12]

The commission operated with three members (Broussard, Lindenbaum, and Trainor) through September 2025. On September 25, 2025, Commissioner Trainor announced his intention to resign effective October 3, 2025.[13] His departure did not affect the policymaking quorum, as there were already fewer than four members in office. The current circumstance does appear to be unique, however, in that the only two remaining commissioners are affiliated with one political party (the Democratic Party). The current policymaking quorum loss is the fourth in the FEC's history. As discussed in the "Historical Note: Loss of Policymaking Quorum in 2008" section of this report, the first occurred in 2008. The **Appendix** discusses events surrounding the second and third quorum losses, which occurred in 2019 and 2020, respectively.

The Commission, Policymaking, and Appointments

Original, Invalidated Appointment Structure

Congress originally designed eight positions for the FEC: six commissioners and two nonvoting *ex officio* members (the Clerk of the House and Secretary of the Senate). Under that structure, two commissioners were appointed by the President, two by the President pro tempore of the Senate, and two by the Speaker of the House.

Two federal court decisions altered the FEC's original design. First and most significantly, in *Buckley v. Valeo* (1976) the Supreme Court of the United States invalidated the original appointments method, holding that congressional appointments violated the Constitution's Appointments Clause.[14] Seventeen years later, a federal court again found fault with the FEC's appointment structure. In 1993, the U.S. Court of Appeals for the District of Columbia held in

[10] See, for example, Taylor Giorno, "Idled Federal Election Commission is a Step Closer to Resuming Work," *The Washington Sun*, November 17, 2026, https://www.washingtonsun.com/influence/senate-advances-federal-election-commission-fec-nominees.

[11] See Letter from Allen J. Dickerson, Commissioner, Federal Election Commission, to Donald J. Trump, President, April 23, 2025, https://www.fec.gov/resources/cms-content/documents/Letter-from-Commissioner-Allen-J-Dickerson-to-President-Donald-Trump.pdf. See also, for example, Dave Levinthal, "The Federal Election Commission Is Facing a De Facto Shutdown," *NOTUS*, April 25, 2025, https://www.notus.org/policy/federal-election-commission-shutdown; and Max Greenwood, "FEC Commissioner Resigns, Paralyzing Watchdog," *Campaigns & Elections*, April 30, 2025, https://campaignsandelections.com/industry-news/fec-commissioner-resigns/.

[12] For discussion of implications from the quorum loss that began in 2025, see, for example, Federal Election Commission, Office of Inspector General, *Management and Performance Challenges Facing the FEC for FY 2027*, November 6, 2026, https://www.fec.gov/resources/cms-content/documents/FY-2027-Mgmt-Challenges.pdf, pp. 3-5.

[13] See, for example, Paul Bedard, "FEC Vice Chairman Resigns, Eyes Chip Roy's Texas House Seat," *Washington Examiner*, September 25, 2025, https://www.washingtonexaminer.com/news/washington-secrets/3823999/trey-trainor-resigns-fec-2026-elections/.

[14] On the Appointments Clause, see U.S. Const., Article II, §2, clause 2. *Buckley* is 424 U.S. 1 (1976). For a brief discussion of the ruling's implications for congressional appointments, see Congressional Research Service, *Constitution of the United States of America: Analysis and Interpretation*, "ArtII.S2.C2.3.10 Officer and Non-Officer Appointments," https://constitution.congress.gov/browse/essay/artII-S2-C2-3-10/ALDE_00013100/.

FEC v. NRA Political Victory Fund that the presence of the two congressional *ex officio* members violated constitutional separation of powers.[15] Congress did not amend FECA responding to this decision, although the *ex officio* members are no longer appointed.

Current Appointment Structure

In a broad revision of FECA in 1976, undertaken in response to the *Buckley* decision, Congress adopted the current appointment method. Today, all commissioners are presidentially appointed and subject to Senate advice and consent.[16] Members of the congressional leadership or committees of jurisdiction (the House Committee on House Administration and Senate Rules and Administration Committee) have continued to influence the selection of at least some nominees.[17]

FECA specifies few qualifications for FEC commissioners, noting simply that they "shall be chosen on the basis of their experience, integrity, impartiality, and good judgment."[18] As one former general counsel notes, although many commissioners are lawyers, "a commissioner does not have to be a lawyer and the commission has a long history of having non-lawyers serve as members."[19] Commissioners typically have had experience as congressional staffers, political professionals, election lawyers, or some combination thereof.

