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NOMINATION HEARING OF JAMES EDWIN TRAINOR III FOR COMMISSIONER OF THE FEDERAL ELECTION COMMISSION

HEARING

BEFORE THE

COMMITTEE ON RULES AND ADMINISTRATION UNITED STATES SENATE

ONE HUNDRED SIXTEENTH CONGRESS

SECOND SESSION

MARCH 10, 2020

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SECOND SESSION

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NOMINATION HEARING OF JAMES EDWIN TRAINOR III FOR COMMISSIONER OF THE FEDERAL ELECTION COMMISSION

TUESDAY, MARCH 10, 2020

UNITED STATES SENATE
COMMITTEE ON RULES AND ADMINISTRATION
Washington, DC.

The committee met, pursuant to notice, at 11:06 a.m., in Room 301, Russell Senate Office building, Hon. Roy Blunt, Chairman of the Committee, presiding.

Present: Senators Blunt, Klobuchar, McConnell, Wicker, Fischer, Hyde-Smith, Schumer, Udall, and Cortez Masto.

OPENING STATEMENT OF HONORABLE ROY BLUNT, CHAIRMAN, A U.S. SENATOR FROM THE STATE OF MISSOURI

Chairman BLUNT. The Committee on Rules and Administration will come to order. Good morning. I am glad that our colleagues are beginning to assemble here. Glad to be here with my friend, the Ranking Member of the Committee, Senator Klobuchar. We are particularly glad, of course, to have Trey Trainor here. Trey is joined by his wife, Lucy.

I would like to recognize the fact that their children, I believe, are watching this hearing back home in Texas where they are in school. Taking a break for a hearing is one thing, taking a break for a couple of days of school, another thing entirely. To James and Abigail, to Patrick and Mary Catherine, Charles, and Andrew, we are glad to be here with your dad today and glad you have a chance to watch this either while we are doing it or later today.

Mr. Trainor is an election law attorney from Driftwood, Texas. He has been practicing law for nearly 20 years. He has represented candidates, political figures, local governments, corporations, and other groups with respect to election law, campaign finance law, and ethics. His clients have included the Republican Party of Texas, the Texas Secretary of State, and President Trump's campaign. He has also served on the U.S. Election Assistance Commission's Standards Advisory Board. The confirmation of Mr. Trainor would fill a vacancy, correct a political imbalance, and, most importantly, create a quorum for the Federal Election Commission.

The FEC plays a vital role for Federal campaign committees. As a former Secretary of State, I certainly worked with the FEC on a regular basis. Since I was Secretary of State, I have run in nine Federal elections and always needed to know that the FEC was there if we needed an answer to a question. I know how important

having the FEC as a fully functioning commission would be for Federal candidates, how important it is that we have for those candidates FEC guidance and advisory opinions. It is always even more true in the election year itself. The FEC has been without a quorum since late August of last year.

Since then, the FEC has not been able to hold hearings, make new rules, issue advisory opinions, conduct investigations, or approve enforcement actions. In fact, while the Commission is authorized to have six Commissioners, it currently has only three. The terms of the three remaining Commissioners expired years ago—Commissioner Hunter's term expired in 2013, Commissioner Walther's in 2009, Commissioner Weintraub's in 2007. It should be noted that a full term is six years, and Mr. Trainor has been nominated to serve on the FEC now several times.

First nominated in 2018, then again in 2019—first nominated in '17, then again in '18, '19, and '20. Since 2013, the Senate has received no other nominations to the Federal Election Commission. We hear a lot about the FEC and its deadlocked decisions, its inability to get things done, but without a quorum, the FEC can do exactly nothing. I look forward to hearing your testimony today, Mr. Trainor, and I look forward to having a quorum at the FEC again. I'm pleased now to turn to Senator Klobuchar for her opening remarks.

OPENING STATEMENT OF HONORABLE AMY KLOBUCHAR, A U.S. SENATOR FROM THE STATE OF MINNESOTA

Senator KLOBUCHAR. Thank you very much, Mr. Chairman. Today we are here to consider a nominee to the Federal Election Commission, the independent agency responsible for enforcing our Federal campaign finance laws. I am deeply disappointed that my Republican colleagues have departed from the Senate tradition of considering FEC nominees on a bipartisan basis.

We look back and the Senate has voted to confirm 47 FEC nominees, and according to the Congressional Research Service, 42 of those nominees have been confirmed through a bipartisan process. The FEC has been, as we know, without a quorum for 192 days, the longest period without a quorum in the agency's history, and I have repeatedly urged my Republican colleagues to work with us to get the agency up and running again, but abandoning bipartisan norms and pushing forward a controversial nominee is not the way to do it.

Moving forward in this way does more harm than good and it isn't what the American people sent us here to do. Americans are tired of the hyper partisanship and gridlock, we should be working to restore the trust in our political institutions. Most Americans don't have the time to study the intricate details of our campaign finance laws, but let me tell you, they have a pretty good sense that things are broken. They know that spending on campaigns has gotten out of control and that spending by special interest groups is a major part of the problem. Experts project that at least $6 billion will be spent in the 2020 election cycle on advertisements alone. That doesn't count the billions that would be spent by the campaigns themselves and the additional billions spent by dark money groups.

In order for our democracy to work, we need strong rules for campaign spending and we need a strong agency to enforce the rules. Congress created the FEC for that very purpose, but it has been dysfunctional and plagued by partisan gridlock. I urge that we pass legislation to change this, to work together, to pass my bill to reform the FEC's rules so that it functions better. I have legislation that we could have a hearing on if we chose, that would establish a working group to investigate bipartisan solutions to improve the functioning of the FEC.

Now, my Republican colleagues have said that by confirming Mr. Trainor, they will do something good, which is restoring quorum, but that is not the full story of this nomination. It ignores the fact that gridlock will persist and that Republicans have intentionally left a Democratic seat on the Commission vacant for more than 1,100 days. It ignores the fact that Leader Schumer and I have referred a Democratic candidate to the White House for consideration and that she has been vetted and cleared. She is mentally qualified and she would be the first person of color to ever sit on the FEC. The idea is that we would have paired these nominations together.

The Democratic seat will remain vacant and the agency charged with enforcing our campaign finance laws will remain ineffective. This is part of a pattern for this Administration and it, of course, spans across many agencies. Now on the topic of the nominee, Mr. Trainor. Today, we are asked to consider appointing someone to the FEC who doesn't believe in the basic campaign finance law. As former Republican FEC Chairman Trevor Potter put it, "Trainor's nomination is another example of how the current nomination process produces Commissioners who are opposed to the mission of the agency, resulting in an explosion of secret spending in elections." That is a quote from a fellow Republican.

Throughout your career Mr. Trainor you have consistently worked to dismantle the rules that keep corruption out of our political system. You have spent a career arguing that people shouldn't have to disclose political spending and fighting to defund the Texas Ethics Commission for enforcing campaign finance rules. Your views on disclosure are inconsistent with decades of Supreme Court precedent, including the views of the late Justice Scalia.

When fellow Republicans in the Texas legislature work to require politically active nonprofit organizations to disclose their donors, you challenged them and said that such a law would have a chilling effect on anybody's ability to speak. You have worked to support voter ID laws. You have helped groups work to purge voter rolls. You believe that the Supreme Court got Citizens United right. You have worked to distort district maps in Texas and you don't believe that states with a history of discriminating against minority voters should have their maps reviewed by the courts.

That is why Trevor Potter made that statement. It is just not me making this statement. These are not consistent views with where the American people are. A recent Gallup poll found that 80 percent of Americans are dissatisfied with how we handle campaign finance in this country. That is the highest dissatisfaction rate since they started asking the question in 2001, and 77 percent of

the public say that there should be stronger limits on spending in campaigns.

When it comes to the agency in charge of enforcing our campaign finance laws, the minimum, the absolute minimum qualification should be that the person actually believes in the mission of the agency. I look forward to hearing the testimony today. Thank you.

Chairman BLUNT. Senator Cruz had hoped to be here today and introduce the nominee. I am going to insert his statement in the record. He talks about his long association with the nominee and his confidence that the nominee will be a great addition to the Commission.

[The prepared statement of Senator Cruz was submitted for the record.]

Chairman BLUNT. Do you have a statement, Mr. Trainor? Why don't you go ahead and we have your statement—your filed statement——

Senator MCCONNELL. Mr. Chairman——

Chairman BLUNT. Do you want to ask questions before he makes a statement?

Senator MCCONNELL. What I would like to do is make a statement and ask a couple of questions, and—is that okay?

Chairman BLUNT. Any objection?

Senator KLOBUCHAR. Nope.

Chairman BLUNT. Without objection, we will let the Majority Leader who is a member of this committee make his statement and then we will let him go on to his questions. Mr. Trainor, I think we have a number of things going on in other places this morning.

Senator MCCONNELL. I appreciate it, Mr. Chairman, Senator Klobuchar. Mr. Trainor, appreciate your being here. It has certainly been a long process for you. I am sure nobody is happier than you and your family that we can finally move forward with this nomination. I have a few questions for you in just a moment, but I would like to address some broader issues surrounding the Commission.

Mr. Trainor's nomination would fill one of two Republican vacancies, re-establish parity between the two parties, restore a quorum, and bring the FEC one step closer to a full slate of six Commissioners. But it is somewhat remarkable to remember that if confirmed, Mr. Trainor would be the only Commissioner serving on an unexpired term—the only one.

Ms. Hunter, the only remaining Republican appointee, saw her term expire in 2013. So did Mr. Walther, one of the Democratic appointees. More than 6 years of hold over each. Of course Ms. Weintraub, the most recent Democratic Chairwoman has been held over on an expired term since the year 2007. Think about that. Her term expired during the Bush 43 Administration. 68 of the 100 United States Senators began their Senate service after Ms. Weintraub's term had already run out.

Between the three current Commissioners combined, we are talking about nearly three decades of continued service since the expiration of their terms. To any of the colleagues who might suggest they feel the FEC is dysfunctional or who wish to propose that its fundamental makeup, which has served us since Watergate, should be altered, I would suggest that what we actually need to do is

have the Commission fully functioning as it already exists, totally filled out, clean slate of Commissioners all serving on real, unexpired terms to bring new energy, build new relationships, and inject some new perspective. Let's not leave this critically important body undermanned and filled with exclusively people serving past the end of their terms, and then pretend that the problem is the underlying bipartisan architecture of the Commission itself.

Confirming Mr. Trainor will restore a quorum and restore an even balance between the two parties' appointees. I am optimistic we will be able to move forward with this nominee and take one important step back toward where we ought to be. But more broadly, I would hope that all of us on the Committee on both sides would be able to agree that we should aim for a new, clean slate of Commissioners on both sides. This is a concept which the current chairwoman has herself suggested. Mr. Chairman, I ask that Ms. Hunter's Op-Ed in Politico magazine dated October 22, 2019 be entered in the record.

