

Prepared Statement of Donald F. McGahn II  
Before the Senate Committee on Rules and Administration

Chairman Feinstein, Ranking Member Bennett, and members of the Committee, thank you for inviting me to appear here today.

It is a great honor to be nominated to the Federal Election Commission, and a great responsibility to serve as a Commissioner. I appreciate the confidence President Bush has shown in me by this nomination.

Since 1974, the Federal Election Commission has served a critical role in our democracy. It is the primary repository of information regarding the financing of federal elections, and has served as a national clearinghouse for information available to the general public. Ultimately, the Commission's core constituency is the general public.

Over the years since its inception, the Commission has consistently become more and more independent. Its structure has changed over the years, due in part to Federal courts taking issue with earlier incarnations of the Commission. Regardless, the Commission is the primary mechanism for the enforcement of the Act. The Commission's enforcement of the law must be impartial and non-partisan. After all, the composition and procedures of the Commission are designed to preclude one political party from having a controlling majority over its decisions. Despite being equally divided, it is remarkably rare for the Commission to deadlock when voting on matters before it. I view both the Commission's increased independence and its ability to act in a non-partisan way as healthy developments.

In recent years, there have been many other positive developments. To the extent that success can be measured in terms of dollars and cents, the Commission has exceeded expectations – there has been a significant increase in the amount of fines and penalties collected. Similarly, the Commission has made great strides with respect to how information is presented to the public. It was not long ago that obtaining information about the Commission and its activities required a trip to its public records room. Now, the Commission places a wealth of information on its website, and has endeavored to make it user-friendly, specifically by making it easier to search for particular information. Procedurally, the Commission's pilot program regarding the ability to actually appear before the Commission in certain enforcement matters has been met with positive commentary. The same is true of the Commission's modification of its advisory opinion process, which allows for a quicker response to certain time-sensitive requests.

Despite these developments, much work remains. The oral hearing procedure is merely a pilot program. Although some advisory opinion requests can now be expedited, a significant number of requests take a significant period of time to resolve. Such delay could serve to discourage otherwise well-intentioned political actors to forego requesting an advisory opinion. The Commission's record of defending its actions in court has been spotty, at best, particularly with respect to the defense of regulations promulgated

pursuant to the Bipartisan Campaign Reform Act. To be fair, this is still a relatively new statute, and the Commission has been challenged in court by some saying it went too far, and others saying it did not go far enough. Regardless, court decisions will continue to play a significant role in the Commission's implementation and enforcement of the statute.

The public interest is best served when the law is made to work better by way of clear rules and standards, formulated in a way that survives judicial review. Ultimately, my hope is that my past experience and professional background will be an asset to the Commission in the execution of its mission.

Thank you again for the opportunity to appear before you. I am happy to answer any questions.