

U.S. Senator Dianne Feinstein
Senate Rules and Administration Committee Hearing

Nominations to the Federal Election Commission
May 21, 2008

Good afternoon. Since the end of the December, the Federal Elections Commission has had only two commissioners, well short of the quorum needed for the commission to do business.

During this time – in the middle of a presidential election year – the FEC has been unable to carry out some very important functions. But now, finally, we have an opportunity to move forward and restore at least a working quorum to the FEC.

On May 6, 2008, the President nominated the following three individuals:

- Cynthia L. Bauerly, of Minnesota, for appointment to a term expiring April 30, 2011, for the seat held by Robert D. Lenhard;
- Caroline C. Hunter, of Florida, for appointment to a term expiring April 30, 2013, for the seat held by Michael E. Toner; and
- Donald F. McGahn, of the District of Columbia, for appointment to a term expiring April 30, 2009, for the seat held by David M. Mason.

I welcome all three of you to this hearing today – along with your families.

On June 13, 2007, the Rules Committee held a confirmation hearing to consider four FEC nominations – Robert D. Lenhard, Hans von Spakovsky, Steven T. Walther, and David M. Mason.

All four nominees were reported out of Committee en bloc without recommendation.

The Senate has taken no further action on these nominations and now, both Mr. Lenhard and Mr. von Spakovsky have withdrawn their nominations.

Only Mr. Walther remains on the Senate Executive Calendar.

If all the nominees are confirmed by the Senate, the FEC will have 5 members, and will be back in business during this critical election year – and not a moment too soon.

We currently are confronting a crisis over the functionality of the Commission.

This is the first time in the Commission's history that only *two Members* are serving, albeit in "hold-over" capacities, as Chair and Vice Chair with four vacancies.

Under the *Federal Election Campaign Act*, the Commission needs four affirmative votes to take action—whether to pursue litigation, audits, regulatory changes, or administrative changes to the agency.

Because the Commission is now hamstrung without the majority votes, it cannot protect and preserve the integrity of our campaign and public financing system for federal elections in 2008.

The Commission is barred from acting on the following core functions:

- Issuing Advisory Opinions
- Conducting Audits (both mandatory and discretionary)
- Pursuing Enforcement Matters (most egregious)
- Engaging in Litigation (defensive and offensive)

- Conducting Investigations
- Holding Public Hearings
- Engaging in Rulemakings, particularly those related to the new Ethics law, “the Honest Leadership and Open Government Act,” such as the disclosure, bundling and travel regulations
- Making Referrals potential criminal conduct to the Department of Justice; and finally
- Certificating over \$85 Million dollars in Presidential public financing for the general election and millions more for qualifying candidates in the 2008 primaries.

As you can see, this is a very serious situation that could become a recipe for disaster if the Senate fails to confirm these nominees.

The raising and spending of money in federal elections is unprecedented in the 2008 presidential and congressional election cycle. There is record campaign spending.

According to the FEC’s statistics from March 6, 2008, the three national committees of the Democratic Party reported raising a total of \$191.3 million in the first 13 months of the 2008 election cycle. The three Republican national party committees reported raising \$186.2 million during the same period.

Clearly, we need a fully functioning Commission to ensure the integrity of our system of raising and spending campaign funds.

My goal is to ensure that these three nominations before us are considered in this hearing, and then voted on by this Committee. I look forward to hearing from the nominees.

I now yield to Senator Bennett, the ranking Member on the Committee.