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SENATE ELECTION LAW GUIDEBOOK 2010

A COMPILATION OF SENATE CAMPAIGN INFORMATION, INCLUDING FEDERAL AND STATE LAWS GOVERNING ELECTION TO THE UNITED STATES SENATE

CHARLES E. SCHUMER, *Chairman*

COMMITTEE ON RULES AND ADMINISTRATION
UNITED STATES SENATE

REVISED TO JANUARY 1, 2010

DECEMBER 18, 2010.—Ordered to be printed

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SENATE RESOLUTION 704

In the Senate of the United States

December 18, 2010

Resolved, That the Committee on Rules and Administration shall prepare a revised edition of the Senate Election Law Guidebook, Senate Document 109–10, and that such document shall be printed as a Senate document.

SEC. 2. There shall be printed, beyond the usual number, 500 additional copies of the document specified in the first section for the use of the Committee on Rules and Administration.

NANCY ERICKSON,
Secretary

CAVEAT

It is of paramount importance to consult with the appropriate secretary of state or state board of elections when questions arise about the various state statutory materials contained in this publication. Specifically, dates and filing information should be confirmed by the appropriate secretary of state or state election office because changes in this area of law occur frequently. In addition, due to natural disasters, affected states may alter election dates and filing deadlines.

PREFACE

The 2010 publication contains a comprehensive compilation of constitutional and Federal statutory provisions and State election laws relating to the nomination and election of candidates to the United States Senate.

This *Guidebook* is designed as a ready reference, providing highlights of provisions of Federal and State laws pertaining to the election of Senators, as well as explanatory legal memoranda. It is anticipated that it will benefit senatorial candidates, the Committee on Rules and Administration, and the public in general. The detailed citations will facilitate opportunity for reference to the statutory provisions if one should require complete information on any given subject.

This revision of the *Senate Election Law Guidebook* was prepared at the direction of the Committee on Rules and Administration by Jack Maskell and L. Paige Whitaker, Legislative Attorneys, David S. Mao, Section Head, Cassandra Foley and Julia Taylor, Law Librarians, and Stuart Carmody, Reference Assistant, Knowledge Services Group, under the supervision of Karen J. Lewis, Assistant Director, and T.J. Halstead, Deputy Assistant Director, American Law Division, Congressional Research Service, Library of Congress.

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KEY ELECTION DATES IN 2010

A. General Election Date: November 2, 2010

B. Congressional Primary Dates Chronologically *

	State	Primary date	Runoff date
S	Illinois	Feb. 2	
	Texas	Mar. 2	Apr. 13
S	Indiana	May 4	
S	Ohio	May 4	
S	North Carolina	May 4	June 22
	Nebraska	May 11	
	West Virginia	May 11	
S	Kentucky	May 18	
S	Oregon	May 18	
S	Pennsylvania	May 18	
S	Arkansas	May 18	June 8
S	Idaho	May 25	
	Mew Mexico	June 1	
	Mississippi	June 1	June 22
S	Alabama	June 1	July 13
S	California	June 8	
S	Iowa	June 8	
	Maine	June 8	
	Montana	June 8	
S	Nevada	June 8	
	New Jersey	June 8	
S	North Dakota	June 8	
	Virginia	June 8	
S	South Carolina	June 8	June 22
S	South Dakota	June 8	June 29
S	Utah	June 22	
S	Georgia	July 20	Aug. 10
S	Oklahoma	July 27	Aug. 24
S	Kansas	Aug. 3	
	Michigan	Aug. 3	
S	Missouri	Aug. 3	
	Tennessee	Aug. 5	
S	Colorado	Aug. 10	
S	Connecticut	Aug. 10	
	Minnesota	Aug. 10	
S	Washington	Aug. 17	
	Wyoming	Aug. 17	
S	Alaska	Aug. 24	
S	Arizona	Aug. 24	
S	Florida	Aug. 24	
S	Vermont	Aug. 24	
S	Louisiana	Aug. 28	Oct. 2
	Guam	Sept. 4	
	Virgin Islands	Sept. 11	
	D.C.	Sept. 14	
S	Delaware	Sept. 14	
S	Maryland	Sept. 14	
	Massachusetts	Sept. 14	
S	New Hampshire	Sept. 14	
S	New York	Sept. 14	
	Rhode Island	Sept. 14	

	State	Primary date	Runoff date
S	Wisconsin	Sept. 14	
S	Hawaii	Sept. 18	

*Source: Federal Election Commission. S indicates a U.S. Senate election. Dates subject to change by the state legislatures.

Notes:

1. In Connecticut, conventions are held by the Democratic and Republican parties prior to the primary. The Democratic convention date for U.S. House districts is date 5/10/10, and the Democratic U.S. Senate convention is 5/21/10. The Republican convention date for U.S. Senate and U.S. House is 5/21/10.
2. In Delaware, the U.S. Senate election is for an Unexpired Term.
3. In Indiana, the Libertarian Party convention date is 4/24/10. The caucus date for the Indiana Democratic Party to select its U.S. Senate nominee is 5/15/10.
4. In Kansas, the Libertarian Party convention is 4/24/10, and the Reform Party convention date is 5/29/10.
5. In Maryland, the Libertarian Party convention date is 3/13/10, and the Green Party convention date is 5/22/10. The caucus date for the Constitution Party of Maryland is 7/17/10.
6. In Michigan, the Libertarian Party convention date is 5/22/10, the U.S. Taxpayers Party convention date is 6/26/10, and the Green Party convention date is 8/1/10.
7. New York has two U.S. Senate seats up in 2010. One is for an Unexpired Term.
8. In Oregon, the Pacific Green Party convention date is 6/5/10, the Libertarian Party convention date is 6/12/10, the Constitution Party convention date is 6/26/10, and the Independence Party convention date is 7/30/10.
9. In Puerto Rico, the general election for Resident Commissioner to the U.S. House of Representatives is held every four years, coinciding with the U.S. Presidential election.
10. In South Carolina, the United Citizens Party convention date is 3/20/10, the Libertarian Party convention date is 4/17/10, the Green Party convention date is 5/1/10, and the convention date for the Constitution, Independence and Working Families parties is 5/15/10.
11. In Texas, the Libertarian Party convention date is 3/13/10 for Single County U.S. Congressional Districts 7, 16, 18, 20, 29, 30 and 32. The convention date is 3/20/10 for Multi-County U.S. Congressional Districts 1–6, 8–15, 17, 19, 21–28 and 31.
12. In Utah, conventions are held by the political parties prior to the primary. The convention date for the Democratic, Republican and Constitution parties is 5/8/10. The Libertarian Party convention date is 5/15/10.
13. In Virginia, parties may choose to nominate by convention rather than by primary election. Democrats: Conventions will be held on 5/8/10 for U.S. House Districts 1 and 2 (caucus), 5/15/10 for Districts 7 and 9, and on 6/5/10 for District 5. The convention for District 6 was canceled. Republicans: Conventions will be held on 5/22/10 for U.S. House Districts 3 and 9. All other Congressional districts will nominate by primary election on 6/8/10.

14 In Wyoming, the Libertarian Party convention date is 4/24/10.

C. 2010 Congressional Primary Dates and Filing Deadlines *

Note: Dates Subject to Change / **S** Indicates Senate Election/General Election Date 11/2/10

	State	Primary date	Runoff date	Filing deadline for primary ballot access	Independent [1] filing deadline for general election
S	Alabama	June 1	July 13	Apr. 2	June 1
S	Alaska	Aug. 24		June 1	June 1
	American Samoa	n/a		n/a	Sept. 1
S	Arizona	Aug. 24		May 26	May 26
S	Arkansas	May 18	June 8	Mar. 8 Noon	May 1 Noon (Independent)
S	California	June 8		Mar. 12	Aug. 6
S	Colorado	Aug. 10		May 27	May 27 (Third/Minor) June 15 (Independent)
S	Connecticut	Aug. 10 [2]		May 25 (or 14th Day After Convention) [2]	Aug. 4
S	Delaware	Sept. 14 [3]		July 30	Sept. 1
	D.C.	Sept. 14		July 7	Aug. 25
S	Florida	Aug. 24		Apr. 30	Mar. 29 Noon
S	Georgia	July 20	Aug. 10	Apr. 30	July 13
	Guam	Sept. 4		July 6	July 6
S	Hawaii	Sept. 18		July 20	July 20
S	Idaho	May 25		Mar. 19	Mar. 19
S	Illinois	Feb. 2		Nov. 2	June 21
S	Indiana	May 4 [4]		Feb. 19 Noon	July 15 Noon
S	Iowa	June 8		Mar. 19	Aug. 13
S	Kansas	Aug. 3 [5]		June 10 Noon	Aug. 2 Noon (Independent)
S	Kentucky	May 18		Jan. 26 4 pm	Aug. 10 4 pm
S	Louisiana	Aug. 28	Oct. 2	July 9	July 9
	Maine	June 8		Mar. 15 5 pm	May 25 5 pm
S	Maryland	Sept. 14 [6]		July 6	Aug. 2
	Massachusetts	Sept. 14		June 1	Aug. 31
	Michigan	Aug. 3 [7]		May 11 4 pm	July 15 4 pm (Independent)
	Minnesota	Aug. 10		June 1	June 1
	Mississippi	June 1	June 22	Mar. 1	Mar. 1
S	Missouri	Aug. 3		Mar. 30	July 26
	Montana	June 8		Mar. 15	Mar. 8
	Nebraska	May 11		Mar. 1	Sept. 1
S	Nevada	June 8		Mar. 12	Feb. 4
S	New Hampshire	Sept. 14		June 11	Sept. 1
	New Jersey	June 8		Apr. 12	June 8
	New Mexico	June 1		Feb. 9	June 2 (Independent) June 22 (Third/Minor)
S	New York	Sept. 14 [8]		July 15	Aug. 17

C. 2010 Congressional Primary Dates and Filing Deadlines *—Continued

Note: Dates Subject to Change / **S** Indicates Senate Election/General Election Date 11/2/10

	State	Primary date	Runoff date	Filing deadline for primary ballot access	Independent [1] filing deadline for general election
S	North Carolina	May 4	June 22	Feb. 26	June 25 Independent Aug. 1 Third/Minor
S	North Dakota	June 8		Apr. 9 4 pm	Sept. 3 4 pm
	Northern Mariana Islands	n/a		n/a	Aug. 4
S	Ohio	May 4		Feb. 18	Feb. 18 (Third/Minor) May 3 (Independent)
S	Oklahoma	July 27	Aug. 24	June 9	June 9 (Independent)
S	Oregon	May 18 [9]		Mar. 9	Aug. 24
S	Pennsylvania	May 18		Mar. 9	Aug. 2
	Puerto Rico	n/a [10]			
	Rhode Island	Sept. 14		June 30	June 30 (Independent)
S	South Carolina	June 8 [11]	June 22	Mar. 30 Noon	July 15 Noon (Independent)
S	South Dakota	June 8	June 29	Mar. 30	June 8 (Independent)
	Tennessee	Aug. 5		Apr. 1	Apr. 1 (Independent)
	Texas	Mar. 2 [12]	Apr. 13	Jan. 4	May 13 (Independent) May 23 (Third/Minor)
S	Utah	June 22 [13]		Mar. 19 5 pm	Mar. 19 5 pm
S	Vermont	Aug. 24		June 17	June 17
	Virginia	June 8 [14]		Apr. 9 5 pm	June 8 7 pm (Independent) June 14 5 pm (Third/Minor)
	Virgin Islands	Sept. 11		Aug. 10	Aug. 10
S	Washington	Aug. 17		June 11	June 11
	West Virginia	May 11		Jan. 30	July 30
S	Wisconsin	Sept. 14		July 13	July 13
	Wyoming	Aug. 17 [15]		May 28	Aug. 23 (Independent)

* Source: Federal Election Commission.

[1] The column Independent Filing Deadline shows the date for the filing of petitions by independent or third/minor party candidates. This is a general reference date for use by the public and voters. Candidates and others seeking specific information should contact the states for other deadlines that may need to be met. For example, the petitions may have to be checked by officials prior to this date. A declaration of candidacy may be due before the petitions are due. New parties may have different deadlines.

[2] In Connecticut, conventions are held by the Democratic and Republican parties prior to the primary. The Democratic convention date for U.S. House districts is 5/10/10, and the Democratic U.S. Senate convention date is 5/21/10. The Republican convention date for U.S. Senate and U.S. House is 5/21/10.

[3] In Delaware, the U.S. Senate election is for an Unexpired Term.

[4] In Indiana, the Libertarian party convention date is 4/24/10. The caucus date for the Indiana Democratic Party to select its U.S. Senate nominee is 5/15/10.

[5] In Kansas, the Libertarian party convention date is 4/24/10. The Reform party convention date is pending.

[6] In Maryland, the Libertarian party convention date is 3/13/10, and the Green party convention date is 5/22/10. The caucus date for the Constitution Party of Maryland is 7/17/10. The convention date for the Independent party is pending.

[7] In Michigan, the Libertarian party convention date is 5/22/10, the U.S. Taxpayers party convention date is 6/26/10, and the Green party convention date is 8/1/10. The Natural Law party convention date is pending.

[8] New York has two U.S. Senate seats up in 2010. One is for an Unexpired Term.

[9] In Oregon, the Constitution, Independent, Libertarian, Pacific Green, Progressive and Working Families parties may nominate by convention. Convention dates are pending.

[10] In Puerto Rico, the general election for Resident Commissioner to the U.S. House of Representatives is held every four years, coinciding with the U.S. Presidential election.

[11] In South Carolina, the United Citizens party convention date is 3/20/10, the Libertarian party convention date is 4/17/10, the Green party convention date is 5/1/10, and the convention date for the Constitution, Independence and Working Families parties is 5/15/10.

[12] In Texas, the Libertarian party convention date is 3/13/10 for Single County U.S. Congressional Districts 7, 16, 18, 20, 29, 30 and 32. The convention date is 3/20/10 for Multi-County U.S. Congressional Districts 1–6, 8–15, 17, 19, 21–28, and 31.

[13] In Utah, conventions are held by the political parties prior to the primary. The convention date for the Democratic, Republican and Constitution parties is 5/8/10. The Libertarian party convention date is 5/15/10.

[14] In Virginia, parties may choose to nominate by convention rather than by primary election. Democrats: Conventions will be held on 5/8/10 for U.S. House Districts 1 and 2 (caucus), 5/15/10 for Districts 7 and 9, and on 6/5/10 for District 5. The convention for District 6 was canceled. Republicans: Conventions will be held on 5/22/10 for U.S. House Districts 3 and 9. All other Congressional districts will nominate by primary election on 6/8/10.

[15] In Wyoming, the Libertarian party convention date is 8/16/10.

FEC REPORTING DATES FOR CONGRESSIONAL CANDIDATES

PRE-ELECTION REPORTING DATES FOR 2010 PRIMARY AND RUNOFF ELECTIONS

State or territory	Election date	Close of books +	Mailing deadline + +	Filing deadline + +	48-hour notices ** (candidates only)
* Alabama	June 1	May 12	May 17	May 20	May 13–May 29.
Runoff	July 13	June 23	June 28	July 1	June 24–July 10.
* Alaska	Aug. 24	Aug. 4	Aug. 9	Aug. 12	Aug. 5–Aug 21.
American Samoa	Nov. 2	Oct. 13	Oct. 18	Oct. 21	Oct. 14–Oct. 30.
* Arizona	Aug. 24	Aug. 4	Aug. 9	Aug. 12	Aug. 5–Aug. 21.
* Arkansas	May 18	Apr. 28	May 3	May 6	Apr. 29–May 15.
Runoff	June 8	May 19	May 24	May 27	May 20–June 5.
* California	June 8	May 19	May 24	May 27	May 20–June 5.
* Colorado	Aug. 10	July 21	July 26	July 29	July 22–Aug. 7.
* Connecticut	Aug. 10	July 21	July 26	July 29	July 22–Aug. 7.
* Delaware	Sept. 14	Aug. 25	Aug. 30	Sept. 2	Aug. 26–Sept. 11.
District of Columbia.	Sept. 14	Aug. 25	Aug. 30	Sept. 2	Aug. 26–Sept. 11.
* Florida	Aug. 24	Aug. 4	Aug. 9	Aug. 12	Aug. 5–Aug. 21.
* Georgia	July 20	June 30	July 5 [1]	July 8 [2]	July 1–July 17.
Runoff	Aug. 10	July 21	July 26	July 29	July 22–Aug. 7.
Guam	Sept. 4	Aug. 15	Aug. 20	Aug. 23	Aug. 16–Sept. 1.
* Hawaii	Sept. 18	Aug. 29	Sept. 3	Sept. 6 [3]	Aug. 30–Sept. 15.
* Idaho	May 25	May 5	May 10	May 13	May 6–May 22.
* Illinois	Feb. 2	Jan. 13	Jan. 18 [1]	Jan. 21 [4]	Jan. 14–Jan. 30.
* Indiana	May 4	Apr. 14	Apr. 19	Apr. 22	Apr. 15–May 1.
* Iowa	June 8	May 19	May 24	May 27	May 20–June 5.
* Kansas	Aug. 3	July 14	July 19	July 22	July 15–July 31.
* Kentucky	May 18	Apr. 28	May 3	May 6	Apr. 29–May 15.
* Louisiana	Aug. 28	Aug. 8	Aug. 13	Aug. 16	Aug. 9–Aug. 25.
Runoff	Oct. 2	Sept. 12	Sept. 17	Sept. 20	Sept. 13–Sept. 29.
Maine	June 8	May 19	May 24	May 27	May 20–June 5.
* Maryland	Sept. 14	Aug. 25	Aug. 30	Sept. 2	Aug. 26–Sept. 11.
Massachusetts	Sept. 14	Aug. 25	Aug. 30	Sept. 2	Aug. 26–Sept. 11.
Michigan	Aug. 3	July 14	July 19	July 22	July 15–July 31.
Minnesota	Sept. 14	Aug. 25	Aug. 30	Sept. 2	Aug. 26–Sept. 11.
Mississippi	June 1	May 12	May 17	May 20	May 13–May 29.
Runoff	June 22	June 2	June 7	June 10	June 3–June 19.
* Missouri	Aug. 3	July 14	July 19	July 22	July 15–July 31.
Montana	June 8	May 19	May 24	May 27	May 20–June 5.
Nebraska	May 11	Apr. 21	Apr. 26	Apr. 29	Apr. 22–May 8.
* Nevada	June 8	May 19	May 24	May 27	May 20–June 5.
* New Hampshire	Sept. 14	Aug. 25	Aug. 30	Sept. 2	Aug. 26–Sept. 11.
New Jersey	June 8	May 19	May 24	May 27	May 20–June 5.
New Mexico	June 1	May 12	May 17	May 20	May 13–May 29.
* New York	Sept. 14	Aug. 25	Aug. 30	Sept. 2	Aug. 26–Sept. 11.
* North Carolina	May 4	Apr. 14	Apr. 19	Apr. 22	Apr. 15–May 1.
Runoff	June 22	June 2	June 7	June 10	June 3–June 19.
* North Dakota	June 8	May 19	May 24	May 27	May 20–June 5.
* Ohio	May 4	Apr. 14	Apr. 19	Apr. 22	Apr. 15–May 1.
* Oklahoma	July 27	July 7	July 12	July 15 [5]	July 8–July 24.
Runoff	Aug. 24	Aug. 4	Aug. 9	Aug. 12	Aug. 5–Aug. 21.
* Oregon	May 18	Apr. 28	May 3	May 6	Apr. 29–May 15.
* Pennsylvania	May 18	Apr. 28	May 3	May 6	Apr. 29–May 15.

State or territory	Election date	Close of books +	Mailing deadline + +	Filing deadline + +	48-hour notices ** (candidates only)
Puerto Rico	n/a	n/a	n/a	n/a	n/a
Rhode Island	Sept. 14	Aug. 25	Aug. 30	Sept. 2	Aug. 26–Sept. 11.
* South Carolina	June 8	May 19	May 24	May 27	May 20–June 5.
Runoff	June 22	June 2	June 10 [7]	June 10	June 3–June 19.
* South Dakota	June 8	May 19	May 24	May 27	May 20–June 5.
Runoff	June 29	June 9	June 14	June 17	June 10–June 26.
Tennessee	Aug. 5	July 16	July 21	July 24 [6]	July 17–Aug. 2
Texas	Mar. 2	Feb. 10	Feb. 15 [1]	Feb. 18	Feb. 11–Feb. 27.
Runoff	Apr. 13	Mar. 24	Mar. 29	Apr. 1	Mar. 25–Apr. 10.
* Utah	June 22	June 2	June 7	June 10	June 3 June 19.
* Vermont	Sept. 14	Aug. 25	Aug. 30	Sept. 2	Aug. 26–Sept. 11.
Virgin Islands	Sept. 11	Aug. 22	Aug. 27	Aug. 30	Aug. 23 Sept. 8.
Virginia	June 8	May 19	May 24	May 27	May 20–June 5.
* Washington	Aug. 17	July 28	Aug. 2	Aug. 5	July 29–Aug. 14.
West Virginia	May 11	Apr. 21	Apr. 26	Apr. 29	Apr. 22–May 8.
* Wisconsin	Sept. 14	Aug. 25	Aug. 30	Sept. 2	Aug. 26–Sept. 11.
Wyoming	Aug. 17	July 28	Aug. 2	Aug. 5	July 29–Aug. 14.

+ This date indicates the end of the reporting period. A reporting period always begins the day after the closing date of the last report filed. If the committee is new and has not previously filed a report, the first report must cover all activity through the close of books for the first report due, including activity that occurred before the committee registered.

++ Reports sent by registered or certified mail must be postmarked by the mailing deadline. Committees should keep the mailing receipt with its postmark as proof of filing. If using overnight mail, the delivery service must receive the report by the mailing deadline. "Overnight mail" means an overnight service with an on-line tracking system and scheduled for next business day delivery. Reports filed by any other means must be received by the Commission (or Secretary of the Senate for Senate committees) by the filing deadline.

* States holding 2010 Senate elections.

** Filed by candidate committees only. 48-Hour Notices are required if the campaign committee receives any contribution (including in-kind gifts or advances of goods or services; loans from the candidate or other non-bank sources; and guarantees or endorsements of bank loans to the candidate or committee) of $1,000 or more per source, during the applicable period.

[1] Notice that the registered/certified & overnight mailing deadline falls on a weekend or federal holiday. The report should be postmarked before that date.

[2] The July Quarterly Report is waived for committees filing the Georgia Pre-Primary Report. See 11 CFR 104.5(a)(1)(iii) and (c)(1)(i)(C).

[3] Notice that this deadline falls on a weekend or federal holiday. Filing deadlines are not extended for weekends or holidays. Reports filed on paper or 3.5" diskette must be received by the appropriate filing office(s) before the filing deadline.

[4] As an alternative, committees may file a consolidated Year-End/IL Pre-Primary Report covering 10/01/09–01/13/10 by January 21, 2010. PACs and party committees filing this report should file two reports: a Year-End report disclosing 2009 activity and a Pre-Primary report disclosing 2010 activity.

[5] The July Quarterly Report is waived for committees filing the Oklahoma Pre-Primary Report. See 11 CFR 104.5(a)(1)(iii) and (c)(1)(i)(C).

[6] Notice that this deadline falls on a weekend or federal holiday. Filing deadlines are not extended for weekends or holidays. Reports filed on paper or 3.5" diskette must be received by the appropriate filing office(s) before the filing deadline.

[7] The mailing deadline is the same as the filing deadline because the computed mailing deadline would fall one day before the primary is held.

The United States Senate

ONE HUNDRED ELEVENTH CONGRESS

JOSEPH R. BIDEN, JR., VICE PRESIDENT

ROBERT C. BYRD, PRESIDENT PRO TEMPORE

NANCY ERICKSON, SECRETARY

TERRANCE W. GAINER, SERGEANT AT ARMS

LULA JOHNSON DAVIS, SECRETARY FOR THE MAJORITY

DAVID J. SCHIAPPA, SECRETARY FOR THE MINORITY

REAR ADM. BARRY C. BLACK (RET.), CHAPLAIN

(Democrats in roman; Republicans in *italic*; Independents in SMALL CAPS)

Name	Residence	Service from	Term expires
Daniel K. Akaka	Honolulu, HI	May 16, 1990	Jan. 3, 2013
Lamar Alexander	Nashville, TN	Jan. 7, 2003	Jan. 3, 2015
John Barrasso	Casper, WY	Jun. 25, 2007	Jan. 3, 2013
Max Baucus	Missoula, MT	Dec. 15, 1978	Jan. 3, 2015
Evan Bayh	Indianapolis, IN	Jan. 6, 1999	Jan. 3, 2011
Mark Begich	East Anchorage, AK	Jan. 3, 2009	Jan. 3, 2015
Michael F. Bennet	Denver, CO	Jan. 22, 2009	Jan. 3, 2011
Robert F. Bennett	Salt Lake City, UT	Jan. 5, 1993	Jan. 3, 2011
Jeff Bingaman	Santa Fe, NM	Jan. 3, 1983	Jan. 3, 2013
Christopher S. Bond	Mexico, MO	Jan. 6, 1987	Jan. 3, 2011
Barbara Boxer	Greenbrae, CA	Jan. 5, 1993	Jan. 3, 2011
Scott P. Brown	Wrentham, MA	Feb. 4, 2010	Jan. 3, 2013
Sherrod Brown	Avon, OH	Jan. 3, 2007	Jan. 3, 2013
Sam Brownback	Topeka, KS	Nov. 7, 1996	Jan. 3, 2011
Jim Bunning	Southgate, KY	Jan. 6, 1999	Jan. 3, 2011
Richard Burr	Winston-Salem, NC	Jan. 4, 2005	Jan. 3, 2011
Roland W. Burris	Chicago, IL	Jan. 15, 2009	Jan. 3, 2011
Robert C. Byrd	Sophia, WV	Jan. 3, 1959	Jan. 3, 2013
Maria Cantwell	Edmonds, WA	Jan. 3, 2001	Jan. 3, 2013
Benjamin L. Cardin	Baltimore, MD	Jan. 3, 2007	Jan. 3, 2013
Thomas R. Carper	Wilmington, DE	Jan. 3, 2001	Jan. 3, 2013
Robert P. Casey, Jr	Scranton, PA	Jan. 3, 2007	Jan. 3, 2013
Saxby Chambliss	Moultrie, GA	Jan. 7, 2003	Jan. 3, 2015
Tom Coburn	Muskogee, OK	Jan. 4, 2005	Jan. 3, 2011
Thad Cochran	Jackson, MS	Dec. 27, 1978	Jan. 3, 2015
Susan M. Collins	Bangor, ME	Jan. 7, 1997	Jan. 3, 2015
Kent Conrad	Bismarck, ND	Jan. 6, 1987	Jan. 3, 2013
Bob Corker	Chattanooga, TN	Jan. 3, 2007	Jan. 3, 2013
John Cornyn	San Antonio, TX	Dec. 2, 2002	Jan. 3, 2015
Michael D. Crapo	Idaho Falls, ID	Jan. 6, 1999	Jan. 3, 2011
Jim DeMint	Greenville, SC	Jan. 4, 2005	Jan. 3, 2011
Christopher J. Dodd	Norwich, CT	Jan. 5, 1981	Jan. 3, 2011
Byron L. Dorgan	Bismarck, ND	Dec. 14, 1992	Jan. 3, 2011
Richard J. Durbin	Springfield, IL	Jan. 3, 1997	Jan. 3, 2015
John Ensign	Las Vegas, NV	Jan. 3, 2001	Jan. 3, 2013
Michael B. Enzi	Gillette, WY	Jan. 3, 1997	Jan. 3, 2015
Russell D. Feingold	Middleton, WI	Jan. 5, 1993	Jan. 3, 2011
Dianne Feinstein	San Francisco, CA	Nov. 10, 1992	Jan. 3, 2013
Al Franken	Minneapolis, MN	Jul. 7, 2009	Jan. 3, 2015

(Democrats in roman; Republicans in *italic*; Independents in SMALL CAPS)

Name	Residence	Service from	Term expires
Kirsten E. Gillibrand	Hudson, NY	Jan. 26, 2009	Jan. 3, 2013
Lindsey Graham	Seneca, SC	Jan. 7, 2003	Jan. 3, 2013
Chuck Grassley	New Hartford, IA	Jan. 5, 1981	Jan. 3, 2011
Judd Gregg	Greenfield, NH	Jan. 5, 1983	Jan. 3, 2011
Kay R. Hagan	Greensboro, NC	Jan. 3, 2015	Jan. 3, 2015
Tom Harkin	Cumming, IA	Jan. 3, 1985	Jan. 3, 2015
Orrin G. Hatch	Salt Lake City, UT	Dec. 30, 1976	Jan. 3, 2013
Kay Bailey Hutchison	Dallas, TX	June 5, 1993	Jan. 3, 2013
James M. Inhofe	Tulsa, OK	Nov. 16, 1994	Jan. 3, 2015
Daniel K. Inouye	Honolulu, HI	Jan. 3, 1963	Jan. 3, 2011
Johnny Isakson	Marietta, GA	Jan. 4, 2005	Jan. 3, 2011
Mike Johanns	Omaha, NE	Jan. 3, 2009	Jan. 3, 2015
Tim Johnson	Vermillion, SD	Jan. 3, 1997	Jan. 3, 2015
Edward E. Kaufman	Wilmington, DE	Jan. 15, 2009	Jan. 3, 2015
John F. Kerry	Boston, MA	Jan. 2, 1985	Jan. 3, 2015
Amy Klobuchar	Minneapolis, MN	Jan. 3, 2007	Jan. 3, 2013
Herb Kohl	Milwaukee, WI	Jan. 3, 1989	Jan. 3, 2013
Jon Kyl	Phoenix, AZ	Jan. 4, 1995	Jan. 3, 2013
Mary L. Landrieu	Baton Rouge, LA	Jan. 3, 1997	Jan. 3, 2015
Frank R. Lautenberg	Cliffside Park, NJ	Jan. 7, 2003	Jan. 3, 2015
Patrick J. Leahy	Burlington, VT	Jan. 3, 1975	Jan. 3, 2011
George S. LeMieux	Ft. Lauderdale, FL	Sept. 10, 2009	Jan. 3, 2011
Carl Levin	Detroit, MI	Jan. 3, 1979	Jan. 3, 2015
JOSEPH I. LIEBERMAN	New Haven, CT	Jan. 3, 1989	Jan. 3, 2013
Blanche L. Lincoln	Hughes, AR	Jan. 6, 1999	Jan. 3, 2011
Richard G. Lugar	Indianapolis, IN	Jan. 7, 1977	Jan. 3, 2013
John McCain	Phoenix, AZ	Jan. 6, 1987	Jan. 3, 2011
Claire McCaskill	St. Louis, MO	Jan. 3, 2007	Jan. 3, 2013
Mitch McConnell	Louisville, KY	Jan. 3, 1985	Jan. 3, 2015
Robert Menendez	Hoboken, NJ	Jan. 18, 2006	Jan. 3, 2013
Jeff Merkley	Portland, OR	Jan. 3, 2009	Jan. 3, 2015
Barbara A. Mikulski	Baltimore, MD	Jan. 6, 1987	Jan. 3, 2011
Lisa Murkowski	Anchorage, AK	Dec. 20, 2002	Jan. 3, 2011
Patty Murray	Seattle, WA	Jan. 5, 1993	Jan. 3, 2011
Ben Nelson	Omaha, NE	Jan. 3, 2001	Jan. 3, 2013
Bill Nelson	Tallahassee, FL	Jan. 3, 2001	Jan. 3, 2013
Mark L. Pryor	Little Rock, AR	Jan. 7, 2003	Jan. 3, 2015
Jack Reed	Cranston, RI	Jan. 3, 1997	Jan. 3, 2015
Harry Reid	Las Vegas, NV	Jan. 6, 1987	Jan. 3, 2011
James E. Risch	Boise, ID	Jan. 3, 2009	Jan. 3, 2015
Pat Roberts	Dodge City, KS	Jan. 3, 1997	Jan. 3, 2015
John D. Rockefeller IV	Charleston, WV	Jan. 15, 1985	Jan. 3, 2015
BERNARD SANDERS	Burlington, VT	Jan. 3, 2007	Jan. 3, 2013
Charles E. Schumer	Brooklyn, NY	Jan. 6, 1999	Jan. 3, 2011
Jeff Sessions	Mobile, AL	Jan. 3, 1997	Jan. 3, 2015
Jeanne Shaheen	Madbury, NH	Jan. 3, 2009	Jan. 3, 2015
Richard C. Shelby	Tuscaloosa, AL	Jan. 6, 1987	Jan. 3, 2011
Olympia J. Snowe	Auburn, ME	Jan. 4, 1995	Jan. 3, 2013
Arlen Specter	Philadelphia, PA	Jan. 3, 1981	Jan. 3, 2011
Debbie Stabenow	Lansing, MI	Jan. 3, 2001	Jan. 3, 2013
Jon Tester	Big Sandy, MT	Jan. 3, 2007	Jan. 3, 2013
John Thune	Pierre, SD	Jan. 4, 2005	Jan. 3, 2011
Mark Udall	Eldorado Springs, CO	Jan. 3, 2009	Jan. 3, 2015
Tom Udall	Santa Fe, NM	Jan. 3, 2009	Jan. 3, 2015
David Vitter	Metairie, LA	Jan. 3, 2005	Jan. 3, 2011
George V. Voinovich	Cleveland, OH	Jan. 6, 1999	Jan. 3, 2011
Mark Warner	Alexandria, VA	Jan. 3, 2009	Jan. 3, 2015
Jim Webb	Falls Church, VA	Jan. 3, 2007	Jan. 3, 2013
Sheldon Whitehouse	Newport, RI	Jan. 3, 2007	Jan. 3, 2013
Roger F. Wicker	Tupelo, MS	Dec. 31, 2007	Jan. 3, 2013
Ron Wyden	Portland, OR	Feb. 6, 1996	Jan. 3, 2011

SENATORS IN THE ONE HUNDRED ELEVENTH CONGRESS

2013

CLASS 1

Democrats (21):
- Akaka, Daniel ..... Honolulu, HI
- Bingaman, Jeff ..... Santa Fe, NM
- Brown, Sherrod ..... Avon, OH
- Byrd, Robert C ..... Sophia, WV
- Cantwell, Maria ..... Edmonds, WA
- Cardin, Benjamin ..... Baltimore, MD
- Carper, Thomas R ..... Wilmington, DE
- Casey, Robert P., Jr ..... Scranton, PA
- Conrad, Kent ..... Bismarck, ND
- Feinstein, Dianne ..... San Francisco, CA
- Gillibrand, Kirsten ..... Hudson, NY
- Klobuchar, Amy ..... Minneapolis, MN
- Kohl, Herb ..... Milwaukee, WI
- McCaskill, Claire ..... St. Louis, MO
- Menendez, Robert ..... Hoboken, NJ
- Nelson, Ben ..... Omaha, NE
- Nelson, Bill ..... Tallahassee, FL
- Stabenow, Debbie ..... Lansing, MI
- Tester, Jon ..... Big Sandy, MT
- Webb, Jim ..... Falls Church, VA
- Whitehouse, Sheldon ..... Newport, RI

Independents (2):
- Lieberman, Joseph I ..... New Haven, CT
- Sanders, Bernard ..... Burlington, VT

Republicans (10):
- Barrasso, John ..... Casper, WY
- Brown, Scott ..... Wrentham, MA
- Corker, Bob ..... Chattanooga, TN
- Ensign, John ..... Las Vegas, NV
- Hatch, Orrin G ..... Salt Lake City, UT
- Hutchison, Kay Bailey ..... Dallas, TX
- Kyl, Jon ..... Phoenix, AZ
- Lugar, Richard G ..... Indianapolis, IN
- Snowe, Olympia J ..... Auburn, ME
- Wicker, Roger F ..... Tupelo, MS

2015

CLASS 2

Democrats (20):
- Baucus, Max ..... Missoula, MT
- Begich, Mark ..... East Anchorage, AK
- Durbin, Richard J ..... Springfield, IL
- Franken, Al ..... Minneapolis, MN
- Hagan, Kay R ..... Greensboro, NC
- Harkin, Tom ..... Cumming, IA
- Johnson, Tim ..... Vermillion, SD
- Kaufman, Edward E ..... Wilmington, DE
- Kerry, John F ..... Boston, MA
- Landrieu, Mary L ..... Baton Rouge, LA
- Lautenberg, Frank R ..... Cliffside Park, NJ
- Levin, Carl ..... Detroit, MI
- Merkley, Jeff ..... Portland, OR
- Pryor, Mark L ..... Little Rock, AR
- Reed, Jack ..... Cranston, RI
- Rockefeller, John D. IV ..... Charleston, WV
- Shaheen, Jeanne ..... Madbury, NH
- Udall, Mark ..... Eldorado Springs, CO
- Udall, Tom ..... Santa Fe, NM
- Warner, Mark R ..... Alexandria, VA

Republicans (13):
- Alexander, Lamar ..... Nashville, TN

Chambliss, Saxby .....Moultrie, GA
Cochran, Thad .....Jackson, MS
Collins, Susan M .....Bangor, ME
Cornyn, John.....San Antonio, TX
Enzi, Michael B.....Gillette, WY
Graham, Lindsey .....Seneca, SC
Inhofe, James M .....Tulsa, OK
Johanns, Mike.....Omaha, NE
McConnell, Mitch.....Louisville, KY
Risch, James E .....Boise, ID
Roberts, Pat.....Dodge City, KS
Sessions, Jeff .....Mobile, AL

2011

CLASS 3

Democrats (16):
Bayh, Evan .....Indianapolis, IN
Bennet, Michael F.....Denver, CO
Boxer, Barbara.....Greenbrae, CA
Burris, Roland .....Chicago, IL
Dodd, Christopher .....Norwich, CT
Dorgan, Byron L .....Bismarck, ND
Feingold, Russell D .....Middleton, WI
Inouye, Daniel K.....Honolulu, HI
Leahy, Patrick J .....Burlington, VT
Lincoln, Blanche L .....Hughes, AR
Mikulski, Barbara A.....Baltimore, MD
Murray, Patty .....Seattle, WA
Reid, Harry .....Las Vegas, NV
Schumer, Charles E.....Brooklyn, NY
Specter, Arlen.....Philadelphia, PA
Wyden, Ron.....Portland, OR
Republicans (18):
Bennett, Robert F.....Salt Lake City, UT
Bond, Christopher S.....Mexico, MO
Brownback, Sam .....Topeka, KS
Bunning, Jim.....Southgate, KY
Burr, Richard.....Winston-Salem, NC
Coburn, Tom.....Muskogee, OK
Crapo, Mike .....Idaho Falls, ID
DeMint, Jim.....Greenville, SC
Grassley, Chuck .....New Hartford, IA
Gregg, Judd .....Greenfield, NH
Isakson, Johnny.....Marietta, GA
LeMieux, George S .....Ft. Lauderdale, FL
McCain, John.....Phoenix, AZ
Murkowski, Lisa.....Anchorage, AK
Shelby, Richard .....Tuscaloosa, AL
Thune, John.....Pierre, SD
Vitter, David.....Metairie, LA
Voinovich, George V.....Cleveland, OH

DEMOCRATS

2011	16
2013	21
2015	20
Total	57

REPUBLICANS

2011	18
2013	10
2015	13
Total	41

INDEPENDENTS

2013	2

TOTALS

Republicans	41
Democrats	57
Independents	2
Total	100

PART I

CONSTITUTIONAL AND FEDERAL STATUTORY PROVISIONS AND OTHER RELATED MATERIALS REGULATING THE NOMINATIONS AND ELECTIONS OF UNITED STATES SENATORS

A. FEDERAL CONSTITUTIONAL PROVISIONS RELATING TO THE ELECTIONS OF SENATORS

Composition of Senate

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures. (Amendment XVII.)

Vacancies

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: *Provided,* That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct. (Amendment XVII, cl. 2.)

Qualifications

No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen. (Art. 1, § 3, cl. 3.)

No person shall be a Senator or Representative in Congress, . . . who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two-thirds of each House, remove such disability. (Amendment XIV, § 3.)

Conduct of Elections

The times, places, and manner of holding elections for Senators and Representatives, shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators. (Art. 1, § 4, cl. 1.)

Each House shall be the judge of the elections, returns, and qualifications of its own members, and a majority of each shall constitute a quorum to do business. (Art. 1, § 5, cl. 1.)

Dual Office Holding

No Senator or Representative, shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emolu-

ments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a Member of either House during his continuance in office. (Art. 1, § 6, cl. 2.)

No Senator or Representative, . . . shall be appointed an Elector. (Art. 2, § 1, cl. 2.)

The terms of the President and Vice President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3d day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin. (Amendment XX, § 1.)

Ban on Poll Tax

The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax. (Amendment XXIV, § 1.)

Eighteen-Year-Old Vote

The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age. (Amendment XXVI, § 1.)

Pay of Senators

No law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened. (Amendment XXVII.)

