

## Introduction

Politics, it has been said, is about deciding who gets what, how much they get, and at whose expense. And, elections are about deciding who is going to make those decisions! The advantages and disadvantages that candidates and political parties possess in elections are often determined by money, and lots of it.

This dissertation enters the policy debate by arguing that the distribution of advantages and disadvantages is not limited to elections, but extends into the realm of public policy. Lawmakers enacting legislation do so on the basis that there is a need for a particular policy. As political scientist Kenneth Meier states, “[p]ublic policy problems... are complex and defy easy solutions.”<sup>1</sup> The enactment of legislation represents the culmination of competing policy interests within the Congress. Another political scientist, Anne Khademian, has described the “institutional design of the bureaucracy” as representing a “composite of past struggles over the preferred approach to government policy making, and consequently, preferred policy outcomes.”<sup>2</sup> In essence, a majority of lawmakers are betting that their prescribed policy will impact society in order to bring about a desired social outcome. In doing so, lawmakers assume that individuals will comply with the laws that they enact and that the laws will be enforced. The rules that lawmakers establish when they enact

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<sup>1</sup> Kenneth Meier, Politics and the Bureaucracy: Policymaking in the Fourth Branch of Government, (New York: Harcourt College Publishers, 2000), p. 62.

<sup>2</sup> Anne M. Khademian. The SEC and Capital Market Regulation: The Politics of Expertise. (Pittsburgh: University of Pittsburgh Press, 1991), p. 4.

legislation serve as ideal policy "norms."<sup>3</sup> Seldom, if ever, however, are these "norms" achieved.

Policies enacted by lawmakers are not self-implementing. It is for this reason that regulatory regimes are established through which other individuals, typically referred to as bureaucrats, are charged with interpreting and carrying out the law. These bureaucrats are accountable to the Congress and President who enacted the law. And, these officials are in turn responsible to the voters who elected them to represent their interests in our system of government.

Regulatory policy typically requires the development of a policy expertise and competence by agency officials and others charged with interpreting, implementing, and enforcing the law.<sup>4</sup> The technical nature of numerous policy issues, such as regulation of the securities industry or regulation of federal campaign finance, generally demand this expertise. As a result, policy-makers typically grant regulatory discretion to the regulatory agency officials charged with discharging these responsibilities.<sup>5</sup> Kenneth Meier notes, "Congress and the President set priorities, and bureaucrats consider them but are granted sufficient discretion to make effective policy."<sup>6</sup> Meyer points out

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<sup>3</sup> The concept of ideal policy "norms" is discussed by Matthew Holden, Jr. in "Pollution Control as a Bargaining Process: An Essay on Regulatory Decision-Making." (Ithaca, New York: Cornell University Water Resources Center, pub. no. 9, Oct. 1966).

<sup>4</sup> Kenneth J. Meier. Politics and the Bureaucracy: Policymaking in the Fourth Branch of Government. (Belmont, California: Brooks/Cole Publishing Company, 2000), p. 132.

<sup>5</sup> Anne M. Khademian. The SEC and Capital Market Regulation: The Politics of Expertise. (Pittsburgh: University of Pittsburgh Press, 1991), p. 3.

<sup>6</sup> Kenneth J. Meier. Politics and the Bureaucracy: Policymaking in the Fourth Branch of Government. (New York: Harcourt College Publishers), p. 48.

that, "...law or policy statements can never be specific enough to cover all future applications. The function of bureaucracy [the agency] is to fill in the gaps of official policy, and filling in gaps means the exercise of discretion."<sup>7</sup>

The nature of regulatory policy is such that a tension will develop between lawmakers who demand accountability from agency regulators and agency regulators who seek latitude, discretion, and independence necessary to carrying out their legislative charge.<sup>8</sup>

Political science is replete with scholars who have examined the relationship between the Congress and President, and the bureaucracy. Marc Eisner and Kenneth Meier state that, "[t]he relationship between elected officials and the bureaucracy is a key question in modern political science."<sup>9</sup> Scholars have studied how Congress controls and manipulates regulatory agencies, the electoral incentives for the Congress to control policy administration, and congressional use of agency structure and incentives to compel agency behavior.<sup>10</sup> Members of Congress have means of control through which they can exert

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<sup>7</sup> Ibid. p. 47.