Chairman BLUNT. Without objection.

[The information referred to was submitted for the record.]

Senator MCCONNELL. It is also a concept that has been supported by election law practitioners on both sides of the aisle. I would ask that a letter dated January 6, 2020 signed by 31 election law practitioners be entered into the record.

Chairman BLUNT. Without objection.

[The information referred to was submitted for the record.]

Senator MCCONNELL. Now, Mr. Chairman, with your indulgence, I have got three questions and I would really appreciate the opportunity to wrap this up. Mr. Trainor, what is the source of campaign finance law?

Mr. TRAINOR. Thank you for your question. The source of campaign finance regulation is—first and foremost the touchstone for us is the First Amendment, and it is the fact that the Supreme Court has allowed campaign finance regulation as an exception to the First Amendment. We always go to that original source, the First Amendment, and then we look to the statute that Congress has passed and have been upheld by the courts.

Senator MCCONNELL. What do you view as the role of the FEC?

Mr. TRAINOR. I view the role of the FEC first and foremost as one of giving the American people confidence in our electoral system with the disclosure requirements that we currently have. People visit the website on a daily basis to see what type of money is being given to elected officials. That is a critical role. It helps to deter corruption in our Governmental system. That is the primary function that they serve.

Senator MCCONNELL. Some of our Democrat colleagues are always saying that the FEC fails to enforce the law. Do you think the FEC fails to enforce the law as some of our colleagues on the other side have suggested?

Mr. TRAINOR. I do not. In fact, if you look at the FEC, there are automatic fines that come from the FEC on a regular basis because they have taken the administrative process and automated it so that if people miss filing deadlines, they have automatic fines that are applied to them. The agency is in fact enforcing the law. Even now without a quorum, they are enforcing the law.

Senator MCCONNELL. Mr. Chairman, thank you for your indulgence. This is a subject I have had an intense interest in over the years. We all may remember *McConnell* v. *FEC*——

Mr. TRAINOR. Very much so.

Senator MCCONNELL. I thank you very much for giving me an opportunity to parachute in here and make some observations. Thank you.

Chairman BLUNT. Thank you, Leader, and thanks to my colleagues for allowing that to happen. Mr. Trainor, why don't we go ahead and have your opening statement and then we will go to Senator Klobuchar for questions right after that.

OPENING STATEMENT OF JAMES E. TRAINOR III TO BE COMMISSIONER OF THE FEDERAL ELECTION COMMISSION

Mr. TRAINOR. Thank you. Chairman Blunt, and Ranking Member Klobuchar, and members of the committee, it is an honor to appear before you as President Trump's nominee for the position of Commissioner of the Federal Election Commission. Before I begin, I would like to introduce my wife, Lucy. She is the mother of our six children, as the chairman stated, James, Abigail, Patrick, Mary Catherine, Charles, and Andrew. I am so very pleased and proud to have her here with me today as I could not have had any success in my career up to this point without her unwavering support. I would also like to thank my parents Jim and Teresa.

Unfortunately, my father cannot be here with us today and my mother passed away in 2011, but I know that they are both here in spirit with me. I would also like to thank my grandmother Wanda who has always been one of my biggest fans and I know she is watching right now. Finally, I would like to thank my friends and family, both those that are here today supporting me and those watching for their support and encouragement as I have engaged in this process since my original nomination in September 2017.

Lucy and I are from the unincorporated area of Hays County, Texas, near a little town called Driftwood, population 144. We are both proud graduates of Texas A&M University, where I was a member of the Corps of Cadets, and I am a proud veteran of the U.S. Army Reserves. It is a privilege for me, as someone who isn't intimately ingrained in the Washington, DC legal community, to be considered for this position and to testify regarding my qualifications and interest in serving as an FEC Commissioner.

As you know, the FEC's mission is to protect the integrity of the Federal campaign finance process by providing transparency and fairly enforcing and administering Federal campaign finance laws. The origins of campaign finance regulation in America date back to President Theodore Roosevelt's Administration and evolved greatly from 1907 to the present. In 1971, Congress created the current regulatory environment by enacting the Federal Election Campaign Act and instituting stringent disclosure requirements for Federal candidates, political parties, and political action committees. Congress amended the Federal Election Campaign Act in 1974 to set limits on contributions by individuals, political parties, and PACs, and establish the independent agency that we know as the FEC, which has been operating since 1975.

Over the past 40 years, the FEC has served an important function in our Republic by providing the American people assurances against political corruption through the disclosure process. Moreover, it has provided the regulated community, those of you who are elected officials, candidates, and political action committees, with guidance on how best to work within the confines of the law. Having graduated from what is today Texas A&M University School of Law, I have been practicing law in this area for over 15 years. The vast majority of that time has been spent advising political candidates, PACs, and organizations on compliance with mostly state and some Federal election laws.

I particularly pride myself on working closely with my clients to avoid instances that would trigger administrative actions. But I also take my ethical obligation to vigorously defend my clients, should the need arise, very seriously. If the Senate votes to confirm me to this post, I will approach my work at the FEC in an objective and methodical manner.

I fully recognize that the touchstone for all regulation of political speech is the First Amendment and that the U.S. Supreme Court has held that our current campaign finance regulation, particularly the disclosure regime, are an allowable exception to the First Amendment for the purposes of deterring corruption.

Accordingly, I will always look to the statutes as passed by Congress and adjudicated by the courts as my guide in reviewing the matters that come before the FEC to ensure that all parties are treated fairly and impartially. Mr. Chairman, Ranking Member Klobuchar, and members of the committee, thank you for the opportunity to appear before you today and I welcome any questions that you may have.

[The prepared Statement of Mr. Trainor was submitted for the record.]

Chairman BLUNT. Thank you, Mr. Trainor. Senator Klobuchar.

Senator KLOBUCHAR. Well, thank you very much, Mr. Trainor. I have a daughter named Abigail too, so there you are, but I don't have six kids. First of all, we are going to be having a briefing this afternoon actually on foreign interference in our election by the intelligence heads and what is happening, and efforts made to prevent it from happening again. Do you accept reports that Russia interfered in our elections and that our elections remain a target for Russia or other adversaries?

Mr. TRAINOR. Yes, I believe that there has been foreign interference in our elections and I believe that there is still the potential for our elections to be targeted by foreign entities.

Senator KLOBUCHAR. Okay. During the 2016 election cycle, Russians took advantage of a weak online disclaimer and disclosure rules and bought—actually bought political ads, some of them in Rubles, some through other groups, and the belief is that according to Facebook, responses to investigations by the Senate Intelligence and Judiciary committee's, Russian disinformation reached more than 126 million Americans online.

It is one of the reasons Senator McCain and I introduced the Honest Act and now Senator Graham is doing the bill with me. It would basically apply the same disclosure and disclaimer rules that apply to political ads run on TV, radio, and in print to ads run on-

line. Do you support legislation like this? Do you think it is something that would be a good idea for the FEC to do? This would be requiring disclosure and disclaimer rules to apply to online political ads, including issue ads.

Mr. TRAINOR. There is a lot to your question there. I will say that the statute has prohibited foreign interference in our elections from its inception. There has been bipartisan support for enforcement of that and I will continue to enforce—to prohibit foreign interference in our elections.

With regard to the disclaimer issues in online ads, I know that that is the subject of a rulemaking at the Commission. I don't want to sit here today and prejudge something that I may have to opine on as far as the rulemaking is concerned. But in that sense, the disclosure requirements, I think that the comments from all of the regulated community are very helpful, and I think that there is a place for consensus among the members of the Federal Election Commission to get to a disclosure requirement for online ads.

Senator KLOBUCHAR. Okay. I would emphasize the importance of the issue ads as well. Many of these ads that really played both sides and like the energy area, pro-pipeline, anti-pipeline, pro-gun and anti-gun, they were done on both sides to basically influence our political process, and I hope that this won't just be campaign ads. On *Bluman* v. *FEC*, the Supreme Court affirmed the decision that upheld the ban on campaign contributions and expenditures by foreign nationals.

However, the lower court opinion left open the possibility of unlimited spending by foreign nationals in the United States on issue advocacy, the same kind of activity, as I just mentioned, that we saw by the Russians in 2016. In fact, a Russian company facing charges brought by Special Counsel Mueller cited Bluman in arguing to have the charges thrown out. I repeat, a Russian company used this opinion to try to make the case that they shouldn't be prosecuted.

As a Commissioner on the FEC, you will be responsible for enforcing the laws that ban foreign spending in elections, as you just mentioned. You have argued, however, that individuals should not have to disclose their donations to issue groups. My first question is, should foreign nationals be able to donate unlimited sums to issue advocacy organizations?

Mr. TRAINOR. With regard to issue ads, it doesn't fall within the purview of the Federal Election Campaign Act according to the courts. It is very difficult to say that the Commission should in fact exercise jurisdiction in that area. But I will say with regard to the foreign disclosures, as I said before, I will absolutely enforce the statute as written to prohibit foreign involvement in our elections.

Senator KLOBUCHAR. Would this mean that issue advocacy organizations would be required to disclose their donors? Are you for that?

Mr. TRAINOR. Well, there are two court cases that are pending with regard to issue advocacy organizations. I know that currently based upon the District Court ruling, and it is being appealed, but based upon the District Court ruling, the FEC is enforcing the disclosure of donors.

Senator KLOBUCHAR. But do you agree with it?

Mr. TRAINOR. Again, I don't want to take any position on where the Commission may come down in the appeal, not having talked with my colleagues who would be there on what their opinion is to where they stand in the appeal, and not having talked with counsel for the agency.

Senator KLOBUCHAR. I will do more questions on a second round. Thank you.

Chairman BLUNT. Alright. Senator Hyde-Smith.

Senator HYDE-SMITH. Thank you, Mr. Chairman. Mr. Trainor, thank you for being here today. It is very vital that the Senate act quickly to get your nomination confirmed because we must restore quorum at the FEC so the agency can get back to doing what it does.

Just a couple of things here, due to your previous roles in the Administration and in the Republican Party, some individuals believe that you must recuse yourself from all matters involving President Trump. How will your personal views affect decisions that you make or might make on questions that come before you as a FEC Commissioner?

Mr. TRAINOR. Thank you for your question Senator. My views with regard to President Trump—I will approach everyone who comes before the Commission objectively. I will look at the facts that are presented to me. I will look at the law, and I will apply the facts to the law fairly amongst everyone that comes before the Commission. With regards to the issue of recusal, I have already had conversations with the ethics advisors at the Commission.

I have entered into an agreement with regard to recusals at the Commission and I intend to follow the same recusal regime that every other Commissioner has followed when matters regarding President Trump come up. I will approach the ethics officials at the agency and have that discussion with them to see when it is appropriate to recuse and when not.

