

117TH CONGRESS
2D SESSION

S. 5331

To reform the Federal Election Commission’s enforcement processes and related provisions under the Federal Election Campaign Act of 1971.

IN THE SENATE OF THE UNITED STATES

DECEMBER 21, 2022

Ms. KLOBUCHAR introduced the following bill; which was read twice and referred to the Committee on Rules and Administration

A BILL

To reform the Federal Election Commission’s enforcement processes and related provisions under the Federal Election Campaign Act of 1971.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Campaign Finance
5 Transparency Act”.

6 **SEC. 2. REVISION TO ENFORCEMENT PROCESS.**

7 (a) STANDARD FOR INITIATING INVESTIGATIONS AND
8 DETERMINING WHETHER VIOLATIONS HAVE OC-
9 CURRED.—

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

5 “(2)(A) The general counsel, upon receiving a com-
6 plaint filed with the Commission under paragraph (1) or
7 upon the basis of information ascertained by the Commis-
8 sion in the normal course of carrying out its supervisory
9 responsibilities, shall make a determination as to whether
10 or not there is reason to believe that a person has com-
11 mitted, or is about to commit, a violation of this Act or
12 chapter 95 or chapter 96 of the Internal Revenue Code
13 of 1986, and as to whether or not the Commission should
14 either initiate an investigation of the matter or that the
15 complaint should be dismissed. The general counsel shall
16 promptly provide notification to the Commission of such
17 determination and the reasons therefore, together with
18 any written response submitted under paragraph (1) by
19 the person alleged to have committed the violation. Upon
20 the expiration of the 30-day period which begins on the
21 date the general counsel provides such notification, the
22 general counsel’s determination shall take effect, unless
23 during such 30-day period the Commission, by vote of a
24 majority of the members of the Commission who are serv-
25 ing at the time, overrules the general counsel’s determina-

tion. If the determination by the general counsel that the Commission should investigate the matter takes effect, or if the determination by the general counsel that the complaint should be dismissed is overruled as provided under the previous sentence, the general counsel shall initiate an investigation of the matter on behalf of the Commission.

“(B) If the Commission initiates an investigation pursuant to subparagraph (A), the Commission, through the Chair, shall notify the subject of the investigation of the alleged violation. Such notification shall set forth the factual basis for such alleged violation. The Commission shall make an investigation of such alleged violation, which may include a field investigation or audit, in accordance with the provisions of this section. The general counsel shall provide notification to the Commission of any intent to issue a subpoena or conduct any other form of discovery pursuant to the investigation. Upon the expiration of the 15-day period which begins on the date the general counsel provides such notification, the general counsel may issue the subpoena or conduct the discovery, unless during such 15-day period the Commission, by vote of a majority of the members of the Commission who are serving at the time, prohibits the general counsel from issuing the subpoena or conducting the discovery.

1 “(3)(A) Upon completion of an investigation under
2 paragraph (2), the general counsel shall make a deter-
3 mination as to whether or not there is probable cause to
4 believe that a person has committed, or is about to com-
5 mit, a violation of this Act or chapter 95 or chapter 96
6 of the Internal Revenue Code of 1986, and shall promptly
7 submit such determination to the Commission, and shall
8 include with the determination a brief stating the position
9 of the general counsel on the legal and factual issues of
10 the case.

11 “(B) At the time the general counsel submits to the
12 Commission the determination under subparagraph (A),
13 the general counsel shall simultaneously notify the re-
14 spondent of such determination and the reasons therefore,
15 shall provide the respondent with an opportunity to submit
16 a brief within 30 days stating the position of the respond-
17 ent on the legal and factual issues of the case and replying
18 to the brief of the general counsel. The general counsel
19 shall promptly submit such brief to the Commission upon
20 receipt.

21 “(C) Upon the expiration of the 30-day period which
22 begins on the date the general counsel submits the deter-
23 mination to the Commission under subparagraph (A) (or,
24 if the respondent submits a brief under subparagraph (B),
25 upon the expiration of the 30-day period which begins on

1 the date the general counsel submits the respondent’s brief
 2 to the Commission under such subparagraph), the general
 3 counsel’s determination shall take effect, unless during
 4 such 30-day period the Commission, by vote of a majority
 5 of the members of the Commission who are serving at the
 6 time, overrules the general counsel’s determination. If the
 7 determination by the general counsel that there is prob-
 8 able cause to believe that a person has committed, or is
 9 about to commit, a violation of this Act or chapter 95 or
 10 chapter 96 of the Internal Revenue Code of 1986, or if
 11 the determination by the general counsel that there is not
 12 probable cause that a person has committed or is about
 13 to commit such a violation is overruled as provided under
 14 the previous sentence, for purposes of this subsection, the
 15 Commission shall be deemed to have determined that there
 16 is probable cause that the person has committed or is
 17 about to commit such a violation.”.

