Michael Malbin
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07/18/2009 07:35 AM

To   improvefecinternet@fec.gov

cc

Subje   [Corrected version] Campaign Finance Institute's
ct   Comments on "Website   and
       Internet Communications Improvement Initiative"

Mr.Hickey:

The attached version of CFI's comments, dated July 18, makes a few minor word corrections to the version set yesterday. Please discard the old version and use this instead. CFI is still requested an opportunity to appear at your public hearing. Thank you.

Michael Malbin

On Sat, Jul 18, 2009 at 1:24 AM, Michael Malbin <mmalbin@cfinst.org> wrote:
   TO: Robert M. Hickey, Staff Director
       Federal Election Commission

   Mr. Hickey,

   Attached is a PDF copy of the Campaign Finance Institute's Comments on "Website and Internet Communications Improvement Initiative". We also request an opportunity to present our thoughts in public hearing.

   * * * * * * * * * * * * * * *
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Comments of the Campaign Finance Institute on
Website and Internet Communications Improvement Initiative

Michael J. Malbin. Executive Director
July 18, 2009

I am pleased to offer these comments on the Federal Election Commission's "Website and Internet Communication Improvement Initiative". I would also appreciate a chance to appear at the commission's public hearings. For the record, The Campaign Finance Institute is a ten year old organization affiliated with The George Washington University. CFI's board is made up of people from all over the political spectrum, with a heavy dose of scholars mixed in with elected officials and other practitioners. I am a professor of political science at the University at Albany, SUNY who has written professionally about campaign finance for thirty-five years, as well as CFI's executive director.

Transparency policy and implementation have been high priorities for CFI from the beginning. Our first blue ribbon task force was a Task Force on Disclosure, which issued two major reports. We have also produced numerous reports on the need for Senate electronic disclosure and we submitted comments to the FEC in 2006 on disbursement reporting. I personally have also written about state disclosure and am on the advisory board of the Grading State Disclosure Project administered by the UCLA Law School.

Before I begin to address the specific questions the FEC placed in the *Federal Register*, I want to raise a more fundamental point. The FEC has two principal functions. One is to administer laws that regulate the behavior of those who raise or spend money in connection with federal elections. The second is to serve as the government's prime vehicle for campaign finance disclosure. The website should serve these two central purposes: to explain and implement the law and to disclose campaign finance activity.

I want to focus on the second of these two purposes, disclosure. Before launching into a website redesign, I urge members of the FEC to step back and ask, what is the purpose of disclosure? The key purpose, expressed *Buckley* v. *Valeo*, is to bring campaign finance information to the public so individuals may decide whether to use that information when they vote. For disclosure to serve this purpose, therefore, the public needs useful information presented in an intelligible format, in a timely way. To accomplish this, the public's needs must be at the forefront of all portions of a website design aimed at disclosure.

But until the FEC put its current interactive map on the home page during the 2008 election cycle, it did almost nothing at all to educate or speak to the general public directly. To reach the public, the FEC seemed in the past to rely almost entirely on the media and on nonprofit organizations such as CFI. The Internet makes a more direct route possible. I urge you to grasp the opportunity. With the current economics of journalism, it is foolhardy to rely on reporters to cover politics well. It is equally important not to rely on the nonprofit sector. I would guess that the total number of people working on campaign finance in the entire nonprofit sector may be smaller than the staff of the FEC. We put out some of the information we do because the FEC does not. If you do the job, we would be happy to step back: there will be more than enough for us to do by focusing on analysis and other value-added work.

If you agree with me and define the task of bringing campaign finance information *to the public* as a core function, this will simplify the process of setting priorities. The rock bottom function is to serve voters. It is not, for example, to provide interactive blogs on policy. Anything that draws away from the central purpose should be resisted until all steps useful for serving the central purpose have been implemented. The core function tells you to put the voter first.

I am therefore delighted to see the FEC undertake this initiative. Shortly, I shall go through your specific questions in page order. Before I do so, however, I should like to make a few general observations based on experiences CFI had a few years ago.

