

116TH CONGRESS
1ST SESSION

H. R. 1272

To amend the Federal Election Campaign Act of 1971 to reduce the number of members of the Federal Election Commission from 6 to 5, to revise the method of selection and terms of service of members of the Commission, to distribute the powers of the Commission between the Chair and the remaining members, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 14, 2019

Mr. KILMER (for himself, Mr. FITZPATRICK, Mr. PETERS, Mr. SARBANES, Miss RICE of New York, Mrs. MURPHY, and Ms. BROWNLEY of California) introduced the following bill; which was referred to the Committee on House Administration

A BILL

To amend the Federal Election Campaign Act of 1971 to reduce the number of members of the Federal Election Commission from 6 to 5, to revise the method of selection and terms of service of members of the Commission, to distribute the powers of the Commission between the Chair and the remaining members, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Restoring Integrity
3 to America’s Elections Act”.

4 **SEC. 2. MEMBERSHIP OF FEDERAL ELECTION COMMIS-**
5 **SION.**

6 (a) REDUCTION IN NUMBER OF MEMBERS; REMOVAL
7 OF SECRETARY OF SENATE AND CLERK OF HOUSE AS
8 EX OFFICIO MEMBERS.—

9 (1) IN GENERAL; QUORUM.—Section 306(a)(1)
10 of the Federal Election Campaign Act of 1971 (52
11 U.S.C. 30106(a)(1)) is amended by striking the sec-
12 ond and third sentences and inserting the following:
13 “The Commission is composed of 5 members ap-
14 pointed by the President by and with the advice and
15 consent of the Senate, of whom no more than 2 may
16 be affiliated with the same political party. A major-
17 ity of the number of members of the Commission
18 who are serving at the time shall constitute a
19 quorum, except that 3 members shall constitute a
20 quorum if there are 4 members serving at the
21 time.”.

22 (2) CONFORMING AMENDMENTS RELATING TO
23 REDUCTION IN NUMBER OF MEMBERS.—(A) The
24 second sentence of section 306(c) of such Act (52
25 U.S.C. 30106(c)) is amended by striking “affirma-
26 tive vote of 4 members of the Commission” and in-

serting “affirmative vote of a majority of the members of the Commission who are serving at the time”.

(B) Such Act is further amended by striking “affirmative vote of 4 of its members” and inserting “affirmative vote of a majority of the members of the Commission who are serving at the time” each place it appears in the following sections:

(i) Section 309(a)(2) (52 U.S.C. 30109(a)(2)).

(ii) Section 309(a)(4)(A)(i) (52 U.S.C. 30109(a)(4)(A)(i)).

(iii) Section 309(a)(5)(C) (52 U.S.C. 30109(a)(5)(C)).

(iv) Section 309(a)(6)(A) (52 U.S.C. 30109(a)(6)(A)).

(v) Section 311(b) (52 U.S.C. 30111(b)).

(3) CONFORMING AMENDMENT RELATING TO REMOVAL OF EX OFFICIO MEMBERS.—Section 306(a) of such Act (52 U.S.C. 30106(a)) is amended by striking “(other than the Secretary of the Senate and the Clerk of the House of Representatives)” each place it appears in paragraphs (4) and (5).

1 (b) TERMS OF SERVICE.—Section 306(a)(2) of such
2 Act (52 U.S.C. 30106(a)(2)) is amended to read as fol-
3 lows:

4 “(2) TERMS OF SERVICE.—

5 “(A) IN GENERAL.—Each member of the
6 Commission shall serve for a single term of 6
7 years.

8 “(B) SPECIAL RULE FOR INITIAL APPOINT-
9 MENTS.—Of the members first appointed to
10 serve terms that begin in January 2022, the
11 President shall designate 2 to serve for a 3-year
12 term.

13 “(C) NO REAPPOINTMENT PERMITTED.—
14 An individual who served a term as a member
15 of the Commission may not serve for an addi-
16 tional term, except that—

17 “(i) an individual who served a 3-year
18 term under subparagraph (B) may also be
19 appointed to serve a 6-year term under
20 subparagraph (A); and

21 “(ii) for purposes of this subpara-
22 graph, an individual who is appointed to
23 fill a vacancy under subparagraph (D)
24 shall not be considered to have served a
25 term if the portion of the unexpired term

1 the individual fills is less than 50 percent
2 of the period of the term.