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 may file a petition with the United States District Court
16 for the District of Columbia. Any petition under this sub-
17 paragraph shall be filed within 60 days after the date on
18 which the party received notice of the dismissal of the
19 complaint.

20 “(ii) In any proceeding under this subparagraph, the
21 court shall determine by de novo review whether the agen-
22 cy’s dismissal of the complaint is contrary to law. In any
23 matter in which the penalty for the alleged violation is
24 greater than \$50,000, the court should disregard any

1 claim or defense by the Commission of prosecutorial dis-
 2 cretion as a basis for dismissing the complaint.

3 “(B)(i) Any party who has filed a complaint with the
 4 Commission and who is aggrieved by a failure of the Com-
 5 mission, within one year after the filing of the complaint,
 6 to act on such complaint, may file a petition with the
 7 United States District Court for the District of Columbia.

8 “(ii) In any proceeding under this subparagraph, the
 9 court shall determine by de novo review whether the agen-
 10 cy’s failure to act on the complaint is contrary to law.

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

18 (2) EFFECTIVE DATE.—The amendments made
 19 by paragraph (1) shall apply—

20 (A) in the case of complaints which are
 21 dismissed by the Federal Election Commission,
 22 with respect to complaints which are dismissed
 23 on or after the date of the enactment of this
 24 Act; and

1 (B) in the case of complaints upon which
2 the Federal Election Commission failed to act,
3 with respect to complaints which were filed on
4 or after the date of the enactment of this Act.

5 (c) REGULATIONS.—Not later than 180 days after
6 the date of the enactment of this Act, the Federal Election
7 Commission shall promulgate new regulations on the en-
8 forcement process under section 309 of the Federal Elec-
9 tion Campaign Act of 1971 (52 U.S.C. 30109) to take
10 into account the amendments made by this section.

11 **SEC. 3. OFFICIAL EXERCISING THE RESPONSIBILITIES OF**
12 **THE GENERAL COUNSEL.**

13 Section 306(f)(1) of the Federal Election Campaign
14 Act of 1971 (52 U.S.C. 30106(f)(1)) is amended by add-
15 ing at the end the following new sentence: “In the event
16 of a vacancy in the position of the general counsel, the
17 most senior attorney employed within the Office of the
18 General Counsel at the time the vacancy arises shall exer-
19 cise all the responsibilities of the general counsel until the
20 vacancy is filled.”.

1 **SEC. 4. PERMITTING APPEARANCE AT HEARINGS ON RE-**
 2 **QUESTS FOR ADVISORY OPINIONS BY PER-**
 3 **SONS OPPOSING THE REQUESTS.**

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

7 “(e) To the extent that the Commission provides an
 8 opportunity for a person requesting an advisory opinion
 9 under this section (or counsel for such person) to appear
 10 before the Commission to present testimony in support of
 11 the request, and the person (or counsel) accepts such op-
 12 portunity, the Commission shall provide a reasonable op-
 13 portunity for an interested party who submitted written
 14 comments under subsection (d) in response to the request
 15 (or counsel for such interested party) to appear before the
 16 Commission to present testimony in response to the re-
 17 quest.”.

18 (b) EFFECTIVE DATE.—The amendment made by
 19 subsection (a) shall apply with respect to requests for advi-
 20 sory opinions under section 308 of the Federal Election
 21 Campaign Act of 1971 which are made on or after the
 22 date of the enactment of this Act.

23 **SEC. 5. PERMANENT EXTENSION OF ADMINISTRATIVE PEN-**
 24 **ALTY AUTHORITY.**

25 Section 309(a)(4)(C)(v) of the Federal Election Cam-
 26 paign Act of 1971 (52 U.S.C. 30109(a)(4)(C)(v)) is

1 amended by striking “, and that end on or before Decem-
 2 ber 31, 2023”.

