

# ***Busted & Broke***

***Why the Federal Election Commission  
doesn't work***

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## Acknowledgments

This report was written by Research Assistant Amisa Ratliff. Michael Beckel, manager of research, investigations, and policy analysis, contributed to this report. Design by Evan Ottenfeld.

## About Issue One

Issue One is the leading cross-partisan political reform group in Washington. We unite Republicans, Democrats, and independents in the movement to increase transparency, strengthen ethics and accountability, and reduce the influence of big money in politics. Issue One's [ReFormers Caucus](#) of more than 200 former members of Congress, governors, and Cabinet officials is the largest bipartisan coalition of its kind ever assembled to [advocate for solutions](#) to fix our broken political system.

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# Busted & Broke

## Why the Federal Election Commission doesn't work

**BY AMISA RATLIFF, RESEARCH ASSISTANT**

Photo credit: Michael Beckel

Candidates, political parties, super PACs, and dark money organizations routinely spend billions of dollars to win elections and secure power in Washington, D.C. But the Federal Election Commission (FEC), the agency charged with ensuring those entities don't break our nation's campaign finance laws, is not up to the task. It lacks the budget, staff, and teeth to get the job done, and all signs indicate that both political parties have abandoned the FEC as an instrument of effective enforcement.

It's common knowledge that the FEC is dysfunctional. New research by [Issue One](#) shows how and why:

- ▶ There has been a dramatic decline in fines issued by the FEC, even as apparent campaign finance violations continue to make headlines.
- ▶ This lack of fines is commensurate with the brain drain that has been crippling the agency. Over the past 16 years, roughly one in five FEC employees has left the agency without being replaced — including a pair of commissioners and numerous high-level officials.
- ▶ As vacancies have reached record levels, the agency's budget has stagnated. Fewer people with fewer institutional resources are left to evaluate more and more cases, and to oversee a campaign finance system stressed with record levels of fundraising and spending.

All of this paints a bleak picture, and it puts the integrity of how we choose our leaders at risk.

"The FEC is failing to get its job done and this is creating a crisis for our elections," said Issue One CEO Nick Penniman. "As the nation heads into what is expected to be the most expensive election in history, with foreign actors dead-set on interfering in our elections, the public deserves a watchdog with the power to hold wrongdoers accountable."

Added Issue One Executive Director Meredith McGehee: "Feckless enforcement of existing laws undermines the integrity of our political system. The FEC needs an adequate budget and an adequate staff to have the teeth necessary to be a true enforcement agency and not a paper tiger."

The FEC's stated [mission](#) is "to protect the integrity of the federal campaign finance process by providing transparency and fairly enforcing and administering federal campaign finance laws." But for years, the agency has been widely criticized for its inability to effectively accomplish this goal.

The [Washington Post](#) has called the FEC "the poster child for a broken Washington," and the Center for Public Integrity [has described](#) the FEC as "rotting from the inside out. The [Wall Street Journal](#) has written that "nothing in Washington is as gridlocked as the Federal Election Commission." John Pudner, the executive director of Take Back Our Republic,

has [called the situation](#) at the FEC “absurd” and has said the agency needs to be “given some teeth to enforce the law.” And Trevor Potter, a former Republican chairman of the FEC, [has said](#) the commission “has been transformed from a vitally important agency that emerged as one of the great triumphs of the post-Watergate reform movement into an actual impediment to enforcement of the law.”

Unlike most other executive branch agencies, which are either led by a single individual or have an odd number of seats, the FEC was designed for deadlock. It is supposed to have six members, no more than three of which can be affiliated with the same political party. And it must have the approval of at least four commissioners to pass measures or enforcement actions.

Today, the panel has dwindled to just four commissioners, meaning it now needs unanimous consent in order to take any action

at all. Instead of providing regular guidance and oversight, the FEC frequently deadlocks, leading to what many have characterized as virtually no significant enforcement of election law.

