



AGENDA DOCUMENT NO. 22-58-A  
AGENDA ITEM  
For meeting of December 15, 2022

December 8, 2022

MEMORANDUM

TO: The Commission

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SUBJECT: Draft Legislative Recommendations 2022

Attached for your approval are draft Legislative Recommendations. The recommendations are:

**Part I: Highest Priority Legislative Recommendations**

1. Make the Administrative Fine Program for Reporting Violations Permanent
2. Increase the Rate of Pay for FEC Staff Director and General Counsel
3. Amend the Foreign National Prohibition to Include Substantial Assistance
4. Amend the Foreign National Prohibition to Include State and Local Ballot Initiatives, Referenda and Recall Elections

**Part II: Priority Legislative Recommendations**

5. Electronic Filing of Electioneering Communication Reports
6. Prohibit Fraudulent PAC Practices
7. Fraudulent Misrepresentation of Campaign Authority
8. Conversion of Campaign Funds
9. Prohibit Aiding or Abetting the Making of Contributions in Name of Another
10. Require Disclosures to Contributors Regarding Recurring Contributions
11. Increase and Index for Inflation Thresholds and Exemptions
12. Permit Political Committees to Make Disbursements by Methods Other than Check

**Part III: Other Improvements**

13. Extend the Respondent Notification Period from Five to Ten Days
14. Extend the Time to Establish Reporting Dates for Special Elections
15. Update the Federal Campaign Finance Statutes

Once the Commission has approved Legislative Recommendations, we will prepare transmittal letters to the President and Congress for the Chairman's signature.

## Part I: HIGHEST PRIORITY LEGISLATIVE RECOMMENDATIONS

### Make the Administrative Fine Program for Reporting Violations Permanent

*Section:* Federal Election Campaign Act of 1971, as amended (FECA), § 309(a)(4)(C)(v) (codified at 52 U.S.C. § 30109(a)(4)(C)(v))

*Recommendation:* Congress should make permanent the Commission’s authority to assess administrative fines for violations of the law requiring timely reporting of receipts and disbursements. The Commission’s current Administrative Fine Program only covers violations that relate to reporting periods through December 31, 2023.

*Explanation:* On December 21, 2018, President Trump signed legislation that extended the Administrative Fine Program, which authorized the Commission to include in the Program certain violations of FECA that relate to reporting periods through December 31, 2023.<sup>1</sup> Congress has acted six times to extend the Administrative Fine Program, extending the initial covered period from two years to cover 24 years.<sup>2</sup> Instead of enacting a seventh temporary extension, Congress should act to make the program permanent.

Through the Administrative Fine Program, the Commission has processed and made public 4,011 cases, with more than \$8.8 million in fines assessed during the period from implementation of the program in 2000 through the end of fiscal year 2022. The Administrative Fine Program has been remarkably successful: over the course of the program, the number of late and nonfiled reports has dramatically decreased. For election cycles 1992 through 2000, an average of 21% of campaign finance reports were filed late. Since the inception of the Administrative Fine Program, the percentage of late reports has dropped to below 10%. As a result, the Administrative Fine Program has become an integral part of the Commission’s mission to administer and enforce the Federal Election Campaign Act of 1971 (FECA).<sup>3</sup> With fewer late reports and fewer challenges to administrative fines, the Commission has been able to reduce the number of employees who work on this program. By making the program permanent, Congress would ensure that the Commission would not lose one of the most cost-effective and successful programs in its history.

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<sup>1</sup> See Pub. L. No. 115-386, 132 Stat. 5161 (2018).

<sup>2</sup> Pub. L. No. 107-67, §642, 115 Stat. 514, 555 (2001) (extending program through 2003 reports), Pub. L. No. 108-199, § 639, 118 Stat. 3, 359 (2004) (extending program through 2005 reports, leaving gap in coverage from January 1 to February 10, 2004); Pub. L. No. 109-155, § 721, 119 Stat. 2396, 2493-94 (2005) (extending program through 2008 reports); Pub. L. No. 110-433, 122 Stat. 4971 (2008) (extending program through 2013 reports); Pub. L. No. 113-72, 127 Stat. 1210 (2013) (extending program through 2018 reports); and Pub. L. No. 115-386, 132 Stat. 5161 (2018) (extending program through 2023 reports).

<sup>3</sup> Pub. L. No. 92-225, 86 Stat. 3 (1972), as amended, codified at 52 U.S.C. § 30104(a)(11)(A)(i).

Under the Administrative Fine Program, the Commission considers reports to be filed late if they are received after the due date, but within 30 days of that due date. Election-sensitive reports<sup>4</sup> are considered late if they are filed after their due date, but at least five days before the election. Committees filing reports after these dates are considered nonfilers. Civil money penalties for late reports are determined by the amount of activity on the report, the number of days the report was late and any prior penalties for violations under the administrative fine regulations. Penalties for nonfiled reports are determined by the estimated amount of activity on the report and any prior violations. Committees have the option to challenge the Commission’s finding, proposed penalty or both, or they may pay the civil penalty assessed.

*Legislative Language:*

Section 309(a)(4)(C)(v) of the Federal Election Campaign Act of 1971 (52 U.S.C. § 30109(a)(4)(C)(v)) is amended by striking the comma after “2000” and by striking “and that end on or before December 31, 2023”.

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<sup>4</sup> Election sensitive reports are those filed immediately before an election and include pre-primary, pre-special, pre-general, October quarterly and October monthly reports.

## **Increase the Rate of Pay for FEC Staff Director and General Counsel**

*Sections:* FECA § 306(f)(1)  
(codified at 52 U.S.C. § 30106(f)(1))

*Recommendation:* Congress should revise section 306 of FECA to delink the salaries of the Staff Director and the General Counsel from Level IV and Level V of the Executive Schedule.