Senator HYDE-SMITH. Do you believe other Commissioners should be held to that same standard including any previous involvement or comments that they have made about the President?

Mr. TRAINOR. I do believe that it is very important for all of the Commissioners to follow the same regime and for us all to be held to the same standard with regard to recusal. Again, I think it is one where a close discussion with the ethics advisory is important so that we can have appropriate recusals when comments may bias an individual's decisions.

Senator HYDE-SMITH. You have expressed the importance of bringing better transparency to the FEC, especially so candidates and members of the public can have better understanding and access to the information collected by the agency. Please share with the committee your vision for making the FEC a more transparent and accessible organization.

Mr. TRAINOR. I will. As a practitioner in this area, I often visit the FEC's website to review campaign finance reports, to look at the various advisory opinions that are put out. The website is very cumbersome and very, very hard to search, and I think that that makes it very hard for the public to understand exactly what the state of our campaign finance regulation is. I would start with looking at making things more accessible just from the front line area

where people go first and foremost to get information about campaign finance.

Senator HYDE-SMITH. Alright. Great. Thank you very much. Thank you, Mr. Chairman.

Chairman BLUNT. I have the—the Democrat Leader has joined us, who is also on this committee. Senator Schumer, Senator McConnell took time for a statement and then some questions and we would be glad for you to do the same thing.

Senator SCHUMER. Thank you very much, Chair Blunt. I want to thank you and our great Ranking Member Amy Klobuchar and all the members of this committee. It has been too long since I joined you in this committee in a public setting, but unfortunately the nominee before us today provided, at least from my point of view, an unhappy occasion for a reunion.

Now, we are here today to consider the nomination of Trey Trainor of Texas to serve on the FEC. It is an important nomination considering the national election we will have in November. Even more so because for the last 6 months, the Commission has been unable to fulfill its mission because it has lacked a quorum. Now, I agree with my colleagues that we need to work toward ending this freeze, but I reject the notion that we must rush to confirm just anybody to the post. The record of the nominee we have before us, Mr. Trainor, raises significant questions about his fitness to carry out the Commission's anti-corruption mandate.

Mr. Trainor has a long career as a conservative political operative. He has worked closely with Thomas Hofeller, notorious for masterminding Republican gerrymandering schemes, to redraw maps that significantly disenfranchise minority voters at the local level. Mr. Trainor's former law firm described him as being, "intimately involved" in Texas' 2003 redistricting which the Supreme Court deemed in violation of the Voting Rights Act. Mr. Trainor has argued the Voting Rights Act has become a political tool. The sacredness of this Voting Rights Act, making it easier for people to vote, he calls it a political tool, and asserted that Section 5, which requires certain states and localities to gain Federal approval for voting change to ensure it is not discriminatory, has outlived its usefulness.

To have a check on states that might want to take advantage of minorities and poor people, and to say that has outlived its usefulness when we have seen, ever since the Shelby decision, state legislature after state legislature try to take those rights away, some of them rather boldly, amazing to me. Mr. Trainor's views on public disclosure of campaign finance—of campaign donations are also discouraging. In his opening statement, Mr. Trainor acknowledged the Supreme Court for allowing—allowed for campaign finance regulations to deter corruption.

Unfortunately, however, this late-breaking acknowledgement cuts against statements Trainor has made in the past. In 2017, Mr. Trainor speculated, "The reason the Federalist Papers were published anonymously is because they wanted the effectiveness of their ideas to win, not who was saying it, to win the arguments, and ultimately, that is what Citizens United has decided," he said, and why it is such a terrible idea to have Citizens United rolled back. I would like the American people to know that the Repub-

licans have nominated someone who wants to roll back Citizens United, which the overwhelming majority of American people support, public disclosure of who is giving. It is amazing. We live in a democracy. We live in a democracy.

In other words, as the Washington Post reported, these words from Mr. Trainor, "appeared to erroneously suggest that the Supreme Court's 2010 Citizens United decision endorsed anonymous political contributions," which anyone who reads the case once knows it hasn't. To be clear, the Supreme Court and Citizens United said the exact opposite of what Mr. Trainor suggested, that disclosure was not only appropriate but important for the public to make informed decisions.

But unfortunately, the Republican Party Leader McConnell, has done a 180 degree shift on that. He was for disclosure a while ago when he was against campaign finance reform but now he is against it and nominating somebody who is against it. Here in this case, Mr. Trainor has expressed two diametrically opposed views on a crucial issue before the FEC. Are reasonable restrictions on the anonymity of donations appropriate or not at all?

I expect my colleagues on the committee have been putting these questions to the nominee, but from my perspective, looking at Mr. Trainor's views on other cases concerning voting rights and campaign finance, it seems far more likely that his earlier opinions are more instructive than his statement given only a short time ago before the committee in charge of confirming him. Unfortunately, Mr. Trainor appears to fit with a pattern in the Trump Administration.

The Administration has a habit of nominating persons to staff or lead Federal agencies despite holding views that are very opposite of the mission of the agency: oil and gas lobby and some climate skeptics for EPA, chemical industry lobbyists for the Consumer Product Safety Commission, the acting head of the CFPB believes the agency she now runs shouldn't even exist. Here we have a nominee for the FEC whose work has violated the Voting Rights Act and who believed, at least at one point, significant skepticism of even the most reasonable restrictions on campaign finance.

Mr. Trainor will receive a fair hearing before this committee as every nominee should and will likely receive a vote before the Senate in the future. Before these votes are cast, it is imperative that every member of this body fully considers Mr. Trainor's record and weigh what a vote for or against his nomination would mean for efforts to limit the influence of big, dark money in politics and root out corruption at all levels of our political process.

Thank you, Mr. Chair. I don't have any questions, so I thank you.

Chairman BLUNT. Well, thank you, Senator Schumer. Mr. Trainor, Senator Schumer suggested we were rushing to confirm just anybody to the post.

I would remind my colleagues that we haven't had a nominee, except for you, since 2013 with vacancies and expired terms on the Commission during that entire time. But you're an attorney in private practice as pointed out. You have represented clients in the election area. Why are you interested in becoming an FEC Com-

missioner and how do you think your past experience qualifies you for this job?

Mr. TRAINOR. Thank you for your question, Mr. Chairman. My past experience for the 16 years that I have worked in this area of the law I think has prepared me well for this position. I come to this position with a hope of being able to help to achieve the mission of the agency, and that is to give the American people confidence in the electoral process through the disclosure process that takes place with the money that is given to elected officials and that is spent by political action committees to support those candidates.

Chairman BLUNT. Both Senator Klobuchar and Senator Schumer have mentioned your work on redistricting maps. One, have you drawn any of those maps, or two, have you principally defended maps? And then, have the courts struck down any of the maps that you have worked to defend?

Mr. TRAINOR. The answer to your first question with regard to the courts having struck down any of the maps, the answer to that question is no. I have worked on three redistricting cases as legal counsel. I had a client that I represented their interest in, and I hope that we would not impute to the lawyer the acts of the client. But in all three cases, however, the courts have upheld the maps that I worked on.

I did work with Dr. Hofeller, God rest his soul. He is a well-recognized expert in the field, and as a litigation attorney, one of the first things that you do when you are looking for an expert witness is to ask whether or not someone has been certified as an expert witness in Federal court before. Dr. Hofeller for over 30 years had been certified as an expert witness in Federal court and therefore made an ideal witness for my client.

Chairman BLUNT. Does the FEC have any authority over redistricting?

Mr. TRAINOR. None whatsoever.

Chairman BLUNT. Let's talk about something it does have authority over, which would be providing advisory opinions and guidance to assist candidates and other campaign committees without that guidance, especially first time candidates would be required to hire accountants and lawyers that they wouldn't need if they had guidance in many cases. If confirmed, what would you do to ensure that the FEC is offering candidates and other political committees consistent, accurate, and timely guidance?

Mr. TRAINOR. I think that the advisory role that the Federal Election Commission plays is one of the most critical. It is how average Americans can participate in the process. If you, today, decide to run for Congress, you absolutely have to pick up the phone and call a lawyer because of the complex web of campaign finance regulations that we have.

It should be a situation where you can pick up the phone and call the Federal Election Commission and ask questions and not live in fear of running afoul of the law. I would make it a priority for me to expeditiously answer the questions that come to the Commission under the advisory process.

Chairman BLUNT. Do you have any ideas for expanding or improving the kind of guidance the FEC can give?

Mr. TRAINOR. Well, I think the role that they play in going around the country and hosting classes where candidates and political action committees who want to get started to participate, I think, is a critical role that they play. I think the more they can get outside of Washington, DC and get to talk to average Americans who are interested in this area of the law and interested in participating in the political process would be a great first step.

Chairman BLUNT. If you are confirmed, you would become the fourth vote the agency needs to take the various actions that a quorum requires. How will you ensure that you are able to quickly come up to speed on the issues pending before the agency?

Mr. TRAINOR. Well, obviously I have read that they have an extensive docket so it would be much like the first year of law school. You start cramming on every case that you have, that you need to know about. I see myself sitting down with the other three Commissioners who are there, getting to know my colleagues, and figuring out ways that we can come to consensus on as many cases as we possibly can, as quickly as we possibly can.

Chairman BLUNT. Thank you. Senator Cortez Masto.

Senator CORTEZ MASTO. Thank you. Hello, Mr. Trainor. Let me followup on Senator Blunt's questioning. I think he asked you, how many times have you been involved in redistricting efforts and how many times those efforts have run afoul of the law, violated the law, and you said none. Is that correct?

Mr. TRAINOR. That is correct. I have worked on three different redistricting cases——

Senator CORTEZ MASTO. Were they all in Texas?

Mr. TRAINOR. Yes, ma'am.

Senator CORTEZ MASTO. Okay, so can I ask you, so for purposes of, and maybe I need just, and that is why I am asking, clarification, in 2006, the Supreme Court held in *League of United Latin American Citizens* v. *Perry* that the Texas legislature violated the Voting Rights Act in redrawing a particular District in Southwestern Texas when it adopted the plan in 2003.

Mr. TRAINOR. Yes.

Senator CORTEZ MASTO. My understanding is that you were involved in that plan in 2003. You coordinated the maps and legal aspects of passage and Department of Justice pre-clearance of HB3. Is that correct?

Mr. TRAINOR. No. In 2003, I was a staffer for Representative Phil King in the Texas legislature. Representative King was the primary author of that particular piece of legislation——

Senator CORTEZ MASTO. You did not work on that or make recommendations to legislator King on that legislation?

Mr. TRAINOR. At the time, I was not licensed as a lawyer until November of that year and the legislature had already passed the legislation at that time.

Senator CORTEZ MASTO. Still, as a staffer you didn't—you were not involved in making recommendations to the legislator on that on that redistricting or that new law?

