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NOMINATION HEARING FOR MEMBERS OF THE FEDERAL ELECTION COMMISSION

HEARING

BEFORE THE

COMMITTEE ON RULES AND ADMINISTRATION UNITED STATES SENATE

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SECOND SESSION

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C O N T E N T S

NOMINATION HEARING FOR MEMBERS OF THE FEDERAL ELECTION COMMISSION

WEDNESDAY, NOVEMBER 18, 2020

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

The Committee met, pursuant to notice, at 10:01, in Room 301, Russell Senate Office Building, Hon. Roy Blunt, Chairman of the Committee, presiding.

Present: Senators Blunt, Klobuchar, Cruz, Capito, Wicker, Fischer, Hyde-Smith, Udall, Warner, Leahy, King, 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 to—I want to thank my colleagues for joining us today. I would like to welcome our nominees to today's hearing. Shana Broussard, Sean Cooksey, and Alan Dickerson are the President's nominees to be members of the Federal Election Commission. As our witnesses are joining us remotely, I also understand that their families and friends are watching today, and so I welcome them as well.

This is a big responsibility. It is a significant Presidential nomination and significant to the work of this committee, and I know you are proud of your family member as they have moved forward to this opportunity. Let me say a little bit about a couple of the nominees and then I am going to turn to another committee member, Senator Cruz, to talk about the third nominee. Alan Dickerson is the nominee to be a member of the Federal Election Commission for a term expiring on April 30, 2025. Mr. Dickerson has been practicing law for 20 years, primarily in the areas of First Amendment and campaign finance.

Since 2011, Mr. Dickerson has been the Legal Director of the Institute for Free Speech, a nonprofit organization that litigates First Amendment and campaign finance cases in state and federal courts. He is also a Captain in the Judge Advocate General Corps for the United States Army Reserve. He and his wife Rachel have one child, Aurelia, and are expecting a second child.

Shana Broussard is the nominee to be a member of the Federal Election Commission for a term expiring on April 30, 2023. Ms. Broussard was born at Vandenberg Air Force Base in Santa Barbara, California, but she truly hails from Louisiana, as was clear with my visit with her this week. She graduated from Dillard Uni-

versity in 1991 and Southern University Law School in 1995. She has had a 25 year legal career, the past 12 of which she has worked at the FEC, first as an enforcement attorney in the Office of General Counsel until 2015, and then as Executive Assistant for Commissioner Walther since 2015.

Ms. Broussard also worked at the Internal Revenue Service and in Louisiana as a prosecutor for the Attorney General and New Orleans Parish District Attorney and as a Clerk of the 2nd Circuit Court of Appeals. I would like to recognize Senator Cruz to introduce our third nominee, Mr. Cooksey.

Senator CRUZ. Thank you, Mr. Chairman. I am very proud today to introduce Sean Cooksey as a nominee to the Federal Election Committee. As the Chairman knows, he is from Missouri and he currently works for the Junior Senator from Missouri. But I am going to go ahead and claim him anyway as an honorary Texan.

Not only did he clerk for one of the most respected Appellate Judges in the country, Jerry Smith, in my hometown of Houston, but he also worked on my staff as Deputy Chief Counsel, serving the 29 million people of the great State of Texas. Sean's impeccable educational credentials include graduating summa cum laude from Truman State University and receiving his J.D. from the University of Chicago Law School, where he graduated with high honors and Order of the Coif. From there, as I mentioned, he clerked for Judge Smith on the U.S. Court of Appeals for the 5th Circuit before joining one of the Nation's most respected law firms in D.C. as a litigation associate focusing on appeals and constitutional law.

Most notably, as a young associate he worked on a Supreme Court matter in which his client ultimately prevailed eight to one. Then in 2018, Sean joined my staff as Deputy Chief Counsel, working on a wide array of important and complex issues including election law. He did a fantastic job, and we were sad but also excited for him when he left in 2019 to serve as Senator Hawley's Chief Counsel when Senator Hawley came and joined us on the Judiciary Committee.

He still serves in that role doing an excellent job for Senator Hawley, and he advises Senator Hawley on constitutional law and judicial nominations, on election law, federal criminal law, ethics compliance, and a whole lot more. My experience with Sean has demonstrated to me that he is not only an exceptionally talented lawyer, but he is also someone deeply committed to the rule of law.

He will be prepared to hit the ground running on day one as a Commissioner, and I have complete confidence that he will faithfully apply the law fairly and neutrally. I would also note that Sean and his wife Ellyn are expecting a baby this winter. These are propitious times in the Cooksey household, and I am proud to introduce my friend Sean.

Chairman BLUNT. There you go. Thanks, Senator Cruz. Three nominees, two babies on the way in two of these families. Earlier this year, our committee gathered to confirm a nominee to restore a quorum at the FEC. Since that confirmation of Commissioner Trey Trainor, the FEC once again lost a quorum with the resignation of Commissioner Hunter in July of this year.

The confirmation of these three nominees before the committee today will restore a quorum at the FEC. But more importantly, the

confirmation of these three nominees would restore a full slate of Commissioners to the FEC for the first time since February 2017. While the FEC is authorized to have six Commissioners, it currently has only three. Only one Commissioner, Commissioner Trainor, serves on an unexpired term. The other two Commissioners serve on holdover status. Their terms have been expired years ago, Commissioner Walther's in 2009 and Commissioner Weintraub's in 2007.

While a quorum, a simple quorum, allows the FEC to hold hearings, make new rules, advise through advisory opinions, conduct investigations or approve enforcement actions, a full slate of Commissioners means that the FEC is not hobbled and is able to continue its work when a single Commissioner departs the agency. For some time now, when one Commissioner left for whatever reason, the Commission was not able to function. Hopefully, our action through these hearings and later will, for the first time again, restore six members to the Commission. The Commission plays a vital role for federal campaign committees.

As I mentioned in our last hearing for the last nominee, I was former Secretary of State. I worked with the Commission on a regular basis then, since I have been a candidate in nine federal elections, which is probably about average for this committee. The members of this committee and the Senate should know the importance of a fully functioning FEC to federal candidates who need to avail themselves of the FEC's guidelines and advisory opinions.

We also know all the important stability that the agency brings to the community that is regulated by the FEC. I look forward to hearing testimony from our nominees today. I also, again, let me say look forward to having a full slate of Commissioners at the FEC and hope we are able to get that done before the Congress adjourns this year.

I would like to turn to my good friend, Senator Klobuchar, for her opening statement.

OPENING STATEMENT OF HONORABLE AMY KLOBUCHAR, A UNITED STATES SENATOR FROM THE STATE OF MINNESOTA

Senator KLOBUCHAR. Well, thank you very much, Mr. Chairman. Today, as you note, we are here to consider three nominees to the Federal Election Commission, which is, of course, the independent agency responsible for enforcing our federal campaign finance laws. First, I want to bring up the fact that given this committee has oversight over federal elections, it is important to acknowledge that nearly 160 million Americans voted this year, more people than ever before in United States history.

Even though we are in the midst of a global pandemic, elections were administered successfully due to the hard work of state and local officials, both Democratic and Republican and independent state and local officials. Last week, officials in charge of election security working in the Trump Administration, including DHS people, Secretaries of State, and the Election Assistance Commission put out a joint statement that said the November 3rd election was the most secure in American history. Again, this is a testament to local officials, also to Chris Krebs who unfortunately was fired yesterday by the President via tweet. But I know that he has a re-

spect, as I saw the statements from many Republican Senators today, of many in the United States Senate. Regardless of that unfortunate incident, I would say we all owe a debt of gratitude to all these hardworking election officials.

Turning to the topic of today's hearing, with the exception, as the chairman noted of a brief period this summer, the FEC has been without a quorum for nearly 15 months. Over that time, I have repeatedly urged my colleagues to work with us to get the agency up and running. FEC nominees are typically confirmed in bipartisan pairs. This spring, the majority chose to push forward a controversial nominee without a Democratic nominee. This approach opened the door to the FEC losing its quorum just 46 days after it was restored. This persistent lack of quorum is a major problem and we know why. We must have an FEC that can enforce the law. The truth is, we need it more than ever. The Center for Responsive Politics estimates spending for the 2020 election cycle was approximately, ready for this, $14 billion. That is more than double the 2016 election cycle, and it includes $2.6 billion in outside spending by super PACs, political parties, and dark money groups.

In order for our democracy to work for the people, 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 after the Watergate scandal to help restore the public's faith in the electoral policy. Since taking over as ranking member of this committee, I have worked with several of my colleagues to propose solutions to try to get the agency back on track, including a bill. At the very least, we should work together to select strong, experienced nominees from both parties who understand that their job is to enforce the law and protect our election system. I am concerned about the views of some of these nominees. I will briefly go through them. I did have a good discussion with all three of them. I appreciate that. I had the opportunity to discuss views such as social media political ads and the need for the FEC to move forward with rules regarding those ads, which account for billions of dollars in political spending.

First, Mr. Dickerson has extensive experience in campaign finance. Unfortunately, he has been focusing on less, not more, transparency for political spending. He's opposed restrictions on individual donations, attempts to bring transparency to corporate and dark money spending after the Citizens United decision, and efforts to stop foreign money from influencing our elections. If we are going to break out of the gridlock that has paralyzed the FEC, we need Commissioners that can work together to find areas where they agree. It is my sincere hope that Mr. Dickerson's views on the role of money and transparency in politics do not make it harder to find consensus with the other Commissioners.

Mr. Cooksey, already discussed by Senator Cruz, he does not have an extensive record on campaign finance or election issues, and his testimony for this hearing doesn't provide enough information regarding his qualifications, his view of the Commission, and how he plans his approach to his role if confirmed. Again, I appreciated the fact that he talked to me and we discussed some really important issues, and I appreciated the words that we heard that they were willing to work on issues like the political ads and the

fact that we don't have any set rules in place for social media ads. Finally, we have Ms. Broussard and I so appreciated, Mr. Chairman, your introduction of her. I have been urging the White House to nominate her for more than a year. Our hope was that she—months ago, she would have been confirmed to fill the vacant seat. I won't go into all that, but let's talk about her because she is great.

Ms. Broussard has served as a lawyer at the FEC for 12 years, both as a Staff Attorney and as a Commissioner Counsel to a Commissioner. She is immensely qualified and well respected by her peers. Her experience as an FEC staffer would bring an important perspective to the Commission. She would also be the first person of color to serve on the FEC. I hope my colleagues that are here remotely listen to that. It is kind of incredible, but there has not been anyone in the past, and I can't think of anyone better to be the first. The pandemic has shown us how resilient our democracy can be when dedicated professionals work to respond to a crisis.

As I said, state and local election officials rose to the challenge. Now it is time for the FEC to rise to the challenge of the issues ahead of them. Of course, individual cases that come before them, but then the key is modernizing some of our rules and the like to make them more responsive to the challenges of our elections of our time. Thank you very much, Mr. Chairman.

Chairman BLUNT. Thank you, Senator Klobuchar. We are going to go to our testimony now from the witnesses. We, of course, have your written statements in the record, but glad for you to use up to 5 minutes in whatever way you would like to talk about your background, the FEC, and what this committee should be considering. Let's first go to Ms. Broussard.

OPENING STATEMENT OF SHANA M. BROUSSARD, OF LOUISIANA, TO BE A MEMBER OF THE FEDERAL ELECTION COMMISSION

Ms. BROUSSARD. Thank you. Good morning. Thank you, Chairman Blunt, Ranking Member Klobuchar, and members of the committee. It is an honor to appear before you today as a nominee for the Federal Election Commission. I would like to first take the opportunity to thank my brothers, Juan and Pierre Broussard. I could ask for no greater cheering team than my brothers.

I would like to take a moment to say hello to my nephew Tristen in Albuquerque, New Mexico. Tristen informed me this weekend that he is working on an essay for his social studies class, for a person that he admires. He told me it was a tie between myself and my brother—his father, Pierre Broussard, but this process has bumped me up in the rankings, so I want to say hello to Tristen. Like my brothers, I would also like to thank my friends and my Sorors, the women of Delta Sigma Theta Sorority Incorporated, for their support and encouragement throughout this process.

Under traditional times, I would have loved to have seen a hearing room filled with women wearing red and white, but we are not in traditional times. Still, their support has been unwavering, and I must take a moment to thank the most instrumental people in my life, my parents, James and Gainell Broussard, of Gibson, Louisiana. My father retired from the United States Air Force after 25

years of service to our country. My mother is a retired middle school teacher, having taught in the very same school that she attended as a child. Together, they instilled within me a pride in public service and a commitment to community that has guided the course of my professional career, first as an Assistant District Attorney, as a Deputy Disciplinary Counsel, and now with the FEC. For more than a decade, I have worked every day to advance the FEC's mission.

Although Congress created the FEC in 1975, the agency's mission to protect the integrity of the federal campaign finance process has never been more urgent. Now, more than ever, it is time to work toward repairing the American people's trust in this agency. Now it has never been more urgent for the Commission to have individuals fill these seats who are measured, impartial, and focused on building consensus. As an FEC attorney, I carefully considered each enforcement matter before me, making sure that my recommended dispositions were supported by facts and the law. My recommendations were fair yet firm, and were always made with an aim toward promoting transparency.

As Counsel for Commissioner Steven Walther over the last 6 years, I have worked with Commissioner offices to build consensus on everything from resolving enforcement matters and management issues to the Commission's budget. I am grateful to Commissioner Walther for this opportunity. He is an example of how to reach across the aisle to get work done at the Commission. I also take this opportunity to thank Commissioner Ellen Weintraub. She too has been supportive, and her dedication to the agency and its mission is unsurpassed.

When I started working for the American people 12 years ago, I never envisioned that I would be testifying today before this committee on my qualifications and an interest in serving as the Commissioner. The opportunity to lead the Commission rarely comes to those already working within the Commission, but it is this very experience, working day to day, side by side with the FEC staff in support of the agency's mission that makes me uniquely prepared to serve the American people.

If confirmed, I will approach my work as a Commissioner as I have done throughout my career in public service, with diligence, impartiality, and with integrity. But equally important, I will serve with the utmost appreciation and respect for the hard work of the staff. Having served with them, I bring a new perspective to agency leadership. Furthermore, if confirmed, I would be the first African-American to serve on the Commission. This historic fact cannot be ignored. 45 years after the establishment of this agency, it is time that the agency designed to promote the integrity of our elections for the American people look a little more like the American people.

Mr. Chairman, ranking member Klobuchar, and members of the committee, thank you for the opportunity to appear today and I welcome any questions that you may have. Thank you.

[The prepared Statement of Ms. Broussard was submitted for the record.]

Chairman BLUNT. Thank you, Ms. Broussard. We are glad to have you with us today. Let's go to Mr. Cooksey next. Sean Cooksey.

OPENING STATEMENT OF SEAN J. COOKSEY, OF MISSOURI, TO BE A MEMBER OF THE FEDERAL ELECTION COMMISSION

Mr. COOKSEY. Good morning, Chairman Blunt, Ranking Member Klobuchar, and members of the committee. It is an honor to appear before you. I would like to thank both the chairman and the ranking member for convening this hearing to consider my nomination to the Federal Election Commission, and I would like to thank President Trump for nominating me. I would also be remiss if I did not thank the committee staff and the White House staff who have helped with my nomination.

I do not have an opening statement, but I would like to acknowledge some important people. First and foremost is my wife, Ellyn. She is my hero and an unwavering source of love and support. I thank my parents, Ken and Susan Cooksey, for all of their patient love throughout my life. I am fortunate to be their son. I am also grateful to my two brothers, my grandmother, and the many friends and colleagues who have encouraged me along the way.

