Ineffective by Design: A Critique of Campaign Finance Law Enforcement in the United States, Australia, and the United Kingdom

Kelly Ann Skahan

Follow this and additional works at: https://digitalcommons.law.uw.edu/wilj

Part of the Comparative and Foreign Law Commons, and the Election Law Commons

Recommended Citation
Available at: https://digitalcommons.law.uw.edu/wilj/vol27/iss2/8

This Comment is brought to you for free and open access by the Law Reviews and Journals at UW Law Digital Commons. It has been accepted for inclusion in Washington International Law Journal by an authorized editor of UW Law Digital Commons. For more information, please contact cnyberg@uw.edu.
INEFFECTIVE BY DESIGN: A CRITIQUE OF CAMPAIGN FINANCE LAW ENFORCEMENT IN THE UNITED STATES, AUSTRALIA, AND THE UNITED KINGDOM

Kelly Ann Skahan†

Abstract: Though ostensibly tasked with enforcing their respective nations’ campaign finance laws, the Federal Election Commission (“FEC”), Australian Electoral Commission (“AEC”), and Electoral Commission (“EC”) are woefully unable to meaningfully address the evolving nature of campaigns or enforce existing regulations in the United States, Australia, and the United Kingdom, respectively. Attempts at enforcement are cut off at the knees by political infighting, half-hearted grants of independent authority, and a lack of institutional support. Conversely, the New York City Campaign Finance Board (“CFB”) is recognized as an example of meaningful enforcement and relative political independence. By implementing changes that translate the CFB’s municipally-successful structure to federal agencies, the FEC, AEC and EC could become more effective in the enforcement of existing laws and better at adapting to the changing face of elections.


I. INTRODUCTION

In modern democracies, it takes money to run an election campaign and laws to make sure a campaign is run fairly. Those laws are tested often. Imagine: in one country, a government body receives five separate reports, each alleging that political action committees have created shell companies from which wealthy donors can contribute unlimited funds to their chosen candidates—an illegal act.¹ Across the Atlantic, the political party in power egregiously oversteps long-established candidate spending limits in over two dozen constituencies en route to a decisive electoral victory.² A hemisphere away, a Senator transfers funds from his labor union’s accounts to his own

† Kelly Ann Skahan is a J.D. Candidate at the University of Washington and is expected to graduate in June 2018. The author received a B.A. in English from Villanova University. She would like to thank Professor Lisa Marshall Manheim for her guidance and patience, the staff of the Washington International Law Journal for their hard work, Vince Skahan for the history lessons, and Susan Skahan for everything.


² Martin Belam, What is the Tory election expenses story and why isn’t it bigger news?, GUARDIAN (May 13, 2016), https://www.theguardian.com/politics/2016/may/13/tory-election-expenses.
campaign war chest, disclosing the donation fourteen months after he is reelected—a full eight months after the law required him to do so. The violations are not related, the beneficiaries are of different political ideologies, and they are located thousands of miles apart. The common thread in each corner of the globe: the bodies tasked with stopping violations of campaign finance law do nothing in response.

Though similar in governmental structure and lawmaking procedure, the United States, Australia, and the United Kingdom each approach campaign finance laws differently. Disclosure thresholds, contribution limits, foreign contributions, and the role of public financing vary widely among the three countries. However, they share a common theme: all three countries’ campaign finance laws are ineffective because they fail to empower their respective campaign finance boards to meaningfully enforce those laws. Specifically, political infighting paralyzes the United States’ Federal Election Commission (“FEC”), the Australian Electoral Commission (“AEC”) fails to effectively monitor violations of campaign finance law, and the insufficiently harsh penalties of the Electoral Commission (“EC”) fail to deter the United Kingdom’s political parties from overstepping spending limits.

Part I of this Comment examines the establishment, authority, and structure of the campaign finance law enforcement bodies of the United States, Australia, and the United Kingdom—the FEC, the AEC, and the EC.

---


6 Nick Thompson, *International campaign finance: How do countries compare?*, CNN (Mar. 5, 2012), http://www.cnn.com/2012/01/24/world/global-campaign-finance/index.html (“[T]he absence of limits on the amount individuals or corporations can donate has contributed to the ongoing erosion of public confidence in the political process in the UK, according to one watchdog organization.”).


respectively. It also discusses instances in which each body failed to enforce clear violations of campaign finance law in their respective jurisdictions. Part II examines the establishment, authority, and structure of the New York City Campaign Finance Board (“CFB”), known widely as one of the most effective campaign finance law enforcement bodies in operation today, as well as an example of effective enforcement on the part of the CFB. Part III evaluates the FEC, AEC, and EC using five factors that make for effective enforcement, based on the New York City CFB’s structure. Part IV and finally, this Comment addresses the limits and challenges of applying measures that succeed on the municipal level to a national enforcement body.

II. THE FEC, AEC, AND EC

The United States’ Federal Election Commission, the Australian Electoral Commission, and the United Kingdom’s Electoral Commission are each structured differently, with varying jurisdictions and responsibilities. However, each body is ineffective because none can effectively enforce the laws they ostensibly exist to maintain, develop, and impose. Specifically, the FEC is crippled by deadlocked votes and consequent inaction, the AEC fails to effectively monitor and audit campaign finance violations in the first place, and the EC lacks authority to impose substantial penalties even when significant violations occur.

A. The United States’ Federal Election Commission

The United States’ history of campaign finance regulation began in 1907. President Roosevelt’s push for campaign finance reform led Congress to enact the Tillman Act, which banned corporate contributions to political candidates. Regulation continued through the first half of the twentieth century with the adoption of the Federal Corrupt Practice Act and its amendments, the Hatch Act, the Smith-Connally Act, and the Taft-Hartley Act, each seeking to rein in corporate and union contributions to election campaigns.

---

9 Jack Noland, *How to Effectively Enforce Campaign Finance Laws*, ISSUE ONE (Dec. 4, 2015), https://www.issueone.org/how-to-effectively-enforce-campaign-finance-laws/ (“One reason why [New York City’s campaign finance system] has been so successful is because it is backed by an effective enforcement agency.”).


11 *Id.*
In 1971, the United States Congress passed the Federal Election Campaign Act ("FECA"), "instituting more stringent disclosure requirements for federal candidates, political parties, and political action committees." Three years later, in response to the Watergate scandal and the 1972 presidential election, Congress passed amendments to the law that set limits on contributions by individuals, political parties, and political action committees. The amendments consolidated previously-passed campaign finance restrictions and formed a comprehensive system of regulation, enforcement, and reporting requirements for federal elections. The amendments also established the FEC as an independent agency designed to regulate campaign finance, collect disclosed finance information, enforce civil penalties, and oversee public funding of presidential elections.

The FEC consists of six commissioners, no more than three of whom can represent the same political party. Generally, commissioners “serve in staggered six-year terms,” with two seats up for appointment every two years and the chair of the Commission seat changing annually. When no successor is appointed, a commissioner may serve beyond her six-year term; though each commissioner theoretically serves as chair only once, commissioners who serve beyond their six-year term may become chair more than one time.

