

If the FEC Won't Protect Voters, the Courts Should — But it Might Be Up to Congress

06.17.2022 | Article

The Hill

Caplin & Drysdale's Trevor Potter authored the June 17, 2022 op-ed "If the FEC Won't Protect Voters, the Courts Should — But it Might Be Up to Congress" for *The Hill*. Below is the excerpt of the op-ed, and please visit this link to view the full op-ed as it appears in *The Hill*.

...

I was a Republican commissioner on the Federal Election Commission (FEC) from 1991 to 1995. During that time, for the most part, at least, the FEC functioned as designed: the commission of three Democrats and three Republicans worked collaboratively to ensure agency operation and even-handed enforcement of campaign laws. My bipartisan team led what was then, and still is, the only government agency whose sole responsibility is overseeing the integrity of political campaigns. We administered and enforced the law to prevent corruption and fulfill voters' right to know who is spending to influence their vote — to ensure that the voices of everyday Americans were not drowned out by those of the wealthy.

But recent years have brought about a dramatic deterioration of the FEC, and the agency no longer functions as intended.

The FEC's structure requires four of the six commissioners to agree before an investigation of an alleged campaign finance violation can be opened. This means that three commissioners can paralyze the agency if they so choose. Unfortunately, that has happened consistently in recent years.

Congress foresaw the risk of gridlock — though probably not at this scale — when it created the FEC, addressing it by including a provision in the Federal Election Campaign Act (FECA) that allows private parties to challenge in court FEC dismissals of alleged campaign finance violations. As the agency's deadlock has become endemic, several private parties have sued under this provision to force the FEC to do its job as Congress intended. But a series of recent judicial decisions has threatened to nullify this core statutory protection.

Please visit this link to view the full op-ed as it appears in *The Hill*

Attorneys

Trevor Potter
(202) 862-5092
tpotter@capdale.com

Related Practices/Industries

Political Law