<sup>8</sup> See either: Anne M. Khademian. The SEC and Capital Market Regulation: The Politics of Expertise. (Pittsburgh: University of Pittsburgh Press, 1991), or Kenneth J. Meier. Politics and the Bureaucracy: Policymaking in the Fourth Branch of Government. (Belmont, California: Brooks/Cole Publishing Company).

<sup>9</sup> Marc Allen Eisner and Kenneth J. Meier, "Presidential Control versus Bureaucratic Power: Explaining the Reagan Revolution in Antitrust." (American Journal of Political Science, Vol. 34, No. 1, 1990), p. 269.

<sup>10</sup> Anne M. Khademian. The SEC and Capital Market Regulation: The Politics of Expertise. (Pittsburgh: University of Pittsburgh Press, 1991),. p. 4-5. Also see: Evan Ringquist, Political Control in EPA's Office of Water Quality (American Journal of Political Science, Vol. 39, No. 2, 1995), p. 337.

influence over regulatory agencies. Congress controls agency budgets, can enact new legislation, can place term limitations on agency officials, and can assert influence upon the appointments process through which regulatory agency officials are appointed to their positions.<sup>11</sup> Additionally, the roles played by presidents in compelling agency behavior through statements, the appointment process, and the budgetary process have been studied.<sup>12</sup> Furthermore, the roles played by multiple actors in the regulatory process have also been considered by Terry Moe and others.

Studies have also examined the roles played by regulatory agencies. Agency expertise and professionalization have been examined by both Eisner and Khademian.<sup>13</sup> The roles played by the competing interests of multiple political actors in the regulatory process have also been examined by Moe and others. The role of regulatory agency compliance with congressional intentions due to incentive structures and congressional monitoring have also received some attention from scholars.<sup>14</sup> Issues of agency competence, effectiveness, timeliness, efficiency, and reliability have also been examined.<sup>15</sup> The

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<sup>11</sup> Terry M. Moe, "An Assessment of the Positive Theory of 'Congressional Dominance,'" Legislative Studies Quarterly, vol. 12, November 1987.

<sup>12</sup> George A. Krause, "The Institutional Dynamics of Policy and Administration: Bureaucratic Influence over Securities Regulation." (American Journal of Political Science, Vol. 40, No. 4, 1996), p. 1087.

<sup>13</sup> Anne M. Khademian. The SEC and Capital Market Regulation: The Politics of Expertise. (Pittsburgh: University of Pittsburgh Press, 1991), pp. 4-5.

<sup>14</sup> Ibid.

<sup>15</sup> Kenneth J. Meier. Politics and the Bureaucracy: Policymaking in the Fourth Branch of Government. (Belmont, California: Brooks/Cole Publishing Company), pp. 132-141.

role of regulatory decision-making as a constrained bargaining process was examined by Matthew Holden, Jr.<sup>16</sup> Lastly, Khademian has noted that, "the political significance of expertise in defining, developing, and changing a bureaucracy's structure and decision making, as well as how it develops a legislative agenda, is often given scant consideration."<sup>17</sup>

Political Scientist George Krause has noted that recent research into the relationship between the Congress and the bureaucracy has neglected two factors. Krause states, "[f]irst, a vast majority of these studies have largely ignored the independent role administrative agencies are capable of playing in the administrative policy..."<sup>18</sup> Second, Krause states, "...these models implicitly assume that political authority is characterized by command or fiat as classical organization posits..."<sup>19</sup> Krause continues, "[i]n reality, the nature and degree of success for these authoritative relations will rest upon some level of agreement by both relevant political and bureaucratic actors ... Therefore, these relationships are most likely to fall somewhere between a strict hierarchial relationship and a market oriented structure..."<sup>20</sup> Krause's

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<sup>16</sup> Please see: Matthew Holden, Jr. "Pollution Control as a Bargaining Process: An Essay on Regulatory Decision-Making." (Ithaca, New York: Cornell University Water Resources Center, pub. no. 9, Oct. 1966).

<sup>17</sup> Anne M. Khademian. The SEC and Capital Market Regulation: The Politics of Expertise. (Pittsburgh: University of Pittsburgh Press, 1991), p. 5.