Mr. TRAINOR. No. I mean, obviously, I worked closely with him to help bring in individuals that he needed advice from to work on the effort. I helped to coordinate those type of meetings for him just like your staff, I am sure——

Senator CORTEZ MASTO. You became an attorney in November of that year?

Mr. TRAINOR. November 2003.

Senator CORTEZ MASTO. You passed the bar?

Mr. TRAINOR. Yes.

Senator CORTEZ MASTO. Officially—so prior to that year, waiting to hear——

Mr. TRAINOR. Yes. I had taken——

Senator CORTEZ MASTO.—while you were working for the legislator, correct?

Mr. TRAINOR. I had taken the bar, yes.

Senator CORTEZ MASTO. Okay, so but it is true that the court found in that case that the legislature had illegally carved up Laredo, removing 100,000 Mexican Americans and adding a white population to shore up a Republican incumbent?

Mr. TRAINOR. That is correct. I believe that to be one of the findings in the case.

Senator CORTEZ MASTO. Did you agree with that court decision?

Mr. TRAINOR. The findings in the case and the remand all get jumbled, and since I wasn't an attorney on them, I don't really——

Senator CORTEZ MASTO. As an attorney now, do you agree with that decision?

Mr. TRAINOR. I do now. *LULAC* v. *Perry* is still very good law.

Senator CORTEZ MASTO. You agree with it?

Mr. TRAINOR. Yes.

Senator CORTEZ MASTO. In Texas, you advocated for defunding the Texas Ethics Commission, which is the state's equivalent of the FEC, so that it would cease existing. In 2014, you said efforts by the Commission to promote transparency for big political donors were completely unconstitutional. Why should someone who wants to disband his own state's campaign finance enforcement agency serve on the enforcement agency for the whole country? Can you clarify those statements for me please?

Mr. TRAINOR. Absolutely. I would be happy to. The Texas Ethics Commission as it is currently constituted is constituted in a similar manner that the original Federal Election Commission was constituted. That is, that members of the Texas Ethics Commission, while they are appointed by the Governor, they are actually selected by members of the House and the Senate. It exists in the legislative branch of the Texas Constitution.

However, they have overtime been given statutory authority to exercise police powers. There is a separation of powers issue with regard to the Texas Ethics Commission enforcing laws as a legislative body. It is very much in line with the U.S. Supreme Court's decision in *NRA Victory Fund* v. *FEC* where the membership of the FEC was altered to eliminate appointments from the Congress to the FEC.

Senator CORTEZ MASTO. It is the police powers that you said are unconstitutional, but you do not believe that in Texas, the Texas Ethics Commission should cease to exist?

Mr. TRAINOR. The fallback position in Texas under Texas law, the fallback position would be that the disclosure regime would return to its original place that being the Secretary of State's office.

Senator CORTEZ MASTO. You agree it should cease to exist? I guess that is what I am trying to clarify. Do you think it should not exist?

Mr. TRAINOR. With regard to the functions that it is exercising today, it should. It can continue to function for its constitutional purpose. When the people of Texas originally created the Ethics Commission, it was to evaluate and recommend salary increases for members of the legislature. It can continue to exist for that purpose.

For the purpose of exercising police powers and fining individuals, which falls exclusively under the Texas Constitution to the Executive branch, it would need to cease those activities.

Senator CORTEZ MASTO. The mission of the FEC is to protect the integrity of the Federal campaign finance process by providing transparency and fairly enforcing and administering Federal campaign finance laws. I assume you are here today because you believe in the mission of the FEC. Is that correct?

Mr. TRAINOR. Absolutely.

Senator CORTEZ MASTO. Do you think that campaign finance laws are being adequately enforced right now?

Mr. TRAINOR. I believe that the processes are in place to adequately enforce them. I think without a quorum, obviously, you can't do that. I think that the situation that we find ourselves in, where there is not new energy and new life being brought to the agency as Congress originally intended for it to, has slowed down that process.

Senator CORTEZ MASTO. Thank you. I know my time is up. Thank you very much.

Chairman BLUNT. Thank you, Senator. The question I asked, just to be sure that Mr. Trainor was responding to what I asked, was the question I intended to ask was if the court struck down any of the maps that you have worked to defend, and I meant worked to defend as an attorney. I think that was the way you heard the question.

Mr. TRAINOR. That is what I heard, yes.

Chairman BLUNT. Senator Udall.

Senator UDALL. Thank you, Chairman Blunt, and let me just tell your Ranking Member Senator Klobuchar, we really missed her at the press conference for the For the People Act in the Capitol, but your name was mentioned and what a good aggressive stance you have taken on For the People and comprehensive democracy reform. Everybody understood I think.

Mr. Trainor, your solo nomination hearing today is causing a lot of us serious concern. Of the 47 Commissioners confirmed before this committee, 32 of them were nominated and confirmed in bipartisan pairs. At 68 percent of previous FEC Commissioners that were brought before this committee, nominated and confirmed on the same timeline. Of the remaining 15 confirmed Commissioners, 10 were nominated and confirmed in bipartisan pairs within 1 month of each other—in bipartisan pairs, in 1 month of each other.

Doing the math, nearly 90 percent of all FEC Commissioners were confirmed in bipartisan pairs. I am deeply disappointed that the President and my Republican colleagues are moving this nomination forward. When Senator Schumer proposed a Democratic

nominee to the White House last summer, the Democratic seat has been purposely kept vacant for 1,100 days. That is 3 years and counting.

This Republican seat has been vacant for 390 days. That may be too long but the Democratic seat has been open two years longer than the seat the Republicans are now filling. Preserving the integrity of our elections is bipartisan business. Bringing this nomination before the Rules Committee while continuing to scuttle a Democratic nominee not only breaks with the tradition of this committee, but also reinforces President Trump's agenda to use the FEC as an instrument of the Republican Party instead of as an agency to impartially enforce the Nation's campaign finance laws.

Mr. Trainor, I think your nomination is going to face obstacles unless we are making the FEC fully operational with a full complement of Commissioners from both sides of the aisle. Do you support pairing your nomination with one to fill the other Democratic seat that has been vacant for 1,100 days?

Mr. TRAINOR. I think I would point back to the Majority Leader's statement earlier that the Commission is in need of new ideas and new perspectives across the board.

Senator UDALL. You don't think it is an issue of fundamental fairness, the process I have talked about of having a full committee and have us move forward with a Democrat paired with you. You don't buy that?

Mr. TRAINOR. With regard to the process of it, I have been—as you mentioned, I have been pending before the Senate since 2017 and my life has been on hold since then. I left my law firm thinking that I was going to have a confirmation hearing some time last year in this process. With regard to the processes that the Senate engages in, I don't really know how to comment on——

Senator UDALL. Well, the other person has been delayed another two years beyond you, so you can imagine what they are going through. Now, I disagreed profoundly with Citizens United and the Supreme Court's other campaign finance decisions. However, we have to acknowledge that the court is not the only institution at fault.

The gridlocked FEC, specifically a block of GOP Commissioners who nearly always vote in lockstep, has also played a big role in undermining our campaign finance laws. It wasn't the Supreme Court that gave the green light for secret money. Citizens United does the opposite. The case endorses transparency as a solution to the problem of mega campaign expenditures, but for the last decade GOP Commissioners have blocked every attempt to close loopholes in FEC regulations that allow secret money groups to flourish. They have refused to compel special interest groups that spend virtually all their money on political advocacy to register as PACs, which would require them to disclose their donors.

It wasn't the Supreme Court that has allowed candidates to work hand-in-glove with super PACs and even raised money for them. The Supreme—the Court assumed these groups would be independent. Again, this was the FEC. We have the institution to thank for the spectacle of President Trump circulating at a super PAC fundraiser at his own hotel being plied for favors by million dollar donors.

In the decade since Citizens United was decided, the FEC has made virtually no attempt to enforce even the inadequate coordination rules it does have on the books. Instead, the FEC is deadlocked over new transparency rules and failed to enforce the transparency rules that already exist. Pattern is the same, Democrats support transparency, Republicans oppose.

The FEC currently has a backlog of around 300 unresolved cases, some of which deal with secret money groups and the $965 million of dark money that has been spent in Federal campaigns since the Citizens United decision.

Now, Mr. Trainor, do you believe in developing new rules to more fully disclose campaign donations and expenditures and aggressively enforcing campaign finance laws, or do you believe the ultra-wealthy have the right to keep multi-million dollar donations to political interest groups secret from the public when they try to influence our Government?

Mr. TRAINOR. Thank you for your question. Let me tell you what I believe with regard to the organization's, first of all with regard to Citizens United. The Supreme Court said that the disclosure regime was one that was very valid.

What we know from litigation that is currently pending is that organizations that spend money now have to disclose their donors and the FEC has taken the position that they will enforce that even though that case is on appeal.

As it is currently, there is a disclosure regime in place for donors to nonprofit organizations that may engage in independent expenditures and I fully intend to comport with the Court's ruling while that is still going forward.

Chairman BLUNT. Thank you, Senator Udall. Senator Klobuchar.

Senator KLOBUCHAR. Chairman, just this morning we received a letter signed by 14 democracy groups, including several by bipartisan and nonpartisan groups who oppose this nomination to the FEC. Without objection, I would like to enter the letter into the record.

Chairman BLUNT. Without objection.

[The information referred to was submitted for the record.]

Senator KLOBUCHAR. Thank you very much. For years the FEC has frequently deadlocked in votes about whether the agency's staff should investigate potential violations. Many believe that these deadlocks have significantly impaired the agency's ability to investigate potential criminal activity and enforce the law. What do you think needs to be present for the FEC to conclude that a "reason to believe" exists to open an investigation, Mr. Trainor?

Mr. TRAINOR. I believe that there has to be credible and valid evidence presented to the Commission that falls squarely within the statutory requirements to show that the statute itself has been violated.

Senator KLOBUCHAR. Describe—do you have a situation you could describe from the last four years in which you believe someone got away with breaking Federal campaign finance law and what the appropriate punishment should be?

Mr. TRAINOR. I think probably the most high-profile case of someone breaking Federal campaign finance law was the Right to

Rise super PAC where there was foreign money involved and the FEC slapped them down in that situation.

Senator KLOBUCHAR. But you will agree that there have been cases where people have broken the law where there hasn't been any action?

Mr. TRAINOR. I don't have a full understanding of everything that has gone on at the FEC being from Texas and only practicing infrequently in front of the Commission, so I don't know that I can characterize everything that has gone on there.

Senator KLOBUCHAR. In the 2010 Supreme Court case *Doe* v. *Reed*, Justice Scalia wrote that, "requiring people to stand up in public for their political acts fosters civic courage without which democracy is doomed."

In a 2015 interview with Time Magazine, President Donald Trump called for more transparency of donors behind big money groups stating, "I don't mind the money coming in, let it be transparent, let them talk, but let there be total transparency." Do you think that is correct?