3 “(D) VACANCIES.—Any vacancy occurring
4 in the membership of the Commission shall be
5 filled in the same manner as in the case of the
6 original appointment. Except as provided in
7 subparagraph (C), an individual appointed to
8 fill a vacancy occurring other than by the expi-
9 ration of a term of office shall be appointed
10 only for the unexpired term of the member he
11 or she succeeds.

12 “(E) LIMITATION ON SERVICE AFTER EX-
13 PIRATION OF TERM.—A member of the Com-
14 mission may continue to serve on the Commis-
15 sion after the expiration of the member’s term
16 for an additional period, but only until the ear-
17 lier of—

18 “(i) the date on which the member’s
19 successor has taken office as a member of
20 the Commission; or

21 “(ii) the expiration of the 1-year pe-
22 riod that begins on the last day of the
23 member’s term.”.

24 (c) QUALIFICATIONS.—Section 306(a)(3) of such Act
25 (52 U.S.C. 30106(a)(3)) is amended to read as follows:

1 “(3) QUALIFICATIONS.—

2 “(A) IN GENERAL.—The President may
3 select an individual for service as a member of
4 the Commission if the individual has experience
5 in election law and has a demonstrated record
6 of integrity, impartiality, and good judgment.

7 “(B) ASSISTANCE OF BLUE RIBBON ADVI-
8 SORY PANEL.—

9 “(i) IN GENERAL.—Prior to the regu-
10 larly scheduled expiration of the term of a
11 member of the Commission and upon the
12 occurrence of a vacancy in the membership
13 of the Commission prior to the expiration
14 of a term, the President shall convene a
15 Blue Ribbon Advisory Panel, consisting of
16 an odd number of individuals selected by
17 the President from retired Federal judges,
18 former law enforcement officials, or indi-
19 viduals with experience in election law, ex-
20 cept that the President may not select any
21 individual to serve on the panel who holds
22 any public office at the time of selection.

23 “(ii) RECOMMENDATIONS.—With re-
24 spect to each member of the Commission
25 whose term is expiring or each vacancy in

1 the membership of the Commission (as the
2 case may be), the Blue Ribbon Advisory
3 Panel shall recommend to the President at
4 least one but not more than 3 individuals
5 for nomination for appointment as a mem-
6 ber of the Commission.

7 “(iii) PUBLICATION.—At the time the
8 President submits to the Senate the nomi-
9 nations for individuals to be appointed as
10 members of the Commission, the President
11 shall publish the Blue Ribbon Advisory
12 Panel’s recommendations for such nomina-
13 tions.

14 “(iv) EXEMPTION FROM FEDERAL AD-
15 VISORY COMMITTEE ACT.—The Federal
16 Advisory Committee Act (5 U.S.C. App.)
17 does not apply to a Blue Ribbon Advisory
18 Panel convened under this subparagraph.

19 “(C) PROHIBITING ENGAGEMENT WITH
20 OTHER BUSINESS OR EMPLOYMENT DURING
21 SERVICE.—A member of the Commission shall
22 not engage in any other business, vocation, or
23 employment. Any individual who is engaging in
24 any other business, vocation, or employment at
25 the time of his or her appointment to the Com-

1 mission shall terminate or liquidate such activ-
 2 ity no later than 90 days after such appoint-
 3 ment.”.

4 **SEC. 3. ASSIGNMENT OF POWERS TO CHAIR OF FEDERAL**
 5 **ELECTION COMMISSION.**

6 (a) APPOINTMENT OF CHAIR BY PRESIDENT.—

7 (1) IN GENERAL.—Section 306(a)(5) of the
 8 Federal Election Campaign Act of 1971 (52 U.S.C.
 9 30106(a)(5)) is amended to read as follows:

10 “(5) CHAIR.—

11 “(A) INITIAL APPOINTMENT.—Of the
 12 members first appointed to serve terms that
 13 begin in January 2022, one such member (as
 14 designated by the President at the time the
 15 President submits nominations to the Senate)
 16 shall serve as Chair of the Commission.

