

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.

Donald F. McGahn II is an attorney and the head of McGahn & Associates PLLC, a Washington, D.C. based law practice specializing in political law. Mr. McGahn has been a member of the bar for almost fifteen years, having been first admitted in 1994.

Mr. McGahn represents and advises a number of political clients, including federal and state candidates, Members of the U.S. House and Senate, national, state and local party committees, leadership PACs, corporations and corporate PACs, non-profits, trade associations, and others involved in the political process on issues such as campaign finance law and government ethics (specifically on the matter of House and Senate gift and ethics rules).

In addition to providing general advice to political clients, Mr. McGahn has appeared before the Federal Election Commission on behalf of numerous elected officials, parties, and others involved in the political process.

Since 1999, Mr. McGahn has served as the General Counsel for the National Republican Congressional Committee in Washington, D.C. He has also served as Counsel for the Illinois Republican Party since 2005.

Mr. McGahn has represented Members of Congress, elected officials and political professionals in dealings with the Department of Justice and the Federal Bureau of Investigation, including client appearances before grand juries. He has also represented Members of Congress before the House Committee on Standards of Official Conduct.

Prior to serving as General Counsel to the NRCC, Mr. McGahn practiced law in the Washington, D.C. office of Patton Boggs LLP as a member of the firm's litigation group. There, he advised and represented elected officials, candidates, national and state parties, and others on election law issues. In addition to political law, he handled all matters of complex litigation, and was recognized for significant pro bono work for the Lawyers' Committee for Civil Rights Under Law.

Mr. McGahn clerked for the Honorable Charles R. Alexander at the Court of Common Pleas in Clarion, Pennsylvania. While still in law school, he served as a Certified Legal Intern for the Lebanon County District Attorney in Lebanon, Pennsylvania, where he tried and won several jury trials. Mr. McGahn attended the United States Naval Academy, the University of Notre Dame, Widener University School of Law, and the Georgetown University Law Center. He was born in Atlantic City, New Jersey, and currently resides in Arlington, Virginia.