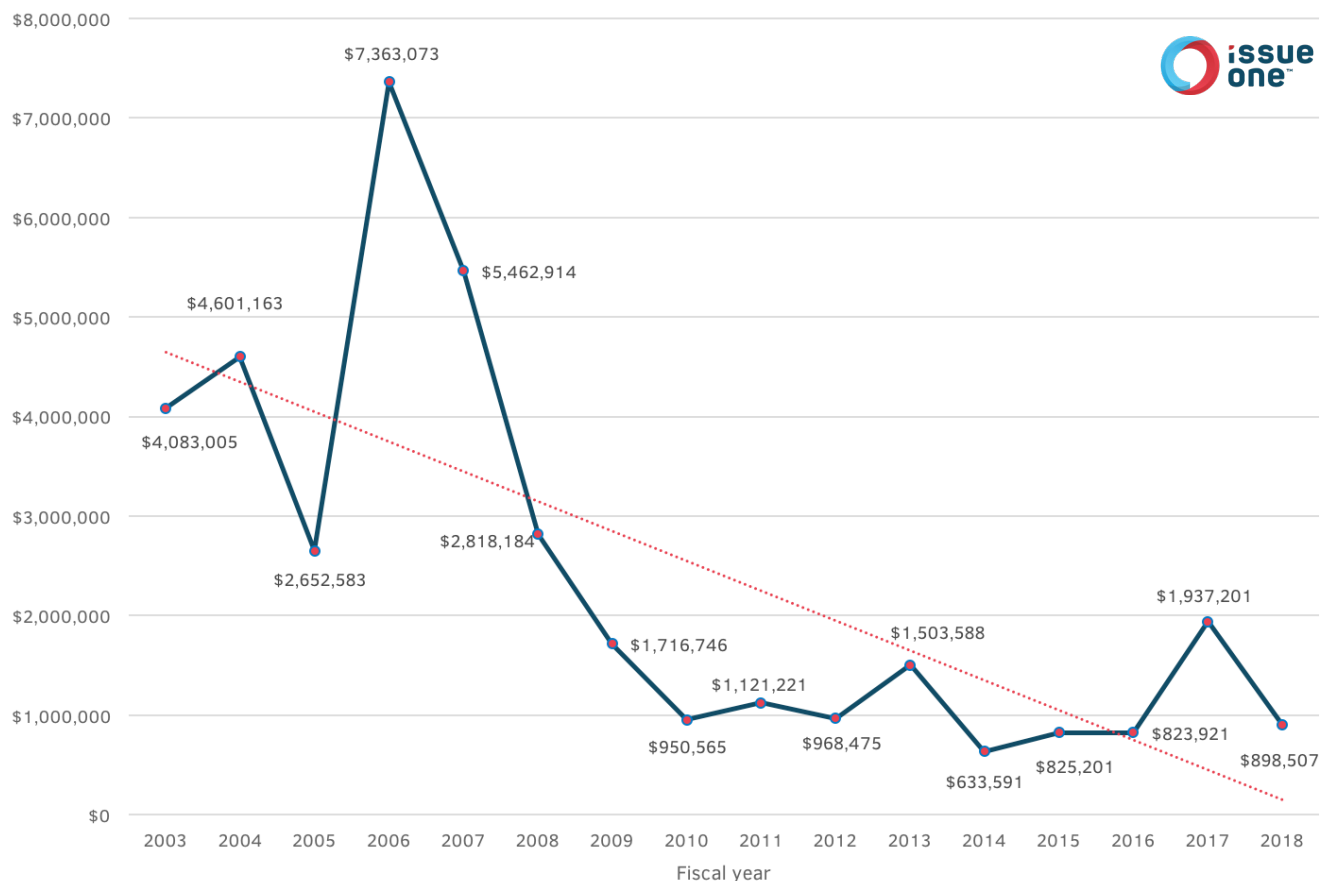
## A WATCHDOG THAT IS SLOW TO BARK OR BITE

The FEC has earned headlines this year for issuing the third-largest fine in the agency’s history, but this enforcement action came years after the violations occurred.

In March, [Mother Jones reported](#) that the FEC had recently issued fines totaling nearly \$1 million in a case stemming from a super PAC’s solicitation of foreign nationals during the 2016 election.

American Pacific International Capital (APIC), a Chinese-owned investment holding company, was [fined \\$550,000](#) after