Finally, I am indebted to three mentors. The first is Judge Jerry Smith of the United States Court of Appeals for the 5th Circuit, for whom I was lucky enough to clerk after graduating from law school. The second is Senator Ted Cruz, who gave me my first job in the United States Senate and has been a role model for me ever since, and I thank Senator Cruz for his very warm introduction. Last, I would like to thank my current boss, Senator Josh Hawley, who entrusted me to work for the people of Missouri as his General Counsel. It has been the honor of a lifetime to serve on his staff.

With that, Chairman Blunt and ranking member Klobuchar, thank you again for holding this hearing, and I look forward to your questions.

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

Chairman BLUNT. Thank you, Mr. Cooksey. Let's go to Allen Dickerson for any comments you would like to make, Mr. Dickerson.

OPENING STATEMENT OF ALLEN DICKERSON, OF THE DISTRICT OF COLUMBIA, TO BE A MEMBER OF THE FEDERAL ELECTION COMMISSION

Mr. DICKERSON. Well, thank you and good morning, Chairman Blunt, Ranking Member Klobuchar, members of the committee. It is a privilege to appear before you this morning to discuss my nomination. I am grateful to the President for his confidence and to this committee for providing me with this opportunity.

I am sorry we are meeting by video conference. It is a wise and responsible decision, but something is lost when an event of this gravity is held remotely. For me personally, that includes the ability of my wife Rachel to be present in person. I understand that she has taken a break from her work as a child psychologist to view a remote feed, but the fact that she is not physically present does nothing to diminish my great appreciation and affection for

her as a woman, wife, and mother. Nor does it lessen the many sacrifices that she has made to support my career and to allow me this opportunity for public service.

While our daughter is too young to follow today's discussion, I do hope that in the fullness of time she will be proud of her father's career in the law and his service to his country. It has been a long road for me from California's Mojave Desert to a hearing before the United States Senate. I am grateful to my parents, Terry and Gail, and to my sister Iris, for setting me on the path. Finally, my thanks go to my colleagues at the Institute for Free Speech for nearly a decade of warm collegiality and partnership. I have spent the last several years bouncing between two very different worlds.

As Legal Director of the Institute for Free Speech, I represent clients in court, and advocate in public for a robust view of the First Amendment. In that capacity, I have represented clients from across the political spectrum, including Republican elected officials and donors, the Libertarian National Committee, the Progressive San Francisco Ballot Committee, and the Coalition for Secular Government. I have authored scores of briefs joined by groups as diverse as Color of Change and the Tea Party Patriots, the ACLU, and the Cato Institute. At the same time as an officer and lawyer in the Army Reserve, I advise soldiers in the very different context of uniformed service. There, the rights of expression and association take a different form, limited by the needs of the service and the requirements of good order, discipline, and fidelity to the chain of command.

From both roles, I have come away with a great respect for the diversity, character, and wisdom of the American people, and I have developed a deep trust in the vibrancy and resilience of American institutions. Congress created the FEC to protect those institutions. In the aftermath of Watergate, as Ranking Member Klobuchar noted, it established the Commission to prevent corruption and to enlighten the American voters as they choose our representatives. It is an important role and it is a challenging one, because all of us, members of the Bar, of Congress, courts, and the Commission have worked hard over many years to find the delicate balance between a legitimate anti-corruption and disclosure interests of the Government on one hand, and the First Amendment rights of the citizenry on the other.

If the Senate chooses to confirm me, I will work every day to provide the American people with an independent Commission that faithfully administers the law as Congress wrote it and the courts have interpreted. Just as when I don or doff the military uniform, I recognize that I have been asked to apply my experience to a new role, and I am prepared to work hard in the service of this agency and its public role.

If confirmed, I look forward to working with my colleagues, both here and those already at the Commission, and with the dedicated civil servants at the FEC to explain a complex body of law, clarify it where appropriate, and enforce it in a fair and nonpartizan manner that Congress envisioned.

Thank you again for the opportunity to be here, and I look forward to your questions.

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

Chairman BLUNT. Well, thank you, Mr. Dickerson, and thanks to all three of you. We do have the votes at 11 a.m. I think I am going to ask my questions last to be sure everybody has a chance to get their questions asked. I am going to give the first set of questions that I would normally ask to Mr. Cruz.

Senator CRUZ. Thank you, Mr. Chairman. Congratulations to all three of the nominees. Let me start with just a general question. What, in your view, is the responsibility of the FEC and what would your responsibility be as Commissioners?

Mr. COOKSEY. Senator Cruz, I am happy to take that question first. The responsibility of the FEC is to fairly and efficiently administer and enforce the campaign finance laws as Congress has enacted them and consistent with the Constitution and the rulings of courts. My responsibility as a Federal Election Commissioner would be to do just that, enforce the law as I see directed by Congress, and to do so in an impartial and effective and fair manner.

Mr. DICKERSON. Senator, I would agree with that characterization and add to that the appropriate discharge of our oath in that regard is intended to and I hope will have the effect of increasing the American public's confidence in our election process.

Ms. BROUSSARD. Thank you, Senator. I also want to conclude—not conclude, but concur with my fellow nominees.

Senator CRUZ. Let me ask another question, in your judgment, what is the relationship between federal campaign finance law and the First Amendment to the Constitution?

Mr. DICKERSON. Senator—go ahead.

Mr. COOKSEY. Senator, the Constitution, of course, is the paramount law of the land. It always controls over any statutory law. As an FEC Commissioner, of course, I would be bound to uphold the First Amendment, first and foremost, but also to administer the statutes as far as Congress has passed them, consistent with that amendment and as interpreted by the courts.

Mr. DICKERSON. Senator, I agree that is absolutely correct. I would add that as a doctrinal matter, campaign finance law is an exception, albeit a well-established and long running exception, to the general prohibitions of the First Amendment. It is part of why the FEC's work is so important in explaining how all of this fits together for all involved in the political process.

Chairman BLUNT. Ms. Broussard, are you going to respond to that?

Senator KLOBUCHAR. I think she may be cutoff.

Chairman BLUNT. Maybe video is not working right now for her.

Senator KLOBUCHAR. Or the phone, so she will have to get back on.

Chairman BLUNT. Right.

Senator CRUZ. Alright, well, for Ms. Broussard, I would ask that she answer that question in writing then afterwards. Because sorry, we are having technical difficulties. Thank you, Mr. Chairman.

Chairman BLUNT. Senator Klobuchar.

Senator KLOBUCHAR. Actually might defer to someone else till she gets back on. Okay. If another Senator wants to go.

Ms. BROUSSARD. Hello?

Senator KLOBUCHAR. Okay. Are you on, Ms. Broussard?

Ms. BROUSSARD. Sorry, I apologize. I think that is the technology that we are working with today.

Senator KLOBUCHAR. Well, if it makes you feel any better, Ms. Broussard, at a judiciary hearing recently, Mr. Zuckerberg had trouble getting on, the head of Facebook. Don't worry about it. Oh, it was Commerce. The commerce——

Chairman BLUNT. Technical challenge.

Senator KLOBUCHAR. Yes, that was—that happened. Alright. I wanted to first ask you, Ms. Broussard, about the—we talked about this over the phone, as I did with the other two nominees, the weak disclaimer and disclosure rules on online political ads. We know in 2016 this was—there were actually ads paid for by Rubles. Fortunately, some of the companies have changed some of their policies, so that has gotten better. But I asked Mr. Zuckerberg about this just yesterday.

We continue to have issues with ads and including ads that aren't looked at by human beings and then get through and are not true. I have this Honest Ads Act, which is bipartisan legislation with Senator Graham that would apply the same disclosure and disclaimer rules on political ads that we have for TV, radio, and print.

Could you talk about your views on this? If you think the FEC could also take care of this. One thing is important to look at, it is not just candidate ads, it is also issue ads. Ms. Broussard.

Ms. BROUSSARD. Thank you. The Honest Ads Act would obviously increase or expand the definition of public communication to the online political spending. I see this as an opportunity to increase transparency ads with the Honest Ads Act, but also prevent the direct or indirect spending of foreign entities into our political discourse, which would provide a greater transparency to the American people.

As it relates to the FEC, if Congress enacts this law, it would be, of course, the responsibility of the Commissioners to work together to craft regulations that would affect that. I think the greatest start would be look at the rulemaking or the Internet disclaimer rules that, excuse me, are currently before the Commission now and that is stalled as a result of the lack of quorum. That rulemaking impact had an expansion or inclusion of the definition of a public communication, but the Honest Ads Act would obviously take it into a broader perspective and work on a greater transparency.

Senator KLOBUCHAR. Right. The way I look at it, the Commission could do some of this by rule and then the law would be very helpful to get into place. Mr. Dickerson, last year in a speech, you argued that online political ads should not be regulated because the amount is such a small portion of political speech. I just want to make sure you know that as of 2018, Facebook and Google collectively sold over 16 million political ads worth over $3.2 billion.

I don't think I have the 2020 numbers on them, but what I do have is a number on broadcast ads, $2.5 billion in 2020, just to give you some comparison. If you look at over $3.2 billion on just two platforms, that is only three, two in the last 3 years. Where are you

on this still? I know we talked about this over the phone, but we are just simply, Senator Graham and I are trying to make sure that the rules applied are the same on both TV broadcast as they are when it comes to these social media platforms.

Mr. DICKERSON. I appreciate the question and thank you for the chance to comment on it. You know, the difficulty in this area is that there are two lines of Supreme Court precedents, as you know. There is one which says that there is a right of privacy, of association, and belief under the First Amendment. The other is that there is this need for transparency in certain types of political spending. That is a very difficult balance.

As I have said publicly and in our call, Senator, you know, I do think that those sort of balancing questions are best left to the wisdom of the American people's elected representatives in Congress. I have been skeptical of the difficulties of bridging that gap in a way that would survive judicial review. But I made those comments in the role of an advocate in public, and I do not consider it the appropriate role of an FEC Commissioner to stand in the way of legislation.

Senator KLOBUCHAR. Okay, thank you. As you know what—it will before you if you get confirmed to this rulemaking. I hope you will remain open to it and we will take that same open view. My last questions, for years, the FEC has frequently deadlocked in votes about whether the agency staff should investigate potential violations. Many believe that these deadlocks have significantly impaired the agency's ability to investigate potential criminal activity, regardless of the candidate's party, and enforce the law.

In order to start an investigation, four Commissioners must find that there is a reason to believe there has been a violation of the law. I would ask each of you, if there are reliable public reports about a potential violation of the law, would that be enough to vote to open an investigation? If you want to just go in the order you were introduced, that is fine. Mr. Cooksey first.

Mr. COOKSEY. Thank you for the question, Senator. I think the standard for finding reason to believe is obviously a vague legal standard. It is one that can't be particularly quantified. I would say that credible news reports could be part of the evidence for finding reason to believe. I don't know if I could say as a categorical rule they would always be relevant, but I would certainly keep an open mind to including those in finding a reason to believe.

Senator KLOBUCHAR. Well, if you need additional information beyond public reports, would you support reaching out to federal agencies to get additional information? As you know, there is a strong relationship between DOJ and the FEC.

Mr. COOKSEY. Yes, Senator, I think referrals from federal agencies are oftentimes a very credible source of potential investigations on the civil enforcement side of the FEC.

Senator KLOBUCHAR. Okay. Thank you. Mr. Dickerson, same two questions about——

Mr. DICKERSON. Yes, I would completely agree with Mr. Cooksey that the decision to find reason to believe is going to be case by case, but certainly reliable public reports of specific facts that raise—that would fall within the legal definition of a violation

would be the sort of thing that would be strong evidence for finding reason to believe.

Senator KLOBUCHAR. You would be open to getting additional information beyond public reports by reaching out to federal agencies to get the information?

Mr. DICKERSON. As I understand it, Senator, other agencies and the FEC are required by statute to coordinate in that manner. I would urge that.

Senator KLOBUCHAR. Very good. Ms. Broussard, do you want to finish up here so I can turn over to our colleagues?

Ms. BROUSSARD. Everything that my co-nominees have said I agree with. If there is sufficient information available in the complaint, there is a reason to look further and I would support any recommendations that come before me if I am confirmed with such information.

Senator KLOBUCHAR. Thank you very much. Thank you to all of you.

Chairman BLUNT. Thank you, Senator Klobuchar. We will next go to Senator Capito followed by Senator Udall.

Senator CAPITO. Thank you, Mr. Chairman. I thank the Ranking Member as well, and I say congratulations to the nominees on your nomination for this very important role. This—I have a question really for all nominees, because as we know, the FEC is unique among independent agencies in that neither party is allotted a majority of seats. When the Commission is fully constituting the backing of at least one Commissioner from each party, it is necessary to form a majority for many of the—for the enforcement actions. This adds to the Commission's legitimacy by ensuring that the FEC cannot impose politically motivated penalties.

I think that is great, but it does present challenges. This structure, however, can make it difficult sometimes to resolve certain cases. I will start with Ms. Broussard. I'm sure she has seen this as a staffer on the committee. How would you work with other Commissioners, including those across the aisle, to resolve these matters in a fair and bipartisan way? I would be interested to know from your experience with the FEC, has this been an enormous problem, a small problem, or how does it present challenges?

Ms. BROUSSARD. Thank you for the question. I have, as you have already said, I have quite a few years of experience inside the agency, so I am familiar with this concept. First I would like to say, by restoring a full Commission, it creates a better opportunity for less of a deadlock. It creates the opportunity for consensus. It actually creates a better road map so that it requires that people truly communicate together for resolution so the American public can have full disclosure.

I have a wealth of experience in working across the aisle because working for Commissioner Walther as one of his counsels, we had the opportunity to kind of obviously drill down into the weeds of cases and sometimes it might not work with one Commissioner. When you have six Commissioners, you have an opportunity to reach to another person and this builds consensus. This is truly having a full body at the Commission is the perfect opportunity for people to work together to find resolution.

Senator CAPITO. Thank you. Mr. Dickerson?

Mr. DICKERSON. I completely agree. As a big believer, as a litigator in the adversarial process, I think the more voices and the better vetting you have on a legal question, the easier it is to find the nuance and find agreement. You know, I would note that much of what the Commission does, does not fall victim to deadlocked votes. That even in contested matters, votes in the Commission that do not reach majority are the exception and not the rule.

I would hope that would continue to be the case because I think the ability of the Commission to give guidance to the regulatory community is helped by majority formal rulemaking in a way that divided votes don't necessarily provide the same level of certainty. I would hope to join my colleagues in reaching toward that goal.

Senator CAPITO. Thank you. Mr. Cooksey?

Mr. COOKSEY. Thank you, Senator. I think you are right that the structure of the Commission is somewhat unique and an important feature to ensure the legitimacy of the Commission's action. I think deadlocks are a consequence of that, but I can't really improve on what my fellow nominees have said. I think often it is a mechanism that forces compromise, that forces consensus building. As someone who comes from a background in the legislative branch, I feel I am very used to that sort of dynamic and finding compromise and finding common ground. It is something that I would be committed to doing if I am lucky enough to be confirmed.

Senator CAPITO. Thank you, Mr. Cooksey. Mr. Cooksey, I would—let me just continue with you. You have been counsel to Senators Hawley and Cruz before. You have advised them on constitutional law, judicial nominations, and election law. You just touched on it a little bit but I didn't know if you want to flesh out more how your legislative experience would help you in your role if you are confirmed as an FEC Commissioner.

Mr. COOKSEY. Thank you for the opportunity to discuss that, Senator. I think my role as a legislative staffer would bring a unique set of skills and a unique set of experiences to the Commission.