Recently, those appointments have been waylaid by political infighting during the approval process. In 2008, for instance, only two commissioners remained on the job when Senator Mitch McConnell "demanded that the Senate vote on pending nominees as a package, not individually," leaving all but two seats open on the Commission. Four commissioners must agree for any official Commission action to occur;

---

13 Id.
14 Id.
16 Id.
17 Id.
20 Leadership and Structure, supra note 15.
consequently, if the Commission has open seats, it is difficult to obtain approval of any proposed official action.\textsuperscript{21} In 2008, four open seats all but paralyzed the Commission entirely.\textsuperscript{22}

Open seats and a lack of consensus led to a steep rise in deadlocked votes and a corresponding drop in official action by the Commission. In 2007, only seven percent of votes “failed to reach the four-vote threshold” necessary for approval.\textsuperscript{23} After Republican Don McGahn’s appointment to the Commission in 2008, that number climbed to thirty-two percent; by 2013 it had reached forty-one percent.\textsuperscript{24} Consequently, fines imposed for campaign finance violations dropped. The FEC assessed more than $6.7 million in fines in 2006, but in 2012 that number dropped to less than $1 million.\textsuperscript{25} In addition, the processing of cases slowed. While the FEC aims to process cases within fifteen months of receiving them, it only managed to do so seventy percent of the time. Alternative dispute resolutions also took longer to assign, and though the Commission “aimed to conclude all non-presidential audits [of campaigns] in an average of 10 months after the election . . . it hit that benchmark just 27 percent of the time.”\textsuperscript{26}

The FEC’s power to enforce law is also statutorily limited.\textsuperscript{27} “The FEC has exclusive jurisdiction over the civil enforcement of federal campaign finance law”; criminal prosecution, however, is the responsibility of the Department of Justice.\textsuperscript{28} The Commission also has the power to interpret the FECA through regulations and advisory opinions,\textsuperscript{29}

\textsuperscript{21} Some argue that this gridlock was by design. “‘Congress created the agency to be structurally deadlocked,’ said Ralph Nader . . . ‘Congress is content to defer to the FEC’s paralysis. It never wanted an agency that would pinch both parties.’” Levinthal, supra note 19; see also Eric Lichtblau, \textit{F.E.C. Can’t Curb 2016 Election Abuse, Commission Chief Says}, \textit{N.Y. TIMES} (May 2, 2015), https://www.nytimes.com/2015/05/03/us/politics/fec-cant-curb-2016-election-abuse-commission-chief-says.html (“‘Congress set this place up to gridlock,’ Lee E. Goodman, a Republican commissioner, said in an interview. ‘This agency is functioning as Congress intended.’”).

\textsuperscript{22} Levinthal, \textit{supra} note 19.

\textsuperscript{23} \textit{Id.}

\textsuperscript{24} \textit{Id.}

\textsuperscript{25} \textit{Id.}

\textsuperscript{26} \textit{Id.}


though a majority of commissioners must agree before the FEC may issue any regulation or opinion.

The agency’s civil enforcement cases come from four sources: audits of political action committees’ reports, complaints, referrals from other government agencies, and self-submissions from individuals or entities who believe they have committed a violation.\textsuperscript{31} Enforcement cases are known as matters under review (“MURs”). Less complicated matters may be referred to either an alternative dispute resolution program or the Commission’s Administrative Fines Program, which calculates pre-established fines for routine violations like late or missing disclosure documents.\textsuperscript{32}

Enforcement cases are usually triggered by a complaint or internal referral. The Commission’s Office of General Counsel then reviews the submitted materials and recommends a response to the Commission.\textsuperscript{33} If four commissioners agree there is reason to believe a violation occurred or is about to occur, the Commission can open an investigation, open settlement negotiations, or file a lawsuit if no alternative resolution is possible.\textsuperscript{34}

The FEC’s susceptibility to deadlocks and stagnation is particularly evident in recent United States Supreme Court decisions. Although the Supreme Court emphasized the importance of disclosure, particularly with regard to corporate contributions, in its 2010 decision in \textit{Citizens United},\textsuperscript{35} the FEC has yet to respond by issuing disclosure rules that take corporate contributions into account.\textsuperscript{36} Rather, the Commission has delayed consideration, abstained, or voted against the Office of General Counsel’s recommendation to investigate donations that were either improperly disclosed or undisclosed entirely. Commissioner Ann Ravel detailed those MURs in the report she issued upon her departure.\textsuperscript{37} She remarked that she, along with Commissioners Weintraub and Walther, made over ten motions to

\begin{flushleft}
\textsuperscript{31} Enforcing federal campaign finance law, \textit{supra} note 28.  \\
\textsuperscript{32} \textit{Ravel, supra} note 1, at 6.  \\
\textsuperscript{33} \textit{Id.}  \\
\textsuperscript{34} \textit{Id.}  \\
\textsuperscript{35} \textit{Citizens United v. Fed. Election Comm’n}, 558 U.S. 310, 370 (2010) (“A campaign finance system that pairs corporate independent expenditures with effective disclosure has not existed before today. It must be noted, furthermore, that many of Congress’ findings in passing BCRA were premised on a system without adequate disclosure . . . . With the advent of the Internet, prompt disclosure of expenditures can provide shareholders and citizens with the information needed to hold corporations and elected officials accountable for their positions and supporters.”).  \\
\textsuperscript{36} \textit{Ravel, supra} note 1, at 13.  \\
\textsuperscript{37} \textit{Id.} at 14.
\end{flushleft}
begin proceedings on allegations of improper disclosures after the Office of General Counsel recommended opening an investigation, but no member of the Republican bloc was willing to join them. Deadlocked, the Commission ultimately did nothing to address the complaints.\textsuperscript{38}

\textbf{B. The Australian Electoral Commission}

Established in 1984,\textsuperscript{39} the AEC is officially a three-person body; it includes a chairperson, an electoral commissioner, and a non-judicial member.\textsuperscript{40} However, the three members are not identically powerful or credentialed, and they do not vote on issues in the same way as their counterparts in the United States. The chairperson must be a judge or retired judge of the Australian Federal Court.\textsuperscript{41} The electoral commissioner is considered the chief executive officer of the Commission,\textsuperscript{42} and only his or her position is full-time; the chairperson and non-judicial member hold their offices on a part-time basis.\textsuperscript{43} All three are appointed by Australia’s governor-general.\textsuperscript{44} The commissioners hold office for up to seven years and are eligible for reappointment.\textsuperscript{45} A quorum requires two members of the Commission.\textsuperscript{46}

Structurally, the AEC is quite different from the FEC. Rather than a single centralized office and commission, the AEC has a three-tiered structure; the agency is comprised of a national office in Canberra, state and territory offices in each state’s capital, and 150 divisional offices throughout the country tasked with managing the Commission’s diverse portfolio of responsibilities.\textsuperscript{47} Electoral officers for the states are appointed directly by the three commissioners,\textsuperscript{48} and staff may be hired by the Commission as needed.\textsuperscript{49}

---

\textsuperscript{38} \textit{Id.}


\textsuperscript{40} \textit{Commonwealth Electoral Act 1918} sub-div 6(2) (Engl.).

\textsuperscript{41} \textit{Id.} at sub-div 6(4).

\textsuperscript{42} \textit{Id.} at sub-div 18(2).

\textsuperscript{43} \textit{Id.} at sub-div 6(3).

\textsuperscript{44} \textit{Id.} at sub-divs 6(3)–(4).

\textsuperscript{45} \textit{Id.} at sub-div 8(1).

\textsuperscript{46} \textit{Commonwealth Electoral Act 1918} sub-div 15(3) (Austl.).

\textsuperscript{47} \textit{AEC organisational structure, supra} note Error! Bookmark not defined.