B. SELECTED LAWS RELATING TO THE ELECTIONS OF SENATORS (TITLE 2, UNITED STATES CODE)

CHAPTER 1—ELECTION OF SENATORS AND REPRESENTATIVES

2 U.S.C. § 1. Time for election of Senators

At the regular election held in any State next preceding the expiration of the term for which any Senator was elected to represent such State in Congress, at which election a Representative to Congress is regularly by law to be chosen, a United States Senator from said State shall be elected by the people thereof for the term commencing on the 3d day of January next thereafter.

June 4, 1914, ch. 103, § 1, 38 Stat. 384; June 5, 1934, ch. 390, § 3, 48 Stat. 879.

2 U.S.C. § 1a. Election to be certified by Governor

It shall be the duty of the executive of the State from which any Senator has been chosen to certify his election, under the seal of the State, to the President of the Senate of the United States.

R.S. § 18. See form suggested by Senate Rule II, *infra*.

2 U.S.C. § 1b. Countersignature of certificate of election

The certificate mentioned in section 1a of this title shall be countersigned by the Secretary of State of the State.

R.S. § 19.

2 U.S.C. § 7. Time of election

The Tuesday next after the 1st Monday in November, in every even numbered year, is established as the day for the election, in each of the States and Territories of the United States, of Representatives and Delegates to the Congress commencing on the 3d day of January, next thereafter.

R.S. § 25; Mar. 3, 1875, ch. 130, § 6, 18 Stat. 400; June 5, 1934, ch. 390, § 2, 48 Stat. 879.

CHAPTER 2—ORGANIZATION OF CONGRESS (OATH OF OFFICE)

2 U.S.C. § 21. Oath of Senators

The oath of office shall be administered by the President of the Senate to each Senator who shall be elected, previous to his taking his seat.

R.S. § 28.

2. U.S.C. § 22. Oath of President of Senate

When a President of the Senate has not taken the oath of office, it shall be administered to him by any Member of the Senate.

R.S. § 29.

2 U.S.C. § 23. Presiding officer of Senate may administer oaths

The presiding officer, for the time being, of the Senate of the United States, shall have power to administer all oaths and affirmations that are or may be required by the Constitution, or by law, to be taken by any Senator, officer of the Senate, witness, or other person, in respect to any matter within the jurisdiction of the Senate.

Apr. 18, 1876, ch. 66, § 1, 19 Stat. 34.

2 U.S.C. § 24. Secretary of Senate or Assistant Secretary may administer oaths

The Secretary of the Senate, and the Assistant Secretary thereof, shall, respectively, have power to administer any oath or affirmation required by law, or by the rules or orders of the Senate, to be taken by any officer of the Senate, and to any witness produced before it.

Apr. 18, 1876, c. 66, § 2, 19 Stat. 34; July 9, 1971, Pub. L. 92–51, 85 Stat. 125.

CHAPTER 3—COMPENSATION AND ALLOWANCES OF MEMBERS

2 U.S.C. § 33. Senators' salaries

Senators elected, whose term of office begins on the 3d day of January, and whose credentials in due form of law shall have been presented in the Senate, may receive their compensation, from the beginning of their term.

June 19, 1934, ch. 648, title I, § 1, 48 Stat. 1022; Oct. 1, 1981, Pub. L. 97–51, § 112(b)(2), 95 Stat. 963.

2 U.S.C. § 36. Salaries of Senators

Salaries of Senators appointed to fill vacancies in the Senate shall commence on the day of their appointment and continue until their successors are elected and qualified: *Provided*, That when Senators have been elected during a sine die adjournment of the Senate to succeed appointees, the salaries of Senators so elected shall commence on the day following their election.

Salaries of Senators elected during a session to succeed appointees shall commence on the day they qualify: *Provided*, That when Senators have been elected during a session to succeed appointees, but have not qualified, the salaries of Senators so elected shall commence on the day following the sine die adjournment of the Senate.

When no appointments have been made the salaries of Senators elected to fill such vacancies shall commence on the day following their election.

Feb. 10, 1923, ch. 68, 42 Stat. 1225; Feb. 6, 1931, ch. 111, 46 Stat. 1065, June 19, 1934, ch. 648, title I, § 1, 48 Stat. 1022; Feb. 13, 1935, ch. 6, § 1, 49 Stat. 22, 23.

2 U.S.C. § 40. Deductions for withdrawal

When any Member or Delegate withdraws from his seat and does not return before the adjournment of Congress, he shall, in addition to the sum deducted for each day, forfeit a sum equal to the amount which would have been allowed by law for his mileage in returning home; and such sum shall be deducted from his compensation, unless the withdrawal is with the leave of the Senate or House of Representatives respectively.

R.S. § 41.

2 U.S.C. § 40a. Deductions for delinquent indebtedness

Whenever a Representative, Delegate, or Resident Commissioner, or a United States Senator, shall fail to pay any sum or sums due from such person to the House of Representatives or Senate, respectively, the appropriate committee or officer of the House of Representatives or Senate, as the case may be, having jurisdiction of the activity under which such debt arose, shall certify such delinquent sum or sums to the Chief Administrative Officer of the House of Representatives in the case of an indebtedness to the House of Representatives and to the Secretary of the Senate in the case of an indebtedness to the Senate, and such latter officials are authorized and directed, respectively, to deduct from any salary, mileage, or expense money due to any such delinquent such certified amounts or so much thereof as the balance or balances due such delinquent may cover. Sums so deducted by the Secretary of the Senate shall be disposed of by him in accordance with existing law and sums so deducted by the Chief Administrative Officer of the House of Representatives shall be disposed of by him in accordance with existing law.

June 19, 1934, c. 648, title I, § 1, 48 Stat. 1024; Aug. 20, 1996, Pub. L. 104–186, title II, § 203(8), 110 Stat. 1726.

2 U.S.C. § 43d. Organizational expenses of Senator-elect

(a) Appointment of employees by Secretary of Senate to assist; termination of employment.

Upon the recommendation of a Senator-elect (other than an incumbent Senator or a Senator elected to fill a vacancy), the Secretary of the Senate shall appoint two employees to assist such Senator-elect. Any employee so appointed shall serve through the day before the date on which the Senator-elect recommending his appointment commences his service as a Senator, except that his employment may be terminated before such day upon recommendation of such Senator-elect.

(b) Payment of salaries of appointed employees; funding; maximum amount.

(1) Salaries of employees appointed under subsection (a) of this section shall be paid from the appropriation for "Administrative, Clerical, and Legislative Assistance to Senators".

(2) Salaries paid to employees appointed upon recommendation of a Senator-elect under subsection (a) of this section shall be charged against the amount of compensation which may be paid to employees in his office under section 61–1(d) of this title (hereinafter referred to as the "clerk-hire allowance"), for the fiscal year in which his service as a Senator commences. The total amount of salaries paid to employees so appointed upon recommendation of a Senator-elect shall be charged against his clerk-hire allowance for each month in such fiscal year beginning with the month in which his service as a Senator commences (until the total amount has been charged) by whichever of the following amounts is greater: (1) one-ninth of the amount of salaries so paid, or (2) the amount by which the aggregate amount of his clerk-hire allowance which may be paid as of the close of such month under section 61–1(d)(1)(B) of this title exceeds the aggregate amount of his clerk-hire allowance actually paid as of the close of such month.

(c) Payment of transportation and per diem expenses of Senator-elect and appointed employees for one round trip from home State to Washington, D.C. for business of impending Congress; funding; maximum amount.

Each Senator-elect and each employee appointed under subsection (a) of this section is authorized one round trip from the home State of the Senator-elect to Washington, D.C., and return, for the purposes of attending conferences, caucuses, or organizational meetings, or for any other official business connected with the impending Congress. In addition, each Senator-elect and each such employee is authorized per diem for not more than seven days while en route to and from Washington, D.C., and while in Washington, D.C. Such transportation and per diem expenses shall be in the same amounts as are payable to Senators and employees in the office of a Senator under section 58(e) of this title, and shall be paid from the contingent fund of the Senate upon itemized vouchers certified by the Senator-elect concerned and approved by the Secretary of the Senate.

(d) Payment of telegrams, telephone services, and stationery expenses incurred by Senator-elect; funding; maximum amount.

(1) Each Senator-elect is authorized to be reimbursed for expenses incurred for telegrams, telephone services, and stationery related to his position as Senator-elect in an amount not exceeding one-twelfth of the total amount of expenses authorized to be paid to or on behalf of a Senator from the State which he will represent under section 58 of this title. Reimbursement to a Senator-elect under this subsection shall be paid from the contingent fund of the Senate upon itemized vouchers certified by such Senator-elect and approved by the Secretary of the Senate.

(2) Amounts reimbursed to a Senator-elect under this subsection shall be charged against the amount of expenses which are authorized to be paid to him or on his behalf under section 58 of this title, for each of the twelve months beginning with the month in which his service as a Senator commences (until all of such amounts have been charged) by whichever of the following amounts is greater: (1)

one-twelfth of the amounts so reimbursed, or (2) the amount by which the aggregate amount authorized to be so paid under section 58(c) of this title as of the close of such month exceeds the aggregate amount actually paid under such section 58 as of the close of such month.

(e) Effective date.

This section shall take effect on October 1, 1978.

Pub. L. 95–355, title I, § 105, Sept. 8, 1978, 92 Stat. 534; Pub. L. 104–197, title I, § 2, Sept. 16, 1996, 110 Stat. 2397.

2 U.S.C. § 46a–1. Senate revolving fund for stationery allowances; availability of unexpended balances; withdrawals

There is established within the Contingent Fund of the Senate a revolving fund which shall consist of (1) the unexpended balance of the appropriation "Contingent Expenses, Senate, Stationery, fiscal year 1957", (2) any amounts hereafter appropriated for stationery allowances of the President of the Senate, and for stationery for use of officers of the Senate and the Conference of the Majority and the Conference of the Minority of the Senate, and (3) any undeposited amounts heretofore received, and any amounts hereafter received as proceeds of sales by the stationery room of the Senate. Any moneys in the fund shall be available until expended for use in the same manner and for the same purposes as funds heretofore appropriated to the Contingent Fund of the Senate for stationery, except that (1) the balance of any amount appropriated for stationery for use of committees and officers of the Senate which remains unexpended at the end of any fiscal year and (2) allowances which are not available for obligation due to vacancies or waiver entitlement thereto, shall be withdrawn from the revolving fund. Disbursements from the fund shall be made upon vouchers approved by the Secretary of the Senate, or his designee.

Pub. L. 85–58, Ch. XI, June 21, 1957, 71 Stat. 188; Pub. L. 92–607, Ch. V, § 506(*l*), formerly § 506(i), Oct. 31, 1972, 86 Stat. 1508, renumbered § 506(j), Pub. L. 95–391, title I, § 108(a), Sept. 30, 1978, 92 Stat. 773, renumbered § 506(k) and amended Pub. L. 96–304, title I, §§ 101. 112(b)(3), July 8, 1980, 96 Stat. 889, 892, renumbered § 506(*l*), Pub. L. 97–276, § 101(e), Oct. 2, 1982, 96 Stat. 1189, Pub. L. 105–55, title I, § 7, Oct. 7, 1997, 111 Stat. 1181.

C. CAMPAIGN FINANCING, REPORTING, AND DISCLOSURE (TITLE 2, UNITED STATES CODE)

FEDERAL ELECTION CAMPAIGN ACT

2 U.S.C. § 431. Definitions

When used in this Act:

(1) The term "election" means—

(A) a general, special, primary, or runoff election;

(B) a convention or caucus of a political party which has authority to nominate a candidate;

(C) a primary election held for the selection of delegates to a national nominating convention of a political party; and

(D) a primary election held for the expression of a preference for the nomination of individuals for election to the office of President.

(2) The term "candidate" means an individual who seeks nomination for election, or election, to Federal office, and for purposes of this paragraph, an individual shall be deemed to seek nomination for election, or election—

(A) if such individual has received contributions aggregating in excess of $5,000 or has made expenditures aggregating in excess of $5,000; or

(B) if such individual has given his or her consent to another person to receive contributions or make expenditures on behalf of such individual and if such person has received such contributions aggregating in excess of $5,000 or has made such expenditures aggregating in excess of $5,000.

(3) The term "Federal office" means the office of President or Vice President, or of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress.

(4) The term "political committee" means—

(A) any committee, club, association, or other group of persons which receives contributions aggregating in excess of $1,000 during a calendar year or which makes expenditures aggregating in excess of $1,000 during a calendar year; or

(B) any separate segregated fund established under the provisions of section 441b(b) of this title; or

(C) any local committee of a political party which receives contributions aggregating in excess of $5,000 during a calendar year, or makes payments exempted from the definition of contribution or expenditure as defined in paragraphs (8) and (9) of this section aggregating in excess of $5,000 during a calendar year, or makes contributions aggregating in excess of $1,000 during a calendar year or makes expenditures aggregating in excess of $1,000 during a calendar year.

(5) The term "principal campaign committee" means a political committee designated and authorized by a candidate under section 432(e)(1) of this title.

(6) The term "authorized committee" means the principal campaign committee or any other political committee authorized by a candidate under section 432(e)(l) of this title to receive contributions or make expenditures on behalf of such candidate.

(7) The term "connected organization" means any organization which is not a political committee but which directly or indirectly establishes, administers, or financially supports a political commit tee.

(8)(A) The term "contribution" includes—

(i) any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office; or

(ii) the payment by any person of compensation for the personal services of another person which are rendered to a political committee without charge for any purpose.

(B) The term "contribution" does not include—

(i) the value of services provided without compensation by any individual who volunteers on behalf of a candidate or political committee;

(ii) the use of real or personal property, including a church or community room used on a regular basis by members of a community for noncommercial purposes, and the cost of invitations, food, and beverages, voluntarily provided by an individual to any candidate or any political committee of a political party in rendering voluntary personal services on the individual's residential premises or in the church or community room for candidate-related or political party-related activities, to the extent that the cumulative value of such invitations, food, and beverages provided by such individual on behalf of any single candidate does not exceed $1,000 with respect to any single election, and on behalf of all political committees of a political party does not exceed $2,000 in any calendar year;

(iii) the sale of any food or beverage by a vendor for use in any candidate's campaign or for use by or on behalf of any political committee of a political party at a charge less than the normal comparable charge, if such charge is at least equal to the cost of such food or beverage to the vendor, to the extent that the cumulative value of such activity by such vendor on behalf of any single candidate does not exceed $1,000 with respect to any single election, and on behalf of all political committees of a political party does exceed $2000 in any calendar year;

(iv) any unreimbursed payment for travel expenses made by any individual on behalf of any candidate or any political committee of a political party, to the extent that the cumulative value of such activity by such individual on behalf of any single candidate does not exceed $1,000 with respect to any single election, and on behalf of all political committees of a political party does not exceed $2,000 in any calendar year;

(v) the payment by a State or local committee of a political party of the costs of preparation, display, or mailing or other

distribution incurred by such committee with respect to a printed slate card or sample ballot, or other printed listing, of 3 or more candidates for any public office for which an election is held in the State in which such committee is organized, except that this clause shall not apply to any cost incurred by such committee with respect to a display of any such listing made on broadcasting stations, or in newspapers, magazines, or similar types of general public political advertising;

(vi) any payment made or obligation incurred by a corporation or a labor organization which, under section 441b(b) of this title, would not constitute an expenditure by such corporation or labor organization;

(vii) any loan of money by a State bank, a federally chartered depository institution, or a depository institution the deposits or accounts of which are insured by the Federal Deposit Insurance Corporation . . . or the National Credit Union Administration, other than any overdraft made with respect to a checking or savings account, made in accordance with applicable law and in the ordinary course of business, but such loan—

(I) shall be considered a loan by each endorser or guarantor, in that proportion of the unpaid balance that each endorser or guarantor bears to the total number of endorsers or guarantors;

(II) shall be made on a basis which assures repayment, evidenced by a written instrument, and subject to a due date or amortization schedule; and

(III) shall bear the usual and customary interest rate of the lending institution;

(viii) any legal or accounting services rendered to or on behalf of—

(I) any political committee of a political party if the person paying for such services is the regular employer of the person rendering such services and if such services are not attributable to activities which directly further the election of any designated candidate to Federal office; or

(II) an authorized committee of a candidate or any other political committee, if the person paying for such services is the regular employer of the individual rendering such services and if such services are solely for the purpose of ensuring compliance with this Act or chapter 95 or chapter 96 of title 26, but amounts paid or incurred by the regular employer for such legal or accounting services shall be reported in accordance with section 434(b) of this title by the committee receiving such services;

(ix) the payment by a State or local committee of a political party of the costs of campaign materials (such as pins, bumper stickers, handbills, brochures, posters, party tabloids, and yard signs) used by such committee in connection with volunteer activities on behalf of nominees of such party: *Provided*, That—

(1) such payments are not for the cost of campaign materials or activities used in connection with any broadcasting, newspaper, magazine, billboard, direct mail, or similar type of general public communication or political advertising;

(2) such payments are made from contributions subject to the limitations and prohibitions of this Act; and

(3) such payments are not made from contributions designated to be spent on behalf of a particular candidate or particular candidates;

(x) the payment by a candidate, for nomination or election to any public office (including State or local office), or authorized committee of a candidate, of the costs of campaign materials which include information on or reference to any other candidate and which are used in connection with volunteer activities (including pins, bumper stickers, handbills, brochures, posters, and yard signs, but not including the use of broadcasting, newspapers, magazines, billboards, direct mail, or similar types of general public communication or political advertising): *Provided*, That such payments are made from contributions subject to the limitations and prohibitions of this Act;

(xi) the payment by a State or local committee of a political party of the costs of voter registration and get-out-the-vote activities conducted by such committee on behalf of nominees of such party for President and Vice President: *Provided*, That—

(1) such payments are not for the costs of campaign materials or activities used in connection with any broadcasting, newspaper, magazine, billboard, direct mail, or similar type of general public communication or political advertising;

(2) such payments are made from contributions subject to the limitations and prohibitions of this Act; and

(3) such payments are not made from contributions designated to be spent on behalf of a particular candidate or particular candidates;

(xii) payment made by a candidate or the authorized committee of a candidate as a condition of ballot access and payments received by any political party committee as a condition of ballot access;

(xiii) any honorarium (within the meaning of section 441i of this title); and

(xiv) any loan of money derived from an advance on a candidate's brokerage account, credit card, home equity line of credit, or other line of credit available to the candidate, if such a loan is made in accordance with applicable law and under commercially reasonable terms and if the person making such loan makes loans derived from an advance on the candidate's brokerage account, credit card, home equity line of credit, or other line of credit in the normal course of the person's business.

(9)(A) The term "expenditure" includes—

(i) any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office; and

(ii) a written contract, promise, or agreement to make an expenditure.

(B) the term "expenditure" does not include—

(i) any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate;

(ii) nonpartisan activity designed to encourage individuals to vote or to register to vote;

(iii) any communication by any membership organization or corporation to its members, stockholders, or executive or administrative personnel, if such membership organization or corporation is not organized primarily for the purpose of influencing the nomination for election, or election, of any individual to Federal office, except that the costs incurred by a membership organization (including a labor organization) or by a corporation directly attributable to a communication expressly advocating the election or defeat of a clearly identified candidate (other than a communication primarily devoted to subjects other than the express advocacy of the election or defeat of a clearly identified candidate), shall, if such costs exceed $2,000 for any election, be reported to the Commission in accordance with section 434(a)(4)(A)(i) of this title, and in accordance with section 434(a)(4)(A)(ii) of this title with respect to any general election;

(iv) the payment by a State or local committee of a political party of the costs of preparation, display, or mailing or other distribution incurred by such committee with respect to a printed slate card or sample ballot, or other printed listing, of 3 or more candidates for any public office for which an election is held in the State in which such committee is organized, except that this clause shall not apply to costs incurred by such committee with respect to a display of any such listing made on broadcasting stations, or in newspapers, magazines, or similar types of general public political advertising;

(v) any payment made or obligation incurred by a corporation or a labor organization which, under section 441b(b) of this title, would not constitute an expenditure by such corporation or labor organization;

(vi) any costs incurred by an authorized committee or candidate in connection with the solicitation of contributions on behalf of such candidate, except that this clause shall not apply with respect to costs incurred by an authorized committee of a candidate in excess of an amount equal to 20 percent of the expenditure limitation applicable to such candidate under section 441a(b), but all such costs shall be reported in accordance with section 434(b);

(vii) the payment of compensation for legal or accounting services—

(I) rendered to or on behalf of any political committee of a political party if the person paying for such services is the regular employer of the individual rendering such services, and if such services are not attributable to activities which directly further the election of any designated candidate to Federal office; or

(II) rendered to or on behalf of a candidate or political committee if the person paying for such services is the regular employer of the individual rendering such services, and if such services are solely for the purpose of ensuring compliance with this Act or chapter 95 or chapter 96 of title 26, but amounts paid or incurred by the regular employer for such legal or accounting services shall be reported in accordance with section 434(b) by the committee receiving such services;

(viii) the payment by a State or local committee of a political party of the costs of campaign materials (such as pins, bumper stickers, handbills, brochures, posters, party tabloids, and yard signs) used by such committee in connection with volunteer activities on behalf of nominees of such party: *Provided,* That—

(1) such payments are not for the costs of campaign materials or activities used in connection with any broadcasting, newspaper, magazine, billboard, direct mail, or similar type of general public communication or political advertising;

(2) such payments are made from contributions subject to the limitations and prohibitions of this Act; and

(3) such payments are not made from contributions designated to be spent on behalf of a particular candidate or particular candidates;

(ix) the payment by a State or local committee of a political party of the costs of voter registration and get out-the-vote activities conducted by such committee on behalf of nominees of such party for President and Vice President: *Provided,* That—

(1) such payments are not for the costs of campaign materials or activities used in connection with any broadcasting, newspaper, magazine, billboard, direct mail, or similar type of general public communication or political advertising;

(2) such payments are made from contributions subject to the limitations and prohibitions of this Act; and

(3) such payments are not made from contributions designated to be spent on behalf of a particular candidate or candidates; and

(x) payments received by a political party committee as a condition of ballot access which are transferred to another political party committee or the appropriate State official.

(10) The term "Commission" means the Federal Election Commission.

(11) The term "person" includes an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons, but such term does not include the Federal Government or any authority of the Federal Government.

(12) The term "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States.

(13) The term "identification" means—

(A) in the case of any individual, the name, the mailing address, and the occupation of such individual, as well as the name of his or her employer; and

(B) in the case of any other person, the full name and address of such person.

(14) The term "national committee" means the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the national level, as determined by the Commission.

(15) The term "State committee" means the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the State level, as determined by the Commission.

(16) The term "political party" means an association, committee, or organization which nominates a candidate for election to any Federal office whose name appears on the election ballot as the candidate of such association, committee, or organization.

(17) *lndependent expenditure.* The term 'independent expenditure' means an expenditure by a person—

(A) expressly advocating the election or defeat of a clearly identified candidate; and

(B) that is not made in concert or cooperation with or at the request or suggestion of such candidate, the candidate's authorized political committee, or their agents, or a political party committee or its agents.

(18) The term "clearly identified" means that—

(A) the name of the candidate involved appears;

(B) a photograph or drawing of the candidate appears; or

(C) the identity of the candidate is apparent by unambiguous reference.

(19) The term "Act" means the Federal Election Campaign Act of 1971 as amended.

(20) *Federal election activity.*

(A) *In general.* The term 'Federal election activity' means—

(i) voter registration activity during the period that begins on the date that is 120 days before the date a regularly scheduled Federal election is held and ends on the date of the election;

(ii) voter identification, get-out-the-vote activity, or generic campaign activity conducted in connection with an election in which a candidate for Federal office appears on the ballot (regardless of whether a candidate for State or local office also appears on the ballot);

(iii) a public communication that refers to a clearly identified candidate for Federal office (regardless of whether a candidate for State or local office is also mentioned or identified) and that promotes or supports a candidate for that office, or attacks or opposes a candidate for that office (regardless of whether the communication expressly advocates a vote for or against a candidate); or

(iv) services provided during any month by an employee of a State, district, or local committee of a political party who spends more than 25 percent of that individual's compensated time during that month on activities in connection with a Federal election.

(B) *Excluded activity*. The term 'Federal election activity' does not include an amount expended or disbursed by a State, district, or local committee of a political party for—

(i) a public communication that refers solely to a clearly identified candidate for State or local office, if the communication is not a Federal election activity described in subparagraph (A)(i) or (ii);

(ii) a contribution to a candidate for State or local office, provided the contribution is not designated to pay for a Federal election activity described in subparagraph (A);

(iii) the costs of a State, district, or local political convention; and

(iv) the costs of grassroots campaign materials, including buttons, bumper stickers, and yard signs, that name or depict only a candidate for State or local office.

(21) *Generic campaign activity.* The term 'generic campaign activity' means a campaign activity that promotes a political party and does not promote a candidate or non-Federal candidate.

(22) *Public communication*. The term 'public communication' means a communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or any other form of general public political advertising.

(23) *Mass mailing*. The term 'mass mailing' means a mailing by United States mail or facsimile of more than 500 pieces of mail matter of an identical or substantially similar nature within any 30-day period.

(24) *Telephone bank.* The term 'telephone bank' means more than 500 telephone calls of an identical or substantially similar nature within any 30-day period.

(25) *Election cycle.* For purposes of sections 315(i) (2 U.S.C. § 441a(i)) and 315A (2 U.S.C. § 441a–1) and paragraph (26), the term 'election cycle' means the period beginning on the day after the date of the most recent election for the specific office or seat that a candidate is seeking and ending on the date of the next election for that office or seat. For purposes of the preceding sentence, a primary election and a general election shall be considered to be separate elections.

(26) *Personal funds.* The term 'personal funds' means an amount that is derived from—

(A) any asset that, under applicable State law, at the time the individual became a candidate, the candidate had legal right of access to or control over, and with respect to which the candidate had—

(i) legal and rightful title; or

(ii) an equitable interest;

(B) income received during the current election cycle of the candidate, including—

(i) a salary and other earned income from bona fide employment;

(ii) dividends and proceeds from the sale of the candidate's stocks or other investments;

(iii) bequests to the candidate;

(iv) income from trusts established before the beginning of the election cycle;

(v) income from trusts established by bequest after the beginning of the election cycle of which the candidate is the beneficiary;

(vi) gifts of a personal nature that had been customarily received by the candidate prior to the beginning of the election cycle; and

(vii) proceeds from lotteries and similar legal games of chance; and

(C) a portion of assets that are jointly owned by the candidate and the candidate's spouse equal to the candidate's share of the asset under the instrument of conveyance or ownership, but if no specific share is indicated by an instrument of conveyance or ownership, the value of ½ of the property.

Pub. L. 92–225, title III, § 301, Feb. 7, 1972, 86 Stat. 11; Pub. L. 93–443, title II, §§ 201(a), 208(c)(1), Oct. 15, 1974, 88 Stat. 1272, 1286; Pub. L. 94–283, title I, §§ 102, 115(d), (h), May 11, 1976, 90 Stat. 478, 495, 496; Pub. L. 96–187, title I, § 101, Jan. 8, 1980, 93 Stat. 1339; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 106–346, § 101(a) [title V, § 502(b)], Oct. 23, 2000, 114 Stat. 1356, 1356A–49; Pub. L. 107–155, title I, §§ 101(b), 103(b)(1), title II, § 211, title III, § 304(c), Mar. 27, 2002, 116 Stat. 85, 87, 92, 100.

2 U.S.C. § 432. Organization of political committees

(a) *Treasurer: vacancy; official authorizations.* Every political committee shall have a treasurer. No contribution or expenditure shall be accepted or made by or on behalf of a political committee during any period in which the office of treasurer is vacant. No expenditure shall be made for or on behalf of a political committee without the authorization of the treasurer or his or her designated agent.

(b) *Account of contributions; segregated funds.*

(1) Every person who receives a contribution for an authorized political committee shall, no later than 10 days after receiving such contribution, forward to the treasurer such contribution, and if the amount of the contribution is in excess of $50 the name and address of the person making the contribution and the date of receipt.

(2) Every person who receives a contribution for a political committee which is not an authorized committee shall—

(A) if the amount of the contribution is $50 or less, forward to the treasurer such contribution no later than 30 days after receiving the contribution; and

(B) if the amount of the contribution is in excess of $50, forward to the treasurer such contribution, the name and address of the person making the contribution, and the date of receipt of the contribution, no later than 10 days after receiving the contribution.

(3) All funds of a political committee shall be segregated from, and may not be commingled with, the personal funds of any individual.

(c) *Recordkeeping.* The treasurer of a political committee shall keep an account of—

(1) all contributions received by or on behalf of such political committee;

(2) the name and address of any person who makes any contribution in excess of $50, together with the date and amount of such contribution by any person;

(3) the identification of any person who makes a contribution or contributions aggregating more than $200 during a calendar year, together with the date and amount of any such contribution;

(4) the identification of any political committee which makes a contribution, together with the date and amount of any such contribution; and

(5) the name and address of every person to whom any disbursement is made, the date, amount, and purpose of the disbursement, and the name of the candidate and the office sought by the candidate, if any, for whom the disbursement was made, including a receipt, in voice, or cancelled check for each disbursement in excess of $200.

(d) *Preservation of records and copies of reports*. The treasurer shall preserve all records required to be kept by. this section and copies of all reports required to be filed by this subchapter for 3 years after the report is filed. For any report filed in electronic format under section 434(a)(11) of this title, the treasurer shall retain a machine-readable copy of the report as the copy preserved under the preceding sentence.

(e) *Principal and additional campaign committees; designations, status of candidate, authorized committees, etc.*

(1) Each candidate for Federal office (other than the nominee for the office of Vice President) shall designate in writing a political committee in accordance with paragraph (3) to serve as the principal campaign committee of such candidate. Such designation shall be made no later than 15 days after becoming a candidate. A candidate may designate additional political committees in accordance with paragraph (3) to serve as authorized committees of such candidate. Such designation shall. be in writing and filed with the principal campaign committee of such candidate in accordance with subsection (f)(1) of this section.

(2) Any candidate described in paragraph (1) who receives a contribution, or any loan for use in connection with the campaign of such candidate for election, or makes a disbursement in connection with such campaign, shall be considered, for purposes of this Act, as having received the contribution or loan, or as having made the disbursement, as the case may be, as an agent of the authorized committee or committees of such candidate.

(3)(A) No political committee which supports or has sup ported more than one candidate may be designated as an authorized committee, except that—

(i) the candidate for the office of President nominated by a political party may designate the national committee of such political party as a principal campaign committee,

but only if that national committee maintains separate books of account with respect to its function as a principal campaign committee; and

(ii) candidates may designate a political committee established solely for the purpose of joint fundraising by such candidates as an authorized committee.

(B) As used in this section, the term "support" does not include a contribution by any authorized committee in amounts of $1,000 or less to an authorized committee of any other candidate.

(4) The name of each authorized committee shall include the name of the candidate who authorized such committee under paragraph (1). In the case of any political committee which is not an authorized committee, such political committee shall not include the name of any candidate in its name.

(5) The name of any separate segregated fund established pursuant to section 441b(b) shall include the name of its connected organization.

(f) *Filing with and receipt of designations, statements, and reports by principal campaign committee.*

(1) Notwithstanding any other provision of this Act, each designation, statement, or report of receipts or disbursements made by an authorized committee of a candidate shall be filed with the candidate's principal campaign committee.

(2) Each principal campaign committee shall receive all designations, statements, and reports required to be filed with it under paragraph (1) and shall compile and file such designations, statements, and reports in accordance with this Act.

(g) *Filing with and receipt of designations, statements, and reports by the Secretary of Senate; forwarding to Commission; filing requirements with Commission; public inspection and preservation of designations, etc.*

(1) Designations, statements, and reports required to be filed under this Act by a candidate for the office of Senator, by the principal campaign committee of such candidate, and by the Republican and Democratic Senatorial Campaign Committee, shall be filed with the Secretary of the Senate, who shall receive such designations, statements, and reports, as custodian for the Commission.

(2) The Secretary of the Senate shall forward a copy of any designation, statement, or report filed with the Secretary under this subsection to the Commission as soon as possible (but no later than 2 working days) after receiving such designation, statement, or report.

(3) All designations, statements, and reports required to be filed under this Act, except designations, statements, and reports filed in accordance with paragraph (1), shall be filed with the Commission.

(4) The Secretary of the Senate shall make the designations, statements, and reports received under this subsection available for public inspection and copying in the same manner as the Commission under section 438(a)(4), and shall preserve such designations, statements, and reports in the same manner as the Commission under section 438(a)(5).

(h) *Campaign depositories; designations, maintenance of accounts, etc.; petty cash fund for disbursements; record of disbursements.*

(1) Each political committee shall designate one or more State banks, federally chartered depository institutions, or depository institutions the deposits or accounts of which are insured by the Federal Deposit Insurance Corporation . . . or the National Credit Union Administration, as its campaign depository or depositories. Each political committee shall maintain at least one checking account and such other accounts as the committee determines at a depository designated by such committee. All receipts received by such committee shall be deposited in such accounts. No disbursements may be made (other than petty cash disbursements under paragraph (2)) by such committee except by check drawn on such accounts in accordance with this section.

(2) A political committee may maintain a petty cash fund for disbursements not in excess of $100 to any person in connection with a single purchase or transaction. A record of all petty cash disbursements shall be maintained in accordance with subsection (c)(5) of this section.

(i) *Reports and records, compliance with requirements based on best efforts.* When the treasurer of a political committee shows that best efforts have been used to obtain, maintain, and submit the information required by this Act for the political committee, any report or any records of such committee shall be considered in compliance with this Act or chapter 95 or chapter 96 of title 26.

Pub. L. 92–225, title III, § 302, Feb. 7, 1972, 86 Stat. 12; Pub. L. 93–443, title II, §§ 202, 208(c)(2), Oct. 15, 1974, 88 Stat. 1275, 1286; Pub. L. 94–283, title I, § 103, May 11, 1976, 90 Stat. 480; Pub. L. 96–187, title I, § 102, Jan. 8, 1980, 93 Stat. 1345; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 104–79, §§ 1(b), 3(a), Dec. 28, 1995, 109 Stat. 791, 792; Pub. L. 105–61, title VI, § 637, Oct. 10, 1997, 111 Stat. 1316; Pub. L. 108–447, div. H, title V, § 525, Dec. 8, 2004, 118 Stat. 3271.

2 U.S.C. § 433. Registration of political committees

(a) *Statements of organizations.* Each authorized campaign committee shall file a statement of organization no later than 10 days after designation pursuant to section 432(e)(1). Each separate segregated fund established under the provisions of section 441b(b) shall file a statement of organization no later than 10 days after establishment. All other committees shall file a statement of organization within 10 days after becoming a political committee within the meaning of section 431(4).

(b) *Contents of statements.* The statement of organization of a political committee shall include—

(1) the name, address, and type of committee;

(2) the name, address, relationship, and type of any connected organization or affiliated committee;

(3) the name, address, and position of the custodian of books and accounts of the committee;

(4) the name and address of the treasurer of the committee;

(5) if the committee is authorized by a candidate, the name, address, office sought, and party affiliation of the candidate; and

(6) a listing of all banks, safety deposit boxes, or other depositories used by the committee.

(c) *Change of information in statements*. Any change in information previously submitted in a statement of organization shall be reported in accordance with section 432(g) no later than 10 days after the date of the change.

(d) *Termination, etc., requirements and authorities.*

(1) A political committee may terminate only when such a committee files a written statement, in accordance with section 432(g), that it will no longer receive any contributions or make any disbursement and that such committee has no outstanding debts or obligations.

(2) Nothing contained in this subsection may be construed to eliminate or limit the authority of the Commission to establish procedures for—

(A) the determination of insolvency with respect to any political committee;

(B) the orderly liquidation of an insolvent political committee, and the orderly application of its assets for the reduction of outstanding debts; and

(C) the termination of an insolvent political committee after such liquidation and application of assets.

Pub. L. 92–225, title III, § 303, Feb. 7, 1972, 86 Stat. 14; Pub. L. 93–443, title II, §§ 203, 208(c)(3), Oct. 15, 1974, 88 Stat. 1276, 1286; Pub. L. 96–187, title I, § 103, Jan. 8, 1980, 93 Stat. 1347.

2 U.S.C. § 434. Reporting requirements

(a) *Receipts and disbursements by treasurers of political committees; filing requirements.*

(1) Each treasurer of a political committee shall file reports of receipts and disbursements in accordance with the provisions of this subsection. The treasurer shall sign each such report.

(2) If the political committee is the principal campaign committee of a candidate for the House of Representatives or for the Senate—

(A) in any calendar year during which there is a regularly scheduled election for which such candidate is seeking election, or nomination for election, the treasurer shall file the following reports:

(i) a pre-election report, which shall be filed no later than the 12th day before (or posted by any of the following: registered mail, certified mail, priority mail having a delivery confirmation, or delivered to an overnight delivery service with an on-line tracking system, if posted or delivered no later than the 15th

day before)[1] any election in which such candidate is seeking election, or nomination for election, and which shall be complete as of the 20th day before such election;

(ii) a post-general election report, which shall be filed no later than the 30th day after any general election in which such candidate has sought election, and which shall be complete as of the 20th day after such general election; and

(iii) additional quarterly reports, which shall be filed no later than the 15th day after the last day of each calendar quarter, and which shall be complete as of the last day of each calendar quarter: except that the report for the quarter ending December 31 shall be filed no later than January 31 of the following calendar year; and

(B)[2] in any other calendar year the treasurer shall file quarterly reports, which shall be filed not later than the 15th day after the last day of each calendar quarter, and which shall be complete as of the last day of each calendar quarter, except that the report for the quarter ending December 31 shall be filed not later than January 31 of the following calendar year.

(3) If the committee is the principal campaign committee of a candidate for the office of President—

(A) in any calendar year during which a general election is held to fill such office—

(i) the treasurer shall file monthly reports if such committee has on January 1 of such year, received contributions aggregating $100,000 or made expenditures aggregating $100,000 or anticipates receiving contributions aggregating $100,000 or more or making expenditures aggregating $100,000 or more during such year: such monthly reports shall be filed no later than the 20th day after the last day of each month and shall be complete as of the last day of the month, except that, in lieu of filing the report otherwise due in November and December, a pre-general election report shall be filed in accordance with paragraph (2)(A)(i), a post-general election report shall be filed in accordance with paragraph (2)(A)(ii), and a year end report shall be filed no later than January 31 of the following calendar year;

(ii) the treasurer of the other principal campaign committees of a candidate for the office of President shall file a pre-election report or reports in accordance with paragraph (2)(A)(i), a post-general election report

[1] Section 641 of division F, title VI of the Consolidated Appropriations Act, 2004, Pub. L. No. 108–199, amended section 434(a) to permit the use of priority and express mail and overnight delivery services for timely filing purposes. This amendment is effective as of January 23, 2004.

[2] Section 503(a) of the Bipartisan Campaign Reform Act of 2002 (BCRA), Pub. L. No. 107–155, amended section 434(a)(2)(B) to require additional reports in nonelection years by House and Senate campaigns. This amendment is effective as of November 6, 2002.

in accordance with paragraph (2)(A)(ii), and quarterly reports in accordance with paragraph (2)(A)(iii); and

(iii) if at any time during the election year a committee filing under paragraph (3)(A)(ii) receives contributions in excess of $100,000 or makes expenditures in excess of $100,000, the treasurer shall begin filing monthly reports under paragraph (3)(A)(i) at the next reporting period; and

(B) in any other calendar year, the treasurer shall file either—

(i) monthly reports, which shall be filed no later than the 20th day after the last day of each month and shall be complete as of the last day of the month; or

(ii) quarterly reports, which shall be filed no later than the 15th day after the last day of each calendar quarter and which shall be complete as of the last day of each calendar quarter.

(4) All political committees other than authorized committees of a candidate shall file either—

(A)(i) quarterly reports, in a calendar year in which a regularly scheduled general election is held, which shall be filed no later than the 15th day after the last day of each calendar quarter: except that the report for the quarter ending on December 31 of such calendar year shall be filed no later than January 31 of the following calendar year;

(ii) a pre-election report, which shall be filed no later than the 12th day before (or posted by any of the following: registered mail, certified mail, priority mail having a delivery confirmation, or express mail having a delivery confirmation, or delivered to an overnight delivery service with an on-line tracking system, if posted or delivered no later than the 15th day before[1] any election in which the committee makes a contribution to or expenditure on behalf of a candidate in such election, and which shall be complete as of the 20th day before the election;

(iii) a post-general election report, which shall be filed no later than the 30th day after the general election and which shall be complete as of the 20th day after such general election; and

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

(B) monthly reports in all calendar years which shall be filed no later than the 20th day after the last day of the month and shall be complete as of the last day of the month, except that, in lieu of filing the reports otherwise due in November and December of any year in which a

[1] Section 641 of division F, title VI of the Consolidated Appropriations Act, 2004, Pub. L. No. 108–199, amended section 434(a) to permit the use of priority and express mail and overnight delivery services for timely filing purposes. This amendment is effective as of January 23, 2004.

regularly scheduled general election is held, a pre-general election report shall be filed in accordance with paragraph (2)(A)(i), a post-general election report shall be filed in accordance with paragraph (2)(A)(ii), and a year end report shall be filed no later than January 31 of the following calendar year. Notwithstanding the preceding sentence, a national committee of a political party shall file the reports required under subparagraph (B).

