

**Legislative Recommendations of the
Federal Election Commission
2007**

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Table of Contents

(Disclosure) Electronic Filing of Senate Reports 1

(Compliance) Fraudulent Misrepresentation of Campaign Authority 2

(Compliance) Addition of Commission to the List of Agencies Authorized to Issue
Immunity Orders Under Title 18 3

(Disclosure) Including FEC Identification Number on Contribution Checks and in
Reports of Itemized Receipts and Disbursements 4

(Disclosure) Increasing Certain Pre-BCRA Registration and Reporting Thresholds 5

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Legislative Recommendations – 2007

(Disclosure) Electronic Filing of Senate Reports

Sections: 2 U.S.C. §§ 432(g) and 434(a)(11)

Recommendation: Congress should require:

- Mandatory electronic filing for all Senate candidates and their authorized committees and for those persons and political committees filing designations, statements, reports or notifications pertaining only to Senate elections if they have, or have reason to expect to have, aggregate contributions or expenditures in excess of \$50,000 in a calendar year.
- Electronically filed designations, statements, reports or notifications pertaining only to Senate elections to be forwarded to the Commission within 24 hours of receipt and to be made accessible to the public on the Internet, if Congress does not change the point of entry for filings pertaining only to Senate elections.

Explanation: Public Law No. 106-58 required, among other things, that the Commission make electronic filing mandatory for political committees and other persons required to file with the Commission who, in a calendar year, have, or have reason to expect to have, total contributions or total expenditures exceeding a threshold set by the Commission (\$50,000). The Bipartisan Campaign Reform Act of 2002 (Public Law No. 107-155) required the Commission to develop software and software standards that will allow information concerning reportable receipts and disbursements to be “transmitted immediately” and posted on the Commission’s web site “immediately upon receipt.” BCRA also expanded the class of persons required to file electronically, mandating that “each candidate for Federal office (or that candidate’s authorized committee) shall use software” that meets the new standards once such software is made available to the candidate. 2 U.S.C. § 434(a)(12)(C). The Commission notes that legislation was introduced in the 110th Congress (S.223) to mandate electronic filing by Senate campaigns.

Data from electronically filed reports is received, processed and disseminated more easily and efficiently, resulting in better use of resources. Reports that are filed electronically are normally available, and may be downloaded within minutes. In contrast, the time between the receipt of a report filed through the paper filing system and its appearance on the Commission’s web site is 48 hours. Moreover, a Senate campaign filing often consists of thousands of pages, and data from the filings themselves take up to 30 days to be integrated into the Commission’s searchable databases. If such reports were electronically filed, the data could be integrated within a few days.

Electronic filing (by means other than diskette) is not affected by disruptions in the delivery of first class mail, such as those arising from security measures put in place after the discovery of anthrax powder in the Senate buildings and U.S. Postal Service facilities in 2001 and the discovery of Ricin in mail delivered to the Senate office buildings in 2004. Because of these security measures, the Commission’s actual receipt of mailed paper filings by Senate campaigns undergoes a delay after receipt into the off-

site mail processing center. In contrast, electronic filings by other types of filers are received and processed in a timely manner.

Legislative Language:

Section 304(a)(11)(D) of the Federal Election Campaign Act of 1971 (2 U.S.C. § 434(a)(11)(D)) is amended to read as follows: “As used in this paragraph, the terms “designation”, “statement”, or “report” mean a designation, statement or report, respectively, which-- (i) is required by this Act to be filed with the Commission, or (ii) is required under section 302(g) to be filed with the Secretary of the Senate and forwarded by the Secretary to the Commission.”

Section 302(g)(2) of the Federal Election Campaign Act of 1971 (2 U.S.C. § 432(g)(2)) is amended by inserting “or 1 working day in the case of a designation, statement, or report filed electronically” after “2 working days”.

Section 304(a)(11)(B) of the Federal Election Campaign Act of 1971 (2 U.S.C. § 434(a)(11)(B)) is amended by inserting “, or filed with the Secretary of the Senate under section 302(g)(1) and forwarded to the Commission,” after “Act”.