\textsuperscript{48} \textit{Commonwealth Electoral Act 1918} sub-div 31(1) (Austl.).

\textsuperscript{49} \textit{Id.} at sub-divs 35(1)–(2).
The AEC’s jurisdiction is also different from that of its American equivalent in several ways. Though both are independent agencies, the AEC is primarily responsible for actually executing elections, including establishing seat boundaries, redistributing districts, and maintaining voter rolls. Statutorily, the AEC is responsible for considering and reporting to the prime minister on electoral matters, promoting public awareness of electoral matters, providing information and advice on electoral matters to the government, conducting research on electoral matters, publishing on matters related to elections, and providing assistance in matters relating to foreign elections.

Though the AEC’s jurisdiction does include campaign finance, the Commission’s actual involvement with enforcement is limited; consequently, violations of campaign finance law often go unnoticed. When campaigns violate disclosure limits or accept illegal loans, the electoral commissioner may bring an action in court against the candidate or an agent of the party in violation. The AEC may also authorize investigation into potential violations, requiring a candidate or party agent to produce documents or appear for questioning. If the AEC finds a campaign has violated the law, the Commission may refer the case to the relevant state or territory office of the Commonwealth Directorate of Public Prosecutions (“DPP”). It is within the DPP’s discretion whether to pursue the matter further. However, although the AEC is statutorily empowered to investigate violations, the Commission’s jurisdiction is so broad that it often fails to notice when a party files late disclosure statements or fails to file them entirely.

The AEC is more reticent about regulating campaigns and campaign finance activity than the FEC. The agency’s 2016–2020 corporate plan includes language stating “[a]s a regulatory body, the AEC aims to reduce

---

51 Commonwealth Electoral Act 1918 sub-divs 7(1)–(3) (Austl.).
52 Id. at sub-divs 315A(1)–(3).
53 Id. at sub-div 316(2A).
55 Id. Additionally, online advertising generally falls into a gap between laws, where no Australian enforcement body is tasked with monitoring campaign finance or electioneering violations that take place on the internet. See Sarah Collerton, Pollies slip through web ad loophole, ABC (Aug. 18, 2010), http://www.abc.net.au/news/2010-08-19/pollies-slip-through-web-ad-loophole/950402.
the regulatory burden imposed on electors through enrollment and voting activities,” before laying out a framework for assessing the performance of regulators. Satisfactory performance by a regulator, the AEC explains, includes refraining from unnecessarily impeding efficient operation of regulated entities, using clear communication, proportionately responding to regulatory risk, dealing transparently, and streamlining monitoring programs—essentially, getting out of the way of campaigns rather than actually regulating them.

Public trust in the AEC faltered after Australia’s 2013 federal election, when the Commission referred over 8000 instances of multiple votes by the same voter to the Australian Federal Police, implying that the AEC had managed the election ineffectively. In response, the AEC instituted its 2016–2020 corporate plan, which identified five key “areas for improvement”: a changed model for electoral events, improved quality and assurance, professionalization of the AEC’s workforce, re-establishment of the agency’s reputation, and more agility and responsiveness across the agency.

The AEC, however, falls victim to many of the same pitfalls as its American equivalent. Australia’s Commission faces much of the same partisan gridlock that cripples the United States’ enforcement body. Major political parties in Australia are unwilling to rework campaign finance laws, which are inconsistent from state to state and often conflict with the general federal regime. Although federal law sets a donation disclosure limit of $13000, states have set inconsistent disclosure limits beneath this ceiling. Further, disclosed donations are published six months after an election concludes, limiting the usefulness of disclosure.

---


57 Id.


59 AEC CORPORATE PLAN, supra note 56, at 5.


61 Id.

62 Id.
Ultimately, the AEC is tasked with too wide a jurisdiction and is encumbered by too few enforcement powers for it to effectively penalize even widely-known violations. When legislative commission hearings reveal campaign finance violations, the AEC fails to act. In 2017, Australian Labour Party leader Bill Shorten was scrutinized for overpayments made by his labor union to his campaign in 2007. The payments were discovered when it came to light that the union had disclosed the contribution to the AEC a full fourteen months after the 2007 election. Despite discovering this violation more than ten years ago, the AEC has yet to take any action regarding the offense, focusing instead on reorganizing its corporate structure and attempting to rehabilitate its own reputation.

C. The United Kingdom’s Electoral Commission

The United Kingdom’s EC was created in 1997, much later than its counterparts in the United States and Australia. The EC was established by the Political Parties, Elections, and Referendums Act ("PPERA"), which also set limits on the amounts registered political parties could accept from donors and the amounts those parties could spend leading up to those elections. Though originally tasked with overseeing and promoting elections and campaigns in the UK, the Commission gained more power in 2006 when Parliament passed the Electoral Administration Act. This Act required local authorities to review and report all polling stations to the Commission. In 2009, Parliament’s Political Parties and Elections Act expanded those powers again, instituting a wider range of civil sanctions that the Commission could impose on violators.

The EC’s current jurisdiction includes overseeing elections and regulating campaign finance throughout the UK. The agency is divided into four main offices: Communications and Research, Electoral Administration and Guidance, Finance and Corporate Services, and Political Finance and Regulation.
The Commission itself has nine or ten commissioners who are independent of political parties. Commissioners may not be members or officers of a registered party; hold relevant elected office; or have been employed by a party, served in office, or been named as a donor to a party at any point in the past five years. Up to four of the ten commissioners are nominated by registered parties of Parliament. Each party may nominate up to three commissioners, and no more than two ultimately appointed commissioners may have been nominated by the same party. The Commission also includes an Executive Team and a Senior Leadership group, who support the Commission “by providing day-to-day leadership to implement [its] strategy successfully.” These teams function largely in the same way as staff members of the FEC and AEC.

The Commission’s statutory enforcement responsibilities come from the PPERA, which requires the agency to “monitor and take all reasonable steps to secure compliance with” campaign finance law. As the regulator of campaign finance, the EC “make[s] sure people understand the rules and try[ies] to prevent people breaking the rules, [is] able to investigate and impose sanctions when people do break the rules, [and] publish[es] data on political funding and spending.” The Commission also advises the government on proposed changes to campaign finance rules.

The EC learns about potential campaign finance violations either through its own independent monitoring, complaints made by individuals, press reports, or referrals from other regulators. The Commission “check[s] all potential breaches of the PPERA rules to determine if they

---

**Notes:**


70 Political Parties, Elections and Referendums Act 2000, c.41, § 3(4)(a)–(d) (Eng.).

71 Id. at § 3A(1).

72 Id. at § 3A(5). The Queen nominally makes all appointments, but generally with the advice of Parliament. Id. at cf.(1)(4).