Seven years ago, in October 2002, CFI's Task Force on Disclosure issued a report entitled *Website Woes: the Federal Non-System for Campaign Finance Disclosure.* The report was critical not just of the FEC's website but of the lack of interface across government sites. In the weeks after publication we briefed the FEC's staff and some commissioners about the findings and recommendations. This week, I took out the report as I worked through the current website. I had forgotten some of the details about how many problems the website had back then. Over the past seven years, the FEC has implemented most of CFI's recommendations. It has also made some changes we never thought of. The website is much better now than it was.

The most important improvement has been in the overall sense of organization given to website, as well as the addition of a general search function. Also improved is the home page's method for finding information about individual candidates. The map is intuitive. Once you click on a candidate and election year, you are taken to a useful summary page, with hotlinks to a database that will list the candidate's contributions from individuals and political committees. These are listed alphabetically by donor. This a major advance over the old method. Under the old system, a heavy user, such as my organization, could download the whole database and do its own sorting. If you were a journalist or private citizen who could not handle downloads, you were stuck with the PDF files, which are nearly useless. Or else you could go to the website of the Center for Responsive Politics, which gives the user information that ought to be available through the FEC, along with CRP's value-added material. So this is a step forward.

But I was also struck when I went through the exercise by some things other users might miss. Some months after our briefings, we were shown a prototype for a system that would let FEC users sort records on the website on a large number of fields. Four years later, during the 2007-2008 cycle, the FEC finally implemented a part of this prototype. Three or four layers down from the map on the home page, the user is finally able to sort on two or three of the fields. This is an improvement, but a long way from the prototype. I mention this not to criticize but to draw out two lessons.

First, the willingness to go forward with something less than the full prototype suggests a shift in operational attitude. The attitude at the FEC used to be like an old-style computer programming company that would not release a new version of anything until it had worked out all of the kinks. In this approach, the search for the perfect is the enemy of the good. The partial implementation of the prototype suggests a willingness at the FEC to go with newer practices in which you release a Beta version of a product and wait for comments. This is the better way to go. You are trying to serve users you do not know and there is no obvious way to reach them. You already know how to reach the regulated community and the specialists, but how are you going to reach the general public to find out its needs? Not through the Federal Register. The best way is to roll out new modules, and then to be open for comments. This has been a key to the success this year of the White House's efforts on data.gov. You need to bring the public in on the effort -- not just in a formal comment period before hand, but in an ongoing way after a launch. This is crucial if you care about public use.

The second lesson is this: it will probably take longer than you expect to implement a redesign, just as it did the last time around. Because I expect you will receive many more good ideas in these comments than you can possibly implement, I urge you to make sure you can improve the core material first. I am heartened by the fact that you have asked a senior staff person to take on this job as a central responsibility. In the past, the website was a stepchild to other needs that were always more pressing. Designating a leader who can make this his or her primary job is an important first step. The next is to develop technically informed time assessments and narrow in on the top priorities.

Before I address your questions in *The Federal Register*, I wish to put forward a vision that goes beyond their scope. I argued earlier that the core function of disclosure is to serve voters. Wouldn't it be good if the government as a whole could heighten this perspective with a central election website for voters: a single place where a voter could enter an address and find out about polling places and hours along with campaign finance and other information about federal, state and local districts and candidates. The site could include links to the candidates' own websites as well as to voter registration. District information could include past elections as well as links to the Census Bureau's congressional district data. It should obviously link directly to district level FEC data. Such a government-wide project goes beyond the scope of your current effort but the goal is worth keeping in front of you to remind you that informing the voter is central. Everything else is about means.

I turn now to some of the questions you asked in your Federal Register Notice. I shall reference these questions with the page numbers in your notice.

7-8: As background, you asked about <u>uses</u>. I use the website in a number of different ways. (1) First, I and others at the Campaign Finance Institute are heavy users of the FEC's datasets. We aggregate the data and bring it together with information from other sources to show patterns over time and across categories. This gives the candidate-specific information context and meaning. I would argue that what we do at CFI is essential for understanding what the data mean. This is different from processing information as a voter, so our needs as users are different. (2) Second, I also come to this as a person interested in campaign finance policy. For that, I sometimes use the website's legal materials as well as the commission's pending business. (3) Finally, I come as a person who teaches a course on elections to fifty undergraduates. In that role, I am constantly teaching novices how to find information about individual candidates. Therefore, I know quite a bit about how the casual and inexperienced user looks at the material and what question they bring to the data. You will not be surprised to hear that even after your map on the home page, these students find the Center for Responsive Politics' website easier to use and more informative for their needs than the FEC's.