Party Balance and Terms

No more than three commissioners may be affiliated with the same political party.[20] In practice, the commission has been divided equally among Democrats and Republicans, although former Commissioner Steven Walther identified as an independent.[21] FECA staggers commissioner terms so that two expire every other April 30 during odd-numbered years (e.g., 2023, 2025).[22] This arrangement means that, at least as designed, two new commissioners would assume office biennially. However, the President is under no obligation to make biennial nominations.

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[15] 6 F.3d 821 (D.C. Cir. 1993); cert. denied (513 U.S. 88 (1994)). For legal analysis for *Buckley* and campaign finance issues, see CRS Report R43719, *Campaign Finance: Constitutionality of Limits on Contributions and Expenditures*, by L. Paige Whitaker.

[16] 52 U.S.C. §30106(a)(1).

[17] Members of the congressional leadership reportedly suggest nominees, although documentation of the practice is sparse. In one example, from 2005, Sen. Reid stated that he was "very pleased that the president acted today upon my two recommendations for Commissioners." See Sen. Harry Reid, "Reid Statement on Nominations to the Federal Election Commission," press release, December 16, 2005. On congressional influence on presidential appointments generally, see CRS Report R44083, *Appointment and Confirmation of Executive Branch Leadership: An Overview*, by Henry B. Hogue and Maeve P. Carey.

[18] 52 U.S.C. §30106(a)(3).

[19] Larry Noble, "In Search of Qualified FEC Commissioners," Campaign Legal Center blog posting, June 30, 2015, https://campaignlegal.org/update/search-qualified-fec-commissioners. David Mason (1998-2008) was the most recent non-lawyer, at the time of service, appointed to the commission.

[20] 52 U.S.C. §30106(a)(1).

[21] Steven T. Walther identified himself as an independent. Sen. Reid recommended Walther to the commission and Walther reportedly worked for Democratic clients before joining the FEC. Walther often voted with Democrats on the FEC, although he emphasized his independence throughout his commission tenure. See, for example, Matthew Murray, "Walther Takes on Washington," *Roll Call* online, January 13, 2009, https://rollcall.com/2009/01/13/walther-takes-on-washington/. On announcing his departure, Walther noted that he had "served as a politically independent Commissioner, and my departure affords the President the opportunity to fill that vacancy and reestablish the historic composition of the Commission to three Democrats and three Republicans." See Federal Election Commission, untitled statement issued by Vice Chair Steven T. Walther, January 21, 2022, https://www.fec.gov/resources/cms-content/documents/January_21_2022_Press_Release_Steven_T_Walther.pdf.

[22] 52 U.S.C. §30106(a)(2)(A).

Expired Terms and Holdover Status

Currently, FEC commissioners may be appointed to a single six-year term.[23] As another CRS report explains, for some federal boards and commissions, including the FEC, "[a]n individual may be nominated and confirmed for a seat for the remainder of an unexpired term in order to replace an appointee who has resigned (or died). Alternatively, an individual might be nominated for an upcoming term with the expectation that the new term will be underway by the time of confirmation."[24] Some FEC commissioners have assumed office when the term to which they were appointed was well underway. For example, on June 24, 2008, the Senate confirmed Donald F. McGahn and Steven T. Walther to terms that expired just 10 months later, on April 30, 2009.[25] Both continued serving in their seats past the expiration of their terms, although they could have been replaced through subsequent appointments.

These and other commissioners could remain in office because FECA provides that an FEC member may serve in "holdover" status, exercising full powers of the office, after his or her term expires "until his or her successor has taken office as a Commissioner."[26]

At Least Four Agreeing Votes Required for Most Policymaking

FECA requires affirmative votes from at least four commissioners to authorize most policymaking or enforcement activity. In particular, this includes

- holding hearings;
- making, amending, or repealing rules;
- initiating litigation or defending the agency in litigation, including appeals;
- issuing advisory opinions;
- conducting investigations, and making referrals to other enforcement agencies;
- approving enforcement actions and audits; and
- issuing and amending forms (e.g., those used in the disclosure process).[27]

Matters without at least four votes for or against an action can have the effect of leaving questions of law, regulation, or enforcement unresolved, as some view the issues in question as having been neither approved nor rejected.[28]

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[23] 52 U.S.C. §30106(a)(2)(A). Commissioners appointed before December 31, 1997, or announced as intended nominees before November 30, 1997, were eligible for reappointment. See 111 Stat. 1305 and 111 Stat. 2523.

[24] CRS Report R44083, *Appointment and Confirmation of Executive Branch Leadership: An Overview*, by Henry B. Hogue and Maeve P. Carey, p. 11.

[25] "Confirmations," *Congressional Record*, vol. 154, part 10 (June 24, 2008), p. 13696.

