



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

2007 APR 12 A 9:32

April 12, 2007

AGENDA ITEM
For Meeting of: 04-12-07

MEMORANDUM

TO: The Commission

THROUGH: Patrina M. Clark, Staff Director *PMC*
Art Forster, Chief Communications Officer *ACF*

FROM: Tina VanBrakle, Director, Congressional Affairs *J.V.*

SUBJECT: Draft Legislative Recommendations 2007

SUBMITTED LATE

Five legislative recommendations have been proposed, including four recommendations from past years and one new recommendation:

- Electronic Filing of Senate Reports (Revised 2006)
- Fraudulent Misrepresentation of Campaign Authority (Revised 2005)
- Addition of Commission to the List of Agencies Authorized to Issue Immunity Orders Under Title 18 (2005)
- Including FEC Identification Number on Contribution Checks and in Reports of Itemized Receipts and Disbursements (2007)
- Increasing Certain Pre-BCRA Registration and Reporting Thresholds (Revised 2007)

Recommendation:

The Congressional Affairs Office recommends that the Commission approve the legislative recommendations, and the transmittal letter, for transmission to the President and Congress.

April 12, 2007

The Honorable George W. Bush
The President
The White House
Washington, D.C. 20500

Dear Mr. President:

In accordance with 2 U.S.C. §438(a)(9), the Federal Election Commission is pleased to submit for your consideration 5 recommendations for legislative action:

- Electronic Filing of Senate Reports
- Fraudulent Misrepresentation of Campaign Authority
- Addition of Commission to the List of Agencies Authorized to Issue Immunity Orders Under Title 18
- Including FEC Identification Number on Contribution Checks and in Reports of Itemized Receipts and Disbursements
- Increasing and Indexing Certain Pre-BCRA Registration and Reporting Thresholds for Inflation

We hope these recommendations can assist Congress in bringing to fruition some necessary changes in campaign finance law, and the FEC stands ready to work with the President and Congress to implement the legislative package.

Sincerely,

Robert D. Lenhard
Chairman

1 **Legislative Recommendations – 2007**

2

3 **(Disclosure) Electronic Filing of Senate Reports (Revised 2006~~5~~)**

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

5 *Recommendation:* The Commission recommends that Congress require:

- 6 • Mandatory electronic filing, to be commenced by a date to be determined by
7 Congress, for all Senate candidates (or those candidates' authorized committees) and
8 for those persons and political committees filing designations, statements, reports or
9 notifications pertaining only to Senate elections if they have, or have reason to expect
10 to have, aggregate contributions or expenditures in excess of \$50,000 in a calendar
11 year.

- 12 • Electronically filed designations, statements, reports or notifications pertaining only
13 to Senate elections to be forwarded to the Commission within 24 hours of receipt and
14 to be made accessible to the public on the Internet, if Congress does not change the
15 point of entry for filings pertaining only to Senate elections.

16

17 *Explanation:* Public Law 106-58 required, among other things, that the Commission
18 make electronic filing mandatory for political committees and other persons required to
19 file with the Commission who, in a calendar year, have, or have reason to expect to have,
20 total contributions or total expenditures exceeding a threshold set by the Commission
21 (\$50,000). The Bipartisan Campaign Reform Act of 2002 (Public Law No. 107-155)
22 required the Commission to develop software and software standards that will allow
23 information concerning reportable receipts and disbursements to be “transmitted

1 immediately” and posted on the Commission’s web site “immediately upon receipt.”
2 BCRA also expanded the class of persons required to file electronically, mandating that
3 “each candidate for Federal office (or that candidate’s authorized committee) shall use
4 software” that meets the new standards once such software is made available to the
5 candidate. 2 U.S.C. §434(a)(12)(C). The plain language of this statutory revision does
6 not appear to exempt Senate candidates and their authorized committees from the
7 electronic filing requirements, but it does not specify where the electronic reports must be
8 filed. Thus, a plain reading of these new requirements indicates that all Senate candidates
9 and their authorized committees must use software, presumably to file electronically,
10 with the Senate (or with the FEC). (The Commission notes that legislation was
11 introduced in the 108¹⁰th Congress (S.+874223) to mandate electronic filing by Senate
12 campaigns.)