9: <u>Gateway defined by type of user</u>? Next you asked whether the opening portal should sort visitors based on the type of user. I would say, definitely not. Once you get past the first step, users have overlapping information needs. I therefore would stick with a subject-based classification, but supplement it with a prominent tab that would take users to a page explaining the website to new users.

11: <u>FAQs</u>: One of the basic flaws of relying on the type of "user" as the main means of organization shows up on page 11. FAQs are discussed there in the section on the media. Yes, the media do ask some questions others might not, but most media -- except for the specialized few -- have questions similar to most citizens. The point of the FAQs therefore should not be about the media *per se*, since they are by definition middle people. It should be about the information the public needs to know, with typical questions from the media (readily supplied by the press office) used as a start. There ought to be FAQs across the board, with simple, plain language explanations. But the problem is not only about "plain language". The problem primarily is about organization, which in turn is a problem about the definition of "users". For example, many of the individual explanations in the various guides for candidates and committees are clear (or as clear as they can be, given the law) but the typical user in the general public has no way to know that the information exists. There is no reason not to take many of your answers from existing documents. The difficulty will be to put yourselves in the shoes of average voters to think about the *questions* they are likely to have, and then organizing the questions (and making their presence known) to these average users.

12-13: <u>User friendliness</u>:
    (a) In general, virtually all of the content pages could do with better explanations geared for the lay user. Each module should contain a clearly marked explanation of the page geared to the novice.
    b) A "<u>contact us</u>" page is important.

(c) There also should be a specific "contact us" method on <u>every</u> page for user comments.

(d) Either this address, or a form to be filled on the web, should encourage the reporting of errors. CFI and other heavy users regularly find records with errors. When they rise to a sufficient level, we call someone to report them. But in the interest of not interrupting people, some errors go unreported by us -- let alone by people who may not know whom to call.

(e) The <u>"webmaster" email</u> address does not do much. It is typically used on other sites for technical communications.

13: Should there be a <u>blog</u> to facilitate a conversation about the substance and techniques used by staff to disclose campaign finance data? A strong yes, but this should be seen as one step in a process that leads to continual self-improvement. I strongly disagree with the idea of the FEC hosting blogs for other user groups. There is more than enough for you to do before the core mission is served properly. Nothing should get in its way.

14: <u>The presentation of individual candidate data</u> has improved, as noted -- provided you get to the information through the map. If you look up a candidate through the traditional search function, the older, less informative presentation still comes up. The results need a redesign. Graphs or pie charts would be useful. These could go beyond charts that divide a specific candidate's receipts and expenditures in categories. The website could also let the user call up the answers to a predetermined set of contextual questions. For example: how does this candidate compare with other incumbents/open seats candidates/ challengers at the same reporting period this year/ two or four years ago? The presentation should also pull in material from other FEC datasets. For example: (a) direct link to opponents; (b) how much in coordinated spending by the parties; (c) how much in independent expenditures, when and by whom; (d) Same for electioneering.

When showing the relevant filings, returned results should either omit, or otherwise clearly indicate, which reports have been superseded by an amended report, so the user is directed only to the most recent report available for the reporting period. (See the comment on amended data below.)

15. <u>The Advisory Opinion search</u> engine should reach pending AORs, with associated documents, and not be limited to final AOs.

16: The general <u>search engine</u> should include everything, including the databases.

17-18: <u>Maps</u>: As I have already noted, the maps are useful, especially for novices.

18-19: <u>Sorting and downloading</u>: This is a high priority in my view. All returned results for individual candidates or committees should be downloadable in Excel and in delimited text format. While on the website, the user should be able to sort on <u>any</u> column or field, including all of the ones mentioned in the FEC's questions.

19 (top): About other websites' sorting: Every one of the contribution sorting methods should be offered. The FEC should never stay away from presenting core function information in the best manner possible. Even if someone else does it,

disclosure of useful information to voters is a mandated statutory responsibility. The FEC needs to make that a top priority.

Sorting by expenditure is more problematic. The commission lets candidates assign expenditures to categories based on their own judgment. As long as this remains the underlying policy, all the user can do is to sort alphabetically and/or by date. Doing so online can also be useful in a limited way, as long as the user is given an explanation of the limits with self-assigned categories.