*Explanation:* The current provision in FECA specifies that the Staff Director and General Counsel are to be paid at Level IV and Level V of the Executive Schedule, respectively. Both positions supervise personnel at the GS-15 and Senior Level pay scales, which often provide higher salaries than Levels IV and V of the Executive Schedule. The Staff Director and General Counsel have significant responsibilities and oversight duties with respect to both administrative and legal areas, as well as management over almost all agency personnel. According to recruiting specialists who have worked with the Commission, the current limit makes attracting a strong pool of applicants to these positions more challenging. The appointment and retention of these key leaders have been identified as ongoing management and performance challenges to the Commission by the Inspector General in the nine most recent Agency Financial Reports covering 2014 through 2022 and in previous Performance and Accountability Reports. The General Counsel's position is currently filled on an acting basis.

The Commission proposes removing the statutory references to the Executive Schedule, and amending FECA to specify that the Staff Director and General Counsel would be compensated under the same schedule as the Commission's other senior managers. This revision will remedy the current situation where the Commission's top managers are compensated at a lower rate than many of their direct reports and will ensure that the Commission can retain highly qualified individuals to serve in those positions as well as enable it to remain competitive in the marketplace for Federal executives when vacancies arise. Changing the salaries for these two positions would not require an increase in the Commission's appropriation request.

### *Legislative Language:*

Section 306(f)(1) of the Federal Election Campaign Act of 1971 (52 U.S.C. § 30106(f)(1)) is amended by striking the second and third sentences, and inserting: "The staff director and general counsel shall be compensated in accordance with section 5376 of title 5, United States Code."

## **Amend the Foreign National Prohibition to Include Substantial Assistance**

*Section:* FECA § 319  
(codified at 52 U.S.C. § 30121)

*Recommendation:* Congress should revise FECA’s foreign national prohibition to prohibit knowingly helping or assisting a foreign national in violating the prohibition.

*Explanation:* FECA prohibits foreign nationals from, directly or indirectly, making a contribution or donation of money or other thing of value, or making an express or implied promise to make a contribution or donation, in connection with a Federal, State, or local election. Foreign nationals are also prohibited from contributing and donating to political party committees and from making expenditures, independent expenditures and disbursements for electioneering communications. FECA further prohibits any person from soliciting, accepting, or receiving any of these prohibited contributions or donations.

Congress should amend FECA’s foreign national prohibition to further prohibit any person from knowingly providing substantial assistance to a foreign national to engage in any of the prohibited transactions. Doing so would permit the Commission to reach actors who aided, abetted, conspired, facilitated or otherwise significantly participated in schemes in which a foreign national violates FECA’s foreign national prohibition.

### *Legislative Language:*

Section 319(a) of the Federal Election Campaign Act of 1971 (52 U.S.C. § 30121(a)) is amended:

- (1) in paragraph (a)(2), by striking the period at the end, replacing it with a semicolon and inserting “or”; and
- (2) by adding new paragraph (a)(3):

“a person to knowingly help, or assist a foreign national in violating this subsection.”

## **Amend the Foreign National Prohibition to Include State and Local Ballot Initiatives, Referenda and Recall Elections**

*Section:* FECA § 319  
(codified at 52 U.S.C. § 30121)

*Recommendation:* Congress should revise FECA’s foreign national prohibition to include state and local ballot initiatives, referenda and any recall elections that are not already included in the prohibition.

*Explanation:* FECA prohibits foreign nationals from, directly or indirectly, making a contribution or donation of money or other thing of value, or making an express or implied promise to make a contribution or donation, in connection with a Federal, State, or local election. Foreign nationals are also prohibited from contributing and donating to political party committees and from making expenditures, independent expenditures and disbursements for electioneering communications.

The Commission recently considered an enforcement action related to foreign national donations in opposition to a Montana ballot initiative. In that Matter Under Review (MUR), the Commission determined that consistent with FECA and Supreme Court precedent, spending related to ballot initiatives is “generally outside the purview of the Act because such spending is not ‘in connection with’ elections.”<sup>5</sup> FECA defines “election” to include a “general, special, primary, or runoff election” and “a convention or caucus of a political party which has the authority to nominate a candidate.”<sup>6</sup> FEC regulations further specify that “[e]lection means the process by which individuals, whether opposed or unopposed, seek nomination for election, or election, to Federal office.”<sup>7</sup> The foreign national prohibition’s reach to state and local elections is exceptional in the FECA which otherwise is limited to federal elections. The Commission determined that FECA’s foreign national prohibition does not reach ballot initiatives that do not appear to be linked to an office-seeking candidate at the federal, state or local level.

The Commission recommends that Congress amend FECA’s foreign national prohibition to include ballot initiatives, referenda and any recall elections not covered by the current version of FECA.

Some recall elections involve the voters simultaneously recalling an incumbent and electing another candidate as a replacement, and recall elections structured this way are subject to the current version of FECA’s foreign national prohibition as they are elections for a candidate seeking (nonfederal) office. However, the Commission recommends that Congress amend FECA’s foreign national prohibition to include expressly recall elections and to clarify its application to these ballot questions and the related processes.

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<sup>5</sup> See FEC Factual and Legal Analysis, MUR 7523 (Stop I-186 to Protect Mining and Jobs), 4 (Oct. 4, 2021), available at [https://www.fec.gov/files/legal/murs/7523/7523\\_23.pdf](https://www.fec.gov/files/legal/murs/7523/7523_23.pdf).

<sup>6</sup> FECA, § 301(1), codified at 52 U.S.C. § 30101(1).

<sup>7</sup> 11 C.F.R. § 100.2.