74 Political Parties, Elections and Referendums Act 2000, c. 41, § 145 (Eng.).


76 Id.

should be assessed.” 78 If the Commission finds reasonable grounds to suspect an offense, it may open an investigation. 79 However, before actually opening an investigation, the EC weighs “whether or not a matter is in the public interest and justifies the use of [its] resources,” 80 considering factors like the seriousness of the offense, the strength of the evidence, the duration of the suspected offense, the compliance history of the person who may have committed the offense, and any steps already taken to rectify the breach. 81

Investigations have three possible outcomes: a determination that there is not enough evidence of an offense to take action, the Commission’s satisfaction beyond a reasonable doubt that an offense has been committed, or the Commission’s decision that it is no longer in the public interest to investigate a suspected offense. 82 When the EC is satisfied beyond a reasonable doubt that an offense occurred, it decides whether to impose a sanction and refers the matter to the police, if appropriate. 83

Generally, the EC imposes sanctions where it considers it appropriate, proportionate, and in the public interest. 84 When determining the size of a sanction, the Commission weighs a number of factors: the seriousness of the offense, the harm caused, any financial gain or advantage the beneficiary may have received, whether the offense was inadvertent or deliberate, offenders’ cooperation with the investigation, whether the matter was reported voluntarily, efforts to mitigate the offense’s impact, and efforts taken to reduce the likelihood of recurrence. 85 Offenders are given the opportunity to respond to sanctions, and their appeals are heard by a member of the Commission. 86

In contrast with the United States and Australia, the United Kingdom’s campaign finance laws focus on limiting the expenditures made by candidates rather than limiting the donations that parties and individuals can receive. 87 There are no limits on the amounts political parties or electoral

---

78 Id.
79 Id. at 13.
80 Id.
81 Id.
82 Id. at 14.
83 EC ENFORCEMENT POLICY, supra note 77, at 15.
84 Id. at 16.
85 Id. at 17.
86 Id. at 18.
candidates may receive; however, parties are obligated to report donations of over £5000 to the EC each year, and individual candidates must submit a return detailing donations of £50 or more. Donations of over £50 must come from permissible donors—that is, individuals registered on a UK electoral register, UK-registered political parties, or UK-registered companies, trade unions, building societies, or unincorporated associations. Foreign donors are not considered to be permissible donors. The EC is empowered to “seek forfeiture orders in the courts to recover from political parties the value of donations” it believes to be impermissible. Spending limits on electoral expenses are set through secondary legislation by the UK’s secretary of state, and only change upon recommendation from the EC or when the secretary of state deems it appropriate.

The EC is also empowered to impose civil penalties. For offenses with fixed penalties, the Commission imposes a fine of £200. Failure to pay the fine within two weeks of the deadline triggers criminal penalties. For offenses with discretionary penalties, the Commission calculates the amount of the fine according to the nature of the offense, taking into account the same factors considered when choosing whether to sanction a party in the first place. Penalties may be between £250 and £20000 for individual offenses.

The Commission also has the power to impose compliance notices and restoration notices, comparable to injunctive relief and restitution in the United States. The EC can impose compliance and restoration notices alone or in combination with discretionary penalties and aims to “restore the position [of the campaign], as far as possible, to what it would have been had no breach occurred.”

---

88 Id.
89 Id.
90 Political Parties, Elections and Referendums Act 2000, c. 41, § 54 (Eng.)
91 Id. at § 58.
92 Campaign Finance: United Kingdom, supra note 87.
93 EC ENFORCEMENT POLICY, supra note 77, at 19.
94 Id. at 19–20.
95 Id. at 20.
96 Id.
97 Id. at 21.
98 Id.
Finally, the Commission may impose a forfeiture of funds.\textsuperscript{99} When a donation is not permissible, the EC can seek the forfeiture of some or all of the donation, at which point the donated money is given to the public purse. Though the Commission has the power to seek a forfeiture order through court proceedings, it usually achieves forfeiture through an agreement with the person or organization who accepted the donation.\textsuperscript{100}

The EC does not impose criminal penalties, and the Commission generally does not conduct investigations for offenses where only criminal prosecution is available. These offenses include knowing violations of donor restrictions,\textsuperscript{101} false statements or declarations to the Commission,\textsuperscript{102} and obstruction of investigations.\textsuperscript{103} Instead, the EC may refer the matter to police or prosecuting authorities for investigation.\textsuperscript{104} When it becomes aware of a potential criminal offense relating to campaign finance or an offense “which [the Commission] consider[s] to be so serious that . . . civil sanctions may not be an adequate measure, [the Commission] will liaise and share information with the relevant authority so that it can consider investigating or prosecuting.”\textsuperscript{105}

Although the EC tends to be more aggressive in investigations than its counterparts in the United States and Australia, it fails to impose meaningful penalties upon campaign finance violators—even those in power. In 2015, the Tory Party consistently exceeded spending limits in campaigns for candidates in twenty-nine constituencies, quite possibly tipping the scales in the election,\textsuperscript{106} leading to a thirty-eight page EC report on the party’s campaign finance violations. However, the Tory Party ignored the EC’s investigation almost entirely. The party took no action to respond, correct inaccurate reporting, or make any attempt at restitution.\textsuperscript{107}

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{100} Id.
\item \textsuperscript{101} Political Parties, Elections and Referendums Act 2000, c. 41§ 61(1) (Eng.).
\item \textsuperscript{102} Id. at § 123(4)(a).
\item \textsuperscript{103} Id. at § 13(2).
\item \textsuperscript{105} EC ENFORCEMENT POLICY, supra note 77, at 14.
\item \textsuperscript{107} Id.
\end{itemize}
\end{footnotesize}
simply argued that the Commission seemed to have found only administrative errors in the Torys’ campaign finance activity, forcing the EC to file papers with the High Court demanding information for the investigation. Ultimately, the misspent amount—£250,000—amounted to less than one percent of what the party spent in total during the election. The EC issued its highest-ever fine as a penalty—just £70,000—two years after the election had ended.\footnote{Id.}

III. THE NEW YORK CITY CAMPAIGN FINANCE BOARD

The New York City Campaign Finance Board (“CFB”), in contrast to its national counterparts in the United States, Australia, and the United Kingdom, generally is known as an effective enforcement body.\footnote{Id.} As this Comment discusses in Part IV, five factors make the CFB particularly effective: independent authority, professional staffing, impasse prevention, relative political freedom, and the power to impose serious civil and criminal penalties. An examination of the CFB’s history and structure illustrates that effectiveness.

Founded in 1988 after several local corruption scandals,\footnote{Ciara Torres-Spellisey & Ari Weisbard, What Albany Could Learn from New York City: A Model of Meaningful Campaign Finance Reform in Action, 1 ALB. GOV’T L. REV. 194, 227 (2008) (“New York city provides a useful point of comparison . . . because New York City’s campaign finance system is battle-tested, well structured and large-scale . . . . [T]he system has been modified in response to feedback the Campaign Finance Board has given the New York City Council on the system’s day-to-day operations.”); see generally Nicole A. Gordon, Options for Continued Reform of Money in Politics: Citizens United is Not the End, 80 ALB. L. REV. 83 (2017); PAUL S. RYAN, CTR. FOR GOVERNMENTAL STUD., A STATUTE OF LIBERTY: HOW NEW YORK CITY’S CAMPAIGN FINANCE LAW IS CHANGING THE FACE OF LOCAL ELECTIONS (2003), http://www.policyarchive.org/collections/cgs/index?section=5&id=230.} the Board was established as part of a sweeping series of ethics reforms, including the Campaign Finance Act\footnote{Frank Lynn, Donors Tell New York Panel of Disguising Political Funds, N.Y. TIMES (Mar. 16, 1988), http://www.nytimes.com/1988/03/16/nyregion/donors-tell-new-york-panel-of-disguising-political-funds.html?pagewanted=all&mcubz=0; see also RONALD GOLDSMITH, MARTIN MARCUS, THOMAS THATCHER & JAMES JACOBS, CORRUPTION AND RACKETEERING IN THE NEW YORK CITY CONSTRUCTION INDUSTRY: THE FINAL REPORT OF THE NEW YORK STATE ORGANIZED CRIME TASK FORCE 120 (1990) (“In hearings before the New York State Commission on Government Integrity, New York City real estate developers revealed how they were able to skirt the statutory proscription on corporate campaign contributions in excess of $5,000 per year. Real estate developer Donald Trump stated that his contributions to local campaigns in 1985 exceeded $150,000 . . . . Developer Gerard Guterman contributed $100,000 to New York City Comptroller Harrison Goldin’s campaign . . . . Robert Pressman and his family contributed $15,000 to Mayor Edward Koch’s 1985 campaign through three contributions.”).} and Question Six,\footnote{N.Y.C. Admin. Code § 3-701.} a public referendum that...
established the Board and passed with 79.8% of the city’s support. The referendum took a strong regulatory stance; it aimed to encourage participation by candidates and small contributors, reduce campaign spending, limit the size of contributions, and ultimately open city elections to a broader range of candidates. Even at its inception, the Board was “assigned broad powers to carry out the purposes of [campaign finance law], including publicizing the names of candidates violating its provisions” and establishing a database of contribution and expenditure information for public access. The Board was also tasked with creating and distributing New York City’s Voters’ Guide.