17 “(B) SUBSEQUENT APPOINTMENTS.—Any
 18 individual who is appointed to succeed the
 19 member who serves as Chair of the Commission
 20 for the term beginning in January 2022 (as
 21 well as any individual who is appointed to fill
 22 a vacancy if such member does not serve a full
 23 term as Chair) shall serve as Chair of the Com-
 24 mission.

1 “(C) VICE CHAIR.—The Commission shall
 2 select, by majority vote of its members, one of
 3 its members to serve as Vice Chair, who shall
 4 act as Chair in the absence or disability of the
 5 Chair or in the event of a vacancy in the posi-
 6 tion of Chair.”.

7 (2) CONFORMING AMENDMENT.—Section
 8 309(a)(2) of such Act (52 U.S.C. 30109(a)(2)) is
 9 amended by striking “through its chairman or vice
 10 chairman” and inserting “through the Chair”.

11 (b) POWERS.—

12 (1) ASSIGNMENT OF CERTAIN POWERS TO
 13 CHAIR.—Section 307(a) of such Act (52 U.S.C.
 14 30107(a)) is amended to read as follows:

15 “(a) DISTRIBUTION OF POWERS BETWEEN CHAIR
 16 AND COMMISSION.—

17 “(1) POWERS ASSIGNED TO CHAIR.—

18 “(A) ADMINISTRATIVE POWERS.—The
 19 Chair of the Commission shall be the chief ad-
 20 ministrative officer of the Commission and shall
 21 have the authority to administer the Commis-
 22 sion and its staff, and (in consultation with the
 23 other members of the Commission) shall have
 24 the power—

1 “(i) to appoint and remove the staff
2 director of the Commission;

3 “(ii) to request the assistance (includ-
4 ing personnel and facilities) of other agen-
5 cies and departments of the United States,
6 whose heads may make such assistance
7 available to the Commission with or with-
8 out reimbursement; and

9 “(iii) to prepare and establish the
10 budget of the Commission and to make
11 budget requests to the President, the Di-
12 rector of the Office of Management and
13 Budget, and Congress.

14 “(B) OTHER POWERS.—The Chair of the
15 Commission shall have the power—

16 “(i) to appoint and remove the gen-
17 eral counsel of the Commission with the
18 concurrence of at least 2 other members of
19 the Commission;

20 “(ii) to require by special or general
21 orders, any person to submit, under oath,
22 such written reports and answers to ques-
23 tions as the Chair may prescribe;

24 “(iii) to administer oaths or affirma-
25 tions;

1 “(iv) to require by subpoena, signed
2 by the Chair, the attendance and testimony
3 of witnesses and the production of all doc-
4 umentary evidence relating to the execu-
5 tion of its duties;

6 “(v) in any proceeding or investiga-
7 tion, to order testimony to be taken by
8 deposition before any person who is des-
9 ignated by the Chair, and shall have the
10 power to administer oaths and, in such in-
11 stances, to compel testimony and the pro-
12 duction of evidence in the same manner as
13 authorized under clause (iv); and

14 “(vi) to pay witnesses the same fees
15 and mileage as are paid in like cir-
16 cumstances in the courts of the United
17 States.

18 “(2) POWERS ASSIGNED TO COMMISSION.—The
19 Commission shall have the power—

20 “(A) to initiate (through civil actions for
21 injunctive, declaratory, or other appropriate re-
22 lief), defend (in the case of any civil action
23 brought under section 309(a)(8) of this Act) or
24 appeal any civil action in the name of the Com-
25 mission to enforce the provisions of this Act

1 and chapter 95 and chapter 96 of the Internal
2 Revenue Code of 1986, through its general
3 counsel;

4 “(B) to render advisory opinions under
5 section 308 of this Act;

6 “(C) to develop such prescribed forms and
7 to make, amend, and repeal such rules, pursu-
8 ant to the provisions of chapter 5 of title 5,
9 United States Code, as are necessary to carry
10 out the provisions of this Act and chapter 95
11 and chapter 96 of the Internal Revenue Code of
12 1986;

13 “(D) to conduct investigations and hear-
14 ings expeditiously, to encourage voluntary com-
15 pliance, and to report apparent violations to the
16 appropriate law enforcement authorities; and

17 “(E) to transmit to the President and Con-
18 gress not later than June 1 of each year a re-
19 port which states in detail the activities of the
20 Commission in carrying out its duties under
21 this Act, and which includes any recommenda-
22 tions for any legislative or other action the
23 Commission considers appropriate.