13 Data from electronically filed reports is received, processed and disseminated
14 more easily and efficiently, resulting in better use of resources. Reports that are filed
15 electronically are normally available, and may be downloaded, within five minutes ~~and~~
16 ~~detailed data is available in the Commission’s databases within 24 to 48 hours.~~ In
17 contrast, the time between the receipt of a report filed through the paper filing system and
18 its appearance on the Commission’s web site is 48 hours. ~~It can take as long as 30 days~~
19 ~~before some detailed data filed on paper is available in the Commission’s databases.~~
20 Moreover, a Senate campaign filing often consists of thousands of pages, and data from
21 the filings themselves take up to 30 days to be integrated into the Commission’s
22 searchable databases. If such reports were electronically filed, the data could be
23 integrated within a few days.

1 Electronic filing (by means other than diskette) is not affected by disruptions in
2 the delivery of first class mail, such as those arising from security measures put in place
3 after the discovery of anthrax powder in the Senate buildings and U.S. Postal Service
4 facilities in 2001 and the discovery of Ricin in mail delivered to the Senate office
5 buildings in 2004. Because of these security measures, the Commission’s actual receipt
6 of mailed paper filings by Senate campaigns undergoes a delay after receipt into the off-
7 site mail processing center. In contrast, electronic filings by other types of filers are
8 received and processed in a timely manner.

9 ~~Electronic filing (by means other than diskette) is also unaffected by disruptions~~
10 ~~in the delivery of first class mail, such as those arising from the presence of anthrax~~
11 ~~powder in the Senate buildings and U.S. Postal Service facilities in 2001 and the more~~
12 ~~recent discovery of Ricin in mail delivered to the Senate office buildings. In each case,~~
13 ~~the disruptions have significantly delayed amendments to Senate campaign reports that~~
14 ~~were filed via regular mail. In 2001, reports submitted by regular mail took months to~~
15 ~~arrive at the Secretary of the Senate (and the FEC), delaying disclosure. In contrast,~~
16 ~~amendments electronically filed during the same time periods by other types of filers~~
17 ~~were received and processed in a timely manner.~~

18
19 *Legislative Language:*

20
21 Section 304(a)(11)(D) of the Federal Election Campaign Act of 1971 (2 U.S.C.
22 434(a)(11)(D)) is amended to read as follows: “As used in this paragraph, the terms
23 “designation”, “statement”, or “report” mean a designation, statement or report,

1 respectively, which-- (i) is required by this Act to be filed with the Commission, or (ii) is
2 required under section 302(g) to be filed with the Secretary of the Senate and forwarded
3 by the Secretary to the Commission.” .

4

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

8

9 Section 304(a)(11)(B) of the Federal Election Campaign Act of 1971 (2 U.S.C.
10 434(a)(11)(B)) is amended by inserting “, or filed with the Secretary of the Senate under
11 section 302(g)(1) and forwarded to the Commission,” after “Act”.

12

13 **(Compliance) Fraudulent Misrepresentation of Campaign Authority (Revised 2005)**

14 *Section:* 2 U.S.C. §441h

15

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

22

1 *Explanation:* 2 U.S.C. §441h(a) prohibits a Federal candidate or his or her agent or
2 employee from fraudulent misrepresentation such as speaking, writing or otherwise
3 acting on behalf of a candidate or political party committee on a “matter which is
4 damaging to such other candidate or political party” or an employee or agent of either.
5 The Commission recommends that this prohibition be extended to any person who would
6 disrupt a campaign by such unlawful means, rather than being limited to candidates and
7 their agents and employees. Proving damages as a threshold matter is often difficult and
8 unnecessarily impedes the Commission’s ability to pursue persons who employ fraud and
9 deceit to undermine campaigns. Fraudulent solicitations of funds on behalf of a
10 candidate or political party committee were recently prohibited in BCRA without any
11 required showing of damage to the misrepresented candidate or political party committee.
12 *See* §441h(b).