Structurally, the CFB is difficult for any one party to control and impossible to deadlock. Tasked with “overseeing the work of the agency, mak[ing] public funds and penalty determinations, issu[ing] advisory opinions and adopt[ing] rules,” the Board itself is nonpartisan, consisting of five appointed members who each serve five-year terms. The odd number of members prevents deadlocked votes. Member appointments are staggered, with two members each appointed by the Speaker of the City Council and the mayor, neither of whom may be enrolled in the same political party. The fifth member is selected by the mayor in consultation with the Speaker.

Admittedly, this presents a double-edged sword; the mayor and Speaker are empowered to stack the CFB with ideologically similar members, provided they are not of the same party. Though the Working Families Party is an independent political party, it shares many policies and positions with the Democratic Party, ultimately allowing for two similarly-minded council members to create a voting bloc despite their nominally different party affiliations. The mayor and the Speaker could load the CFB with liberal (or conservative) votes with very little oversight, allowing

---

114 Id. at 24.
115 Id. at 44.
116 Id. at 45.
117 Id. at 46.
119 Id.
120 Id.
them to push a regime of increased or decreased enforcement depending on their current political agenda.

Members of the Board must be city residents and registered voters, and they must not be officers of political parties, candidates for any city office, participants in any capacity in any campaign for city office, officers or employees of the city, or registered lobbyists. Board members do not work for the CFB full-time and are compensated $100 per working day. However, the Board is statutorily entitled to employ necessary staff members who analyze, audit, and publicize how money is raised and spent in local elections; educate voters; and make policy and legislative recommendations to the Board. As of July 2017, the staff consisted of seventeen full-time employees. Though the CFB’s specific operating budget is not statutorily protected from a budget shutdown, the law does protect the funding the Board dispenses and the operation and distribution of that funding, ensuring a city government shutdown will not cripple the agency’s function.

The Board’s independent authority is substantial; it has the power to investigate matters related to campaign finance law, to require the attendance and testimony of any person relevant to investigation, and to compel the production of relevant documents and other evidence. The Board is also empowered to audit and examine all matters related to campaign finance. Penalties issued by the CFB are significant and public. Candidates whose expenditures exceed statutory limitations incur a fine of three times the excess. Failure to respond to the Board’s audit reports incurs a fine of ten percent of the candidate’s public funds. A candidate’s knowing misrepresentation of information to the Board incurs forfeiture of all public

122 1 N.Y. CITY CHARTER REVISION COMM’N, supra note 113, at 45.
123 N.Y.C. Admin. Code § 3-708(2).
124 Id. at § 3-708(3).
126 Id.
128 N.Y.C. Admin. Code § 3-708(6).
129 Id. at § 3-710.
130 Id. at § 3-711(2)(a).
131 Id. at § 3-711(2)(b).
funds and criminal penalties.\textsuperscript{132} Further, the Board is statutorily authorized to publicize campaign finance law violations.\textsuperscript{133}

The enforcement process in New York City begins in one of two ways: either the Board receives a written complaint alleging a campaign finance violation or the Board undertakes an investigation on its own initiative.\textsuperscript{134} The Board may investigate possible violations at any point. An investigation may include a field investigation, issuing subpoenas, taking sworn testimony, issuing interrogatories, and more. No specific evidentiary standard is required for the Board to instigate an investigation.\textsuperscript{135}

When the Board believes a violation has occurred, it notifies the candidate and treasurer of her campaign of the alleged violation and proposes a civil penalty or repayment obligation.\textsuperscript{136} This is the only opportunity a candidate has to submit information and documentation to contest the violation.\textsuperscript{137} The Board then considers any submitted information to determine the amount of civil penalties.\textsuperscript{138} The Board may also institute conciliation or mediation proceedings for novel issues of law, if appropriate.\textsuperscript{139}

The CFB has been effective and aggressive in enforcement from its inception. After then-Mayor Ed Koch signed its authorizing legislation into law, the CFB did not hesitate to penalize Koch’s own campaign for violations after its first round of investigations and audits.\textsuperscript{140} Even current Mayor Bill de Blasio, who has appointed current Board members, is not immune to the CFB’s aggressive enforcement. In 2016, he was fined almost $48000 for improper spending during his 2013 campaign.\textsuperscript{141} The Board’s use of technology is also commendable—all candidates are listed in a publicly-accessible enforcement database according to their borough or

\begin{flushleft}
\textsuperscript{132} Id. at § 3-711(3).
\textsuperscript{133} Id. at § 3-711(1).
\textsuperscript{134} N.Y. CITY CAMPAIGN FINANCE Bd. RULES § 7-01.
\textsuperscript{135} Id. at § 7-01(f).
\textsuperscript{136} Id. at § 7-02(c)(1).
\textsuperscript{137} Id. at § 7-02(c)(2).
\textsuperscript{138} Id. at § 7-02(c)(4).
\textsuperscript{139} Id. at § 7-02(d).
\end{flushleft}
district with notifications of whether their disclosure statements are late or missing.¹⁴²

IV. FIVE FACTORS FOR EFFECTIVE ENFORCEMENT, APPLIED

As revealed in the discussion above, five factors have made the New York City Campaign Finance Board notably successful. Specifically, the CFB’s strength comes from its independent authority, professional staffing, tiebreaking procedures and impasse prevention, relative political freedom, and power to impose serious civil and criminal penalties.¹⁴³ The same factors that make the New York City CFB so effective, applied on a national level, could increase the efficacy of the FEC, AEC, and EC.¹⁴⁴

A. Independent Authority

The CFB’s independent authority is significant, particularly for a municipal enforcement body. It has the power to “oversee . . . the work of the agency, make public funds and penalty determinations, issue advisory opinions and adopt rules,”¹⁴⁵ and it is empowered to investigate campaign finance law matters.¹⁴⁶ In addition, the CFB can compel attendance and testimony of any person relevant to an investigation, as well as the production of relevant documents and evidence.¹⁴⁷ Finally, the Board has the power (and staffing resources) to audit any candidate in a local election,¹⁴⁸ independently impose penalties for violations,¹⁴⁹ and to publicize those violations.¹⁵⁰