On this point, CFI presented comments to the FEC in December 2006 on "Purpose of Disbursement" entries. Before these comments, CFI had tried to compare 2004 spending by the Republican and Democratic National Committees. In that cycle, the RNC listed 1,964 spending categories compared to the DNC's 184. While I do support having the ability to sort by spending category even without a change in policy, the policy adopted in January 2007 will need to change for this function to be most useful. I have attached a copy of CFI's 2006 comments as an appendex to this document.

19-20: Election results should be integrated with campaign finance. That the official reports come from two different sources should not prevent the FEC from mashing up two pieces of information, both equally official, about individual candidates. As noted earlier, I support a central site using material from more than one federal agency.

20: User generated charts and graph: These could improve a page's attractiveness, but I would recommend them only if it does not crowd out higher priorities.

21: Availability of raw data: Raw data through FTP and electronic downloads are absolutely essential for CFI, other nonprofits, scholars, specialized journalists, and many other heavy data users. Overnight access is useful for most purposes, but some organizations -- particularly local journalists and bloggers following individual races -- may find it helpful to have real time access. The FEC indirectly has this now, but it is not highlighted. See http://www.fec.gov/finance/disclosure/efile_search.shtml. Enter today's date in "Date Filed".

FTP: should additional categories be included?
- Even though entering expenditure data may be prohibitive for Senate paper filers, why not make House, Presidential and PAC expenditure files available?
- Independent expenditures are available as part of existing files, but there needs to be a separate file with all independent expenditures by party committees, non-party committees and individuals.

XML/JSON/API: These would be useful to many people, but introducing the new formats should not mean discarding the old. It is important to maintain backward compatibility.

Amended data - it would be a plus to see what data was amended in a new report, but most helpful would be to access a list of all the most recent reports (amended reports filtered out) for any given committee. In my ultimate scenario, I would be able to go

to a committee's report page and click a button to download all current reports for that committee by cycle.

22. <u>COBOL</u>: The FEC eventually will have to move away from this antiquated programming language, especially as programmers retire. Because of the difficulties of reporting negative numbers, the problems used to be severe. With this resolved by the commission in recent years, the day to day questions can be an annoyance but not a huge problem. But the fact that the issue is not immediately pressing should not prevent the FEC moving away from COBOL while people are still around with the programming skills.

25: <u>Campaign guides</u>: Disaggregating this information, and then offering links, would be a good way to build part of the FAQs.

29: Make <u>television</u> recording of training session? Absolutely. The general public (and reporters at a distance) should get a chance to learn, not just the campaign treasurers.

33: <u>Regulations</u>: The compilation is very cumbersome. Non-lawyers and non-specialists should have more easily usable, topical access to the material.

34. <u>Statutes</u>: The text of the FECA as amended is easy enough to find, but the statutes that make up the amendments are hard to find. Links should be included to Statutes at Large as well as to the US Code. Both should include key words and links. Annotated versions of rules and laws linked to court decisions would be useful.

41: <u>Video recording</u> of commission meetings would also be useful. It is difficult to identify speakers on audio.

APPENDIX

December 4, 2006

Ms. Amy Rothstein
Acting Assistant General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

RE: Comments of the Campaign Finance Institute on: Request for Comment: "Purpose of Disbursement" Entries for Filings with the Commission

Dear Ms. Rothstein:

The Campaign Finance Institute, a nonpartisan organization conducting objective research on and policy analysis of campaign finance issues, respectfully submits the attached comments on the Request for Comment: "Purpose of Disbursement" Entries for Filings with the Commission.

Sincerely,

Michael J. Malbin   Steve Weissman
Executive Director   Associate Director for Policy
mmalbin@cfInst.org   sweissman@cfInst.org

Attachment

Comments of the Campaign Finance Institute on: Request for Comment: "Purpose of Disbursement" Entries for Filings with the Commission

The Campaign Finance Institute greatly appreciates the opportunity to comment on the proposed Commission guidance. CFI has done considerable research and analysis on the federal campaign finance disclosure system including two public reports by its blue ribbon Task Force on Disclosure and a series of public reports on the need for Senate electronic disclosure. For this comment, we also draw on our research into national party committee expenditures in the 2004 election and convention host committee ones in 2000 and 2004.

