

AGENDA DOCUMENT NO. 13-58-A



FEDERAL ELECTION COMMISSION
Washington, DC 20463

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AGENDA ITEM

For Meeting of 12-17-13

MEMORANDUM

TO: The Commission

FROM: Ellen L. Weintraub *ELW*
Chair

DATE: December 17, 2013

SUBJECT: Additional Proposed 2013
Legislative Recommendations

SUBMITTED LATE

Attached please find two additional recommendations: "Increasing the Frequency of Political Committee Reporting in Non-election Years" and "Fraudulent Misrepresentation of Campaign Authority." I am in favor of incorporating these two recommendations into the Commission's 2013 Legislative Recommendations.

Attachment

Increasing the Frequency of Political Committee Reporting in Non-election Years

Sections: 2 U.S.C. § 434(a)(4)(A)(iv)

Recommendation: Congress should increase the frequency with which many political committees other than authorized committees file campaign finance disclosure reports from semiannually to quarterly in non-election years.

Explanation: The *Federal Election Campaign Act* provides three schedules for political committee reports of receipts and disbursements. For principal campaign committees of candidates for the House of Representatives or the Senate, the *Act* requires quarterly reporting in election and non-election years, with pre-election reports and a post-general election report in election years. See 2 U.S.C. § 434(a)(2). For principal campaign committees of Presidential candidates, the *Act* requires either monthly or quarterly reporting in election and non-election years, with pre-general election reports, post-general election reports and, in some instances, pre-primary election reports. See 2 U.S.C. § 434(a)(3). Finally, for all other political committees, including political party committees, corporate and labor organization separate segregated funds and nonconnected committees, the *Act* requires either monthly or quarterly reporting in election years, with pre-election reports and a post-general election report. In non-election years, monthly reports are required of those that file monthly in election years, but for those who file quarterly in election years, only semiannual reports are required. See 2 U.S.C. § 434(a)(4). The chart below shows the various reporting frequencies for political committees currently required under the *Act*.

Committee Type	Election Year Frequency	Election Year Additional Reports	Non-election Year Frequency	Citation 2 U.S.C.
House of Representatives and Senate	Quarterly	Pre-Primary Pre-General Post-General	Quarterly	§ 434(a)(2)
Presidential	Monthly	Pre-General Post-General	Monthly or Quarterly	§ 434(a)(3)
Presidential (less than \$100,000 in contributions or expenditures)	Quarterly	Pre-Primaries Pre-General Post-General	Monthly or Quarterly	§ 434(a)(3)
National committees of a political party	Monthly	Pre-General Post-General	Monthly	§ 434(a)(4)(B)
All other political committees (monthly)	Monthly	Pre-General Post-General	Monthly	§ 434(a)(4)(B)
All other political committees (quarterly/semiannual)	Quarterly	Pre-Primaries Pre-General Post-General	Semiannual	§ 434(a)(4)(A)

Thus, of all of the reporting frequencies, the least frequent reporting is the semiannual reporting required of political committees other than authorized committees in non-election years. With the increased financial activity reported by these filers, and with the increasing ease and decreasing cost of electronic filing, requiring quarterly reports from these political committees in non-election years would enhance the information available to the public without unduly burdening these committees, particularly for those filers with substantial financial activity in the non-election years. Therefore, Congress should amend the the *Federal Election Campaign Act* to change the semiannual filing option to quarterly for those filers with more \$10,000 in financial activity in a non-election year.

Legislative Language:

Section 304(a)(4)(A)(iv) of the *Federal Election Campaign Act of 1971* (2 U.S.C. § 434(a)(4)(A)(iv)) is amended to read as follows:

“(iv) in any other calendar year—

“(I) a report covering the period beginning January 1 and ending June 30, which shall be filed no later than July 31 and a report covering the period beginning July 1 and ending December 31, which shall be filed no later than January 31 of the following calendar year; or

“(II) if the political committee has received contributions or has reason to expect to receive contributions in excess of \$10,000 in such calendar year, or if the political committee has made expenditures or has reason to expect to make expenditures in excess of \$10,000 in such calendar year, quarterly reports, which shall be filed no later than the 15th day after the last day of each calendar quarter; except that the report for the quarter ending on December 31 of such calendar year shall be filed no later than January 31 of the following calendar year; or”

Fraudulent Misrepresentation of Campaign Authority

Section: 2 U.S.C. § 441h

Recommendation: Congress should revise the prohibitions on fraudulent misrepresentation of campaign authority to encompass all persons purporting to act on behalf of candidates and real or fictitious political committees and political organizations. In addition, Congress should remove the requirement that the fraudulent misrepresentation must pertain to a matter that is “damaging” to another candidate or political party.

Explanation: The Federal Election Campaign Act of 1971, Public Law 92-225, 86 Stat. 3 (1972), as amended (“FECA”), prohibits a Federal candidate or his or her agents or employees from fraudulent misrepresentation such as speaking, writing or otherwise acting on behalf of a candidate or political party committee on a “matter which is damaging to such other candidate or political party” or an employee or agent of either. *See* 2 U.S.C. § 441h(a). The Commission recommends that this prohibition be extended to any person who would disrupt a campaign by such unlawful means, rather than being limited to candidates and their agents and employees. Proving damages as a threshold matter is often difficult and unnecessarily impedes the Commission’s ability to pursue persons who employ fraud and deceit to undermine campaigns. Fraudulent solicitations of funds on behalf of a candidate or political party committee have been prohibited without any required showing of damage to the misrepresented candidate or political party committee. *See* Bipartisan Campaign Reform Act of 2002, § 309, Public Law 107-155, 116 Stat. 81, 104 (2002), *codified at* 2 U.S.C. § 441h(b).

In addition, while both subsections (a) and (b) of 2 U.S.C. § 441h directly address fraudulent actions “on behalf of any other candidate or political party,” they do not address situations where a person falsely claims to represent another type of political committee or claims to be acting on behalf of a fictitious political organization, rather than an actual political party or a candidate. For example, the current statute does not bar fraudulent misrepresentation or solicitation on behalf of a corporate or union separate segregated fund or a non-connected political committee.

Legislative Language:

Section 322 of the Federal Election Campaign Act of 1971 (2 U.S.C. § 441h) is amended:

- (1) in subsection (a), by striking “who is a candidate for Federal office or an employee or agent of such a candidate”;
- (2) in paragraph (a)(1), by striking “candidate or political party or employee or agent thereof on a matter which is damaging to such other candidate or political party or employee or agent thereof” and inserting “candidate, political party, other real or fictitious political committee or organization, or employee or agent of any of the foregoing.”; and

- (3) in paragraph (b)(1), by striking “candidate or political party or employee or agent thereof” and inserting “candidate, political party, other real or fictitious political committee or organization, or employee or agent of any of the foregoing.”