¹⁴³ This list of factors was largely informed by Amanda LaForge’s critique of the FEC in The Toothless Tiger – Structural, Political, and Legal Barriers to Effective FEC Enforcement: An Overview and Recommendations, and Ciara Torres-Spelliscy and Ari Weisbard’s article What Albany Could Learn from New York City: A Model of Meaningful Campaign Finance Reform in Action. Amanda S. LaForge, The Toothless Tiger – Structural, Political, and Legal Barriers to Effective FEC Enforcement: An Overview and Recommendations, 10 ADMIN. L.J. AM. U. 351, 381–82 (1996); Torres-Spelliscy & Weisbard, supra note 110, at 237.
¹⁴⁴ Throughout this analysis, I proceed with the assumption that, all else being equal, stricter regulation of money in campaigns, more competitive races, and more enforcement of campaign finance laws are normatively preferable to minimal regulation, competition, and enforcement.
¹⁴⁵ Board Members, supra note 118.
¹⁴⁶ N.Y.C. Admin. Code § 3-708(5).
¹⁴⁷ Id.
¹⁴⁸ Id. at §3-710.
¹⁴⁹ THE RULES OF THE CITY OF N.Y. §7-02(c)(4).
¹⁵⁰ N.Y.C. Admin. Code § 3-711(1).
The United States’ FEC currently lacks the power to conduct random audits; rather, it only automatically audits publicly-funded presidential candidates.¹⁵¹ Audits of non-presidential campaigns are only permitted for cause,¹⁵² though reformers argue random audits would serve as a deterrent for would-be violators.¹⁵³ Reformers also argue that allowing courts to review citizen complaints that have been ignored for more than 120 days de novo would de-politicize enforcement, granting courts more independent authority to apply the law when the FEC fails to act.¹⁵⁴ Finally, allowing the FEC to petition the Supreme Court for writs of certiorari to appeal civil enforcement actions would give the Commission more independent power to enforce civil penalties without the involvement of the Department of Justice.¹⁵⁵

Though billed as an independent agency, the AEC’s power to independently enforce the law is quite limited. While the electoral commissioner has the power to bring a court case against parties or candidates who fail to disclose donations properly,¹⁵⁶ the Commission has minimal power to pursue criminal charges. Instead, the Commission refers cases to state law enforcement when it believes a knowing or willful violation has taken place and leaves it within the state’s discretion to pursue the matter further.¹⁵⁷ In other words, the AEC’s independent power rests more in redistricting and in the administration of elections than in enforcement of campaign finance laws.¹⁵⁸ As in the United States, allowing the Commission the power to impose criminal penalties independently, establish more severe fines, and appeal to the country’s High Court would dramatically increase its ability to enforce campaign finance laws.

In contrast, the EC’s independent authority surpasses that of the FEC and AEC. The Commission’s powers include the ability to issue disclosure notices, which require disclosure of specific documents or information

¹⁵¹ Gellhorn et al., supra note 127, at 19.
¹⁵⁴ LaForge, supra note 143, at 381–82.
¹⁵⁵ Id. at 380–81.
¹⁵⁶ Commonwealth Electoral Act 1918 ssuv-div 315A(1)–(3).
¹⁵⁷ Burton, supra note 54.
related to an organization’s expenditures; to obtain an inspection warrant when parties unreasonably refuse to disclose documents; to issue investigation notices, which require production of documents and information related to an investigation; to obtain a disclosure order, a court-mandated order to produce the same information; and to require an individual to obtain a statutory interview.\footnote{EC ENFORCEMENT POLICY, supra note 77, at 6–9.} The Commission also has the power to issue stop notices (similar to injunctions in the United States) to organizations engaging in activity it reasonably believes to be damaging to public confidence in elections.\footnote{Id. at 11.} As demonstrated by the Tory election scandal, however, without the independent ability to establish more meaningful penalties, the EC’s independent authority lacks teeth.

\textit{B. Professional Staffing}

One of the aspects that makes the New York City CFB effective is its professional staff. Though CFB board membership is not a full-time job, the agency itself is driven by staff that serves full-time, giving the Board the capacity to audit every candidate.\footnote{Gellhorn et al., supra note 127, at 19.}

In contrast (and appointment issues notwithstanding), the FEC’s functionality has been limited in the past by basic funding issues during government shutdowns. In 2013, then-Commission Chairwoman Ellen Weintraub was one of only four FEC employees (out of 339) deemed essential during a shutdown. All four were commissioners.\footnote{Dave Levinthal, \textit{Government shutdown shrinks FEC to just four employees}, CTR. FOR PUB. INTEGRITY (Oct. 1, 2013, 4:04 PM), https://www.publicintegrity.org/2013/10/01/13492/government-shutdown-shrinks-fec-just-four-employees.} “I’d literally be the one turning the lights on,” she said in interviews during the budget impasse.\footnote{Id.} Phone calls, emails, audits, and enforcement cases went unattended during the shutdown.\footnote{Id.} The staffing shortfall came both during oral arguments for \textit{McCutcheon v. Federal Election Commission}\footnote{Id.} and while the Commission itself was shorthanded: Democrat Ann Ravel and Republican Lee Goodman, though confirmed by the Senate, had yet to start their terms.\footnote{Id.}

\footnote{159 EC ENFORCEMENT POLICY, supra note 77, at 6–9.} \footnote{160 Id. at 11.} \footnote{161 Gellhorn et al., supra note 127, at 19.} \footnote{162 Dave Levinthal, \textit{Government shutdown shrinks FEC to just four employees}, CTR. FOR PUB. INTEGRITY (Oct. 1, 2013, 4:04 PM), https://www.publicintegrity.org/2013/10/01/13492/government-shutdown-shrinks-fec-just-four-employees.} \footnote{163 Id.} \footnote{164 Id.} \footnote{165 McCutcheon v. Fed. Election Comm’n, 134 S. Ct. 1434 (2014) (finding two-year aggregate limits on campaign contributions failed to meet the stated objective of preventing corruption and were thus unconstitutional).} \footnote{166 Id.}
Even when the federal government is not shut down, the FEC remains underfunded. Though the Commission’s budget has increased over the past decade—funding went from $54.2 million in 2006 to $65.8 million in 2016, an increase of almost 18 percent\(^\text{167}\)—that growth is far outpaced by the explosion of political spending over the same period. The federal election cycle cost $2.85 billion in 2005–2006; in 2011–2012 it jumped to $6.3 billion, a 120 percent increase\(^\text{168}\). Over the same period, the FEC went from 385 staffers—372 permanent and 13 temporary—to 338 in 2013.\(^\text{169}\)

Individual analysts went from monitoring 200–300 political committees in previous years to more than 500 each in 2013.\(^\text{170}\)

The AEC has specified that professionalization of its workforce is one of its long-term goals. The agency’s corporate plan for 2016–2020 includes initiatives to professionalize its workforce.\(^\text{171}\) The agency aims to roll out a core skills and capability training program for all AEC staff, improve the capability of executive-level agency heads, and better inform all staff of their job expectations.\(^\text{172}\) The AEC plans to improve recruitment, retention, and training of employees.\(^\text{173}\) It also aims to improve its information technology systems via replacement of old and outdated equipment, increase desktop and mobile access for staff members, and technology training across the agency.\(^\text{174}\) Those efforts ultimately aim to correct the lack of attention paid to violations like the ones in Tasmania, where lobbyists failed to disclose large donations and were never penalized.\(^\text{175}\)

Tasked with a wider jurisdiction than its counterparts, the EC in the United Kingdom is a much larger enterprise than the enforcement bodies of the United States and Australia. Accordingly, and to its credit, its workforce is largely professionalized and the Commission avoids some of the understaffing issues that face the FEC and AEC. With full-time offices in London, Northern Ireland, Scotland, and Wales, as well as regional teams throughout England, the EC works to make itself available across the UK in

---

\(^{167}\) Levinthal, supra note 19.