Mr. TRAINOR. Well, Justice Scalia first espoused that opinion in *McIntyre* v. *Ohio*, a school board case out of Ohio, and at the end of the day the two cases *CREW* v. *FEC* that are pending here in DC allow for that type of transparency. The Commission is currently enforcing transparency of those organizations. If I am to get to the Commission, I will follow the dictates of the Court.

Senator KLOBUCHAR. Okay, but here is my issue. There was a famous 1958 Supreme Court case that protected the membership list of the Alabama NAACP because NAACP members in the 1950's faced persecution, violence, and death for their political activity. You have repeatedly invoked the NAACP case to argue that wealthy political donors should be able to stay secret. How do these wealthy donors compare to the Civil Rights activists who faced mortal danger?

Mr. TRAINOR. I think you have to take an overall view of the—as I said in my opening statement, that the First Amendment is our touchstone when looking at campaign finance. We are only allowed to regulate what the courts have said we can regulate with regard to the First Amendment.

With the *NAACP* v. *Alabama* being out there, it does in fact say that individuals can donate anonymously to that organization because they have a fear of reprisal.

That is still good law. In a situation where an individual may have a fear of reprisal, I think that *NAACP* v. *Alabama* clearly applies. I think that the state of the law is in flux with regard to the Crew cases that are pending here, and if they ultimately make it to the Supreme Court, they may have to revisit the holding in *NAACP* v. *Alabama*.

Senator KLOBUCHAR. I understand you submitted a letter to the Commission's General Counsel regarding steps you will take to recuse yourself from matters where there is a conflict of interest. You served as counsel for President Trump's 2016 campaign and worked at the Department of Defense during the first few months of the Trump Administration. Your letter does not indicate that you intend to recuse yourself from matters related to the Trump campaign. Do you plan to recuse yourself from such matters?

Mr. TRAINOR. My plan is to follow the same recusal regime as every other member of the Commission. In every situation where a matter involving President Trump comes up, I can commit that I will have a conversation with the ethics advisors at the Commission to take the appropriate steps should recusal be necessary.

Senator KLOBUCHAR. You are not going to just recuse yourself from the beginning on the Trump matters?

Mr. TRAINOR. Not as a blanket recusal. I don't think that there is any one at the Commission currently who has a blanket recusal and I think we should all follow the same rules and guidelines.

Senator KLOBUCHAR. Last question. In 2006, the Supreme Court held in *League of United Latin American Citizens* v. *Perry* that the Texas legislature violated the Voting Rights Act because the plan was drawn to deny Latino voters in District 23 the opportunity to elect a candidate of their own choosing. You have done significant redistricting work in Texas during your career. Did you do any work on the 2003 map and did the Supreme Court get it right in this case?

Mr. TRAINOR. The work, as I was explaining earlier, the work I did in 2003 was as a non-lawyer staffer for a member of the Texas legislature who carried that particular piece of legislation. The answer to your question is, I did do work on it in that I administratively processed, that type of thing——

Senator KLOBUCHAR. I heard that. How about the Supreme Court's ruling?

Mr. TRAINOR. I do believe that *LULAC* v. *Perry* is good law. Yes.

Senator KLOBUCHAR. Okay. Thank you.

Chairman BLUNT. Mr. Trainor, you mentioned that the standards that must be met by the Commission to open investigations be credible evidence. Let's go beyond that. What would your process be for enforcing—for approaching enforcement actions at the agency? Would you vote to enforce campaign finance laws?

Mr. TRAINOR. If the credible evidence shows that there is a violation, I absolutely will enforce the statute. More importantly than that, I want to work with the other Commissioners to come to a consensus when there is a violation of the statute, instead of having a deadlock situation, find areas where we can come together in a bipartisan manner when someone has clearly violated the law.

Chairman BLUNT. Well on that point, you know, there have been real concerns that the FEC has been hopelessly deadlocked over and over again. The balance of numbers, of members, Republican and Democrat, has been an important part of the way this institution was set up. But if you were confirmed, what would you do to try to alleviate that deadlock and work with your fellow Commissioners?

Mr. TRAINOR. Well, the deadlock that we currently see at the Commission, I believe to be a function of the over extended stays of Commissioners at the agency. I think Congress, in its wisdom, putting in place a 6-year term is very important to allow people to come in with fresh ideas and new ways of evaluating the law.

As you see the law evolve in this area, you need people who come from the world of practitioners into the Commission who recognize what kind of effect it has on the regulated community to have a

deadlock situation, what type of burden it puts on the private individuals to have to go litigate when there is a deadlock situation.

My friend Dave Warrington reminded me last night the judge that he clerked for had a sign on the other side of his bench that said, remember you used to be a lawyer in this court to remind him that he needed to treat everyone fairly and move judiciously through his cases.

When I get to the Commission, I want to do that. I want to remember that I used to be on the other side of that dais representing individuals and that deadlock situations are not helpful to the regulated community.

Chairman BLUNT. On the topic of who has been waiting to serve on the Commission, I might point out again, this is the only nominee that we have had from the White House since 2013. Your first nomination was in 2017. Then again '18, '19, and '20.

In terms of time on task of trying to get to the Commission, we certainly appreciate that. Again, other Presidents have been slow in filling vacancies. There have been two vacancies, I think, since 2013 that have not been filled by anybody. Senator Cortez Masto, do you have another question?

Senator CORTEZ MASTO. Thank you. I appreciate those comments, Senator, but can I just followup on some answers that you gave to Senator Klobuchar, and it goes back to the question that I had originally asked you with respect to the 2003 maps in Texas. You said you worked as a non-staffer for the legislature on those maps—excuse me, a non-attorney staffer. What was your title as a staffer?

Mr. TRAINOR. I was Chief of Staff.

Senator CORTEZ MASTO. You were Chief of Staff to the Representative working on those. Okay. What was your specific involvement with respect to those maps for redistricting in 2003?

Mr. TRAINOR. I would do—so staff at the Texas legislature is very, very small.

Senator CORTEZ MASTO. You are the Chief of Staff——

Mr. TRAINOR. I am the Chief of Staff of two people.

Senator CORTEZ MASTO. Okay.

Mr. TRAINOR. We did everything from coordinating what rooms the committee would meet in to making sure that the Legislative Counsel's Office——

Senator CORTEZ MASTO. Did you help design the legislative districts adopted for the 2002 elections?

Mr. TRAINOR. No.

Senator CORTEZ MASTO. You did not. I guess I am confused then because in your resume, which is online for Beirne, Maynard & Parsons, at the end of it, it says that "Trainor has been intimately involved in Texas redistricting, helping to design the Texas House Legislative districts adopted for the 2002 election. During the third called special session of 2003, he coordinated the maps and legal aspects of passage and Department of Justice pre-clearance of HB3, the new congressional maps adopted for the 2004 election." Is that statement as part of your resume, which is online for the firm that you worked for, inaccurate?

Mr. TRAINOR. I think it is probably some marketing license by the marketing individuals at the firm.

Senator CORTEZ MASTO. That is your resume. It is not something that you have pre-clearance and said, yes, I approve this, this should be on representing what I have done in the past with respect to my work on redistricting?

Mr. TRAINOR. With regard to HB3. I mean, I did do coordinating efforts for the individuals who worked on the map. I spent time working with them, making sure that they had everything that they needed. In a redistricting situation, in a state legislative body with 150 members of the House, they are constantly bringing everyone in for meetings to talk about each individual district.

I did spend time coordinating that. I did travel with Representative King to the Department of Justice for the pre-clearance meeting when he came here. They had asked for additional information, and so he and the Senate sponsor came to meet with the Department of Justice, and I, you know, sat through that meeting.

Senator CORTEZ MASTO. I appreciate your testimony here today. I do think it is doing a disservice to the truth here, and I have concerns that first of all, you are Chief of Staff. We all have a Chief of Staff. We know what our Chief of Staff does, and for you to come back and say that what was on your resume is inaccurate and that you were not intimately involved has concerns for me as somebody that I am looking to appoint to the FEC, to an important, I think, body which, by the way, should have been paired with a Democrat.

I appreciate the comments from the Chairman, but I do think if we are going to make a statement as Congress, that we have to fight for one another when appropriate and I think it should have been paired. I think the FEC needs to be fully staffed and doing more but I have concerns that what I am hearing today is a lack of truth coming from you because you want to be appointed to this position instead of stepping up and being proud of the work that you have done.

I disagree with the work but it is the work that you have done over the years, not only as a staffer, but now as an attorney. There are statements that you were very proud of trying to get more Republicans back in office. You are on record on saying that. If that is who you truly are, own it. That doesn't—but I have concerns about the misinformation.

I appreciate you being here, but for that reason, I cannot support you in this position and I appreciate you giving me the opportunity to speak.

Chairman BLUNT. Thank you, Senator. Senator Klobuchar.

Senator KLOBUCHAR. Thank you. I appreciate Senator Cortez Masto's work there and research, and thank you for your highlighting of this. I wasn't aware of that. I wanted to sort of take what the Senator has done here and just put it into the real world. I know the questions were about the maps, but we also know that there are big problems in Texas with regard to everything from voting lists.

In fact, the Secretary of State resigned there recently because of the problems that he had created but also there is problems with access to voting, beyond even the redistricting, which creates an obvious problem with access to voting. Super Tuesday highlighted ongoing voting access and voting rights issues. In Texas reports indicate that people waited hours in line to vote.

Many have pointed to the fact that in Texas, the long lines are the direct result of policies designed to disenfranchise voters including the closure of polling places in heavily minority areas. Some African-American voters waited more than 5 hours in line. When asked why they stayed in line, one voter told a reporter, "we thought they were making us wait on purpose so we motivated each other."

At Texas Southern University, Hervis Rogers, an African-American man, waited 7 hours to vote after casting a ballot. Reporters asked him where he was headed after waiting for so long. He said he had to go to work. Mr. Trainor, you have worked on elections in Texas for a long time as Senator Cortez Masto has just pointed out. You served as general counsel to the Texas Secretary of State. Why is this happening?

Mr. TRAINOR. I think the problems that we saw most recently in the primary in Texas particularly, in Harris County, stem from the fact that the County for the first time in a major election went to countywide voting locations where you could vote at any voting location.

The County selected those voting locations through the Commissioner's Court, and when they did that, they did in fact close down some because they were consolidating because now you didn't have to go to your particular precinct to vote. It did create lines. I think it is a technological issue that created the problem.

I worked with individuals to notify the Secretary of State that they were going to have these issues in Harris County. Some of those polling locations are schools. Those schools have the ability to block cell phone signals. Because you have a countywide voting location, you need to have a constant online access to be able to update the voting rolls when someone votes, and in certain situations in Harris County, they literally would have to take a machine outside of the school so that it could upload frequently to get downloaded information as to who voted and bring it back in. They had only tested that system in municipal elections in May, a very small election.