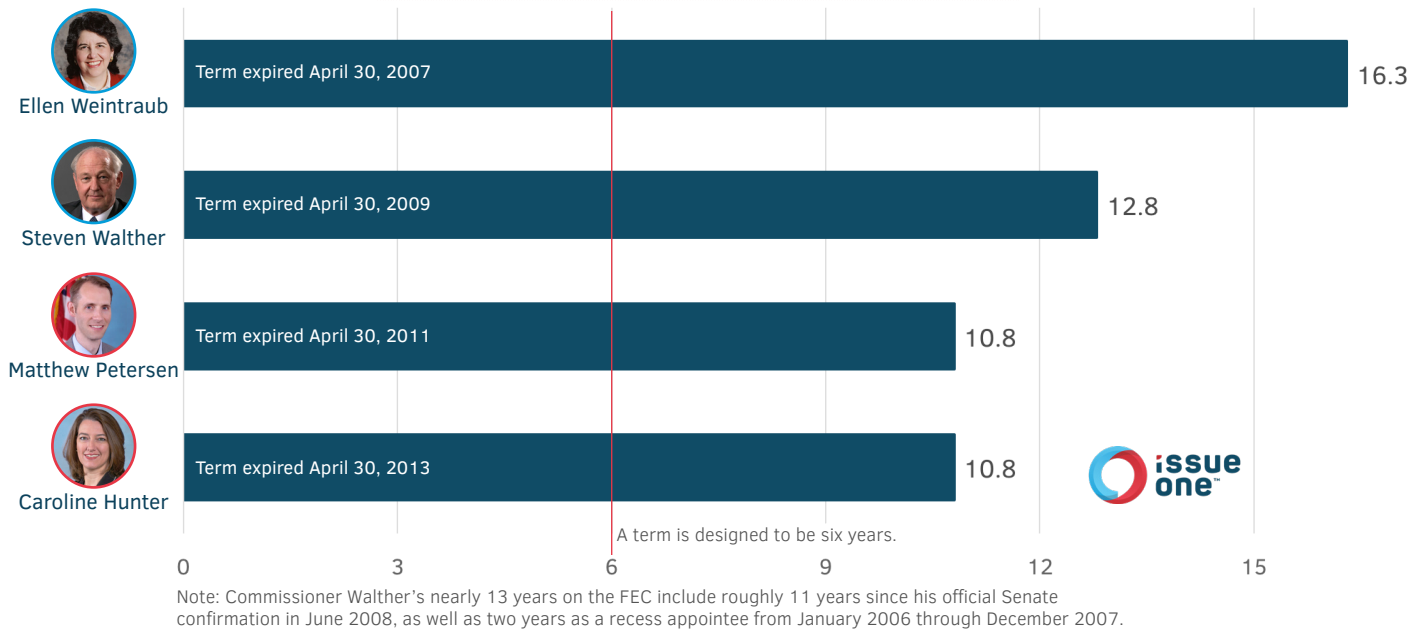
## Annual fines issued by the FEC per year



Source: Federal Election Commission.

Note: The FEC’s fiscal year runs from October 1 through September 30. Fine amounts for FY03-FY17 were adjusted for inflation by Issue One. All amounts are in September 2018 dollars.

## FEC commissioners' years on the job



contributing \$1.3 million to Right to Rise USA, a super PAC that supported Republican Jeb Bush during his failed 2016 presidential campaign.

The FEC found that Neil Bush, Jeb's brother and a member of APIC's board, had solicited donations from the Chinese businessmen who control the company as well as the American who controls its U.S. operations. The FEC complaint was brought against APIC and Right to Rise USA by the [Campaign Legal Center](#) after [an investigation by the Intercept](#) in August 2016 detailed how the Chinese president of APIC directed the company's super PAC contributions.

For its part in these transactions, Right to Rise USA was [fined \\$390,000](#). In an unrelated matter, Right to Rise USA was also [fined \\$200,000](#) by the FEC in October for failing to file some of its disclosures for independent expenditures aiding Bush in a timely fashion — a clear violation of the law.

Similarly, the FEC also [recently fined](#) a liberal, union-backed super PAC called For Our Future [\\$59,000](#) for failing to promptly report several of its independent expenditures aiding Democrats in the 2016 election.

Such examples show that even some clear breaches of reporting requirements and

election law are not punished by the FEC until years after the infractions occur. Furthermore, cases of significant enforcement actions are the exception. Most fines issued by the FEC are so low that they are simply seen as the cost of doing business, rather than a true deterrent to — or punishment for — breaking the law.

### FINES ON THE DECLINE

Fines are one of the main ways that the FEC enforces campaign finance laws and penalizes offenders. As the old proverb says, without enforcement, there is no law.

Issuing fines requires staff members, especially in the office of the general counsel. Vacancies, in addition to gridlock, lead to a decrease in fines and an increase in the time it takes to settle enforcement matters.