(5) If a designation, report, or statement filed pursuant to this Act (other than under paragraph (2)(A)(i) or (4)(A)(ii) or subsection (g)(1)) is sent by registered mail, certified mail, priority mail having a delivery confirmation, or express mail having a delivery confirmation, the United States postmark shall be considered the date of filing of the designation, report, or statement. If a designation, report or statement filed pursuant to this Act (other than under paragraph (2)(A)(i) or (4)(A)(ii), or subsection (g)(1)) is sent by an overnight delivery service with an on-line tracking system, the date on the proof of delivery to the delivery service shall be considered the date of filing of the designation, report, or statement.

(6)(A) The principal campaign committee of a candidate shall notify the Secretary or the Commission, and the Secretary of State, as appropriate, in writing, of any contribution of $1,000 or more received by any authorized committee of such candidate after the 20th day, but more than 48 hours before, any election. This notification shall be made within 48 hours after the receipt of such contribution and shall include the name of the candidate and the office sought by the candidate, the identification of the contributor, and the date of receipt and amount of the contribution.

(B) Notification of expenditure from personal funds.

(i) *Definition of expenditure from personal funds.* In this subparagraph, the term 'expenditure from personal funds' means—

(I) an expenditure made by a candidate using personal funds; and

(II) a contribution or loan made by a candidate using personal funds or a loan secured using such funds to the candidate's authorized committee.

(ii) *Declaration of intent.* Not later than the date that is 15 days after the date on which an individual becomes a candidate for the office of Senator, the candidate shall file a declaration stating the total amount of expenditures from personal funds that the candidate intends to make, or to obligate to make, with respect to the election that will exceed the State-by-State competitive and fair campaign formula with—

(I) the Commission; and

(II) each candidate in the same election.

(iii) Initial notification. Not later than 24 hours after a candidate described in clause (ii) makes or obligates to make an aggregate amount of expenditures from personal funds in excess of 2 times the threshold amount in connec-

tion with any election, the candidate shall file a notification with—

(I) the Commission; and

(II) each candidate in the same election.

(iv) Additional notification. After a candidate files an initial notification under clause (ill), the candidate shall file an additional notification each time expenditures from personal funds are made or obligated to be made in an aggregate amount that exceed $10,000 with—

(I) the Commission; and

(II) each candidate in the same election.

Such notification shall be filed not later than 24 hours after the expenditure is made.

(v) Contents. A notification under clause (iii) or (iv) shall include—

(I) the name of the candidate and the office sought by the candidate;

(II) the date and amount of each expenditure; and

(III) the total amount of expenditures from personal funds that the candidate has made, or obligated to make, with respect to an election as of the date of the expenditure that is the subject of the notification.

(C) Notification of disposal of excess contributions. In the next regularly scheduled report after the date of the election for which a candidate seeks nomination for election to, or election to, Federal office, the candidate or the candidate's authorized committee shall submit to the Commission a report indicating the source and amount of any excess contributions (as determined under paragraph (1) of section 315(i)) (2 U.S.C. § 441a(i)) and the manner in which the candidate or the candidate's authorized committee used such funds.

(D) Enforcement. For provisions providing for the enforcement of the reporting requirements under this paragraph, see section 309 (2 U.S.C. § 437g).

(E) The notification required under this paragraph shall be in addition to all other reporting requirements under this Act.

(7) The reports required to be filed by this subsection shall be cumulative during the calendar year to which they relate, but where there has been no change in an item reported in a previous report during such year, only the amount need be carried forward.

(8) The requirement for a political committee to file a quarterly report under paragraph (2)(A)(iii) or paragraph (4)(A)(i) shall be waived if such committee is required to file a pre-election report under paragraph (2)(A)(i), or paragraph (4)(A)(ii) during the period beginning on the 5th day after the close of the calendar quarter and ending on the 15th day after the close of the calendar quarter.

(9) The Commission shall set filing dates for reports to be filed by principal campaign committees of candidates seeking election, or nomination for election, in special elections and political committees filing under paragraph (4)(A) which make contributions to or expenditures on behalf of a candidate or candidates in special elections. The Commission shall require

no more than one preelection report for each election and one postelection report for the election which fills the vacancy. The Commission may waive any reporting obligation of committees required to file for special elections if any report required by paragraph (2) or (4) is required to be filed within 10 days of a report required under this subsection. The Commission shall establish the reporting dates within 5 days of the setting of such election and shall publish such dates and notify the principal campaign committees of all candidates in such election of the reporting dates.

(10) The treasurer of a committee supporting a candidate for the office of Vice President (other than the nominee of a political party) shall file reports in accordance with paragraph (3).

(11)(A) The Commission shall promulgate a regulation under which a person required to file a designation, statement, or report under this Act—

(i) is required to maintain and file a designation, statement, or report for any calendar year in electronic form accessible by computers if the person has, or has reason to expect to have, aggregate contributions or ex penditures in excess of a threshold amount determined by the Commission; and

(ii) may maintain and file a designation, statement, or report in electronic form or an alternative form if not required to do so under the regulation promulgated under clause (i).

(B) The Commission shall make a designation, statement, report, or notification that is filed with the Commission under this Act available for inspection by the public in the offices of the Commission and accessible to the public on the Internet not later than 48 hours (or not later than 24 hours in the case of a designation, statement, report, or notification filed electronically) after receipt by the Commission.

(C) In promulgating a regulation under this paragraph, the Commission shall provide methods (other than requiring a signature on the document being filed) for verifying designations, statements, and reports covered by the regulation. Any document verified under any of the methods shall be treated for all purposes (including penalties for perjury) in the same manner as a document verified by signature.

(D) As used in this paragraph, the term "report" means, with respect to the Commission, a report, designation, or statement required by this Act to be filed with the Commission.

(12) *Software for filing of reports.*

(A) *In general.* The Commission shall—

(i) promulgate standards to be used by vendors to develop software that—

(I) permits candidates to easily record information concerning receipts and disbursements required to be reported under this Act at the time of the receipt or disbursement;

(II) allows the information recorded under subclause (1) to be transmitted immediately to the Commission; and

(III) allows the Commission to post the information on the Internet immediately upon receipt; and

(ii) make a copy of software that meets the standards promulgated under clause (i) available to each person required to file a designation, statement, or report in electronic form under this Act.

(B) *Additional information.* To the extent feasible, the Commission shall require vendors to include in the software developed under the standards under subparagraph (A) the ability for any person to file any designation, statement, or report required under this Act in electronic form.

(C) *Required use.* Notwithstanding any provision of this Act relating to times for filing reports, each candidate for Federal office (or that candidate's authorized committee) shall use software that meets the standards promulgated under this paragraph once such software is made available to such candidate.

(D) *Required posting.* The Commission shall, as soon as practicable, post on the Internet any information received under this paragraph.

(b) *Contents of reports.* Each report under this section shall disclose—

(1) the amount of cash on hand at the beginning of the reporting period;

(2) for the reporting period and calendar year (or election cycle, in the case of an authorized committee of a candidate for Federal office), the total amount of all receipts, and the total amount of all receipts in the following categories:

(A) contributions from persons other than political committees;

(B) for an authorized committee, contributions from the candidate;

(C) contributions from political party committees;

(D) contributions from other political committees;

(E) for an authorized committee, transfers from other authorized committees of the same candidate;

(F) transfers from affiliated committees and, where the reporting committee is a political party committee, transfers from other political party committees, regardless of whether such committees are affiliated;

(G) for an authorized committee, loans made by or guaranteed by the candidate;

(H) all other loans;

(I) rebates, refunds, and other offsets to operating expenditures;

(J) dividends, interest, and other forms of receipts; and

(K) for an authorized committee of a candidate for the office of President, Federal funds received under chapter 95 and chapter 96 of title 26;

(3) the identification of each—

(A) person (other than a political committee) who makes a contribution to the reporting committee during the reporting period, whose contribution or contributions have

an aggregate amount or value in excess of $200 within the calendar year (or election cycle, in the case of an authorized committee of a candidate for Federal office), or in any lesser amount if the reporting committee should so elect, together with the date and amount of any such contribution;

(B) political committee which makes a contribution to the reporting committee during the reporting period, together with the date and amount of any such contribution;

(C) authorized committee which makes a transfer to the reporting committee;

(D) affiliated committee which makes a transfer to the reporting committee during the reporting period and, where the reporting committee is a political party committee, each transfer of funds to the reporting committee from another political party committee, regardless of whether such committees are affiliated, together with the date and amount of such transfer;

(E) person who makes a loan to the reporting committee during the reporting period, together with the identification of any endorser or guarantor of such loan, and date and amount or value of such loan;

(F) person who provides a rebate, refund, or other offset to operating expenditures to the reporting committee in an aggregate amount or value in excess of $200 within the calendar year (or election cycle, in the case of an authorized committee of a candidate for Federal office), together with the date and amount of such receipt; and

(G) person who provides any dividend, interest, or other receipt to the reporting committee in an aggregate value or amount in excess of $200 within the calendar year (or election cycle, in the case of an authorized committee of a candidate for Federal office), together with the date and amount of any such receipt;

(4) for the reporting period and the calendar year (or election cycle, in the case of an authorized committee of a candidate for Federal office), the total amount of all disbursements, and all disbursements in the following categories:

(A) expenditures made to meet candidate or committee operating expenses;

(B) for authorized committees, transfers to other committees authorized by the same candidate;

(C) transfers to affiliated committees and, where the reporting committee is a political party committee, transfers to other political party committees, regardless of whether they are affiliated;

(D) for an authorized committee, repayment of loans made by or guaranteed by the candidate;

(E) repayment of all other loans;

(F) contribution refunds and other offsets to contributions;

(G) for an authorized committee, any other disbursements;

(H) for any political committee other than an authorized committee—

(i) contributions made to other political committees;

(ii) loans made by the reporting committees;

(iii) independent expenditures;

(iv) expenditures made under section 441a(d) of this title; and

(v) any other disbursements; and

(I) for an authorized committee of a candidate for the office of President, disbursements not subject to the limitation of section 441a(b);

(5) the name and address of each—

(A) person to whom an expenditure in an aggregate amount or value in excess of $200 within the calendar year is made by the reporting committee to meet a candidate or committee operating expense, together with the date, amount, and purpose of such operating expenditure;

(B) authorized committee to which a transfer is made by the reporting committee;

(C) affiliated committee to which a transfer is made by the reporting committee during the reporting period and, where the reporting committee is a political party committee, each transfer of funds by the reporting committee to another political party committee, regardless of whether such committees are affiliated, together with the date and amount of such transfers;

(D) person who receives a loan repayment from the reporting committee during the reporting period, together with the date and amount of such loan repayment; and

(E) person who receives a contribution refund or other offset to contributions from the reporting committee where such contribution was reported under paragraph (3)(A) of this subsection, together with the date and amount of such disbursement;

(6)(A) for an authorized committee, the name and address of each person who has received any disbursement not disclosed under paragraph (5) in an aggregate amount or value in excess of $200 within the calendar year (or election cycle, in the case of an authorized committee of a candidate for Federal office) together with the date and amount of any such disbursement;

(B) for any other political committee, the name and address of each—

(i) political committee which has received a contribution from the reporting committee during the reporting period, together with the date and amount or any such contribution;

(ii) person who has received a loan from the reporting committee during the reporting period, together with the date and amount of such loan;

(iii) person who receives any disbursement during the reporting period in an aggregate amount or value in excess of $200 within the calendar year (or election cycle, in the case of an authorized committee of a candidate for Federal office) in connection with an independent expenditure by

the reporting committee, together with the date, amount, and purpose of any such independent expenditure and a statement which indicates whether such independent expenditure is in support of, or in opposition to, a candidate, as well as the name and office sought by such candidate, and a certification, under penalty of perjury, whether such independent expenditure is made in cooperation, consultation, or concert, with, or at the request or suggestion of, any candidate or any authorized committee or agent of such committee;

(iv) person who receives any expenditure from the reporting committee during the reporting period in connection with an expenditure under section 441a(d) of this title, together with the date, amount, and purpose of any such expenditure as well as the name of, and office sought by, the candidate on whose behalf the expenditure is made; and

(v) person who has received any disbursement not otherwise disclosed in this paragraph or paragraph (5) in an aggregate amount or value in excess of $200 within the calendar year (or election cycle, in the case of an authorized committee of a candidate for Federal office) from the reporting committee within the reporting period, together with the date, amount, and purpose of any such disbursement;

(7) the total sum of all contributions to such political committee, together with the total contributions less offsets to contributions and the total sum of all operating expenditures made by such political committee, together with total operating expenditures less offsets to operating expenditures, for both the reporting period and the calendar year (or election cycle, in the case of an authorized committee of a candidate" for Federal office); and

(8) the amount and nature of outstanding debts and obligations owed by or to such political committee; and where such debts and obligations are settled for less than their reported amount or value, a statement as to the circumstances and conditions under which such debts or obligations were extinguished and the consideration therefor.

(c) *Statements by other than political committees; filing; contents; indices of expenditures.*

(1) Every person (other than a political committee) who makes independent expenditures in an aggregate amount or value in excess of $250 during a calendar year shall file a statement containing the information required under subsection (b)(3)(A) of this section for all contributions received by such person.

(2) Statements required to be filed by this subsection shall be filed in accordance with subsection (a)(2) of this section, and shall include—

(A) the information required by subsection (b)(6)(B)(iii) of this section, indicating whether the independent expenditure is in support of, or in opposition to, the candidate involved;

(B) under penalty of perjury, a certification whether or not such independent expenditure is made in cooperation, consultation, or concert, with, or at the request or suggestion of, any candidate or any authorized committee or agent of such candidate; and

(C) the identification of each person who made a contribution in excess of $200 to the person filing such statement which was made for the purpose of furthering an independent expenditure.

(3) The Commission shall be responsible for expeditiously preparing indices which set forth, on a candidate-by-candidate basis, all independent expenditures separately, including those reported under subsection (b)(6)(B)(iii) of this section, made by or for each candidate, as reported under this subsection, and for periodically publishing such indices on a timely pre-election basis.

(d) *Use of facsimile machines and electronic mail to file independent expenditure statements.*

(1) Any person who is required to file a statement under subsection (c) or (g) of this section, except statements required to be filed electronically pursuant to subsection (a)(11)(A)(i) may file the statement by facsimile device or electronic mail, in accordance with such regulations as the Commission may promulgate.

(2) The Commission shall make a document which is filed electronically with the Commission pursuant to this paragraph accessible to the public on the internet not later than 24 hours after the document is received by the Commission.

(3) In promulgating a regulation under this paragraph, the Commission shall provide methods (other than requiring a signature on the document being filed) for verifying the documents covered by the regulation. Any document verified under any of the methods shall be treated for all purposes (including penalties for perjury) in the same manner as a document verified by signature.

(e) *Political committee.*

(1) *National and congressional political committees.* The national committee of a political party, any national congressional campaign committee of a political party, and any subordinate committee of either, shall report all receipts and disbursements during the reporting period.

(2) *Other political committees to which section 323 (2 U.S.C. § 441.i) applies.*

(A) *In general.* In addition to any other reporting requirements applicable under this Act, a political committee (not described in paragraph (1)) to which section 323(b)(1) (2 U.S.C. § 441i(b)(1)) applies shall report all receipts and disbursements made for activities described in section 301(20)(A), (2 U.S.C. § 431(20)(A)) unless the aggregate amount of such receipts and disbursements during the calendar year is less than $5,000.

(B) *Specific disclosure by state and local parties of certain nonfederal amounts permitted to be spent on federal election activity.* Each report by a political committee

under subparagraph (A) of receipts and disbursements made for activities described in section 301(20)(A) (2 U.S.C. § 431(20)(A)) shall include a disclosure of all receipts and disbursements described in section 323(b)(2)(A) and (B) (2 U.S.C. § 441i(b)(2)(A) and (B)).

(3) *Itemization.* If a political committee has receipts or disbursements to which this subsection applies from or to any person aggregating in excess of $200 for any calendar year, the political committee shall separately itemize its reporting for such person in the same manner as required in paragraphs (3)(A), (5), and (6) of subsection (b).

(4) *Reporting periods.* Reports required to be filed under this subsection shall be filed for the same time periods required for political committees under subsection (a)(4)(B).

(f) *Disclosure of electioneering communications.*

(1) *Statement required.* Every person who makes a disbursement for the direct costs of producing and airing electioneering communications in an aggregate amount in excess of $10,000 during any calendar year shall, within 24 hours of each disclosure date, file with the Commission a statement containing the information described in paragraph (2).

(2) *Contents of statement.* Each statement required to be filed under this subsection shall be made under penalty of perjury and shall contain the following information:

(A) The identification of the person making the disbursement, of any person sharing or exercising direction or control over the activities of such person, and of the custodian of the books and accounts of the person making the disbursement.

(B) The principal place of business of the person making the disbursement, if not an individual.

(C) The amount of each disbursement of more than $200 during the period covered by the statement and the identification of the person to whom the disbursement was made.

(D) The elections to which the electioneering communications pertain and the names (if known) of the candidates identified or to be identified.

(E) If the disbursements were paid out of a segregated bank account which consists of funds contributed solely by individuals who are United States citizens or nationals or lawfully admitted for permanent residence (as defined in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. § 1101(a)(20))) directly to this account for electioneering communications, the names and addresses of all contributors who contributed an aggregate amount of $1,000 or more to that account during the period beginning on the first day of the preceding calendar year and ending on the disclosure date. Nothing in this subparagraph is to be construed as a prohibition on the use of funds in such a segregated account for a purpose other than electioneering communications.

(F) If the disbursements were paid out of funds not described in subparagraph (E), the names and addresses of

all contributors who contributed an aggregate amount of $1,000 or more to the person making the disbursement during the period beginning on the first day of the preceding calendar year and ending on the disclosure date.

(3) *Electioneering communication.* For purposes of this subsection—

(A) *In general.*

(i) The term 'electioneering communication' means any broadcast, cable, or satellite communication which—

(I) refers to a clearly identified candidate for Federal office;

(II) is made within—

(aa) 60 days before a general, special, or runoff election for the office sought by the candidate; or

(bb) 30 days before a primary or preference election, or a convention or caucus of a political party that has authority to nominate a candidate, for the office sought by the candidate; and

(III) in the case of a communication which refers to a candidate for an office other than President or Vice President, is targeted to the relevant electorate.

(ii) If clause (i) is held to be constitutionally insufficient by final judicial decision to support the regulation provided herein, then the term 'electioneering communication' means any broadcast, cable, or satellite communication which promotes or supports a candidate for that office, or attacks or opposes a candidate for that office (regardless of whether the communication expressly advocates a vote for or against a candidate) and which also is suggestive of no plausible meaning other than an exhortation to vote for or against a specific candidate. Nothing in this subparagraph shall be construed to affect the interpretation or application of section 100.22(b) of title 11, Code of Federal Regulations.

(B) *Exceptions.* The term 'electioneering communication' does not include—

(i) a communication appearing in a news story, commentary, or editorial distributed through the facilities of any broadcasting station, unless such facilities are owned or controlled by any political party, political committee, or candidate;

(ii) a communication which constitutes an expenditure or an independent expenditure under this Act;

(iii) a communication which constitutes a candidate debate or forum conducted pursuant to regulations adopted by the Commission, or which solely promotes such a debate or forum and is made by or on behalf of the person sponsoring the debate or forum; or

(iv) any other communication exempted under such regulations as the Commission may promulgate (consistent with the requirements of this paragraph) to ensure the appropriate implementation of this paragraph, except that under any such regulation a communication may not be exempted if it meets the requirements of this paragraph and is described in section 301(20)(A)(iii) (2 U.S.C. § 431(20)(A)(iii)).

(C) *Targeting to relevant electorate.* For purposes of this paragraph, a communication which refers to a clearly identified candidate for Federal office is 'targeted to the relevant electorate' if the communication can be received by 50,000 or more persons—

(i) in the district the candidate seeks to represent, in the case of a candidate for Representative in, or Delegate or Resident Commissioner to, the Congress; or

(ii) in the State the candidate seeks to represent, in the case of a candidate for Senator.

(4) *Disclosure date.* For purposes of this subsection; the term 'disclosure date' means—

(A) the first date during any calendar year by which a person has made disbursements for the direct costs of producing or airing electioneering communications aggregating in excess of $10,000; and

(B) any other date during such calendar year by which a person has made disbursements for the direct costs of producing or airing electioneering communications aggregating in excess of $10,000 since the most recent disclosure date for such calendar year.

(5) *Contracts to disburse.* For purposes of this subsection, a person shall be treated as having made a disbursement if the person has executed a contract to make the disbursement.

(6) *Coordination with other requirements.* Any requirement to report under this subsection shall be in addition to any other reporting requirement under this Act.

(7) *Coordination with Internal Revenue Code.* Nothing in this subsection may be construed to establish, modify, or otherwise affect the definition of political activities or electioneering activities (including the definition of participating in, intervening in, or influencing or attempting to influence a political campaign on behalf of or in opposition to any candidate for public office) for purposes of the Internal Revenue Code of 1986.

(g) *Time for reporting certain expenditures.*

(1) *Expenditures aggregating $1,000.*

(A) *Initial report.* A person (including a political committee) that makes or contracts to make independent expenditures aggregating $1,000 or more after the 20th day, but more than 24 hours, before the date of an election shall file a report describing the expenditures within 24 hours.

(B) *Additional reports.* After a person files a report under subparagraph (A), the person shall file an additional report within 24 hours after each time the person makes

or contracts to make independent expenditures aggregating an additional $1,000 with respect to the same election as that to which the initial report relates.

(2) *Expenditures aggregating $10,000.*

(A) *Initial report*. A person (including a political commit tee) that makes or contracts to make independent expenditures aggregating $10,000 or more at any time up to and including the 20th day before the date of an election shall file a report describing the expenditures within 48 hours.

(B) *Additional reports*. After a person files a report under subparagraph (A), the person shall file an additional report within 48 hours after each time the person makes or contracts to make independent expenditures aggregating an additional $10,000 with respect to the same election as that to which the initial report relates.

(3) *Place of filing; Contents.* A report under this subsection—

(A) shall be filed with the Commission; and

(B) shall contain the information required by subsection (b)(6)(B)(iii), including the name of each candidate whom an expenditure is intended to support or oppose.

(4) *Time of filing for expenditures aggregating $1,000*. Not withstanding subsection (a)(5), the time at which the statement under paragraph (1) is received by the Commission or any other recipient to whom the notification is required to be sent shall be considered the time of filing of the statement with the recipient.

(h) *Reports from Inaugural Committees*. The Federal Election Commission shall make any report filed by an Inaugural Committee under section 510 of title 36, United States Code, accessible to the public at the offices of the Commission and on the Internet not later than 48 hours after the report is received by the Commission.

(i) *Disclosure of Bundled Contributions*.—

(1) *Required disclosure.*—Each committee described in paragraph (6) shall include in the first report required to be filed under this section after each covered period (as defined in paragraph (2)) a separate schedule setting forth the name, address, and employer of each person reasonably known by the committee to be a person described in paragraph (7) who provided 2 or more bundled contributions to the committee in an aggregate amount greater than the applicable threshold (as defined in paragraph (3)) during the covered period, and the aggregate amount of the bundled contributions provided by each such person during the covered period.

(2) *Covered period.*—In this subsection, a 'covered period' means, with respect to a committee—

(A) the period beginning January 1 and ending June 30 of each year;

(B) the period beginning July 1 and ending December 31 of each year; and

(C) any reporting period applicable to the committee under this section during which any person described in paragraph (7) provided 2 or more bundled contributions to

the committee in an aggregate amount greater than the applicable threshold.

(3) *Applicable threshold.*—

(A) *In general.*—In this subsection, the 'applicable threshold' is $15,000, except that in determining whether the amount of bundled contributions provided to a committee by a person described in paragraph (7) exceeds the applicable threshold, there shall be excluded any contribution made to the committee by the person or the person's spouse.

(B) *Indexing.*—In any calendar year after 2007, section 315(c)(1)(B) shall apply to the amount applicable under subparagraph (A) in the same manner as such section applies to the limitations established under subsections (a)(1)(A), (a)(1)(B), (a)(3), and (h) of such section, except that for purposes of applying such section to the amount applicable under subparagraph (A), the 'base period' shall be 2006.

(4) *Public availability.*—The Commission shall ensure that, to the greatest extent practicable—

(A) information required to be disclosed under this subsection is publicly available through the Commission website in a manner that is searchable, sortable, and downloadable; and

(B) the Commission's public database containing information disclosed under this subsection is linked electronically to the websites maintained by the Secretary of the Senate and the Clerk of the House of Representatives containing information filed pursuant to the Lobbying Disclosure Act of 1995.

(5) *Regulations.*—Not later than 6 months after the date of enactment of the Honest Leadership and Open Government Act of 2007, the Commission shall promulgate regulations to implement this subsection. Under such regulations, the Commission—

(A) may, notwithstanding paragraphs (1) and (2), provide for quarterly filing of the schedule described in paragraph (1) by a committee which files reports under this section more frequently than on a quarterly basis;

(B) shall provide guidance to committees with respect to whether a person is reasonably known by a committee to be a person described in paragraph (7), which shall include a requirement that committees consult the websites maintained by the Secretary of the Senate and the Clerk of the House of Representatives containing information filed pursuant to the Lobbying Disclosure Act of 1995;

(C) may not exempt the activity of a person described in paragraph (7) from disclosure under this subsection on the grounds that the person is authorized to engage in fundraising for the committee or any other similar grounds; and

(D) shall provide for the broadest possible disclosure of activities described in this subsection by persons described in paragraph (7) that is consistent with this subsection.

(6) *Committees described.*—A committee described in this paragraph is an authorized committee of a candidate, a leadership PAC, or a political party committee.

(7) *Persons described.*—A person described in this paragraph is any person, who, at the time a contribution is forwarded to a committee as described in paragraph (8)(A)(i) or is received by a committee as described in paragraph (8)(A)(ii), is—

(A) a current registrant under section 4(a) of the Lobbying Disclosure Act of 1995;

(B) an individual who is listed on a current registration filed under section 4(b)(6) of such Act or a current report under section 5(b)(2)(C) of such Act; or

(C) a political committee established or controlled by such a registrant or individual.

(8) *Definitions.*—For purposes of this subsection, the following definitions apply:

(A) *Bundled contribution.*—The term 'bundled contribution' means, with respect to a committee described in paragraph (6) and a person described in paragraph (7), a contribution (subject to the applicable threshold) which is—

(i) forwarded from the contributor or contributors to the committee by the person; or

(ii) received by the committee from a contributor or contributors, but credited by the committee or candidate involved (or, in the case of a leadership PAC, by the individual referred to in subparagraph (B) involved) to the person through records, designations, or other means of recognizing that a certain amount of money has been raised by the person.

(B) *Leadership pac.*—The term 'leadership PAC' means, with respect to a candidate for election to Federal office or an individual holding Federal office, a political committee that is directly or indirectly established, financed, maintained or controlled by the candidate or the individual but which is not an authorized committee of the candidate or individual and which is not affiliated with an authorized committee of the candidate or individual, except that such term does not include a political committee of a political party.

Pub. L. 92–225, title III, § 304, Feb. 7, 1972, 86 Stat. 14; Pub. L. 93–443, title II, §§ 204(a)–(d), 208(c)(4), Oct. 15, 1974, 88 Stat. 1276–1278, 1286; Pub. L. 94–283, title I, § 104, May 11, 1976, 90 Stat. 480; Pub. L. 96–187, title I, § 104, Jan. 8, 1980, 93 Stat. 1348; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 104–79, §§ 1(a), 3(b), Dec. 28, 1995, 109 Stat. 791, 792; Pub. L. 106–58, title VI, §§ 639(a), 641(a), Sept. 29, 1999, 113 Stat. 476, 477; Pub. L. 106–346, § 101(a) [title V, § 502(a), (c)], Oct. 23, 2000, 114 Stat. 1356, 1356A–49; Pub. L. 107–155, title I, § 103(a), title II, §§ 201(a), 212, title III, §§ 304(b), 306, 308(b), title V, §§ 501, 503, Mar. 27, 2002, 116 Stat. 87, 88, 93, 99, 102, 104, 114, 115; Pub. L. 108–199, div. F, title VI, § 641, Jan. 23, 2004, 118 Stat. 359; Pub. L. 110–81, title II, § 204(a), Sept. 14, 2007, 121 Stat. 744.

2 U.S.C. § 437. Reports on convention financing

Each committee or other organization which—

(1) represents a State, or a political subdivision thereof, or any group of persons, in dealing with officials of a national political party with respect to matters involving a convention held in such State or political subdivision to nominate a candidate for the office of President or Vice President, or

(2) represents a national political party in making arrangements for the convention of such party held to nominate a candidate for the office of President or Vice President, shall, within 60 days following the end of the convention (but not later than 20 days prior to the date on which presidential and vice-presidential electors are chosen), file with the Commission a full and complete financial statement, in such form and detail as it may prescribe, of the sources from which it derived its funds, and the purpose for which such funds were expended.

Pub. L. 92–225, title III, § 305, formerly § 307, Feb. 7, 1972, 86 Stat. 16; Pub. L. 93–443, title II, § 208(c)(6), Oct. 15, 1974, 88 Stat. 1286; renumbered § 305 and amended Pub. L. 96–187, title I, §§ 105(2), 112(a), Jan. 8, 1980, 93 Stat. 1354, 1366.

2 U.S.C. § 437c. Federal Election Commission

(a) *Establishment; membership; term of office; vacancies; qualifications; compensation; chairman and vice chairman.*

(1) There is established a commission to be known as the Federal Election Commission. The Commission is composed of the Secretary of the Senate and the Clerk of the House of Representatives or their designees, ex officio and without the right to vote, and 6 members appointed by the President, by and with the advice and consent of the Senate. No more than 3 members of the Commission appointed under this paragraph may be affiliated with the same political party.

(2)(A) Members of the Commission shall serve for a single term of 6 years, except that of the members first appointed—

(i) two of the members, not affiliated with the same political party, shall be appointed for terms ending on April 30, 1977;

(ii) two of the members, not affiliated with the same political party, shall be appointed for terms ending on April 30, 1979; and

(iii) two of the members, not affiliated with the same political party, shall be appointed for terms ending on April 30, 1981.

(B) A member of the Commission may serve on the Commission after the expiration of his or her term until his or her successor has taken office as a member of the Commission.

(C) An individual appointed to fill a vacancy occurring other than by the expiration of a term of office shall be appointed only for the unexpired term of the member he or she succeeds.

(D) Any vacancy occurring in the membership of the Commission shall be filled in the same manner as in the case of the original appointment.

(3) Members shall be chosen on the basis of their experience, integrity, impartiality, and good judgment and members (other than the Secretary of the Senate and the Clerk of the House of Representatives) shall be individuals who, at the time appointed to the Commission, are not elected or appointed officers or employees in the executive, legislative, or judicial branch of the Federal Government. Such members of the Commission shall not engage in any other business, vocation, or employment. Any individual who is engaging in any other business, vocation, or employment at the time of his or her appointment to the Commission shall terminate or liquidate such activity no later than 90 days after such appointment.

(4) Members of the Commission (other than the Secretary of the Senate and the Clerk of the House of Representatives) shall receive compensation equivalent to the compensation paid at level IV of the Executive Schedule (5 U.S.C. § 5315).

(5) The Commission shall elect a chairman and a vice chairman from among its members (other than the Secretary of the Senate and the Clerk of the House of Representatives) for a term of one year. A member may serve as chairman only once during any term of office to which such member is appointed. The chairman and the vice chairman shall not be affiliated with the same political party. The vice chairman shall act as chairman in the absence or disability of the chairman or in the event of a vacancy in such office.

(b) *Administration, enforcement, and formulation of policy; exclusive jurisdiction of civil enforcement; Congressional authorities or functions with respect to elections for Federal office.*

(1) The Commission shall administer, seek to obtain compliance with, and formulate policy with respect to, this Act and chapter 95 and chapter 96 of title 26. The Commission shall have exclusive jurisdiction with respect to the civil enforcement of such provisions.

(2) Nothing in this Act shall be construed to limit, restrict, or diminish any investigatory, informational, oversight, supervisory, or disciplinary authority or function of the Congress or any committee of the Congress with respect to elections for Federal office.

(c) *Voting requirements; delegation of authorities.* All decisions of the Commission with respect to the exercise of its duties and powers under the provisions of this Act shall be made by a majority vote of the members of the Commission. A member of the Commission may not delegate to any person his or her vote or any decision making authority or duty vested in the Commission by the provisions of this Act, except that the affirmative vote of 4 members of the Commission shall be required in order for the Commission to take any action in accordance with paragraph (6), (7), (8), or (9) of section 437d(a) of this title or with chapter 95 or chapter 96 of title 26.

(d) *Meetings*. The Commission shall meet at least once each month and also at the call of any member.

(e) *Rules for conduct of activities; judicial notice of seal; principal office.* The Commission shall prepare written rules for the conduct of its activities, shall have an official seal which shall be judicially

noticed, and shall have its principal office in or near the District of Columbia (but it may meet or exercise any of its powers anywhere in the United States).

(f) *Staff director and general counsel; appointment and compensation; appointment and compensation of personnel and procurement of intermittent services by staff director; use of assistance, personnel, and facilities of Federal agencies and departments; counsel for defense of actions.*

(1) The Commission shall have a staff director and a general counsel who shall be appointed by the Commission. The staff director shall be paid at a rate not to exceed the rate of basic pay in effect for level IV of the Executive Schedule (5 U.S.C. § 5315). The general counsel shall be paid at a rate not to exceed the rate of basic pay in effect for level V of the Executive Schedule (5 U.S.C. § 5316). With the approval of the Commission, the staff director may appoint and fix the pay of such additional personnel as he or she considers desirable without regard to the provisions of title 5, United States Code, governing appointments in the competitive service.

(2) With the approval of the Commission, the staff director may procure temporary and intermittent services to the same extent as is authorized by section 3109(b) of title 5, United States Code, but at rates for individuals not to exceed the daily equivalent of the annual rate of basic pay in effect for grade GS–15 of the General Schedule (5 U.S.C. § 5332).

(3) In carrying out its responsibilities under this Act, the Commission shall, to the fullest extent practicable, avail itself of the assistance, including personnel and facilities of other agencies and departments of the United States. The heads of such agencies and departments may make available to the Commission such personnel, facilities, and other assistance, with or without reimbursement, as the Commission may request.

(4) Notwithstanding the provisions of paragraph (2), the Commission is authorized to appear in and defend against any action instituted under this Act, either—

(A) by attorneys employed in its office, or

(B) by counsel whom it may appoint, on a temporary basis as may be necessary for such purpose, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and whose compensation it may fix without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title. The compensation of counsel so appointed on a temporary basis shall be paid out of any funds otherwise avail-

able to pay the compensation of employees of the Commission.

Pub. L. 92–225, title III, § 306, formerly § 310, as added Pub. L. 93–443, title II, § 208(a), Oct. 15, 1974, 88 Stat. 1280; renumbered § 309 and amended Pub. L. 94–283, title I, § § 101(a)–(d), 105, May 11, 1976, 90 Stat. 475, 476, 481; renumbered § 306 and amended Pub. L. 96–187, title I, § § 105(3), (6), 112(b), Jan. 8, 1980, 93 Stat. 1354, 1366; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 105–61, title V, § 512(a), Oct. 10, 1997, 111 Stat. 1305.

2 U.S.C. § 437d. Powers of the Commission

(a) *Specific authorities.* The Commission has the power—

(1) to require by special or general orders, any person to submit, under oath, such written reports and answers to questions as the Commission may prescribe;

(2) to administer oaths or affirmations;

(3) to require by subpoena, signed by the chairman or the vice chairman, the attendance and testimony of witnesses and the production of all documentary evidence relating to the execution of its duties;

(4) in any proceeding or investigation, to order testimony to be taken by deposition before any person who is designated by the Commission and has the power to administer oaths and, in such instances, to compel testimony and the production of evidence in the same manner as authorized under paragraph (3);

(5) to pay witnesses the same fees and mileage as are paid in like circumstances in the courts of the United States;

(6) to initiate (through civil actions for injunctive, declaratory, or other appropriate relief), defend (in the case of any civil action brought under section 437g(a)(8) of this title) or appeal any civil action in the name of the Commission to enforce the provisions of this Act and chapter 95 and chapter 96 of title 26, through its general counsel;

(7) to render advisory opinions under section 437f of this title;

(8) to develop such prescribed forms and to make, amend, and repeal such rules, pursuant to the provisions of chapter 5 of title 5, United States Code, as are necessary to carry out the provisions of this Act and chapter 95 and chapter 96 of title 26; and

(9) to conduct investigations and hearings expeditiously, to encourage voluntary compliance, and to report apparent violations to the appropriate law enforcement authorities.

(b) *Judicial orders for compliance with subpoenas and orders of Commission; contempt of court.* Upon petition by the Commission, any United States District court within the jurisdiction of which any inquiry is being carried on may, in case of refusal to obey a subpoena or order of the Commission issued under subsection (a) of this section, issue an order requiring compliance. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

(c) *Civil liability for disclosure of information.* No person shall be subject to civil liability to any person (other than the Commission

or the United States) for disclosing information at the request of the Commission.

(d) *Concurrent transmissions to Congress or member of budget estimates, etc.; prior submission of legislative recommendations, testimony, or comments on legislation*

(1) Whenever the Commission submits any budget estimate or request to the President or the Office of Management and Budget, it shall concurrently transmit a copy of such estimate or request to the Congress.

(2) Whenever the Commission submits any legislative recommendation, or testimony, or comments on legislation, requested by the Congress or by any Member of the Congress, to the President or the Office of Management and Budget, it shall concurrently transmit a copy thereof to the Congress or to the Member requesting the same. No officer or agency of the United States shall have any authority to require the Commission to submit its legislative recommendations, testimony, or comments on legislation, to any office or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress.

(e) *Exclusive civil remedy for enforcement.* Except as provided in section 437g(a)(8) of this title, the power of the Commission to initiate civil actions under subsection (a)(6) of this section shall be the exclusive civil remedy for the enforcement of the provisions of this Act.

Pub. L. 92–225, title III, § 307, formerly § 311, as added Pub. L. 93–443, title II, § 208(a), Oct. 15, 1974, 88 Stat. 1282; renumbered § 310 and amended Pub. L. 94–283, title I, § § 105, 107, 115(b), May 11, 1976, 90 Stat. 481, 495; renumbered § 307 and amended Pub. L. 96–187, title I, § § 105(3), 106, Jan. 8, 1980, 93 Stat. 1354, 1356; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095.

2 U.S.C. § 437f. Advisory opinions

(a) *Requests by persons, candidates, or authorized committees; subject matter; time for response.*

(1) Not later than 60 days after the Commission receives from a person a complete written request concerning the application of this Act, chapter 95 or chapter 96 of title 26, or a rule or regulation prescribed by the Commission, with respect to a specific transaction or activity by the person, the Commission shall render a written advisory opinion relating to such transaction or activity to the person.

(2) If an advisory opinion is requested by a candidate, or any authorized committee of such candidate, during the 60-day period before any election for Federal office involving the requesting party, the Commission shall render a written advisory opinion relating to such request no later than 20 days after the Commission receives a complete written request.

(b) *Procedures applicable to initial proposal of rules or regulations, and advisory opinions.* Any rule of law which is not stated in this Act or in chapter 95 or chapter 96 of title 26 may be initially proposed by the Commission only as a rule or regulation pur-

suant to procedures established in section 438(d) of this title. No opinion of an advisory nature may be issued by the Commission or any of its employees except in accordance with the provisions of this section.

(c) *Persons entitled to rely upon opinions; scope of protection for good faith reliance.*

(1) Any advisory opinion rendered by the Commission under subsection (a) of this section may be relied upon by—

(A) any person involved in the specific transaction or activity with respect to which such advisory opinion is rendered; and

(B) any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which such advisory opinion is rendered.

(2) Notwithstanding any other provisions of law, any person who relies upon any provision or finding of an advisory opinion in accordance with the provisions of paragraph (1) and who acts in good faith in accordance with the provisions and findings of such advisory opinion shall not, as a result of any such act, be subject to any sanction provided by this Act or by chapter 95 or chapter 96 of title 26.

(d) *Requests made public; submission of written comments by interested public.* The Commission shall make public any requests made under subsection (a) of this section for an advisory opinion. Before rendering an advisory opinion, the Commission shall accept written comments submitted by any interested party within the 10-day period following the date the request is made public.

Pub. L. 92–225, title III, § 308, formerly § 313, as added Pub. L. 93–443, title II, § 208(a), Oct. 15, 1974, 88 Stat. 1283; renumbered § 312 and amended Pub. L. 94–283, title I, § § 105, 108(a), May 11, 1976, 90 Stat. 481, 482; renumbered § 308 and amended Pub. L. 96–187, title I, § § 105(4), 107(a), Jan. 8, 1980, 93 Stat. 1354, 1357; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095.

