

FIXING THE FEDERAL ELECTION COMMISSION

H.R. 2034: Restoring Integrity to America's Elections Act

The Federal Election Commission (FEC) is the independent agency charged with enforcing federal campaign finance laws. Created in 1971, the FEC is comprised of six commissioners. No more than three commissioners may be from the same party (there are currently three Republicans, two Democrats and one independent who caucuses with the Democrats).

A dysfunctional agency that traffics in ineffective enforcement is a waste of taxpayer dollars. It may even play a role in encouraging foreign money to flow into U.S. elections.

Problems with the FEC

Any enforcement action taken by the Commission requires at least four votes.¹ However, because the Commission is made up of an even number of Republicans and Democrats, it now deadlocks 3-3 on most decisions, resulting in no enforcement. This escalating number of FEC deadlocks has rendered the agency unable to effectively enforce election laws.

- ▶ **Outside group coordination.** In early 2015, a dispute over simple donation disclosure and illegal coordination between candidates and affiliated super PACs resulted in an even split.²
- ▶ **Contractor loopholes.** Later that year, the FEC voted 3-3 in a case relating to the 'Chevron' loophole, which allows federal contractors to make campaign contributions to candidates.³
- ▶ **Outdated rules.** Correct the Record, a pro-Hillary Clinton super PAC with paid staffers, has successfully skirted FEC regulations by exploiting a 2006 decision exempting certain unpaid Internet activity (i.e., blogging) from non-coordination laws.⁴
- ▶ **Coercion.** Just recently, the FEC deadlocked over a complaint that during the 2012 presidential election, a company coerced its employees to attend political rallies and contribute to campaigns.⁵
- ▶ **Scam PACs.** A plethora of scam PACs, in which large sums of money are collected from the unsuspecting public and then never delivered to the advertised cause, have remained largely undetected by the FEC.⁶
- ▶ **Transparency.** The FEC divided evenly in a case involving a rapper who had illegally given money to a super PAC through his LLC without disclosing himself as the source of funding.⁷

“In the vacuum created by the FEC’s breakdown, candidates, committees and outside groups of both parties and at all levels have engaged with impunity in what appear to be violations of law, using soft money for federal campaigns, creating and coordinating with allegedly ‘independent’ groups and ignoring disclosure requirements. Congress gave the FEC power to enforce the campaign finance laws, and did not expect it to become gridlocked and unable to act.”

Former FEC Chair Trevor Potter, appointed by George H.W. Bush.⁸

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The federal campaign finance system needs an effective watchdog that responds in real-time without gridlock and enforces the laws on the books. As our elections continue to grow in cost and complexity, fixing this broken law enforcement agency should be a priority for Congress and the president.

Nearly 80 percent of Americans are dissatisfied with the way the federal government is working.¹⁰ Americans' distrust of government is exacerbated when the agency charged with enforcing the law no longer functions and is essentially AWOL.

The **Restoring Integrity to America's Elections Act (H.R. 2034)**, sponsored by Reps. Derek Kilmer (D-WA), Jim Renacci (R-OH), Mark Amodei (R-NV), Lou Barletta (R-PA), Ken Buck (R-CO), Larry Bucshon (R-IN), Walter Jones (R-NC), Stephanie Murphy (D-FL), Scott Peters (D-CA), Jared Polis (D-CO), Kathleen Rice (D-NY) and John Sarbanes (D-MD), is designed to restructure the FEC and ensure it can effectively enforce the law.

"Lately, the commission designed to be the people's advocate in our elections has seen more gridlock than Congress."

Rep. Derek Kilmer (D-WA)¹¹

H.R. 2034 would:

- ▶ **Change the number of commissioners.** By reducing the number of commissioners from six to five and permitting no more than two members to be affiliated with the same party, the FEC would become a more effective enforcer of ethics and election laws. The Commission would have the authority to initiate, defend and appeal civil actions, conduct investigations, issue advisory opinions and change or amend regulations.
- ▶ **Create a blue ribbon panel to recommend commissioners.** To help ensure the president nominates a highly qualified appointee, the bill establishes a nonpartisan Blue Ribbon Advisory Panel to publicly recommend potential nominees to the FEC for the president's consideration.
- ▶ **Strengthen the FEC Chair.** The bill also directs the president to appoint a chair, subject to confirmation by the Senate. The chair would have administrative powers and the power to order written reports, administer oaths and handle witnesses and evidence.
- ▶ **Eliminate never-ending holdovers.** Currently, FEC commissioners can serve long after their term has expired while they wait for a replacement commissioner. The bill directs that each commissioner serve a six-year term and may not remain more than one year past the end of that term.
- ▶ **Improve enforcement.** The bill clarifies that the FEC may be represented by agency attorneys before the Supreme Court and allows those who respond to requests from the FEC to appear at hearings.⁹

¹ Campaign Legal Center, <http://bit.ly/1WRMMEI>

² The Hill, <http://bit.ly/1XukVd0>

³ Public Citizen, <http://bit.ly/28Lbr1M>

⁴ The Washington Post, <http://wapo.st/1UTg4Q1>

⁵ Sunlight Foundation, <http://bit.ly/1Ue4XPc>

⁶ Center for Responsive Politics, <http://bit.ly/1ZWYL24>

⁷ Center for Public Integrity, <http://bit.ly/21r9fqK>

⁸ Campaign Legal Center,

<http://bit.ly/1WRMMEI>

⁹ Congress.gov, <http://1.usa.gov/1Yyk4bo>

¹⁰ Associated Press, <http://apne.ws/1rtEFR8>

¹¹ The Hill, <http://bit.ly/1YykSgr>