24 “(3) PERMITTING COMMISSION TO EXERCISE
25 OTHER POWERS OF CHAIR.—With respect to any in-

1 vestigation, action, or proceeding, the Commission,
2 by an affirmative vote of a majority of the members
3 who are serving at the time, may exercise any of the
4 powers of the Chair described in paragraph (1)(B).”.

5 (2) CONFORMING AMENDMENTS RELATING TO
6 PERSONNEL AUTHORITY.—Section 306(f) of such
7 Act (52 U.S.C. 30106(f)) is amended—

8 (A) by amending the first sentence of
9 paragraph (1) to read as follows: “The Com-
10 mission shall have a staff director who shall be
11 appointed by the Chair of the Commission in
12 consultation with the other members and a gen-
13 eral counsel who shall be appointed by the
14 Chair with the concurrence of at least two other
15 members.”;

16 (B) in paragraph (2), by striking “With
17 the approval of the Commission” and inserting
18 “With the approval of the Chair of the Commis-
19 sion”; and

20 (C) by striking paragraph (3).

21 (3) CONFORMING AMENDMENT RELATING TO
22 BUDGET SUBMISSION.—Section 307(d)(1) of such
23 Act (52 U.S.C. 30107(d)(1)) is amended by striking
24 “the Commission submits any budget” and inserting

1 “the Chair (or, pursuant to subsection (a)(3), the
2 Commission) submits any budget”.

3 (4) OTHER CONFORMING AMENDMENTS.—Sec-
4 tion 306(c) of such Act (52 U.S.C. 30106(c)) is
5 amended by striking “All decisions” and inserting
6 “Subject to section 307(a), all decisions”.

7 (5) TECHNICAL AMENDMENT.—The heading of
8 section 307 of such Act (52 U.S.C. 30107) is
9 amended by striking “THE COMMISSION” and insert-
10 ing “THE CHAIR AND THE COMMISSION”.

11 **SEC. 4. REVISION TO ENFORCEMENT PROCESS.**

12 (a) STANDARD FOR INITIATING INVESTIGATIONS AND
13 DETERMINING WHETHER VIOLATIONS HAVE OC-
14 CURRED.—

15 (1) REVISION OF STANDARDS.—Section 309(a)
16 of the Federal Election Campaign Act of 1971 (52
17 U.S.C. 30109(a)) is amended by striking paragraphs
18 (2) and (3) and inserting the following:

19 “(2)(A) The general counsel, upon receiving a com-
20 plaint filed with the Commission under paragraph (1) or
21 upon the basis of information ascertained by the Commis-
22 sion in the normal course of carrying out its supervisory
23 responsibilities, shall make a determination as to whether
24 or not there is reason to believe that a person has com-
25 mitted, or is about to commit, a violation of this Act or

1 chapter 95 or chapter 96 of the Internal Revenue Code
2 of 1986, and as to whether or not the Commission should
3 either initiate an investigation of the matter or that the
4 complaint should be dismissed. The general counsel shall
5 promptly provide notification to the Commission of such
6 determination and the reasons therefore, together with
7 any written response submitted under paragraph (1) by
8 the person alleged to have committed the violation. Upon
9 the expiration of the 30-day period which begins on the
10 date the general counsel provides such notification, the
11 general counsel's determination shall take effect, unless
12 during such 30-day period the Commission, by vote of a
13 majority of the members of the Commission who are serv-
14 ing at the time, overrules the general counsel's determina-
15 tion. If the determination by the general counsel that the
16 Commission should investigate the matter takes effect, or
17 if the determination by the general counsel that the com-
18 plaint should be dismissed is overruled as provided under
19 the previous sentence, the general counsel shall initiate an
20 investigation of the matter on behalf of the Commission.