2 U.S.C. § 437g. Enforcement

(a) *Administrative and judicial practice and procedure.*

(1) Any person who believes a violation of this Act or of chapter 95 or chapter 96 of title 26 has occurred, may file a complaint with the Commission. Such complaint shall be in writing, signed and sworn to by the person filing such complaint, shall be notarized, and shall be made under penalty of perjury and subject to the provisions of section 1001 of title 18. Within 5 days after receipt of a complaint, the Commission shall notify, in writing, any person alleged in the complaint to have committed such a violation. Before the Commission conducts any vote on the complaint, other than a vote to dismiss, any person so notified shall have the opportunity to demonstrate, in writing, to the Commission within 15 days after notification that no action should be taken against such person on the basis of the complaint. The Commission may not conduct any investigation or take any other action under this section solely

on the basis of a complaint of a person whose identity is not disclosed to the Commission.

(2) If the Commission, upon receiving a complaint under paragraph (1) or on the basis of information ascertained in the normal course of carrying out its supervisory responsibilities, determines, by an affirmative vote of 4 of its members, that it has reason to believe that a person has committed, or is about to commit, a violation of this Act or chapter 95 or chapter 96 of title 26, the Commission shall, through its chairman or vice chairman, notify the person of the alleged violation. Such notification shall set forth the factual basis for such alleged violation. The Commission shall make an investigation of such alleged violation, which may include a field investigation or audit, in accordance with the provisions of this section.

(3) The general counsel of the Commission shall notify the respondent of any recommendation to the Commission by the general counsel to proceed to a vote on probable cause pursuant to paragraph (4)(A)(i). With such notification, the general counsel shall include a brief stating the position of the general counsel on the legal and factual issues of the case. Within 15 days of receipt of such brief, respondent may submit a brief stating the position of such respondent on the legal and factual issues of the case, and replying to the brief of general counsel. Such briefs shall be filed with the Secretary of the Commission and shall be considered by the Commission before proceeding under paragraph (4).

(4)(A)(i) Except as provided in clauses (ii) and subparagraph (C), if the Commission determines, by an affirmative vote of 4 of its members, that there is probable cause to believe that any person has committed, or is about to commit, a violation of this Act or of chapter 95 or chapter 96 of title 26, the Commission shall attempt, for a period of at least 30 days, to correct or prevent such violation by informal methods of conference, conciliation, and persuasion, and to enter into a conciliation agreement with any person involved. Such attempt by the Commission to correct or prevent such violation may continue for a period of not more than 90 days. The Commission may not enter into a conciliation agreement under this clause except pursuant to an affirmative vote of 4 of its members. A conciliation agreement, unless violated, is a complete bar to any further action by the Commission, including the bringing of a civil proceeding under paragraph (6)(A).

(ii) If any determination of the Commission under clause (i) occurs during the 45-day period immediately preceding any election, then the Commission shall attempt, for a period of at least 15 days, to correct or prevent the violation involved by the methods specified in clause (i).

(B)(i) No action by the Commission or any person, and no information derived, in connection with any conciliation attempt by the Commission under subparagraph (A) may be made public by the Commission without the written consent of the respondent and the Commission.

(ii) If a conciliation agreement is agreed upon by the Commission and the respondent, the Commission shall make public

any conciliation agreement signed by both the Commission and the respondent. If the Commission makes a determination that a person has not violated this Act or chapter 95 or chapter 96 of title 26, the Commission shall make public such determination.

(C)(i) Notwithstanding subparagraph (A), in the case of a violation of any requirement of section 304(a) of the Act (2 U.S.C. § 434(a)), the Commission may—

(I) find that a person committed such a violation on the basis of information obtained pursuant to the procedures described in paragraphs (1) and (2); and

(II) based on such finding, require the person to pay a civil money penalty in an amount determined under a schedule of penalties which is established and published by the Commission and which takes into account the amount of the violation involved, the existence of previous violations by the person, and such other factors as the Commission considers appropriate.

(ii) The Commission may not make any determination adverse to a person under clause (i) until the person has been given written notice and an opportunity to be heard before the Commission.

(iii) Any person against whom an adverse determination is made under this subparagraph may obtain a review of such determination in the district court of the United States for the district in which the person resides, or transacts business, by filing in such court (prior to the expiration of the 30-day period which begins on the date the person receives notification of the determination) a written petition requesting that the determination be modified or set aside.

(iv) This subparagraph shall apply with respect to violations that relate to reporting periods that begin on or after January 1, 2000, and that end on or before December 31, 2013.

(5)(A) If the Commission believes that a violation of this Act or of chapter 95 or chapter 96 of title 26 has been committed, a conciliation agreement entered into by the Commission under paragraph (4)(A) may include a requirement that the person involved in such conciliation agreement shall pay a civil penalty which does not exceed the greater of $5,000 or an amount equal to any contribution or expenditure involved in such violation.

(B) If the Commission believes that a knowing and willful violation of this Act or of chapter 95 or chapter 96 of title 26 has been committed, a conciliation agreement entered into by the Commission under paragraph (4)(A) may require that the person involved in such conciliation agreement shall pay a civil penalty which does not exceed the greater of $10,000 or an amount equal to 200 percent of any contribution or expenditure involved in such violation (or in the case of a violation of section 320 (2 U.S.C. § 441f), which is not less than 300 percent of the amount involved in the violation and is not more than the greater of $50,000 or 1000 percent of the amount involved in the violation).

(C) If the Commission by an affirmative vote of 4 of its members, determines that there is probable cause to believe that a knowing and willful violation of this Act which is subject to subsection (d) of this section, or a knowing and willful violation of chapter 95 or chapter 96 of title 26, has occurred or is about to occur, it may refer such apparent violation to the Attorney General of the United States without regard to any limitations set forth in paragraph (4)(A).

(D) In any case in which a person has entered into a conciliation agreement with the Commission under paragraph (4)(A), the Commission may institute a civil action for relief under paragraph (6)(A) if it believes that the person has violated any provision of such conciliation agreement. For the Commission to obtain relief in any civil action, the Commission need only establish that the person has violated, in whole or in part, any requirement of such conciliation agreement.

(6)(A) If the Commission is unable to correct or prevent any violation of this Act or of chapter 95 or chapter 96 of title 26, by the methods specified in paragraph (4), the Commission may, upon an affirmative vote of 4 of its members, institute a civil action for relief, including a permanent or temporary injunction, restraining order, or any other appropriate order (including an order for a civil penalty which does not exceed the greater of $5,000 or an amount equal to any contribution or expenditure involved in such violation) in the district court of the United States for the district in which the person against whom such action is brought is found, resides, or transacts business.

(B) In any civil action instituted by the Commission under subparagraph (A), the court may grant a permanent or temporary injunction, restraining order, or other order, including a civil penalty which does not exceed the greater of $5,000 or an amount equal to any contribution or expenditure involved in such violation, upon a proper showing that the person involved has committed, or is about to commit (if the relief sought is a permanent or temporary injunction or a restraining order), a violation of this Act or chapter 95 or chapter 96 of title 26.

(C) In any civil action for relief instituted by the Commission under subparagraph (A), if the court determines that the Commission has established that the person involved in such civil action has committed a knowing and willful violation of this Act or of chapter 95 or chapter 96 of title 26, the court may impose a civil penalty which does not exceed the greater of $10,000 or an amount equal to 200 percent of any contribution or expenditure involved in such violation (or in the case of a violation of section 320 (2 U.S.C. § 441f), which is not less than 300 percent of the amount involved in the violation and is not more than the greater of $50,000 or 1000 percent of the amount involved in the violation.

(7) In any action brought under paragraph (5) or (6), subpoenas for witnesses who are required to attend a United States district court may run into any other district.

(8)(A) Any party aggrieved by an order of the Commission dismissing a complaint filed by such party under paragraph (1), or by a failure of the Commission to act on such complaint during the 120-day period beginning on the date the complaint is filed, may file a petition with the United States District Court for the District of Columbia.

(B) Any petition under subparagraph (A) shall be filed, in the case of a dismissal of a complaint by the Commission, within 60 days after the date of the dismissal.

(C) In any proceeding under this paragraph the court may declare that the dismissal of the complaint or the failure to act is contrary to law, and may direct the Commission to conform with such declaration within 30 days, failing which the complainant may bring, in the name of such complainant, a civil action to remedy the violation involved in the original complaint.

(9) Any judgment of a district court under this subsection may be appealed to the court of appeals, and the judgment of the court of appeals affirming or setting aside, in whole or in part, any such order of the district court shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(10) *Repealed*.

(11) If the Commission determines after an investigation that any person has violated an order of the court entered in a proceeding brought under paragraph (6), it may petition the court for an order to hold such person in civil contempt, but if it believes the violation to be knowing and willful it may petition the court for an order to hold such person in criminal contempt.

(12)(A) Any notification or investigation made under this section shall not be made public by the Commission or by any person without the written consent of the person receiving such notification or the person with respect to whom such investigation is made.

(B) Any member or employee of the Commission, or any other person, who violates the provisions of subparagraph (A) shall be fined not more than $2,000. Any such member, employee, or other person who knowingly and willfully violates the provisions of subparagraph (A) shall be fined not more than $5,000.

(b) *Notice to persons not filing required reports prior to institution of enforcement action; publication of identity of persons and unfiled reports.* Before taking any action under subsection (a) of this section against any person who has failed to file a report required under section 434(a)(2)(A)(iii) of this title for the calendar quarter immediately preceding the election involved, or in accordance with section 434(a)(2)(A)(i) of this title, the Commission shall notify the person of such failure to file the required reports. If a satisfactory response is not received within 4 business days after the date of notification, the Commission shall, pursuant to section 438(a)(7) of this title, publish before the election the name of the person and the report or reports such person has failed to file.

(c) *Reports by Attorney General of apparent violations.* Whenever the Commission refers an apparent violation to the Attorney General, the Attorney General shall report to the Commission any action taken by the Attorney General regarding the apparent violation. Each report shall be transmitted within 60 days after the date the Commission refers an apparent violation, and every 30 days thereafter until the final disposition of the apparent violation.

(d) *Penalties; defenses; mitigation of offenses.*

(1)(A). Any person who knowingly and willfully commits a violation of any provision of this Act which involves the making, receiving, or reporting of any contribution, donation or expenditure—

(i) aggregating $25,000 or more during a calendar year shall be fined under title 18, United States Code, or imprisoned for not more than 5 years, or both; or

(ii) aggregating $2,000 or more (but less than $25,000) during a calendar year shall be fined under such title, or imprisoned for not more than one year, or both.

(B) In the case of a knowing and willful violation of section 441b(b)(3) of this title, the penalties set forth in this subsection shall apply to a violation involving an amount aggregating $250 or more during a calendar year. Such violation of section 441b(b)(3) of this title may incorporate a violation of section 441c(b), 441f, and 441g of this title.

(C) In the case of a knowing and willful violation of section 441h of this title, the penalties set forth in this subsection shall apply without regard to whether the making, receiving, or reporting of a contribution or expenditure of $1,000 or more is involved.

(D) Any person who knowingly and willfully commits a violation of section 320 (2 U.S.C. § 441f) involving an amount aggregating more than $10,000 during a calendar year shall be—

(i) imprisoned for not more than 2 years if the amount is less than $25,000 (and subject to imprisonment under subparagraph (A) if the amount is $25,000 or more);

(ii) fined not less than 300 percent of the amount involved in the violation and not more than the greater of—

(I) $50,000; or

(II) 1,000 percent of the amount involved in the violation; or

(iii) both imprisoned under clause (i) and fined under clause (ii).

(2) In any criminal action brought for a violation of any provision of this Act or of chapter 95 or chapter 96 of this title 26, any defendant may evidence their lack of knowledge or intent to commit the alleged violation by introducing as evidence a conciliation agreement entered into between the defendant and the Commission under subsection (a)(4)(A) of this section which specifically deals with the act or failure to act constituting such violation and which is still in effect.

(3) In any criminal action brought for a violation of any provision of this Act or of chapter 95 or chapter 96 of title 26, the court before which such action is brought shall take into account, in weighing the seriousness of the violation and in con-

sidering the appropriateness of the penalty to be imposed if the defendant is found guilty, whether—

(A) the specific act or failure to act which constitutes the violation for which the action was brought is the subject of a conciliation agreement entered into between the defendant and the Commission under subparagraph (a)(4)(A);

(B) the conciliation agreement is in effect; and

(C) the defendant is, with respect to the violation involved, in compliance with the conciliation agreement.

Pub. L. 92–225, title III, § 390, formerly § 314, as added Pub. L. 93–443, title II, § 208(a), Oct. 15, 1974, 88 Stat. 1284; renumbered § 313 and amended Pub. L. 94–283, title I, § 105, 109, May 11, 1976, 90 Stat. 481, 483; renumbered § 309 and amended Pub. L. 96–187, title I, §§ 105(4), 108, Jan. 8, 1980, 93 Stat. 1354, 1358; Pub. L. 98–620, title IV, § 402(1)(A), Nov. 8, 1984, 98 Stat. 3357; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 106–58, title VI, § 640(a), (b), Sept. 29, 1999, 113 Stat. 476, 477; Pub. L. 107–155, title III, §§ 312(a), 315(a), (b), Mar. 27, 2002, 116 Stat. 106, 108 Pub. L. 110–433, § 1(a), Oct. 16, 2008, 122 stat. 4971.

2 U.S.C. § 437h. Judicial review

The Commission, the national committee of any political party, or any individual eligible to vote in any election for the office of President may institute such actions in the appropriate district court of the United States, including actions for declaratory judgment, as may be appropriate to construe the constitutionality of any provision of this Act. The district court immediately shall certify all questions of constitutionality of this Act to the United States court of appeals for the circuit involved, which shall hear the matter sitting en banc.

Pub. L. 92–225, title III, § 310, formerly § 315, as added Pub. L. 93–443, title II, § 208(a), Oct. 15, 1974, 88 Stat. 1285; renumbered § 314 and amended Pub. L. 94–283, title I, §§ 105, 115(e), May 11, 1976, 90 Stat. 481, 496; renumbered § 310 and amended Pub. L. 96–187, title I, §§ 105(4), 112(c), Jan. 8, 1980, 93 Stat. 1354, 1366; Pub. L. 98–620, title IV, § 402(1)(B), Nov. 8, 1984, 98 Stat. 3357; Pub. L. 100–352, § 6(a), June 27, 1988, 102 Stat. 663.

2 U.S.C. § 438. Administrative provisions

(a) *Duties of Commission.* The Commission shall—

(1) prescribe forms necessary to implement this Act;

(2) prepare, publish, and furnish to all persons required to file reports and statements under this Act a manual recommending uniform methods of bookkeeping and reporting;

(3) develop a filing, coding, and cross-indexing system consistent with the purposes of this Act.

(4) within 48 hours after the time of the receipt by the Commission of reports and statements filed with it, make them available for public inspection, and copying, at the expense of the person requesting such copying, except that any information copied from such reports or statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and ad-

dress of any political committee to solicit contributions from such committee. A political committee may submit 10 pseudonyms on each report filed in order to protect against the illegal use of names and addresses of contributors, provided such committee attaches a list of such pseudonyms to the appropriate report. The Secretary or the Commission shall exclude these lists from the public record;

(5) keep such designations, reports, and statements for a period of 10 years from the date of receipt, except that designations, reports, and statements that relate solely to candidates for the House of Representatives shall be kept for 5 years from the date of their receipt;

(6)(A) compile and maintain a cumulative index of designations, reports, and statements filed under this Act, which index shall be published at regular intervals and made available for purchase directly or by mail;

(B) compile, maintain, and revise a separate cumulative index of reports and statements filed by multicandidate committees, including in such index a list of multicandidate committees; and

(C) compile and maintain a list of multicandidate committees, which shall be revised and made available monthly;

(7) prepare and publish periodically lists of authorized committees which fail to file reports as required by this Act;

(8) prescribe rules, regulations, and forms to carry out the provisions of this Act, in accordance with the provisions of subsection (d) of this section;

(9) transmit to the President and to each House of the Congress no later than June 1 of each year, a report which states in detail the activities of the Commission in carrying out its duties under this Act, and any recommendations for any legislative or other action the Commission considers appropriate, and

(10) serve as a national clearinghouse for the compilation of information and review of procedures with respect to the administration of Federal elections. The Commission may enter into contracts for the purpose of conducting studies under this paragraph. Reports or studies made under this paragraph shall be available to the public upon the payment of the cost thereof, except that copies shall be made available without cost, upon request, to agencies and branches of the Federal Government.

(b) *Audits and field investigations*. The Commission may conduct audits and field investigations of any political committee required to file a report under section 434 of this title. All audits and field investigations concerning the verification for, and receipt and use of, any payments received by a candidate or committee under chapter 95 or chapter 96 of title 26 shall be given priority. Prior to conducting any audit under this subsection, the Commission shall perform an internal review of reports filed by selected committees to determine if the reports filed by a particular committee meet the threshold requirements for substantial compliance with the Act. Such thresholds for compliance shall be established by the Commission. The Commission may, upon an affirmative vote of 4 of its members, conduct an audit and field investigation of any com-

mittee which does meet the threshold requirements established by the Commission. Such audit shall be commenced within 30 days of such vote, except that any audit of an authorized committee of a candidate, under the provisions of this subsection, shall be commenced within 6 months of the election for which such committee is authorized.

(c) *Statutory provisions applicable to forms and information gathering activities.* Any forms prescribed by the Commission under subsection (a)(1) of this section, and any information-gathering activities of the Commission under this Act, shall not be subject to the provisions of section 3512 of title 44.

(d) *Rules, regulations, or forms; issuance, procedures applicable, etc.*

(1) Before prescribing any rule, regulation, or form under this section or any other provision of this Act, the Commission shall transmit a statement with respect to such rule, regulation, or form to the Senate and the House of Representatives, in accordance with this subsection. Such statement shall set forth the proposed rule, regulation, or form and shall contain a detailed explanation and justification of it.

(2) If either House of the Congress does not disapprove by resolution any proposed rule or regulation submitted by the Commission under this section within 30 legislative days after the date of the receipt of such proposed rule or regulation or within 10 legislative days after the date of receipt of such proposed form, the Commission may prescribe such rule, regulation, or form.

(3) For purposes of this subsection, the term "legislative day" means, with respect to statements transmitted to the Senate, any calendar day on which the Senate is in session, and with respect to statements transmitted to the House of Representatives, any calendar day on which the House of Representatives is in session.

(4) For purposes of this subsection, the terms "rule" and "regulation" mean a provision or series of interrelated provisions stating a single, separable rule of law.

(5)(A) A motion to discharge a committee of the Senate from the consideration of a resolution relating to any such rule, regulation, or form, or a motion to proceed to the consideration of such a resolution, is highly privileged and shall be decided without debate.

(B) Whenever a committee of the House of Representatives reports any resolution relating to any such form, rule or regulation, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. An amendment to the motion is not in order, and is not in order to move to reconsider the vote by which the motion is agreed to or disagreed with.

(e) *Scope of protection for good faith reliance upon rules or regulations.* Notwithstanding any other provision of law, any person who relies upon any rule or regulation prescribe by the Commission in accordance with the provisions of this section and who acts

in good faith in accordance with such rule or regulation shall not, as a result of such act, be subject to any sanction provided by this Act or by chapter 95 or chapter 96 of title 26.

(f) *Promulgation of rules, regulations, and forms by Commission and Internal Revenue Service; report to Congress on cooperative efforts.* In prescribing such rules, regulations, and forms under this section, the Commission and the Internal Revenue Service shall consult and work together to promulgate rules, regulations, and forms which are mutually consistent. The Commission shall report to the Congress annually on the steps it has taken to comply with this subsection.

Pub. L. 92–225, title III, § 311, formerly § 308, Feb. 7, 1972, 86 Stat. 16; renumbered § 316 and amended Pub. L. 93–443, title II, §§ 208(a), (c)(7)–(10), 209(a)(1), (b), Oct. 15, 1974, 88 Stat. 1279, 1286, 1287; renumbered § 315 and amended Pub. L. 94–283, title I, §§ 105, 110, May 11, 1976, 90 Stat. 481, 486; renumbered § 311 and amended Pub. L. 96–187, title I, §§ 105(4), 109, Jan. 8, 1980, 93 Stat. 1354, 1362; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 104–79, § 3(c), Dec. 28, 1995, 109 Stat. 792; Pub. L. 107–252, title VIII, § 801(b), Oct. 29, 2002, 116 Stat. 1726.

2 U.S.C. § 438a. Maintenance of website of election reports

(a) *In general.* The Federal Election Commission shall maintain a central site on the Internet to make accessible to the public all publicly available election-related reports and information.

(b) *Election-related report.* In this section, the term 'election-related report' means any report, designation, or statement required to be filed under the Federal Election Campaign Act of 1971.

(c) *Coordination with other agencies.* Any Federal executive agency receiving election-related information which that agency is required by law to publicly disclose shall cooperate and coordinate with the Federal Election Commission to make such report available through, or for posting on, the site of the Federal Election Commission in a timely manner.

Pub. L. 107–155, title V, § 502, Mar. 27, 2002, 116 Stat. 115.

2 U.S.C. § 439. Statements filed with State officers; "appropriate State" defined; duties of State officers; waiver of duplicate filing requirements for States with electronic access

(a)(1) A copy of each report and statement required to be filed by any person under this Act shall be filed by such person with the Secretary of State (or equivalent State officer) of the appropriate State, or, if different, the officer of such State who is charged by State law with maintaining State election campaign reports. The chief executive officer of such State shall designate any such officer and notify the Commission of any such designation.

(2) For purposes of this subsection, the term "appropriate State" means—

(A) for statements and reports in connection with the campaign for nomination for election of a candidate to the office of President or Vice President, each State in which an expenditure is made on behalf of the candidate; and

(B) for statements and reports in connection with the campaign for nomination for election, or election, of a candidate to the office of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress, the State in which the candidate seeks election; except that political committees other than authorized committees are only required to file, and Secretaries of State required to keep, that portion of the report applicable to candidates seeking election in that State.

(b) The Secretary of State (or equivalent State officer), or the officer designated under subsection (a)(1) of this section, shall—

(1) receive and maintain in an orderly manner all reports and statements required by this Act to be filed therewith;

(2) keep such reports and statements (either in original filed form or in facsimile copy by microfilm or otherwise) for 2 years after their date of receipt;

(3) make each report and statement filed therewith available as soon as practicable (but within 48 hours of receipt) for public inspection and copying during regular business hours, and permit copying of any such report or statement by hand or by duplicating machine at the request of any person, except that such copying shall be at the expense of the person making the request; and

(4) compile and maintain a current list of all reports and statements pertaining to each candidate.

(c) Subsections (a) and (b) shall not apply with respect to any State that, as determined by the Commission, has a system that permits electronic access to, and duplication of, reports and statements that are filed with the Commission.

Pub. L. 92–225, title III, § 312, formerly § 309, Feb. 7, 1972, 86 Stat. 18; renumbered § 317 and amended Pub. L. 93–443, title II, § 208(a), (c)(11), Oct. 15, 1974, 88 Stat. 1279, 1287; renumbered § 316, Pub. L. 94–283, title I, § 105, May 11, 1976, 90 Stat. 481; renumbered § 312 and amended Pub. L. 96–187, title I, §§ 105(4), 110, Jan. 8, 1980, 93 Stat. 1354, 1364; Pub. L. 104–79, § 2, Dec. 28, 1995, 109 Stat. 791.

2 U.S.C. § 439a. Use of contributed amounts for certain purposes

(a) *Permitted uses.* A contribution accepted by a candidate, and any other donation received by an individual as support for activities of the individual as a holder of Federal office, may be used by the candidate or individual—

(1) for otherwise authorized expenditures in connection with the campaign for Federal office of the candidate or individual;

(2) for ordinary and necessary expenses incurred in connection with duties of the individual as a holder of Federal office;

(3) for contributions to an organization described in section 170(c) of the Internal Revenue Code of 1986; or

(4) for transfers, without limitation, to a national, State, or local committee of a political party.

(b) *Prohibited use.*

(1) *In general.* A contribution or donation described in subsection (a) shall not be converted by any person to personal use.

(2) *Conversion.* For the purposes of paragraph (1), a contribution or donation shall be considered to be converted to personal use if the contribution or amount is used to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the candidate's election campaign or individual's duties as a holder of Federal office, including—

(A) a home mortgage, rent, or utility payment;

(B) a clothing purchase;

(C) a noncampaign-related automobile expense;

(D) a country club membership;

(E) a vacation or other noncampaign-related trip;

(F) a household food item;

(G) a tuition payment;

(H) admission to a sporting event, concert, theater, or other form of entertainment not associated with an election campaign; and

(I) dues, fees, and other payments to a health club or recreational facility.

(c) *Restrictions on use of campaign funds for flights on noncommercial Aircraft.*

(1) *In general.* Notwithstanding any other provision of this Act, a candidate for election for Federal office (other than a candidate who is subject to paragraph (2)), or any authorized committee of such a candidate, may not make any expenditure for a flight on an aircraft unless—

(A) the aircraft is operated by an air carrier or commercial operator certificated by the Federal Aviation Administration and the flight is required to be conducted under air carrier safety rules, or, in the case of travel which is abroad, by an air carrier or commercial operator certificated by an appropriate foreign civil aviation authority and the flight is required to be conducted under air carrier safety rules; or

(B) the candidate, the authorized committee, or other political committee pays to the owner, lessee, or other person who provides the airplane the pro rata share of the fair market value of such flight (as determined by dividing the fair market value of the normal and usual charter fare or rental charge for a comparable plane of comparable size by the number of candidates on the flight) within a commercially reasonable time frame after the date on which the flight is taken.

(2) *House candidates.* Notwithstanding any other provision of the Act, in the case of a candidate for election for the office of Representative in, or Delegate or Resident Commissioner to, the Congress, an authorized committee and a leadership PAC of the candidate may not make any expenditure for a flight on an aircraft unless—

(A) the aircraft is operated by an air carrier or commercial operator certificated by the Federal Aviation Administration and the flight is required to be conducted under air

carrier safety rules, or, in the case of travel which is abroad, by an air carrier or commercial operator certificated by an appropriate foreign civil aviation authority and the flight is required to be conducted under air carrier safety rules; or

(B) the aircraft is operated by an entity of the Federal government or the government of any State.

(3) *Exception for aircraft owned or leased by candidate.*

(A) *In general.* Paragraphs (1) and (2) do not apply to a flight on an aircraft owned or leased by the candidate involved or an immediate family member of the candidate (including an aircraft owned by an entity that is not a public corporation in which the candidate or an immediate family member of the candidate has an ownership interest), so long as the candidate does not use the aircraft more than the candidate's or immediate family member's proportionate share of ownership allows.

(B) *Immediate family member defined.*—In this subparagraph (A), the term 'immediate family member' means, with respect to a candidate, a father, mother, son, daughter, brother, sister, husband, wife, father-in-law, or mother-in-law.

(4) *Leadership pac defined.*—In this subsection, the term 'leadership PAC' has the meaning given such term in section 304(i)(8)(B).

Pub. L. 92–225, title III, § 313, as added Pub. L. 107–155, title III, § 301, Mar. 27, 2002, 116 Stat. 95; amended Pub. L. 108–447, div. H, title V, § 532, Dec. 8, 2004, 118 Stat. 3272; Pub. L. 110–81, title VI, § 601(a), Sept. 14, 2007, 121 Stat. 774.

2 U.S.C. § 439c. Authorization of appropriations

NOTE: This section contains the authorization for FEC appropriations for FY 1975 through FY 1978, and for FY 1981. While contained in the United States Code, this provision has no substantive election law content.

2 U.S.C. § 441a. Limitations, contributions, and expenditures

(a) *Dollar limits on contributions.*

(1) Except as provided in subsection (i) and section 315A (2 U.S.C. § 441a–1), no person shall make contributions—

(A) to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed $2,000;

(B) to the political committees established and maintained by a national political party, which are not the authorized political committees of any candidate, in any calendar year which, in the aggregate, exceed $25,000;

(C) to any other political committee (other than a committee described in subparagraph (D)) in any calendar year which, in the aggregate, exceed $5,000; or

(D) to a political committee established and maintained by a State committee of a political party in any calendar year which, in the aggregate, exceed $10,000.

(2) No multicandidate political committee shall make contributions—

(A) to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed $5,000;

(B) to the political committees established and maintained by a national political party, which are not the authorized political committees of any candidate, in any calendar year, which, in the aggregate, exceed $15,000; or

(C) to any other political committee in any calendar year which, in the aggregate, exceed $5,000.

(3) During the period which begins on January 1 of an odd-numbered year and ends on December 31 of the next even numbered year, no individual may make contributions aggregating more than—

(A) $37,500, in the case of contributions to candidates and the authorized committees of candidates;

(B) $57,500, in the case of any other contributions, of which not more than $37,500 may be attributable to contributions to political committees which are not political committees of national political parties.

(4) The limitations on contributions contained in paragraphs (1) and (2) do not apply to transfers between and among political committees which are national, State, district, or local committees (including any subordinate committee thereof) of the same political party. For purposes of paragraph (2), the term "multicandidate political committee" means a political committee which has been registered under section 433 of this title for a period of not less than 6 months, which has received contributions from more than 50 persons, and, except for any State political party organization, has made contributions to 5 or more candidates for Federal office.

(5) For purposes of the limitations provided by paragraph (1) and paragraph (2), all contributions made by political committees established or financed or maintained or controlled by any corporation, labor organization, or any other person, including any parent, subsidiary, branch, division, department, or local unit of such corporation, labor organization, or any other person, or by any group of such persons, shall be considered to have been made by a single political committee, except that—

(A) nothing in this sentence shall limit transfers between political committees of funds raised through joint fundraising efforts;

(B) for purposes of the limitations provided by paragraph (1) and paragraph (2) all contributions made by a single political committee established or financed or maintained or controlled by a national committee of a political party and by a single political committee established or financed or maintained or controlled by the State committee of a political party shall not be considered to have been made by a single political committee; and

(C) nothing in this section shall limit the transfer of funds between the principal campaign committee of a candidate seeking nomination or election to a Federal office

and the principal campaign committee of that candidate for nomination or election to another Federal office if—

(i) such transfer is not made when the candidate is actively seeking nomination or election to both such offices;

(ii) the limitations contained in this Act on contributions by persons are not exceeded by such transfer; and

(iii) the candidate has not elected to receive any funds under chapter 95 or chapter 96 of title 26.

In any case in which a corporation and any of its subsidiaries, branches, divisions, departments, or local units, or a labor organization and any of its subsidiaries, branches, divisions, departments, or local units establish or finance or maintain or control more than one separate segregated fund, all such separate segregated funds shall be treated as a single separate segregated fund for purposes of the limitations provided by paragraph (1) and paragraph (2).

(6) The limitations on contributions to a candidate imposed by paragraphs (1) and (2) of this subsection shall apply separately with respect to each election, except that all elections held in any calendar year for the office of President of the United States (except a general election for such office) shall be considered to be one election.

(7) For purposes of this subsection—

(A) contributions to a named candidate made to any political committee authorized by such candidate to accept contributions on his behalf shall be considered to be contributions made to such candidate;

(B)(i) expenditures made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents, shall be considered to be a contribution to such candidate;

(ii) expenditures made by any person (other than a candidate or candidate's authorized committee) in cooperation, consultation, or concert, with, or at the request or suggestion of, a national, State, or local committee of a political party, shall be considered to be contributions made to such party committee; and

(iii) the financing by any person of the dissemination, distribution, or republication, in whole or in part, of any broadcast or any written, graphic, or other form of campaign materials prepared by the candidate, his campaign committees, or their authorized agents shall be considered to be an expenditure for purposes of this paragraph; and

(C) if—

(i) any person makes, or contracts to make, any disbursement for any electioneering communication (within the meaning of section 304(f)(3)) (2 U.S.C. § 434(f)(3)); and

(ii) such disbursement is coordinated with a candidate or an authorized committee of such candidate, a Federal, State, or local political party or committee

thereof, or an agent or official of any such candidate, party, or committee;

such disbursement or contracting shall be treated as a contribution to the candidate supported by the electioneering communication or that candidate's party and as an expenditure by that candidate or that candidate's party; and

(D) contributions made to or for the benefit of any candidate nominated by a political party for election to the office of Vice President of the United States shall be considered to be contributions made to or for the benefit of the candidate of such party for election to the office of President of the United States.

(8) For purposes of the limitations imposed by this section, all contributions made by a person, either directly or indirectly, on behalf of a particular candidate, including contributions which are in any way earmarked or otherwise directed through an intermediary or conduit to such candidate, shall be treated as contributions from such person to such candidate. The intermediary or conduit shall report the original source and the intended recipient of such contribution to the Commission and to the intended recipient.

(b) *Dollar limits on expenditures by candidates for office of President of the United States.*

(1) No candidate for the office of President of the United States who is eligible under section 9003 of title 26 (relating to condition for eligibility for payments) or under section 9033 of title 26 (relating to eligibility for payments) to receive payments from the Secretary of the Treasury may make expenditures in excess of—

(A) $10,000,000 in the case of a campaign for nomination for election to such office, except the aggregate of expenditures under this subparagraph in any one State shall not exceed the greater of 16 cents multiplied by the voting age population of the State (as certified under subsection (e) of this section), or $200,000; or

(B) $20,000,000 in the case of a campaign for election to such office.

(2) For purposes of this subsection—

(A) expenditures made by or on behalf of any candidate nominated by a political party for election to the office of Vice President of the United States shall be considered to be expenditures made by or on behalf of the candidate of such party for election to the office of President of the United States; and

(B) an expenditure is made on behalf of a candidate, including a vice presidential candidate, if it is made by—

(i) an authorized committee or any other agent of the candidate for purposes of making any expenditure; or

(ii) any person authorized or requested by the candidate, an authorized committee of the candidate, or an agent of the candidate, to make the expenditure.

(c) *Increases on limits based on increases in price index.*

(1)(A) At the beginning of each calendar year (commencing in 1976), as there become available necessary data from the Bureau of Labor Statistics of the Department of Labor, the Secretary of Labor shall certify to the Commission and publish in the Federal Register the percent difference between the price index for the 12 months preceding the beginning of such calendar year and the price index for the base period.

(B) Except as provided in subparagraph (C), in any calendar year after 2002—

(i) a limitation established by subsections (a)(1)(A), (a)(I)(B), (a)(3), (b), (d), or (h) 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.

(C) In the case of limitations under subsections (a)(I)(A), (a)(I)(B), (a)(3), and (h), increases shall only be made in odd numbered years and such increases shall remain in effect for the 2-year period beginning on the first day following the date of the last general election in the year preceding the year in which the amount is increased and ending on the date of the next general election.

(2) For purposes of paragraph (1)—

(A) the term "price index" means the average over a calendar year of the Consumer Price Index (all items—United States city average) published monthly by the Bureau of Labor Statistics; and

(B) the term "base period" means—

(i) for purposes of subsections (b) and (d), calendar year 1974; and

(ii) for purposes of subsections (a)(1)(A), (a)(1)(B), (a)(3), and (h), calendar year 2001.

(d) *Expenditures by national committee, State committee, or subordinate committee of State committee in connection with general election campaign of candidates for Federal office.*

(1) Notwithstanding any other provision of law with respect to limitations on expenditures or limitations on contributions, the national committee of a political party and a State committee of a political party, including any subordinate committee of a State committee, may make expenditures in connection with the general election campaign of candidates for Federal office, subject to the limitations contained in paragraphs (2), (3) and (4) of this subsection.

(2) The national committee of a political party may not make any expenditure in connection with the general election campaign of any candidate for President of the United States who is affiliated with such party which exceeds an amount equal to 2 cents multiplied by the voting age population of the United States (as certified under subsection (e) of this section). Any expenditure under this paragraph shall be in addition to any expenditure by a national committee of a political party serv-

ing as the principal campaign committee of a candidate for the office of President of the United States.

(3) The national committee of a political party, or a State committee of a political party, including any subordinate committee of a State committee, may not make any expenditure in connection with the general election campaign of a candidate for Federal office in a State who is affiliated with such party which exceeds—

(A) in the case of a candidate for election to the office of Senator, or of Representative from a State which is entitled to only one Representative, the greater of—

(i) 2 cents multiplied by the voting age population of the State (as certified under subsection (e) of this section); or

(ii) $20,000; and

(B) in the case of a candidate for election to the office of Representative, Delegate, or Resident Commissioner in any other State, $10,000.

(4) *Independent versus coordinated expenditures by party.*

(A) *In general.* On or after the date on which a political party nominates a candidate, no committee of the political party may make—

(i) any coordinated expenditure under this subsection with respect to the candidate during the election cycle at any time after it makes any independent expenditure (as defined in section 301(17)) (2 U.S.C. § 431(17)) with respect to the candidate during the election cycle; or

(ii) any independent expenditure (as defined in section 301(17)) (2 U.S.C. § 431(17)) with respect to the candidate during the election cycle at any time after it makes any coordinated expenditure under this subsection with respect to the candidate during the election cycle.

(B) *Application.* For purposes of this paragraph, all political committees established and maintained by a national political party (including all congressional campaign committees) and all political committees established and maintained by a State political party (including any subordinate committee of a State committee) shall be considered to be a single political committee.

(C) *Transfers.* A committee of a political party that makes coordinated expenditures under this subsection with respect to a candidate shall not, during an election cycle, transfer any funds to, assign authority to make coordinated expenditures under this subsection to, or receive a transfer of funds from. a committee of the political party that has made or intends to make an independent expenditure with respect to the candidate.

(e) *Certification and publication of estimated voting age population.*

During the first week of January 1975, and every subsequent year, the Secretary of Commerce shall certify to the Commission and publish in the Federal Register an estimate of the voting age

population of the United States, of each State, and of each congressional district as of the first day of July next preceding the date of certification. The term "voting age population" means resident population, 18 years of age or older.

(f) *Prohibited contributions and expenditures.*

No candidate or political committee shall knowingly accept any contribution or make any expenditure in violation of the provisions of this section. No officer or employee of a political committee shall knowingly accept a contribution made for the benefit or use of a candidate, or knowingly make any expenditure on behalf of a candidate, in violation of any limitation imposed on contributions and expenditures under this section.

(g) *Attribution of multi-State expenditures to candidate's expenditure limitation in each State.*

The Commission shall prescribe rules under which any expenditure by a candidate for presidential nominations for use in 2 or more States shall be attributed to such candidate's expenditure limitation in each such State, based on the voting age population in such State which can reasonably be expected to be influenced by such expenditure.

(h) *Senatorial candidates.*

Notwithstanding any other provision of this Act, amounts totaling not more than $35,000 may be contributed to a candidate for nomination for election, or for election, to the United States Senate during the year in which an election is held in which he is such a candidate, by the Republican or Democratic Senatorial Campaign Committee, or the national committee of a political party, or any combination of such committees.

(i) *Increased limit to allow response to expenditures from personal funds.*

(1) *Increase.*

(A) *In general.* Subject to paragraph (2), if the opposition personal funds amount with respect to a candidate for election to the office of Senator exceeds the threshold amount, the limit under subsection (a)(1)(A) (in this subsection referred to as the 'applicable limit') with respect to that candidate shall be the increased limit.

(B) *Threshold amount.*

(i) *State-by-state competitive and fair campaign formula.* In this subsection, the threshold amount with respect to an election cycle of a candidate described in subparagraph (A) is an amount equal to the sum of—

(I) $150,000; and

(II) $0.04 multiplied by the voting age population.

(ii) *Voting age population.* In this subparagraph, the term 'voting age population' means in the case of a candidate for the office of Senator, the voting age population of the State of the candidate (as certified under section 315(e)) (2 U.S.C. § 441a(e)).

(C) *Increased limit.* Except as provided in clause (ii), for purposes of subparagraph (A), if the opposition personal funds amount is over—

(i) 2 times the threshold amount, but not over 4 times that amount—

(I) the increased limit shall be 3 times the applicable limit; and

(II) the limit under subsection (a)(3) shall not apply with respect to any contribution made with respect to a candidate if such contribution is made under the increased limit of subparagraph (A) during a period in which the candidate may accept such a contribution;

(ii) 4 times the threshold amount, but not over 10 times the amount—

(I) the increased limit shall be 6 times the applicable limit; and

(II) the limit under subsection (a)(3) shall not apply with respect to any contribution made with respect to a candidate if such contribution is made under the increased limit of subparagraph (A) during a period in which the candidate may accept such a contribution; and

(iii) 10 times the threshold amount—

(I) the increased limit shall be 6 times the applicable limit;

(II) the limit under subsection (a)(3) shall not apply with respect to any contribution made with respect to a candidate if such contribution is made under the increased limit of subparagraph (A) during a period in which the candidate may accept such a contribution; and

(III) the limits under subsection (d) with respect to any expenditure by a State or national committee of a political party shall not apply.

(D) *Opposition personal funds amount.* The opposition personal funds amount is an amount equal to the excess (if any) of—

(i) the greatest aggregate amount of expenditures from personal funds (as defined in section 304(a)(6)(B)) (2 U.S.C. § 434(a)(6)(B)) that an opposing candidate in the same election makes; over

(ii) the aggregate amount of expenditures from personal funds made by the candidate with respect to the election.

(E) *Special rule for candidate's campaign funds.*

(i) *In general.* For purposes of determining the aggregate amount of expenditures from personal funds under subparagraph (D)(ii), such amount shall include the gross receipts advantage of the candidate's authorized committee.