13

14 In addition, while both §§441h(a) and (b) directly address fraudulent actions “on
15 behalf of any other candidate or political party,” they do not address situations where a
16 person falsely claims to represent another type of political committee or claims to be
17 acting on behalf of a fictitious political organization, rather than an actual political party
18 or a candidate. For example, the narrow scope of the existing language does not bar
19 fraudulent misrepresentation or solicitation on behalf of a corporate or union separate
20 segregated fund or a non-connected political committee.

21

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

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,”;

(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 (2005)

Section: 18 U.S.C. §6001(1)

Recommendation: The Commission recommends that Congress revise 18 U.S.C. §6001(1) to add the Commission to the list of agencies authorized to issue immunity

1 orders according to the provisions of Title 18.

2 *Explanation:* Congress has entrusted the Commission with the exclusive jurisdiction for
3 the civil enforcement of the Federal Election Campaign Act of 1971, as amended, the
4 Presidential Election Campaign Fund Act and the Presidential Primary Matching
5 Payment Account Act. The Commission is authorized, in any proceeding or
6 investigation, to order testimony to be taken by deposition and to compel testimony and
7 the production of evidence under oath pursuant to subpoena. *See* 2 U.S.C. §437d(a)(3)
8 and (4). However, in some instances, an individual who has been called to testify or
9 provide other information refuses to do so on the basis of his privilege against self-
10 incrimination. There is currently no mechanism whereby the Commission, with the
11 approval of the Attorney General, can issue an order providing limited criminal immunity
12 for information provided to the Commission. Many other independent agencies,
13 including the Federal Communications Commission and the Federal Trade Commission,
14 can grant such immunity.

15 Federal immunity grants are governed by 18 U.S.C. §§6001-6005. 18 U.S.C. §§
16 6002 and 6004(a) provide that if a witness asserts his Fifth Amendment privilege against
17 self-incrimination and refuses to answer questions at any “proceeding before an agency
18 of the United States,” the agency may seek approval from the Attorney General to
19 immunize the witness from criminal prosecution for testimony or information provided to
20 the agency (and any information directly or indirectly derived from such testimony or
21 information). If the Attorney General approves the agency’s request, the agency may
22 then issue an order immunizing the witness and compelling his testimony. Once that
23 order is issued and communicated to the witness, he cannot continue to refuse to testify in

1 the inquiry. The order issued by the agency only immunizes the witness as to criminal
2 liability, and does not preclude civil enforcement action. The immunity conferred is “use”
3 immunity, not “transactional” immunity. The government also can criminally prosecute
4 the witness for perjury or giving false statements if the witness lies during his immunized
5 testimony, or for otherwise failing to comply with the order.

6 Only “an agency of the United States,” as that term is defined in 18 U.S.C.
7 §6001(1), can avail itself of the mechanism described above. The term is currently
8 defined to mean an executive department or military department, and certain other
9 persons or entities, including a large number of enumerated independent federal agencies.
10 The Commission is not one of the enumerated agencies. When the provision was added
11 to title 18 in 1970, the enumerated agencies were those that already had immunity
12 granting power, but additional agencies have been substituted or added since then.
13 Adding the Commission as one of the enumerated agencies in 18 U.S.C. §6001(1) would
14 enhance its ability to obtain information relevant to the effective execution of its
15 enforcement responsibilities.

16

17 *Legislative Language:*

18

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

21

22 **(Disclosure) Including FEC Identification Number on Contribution Checks and in**
23 **Reports of Itemized Receipts and Disbursements (2007)**

1 *Section:* 2 U.S.C. 434(b)(9)

2 *Recommendation:* The Commission recommends Congress consider amending the Act to
3 require political committees to include their FEC identification number on all committee-
4 to-committee contribution checks issued by them and to disclose the FEC identification
5 number of other political committees when itemizing contributions received on schedule
6 A and contributions disbursed on schedule B of FEC Form 3, Form 3X, or 3P.