[26] See 52 U.S.C. §30106(a)(2)(B). A successor could take office through presidential appointment, with the advice and consent of the Senate, or, as conditions permit, through a presidential recess appointment. For additional discussion of recess appointments generally, see CRS Report RS21308, *Recess Appointments: Frequently Asked Questions*, by Henry B. Hogue.

[27] See 52 U.S.C. §30106(c); 52 U.S.C. §30107(a)(6)-(a)(9); and 52 U.S.C. §30109(a).

[28] Campaign lawyers and some former commissioners have different interpretations of deadlocked votes. In enforcement matters, for example, some practitioners view deadlocks as an opportunity to challenge the boundaries of the law (because no violation was found), whereas others regard deadlocks as leaving the issue unresolved. For additional discussion, see archived CRS Report R44319, *The Federal Election Commission: Enforcement Process and Selected Issues for Congress*, by R. Sam Garrett. See also, for example, Kenneth P. Doyle, "Increasing Prevalence of Split FEC Votes on Key Issues Could Shape Next Campaigns," *Daily Report for Executives*, April 9, 2009, p. C-1; (continued...)

When fewer than four commissioners remain in office, existing campaign law and regulation remain in effect. Agency staff and remaining commissioners may continue to provide general information, and to prepare for a repopulated commission. In addition, as explained below, the commission revised its internal procedures in 2007 to clarify functions during a quorum loss.

Historical Note: Loss of Policymaking Quorum in 2008 and Amendment to Directive 10

The FEC first lost its policymaking quorum in 2008. The 2008 episode arguably remains noteworthy because it provided the impetus for amending internal commission procedures concerning operations during a quorum loss. As in the initial 2025 vacancies, the 2008 quorum loss resulted from three commissioners departing in brief succession. Unlike in 2025, the 2008 instance involved expiring recess appointments. This section provides a brief historical overview.

Following expired recess appointments and amid ongoing Senate consideration of FEC nominations, the agency had two commissioners for the first six months of 2008.

In late 2007, in anticipation of two commissioners remaining in office in 2008, commissioners amended the FEC's rules of internal procedure to permit executing some duties if the commission lost its four-member policymaking quorum. These revisions added a new Section L to the FEC's Directive 10 to permit the commission to continue meeting with fewer than four members to approve general public information, such as educational guides; appoint certain staff; and approve other basic administrative and employment matters.[29] Under Section L(4) of those provisions, "approval of any motion or appeal ... shall require the affirmative vote of a majority of the [m]embers of the Commission. However, if such a majority comprises exclusively the affirmative votes of [m]embers affiliated with the same political party" then the motion or appeal "shall be deemed not approved."[30] With two Democratic commissioners remaining in office after October 3, 2025, the situation contemplated in Section L(4) of Directive 10 appears to be present for the first time. During the loss of the commission's policymaking quorum in 2008, the two remaining commissioners (David Mason (R) and Ellen Weintraub (D)) met publicly to discuss advisory opinions, but could not vote to approve or disapprove those opinions. At the time, the commissioners explained that although they recognized that the commission lacked a quorum, they were attempting to provide general feedback, particularly given the ongoing 2008 election cycle. That practice generated some controversy, however, as some practitioners contended that remaining commissioners did not have the authority to meet and provide guidance.[31] (The commission did not hold public discussions such as these during later quorum losses.)

Nicholas Confessore, "Election Panel Enacts Policies by Not Acting," *New York Times*, August 26, 2014, p. A1; Brad Smith, "What Does It Mean When the Federal Election Commission 'Deadlocks'," Institute for Free Speech (previously Center for Competitive Politics), blog posting, April 14, 2009, https://www.ifs.org/blog/what-does-it-mean-when-the-federal-election-commission-deadlocks/; and Bob Bauer, "'Desperate' at the FEC, Part II: The Risks of Unintended Consequences," *More Soft Money Hard Law* (blog), June 11, 2015, http://www.moresoftmoneyhardlaw.com/2015/06/desperate-fec-part-ii-risks-unintended-consequences/.

[29] Federal Election Commission, "Rules of Procedure," 73 *Federal Register* 5568, January 30, 2008. Section L (p. 5570) of the document refers to operations with fewer than four commissioners; that language was adopted in December 2007.

[30] See Section L(4) in Federal Election Commission, "Rules of Procedure," 73 *Federal Register* 5568, January 30, 2008 (p. 5570).