(ii) *Gross receipts advantage.* For purposes of clause (i), the term 'gross receipts advantage' means the excess, if any, of—

(I) the aggregate amount of 50 percent of gross receipts of a candidate's authorized committee during any election cycle (not including contribu-

tions from personal funds of the candidate) that may be expended in connection with the election, as determined on June 30 and December 31 of the year preceding the year in which a general election is held, over

(II) the aggregate amount of 50 percent of gross receipts of the opposing candidate's authorized committee during any election cycle (not including contributions from personal funds of the candidate) that may be expended in connection with the election, as determined on June 30 and December 31 of the year preceding the year in which a general election is held.

(2) *Time to accept contributions under increased limit.*

(A) *In general.* Subject to subparagraph (B), a candidate and the candidate's authorized committee shall not accept any contribution, and a party committee shall not make any expenditure, under the increased limit under paragraph (1)—

(i) until the candidate has received notification of the opposition personal funds amount under section 304(a)(6)(B) (2 U.S.C. § 434(a)(6)(B)); and

(ii) to the extent that such contribution, when added to the aggregate amount of contributions previously accepted and party expenditures previously made under the increased limits under this subsection for the election cycle, exceeds 110 percent of the opposition personal funds amount.

(B) *Effect of withdrawal of an opposing candidate.* A candidate and a candidate's authorized committee shall not accept any contribution and a party shall not make any expenditure under the increased limit after the date on which an opposing candidate ceases to be a candidate to the extent that the amount of such increased limit is attributable to such an opposing candidate.

(3) *Disposal of excess contributions.*

(A) *In general.* The aggregate amount of contributions accepted by a candidate or a candidate's authorized committee under the increased limit under paragraph (1) and not otherwise expended in connection with the election with respect to which such contributions relate shall, not later than 50 days after the date of such election, be used in the manner described in subparagraph (B).

(B) *Return to contributors.* A candidate or a candidate's authorized committee shall return the excess contribution to the person who made the contribution.

(j) *Limitation on repayment of personal loans.* Any candidate who incurs personal loans made after the effective date of the Bipartisan Campaign Reform Act of 2002 in connection with the candidate's campaign for election shall not repay (directly or indirectly), to the extent such loans exceed $250,000, such loans from

any contributions made to such candidate or any authorized committee of such candidate after the date of such election.

Pub. L. 92–225, title III, § 315, formerly § 320, as added Pub. L. 94–283, title I, § 112(2), May 11, 1976, 90 Stat. 486; renumbered § 315, Pub. L. 96–187, title I, § 105(5), Jan. 8, 1980, 93 Stat. 1354; amended Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 107–155, title I, § 103, title II, § 202, 213, 214(a), title III, §§ 304(a), 307(a)–(d), 316, 319(b), Mar 27, 2002, 116 Stat. 86, 90, 94, 97, 102, 103, 108, 112.

2 U.S.C. § 441a–l. Modification of certain limits for House candidates in response to personal fund expenditures of opponents

(a) *Availability of increased limit.*

(1) *In general.* Subject to paragraph (3), if the opposition personal funds amount with respect to a candidate for election to the office of Representative in, or Delegate or Resident Commissioner to, the Congress exceeds $350,000—

(A) the limit under subsection (a)(1)(A) (2 U.S.C. § 441a(a)(1)(A)) with respect to the candidate shall be tripled;

(B) the limit under subsection (a)(3) (2 U.S.C. § 441a(a)(3)) shall not apply with respect to any contribution made with respect to the candidate if the contribution is made under the increased limit allowed under subparagraph (A) during a period in which the candidate may accept such a contribution; and

(C) the limits under subsection (d) (2 U.S.C. § 441a(d)) with respect to any expenditure by a State or national committee of a political party on behalf of the candidate shall not apply.

(2) *Determination of opposition personal funds amount.*

(A) *In general.* The opposition personal funds amount is an amount equal to the excess (if any) of—

(i) the greatest aggregate amount of expenditures from personal funds (as defined in subsection (b)(1)) that an opposing candidate in the same election makes; over

(ii) the aggregate amount of expenditures from personal funds made by the candidate with respect to the election.

(B) *Special rule for candidate's campaign funds.*

(i) *In general.* For purposes of determining the aggregate amount of expenditures from personal funds under subparagraph (A), such amount shall include the gross receipts advantage of the candidate's authorized committee.

(ii) *Gross receipts advantage.* For purposes of clause (i), the term 'gross receipts advantage' means the excess, if any, of—

(I) the aggregate amount of 50 percent of gross receipts of a candidate's authorized committee during any election cycle (not including contribu-

tions from personal funds of the candidate) that may be expended in connection with the election, as determined on June 30 and December 31 of the year preceding the year in which a general election is held, over

(II) the aggregate amount of 50 percent of gross receipts of the opposing candidate's authorized committee during any election cycle (not including contributions from personal funds of the candidate) that may be expended in connection with the election, as determined on June 30 and December 31 of the year preceding the year in which a general election is held.

(3) *Time to accept contributions under increased limit.*

(A) *In general.* Subject to subparagraph (B), a candidate and the candidate's authorized committee shall not accept any contribution, and a party committee shall not make any expenditure, under the increased limit under paragraph (1)—

(i) until the candidate has received notification of the opposition personal funds amount under subsection (b)(1); and

(ii) to the extent that such contribution, when added to the aggregate amount of contributions previously accepted and party expenditures previously made under the increased limits under this subsection for the election cycle, exceeds 100 percent of the opposition personal funds amount.

(B) *Effect of withdrawal of an opposing candidate.* A candidate and a candidate's authorized committee shall not accept any contribution and a party shall not make any expenditure under the increased limit after the date on which an opposing candidate ceases to be a candidate to the extent that the amount of such increased limit is attributable to such an opposing candidate.

(4) *Disposal of excess contributions.*

(A) *In general.* The aggregate amount of contributions accepted by a candidate or a candidate's authorized committee under the increased limit under paragraph (1) and not otherwise expended in connection with the election with respect to which such contributions relate shall not later than 50 days after the date of such election, be used in the manner described in subparagraph (B).

(B) *Return to contributors.* A candidate or a candidate's authorized committee shall return the excess contribution to the person who made the contribution.

(b) *Notification of expenditures from personal funds.*

(1) *In general.*

(A) *Definition of expenditure from personal funds.* In this paragraph, the term 'expenditure from personal funds' means—

(i) an expenditure made by a candidate using personal funds; and

(ii) a contribution or loan made by a candidate using personal funds or a loan secured using such funds to the candidate's authorized committee.

(B) *Declaration of intent.* Not later than the date that is 15 days after the date on which an individual becomes a candidate for the office of Representative in, or Delegate or Resident Commissioner to, the Congress, the candidate shall file a declaration stating the total amount of expenditures from personal funds that the candidate intends to make, or to obligate to make, with respect to the election that will exceed $350,000.

(C) *Initial notification.* Not later than 24 hours after a candidate described in subparagraph (B) makes or obligates to make an aggregate amount of expenditures from personal funds in excess of $350,000 in connection with any election, the candidate shall file a notification.

(D) *Additional notification.* After a candidate files an initial notification under subparagraph (C), the candidate shall file an additional notification each time expenditures from personal funds are made or obligated to be made in an aggregate amount that exceeds $10,000. Such notification shall be filed not later than 24 hours after the expenditure is made.

(E) *Contents.* A notification under subparagraph (C) or (D) shall include—

(i) the name of the candidate and the office sought by the candidate;

(ii) the date and amount of each expenditure; and

(iii) the total amount of expenditures from personal funds that the candidate has made, or obligated to make, with respect to an election as of the date of the expenditure that is the subject of the notification.

(F) *Place of filing.* Each declaration or notification required to be filed by a candidate under subparagraph (C), (D), or (E) shall be filed with—

(i) the Commission; and

(ii) each candidate in the same election and the national party of each such candidate.

(2) *Notification of disposal of excess contributions.* In the next regularly scheduled report after the date of the election for which a candidate seeks nomination for election to, or election to, Federal office, the candidate or the candidate's authorized committee shall submit to the Commission a report indicating the source and amount of any excess contributions (as determined under subsection (a) and the manner in which the candidate or the candidate's authorized committee used such funds.

(3) *Enforcement.* For provisions providing for the enforcement of the reporting requirements under this subsection, see section 309 (2 U.S.C. § 437g).

Pub. L. 92–225, title III, § 315A, as added Pub. L. 107–155, title III, § 315A, as added Pub. L. 107–155, title III, § 319(a), Mar. 27, 2002, 116 Stat. 109.

2 U.S.C. § 441b. Contributions or expenditures by national banks, corporations, or labor organizations

(a) It is unlawful for any national bank; or any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, or for any corporation whatever, or any labor organization, to make a contribution or expenditure in connection with any election at which presidential and vice presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to, Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices, or for any candidate, political committee, or other person knowingly to accept or receive any contribution prohibited by this section, or any officer or any director of any corporation or any national bank or any officer of any labor organization to consent to any contribution or expenditure by the corporation, national bank, or labor organization, as the case may be, prohibited by this section.

(b)(1) For the purposes. of this section the term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(2) For purposes of this section and section 791(h) of title 15,[1] the term "contribution or expenditure" includes a contribution or expenditure, as those terms are defined in section 301 (2 U.S.C. § 431), and also includes any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value (except a loan of money by a national or State bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business) to any candidate, campaign committee, or political party or organization, in connection with any election to any of the offices referred to in this section or for any applicable electioneering communication, but shall not include

(A) communications by a corporation to its stockholders and executive or administrative personnel and their families or by a labor organization to its members and their families on any subject;

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[1] 15 U.S.C. § 79*l*(h) provides:

(h) Political contributions forbidden.

It shall be unlawful for any registered holding company, or any subsidiary company thereof, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, directly or indirectly—

(1) to make any contribution whatsoever in connection with the candidacy, nomination, election or appointment of any person for or to any office or position in the Government of the United States, a State, or any political subdivision of a State, or any agency, authority, or instrumentality of any one or more of the foregoing; or

(2) to make any contribution to or in support of any political party or any committee or agency thereof.

The term "contribution" as used in this subsection includes any gift, subscription, loan, advance, or deposit of money or anything of value, and includes any contract, agreement, or promise, whether or not legally enforceable, to make a contribution.

(B) nonpartisan registration and get-out-the-vote campaigns by a corporation aimed at its stockholders and executive or administrative personnel and their families, or by a labor organization aimed at its members and their families; and

(C) the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation, labor organization, membership organization, cooperative, or corporation without capital stock.

(3) It shall be unlawful—

(A) for such a fund to make a contribution or expenditure by utilizing money or anything of value secured by physical force, job discrimination, financial reprisals, or the threat of force, job discrimination, or financial reprisal; or by dues, fees, or other moneys required as a condition of membership in a labor organization or as a condition of employment, or by moneys obtained in any commercial transaction;

(B) for any person soliciting an employee for a contribution to such a fund to fail to inform such employee of the political purposes of such fund at the time of such solicitation; and

(C) for any person soliciting an employee for a contribution to such a fund to fail to inform such employee at the time of such solicitation, of his right to refuse to so contribute without any reprisal.

(4)(A) Except as provided in subparagraphs (B), (C), and (D), it shall be unlawful—

(i) for a corporation, or a separate segregated fund established by a corporation, to solicit contributions to such a fund from any person other than its stockholders and their families and its executive or administrative personnel and their families, and

(ii) for a labor organization, or a separate segregated fund established by a labor organization, to solicit contributions to such a fund from any person other than its members and their families.

(B) It shall not be unlawful under this section for a corporation, a labor organization, or a separate segregated fund established by such corporation or such labor organization, to make 2 written solicitations for contributions during the calendar year from any stockholder, executive or administrative personnel, or employee of a corporation or the families of such persons. A solicitation under this subparagraph may be made only by mail addressed to stockholders, executive or administrative personnel, or employees at their residence and shall be so designed that the corporation, labor organization, or separate segregated fund conducting such solicitation cannot determine who makes a contribution of $50 or less as a result of such solicitation and who does not make such a contribution.

(C) This paragraph shall not prevent a membership organization, cooperative, or corporation without capital stock, or a separate segregated fund established by a membership organization, cooperative, or corporation without capital stock, from soliciting contributions to such a fund from members of such organization, cooperative, or corporation without capital stock.

(D) This paragraph shall not prevent a trade association or a separate segregated fund established by a trade association from soliciting contributions from the stockholders and executive or administrative personnel of the member corporations of such trade association and the families of such stockholders or personnel to the extent that such solicitation of such stockholders and personnel, and their families, has been separately and specifically approved by the member corporation involved, and such member corporation does not approve any such solicitation by more than one such trade association in any calendar year.

(5) Notwithstanding any other law, any method of soliciting voluntary contributions or of facilitating the making of voluntary contributions to a separate segregated fund established by a corporation, permitted by law to corporations with regard to stockholders and executive or administrative personnel, shall also be permitted to labor organizations with regard to their members.

(6) Any corporation, including its subsidiaries, branches, divisions, and affiliates, that utilizes a method of soliciting voluntary contributions or facilitating the making of voluntary contributions, shall make available such method, on written request and at a cost sufficient only to reimburse the corporation for the expenses incurred thereby, to a labor organization representing any members working for such corporation, its subsidiaries, branches, divisions, and affiliates.

(7) For purposes of this section, the term "executive or administrative personnel" means individuals employed by a corporation who are paid on a salary, rather than hourly, basis and who have policymaking, managerial, professional, or supervisory responsibilities.

(c) *Rules relating to electioneering communications.*

(1) *Applicable electioneering communication*. For purposes of this section, the term 'applicable electioneering communication' means an electioneering communication (within the meaning of section 304(f)(3)) (2 U.S.C. § 434(f)(3)) which is made by any entity described in subsection (a) of this section or by any other person using funds donated by an entity described in subsection (a) of this section.

(2) *Exception*. Notwithstanding paragraph (1), the term 'applicable electioneering communication' does not include a communication by a section 501(c)(4) organization or a political organization (as defined in section 527(e)(1) of the Internal Revenue Code of 1986) made under section 304(f)(2)(E) or (F) of this Act (2 U.S.C. § 434(f)(2)(E) or (F)) if the communication is paid for exclusively by funds provided directly by individuals who are United States citizens or nationals or lawfully admitted for permanent residence (as defined in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. § 1101(a)(20))). For purposes of the preceding sentence, the term 'provided directly by individuals' does not include funds the source of which is an entity described in subsection (a) of this section.

(3) *Special operating rules*.

(A) *Definition under paragraph (1).* An electioneering communication shall be treated as made by an entity described in subsection (a) if an entity described in sub-

section (a) directly or indirectly disburses any amount for any of the costs of the communication.

(B) *Exception under paragraph (2).* A section 501(c)(4) organization that derives amounts from business activities or receives funds from any entity described in subsection (a) shall be considered to have paid for any communication out of such amounts unless such organization paid for the communication out of a segregated account to which only individuals can contribute, as described in section 304(f)(2)(E) (2 U.S.C. § 434(f)(2)(E)).

(4) *Definitions and rules.* For purposes of this subsection—

(A) the term 'section 501(c)(4) organization' means—

(i) an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code; or

(ii) an organization which has submitted an application to the Internal Revenue Service for determination of its status as an organization described in clause (i); and

(B) a person shall be treated as having made a disbursement if the people has executed a contract to make the disbursement.

(5) *Coordination with Internal Revenue Code.* Nothing in this subsection shall be construed to authorize an organization exempt from taxation under section 501(a) of the Internal Revenue Code of 1986 to carry out any activity which is prohibited under such Code.

(6) *Special rules for targeted communication.*

(A) *Exception does not apply.* Paragraph (2) shall not apply in the case of a targeted communication that is made by an organization described in such paragraph.

(B) *Targeted communication.* For purposes of subparagraph (A), the term 'targeted communication' means an electioneering communication (as defined in section 304(f)(3)) (2 U.S.C. § 434(f)(3)) that is distributed from a television or radio broadcast station or provider of cable or satellite television service and, in the case of a communication which refers to a candidate for an office other than President or Vice President, is targeted to the relevant electorate.

(C) *Definition.* For purposes of this paragraph, a communication is 'targeted to the relevant electorate' if it meets the requirements described in section 304(f)(3)(C) (2 U.S.C. § 434(f)(3)(C)).

Pub. L. 92–225, title III, § 316, formerly § 321, as added Pub. L. 94–283, title I, § 112(2), May 11, 1976, 90 Stat. 490; renumbered § 316 and amended Pub. L. 96–187, title I, §§ 105(5), 112(d), Jan. 8, 1980, 93 Stat. 1354, 1366; Pub. L. 107–155, title II, §§ 203, 204, 214(d), Mar. 27, 2002, 116 Stat. 91, 92, 95.

2 U.S.C. § 441c. Contributions by government contractors

(a) *Prohibition.*

It shall be unlawful for any person—

(1) Who enters into any contract with the United States or any department or agency thereof either for the rendition of personal services or furnishing any material, supplies, or equipment to the United States or any department or agency thereof or for selling any land or building to the United States or any department or agency thereof, if payment for the performance of such contract or payment for such material, supplies, equipment, land, or building is to be made in whole or in part from funds appropriated by the Congress, at any time between the commencement of negotiations for the later of (A) the completion of performance under; or (B) the termination of negotiations for, such contract or furnishing of material, supplies, equipment, land, or buildings, directly or indirectly to make any contribution of money or other things of value, or to promise expressly or implied to make any such contribution to any political party, committee, or candidate for public office or to any person for any political purpose or use; or

(2) knowingly to solicit any such contribution from any such person for any such purpose during any such period.

(b) *Separate segregated funds.*

This section does not prohibit or make unlawful the establishment or administration of, or the solicitation of contributions to, any separate segregated fund by any corporation, labor organization, membership organization, cooperative, or corporation without capital stock for the purpose of influencing the nomination for election, or election, of any person to Federal office, unless the provisions of section 441b of this title prohibit or make unlawful the establishment or administration of, or the solicitation of contributions to, such fund. Each specific prohibition, allowance, and duty applicable to a corporation, labor organization, or separate segregated fund under section 441b of this title applies to a corporation, labor organization, or separate segregated fund to which this subsection applies.

(c) *"Labor organization" defined.*

For purposes of this section, the term "labor organization" has the meaning given it by section 441b(b)(1) of this title.

Pub. L. 92–225, title III, § 317, formerly § 322, as added Pub. L. 94–283, title I, § 112(2), May 11, 1976, 90 Stat. 492; renumbered § 317, Pub. L. 96–187, title I, § 105(5), Jan. 8, 1980, 93 Stat. 1354.

2 U.S.C. § 441d. Publication and distribution of statements and solicitations; charge for newspaper or magazine space

(a) Whenever a political committee makes a disbursement for the purpose of financing any communication through any broadcasting station, newspaper, magazine, outdoor advertising facility, mailing, or any other type of general public political advertising, or whenever any person makes a disbursement for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate, or solicits any contribution through any broadcasting station, newspaper, magazine, outdoor advertising facility, mailing, or any other type of general public political advertising or makes a disbursement for an electioneering commu-

nication (as defined in section 304(f)(3)) (2 U.S.C. § 434(f)(3)), such communication—

(1) if paid for and authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state that the communication has been paid for by such authorized political committee, or

(2) if paid for by other persons but authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state that the communication is paid for by such other persons and authorized by such authorized political committee;

(3) if not authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state the name and permanent street address, telephone number or World Wide Web address of the person who paid for the communication and state that the communication is not authorized by any candidate or candidate's committee.

(b) No person who sells space in a newspaper or magazine to a candidate or to the agent of a candidate, for use in connection with such candidate's campaign, may charge any amount for such space which exceeds the amount charged for comparable use of such space for other purposes.

(c) *Specification.* Any printed communication described in subsection (a) shall—

(1) be of sufficient type size to be clearly readable by the recipient of the communication;

(2) be contained in a printed box set apart from the other contents of the communication; and

(3) be printed with a reasonable degree of color contrast between the background and the printed statement.

(d) *Additional requirements.*

(1) *Communications by candidates or authorized persons.*

(A) *By radio.* Any communication described in paragraph (1) or (2) of subsection (a) which is transmitted through radio shall include, in addition to the requirements of that paragraph, an audio statement by the candidate that identifies the candidate and states that the candidate has approved the communication.

(B) By television. Any communication described in paragraph (1) or (2) of subsection (a) which is transmitted through television shall include, in addition to the requirements of that paragraph, a statement that identifies the candidate and states that the candidate has approved the communication. Such statement—

(i) shall be conveyed by—

(I) an unobscured, full-screen view of the candidate making the statement, or

(II) the candidate in voice-over, accompanied by a clearly identifiable photographic or similar image of the candidate; and

(ii) shall also appear in writing at the end of the communication in a clearly readable manner with a reasonable degree of color contrast between the back-

ground and the printed statement, for a period of at least 4 seconds.

(2) *Communications by others.* Any communication described in paragraph (3) of subsection (a) which is transmitted through radio or television shall include, in addition to the requirements of that paragraph, in a clearly spoken manner, the following audio statement: '_____ is responsible for the content of this advertising.' (with the blank to be filled in with the name of the political committee or other person paying for the communication and the name of any connected organization of the payor). If transmitted through television, the statement shall be conveyed by an unobscured, full-screen view of a representative of the political committee or other person making the statement, or by a representative of such political committee or other person in voice-over, and shall also appear in a clearly readable manner with a reasonable degree of color contrast between the background and the printed statement, for a period of at least 4 seconds.

Pub. L. 92–225, title III, § 318, formerly § 323, as added Pub. L. 94–283, title I, § 112(2), May 11, 1976, 90 Stat. 493; renumbered § 318 and amended Pub. L. 96–187, title I, §§ 105(5), 111, Jan. 8, 1980, 93 Stat. 1354, 1365; Pub. L. 107–155, title III, § 311, Mar. 27, 2002, 116 Stat. 105.

2 U.S.C. § 441e. Contributions and donations by foreign nationals

(a) *Prohibition.* It shall be unlawful for—

(1) a foreign national, directly or indirectly, to make—

(A) a contribution or donation of money or other thing of value, or to make an express or implied promise to make a contribution or donation, in connection with a Federal, State, or local election;

(B) a contribution or donation to a committee of a political party; or

(C) an expenditure, independent expenditure, or disbursement for an electioneering communication (within the meaning of section 304(f)(3)) (2 U.S.C. § 434(f)(3)); or

(2) a person to solicit, accept, or receive a contribution or donation described in subparagraph (A) or (B) of paragraph (1) from a foreign national.

(b) As used in this section, the term "foreign national" means—

(1) a foreign principal, as such term is defined by section 611(b) of title 22 except that the term "foreign national" shall not include any individual who is a citizen of the United States; or

(2) an individual who is not a citizen of the United States or a national of the United States (as defined in section 101(a)(22) of the Immigration and Nationality Act) and who is not law-

fully admitted for permanent residence, as defined by section 1101(a)(20) of title 8.

Pub. L. 92–225, title III, § 319, formerly § 324, as added Pub. L. 94–283, title I, § 112(2), May 11, 1976, 90 Stat. 493; renumbered § 319, Pub. L. 96–187, title I, § 105(5), Jan. 8, 1980, 93 Stat. 1354; amended Pub. L. 107–155, title III, §§ 303, 317, Mar. 27, 2002, 116 Stat. 96, 109.

2 U.S.C. § 441f. Contributions in name of another prohibited

No person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution and no person shall knowingly accept a contribution made by one person in the name of another person.

Pub. L. 92–225, title III, § 320, formerly § 325, as added Pub. L. 94–283, title I, § 112(2), May 11, 1976, 90 Stat. 494; renumbered § 320, Pub. L. 96–187, title I, § 105(5), Jan. 8, 1980, 93 Stat. 1354.

2 U.S.C. § 441g. Limitation on contribution of currency

No person shall make contributions of currency of the United States or currency of any foreign country to or for the benefit of any candidate which, in the aggregate, exceed $100, with respect to any campaign of such candidate for nomination for election, or for election, to Federal office.

Pub. L. 92–225, title III, § 321, formerly § 326, as added Pub. L. 94–283, title I, § 112(2), May 11, 1976, 90 Stat. 494; renumbered § 321, Pub. L. 96–187, title I, § 105(5), Jan. 8, 1980, 93 Stat. 1354.

2 U.S.C. § 441h. Fraudulent misrepresentation of campaign authority

(a) *In general.* No person who is a candidate for Federal office or an employee or agent of such a candidate shall—

(1) fraudulently misrepresent himself or any committee or organization under his control as speaking or writing or otherwise acting for or on behalf of any other 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; or

(2) willfully and knowingly participate in or conspire to participate in any plan, scheme, or design to violate paragraph (1).

(b) *Fraudulent solicitation of funds.* No person shall—

(1) fraudulently misrepresent the person as speaking, writing, or otherwise acting for or on behalf of any candidate or political party or employee or agent thereof for the purpose of soliciting contributions or donations; or

(2) willfully and knowingly participate in or conspire to participate in any plan, scheme, or design to violate paragraph (1).

Pub. L. 92–225, title III, § 322, formerly § 327, as added Pub. L. 94–283, title I, § 112(2), May 11, 1976, 90 Stat. 494; renumbered § 322, Pub. L. 96–187, title I, § 105(5), Jan. 8, 1980, 93 Stat. 1354; amended Pub. L. 107–155, title III, § 309, 317, Mar. 27, 2002, 116 Stat. 104.

2 U.S.C. § 441i. Soft money of political parties

(a) *National committees.*

(1) *In general.* A national committee of a political party (including a national congressional campaign committee of a political party) may not solicit, receive, or direct to another person a contribution, donation, or transfer of funds or any other thing of value, or spend any funds, that are not subject to the limitations, prohibitions, and reporting requirements of this Act.

(2) *Applicability.* The prohibition established by paragraph (1) applies to any such national committee, any officer or agent acting on behalf of such a national committee, and any entity that is directly or indirectly established, financed, maintained, or controlled by such a national committee.

(b) *State, district and local committees.*

(1) *In general.* Except as provided in paragraph (2), an amount that is expended or disbursed for Federal election activity by a State, district, or local committee of a political party (including an entity that is directly or indirectly established, financed, maintained, or controlled by a State, district, or local committee of a political party and an officer or agent acting on behalf of such committee or entity), or by an association or similar group of candidates for State or local office or of individuals holding State or local office, shall be made from funds subject to the limitations, prohibitions, and reporting requirements of this Act.

(2) *Applicability.*

(A) *In general.* Notwithstanding clause (i) or (ii) of section 301(20)(A) (2 U.S.C. § 431(20)(A)), and subject to subparagraph (B), paragraph (1) shall not apply to any amount expended or disbursed by a State, district, or local committee of a political party for an activity described in either such clause to the extent the amounts expended or disbursed for such activity are allocated (under regulations prescribed by the Commission) among amounts—

(i) which consist solely of contributions subject to the limitations, prohibitions, and reporting requirements of this Act (other than amounts described in subparagraph (B)(iii)); and

(ii) other amounts which are not subject to the limitations, prohibitions, and reporting requirements of this Act (other than any requirements of this subsection).

(B) *Conditions.* Subparagraph (A) shall only apply if—

(i) the activity does not refer to a clearly identified candidate for Federal office;

(ii) the amounts expended or disbursed are not for the costs of any- broadcasting, cable, or satellite communication, other than a communication which refers solely to a clearly identified candidate for State or local office;

(iii) the amounts expended or disbursed which are described in subparagraph (A)(ii) are paid from

amounts which are donated in accordance with State law and which meet the requirements of subparagraph (C), except that no person (including any person established, financed, maintained, or controlled by such person) may donate more than $10,000 to a State, district, or local committee of a political party in a calendar year for such. expenditures or disbursements; and

(iv) the amounts expended or disbursed are made solely from funds raised by the State, local, or district committee which makes such expenditure or disbursement, and do not include any funds provided to such committee from—

(I) any other State, local, or district committee of any State party,

(II) the national committee of a political party (including a national congressional campaign committee of a political party),

(III) any officer or agent acting on behalf of any committee described in subclause (I) or (II), or

(IV) any entity directly or indirectly established, financed, maintained, or controlled by any committee described in subclause (I) or (II)

(C) *Prohibiting involvement of national parties, federal candidates and officeholders, and state parties acting jointly.* Notwithstanding subsection (e) (other than subsection. (e)(3)), amounts specifically authorized to be spent under subparagraph (B)(iii) meet the requirements of this subparagraph only if the amounts—

(i) are not solicited, received, directed, transferred, or spent by or in the name of any person described in subsection (a) or (e); and

(ii) are not solicited, received, or directed through fundraising activities conducted jointly by 2 or more State, local, or district committees of any political party or their agents, or by a State, local, or district committee of a political party on behalf of the State, local, or district committee of a political party or its agent in one or more other States.

(c) *Fundraising costs*. An amount spent by a person described in subsection (a) or (b) to raise funds that are used, in whole or in part, for expenditures and disbursements for a Federal election activity shall be made from funds subject to the limitations, prohibitions, and reporting requirements of this Act.

(d) *Tax-exempt organizations.* A national, State, district, or local committee of a political party (including a national congressional campaign committee of a political party), an entity that is directly or indirectly established, financed, maintained, or controlled by any such national, State, district, or local committee or its agent, and an officer or agent acting on behalf of any such party committee or entity, shall not solicit any funds for, or make or direct any donations to—

(1) an organization that is described in section 501(c) of the Internal Revenue Code of 1986 and exempt from taxation

under section 501(a) of such Code (or has submitted an application for determination of tax exempt status under such section) and that makes expenditures or disbursements in connection with an election for Federal office (including expenditures or disbursements for Federal election activity); or

(2) an organization described in section 527 of such Code (other than a political committee, a State, district, or local committee of a political party, or the authorized campaign committee of a candidate for State or local office).

(e) *Federal candidates.*

(1) *In general.* A candidate, individual holding Federal office, agent of a candidate or an individual holding Federal office, or an entity directly or indirectly established, financed, maintained or controlled by or acting on behalf of 1 or more candidates or individuals holding Federal office, shall not—

(A) solicit, receive, direct, transfer, or spend funds in connection with an election for Federal office, including funds for any Federal election activity, unless the funds are subject to the limitations, prohibitions, and reporting requirements of this Act; or

(B) solicit, receive, direct, transfer, or spend funds in connection with any election other than an election for Federal office or disburse funds in connection with such an election unless the funds—

(i) are not in excess of the amounts permitted with respect to contributions to candidates and political committees under paragraphs (1), (2), and (3) of section 315(a) (2 U.S.C. § 441a(a)); and

(ii) are not from sources prohibited by this Act from making contributions in connection with an election for Federal office.

(2) *State law.* Paragraph (1) does not apply to the solicitation, receipt, or spending of funds by an individual described in such paragraph who is or was also a candidate for a State or local office solely in connection with such election for State or local office if the, solicitation, receipt, or spending of funds is permitted under State law and refers only to such State or local candidate, or to any other candidate for the State or local office sought by such candidate, or both.

(3) *Fundraising events.* Notwithstanding paragraph (1) or subsection (b)(2)(C), a candidate or an individual holding Federal office may attend, speak, or be a featured guest at a fundraising event for a State, district, or local committee of a political party.

(4) *Permitting certain solicitations.*

(A) *General solicitations.* Notwithstanding any other provision of this subsection, an individual described in paragraph (1) may make a general solicitation of funds on behalf of any organization that is described in section 501 (c) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code (or has submitted an application for determination of tax exempt status under such section) (other than an entity whose principal purpose is to conduct activities described in clauses

(i) and (ii) of section 301(20)(A) (2 U.S.C. § 43 1 (20)(A)) where such solicitation does not specify how the funds will or should be spent.

(B) *Certain specific solicitations*. In addition to the general solicitations permitted under subparagraph (A), an individual described in paragraph (1) may make a solicitation explicitly to obtain funds for carrying out the activities described in clauses (i) and (ii) of section 301(20)(A) (2) U.S.C. § 431(20)(A)), or for an entity whose principal purpose is to conduct such activities, if—

(i) the solicitation is made only to individuals; and

(ii) the amount solicited from any individual during any calendar year does not exceed $20,000.

(f) *State candidates.*

(1) *In general.* A candidate for State or local office, individual holding State or local office, or an agent of such a candidate or individual may not spend any funds for a communication described in section 301(20)(A)(iii) (2 U.S.C. § 431(20)(A)(iii)) unless the funds are subject to the limitations, prohibitions, and reporting requirements of this Act.

(2) *Exception for certain communications.* Paragraph (1) shall not apply to an individual described in such paragraph if the communication involved is in connection with an election for such State or local office and refers only to such individual or to any other candidate for the State or local office held or sought by such individual, or both.

Pub. L. 92–225, title III, § 323, as added Pub. L. 107–155, title I, § 101(a), Mar. 27, 2002, 116 Stat. 82.

2 U.S.C. § 441k. Prohibition of contributions by minors

An individual who is 17 years old or younger shall not make a contribution to a candidate or a contribution or donation to a committee of a political party.

Pub. L. 92–225, title III, § 324, as added Pub. L. 107–155, title III, § 318, Mar. 27, 2002, 116 Stat. 109.

2 U.S.C. § 442. Authority to procure technical support and other services and incur travel expenses; payment of such expenses

For the purpose of carrying out his duties under the Federal Election Campaign Act of 1971, the Secretary of the Senate is authorized, from and after July 1, 1972,

(1) to procure technical support services,

(2) to procure the temporary or intermittent services of individual technicians, experts, or consultants, or organizations thereof, in the same manner and under the same conditions, to the extent applicable, as a standing committee of the Senate may procure such services under section 72a(i) of this title,

(3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable basis the services of personnel of any such department or agency, and

(4) to incur official travel expenses.

Payments to carry out the provisions of this paragraph shall be made from funds included in the appropriation "Miscellaneous Items" under the heading "Contingent Expenses of the Senate" upon vouchers approved by the Secretary of the Senate. All sums received by the Secretary under authority of the Federal Election Campaign Act of 1971 shall be covered into the Treasury as miscellaneous receipts.

Pub. L. 92–342, § 101, July 10, 1972, 86 Stat. 435.

Subchapter II—General provisions

2 U.S.C. § 451. Extension of credit by regulated industries; regulations

The Secretary of Transportation, the Federal Communications Commission, and the Surface Transportation Board shall each maintain its own regulations with respect to the extension of credit, without security, by any person regulated by the Secretary under subpart II of part A of subtitle VII of title 49, or such Commission or Board, to any candidate for Federal office, or to any person on behalf of such a candidate, for goods furnished or services rendered in connection with the campaign of such candidate for nomination for election, or election, to such office.

Pub. L. 92–225, title IV, § 401, Feb. 7, 1972, 86 Stat. 19; Pub. L. 93–443, title II, § 201(b)(1), Oct. 15, 1974, 88 Stat. 1275; Pub. L. 103–272, § 4(a), July 5, 1994, 108 Stat. 1360; Pub. L. 104–88, title III, § 313, Dec. 29, 1995, 109 Stat. 948; Pub. L. 104–287, § 6(g), Oct. 11, 1996, 110 Stat. 3399.

2 U.S.C. § 452. Prohibition against use of certain Federal funds for election activities

No part of any funds appropriated to carry out the Economic Opportunity Act of 1964 (42 U.S.C. § 2701 et seq.) shall be used to finance, directly or indirectly, any activity designed to influence the outcome of any election to Federal office, or any voter registration activity, or to pay the salary of any officer or employee of the Office of Economic Opportunity who, in his official capacity as such an officer or employee, engages in any such activity.

Pub. L. 92–225, title IV, § 402, Feb. 7, 1972, 86 Stat. 19; Pub. L. 93–443, title II, § 201(b)(2), Oct. 15, 1974, 88 Stat. 1275.

2 U.S.C. § 453. State laws affected

(a) *In general.* Subject to subsection (b), the provisions of this Act, and of rules prescribed under this Act, supersede and preempt any provision of State law with respect to election to Federal office.

(b) *State and local committees of political parties.* Notwithstanding any other provision of this Act, a State or local committee of a political party may, subject to State law, use exclusively funds that are not subject to the prohibitions, limitations, and reporting

requirements of the Act for the purchase or construction of an office building for such State or local committee.

Pub. L. 92–225, title IV, § 403, Feb. 7, 1972, 86 Stat. 20; Pub. L. 93–443, title III, § 301, Oct. 15, 1974, 88 Stat. 1289; Pub. L. 107–155, title I, § 103(b)(2), Mar. 27, 2002, 116 Stat. 87.

2 U.S.C. § 454. Partial invalidity

If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the validity of the remainder of the Act and the application of such provision to other persons and circumstances shall not be affected thereby.

Pub. L. 92–225, title IV, § 404, Feb. 7, 1972, 86 Stat. 20.

2 U.S.C. § 455. Period of limitations

(a) No person shall be prosecuted, tried, or punished for any violation of subchapter I of this chapter, unless the indictment is found or the information is instituted within 5 years after the date of the violation.

(b) Notwithstanding any other provision of law—

(1) the period of limitations referred to in subsection (a) of this section shall apply with respect to violations referred to in such subsection committed before, on, or after the effective date of this section; and

(2) no criminal proceeding shall be instituted against any person for any act or commission which was a violation of any provision of subchapter I of this chapter, as in effect on December 31, 1974, if such act or omission does not constitute a violation of any such provision, as amended by the Federal Election Campaign Act Amendments of 1974.

Nothing in this subsection shall affect any proceeding pending in any court of the United States on January 1, 1975.

Pub. L. 92–225, title IV, § 406, as added Pub. L. 93–443, title III, § 302, Oct. 15, 1974, 88 Stat. 1289; amended Pub. L. 94–283, title I, § 115(f), May 11, 1976, 90 Stat. 496; Pub. L. 107–155, title III, § 313(a), Mar. 27, 2002, 116 Stat. 106.

D. FINANCIAL DISCLOSURE REQUIREMENTS OF FEDERAL PERSONNEL

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5 U.S.C. App. § 101. Persons required to file

(a) Within thirty days of assuming the position of an officer or employee described in subsection (f), an individual shall file a report containing the information described in section 102(b) unless the individual has left another position described in subsection (f) within thirty days prior to assuming such new position or has already filed a report under this title with respect to nomination for the new position or as a candidate for the position.

(b)(1) Within five days of the transmittal by the President to the Senate of the nomination of an individual (other than an individual nominated for appointment to a position as a Foreign Service Officer or a grade or rank in the uniformed services for which the pay grade prescribed by section 201 of title 37, United States Code, is O–6 or below) to a position, appointment to which requires the advice and consent of the Senate, such individual shall file a report containing the information described in section 102(b). Such individual shall, not later than the date of the first hearing to consider the nomination of such individual, make current the report filed pursuant to this paragraph by filing the information required by section 102(a)(1)(A) with respect to income and honoraria received as of the date which occurs five days before the date of such hearing. Nothing in this Act shall prevent any Congressional committee from requesting, as a condition of confirmation, any additional financial information from any Presidential nominee whose nomination has been referred to that committee.

(2) An individual whom the President or the President-elect has publicly announced he intends to nominate to a position may file the report required by paragraph (1) at any time after the public announcement, but not later than is required under the first sentence of such paragraph.

(c) Within thirty days of becoming a candidate as defined in section 301 of the Federal Campaign Act of 1971, in a calendar year for nomination or election to the office of President, Vice President, or Member of Congress, or on or before May 15 of that calendar year, whichever is later, but in no event later than 30 days before the election, and on or before May 15 of each successive year an individual continues to be a candidate, an individual other than an incumbent President, Vice President, or Member of Congress shall file a report containing the information described in section 102(b). Notwithstanding the preceding sentence, in any calendar year in which an individual continues to be a candidate for any office but all elections for such office relating to such candidacy were held in prior calendar years, such individual need not file a report unless

he becomes a candidate for another vacancy in that office or another office during that year.

(d) Any individual who is an officer or employee described in subsection (f) during any calendar year and performs the duties of his position or office for a period in excess of sixty days in that calendar year shall file on or before May 15 of the succeeding year a report containing the information described in section 102(a).

(e) Any individual who occupies a position described in subsection (f) shall, on or before the thirtieth day after termination of employment in such position, file a report containing the information described in section 102(a) covering the preceding calendar year if the report required by subsection (d) has not been filed and covering the portion of the calendar year in which such termination occurs up to the date the individual left such office or position, unless such individual has accepted employment in another position described in subsection (f).

(f) The officers and employees referred to in subsections (a), (d), and (e) are—

(1) the President;

(2) the Vice President;

(3) each officer or employee in the executive branch, including a special Government employee as defined in section 202 of title 18, United States Code, who occupies a position classified above GS–15 of the General Schedule or, in the case of positions not under the General Schedule, for which the rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS–15 of the General Schedule; each member of a uniformed service whose pay grade is at or in excess of O–7 under section 201 of title 37, United States Code; and each officer or employee in any other position determined by the Director of the Office of Government Ethics to be of equal classification;

(4) each employee appointed pursuant to section 3105 of title 5, United States Code;

(5) any employee not described in paragraph (3) who is in a position in the executive branch which is excepted from the competitive service by reason of being of a confidential or policymaking character, except that the Director of the Office of Government Ethics may, by regulation, exclude from the application of this paragraph any individual, or group of individuals, who are in such positions, but only in cases in which the Director determines such exclusion would not affect adversely the integrity of the Government or the public's confidence in the integrity of the Government;

(6) the Postmaster General, the Deputy Postmaster General, each Governor of the Board of Governors of the United States Postal Service and each officer or employee of the United States Postal Service or Postal Regulatory Commission who occupies a position for which the rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS–15 of the General Schedule;

(7) the Director of the Office of Government Ethnics and each designated agency ethics official;

(8) any civilian employee not described in paragraph (3), employed in the Executive Office of the President (other than a special government employee) who holds a commission or appointment from the President;

(9) a Member of Congress as defined under section 109(12);

(10) an officer or employee of the Congress as defined under section 109(13);

(11) a judicial officer as defined under section 109(10); and

(12) a judicial employee as defined under section 109(8).