I have a lot of experience working across the aisle, working with—in a small setting, with a small committee—a small number of committee members, and forging a lot of important compromises, you know, even if we can't agree 100 percent of the time, finding those areas we can agree and moving forward. I think there is also a long and important history of people who have gone on to the FEC from a legislative background like mine and who have gone on to make very big contributions there.

Senator CAPITO. Thank you. Ms. Broussard, just my last question to you is, and I don't know the answer to this, I am looking for information from you as an informed staffer. Are there a lot of backlog cases because the Commission has not been functioning properly?

When you have these kinds of situation where you do have backlog, what has been the experience with the Commission to be able to prioritize certain areas, maybe it is timeliness, maybe it is, you know, amounts of dollars or the amount of people that affect—how do you prioritize when you have backlog? First my first question is, is there a large backlog? I don't know that. If there is, how would you prioritize?

Ms. BROUSSARD. Thank you. The quick answer to your question, Senator, is yes, there is a large backlog. This is public information available. The status of enforcement quarterly reports are published on the FEC's website, and it reflects that as of present or the close to the last quarter, there are 380 cases of the enforcement division, with 200 that are before the Commission awaiting vote.

The obvious answer to your question is there is a backlog. But what I think the intent would be, if confirmed, would be to prioritize those enforcement cases based on the statute of limitations. Those matters that are within that 5 year limitation of the statute, we would be able to assess the severity of the allegations, prioritize those that have a greater harm to the public or higher prioritized matters, and compare that based upon the statute of limitations. I would suggest that we, working in consensus, put those cases first on the enforcement agendas.

Senator CAPITO. Is that something, when you are seeking to prioritize, that you have to have agreement with the Commissioners on? I mean, do the Commissioners set the agenda? Is that how that is done?

Ms. BROUSSARD. Well, as it relates to the enforcement agenda, the executive sessions, it is usually set by the chair of the Commission, which, as you know, alternates each year. Whomever is the chair would determine the agenda. That would be a priority for the chair, which I believe if confirmed, I would prioritize those matters that are, if I were the chair of course, would prioritize those.

Senator CAPITO. Alright. Thank you all very much. Thank you and good luck. Good answers. Thank you.

Ms. BROUSSARD. Thank you.

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

Senator UDALL. Thank you so much, Chairman Blunt and Ranking Member Capito. I have closely followed the work—Ranking Member Klobuchar, excuse me—get to listen to you two. I have closely followed the work of the Federal Election Commission and have pushed for reform of the Commission during my time in the Senate. I believe that in its current state, the FEC has failed to uphold its mission and I am quoting here on the mission, "to protect the integrity of the federal campaign finance process by providing transparency and fairly enforcing and administering federal campaign finance laws." Congress created the Federal Election Commission to fight political corruption after Watergate.

But more recently, partisan gridlock left the agency powerless to enforce the few campaign finance laws remaining on the books. In 2016, we saw record spending of millions of dollars in undisclosed dark money, and we have seen the spending continue and on and on. Without a strong watchdog looking over their shoulders, super PACs and billionaire donors have had free rein to push the limits.

I disagree profoundly with Citizens United and the Supreme Court's other campaign finance decisions, but we have to acknowledge that the court is not the only one 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. For the last decade, GOP Commissioners have blocked every attempt to close loopholes in FEC regulations that allow dark money groups to flourish.

The FEC has failed to compel groups to spend virtually all of their money on political advocacy to register as PACs, which would require them to disclose their donors. After 2018, we now know that there were efforts to secretly funnel foreign campaign money to candidates, deliberately violating our campaign finance laws to interfere in the outcome of those elections. I believe that a decisive FEC that can judiciously enforce campaign finance violations is crucial to maintaining the legitimacy of our elections and our democracy.

Traditionally, FEC nominees have moved in bipartisan pairs. But what troubles me about today's set of nominations is the posture. Republicans broke with a long held Senate tradition when they refused to move a Democratic nominee with Commissioner Trainor's nomination and are now advancing Republican nominees after the recent Presidential election. While it is time for the FEC to be fully functional again, there is still more work to be done.

Ms. Broussard, thank you for joining us today. You have successfully built a career dedicated to public service and have served as an attorney for the FEC in the Office of General Counsel since 2008. Given your experience, what would you recommend the Commission do to improve its effectiveness? Are there specific ways the FEC can increase election finance transparency within its current structure?

Ms. BROUSSARD. Thank you, Senator. To answer the question regarding specific ways to increase transparency, from a perspective of educating the public on the voluntary compliance, we currently have quite a few webinars and everything in place that gives our political stakeholders the opportunity for educational advancement. So, as a working FEC, I consider that a means for us to be able to advance the goals of disclosure to the public by promoting that voluntary compliance. I must have to say, if I could, I apologize, but if I could ask you to repeat the first half of your question again, I would be happy to answer it. I apologize.

Senator UDALL. Sure. Let me give you that one for the record, because I want to ask one more question here of the other nominees. Since the Presidential election, President Trump has made several claims of voter fraud. However, judges have repeatedly and overwhelmingly ruled against the Trump campaign's claims of fraud.

GOP election officials in key states have also disagreed with these baseless claims. Just last week, the Cybersecurity and Infrastructure Security Agency issued a statement calling the 2020 Presidential election the most secure in American history. Mr. Dickerson, Mr. Cooksey, do you believe that there was widespread election fraud in 2020? Do you believe that it is wrong for individuals to suggest that there was widespread fraud without any proof?

Mr. COOKSEY. Thank you for the question, Senator. I do not have any personal knowledge of any widespread voter fraud that happened in the most recent election. I know that there is ongoing litigation by various candidates about the consequences or the outcomes of the election, but I haven't followed it myself and can't speak to it in detail.

Senator UDALL. Thank you.

Mr. DICKERSON. Senator, thank you for the question. The only thing I would add to Mr. Cooksey's response is to remind the committee emphatically and anyone who is watching this that the FEC has no role whatsoever in election administration or in judging electoral outcomes. I think it is important that the FEC remain within the four corners that Congress set for it.

Senator UDALL. Yes. But remember, as officials in official positions, when issues come up like this, you are going to be asked and it is important that people speak truth to power. Thank you so much, Mr. Chairman.

Chairman BLUNT. Thank you, Senator Udall. Senator Warner is ready for questions. We will go to him. If not, we will go to Senator Hyde-Smith.

Senator WARNER. Well, thank you, Mr. Chairman.

Chairman BLUNT. Senator Warner.

Senator WARNER. I am ready and I am here. I apologize about the sun coming in the wrong way. I want to actually pick up where Senator Udall left off. I got to tell you, Mr. Dickerson, I am pretty amazingly disappointed by your last answer. The FEC is parked along with the Election Assistance Commission, DHS, CISA, all parts of the group that ensure the integrity of our election system, and that goes from voting machines to transparency around election contributions.

My agreement with Ranking Member Klobuchar on her great work, which I am proud to be a partner on, Honest Ads Act. I know, sitting from my position, the chairman who I had the opportunity to serve on the Intelligence Committee, if you would have asked us 30, 45 days out from this election with the potential of foreign interference, with the potential of people showing up with long guns at our polling stations, with the potential of many of our intelligence and law enforcement agencies concerned about prior to and immediate aftermath of violence at our polling stations—I think Americans responded remarkably, we had record turnout.

I think our poll workers and officials did great jobs. I think our Secretaries of State—we have got former Secretaries of State on this on this panel with Senators uniformly in both parties——did a good job. I frankly am outraged that—CISA—the entity responsible for election security, have indicated that this was the safest and most secure election in our history. I think it was remarkable to me that the President then fired the head of CISA last night.

I want to give you, Mr. Dickerson, and all three members of the panel a chance to answer again. Do you not feel that the integrity of our election system is part of the responsibility of the FEC? You have—none of you want to weigh in at all on whether the elections that just took place were conducted in a safe and fair way or not? You are also to be election security expert, election experts.

You must have an opinion on whether these elections were conducted appropriately or not. I will ask each one of the panel to respond briefly, because I have got one other quick question for the record.

Mr. DICKERSON. Senator, I appreciate the opportunity, in particular because I share your concerns and those on the Intelligence Committee for foreign influence and meddling in American self-

Government. I think, my comment, which I do stand by, is to note that combating that risk is a Government-wide mission.

As you pointed out, Senator, there are other larger, more expert, and better resourced agencies, some of which you mentioned, but I would add the Intelligence Community itself, the Department of Defense, the widespread abilities of the Department of Justice in this area that are simply a better fit, given the way——

Senator WARNER. Mr. Dickerson, I don't need a long—I mean, if you were to become confirmed, you do not think a role of the FEC Commissioner is to also try to support the integrity and confidence that Americans have in our election system?

Mr. DICKERSON. Absolutely, I do.

Senator WARNER. Is that confidence undermined when people recklessly, without proof, attack the election results or when, again, I will get into the firing of Mr. Krebs, which I think was extraordinarily inappropriate. But I am looking for FEC Commissioners who want to stand up for rule of law and stand up for speaking out when the integrity of our system is being attacked. I get the other—Mr. Chairman I am probably running out of time, but very briefly, could I get the other two witnesses to respond?

Chairman BLUNT. Certainly can.

Ms. BROUSSARD. I am happy to respond, Senator. I apologize for speaking over. I agree with you, Senator. I think the part of the responsibility of a Commissioner with the Federal Election Commission is to promote the integrity of the federal election process and protect the disclosure of information, which also protects the American public from being—the election process itself.

I don't have any information, as a fellow nominee mentioned, that the only thing that there was any evidence of voter fraud and we also have public reports from national resources—CISA—being that we did not have any issues with this election and that it was quite a fair election and it has already been mentioned that we had an excellent amount of voter turnout, which I find extremely exciting.

I think the opportunity for as a Commissioner to verbally promote the safety, the quality, the fairness of elections is a responsibility, although we are specifically tasked with enforcing FICA.

Mr. COOKSEY. Senator, to be brief, I agree with what my fellow nominees have said. The principal mission of the FEC is to promote transparency and accountability in the campaign finance system, but FEC Commissioners are public figures and have a broader responsibility to promote integrity and American confidence in our elections.

Senator WARNER. Thank you. Mr. Chairman, I know I don't often get to my Rules committee meetings and I know I may have gone beyond my time, so I won't ask my last question or I won't be invited back. Thank you and Senator Klobuchar for your leadership.

[Laughter.].

Chairman BLUNT. Well, there will be a chance for questions for the record as well. Senator Warner, thanks for your time—.

Senator KLOBUCHAR. Mr. Chairman, I also want to thank Senator Warner for his work in the Honest Ads Act. I had omitted mentioning him so thank you.

Chairman BLUNT. Senator Hyde-Smith.

Senator HYDE-SMITH. Thank you, Mr. Chairman, and thank you everyone for being here today. This is really important that we fill these positions. As you well know, these vacancies have been there for a while. I just have questions on how will your personal views or previous work affect decisions that you might make on questions that come before you as a FEC Commissioner, and how would you go about recusing yourself if you thought that there was a need for recusal?

Mr. DICKERSON. Thank you, Senator. I will take first shot at that, because I am the person up here who has represented clients most recently. In terms of the recusal process, and I expect my clients—my colleagues have also filed letters with the Commission outlining our responsibilities to recuse. I would add just personally that I consider those rules a floor and not a ceiling. I could imagine cases in which the perception of entanglement would lead me to recuse even if the rules didn't require it. But those would case by case questions that would arise as things develop.

Senator HYDE-SMITH. Thank you.

Mr. COOKSEY. Thank you, Senator. I agree with what Mr. Dickerson said. I think recusal is very important at the FEC as a Commission that is tasked with promoting confidence and integrity in the election process. I am not aware of any specific recusal needs, but I am committed to applying the recusal standard in an exacting and careful way. If ever there is a situation in which I think it might be implicated, I will commit to consulting with the career staff and my colleagues to make sure that it is followed to the letter.

Ms. BROUSSARD. Senator, the answer of the fellow nominees, I feel is directly on point. I, too, have been in discussions with our ethics counsel to fill out a form that would tell us if we have the grounds for recusal. I think the most important thing is that we remain impartial, integrity, and that if we had any questions, we take advantage of the ethics resources that we would have available to us. Thank you.

Senator HYDE-SMITH. Thank you.

Chairman BLUNT. Thank you, Senator Hyde-Smith. If Senator Leahy is available, we will go to him. If not, we are going to go to Senator Cortez Masto. Senator Leahy, you are recognized for 5 minutes.

Senator LEAHY. Thank you. Is this coming through?

Chairman BLUNT. Yes, it is. Yes, it is.

Senator LEAHY. Okay, good. Thank you. Appreciate having this opportunity. Each of you being nominated to the FEC at a critical moment. The FEC was created to promote confidence and participation in a democratic process. That is more difficult today when you have a President who almost every public statement, a tweet undermines public confidence in our election, seeks to suppress legally cast votes.

But his temper tantrum tweets aside, all serious federal and state election officials, both Republicans and Democrats, have stated unequivocally that our election results are legitimate. Now, I will ask a question for each of you and you can answer yes or no. Is Joe Biden the President-elect of the United States? Yes or no?

Ms. BROUSSARD. Yes.

Mr. COOKSEY. Senator, I am aware that most media organizations have projected that former Vice President Biden has won the election.

Senator LEAHY. Do you accept that?

Mr. COOKSEY. I have no reason to doubt it.

Senator LEAHY. Thank you.

Mr. DICKERSON. I agree with Mr. Cooksey, subject to the outcome of litigation.

Senator LEAHY. Most of you have experienced litigation, as you know, virtually all of those cases have been dismissed, thrown out or withdrawn. I do realize Mr. Giuliani gave a Four Seasons discussion that strayed and brought somebody from out of the state, a sex offender, to give some baseless charges. But everything else has been pretty much thrown out.

President Trump's own Department of Homeland Security has said this was the most secure in American history of elections and there is no history that anything that—there were deleted or lost votes, changed votes or were compromised. Do you agree with President Trump's Department of Homeland Security in that? Mr. Dickerson.

Mr. DICKERSON. Senator, in all frankness, I have very little expertise in that area. As you might imagine, my attention has been dedicated toward this hearing. I am really not in a position to give any useful commentary on activity at DHS in recent weeks.

Senator LEAHY. I would tell you, the FEC Commissioner Weintraub, recently observed that very few substantiated complaints of voter fraud or illegal votes. Would you agree with that? Do you have any reason to disagree with that?

Mr. DICKERSON. I have no reason to disagree. Commissioner Weintraub is an excellent attorney.

Senator LEAHY. Anybody else want to add to it?

Mr. COOKSEY. Senator, I agree with what Mr. Dickerson said. I have no personal knowledge or reason to doubt the statement of DHS.

Ms. BROUSSARD. Senator, I do not doubt the statement, DHS statement.

Senator LEAHY. Thank you very much. Mr. Dickerson, you criticized state efforts to limit companies with foreign ties from contributing money to state campaigns, as we do in my own State of Vermont. We want to make sure there is no foreign interference in our elections. I hope we all agree with that. I ask, is it ever appropriate for an American candidate for public office to influence or accept aid of a foreign state seeking to encourage our domestic election?

Mr. DICKERSON. I would think that would be an inappropriate decision.

Senator LEAHY. Thank you. I mention that only because of President Trump's statement during an ABC News interview in 2019 when he said there is nothing wrong with taking information from a foreign government on a political opponent. I must admit that a number of my Republican colleagues were pretty shocked at that.

I worry because some Republican Senators who have echoed the President's unsubstantiated claims about voter fraud. Some have claimed that Philadelphia's ballot counting process—political—oth-

ers with their claims are brought about when Republican Secretaries of State have said everything was fair. They face death threats because of that. They are saying because he is on a path to victory. If so, what is that path? Mr. Dickerson, do you see a path to victory for the President?