\(^{168}\) Id.

\(^{169}\) Id.

\(^{170}\) Id.

\(^{171}\) Functions of the AEC, supra note 50.

\(^{172}\) AEC CORPORATE PLAN, supra note 56, at 9.

\(^{173}\) Id. at 17.

\(^{174}\) Id. at 16.

\(^{175}\) Burton, supra note 54.
person, via telephone, or via email.\textsuperscript{176} Salaries and business travel for Commission members are also closely tallied and reported,\textsuperscript{177} and over 130 full-time staffers worked for the agency in 2016.\textsuperscript{178}

\textit{C. Methods of Preventing Impasse}

New York City’s CFB has avoided impasse chiefly by eschewing even-numbered boards. Stalemates are rare, partially due to the incorporation of minor political parties with similar ideologies. New York's mayor and Speaker of the City Council each appoint two members to the five-person board, neither of whom may be of the same political party.\textsuperscript{179} In his first selection, Mayor Bill de Blasio sidestepped the limitations on party members by appointing Naomi Zauderer of the Working Families Party,\textsuperscript{180} a minor political party closely aligned with progressive politics.\textsuperscript{181} The move freed him to select a Democratic-leaning commissioner for his second appointment. Because the fifth seat is filled by the mayor in consultation with the Speaker, it is likely Mayor de Blasio will be able to build a strong progressive majority on the CFB.\textsuperscript{182}

In contrast, deadlocked votes have crippled the FEC; in fact, some allege that Congress designed the FEC to fail, most notably through a bipartisan, six-member structure that requires agreement from at least four commissioners for substantive action.\textsuperscript{183} In a report issued when she announced her early departure from the Commission, former Commissioner Ann Ravel pointed out that the four-vote threshold had allowed the agency’s

\textsuperscript{178} Id. at 67. Adjusted for population, this is proportionally nearly twice the number of employees the FEC employed in 2013, the last year for which staffing numbers are readily available.
\textsuperscript{179} Board Members, supra note 118.
\textsuperscript{180} Editorial, Will Mayor de Blasio leash the city’s campaign-finance watchdog?, N.Y. POST (Oct. 28, 2016), http://nypost.com/2016/10/28/will-mayor-de-blasio-leash-the-citys-campaign-finance-watchdog/.
\textsuperscript{181} New York Working Families, WORKING FAMILIES, http://workingfamilies.org/states/new-york/ (last visited Jul. 19, 2017). Though the Working Families Party has endorsed both Democratic and Republican candidates, the party most closely identifies with the labor movement and progressive politics.
\textsuperscript{182} Assuming political diversity is normatively positive, the relatively homogenous makeup of New York City’s CFB may be considered problematic; however, it has led to the expansion of regulation and enforcement, which this comment assumes to be a positive net result in New York. I address the problems with national political homogeneity in Part V of this comment.
Republican bloc to “delay and dismiss flagrant violations, impose significantly lower penalties, and leave major cases without resolution.”  

She noted that, in 2006, commissioners deadlocked in less than three percent of substantive votes in MURs closed that year. In 2016, that number jumped to thirty percent. Incorporating minor political parties could help to break the current deadlock at the FEC. Appointments to the Board are made by the president with the advice and consent of the Senate.  

By selecting commissioners who identify with minor parties, a president could theoretically stack the FEC with commissioners sympathetic to his or her views on regulation of campaign finance, either increasing enforcement dramatically or ceasing it altogether.  

Unlike their American counterpart, the AEC and EC are structured to avoid impasse. Rather than appointing equal voting power among an even number of commissioners, each Commission empowers its members differently, avoiding the FEC’s problems with deadlocks. In Australia, the chairperson, electoral commissioner, and non-judicial member each play different roles in enforcing, reporting, and educating the public on campaign finance enforcement. Accordingly, preventing impasse is not a concern; a deadlock cannot occur because decisions are made by individual commissioners who manage specific portfolios of responsibilities rather than via consensus.  

In the United Kingdom, the EC is structured more like a corporate scheme than a voting panel; nine to ten commissioners set a working strategy and priorities for the EC as an organization, each representing specific regions of the UK or political demographics in Parliament. The Executive Team and staff of the Commission, who are not subject to appointments by Parliament, handle day-to-day functions of election administration. Because a vote by the Commission is not required to update a regulation, trigger an investigation, or impose a sanction, impasse is not an issue.  

---  

184 RAVEL, supra note 1, at 1.  
186 Commonwealth Electoral Act 1918 sub-div 6(2) (Austl.).  
187 Who we are, supra note 68.  
188 Id.
D. Political Independence

The CFB is considered a nonpartisan, formidable enforcement body that has “angered all four incumbent mayors in office since 1988.” 189 Though appointed by the mayor and the Speaker of the City Council, Board members are from different political parties. The appointment process encourages the inclusion of members from minor political parties, allowing for more ideological nuance on the Board than its federal counterpart’s traditional partisan voting blocs. Eschewing partisan appointments also ensures Board seats will not remain empty due to partisan delays, as they did in 2008 at the FEC. 190

In the United States, the FEC’s bipartisan structure presents unique challenges when it comes to political independence. Though the Commission’s structure is designed to protect against overly partisan influence, Congress’s choice to establish an ostensibly balanced and even-numbered Commission has been both praised for insulating the agency from political influence and criticized for thwarting its effectiveness. 191 From the beginning, the Commission’s bipartisan structure has made it difficult for the FEC to compromise on the most contentious issues and has opened individual commissioners to charges of partisan bias. 192

In Australia, the three commissioners of the AEC are appointed by the governor-general, 193 who is himself appointed by the prime minister via the Queen. 194 The governor-general then essentially serves as the chief executive in the Australian federal government, 195 without a prescribed term of office. Appointments to the AEC are made with the advice of the legislature in much the same way that the members of the FEC are appointed in the United States. 196 However, due to the varying duties and levels of power among the commissioners, as well as the distribution of responsibility among the various levels of the AEC’s administrative structure, the Commission is more like a large company tasked with administering

---

190 See generally Levinthal, supra note 19.
191 GARRETT, supra note 183, at 1.
192 Id. at 7.
193 Commonwealth Electoral Act 1918 sub-div 6(3)–(4) (Austl.).
195 Id.
196 Commonwealth Electoral Act 1918 sub-div 6(3)–(4) (Austl.).
elections than an agency subject to political influence. Though it lacks insulation from politics, it also does not seem to suffer from paralysis due to political influence.