21 “(B) If the Commission initiates an investigation
22 pursuant to subparagraph (A), the Commission, through
23 the Chair, shall notify the subject of the investigation of
24 the alleged violation. Such notification shall set forth the
25 factual basis for such alleged violation. The Commission

1 shall make an investigation of such alleged violation, which
2 may include a field investigation or audit, in accordance
3 with the provisions of this section. The general counsel
4 shall provide notification to the Commission of any intent
5 to issue a subpoena or conduct any other form of discovery
6 pursuant to the investigation. Upon the expiration of the
7 15-day period which begins on the date the general counsel
8 provides such notification, the general counsel may issue
9 the subpoena or conduct the discovery, unless during such
10 15-day period the Commission, by vote of a majority of
11 the members of the Commission who are serving at the
12 time, prohibits the general counsel from issuing the sub-
13 poena or conducting the discovery.

14 “(3)(A) Upon completion of an investigation under
15 paragraph (2), the general counsel shall promptly submit
16 to the Commission the general counsel’s recommendation
17 that the Commission find either that there is probable
18 cause or that there is not probable cause to believe that
19 a person has committed, or is about to commit, a violation
20 of this Act or chapter 95 or chapter 96 of the Internal
21 Revenue Code of 1986, and shall include with the rec-
22 ommendation a brief stating the position of the general
23 counsel on the legal and factual issues of the case.

24 “(B) At the time the general counsel submits to the
25 Commission the recommendation under subparagraph (A),

1 the general counsel shall simultaneously notify the re-
2 spondent of such recommendation and the reasons there-
3 fore, shall provide the respondent with an opportunity to
4 submit a brief within 30 days stating the position of the
5 respondent on the legal and factual issues of the case and
6 replying to the brief of the general counsel. The general
7 counsel and shall promptly submit such brief to the Com-
8 mission upon receipt.

9 “(C) Not later than 30 days after the general counsel
10 submits the recommendation to the Commission under
11 subparagraph (A) (or, if the respondent submits a brief
12 under subparagraph (B), not later than 30 days after the
13 general counsel submits the respondent’s brief to the Com-
14 mission under such subparagraph), the Commission shall
15 approve or disapprove the recommendation by vote of a
16 majority of the members of the Commission who are serv-
17 ing at the time.”.

18 (2) CONFORMING AMENDMENT RELATING TO
19 INITIAL RESPONSE TO FILING OF COMPLAINT.—Sec-
20 tion 309(a)(1) of such Act (52 U.S.C. 30109(a)(1))
21 is amended—

22 (A) in the third sentence, by striking “the
23 Commission” and inserting “the general coun-
24 sel”; and

1 (B) by amending the fourth sentence to
2 read as follows: “Not later than 15 days after
3 receiving notice from the general counsel under
4 the previous sentence, the person may provide
5 the general counsel with a written response that
6 no action should be taken against such person
7 on the basis of the complaint.”.

8 (b) REVISION OF STANDARD FOR REVIEW OF DIS-
9 MISSAL OF COMPLAINTS.—

10 (1) IN GENERAL.—Section 309(a)(8) of such
11 Act (52 U.S.C. 30109(a)(8)) is amended to read as
12 follows:

13 “(8)(A)(i) Any party aggrieved by an order of the
14 Commission dismissing a complaint filed by such party
15 after finding either no reason to believe a violation has
16 occurred or no probable cause a violation has occurred
17 may file a petition with the United States District Court
18 for the District of Columbia. Any petition under this sub-
19 paragraph shall be filed within 60 days after the date on
20 which the party received notice of the dismissal of the
21 complaint.

22 “(ii) In any proceeding under this subparagraph, the
23 court shall determine by de novo review whether the agen-
24 cy’s dismissal of the complaint is contrary to law. In any
25 matter in which the penalty for the alleged violation is

1 greater than \$50,000, the court should disregard any
2 claim or defense by the Commission of prosecutorial dis-
3 cretion as a basis for dismissing the complaint.

