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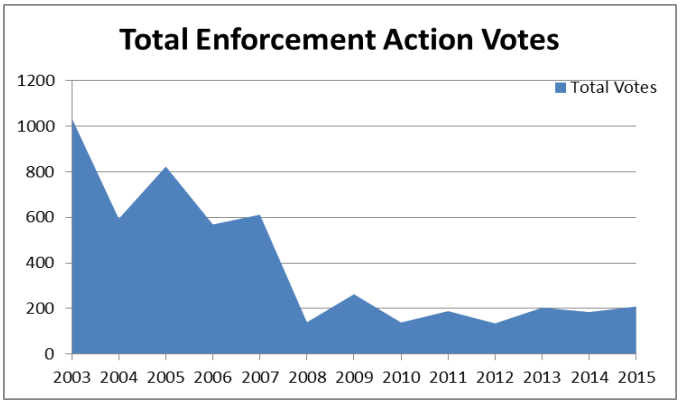
Roiled in Partisan Deadlock, Federal Election Commission Is Failing

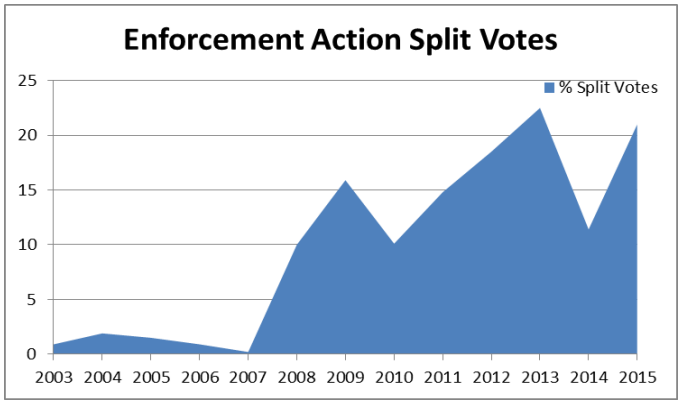
In just the last few years, a sharply pervasive partisan split on the Federal Election Commission (FEC) has largely prevented the agency from fulfilling its mission. In both numbers of actions taken and immobilizing deadlocked votes, the FEC is showing a dramatic and uncharacteristic inability to perform its duties more or less in all categories – enforcement, audits, regulations and advisory opinions.

One of the most critical functions of the FEC is to enforce the Federal Election Campaign Act (FECA), nation's campaign finance law, but today's agency is falling desperately short in this mission.

Split Votes on Proposed Enforcement Actions

Year	Split Votes	Total Votes	% of Split Votes
2003	9	1036	0.9
2004	11	594	1.9
2005	12	823	1.5
2006	5	569	0.9
2007	2	612	0.2
2008	14	140	10
2009	42	263	15.9
2010	14	139	10.1
2011	28	189	14.8
2012	25	135	18.5
2013	46	204	22.5
2014	21	185	11.4
2015	42	209	21
Totals	**271**	**5098**	**5.32%**