During the first five years after President George W. Bush signed the Bipartisan Campaign Reform Act of 2002 into law, the median amount of fines issued by the FEC annually was about \$4.6 million (adjusted for inflation). During the past five years, by contrast, the median amount of fines issued by the FEC annually was just \$825,000 (in 2018 dollars). This represents a nearly six-fold decline.

## **Busted & Broke**

**“The poster child for a broken Washington.”**

**- The Washington Post**

**The FEC is “rotting from the inside out.”**

**- Center for Public Integrity**

**“Nothing in Washington is as gridlocked” as the FEC.**

**- The Wall Street Journal**

**The agency needs to be “given some teeth to enforce the law.”**

**- John Pudner, Take Back Our Republic**

**The FEC has been transformed “into an actual impediment to enforcement of the law.”**

**- Trevor Potter, former Republican FEC chairman**

During its 2006 fiscal year alone, the FEC issued a record level of fines — about \$7.4 million, after adjusting for inflation. This was mostly due to a record-breaking [\\$3.8 million fine](#) (about \$4.7 million in 2018 dollars) against Freddie Mac after the federally chartered organization violated the Federal Election Campaign Act and FEC regulations by, among other things, using corporate resources to facilitate fundraising events that raised \$1.7 million for federal candidates between 2000 and 2003.

During its most recently completed fiscal year, which ran from October 2017 through September 2018, the FEC issued only about [\\$900,000](#) in fines. That was less than half the amount it issued in the previous fiscal year.

Much of last year's total was due to a single [\\$350,000 fine](#) for an illegal contribution made during the 2012 election cycle. The FEC concluded that multiple pass-through organizations, including a Delaware-based limited liability company and the American Conservative Union, were used to conceal the identity of an unknown donor who gave \$1.7 million to Now or Never PAC, a super PAC that supported several Republican candidates. Due to an ongoing lawsuit, the identity of the original donor is still unknown nearly seven years later.

## PARALYZED BY GRIDLOCK

While there are occasionally notable cases of large FEC fines, one of the most common enforcement outcomes at the agency is actually deadlock, in which there is no investigation, no fine is issued, and the case is dismissed. Even in clear cases of misconduct, the FEC may fail to issue a fine.

Below are some notable cases from recent years in which the FEC deadlocked and failed to enforce campaign finance laws.

In [2016](#), the FEC deadlocked in a case involving Edward Conard, a longtime friend and former business partner of Republican Mitt Romney. Conard had covertly created [a Delaware-based limited liability company](#) called W Spann LLC for the sole purpose of making a \$1 million donation to Restore Our Future, the super PAC that supported Romney's failed 2012

presidential run. Federal law prohibits people from making political contributions under any name but their own, yet Conard admitted that he used W Spann LLC as a "vehicle" for his super PAC contribution so that his identity would not be publicly disclosed.

The FEC has deadlocked in similar situations involving other LLCs as well. In [2018](#), the commission failed to agree that it should investigate a case in which a company called MMWP12 LLC [contributed \\$500,000](#) to an outside group that backed Republican John Kasich's failed 2016 presidential campaign without disclosing the true source of the funds.

Around the same time, the FEC likewise failed to agree that it should investigate a case in which healthcare entrepreneur Vivek Garipalli used DE First Holdings, a statutory trust, to [donate \\$1 million](#) in 2015 to a liberal super PAC called Coalition for Progress.

In all three of these cases, the commission gridlocked. While half of the commissioners supported further investigation, half of them voted to dismiss the cases because they believed that there had not been ample notice of the FEC's rules about how to treat super PAC contributions from LLCs and trusts. The three Republican commissioners [wrote](#) that intentionally using a corporation or LLC to mask one's identity could be considered illegal, but that pursuing enforcement actions in these cases would be "unfair" because the existing FEC legal guidance did not, in their opinions, make it clear that such activity was illegal.

Yet if the FEC had not taken more than four years to decide the first case, involving W Spann LLC, the commission would likely have been able to levy substantial fines against the people behind DE First Holdings and MMWP12 LLC.

## EVEN FEC COMMISSIONERS ARE FRUSTRATED

Some of the FEC's most vocal detractors are the commissioners themselves, who are frustrated by their inability to perform the job they were appointed to do. Gridlock at the agency is largely due to ideological differences among commissioners, some of whom believe the FEC should enforce election laws, and some of whom are not only opposed to significant enforcement

but also actively engage in obstructionism. Potter, the former Republican FEC chairman, may have said it best in a [2017 speech](#). He traced the FEC's ineffectiveness back to congressional Republican leadership's opposition to the Bipartisan Campaign Reform Act of 2002, which banned unlimited "soft money" contributions to political parties. Potter said that this opposition to enforcement was "imported" to the FEC with the new Republican commissioners whose terms began in 2008. Since then, he said, the commission "has deadlocked time and again, on virtually every important issue" and "has ceased to function as intended."

