FEDERAL ELECTION COMMISSION
Washington, DC 20463

TESTIMONY OF
ROBERT DRURY LENHARD
ON HIS NOMINATION TO
THE FEDERAL ELECTION COMMISSION
UNITED STATES SENATE COMMITTEE ON RULES AND ADMINISTRATION
JUNE 13, 2007

Chairman Feinstein, Ranking Member Bennett, and Members of the Committee:

Thank you for inviting me to appear before you today. It is a great honor to be nominated to the Federal Election Commission, and a great responsibility to serve as a Commissioner. I take this charge very seriously. I believe the Federal Election Commission plays a vital role in our democracy – facilitating public disclosure of campaign finance information and ensuring that all participants in federal campaigns play by the same clear rules. The Commission's administration and enforcement of campaign finance rules must be impartial and unequivocally nonpartisan. At the same time, we must be constantly mindful that our actions can have an impact on political speech – a core First Amendment right – and tread carefully in these areas.

I have the good fortune to appear before you today and to point to a record of significant accomplishments at the Federal Election Commission since my arrival there a year and a half ago. In almost every facet of the FEC's operations, we have made visible and measurable improvements. These include improving citizens' access to and ease of use of our campaign finance data, adopting new procedures for informing the regulated community of the agency's interpretation of the law to maximize voluntary compliance, and achieving unprecedented success in enforcing the campaign finance laws. I go into greater detail regarding these and other recent agency accomplishments below.

These successes are the result of the hard work, dedication and creativity of many people, including my fellow Commissioners, senior managers, and staff at the FEC. I am proud of the leadership role I have played in these efforts, first as the Vice Chairman in 2006 and as the Chairman this year. I think we as a Commission have been successful at maintaining a collegial relationship that makes persuasion and compromise possible. This spirit has made it possible for us to accomplish a great deal in the past year and a half.

Specifically, since I joined the Commission in January of 2006, we have made significant improvements in four major areas – disclosure of campaign finance data, interpreting the law, enforcement, and agency operations.

In disclosure, the FEC remains the primary source of information about money raised and spent in federal elections. There are currently about 6,500 registered political committees and an additional 1,000 entities that are not political committees but that also file reports with the FEC. Collectively, these entities filed about 121,000 reports in the 2006 election cycle, reporting on about $4.1 billion in spending. In the 2004 election cycle, which included the presidential race, committees reported about $4.7 billion in spending, and we anticipate the spending in 2008 will be even greater. Our staff has most of these reports on the web and available to the public within minutes of filing with the agency. Our website is now a primary source of information about campaigns and registers about 96 million hits a year. Citizen access to campaign finance data has never been easier.

The FEC is also taking steps to improve how we present information on the internet. We made significant improvements in how our presidential campaign finance data is presented in the first quarter of this year. In 2006, we made it significantly easier to search the online library of agency advisory opinions, and we will unveil dramatic improvements to our web search engine for contributions when we release the second quarter fundraising figures in the presidential race this year. We anticipate this new search function will be available for all our data by the end of 2007. As a result, citizens will be able to search more easily by state, by races within the state, and by zip code, all with a new, easy to use map icon. The best news is that we have been able to do all of this within our current budget levels.

A second major responsibility of the agency is to interpret the statute we administer. We have had significant accomplishments using three tools we have in that area – rulemaking, advisory opinions, and policy statements.

When I first arrived at the FEC, there were worried articles in the press that the arrival of three new Commissioners would slow down the agency's work on adopting the last five rules that followed the passage of the Bipartisan Campaign Reform Act of 2002 (BCRA). As you may recall, Congressmen Shays and Meehan had sued the FEC, challenging many of the rules the agency adopted when implementing BCRA. In 2004, a district court struck down some of those rules and ordered the agency to provide a better explanation and justification for others. In 2005, a three-judge panel of the U.S. Court of Appeals for the D.C. Circuit upheld some parts of the lower court's decision and reversed others. As a result, the agency was left to reconsider nine of its BCRA rules. By January of 2006, five of the more contentious rulemakings remained undone.

The good news is that over the next 100 days, we issued final rules in all five areas, including:

(i) Defining what sorts of activities constitute "coordination" between a candidate and outside groups;

(ii) Defining what internet activity the Commission would regulate;

(iii) Defining when an individual becomes an "agent" of a campaign or party and is thereby covered by Federal Election Campaign Act (FECA) and BCRA rules;

(iv) Defining what types of "federal election activities" state and local political parties could engage in around state or local elections while using only state permissible funds; and

(v) Defining what sorts of speech constitutes the prohibited "solicitation" or "direction" of non-federal funds.

Again, this was the product of a collective effort by the staff and the Commissioners. While some may criticize one part or another of these rules, the agency was able to move quickly, decided difficult issues, was clear as to its decisions, and did so, in the majority of cases, unanimously. These goals – clarity, speed and unity – have appeared in many of our most difficult decisions over the past eighteen months.