Mr. DICKERSON. I am not aware of one, but I have not looked at these cases in any detail.

Senator LEAHY. Anybody else see one?

Mr. COOKSEY. Senator, as Mr. Dickerson said, I am aware of ongoing litigation about the election, and I haven't followed it in great detail and I am not in a position to comment on the merits of it.

Senator LEAHY. You are aware that an awful lot of the litigation has been withdrawn or tossed out by the courts?

Mr. COOKSEY. I have seen news articles to that effect.

Senator LEAHY. I am a lawyer. I watch it very, very carefully. I have seen that I—the only reason I even raise these questions in a time of COVID the fact that it is taking so long to set up the process we have when we have a new President coming in. It is damaging to the country, is damaging to our security, is damaging to the health of our people. If we suddenly, as a new President is being inaugurated, we suddenly have an attack from one of our adversaries overseas, Lord help us all.

The Presidents in the past, whether they have lost or won, they have always gone with that, have helped the new President coming in. I am simply stating this as the longest-serving Senator. I have never seen this happen with either Republicans or Democrats. We should be preparing, especially at a time of COVID and a time of extreme threats that the Chairman is aware of some of it from his position in other committees, as am I. We should be preparing for the transition.

Mr. Chairman, I appreciate you setting this hearing. I know we have a vote that started on the floor.

Chairman BLUNT. We do. We do. Thank you, Senator Leahy.

Senator LEAHY. You know where my office so I will be at the vote very quickly.

Chairman BLUNT. Exactly. Your office looks great on the camera here today. Thank you, Senator Leahy. Senator Cortez Masto.

Senator CORTEZ MASTO. Thank you. Thank you, Chairman and Ranking Member. Thank you to all three of you and for your willingness to serve on the Commission. Let me followup with Senator Leahy's line of questioning. My question to all three of you is, do you think that the FEC has a role to play in limiting foreign interference in federal elections? If the answer is yes, what is that role? Mr. Cooksey, let me start with you.

Mr. COOKSEY. Thank you for that question, Senator. It raises a very important issue and I also share a concern about foreign interference in the elections. Yes, the FEC does have a role in prohibiting foreign interference. The prohibition on foreign national contributions is longstanding in law and has been upheld by the courts. It applies across a wide swath of political contributions. If I am confirmed, I am committed to enforcing that, just as it has been a priority for the Commission over recent years.

Senator CORTEZ MASTO. Thank you. Mr. Dickerson.

Mr. DICKERSON. I entirely agree. I think the foreign contribution and expenditure prohibition has been an area of bipartisan priority at the Commission. I would plan to join that tradition.

Senator CORTEZ MASTO.Thank you. Ms. Broussard.

Ms. BROUSSARD. Thank you. I cannot—I have no disagreement from my fellow nominees. The statute requires that foreign nationals are prohibited from making contributions or expenditures in our elections, are in connection with our state and local, state, and federal elections. I agree with that. I would look forward to, if confirmed, working with fellow Commissioners to enforce this.

Senator CORTEZ MASTO. Thank you. I know, looking at the Federal Election Campaign Act, there is really not a lot of qualifications for Commissioners that we have to look at other than that the Commissioner shall be chosen on the basis of their experience, integrity, impartiality, and good judgment. I think many of the questioning you are seeing here really goes to the impartiality piece of it.

I appreciate the answers, particularly, Mr. Dickerson, that you gave to Senator Hyde-Smith on recusal and the fact that perception also has an impact and that should be considered when you are looking to recuse. But it is a Commissioner's decision to recuse or not to recuse at the end of the day.

Let me ask you this, Mr. Dickerson, because over the past several years, you have advocated against the DISCLOSE Act and just about every effort by Congress and the FEC to strengthen transparency. If you are confirmed as Commissioner, how can I be assured that you are going to be impartial when it comes to the issues of transparency and will make the decision to recuse yourself if appropriate?

Mr. DICKERSON. I am very grateful for the question, Senator. I would analogize to what happens when an advocate or a practicing attorney is nominated for the judiciary, as we do often at the Commission, sit in a quasi-judicial capacity, which is why the perception matters so much. You know, I—the simple answer is that I will take an oath to the Constitution if confirmed to this position.

As I often remind people, the First Amendment is only one part of the Constitution and I have been emphasizing that aspect of it in my practice for the last decade. But I also recognize that the role of an independent Commission, as a creature of statute, bound by Congress's judgment is a very different one from that of an advocate in the nonprofit space.

My commitment to you, quite simply, Senator, is that I would take that oath seriously and recognize the very different role required by a nonpartisan law enforcement role as opposed to representing clients or speaking in public as an advocate.

Senator CORTEZ MASTO. Thank you. Do you think it is appropriate for an FEC Commissioner to be vocal on Twitter or media interviews supporting a particular candidate over another?

Mr. DICKERSON. I worry about it a great deal. I think it does make—I think there has been unanimity among my fellow nominees and I that we would like to be working toward unanimity and compromise on the Commission. I suspect that extracurricular advocacy makes that harder inside the building. I can't speak for any-

one else who might be nominated or confirmed. I would plan to avoid that sort of outside advocacy.

Senator CORTEZ MASTO. Mr. Cooksey, same question to you.

Mr. COOKSEY. Thank you, Senator. I agree with what Mr. Dickerson said in that if I am lucky enough to be confirmed, my focus will be on the administration and enforcement of campaign finance law, not on outside political activity or advocacy.

Senator CORTEZ MASTO. Thank you. I notice my time is up. The rest of my questions, I will submit for the record. Thank you all again. Congratulations on your nominations.

Chairman BLUNT. Thank you, Senator Cortez Masto. We are voting. Let me have a couple of questions and a couple of comments. One is on all of the suggestions of your public view of elections generally. There are First Amendment rights. You do know more about elections and think more about elections than most people. But I don't think it is the job of the Federal Election Assistance Commission to try to enforce the campaign finance law. I don't think it is the job of the Department of Homeland Security to give opinions on how they think the campaign finance law should be enforced. My thought on this is, while there may be rulemaking authorities and other authorities that you have in the campaign finance law area, I think it is unreasonable to expect these agencies to constantly cross lines and decide, well, I know a lot about elections because I am on the Election Assistance Commission. I think I am going to start making determinations about how campaign finance law is being enforced. I think generally you all three wound up in that space where you have important responsibilities, the integrity of the election system is important, but your role is pretty clearly defined.

Ms. Broussard made a comment I very much agreed with that if the Congress passes a law, you are going to enforce that law. There may be some rulemaking authority that is on the edges of whether Congress has passed a law or not, but understanding your job and how you do your job is critically important because nobody else is going to do your job. You spend all your time doing somebody else's job, nobody is doing your job, which is critical.

On—what standard, if you have had a chance to think about this yet, and I know Ms. Broussard has, what standard must be met before the Commission offers an investigation? Let's just go in alphabetical order here, Broussard, Cooksey, Dickerson. What standard do you think needs to be met before the Commission opens an investigation?

Ms. BROUSSARD. Thank you, Senator. There has to be reason to believe that a violation has occurred or could occur, and the reason to believe is based upon sufficient evidence available. If, as was already mentioned by one of the nominees, it is not a quantified percentage, but that is the standard that is based in the statute and is also the regulations.

Chairman BLUNT. Mr. Cooksey.

Mr. COOKSEY. Yes, Senator, Ms. Broussard is correct. Reason to believe is the standard. I would describe reason to believe as the presence of credible evidence that a violation of the law has occurred—one of the campaign finance laws that the FEC administers.

Mr. DICKERSON. Senator, I find myself in the pleasant position and entirely agreeing with my fellow nominees.

Chairman BLUNT. Well, let me ask one more question. We will see if you agree with that one. The FEC is the subject of a great deal of litigation. The adversarial process really requires somebody engaged to defend the position the Commission has taken or nobody engages. What is your view of that? All three lawyers, all three capable attorneys. What do you think should be the FEC view of litigation challenging a newly arrived at position taken by the FEC? We can reverse alphabetical order. Let's go Dickerson, Cooksey, and Broussard.

Mr. DICKERSON. Thank you for the question. I have thought about this a great deal as a member of the private Bar who deals with the FEC. I don't think that the Commission does judges or courts any favors when important questions of constitutional or statutory law are decided on default judgments. I don't think that provides any clarity the law or any sufficient due process for the people held in front of the Commission. There may be cases where I would not vote to enforce or to appeal or to otherwise go to court, but sitting here right now and in my experience, I cannot think of any.

Mr. COOKSEY. Senator, my approach to this question is that Congress created the Commission as the administrator of the federal campaign finance law, not the courts and not private litigants. I have a strong belief that the rulings and the decisions of the FEC as a general matter should be defended in court.

Chairman BLUNT. Ms. Broussard.

Ms. BROUSSARD. Thank you. I believe that we have to look at each case, the particular facts, the law and with discussion with the Office of General Counsel to make that decision. But as Mr. Dickerson mentioned, I can agree with his perspective and said there may be some cases that it may be a value to consider with my peers on the Commission whether there should be a defense. But I am open to considering each matter before me and make the decision at that time. Thank you.

Chairman BLUNT. Well, I thank all of you for joining us today. The record will be open until noon on Friday, November the 20th.

I know Ms. Broussard, in the point when we had a slight disengagement, Senator Cruz had a question that he had hoped you all three would answer, that you didn't get a chance to answer. There will probably be more questions to be filed. I am hopeful that we can move all three of these nominations this year and restore the Commission to the six member status.

I would point out for the observations that I would like to do this two at a time, one Democrat, one Republican. There have been two vacancies on the court for over, or two terms on the Commission for a decade or so now, one by a Democrat, one by an Independent that generally votes with that side of the Commission, that no nominee has ever been presented to this committee.

I would love to have nominees for that and we would quickly move on those nominees, even if they both come at the same time, as long as there is otherwise a full Commission. The committee is adjourned.

[Whereupon, at 11:22 a.m., the hearing was adjourned.]

APPENDIX MATERIAL SUBMITTED

SENATOR CRUZ STATEMENT FOR THE RECORD AT NOVEMBER 18, 2020 RULES COMMITTEE HEARING

Thank you, Mr. Chairman. I'm very proud today to introduce Sean Cooksey as a nominee to the Federal Election Commission.

As the chairman knows, he's from Missouri and currently works for the Junior Senator from Missouri, but I'm going to go ahead and claim him anyway as an honorary Texan. Not only did he clerk for one of the most respected appellate judges in the country, Jerry Smith, in my home town of Houston, but he also worked on my staff as Deputy Chief Counsel, serving the 29 million people of the great state of Texas.

Sean's impeccable educational credentials include graduating summa cum laude from Truman State University, and receiving his J.D. from the University of Chicago Law School, where he graduated with High Honors and Order of the Coif.

From there, as I mentioned, he clerked for Judge Smith on the U.S. Court of Appeals for the Fifth Circuit before joining one of the nation's most respected law firms in D.C. as a litigation associate, focusing on appeals and constitutional law. Most notably, as a young associate he worked on a Supreme Court matter in which his client ultimately prevailed 8-1.

Then, in 2018, Sean joined my staff as Deputy Chief Counsel working on a wide array of important and complex issues, including election law. He did a fantastic job. And we were sad—but also excited for him—when he left in 2019 to serve as Senator Hawley's Chief Counsel when Senator Hawley came and joined us on the Judiciary Committee. He still serves in that role, doing an excellent job for Senator Hawley and he advises Senator Hawley on constitutional law, judicial nominations, election law, federal criminal law, ethics compliance, and a whole lot more.

My experience with Sean has demonstrated to me that he is not only an exceptionally talented lawyer, but he's also someone deeply committed to the rule of law. He will be prepared to hit the ground running on day one as a Commissioner, and I have complete confidence that he will faithfully apply the law fairly and neutrally. I would also note that Sean and his wife Ellyn are expecting a baby this winter and so these are propitious times in the Cooksey household. I'm proud to introduce my friend Sean.

Statement of Shana M. Broussard
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 a nominee for the position of Commissioner on the Federal Election Commission.

I'd first like to take the opportunity to thank the most instrumental people in my life, my parents James and Gainell Broussard of Gibson, Louisiana. My father is retired from the United States Air Force after 25 years of service to our Country and my mother is a retired middle school teacher, having taught in the very same school she attended as a child. Together, they instilled within me a pride in public service and a commitment to community. I also want to thank my brothers Juan and Pierre Broussard. I could ask for no greater support than my older and younger brother. I also thank all my friends that have supported and encouraged me throughout this process.

Like my parents, public service and a commitment to community have guided the course of my professional career and personal life. I have over two decades of combined experience working in local and federal government. After law school, I took a position as an Assistant District Attorney in my home state of Louisiana prosecuting major crimes and then worked as the Deputy Disciplinary Counsel for the Louisiana Attorney Disciplinary Board. When I arrived in Washington, DC in 2007, I entered federal service, becoming an Attorney-Advisor in the Internal Revenue Service's Office of Professional Responsibility. And since 2008, I have been with the Federal Election Commission, first serving as a staff attorney and then as counsel to Commissioner Walther. As you know, the mission of the Federal Election Commission ("FEC") is to protect the integrity of the federal campaign finance process by providing transparency and enforcing and administering federal campaign finance laws in a fair manner. Although Congress created the FEC in 1975, the agency's mission remains not only relevant today, but the need for the timely and fair enforcement of the nation's campaign finance laws has never been more urgent. During my 12-year tenure at the FEC, I have worked to advance the agency's mission, consistent with the statutes enacted by Congress and interpreted by the courts.

As a staff attorney, I handled a variety of enforcement matters that raised complex questions of statutory and regulatory interpretation. Importantly, I carefully considered each matter, making sure that my recommended disposition was supported by the facts and the law. My recommendations were fair yet firm and were always made with an aim toward promoting transparency in the campaign finance laws. Division leadership recognized my efforts twice, honoring me with Outstanding Performance Awards in 2011 and 2014. As counsel for Steven T. Walther since 2015, I have primarily managed his enforcement and compliance caseload, including matters from the Reports Analysis Division, Audit Division, Alternative Dispute Resolution Office, and Administrative Fines Office. Working with Commissioner Offices to

build consensus in resolving enforcement matters has also been an important part of this role. In addition, by working closely with Commissioner Walther in the management and overall operation of the FEC, I understand the supervisory role of an FEC Commissioner.

Although I have enjoyed each year working for the American people at the FEC, I never envisioned that I would be testifying today before this Committee on my qualifications and interest in serving as a Commissioner. In only one instance has an individual already with the Commission been nominated and confirmed by the Senate to serve as a Commissioner. But having knowledge of the agency and campaign finance law is what makes me particularly prepared to serve if the Senate confirms my nomination. If confirmed, I will approach my work as a Commissioner as I have done throughout my career in public service—with diligence, impartiality, and integrity. I will focus on executing the Commission's strategic objectives, namely, encouraging public confidence in the political process, promoting voluntary compliance by increased educational outreach, the timely enforcement of campaign finance laws, and supporting the continued high performance of the agency's workforce.

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.

Written Statement of Sean J. Cooksey

Nominee to be a Member of the Federal Election Commission

Good morning, Chairman Blunt, Ranking Member Klobuchar, and members of the Committee. It's an honor to appear before you.

I'd like to thank both the Chairman and the Ranking Member for convening this hearing to consider my nomination to the Federal Election Commission, and I'd like to thank President Trump for nominating me. I would also be remiss if I did not thank the committee staff and the White House staff who have helped with my nomination.

I do not have an opening statement, but I would like to acknowledge some important people.

First and foremost is my wife, Ellyn. She is my hero and an unwavering source of love and support.

I thank my parents, Ken and Susan Cooksey, for all their patient love throughout my life. I am fortunate to be their son.

