

Statement of David M. Mason
Nominee, Federal Election Commission
Before the
Senate Committee on Rules and Administration

June 13, 2007

Chairman Feinstein, Senator Bennett and members of the Committee, I am greatly honored to appear before you in connection with my nomination to be a Member of the Federal Election Commission.

While the Federal Election Commission is among the smallest of the government's regulatory agencies, its function is among the most important. As I noted when first nominated:

The task of self-government is central to the foundation and continuing existence of the United States. In most instances, Americans govern themselves through elections. Thus, conducting and regulating elections is the most fundamental and necessary task for the government of a free people. The legitimacy of every other action of the government relies upon the basis of free, fair and honest elections. The Federal Election Commission plays a critical role in this process by regulating the financing of federal elections in order to prevent corruption or the appearance of corruption. Financial corruption in fact, and its appearance in faith, undermines and ultimately can destroy self-government. Its prevention and punishment is as important as anything else the government does. Thus, I am honored, and even humbled, by the trust represented by my nomination.

I am equally honored by this nomination to a second term on the Commission and want to express my gratitude to the President, and to the several Senators who supported my re-nomination, for their high trust and confidence.

Nine years ago when I first appeared before this Committee, I highlighted two areas of concern which I hoped to address as a member of the Commission: the pace of agency action, particularly in the enforcement area, and the frequency with which agency decisions were overturned by federal courts.

While no single Member of a multi-Member agency can claim sole credit for the agency's actions, I can report that dramatic progress has been made in both of these areas over the past nine years, thanks to initiatives taken with my colleagues and ably implemented by our staff.

First, the Commission eliminated the "enforcement backlog" that existed in 1998 and it has not been a factor for several years. This was a significant problem because it

required many years to resolve cases, leading to frustration on the part of complainants, respondents and other interested parties – justice delayed is justice denied. Moreover, the backlog required the Commission to dump stale cases without any investigation or determination on the merits.

The Commission improved enforcement time lines without the addition of significant new resources: by reorganizing, streamlining and developing new techniques and programs to address enforcement matters. The Administrative Fines Program, which Congress authorized, and the Alternative Dispute Resolution Program, which Congress supported, were two important elements of this success. In a series of cases the Commission developed a clear standard for case dismissals (an issue I raised in 1998 and which remains one of continuing importance to me), articulating the standards and procedures for determining when complaints were without merit. Perhaps most important, however, was the Commission's own reordering of its priorities and enforcement program, focusing on core violations of the Federal Election Campaign Act (FECA) – “meat and potatoes” cases, as I put it in 1998. The Commission also, under the able management of former General Counsel Larry Norton, adopted a number of measures to delegate authority and streamline enforcement procedures. This combination of new methods, better enforcement focus and streamlined procedures has resulted in roughly cutting in half the average time it takes for the Commission to complete action on an enforcement matter.

The increase in speed has not been accomplished by taking a lax enforcement stance. Indeed, as figures provided to the Committee show, the amount and size of fines secured by the Commission has been increasing fairly steadily. This is a result of a proper focus on core violations rather than pursuing novel legal theories.

This improvement has been dramatic, and I think we can do even better. Commissioners are united in dedication to this goal, and our new General Counsel, Tommie Duncan, is already focused and working on further improving the timeliness of our enforcement efforts.

The second concern I raised in 1998 was the frequency with which agency regulations and enforcement decisions were overturned by federal courts. On the enforcement side, I can again report success. The Commission's findings of violations have been vindicated in every offensive enforcement proceeding filed since I joined the Commission. It has been nearly as successful in defending its enforcement decisions pursuant to Section 437g(a)(8) of the FECA, with no findings that our actions were contrary to law. The Commission sought a voluntary remand in only one matter which was affected by a significant Supreme Court ruling during the pendency of the case.

The Commission has continued to be challenged in court as to the validity of a number of its regulations, and I suspect that a complete remedy in this area may be impossible. I said in 1998:

In the areas of coordination and issue advocacy in particular, there are already a number of judicial actions pending which may provide the Commission with some more definitive guidance even within the next year.

Yet today issue advocacy (*Wisconsin Right to Life*) and coordination (*Shays et. al. v. FEC*) remain disputed issues in the courts and were, of course, the subject of major legislative changes in the Bipartisan Campaign Reform Act.

What I have endeavored to do (and the Commission collectively) is to make our own regulatory and policy decisions in these areas clear, easy to understand and straightforward to administer. The Commission has a special obligation to tread carefully in areas so directly impinging on First Amendment rights, so vigorously disputed by interest groups of all stripes, and so subject to shifting judicial interpretations. The Commission's end goal: to apply the FECA fairly while protecting the individual constitutional rights of citizens in a free society. The welcome preservation of robust political debate from all perspectives is integral to the functioning of our Republic.

Recognizing this importance, the Commission works to adapt to judicial decisions rather than waging protracted battles re-litigating the same issues. I do have hope that as we get appropriate judicial guidance we will be able to provide greater stability and certainty in these areas.

Service on the Commission has enriched my perspective in one important respect: the critical role of equity in this area of the law. Of course, I have endeavored to be fair to everyone who comes before the Commission. But I know that most, perhaps nearly all, persons and groups who have been subject to Commission enforcement action think we have not been fair. Yet, the Commission's structure, its statutory procedures, even substantive provisions of the statute, are designed to ensure fairness. What is perhaps not appreciated by anyone who has not served on or worked at the Commission is the degree to which Commissioners take this obligation of equity to heart. We spend most of our time day in and day out attempting to ensure that our enforcement decisions are fair, that our regulations are fair, and that our administrative processes are fair. I will count it as a success if my colleagues and close observers conclude that I have been fair. And I hope I can assure this Committee, and by extension the Congress and the American people, of our strong commitment in this regard.

Finally, I want to renew my personal commitment to enforcing federal campaign finance laws as passed by Congress and consistent with the Constitution. The practical enforcement of the law in this constitutionally sensitive area is not always simple or straightforward. There are significant and reasonable arguments about how the supreme law of the land interacts with the particular statutes the FEC enforces. Recognizing the foundational importance of protecting the constitutional safeguards which support the free discussion of political issues is at least the beginning of upholding the task of self-government.

DAVID M. MASON

David M. Mason was nominated to the Federal Election Commission by President William Clinton on March 4, 1998 and confirmed by the U.S. Senate on July 30, 1998. He was nominated for a second term by President George W. Bush on December 19, 2005. He currently is Vice Chairman and a member of the Commission's Finance Committee.

Prior to his appointment, Mr. Mason was Senior Fellow in Congressional Studies at the Heritage Foundation. He joined Heritage in 1990 and served at various times as Director of Executive Branch Liaison, Director of the Foundation's U.S. Congress Assessment Project, and Vice President, Government Relations.

Commissioner Mason served as Deputy Assistant Secretary of Defense, where he managed the Pentagon's relations with the U.S. House of Representatives. One of his major accomplishments there was guiding base closing legislation to a successful conclusion.

He has served on Capitol Hill, as a Legislative Assistant to Senator John Warner, Legislative Director to Representative Tom Bliley, and Staff Director to then-House Republican Whip Trent Lott. He was active as a staffer and volunteer in numerous Congressional, Senate, Gubernatorial and Presidential campaigns, and was himself the Republican nominee for the Virginia House of Delegates in the 48th District in 1982.

Commissioner Mason attended Lynchburg College in Virginia and graduated cum laude from Claremont McKenna College in California. He is active in community affairs in northern Virginia and in the home education movement nationally. He and his wife reside in Lovettsville, Virginia with their ten children.