<sup>18</sup> George A. Krause, "The Institutional Dynamics of Policy and Administration: Bureaucratic Influence over Securities Regulation." (American Journal of Political Science, Vol. 40, No. 4, 1996), p. 1088.

<sup>19</sup> Ibid.

<sup>20</sup> Ibid.

point appears to be that the policy that the regulatory agency ultimately implements will fall somewhere between the policy that elected officials initiate and the most effective and market efficient means of carrying out this policy. In essence, it appears that Krause views actual policy as deviating from the policy enacted by lawmakers.

In recent years, many political scientists have utilized rational-choice theory as a framework for their studies. When applied to regulatory agencies, the theory assumes that individual actors and regulators within the political and policy systems are utility maximizers. It assumes that individual lawmakers have policy objectives and that they work to achieve these objectives. The argument is based on the foundation that the single most important motivation for a Member of Congress is re-election. As a result, Members of Congress have designed a political institution complete with a committee system in which they can pursue those interests deemed important to their constituents, and hence important to their own re-election. Members of Congress then become experts in certain policy areas, while neglecting other policy areas. Legislators carve out niches for themselves on committees where they work to set the policy agenda, and exert jurisdictional influence over policy and the bureaucracy. Rational choice theory is premised on the argument that policy-makers "have objectives and that they act so as to maximize (or at least attain) those objectives."<sup>21</sup> Lawmakers utilize policy tools in the form of the appointment process, the appropriation of the agency's

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<sup>21</sup> Anne M. Khademian. The SEC and Capital Market Regulation: The Politics of Expertise. (Pittsburgh: University of Pittsburgh Press, 1991), p. 4.

budget, oversight hearings, and other means, to guide the agency's behavior to achieve these objectives.

To achieve their policy objectives, lawmakers utilize both formal and informal structures to guide agency behavior. The formal structures or institutions that guide agency behavior consist of the laws that policy-makers enact, and amend over time. In her study of the securities industry, Anne Khademian states that, "[f]ormal institutions are explicit structures and procedures provided for in the Constitution or through statute."<sup>22</sup> Informal structures she states, "are primarily procedures that become standard through consensus and use – procedures that act as rules to guide behavior. How the...[agency] interprets and implements its mandate, the 'acceptable' qualifications for appointed... officials, or how decisions are reached..."<sup>23</sup>

Under Principal Agent Theory, the regulatory agency is designed to reflect the desires and intentions of their legislative creators. Principal Agent Theory argues that the principal (the Congress and President) attempts to control the actions and behaviors of the agent (the regulatory agency) through a system of rewards and punishments. As a rational creature, the agent tends to pursue its own self-interest. Decisions made by the agent must be monitored from a distance with a lack of complete information on the part of the principal. As a result, the task of the principal is to minimize the degree to which the agent deviates from the principal's desired outcome. Such, the theory argues, is the relationship between

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<sup>22</sup> Ibid., p. 20.

<sup>23</sup> Ibid.

Members of Congress (the principal) and agency bureaucrats (the agents). Unfortunately, the policy process is not simply a command and control relationship between a principal and an agent. Rather, it is a highly constrained process.

Lawmakers, however, are not the only rational actors in the policy system. Regulatory agency officials also act rationally by seeking to maximize their individual and collective self-interests through the manner in which they interpret, implement, and enforce their regulatory charge. In an examination of the Securities and Exchange Commission, Khademian examines, "...goal oriented behavior and the importance of institutional design in conditioning that behavior."<sup>24</sup> She continues, "...both the [agency] and the elected officials... seek particular outcomes, and that these actors struggle, from their various institutional bases, to generate the conditions necessary to realize those preferences."<sup>25</sup>

This dissertation focuses on the application of rational-choice theory in the area of regulatory decision-making within the Federal Election Commission. In doing so, this dissertation takes a "constrained rational choice perspective" and adopts a qualitative model of regulatory decision-making proffered by Matthew Holden, Jr. in which regulatory decision-making is described as a constrained bargaining process.

### **Regulatory Decision-Making:**

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<sup>24</sup> Anne M. Khademian. The SEC and Capital Market Regulation: The Politics of Expertise. (Pittsburgh: University of Pittsburgh Press, 1991), p. 7.