Amending FECA's foreign national prohibition to apply to state and local ballot initiatives, referenda and recall elections would make prohibited foreign national spending in these contests subject to civil enforcement by the Federal Election Commission and, under the appropriate circumstances, it would also provide the U.S. Department of Justice with the authority to pursue knowing and willful violations as criminal cases.

*Legislative Language:*

Section 319(a)(1)(A) of the Federal Election Campaign Act of 1971 (52 U.S.C. § 30121(a)(1)(A)) is amended by inserting a comma after "election" followed by "including a State or local ballot initiative, referendum or recall election".



## **Part II: PRIORITY LEGISLATIVE RECOMMENDATIONS**

### **Electronic Filing of Electioneering Communication Reports**

*Section:* FECA § 304(a)(11)(A)(i)  
(codified at 52 U.S.C. § 30104(a)(11)(A)(i))

*Recommendation:* Congress should require reports of electioneering communications to be filed electronically with the Commission, rather than on paper.

*Explanation:* The Treasury and General Government Appropriations Act, 2000,<sup>8</sup> required the Commission to 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 amount set by the Commission (which is currently \$50,000). In addition, many independent expenditure reports are already subject to mandatory electronic filing under FECA section 304(a)(11)(A)(i). However, because electioneering communication reports are not filed by political committees, and because funds spent for electioneering communications are reported as “disbursements,” and not as “expenditures,” the mandatory electronic filing provisions do not apply to electioneering communication reports.

Compared to data from paper reports, 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 to the public, and may be downloaded, within minutes. In contrast, the time between the receipt of a report filed through the paper filing system and its initial appearance on the Commission’s web site is 48 hours.

Electronic filings are not subject to delay due to post office processing or disruptions in the delivery of mail, such as those arising from health and security measures related to the COVID-19 pandemic or the discovery of anthrax powder and ricin in mail. Because of these measures, the Commission’s receipt of mailed paper filings is delayed. In contrast, electronic filings are not subject to these delays.

Only entities that report more than \$50,000 of electioneering communications would be subject to mandatory electronic filing under the proposal. The current threshold selected by the Commission ensures that entities with limited financial resources can file reports on paper, which avoids the cost of internet access and a computer sufficient to file reports.

#### *Legislative Language:*

Section 304(a)(11)(A)(i) of the Federal Election Campaign Act of 1971 (52 U.S.C. § 30104(a)(11)(A)(i)) is amended by inserting “or makes or has reason to expect to make electioneering communications” after “expenditures”.

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<sup>8</sup> Pub. L. No. 106-58, § 639, 113 Stat. 430, 476 (1999).

## Prohibit Fraudulent PAC Practices

*Recommendation:* Congress should examine potentially fraudulent fundraising and spending activities of certain political committees that are often referred to as “scam PACs.” These committees solicit contributions with the promise of supporting candidates, but then disclose minimal or no candidate support activities while engaging in significant and continuous fundraising. This fundraising predominantly funds personal compensation for the committees’ organizers. In many cases, all funds raised by this subset of political committees are provided to fundraising vendors, direct mail vendors, and consultants in which the political committees’ officers appear to have financial interests. Based on its examination, Congress should amend the Federal Election Campaign Act to address, define, and prohibit fraudulent fundraising practices.

*Explanation:*

- Misleading contributors

Most political committees appropriately use vendors and consultants in support of their fundraising and political efforts, and vendors are often legitimately compensated with significant amounts of money that constitute large percentages of committees’ disbursements. However, through its examination of campaign finance disclosure reports and media accounts, the Federal Election Commission has noticed a recurring pattern where certain unauthorized political committees use fundraising materials that promise to use solicited funds to support candidates but instead, these committees use the funds solely for further committee fundraising activity. Sometimes, these solicitations imply that the committee’s fundraising materials originate from a named candidate for Federal office without that candidate’s knowledge or permission. In some cases, 90 percent or more of committee disbursements are paid to vendors in which the committees’ officers have a financial interest, while 10 percent or less of their disbursements are actually spent on candidate-support activities, such as contributions to candidates, independent expenditures, or donations to state and local candidates. The Federal Bureau of Investigation has recently warned of an increase in reports of potentially fraudulent PACs.<sup>9</sup>

The Commission believes that Congress should give the Commission the authority to protect contributors from committees that defraud their contributors, so-called “scam PACs.” Congress should consider whether political committee should be permitted to solicit contributions with false promises of supporting candidates, but then, over the course of years, deliver only support to the committee’s vendors. While legal recourse against such committees might be pursuable under mail- and wire-fraud statutes or the Lanham Act, candidates and contributors who believe they have been victimized by these committees often seek the FEC’s

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<sup>9</sup> See FBI Press Release, “Scam PACs Are on the Rise” (Apr. 15, 2021), *available at:* [Scam PACs Are on the Rise — FBI](#), (last visited May 6, 2021). See also FBI Press Release, “FBI Warns Voters on Election Crimes Ahead of the November 2022 Midterm Election” (Oct. 12, 2022), *available at:* [FBI Warns Voters on Election Crimes Ahead of the November 2022 Midterm Election — FBI](#)

assistance. Amending FECA to address and prohibit fraudulent solicitation, including false claims of candidate endorsement and the use of the federal political committee as an artifice to defraud contributors solely to enrich committee organizers, would provide the Commission jurisdiction to consider the complaints of aggrieved candidates and contributors.

- Related Vendors

Another troubling aspect of this recurring pattern is the frequency of relationships between the individuals who established or operate political committees and the vendors who receive large amounts of the committees' disbursements. In some instances, the committees pay fees directly to individuals who establish or operate the committees, and in other instances, the fees are paid to entities with financial relationships with those who establish or operate the committee. Congress could also consider adding standards that address payments to vendors that have financial relationships with the individuals who establish or operate political committees.