We have also begun several rulemakings for 2007, including issuing rules on interpreting the millionaires' amendment, hybrid party-candidate advertisements, and the agency's ethics and public disclosure policies. We also stand ready to take on any rulemakings required by Congressional action or Supreme Court decision.

In addition, we have continued to use the advisory opinion process to respond to the regulated community's legal questions, and in 2006 issued 24 advisory opinions on a number of difficult questions involving the millionaires' amendment, hybrid advertisements, local political activity as "federal election activity," nascent party activity, and recounts.

I am particularly proud of our adapting our advisory opinion process last year to respond faster to time-sensitive requests. The Commission realized it needed to create an expedited process when confronted with an advisory opinion request from a campaign that had lost almost all of its cash on hand due to embezzlement. The parents of the embezzler offered to repay the misappropriated amount, but the campaign was afraid that if it accepted the parents' money, it would have accepted an illegal contribution. Under the FEC's traditional advisory opinion process, the agency would have provided the campaign with an answer approximately 60 days after the request was made. However, with no funds in the bank and a campaign in mid-swing, a 60-day delay might as well have been an eternity. As a result, the Commissioners and staff worked quickly to expedite the request and were able to provide a draft answer within nine days and voted to approve that draft six days later.

Out of this experience, the Commission decided to create an informal process whereby advisory opinion requests can be handled on an expedited basis. If the question is particularly time sensitive and the Commission believes the legal issues can be resolved quickly, it will provide a draft answer for public comment and vote on a final opinion in dramatically less time than the traditional advisory opinion process. Following the embezzlement case, we handled four additional opinions under the new expedited process.

Policy statements are another tool the FEC has increasingly used to provide clarity on the law. While the agency has occasionally used policy statements in the past, seven of the eleven policy statements the agency has issued have been in the past year, and six of those have been in the past three months. We view this as an effective and simple way to inform the regulated community of how the agency is interpreting the law.

These policy statements provide important guidance to the regulated community. For example, we have issued policy statements on how the agency will treat self-reporting (or, "sua sponte") submissions, guidelines protecting against embezzlement of campaign funds, and the use of a "best efforts" defense. The agency also issued a policy statement creating a new pilot program that allows respondents in enforcement matters to request a hearing before the Commission. The American Bar Association recommended that the Commission take this step in the early 1980s, and I am proud that this Commission was able to create the pilot program.

In addition to disclosure and interpreting the statute, enforcement is the third major area of agency activity. In 2006, the agency had its strongest year ever in the enforcement area. The agency collected its largest single civil penalty ($3.8 million), collected its largest total in civil penalties in a year ($6.2 million), and processed its cases over 30% faster than in earlier years.

That record continued in the first quarter of 2007, when the agency collected over $1.1 million in penalties, more than in any first quarter in the agency's history. There is no doubt that the agency's enforcement record in the past eighteen months is stronger than it has ever been.

Finally, over the last eighteen months the agency has undertaken a concentrated effort to modernize its business and management processes, and align those practices with recognized best practices. The Commission brought in a new staff director in 2006, who has overseen the reorganization of the Commission's divisions, including the hiring of four new senior level division heads. Along with the reorganization of its divisions, the agency is undertaking a comprehensive review of its budget process, financial systems, personnel programs, and internal controls. The ultimate goal of these efforts is to complete our mission maximizing the value of the tax dollars we are provided, while creating a professional work environment that we hope will become one of the best small agencies to work for in the Federal government.

In sum, the FEC plays a vital role in ensuring that the financing of the democratic process through which our citizens elect their political leaders is transparent and that the laws are fully and fairly enforced. I am proud to have had a role in the success this agency has had over the past eighteen months and hope to continue to play a part in the work that is yet to be done.

Thank you.

Biography of Robert D. Lenhard

President George W. Bush appointed Robert D. Lenhard to the Federal Election Commission in January of 2006. Mr. Lenhard was subsequently elected Vice Chairman of the FEC during 2006 and then elected Chairman for 2007.

Mr. Lenhard was an Associate General Counsel with the American Federation of State, County and Municipal Employees, AFL-CIO (AFSCME) from 1991 until he became a member of the Federal Election Commission. At AFSCME, he was responsible for legal issues related to federal and state election laws. His work included counseling the union on federal and state campaign finance issues, litigating enforcement actions before the FEC and state agencies, and providing training to field staff on federal and state election law issues.

Prior to working at AFSCME, Mr. Lenhard was an associate at the law firm of Kirschner, Weinberg & Dempsey, where he represented AFSCME and other labor unions. Prior to that, Mr. Lenhard worked for the United Mine Workers of America (UMWA) and the Amalgamated Clothing and Textile Workers Union (ACTWU). After graduating from law school, Mr. Lenhard worked as an associate at the Los Angeles law firm of Grace, Neumeyer & Otto.

Mr. Lenhard is a 1981 graduate of the Johns Hopkins University where he earned a B.A. with Honors and a 1984 graduate of the University of California, Los Angeles School of Law.