I am also grateful to my two brothers, my grandmother, and the many friends and colleagues who have encouraged me along the way.

Finally, I am indebted to three mentors. The first is Judge Jerry Smith of the U.S. Court of Appeals for the Fifth Circuit, for whom I was lucky enough to clerk after graduating law school.

The second is Senator Ted Cruz, who gave me my first job in the United States Senate and has been a role model for me ever since.

Lastly, I'd like to thank my current boss, Senator Josh Hawley, who entrusted me to work for the people of Missouri as his General Counsel. It has been the honor of a lifetime to serve on his staff.

With that, Chairman Blunt and Ranking Member Klobuchar, thank you again for holding this hearing, and I look forward to your questions.

Statement of Allen Dickerson

Nominee to be a member of the Federal Election Commission

Chairman Blunt, Ranking Member Klobuchar, and Members of the Senate Committee on Rules and Administration:

It is a privilege to appear before you this morning to discuss my nomination to the Federal Election Commission. I am grateful to the President for his confidence and to this Committee for providing me with this opportunity.

I am sorry we are meeting by videoconference. It is a wise and responsible decision. But something is lost when an event of this gravity is held remotely. For me, that includes the ability of my wife, Rachel, to be present in person for this important occasion. But I understand that she has taken a break from her work as a child psychologist to watch our live feed. And the fact she is not physically present does nothing to diminish my great appreciation and affection for her as a woman, wife, and mother. Nor does it lessen the many sacrifices she has made to support my career and to allow me this opportunity for public service.

And while our daughter is too young to follow today's discussion, I hope that, in the fullness of time, she will be proud of her father's career in the law and service to his country.

It has been a long road from California's Mojave Desert to a hearing before the United States Senate. I am grateful for my parents, Terry and Gayle, and to my sister, Iris, for setting me on the path. And my thanks, finally, go to my colleagues at the Institute for Free Speech for nearly a decade of warm collegiality and companionship.

I have spent the last several years bouncing between two very different worlds.

As Legal Director of the Institute for Free Speech, I represent clients in court, and advocate in public, for a robust view of the First Amendment. In that capacity, I have represented clients from across the political spectrum, including Republican elected officials and donors, the Libertarian National Committee, a progressive San Francisco ballot committee, and the Coalition for Secular Government. And I have authored scores of briefs joined by groups as diverse as Color of Change and the Tea Party Patriots, the ACLU and the Cato Institute.

At the same time, as an officer and lawyer in the Army Reserve, I advise soldiers in the very different context of uniformed service. There, rights of expression and association take a different form, limited by the needs of the Service and the requirements of good order, discipline, and fidelity to the chain of command.

From both roles, I have come away with a great respect for the diversity, character, and wisdom of the American people. And I have developed a deep trust in the vibrancy and resilience of American institutions.

Congress created the FEC to protect those institutions. In the aftermath of Watergate, it established the Commission to prevent corruption of our elected officials and to enlighten American voters as they choose our representatives. It is an important role.

And it is a challenging one. All of us – members of the bar, the Congress, the courts, and the Commission – have worked hard to find the delicate balance between the legitimate anticorruption and disclosure interests of the government, on one hand, and the First Amendment rights of the citizenry on the other.

If the Senate chooses to confirm me, I will work every day to provide the American people with an independent Commission that faithfully administers the law as written by Congress and interpreted by the courts. Just as when I don or doff a military uniform, I recognize that I have been asked to apply my experience to a new role. And I am prepared to work hard in the service of this agency and its public mission.

If confirmed, I look forward to working with my colleagues, and with the dedicated civil servants at the FEC, to explain a complex body of law, clarify it where appropriate, and enforce it in the fair and nonpartisan manner Congress envisioned.

I thank you again for the opportunity to be here and look forward to your questions.

* * *

Allen Dickerson is the Legal Director at the Institute for Free Speech, where he has led a nationwide First Amendment litigation practice since 2011. Previously, he was Assistant General Counsel to the Republican Governors Association and worked as an Associate with the New York office of Kirkland & Ellis, LLP. He also serves as a Captain in the Judge Advocate General's Corps, United States Army Reserve.

Mr. Dickerson received his undergraduate degree from Yale College and his J.D. from New York University School of Law.

Senate Committee on Rules and Administration
Federal Election Commission Nomination Hearing
November 18, 2020
Questions for the Record
Ms. Shana Broussard

Senator Klobuchar

1. For years the results of the Federal Employee Viewpoint Survey have shown that the FEC has suffered from some of the worst staff morale in the federal government. And the FEC's nonpartisan law-enforcement staff routinely spend years investigating major violations, only to have the FEC Commissioners terminate the investigation on ideological grounds.

   - From your perspective as an FEC employee, what steps should be taken to improve morale amongst the hardworking men and women at the agency?

     I believe that FEC staff morale is currently struggling as a direct result of the loss of quorums and the lack of diversity at the Commission. Harmony -- or even balance -- relies upon the support of Commission leadership so that all staff can understand and align with the agency's mission. With a lack of a quorum, and therefore a lack of leadership at the very top, the agency has not been able to work to its best ability, staff find their efforts stalled, thus directly impacting each person's individual role in fulfilling the mission of the FEC culminating in a stagnant work force. There is also a concern that morale is struggling because of a lack of diversity and inclusion among the Commission leadership. The Commission has not historically reflected the electorate that it serves. Diversity matters because people with different backgrounds have different perspectives on dealing with problems or confronting creative opportunities, enhancing the quantity and quality of ideas presented. Restoring the quorum, and adding diversity to the Commission leadership is a positive first step towards improving morale.

2. I think the FEC needs to be doing more to prevent foreign spending in our elections. I have been deeply disappointed by the fact that the agency still has not issued a final rule regarding disclaimer requirements for online political ads.

   - Do you believe that the FEC should finalize the draft rule?

   - If you are confirmed as a Commissioner, how will you work to ensure that the Commission finalizes a strong disclaimer rule for online ads?

The Commission should finalize the draft rule and finish the effort it started in 2011 because a final rule will provide clarity to the public. This was a process that the Commission started in 2011, revitalized in 2016 with an NPRM that amended the definition of "public communication" to include "internet-enabled devices" and provided two alternative proposals to revise its disclaimer regulations to specifically apply to internet ads, and continued with public comments provided at a hearing held in 2018. Between 2017 and 2019, when the Commission lost its quorum, Commissioners seemed close to an agreement.

The new Commissioners should join Commissioners Weintraub and Walther's efforts to work across the aisle on what is neither "new or remarkable." *See* Concurring Statement of Vice Chair Caroline C. Hunter and Commissioners Lee E. Goodman and Matthew S. Petersen in AO 2017-12 (Take Back Action Fund) (Dec. 14, 2017). The current disclaimer regulations apply to all types of communications - including those over the internet. 11 C.F.R. § 110.11(a)(1) - (4). The new rule will simply clarify for the public precisely how the disclaimer rules - written before internet communications became a main way for campaigns to communicate - apply to these specific types of communications.

3. One of our country's founding principles is that we, the American people, pick our government. Accordingly, we have laws that prevent foreign influence of elections. These laws protect our sovereignty and our national security. Please indicate whether you believe the following contributions are acceptable within a democracy that strives to prevent foreign influence in our government:

   - Should a foreign national working on behalf of the Russian government be able to buy issue ads that exacerbate racial tensions within our society, yes or no?

     No.

   - Should a foreign national living abroad be able to buy issue ads that seek to undermine Americans' faith in their government, yes or no?

     No.

   - Should a foreign national working on behalf of a foreign government be able to buy issue ads that seek to influence Americans' views of U.S. foreign policy, like NATO membership, yes or no?

     No.

Senator Cruz

1. What is the relationship between federal campaign finance law and the First Amendment to the United States Constitution?

   The sources of modern federal campaign finance law are the First Amendment, the Federal Election Campaign Act of 1971, as amended, Commission regulations, court decisions, and Commission precedents. The Supreme Court has explained that federal campaign finance laws implicate fundamental First Amendment interests. As a Commissioner, I will be mindful of the unique relationship between federal campaign finance laws and the First Amendment.

Senator Warner

1. The integrity of our election system – ranging from adherence to our campaign finance rules, to the security of voting machines, to the proper administration of registration systems – is of utmost importance. Responsibility for this spans the Federal Election Commission, Election Assistance Commission, DHS, and – perhaps most importantly - state and local officials of both political parties.

   Our democracy depends on Americans being able to exercise their franchise – and to have faith that both voters, and those seeking their votes, will abide by the results of a free and fair election.

   For several years now, many of us have been leading bipartisan efforts to devote federal resources to election integrity – secure and reliable voting and tabulation machines, resources for post-election audits, assistance in securing registration systems. And yet at every step, our efforts were stymied by the White House and Leader McConnell. In December 2018, we even saw the leading piece of bipartisan legislation pulled at the very last minute from a scheduled markup by this Committee after intervention by the White House and Leader McConnell.

   Despite that, we saw state and county election administrators, and volunteer election workers, overcome the odds and administer an election that by every indication was conducted securely and properly.

   Everyone involved did their part: from volunteer poll workers bravely serving 14-hour shifts indoors, to state and local administrators to the voters themselves, who turned out in record numbers. Everyone except the President, who refuses to acknowledge what is plain to see, including to foreign election observers he invited and to frontline DOJ attorneys his AG

dispatched across the country: this election was, despite the many challenges, conducted freely and fairly.

- Will you acknowledge that from all indications and public evidence, the 2020 election was conducted freely and fairly?

  Yes.

2. The influence of dark money in our political process has been an area of increasing concern, particularly with the ability of dark money groups – not to mention foreign actors – to exploit the opacity of large social media platforms to influence our politics.

   The attractiveness of social media manipulation to both dark money groups and foreign actors was catalogued quite well by leading researcher Young Mie Kim, whose efforts to track the use of Facebook by dark money groups in 2016 revealed that Russian actors were up there with conservative dark-money groups in running large numbers of divisive political ads behind fictitious groups.

   A hallmark of our campaign finance laws has been transparency. Even as they were invalidating a range of other campaign finance reforms, the Supreme Court emphasized the importance – and legality – of transparency obligations.

   - Do you believe it is important to update our federal election laws to bring greater transparency to the increasingly important world of online political communication? Why?

     Yes. Transparency is a cornerstone of the agency's mission. Entities that air political ads on television, radio, and in newsprint are currently required to disclose who has paid for the advertisement under the FECA and Commission regulations, but this is not a requirement online unless the internet communication was paid to be placed on another's website. Congress should enact laws that would promote greater transparency for all political communications - including those distributed only online. It would then be the Commission's responsibility to implement and enforce regulations based on this new law. If confirmed, I would welcome the opportunity to work with fellow Commissioners to do so.

3. With each election, we've increasingly seen efforts to promote political messages through a wider range of social media channels – not just in the context of ads, but increasingly through highly professional efforts to pump out organic content that users will think is genuine. For years we've seen growing indications of political expenditures being spent on coordinated social media efforts, often with only vague references to those efforts in expenditure

disclosures, but in 2020 in particular we saw this trend explode. For instance, one primary candidate even paid dozens of influencers to push out organic content promoting their candidacy.[1] We see a similar phenomenon going on with PACs – on both sides of the aisle.

The goal, in all cases, is to reach Americans through trusted channels, while avoiding their ingrained skepticism for explicit advertisements. The FTC has a name for this in the broader marketing context – it's called 'online influencer marketing', and too often it's done without any disclosure of the financial sponsorship behind the content.

- Would you not agree that campaigns should make granular disclosures of these expenditures that specifically list the influencers being paid to promote sponsored political communications?

- Would you not agree that those engaged in posting sponsored organic content – which, as the FTC has recognized, is simply advertising by a different name – are required to include political disclaimers accompanying any sponsored content?

- To the extent any gaps exist in compliance with existing rules, will you work to update FEC guidelines to make clear that sponsored content must include disclaimer language?

> The Act and Commission regulations are clear. Any gaps in compliance exist only because of a lack of enforcement by the Commission. Political committees are required to identify each person to whom they made disbursements, as well as the date, amount, and purpose of such payments. *See* 52 U.S.C. § 30104(b)(5)-(6); 11 C.F.R. § 104.3(b)(3)-(4). The purpose of such disbursements should be sufficiently specific to allow the public to easily determine why the disbursement was made. *See* Statement of Policy: "Purpose of Disbursement" Entries for Filings with the Commission, 72 Fed. Reg. 887 (Jan. 9, 2007). Furthermore, any public communication paid for by a political committee must include a disclaimer indicating who paid for the communication. *See* 52 U.S.C. § 30120; 11 C.F.R. § 110.11; 11 C.F.R. § 100.26. This includes any communications placed for a fee on another person's website. *See* 11 C.F.R. § 110.11; 11 C.F.R. § 100.26.

4. During the 2016 election, in addition to their social media manipulation and online influence efforts, the Russian intelligence services engaged in hack and dump operations. And actors working on behalf of a Russian oligarch, one with strong connections to President Putin, communicated with Donald Trump Jr to set up a meeting where they would provide "the Trump campaign with some official documents and information that would incriminate Hillary and her dealings with Russia and would be very useful to your father."

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[1] https://www.reuters.com/article/us-usa-election-socialmedia-sponsored/from-facebook-to-tiktok-u-s-political-influencers-are-paid-for-posts-idUSKBN27E1T9; https://fr.reuters.com/article/us-usa-election-influencers-idUSKBN2042M2; https://morningconsult.com/2019/12/19/experts-say-influencers-could-help-campaigns-sidestep-social-media-crackdown-on-political-ads/

In response to this email, Donald Trump Jr replied, "…if it's what you say I love it especially in the summer," and proceeded to set up a meeting between most of the senior officials of the Trump Campaign and the emissaries of the Russians.

- Under US law, the Russian actors would clearly not be allowed to donate to a campaign. And if they had reached out to a campaign official to offer funding, the campaign would be obligated to call the authorities and report a potential crime. Do you believe that there should be the same responsibility to report it when representatives of a foreign government offer a campaign official or surrogate dirt on their opponent?

  The law clearly states that foreign nationals are prohibited from making -- and candidates or committees are prohibited from receiving -- contributions, expenditures, or providing anything of value, in connection with a state or federal election. 52 U.S.C. § 30121(a)(1); 11 C.F.R. § 110.20(b), (c), (e), (f). This prohibition extends to anyone who provides substantial assistance in the making or acceptance of such a contribution, expenditure, or provision of anything of a value. 11 C.F.R. § 110.20 (h). "Anything of value" includes "the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services." 11 C.F.R. § 100.52(d)(1). But, while the law permits a commercial vendor to provide goods or services to a political committee without making a contribution if done so in the ordinary course of business and at the usual and normal charge, the Commission has found that a committee's receipt of opposition research services without paying the usual or normal charge may result in an in-kind contribution. 11 C.F.R. § 100.52(d)(1); 11 C.F.R. § 114.2(f)(1); Factual & Legal Analysis at 13-20, MUR 6414 (Carnahan) (July 10, 2012).

Senator Cortez Masto

1. Scam PACs are a bipartisan problem, and they result in grassroots donors, oftentimes senior citizens, getting ripped off. As a Commissioner, would you commit to cracking down on scam PACs that take advantage of seniors and other Americans?