In this Legislative Recommendation, the Commission renews its call for Congress to act to empower the FEC to address potentially fraudulent PAC practices of scam PACs. In 2017 and 2018, the Commission issued a Legislative Recommendation calling for an examination of this problem and development of a legislative solution. In addition, in 2021 and again this year, the Commission asks Congress to amend FECA to define the fundraising practices of political committees that Congress finds to be fraudulent and to prohibit the use of those practices. For the first time, the Commission is calling on Congress to require further disclosure in an effort to address these problems. Amending FECA in these ways would provide the Commission with the authority to pursue these actors for civil penalties, and in the appropriate circumstances, it would also provide the U.S. Department of Justice with the authority to pursue knowing and willful violations as criminal cases.

## Fraudulent Misrepresentation of Campaign Authority

*Section:* FECA § 322  
(codified at 52 U.S.C. § 30124)

*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 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.<sup>10</sup> 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.<sup>11</sup>

In addition, while both subsections (a) and (b) of FECA section 322 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 (52 U.S.C. § 30124) 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

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<sup>10</sup> See FECA § 322, codified at 52 U.S.C. § 30124(a).

<sup>11</sup> See Bipartisan Campaign Reform Act of 2002, § 309, Pub. L. No. 107-155, 116 Stat. 81, 104 (2002) (“BCRA”), codified at 52 U.S.C. § 30124(b).

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.”.

## Conversion of Campaign Funds

*Section:* FECA § 313  
(codified at 52 U.S.C. § 30114)

*Recommendation:* Congress should amend the Federal Election Campaign Act’s prohibition of the personal use of campaign funds to extend its reach to all political committees.

*Explanation:* In 2007, the Department of Justice noted, “[r]ecent years have seen a dramatic rise in the number of cases in which candidates and campaign fiduciaries steal money that has been contributed to a candidate or political committee for the purpose of electing the candidate or the candidates supported by the political committee.”<sup>12</sup> In fact, the Commission has seen a substantial number of instances where individuals with access to the funds received by political committees have used such funds to pay for their own personal expenses.

The Commission proposes to revise section 313 of FECA to address this growing problem by prohibiting the use by any person of any political committee’s receipts for expenses that would exist irrespective of the political committee’s political activities. Political activities would include activities in connection with a Federal election, as well as activities in furtherance of a political committee’s policy or educational objectives and other legitimate committee functions and related administrative expenses. Such an amendment would provide for the coherent and consistent application of FECA.

### *Legislative Language:*

Section 313 of the Federal Election Campaign Act of 1971 (52 U.S.C. § 30114) is amended:

- (1) in paragraph (b)(1), by inserting “or a receipt accepted by any other political committee” after “subsection (a)”;
- (2) in paragraph (b)(2), by striking “contribution or donation” and inserting “contribution, donation, or receipt”;
- (3) in paragraph (b)(2), by striking “campaign or individual’s duties as a holder of Federal office,” and inserting “campaign, individual’s duties as a holder of Federal office, or political committee’s political activities,”.

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<sup>12</sup> See U.S. Department of Justice, *Federal Prosecution of Election Offenses*, 194-95 (7<sup>th</sup> ed. May 2007); see generally U.S. Department of Justice, *Federal Prosecution of Election Offenses*, 195-96 (8<sup>th</sup> ed. Dec. 2017).

## **Prohibit Aiding or Abetting the Making of Contributions in Name of Another**

*Sections:* FECA § 320  
(codified at 52 U.S.C. § 30122)

*Recommendation:* Congress should amend the prohibition of making contributions in the name of another in the Federal Election Campaign Act to also prohibit directing, helping or assisting the making of a contribution in the name of another.

*Explanation:* Since its enactment in 1972, FECA has prohibited contributions in the name of another. Specifically, the statute prohibits making a contribution in the name of another person or knowingly permitting another to use one's name to effect such a contribution. Additionally, knowingly accepting a contribution made by one person in the name of another is also prohibited. These prohibitions promote the important and long-recognized governmental interest in fighting corruption and its appearance by ensuring accurate disclosure of the true sources and amounts of campaign contributions and preventing circumvention of FECA's contribution limits and source prohibitions. This section of FECA is one of its most frequently violated provisions.<sup>13</sup> People attempting to violate FECA's limits on the sources and amounts of contributions often attempt to avoid detection by laundering their illegal contributions through straw donors.

In 1989, the Commission added a provision to its regulation providing that no person shall “[k]nowingly help or assist any person in making a contribution in the name of another.”<sup>14</sup> The Commission promulgated section 110.4(b)(1)(iii) after a federal district court held the previous year that a defendant had violated section 320 of FECA “by *knowingly assisting* in the making of contributions in the name of another.”<sup>15</sup> In the nearly three decades since the FEC promulgated section 110.4(b)(1)(iii), the agency has consistently and repeatedly enforced section 320 of FECA in administrative enforcement matters against respondents who knowingly helped or assisted conduit contributions. Doing so has permitted the Commission to reach actors in schemes who initiated, instigated and significantly participated in another person's making of a contribution in the name of another. In one such enforcement proceeding, the Commission's authority to promulgate this regulation was challenged, and a federal district court agreed with the challenger and struck down the regulation. That court found that the regulation's prohibition went beyond the prohibitions in FECA, stating that legislation is therefore required to expand the reach of FECA in this way.<sup>16</sup> The court also issued a nationwide injunction, which makes a different court reaching a different result unlikely.

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<sup>13</sup> See FECA § 320 (codified at 52 U.S.C. § 30122); U.S. Department of Justice, *Federal Prosecution of Election Offenses*, 141 (8<sup>th</sup> ed. Dec. 2017).