3 **SEC. 6. RESTRICTIONS ON EX PARTE COMMUNICATIONS.**

4 Section 306(e) of the Federal Election Campaign Act
 5 of 1971 (52 U.S.C. 30106(e)) is amended—

6 (1) by striking “(e) The Commission” and in-
 7 serting “(e)(1) The Commission”; and

8 (2) by adding at the end the following new
 9 paragraph:

10 “(2) Members and employees of the Commission shall
 11 be subject to limitations on ex parte communications, as
 12 provided in the regulations promulgated by the Commis-
 13 sion regarding such communications which are in effect
 14 on the date of the enactment of this paragraph.”.

15 **SEC. 7. CLARIFYING AUTHORITY OF FEC ATTORNEYS TO**
 16 **REPRESENT FEC IN SUPREME COURT.**

17 (a) CLARIFYING AUTHORITY.—Section 306(f)(4) of
 18 the Federal Election Campaign Act of 1971 (52 U.S.C.
 19 30106(f)(4)) is amended by striking “any action instituted
 20 under this Act, either (A) by attorneys” and inserting
 21 “any action instituted under this Act, including an action
 22 before the Supreme Court of the United States, either (A)
 23 by the general counsel of the Commission and other attor-
 24 neys”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 paragraph (1) shall apply with respect to actions insti-
3 tuted before, on, or after the date of the enactment of
4 this Act.

5 **SEC. 8. REQUIRING FORMS TO PERMIT USE OF ACCENT**
6 **MARKS.**

7 (a) REQUIREMENT.—Section 311(a)(1) of the Fed-
8 eral Election Campaign Act of 1971 (52 U.S.C.
9 30111(a)(1)) is amended by striking the semicolon at the
10 end and inserting the following: “, and shall ensure that
11 all such forms (including forms in an electronic format)
12 permit the person using the form to include an accent
13 mark as part of the person’s identification;”.

14 (b) EFFECTIVE DATE.—The amendment made by
15 subsection (a) shall take effect upon the expiration of the
16 90-day period which begins on the date of the enactment
17 of this Act.

18 **SEC. 9. EXTENSION OF THE STATUTES OF LIMITATIONS**
19 **FOR OFFENSES UNDER THE FEDERAL ELEC-**
20 **TION CAMPAIGN ACT OF 1971.**

21 (a) CIVIL OFFENSES.—Section 309(a) of the Federal
22 Election Campaign Act of 1971 (52 U.S.C. 30109(a)) is
23 amended by inserting after paragraph (9) the following
24 new paragraph:

1 “(10) No person shall be subject to a civil penalty
 2 under this subsection with respect to a violation of this
 3 Act unless a complaint is filed with the Commission with
 4 respect to the violation under paragraph (1), or the Com-
 5 mission responds to information with respect to the viola-
 6 tion which is ascertained in the normal course of carrying
 7 out its supervisory responsibilities under paragraph (2),
 8 not later than 10 years after the date on which the viola-
 9 tion occurred.”.

10 (b) CRIMINAL OFFENSES.—Section 406(a) of such
 11 Act (52 U.S.C. 30145(a)) is amended by striking “5
 12 years” and inserting “10 years”.

13 (c) EFFECTIVE DATE.—The amendments made by
 14 this section shall apply with respect to violations occurring
 15 on or after the date of enactment of this Act.

16 **SEC. 10. EFFECTIVE DATE; TRANSITION.**

17 (a) IN GENERAL.—Except as otherwise provided, this
 18 Act and the amendments made by this Act shall take ef-
 19 fect and apply on the date of the enactment of this Act,
 20 without regard to whether or not the Federal Election
 21 Commission has promulgated regulations to carry out this
 22 Act and the amendments made by this Act.

23 (b) TRANSITION.—

24 (1) NO EFFECT ON EXISTING CASES OR PRO-
 25 CEEDINGS.—Nothing in this Act or in any amend-

1 ment made by this Act shall affect any of the powers
2 exercised by the Federal Election Commission prior
3 to the date of the enactment of this Act, including
4 any investigation initiated by the Commission prior
5 to such date or any proceeding (including any en-
6 forcement action) pending as of such date.

7 (2) TREATMENT OF CERTAIN COMPLAINTS.—If,
8 as of the date of the enactment of this Act, the gen-
9 eral counsel of the Federal Election Commission has
10 not made any recommendation to the Commission
11 under section 309(a) of the Federal Election Cam-
12 paign Act of 1971 (52 U.S.C. 30109) with respect
13 to a complaint filed prior to the date of the enact-
14 ment of this Act, this Act and the amendments
15 made by this Act shall apply with respect to the
16 complaint in the same manner as this Act and the
17 amendments made by this Act apply with respect to
18 a complaint filed on or after the date of the enact-
19 ment of this Act.

○