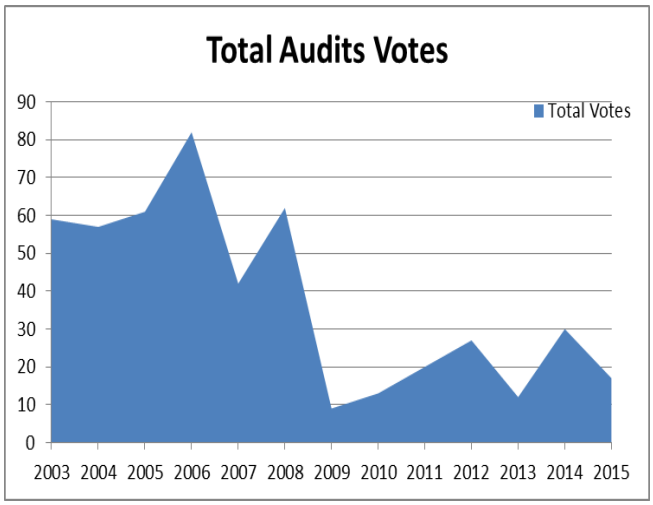


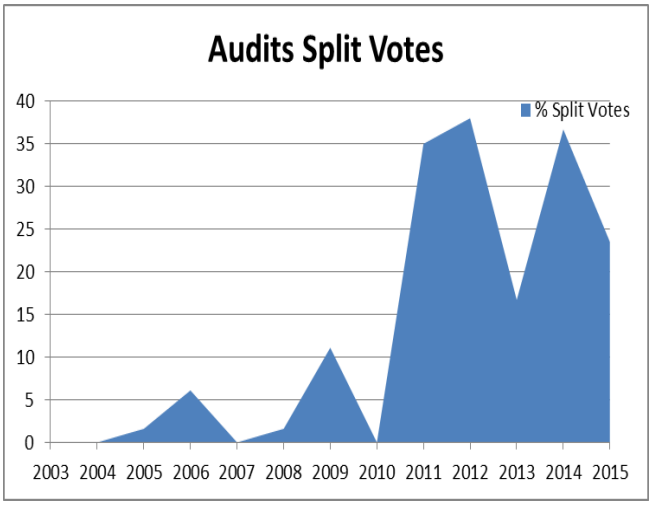
In addition to enforcing the law, the FEC is charged with conducting audits of the financial activity of candidates and committees, in order to ensure compliance with the law. The audit function is designed to monitor compliance with the contributions limits, reporting requirements and handling of public funds by presidential candidates. Audits are performed on a random basis or when preliminary investigations suggest a need for further review, except that all publicly financed candidates are subject to regular audits.

As noted below, today's FEC is pursuing far fewer audits than it had done so previously, and when the question of conducting an audit arises, the agency is often inclined to deadlock on the issue, resulting in no further action.

Split Votes on Proposed Audits

Year	Split Votes	Total Votes	% of Split Votes
2003	0	59	0
2004	0	57	0
2005	1	61	1.6
2006	5	82	6.1
2007	0	42	0
2008	1	62	1.6
2009	1	9	11.1
2010	0	13	0
2011	7	20	35
2012	10	27	38
2013	2	12	16.7
2014	11	30	36.7
2015	4	17	23.5
Totals	**42**	**491**	**8.55%**



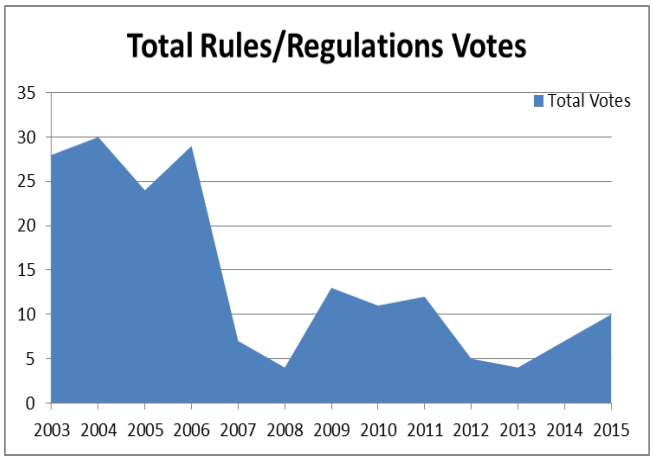


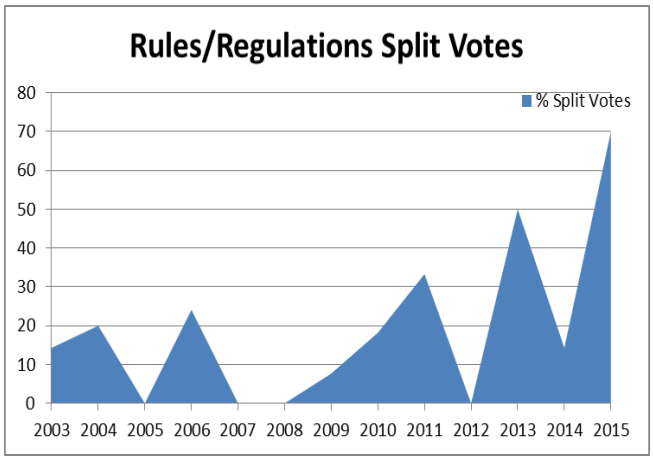
The Federal Election Commission is that agency responsible for promulgating rules and regulations to facilitate implementation of the nation's campaign finance laws. The Commission clarifies the FECA and the public funding statutes through regulations, codified in Title 11 of the Code of Federal Regulations.