<sup>14</sup> 11 C.F.R. § 110.4(b)(1)(iii) (1989); see *Affiliated Committees, Transfers, Prohibited Contributions, Annual Contribution Limitations and Earmarked Contributions*, 54 Fed. Reg. 34,098, 34,104-05 (Aug. 17, 1989).

<sup>15</sup> See *FEC v. Rodriguez*, Final Order and Default Judgment, Case No. 86-687-Civ-T-10 (M.D. Fla. Oct. 28, 1988) (emphasis added).

<sup>16</sup> See *FEC v. Swallow*, 304 F. Supp. 3d 1113, 1116 (D. Utah 2018).

This Legislative Recommendation would incorporate the language of the Commission's stricken regulation into FECA, modified to include direct along with help or assist.

*Legislative Language:*

Section 320 of the Federal Election Campaign Act of 1971 (52 U.S.C. § 30122) is amended by adding at the end the following:

“No person shall knowingly direct, help, or assist any person in making a contribution in the name of another.”



## Require Disclosures to Contributors Regarding Recurring Contributions

*Section:* FECA § 318  
(codified at 52 U.S.C. § 30120)

*Recommendation:* Congress should amend FECA to require those soliciting recurring contributions to receive the affirmative consent of the contributors, to disclose additional information to their financial supporters and to immediately cancel recurring contributions upon request.

*Explanation:* Commission staff are regularly contacted by individuals who have discovered recurring contributions to political committees have been charged to their credit card accounts or deducted from their checking accounts. In many cases, the contributors do not recall authorizing recurring contributions. Often, these contributors have attempted unsuccessfully to cancel the recurring transactions with the political committee prior to contacting FEC staff.

Some fundraising devices use “pre-checked boxes” to treat a one-time contribution as a recurring contribution. In this way, some committees consider the contributor to have authorized the recurring contributions without obtaining the contributors’ affirmative consent. The Commission’s experience strongly suggests that many contributors are unaware of the “pre-checked” boxes and are surprised by the already completed transactions appearing on account statements.

Without express statutory authority in FECA, Commission staff do not have much effective assistance to offer these frustrated contributors. Congress should amend FECA to require those soliciting contributions to (1) receive affirmative consent of contributors when setting up recurring contributions, not to include implied consent through such means as pre-checked boxes; (2) provide a receipt and clearly and conspicuously disclose all material terms of recurring contributions to contributors at the time the contributions are set up and at the time of each individual contribution; (3) in each communication with the contributor regarding a recurring contribution, provide information needed to cancel the recurring contribution; and (4) immediately cancel recurring contributions upon the request of contributors. The same requirements should apply to those seeking recurring donations to fund electioneering communications.

### *Legislative Language:*

Section 318 of the Federal Election Campaign Act of 1971 (codified at 52 U.S.C. § 30120) is amended by adding at the end the following:

- (3) *Communications that solicit recurring contributions.*
  - (A) Any person soliciting a recurring contribution to a political committee, a recurring contribution to fund an independent expenditure, or a recurring donation

to fund an electioneering communication must receive the affirmative consent of the contributor or donor at the arrangement of the recurring contribution or donation. Passive action by the contributor or donor, such as failing to uncheck a pre-checked box authorizing a recurring contribution, shall not meet the requirement of affirmative consent under this subparagraph.

(B) Any person accepting a recurring contribution or donation described in subparagraph (A) shall:

- (i) provide a receipt for an initial contribution or donation and each recurrence that clearly and conspicuously discloses all material terms;
- (ii) provide all information needed to cancel recurring contributions or donations in each communication with the contributor or donor that concerns the contribution or donation; and
- (iii) shall immediately cancel recurring contributions or donations upon request of the contributor or donor.

## **Increase and Index for Inflation Thresholds and Exemptions**

*Sections:* FECA §§ 301, 304 and 315  
(codified at 52 U.S.C. §§ 30101, 30104 & 30116)

*Recommendation:* Congress should increase and index for inflation certain thresholds and exemptions in the Federal Election Campaign Act that have not been changed since the 1970s.

*Explanation:* Most of the Federal Election Campaign Act's contribution limits and registration and reporting thresholds were set in the 1970s. Because over twenty years of inflation had effectively reduced FECA's contribution limits in real dollars, the Bipartisan Campaign Reform Act of 2002 increased most of FECA's contribution limits to adjust for some of the effects of inflation. Furthermore, BCRA indexed these limits for inflation to address inflation in the future. The Commission proposes extending this approach to registration and reporting thresholds, which have been effectively reduced by inflation since those thresholds were established in 1971 or 1979.

Since 1971, FECA has provided that any group of persons that receives contributions or makes expenditures in excess of \$1,000 in a calendar year must register and report as a political committee.<sup>17</sup> FECA also requires political committees to abide by the contribution limits and source prohibitions specified in FECA. Since 1979, FECA has provided that local political party organizations are also subject to a \$1,000 threshold for federal political committee status.<sup>18</sup> The Commission recommends that Congress increase these thresholds to \$2,000, and then index those amounts for inflation to prevent erosion in the future. Raising this threshold would be particularly beneficial for local and Congressional district committees of political parties. These organizations frequently breach the \$1,000 threshold. An increased threshold would permit limited spending on federal elections without triggering federal political committee status for local and Congressional district committees of political parties.

Since 1979, FECA has required persons (other than political committees) who make independent expenditures in excess of \$250 in a calendar year to report such expenditures to the Commission.<sup>19</sup> The Commission recommends that Congress increase this threshold to \$500 and index this amount for inflation.