<sup>25</sup> Ibid.



Holden's model, set forth in his essay entitled, "Pollution Control as a Bargaining Process: An Essay on Regulatory Decision-Making,"<sup>26</sup> argues that lawmakers enact a policy "norm" which serves as the ideal guide as to legislative intent. In his article, Holden offers the hypothesis that, "[w]hile... agencies certainly do distribute advantages and disadvantages, the distributions which occur are seldom consistent with the distributions which one would have expected if one took the policy norms involved in the creation of the agencies as clues to the agencies' most likely behavior."<sup>27</sup> Likewise, Chapter Five of this dissertation poses the hypothesis that the policy outcomes associated with the regulation of federal campaign finance law by the Federal Election Commission will tend to deviate from the ideal policy "norm" that the Congress and the President intended when they enacted the Federal Election Campaign Act, and amended it over the succeeding years.

Holden argues that agency administrators make decisions involving standard setting. Standard setting allows agency administrators to determine who to regulate and who to ignore, what to accept as compliance with the law, and how long the agency should wait before enforcing the law. In the case of the Federal Election Commission, this dissertation will document how the Commission utilizes its Rule-Making and Advisory Opinion functions, along with the agency's Audit and Reports Analysis Divisions, to establish regulatory standards in the area of federal campaign finance.

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<sup>26</sup> Matthew Holden, Jr. "Pollution Control as a Bargaining Process: An Essay on Regulatory Decision-Making." (Ithaca, New York: Cornell University Water Resources Center, pub. no. 9, Oct. 1966).

<sup>27</sup> Ibid., p. 9.

But, the actions that agency administrators face in setting standards are constrained by certain environmental factors. Holden's theory outlines four possible constraints placed upon regulatory agency standard setting: technological issues, social values and myths, the size and scope of avenues through which participants can appeal for a better policy outcome, and whether the nature of the interaction involves only a single occurrence or involves repeat interaction.<sup>28</sup> The technical nature of a policy area often requires a certain amount of expertise that only the dedicated agency official is deemed to possess. As a result, the nature of the subject matter, such as federal campaign finance, receives some deference from those in Congress who are not policy experts in this area. Second, social values and myths can enter into the standard setting equation. How do agency officials view the subject that they are charged with administering? Do they view campaign finance restrictions as an imposition upon their right to free speech or are restrictions a necessary part of our political system. How one views the role of money in our political process may guide how an individual agency administrator interprets, implements, and enforces the law. Third, do avenues of repair exist through which participants in the policy process can appeal? Simply put, can the regulated community appeal decisions by the regulatory agency or do barriers exist which limit appeal options. Fourth, is the nature of the interaction a single or repeat occurrence? The argument is that repeat interactions force give and take or bargaining in the regulatory process because participants are aware that they can or will be interacting in the future. As federal

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<sup>28</sup> Ibid., p. 31.

campaign finance regulation is an ongoing activity, the nature is such that repeat interactions must necessarily occur.

Because regulatory policy is a technically complex activity administered by individuals in possession of their own values and impacted by society's values, the manner in which regulatory policy is interpreted, administered, and enforced, will likely deviate from the "norm" enacted by the Congress and President. Because the regulatory agency does not want to see its regulatory powers curtailed by the federal courts, and the added cost of litigation, the agency may attempt to avoid taking actions that will end up in court. At the same time, the costs of litigation may prompt the regulated to seek a regulatory solution short of going to court. Lastly, as federal campaign finance regulation is an ongoing activity, the nature is such that repeat interactions must necessarily occur. The combination of these factors serves to constrain the standard setting actions of the regulatory agency in which they decide who, what, how, how much, and when to enforce the law.

As a result of these constraints, Holden's model concludes that the decisions of agency administrators will rationally deviate from the desired "norm" and settle for what can be achieved through bargaining – either implicitly or explicitly – to a desired outcome, thus never achieving the policy "norm."

When examined through the lens of rational choice theory, Holden's model demonstrates how Khademian's tension of agency expertise and independence is balanced with the desire of congressional policy-makers for control of the policy process. Because individual self-interests are

present on the part of both lawmakers and agency officials, both will work to maximize their own interests. Because Federal Election Commission regulators are rational actors charged with regulating Members of Congress, agency officials will rationally seek to balance their need to achieve "enough" enforcement with the ability of lawmakers to enact sanctions upon the agency. Agency officials will either implicitly or tacitly consider the ability of lawmakers to sanction or reward the agency.