(Compliance) 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: 2 U.S.C. § 441h(a) prohibits a Federal candidate or his or her agent or employee 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. 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 were recently prohibited in BCRA without any required showing of damage to the misrepresented candidate or political party committee. *See* 2 U.S.C. § 441h(b).

In addition, while both § 441h(a) and (b) 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 narrow scope of the existing language does not bar fraudulent misrepresentation or solicitation on behalf of a corporate or union separate segregated fund or a non-connected political committee.

Congress should consider revising the statute to strengthen these important prohibitions on fraudulent activity.

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 “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 in lieu thereof “, 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 “or political party or employee or agent thereof” and inserting in lieu thereof “, political party, other real or fictitious political committee or organization, or employee or agent of any of the foregoing,”.

(Compliance) Addition of Commission to the List of Agencies Authorized to Issue Immunity Orders Under Title 18

Section: 18 U.S.C. § 6001(1)

Recommendation: Congress should revise 18 U.S.C. § 6001(1) to add the Commission to the list of agencies authorized to issue immunity orders with the concurrence of the Attorney General according to the provisions of Title 18.

Explanation: Congress has entrusted the Commission with the exclusive jurisdiction for the civil enforcement of the Federal Election Campaign Act, the Presidential Election Campaign Fund Act and the Presidential Primary Matching Payment Account Act. The Commission is authorized to order testimony to be taken by deposition and to compel testimony and the production of evidence under oath pursuant to subpoena. *See* 2 U.S.C. § 437d(a)(3) and (4). However, in some instances, an individual may refuse to testify or provide other information on the basis of his privilege against self-incrimination. There is currently no legal basis for the Commission, with the approval of the Attorney General, to issue an order providing limited criminal immunity for information provided to the Commission. Many other independent agencies, including the Federal Communications Commission and the Federal Trade Commission, can grant such immunity.

Federal immunity grants are governed by 18 U.S.C. §§ 6001-6005. 18 U.S.C. §§ 6002 and 6004(a) provide that if a witness asserts his Fifth Amendment privilege against self-incrimination in any “proceeding before an agency of the United States,” the agency may seek approval from the Attorney General to immunize the witness from criminal prosecution for testimony or information provided to the agency (and any information directly or indirectly derived from such testimony or information). If the Attorney General approves the agency’s request, the agency may then issue an order immunizing the witness and compelling his testimony. The order only immunizes the witness as to criminal liability, and does not preclude civil enforcement action. The immunity conferred is “use” immunity, not “transactional” immunity. The government also can criminally prosecute the witness for perjury or giving false statements if the witness lies during his immunized testimony, or for otherwise failing to comply with the order.

Only “an agency of the United States,” as that term is defined in 18 U.S.C. § 6001(1), can avail itself of this process. This means an executive department or military department, and certain other persons or entities, including a large number of enumerated independent federal agencies. The Commission is not one of the enumerated agencies. When the provision was added to title 18 in 1970, the FEC did not exist, but additional agencies have been substituted or added since then. Adding the Commission as one of the enumerated agencies would enhance its ability to obtain information crucial to enforcement of the law.

Legislative Language:

Title 18, United States Code is amended in section 6001(1) by inserting “the Federal Election Commission,” after “the Federal Deposit Insurance Corporation,”.

(Disclosure) Including FEC Identification Number on Contribution Checks and in Reports of Itemized Receipts and Disbursements

Section: 2 U.S.C. § 434(b)(9)

Recommendation: Congress should require political committees to include their FEC identification number on all committee-to-committee contribution checks issued by them and to disclose the FEC identification number of other political committees when itemizing contributions received from those committees on schedule A and contributions disbursed on schedule B of FEC Form 3, Form 3X, or 3P.

Explanation: The Federal Election Commission’s Inspector General recently completed an audit of the FEC’s public disclosure process. While the audit found that the agency generally constructs an accurate depiction of campaign finance activity, the Inspector General also discovered that PACs and campaign committees themselves appeared to have some difficulty accurately and consistently identifying other committees involved in financial transactions, and the FEC occasionally assigned PAC contributions to the wrong candidate.