The Commission's goal in providing filers with "non-exhaustive" lists of "purpose of disbursement" entries that are "generally acceptable" and "generally not acceptable" is "to make the purpose of the disbursement clear" so that the public can "easily discern why the disbursement was made when reading the name of the recipient and purpose." CFI strongly supports the Commission's objective. Steps to increase expenditure purpose disclosure can provide useful information about how money is actually spent in democratic elections. Greater disclosure can also provide policy makers (including the Commission itself) with data on changing campaign costs and their components. If such information is not available in readily searchable electronic form, we can end up with policymaking in the dark. For example, CFI is frequently asked by Congressional staff how much the cost of TV political advertising has risen between campaigns. But in the absence of standard, detailed categories covering all costs (including media consultants and production services) of employing each form of media, we have no way of answering these questions.

CFI believes that the best, most useful system for public disclosure would be one in which filers were required to indicate, for each specific transaction description, whether the purpose of the disbursements fits one of a limited set of inclusive categories. There might be, say, 15-30 defined choices and a residual "other" category. This amended system would put little burden on the regulated community, while giving it greater reassurance that its filings would not be unnecessarily questioned by the Commission.

However, if the Commission proceeds along the path of incremental change charted in its proposed guidance, it is crucial that its expanded lists of acceptable and non-acceptable purposes have more "teeth" in them or disclosure will be too weak. In particular, it is not enough for the Commission to state that "if a committee uses a description that is listed as lacking sufficient detail, a RAD [Reports and Analysis Division] analyst *may* review the report closely," but "in *most* instances" the Commission will only contact the filer and request an amendment to the report. To assure proper enforcement, the Commission should state that the analyst *will* review the report and, *in all instances*, require corrections.

Equally important, the "purpose of disbursements" list (together with the name of the recipient) must truly inform the citizen what the money is spent "for" rather than merely what it is spent "on." For example, an expenditure for "Printing, for a disbursement to a printing company," one of the proposed additions to the current "acceptable" categories, does not reveal whether the printing is for fundraising letters, voter communications, party events or something else. The focus of this category is on the product, not the purpose. It does not adequately convey to the public what the party is doing. On the other hand, the other suggested additions to the current list -- " Exit Polling," "Door-to-Door Get-Out –the-Vote," "Get-Out-the-Vote Phone Calls," or "Driving Voters to the Polls" (to GOTV or voter registration vendors) -- more fully convey the purposive function of these expenditures. So do almost all of the Commission's continuing, but more fully elaborated, categories such as "Salary, for a disbursement to a staff member."

We want to emphasize that even though the recipient of an expenditure must be identified, this does not necessarily help reveal the purpose of the disbursement. We were continually frustrated in our effort to study 2004 cycle national party committee spending because the vendors of "Printing," "Direct Mail," "Postage," "Telemarketing," "Internet," and "On-line services" were usually companies that delivered a variety of campaign services and generally invoked confidentiality agreements when asked directly which of these services (e.g. fundraising, get-out-the-vote, voter registration, brochures, voter identification, Web hosting) they provided.

A further requirement for adequate disclosure of expenditure purposes is that the most important campaign functions be covered. Two political science scholars who have already plowed in this field are Professor Ray LaRaja of the University of Massachusetts and Dr. Craig Holman of Public Citizen. In attempting to develop informative, purposive categories to characterize federally reported state party "soft money" campaign spending prior to enactment of the Bipartisan Campaign Reform Act of 2002, they came to similar conclusions. Based on their combined work, we suggest that the Commission augment the acceptable list (inserting the relevant vendor types) by incorporating the following wholly or partially omitted areas:

- *Fundraising: Require filers to state whether a communication is made and targeted primarily for the purpose of fundraising. Include separate categories of fundraising for such major modes as mail, telephone, Internet, canvassing or event. Do not permit filers to avoid the primary purpose by giving only the mode of production or delivery.*

- *Voter Communication and Mobilization: Require filers to state whether a communication is targeted and made primarily to communicate and mobilize voters in the relevant constituency. Include separate categories for such major methods of voter communication and mobilization as: creation and maintenance of databases, and communications via mail, telephone, Internet and canvassing. (The Commission's newly proposed categories such as "Get-Out-The-Vote*

Phone Calls," "Driving Voters to the Polls," etc. are far too narrow to encompass contemporary political committees' efforts to mobilize their followers); and

- *Media. Include all expenses for the use of general public political advertising with separate categories for major media modes including radio, TV, newspapers and periodicals, internet, and video/audio.* (The Commission's proposed category, "Media for a disbursement to a radio or television communications company" is too narrow both in the forms of media included and in the omission of such media expenses as consultants, communication buyers and production services.)