When you had the turn out that we had in Texas recently, massive turnout in both the Democrat and Republican primary, with a system that was untried with that number of people, I think that is what led to the long lines. My work as general counsel at the Secretary of State's office, it was right after HAVA had passed and we were implementing statewide voter lists that HAVA required and we worked intimately with all of the counties to be—to make sure that they had the type of access that they needed and the type of voting machines that the counties wanted in compliance with HAVA.

Senator KLOBUCHAR. You know, I said from the beginning I opposed your nomination, but if you are confirmed, what will you do about this? You will have the power of FEC Commissioner. Will you do anything to try to change this, what is happening in your own state?

Mr. TRAINOR. Well, obviously, none of the voting activity falls within the purview or jurisdiction of the Federal Election Commission, but in my own state, as an individual who votes there, you know, I can still continue to comment on these issues and I think

it is an important issue for Harris County to look at as we get ready for the November election where I think they will be even higher turnout.

Senator KLOBUCHAR. Thank you.

Chairman BLUNT. Mr. Trainor, when you worked for the Secretary of State, the Secretary of State was Roger Williams who has been a member of the U.S. House for some time now, so——

Mr. TRAINOR. That is correct.

Chairman BLUNT. Your recent—when you said you contacted the Secretary of State anticipating these problems, you were doing that not as part of the office——

Mr. TRAINOR. Not as part of the Office. I am Assistant General Counsel, currently, for the Republican Party of Texas, and both parties, both the Republicans and Democrats, have contacted the Secretary of State's Office to discuss the issues present in Harris County with countywide polling locations.

Chairman BLUNT. How is Harris County, how are those elections administered? Are they administered by an elected official or an appointed board?

Mr. TRAINOR. Well, they have an elections administrator who is hired, and the County Commission hires that individual and works closely with the County Clerk who is an elected Democrat.

Chairman BLUNT. They don't, they report then—work closely with the County Clerk appointed by the County Commission, the election authority——

Mr. TRAINOR. Correct.

Chairman BLUNT. But you tried to alert them to the fact that this would be a problem?

Mr. TRAINOR. Yes. We had identified that issue in the May municipal elections that it would create long lines and ultimately that came to pass.

Chairman BLUNT. Obviously, if your cell phone doesn't work, you are not going to be able to call the help number or whatever happens there and maybe not even be connected to any online information the county office is putting out.

Mr. TRAINOR. That is correct. Countywide voting in Texas has worked very well in some of our rural communities. It started in Lubbock. It has worked very well. But as we you get to the more populous areas, Dallas and Houston, countywide polling locations have become more and more problematic because the level of administration that it takes.

Chairman BLUNT. This is way off field here.

Mr. TRAINOR. Yes. It is very far afield.

Chairman BLUNT. As a former election official and state election official as well, the legislature decided that counties would have an option for countywide voting or every County would have countywide voting where you could just go to any polling place?

Mr. TRAINOR. In Texas, countywide voting started as a pilot project for three rural counties in Texas. It has slowly been adopted by more counties on a pilot project basis. Then, after the most recent legislative session, it was made available to all counties upon approval from the Secretary of State's Office.

Chairman BLUNT. You weren't part of the Secretary of State's Office?

Mr. TRAINOR. I was not part of the Secretary of State Office.

Chairman BLUNT. When that was done or even when that legislation was passed?

Mr. TRAINOR. Not at all.

Chairman BLUNT. But you did step in and try to give advice that this was going to be a problem?

Mr. TRAINOR. Yes.

Chairman BLUNT. Could be a problem——

Mr. TRAINOR. Yes.

Chairman BLUNT. Alright. Well, thank you for being here today. I want to thank you for joining us. The record will remain open until noon on Friday, March the 13th. Any questions you get in the record and for the record, I would request that you respond to as quickly as you can.

Chairman BLUNT. The committee is adjourned.

[Whereupon, at 12:22 p.m., the hearing was adjourned.]

APPENDIX MATERIAL SUBMITTED

SENATOR CRUZ STATEMENT FOR THE RECORD
AT MARCH 10, 2020 RULES COMMITTEE HEARING

Although I cannot be physically present to introduce my friend Trey Trainor at this hearing on his nomination to be a member of the Federal Election Commission, the nearly 1,500 miles that separate us at the moment cannot stop me from saying a few words on behalf of his nomination.

I met Trey nearly two decades ago, when he was a young lawyer. Since then, I've had the privilege to watch him excel in multiple different and important positions in the state government, in the federal government, and in private practice. Indeed, I don't think he's ever had an entry-level legal job. His first legal job out of law school was as the General Counsel and Chief Clerk for the Texas House of Representatives Committee of Regulated Industries.

Throughout his career, Trey has developed immense experience in the issues that he will face as a Federal Election Commissioner. He served as General Counsel to the Texas Office of the Secretary of State—the chief elections officer for the State of Texas—where he advised the Secretary on cutting-edge elections issues. And he has worked for over a decade in private practice representing corporations, interest groups, political figures, and other entities on issues of elections law, campaign finance, and ethics.

Throughout the time that I've known Trey, I've been consistently impressed with his commitment to the rule of law and his depth of knowledge of election law. Because his confirmation would not only restore the quorum at the Commission necessary for it to carry out its responsibilities, but would strengthen the Commission with an individual of the utmost character and experience, I strongly support his nomination.

Statement of James Edwin "Trey" Trainor, III
Nominee for Commissioner of the Federal Election Commission

Thank you, Chairman Blunt, Ranking Member Klobuchar, and Members of the committee. It is an honor to appear before you as President Trump's nominee for the position of Commissioner on the Federal Election Commission (FEC).

Before I begin, I would like to introduce my wife, Lucy, the mother of our six children, James, Abigail, Patrick, Mary Catherine, Charles and Andrew. I am so pleased and proud to have her here with me here today as I could not have had any success in my career up to this point without here unwavering support. I would also like to thank my parents, Jim and Teresa, unfortunately my father cannot be here with us today and my mother passed away in 2011, but I know both are here with me in spirit. I'd also like to thank my grandmother, Wanda, who has always been one of my biggest fans. Finally, I would like to thank my friends and family, both here with me today and those watching, for their support and encouragement as I have been engaged in this process since my original nomination in September 2017.

Lucy and I are from an unincorporated area of Hays County Texas near the little town of Driftwood, population 144. We are both proud graduates of Texas A&M University, where I was a member of the Corps of Cadets, and I'm a proud veteran of the U.S. Army Reserves. It is a privilege for me, as someone who isn't intimately ingrained in the Washington, DC legal community, to be considered for this position, and to testify regarding my qualifications and interest in serving as an FEC Commissioner.

As you know, the FEC's mission is to protect the integrity of the federal campaign finance process by providing transparency and fairly enforcing and administering federal campaign finance laws.

The origins of campaign finance regulation in America date back to President Theodore Roosevelt's administration and have evolved greatly from 1907 to the present. In 1971, Congress created the current regulatory environment by enacting the Federal Election Campaign Act and instituting stringent disclosure requirements for federal candidates, political parties and political action committees (PACs). Congress amended the Federal Election Campaign Act in 1974 to set limits on contributions by individuals, political parties and PACs and established an independent agency, the FEC, which began operating in 1975.

Over the past 40 years, the FEC has served an important function in our republic by providing the American people assurances against political corruption through the disclosure process. Moreover, it has provided the regulated community – elected officials, candidates, and PACs – with guidance on how best to work within the confines of the law.

Having graduated from, what is today, Texas A&M University School of Law, I have been practicing law for over 15 years. The vast majority of that time has been spent advising political candidates, PACs, and other organizations on compliance with mostly state and some federal election laws. I particularly pride myself on working closely with my clients to avoid

instances which would trigger administrative action, but I also take my ethical obligation to vigorously defend my clients, should the need arise, very seriously.

If the Senate votes to confirm me to this post, I will approach my work at the FEC in an objective and methodical manner. I fully recognize that the touchstone for all regulation of political speech is the First Amendment, and that the U.S. Supreme Court has held that our current campaign finance regulations, particularly the disclosure regime, are an allowable exception to the First Amendment for the purpose of deterring corruption. Accordingly, I will always look to the statutes as passed by Congress and adjudicated by the courts as my guide in reviewing the matters that come before me at the FEC to ensure that all parties are treated fairly and impartially.

Mr. Chairman, Ranking Member Klobuchar, and Members of the Committee, thank you for the opportunity to appear before you today. I welcome any questions you may have.

POLITICO



Paul Morigi/Getty Images

OPINION

How My FEC Colleague Is Damaging the Agency and Misleading the Public

Chairwoman Ellen Weintraub's anti-Trump publicity tour is harming the legitimacy of the institution she purports to serve.

By CAROLINE HUNTER | October 22, 2019

One of my colleagues on the Federal Election Commission has been having a field day. This year's chair, Ellen Weintraub, has attracted considerable attention thanks to the FEC's important role in regulating and enforcing federal campaign finance law, which is a hot topic right now. As chair, Weintraub has been rushing around

giving interviews, tweeting and generally weighing in on a whole host of topics both within and outside of the FEC's area of expertise.

Unfortunately, while Weintraub's tweets and interviews might make for good soundbites and clickbait, they are harming the legitimacy of the institution she purports to serve. Commissioners are meant to be independent and neutral arbiters of campaign finance law. Yet Weintraub's statements indicate that she has prematurely judged matters that could come before the FEC, and that she radically rejects any legal perspective other than her own. Not only that, she risks misleading the public about what the FEC does and what campaign finance law really says. Not surprisingly, Weintraub's activities are causing consternation and confusion in several quarters, including on Capitol Hill, and people are starting to ask questions, including about her possible misuse of government resources for ideological and political purposes.

Weintraub has used her position at the FEC to take on the president of the United States. She repeatedly challenged his allegations of voter fraud in 2016 in New Hampshire and, in the context of discussing the outcome of the 2016 presidential election, questioned the legitimacy of the Electoral College. The FEC has no authority over either of these issues. Weintraub nonetheless used her official title and Commission letterhead in her public attacks on the president, which made it look as if she was acting on the agency's behalf and with other commissioners' support, neither of which was true. By creating these false impressions, Weintraub risked both misleading the public about the FEC's role and undermining the public's confidence in the agency.

More recently, Weintraub has used her position as FEC chair to inject herself and the FEC into the national debate over President Donald Trump's telephone call with Ukrainian President Volodymyr Zelensky, and whether his recent actions violate campaign finance law prohibiting campaigns from soliciting or accepting contributions from foreign nationals. Without explicitly saying that the president violated the foreign national ban, the timing and tone of Weintraub's public statements unmistakably convey that impression. For example, within hours after ABC News reported that the president had said he would listen to information from foreign nationals about a political opponent, Weintraub tweeted a statement on Commission letterhead about the illegality of campaigns' accepting contributions from foreign nationals, along with the snarky comment, "I would not have thought that I needed to say this." She retweeted her statement with a microphone emoji and an even snarkier "Is this thing on?" when the president said China should investigate Joe Biden and his son Hunter.