(g)(1) Reasonable extensions of time for filing any report may be granted under procedures prescribed by the supervising ethics office for each branch, but the total of such extensions shall not exceed ninety days.

(2)(A) In the case of an individual who is serving in the Armed Forces, or serving in support of the Armed Forces, in an area while that area is designated by the President by Executive order as a combat zone for purposes of section 112 of the Internal Revenue Code of 1986, the date for the filing of any report shall be extended so that the date is 180 days after the later of—

(i) the last day of the individual's service in such area during such designated period; or

(ii) the last day of the individual's hospitalization as a result of injury received or disease contracted while serving in such area.

(B) The Office of Government Ethics, in consultation with the Secretary of Defense, may prescribe procedures under this paragraph.

(h) The provisions of subsection (a), (b), and (e) shall not apply to an individual who, as determined by the designated agency ethics official or Secretary concerned (or in the case of a Presidential appointee under subsection (b), the Director of the Office of Government Ethics), the congressional ethics committees, or the Judicial Conference, is not reasonably expected to perform the duties of his office or position for more than sixty days in a calendar year, except that if such individual performs the duties of his office or position for more than sixty days in a calendar year—

(1) the report required by subsections (a) and (b) shall be filed within fifteen days of the sixtieth day, and

(2) the report required by subsection (e) shall be filed as provided in such subsection.

(i) The supervising ethics office for each branch may grant a publicly available request for a waiver of any reporting requirement under this section for an individual who is expected to perform or has performed the duties of his office or position less than one hundred and thirty days in a calendar year, but only if the supervising ethics office determines that—

(1) such individual is not a full-time employee of the Government,

(2) such individual is able to provide services specially needed by the Government,

(3) it is unlikely that the individual's outside employment or financial interests will create a conflict of interest, and

(4) public financial disclosure by such individual is not necessary in the circumstances.

Pub. L. 95–521, title I, § 101; Oct. 26, 1978, 92 Stat. 1824; Pub. L. 96–19, §§ 2 (a)(1), (b), (c)(1), 4(b)(1), (d)–(f), 5, June 13, 1979, 93 Stat. 37, 38, 40; Pub. L. 101–194, title II, § 202, Nov. 30, 1989, 103 Stat. 1725; Pub. L. 101–280, § 3(1), (2), May 4, 1990, 104 Stat. 152; Pub. L. 102–25, title VI, § 605(a), Apr. 6, 1991, 105 Stat. 110; Pub. L. 102–378, § 4(a)(1), Oct. 2, 1992, 106 Stat. 1356; Pub. L. 109–435, title VI, § 604(c), Dec. 20, 2006, 120 Stat. 3241.

5 U.S.C. App. § 102. Contents of reports

(a) Each report filed pursuant to section 101(d) and (e) shall include a full and complete statement with respect to the following:

(1)(A) The source, type, and amount or value of income (other than income referred to in subparagraph (B)) from any source (other than from current employment by the United States Government), and the source, date, and amount of honoraria from any source, received during the preceding calendar year, aggregating $200 or more in value and, effective January 1, 1991, the source, date, and amount of payments made to charitable organizations in lieu of honoraria, and the reporting individual shall simultaneously file with the applicable supervising ethics office, on a confidential basis, a corresponding list of recipients of all such payments, together with the dates and amounts of such payments.

(B) The source and type of income which consists of dividends, rents, interest, and capital gains, received during the preceding calendar year which exceeds $200 in amount or value, and an indication of which of the following categories the amount or value of such item of income is within:

(i) not more than $1,000;

(ii) greater than $1,000 but not more than $2,500;

(iii) greater than $2,500 but not more than $5,000;

(iv) greater than $5,000 but not more than $15,000;

(v) greater than $15,000 but not more than $50,000;

(vi) greater than $50,000 but not more than $100,000;

(vii) greater than $100,000 but not more than $1,000,000;

(viii) greater than $1,000,000 but not more than $5,000,000, or

(ix) greater than $5,000,000.

(2)(A) The identity of the source, a brief description, and the value of all gifts aggregating more than the minimal value as established by section 7342(a)(5) of title 5, United States Code, or $250, whichever is greater, received from any source other than a relative of the reporting individual during the preceding calendar year, except that any food, lodging or entertainment received as personal hospitality of an individual need not be reported, and any gift with a fair market value of $100 or less, as adjusted at the same time and by the same percentage as the minimal value is adjusted, need not be aggregated for purposes of this subparagraph.

(B) The identity of the source and a brief description (including a travel itinerary, dates, and nature of expense provided) of reimbursements received from any source aggregating more than the minimal value as established by § 7342(a)(5) of title 5, U.S.C., or

$250, whichever is greater in value and received during the preceding calendar year.

(C) In an unusual case, a gift need not be aggregated under subparagraph (A) if a publicly available request for a waiver is granted.

(3) The identity and category of value of any interest in property held during the preceding calendar year, in a trade or business, or for investment or the production of income, which has a fair market value which exceeds $1,000 as of the close of the preceding calendar year, excluding any personal liability owed to the reporting individual by a spouse, or by a parent, brother, sister, or child of the reporting individual or of the reporting individual's spouse, or any deposits aggregating $5,000 or less in a personal savings account. For purposes of this paragraph, a personal savings account shall include any certificate of deposit or any other form of deposit in a bank, savings and loan association, credit union, or similar financial institution.

(4) The identity and category of value of the total liabilities owed to any creditor other than a spouse, or a parent, brother, sister, or child of the reporting individual's spouse which exceed $10,000 at any time during the preceding calendar year, excluding—

(A) any mortgage secured by real property which is a personal residence of the reporting individual or his spouse; and

(B) any loan secured by a personal motor vehicle, household furniture, or appliances, which loan does not exceed the purchase price of the item which secures it.

With respect to revolving charge accounts, only those with an outstanding liability which exceeds $10,000 as of the close of the preceding calendar year need be reported under this paragraph.

(5) Except as provided in this paragraph, a brief description, the date, and category of value of any purchase, sale or exchange during the preceding calendar year which exceeds $1,000—

(A) in real property, other than property used solely as a personal residence of the reporting individual or his spouse; or

(B) in stocks, bonds, commodities futures, and other forms of securities.

Reporting is not required under this paragraph of any transaction solely by and between the reporting individual, his spouse, or dependent children.

(6)(A) The identity of all positions held on or before the date of filing during the current calendar year (and, for the first report filed by an individual, during the two-year period preceding such calendar year) as an officer, director, trustee, partner, proprietor, representative, employee, or consultant of any corporation, company, firm, partnership, or the business enterprise, any nonprofit organization, any labor organization, or any educational or other institution other than the United States. This subparagraph shall not require the reporting of positions held in any religious, social, fraternal, or political entity and positions solely of an honorary nature.

(B) If any person, other than the United States Government, paid a nonelected reporting individual compensation in excess of $5,000 in any of the two calendar years prior to the calendar year during

which the individual files his first report under this title, the individual shall include in the report—

(i) the identify of each source of such compensation; and

(ii) a brief description of the nature of the duties performed or services rendered by the reporting individual for each such source.

The preceding sentence shall not require any individual to include in such report any information which is considered confidential as a result of a privileged relationship, established by law, between such individual and any person nor shall it require an individual to report any information with respect to any person for whom services were provided by any firm or association of which such individual was a member, partner, or employee unless such individual was directly involved in the provision of such services.

(7) A description of the date, parties to, and terms of any agreement or arrangement with respect to (A) future employment; (B) a leave of absence during the period of the reporting individual's Government service; (C) continuation of payments by a former employer other than the United States Government; and (D) continuing participation in an employee welfare or benefit plan maintained by a former employer.

(8) The category of the total cash value of any interest of the reporting individual in a qualified blind trust, unless the trust instrument was executed prior to July 24, 1995 and precludes the beneficiary from receiving information on the total cash value of any interest in the qualified blind trust.

(b)(1) Each report filed pursuant to subsections (a), (b), and (c) of section 101 shall include a full and complete statement with respect to the information required by—

(A) paragraph (1) of subsection (a) for the year of filing and the preceding calendar year,

(B) paragraphs (3) and (4) of subsection (a) as of the date specified in the report but which is less than thirty-one days before the filing date, and

(C) paragraphs (6) and (7) of subsection (a) as of the filing date but for periods described in such paragraphs.

(2)(A) In lieu of filling out one or more schedules of a financial disclosure form, an individual may supply the required information in an alternative format, pursuant to either rules adopted by the supervising ethics office for the branch in which such individual serves or pursuant to a specific written determination by such office for a reporting individual.

(B) In lieu of indicating the category of amount or value of any item contained in any report filed under this title, a reporting individual may indicate the exact dollar amount of such item.

(c) In the case of any individual described in section 101(e), any reference to the preceding calendar year shall be considered also to include that part of the calendar year of filing up to the date of the termination of employment.

(d)(1) The categories for reporting the amount or value of the items covered in paragraphs (3), (4), (5), and (8) of subsection (a) are as follows:

(A) not more than $15,000;

(B) greater than $15,000 but not more than $50,000;

(C) greater than $50,000 but not more than $100,000;
(D) greater than $100,000 but not more than $250,000;
(E) greater than $250,000 but not more than $500,000;
(F) greater than $500,000 but not more than $1,000,000;
(G) greater than $1,000,000 but not more than $5,000,000;
(H) greater than $5,000,000 but not more than $25,000,000;
(I) greater than $25,000,000 but not more than $50,000,000; and
(J) greater than $50,000,000.

(2) For the purposes of paragraph (3) of subsection (a) if the current value of an interest in real property (or an interest in a real estate partnership) is not ascertainable without an appraisal, an individual may list (A) the date of purchase and the purchase price of the interest in the real property, or (B) the assessed value of the real property for tax purposes, adjusted to reflect the market value of the property used for the assessment if the assessed value is computed at less than 100 percent of such market value, but such individual shall include in his report a full and complete description of the method used to determine such assessed value, instead of specifying a category of value pursuant (1) of this subsection. If the current value of any other item required to be reported under paragraph (3) of subsection (a) is not ascertainable without an appraisal, such individual may list the book value of a corporation whose stock is not publicly traded, the net worth of a business partnership, the equity value of an individually owned business, or with respect to other holdings, any recognized indication of value, but such individual shall include in his report a full and complete description of the method used in determining such value. In lieu of any value referred to in the preceding sentence, an individual may list the assessed value of the item for tax purposes, adjusted to reflect the market value of the item used for the assessment if the assessed value is computed at less than 100 percent of such market value, but a full and complete description of the method used in determining such assessed value shall be included in the report.

(e)(1) Except as provided in the last sentence of this paragraph, each report required by section 101 shall also contain information listed in paragraphs (1) through (5) of subsection (a) of this section respecting the spouse or dependent child of the reporting individual as follows:

(A) The source of items of earned income earned by a spouse from any person which exceed $1,000 and the source and amount of any honoraria received by a spouse, except that, with respect to earned income (other than honoraria), if the spouse is self-employed in business or a profession, only the nature of such business or profession need be reported.

(B) All information required to be reported in subsection (a)(1)(B) with respect to income derived by a spouse or dependent child from any asset held by the spouse or dependent child and reported pursuant to subsection (a)(3).

(C) In the case of any gifts received by a spouse or dependent child which are not received totally independent of the relationship of the spouse or dependent child to the reporting individual, the identity of the source and a brief description of gifts

of transportation, lodging, food or entertainment and a brief description and the value of other gifts.

(D) In the case of any reimbursements received by a spouse or dependent child which are not received totally independent of the relationship of the spouse or dependent child to the reporting individual, the identity of the source and brief description of each such reimbursement.

(E) In the case of items described in paragraphs (3) through (5) of subsection (a), all information required to be reported under these paragraphs other than items (i) which the reporting individual certifies represent the spouse's or dependent child's sole financial interest or responsibility and which the reporting individual has no knowledge of, (ii) which are not in any way, past or present, derived from the income, assets, or activities of the reporting individual, and (iii) from which the reporting individual neither derives, nor expects to derive, any financial or economic benefit.

(F) For purposes of this section, categories with amounts or values greater than $1,000,000 set forth in sections 102(a)(1)(B) and 102(d)(1) shall apply to the income, assets, or liabilities of spouses and dependent children only if the income, assets, or liabilities are held jointly with the reporting individual. All other income, assets, or liabilities of the spouse or dependent children required to be reported under this section in an amount or value greater than $1,000,000 shall be categorized only as an amount or value greater than $1,000,000.

Reports required by subsections (a), (b), and (c) of section 101 shall, with respect to the spouse and dependent child of the reporting individual, only contain information listed in paragraphs (1), (3), and (4) of subsection (a), as specified in this paragraph.

(2) No report shall be required with respect to a spouse living separate and apart from the reporting individual with the intention of terminating the marriage or providing for permanent separation; or with respect to any income or obligations of an individual arising from the dissolution of his marriage or the permanent separation from his spouse.

(f)(1) Except as provided in paragraph (2), each reporting individual shall report the information required to be reported pursuant to subsections (a), (b), and (c) of this section with respect to the holdings of and the income from a trust or other financial arrangement from which income is received by, or with respect to which a beneficial interest in principal or income is held by, such individual, his spouse, or any dependent child.

(2) A reporting individual need not report the holdings of the source of income from any of the holdings of—

(A) any qualified blind trust (as defined in paragraph (3));

(B) a trust—

(i) which was not created directly by such individual, his spouse, or any dependent child, and

(ii) the holdings or sources of income of which such individual, his spouse, and any dependent child have no knowledge of; or

(C) an entity described under the provisions of paragraph (8), but such individual shall report the category of the amount of

income received by him, his spouse, or any dependent child from the trust or other entity under subsection (a)(1)(B) of this section.

(3) For purposes of this subsection, the term "qualified blind trust" includes any trust in which a reporting individual, his spouse, or any minor or dependent child has a beneficial interest in the principal or income, and which meets the following requirements:

(A)(i) The trustee of the trust and any other entity designated in the trust instrument to perform fiduciary duties is a financial institution, an attorney, a certified public accountant, a broker, or an investment advisor who—

(I) is independent of and not associated with any interested party so that the trustee or other person cannot be controlled or influenced in the administration of the trust by any interested party; and

(II) is not and has not been an employee of or affiliated with any interested party and is not a partner of, or involved in any joint venture or other investment with, any interested party; and

(III) is not a relative of any interested party.

(ii) Any officer or employee of a trustee or other entity who is involved in the management or control of the trust—

(I) is independent of and not associated with any interested party so that such officer or employee cannot be controlled or influenced in the administration of the trust by any interested party;

(II) is not a partner of, or involved in any joint venture or other investment with, any interested party; and

(III) is not a relative of any interested party.

(B) Any asset transferred to the trust by an interested party is free of any restriction with respect to its transfer or sale unless such restriction is expressly approved by the supervising ethics office of the reporting individual.

(C) The trust instrument which establishes the trust provides that—

(i) except to the extent provided in subparagraph (B) of this paragraph, the trustee in the exercise of his authority and discretion to manage and control the assets of the trust shall not consult or notify any interested party;

(ii) the trust shall not contain any asset the holding of which by an interested party is prohibited by any law or regulation;

(iii) the trustee shall promptly notify the reporting individual and his supervising ethics office when the holdings of any particular asset transferred to the trust by any interested party are disposed of or when the value of such holding is less than $1,000;

(iv) the trust tax return shall be prepared by the trustee or his designee, and such return and any information relating thereto (other than the trust income summarized in appropriate categories necessary to complete an interested party's tax return), shall not be disclosed to any interested party;

(v) an interested party shall not receive any report on the holdings and sources of income of the trust, except a report at the end of each calendar quarter with respect to the total cash value of the interest of the interested party in the trust or the net income or loss of the trust or any reports necessary to enable the interested party to complete an individual tax return required by law or to provide the information required by subsection (a)(1) of this section, but such report shall not identify any asset or holding;

(vi) except for communications which solely consist of requests for distributions of cash or other unspecified assets of the trust, there shall be no direct or indirect communication between the trustee and an interested party with respect to the trust unless such communication is in writing and unless it relates only (I) to the general financial interest and needs of the interested party (including, but not limited to, an interest in maximizing income or long-term capital gain), (II) to the notification of the trustee of a law or regulation subsequently applicable to the reporting individual which prohibits the interested party from holding an asset, which notification directs that the asset not be held by the trust, or (III) to directions to the trustee to sell all of an asset initially placed in the trust by an interested party which in the determination of the reporting individual creates a conflict of interest or the appearance thereof due to the subsequent assumption of duties by the reporting individual (but nothing herein shall require any such direction); and

(vii) the interested parties shall make no effort to obtain information with respect to the holdings of the trust, including obtaining a copy of any trust tax return filed or any information relating thereto except as otherwise provided in this subsection.

(D) The proposed trust instrument and the proposed trustee is approved by the reporting individual's supervising ethics office.

(E) For purposes of this subsection, "interested party" means a reporting individual, his spouse, and any minor or dependent child; "broker" has the meaning set forth in section 3(a)(4) of the Securities and Exchange Act of 1934 (15 U.S.C. 78c(a)(4)); and "investment adviser" includes any investment adviser who, as determined under regulations prescribed by the supervising ethics office, is generally involved in his role as such an adviser in the management or control of trusts.

(F) Any trust qualified by a supervising ethics office before the effective date of title II of the Ethics Reform Act of 1989 shall continue to be governed by the law and regulations in effect immediately before such effective date.

(4)(A) An asset placed in a trust by an interested party shall be considered a financial interest of the reporting individual, for the purposes of any applicable conflict of interest statutes, regulations, or rules of the Federal Government (including section 208 of title 18, United States Code), until such time as the reporting individual

is notified by the trustee that such asset has been disposed of, or has a value of less than $1,000.

(B)(i) The provisions of subparagraph (A) shall not apply with regard to a trust created for the benefit of a reporting individual, or the spouse, dependent child, or minor child of such a person, if the supervising ethics office for such reporting individual finds that—

(I) the assets placed in the trust consist of a well-diversified portfolio of readily marketable securities;

(II) none of the assets consist of securities of entities having substantial activities in the area of the reporting individual's primary area of responsibility;

(III) the trust instrument prohibits the trustee, notwithstanding the provisions of paragraphs (3)(C)(iii) and (iv) of this subsection, from making public or informing any interested party of the sale of any securities;

(IV) the trustee is given power of attorney, notwithstanding the provisions of paragraph (3)(C)(v) of this subsection, to prepare on behalf of any interested party the personal income tax returns and similar returns which may contain information relating to the trust; and

(V) except as otherwise provided in this paragraph, the trust instrument provides (or in the case of a trust established prior to the effective date of this Act which by its terms does not permit amendment, the trustee, the reporting individual, and any other interested party agree in writing) that the trust shall be administered in accordance with the requirements of this subsection and the trustee of such trust meets the requirements of paragraph (3)(A).

(ii) In any instance covered by subparagraph (B) in which the reporting individual is an individual whose nomination is being considered by a congressional committee, the reporting individual shall inform the congressional committee considering his nomination before or during the period of such individual's confirmation hearing of his intention to comply with this paragraph.

(5)(A) The reporting individual shall, within thirty days after a qualified blind trust is approved by his supervising ethics office, file with such office a copy of—

(i) the executed trust instrument of such trust (other than those provisions which relate to the testamentary disposition of the trust assets), and

(ii) a list of assets which were transferred to such trust, including the category of value of each asset as determined under subsection (d) of this section.

This subparagraph shall not apply with respect to a trust meeting the requirements for being considered a qualified blind trust under paragraph (7) of this subsection.

(B) The reporting individual shall, within thirty days of transferring an asset (other than cash) to a previously established qualified blind trust, notify his supervising ethics office of the identity of each such asset and the category of value of each asset as determined under subsection (d) of this section.

(C) Within thirty days of the dissolution of a qualified blind trust, a reporting individual shall—

(i) notify his supervising ethics office of such dissolution, and

(ii) file with such office a copy of a list of the assets of the trust at the time of such dissolution and the category of value under subsection (d) of this section of each such asset.

(D) Documents filed under subparagraphs (A), (B), and (C) of this paragraph and the lists provided by the trustee of assets placed in the trust by an interested party which have been sold shall be made available to the public in the same manner as a report is made available under section 105 and the provisions of that section shall apply with respect to such documents and lists.

(E) A copy of each written communication with respect to the trust under paragraph (3)(C)(vi) shall be filed by the person initiating the communication with the reporting individual's supervising ethics office within five days of the date of the communication.

(6)(A) A trustee of a qualified blind trust shall not knowingly and willfully, or negligently, (i) disclose any information to an interested party with respect to such trust that may not be disclosed under paragraph (3) of this subsection; (ii) acquire any holding the ownership of which is prohibited by the trust instrument; (iii) solicit advice from any interested party with respect to such trust, which solicitation is prohibited by paragraph (3) of this subsection or the trust agreement; or (iv) fail to file any document required by this subsection.

(B) A reporting individual shall not knowingly and willfully, or negligently, (i) solicit or receive any information with respect to a qualified blind trust of which he is an interested party that may not be disclosed under paragraph (3)(C) of this subsection or (ii) fail to file any document required by this subsection.

(C)(i) The Attorney General may bring a civil action in any appropriate United States district court against any individual who knowingly and willfully violates the provisions of subparagraph (A) and (B) of this paragraph. The court in which such action is brought may assess against such individual a civil penalty in any amount not to exceed $10,000.

(ii) The Attorney General may bring a civil action in any appropriate United States district court against any individual who negligently violates the provisions of subparagraph (A) or (B) of this paragraph. The court in which such action is brought may assess against such individual a civil penalty in any amount not to exceed $5,000.

(7) Any trust may be considered to be a qualified blind trust if—

(A) the trust instrument is amended to comply with the requirements of paragraph (3) or, in the case of a trust instrument which does not by its terms permit amendment, the trustee, the reporting individual, and any other interested party agree in writing that the trust shall be administered in accordance with the requirements of this subsection and the trustee of such trust meets the requirements of paragraph (3)(A); except that in the case of any interested party who is a dependent child, a parent or guardian of such child may execute the agreement referred to in this subparagraph;

(B) a copy of the trust instrument (except testamentary provisions) and a copy of the agreement referred to in subparagraph (A), and a list of the assets held by the trust at the time

of approval by the supervising ethics office, including the category of value of each asset as determined under subsection (d) of this section, are filed with such office and made available to the public as provided under paragraph (5)(D) of this subsection; and

(C) the supervising ethics office determines that approval of the trust arrangement as a qualified blind trust is in the particular case appropriate to assure compliance with applicable laws and regulations.

(8) A reporting individual shall not be required to report the financial interests held by a widely held investment fund (whether such fund is a mutual fund, regulated investment company, pension or deferred compensation plan, or other investment fund), if—

(A)(i) the fund is publicly traded; or

(ii) the assets of the fund are widely diversified; and

(B) the reporting individual neither exercises control over nor has the ability to exercise control over the financial interests held by the fund.

(g) Political campaign funds, including campaign receipts and expenditures, need not be included in any report filed pursuant to this title.

(h) A report filed pursuant to subsection (a), (d), or (e) of section 101 need not contain the information described in subparagraphs (A), (B), and (C) of subsection (a)(2) with respect to gifts and reimbursements received in a period when the reporting individual was not an officer or employee of the Federal Government.

(i) A reporting individual shall not be required under this title to report—

(1) financial interests in or income derived from—

(A) any retirement system under title 5, United States Code (including the Thrift Savings Plan under subchapter III of chapter 84 of such title); or

(B) any other retirement system maintained by the United States for officers or employees of the United States, including the President, or for members of the uniformed services; or

(2) benefits received under the Social Security Act.

Pub. L. 95–521, title I, § 102; Oct. 26, 1978, 92 Stat. 1825; Pub. L. 96–19, §§ 3(a)(1), (b), 6(a), 7(a)–(d)(1), (f), 9(b), (c)(1), (j), June 13, 1979, 93 Stat. 39–43; Pub. L. 97–51, § 130(b), Oct. 1, 1981, 95 Stat. 966; Pub. L. 98–150, § 10, Nov. 11, 1983, 97 Stat. 962; Pub. L. 101–194, title II, § 202, Nov. 30, 1989, 103 Stat. 1727; Pub. L. 101–280, § 3(3), May 4, 1990, 104 Stat. 152; Pub. L. 102–90, title III, § 314(a), Aug. 14, 1991, 105 Stat. 469; Pub. L. 104–65, §§ 20, 22(a), (b), Dec. 19, 1995, 109 Stat. 704, 705.

5 U.S.C. App. § 103. Filing of reports

(a) Except as otherwise provided in this section, the reports required under this title shall be filed by the reporting individual with the designated agency ethics official at the agency by which he is employed (or in the case of an individual described in section 101(e), was employed) or in which he will serve. The date any re-

port is received (and the date of receipt of any supplemental report) shall be noted on such report by such official.

(b) The President, the Vice President, and independent counsel and persons appointed by independent counsel under chapter 40 of title 28, United States Code, shall file reports required under this title with the Director of the Office of Government Ethics.

(c) Copies of the reports required to be filed under this title by the Postmaster General, the Deputy Postmaster General, the Governors of the Board of Governors of the United States Postal Service, designated agency ethics officials, employees described in section 105(a)(2)(A) or (B), 106(a)(1)(A) or (B), or 107(a)(1)(A) or (b)(1)(A)(i), of title 3, United States Code, candidates for the office of President or Vice President and officers and employees in (and nominees to) offices or positions which require confirmation by the Senate or by both Houses of Congress other than individuals nominated to be judicial officers and those referred to in subsection (f) shall be transmitted to the Director of the Office of Government Ethics. The Director shall forward a copy of the report of each nominee to the congressional committee considering the nomination.

(d) Reports required to be filed under this title by the Director of the Office of Government Ethics shall be filed in the Office of Government Ethics and, immediately after being filed, shall be made available to the public in accordance with this title.

(e) Each individual identified in section 101(c) who is a candidate for nomination or election to the Office of President or Vice President shall file the reports required by this title with the Federal Election Commission.

(f) Reports required of members of the uniformed services shall be filed with the Secretary concerned.

(g) Each supervising ethics office shall develop and make available forms for reporting the information required by this title.

(h)(1) The reports required under this title shall be filed by a reporting individual with—

(A)(i)(I) the Clerk of the House of Representatives, in the case of a Representative in Congress, a Delegate to Congress, the Resident Commissioner from Puerto Rico, an officer or employee of the Congress whose compensation is disbursed by the Chief Administrative Officer of the House of Representatives, an officer or employee of the Architect of the Capitol, United States Capitol Police, the United States Botanic Garden, the Congressional Budget Office, the Government Printing Office, the Library of Congress, or the Copyright Royalty Tribunal (including any individual terminating service, under section 101(e), in any office or position referred to in this subclause), or an individual described in section 101(c) who is a candidate for nomination or election as a Representative in Congress, a Delegate to Congress, or the Resident Commissioner from Puerto Rico; and

(II) the Secretary of the Senate, in the case of a Senator, an officer or employee of the Congress whose compensation is disbursed by the Secretary of the Senate, an officer or employee of the Government Accountability Office, the Office of Technology Assessment, or the Office of the Attending Physician

(including any individual terminating service, under section 101(2), in any office or position referred to in this subclause), or an individual described in section 101(c) who is a candidate for nomination or election as a Senator; and

(ii) in the case of an officer or employee of the Congress as described under section 101(f)(10) who is employed by an agency or commission established in the legislative branch after the date of the enactment of the Ethics Reform Act of 1989—

(I) the Secretary of the Senate or the Clerk of the House of Representatives, as the case may be, as designated in the statute establishing such agency or commission; or

(II) if such statute does not designate such committee, the Secretary of the Senate for agencies and commissions established in even numbered calendar years, and the Clerk of the House of Representatives for agencies and commissions established in odd numbered calendar years; and

(B) the Judicial Conference with regard to a judicial officer or employee described under paragraphs (11) and (12) of section 101(f) (including individuals terminating service in such office or position under section 101(e) or immediately preceding service in such office or position).

(2) The date any report is received (and the date of receipt of any supplemental report) shall be noted on such report by such committee.

(i) A copy of each report filed under this title by a Member or an individual who is a candidate for the office of Member shall be sent by the Clerk of the House of Representatives or Secretary of the Senate, as the case may be, to the appropriate State officer designated under section 316(a) of the Federal Election Campaign Act of 1971 of the State represented by the Member or in which the individual is a candidate, as the case may be, within the thirty-day period beginning on the day the report is filed with the Clerk or Secretary.

(j)(1) A copy of each report filed under this title with the Clerk of the House of Representatives shall be sent by the Clerk to the Committee on Standards of Official Conduct of the House of Representatives within the 7-day period beginning on the day the report is filed.

(2) A copy of each report filed under this title with the Secretary of the Senate shall be sent by the Secretary to the Select Committee on Ethics of the Senate within the 7-day period beginning on the day the report is filed.

(k) In carrying out their responsibilities under this title with respect to candidates for office, the Clerk of the House of Representatives and the Secretary of the Senate shall avail themselves of the assistance of the Federal Election Commission. The Commission shall make available to the Clerk and the Secretary on a regular basis a complete list of names and addresses of all candidates registered with the Commission, and shall cooperate and coordinate

its candidate information and notification program with the Clerk and the Secretary to the greatest extent possible.

Pub. L. 95–521, title I, § 103, Oct. 26, 1978, 92 Stat. 1831; Pub. L. 96–19, §§ 4(b)(2), 9(a), June 13, 1979, 93 Stat. 40, 42; Pub. L. 101–194, title II, § 202, Nov. 30, 1989, 103 Stat. 1736; Pub. L. 101–280, § 3(1), (4), May 4, 1990, 104 Stat. 152, 153; Pub. L. 102–90, title III, § 313(1), Aug. 14, 1991, 105 Stat. 469; Pub. L. 104–186, title II, § 216(1), Aug. 20, 1996, 110 Stat. 1747; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814; Pub. L. 109–55, title I, § 1003(a), Aug. 2, 2005, 119 Stat. 572.

5 U.S.C. App. § 104. Failure to file or filing false reports

(a)(1) The Attorney General may bring a civil action in any appropriate United States district court against any individual who knowingly and willfully falsifies or who knowingly and willfully fails to file or report any information that such individual is required to report pursuant to section 102 The court in which such action is brought may assess against such individual a civil penalty in any amount, not to exceed $50,000.

(2)(A) It shall be unlawful for any person to knowingly and willfully—

(i) falsify any information that such person is required to report under sectin 102; and

(ii) fail to file or report any information that such person is required to report under section 102.

(B) Any person who—

(i) violates subparagraph (A)(i) shall be fined under title 18, United States Code imprisoned for not more than 1 year, or both; and

(ii) violates subparagraph (A)(ii) shall be fined under title 18, United States Code.

(b) The head of each agency, each Secretary concerned, the Director of the Office of Government Ethics, each congressional ethics committee, or the Judicial Conference, as the case may be, shall refer to the Attorney General the name of any individual which such official or committee has reasonable cause to believe has willfully failed to file a report or has willfully falsified or willfully failed to file information required to be reported. Whenever the Judicial Conference refers a name to the Attorney General under this subsection, the Judicial Conference also shall notify the judicial council of the circuit in which the named individual serves of the referral.

(c) The President, the Vice President, the Secretary concerned, the head of each agency, the Office of Personnel Management, a congressional ethics committee, and the Judicial Conference, may take any appropriate personnel or other action in accordance with applicable law or regulation against any individual failing to file a report or falsifying or failing to report information required to be reported.

(d)(1) Any individual who files a report required to be filed under this title more than 30 days after the later of—

(A) the date such report is required to be filed pursuant to the provisions of this title and the rules and regulations promulgated thereunder; or

(B) if a filing extension is granted to such individual under section 101(g), the last day of the filing extension period,

shall, at the direction of and pursuant to regulations issued by the supervising ethics office, pay a filing fee of $200. All such fees shall be deposited in the miscellaneous receipts of the Treasury. The authority under this paragraph to direct the payment of a filing fee may be delegated by the supervising ethics office in the executive branch to other agencies in the executive branch.

(2) The supervising ethics office may waive the filing fee under this subsection in extraordinary circumstances.

Pub. L. 95–521, title I, § 104, Oct. 26, 1978, 92 Stat. 1832; Pub. L. 96–19, § 8(a), June 13, 1979, 93 Stat. 41; Pub. L. 101–194, title II, § 202, Nov. 30, 1989, 103 Stat. 1737; Pub. L. 101–280, § 3(1), (5), May 4, 1990, 104 Stat. 152, 154; Pub. L. 101–650, title IV, § 405, Dec. 1, 1990, 104 Stat. 5124; Pub. L. 110–81, title VII, § 702, Sept. 14, 2007, 121 Stat. 775.

5 U.S.C. App. § 105. Custody of and public access to reports

(a) Each agency, each supervising ethics office in the executive or judicial branch, the Clerk of the House of Representatives, and the Secretary of the Senate shall make available to the public, in accordance with subsection (b), each report filed under this title with such agency or office or with the Clerk or the Secretary of the Senate, except that—

(1) this section does not require public availability of a report filed by any individual in the Office of the Director of National Intelligence, the Central Intelligence Agency, the Defense Intelligence Agency, or the National Geospatial–Intelligence Agency, or the National Security Agency, or any individual engaged in intelligence activities in any agency of the United States, if the President finds or has found that, due to the nature of the office or position occupied by such individual, public disclosure of such report would, be[1] revealing the identity of the individual or other sensitive information, compromise the national interest of the United States; and such individuals may be authorized, notwithstanding section 104(a), to file such additional reports as are necessary to protect their identity from public disclosure if the President first finds or has found that such filing is necessary in the national interest; and

(2) any report filed by an independent counsel whose identity has not been disclosed by the division of the court under chapter 40 of title 28, United States Code, and any report filed by any person appointed by that independent counsel under such chapter, shall not be made available to the public under this title .

(b)(1) Except as provided in the second sentence of this subsection, each agency, each supervising ethics office in the executive or judicial branch, the Clerk of the House of Representatives, and the Secretary of the Senate shall, within thirty days after any re-

[1] So in original. Probably should be "by".

port is received under this title by such agency or office or by the Clerk or the Secretary of the Senate, as the case may be, permit inspection of such report by or furnish a copy of such report to any person requesting such inspection or copy. With respect to any report required to be filed by May 15 of any year, such report shall be made available for public inspection within 30 calendar days after May 15 of such year or within 30 days of the date of filing such a report for which an extension is granted pursuant to section 101(g). The agency, office, Clerk, or Secretary of the Senate, as the case may be may require a reasonable fee to be paid in any amount which is found necessary to recover the cost of reproduction or mailing of such report excluding any salary of any employee involved in such reproduction or mailing. A copy of such report may be furnished without charge or at a reduced charge if it is determined that waiver or reduction of the fee is in the public interest.

(2) Notwithstanding paragraph (1), a report may not be made available under this section to any person nor may any copy thereof be provided under this section to any person except upon a written application by such person stating—

(A) that person's name, occupation and address;

(B) the name and address of any other person or organization on whose behalf the inspection or copy is requested; and

(C) that such person is aware of the prohibitions on the obtaining or use of the report.

Any such application shall be made available to the public throughout the period during which the report is made available to the public.

(3)(A) This section does not require the immediate and unconditional availability of reports filed by an individual described in section 109(8) or 109(10) of this Act [sections 109(8) or 109(10) of Appendix 4 of this title] if a finding is made by the Judicial Conference, in consultation with United States Marshall Service, that revealing personal and sensitive information could endanger that individual or a family member of that individual.

(B) A report may be redacted pursuant to this paragraph only—

(i) to the extent necessary to protect the individual who filed the report or a family member of that individual; and

(ii) for as long as the danger to such individual exists.

(C) The Administrative Office of the United States Courts shall submit to the Committees on the Judiciary of the House of Representatives and of the Senate an annual report with respect to the operation of this paragraph including—

(i) the total number of reports redacted pursuant to this paragraph;

(ii) the total number of individuals whose reports have been redacted pursuant to this paragraph;

(iii) the types of threats against individuals whose reports are redacted, if appropriate;

(iv) the nature or type of information redacted;

(v) what steps or procedures are in place to ensure that sufficient information is available to litigants to determine if there is a conflict of interest;

(vi) principles used to guide implementation of redaction authority; and

(vii) any public complaints received relating to redaction.

(D) The Judicial Conference, in consultation with the Department of Justice, shall issue regulations setting forth the circumstances under which redaction is appropriate under this paragraph and the procedures for redaction.

(E) This paragraph shall expire on December 31, 2011, and apply to filings through calendar year 2011.

(c)(1) It shall be unlawful for any person to obtain or use a report—

(A) for any unlawful purpose;

(B) for any commercial purpose, other than by news and communications media for dissemination to the general public;

(C) for determining or establishing the credit rating of any individual; or

(D) for use, directly or indirectly, in the solicitation of money for any political, charitable, or other purpose.

(2) The Attorney General may bring a civil action against any person who obtains or uses a report for any purpose prohibited in paragraph (1) of this subsection. The court in which such action is brought may assess against such person a penalty in any amount not to exceed $10,000. Such remedy shall be in addition to any other remedy available under statutory or common law.

(d) Any report filed with or transmitted to an agency or supervising ethics office or to the Clerk of the House of Representatives or the Secretary of the Senate pursuant to this title shall be retained by such agency or office or by the Clerk or the Secretary of the Senate, as the case may be. Such report shall be made available to the public for a period of six years after receipt of the report. After such six-year period the report shall be destroyed unless needed in an ongoing investigation, except that in the case of an individual who filed the report pursuant to section 101(b) and was not subsequently confirmed by the Senate, or who filed the report pursuant to section 101(c) and was not subsequently elected, such reports shall be destroyed one year after the individual either is no longer under consideration by the Senate or is no longer a candidate for nomination or election to the Office of President, Vice President, or as a Member of Congress, unless needed in an ongoing investigation.

Pub. L. 95–521, title I, § 105; Oct. 26, 1978, 92 Stat. 1833; Pub. L. 101–194, title II, § 202, Nov. 30, 1989, 103 Stat. 1737; Pub. L. 101–280, § 3(6), May 4, 1990, 104 Stat. 154; Pub. L. 102–90, title III, § 313(2), Aug. 14, 1991, 105 Stat. 469; Pub. L. 103–359, title V, § 501(m), Oct. 14, 1994, 108 Stat. 3430; Pub. L. 104–201, div. A, title XI, § 1122(b)(2), Sept. 23, 1996, 110 Stat. 2687; Pub. L. 105–318, § 7, Oct. 30, 1998, 112 Stat. 3011; Pub. L. 107–126, Jan. 16, 2002, 115 Stat. 2404; Pub. L. 108–136, div. A, title IX, § 921(g), Nov. 24, 2003, 117 Stat. 1570; Pub. L. 108–458, title I, § 1079(c), Dec. 17, 2004; 118 Stat. 3696; Pub. L. 110–24, §§ 2, 3, May 3, 2007, 121 Stat. 100; Pub. L. 110–177, title I, § 104, Jan. 7, 2008; 121 Stat. 2535.

5 U.S.C. App. § 106. Review of reports

(a)(1) Each designated agency ethics official or Secretary concerned shall make provisions to ensure that each report filed with him under this title is reviewed within sixty days after the date of such filing, except that the Director of the Office of Government Ethics shall review only those reports required to be transmitted to him under this title within sixty days after the date of transmittal.

(2) Each congressional ethics committee and the Judicial Conference shall make provisions to ensure that each report filed under this title is reviewed within sixty days after the date of such filing.

(b)(1) If after reviewing any report under subsection (a), the Director of the Office of Government Ethics, the Secretary concerned, the designated agency ethics official, a person designated by the congressional ethics committee, or a person designated by the Judicial Conference, as the case may be, is of the opinion that on the basis of information contained in such report the individual submitting such report is in compliance with applicable laws and regulations, he shall state such opinion on the report, and shall sign such report.

(2) If the Director of the Office of Government Ethics, the Secretary concerned, the designated agency ethics official, a person designated by a congressional ethics committee, or a person designated by the Judicial Conference, after reviewing any report under subsection (a)—

(A) believes additional information is required to be submitted, he shall notify the individual submitting such report what additional information is required and the time by which it must be submitted, or

(B) is of the opinion, on the basis of information submitted, that the individual is not in compliance with applicable laws and regulations, he shall notify the individual, afford a reasonable opportunity for a written or oral response, and after consideration of such response, reach an opinion as to whether or not, on the basis of information submitted, the individual is in compliance with such laws and regulations.

