

December 12, 2017

Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Matthew Petersen to the U.S. District Court for the District of Columbia

Dear Chairman Grassley, Ranking Member Feinstein, and Committee Members:

We write to you today in opposition to the nomination of Matthew Petersen to serve on the U.S. District Court for the District of Columbia based on his demonstrated antipathy to common sense campaign finance laws and his complete lack of court experience.

Mr. Petersen has held a seat on the Federal Election Commission (FEC) for nearly a decade and served as the Commission's chair in 2010 and 2016. During that time, the FEC has achieved notoriety for an unprecedented level of partisan gridlock and inaction, and allowed the flood of post-*Citizens United* political spending to swamp federal elections without any meaningful regulatory oversight or enforcement.

A review of the agency's track record shows that Mr. Petersen consistently voted with the two other Republican commissioners as an ideological bloc to prevent development of FEC rules needed to implement a changing legal landscape, and to prevent enforcement action on alleged violations of law, even when clearly recommended by the agency's nonpartisan legal counsel.

FEC gridlock under Mr. Petersen's tenure has been extensively documented and reported in numerous news outlets since 2010. A 2015 study by Public Citizen concluded that,

In just the last few years, a sharply pervasive partisan split on the Federal Election Commission (FEC) has largely prevented the agency from fulfilling its mission. In both numbers of actions taken and immobilizing deadlocked votes, the FEC is showing a dramatic and uncharacteristic inability to perform its duties more or less in all categories – enforcement, audits, regulations and advisory opinions.¹

FEC chair Ann Ravel's office released a report in 2017 entitled "Dysfunction and Deadlock," which provides detailed statistics on the agency's partisan gridlock and providing numerous examples of major deadlocked rules and cases.² Ravel resigned in February of this year, citing her lack of hope concerning the agency's gridlock as a major factor.³

¹ "Roiled in Partisan Deadlock, Federal Election Commission is Failing," Public Citizen (2015), <https://www.citizen.org/sites/default/files/fec-deadlock-update-april-2015.pdf>.

² Office of Commissioner Ann M. Ravel, "Dysfunction and Deadlock: The Enforcement Crisis at the Federal Election Commission Reveals the Unlikelihood of Draining the Swamp," FEC (Feb. 2017), http://classic.fec.gov/members/ravel/ravelreport_feb2017.pdf.

³ Eric Kurhi and Rick Hurd, "FEC Democratic member Ann Ravel resigns post – 'I couldn't stay,'" *The Mercury News* (Feb. 19, 2017), <http://www.mercurynews.com/2017/02/19/ann-ravel-member-of-fec-resigns-her-post/>.

A review of Mr. Petersen’s decisions at the FEC shows an unwillingness to fully implement and enforce the law as enacted by Congress and interpreted by the courts.

Mr. Petersen and his two Republican colleagues have consistently blocked enforcement of the common sense requirement that nonprofits, like Karl Rove’s Crossroads GPS, that spend more than half of their resources on electioneering register as political committees and file disclosure reports. In one such case, involving Americans for Job Security and American Action Network, a federal judge—on the court Mr. Petersen has been nominated to join—rebuked Mr. Petersen and his fellow commissioners for their “arbitrary and capricious” action “contrary to law,” writing that their decision to dismiss the complaint “blinks reality” by “conclude[ing] that many of the ads...were not designed to influence the election or defeat of a particular candidate in an ongoing race.”⁴

Similarly, Mr. Petersen and his FEC voting bloc have prevented the Commission from developing rules to ensure adequate disclosure following the *Citizens United* decision, voted to make it easier for candidates to collaborate with supposedly “independent” Super PACs, refused to investigate allegations of workplace political coercion, and blocked the FEC’s nonpartisan Office of General Counsel recommendations to investigate the use of LLCs to hide the true identity of political spenders.

Up until last month, Mr. Petersen has even resisted the FEC taking any steps to prevent foreign interference in U.S. elections. When then-FEC chair Ann Ravel warned against the threat of Russian President Vladimir Putin attempting to influence elections in 2015, Mr. Peterson opposed a rulemaking to deal with that threat. As recently as July 2017, when it was clear the threat had become a reality, Mr. Petersen still resisted. Not until November 2017 did Mr. Petersen endorse any action, and then only on a narrow issue of disclaimers for online paid political ads, while simultaneously blocking the FEC from holding a public hearing on the matter.