   If confirmed, I would wholeheartedly commit to support efforts to eliminate and/or diminish the damaging effects of fraudulent solicitation on grassroots donors. Scam PACs allegedly solicit large sums of money for the purpose of supporting candidates, raise significant funds, and oftentimes spend the bulk of donations received on vendor fees with little funds reaching candidates or committees as donors anticipated. I will do everything in my power as a Commissioner to enforce the law against scam PACs that take advantage of donors and funnel money away from the candidates, committees, and parties that those donors actually wish to support. As a first step, I would propose that the Commission expand its public outreach by developing educational resources that outline potential "warning signs" of a scam PAC and disseminate such information on the agency's website and easily accessible social media outlets. But Congress should also consider amending the FECA to address and prohibit fraudulent solicitation to provide the Commission

jurisdiction to consider the complaints of donors and candidates and to enact regulations that prohibit fraudulent solicitation, including false claims of candidate endorsement. Since 2016, the Commission has consistently included in its legislative recommendations that Congress examine "potentially fraudulent fundraising and spending activities of certain political committees." *See, e.g.*, Legislative Recommendations of the Federal Election Commission 2016 at 7 (Dec. 1, 2016).

2. A few years after *Citizens United*, Justice Kennedy stated publicly in an appearance at Harvard Law School that the disclosure he had envisioned in *Citizens United* was, quote, "not working the way it should." Do you agree? If not, why; if yes, then what should the FEC do to bring that vision closer to reality?

   In *Citizens United*, the Supreme Court reaffirmed the constitutionality of disclosure requirements, stating that "transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages." *Citizens United v. FEC*, 558 U.S. 310, 371 (2010). Despite the Court's viewpoint on disclosure, the FEC's enforcement of the law has decreased. *See* FEC Enforcement Statistics for Fiscal Years 1997-2020, available at https://transition.fec.gov/press/bkgnd/EnforcementStatistics.shtml. The newly reconstituted Commission could and should enforce the law as Congress intended and the Courts have reaffirmed. Additionally, the Commission should ensure that disclosure requirements are implemented consistent with relevant court decisions. For instance, the D.C. Circuit recently affirmed a lower court decision that invalidated a Commission regulation concerning donor disclosure requirements for independent expenditures made by non-political committees. *See Citizens for Responsibility & Ethics in Washington v. FEC*, 971 F.3d 340 (D.C. Cir. 2020). The Commission should begin the rulemaking process to create a new rule in conformance with the court's decision.

3. Do you agree that Americans have a right to know who is giving or spending significant amounts of money to influence U.S. elections?

   Yes.

   - If a donor gives $1,000 to a candidate, should their name be publicly disclosed?

     Presently, the law requires that all donors whose aggregate election-cycle-to-date total contributions exceed $200 must be disclosed.

   - If a donor gives $100,000 to a politically-active nonprofit group that is spending money on ads supporting a candidate, should their name be publicly disclosed?

     Presently, the law requires that a politically-active nonprofit group must disclose the names of any donor who have given more than $200 to fund that organization's political efforts in a federal campaign and any advertisements that call for the election or defeat of a federal candidate. The statute is clear and the regulations

implementing this rule were invalidated for being impermissibly narrow in its applications. *See Citizens for Responsibility & Ethics in Washington v. FEC*, 316 F. Supp. 3d 349 (D.D.C. 2018), *aff'd*, 971 F.3d 340 (D.C. Cir. 2020). The Commission must now craft a new rule to require the disclosures mandated by Congress in FECA in conformance with the Court's decision.

4. Do you believe that a donor should be allowed to give unlimited amounts of money directly to a federal candidate?

No. In *Buckley v. Valeo*, 424 U.S. 1 (1976), the Supreme Court upheld contribution limits holding that contributions can be limited in order to prevent opportunities for corruption and the appearance of corruption of our government. The Court drew a distinction between limits on contributions and those on expenditures. The Supreme Court has continued the Buckley distinction between limits on contributions and limits on expenditures and has consistently upheld the constitutionality of federal contribution limits.

Senate Committee on Rules and Administration
Federal Election Commission Nomination Hearing
November 18, 2020
Questions for the Record
Mr. Sean Cooksey

Senator Klobuchar

1. 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 that "I don't mind the money coming in… Let it be transparent. Let them talk, but let there be total transparency."

   - Are Justice Scalia and President Trump wrong?

     Answer: The Supreme Court has held that election-related disclosure requirements are generally subject to "exacting scrutiny," which demands that the disclosure have a "substantial relationship" to a sufficiently important government interest. *Davis v. FEC*, 554 U.S. 724, 744 (2008). *See also Buckley v. Valeo*, 424 U.S. 1, 64–65 (1976). In *Doe v. Reed*, the Court reasoned that not only does the government have an interest in preserving the integrity of the electoral system, but "[t]hat interest also extends more generally to promoting transparency and accountability in the electoral process." 561 U.S. 186, 198 (2010). If confirmed, I will diligently and fairly enforce the campaign-finance disclosure requirements enacted by Congress, consistent with the law.

   - If you're confirmed, what will you do as commissioners to increase transparency in our campaign finance system?

     Answer: Please see my answer to the first part of this question.

2. In the famous 1958 Supreme Court case *NAACP v. Alabama,* the Court ruled to protect the membership list of the Alabama NAACP, because its members faced persecution, violence, and death for their political activity. Some have used this case to argue that wealthy political donors should be able to stay secret.

   - Do you think this case forms a justifiable basis for keeping wealthy political donors secret?

     Answer: In different contexts, the Supreme Court has recognized the constitutional rights of individuals and organizations to engage in certain political activities and to associate anonymously. *See*, *e.g.*, *NAACP v. Alabama*, 357 U.S. 449 (1958); *Brown v. Socialist Workers '74 Campaign Committee*, 459 U.S. 87 (1982); *McIntyre v. Ohio Elections*

Commission, 514 U.S. 334 (1995). In general, courts have decided cases raising this sort of constitutional claim based on the particular facts and circumstances at issue, with consideration to the governmental interests at stake, and subject to the appropriate level of scrutiny. If confirmed, I will diligently and fairly enforce the campaign-finance disclosure requirements enacted by Congress, consistent with the law, and I will abide by the decisions of federal courts.

- How do those wealthy donors compare to the civil rights activists who faced threats to their lives?

  Answer: Please see my answer to the first part of this question.

3. In *Bluman v. FEC* the Supreme Court affirmed a 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 on "issue advocacy," the same kind of activity that we saw by Russians in 2016. This summer, the Supreme Court ruled that foreign citizens outside U.S. territory do not possess rights under the U.S. Constitution. Meaning that strong regulations on foreign spending in elections are not subject to the First Amendment.

   - Should issue advocacy organizations be required to disclose their donors, yes or no?

     Answer: Under current law, 501(c) organizations must disclose their contributors who meet the relevant contribution thresholds when those organizations engage in independent expenditures or receive contributions for the purpose of electioneering communications. When individual contributors must be disclosed to the FEC, the information provided includes the name and address of the contribution source. Campaign-finance disclosure is also an area of law in flux because of ongoing litigation. But I believe Congress is the most appropriate body to make changes to the generally applicably disclosure requirements for 501(c) organizations. If confirmed, I will diligently enforce the prohibition on foreign-national contributions and the disclosure requirements enacted by Congress, and I will abide by the decisions of federal courts.

   - Should issue advocacy organizations be required to disclose their foreign donors, yes or no?

     Answer: Please see my answer to the first part of this question.

   - Do our current campaign disclosure forms allow regulators to determine if donors to a 501(c)(4) or SuperPACs are American citizens?

     Answer: Please see my answer to the first part of this question.

4. One of our country's founding principles is that we, the American people, pick our government. Accordingly, we have laws that prevent foreign influence of elections. These laws protect our sovereignty and our national security. Please indicate whether you believe

the following contributions are acceptable within a democracy that strives to prevent foreign influence in our government:

- Should a foreign national working on behalf of the Russian government be able to buy issue ads that exacerbate racial tensions within our society, yes or no?

  Answer: I share the concern with foreign governments and other foreign nationals making illegal contributions or otherwise attempting to influence American elections, and I believe the prohibition on foreign-national contributions is an important feature of our campaign-finance laws. The Supreme Court has held consistently that Congress has wide latitude to enact laws regulating or limiting the conduct of foreign nationals who reside outside of the territorial boundaries of the United States. If confirmed, I will enforce the prohibition on foreign-national contributions and related laws enacted by Congress. I will also cooperate with other federal partners as appropriate to assist with the enforcement of relevant laws that touch on these concerns but that are outside of the jurisdiction of the Federal Election Commission, such as the Foreign Agents Registration Act.

- Should a foreign national living abroad be able to buy issue ads that seek to undermine Americans' faith in their government, yes or no?

  Answer: Please see my answer to the first part of this question.

- Should a foreign national working on behalf of a foreign government be able to buy issue ads that seek to influence Americans' views of U.S. foreign policy, like NATO membership, yes or no?

  Answer: Please see my answer to the first part of this question.

Senator Warner

1. The integrity of our election system – ranging from adherence to our campaign finance rules, to the security of voting machines, to the proper administration of registration systems – is of utmost importance. Responsibility for this spans the Federal Election Commission, Election Assistance Commission, DHS, and – perhaps most importantly - state and local officials of both political parties.

   Our democracy depends on Americans being able to exercise their franchise – and to have faith that both voters, and those seeking their votes, will abide by the results of a free and fair election.

   For several years now, many of us have been leading bipartisan efforts to devote federal resources to election integrity – secure and reliable voting and tabulation machines, resources for post-election audits, assistance in securing registration systems. And yet at every step, our efforts were stymied by the White House and Leader McConnell. In December 2018, we even saw the leading piece of bipartisan legislation pulled at the very last minute from a

scheduled markup by this Committee after intervention by the White House and Leader McConnell.

Despite that, we saw state and county election administrators, and volunteer election workers, overcome the odds and administer an election that by every indication was conducted securely and properly.

Everyone involved did their part: from volunteer poll workers bravely serving 14-hour shifts indoors, to state and local administrators to the voters themselves, who turned out in record numbers. Everyone except the President, who refuses to acknowledge what is plain to see, including to foreign election observers he invited and to frontline DOJ attorneys his AG dispatched across the country: this election was, despite the many challenges, conducted freely and fairly.

- Will you acknowledge that from all indications and public evidence, the 2020 election was conducted freely and fairly?

  Answer: I have seen and am encouraged by reports that the 2020 general election involved the most votes ever cast in a single election in our history, despite many significant challenges, which is due in no small part to the tireless efforts of election officials throughout the country. I have not investigated or studied claims of voter fraud, election irregularities, or other similar controversies, and I am not able to make informed comments on their merit. I do not have a reason to doubt the statements of relevant election authorities about the secure administration of the election.

2. The influence of dark money in our political process has been an area of increasing concern, particularly with the ability of dark money groups – not to mention foreign actors – to exploit the opacity of large social media platforms to influence our politics.

   The attractiveness of social media manipulation to both dark money groups and foreign actors was catalogued quite well by leading researcher Young Mie Kim, whose efforts to track the use of Facebook by dark money groups in 2016 revealed that Russian actors were up there with conservative dark-money groups in running large numbers of divisive political ads behind fictitious groups.

   A hallmark of our campaign finance laws has been transparency. Even as they were invalidating a range of other campaign finance reforms, the Supreme Court emphasized the importance – and legality – of transparency obligations.

   - Do you believe it is important to update our federal election laws to bring greater transparency to the increasingly important world of online political communication?

     Answer: I believe the mission of the Federal Election Commission to promote transparency and accountability in the campaign finance system is important, and I believe

the FEC should apply existing campaign-finance statutes to the internet as applicable, consistent with the law. If confirmed, I will diligently administer and enforce campaign-finance laws, including the disclosure and disclaimer requirements that apply to purchased internet advertising. I will also work with members of Congress and other relevant parties if I believe that statutory changes are necessary to enable the Federal Election Commission to continue to achieve its mission in light of changed circumstances or events.

- Why?

  Answer: Please see my answer to the first part of this question.

3. With each election, we've increasingly seen efforts to promote political messages through a wider range of social media channels – not just in the context of ads, but increasingly through highly professional efforts to pump out organic content that users will think is genuine. For years we've seen growing indications of political expenditures being spent on coordinated social media efforts, often with only vague references to those efforts in expenditure disclosures, but in 2020 in particular we saw this trend explode. For instance, one primary candidate even paid dozens of influencers to push out organic content promoting their candidacy.[1] We see a similar phenomenon going on with PACs – on both sides of the aisle.

   The goal, in all cases, is to reach Americans through trusted channels, while avoiding their ingrained skepticism for explicit advertisements. The FTC has a name for this in the broader marketing context – it's called 'online influencer marketing', and too often it's done without any disclosure of the financial sponsorship behind the content.

   - Would you not agree that campaigns should make granular disclosures of these expenditures that specifically list the influencers being paid to promote sponsored political communications?

     Answer: Enforcing existing statutes to changing circumstances is a persistent legal and administrative problem. The increasing scope and complexity of the internet and the markets for advertising have posed new challenges for the Federal Election Commission. If I am confirmed, I will work with fellow commissioners and career staff to better understand how the FEC currently approaches these issues, and I will diligently and fairly apply campaign-finance law to all applicable conduct that falls within the FEC's existing authorities, including conduct on the internet. I will also work with members of Congress and other relevant parties if I believe that statutory changes are necessary to enable the

[1] https://www.reuters.com/article/us-usa-election-socialmedia-sponsored/from-facebook-to-tiktok-u-s-political-influencers-are-paid-for-posts-idUSKBN27E1T9; https://fr.reuters.com/article/us-usa-election-influencers-idUSKBN2042M2; https://morningconsult.com/2019/12/19/experts-say-influencers-could-help-campaigns-sidestep-social-media-crackdown-on-political-ads/

Federal Election Commission to continue to achieve its mission in light of changed circumstances or events.

- Would you not agree that those engaged in posting sponsored organic content – which, as the FTC has recognized, is simply advertising by a different name – are required to include political disclaimers accompanying any sponsored content?

  Answer: Please see my answer to the first part of this question.

- To the extent any gaps exist in compliance with existing rules, will you work to update FEC guidelines to make clear that sponsored content must include disclaimer language?

  Answer: Please see my answer to the first part of this question.

4. During the 2016 election, in addition to their social media manipulation and online influence efforts, the Russian intelligence services engaged in hack and dump operations. And actors working on behalf of a Russian oligarch, one with strong connections to President Putin, communicated with Donald Trump Jr to set up a meeting where they would provide "the Trump campaign with some official documents and information that would incriminate Hillary and her dealings with Russia and would be very useful to your father."

   In response to this email, Donald Trump Jr replied, "…if it's what you say I love it especially in the summer," and proceeded to set up a meeting between most of the senior officials of the Trump Campaign and the emissaries of the Russians.

   - Under US law, the Russian actors would clearly not be allowed to donate to a campaign. And if they had reached out to a campaign official to offer funding, the campaign would be obligated to call the authorities and report a potential crime. Do you believe that there should be the same responsibility to report it when representatives of a foreign government offer a campaign official or surrogate dirt on their opponent?

     Answer: I share the concern with foreign governments and other foreign nationals making illegal contributions or otherwise attempting to interfere with American elections, and I believe the prohibition on foreign-national contributions is an important feature of our campaign-finance laws. I also believe that all Americans have a responsibility to report conduct that they believe to be criminal to relevant authorities. If confirmed, I will diligently and fairly enforce the prohibition on foreign-national contributions and related laws enacted by Congress. I will also cooperate with other federal partners as appropriate to assist with the enforcement of relevant laws that touch on these concerns but that are outside of the jurisdiction of the Federal Election Commission, such as the Foreign Agents Registration Act.

Senator Cortez Masto

1. Scam PACs are a bipartisan problem, and they result in grassroots donors, oftentimes senior citizens, getting ripped off. As a Commissioner, would you commit to cracking down on scam PACs that take advantage of seniors and other Americans?

