



Restoring Integrity to America's Elections

The For The People Act's FEC Reform Provisions

The Federal Election Commission ("FEC") is the sole government agency exclusively entrusted with enforcing and administering the laws that govern money in our campaign system. But it has been failing at that mission—and the failure of the FEC to enforce campaign finance laws has resulted in an explosion in secret spending and our politics increasingly rigged in favor of wealthy special interests. The problems in our campaign finance system are often attributed to Supreme Court decisions like Citizens United, but the FEC is also to blame for failing to enforce the laws that remain on the books.

The For The People Act reforms the FEC to make it a functional agency and an effective watchdog. The FEC reform provisions are a crucial component of the Act: other provisions strengthen federal law to increase transparency and protect the voices of average voters, but unless the FEC is also reformed, there is a risk that those provisions will not be diligently enforced.

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The Challenge

The FEC is led by six Commissioners nominated by the President, no more than three of whom can be from the same political party. The political custom is that nominees are recommended by party leaders in Congress. To pursue investigations or take other major actions, at least four Commissioners need to agree, which in practice means that most substantive decisions require bipartisan agreement.

Over approximately the past decade, Senate Majority Leader Mitch McConnell and other political elites have put forward FEC nominees who are ideologically opposed to campaign finance laws and their enforcement. The problem is not that the Republican Commissioners only vote to enforce the law against Democrats, and vice-versa; it is that McConnell's FEC Commissioners largely refuse to enforce the law against anybody, Democrat or Republican.

Because the FEC needs the agreement of at least four Commissioners to enforce the law, just three Commissioners can paralyze the agency. Over approximately the last decade, McConnell's three commissioners have used this power to prevent the agency from taking action on important issues like the disclosure of secret money, super PAC coordination, transparency for digital political advertising, and more. The FEC's failure to enforce the law has made political candidates from both parties more dependent on wealthy special interests, and our elected officials more responsive to those interests than they are to average Americans.

When the FEC receives a complaint or other evidence suggesting violations of campaign finance law, the FEC's nonpartisan attorneys first review the evidence and recommend whether there is "reason to believe" a violation has occurred, which is the threshold to open a formal investigation. Currently, just three out of six Commissioners can—and often do—override that recommendation and thwart further inquiry into an alleged violation.

The Solution

HR1's FEC reform provisions (the "Restoring Integrity to America's Elections Act") would restructure the agency so that it can function as an effective watchdog.

The For the People Act reforms the Commissioner selection process to increase the likelihood that FEC Commissioners will be committed to the mission of the agency. While Commissioner nominations are ultimately up to the President, HR1 creates a diverse nonpartisan "blue-ribbon" advisory panel to identify and recommend qualified nominees. This would limit the ability of insiders like McConnell to stack the FEC with ideologues. The panel's recommendations would be made public when the President submits his nominee to the Senate, placing pressure on the President to explain deviations from those recommendations.

The For the People Act changes the number of FEC Commissioners from six to five to avoid deadlocks, and requires that no more than two Commissioners can be members of the same political party. This means agency actions will require at least one vote from either an independent or a member of a different party. Changing the number of FEC Commissioners to an odd number, and allowing the president to nominate a chair with broad powers to manage the agency, would bring the FEC's structure more closely in line with other independent regulatory agencies, like the Federal Communications Commission (FCC). Doing so would also improve the transparency, public understanding, and accountability of the agency.

The For the People Act strengthens the enforcement process to prevent Commissioners from shutting down investigations at an early stage. HR1 would change the process to instead require a majority vote to overrule the FEC attorneys' recommendation. So if FEC attorneys recommend "reason to believe" a violation has occurred, and the recommendation is not overruled, an investigation will take place. Similarly, after an investigation, FEC attorneys make a recommendation as to whether to find "probable cause" that a violation occurred; the Commissioners have 30 days to approve or disapprove the recommendation by majority vote. The For the People Act would still retain the due process protections currently in place.

Congress should pass the For the People Act to strengthen the FEC that will enforce campaign finance law and protect the voices of voters in our democracy.