(3) If the Director of the Office of Government Ethics, the Secretary concerned, the designated agency ethics official, a person designated by a congressional ethics committee, or a person designated by the Judicial Conference, reaches an opinion under paragraph (2)(B) that an individual is not in compliance with applicable laws and regulations, the official or committee shall notify the individual of that opinion and, after an opportunity for personal consultation (if practicable), determine and notify the individual of which steps, if any, would in the opinion of such official or committee be appropriate for assuring compliance with such laws and regulations and the date by which such steps should be taken. Such steps may include, as appropriate—

(A) divestiture,

(B) restitution,

(C) the establishment of a blind trust,

(D) request for an exemption under section 208(b) of title 18, United States Code, or

(E) voluntary request for transfer, reassignment, limitation of duties, or resignation.

The use of any such steps shall be in accordance with such rules or regulations as the supervising ethics office may prescribe.

(4) If steps for assuring compliance with applicable laws and regulations are not taken by the date set under paragraph (3) by an individual in a position in the executive branch (other than in the Foreign Service or the uniformed services), appointment to which requires the advice and consent of the Senate, the matter shall be referred to the President for appropriate action.

(5) If steps for assuring compliance with applicable laws and regulations are not taken by the date set under paragraph (3) by a member of the Foreign Service or the uniformed services, the Secretary concerned shall take appropriate action.

(6) If steps for assuring compliance with applicable laws and regulations are not taken by the date set under paragraph (3) by any other officer or employee, the matter shall be referred to the head of the appropriate agency, the congressional ethics committee, or the Judicial Conference, for appropriate action; except that in the case of the Postmaster General or Deputy Postmaster General, the Director of the Office of Government Ethics shall recommend to the Governors of the Board of Governors of the United States Postal Service the action to be taken.

(7) Each supervising ethics office may render advisory opinions interpreting this title within its respective jurisdiction. Notwithstanding any other provision of law, the individual to whom a public advisory opinion is rendered in accordance with this paragraph, and any other individual covered by this title who is involved in a fact situation which is indistinguishable in all material aspects, and who acts in good faith in accordance with the provisions and findings of such advisory opinion shall not, as a result of such act, be subject to any penalty or sanction provided by this title.

Pub. L. 95–521, title I, § 106; Oct. 26, 1978, 92 Stat. 1833; Pub. L. 101–194, title II, § 202, Nov. 30, 1989, 103 Stat. 1739; Pub. L. 101–280, § 3(1), (7), May 4, 1990, 104 Stat. 152, 155.

5 U.S.C. App. § 107. Confidential reports and other additional requirements

(a)(1) Each supervising ethics office may require officers and employees under its jurisdiction (including special Government employees as defined in section 202 of title 18, United States Code) to file confidential financial disclosure reports, in such form as the supervising ethics office may prescribe. The information required to be reported under this subsection by the officers and employees of any department or agency shall be set forth in rules or regulations prescribed by the supervising ethics office, and may be less extensive than otherwise required by this title or more extensive when determined by the supervising ethics office to be necessary and appropriate in light of sections 202 through 209 of title 18, United States Code, regulations promulgated thereunder, or the authorized activities of such officers or employees. Any individual re-

quired to file a report pursuant to section 101 shall not be required to file a confidential report pursuant to this subsection, except with respect to information which is more extensive than information otherwise required by this title. Subsections (a), (b), and (d) of section 105 shall not apply with respect to any such report.

(2) Any information required to be provided by an individual under this subsection shall be confidential and shall not be disclosed to the public.

(3) Nothing in this subsection exempts any individual otherwise covered by the requirement to file a public financial disclosure report under this title from such requirement.

(b) The provisions of this title requiring the reporting of information shall supersede any general requirement under any other provision of law or regulation with respect to the reporting of information required for purposes of preventing conflicts of interest or apparent conflicts of interest. Such provisions of this title shall not supersede the requirements of section 7342 of title 5, United States Code.

(c) Nothing in this Act requiring reporting of information shall be deemed to authorize the receipt of income, gifts, or reimbursements; the holding of assets, liabilities, or positions; or the participation in transactions that are prohibited by law, Executive order, rule, or regulation.

Pub. L. 95–521, title I, § 107; Oct. 26, 1978, 92 Stat. 1834; Pub. L. 96–19, § 9(d), (g), June 13, 1979, 93 Stat. 42, 43; Pub. L. 101–194, title II, § 202, Nov. 30, 1989, 103 Stat. 1740.

5 U.S.C. App. § 108. Authority of Comptroller General

(a) The Comptroller General shall have access to financial disclosure reports filed under this title for the purposes of carrying out his statutory responsibilities.

(b) No later than December 31, 1992, and regularly thereafter, the Comptroller General shall conduct a study to determine whether the provisions of this title are being carried out effectively.

Pub. L. 95–521, title I, § 108; Oct. 26, 1978, 92 Stat. 1835; Pub. L. 96–19, § 9(t), June 13, 1979, 93 Stat. 44; Pub. L. 101–194, title II, § 202, Nov. 30, 1989, 103 Stat. 1741.

5 U.S.C. App. § 109. Definitions

For the purposes of this title, the term—

(1) "congressional ethics committees" means the Select Committee on Ethics of the Senate and the Committee on Standards of Official Conduct of the House of Representatives;

(2) "dependent child" means, when used with respect to any reporting individual, any individual who is a son, daughter, stepson, or stepdaughter and who—

(A) is unmarried and under age 21 and is living in the household of such reporting individual; or

(B) is a dependent of such reporting individual within the meaning of section 152 of the Internal Revenue Code of 1986;

(3) "designated agency ethics official" means an officer or employee who is designated to administer the provisions of this title within an agency;

(4) "executive branch" includes each Executive agency (as defined in section 105 of title 5, United States Code), other than the General Accounting Office, and any other entity or administrative unit in the executive branch;

(5) "gift" means a payment, advance, forbearance, rendering, or deposit of money, or any thing of value, unless consideration of equal or greater value is received by the donor, but does not include—

(A) bequest and other forms of inheritance;

(B) suitable mementos of a function honoring the reporting individual;

(C) food, lodging, transportation, and entertainment provided by a foreign government within a foreign country or by the United States Government, the District of Columbia, or a State or local government or political subdivision thereof;

(D) food and beverages which are not consumed in connection with a gift of overnight lodging;

(E) communications to the offices of a reporting individual, including subscriptions to newspapers and periodicals; or

(F) consumable products provided by home-State businesses to the offices of a reporting individual who is an elected official, if those products are intended for consumption by persons other than such reporting individual;

(6) "honoraria" has the meaning given such term in section 505 of this Act;

(7) "income" means all income from whatever source derived, including but not limited to the following items: compensation for services, including fees, commissions, and similar items; gross income derived from business (and net income if the individual elects to include it); gains derived from dealings in property; interest; rents; royalties; dividends; annuities; income from life insurance and endowment contracts; pensions; income from discharge of indebtedness; distributive share of partnership income; and income from an interest in an estate or trust;

(8) "judicial employee" means any employee of the judicial branch of the Government, of the United States Sentencing Commission, of the Tax Court, of the Court of Federal Claims, of the Court of Appeals for Veterans Claims, or of the United States Court of Appeals for the Armed Forces, who is not a judicial officer and who is authorized to perform adjudicatory functions with respect to proceedings in the judicial branch, or who occupies a position for which the rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS–15 of the General Schedule;

(9) "Judicial Conference" means the Judicial Conference of the United States;

(10) "judicial officer" means the Chief Justice of the United States, the Associate Justices of the Supreme Court, and the judges of the United States courts of appeals, United States

district courts, including the district courts in Guam, the Northern Mariana Islands, and the Virgin Islands, Court of Appeals for the Federal Circuit, Court of International Trade, Tax Court, Claims Court, Court of Appeals for Veterans Claims, United States Court of Appeals for the Armed Forces, and any court created by Act of Congress, the judges of which are entitled to hold office during good behavior;

(11) "legislative branch" includes—

(A) the Architect of the Capitol;

(B) the Botanic Gardens;

(C) the Congressional Budget Office;

(D) the General Accounting Office;

(E) the Government Printing Office;

(F) the Library of Congress;

(G) the United States Capitol Police;

(H) the Office of Technology Assessment; and

(I) any other agency, entity, office, or commission established in the legislative branch;

(12) "Member of Congress" means a United States Senator, a Representative in Congress, a Delegate to Congress, or the Resident Commissioner from Puerto Rico;

(13) "officer or employee of the Congress" means—

(A) any individual described under subparagraph (B), other than a Member of Congress or the Vice President, whose compensation is disbursed by the Secretary of the Senate or the Chief Administrative Officer of the House of Representatives;

(B)(i) each officer or employee of the legislative branch (except any officer or employee of the Government Accountability Office) who, for at least 60 days, occupies a position for which the rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS–15 of the General Schedule; and

(ii) each officer or employee of the Government Accountability Office who, for at least 60 consecutive days, occupies a position for which the rate of basic pay, minus the amount of locality pay that would have been authorized under section 5304 of title 5, United States Code (had the officer or employee been paid under the General Schedule) for the locality within which the position of such officer or employee is located (as determined by the Comptroller General), is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS–15 of the General Schedule; and

(iii) at least one principal assistant designated for purposes of this paragraph by each Member who does not have an employee who occupies a position for which the rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS–15 of the General Schedule;

(14) "personal hospitality of any individual" means hospitality extended for a nonbusiness purpose by an individual, not a corporation or organization, at the personal residence of that

individual or his family or on property or facilities owned by that individual or his family;

(15) "reimbursement" means any payment or other thing of value received by the reporting individual, other than gifts, to cover travel-related expenses of such individual other than those which are—

(A) provided by the United States Government, the District of Columbia, or a State or local government or political subdivision thereof;

(B) required to be reported by the reporting individual under section 7342 of title 5, United States Code; or

(C) required to be reported under section 304 of the Federal Election Campaign Act of 1971 (2 U.S.C. 434);

(16) "relative" means an individual who is related to the reporting individual, as father, mother, son, daughter, brother, sister, uncle, aunt, great aunt, great uncle, first cousin, nephew, niece, husband, wife, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, or who is the grandfather or grandmother of the spouse of the reporting individual, and shall be deemed to include the fiance or fiancee of the reporting individual;

(17) "Secretary concerned" has the meaning set forth in section 101(a)(9) of title 10, United States Code, and, in addition means—

(A) the Secretary of the Commerce, with respect to matters concerning the National Oceanic and Atmospheric Administration;

(B) the Secretary of Health and Human Services, with respect to matters concerning the Public Health Service; and

(C) the Secretary of State, with respect to matters concerning the Foreign Service;

(18) "supervising ethics office" means—

(A) the Select Committee on Ethics of the Senate, for Senators, officers and employees of the Senate, and other officers or employees of the legislative branch required to file financial disclosure reports with the Secretary of the Senate pursuant to section 103(h) of this title;

(B) the Committee on Standards of Official Conduct of the House of Representatives, for Members, officers and employees of the House of Representatives and other officers or employees of the legislative branch required to file financial disclosure reports with the Clerk of the House of Representatives pursuant to section 103(h) of this title;

(C) the Judicial Conference for judicial officers and judicial employees; and

(D) the Office of Government Ethics for all executive branch officers and employees; and

(19) "value" means a good faith estimate of the dollar value if the exact value is neither known nor easily obtainable by the reporting individual.

Pub. L. 95–521, title I, § 109, Oct. 26, 1978, 92 Stat. 1836; Pub. L. 101–194, title II § 202, Nov. 30, 1989, 103 Stat. 1741; Pub. L. 101–280, § 3(1), (8), May 4, 1990, 104 Stat. 152, 155; Pub. L. 102–378, § 4(a)(2), Oct. 2, 1992, 106 Stat. 1357; Pub. L. 102–572, title IX, § 902(b)(2), Oct. 29, 1992, 106 Stat. 4516; Pub. L. 103–160, Div. A, title XI, § 1182(d)(3), Nov. 30, 1993, 107 Stat. 1773; Pub. L. 103–337, Div. A, title IX, § 924(d)(3), Oct. 5, 1994, 108 Stat. 2832; Pub. L. 104–186, title II, § 216(2), Aug. 20, 1996, 110 Stat. 1747; Pub. L. 105–368, title V, Subtitle B, § 512(b)(1)(D), Nov. 11, 1998, 112 Stat. 3342; Pub. L. 110–323, § 7, Sept. 22, 2008, 122 Stat. 3547.

5 U.S.C. App. § 110. Notice of actions taken to comply with ethics agreements

(a) In any case in which an individual agrees with that individual's designated agency ethics official, the Office of Government Ethics, a Senate confirmation committee, a congressional ethics committee, or the Judicial Conference, to take any action to comply with this Act or any other law or regulation governing conflicts of interest of, or establishing standards of conduct applicable with respect to, officers or employees of the Government, that individual shall notify in writing the designated agency ethics official, the Office of Government Ethics, the appropriate committee of the Senate, the congressional ethics committee, or the Judicial Conference, as the case may be, of any action taken by the individual pursuant to the agreement. Such notification shall be made not later than the date specified in the agreement by which action by the individual must be taken, or not later than three months after the date of the agreement, if no date for action is so specified.

(b) If an agreement described in subsection (a) requires that the individual recuse himself or herself from particular categories of agency or other official action, the individual shall reduce to writing those subjects regarding which the recusal agreement will apply and the process by which it will be determined whether the individual must recuse himself or herself in a specific instance. An individual shall be considered to have complied with the requirements of subsection (a) with respect to such recusal agreement if such individual files a copy of the document setting forth the information described in the preceding sentence with such individual's designated agency ethics official or the appropriate supervising ethics office within the time prescribed in the last sentence of subsection (a).

Pub. L. 95–521, title I, § 110, as added Nov. 30, 1989, Pub. L. 101–194, title II, § 202, 103 Stat. 1744; as amended May 4, 1990, Pub. L. 101–280, § 3(1), 104 Stat. 152.

5 U.S.C. App. § 111. Administration of provisions

The provisions of this title shall be administered by—

(1) the Director of the Office of Government Ethics, the designated agency ethics official, or the Secretary concerned, as appropriate, with regard to officers and employees described in paragraphs (1) through (8) of section 101(f);

(2) the Select Committee on Ethics of the Senate and the Committee on Standards of Official Conduct of the House of

Representatives, as appropriate, with regard to officers and employees described in paragraphs (9) and (10) of section 101(f); and

(3) the Judicial Conference in the case of an officer or employee described in paragraphs (11) and (12) of section 101(f) [5 U.S.C. App. § 101(f) (11), (12)]. The Judicial Conference may delegate any authority it has under title to an ethics committee established by the Judicial Conference.

Pub. L. 95–521, title I, § 111, as added Nov. 30, 1989, Pub. L. 101–194, title II, § 202, 103 Stat. 1744; as amended May 4, 1990, Pub. L. 101–280, § 3(1), (9), 104 Stat. 152, 157.

E. POLITICAL ACTIVITIES: FEDERAL EMPLOYEES (TITLE 5, UNITED STATES CODE)

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5 U.S.C. § 7321. Political participation

It is the policy of the Congress that employees should be encouraged to exercise fully, freely, and without fear of penalty or reprisal, and to the extent not expressly prohibited by law, their right to participate or to refrain from participating in the political processes of the Nation.

Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 525; Pub. L. 103–94, § 2, Oct. 6, 1993, 107 Stat. 1001.

5 U.S.C. § 7322. Definitions

For the purpose of this subchapter—

(1) "employee" means any individual, other than the President and the Vice President, employed or holding office in—

(A) an Executive agency other than the General Accounting Office;

(B) a position within the competitive service which is not in an Executive agency; or

(C) the government of the District of Columbia, other than the Mayor or a member of the City Council or the Recorder of Deeds;

but does not include a member of the uniformed services;

(2) "partisan political office" means any office for which any candidate is nominated or elected as representing a party any of whose candidates for Presidential elector received votes in the last preceding election at which Presidential electors were selected, but shall exclude any office or position within a political party or affiliated organization; and

(3) "political contribution"—

(A) means any gift, subscription, loan, advance, or deposit of money or anything of value, made for any political purpose;

(B) includes any contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a contribution for any political purpose;

(C) includes any payment by any person, other than a candidate or a political party or affiliated organization, of compensation for the personal services of another person which are rendered to any candidate or political party or affiliated organization without charge for any political purpose; and

(D) includes the provision of personal services for any political purpose.

Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 525; Pub. L. 103–94, § 2, Oct. 6, 1993, 107 Stat. 1001.

5 U.S.C. § 7323. Political activity authorized; prohibitions

(a) Subject to the provisions of subsection (b), an employee may take an active part in political management or in political campaigns, except an employee may not—

(1) use his official authority or influence for the purpose of interfering with or affecting the result of an election;

(2) knowingly solicit, accept, or receive a political contribution from any person, unless such person is—

(A) a member of the same Federal labor organization as defined under section 7103(4) of this title or a Federal employee organization which as of the date of enactment of the Hatch Act Reform Amendments of 1993 had a multicandidate political committee (as defined under section 315(a)(4) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(a)(4)));

(B) not a subordinate employee; and

(C) the solicitation is for a contribution to the multicandidate political committee (as defined under section 315(a)(4) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(a)(4))) of such Federal labor organization as defined under section 7103(4) of this title or a Federal employee organization which as of the date of the enactment of the Hatch Act Reform Amendments of 1993 had a multicandidate political committee (as defined under section 315(a)(4) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(a)(4))); or

(3) run for the nomination or as a candidate for election to a partisan political office; or

(4) knowingly solicit or discourage the participation in any political activity of any person who—

(A) has an application for any compensation, grant, contract, ruling, license, permit, or certificate pending before the employing office of such employee; or

(B) is the subject of or a participant in an ongoing audit, investigation, or enforcement action being carried out by the employing office of such employee.

(b)(1) An employee of the Federal Election Commission (except one appointed by the President, by and with the advice and consent of the Senate), may not request or receive from, or give to, an employee, a Member of Congress, or an officer of a uniformed service a political contribution.

(2)(A) No employee described under subparagraph (B) (except one appointed by the President, by and with the advice and consent of the Senate), may take an active part in political management or political campaigns.

(B) The provisions of subparagraph (A) shall apply to—

(i) an employee of—

(I) the Federal Election Commission or the Election Assistance Commission;

(II) the Federal Bureau of Investigation;

(III) the Secret Service;

(IV) the Central Intelligence Agency;

(V) the National Security Council;

(VI) the National Security Agency;

(VII) the Defense Intelligence Agency;

(VIII) the Merit Systems Protection Board;

(IX) the Office of Special Counsel;

(X) the Office of Criminal Investigation of the Internal Revenue Service;

(XI) the Office of Investigative Programs of the United States Customs Service; or

(XII) the Office of Law Enforcement of the Bureau of Alcohol, Tobacco, and Firearms;

(XIII) the National Geospatial-Intelligence Agency; or

(XIV) the Office of the Director of National Intelligence; or

(ii) a person employed in a position described under section 3132(a)(4), 5372, or 5372a or 5372b of title 5, United States Code.

(3) No employee of the Criminal Division or National Security Division of the Department of Justice (except one appointed by the President, by and with the advice and consent of the Senate), may take an active part in political management or political campaigns.

(4) For purposes of this subsection, the term "active part in political management or in a political campaign" means those acts of political management or political campaigning which were prohibited for employees of the competitive service before July 19, 1940, by determinations of the Civil Service Commission under the rules prescribed by the President.

(c) An employee retains the right to vote as he chooses and to express his opinion on political subjects and candidates.

Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 525; Pub. L. 103–94, § 2, Oct. 6, 1993, 107 Stat. 1002; Pub. L. 103–359, title V, § 501(k), Oct. 14, 1994, 108 Stat. 3430; Pub. L. 104–201, Div. A, title XI, § 1122(a)(1), Sept. 23, 1996, 110 Stat. 2687; Pub. L. 106–554, § 1(a)(3), Dec. 21, 2000, 114 Stat. 2763; Pub. L. 107–252, title VIII, Subtitle B, § 811(a), Oct. 29, 2002, 116 Stat. 1727; Pub. L. 108–458, title I, Subtitle G, § 1079(a), Dec. 17, 2004, 118 Stat. 3695; Pub. L. 109–177, title V, § 506(b)(2), March 9, 2006, 120 Stat. 249; Pub. L. 110–417, Div. A, title IX, Subtitle D, § 931(a)(1), Oct. 14, 2008, 122 Stat. 4575.

5 U.S.C. § 7324. Political activities on duty; prohibition

(a) An employee may not engage in political activity—

(1) while the employee is on duty;

(2) in any room or building occupied in the discharge of official duties by an individual employed or holding office in the Government of the United States or any agency or instrumentality thereof;

(3) while wearing a uniform or official insignia identifying the office or position of the employee; or

(4) using any vehicle owned or leased by the Government of the United States or any agency or instrumentality thereof.

(b)(1) An employee described in paragraph (2) of this subsection may engage in political activity otherwise prohibited by subsection (a) if the costs associated with that political activity are not paid for by money derived from the Treasury of the United States.

(2) Paragraph (1) applies to an employee—

(A) the duties and responsibilities of whose position continue outside normal duty hours and while away from the normal duty post; and

(B) who is—

(i) an employee paid from an appropriation for the Executive Office of the President; or

(ii) an employee appointed by the President, by and with the advice and consent of the Senate, whose position is located within the United States, who determines policies to be pursued by the United States in relations with foreign powers or in the nationwide administration of Federal laws.

Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 525; as amended by Pub. L. 93–268, § 4(a), Apr. 17, 1974, 88 Stat. 87; Pub. L. 103–94, § 2, Oct. 6, 1993, 107 Stat. 1003.

5 U.S.C. § 7325. Political activity permitted; employees residing in certain municipalities

The Office of Personnel Management may prescribe regulations permitting employees, without regard to the prohibitions in paragraphs (2) and (3) of section 7323(a) and paragraph (2) of Section 7323(b) of this title, to take an active part in political management and political campaigns involving the municipality or other political subdivision in which they reside, to the extent the Office considers it to be in their domestic interest, when—

(1) the municipality or political subdivision is in Maryland or Virginia and in the immediate vicinity of the District of Columbia, or is a municipality in which the majority of voters are employed by the Government of the United States; and

(2) the Office determines that because of special or unusual circumstances which exist in the municipality or political subdivision it is in the domestic interest of the employees and individuals to permit that political participation.

Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 526; Pub. L. 96–54, § 2(a)(44), Aug. 14, 1979, 93 Stat. 384; Pub. L. 103–94, § 2, Oct. 6, 1993, 107 Stat. 1004; Pub. L. 104–93; title III, § 308, Jan. 6, 1996, 109 Stat. 966.

5 U.S.C. § 7326. Penalties

An employee or individual who violates section 7323 or 7324 of this title shall be removed from his position, and funds appropriated for the position from which removed thereafter may not be used to pay the employee or individual. However, if the Merit Systems Protection Board finds by unanimous vote that the violation

does not warrant removal, a penalty of not less than 30 days' suspension without pay shall be imposed by direction of the Board.

Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 526; Pub. L. 103–94, § 2, Oct. 6, 1993, 107 Stat. 1004.

5 U.S.C. § 7351. Gifts to superiors

(a) An employee may not—

(1) solicit a contribution from another employee for a gift to an official superior;

(2) make a donation as a gift or give a gift to an official superior; or

(3) accept a gift from an employee receiving less pay than himself.

(b) An employee who violates this section shall be subject to appropriate disciplinary action by the employing agency or entity.

(c) Each supervising ethics office (as defined in section 7353(d)(1)) is authorized to issue regulations implementing this section, including regulations exempting voluntary gifts or contributions that are given or received for special occasions such as marriage or retirement or under other circumstances in which gifts are traditionally given or exchanged.

Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 527; as amended Pub. L. 101–194, title III, § 301, Nov. 30, 1989, 103 Stat. 1745; Pub. L. 101–280, § 4(a), May 4, 1990, 104 Stat. 157.

5 U.S.C. § 7353. Gifts to Federal employees

(a) Except as permitted by subsection (b), no Member of Congress or officer or employee of the executive, legislative, or judicial branch shall solicit or accept anything of value from a person—

(1) seeking official action from, doing business with, or (in the case of executive branch officers and employees) conducting activities regulated by, the individual's employing entity; or

(2) whose interests may be substantially affected by the performance or nonperformance of the individual's official duties.

(b)(1) Each supervising ethics office is authorized to issue rules or regulations implementing the provisions of this section and providing for such reasonable exceptions as may be appropriate.

(2)(A) Subject to subparagraph (B), a Member, officer, or employee may accept a gift pursuant to rules or regulations established by such individual's supervising ethics office pursuant to paragraph (1);

(B) No gift may be accepted pursuant to subparagraph (A) in return for being influenced in the performance of any official act.

(3) Nothing in this section precludes a Member, officer, or employee from accepting gifts on behalf of the United States Government or any of its agencies in accordance with statutory authority.

(4) Nothing in this section precludes an employee of a private sector organization, while assigned to an agency under chapter 37, from continuing to receive pay and benefits from such organization in accordance with such chapter.

(c) A Member of Congress or an officer or employee who violates this section shall be subject to appropriate disciplinary and other

remedial action in accordance with any applicable laws, Executive orders, and rules or regulations.

(d) For purposes of this section—

(1) the term "supervising ethics office" means—

(A) the Committee on Standards of Official Conduct of the House of Representatives or the House of Representatives as a whole, for Members, officers, and employees of the House of Representatives;

(B) the Select Committee on Ethics of the Senate, or the Senate as a whole, for Senators, officers, and employees of the Senate;

(C) the Judicial Conference of the United States for judges and judicial branch officers and employees;

(D) the Office of Government Ethics for all executive branch officers and employees; and

(E) the ethics committee with which the officer or employee is required to file financial disclosure forms, for all legislative branch officers and employees other than those specified in subparagraphs (A) and (B), except that such authority may be delegated; and

(2) the term "officer or employee" means an individual holding an appointive or elective position in the executive, legislative, or judicial branch of Government, other than a Member of Congress.

Added Pub. L. 101–194, Nov. 30, 1989, title III, § 303, 103 Stat. 1746, amended Pub. L. 101–280, § 4(d), May 4, 1990, 104 Stat. 158; Pub. L. 107–347, title II, § 209(g)(1)(C), Dec. 17, 2002, 116 Stat. 2932.

F. POLITICAL ACTIVITIES: STATE AND LOCAL EMPLOYEES (TITLE 5, UNITED STATES CODE)

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5 U.S.C. § 1501. Definitions

For the purpose of this chapter—

(1) "State" means a State or territory or possession of the United States;

(2) "State or local agency" means the executive branch of a State, municipality, or other political subdivision of a State, or an agency or department thereof;

(3) "Federal agency" means an Executive agency or other agency of the United States, but does not include a member bank of the Federal Reserve System; and

(4) "State or local officer or employee" means an individual employed by a State or local agency whose principal employment is in connection with an activity which is financed in whole or in part by loans or grants made by the United States or a Federal agency, but does not include—

(A) an individual who exercises no functions in connection with that activity; or

(B) an individual employed by an educational or research institution, establishment, agency or system which is supported in whole or in part by a State or political subdivision thereof, or by a recognized religious, philanthropic, or cultural organization.

Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 403; as amended by Pub. L. 93–443, title VI, § 401(c), Oct. 15, 1974, 88 Stat. 1290.

5 U.S.C. § 1502. Influencing elections; taking part in political campaigns; prohibitions; exceptions

(a) A State or local officer or employee may not—

(1) use his official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office;

(2) directly or indirectly coerce, attempt to coerce, command, or advise a State or local officer or employee to pay, lend, or contribute anything of value to a party, committee, organization, agency, or person for political purposes; or

(3) be a candidate for elective office.

(b) A State or local officer or employee retains the right to vote as he chooses and to express his opinions on political subjects and candidates.

(c) Subsection (a)(3) of this section does not apply to—

(1) the Governor or Lieutenant Governor of a State or an individual authorized by law to act as Governor;

(2) the mayor of a city;

(3) a duly elected head of an executive department of a State or municipality who is not classified under a State or municipal merit or civil-service system; or

(4) an individual holding elective office.

Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 404; as amended by Pub. L. 93–443, title IV, § 401(a), Oct. 15, 1974, 88 Stat. 1290.

5 U.S.C. § 1503. Nonpartisan candidacies permitted

Section 1502(a)(3) of this title does not prohibit any State or local officer or employee from being a candidate in any election if none of the candidates is to be nominated or elected at such election as representing a party any of whose candidates for Presidential elector received votes in the last preceding election at which Presidential electors were selected.

Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 404; as amended by Pub. L. 93–443, title IV, § 401(b)(1), Oct. 15, 1974, 88 Stat. 1290.

5 U.S.C. § 1504. Investigations; notice of hearing

When a Federal agency charged with the duty of making a loan or grant of funds of the United States for use in an activity by a State or local officer or employee has reason to believe that the officer or employee has violated section 1502 of this title, it shall report the matter to the Special Counsel. On receipt of the report, or on receipt of other information which seems to the Special Counsel to warrant an investigation, the Special Counsel shall investigate the report and such other information and present his findings and any charges based on such findings to the Merit Systems Protection Board, which shall—

(1) fix a time and place for a hearing; and

(2) send, by registered or certified mail, to the officer or employee charged with the violation and to the State or local agency employing him a notice setting forth a summary of the alleged violation and giving the time and place of the hearing.

The hearing may not be held earlier than 10 days after the mailing of the notice.

Pub. L. 89–544, Sept. 6, 1966, 80 Stat. 405; as amended by Pub. L. 95–454, title IX, § 906(c)(7), Oct. 13, 1978, 92 Stat. 1225.

5 U.S.C. § 1505. Hearings; adjudications; notice of determinations

Either the State or local officer or employee or the State or local agency employing him, or both, are entitled to appear with counsel at the hearing under section 1504 of this title, and be heard. After this hearing, the Merit System Protection Board shall—

(1) determine whether a violation of section 1502 of this title has occurred;

(2) determine whether the violation warrants the removal of the officer or employee from his office or employment; and

(3) notify the officer or employee and the agency of the determination by registered or certified mail.

Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 405; as amended by Pub. L. 95–454, title IX, § 906(a)(6), Oct. 13, 1978, 92 Stat. 1225.

5 U.S.C. § 1506. Orders; withholding loans or grants; limitations

(a) When the Merit Systems Protection Board finds—

(1) that a State or local officer or employee has not been removed from his office or employment within 30 days after notice of a determination by the Board that he has violated section 1502 of this title and that the violation warrants removal; or

(2) that the State or local officer or employee has been removed and has been appointed within 18 months after his removal to an office or employment in the same State in a State or local agency which does not receive loans or grants from a Federal agency;

the Board shall make and certify to the appropriate Federal agency an order requiring that agency to withhold from its loans or grants to the State or local agency to which notice was given an amount equal to 2 years' pay at the rate the officer or employee was receiving at the time of the violation. When the State or local agency to which appointment within 18 months after removal has been made is one that receives loans or grants from a Federal agency, the Board order shall direct that the withholding be made from that State or local agency.

(b) Notice of the order shall be sent by registered or certified mail to the State or local agency from which the amount is ordered to be withheld. After the order becomes final, the Federal agency to which the order is certified shall withhold the amount in accordance with the terms of the order. Except as provided by section 1508 of this title, a determination or order of the Board becomes final at the end of 30 days after mailing the notice of the determination or order.

(c) The Board may not require an amount to be withheld from a loan or grant pledged by a State or local agency as security for its bonds or notes if the withholding of that amount would jeopardize the payment of the principal or interest on the bonds or notes.

Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 405; as amended by Pub. L. 95–454, title IX, § 906(a)(6), Oct. 13, 1978, 92 Stat. 1225.

5 U.S.C. § 1507. Subpenas and depositions

(a) The Merit Systems Protection Board may require by subpena the attendance and testimony of witnesses and the production of documentary evidence relating to any matter before it as a result of this chapter. Any member of the Board may sign subpenas, and members of the Board and its examiners when authorized by the Board may administer oaths, examine witnesses, and receive evidence. The attendance of witnesses and the production of documentary evidence may be required from any place in the United States at the designated place of hearing. In case of disobedience to a subpena, the Board may invoke the aid of a court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence. In case of contumacy or refusal to obey a subpena issued to a person, the United States District Court within whose jurisdiction the inquiry is carried on may

issue an order requiring him to appear before the Board, or to produce documentary evidence if so ordered, or to give evidence concerning the matter in question; and any failure to obey the order of the court may be punished by the court as a contempt thereof.

(b) The Board may order testimony to be taken by deposition at any stage of a proceeding or investigation before it as a result of this chapter. Depositions may be taken before an individual designated by the Board and having the power to administer oaths. Testimony shall be reduced to writing by the individual taking the deposition, or under his direction, and shall be subscribed by the deponent. Any person may be compelled to appear and depose and to produce documentary evidence before the Board as provided by this section.

(c) A person may not be excused from attending and testifying or from producing documentary evidence or in obedience to a subpena on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled to testify, or produce evidence, documentary or otherwise, before the Board in obedience to a subpena issued by it. A person so testifying is not exempt from prosecution and punishment for perjury committed in so testifying.

Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 406; as amended by Pub. L. 95–454, title IX, § 906(a)(6), Oct. 13, 1978, 92 Stat. 1225.

5 U.S.C. § 1508. Judicial review

A party aggrieved by a determination or order of the Merit Systems Protection Board under section 1504, 1505, or 1506 of this title may, within 30 days after the mailing of notice of the determination or order, institute proceedings for review thereof by filing a petition in the United States District Court for the district in which the State or local officer or employee resides. The institution of the proceedings does not operate as a stay of the determination or order unless—

(1) the court specifically orders a stay; and

(2) the officer or employee is suspended from his office or employment while the proceedings are pending.

A copy of the petition shall immediately be served on the Board, and thereupon the Board shall certify and file in the court a transcript of the record on which the determination or order was made. The court shall review the entire record including questions of fact and questions of law. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that the additional evidence may materially affect the result of the proceedings and that there were reasonable grounds for failure to adduce this evidence in the hearing before the Board, the court may direct that the additional evidence be taken before the Board in the manner and on the terms and conditions fixed by the court. The Board may modify its findings of fact or its determination or order in view of the additional evidence and shall file with the court the modified findings, determination, or order; and

the modified findings of fact, if supported by substantial evidence, are conclusive. The court shall affirm the determination or order, or the modified determination or order, if the court determines that it is in accordance with law. If the court determines that the determination or order, or the modified determination or order, is not in accordance with law, the court shall remand the proceeding to the Board with directions either to make a determination or order determined by the court to be lawful or to take such further proceedings as, in the opinion of the court, the law requires. The judgment and decree of the court are final, subject to review by the appropriate United States Court of Appeals as in other cases, and the judgment and decree of the court of appeals are final, subject to review by the Supreme Court of the United States on certiorari or certification as provided by section 1254 of title 28. If a provision of this section is held to be invalid as applied to a party by a determination or order of the Board, the determination or order becomes final and effective as to that party as if the provision had not been enacted.

Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 406; as amended by Pub. L. 95–454, title IX, § 906(a)(6), Oct. 13, 1978, 92 Stat. 1225.

G. LIMITATIONS ON OUTSIDE EMPLOYMENT AND ELIMINATION OF HONORARIA

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5 U.S.C. App. § 501. Outside earned income limitation

(a) Outside earned income limitation—

(1) Except as provided by paragraph (2), a Member or an officer or employee who is a noncareer officer or employee and who occupies a position classfied above GS–15 of the General Schedule or, in the case of positions not under the General Schedule, for which the rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS–15 of the General Schedule, may not in any calendar year have outside earned income attributable to such calendar year which exceeds 15 percent of the annual rate of basic pay for level II of the Executive Schedule under section 5313 of title 5, United States Code, as of January 1 of such calendar year.

(2) In the case of any individual who becomes a Member or an officer or employee who is a noncareer officer or employee and who occupies a position classified above GS–15 of the General Schedule or, in the case of positions not under the General Schedule, for which the rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS–15 of the General Schedule, such individual may not have outside earned income attributable to the portion of that calendar year which occurs after such individual becomes a Member or such an officer or employee which exceeds 15 percent of the annual rate of basic pay for level II of the Executive Schedule under section 5313 of title 5, United States Code, as of January 1 of such calendar year multiplied by a fraction, the numerator of which is the number of days such individual is a Member or such officer or employee during such calendar year and the denominator of which is 365.

(b) Honoraria prohibition.—An individual may not receive any honorarium while that individual is a Member, officer or employee.

(c) Treatment of charitable contributions.—Any honorarium which, except for subsection (b), might be paid to a Member, officer or employee, but which is paid instead on behalf of such Member, officer or employee to a charitable organization, shall be deemed not to be received by such Member, officer or employee. [See also Senate Rule 35 pertaining to gifts.] No such payment shall exceed $2,000 or be made to a charitable organization from which such in-

dividual or a parent, sibling, spouse, child, or dependent relative of such individual derives any financial benefit.

Pub. L. 95–521, title V, Oct. 26, 1978, 92 Stat. 1864, as amended Pub. L. 101–194, title VI § 601(a), Nov. 30, 1989, 103 Stat. 1760; Pub. L. 101–280 § 7(a), May 4, 1990, 104 Stat. 161; Pub. L. 102–378, § 4(b)(1), (2), Oct. 2, 1992, 106 Stat. 1357.

5 U.S.C. App. § 502. Limitations on outside employment

(a) Limitations.—A Member or an officer or employee who is a noncareer officer or employee and who occupies a position classified above GS–15 of the General Schedule or, in the case of positions not under the General Schedule, for which the rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS–15 of the General Schedule shall not—

(1) receive compensation for affiliating with or being employed by a firm, partnership, association, corporation, or other entity which provides professional services involving a fiduciary relationship;

(2) permit that Member's, officer's, or employee's name to be used by any such firm, partnership, association, corporation, or other entity;

(3) receive compensation for practicing a profession which involves a fiduciary relationship;

(4) serve for compensation as an officer or member of the board of any association, corporation, or other entity; or

(5) receive compensation for teaching, without the prior notification and approval of the appropriate entity referred to in section 503.

(b) Teaching compensation of justices and judges retired from regular active service.—For purposes of the limitation under section 501(a), any compensation for teaching approved under subsection (a)(5) of this section shall not be treated as outside earned income—

(1) when received by a justice of the United States retired from regular active service under section 371(b) of title 28, United States Code;

(2) when received by a judge of the United States retired from regular active service under section 371(b) of title 28, United States Code, for teaching performed during any calendar year for which such judge has met the requirements of subsection (f) of section 371 of title 28, United States Code, as certified in accordance with such subsection; or

(3) when received by a justice or judge of the United States retired from regular active service under section 372(a) of title 28, United States Code.

Pub. L. 95–521, title V, Oct. 26, 1978, 92 Stat. 1864, as amended Pub. L. 101–194, title VI, § 601(a), Nov. 30, 1989, 103 Stat. 1760; Pub. L. 101–280, § 7(a)(1), (b), May 4, 1990, 104 Stat. 161; Pub. L. 101–650, title III, § 319, Dec. 1, 1990, 104 Stat. 5117; Pub. L. 102–198, § 6, Dec. 9, 1991, 105 Stat. 1624; Pub. L. 102–378, § 4(b)(3), Oct. 2, 1992, 106 Stat. 1357.

5 U.S.C. App. § 503. Administration

This title shall be subject to the rules and regulations of—

(1) and administered by—

(A) the Committee on Standards of Official Conduct of the House of Representatives, with respect to Members, officers, and employees of the House of Representatives; and

(B) in the case of Senators and legislative branch officers and employees other than those officers and employees specified in subparagraph (A), the committee to which reports filed by such officers and employees under title I are transmitted under such title, except that the authority of this section may be delegated by such committee with respect to such officers and employees;

(2) The Office of Government Ethics and administered by designated agency ethics officials with respect to officers and employees of the executive branch; and

(3) and administered by the Judicial Conference of the United States (or such other agency as it may designate) with respect to officers and employees of the judicial branch.

Pub. L. 95–521, title V, Oct. 26, 1978, 92 Stat. 1864, as amended Pub. L. 101–194, title VI § 601(a), Nov. 30, 1989, 103 Stat. 1760; Pub. L. 101–280, § 7(c), May 4, 1990, 104 Stat. 161; Pub. L. 102–90, title I, § 6(b)(1), Aug. 14, 1991, 105 Stat. 450.

5 U.S.C. App. § 504. Civil penalties

(a) Civil action.—The Attorney General may bring a civil action in any appropriate United States district court against any individual who violates any provision of section 501 or 502. The court in which such action is brought may assess against such individual a civil penalty of not more than $10,000 or the amount of compensation, if any, which the individual received for the prohibited conduct, whichever is greater.

(b) Advisory opinions.—Any entity described in section 503 may render advisory opinions interpreting this title, in writing, to individuals covered by this title. Any individual to whom such an advisory opinion is rendered and any other individual covered by this title who is involved in a fact situation which is indistinguishable in all material aspects, and who, after the issuance of such advisory opinion, acts in good faith in accordance with its provisions and findings shall not, as a result of such actions, be subject to any sanction under subsection (a).

Pub. L. 95–521, title V, Oct. 26, 1978, 92 Stat. 1864, as amended Pub. L. 101–194, title VI, § 601(a), Nov. 30, 1989, 103 Stat. 1761.