   Answer: I am concerned about the issue of fraud in campaign finance, and in particular with how it may impact vulnerable populations like senior citizens. If confirmed, I plan to consult with my colleagues and subject matter experts at the FEC to learn more about this issue. I will also vigorously enforce the prohibitions on fraudulent misrepresentations in the Federal Election Campaign Act.

2. A few years after *Citizens United*, Justice Kennedy stated publicly in an appearance at Harvard Law School that the disclosure he had envisioned in *Citizens United* was, quote, "not working the way it should." Do you agree? If not, why; if yes, then what should the FEC do to bring that vision closer to reality?

   Answer: I am unfamiliar with the remarks in question or their context, and therefore I am unable to knowledgeably comment about whether I agree or disagree with the views Justice Kennedy intended to express. I do, however, support the mission of the Federal Election Commission to promote transparency and accountability in the campaign finance system, and if confirmed, I will diligently and fairly enforce the disclosure requirements that apply to campaign committees, independent expenditure-only political committees, and other organizations.

3. Do you believe that Americans have a right to know who is giving or spending significant amounts of money to influence U.S. elections?

   Answer: The Supreme Court reasoned in *Doe v. Reed* that not only does the government have an interest in preserving the integrity of the electoral system, but "[t]hat interest also extends more generally to promoting transparency and accountability in the electoral process." 561 U.S. 186, 198 (2010). To achieve that interest, Congress has set out disclosure requirements for certain election-related contributions. Under current law, candidate committees for federal office, as well as independent expenditure-only political committees, must publicly disclose contributions that meet relevant thresholds. Similarly, under current law, 501(c) organizations must disclose contributions that meet relevant thresholds when they engage in independent expenditures or receive contributions for the purpose of electioneering communications. This area of law is also in flux because of ongoing litigation. If confirmed, I will abide by federal court decisions affecting campaign-finance disclosure, and I will diligently and fairly enforce the disclosure provisions of the Federal Election Campaign Act.

   - If a donor gives $1,000 to a candidate, should their name be publicly disclosed?

     Answer: Please see my answer to the first part of this question. Under current law, candidate committees for federal office must publicly disclose contributions that meet relevant thresholds.

- If a donor gives $100,000 to a politically-active nonprofit group that is spending money on ads supporting a candidate, should their name be publicly disclosed?

  Answer: Please see my answer to the first part of this question. Under current law, 501(c) organizations must disclose contributions that meet relevant thresholds when they engage in independent expenditures or receive contributions for the purpose of electioneering communications.

4. Do you believe that a donor should be allowed to give unlimited amounts of money directly to a federal candidate?

   Answer: In the Federal Election Campaign Act, Congress set limits on the amount of money that eligible individuals may contribute to any single candidate committee for federal office—currently $2,800 per candidate committee per election. The Supreme Court of the United States has upheld those contribution limits against constitutional challenge because they are justified by the government's compelling interest in preventing corruption and the appearance of corruption in our electoral process. Any change to those contribution limits would require a statutory amendment to the FECA by Congress. If confirmed, I will administer and enforce the contribution limits provided for under the law diligently and fairly.

Senate Committee on Rules and Administration
Federal Election Commission Nomination Hearing
November 18, 2020
Questions for the Record
Mr. Allen Dickerson

Senator Klobuchar

1. 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 that "I don't mind the money coming in… Let it be transparent. Let them talk, but let there be total transparency."

   - Are Justice Scalia and President Trump wrong?

RESPONSE: Neither statement is wrong in context. But I do not believe that the constitutional balance always requires "people to stand up in public for their political acts" regardless of the act at issue or the potential risk to the actor.

Doe v. Reed concerned the disclosure of "public signed referendum petitions," not contributors to political organizations. *Doe v. Reed,* 561 U.S. 186, 219 (2010) (Scalia, J., concurring). In that context, as Justice Scalia noted, an individual signer is "acting as a legislator." *Id.* at 221. Because "the exercise of lawmaking power in the United States has traditionally been public," Justice Scalia joined the Court's eight-to-one decision upholding transparency in the state initiative and referendum process. *Id.* at 222.

The context of President Trump's statement is less clear, but he appears to have been referring to independent expenditure committees, sometimes called Super PACs. I support the transparency mission entrusted to the Federal Election Commission, which includes the robust disclosure of donors to those organizations and related rules concerning electioneering communications by independent groups.

   - If you're confirmed, what will you do as commissioners to increase transparency in our campaign finance system?

RESPONSE: If confirmed, I pledge to give serious and thoughtful considerations to proposals by my colleagues and the public to better fulfill the FEC's transparency mission.

I have engaged in such efforts in the past. In 2015, I joined with Robert F. Bauer, who previously served as President Obama's White House Counsel, and other prominent campaign finance experts from both parties, to petition the FEC. We sought improvements to the Commission's forms, which are outdated and, in many cases, misleading. We noted that these deficiencies lead

to misreporting of information to the public. Our goal was to update the forms, provide better information to the public, and help target the Commission's enforcement efforts toward those who intentionally violate the law instead of those who are baffled by it.

I have also been a longstanding and vocal supporter of pending efforts to adopt new regulations concerning online disclaimer obligations. And while I am not a technology expert, I have noticed that the FEC website is a mishmash of old and new features, and I have heard reports that the FEC's filing software is unreliable.

Acting on these longstanding petitions, and taking action to update the FEC's technology infrastructure, are good preliminary steps toward forging agreement among commissioners and creating a foundation for future improvements.

2. In the famous 1958 Supreme Court case *NAACP v. Alabama,* the Court ruled to protect the membership list of the Alabama NAACP, because its members faced persecution, violence, and death for their political activity. Some have used this case to argue that wealthy political donors should be able to stay secret.

    - Do you think this case forms a justifiable basis for keeping wealthy political donors secret?

RESPONSE: The appropriate balance between the government's interest in transparency and a citizen's right to privacy of association and belief depends on the context in which the government's interests are invoked.

NAACP v. Alabama protected the "ordinary rank-and-file members" of the NAACP's Alabama chapter. *NAACP v. Ala.*, 357 U.S. 449, 464 (1958). But that decision does not stand alone. As the NAACP Legal Defense and Education Fund recently noted, it was merely the first step in "a consistent line of Supreme Court precedent requiring the government to identify a compelling justification before it can force disclosure of organization membership and/or donor lists." *Amicus Curiae* Br. of NAACP Legal Defense and Edu. Fund at 2, *Ams. for Prosperity Found. v. Becerra*, 903 F.3d 1000, ECF No. 41, (9th Cir. Jan. 27, 2017).

For purposes of the Federal Election Campaign Act, the most prominent governing case is *Buckley v. Valeo,* which explicitly applied *NAACP* in the context of political contributions regulated by the FEC. There, the Court applied "the strict test" of *NAACP* as a threshold matter before upholding various disclosure provisions. 424 U.S. 1, 66 (1976) It noted, however, that exceptions from those general rules would be available where a "reasonable probability" of "threats harassment, or reprisals from either Government officials or private parties" could be shown. *Id.* at 74.

    - How do those wealthy donors compare to the civil rights activists who faced threats to their lives?

RESPONSE: There is no comparison. But all Americans are entitled to the protections of the Constitution.

3. Since *Citizens United*, we've seen an explosion in the number of dark money groups. You've opposed efforts by the IRS to clarify rules for nonprofit political activity and prevent abuses of the tax code. In 2014, you testified before the Oversight Committee that it was the role of the FEC to enforce campaign finance laws, and that the IRS should stay out of it. You've also filed comments urging the FEC to do less on disclosures, even suggesting that there is too much disclosure in our political system.

   - Do you believe that dark money groups and the lack of clarity for rules governing non-profit political activity undermine the integrity of our democracy, yes or no?

RESPONSE: Lack of clarity concerning the rules governing non-profit political activity is troubling and undermines our republican form of government. As the Supreme Court recognized in *Buckley v. Valeo*, "vague laws may not only trap the innocent by not providing fair warning or foster arbitrary and discriminatory application but also operate to inhibit protected expression by inducing citizens to steer far wider of the unlawful zone than if the boundaries of the forbidden areas were clearly marked." 424 U.S. at 41, n.48 (citations and quotation marks omitted, ellipses omitted).

   - Do you still believe the IRS lacks the authority or expertise to try to protect our democracy from dark money by requiring specific identifying information on certain tax filings, yes or no?

RESPONSE: I continue to believe that the IRS's principal duty and expertise is revenue collection. Unlike the FEC, it is governed by a single commissioner of the president's choice, has limited expertise in questions of political regulation, and has been used for partisan ends in the recent past, most famously during the Watergate era. The decision to structure the FEC as a bipartisan agency and to charge it with "exclusive jurisdiction" over the civil enforcement of the federal campaign finance laws reflects the mature judgment of Congress in the immediate aftermath of those scandals. 52 U.S.C. § 30106(b)(1).

The IRS has significant discretion to determine the information that must be provided on its forms, and it has been given clear authority to collect information from certain political organizations organized under section 527 of the Internal Revenue Code. I believe it should be guided by prudential considerations in exercising its discretion, including the considerations I give above. If confirmed, I will "consult and work together" with the IRS, as required by law, "to promulgate rules, regulations and forms which are mutually consistent." 52 U.S.C. § 30111(f).

   - What would you do as a Commissioner to improve federal transparency requirements for political spending?

RESPONSE: Please see my answer to question 1, above.

4. The IRS and Treasury Department used to require non-profit groups that engage in issue advocacy to identify, in confidential filings, the names of individual donors who make significant financial contributions. Under the Trump Administration, they rolled back that

requirement. One of the main ways we ensure that foreign money does not improperly influence our democracy is by tracking foreign donations to issue advocacy groups.

- For decades under both Democratic and Republican Administrations, the IRS and Treasury Department collected basic information about donors who contribute significant amounts to issue advocacy group. Did you support the Trump Administrations efforts to roll back that practice? If yes, why?

RESPONSE: I supported the decision of the IRS for the reasons it gave in its Notice of Proposed Rulemaking. The Service noted that it "does not need the names and addresses of substantial contributors to tax-exempt organizations not described in section 501(c)(3) to be reported annually" on relevant forms "in order to carry out the internal revenue laws." 84 Fed. Reg. 47447, 47451 (September 10, 2019). It expressed concern over the "risk of inadvertent disclosure of information that is not open to public inspection." *Id.* at 47452. And it recognized both that "Congress has not tasked the IRS with the enforcement of campaign finance laws," and that "the [Internal Revenue Code] generally prohibits the IRS from disclosing [donor information] to federal agencies for nontax investigations, including campaign finance matters, except in narrowly prescribed circumstances." *Id.*

- As a commissioner what system would you advocate for to ensure that foreign contributions aren't influencing elections?

RESPONSE: The Federal Election Campaign Act permits the FEC to investigate credible allegations of foreign contributions or expenditures made in U.S. elections, to seek conciliation with offenders after a finding of probable cause, and to bring civil enforcement actions for injunctive relief and a monetary penalty of up to three times the value of the unlawful spending. I am committed to using these tools to protect the integrity of the federal campaign finance system.

5. In *Bluman v. FEC* the Supreme Court affirmed a 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 on "issue advocacy," the same kind of activity that we saw by Russians in 2016. This summer, the Supreme Court ruled that foreign citizens outside U.S. territory do not possess rights under the U.S. Constitution. Meaning that strong regulations on foreign spending in elections are not subject to the First Amendment.

   - Should issue advocacy organizations be required to disclose their donors, yes or no?

RESPONSE: Russia's activities in 2016 included identity fraud, repeated violations of the Foreign Agents Registration Act, and other unambiguously unlawful behavior. I strongly support efforts by law enforcement and others, including the Intelligence Community, to address these violations.

In the context of federal campaign finance law, however, "issue advocacy" is not a defined term, and is not interchangeable with Russia's unlawful efforts. Rather, it is best described as the

"public discussion of issues of public importance," as distinct from "spending that is unambiguously related to the campaign of a particular federal candidate." *Buckley v. Valeo,* 424 U.S. at 11, n. 7 (citation and quotation marks omitted); *Id.* at 80.

Electioneering Communications are a subset of issue advocacy that is regulated by the FEC. But those communications are narrowly defined and were blessed by the courts because they are, in most cases, unambiguously campaign related insofar as they mention a candidate shortly before that candidate's election and are targeted to the relevant constituency.

Organizations that make electioneering communications must disclose certain donors, specifically those whose donations total $1,000 or more and were "made for the purpose of furthering electioneering communications." 11 C.F.R. § 104.20(c)(10).

- Should issue advocacy organizations be required to disclose their foreign donors, yes or no?

RESPONSE: Organizations making electioneering communications must disclose foreign contributions given to support those disbursements, although such a contribution would be unlawful and should not be accepted. In many cases, those organizations will also have significant reporting obligations under the Foreign Agents Registration Act. While FARA is administered by the Department of Justice, and not the FEC, I believe both agencies should cooperate to ensure that advocacy organizations disclose the information required by Congress.

- Do our current campaign disclosure forms allow regulators to determine if donors to a 501(c)(4) or SuperPACs are American citizens?

RESPONSE: I am not aware of specific difficulties encountered by the FEC's enforcement staff in reviewing the FEC's forms. To the extent the information conveyed is insufficient, I would consult with my colleagues and the expert civil servants at the Commission to evaluate the problem and the scope of the FEC's statutory discretion, and solicit public feedback concerning potential remedies.

6. One of our country's founding principles is that we, the American people, pick our government. Accordingly, we have laws that prevent foreign influence of elections. These laws protect our sovereignty and our national security. Please indicate whether you believe the following contributions are acceptable within a democracy that strives to prevent foreign influence in our government:

   - Should a foreign national working on behalf of the Russian government be able to buy issue ads that exacerbate racial tensions within our society, yes or no?

RESPONSE: No.

- Should a foreign national living abroad be able to buy issue ads that seek to undermine Americans' faith in their government, yes or no?

RESPONSE: No.

- Should a foreign national working on behalf of a foreign government be able to buy issue ads that seek to influence Americans' views of U.S. foreign policy, like NATO membership, yes or no?

RESPONSE: Congress has regulated the purchase of such ads by requiring comprehensive disclosure of foreign entanglements through the Foreign Agents Registration Act. While the FEC has no role in that process, I support the robust enforcement of those provisions.

Senator Warner

1. The integrity of our election system – ranging from adherence to our campaign finance rules, to the security of voting machines, to the proper administration of registration systems – is of utmost importance. Responsibility for this spans the Federal Election Commission, Election Assistance Commission, DHS, and – perhaps most importantly - state and local officials of both political parties.

   Our democracy depends on Americans being able to exercise their franchise – and to have faith that both voters, and those seeking their votes, will abide by the results of a free and fair election.

   For several years now, many of us have been leading bipartisan efforts to devote federal resources to election integrity – secure and reliable voting and tabulation machines, resources for post-election audits, assistance in securing registration systems. And yet at every step, our efforts were stymied by the White House and Leader McConnell. In December 2018, we even saw the leading piece of bipartisan legislation pulled at the very last minute from a scheduled markup by this Committee after intervention by the White House and Leader McConnell.

   Despite that, we saw state and county election administrators, and volunteer election workers, overcome the odds and administer an election that by every indication was conducted securely and properly.

   Everyone involved did their part: from volunteer poll workers bravely serving 14-hour shifts indoors, to state and local administrators to the voters themselves, who turned out in record numbers. Everyone except the President, who refuses to acknowledge what is plain to see, including to foreign election observers he invited and to frontline DOJ attorneys his AG dispatched across the country: this election was, despite the many challenges, conducted freely and fairly.

   - Will you acknowledge that from all indications and public evidence, the 2020 election was conducted freely and fairly?