4 “(B)(i) Any party who has filed a complaint with the
5 Commission and who is aggrieved by a failure of the Com-
6 mission, within one year after the filing of the complaint,
7 to either dismiss the complaint or to find reason to believe
8 a violation has occurred or is about to occur, may file a
9 petition with the United States District Court for the Dis-
10 trict of Columbia.

11 “(ii) In any proceeding under this subparagraph, the
12 court shall treat the failure to act on the complaint as
13 a dismissal of the complaint, and shall determine by de
14 novo review whether the agency’s failure to act on the
15 complaint is contrary to law.

16 “(C) In any proceeding under this paragraph the
17 court may declare that the dismissal of the complaint or
18 the failure to act is contrary to law, and may direct the
19 Commission to conform with such declaration within 30
20 days, failing which the complainant may bring, in the
21 name of such complainant, a civil action to remedy the
22 violation involved in the original complaint.”.

23 (2) EFFECTIVE DATE.—The amendments made
24 by paragraph (1) shall apply—

1 (A) in the case of complaints which are
 2 dismissed by the Federal Election Commission,
 3 with respect to complaints which are dismissed
 4 on or after the date of the enactment of this
 5 Act; and

6 (B) in the case of complaints upon which
 7 the Federal Election Commission failed to act,
 8 with respect to complaints which were filed on
 9 or after the date of the enactment of this Act.

10 **SEC. 5. PERMITTING APPEARANCE AT HEARINGS ON RE-**
 11 **QUESTS FOR ADVISORY OPINIONS BY PER-**
 12 **SONS OPPOSING THE REQUESTS.**

13 (a) IN GENERAL.—Section 308 of such Act (52
 14 U.S.C. 30108) is amended by adding at the end the fol-
 15 lowing new subsection:

16 “(e) To the extent that the Commission provides an
 17 opportunity for a person requesting an advisory opinion
 18 under this section (or counsel for such person) to appear
 19 before the Commission to present testimony in support of
 20 the request, and the person (or counsel) accepts such op-
 21 portunity, the Commission shall provide a reasonable op-
 22 portunity for an interested party who submitted written
 23 comments under subsection (d) in response to the request
 24 (or counsel for such interested party) to appear before the

1 Commission to present testimony in response to the re-
2 quest.”.

3 (b) **EFFECTIVE DATE.**—The amendment made by
4 subsection (a) shall apply with respect to requests for advi-
5 sory opinions under section 308 of the Federal Election
6 Campaign Act of 1971 which are made on or after the
7 date of the enactment of this Act.

8 **SEC. 6. PERMANENT EXTENSION OF ADMINISTRATIVE PEN-**
9 **ALTY AUTHORITY.**

10 (a) **EXTENSION OF AUTHORITY.**—Section
11 309(a)(4)(C)(v) of the Federal Election Campaign Act of
12 1971 (52 U.S.C. 30109(a)(4)(C)(v)) is amended by strik-
13 ing “, and that end on or before December 31, 2018”.

14 (b) **EFFECTIVE DATE.**—The amendment made by
15 subsection (a) shall take effect on December 31, 2018.

16 **SEC. 7. EFFECTIVE DATE; TRANSITION.**

17 (a) **IN GENERAL.**—Except as otherwise provided, the
18 amendments made by this Act shall apply beginning Janu-
19 ary 1, 2022.

20 (b) **TRANSITION.**—

21 (1) **TERMINATION OF SERVICE OF CURRENT**
22 **MEMBERS.**—Notwithstanding any provision of the
23 Federal Election Campaign Act of 1971, the term of
24 any individual serving as a member of the Federal

1 Election Commission as of December 31, 2021, shall
2 expire on that date.

3 (2) NO EFFECT ON EXISTING CASES OR PRO-
4 CEEDINGS.—Nothing in this Act or in any amend-
5 ment made by this Act shall affect any of the powers
6 exercised by the Federal Election Commission prior
7 to December 31, 2021, including any investigation
8 initiated by the Commission prior to such date or
9 any proceeding (including any enforcement action)
10 pending as of such date.

○