Under FECA, an individual may spend up to \$1,000 per candidate, per election and up to \$2,000 per calendar year on behalf of all political committees of the same party for food, beverages, and invitations for an event held in the individual's home without making a

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<sup>17</sup> FECA § 301(4)(A) (codified at 52 U.S.C. § 30101(4)(A)).

<sup>18</sup> FECA § 301(4)(C) (codified at 52 U.S.C. § 30101(4)(C)).

<sup>19</sup> FECA § 304(c)(1) (codified at 52 U.S.C. § 30104(c)(1)).

contribution.<sup>20</sup> FECA also permits an individual to spend up to \$1,000 per candidate, per election and up to \$2,000 per calendar year on behalf of all political committees of the same party for unreimbursed travel expenses on behalf of the campaign or political party without making a contribution.<sup>21</sup>

Congress added the current exemption limits in 1979, setting the amount for candidates as the same as the contribution limit then in effect (\$1,000 per election) and setting the amount for political parties as 40% of the contribution limit then in effect for state, district, and local parties (\$5,000 per calendar year) and 10% of the contribution limit then in effect for national parties (\$20,000).<sup>22</sup>

The Commission recommends that Congress update the in-home event exemption and unreimbursed travel expense exemption on behalf of candidates from \$1,000 to \$2,000 and index these amounts for inflation. The Commission further recommends that Congress update the in-home event exemption and unreimbursed travel exemption on behalf of political parties to \$4,000.

Increasing these thresholds and exemptions would take into account many years of inflation and the general increase in campaign cost and would ease the compliance burdens on individuals and smaller organizations. Additionally, by increasing the thresholds, Congress would exempt some individuals and small organizations that engage in only minimal spending from the Act's registration and reporting requirements. Increasing the registration and reporting thresholds to compensate for inflation would leave significant financial activity subject to regulation as intended by Congress when it enacted the FECA.

*Legislative language:*

Section 301 of the Federal Election Campaign Act of 1971 (52 U.S.C. § 30101) is amended:

- (1) in paragraph (4)(A), by striking both references to "\$1,000" and inserting "\$2,000";
- (2) in paragraph (4)(C), by striking both references to "\$5,000" and inserting "\$10,000" and by striking both references to "\$1,000" and inserting "\$2,000";
- (3) in subparagraph (8)(B)(ii), by striking "\$2,000" and inserting "\$4,000" and by striking "\$1,000" and inserting "\$2,000";

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<sup>20</sup> FECA § 301(8)(B)(ii) (*codified at* 52 U.S.C. § 30101(8)(B)(ii)).

<sup>21</sup> FECA § 301(8)(B)(iv) (*codified at* 52 U.S.C. § 30101(8)(B)(iv)).

<sup>22</sup> *See* Federal Election Campaign Act Amendments of 1979, Pub. L. No. 96-187, § 101, 93 Stat. 1339 (1980).

(4) in subparagraph (8)(B)(iv), by striking “\$2,000” and inserting “\$4,000” and by striking “\$1,000” and inserting “\$2,000”.

Section 304 of the Federal Election Campaign Act of 1971 (52 U.S.C. § 30104) is amended: in paragraph (c)(1) by striking “\$250” and inserting “\$500”.

Section 315 of the Federal Election Campaign Act of 1971 (52 U.S.C. § 30116) is amended—

(1) in paragraph (c)(1), by adding after subparagraph (C) the following:

“(D) In any calendar year after 2023—

(i) thresholds established by section 301(4)(A) and (4)(C) shall be increased by the percent difference determined under subparagraph (A);

(ii) each amount so increased shall remain in effect for the calendar year; and

(iii) if any amount after adjustment under clause (i) is not a multiple of \$100, such amount shall be rounded to the nearest multiple of \$100.”;

“(E) In any odd numbered calendar year after 2022—

(i) the exemption amounts established by section 301(8)(B)(ii) or (iv) shall be increased by the percent difference determined under subparagraph (A);

(ii) each amount so increased shall remain in effect for the 2-year period beginning on the first day following the date of the general election in the year preceding the year in which the amount is increased and ending on the date of the next general election; and

(iii) if any amount after adjustment under clause (i) is not a multiple of \$100, such amount shall be rounded to the nearest multiple of \$100.”;

(2) in paragraph (c)(2)(B)(i), by striking “and” at the end;

(3) in paragraph (c)(2)(B)(ii), by striking the period at the end and inserting a semicolon followed by “and”; and

(4) by adding after paragraph (c)(2)(B)(ii) the following:

“(iii) for purposes of section 301(4)(A), (4)(C), (8)(B)(ii) and (iv) calendar year 2023.”.

## **Permit Political Committees to Make Disbursements by Methods Other Than Check**

*Section:* FECA § 302(h)(1)  
(codified at 52 U.S.C. § 30102(h)(1))

*Recommendation:* Congress should delete the reference to a “check drawn on” an account at a campaign depository as the only permissible method of making political committee disbursements.

*Explanation:* The Federal Election Campaign Act requires all political committees to maintain at least one campaign depository account and to make all disbursements (other than from petty cash) “by check drawn on such accounts in accordance with this section.”<sup>23</sup> Since this provision was adopted, financial payments have evolved to include credit cards, debit cards, and other well-established electronic transaction methods.<sup>24</sup> The Commission accordingly recommends deletion of FECA’s requirement that disbursements be made “by check drawn on” campaign depository accounts. The Commission recommends substituting technology-neutral language to require that committees make disbursements “from such accounts.”

### *Legislative Language:*

The last sentence of section 302(h)(1) of the Federal Election Campaign Act of 1971 (52 U.S.C. § 30102(h)(1)) is amended to read as follows: “No disbursements may be made (other than petty cash disbursements under paragraph (2)) by such committee except from such accounts.”.