RESPONSE: The Federal Election Commission's role is set by Congress and does not extend to election administration or the determination of election outcomes. As a private citizen, however, I have seen no evidence that the election was not conducted freely and fairly. And I join you in celebrating the thousands of Americans whose hard work is essential to the machinery of American self-government.

2. The influence of dark money in our political process has been an area of increasing concern, particularly with the ability of dark money groups – not to mention foreign actors – to exploit the opacity of large social media platforms to influence our politics.

   The attractiveness of social media manipulation to both dark money groups and foreign actors was catalogued quite well by leading researcher Young Mie Kim, whose efforts to track the use of Facebook by dark money groups in 2016 revealed that Russian actors were up there with conservative dark-money groups in running large numbers of divisive political ads behind fictitious groups.

   A hallmark of our campaign finance laws has been transparency. Even as they were invalidating a range of other campaign finance reforms, the Supreme Court emphasized the importance – and legality – of transparency obligations.

   - Do you believe it is important to update our federal election laws to bring greater transparency to the increasingly important world of online political communication?

RESPONSE: I have submitted comments supporting an FEC rulemaking to update and clarify online disclaimer rules on three separate occasions. I continue to believe that the FEC should adopt a regulation providing clear rules for online disclaimers, and I am committed to enforcing that regulation once issued.

- Why?

RESPONSE: The lack of clear guidance in this area has two unfortunate consequences. First, the lack of authoritative guidance leaves each individual organization to interpret the law for itself, which may lead to uneven and sometimes contradictory approaches to legal compliance. Second, because even well-meaning groups, including small organizations, must undertake their own analysis of the law's requirements, and cannot rely upon clear rules set by the Commission, they risk uneven, view-point based, or politically-motivated complaints brought by ideological opponents. Even where such complaints are meritless, they will chill future speech and distract from the Commission's work.

3. In 2016, both foreign actors and a wide range of dark money groups were able to exploit the opacity and reach of social media platforms to spread false and divisive information, and promote voter suppression campaigns, in large part because of a series of FEC opinions granted in the decade prior.

While the FEC in its 2006 rulemaking concluded that disclaimer requirements could apply to paid online ads, large swathes of internet advertisements had in effect been exempted from these requirements through these FEC advisory opinions sought by Google and Facebook.

In addition to promoting greater accountability by informing Americans of the source behind political messages, disclaimers for online advertisements are even more important given indications that users often have difficulty distinguishing between commercial and so-called 'organic' content. This has been made all the more difficult because large internet platforms like Google and Facebook have actively worked to make ad content less distinguishable from organic content – both to evade Ad Blockers and to increase the likelihood that users engage with ad content, mistaking it for organic content.

These issues still appear before the Commission, with commercial interests of large internet platforms directly implicated by the FEC's decision-making.

- Are Google and Facebook financial sponsors of the Institute for Free Speech?

RESPONSE: The Institute for Free Speech is organized under Section 501(c)(3) of the Internal Revenue Code. It complies with all applicable laws and its IRS Form 990 is publicly available. Pursuant to Federal law, however, and consistent with near-universal practice, the Institute does not publicly disclose its financial supporters.

4. With each election, we've increasingly seen efforts to promote political messages through a wider range of social media channels – not just in the context of ads, but increasingly through highly professional efforts to pump out organic content that users will think is genuine. For years we've seen growing indications of political expenditures being spent on coordinated social media efforts, often with only vague references to those efforts in expenditure disclosures, but in 2020 in particular we saw this trend explode. For instance, one primary candidate even paid dozens of influencers to push out organic content promoting their candidacy.[1] We see a similar phenomenon going on with PACs – on both sides of the aisle.

   The goal, in all cases, is to reach Americans through trusted channels, while avoiding their ingrained skepticism for explicit advertisements. The FTC has a name for this in the broader marketing context – it's called 'online influencer marketing', and too often it's done without any disclosure of the financial sponsorship behind the content.

   - Would you not agree that campaigns should make granular disclosures of these expenditures that specifically list the influencers being paid to promote sponsored political communications?

[1] https://www.reuters.com/article/us-usa-election-socialmedia-sponsored/from-facebook-to-tiktok-u-s-political-influencers-are-paid-for-posts-idUSKBN27E1T9; https://fr.reuters.com/article/us-usa-election-influencers-idUSKBN2042M2; https://morningconsult.com/2019/12/19/experts-say-influencers-could-help-campaigns-sidestep-social-media-crackdown-on-political-ads/

RESPONSE: This question is likely to be the subject of complaints filed with the FEC. It would be improper for a nominee to opine upon claims likely to appear before the Commission in present or impending enforcement matters. Further comment would risk denying both complainants and respondents the right to a fair and impartial hearing before the Commission.

- Would you not agree that those engaged in posting sponsored organic content – which, as the FTC has recognized, is simply advertising by a different name – are required to include political disclaimers accompanying any sponsored content?

RESPONSE: This question is likely to be the subject of complaints filed with the FEC. It would be improper for a nominee to opine upon claims likely to appear before the Commission in present or impending enforcement matters. Further comment would risk denying both complainants and respondents the right to a fair and impartial hearing before the Commission.

- To the extent any gaps exist in compliance with existing rules, will you work to update FEC guidelines to make clear that sponsored content must include disclaimer language?

RESPONSE: To the extent current FEC guidelines are unclear with respect to disclosure or disclaimer requirements for sponsored content, I will work with my colleagues, subject-matter experts, and the regulated community to address those gaps and provide meaningful guidance to entities regulated by the Commission.

5. In addition to my role on the Rules Committee, I am Vice Chairman of the Senate Select Committee on Intelligence. I'm incredibly proud of our 5-part investigation into Russian's Active Measures Campaign against the United States 2016 General Elections.

   As a portion of their efforts, our bipartisan investigation revealed that the Russian Internet Research Agency – the vector for much of the foreign influence effort – purchased approximately $100,000 of political advertisements, as part of a wider social media manipulation campaign.

   Russia's playbook was simple, but formidable. It worked like this:
   1. Influence operators set up thousands of fake accounts, groups, and pages across a wide array of platforms.
   2. These fake accounts populate content on Facebook, Instagram, Twitter, YouTube, Reddit, LinkedIn, and others.
   3. Each of these fake accounts spends months developing networks of real people to follow and like their content, boosted by tools like paid ads and automated bots. Most of their real-life followers have no idea they are caught up in this web.
   4. These networks are later utilized to push an array of disinformation, including stolen emails, state-led propaganda (like RT and Sputnik), fake news, and divisive content.

   Though their operation focused more strongly on organic content, these ads amplified their efforts, drove unwitting Americans to fictitious Facebook Groups run by the IRA, and aimed to stoke racial resentment and influence voter turnout in our electorate. I'm concerned that in your previous testimony to Congress you sought to downplay the impact of these purchases and the efficacy of legislation to address this pressing matter.

You seem to characterize this is some big moral panic – that the concerted, sustained effort to interfere in our elections, sow racial division, and even incite violence is vastly overblown. But the consequences of this are very real, and we see this playbook already used by a wide array of bad actors – foreign and domestic - intent on exploiting the opacity and reach of social media platforms to undermine our democracy, suppress participation by vulnerable communities, and exacerbate, rather than heal, political division.

- What will you do as a Commissioner to address attempts by China, Russian, Iran, and other foreign adversaries to interfere in our elections?

RESPONSE: I am committed to enforcement of the Federal Election Campaign Act's prohibitions on foreign contributions and expenditures and will make full use of the tools provided to the FEC by Congress.

- Under what conditions should the FEC open an investigation into potential foreign money? If the FEC receives evidence that a dark money group received $1 million from China, and spent $1 million on independent expenditures, is that enough for the FEC to find "reason to believe" the law has been violated and open an investigation?

RESPONSE: The FEC should find reason to believe a violation has occurred, and open an investigation, where credible allegations exist of specific facts that, if true, would violate the ban on foreign contributions or expenditures. The specifics of such a finding will necessarily depend on the facts alleged in the complaint. Further comment would be improper as your questions raise issues that are likely to come before the Commission in present or impending enforcement matters.

The Committee specifically emphasized – on a bipartisan basis – the importance of taking measures that "ensure Americans know the sources of online political advertisements." Yet in comments you filed with the FEC, you urged the Commission to adopt an exceptionally narrow rule for online political ad disclaimers—one that would allow advertisers to decide whether their digital ads needed to include disclaimers.

- What steps *will* you commit to taking as a Commissioner to ensure the FEC finally acts on its long-pending rulemaking and clarifies the disclosure requirements that apply to digital political ads?

RESPONSE: I have long supported the adoption of a new regulation governing disclaimer requirements for online political ads and have specifically and publicly supported the FEC's long-pending rulemaking. I am committed to working with my colleagues to find common ground allowing the Commission to conclude that process and issue a final rule.

As a commissioner, however, my discretion would be limited by the Federal Election Campaign Act. As the Intelligence Committee's report notes, in the very sentence you cite, additional authority would need to be provided by Congress. Report of the Select Committee on Intelligence, United States Senate, On Russian Active Measures Campaigns and Interference in

the 2016 U.S. Election, Vol. 2: Russia's Use of Social Media at 80 ("[T]he Committee recommends that Congress examine legislative approaches to ensuring Americans know the sources of online political advertisements."). If new legislation is enacted, and if Congress chooses to entrust the FEC with an expanded role, I will faithfully carry out my duties under those new provisions.

6. I believe we have ample evidence that self-regulation on disclaimers and other issues within the FEC's jurisdiction is simply inadequate. I'd note that your colleague, David Keating -- President of the Institute for Free Speech -- was taken aback at the lack of disclaimers on paid political content on Facebook in direct violation of FEC regulations. He told ProPublica there was "no excuse" for only a small minority of advertisers properly issuing disclosures on this content.

   But, this is only a single example of the utter failure of advertisers and platforms to self-regulate. Despite *some* efforts being taken by major platforms like Facebook, Google and Twitter, we again and again have seen them fail to identify political content or properly catalogue who is purchasing these ads.

   This creates an ecosystem where not only does misinformation and disinformation frequently spread through paid content, but identifying the source is nearly impossible for the average citizen.

   - The efforts to self-regulate by advertisers and platforms appear to result in a shockingly low compliance-rate with FEC regulations; given that fact, isn't it evident that the FEC needs to pursue more robust oversight?

RESPONSE: As you note, FEC regulations require disclaimers for public communications placed for a fee on social media sites. This is not a question of self-regulation; such disclaimers are required by law. To the extent these requirements are being disregarded, I look forward to working with my colleagues, experts in the relevant fields, and the platforms themselves to fashion an appropriate oversight regime.

7. During the 2016 election, in addition to their social media manipulation and online influence efforts, the Russian intelligence services engaged in hack and dump operations. And actors working on behalf of a Russian oligarch, one with strong connections to President Putin, communicated with Donald Trump Jr to set up a meeting where they would provide "the Trump campaign with some official documents and information that would incriminate Hillary and her dealings with Russia and would be very useful to your father."

   In response to this email, Donald Trump Jr replied, "…if it's what you say I love it especially in the summer," and proceeded to set up a meeting between most of the senior officials of the Trump Campaign and the emissaries of the Russians.

   - Under US law, the Russian actors would clearly not be allowed to donate to a campaign. And if they had reached out to a campaign official to offer funding, the campaign would be obligated to call the authorities and report a potential crime. Do you believe that there

should be the same responsibility to report it when representatives of a foreign government offer a campaign official or surrogate dirt on their opponent?

RESPONSE: Multiple groups have reported that a complaint concerning this question is currently pending before the Commission. It would be improper for a nominee to opine upon claims likely to appear before the Commission in present or impending enforcement matters. Further comment would risk denying both complainants and respondents the right to a fair and impartial hearing before the Commission.

Senator Cortez Masto

1. Scam PACs are a bipartisan problem, and they result in grassroots donors, oftentimes senior citizens, getting ripped off. As a Commissioner, would you commit to cracking down on scam PACs that take advantage of seniors and other Americans?

RESPONSE: Contributing to political causes is an important exercise of free speech and association and part of what the Supreme Court has called "the right to participate in electing our political leaders." *McCutcheon v. Fed. Election Comm'n*, 572 U.S. 185, 191 (2014) (Roberts, C.J., controlling op.). Americans, and particularly small-dollar grassroots donors, should be able to exercise that right without being preyed upon by unscrupulous charlatans.

If confirmed, my role would be limited to the tools and authorities provided by the Federal Election Campaign Act. While FECA allows the FEC to demand transparency from political committees, it does not define Scam PACs. And while federal law gives the FEC jurisdiction over certain types of fraud in connection with candidate and party fundraising, 52 U.S.C. § 30124, I am unaware of statutory authority permitting the FEC to police the ways in which other organizations raise and spend funds. In fact, the FEC's 2018 report to Congress specifically requested legislation in this area.

Political committees that engage in fraud, however, are subject to the same laws as any other organization. Prosecutors can, and do, bring criminal charges against PAC leaders that violate those laws, misrepresent their activities, and take advantage of seniors and other Americans. I support those efforts and believe the FEC should cooperate with law enforcement on these matters within the boundaries set by Congress.

2. A few years after *Citizens United*, Justice Kennedy stated publicly in an appearance at Harvard Law School that the disclosure he had envisioned in *Citizens United* was, quote, "not working the way it should." Do you agree? If not, why; if yes, then what should the FEC do to bring that vision closer to reality?

RESPONSE: I do not know the full context of Justice Kennedy's remark. *Citizens United* upheld the disclosure rules imposed by Congress and I support their enforcement. To the extent Justice Kennedy meant to imply that additional disclosure requirements should be adopted, that is a matter for Congress to take up in future legislation and for the courts to review in a future case.

3. Do you believe that Americans have a right to know who is giving or spending significant amounts of money to influence U.S. elections?

   - If a donor gives $1,000 to a candidate, should their name be publicly disclosed?

RESPONSE: Yes. *Buckley v. Valeo* upheld public disclosure of contributors giving $100, in aggregate, to a federal candidate. Even taking account of inflation since 1976, that holding would permit disclosure of a $1,000 contribution made today.

   - If a donor gives $100,000 to a politically-active nonprofit group that is spending money on ads supporting a candidate, should their name be publicly disclosed?

RESPONSE: The D.C. Circuit recently addressed this question. In *CREW v. FEC*, the court invalidated a longstanding FEC regulation and held that an organization spending more than $250 on independent expenditures must "disclose the name of any contributor whose contributions during the relevant reporting period total $200, along with the date and amount of each contribution." *Citizens for Responsibility & Ethics in Washington v. Fed. Election Comm'n*, 971 F.3d 340, 354 (D.C. Cir. 2020). I am committed to enforcing the statute as interpreted by that and any other final judicial ruling.

4. Do you believe that a donor should be allowed to give unlimited amounts of money directly to a federal candidate?

RESPONSE: No. The Federal Election Campaign Act sets statutory limits on the amounts that may be contributed to federal candidates, and those limits have been consistently upheld by the courts and enforced by bipartisan votes of the FEC.

5. In 2015, you urged the FEC not to adopt more stringent coordination standards, writing that, "no pressing need has been shown for the Commission to go beyond the extensive coordination rules that already exist." Do you still believe that the FEC's coordination rules are sufficient?

RESPONSE: As I noted at the time, the FEC has adopted extensive regulations prohibiting coordination between candidates and independent groups. *See* 11 C.F.R. § 109.21. The difficulty lies not in the lack of regulatory authority, but in disagreements over the application of those rules to specific facts. While I am open to learning new information that would change my view, I continue to believe that the published regulations are adequate, and that the FEC should instead use its advisory opinion process to provide granular guidance concerning specific planned activities.

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