[31] See, for example, Letter from Donald F. McGahn II, Counsel, People for Pete Domenici, to Thomesenia P. Duncan, Office of General Counsel, Federal Election Commission, January 23, 2008, withdrawing advisory opinion request 2007-36, https://www.fec.gov/data/legal/advisory-opinions/2007-36/. (McGahn was later appointed to the (continued...)

After the Senate confirmed nominees in June 2008, the new commissioners faced a backlog of enforcement matters, litigation, advisory opinions, and rulemakings to implement portions of the Honest Leadership and Open Government Act of 2007 (HLOGA).[32] The commission returned to normal operations during the rest of 2008 and throughout 2009.

Concluding Comments

When the FEC loses its policymaking quorum, agency operations do not cease. The agency remains open for business with remaining commissioners and its regular staff. Previously authorized work requiring commission approval may continue. Although new enforcement or policy matters cannot advance until a quorum is reconstituted, a repopulated commission could, unless statutorily prohibited from doing so, consider older matters.[33] In addition, the Justice Department may pursue criminal enforcement on its own authority, regardless of the FEC's operating capacity for civil matters.[34]

commission.) See also, for example, CBS News, "FEC Fight Leaves Candidates Hanging," April 23, 2008, https://www.cbsnews.com/news/fec-fight-leaves-candidates-hanging/. The FEC's obligations under the Administrative Procedure Act (APA) are beyond the scope of this report.

[32] For historical background, see archived CRS Report RL34324, *Campaign Finance: Legislative Developments and Policy Issues in the 110th Congress*, by R. Sam Garrett; and archived CRS Report RS22780, *The Federal Election Commission (FEC) With Fewer than Four Members: Overview of Policy Implications*, by R. Sam Garrett.

[33] The statute of limitations for civil and criminal violations is five years. See 28 U.S.C. §2462 and 52 U.S.C. §30145, respectively. Other actions, such as rulemaking activities that are already under way, may continue indefinitely. However, as noted above, new rulemakings could not be initiated or finalized without a quorum.

[34] For an overview of various civil versus criminal provisions and administration/enforcement in campaigns and elections, see CRS Report R45302, *Federal Role in U.S. Campaigns and Elections: An Overview*, by R. Sam Garrett.

Appendix. Background on Circumstances Surrounding Vacancies and Nominations Between 2017 and 2020

As discussed in the body of this report, Federal Election Commission (FEC) membership fell below the level required for a quorum for the first time in 2008. In addition, several resignation and nomination events affecting the FEC occurred between 2017 and 2020, some of which affected eventual losses in the commission's policymaking quorum in 2019 and 2020. The FEC lost its policymaking quorum twice during this latter period: once, for approximately nine months, between August 2019 and June 2020, and a second time, for approximately six months, between July 2020 and December 2020. By December 2020, the commission's policymaking quorum was restored.

For historical reference, this Appendix contains information about how the 2017-2020 nominations activity led to or resolved quorum losses. Versions of this content were previously included in the body of this report. Previous versions of the report also contain additional historical discussion.[35]

At the beginning of February 2017, the commission was at full membership. As discussed below, commission membership fell gradually throughout 2017 and 2019, which eventually resulted in the commission's second quorum loss. A quorum was briefly restored but then again lost. A quorum was restored in 2020 and held until the 2025 loss discussed in the body of this report.

- Effective February 28, 2017, Democratic Commissioner Ann M. Ravel resigned, leaving the commission with five members and thus maintaining its policymaking quorum.[36]
- On February 7, 2018, Republican Commissioner Lee Goodman announced his intention to resign, effective February 16, 2018.[37] Once Goodman left the FEC, the commission had four remaining members and thus maintained its policymaking quorum.
- As discussed in more detail below, President Trump nominated James E. "Trey" Trainor III to Republican Commissioner Matthew S. Petersen's seat during the 115th and 116th Congresses. Petersen initially remained in office and resigned effective August 31, 2019.[38] With the Ravel, Goodman, and Petersen vacancies, the commission then dropped to three members, thus losing its policymaking quorum for the second time in the agency's history. The Senate confirmed Trainor to the Petersen seat on May 19, 2020. Trainor was sworn in on June 5, 2020, thus restoring the agency's policymaking quorum.[39]

[35] Congressional requesters may contact the author of this report for additional information.

[36] Federal Election Commission, "Ann Ravel Departs Federal Election Commission," press release, February 28, 2017, https://www.fec.gov/updates/ann-ravel-departs-federal-election-commission/.

[37] Federal Election Commission, "Lee Goodman to Depart Federal Election Commission," press release, February 7, 2018, https://www.fec.gov/updates/lee-goodman-depart-federal-election-commission/.