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<sup>23</sup> See FECA § 302(h)(1) (codified at 52 U.S.C. § 30102(h)(1)).

<sup>24</sup> See, e.g., Fed. Reserve Sys., *Developments in Noncash Payments for 2019 and 2020: Findings from the Federal Reserve Payments Study* (Dec. 2021), <https://www.federalreserve.gov/paymentsystems/fr-payments-study.htm>.

### **Part III: OTHER IMPROVEMENTS**

#### **Extend the Respondent Notification Period from Five to Ten Days**

*Section:* FECA § 309(a)(1)  
(codified at 52 U.S.C. § 30109(a)(1))

*Recommendation:* Congress should extend the period for notifying respondents of the receipt of a complaint from 5 to 10 days.

*Explanation:* Under FECA, any person who believes that a violation of FECA or of chapter 95 or chapter 96 of title 26 has occurred may file a complaint with the Commission. Within five days after receipt of the complaint, the Commission must notify, in writing, any person alleged in the complaint to have committed such a violation.

The Commission has witnessed exponential growth in the number of filed complaints since the Commission began operating in 1975. However, the size of the Commission's staff has not grown proportionately. As our modern communications, technological, and financial systems improve and grow increasingly interconnected and international, the Commission expects the volume of filed complaints to continually increase.

In order to respond to these complaints, the Commission must identify the proper party or parties to notify. In cases where a foreign national is involved, this can raise practical difficulties when the party lives overseas as well as delicate questions concerning diplomatic communications. Extending the period of time the Commission has to conduct its preliminary review would allow the Commission to better handle its expanding workload and ensure that the proper respondents, including those abroad, are correctly identified and properly notified.

The Commission recommends that Congress extend the time period between when the Commission receives a complaint and when the Commission must notify the respondent from five to ten days.

#### *Legislative Language:*

Section 309(a)(1) of the Federal Election Campaign Act (52 U.S.C. § 30109(a)(1)) is amended by striking "Within 5 days" and adding the words "Within 10 days" after "title 18."

## **Extend the Time to Establish Reporting Dates for Special Elections**

*Section:* FECA § 304(a)(9)  
(codified at 52 U.S.C. § 30104(a)(9))

*Recommendation:* Congress should require the Commission to establish the reporting dates for a special election within five business days of the special election date being set, instead of within five calendar days as currently required.

*Explanation:* The Federal Election Campaign Act requires that the Commission “establish the reporting dates within 5 days of the setting of [a special] election and shall publish such dates and notify the principal campaign committees of all candidates in such election of the reporting dates.”<sup>25</sup> The five-day period often includes a weekend, leaving the Commission with only three business days to establish the relevant reporting dates in many circumstances. In the Commission’s experience, dates for special elections, and their corresponding reporting deadlines, are ordinarily established months in advance. As a result, changing the deadline from five calendar days to five business day would alleviate an administrative burden on the Commission without any significant effect on candidates or their campaign committees.

### *Legislative Language:*

Section 304(a)(9) of the Federal Election Campaign Act of 1971 (52 U.S.C. § 30104(a)(9)) is amended by striking “5 days” and inserting “5 business days”.

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<sup>25</sup> FECA § 304(a)(9) (codified at 52 U.S.C. § 30104(a)(9)).



## Update the Federal Campaign Finance Statutes

*Sections:* 26 U.S.C. § 9008;  
FECA §§ 304, 306, 307, 309, 315, 315A, 316, & 324  
(codified at 52 U.S.C. §§ 30104, 30106, 30107, 30109, 30116, 30117, 30118 & 30126)

*Recommendation:* Congress should update FECA and the provisions of the Presidential Election Campaign Fund Act (PECFA) by:

- (i) removing the FECA provisions that have been held to be unconstitutional and that are, thus, no longer operative;
- (ii) repealing the provisions of PECFA that allocate and govern the use of funds through the public convention financing program that subsequent legislation has made inoperative;
- (iii) revising certain citations to reflect the 2014 recodification of FECA;
- and
- (iv) modernizing the spelling of “subpena” in FECA.

*Explanation:*

(i) Remove Unconstitutional FECA Provisions.

A number of provisions of the FECA have been held to be unconstitutional. As a result, the Commission may no longer enforce them. Nevertheless, these provisions remain in FECA. Repealing these invalid provisions would promote public understanding of federal campaign finance law.

The FECA provisions that have been held to be unconstitutional but remain in FECA are as follows:

- The inclusion of the Secretary of the Senate and the Clerk of the House of Representatives in the membership of the Commission.  
*Statutory provision:* FECA § 306(a)(1) (52 U.S.C. § 30106(a)(1)).  
*Relevant court case:* *FEC v. NRA Political Victory Fund*, 6 F.3d 821 (D.C. Cir. 1993), *cert. dismissed for want of jurisdiction*, 513 U.S. 88 (1994).
- The requirement that a political party committee must choose between making coordinated communications or independent expenditures after it nominates a candidate.  
*Statutory provision:* FECA § 315(d)(4) (52 U.S.C. § 30116(d)(4)).  
*Relevant court case:* *McConnell v. FEC*, 540 U.S. 93 (2003)
- The prohibition on contributions by minors.  
*Statutory provision:* FECA § 324 (52 U.S.C. § 30126).  
*Relevant court case:* *McConnell v. FEC*, 540 U.S. 93 (2003)
- The so-called Millionaires’ Amendment, which increased contribution limits for candidates whose opponents spent more than certain threshold amounts of their own personal funds on their campaigns.

*Statutory provisions:* FECA §§ 304(a)(6)(B)-(E); 315(i); & 315A (52 U.S.C. §§ 30104(a)(6)(B)-(E); 30116(i); & 30117).