The EC, in contrast to the FEC and AEC, goes to great lengths to insulate its individual commissioners from political influence. Candidates for the Commission may not be members, officers, or employees of a registered political party; hold relevant elected office; or be named donors within the five years preceding their appointment.197 However, the PPERA provides that the registered leader of a qualifying party may propose for consideration up to four of the commissioners,198 and each of the three largest parties may nominate three commissioners for appointment.199 In total, no one party may have proposed more than two of the ten commissioners ultimately appointed, ensuring that no more than twenty percent of the Commission represents (and is potentially beholden to) a single political party.200

E. Enforcement of Civil and Criminal Penalties

The CFB is empowered to impose meaningful penalties on campaign finance law violators. Statutorily, it has audit and subpoena power, both before and after an election, and can withhold public funds from candidates it believes to be noncompliant.201 It can make civil penalty assessments and go to court to enforce them, and often imposes penalties of up to $10000 per violation.202 However, most conflicts are resolved via conciliation, a mediation-style dispute resolution process.203

The FEC’s assessment of fines has declined dramatically over the past decade. “In 2006, the Commission assessed more than $5.5 million in MUR civil penalties. In 2016, MUR civil penalties imposed totaled only $595,425.”204 Most likely, the deadlocked board and decrease in staffing and bandwidth (rather than a decline in violations) contributed to that reduction. In addition, the FEC has the power to refer knowing and willful

197 Political Parties Elections and Referendums Act 2000, c.41, § 3(4)(a)–(d) (Engl.).
198 Id. at § 3A(1).
199 Id. at § 3A(3).
200 Id. at § 3A(5).
201 Torres-Spelliscy & Weisbard, supra note 110, at 237.
202 Id.
203 Gellhorn et al., supra note 127, at 7–8.
204 RAVEL, supra note 1, at 1.
violations to the Department of Justice for criminal prosecution. However, most cases do not involve personal candidate liability, resulting in limited criminal prosecution of campaign finance law violations.

The AEC has proposed updates to its own regulations that would make enforcement easier and penalties more automatic, but the Australian legislature’s lack of political will when it comes to campaign finance regulation has limited its progress. Suggestions included the issuance of “on-the-spot” penalties and fines for occurrences of late or incomplete disclosure forms, designed to encourage contemporaneous or continuous disclosure. More extreme ideas included empowering the AEC to deregister political parties and liquidate party assets as a penalty for misleading the Commission, an increase in pecuniary penalties, or the addition of imprisonment as a penalty for repeated or serious offenses. As of October 2017, none of the Commission’s suggestions had been implemented.

In December 2016, the UK’s EC also called for stronger powers to sanction political parties found to be in violation of campaign finance laws. The maximum penalty the EC is empowered to impose is just £20000. Injunctive penalties are also available, and the Commission can refer cases to the Metropolitan Police Service for knowing violations. However, even facing multiple violations by the Tory Party during the 2015 campaign, the EC was only empowered to impose a total of £70000 in penalties—less than a quarter of one percent of the party’s overall spending that election.

206 Gelhorn et al., supra note 127, at 36.
207 Australian Electoral Commission, Supplementary Submission 19.1, 3.
209 Id. at 182.
210 Id. at 183.
211 Id. at 184.
213 Id.
214 Howker & Basnett, supra note 106.
V. LIMITS AND CHALLENGES OF APPLYING A SPECIFIC MUNICIPALITY’S STRATEGY ON A NATIONAL LEVEL

Translating strategies that make sense on a municipal level, however, does not come without its challenges. The differences in ideological diversity and political will between a city and a country make for anything but a seamless transition. New York City’s geographical compactness, political homogeneity, and pro-regulation leadership make it the ideal home for a campaign finance enforcement commission like the CFB to flourish. Application on a national scale would likely face the opposite circumstances: expansive geography (and with it, political diversity) and possible resistance to additional regulation of political spending.

The adoption of a pro-regulation campaign finance regime in New York City may have been due to the convergence of three factors: an impetus, political will, and the support of voters. The CFB only came into being after a series of scandals led the public to demand investigations into, and laws to prevent, corruption on the municipal level. The political will to maintain the CFB’s enforcement power was strong, even after Mayor Ed Koch, who had signed the Campaign Finance Reform Act into law, became one of the first candidates penalized for violating contribution limits after overspending in his 1989 primary campaign. An overwhelming majority of voters passed a referendum creating the CFB in 1988. The City Council remains pro-regulation when it comes to campaign finance, and has added new legislation and regulation that further reins in contributions and increases disclosure responsibilities over a half dozen times since 1996.

The United States, Australia, and the United Kingdom, in contrast, lack the three things that may have made New York City’s campaign finance regime so effective. Though each of the three nations has faced countless

---


216 Lynn, supra note 111 (“The integrity panel . . . was formed as a result of a statewide investigation into political and governmental corruption growing out of the New York City corruption scandals.”).

217 Strom, supra note 140.


continuously-unfolding campaign finance scandals in recent years (and indeed, the implementation of campaign finance regulation was triggered by election scandals, particularly in the United States) none has used those scandals as a catalyst for reform and increased regulation. They also lack the political will to increase regulation on the national level, regardless of voter support of campaign finance regulation. While it may be easy for a bill strengthening campaign finance restrictions to survive a city council vote for regulation in New York City, where 48 of 51 councilmembers and the mayor are Democrats, legislation that strengthens financial restrictions is far more difficult to pass on the national level, particularly in more conservative legislative bodies.

However, transitioning successful local strategies and laws into model legislation for use on a national level is not entirely unheard of outside the campaign finance realm. In 1994, sex offender registries in the United States were intended only for use by law enforcement. After Megan Kanka, a seven-year-old girl in New Jersey, was raped and murdered by a sex offender living in her neighborhood, her parents pushed for local laws requiring public sex offender registration for high-risk offenders. After New Jersey Congressman Dick Zimmer, a Republican, sponsored a bill based on the state legislation, United States President Bill Clinton, a

---


Democrat, ultimately signed “Megan’s Law,” a federal crime measure allowing states to inform communities when convicted sex offenders move into the area.\textsuperscript{226}

The successful passage of Megan’s Law demonstrates the three factors that may be needed for the passage of state or municipal-level reform to be successful on a national level: a catalyzing event, bipartisan political will, and public support.\textsuperscript{227} Admittedly, strengthening campaign finance law enforcement faces an uphill battle when it comes to the latter two factors; it is difficult to imagine a legislative body finding the political will to change a campaign finance regime that elected them, and campaign finance reform no doubt inspires a tiny fraction of the passion the public feels for violence against children. More exhaustive research may indicate easier paths to reform. However, without a catalyzing event, bipartisan political support, and public interest, the implementation of stronger campaign finance enforcement powers is unlikely to become a priority in the United States, Australia, or the United Kingdom.

VI. CONCLUSION

The inefficacy of the Federal Election Commission, Australian Electoral Commission, and the United Kingdom’s Electoral Commission did not come about by chance; rather, it is inherently encoded in each agency’s authorizing legislation and enforced by their appointment processes, enforcement powers, and exposure to political gridlock. While the FEC is deadlocked by constant impasse, the AEC fails to monitor or penalize violations of campaign finance law effectively, and the EC remains crippled by insufficiently harsh penalties that fail to deter parties from overstepping spending limits.

The New York City Campaign Finance Board, however, remains a model of effective enforcement because it has significant independent authority, employs professional staff, is structured in a way that precludes deadlocked votes, is relatively free from political influence over appointments and enforcement, and has the power to impose serious


\textsuperscript{227} Though popular, Megan’s Law remains divisive, as evidence indicates it may not be effective in preventing sexual violence. See generally David Morgan, Megan’s Law no deterrent to sex offenders, CBS News (Feb. 6, 2009), https://www.cbsnews.com/news/megans-law-no-deterrent-to-sex-offenders/.
penalties when violations occur. Though applying those factors on a national scale presents its own set of challenges, the FEC, AEC, and EC may be made more effective if they implement portions of the CFB’s structure, making for stronger enforcement of campaign finance laws in their respective election systems.