When the U.S. Department of Justice announced it had determined that the president's call with Zelensky did not violate campaign finance law, Weintraub, acting unilaterally and without conferring with other commissioners, issued a draft interpretive rule arguably implying that Trump's actions would be illegal. She posted the draft on the FEC's website and added it to the agenda of an upcoming meeting, even though she knew the FEC, lacking the four members required for a quorum, could not do anything to act on or enforce it. All her actions did was generate publicity for herself and her view of the law. Weintraub also tweeted a link to the draft rule with a message emphasizing the foreign national prohibition's "broad scope," and retweeted it the next day with thick red lines underscoring the relevant language. Weintraub has also appeared on several cable news programs to discuss the foreign national ban.

What makes these public statements so concerning is the possibility that this issue might come before Weintraub in an enforcement action. In enforcement actions, commissioners are like judges: We hear complaints alleging that someone violated the law, consider responses from the accused and make a judgement based on the facts presented. And, like judges, commissioners have to be fair and neutral in applying the law to the facts, and decide each case on its own merits. Yet, Weintraub's statements indicate that she has already made up her mind about the president and his administration—before considering all the facts and deliberating with other commissioners. (For some context, imagine how improper it would be for a judge to go on TV and opine about a high-profile case that could come before him or her in court.) At least one news outlet has interpreted her comments to mean she thought Trump's actions were illegal. I doubt she demanded a correction to that reading, though she seems to be trying to backtrack from her earlier statements by claiming that she was just explaining the law and not expressing her opinion on how the law applies in this case.

Weintraub's public statements also risk misleading the public about campaign finance law at a moment when the stakes couldn't be higher. Media reports indicate that questions about the foreign national ban might play a role in Congress's impeachment inquiry. There is no dispute that federal law prohibits foreign nationals from making contributions, donations, expenditures and disbursements in connection with U.S. elections, and prohibits any person from soliciting such contributions or donations from foreign nationals. The FEC has enforced these prohibitions in the civil context for decades, and I stand by my votes in favor of enforcement.

But Weintraub's statements create the false impression that the law in this area is clear in all cases when, in fact, it is not. Each case has to be considered on its own specific facts. For

example, the FEC concluded in a prior enforcement action that Sir Elton John—a foreign national—could give a free concert to Hillary Clinton's presidential campaign without violating the foreign national ban, even though the concert raised millions of dollars for Clinton's campaign. The FEC also approved political committees' proposals to accept free coding services and intellectual property rights from foreign nationals, and to allow a foreign national to make speeches at campaign rallies and to solicit candidate contributions. If the FEC ends up considering the legality of the president's actions, it would have to base its determination on the specific facts presented; to prejudge the result, as Weintraub seems to have done, is irresponsible.

Weintraub's hostility to other ways of interpreting the law is so extreme that she took the unprecedented step of refusing to allow the FEC to defend itself in court. Recently, a former colleague and I voted to dismiss a complaint against Clinton's campaign committee and a pro-Clinton super PAC because, among other reasons, the record did not indicate that the two committees had "coordinated" under applicable law. Weintraub disagreed and wanted to investigate. When her view did not prevail, she threw the entire Commission (and Clinton) under the bus by refusing to allow the FEC to defend our position in court. (At least four commissioners would have had to vote to allow the agency to defend itself. Since we had only four commissioners at the time, the vote had to be unanimous.) When the complainant filed suit against the FEC, the agency was forced to ignore the court's summons. But Weintraub was not satisfied with merely preventing the FEC from defending itself; she did not want anyone else to defend our position, either. When Clinton tried to intervene in the lawsuit to defend herself and the complainant fought to stop her, Weintraub seemed pleased, tweeting a link to the complainant's legal brief and calling it "spellbinding reading."

Weintraub has complained for years that the FEC was dysfunctional when her Republican colleagues disagreed with her legal positions and outvoted her. Now, she is dismissing her colleagues' views, boasting publicly about her plans to block the agency from defending itself in court whenever she disagrees with its legal position. The United States Court of Appeals for the District of Columbia Circuit has stated that the FEC is "unique among federal administrative agencies" because our "sole purpose" is to regulate "core constitutionally protected activity"—the First Amendment rights of free speech and association in politics. Weintraub's interpretation of the law doesn't properly consider the First Amendment—and to make it worse, she's using radical measures to force her viewpoint.

Her inflammatory public statements and inappropriate tactics risk delegitimizing the FEC by reducing the public's trust in it to act fairly. While Weintraub is free to speak about any issue she likes in her personal capacity, we commissioners must be circumspect when acting in our official capacities. Instead, Weintraub is using her official position to drag the FEC into political debates in which it does not belong, to promote herself and her personal views of what the law should be, and to mislead the public. In light of her activity, Congress and the president should take a hard look at replacing all three remaining members of the FEC, myself included, and starting fresh with a slate of six new commissioners. No one would blame them if they did.

January 6, 2020

President Donald J. Trump
The White House
1600 Pennsylvania Avenue, N.W.
Washington, DC 20500

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
1236 Longworth House Office Building
Washington, DC 20515

The Honorable Mitch McConnell
Majority Leader
United States Senate
317 Russell Senate Office Building
Washington, DC 20510

The Honorable Kevin McCarthy
Minority Leader
U.S. House of Representatives
2468 Rayburn House Office Building
Washington, DC 20515

The Honorable Charles Schumer
Minority Leader
United States Senate
322 Hart Senate Office Building
Washington, D.C. 20510

Dear Mr. President, Majority Leader McConnell, Minority Leader Schumer, Madam Speaker, and Minority Leader McCarthy:

Now that we are in the 2020 election year, with voting in presidential and congressional elections commencing in only a few weeks, it is critical to maintain public confidence in our national election systems. Yet the Federal Election Commission ("FEC" or "the Commission") has only three members and is thus unable to take official action on any matter pending before the agency.

The FEC should be comprised of six Commissioners, but now has only three, all of whom are holdover members whose terms have long since expired and who are ineligible for reappointment. It takes a quorum of at least four (4) commissioners to approve actions by the Commission. This is an untenable situation. We urge you to work together and immediately identify, nominate, and confirm a full slate of qualified individuals to serve as Commissioners of the FEC.

The undersigned are lawyers who represent organizations and candidates regulated by federal campaign finance law. We represent diverse clients and views spanning the political spectrum, left, right, and center. We are Democrats, Republicans, and independents. In representing those clients, we often find ourselves in adversarial positions in the legal arena. Yet we are united in our commitment to the rule of law and the need for the agency tasked with regulating federal campaign finance laws to fully function and carry out the mission assigned to it by Congress.

While the Commission and its staff have stated publicly that they remain open for business, and many routine functions continue, the lack of a quorum prevents the Commission from: enforcing federal law, leaving complainants and the public with no redress against violation; issuing advisory opinions, leaving those who are committed to complying with the law unable to secure official guidance about often complex compliance matters; auditing candidates and committees whose conduct warrants such review, leaving ongoing problems unaddressed; and considering or taking regulatory action, leaving rules in place that merit reconsideration and failing to deal with changed circumstances that merit new rules.

We urge the President and the Senate and House leadership from both parties to agree on a slate of nominees, as has been the tradition for years, then for the President to nominate Commissioners and the Senate to confirm them at the earliest possible date.

Citizens who choose to spend their precious time and energy running for office or campaigning for a favored candidate deserve to know what the rules are in any given situation, and that the rules are being fairly and promptly enforced.

We urge your swift attention to this situation, which has languished for far too long. We, as professionals in this field, stand ready to provide any assistance necessary to the White House and the Congress in order to attain a fully functional Federal Election Commission.

Thank you for your attention and we look forward to your prompt action.

Sincerely,

Cleta Mitchell, Partner
Foley & Lardner LLP

Elizabeth Kingsley, Partner
Harmon, Curran, Spielberg & Eisenberg, LLP

Gregory L. Colvin, Senior Counsel
Rosemary E. Fei
David A. Levitt
Nancy E. McGlamery
Eric K. Gorovitz
Daren S. Garshelis
Adler & Colvin

Brett G. Kappel, Partner
Akerman LLP

Elliot S. Berke, Managing Partner
William J. Farah
Berke Farah LLP

Eric Lycan
Embry Merritt Shaffar Womack PLLC

Karen Blackistone Oaks, Partner
The Gober Group

Sarah Duniway, Attorney
Gray Plant Mooty

Ruth Eisenberg, Partner
Paul J. Murphy, Partner
John Pomeranz, Partner
Rich Eisenberg, Senior Counsel
Harmon Curran Spielberg & Eisenberg LLP

Jason Torchinsky, Partner
Holtzman Vogel Josefiak Torchinsky PLLC

Barnaby Zall
Law Office of Barnaby Zall

Andrew D. Herman, Member
Miller and Chevalier Chartered

Joseph E. Sandler
Neil P. Reiff
James C. Lamb
Joseph M. Birkenstock
Sandler Reiff Lamb Rosenstein & Birkenstock, P.C.

Suzanne Ross McDowell
Steptoe & Johnson LLP

Laurence E. Gold, Partner
Joseph W. Steinberg
Kathy S. Strom
Trister, Ross, Schadler & Gold, PLLC

Jeffrey P. Altman, Partner
James A. Kahl, Partner
Whiteford Taylor & Preston

March 10, 2020

The Honorable Roy Blunt
Chairman, Senate Rules Committee
260 Russell Senate Office Building
Washington, DC 20510

Dear Chairman Blunt:

We are writing to express our strong objection to the White House's troubling decision to proceed with only a Republican nominee to the Federal Election Commission (FEC), despite the fact that a Democratic nominee has already been vetted and is also awaiting confirmation. The FEC should have a full complement of six commissioners that are willing to enforce our nation's campaign finance laws—and the appointment process should be free from partisan gamesmanship.

An independent FEC is the foundation of ensuring our democratic processes are fair and accountable. Traditionally, when there are open Democratic and Republican seats, Senate Republican and Democratic leaders each put forward a candidate to the White House for consideration. Republican Leader Mitch McConnell and Democratic Leader Chuck Schumer have nominated a bipartisan pair of candidates to fill the current vacancies on the FEC, but President Donald Trump has only nominated a Republican candidate.

It is unacceptable to only nominate the Republican candidate to the FEC when there is a fully vetted Democratic candidate pending. There is no excuse to refuse consideration of the Democratic nominee. Doing so is sheer partisan politics and undermines the integrity of a fair and balanced appointment process for this bipartisan agency.