During Mr. Petersen’s tenure, the FEC has not referred a single case to the Department of Justice for enforcement action. Perhaps most egregiously, Mr. Petersen, along with his voting bloc, took unprecedented steps as an FEC Commissioner to tie the hands of the agency’s nonpartisan staff and bar them from communicating with the DOJ and other enforcement agencies about potential criminal violations of federal campaign law without their prior approval. That radical move led the FEC General Counsel to quit in 2013 and has decimated the morale of the agency’s legal staff.⁵

The end result has been a wild-west atmosphere where anything goes for the secret money organizations that have pumped more than \$800 million of undisclosed funds into federal elections since 2010. *Politico* recently found that the FEC’s ideological gridlock has led to a growing number of scofflaws who feel emboldened to just ignore campaign finance laws and fines. According to Adam Rappaport, chief counsel for Citizens for Responsibility and Ethics in Washington, the situation “reinforces the view of many political actors that there really isn’t a sheriff in town. Political actors feel confident and comfortable that the FEC will not enforce campaign finance laws against them.”⁶

⁴ Citizens for Responsibility and Ethics in Washington v. FEC, No. 1:14-cv-01419 (CRC), 2016 WL 5107018, at *11 (D.D.C. Sept. 19, 2016).

⁵ Kenneth Doyle, “FEC Rarely Votes to Refer Criminal Cases to Justice,” *Bloomberg BNA* (July 29, 2015), <https://www.bna.com/fec-rarely-votes-n17179934048/>.

⁶ Dave Levinthal, “Scofflaw Political Groups Are Ignoring FEC Fines,” *Politico* (Oct. 30, 2017), <https://www.politico.com/magazine/story/2017/10/30/scofflaw-political-groups-are-ignoring-fec-fines-215760>.

Given a position on the U.S. District Court for the District of Columbia—a court that handles many, if not most, major campaign finance cases—Mr. Petersen’s narrow interpretation of the laws will inevitably result in rulings that heavily favor unbridled political spending and further undermine public confidence in the honesty and integrity of our government.

This is not what the people in America want or expect. Public opinion polls have long demonstrated supermajorities of public support, across the political spectrum, for disclosure and sensible regulation of campaign spending to prevent corruption or the appearance of corruption.⁷

A recent poll found that 96% of voters blame the influence of money in politics for causing dysfunction in the U.S. political system.⁸ And 85% of voters say we need “fundamental changes” or to “completely rebuild” the way political campaigns are financed.⁹

Mr. Petersen’s extreme and ideological approach to campaign finance law places him outside the mainstream in America and makes him unsuitable for a lifetime appointment to the federal courts. It is also his *only* area of legal expertise.

Mr. Petersen has no courtroom experience whatsoever. By his own admissions, during his limited time with a private law firm, Mr. Petersen did “not have clients in the traditional sense,” and his career as partisan counsel for the Republican National Committee and House and Senate committees, and as a partisan FEC commissioner, has meant that he has “not had occasion to appear in court” and has zero experience “in court or directly litigating cases.”¹⁰ He has never even clerked for a judge.

While Mr. Petersen may be a very capable legislative and campaign lawyer, he lacks the breadth of thinking and experience that Congress, and the public, traditionally expect in a lifetime appointment to one of the most important federal courts in the country.

For all of the foregoing reasons, we respectfully urge you to vote in opposition to the nomination of Mr. Petersen to the U.S. District Court for the District of Columbia.

Sincerely,

American Family Voices
Center for Biological Diversity
Center for Media and Democracy
Demos

⁷ “Money, Politics and the American Public,” Roper Center for Public Opinion, <https://ropercenter.cornell.edu/money-politics-and-the-american-public/>.

⁸ Washington Post-University of Maryland Democracy Poll (Sept. 27-Oct. 5, 2017), https://www.washingtonpost.com/page/2010-2019/WashingtonPost/2017/10/28/National-Politics/Polling/question_19493.xml?uuid=Yg489LvXEebk7lwQ-V6Ig.

⁹ Nicholas Confessore and Megan Thee-Brenan, “Poll Shows Americans Favor an Overhaul of Campaign Financing,” *New York Times* (June 2, 2015), <https://www.nytimes.com/2015/06/03/us/politics/poll-shows-americans-favor-overhaul-of-campaign-financing.html>.

¹⁰ United States Senate Committee on the Judiciary, Questionnaire for Judicial Nominees, Matthew Spencer Petersen, pp. 29-30, <https://www.judiciary.senate.gov/imo/media/doc/Petersen%20SJQ.pdf>.

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Free Speech For People
People For the American Way
Voices for Progress