When lawmakers and regulatory agency officials each seek to rationally maximize their own self interests, the formal and informal structures and constraints come into play. The result is that give and take in regulatory decision-making will occur on the part of both lawmakers and regulators with the result being a deviation from the ideal policy "norm," but some level of enforcement that is deemed to be "enough" enforcement. As Khademian states, "[b]oth the political desire to control the bureaucracy and the need for reliable expertise influence the formal and informal structures that condition and create incentives for bureaucratic behavior."<sup>29</sup> This dissertation argues that these structures and incentives for political behavior will lead to the constraining of the rational choices made by both lawmakers and agency officials. Rational behavior works in both directions, not solely in a command and control hierarchic manner in which the Congress and President dictate and the regulatory agency complies. Bureaucratic discretion co-exists with political control. Policy outcomes can not be dictated. As a result of "constrained rational choices," policy implementation and

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<sup>29</sup> Anne M. Khademian. The SEC and Capital Market Regulation: The Politics of Expertise. (Pittsburgh: University of Pittsburgh Press, 1991), p. 7.

enforcement of federal campaign finance law will by its very nature typically deviate from the ideal policy "norm."

**Agency Competence:**

The discharge of an agency's statutory requirements requires more than the ability to make decisions, these decisions must be made in a competent manner. Kenneth Meier has outlined four factors that are requisite for determining if a regulatory agency is acting competently. These four variables - agency effectiveness, timeliness, efficiency, and reliability<sup>30</sup> - will be examined in Chapter Seven with reference to the enforcement profiles contained in Chapter Six of this dissertation.

Meier defines effectiveness as "being determined by whether or not the bureau achieves the policy goals stated for it by other political decision makers. The concern is with the stated objectives of other political elites, preferably those objectives stated in the law, not with the objectives of the bureau."<sup>31</sup> Meier notes that, "[a]gency effectiveness might also be affected by constraints placed on the agency. Many agencies are not given sufficient resources to address their policy mandate."<sup>32</sup> This dissertation examines agency effectiveness in the area of compliance to see if the regulatory agency is enforcing the policy "norm" enacted by the Congress, as altered by the federal courts.

The second factor Meier considers in his examination of regulatory agency competence is timeliness. Regulatory

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<sup>30</sup> Kenneth J. Meier. Politics and the Bureaucracy: Policymaking in the Fourth Branch of Government. (Belmont, California: Brooks/Cole Publishing Company), pp. 132-137.

<sup>31</sup> Ibid., p. 132.

<sup>32</sup> Ibid., p. 132.

agencies are supposed to "be timely in the disposition of cases; that is it should act with all reasonable speed."<sup>33</sup> One of the goals of the enforcement prioritization system that will be outlined in Chapter Six is that the agency will attempt to resolve compliance matters within the present election cycle or less. Therefore, this dissertation seeks to determine if the agency is meeting this goal for timeliness or if the regulatory agency is taking more than twenty-four months (two years) to resolve the average compliance matter.

The third factor that Meier considers is agency efficiency. Meier states that, "[w]hen bureaucrats engage in policymaking, competence demands that their actions be efficient. Efficiency should not be confused with effectiveness... Efficiency without regard for effectiveness, however is a false economy. An efficient but ineffective program is still a waste of money."<sup>34</sup> In the case of enforcement of federal campaign finance law, efficiency simply means the ability of the Federal Election Commission to dispose of compliance cases in an efficient manner.

The last factor that Meier utilizes to examine regulatory agency competence is reliability. According to Meier, there are three aspects to reliability: first, "bureaucrats should be knowledgeable, ...they should know what they are doing;"<sup>35</sup> second, the law should be applied consistently; third, "[a] citizen should know in advance that a bureau will decide a case in a specified way if

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<sup>33</sup> Ibid., p. 133.

<sup>34</sup> Ibid., p. 134.

<sup>35</sup> Ibid., p. 136.

certain conditions are met.”<sup>36</sup> Taken together, these three aspects should determine agency reliability as a factor of regulatory agency competence.