Democrat Ann Ravel, another former chair of the FEC, agrees. She frequently criticized the agency before she left in 2017, writing [op-eds](#) in the *New York Times* and even [appearing](#) on Comedy Central's "The Daily Show" in an effort to alert the public about its dysfunction. Similarly, Democrat Ellen Weintraub, the current chair of the FEC, [has said](#) that "people feel free to ignore" the few campaign finance rules that still stand.

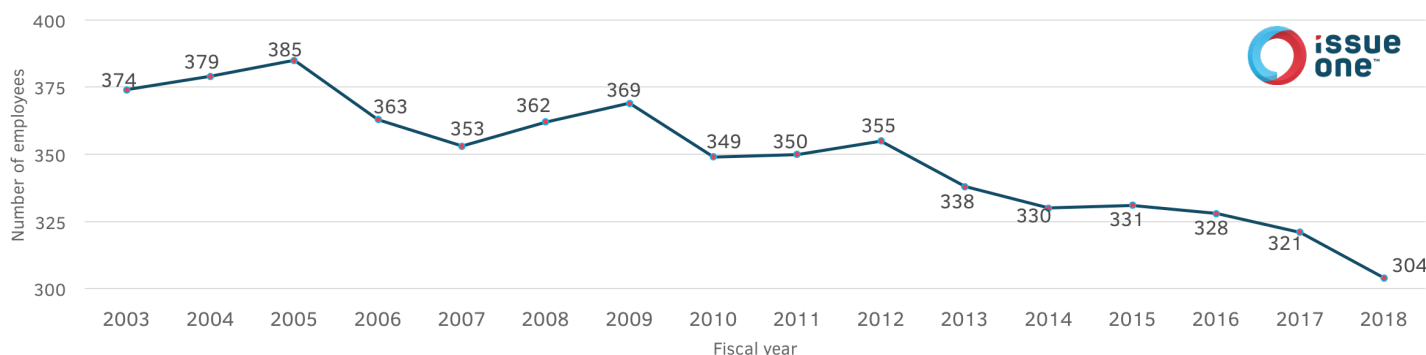
The ideological differences among the current FEC commissioners run deep, and disagreements permeate the agency's mundane matters as well as its enforcement docket. The commissioners — who have been serving together for years longer than originally intended — were even [famously](#) unable to decide whether to serve bagels or donuts for an event commemorating its 40th anniversary in 2015.

Two decades ago, Congress passed a [bill](#) designed to limit FEC commissioners to a single six-year term, which should have regularly brought fresh perspectives to the agency. Yet today, the most junior members of the FEC, Republicans Caroline Hunter and Matthew Petersen, have each served for nearly 11 years (almost twice as long as a normal term), while Weintraub, the longest-serving of the current commissioners, has been at the agency for more than 16 years.

In part because commissioners are allowed to stay in their roles until the president nominates (and the Senate confirms) new people to take their place, neither Democrats nor Republicans have made new FEC nominations a priority. During his eight years in the White House, President Barack Obama nominated people to fill just three seats on the FEC, while he could have nominated six. The sole individual Obama nominated during his first term [withdrew from the process](#). (The other two — Ravel and Republican Lee Goodman — each left the FEC before serving six years.) To date, President Donald Trump, who could likewise nominate six new FEC commissioners, [has nominated](#) just one. But the Republican-controlled Senate has never scheduled a confirmation vote or publicly pressed the president to put forward additional names.

Due to inaction by Congress and the president, none of the current commissioners have been replaced and the two other commissioners' seats have each remained vacant for more than a year. Moreover, what many people don't know is that the vacancies don't stop at the top.

## FEC staff levels per year



Source: Federal Election Commission for FY14-FY18; Center for Public Integrity for FY03-FY13.  
Note: Figures include both temporary and permanent positions.

## VACANCIES ABOUND

Records show that the agency has lost 24 employees during the past three years without replacing them. In fact, the FEC's staff has been decreasing for years. According to research by Issue One, roughly one in five employees has left the agency since 2003 and not been replaced.