The agency has shown episodes of conflict and deadlocked votes when it comes to promulgating regulations, with the agency today rivaling its past episodes of indecision. Furthermore, the FEC is showing a strong disinclination to make use of its rulemaking authorities.

Split Votes on Proposed Rules

Year	Split Votes	Total Votes	% of Split Votes
2003	4	28	14.3
2004	6	30	20.0
2005	0	24	0
2006	7	29	24.1
2007	0	7	0
2008	0	4	0
2009	1	13	7.7
2010	2	11	18.2
2011	4	12	33.3
2012	0	5	0
2013	2	4	50
2014	1	7	14.3
2015	7	10	70
Totals	**34**	**184**	**18%**



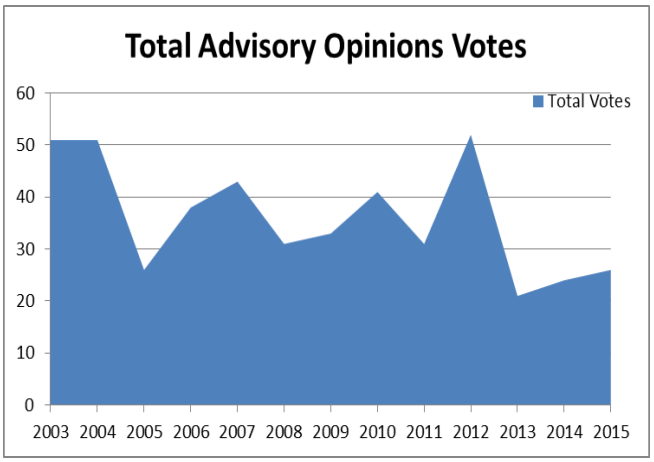


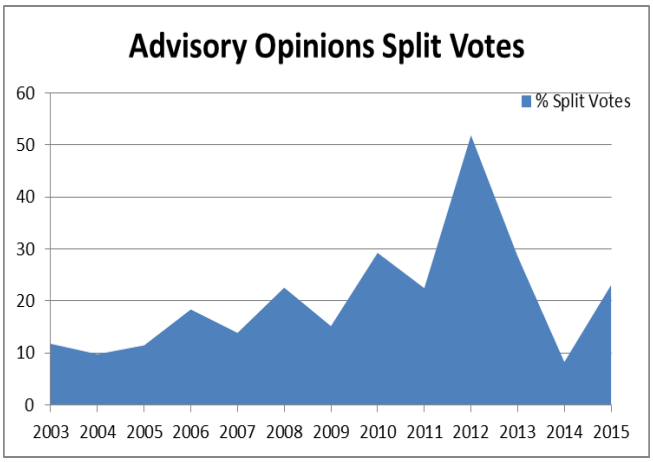
Finally, the Federal Election Commission is supposed to provide advice to candidates and committees on how the law will reasonably be interpreted and how candidates and committees may avoid running afoul of the law. The Commission issues written advisory opinions (AOs) to people seeking guidance on the application of the campaign finance law to their own specific activities.

Individuals and organizations involved in an activity approved in an AO may rely on the AO without risk of enforcement action by the FEC, provided that they act in accordance with the AO's provisions. Here, too, the FEC shows a troubling trend toward deadlocking on advisory opinion requests, leaving candidates and committees pretty much on their own when it comes to fielding how the law will be enforced.

Split Votes on Advisory Opinions

Year	Split Votes	Total Votes	% of Split Votes
2003	6	51	11.8
2004	5	51	9.8
2005	3	26	11.5
2006	7	38	18.4
2007	6	43	13.9
2008	7	31	22.6
2009	5	33	15.2
2010	12	41	29.3
2011	7	31	22.5
2012	27	52	51.9
2013	6	21	28.6
2014	2	24	8.3
2015	6	26	23.1
Totals	**99**	**468**	**21.15%**





** Total data for 2014 is not yet complete because some of the FEC rulings have yet to be released and some of the voting on cases brought to the FEC in 2014 has been postponed until later this year*

Sources: Craig Holman, Ph.D., lobbyist; Timothy Nevins, researcher; Emma Stein, researcher; Andrew Richard, researcher; Public Citizen (2016)