When regulatory agencies satisfactorily meet these four factors, then Meier deems that the regulatory agency is competent. If one or more factors is not met, then the agency is found to be lacking in competence.

### **Why the Federal Election Commission?**

The late 1990s witnessed a resurgence in public concern over federal campaign finance law in the United States. While political scientists, journalists, and lawmakers have spent the past few years focusing extensively on closing “loopholes” in the laws that govern federal campaign finance in the United States, most of these studies and efforts have neglected to examine or take issue with the entity that is charged with interpreting, implementing, and enforcing these laws. At present, that governmental agency is the United States Federal Election Commission. This dissertation seeks to understand this important regulatory agency and the manner in which it undertakes regulatory decisions.

Regulation of federal campaign finance law is both complex and controversial. What should be regulated? Who should be regulated? When should it be regulated? And, what types of penalties should be imposed? Regulation of federal campaign finance law is made even more complex and controversial by the very fact that all Members of Congress are regulated by these laws. How far can the agency go in regulating the law before sanctions might be imposed? How can the regulatory agency achieve “enough” of its

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<sup>36</sup> Ibid.

legislative charge, while not upsetting those in the Congress?

In focusing on the Federal Election Commission, I have sought to improve the reader's understanding of federal campaign finance law, the manner in which the Federal Election Commission interprets and implements the law, and the manner in which the regulatory agency makes decisions and enforces the law. I have sought to apply modern rational-choice theory to regulatory decision-making in order to demonstrate that regulatory decision-making is a constrained process in which bargaining takes place in both directions.

Because the Federal Election Commission regulates the political economy that guides federal campaign finance, this dissertation seeks to answer the following questions. How has the Federal Election Commission interpreted, implemented, and enforced federal campaign finance law in the United States? How does the Federal Election Commission make decisions? Additionally, the ways in which the agency undertakes disclosure and enforcement activities are extremely important. But, is enforcement occurring competently in an efficient, timely, reliable, and effective manner? This dissertation attempts to answer these questions through an examination of the formal and informal structures of the agency that guide and constrain the regulatory process of federal campaign finance.

**Objectives and Structure of the Dissertation:**

This dissertation focuses on the Federal Election Commission, as a regulatory agency, and its decision-making process. There are several objectives for this dissertation. The first objective is to explore several



background context issues involving the need for a law, the enactment of the Federal Election Campaign Act (FECA), as amended, to serve as the policy "norm," and the interpretation and adjustment of this policy "norm" by the federal courts. The second objective is to examine the manner in which the Federal Election Commission has interpreted the federal campaign finance law, implemented the law, and enforced the law. The third objective is the development of single allegation profiles of Federal Election Commission enforcement under their Enforcement Prioritization System, and for the several years proceeding the enactment of this prioritization process. Based upon these enforcement profiles, this dissertation also seeks to examine agency competence.

For purposes of structure, this dissertation is divided into three distinct parts: Background Environment, Internal Environment, and Regulated Environment.

In the first portion of the dissertation, Chapter One inquires into some of the issues that have spurred the need for federal campaign finance laws in the United States. The discussion then turns to an analysis of our nation's federal campaign finance laws since the early 1970s. What follows next is a brief examination of the impact of the federal courts on these laws. Through this three-pronged examination, the reader will gain a more thorough understanding of the concerns that led to the establishment of the campaign finance "norm," the legislative history of the "norm," and some of the legal interpretations that have marginalized our nation's federal campaign finance laws, such that present laws deviate from the "norm."

The second part of this dissertation focuses on the internal environment of the Federal Election Commission, as

a regulatory agency. Chapter Two examines the present statutory charge of the Federal Election Commission. What follows next in Chapter Three is an explanation of the organizational structure of the agency. Chapter Four examines the constraints placed on the agency by the Congress and President. Lastly, in Chapter Five, the model and hypothesis posed by Matthew Holden, Jr. are utilized to examine the agency's regulatory decision-making processes.

