

FEC Changes: One Commissioner Arrives, One Leaves, Quorum Lost

July 2020

June 26 was a day for big changes at the Federal Election Commission (FEC). Longtime Commissioner Caroline Hunter announced she would be stepping down after more than a decade of service. Shortly thereafter, the White House announced the President's intent to nominate Allen Dickerson to replace her. The moves come at a critical time for the FEC, which lacked a quorum for 10 months, resumed a quorum in June, and now faces the loss of a quorum again.

Commissioner Hunter, a Republican, was first appointed to the FEC in 2008. "Caroline has been a stalwart defender of limited government and agency accountability," said Michael Toner, chair of Wiley's Election Law and Government Ethics Practice and former FEC Chairman. She announced she would step down, effective July 3, to join a nonprofit organization, Stand Together in Arlington, VA.

Allen Dickerson has been the Legal Director for the Institute for Free Speech, where he leads a nationwide First Amendment litigation practice. Previously, he was an associate with Kirkland & Ellis, LLP. He also serves as Captain in the Judge Advocate General's Corps, United States Army Reserve.

"Allen has a brilliant legal mind and an established commitment to the proper balance between regulation and free speech," said Lee Goodman, a former Chairman of the FEC. "Allen Dickerson and Trey Trainor will work well together on the Republican side of the commission and bring much-needed stability to the agency."

Authors

Michael E. Toner
Partner
202.719.7545
mtoner@wiley.law
D. Mark Renaud
Partner
202.719.7405
mrenaud@wiley.law
Andrew G. Woodson
Partner
202.719.4638
awoodson@wiley.law

Practice Areas

Election Law & Government Ethics
Federal Election Commission
Representation

The White House's decision to nominate Dickerson solo, without pairing him with a Democratic nominee, is a significant development. With Hunter's departure, the six-member Commission is down to three commissioners. Four commissioners are required to make a quorum that can conduct agency business. The three remaining commissioners are its new Chairman – Trey Trainor, a Republican – and incumbent commissioners Ellen Weintraub, a Democrat, and Steven Walther, an independent who traditionally has voted with the Democrats. Weintraub has served 18 years, since 2002, while Walther has served since 2006. Both serve long past their original six-year terms.

That composition leaves the White House and Senate some important decisions about how to remake the Commission. The White House could nominate five new commissioners, three Democrats and two Republicans, to join Chairman Trainor, who joined the Commission this month. Alternatively, the White House could nominate one Democrat to fill the empty Democratic seat and two new Republicans to fill the two empty Republican seats. The White House's announcement that it is nominating only Dickerson at this time indicates an incremental approach. Dickerson would join Trainor to fill two Republican seats, while Weintraub and Walther would continue serving past their terms in Democratic seats. The quorum would be restored with the bare minimum of four commissioners. Whether the Senate agrees with this approach remains to be determined.

For the foreseeable future, the agency once again will be without a quorum for at least some period of time this summer. The agency can resume regulatory business once Dickerson is formally nominated, confirmed by the Senate, and sworn into a seat. That process may take time.