Indeed many of the above activities (as well as others not included in the "acceptable" list such as rent and furniture) are specifically referred to in the Commission's own Instructions to filers of Forms 3, 3X and 4. They come up as the individual ingredients for filers' **voluntary** use of category codes that "broadly characterize disbursements," like "Solicitation and Fundraising Expenses," "Advertising Expenses," "Campaign Event Expenses," etc. But because filers only "should" use these quite broad categories -- and relatively few do so -- an opportunity for simplified public disclosure has been wasted. (According to our analysis of a sample of individual disbursements in 3rd quarter 2006 reports of House general election candidates, 64% of them had no codes. Moreover, even those who used codes did not use them consistently. As for the national and House major party committees, 93% of the reported disbursements thus far for calendar year 2006 – a total of 123,000 individual disbursements – lack codes. Senate expenditure analysis is effectively precluded by the lack of an electronic database.) Thus lack of use of these "super category" codes -- which also need updating -- underlines the need for the Commission to establish and enforce a valid set of acceptable disbursement purposes.

The Commission's expanded list of 79 "generally unacceptable" purposes to support its 18 "generally acceptable" ones is helpful. But it is also seriously inadequate when one realizes that each political committee determines its own purpose descriptions and that these are therefore quite numerous and vary widely in content. To take one example, the Republican National Committee alone listed 1,964 individual purposes for its operating expense disbursements in the 2004 election cycle while the Democratic National Committee employed 184. And the parties' descriptions of similar expenditures were often very different. In attempting to understand and communicate what these major political committees actually did during the cycle, we encountered major problems which prevented us from completing our projected public report. These are the same problems the public must confront in trying to understand the parties' role in our democracy.

Based on our analyses of these party expenditures as well as those of the major party congressional campaign committees, we would suggest the following minimum additions to the "unacceptable" list:

- *Insert "consultant-political" because this has often been used as a catchall for a variety of fundraising, legal, polling, canvassing, media and other activities that should be accounted for separately.*

- *Add "printing," "design," "postage," "direct mail," "telemarketing," and "gifts" because they are do not allow the public to discover whether the function of the activity is to further fundraising, various forms of voter communication or something else.*

- *Make clear that minor variations of unacceptable listings are equally unacceptable.*

While our recommended changes in purposive categories reflect our recent research which has focused mainly on party spending, we think the Commission would gain additional insight from studying the purposes listed by candidates and PACs although we have reason to believe they are broadly similar. However convention host committees are a different story.

Finally, it is apparent that relatively few of the purpose descriptions in this proposed guidance apply to host committees for presidential nominating conventions. We therefore recommend that the Commission approach this issue in separate guidance.

CFI studies of the 2000 and 2004 host committee expenditure reports for the two major parties show that the most important spending beyond administration were described by such terms as: convention facility, construction, TV production and pre-production, radio system, communications equipment, computer equipment and software, rent, electricity, lighting, signs, security, convention transportation, media reception /consulting/public relations, and "lighted boat parade." As we have previously pointed out in our May 22, 2003 written comments to the Commission on Notice 2003-8, the lack of any relevant descriptions for most of the special functions of host committees in existing "purpose of disbursement" regulations produces individual decisions by each host committee that hinders attempts to understand and compare host committee activities.

In order to understand the precise functions of these organizations, we have suggested that the Commission should separately elaborate a series of disclosure descriptions for host committees that matches the list of 11 host committee permissible expenditure purposes found in 9008.52 (b). (Such a listing should also apply to required statements, under 9008.51(c), by State and local Governments agencies providing facilities and services for the conventions).

In sum, CFI calls upon the Commission to revise its proposed guidance to ensure that all filers describe the purposes of their disbursements in a way that informs the public of the functional purpose of each expenditure and that the new system contains enough teeth to assure compliance.