[38] Federal Election Commission, "Matthew Petersen to Depart Federal Election Commission," press release, August 26, 2019, https://www.fec.gov/updates/matthew-petersen-depart-federal-election-commission/.

[39] On the swearing-in date, see Federal Election Commission, "James E. Trainor III Sworn in as Commissioner," press release, June 5, 2020, https://www.fec.gov/updates/james-e-trainor-iii-sworn-commissioner/.

- The commission again lost its policymaking quorum effective July 3, 2020—the third such instance in FEC history—when Republican Commissioner Caroline C. Hunter resigned. As noted in the body of this report, the Senate subsequently confirmed Shana M. Broussard, Sean J. Cooksey, and Allen Dickerson in 2020, thus restoring the commission's policymaking quorum.[40]

Background on Circumstances Surrounding the Petersen Vacancy

Commissioner Petersen's 2019 departure from the FEC ended a two-year period of uncertainty about when a vacancy in his seat might occur. A brief description appears below for historical reference.

- On September 11, 2017, President Trump nominated Petersen for a federal judgeship.[41] Petersen subsequently withdrew from consideration for the judgeship, reportedly writing, "until the time is otherwise appropriate, I look forward to returning to my duties at the Federal Election Commission."[42] Petersen remained on the commission in holdover status until his August 31, 2019, resignation.
- After Petersen was nominated to the federal judgeship,[43] but before he withdrew from consideration for that position, President Trump nominated a replacement for Petersen at the FEC. On September 14, 2017, President Trump nominated James E. "Trey" Trainor III to the Petersen seat. Petersen continued serving at the commission, and the Trainor nomination was returned to the President at the end of the first session of the 115th Congress.[44] The White House resubmitted the nomination on January 8, 2018, at the start of the second session of the 115th Congress, and the nomination was returned to the President at the end of the Congress.[45] The White House resubmitted the Trainor nomination at the beginning of the 116th Congress and again early in the second session of the 116th

[40] See Federal Election Commission, "Shana Broussard, Sean Cooksey, Allen Dickerson Sworn in as Commissioners," press release, December 18, 2020, https://www.fec.gov/updates/shana-broussard-sean-cooksey-allen-dickerson-sworn-commissioners/. See also PNs 2237, 2302, and 2303, https://www.congress.gov/nomination/116th-congress/2237, https://www.congress.gov/nomination/116th-congress/2302, and https://www.congress.gov/nomination/116th-congress/2303.

[41] See PN 1017, https://www.congress.gov/nomination/115th-congress/1017.

[42] Dave Levinthal, "New Hope, New Problem: Will the Federal Election Commission Shut Down?" *Center for Public Integrity*, December 20, 2017, updated February 7, 2018, https://www.publicintegrity.org/2017/12/20/21410/new-hope-new-problem-will-federal-election-commission-shut-down. For additional discussion, see, for example, Kenneth P. Doyle, "Lawyer with No Courtroom Experience Withdraws as Judge Nominee," *Daily Report for Executives*, December 19, 2017. The circumstances surrounding the judicial nomination and withdrawal are beyond the scope of this report.

[43] See PN 1017, https://www.congress.gov/nomination/115th-congress/1017.

[44] See "Nominations Returned to the Senate," *Congressional Record*, daily edition, vol. 163, no. 216 (January 3, 2018), pp. S25-S26. The September 2017 Trainor nomination was one of a large group returned to the President at the end of the first session under Senate Rule XXXI. However, this rule was waived for another group of nominations, and these were kept in status quo into the second session. See Sen. Mitch McConnell, "Nominations Remaining in Status Quo," remarks in the Senate, *Congressional Record*, daily edition, vol. 163, no. 209 (December 21, 2017), p. S8241; and Sen. Mitch McConnell, "Nominations Remaining in Status Quo," remarks in the Senate, *Congressional Record*, daily edition, vol. 163, no. 215 (January 2, 2018), p. S8289. CRS Specialist Henry Hogue provided consultations on this information.

[45] See PNs 1024 and 1425, https://www.congress.gov/nomination/115th-congress/1024, and https://www.congress.gov/nomination/115th-congress/1425.

- Congress.[46] The Senate Rules and Administration Committee held a hearing on the Trainor nomination on March 10, 2020. It ordered the nomination reported favorably on May 7, 2020. The Senate confirmed Trainor to the seat on May 19, 2020.[47]

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[46] See PNs 197 and 1600, https://www.congress.gov/nomination/116th-congress/197, and https://www.congress.gov/nomination/116th-congress/1600.

[47] The Senate confirmed Trainor with a 49-43 vote. See record vote no. 96.