These aren't just low-level employees. There are currently a number of vacancies in critical senior leadership positions. Last year, an inspector general [report](#) noted that these kinds of vacancies put the FEC "at risk of not efficiently and effectively meeting the agency's mission," and leave the agency "at high risk for fraud, waste, and abuse."

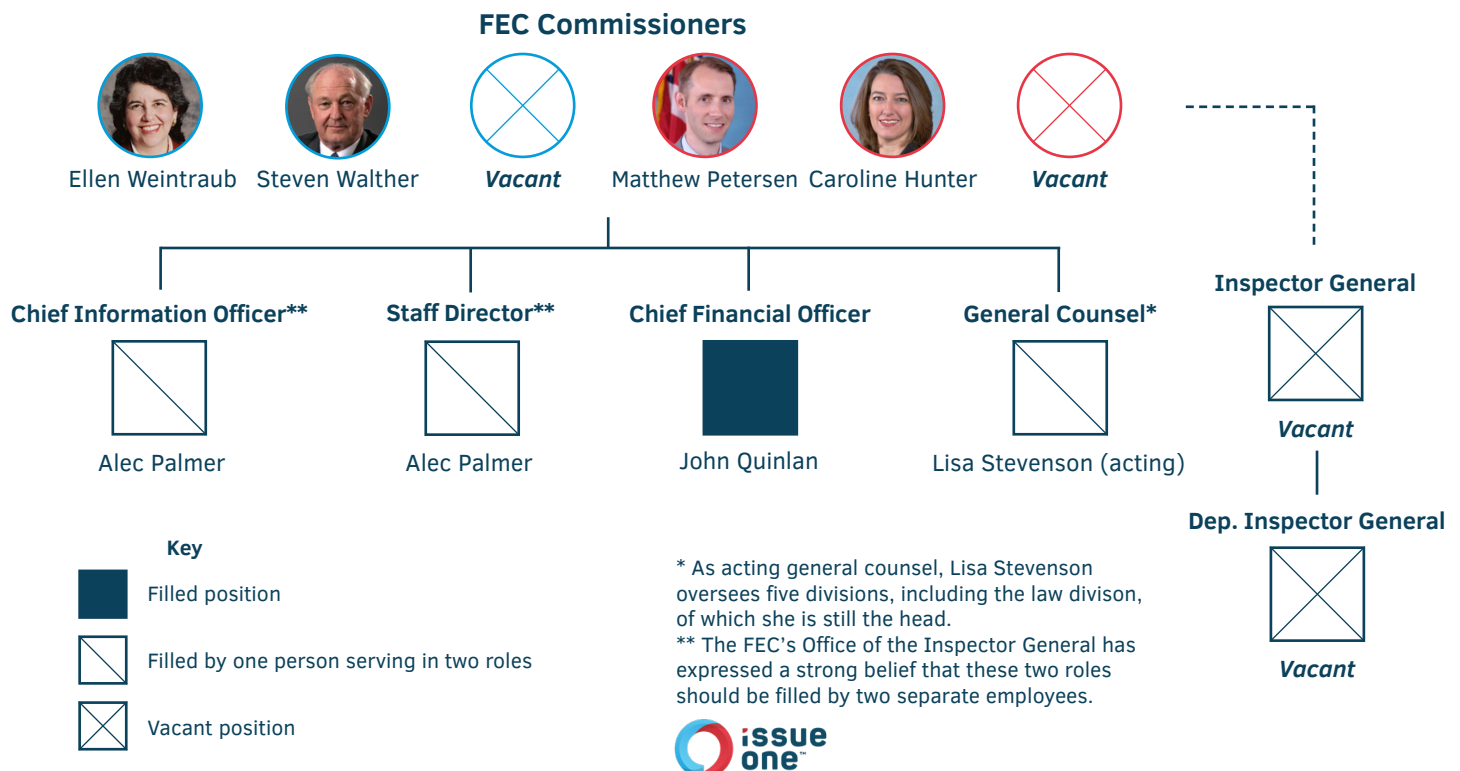
Among the notable vacancies at the FEC:

- ▶ Alec Palmer [serves](#) as both the staff director and chief information officer. He has been the agency's chief information officer since 2003, and he became the acting staff director

after the previous staff director left the FEC in [October 2009](#). Palmer was officially named staff director in [August 2011](#) and continues to serve in both roles. The FEC's Office of the Inspector General expressed a strong belief that these roles should be filled by two separate employees in a report last year, because both positions serve crucial purposes. The staff director supervises nearly every division at the agency, while the chief information officer is responsible for all of the FEC's computer support.