7

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

15 Part of the FEC's disclosure process requires the agency to match contributions
16 made by one committee to those received by another. However, a committee may be
17 known by several different names, acronyms, and abbreviations, and some candidates
18 have multiple committees. The Act does not currently require that committee
19 identification numbers be included on contribution checks or as identifying information
20 when reporting itemized activity on FEC Form 3, Form 3X, or Form 3P. Without a
21 common attribute such as an identification number, committees and FEC staff can find it
22 difficult to track a PAC's disbursements to the candidate's receipt of the contribution.
23 Reporting errors and inaccurately coded PAC contributions that may occur as a result of

1 these difficulties create disclosure discrepancies on the public record. While reporting
2 software has improved the situation in recent years, in order to ensure more accurate
3 reporting and public disclosure of campaign finance activity, the Commission
4 recommends that the Act be amended to require committees to include their FEC
5 identification number on all contribution checks and to disclose the FEC identification
6 number of recipient committees on FEC Form 3, Form 3X, and Form 3P.

7

8 Legislative Language:

9

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

12

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

14

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

18

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

22

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

4

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

6 **(Revised 2007)**

7 *Sections:* 2 U.S.C. §§431 and 434

8 *Recommendation:* The Commission recommends that Congress increase certain pre-
9 BCRA registration and reporting thresholds.

10

11 *Explanation:* Most of the Act's registration and reporting thresholds were set in 1974 and
12 1979. Because over twenty years of inflation had effectively reduced the Act's
13 contribution limits in real dollars, the BCRA increased some contribution limits to
14 partially adjust for inflation: contributions to candidates and national party committees by
15 individuals and non-multicandidate committees, the biennial aggregate contribution limit
16 for individuals and the limit on contributions to Senate candidates by certain national
17 party committees. The Commission proposes extending this approach to other pre-
18 BCRA registration and reporting thresholds, which have similarly been effectively
19 reduced as a result of inflation. These thresholds are: (1) receipt of contributions in
20 excess of \$1,000 or making expenditures in excess of \$1,000 in a calendar year for a
21 group of persons to become a political committee; (2) making contributions in excess of
22 \$1,000 or expenditures in excess of \$1,000 in a calendar year for a local party committee
23 to become a political committee; (3) making independent expenditures in excess of \$250

1 in a calendar year for a person other than a political committee to be required to report
2 such expenditures; and (4) an exception to the definition of “contribution” for an
3 individual’s unreimbursed payments of \$1,000 in travel expenses on behalf of any single
4 candidate in a single election, or \$2,000 on behalf of a political party in a calendar year.
5 2 U.S.C. 431(4)(A) and (C); 434(c)(1); and 431(8)(B)(iv).

6 Increasing these thresholds would ease the registration and reporting burdens on
7 smaller organizations and individuals who, in some cases, are unaware of the Act's
8 registration and reporting provisions. Moreover, by increasing the thresholds, Congress
9 would help to ensure that some organizations and individuals who lack the resources and
10 technical expertise to comply with the Act’s registration and reporting requirements
11 would not have to do so. Finally, because of the effect of inflation, increasing the
12 registration and reporting thresholds would continue to capture the significant financial
13 activity envisioned when Congress enacted the FECA.

14

15 Legislative language:

16

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

18

19 (1) in paragraph (4)(A), by striking both references to “\$1,000” and by inserting
20 “\$5,000” in lieu thereof.

21

22 (2) in paragraph (4)(C), by striking both references to “\$1,000” and by inserting
23 “\$5,000” in lieu thereof.

1

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

3 lieu thereof and by striking “\$2,000” and inserting “\$4,000” in lieu thereof.

4

5 Section 304 of the Federal Election Campaign Act (2 U.S.C. 434) is amended, in

6 paragraph (c)(1) by striking “\$250” and inserting “\$1,000” in lieu thereof.