*Relevant court case:* *Davis v. FEC*, 554 U.S. 724 (2008)

- The prohibition on the making of electioneering communications and independent expenditures by corporations and labor organizations.  
*Statutory provision:* FECA § 316(a) (52 USC 30118(a)).  
*Relevant court case:* *Citizens United v. FEC*, 558 U.S. 310 (2010)
- The limitation on the aggregate amount of contributions an individual may make in an election cycle.  
*Statutory provision:* FECA § 315(a)(3) (52 U.S.C. § 30116(a)(3)).  
*Relevant court case:* *McCutcheon v. FEC*, 572 U.S. 185 (2014)
- The limitation on repayment of personal loans.  
*Statutory provision:* FECA § 315(j) (52 U.S.C. § 30116(j)).  
*Relevant court case:* *FEC v. Ted Cruz for Senate*, 142 S.Ct. 1638 (2022).

(ii) Repeal Inoperable PECFA Provisions.

The Gabriella Miller Kids First Research Act (the “Research Act”)<sup>26</sup> amended the Presidential Election Campaign Fund Act<sup>27</sup> by terminating the longstanding entitlement of national party committees to public funds to finance their presidential nominating conventions. But the Research Act did not repeal the convention financing provisions. Rather, the Research Act implemented the termination by requiring that the funds in question be transferred to a “10-Year Pediatric Research Initiative Fund” instead of to the national party committees.<sup>28</sup>

Prior to the Research Act, the Commission had promulgated numerous regulations implementing the Presidential Election Campaign Fund Act.<sup>29</sup> Many of these public funding regulations no longer serve a functional purpose following the Research Act, yet the statutory provisions that they implement remain in place. These statutory and regulatory provisions, which the Research Act rendered inoperative, may confuse the public as to the state of the law. By repealing those inoperative provisions, Congress can clarify the law.

The following statutory provisions are no longer operational and should be removed:

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<sup>26</sup> Pub. L. No. 113-94, 128 Stat. 1085 (2014).

<sup>27</sup> 26 U.S.C. §§ 9001-9013.

<sup>28</sup> See Pub. L. No. 113-94, § 2(a), 128 Stat. 1085 (*codified at* 26 U.S.C. § 9008(i)). The Research Act did delete the statutory requirements for the Commission to report to Congress regarding payments to and expenses of national party committees for presidential nominating conventions. Pub. L. No. 113-94, § 2(c)(1), 128 Stat. 1085-96 (deleting 26 U.S.C. § 9009(a)(4)-(6)). The Research Act also removed statutory provisions that criminalized (1) a national party committee’s spending more than the limit established by 26 U.S.C. § 9008(d); (2) any person’s spending public convention funds on expenses other than a national party committee’s convention expenses; and (3) giving or accepting a kickback in connection with any convention expense. *Id.* § 2(c)(2) (amending 26 U.S.C. § 9012).

<sup>29</sup> See 11 C.F.R. part 9008.

- 26 U.S.C. § 9008(b)(3) — requires the Secretary of the Treasury to make payments to “the national committee of a major party or a minor party which elects to receive its entitlement”;
- 26 U.S.C. § 9008(c) — restricts national party committees from using funds received under the Funding Statute except for expenses incurred with respect to a presidential nominating convention or to repaying loans or otherwise restoring funds that were used to defray such expenses;
- 26 U.S.C. § 9008(d) — limits expenditures by national party committees to the amount of funds to which they are entitled under the Funding Statute, and sets out exceptions to this limitation;
- 26 U.S.C. § 9008(e) — states the date on which the national party committees may begin receiving funds;
- 26 U.S.C. § 9008(f) — requires the Secretary of the Treasury to transfer to the Treasury any remaining funds in a national party committee’s account after the close of a nominating convention;
- 26 U.S.C. § 9008(g) — provides that any major or minor party may file a statement with the Commission designating the national committee of that party; and requires the Commission, upon verifying the statement, to certify to the Secretary of the Treasury the payment amount the national party committee is entitled to;
- 26 U.S.C. § 9008(h) — grants the Commission the authority to require repayments from a national party committee that has received funds under the Funding Statute.

*Legislative Language for (ii):*

Section 9008 of the Internal Revenue Code of 1986 is amended as follows:

- (1) in subsection (b), by striking paragraph (3); and
- (2) by striking subsections (c), (d), (e), (f), (g), and (h).

*(iii) Revise Citations to Reflect Recodification.*

On September 1, 2014, Title 52 of the United States Code was established for codifying legislation related to Voting and Elections, and it includes the Federal Election Campaign Act. In order to ensure that other laws accurately reflect the new location of FECA in the United States Code, legislation is needed to conform citations to the Federal Election Campaign Act in various other laws to its current codification. In the 114<sup>th</sup> Congress, H.R. 2832 was a bill that would have provided the necessary updates.<sup>30</sup> The bill passed the House of Representatives on September 6, 2016, by voice vote. The Senate did not act on it. Similar legislation should be enacted in order to promote public understanding and access to the Federal Election Campaign Act.

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<sup>30</sup> See H.R. 2832, 114<sup>th</sup> Cong. (2015).

*Legislative Language for (iii):*

See H.R. 2832, 114<sup>th</sup> Cong. (2015).

(iv) Modernize the Spelling of “Subpena” in FECA.

FECA currently gives the Commission the power of “subpena.” While this formulation may have been the spelling of choice in the 1970s, the more common version today is “subpoena.” To avoid confusion, we recommend that Congress modernize FECA accordingly.

*Legislative Language for (v):*

Sections 307 and 309 of the Federal Election Campaign Act (52 U.S.C. § 30107 and § 30109) are amended by striking “subpena” at each place it appears and inserting “subpoena” in its place.