Part of the FEC's disclosure process requires the agency to match contributions made by one committee to those received by another. However, a committee may be known by several different names, acronyms, and abbreviations, and some candidates have multiple committees. The Act does not currently require that committee identification numbers be included on contribution checks or as identifying information when reporting itemized activity on FEC Form 3, Form 3X, or Form 3P. Without a common attribute such as an identification number, committees and FEC staff can find it difficult to track a PAC's disbursements to the candidate's receipt of the contribution. Reporting errors and inaccurately coded PAC contributions create disclosure discrepancies on the public record. While reporting software has improved the situation in recent years, in order to ensure more accurate reporting and public disclosure of campaign finance activity, the Commission recommends that the Act be amended to require committees to include their FEC identification number on all contribution checks and to disclose the FEC identification number of recipient committees on FEC Form 3, Form 3X, and Form 3P.

Legislative Language:

Section 304 of the Federal Election Campaign Act of 1971 (2 U.S.C. § 434) is amended by adding paragraph (9) to subsection (b) to state:

(9) (A) Each report filed by a political committee under this section must include—

(i) the Federal Election Commission Identification Number of each political committee that makes a contribution to the reporting committee during the reporting period and that is identified in the report; and

(ii) the Federal Election Commission Identification Number of each political committee that receives a contribution from the reporting committee during the reporting period.

(B) Each check, draft, or similar instrument used by a political committee to make a contribution to another political committee shall include the contributing committee's Federal Election Commission Identification Number.

(Disclosure) Increasing Certain Pre-BCRA Registration and Reporting Thresholds

Sections: 2 U.S.C. §§ 431 and 434

Recommendation: Congress should increase certain pre-BCRA registration and reporting thresholds that have not been changed since the 1970s.

Explanation: Most of the Act's registration and reporting thresholds were set in 1974 and 1979. Because over twenty years of inflation had effectively reduced the Act's contribution limits in real dollars, the BCRA increased some contribution limits to partially adjust for inflation: contributions to candidates and national party committees by

individuals and non-multicandidate committees, the biennial aggregate contribution limit for individuals and the limit on contributions to Senate candidates by certain national party committees. The Commission proposes extending this approach to other pre-BCRA registration and reporting thresholds, which have similarly been effectively reduced as a result of inflation. These thresholds are: (1) receipt of contributions in excess of \$1,000 or making expenditures in excess of \$1,000 in a calendar year for a group of persons to become a political committee; (2) making contributions in excess of \$1,000 or expenditures in excess of \$1,000 in a calendar year for a local party committee to become a political committee; (3) making independent expenditures in excess of \$250 in a calendar year for a person other than a political committee to be required to report such expenditures; and (4) an exception to the definition of “contribution” for an individual’s unreimbursed payments of \$1,000 in travel expenses on behalf of any single candidate in a single election, or \$2,000 on behalf of a political party in a calendar year. 2 U.S.C. §§ 431(4)(A) and (C); 434(c)(1); and 431(8)(B)(iv).

Increasing these thresholds would take into account many years of inflation and the general increase in campaign cost and ease the registration and reporting burdens on smaller organizations and individuals who, in some cases, are unaware of the Act's registration and reporting provisions. Moreover, by increasing the thresholds, Congress would ensure that some small organizations and individuals who lack the resources and technical expertise to comply with the Act’s registration and reporting requirements would not have to do so. Increasing the registration and reporting thresholds to compensate for inflation would not affect the Commission’s ability to capture significant financial activity as intended by Congress when it enacted the FECA.

Legislative language:

Section 301 of the Federal Election Campaign Act (2 U.S.C. § 431) is amended:

- (1) in paragraph (4)(A), by striking both references to “\$1,000” and by inserting “\$5,000” in lieu thereof;
- (2) in paragraph (4)(C), by striking both references to “\$1,000” and by inserting “\$5,000” in lieu thereof; and
- (3) in subparagraph (8)(B)(iv) by striking “\$1,000” and inserting “\$2,000” in lieu thereof and by striking “\$2,000” and inserting “\$4,000” in lieu thereof.

Section 304 of the Federal Election Campaign Act (2 U.S.C. § 434) is amended, in paragraph (c)(1) by striking “\$250” and inserting “\$1,000” in lieu thereof.