The FEC plays a crucial role in our country's ability to conduct free, fair, and secure elections. Since the end of August 2019, the FEC has only had three commissioners and therefore does not have a quorum necessary to fully enforce our federal campaign finance laws, while hundreds of cases pile up on their enforcement docket.[i] The American people deserve an independent FEC that will safeguard our elections from corruption and foreign influence, and candidates deserve clear guidance for their campaigns.

Worse yet, the Republican nominee under consideration -- Trey Trainor -- has a long history of evading, if not wholly undermining, campaign finance laws. In an election year, Republicans are making a blatant power grab by attempting to hijack the FEC and stack it with a nominee whose past record and comments suggest he might refuse to enforce our election laws or enforce them in undemocratic or partisan ways. This nominee has long been an advocate for dark money and deregulating the campaign finance system. His record includes representing the biggest dark money group in Texas in a legal battle over disclosing its donors[ii]; arguing against a state measure that would require dark money donors to be disclosed[iii]; and supporting efforts to defund

an ethics oversight commission and to weaken ethics laws.[iv] The FEC cannot be stacked with commissioners whose beliefs are antithetical to the purpose of the Commission and our campaign finance laws.

Our democracy is increasingly under attack from dark money and foreign influence. America needs a strong and independent FEC to safeguard our elections from corruption. We urge the White House to formally consider the Democratic FEC nominee and to fill the remaining Republican seats with qualified election law experts in order to ensure a fully functioning FEC in this critical election year.

Signed,

African American Ministers In Action
Campaign for Accountability
Center for American Progress
Center for Popular Democracy
Clean Elections Texas
Democracy 21
Democracy Matters
End Citizens United Action Fund
Indivisible Kansas City
NETWORK Lobby for Catholic Social Justice
New Mexicans for Money Out of Politics
People for the American Way
Progressive Turnout Project
Public Citizen

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[i] https://www.fec.gov/resources/cms-content/documents/FEC_Response_to_House_Admin.pdf
[ii] https://www.dallasnews.com/news/politics/2017/09/27/campaign-watchdogs-cite-significant-concerns-if-texas-lawyer-trey-trainor-gets-fec-post/#link_time=1506556063
[iii] https://www.washingtonpost.com/news/post-politics/wp/2017/09/13/trump-nominates-conservative-texas-lawyer-to-federal-election-commission/
[iv] https://www.texasobserver.org/trump-trey-trainor-fec-nominee/

Senate Committee on Rules and Administration
Federal Election Commission Nomination Hearing
March 10, 2020
Questions for the Record
Mr. James E. Trainor III

Senator Klobuchar

1. Previously, you have made public statements that you support the Supreme Court's decision in *Citizen's United* that allows corporations to spend unlimited amounts of money on elections. Most of our campaign finance law was written prior to *Citizens United* and did not anticipate corporate political spending - and now loopholes exist that can be exploited by foreign nationals seeking to influence our elections.

   - Do you believe that current law and regulations provide adequate transparency to prevent foreign donations to campaigns?

     ANSWER: Because campaign committees cannot accept contributions from corporations, and because campaign committees must disclose all contributions received from individuals over $200, corporations cannot make contributions to campaign committees and will be disclosed if they do. If a corporation reimburses an individual's contribution, the Federal Election Commission (FEC) has a long track record of enforcing the prohibition against making a contribution "in the name of another." If confirmed and appointed as a Commissioner, I will enforce the "name of another" prohibition and , in the event an individual is reimbursed by a foreign source, I will enforce the "foreign national" prohibition of the Federal Election Campaign Act.

   - What percentage of a corporation would have to be foreign owned for you to consider it a foreign corporation?

     ANSWER: The Federal Election Campaign Act prohibits contributions and expenditures by "foreign nationals." Congress has defined "foreign national" in 52 U.S.C. 30121(b). If confirmed ad appointed, I will enforce the foreign national prohibition against corporations defined by Congress as "foreign nationals" under 52 U.S.C. 30121(b).

2. Since 1978, there has been a Memorandum of Understanding between the Department of Justice and the FEC regarding enforcement of campaign finance law. Ensuring that the Department and the Commission work together to enforce the law is imperative.

   - Will you allow the FEC's nonpartisan law-enforcement staff to share information about potential criminal activity with the nonpartisan law-enforcement staff at the Department of Justice?

     ANSWER: My understanding is that the FEC and Department of Justice (DOJ) have a long history of working in coordination on significant knowing and willful violation of the FEC, including sharing information. For the most serious violations in clear areas of law, the FEC has a track record of deferring action while the DOJ pursues criminal investigations and prosecutions and then using information developed by

DOJ to inform the FEC's findings. An example of this happened in MUR 6528 (Michael Grimm for Congress), where the FEC's findings are based upon evidence developed by the DOJ. I will follow this established practice.

- When a complaint is filed, will you allow the FEC's nonpartisan law-enforcement staff to conduct additional factual research into whether the law was broken?

  ANSWER: I understand that the FEC has conformed with Congress' mandate in 52 U.S.C. 30109(a)(2) to find "reason to believe" before conducting an investigation. The FEC has allowed its staff to collect publicly-available information from government sources in connection with assessing a complaint before a finding of "reason to believe." If confirmed and appointed, I will follow the FEC's established practice.

3. On Transparency Texas' 2013, 2014, 2015, 2017 and 2018 tax returns filed with the IRS, the group disclosed that, "Trey Trainor and Tim Dunn have a business relationship." When President Trump nominated you as an FEC Commissioner, you filed a personal financial disclosure report and an ethics agreement agreeing to recuse from matters that could pose a conflict of interest. However, neither your financial disclosure report nor your ethics agreement initially mentioned Mr. Dunn.

   - What is the nature of your "business relationship" with Mr. Dunn?

     ANSWER: Mr. Dunn is currently, and has been, a legal client of my law firm(s) where I have provided him with professional legal services. Mr. Dunn was not disclosed on the initial personal financial disclosure reports because the work my firm(s) did for him in the years covered by the reports did not meet the $5,000 reporting threshold.

4. Mr. Dunn is a major political donor on both the federal and state levels; for example, he gave $150,000 to President Trump's joint fundraising committee last year, and in December he gave $150,000 to a federal super PAC called Congressional Reform Fund.

   - Will you commit to recusing yourself from matters pertaining to Mr. Dunn if confirmed?

     ANSWER: I will consult with ethics counsel and I will conform to all ethics requirements in all matters, and for all parties, that come before the FEC.

5. You have repeatedly noted that the Federalist Papers were published under pseudonyms.

   - Do you think the Federalist Papers give FEC Commissioners discretion not to enforce transparency laws passed by Congress?

     ANSWER: No.

6. In another part of *Citizens United*, the Court held that corporations can spend unlimited amounts to influence American elections. But the key premise of that decision was that the spending would be truly independent, not coordinated in any way with a candidate.

The rise of single-candidate super PACs set up and run by candidates' former staffers has removed the presumption that super PAC spending is truly independent.

- What would you do as a Commissioner to enforce federal coordination rules to prevent this non-independent "independent" spending?

  ANSWER: As a Commissioner I will enforce the FEC's coordination regulations to treat coordination between Super PACs and candidate campaigns as contributions in conformity with the significant federal court rulings, including *Christian Coalition v. FEC*, 52 F. Supp 2d 45 (1999), and *Shays v. FEC*, 528 F.3d 914 (D.C. Cir. 2008).

7. One way foreign money can get into our elections in through dark-money groups who keep their donors hidden.

   - What will you do to stop or catch illegal foreign contributions to nonprofit corporations or other groups that don't disclose their donors?

     ANSWER: As a Commissioner I will enforce the "foreign national" prohibition of the Federal Election Campaign Act against organizations that use foreign organizations that use foreign contributions to fund electoral advocacy. Once recent example of the FEC's enforcement of the foreign national prohibition in MUR 7122 (Right to Rise USE, et al.), where the FEC imposed a nearly $1 million civil penalty against a Super PAC that accepted contributions from a corporation controlled by foreign nationals who made the decision to make the contributions. Another example is MUR 7035 (Bernie 2016, et al.), where the FEC imposed a civil penalty against the campaign of Bernie Sanders for accepting in-kind contributions from a foreign labor union. These examples demonstrate that the FEC has been able to catch and punish illegal foreign contributions.

8. We know one of the ways foreign agents interfered in the 2016 elections was through paid political ads on Facebook. In the Select Committee on Intelligence's Report on Russian Active Measures Campaigns and Interference in the 2016 Election, the Committee specifically emphasized the importance of taking measures that "ensure Americans know the sources of online political advertisements." But the FEC has been "considering" a rulemaking about online ads *since 2011*.

   - What steps will you commit to taking as a Commissioner to make sure the FEC finally acts on its rulemaking and strengthens the disclosure requirements for digital political ads?

     ANSWER: In Advisory Opinion 2017-12 (Take Back Action Fund), the FEC concluded that Facebook ads must post disclaimers identifying the ad sponsors. If confirmed and appointed to the FEC, I will adhere to the rule set forth in Advisory Opinion 2017-12. What remains unresolved is how to enforce the Act's disclaimer rules on very small character-limited or pixel-limited digital ads. As I testified at my hearing before the Senate Committee on Rules and Administration, I believe the FEC has identified several reasonable alternative solutions to disclaimers on small digital ads. I have not reviewed the entire record submitted in that rulemaking and do not

want to pre-judge the rulemaking. However, I am committed to working with my fellow commissioners to find a reasonable solution to disclaimers on small digital ads.

9. What will you do to make sure the FEC stops or catches illegal foreign election activity on Facebook?

ANSWER: In Advisory Opinion 2017-12 (Take Back Action Fund), the FEC concluded that Facebook ads must post disclaimers identifying the ads sponsors. If confirmed and appointed to the FEC, I will adhere to the rule set forth in Advisory Opinion 2017-12 by requiring disclaimers on Facebook ads that are regulated by the Federal Election Campaign Act. The FEC should work with DOJ, including the Foreign Agents Registration Act office, to detect and enforce violations of the Act's foreign nationals ban on Facebook and other websites. Likewise, if the FEC becomes aware of ads on Facebook that are not covered by the Federal Election Campaign Act, the FEC should work with DOJ's Foreign Agents Registration Act office to address foreign-sponsored propaganda.

10. When a complaint is filed, will you allow the FEC's nonpartisan law-enforcement staff to conduct additional factual research into whether the law was broken?

ANSWER: I understand that the FEC has conformed with Congress' mandate in 52 U.S.C. 30109(a)(2) to find "reason to believe" before conducting an investigation. The FEC has allowed its staff to collect publicly-available information from government sources in connection with assessing a complaint before a finding of "reason to believe." If confirmed and appointed, I will follow the FEC's established practice.

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