The third part of this dissertation explores regulatory enforcement and agency competence. This part of the dissertation explores the agency's formal compliance process. Chapter Six presents two single allegation profiles of Federal Election Commission enforcement. The first profile describes Federal Election Commission enforcement prior to the implementation of an Enforcement Prioritization System (EPS). The second profile describes Federal Election Commission enforcement after the enactment of the prioritization system. These profiles will allow the reader to gain a better understanding into the types of compliance matters that the Federal Election Commission is investigating, and where punitive and distributive remedies are applied. In the process, it will be possible to identify the manner in which the Federal Election Commission undertakes compliance actions, against whom compliance actions are taken, what types of penalties are involved, the length or duration of investigations, and how the prioritization system has impacted compliance efforts.

Also of importance in this part of the dissertation, Chapter Seven will examine the issue of agency competence in regulatory enforcement through the application of the four variables outlined by Kenneth Meier. The objective of this part of the dissertation is to examine the manner in

which the FEC interprets and undertakes its mandate to enforce the law against its regulated constituency.

**Expectations:**

What should one expect to find out as a result of this dissertation's examination of the Federal Election Commission and its decision-making process? As a political scientist, I would expect that material gathered on the Federal Election Commission will demonstrate the strength of the hypothesis of regulatory agency decision-making as a constrained bargaining process, as posed by Matthew Holden, Jr. I expect that information gathered will demonstrate that the Federal Election Commission faces many of the same factors that Holden identified in his study of state pollution control agencies. The Federal Election Commission has to set standards and bargain for compliance as it determines who to regulate and who to ignore, how long to wait before imposing regulations, and what to accept as compliance. And, this bargaining will take place internally between members of the regulatory agency's commission, and between the agency and lawmakers overseeing the agency.

What the regulatory agency accepts as compliance will typically deviate from the "norm" established by the Congress and President. Part of this deviation is due to the involvement of the federal courts and part is due to the constrained nature of regulatory agency decision-making. Again, lawmakers can not ordain the desired outcome. Policy guides do not equate to policy outcomes, nor do they equate to the agency's "most likely behavior."<sup>37</sup>

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<sup>37</sup> Matthew Holden, Jr. "Pollution Control as a Bargaining Process: An Essay on Regulatory Decision-Making." (Ithaca, New York: Cornell University Water Resources Center, pub. no. 9, Oct. 1966),

Furthermore, as a political scientist, I believe that the data contained in the single allegation enforcement profiles will demonstrate that enforcement is not greatly enhanced through the implementation of an enforcement prioritization system. It should be expected that the agency would become more efficient in disposing of allegations of campaign finance violations, while not actually becoming more effective in the enforcement of these allegations. As a result, the agency will fail to satisfy the requirements Kenneth Meier outlines as necessary for agency "competence." In the area of enforcement, the Federal Election Commission will generally be found to be efficient, timely, and reliable in the carrying out of its enforcement activities, while its overall effectiveness will be mixed – at best. Furthermore, public perception will generally remain that the federal campaign finance system is greatly flawed, if not a total failure, that Federal Election Commissioners are a part of the problem, that the agency lacks competence, and that the agency's Commission is poorly structured to accomplish its legislative charge.

At its very essence, this dissertation is about the United States Federal Election Commission, as a regulatory agency, and its decision-making process. The dissertation examines the need for a law, the establishment of an ideal policy "norm," and the manner in which the courts have altered the law such that it no longer conforms to the "norm." It examines the Federal Election Commission's current statutory charge, how the agency is structured, and how the regulatory agency undertakes decision-making in a

constrained environment. Lastly, this dissertation documents Federal Election Commission efficiency, timeliness, reliability, and effectiveness, through the creation of single allegation enforcement profiles.

Regulatory agency officials make rational decisions in the same manner that lawmakers make rational decisions. The only differences are the factors that constrain lawmakers and the factors that constrain agency officials. Clearly, lawmakers possess a set of policy tools that they can call upon to shape agency action. But, the four factors that Matthew Holden, Jr. outlined – the technological nature of the policy, social myths and values, avenues of appeal for a better policy outcome, and whether the interaction is a single or repeat occurrence – will be balanced against these policy tools and serve as the basis for constrained bargaining within the regulatory decision-making process. And, each bargain that is reached may in turn serve as the basis for future bargains. As a result, the policy that is implemented and enforced by the regulatory agency will naturally tend to deviate from the ideal policy “norm” that the Congress and President intended.