- ▶ Lisa Stevenson currently serves as both the deputy general counsel for the FEC's law division and the acting general counsel for the agency. The general counsel oversees five different organizational units, including the law division. Stevenson has been the acting general counsel since [September 2016](#), but the role has not been permanently filled since the previous attorney [left in July 2013](#).

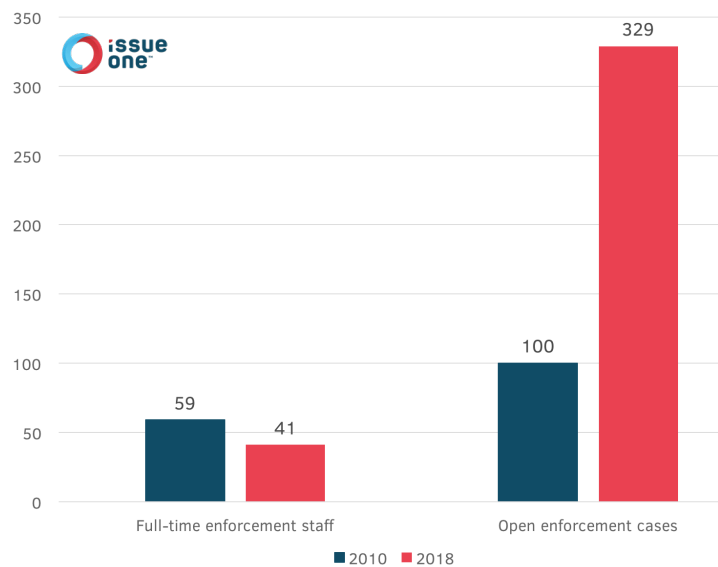
## Vacancies in leadership positions at the FEC



- ▶ The position of inspector general, whose office's [mission](#) is to “detect and prevent fraud, waste, and abuse in agency programs and operations,” has been vacant since Lynne McFarland retired in [March 2017](#) after serving in the role for 27 years. The Center for Public Integrity recently [reported](#) that attempts to fill the vacancy have caused internal strife at the agency, including the resignation of one human resources specialist.
- ▶ The position of deputy inspector general has been vacant since November 2018. That's when J. Cameron Thurber, the previous deputy inspector general and author of the FEC's last inspector general report, resigned, leaving the inspector general's office completely unable to fulfill its mission.
- ▶ The position of director of accounting, who serves under the direction of the FEC's chief financial officer and helps manage the agency's budget, has been vacant since August 2016.
- ▶ The number of employees (mostly lawyers) in the FEC's enforcement division fell to 41 employees in 2018, down from 59 in 2010. All the while, there has been a growing backlog of cases. In 2010, the agency had 100 cases on its docket, but in 2018, it had 329 cases. That's more than a four-fold increase in each employee's average workload, going from 1.7 cases per employee in 2010 to 8 cases per employee in 2018. Weintraub, the FEC's current chair, [recently lamented](#) at a public event that the agency “could use another whole team of enforcement attorneys.”

The 2018 inspector general report noted that vacancies at the management level could result in inadequate oversight of daily operations. FEC management responded to the report by saying that they were working with the FEC's personnel committee (a pair of FEC commissioners who must approve all new hires) to fill the vacancies, but the downward trend in staffing levels is clearly cause for concern.

## More cases, fewer FEC staffers



Source: Federal Election Commission.

The high number of vacancies may also be related to [low morale](#) at the agency — a negative feedback loop that could lead to a higher frequency of staff departures as well as an unwillingness for others to join the agency. Or it could be related to an inability of the FEC's personnel committee to agree on basic, non-political hiring decisions. Either way, it is clear that the agency is not working at capacity when senior leadership roles remain vacant for years on end.

## CONCLUSION

All this speaks to a federal agency that is unable and unwilling to fulfill its mission. The commission is both underfunded and understaffed, and the anti-corruption laws that help guarantee the integrity of our campaigns are underenforced.

Congress should provide the FEC with the resources it needs to do its job, and the FEC should set aside ideological differences to focus on safeguarding our elections. We need a watchdog that enforces the laws on the books and protects our country against corruption and foreign interference. The FEC can, and should, be that watchdog. •