5 U.S.C. App. § 505. Definitions

For purposes of this title:

(1) The term "Member" means a Senator in, a Representative in, or a Delegate or Resident Commissioner to, the Congress.

(2) The term "officer or employee" means any officer or employee of the Government except any special Government employee (as defined in section 202 of title 18, United States Code).

(3) The term "honorarium" means a payment of money or anything of value for an appearance, speech or article (including a series of appearances, speeches, or articles if the subject matter is directly related to the individual's official duties or the payment is made because of the individual's status with the Government) by a Member, officer or employee, excluding any actual and necessary travel expenses incurred by such individual (and one relative) to the extent that such expenses are paid or reimbursed by any other person, and the amount otherwise determined shall be reduced by the amount of any such expenses to the extent that such expenses are not paid or reimbursed.

(4) The term "travel expenses" means, with respect to a Member, officer or employee, or a relative of any such individual, the cost of transportation, and the cost of lodging and meals while away from his or her residence or principal place of employment.

(5) The term "charitable organization" means an organization described in section 170(c) of the Internal Revenue Code of 1986.

Pub. L. 95–521, title V, Oct. 26, 1978, 92 Stat. 1864, as amended Pub. L. 101–194, title VI, § 601(A), Nov. 30, 1989, 103 Stat. 1760; Pub. L. 102–90, title I, § 6(b)(2) and title III, § 314(b), August 14, 1991, 105 Stat. 450, 469.

H. CRIMINAL CODE PROVISIONS (TITLE 18, UNITED STATES CODE)

CHAPTER 11—BRIBERY, GRAFT, AND CONFLICTS OF INTEREST

18 U.S.C. § 201. Bribery of public officials and witnesses

(a) For the purpose of this section—

(1) the term "public official" means Member of Congress, Delegate, or Resident Commissioner, either before or after such official has qualified, or an officer or employee or person acting for or on behalf of the United States, or any department, agency or branch of Government thereof, including the District of Columbia, in any official function, under or by authority of any such department, agency, or branch of Government, or a juror;

(2) the term "person who has been selected to be a public official" means any person who has been nominated or appointed to be a public official, or has been officially informed that such person will be so nominated or appointed; and

(3) the term "official act" means any decision or action on any question, matter, cause, suit, proceeding or controversy, which may at any time be pending, or which may by law be brought before any public official, in such official's official capacity, or in such official's place of trust or profit.

(b) Whoever—

(1) directly or indirectly, corruptly gives, offers or promises anything of value to any public official or person who has been selected to be a public official, or offers or promises any public official or any person who has been selected to be a public official to give anything of value to any other person or entity, with intent—

(A) to influence any official act; or

(B) to influence such public official or person who has been selected to be a public official to commit or aid in committing, or collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States; or

(C) to induce such public official or such person who has been selected to be a public official to do or omit to do any act in violation of the lawful duty of such official or person;

(2) being a public official or person selected to be a public official, directly or indirectly, corruptly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally or for any other person or entity, in return for—

(A) being influenced in the performance of any official act;

(B) being influenced to commit or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States; or

(C) being induced to do or omit to do any act in violation of the official duty of such official or person;

(3) directly or indirectly, corruptly gives, offers, or promises anything of value to any person, or offers or promises such person to give anything of value to any other person or entity, with intent to influence the testimony under oath or affirmation of such first-mentioned person as a witness upon a trial, hearing, or other proceeding, before any court, any committee of either House or both Houses of Congress, or any agency, commission, or officer authorized by the laws of the United States to hear evidence or take testimony, or with intent to influence such person to absent himself therefrom;

(4) directly or indirectly, corruptly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally or for any other person or entity in return for being influenced in testimony under oath or affirmation as a witness upon any such trial, hearing, or other proceeding, or in return for absenting himself therefrom;

shall be fined under this title or not more than three times the monetary equivalent of the thing of value, whichever is greater, or imprisoned for not more than fifteen years, or both, and may be disqualified from holding any office of honor, trust, or profit under the United States.

(c) Whoever—

(1) otherwise than as provided by law for the proper discharge of official duty—

(A) directly or indirectly gives, offers, or promises anything of value to any public official, former public official, or person selected to be a public official, for or because of any official act performed or to be performed by such public official, former public official, or person selected to be a public official; or

(B) being a public official, former public official, or person selected to be a public official, otherwise than as provided by law for the proper discharge of official duty, directly or indirectly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally for or because of any official act performed or to be performed by such official or person;

(2) directly or indirectly, gives, offers, or promises anything of value to any person, for or because of the testimony under oath or affirmation given or to be given by such person as a witness upon a trial, hearing, or other proceeding, before any court, any committee of either House or both Houses of Congress, or any agency, commission, or officer authorized by the laws of the United States to hear evidence or take testimony, or for or because of such person's absence therefrom;

(3) directly or indirectly, demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally for or because of the testimony under oath or affirmation given or to be given by such person as a witness upon any such trial,

hearing, or other proceeding, or for or because of such person's absence therefrom;

shall be fined under this title or imprisoned for not more than two years, or both.

(d) Paragraphs (3) and (4) of subsection (b) and paragraphs (2) and (3) of subsection (c) shall not be construed to prohibit the payment or receipt of witness fees provided by law, or the payment, by the party upon whose behalf a witness is called and receipt by a witness, of the reasonable cost of travel and subsistence incurred and the reasonable value of time lost in attendance at any such trial, hearing, or proceeding, or in the case of expert witnesses, a reasonable fee for time spent in the preparation of such opinion, and in appearing and testifying.

(e) The offenses and penalties prescribed in this section are separate from and in addition to those prescribed in sections 1503, 1504, and 1505 of this title.

Added Pub. L. 87–849, Sec. 1(a), Oct. 23, 1962, 76 Stat. 1119; amended Pub. L. 91–405, title II, Sec. 204(d)(1), Sept. 22, 1970, 84 Stat. 853; Pub. L. 99–646, Sec. 46(a)–(1), Nov. 10, 1986, 100 Stat. 3601–3604; Pub. L. 103–322, title XXXIII, Secs. 330011(b), 330016(2)(D), Sept. 13, 1994, 108 Stat. 2144, 2148.

18 U.S.C. § 202. Definitions

(a) For the purpose of sections 203, 205, 207, 208, and 209 of this title the term "special Government employee" shall mean an officer or employee of the executive or legislative branch of the United States Government, of any independent agency of the United States or of the District of Columbia, who is retained, designated, appointed, or employed to perform, with or without compensation, for not to exceed one hundred and thirty days during any period of three hundred and sixty-five consecutive days, temporary duties either on a full-time or intermittent basis, a part-time United States commissioner, a part-time United States magistrate judge, or, regardless of the number of days of appointment, an independent counsel appointed under chapter 40 of title 28 and any person appointed by that independent counsel under section 594(c) of title 28. Notwithstanding the next preceding sentence, every person serving as a part-time local representative of a Member of Congress in the Member's home district or State shall be classified as a special Government employee. Notwithstanding section 29(c) and (d)[1] of the Act of August 10, 1956 (70A Stat. 632; 5 U.S.C. 30r(c) and (d)), a Reserve officer of the Armed Forces, or an officer of the National Guard of the United States, unless otherwise an officer or employee of the United States, shall be classified as a special Government employee while on active duty solely for training. A Reserve officer of the Armed Forces or an officer of the National Guard of the United States who is voluntarily serving a period of extended active duty in excess of one hundred and thirty days shall be classified as an officer of the United States within the meaning of section 203 and sections 205 through 209 and 218. A Reserve officer of the Armed Forces or an officer of the National Guard of the United States who is serving involuntarily shall be classified as a special Government employee. The terms "officer or employee" and

special Government employee" as used in sections 203, 205, 207 through 209, and 218, shall not include enlisted members of the Armed Forces.

(b) For the purposes of sections 205 and 207 of this title, the term "official responsibility" means the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government action.

(c) Except as otherwise provided in such sections, the terms "officer" and "employee" in sections 203, 205, 207 through 209, and 218 of this title shall not include the President, the Vice President, a Member of Congress, or a Federal judge.

(d) The term "Member of Congress" in sections 204 and 207 means—

(1) a United States Senator; and

(2) a Representative in, or a Delegate or Resident Commissioner to, the House of Representatives.

(e) As used in this chapter, the term—

(1) "executive branch" includes each executive agency as defined in title 5, and any other entity or administrative unit in the executive branch;

(2) "judicial branch" means the Supreme Court of the United States; the United States courts of appeals; the United States district courts; the Court of International Trade; the United States bankruptcy courts; any court created pursuant to article I of the United States Constitution, including the Court of Appeals for the Armed Forces, the United States Court of Federal Claims, and the United States Tax Court, but not including a court of a territory or possession of the United States; the Federal Judicial Center; and any other agency, office, or entity in the judicial branch; and

(3) "legislative branch" means—

(A) the Congress; and

(B) the Office of the Architect of the Capitol, the United States Botanic Garden, the Government Accountability Office, the Government Printing Office, the Library of Congress, the Office of Technology Assessment, the Congressional Budget Office, the United States Capitol Police, and any other agency, entity, office, or commission established in the legislative branch.

Added Pub. L. 87–849, Sec. 1(a), Oct. 23, 1962, 76 Stat. 1121; amended Pub. L. 90–578, title III, Sec. 301(b), Oct. 17, 1968, 82 Stat. 1115; Pub. L. 100–191, Sec. 3(a), Dec. 15, 1987, 101 Stat. 1306; Pub. L. 101–194, title IV, Sec. 401, Nov. 30, 1989, 103 Stat. 1747; Pub. L. 101–280, Sec. 5(a), May 4, 1990, 104 Stat. 158; Pub. L. 101–650, title III, Sec. 321, Dec. 1, 1990, 104 Stat. 5117; Pub. L. 102–572, title IX, Sec. 902(b)(1), Oct. 29, 1992, 106 Stat. 4516; Pub. L. 103–337, div. A, title IX, Sec. 924(d)(1)(B), Oct. 5, 1994, 108 Stat. 2832; Pub. L. 108–271, Sec. 8(b), July 7, 2004, 118 Stat. 814.

18 U.S.C. § 203. Compensation to Members of Congress, officers and others in matters affecting the Government

(a) Whoever, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly—

(1) demands, seeks, receives, accepts, or agrees to receive or accept any compensation for any representational services, as agent or attorney or otherwise, rendered or to be rendered either personally or by another—

(A) at a time when such person is a Member of Congress, Member of Congress Elect, Delegate, Delegate Elect, Resident Commissioner, or Resident Commissioner Elect; or

(B) at a time when such person is an officer or employee or Federal judge of the United States in the executive, legislative, or judicial branch of the Government, or in any agency of the United States,

in relation to any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest or other particular matter in which the United States is a party or has a direct and substantial interest, before any department, agency, court, court-martial, officer, or any civil, military, or naval commission; or

(2) knowingly gives, promises, or offers any compensation for any such representational services rendered or to be rendered at a time when the person to whom the compensation is given, promised, or offered, is or was such a Member, Member Elect, Delegate, Delegate Elect, Commissioner, Commissioner Elect, Federal judge, officer, or employee;

shall be subject to the penalties set forth in section 216 of this title.

(b) Whoever, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly—

(1) demands, seeks, receives, accepts, or agrees to receive or accept any compensation for any representational services, as agent or attorney or otherwise, rendered or to be rendered either personally or by another, at a time when such person is an officer or employee of the District of Columbia, in relation to any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, other particular matter in which the District of Columbia is a party or has a direct and substantial interest, before any department, agency, court, officer, or commission; or

(2) knowingly gives, promises, or offers any compensation for any such representational services rendered or to be rendered at a time when the person to whom the compensation is given, promised, or offered, is or was an officer or employee of the District of Columbia;

shall be subject to the penalties set forth in section 216 of this title.

(c) A special Government employee shall be subject to subsections (a) and (b) only in relation to a particular matter involving a specific party or parties—

(1) in which such employee has at any time participated personally and substantially as a Government employee or as a special Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise; or

(2) which is pending in the department or agency of the Government in which such employee is serving except that paragraph (2) of this subsection shall not apply in the case of a special Government employee who has served in such department or agency no more than sixty days during the immediately preceding period of three hundred and sixty-five consecutive days.

(d) Nothing in this section prevents an officer or employee, including a special Government employee, from acting, with or without compensation, as agent or attorney for or otherwise representing his parents, spouse, child, or any person for whom, or for any estate for which, he is serving as guardian, executor, administrator, trustee, or other personal fiduciary except—

(1) in those matters in which he has participated personally and substantially as a Government employee or as a special Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise; or

(2) in those matters that are the subject of his official responsibility,

subject to approval by the Government official responsible for appointment to his position.

(e) Nothing in this section prevents a special Government employee from acting as agent or attorney for another person in the performance of work under a grant by, or a contract with or for the benefit of, the United States if the head of the department or agency concerned with the grant or contract certifies in writing that the national interest so requires and publishes such certification in the Federal Register.

(f) Nothing in this section prevents an individual from giving testimony under oath or from making statements required to be made under penalty or perjury.

Added Pub. L. 87–849, § 1(a), Oct. 23, 1962, 76 Stat. 1121; amended Pub. L. 91–405, title II, § 204(d) (2), (3), Sept. 22, 1970, 84 Stat 853; Pub. L. 99–646, § 47(a), Nov. 10, 1986, 100 Stat. 3604; Pub. L. 101–194, title IV, § 402, Nov. 30, 1989, 103 Stat. 1748; Pub. L. 101–280, § 5(b), May 4, 1990, 104 Stat. 159.

18 U.S.C. § 210. Offer to procure appointive public office

Whoever pays or offers or promises any money or things of value, to any person, firm, or corporation in consideration of the use or promise to use any influence to procure any appointive office or place under the United States for any person, shall be fined under this title or imprisoned not more than one year, or both.

June 25, 1948, ch. 62 Stat. 694; § 210, formerly § 214, renumbered Oct. 23, 1962, Pub. L. 87–849, § 1(b), 76 Stat. 1125; Sept. 13, 1994, Pub. L. 103–322, title XXXIII, § 330016(1)(H), 108 Stat. 2147.

18 U.S.C. § 211. Acceptance or solicitation to obtain appointive public office

Whoever solicits or receives, either as a political contribution, or for personal emolument, any money or thing of value, in consideration of the promise of support or use of influence in obtaining for any person any appointive office or place under the United States, shall be fined under this title or imprisoned not more than one year, or both.

Whoever solicits or receives anything of value in consideration of aiding a person to obtain employment under the United States either by referring his name to an executive department or agency of the United States or by requiring the payment of a fee because such person has secured such employment shall be fined under this title or imprisoned not more than one year, or both. This section shall not apply to such services rendered by an employment agency pursuant to the written request of an executive department or agency of the United States.

June 25, 1948, ch. 645, 62 Stat. 694; § 211, formerly § 215, amended Sept. 13, 1951, ch. 380, 65 Stat. 320; and renumbered Oct. 23, 1962, Pub. L. 87–849, § 1(b), 76 Stat. 1125; Sept. 13, 1994, Pub. L. 103–322, title XXXIII, § 330016(1)(H), 108 Stat. 2147.

18 U.S.C. § 216. Penalties and injunctions

(a) The punishment for an offense under section 203, 204, 205, 207, 208, or 209 of this title is the following:

(1) Whoever engages in the conduct constituting the offense shall be imprisoned for not more than one year or fined in the amount set forth in this title, or both.

(2) Whoever willfully engages in the conduct constituting the offense shall be imprisoned for not more than five years or fined in the amount set forth in this title, or both.

(b) The Attorney General may bring a civil action in the appropriate United States district court against any person who engages in conduct constituting an offense under section 203, 204, 205, 207, 208, or 209 of this title and, upon proof of such conduct by a preponderance of the evidence, such person shall be subject to a civil penalty of not more than $50,000 for each violation or the amount of compensation which the person received or offered for the prohibited conduct, whichever amount is greater. The imposition of a civil penalty under this subsection does not preclude any other criminal or civil statutory, common law, or administrative remedy, which is available by law to the United States or any other person.

(c) If the Attorney General has reason to believe that a person is engaging in conduct constituting an offense under section 203, 204, 205, 207, 208, or 209 of this title, the Attorney General may petition an appropriate United States district court for an order prohibiting that person from engaging in such conduct. The court may issue an order prohibiting that person from engaging in such conduct if the court finds that the conduct constitutes such an offense. The filing of a petition under this section does not preclude

any other remedy which is available by law to the United States or any other person.

Added Pub. L. 101–194, title IV, Sec. 407(a), Nov. 30, 1989, 103 Stat. 1753; amended Pub. L. 101–280, Sec. 5(f), May 4, 1990, 104 Stat. 159.

18 U.S.C. § 219. Officers and employees acting as agents of foreign principals

(a) Whoever, being a public official, is or acts as an agent of a foreign principal required to register under the Foreign Agents Registration Act of 1938 or a lobbyist required to register under the Lobbying Disclosure Act of 1995 in connection with the representation of a foreign entity, as defined in section 3(6) of that Act shall be fined under this title or imprisoned for not more than two years, or both.

(b) Nothing in this section shall apply to the employment of any agent of a foreign principal as a special Government employee in any case in which the head of the employing agency certifies that such employment is required in the national interest. A copy of any certification under this paragraph shall be forwarded by the head of such agency to the Attorney General who shall cause the same to be filed with the registration statement and other documents filed by such agent, and made available for public inspection in accordance with section 6 of the Foreign Agents Registration Act of 1938, as amended.

(c) For the purpose of this section "public official" means Member of Congress, Delegate, or Resident Commissioner, either before or after he has qualified, or an officer or employee or person acting for or on behalf of the United States, or any department, agency, or branch of Government thereof, including the District of Columbia, in any official function, under or by authority of any such department, agency, or branch of Government.

(Added Pub. L. 89–486, Sec. 8(b), July 4, 1966, 80 Stat. 249; amended Pub. L. 98–473, title II, Sec. 1116, Oct. 12, 1984, 98 Stat. 2149; Pub. L. 99–646, Sec. 30, Nov. 10, 1986, 100 Stat. 3598; Pub. L. 101–647, title XXXV, Sec. 3511, Nov. 29, 1990, 104 Stat. 4922; Pub. L. 104–65, Sec. 12(b), Dec. 19, 1995, 109 Stat. 701.

18 U.S.C. § 227. Wrongfully influencing a private entity's employment decisions by a Member of Congress

Whoever, being a Senator or Representative in, or a Delegate or Resident Commissioner to, the Congress or an employee of either House of Congress, with the intent to influence, solely on the basis of partisan political affiliation, an employment decision or employment practice of any private entity—

(1) takes or withholds, or offers or threatens to take or withhold, an official act, or

(2) influences, or offers or threatens to influence, the official act of another,

shall be fined under this title or imprisoned for not more than 15 years, or both, and may be disqualified from holding any office of honor, trust, or profit under the United States.

Added Pub. L. 110–81, Title I, § 102(a), Sept. 14, 2007, 121 Stat. 739.

18 U.S.C. § 592. Troops at polls

Whoever, being an officer of the Army or Navy, or other person in the civil, military, or naval service of the United States, orders, brings, keeps, or has under his authority or control any troops or armed men at any place where a general or special election is held, unless such force be necessary to repel armed enemies of the United States, shall be fined under this title or imprisoned not more than five years, or both; and be disqualified from holding any office of honor, profit, or trust under the United States.

This section shall not prevent any officer or member of the Armed Forces of the United States from exercising the right of suffrage in any election district to which he may belong, if otherwise qualified according to the laws of the State in which he offers to vote.

June 24, 1948, ch. 645, 62 Stat. 719; Sept. 13, 1994, Pub. L. 103–322, title XXXIII, § 330016(1)(K), 108 Stat. 2147.

18 U.S.C. § 593. Interference by Armed Forces

Whoever, being an officer or member of the Armed Forces of the United States prescribes or fixes or attempts to prescribe or fix, whether by proclamation, order or otherwise, the qualifications of voters at any election in any State; or

Whoever, being such officer or member, prevents or attempts to prevent by force, threat, intimidation, advice, or otherwise any qualified voter of any State from fully exercising the right of suffrage at any general or special election; or

Whoever, being such officer or member, orders or compels or attempts to compel any election officer in any State to receive a vote from a person not legally qualified to vote; or

Whoever, being such officer or member, imposes or attempts to impose any regulations for conducting any general or special election in a State, different from those prescribed by law; or

Whoever, being such officer or member, interferes in any manner with an election officer's discharge of his duties—shall be fined under this title or imprisoned not more than five years, or both; and disqualified from holding any office of honor, profit, or trust under the United States.

This section shall not prevent any officer or member of the Armed Forces from exercising the right of suffrage in any district to which he may belong, if otherwise qualified according to the laws of the State of such district.

June 25, 1948, ch. 645, 62 Stat. 719; Sept. 13, 1994, Pub. L. 103–322, title XXXIII, § 330016(1)(K), 108 Stat. 2147.

18 U.S.C. § 594. Intimidation of voters

Whoever intimidates, threatens, coerces, or attempts to intimidate, threaten, or coerce, any other person for the purposes of

interfering with the right of such other person to vote or to vote as he may choose, or of causing such other person to vote for, or not to vote for, any candidate for the office of President, Vice President, Presidential elector, Member of the Senate, Member of the House of Representatives, Delegate from the District of Columbia, or Resident Commissioner, at any election held solely or in part for the purpose of electing such candidate, shall be fined under this title or imprisoned not more than one year, or both.

June 25, 1948, ch. 645, 62 Stat. 720; as amended by Pub. L. 91–405, title II, § 204(d)(5), Sept. 22, 1970, 84 Stat. 853; Sept. 13, 1994, Pub. L. 103–322, title XXXIII, § 330016(1)(H), 108 Stat. 2147.

18 U.S.C. § 595. Interference by administrative employees of Federal, State, or territorial governments

Whoever, being a person employed in any administrative position by the United States, or by any department or agency thereof, or by the District of Columbia or any agency or instrumentality thereof, or by any State, Territory, or Possession of the United States, or any political subdivision, municipality, or agency thereof, or agency of such political subdivision or municipality (including any corporation owned or controlled by any State, Territory or Possession of the United States or by any such political subdivision, municipality, or agency), in connection with any activity which is financed in whole or in part by loans or grants made by the United States, or any department or agency thereof, uses his official authority for the purpose of interfering with, or affecting, the nomination or the election of any candidate for the office of President, Vice President, Presidential elector, Member of the Senate, Member of the House of Representatives, Delegate from the District of Columbia, or Resident Commissioner, shall be fined under this title or imprisoned not more than one year, or both.

This section shall not prohibit or make unlawful any act by any officer or employee of any educational or research institution, establishment, agency, or system which is supported in whole or in part by any State or political subdivision thereof, or by the District of Columbia or by any Territory or Possession of the United States; or by any recognized religious, philanthropic or cultural organization.

June 25, 1948, c. 645, 62 Stat. 720; as amended by Pub. L. 91–405, title II, § 204(d)(6), 84 Stat. 853; Sept. 13, 1994, Pub. L. 103–322, title XXXIII, § 330016(1)(H), (L), 108 Stat. 2147.

18 U.S.C. § 596. Polling Armed Forces

Whoever, within or without the Armed Forces of the United States, polls any member of such forces, either within or without the United States, either before or after he executes any ballot under any Federal or State law, with reference to his choice of or his vote for any candidate, or states, publishes, or releases any result of any purported poll taken from or among the members of the Armed Forces of the United States or including within it the statement of choice for such candidate or of such votes cast by any member of the Armed Forces of the United States, shall be fined under this title or imprisoned for not more than one year, or both.

The word "poll" means any request for information, verbal or written which by its language or form of expression requires or implies the necessity of an answer, where the request is made with the intent of compiling the result of the answers obtained, either for the personal use of the person making the request, or for the purpose of reporting the same to any other person, persons, political party, unincorporated association or corporation, or for the purpose of publishing the same orally, by radio, or in written or printed form.

June 25, 1948, ch. 645, 62 Stat. 720; Sept. 13, 1994, Pub. L. 103–322, title XXXIII, § 330016(1)(H), 108 Stat. 2147.

18 U.S.C. § 597. Expenditures to influence voting

Whoever makes or offers to make an expenditure to any person, either to vote or withhold his vote, or to vote for or against any candidate; and

Whoever solicits, accepts, or receives any such expenditure in consideration of his vote or the withholding of his vote—shall be fined under this title or imprisoned not more than one year, or both; and if the violation was willful, shall be fined under this title or imprisoned not more than two years, or both.

June 24, 1948, ch. 645, 62 Stat. 721; Sept. 13, 1994, Pub. L. 103–322, title XXXIII, § 330016(1)(H), 108 Stat. 2147; Oct. 11, 1996, Pub. L. 104–294, title VI, § 601(a)(12), 110 Stat. 3498.

18 U.S.C. § 598. Coercion by means of relief appropriations

Whoever uses any part of any appropriation made by Congress for work relief, relief, or for increasing employment by providing loans and grants for public-works projects, or exercises or administers any authority conferred by any Appropriation Act for the purpose of interfering with, restraining, or coercing any individual in the exercise of his right to vote at any election, shall be fined under this title or imprisoned not more than one year, or both.

June 25, 1948, ch. 645, 62 Stat. 721; Sept. 13, 1994, Pub. L. 103–322, title XXXIII, § 330016(1)(H), 108 Stat. 2147.

18 U.S.C. § 599. Promise of appointment by candidate

Whoever, being a candidate, directly or indirectly promises or pledges the appointment, or the use of his influence or support for the appointment of any person to any public or private position or employment, for the purpose of procuring support in his candidacy shall be fined under this title or imprisoned not more than one year, or both; and if the violation was willful, shall be fined under this title or imprisoned not more than two years, or both.

June 25, 1948, ch. 645, 62 Stat. 721; Sept. 13, 1994, Pub. L. 103–322, title XXXIII, § 330016(1)(H), (L), 108 Stat. 2147.

18 U.S.C. § 600. Promise of employment or other benefit for political activity

Whoever, directly or indirectly, promises any employment, position, compensation, contract, appointment, or other benefit, provided for or made possible in whole or in part any Act of Congress,

or any special consideration in obtaining any such benefit, to any person as a consideration, favor, or reward for any political activity or for the support of our opposition to any candidate or any political party in connection with any general or special election to any political office or in connection with any primary election or political convention or caucus held to select candidates for any political office, shall be fined under this title or imprisoned not more than one year, or both.

June 15, 1948, ch. 645, 62 Stat. 721; as amended Pub. L. 92–225, title II, § 202, Feb. 7, 1972, 86 Stat. 9; and Pub. L. 94–453, § 3, Oct. 2, 1976, 90 Stat. 1517; Sept. 13, 1994, Pub. L. 103–322, title XXXIII, § 330016(2)(L), 108 Stat. 2147.

18 U.S.C. § 601. Deprivation of employment or other benefit for political contribution

(a) Whoever, directly or indirectly knowingly causes or attempts to cause any person to make a contribution of a thing of value (including services) for the benefit of any candidate of any political party, by means of the denial or deprivation, or the threat of the denial or deprivation, of—

(1) any employment, position, or work in or for any agency or other entity of the Government of the United States, a State, or a political subdivision of a State, or any compensation or benefit of such employment, position, or work; or

(2) any payment or benefit of a program of the United States, a State, or a political subdivision of a State; if such employment, position, work, compensation, payment, or benefit is provided for or made possible in whole or in part by an Act of Congress, shall be fined under this title or imprisoned not more than one year, or both.

(b) As used in this section—

(1) the term "candidate" means an individual who seeks nomination for election, or election, to Federal, State, or local office, whether or not such individual is elected, and, for purposes of this paragraph, an individual shall be deemed to seek nomination for election, or election, to Federal, State, or local office, if he has (A) taken the action necessary under the law of a State to qualify himself for nomination for election, or election, or (B) received contributions or made expenditures, or has given his consent for any other person to receive contributions or make expenditures, with a view to bringing about his nomination for election, or election, to such office;

(2) the term "election" means (A) a general, special primary, or runoff election, (B) a convention or caucus of a political party held to nominate a candidate, (C) a primary election held for the selection of delegates to a nominating convention of a political party, (D) a primary election held for the expression of a preference for the nomination of persons for election to the office of President, and (E) the election of delegates to a constitutional convention for proposing amendments to the Constitution of the United States or of any State; and

(3) the term "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

June 25, 1948, ch. 645, Stat. 721; as amended by Pub. L. 94–453, § 1, Oct. 2, 1976, 90 Stat. 1516; Sept. 13, 1994, Pub. L. 103–322, title XXXIII, § 330016(1)(L), 108 Stat. 2147.

18 U.S.C. § 602. Solicitation of political contributions

(a) It shall be unlawful for—

(1) a candidate for the Congress;

(2) an individual elected to or serving in the office of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress;

(3) an officer or employee of the United States or any department or agency thereof; or

(4) a person receiving any salary or compensation for services from money derived from the Treasury of the United States;

to knowingly solicit any contribution within the meaning of section 301(8) of the Federal Election Campaign Act of 1971 (2 U.S.C. § 431(8)) from any other such officer, employee, or person. Any person who violates this section shall be fined under this title or imprisoned not more than 3 years, or both.

(b) The prohibition in subsection (a) shall not apply to any activity of an employee (as defined in section 7322(1) of title 5) or any individual employed in or under the United States Postal Service or the Postal Rate Commission, unless that activity is prohibited by section 7323 or 7324 of such title.

June 25, 1948, ch. 645, 62 Stat. 722; as amended by Pub. L. 96–187, title II, § 201(a)(3), Jan. 8, 1980, 93 Stat. 1367; Pub. L. 103–94, § 4, Oct. 6, 1993, 107 Stat. 1004; Sept. 13, 1994, Pub. L. 103–322, title XXXIII, § 330016(1)(K), 108 Stat. 2147.

18 U.S.C. § 603. Making political contributions

(a) It shall be unlawful for an officer or employee of the United States or any department or agency thereof, or a person receiving any salary or compensation for services from money derived from the Treasury of the United States, to make any contribution within the meaning of section 301(8) of the Federal Election Campaign Act of 1971 (2 U.S.C. § 431(8)) to any other such officer, employee or person or to any Senator or Representative in, or Delegate, or Resident Commissioner to, the Congress, if the person receiving such contribution is the employer or employing authority of the person making the contribution. Any person who violates this section shall be fined under this title or imprisoned not more than three years, or both.

(b) For purposes of this section, a contribution to an authorized committee as defined in section 302(e)(1) of the Federal Election Campaign Act of 1971 [2 U.S.C. § 432(e)(1)] shall be considered a contribution to the individual who has authorized such committee.

(c) The prohibition in subsection (a) shall not apply to any activity of an employee (as defined in section 7322(1) of title 5) or any individual employed in or under the United States Postal Service

or the Postal Rate Commission, unless that activity is prohibited by section 7323 or 7324 of such title.

June 25, 1948, ch. 645, 62 Stat. 722; Oct. 31, 1951, ch. 665, § 20(b), 65 Stat. 718; as amended by Pub. L. 96–187, title II, § 201, Jan. 8, 1980, 93 Stat. 1367; Pub. L. 103–94, § 4, Oct. 6, 1993, 107 Stat. 1005; Sept. 13, 1994, Pub. L. 103–322, title XXXIII, § 330016(1)(K), 108 Stat. 2147.

18 U.S.C. § 604. Solicitation from persons on relief

Whoever solicits or receives or is in any manner concerned in soliciting or receiving any assessment, subscription, or contribution for any political purpose from any person known by him to be entitled to, or receiving compensation, employment, or other benefit provided for or made possible by any Act of Congress appropriating funds for work relief or relief purposes, shall be fined under this title or imprisoned not more than one year, or both.

June 25, 1948, ch. 645, 62 Stat. 722; Sept. 13, 1994, Pub. L. 103–322, title XXXIII, § 330016(1)(H), 108 Stat. 2147.

18 U.S.C. § 605. Disclosure of names of persons on relief

Whoever, for political purposes, furnishes or discloses any list or names of persons receiving compensation, employment or benefits provided for or made possible by any Act of Congress appropriating, or authorizing the appropriation of funds for work relief or relief purposes, to a political candidate, committee, campaign manager, or to any person for delivery to a political candidate, committee, or campaign manager; and whoever receives any such list or names for political purposes shall be fined under this title or imprisoned not more than one year, or both.

June 25, 1948, ch. 645, 62 Stat. 722; Sept. 13, 1994, Pub. L. 103–322, title XXXIII, § 330016(1)(H), 108 Stat. 2147.

18 U.S.C. § 606. Intimidation to secure political contributions

Whoever, being one of the officers or employees of the United States mentioned in section 602 of this title, discharges, or promotes, or degrades, or in any manner changes the official rank or compensation of any other officer or employee, or promises or threatens so to do, for giving or withholding or neglecting to make any contribution of money or other valuable thing for any political purpose, shall be fined under this title or imprisoned not more than three years, or both.

June 25, 1948, ch. 645, 62 Stat. 722; Sept. 13, 1994, Pub. L. 103–322, title XXXIII, § 330016(1)(K), 108 Stat. 2147.

18 U.S.C. § 607. Place of solicitation

(a) *Prohibition.*—

(1) *In general.*—It shall be unlawful for any person to solicit or receive a donation of money or other thing of value in connection with a Federal, State, or local election from a person who is located in a room or building occupied in the discharge of official duties by an officer or employee of the United States. It shall be unlawful for an individual who is an officer or em-

ployee of the Federal Government, including the President, Vice President, and Members of Congress, to solicit or receive a donation of money or other thing of value in connection with a Federal, State, or local election, while in any room or building occupied in the discharge of official duties by an officer or employee of the United States, from any person.

(2) *Penalty.*—A person who violates this section shall be fined not more than $5,000, imprisoned not more than three years, or both.

(b) The prohibition in subsection (a) shall not apply to the receipt of contributions by persons on the staff of a Senator or Representative in, or Delegate or Resident Commissioner to, the Congress, or Executive Office of the President, provided that such contributions have not been solicited in any manner which directs the contributor to mail or deliver a contribution to any room, building, or other facility referred to in subsection (a), and provided, that such contributions are transferred within seven days of receipt to a political committee within the meaning of section 302(e) of the Federal Election Campaign Act of 1971.

June 25, 1948, c. 645, 62 Stat. 722; Pub. L. 96–187, title II, § 201(a)(5), Jan. 8, 1980, 93 Stat. 1367; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 107–155, title III, § 302, Mar. 27, 2002, 116 Stat. 96.

18 U.S.C. § 608. Absent uniformed services voters and overseas voters

(a) Whoever knowingly deprives or attempts to deprive any person of a right under the Uniformed and Overseas Citizens Absentee Voting Act shall be fined in accordance with this title or imprisoned not more than five years, or both.

(b) Whoever knowingly gives false information for the purpose of establishing the eligibility of any person to register or vote under the Uniformed and Overseas Citizens Absentee Voting Act, or pays or offers to pay, or accepts payment for registering or voting under such Act shall be fined in accordance with this title or imprisoned not more than five years, or both.

Added Pub. L. 99–410, title II, § 202(a), Aug. 28, 1986, 100 Stat. 929.

18 U.S.C. § 609. Use of military authority to influence vote of member of Armed Forces

Whoever, being a commissioned, noncommissioned, warrant, or petty officer of an Armed Force, uses military authority to influence the vote of a member of the Armed Forces or to require a member of the Armed Forces to march to a polling place, or attempts to do so, shall be fined in accordance with this title or imprisoned not more than five years, or both. Nothing in this section shall prohibit free discussion of political issues or candidates for public office.

Added Pub. L. 99–410, title II, § 202(a), Aug. 28, 1986, 100 Stat. 929.

18 U.S.C. § 610. Coercion of political activity

It shall be unlawful for any person to intimidate, threaten, command, or coerce, or attempt to intimidate, threaten, command, or coerce, any employee of the Federal Government as defined section 7322(1) of title 5, United States Code, to engage in, or not to engage in, any political activity, including, but not limited to, voting or refusing to vote for any candidate or measure in any election, making or refusing to make any political contribution, or working or refusing to work on behalf of any candidate. Any person who violates this section shall be fined under this title or imprisoned not more than three years, or both.

Pub. L. 103–94, § 4(c)(1), Oct. 6, 1993, 107 Stat. 1005; Pub. L. 104–294, title VI, § 601(a)(1), Oct. 11, 1996, 110 Stat. 3498.

18 U.S.C. § 611. Voting by aliens

(a) it shall be unlawful for any alien to vote in any election held solely or in part for the purpose of electing a candidate for the office of President, Vice President, Presidential elector, Member of the Senate, Member of the House of Representatives, Delegate from the District of Columbia, or Resident Commissioner unless—

(1) the election is held partly for some other purpose;

(2) aliens are authorized to vote for such other purpose under a State constitution or statute or a local ordinance; and

(3) voting for such other purpose is conducted independently of voting for a candidate for such Federal offices, in such a manner that an alien has the opportunity to vote for such other purpose, but not an opportunity to vote for a candidate for any one or more of such Federal offices.

(b) Any person who violates this section shall be fined under this title, imprisoned not more than one year, or both.

(c) Subsection (a) does not apply to an alien if—

(1) each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization);

(2) the alien permanently resided in the United States prior to attaining the age of 16; and

(3) the alien reasonably believed at the time of voting in violation of such subsection that he or she was a citizen of the United States.

Added Pub. L. 104–208, div. C, title II, § 216(a), Sept. 30, 1996, 110 Stat. 3009–572; amended Pub. L. 106–395, title II, § 201(d)(1), Oct. 30, 2000, 114 Stat. 1635.

I. USE OF FRANKED MAIL (TITLE 39, UNITED STATES CODE)

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39 U.S.C. § 3201. Definitions

As used in this chapter—

(1) "penalty mail" means official mail, other than franked mail, which is authorized by law to be transmitted in the mail without prepayment of postage;

(2) "penalty cover" means envelopes, wrappers, labels, or cards used to transmit penalty mail;

(3) "frank" means the autographic or facsimile signature of persons authorized by section 3210–3216 and 3218 of this title to transmit matter through the mail without prepayment of postage or other indicia contemplated by section 733 and 907 of title 44;

(4) "franked mail" means mail which is transmitted in the mail under a frank;

(5) "Members of Congress" includes Senators, Representatives, Delegates, and Resident Commissioners; and

(6) "missing child" has the meaning provided by section 403(1) of the Juvenile Justice and Delinquency Prevention Act of 1974.

Pub. L. 91–375, Aug. 12, 1970, 84 Stat. 751; Pub. L. 99–87, § 1(b), Aug. 9, 1985, 99 Stat. 291.

39 U.S.C. § 3210. Franked mail transmitted by the Vice President, Members of Congress, and congressional officials

(a)(1) It is the policy of the Congress that the privilege of sending mail as franked mail shall be established under this section in order to assist and expedite the conduct of the official business, activities, and duties of the Congress of the United States.

(2) It is the intent of the Congress that such official business, activities, and duties cover all matters which directly or indirectly pertain to the legislative process or to any congressional representative functions generally, or to the functioning, working, or operating of the Congress and the performance of official duties in connection therewith, and shall include, but not be limited to, the conveying of information to the public, and the requesting of the views of the public, or the views and information of other authority of government, as a guide or a means of assistance in the performance of those functions.

(3) It is the intent of the Congress that mail matter which is frankable specifically includes, but is not limited to—

(A) mail matter to any person and to all agencies and officials of Federal, State, and local governments regarding pro-

grams, decisions, and other related matters of public concern or public service, including any matter relating to actions of a past or current Congress;

(B) the usual and customary congressional newsletter or press release which may deal with such matters as the impact of laws and decisions on State and local governments and individual citizens; reports on public and official actions taken by Members of Congress; and discussions of proposed or pending legislation or governmental actions and the positions of the Members of Congress on, and arguments for or against, such matters;

(C) the usual and customary congressional questionnaire seeking public opinion on any law, pending or proposed legislation, public issue, or subject;

(D) mail matter dispatched by a Member of Congress between his Washington office and any congressional district offices, or between his district offices;

(E) mail matter directed by one Member of Congress to another Member of Congress or to representatives of the legislative bodies of State and local governments;

(F) mail matter expressing congratulations to a person who has achieved some public distinction;

(G) mail matter, including general mass mailings, which consists of Federal laws, Federal regulations, other Federal publications, publications purchased with Federal funds, or publications containing items of general information;

(H) mail matter which consists of voter registration or election information or assistance prepared and mailed in a nonpartisan manner;

(I) mail matter which constitutes or includes a biography or autobiography of any Member of, or Member-elect to, Congress or any biographical or autobiographical material concerning such Member or Member-elect or the spouse or other members of the family of such Member or Member-elect, and which is so mailed as a part of a Federal publication or in response to a specific request therefor and is not included for publicity purposes in a newsletter or other general mass mailing of the Member or Member-elect under the franking privilege; or

(J) mail matter which contains a picture, sketch, or other likeness of any Member or Member-elect and which is so mailed as a part of a Federal publication or in response to a specific request therefor and, when contained in a newsletter or other general mass mailing of any Member or Member-elect, is not of such size, or does not occur with such frequency in the mail matter concerned, as to lead to the conclusion that the purpose of such picture, sketch, or likeness is to advertise the Member or Member-elect rather than to illustrate accompanying text.

(4) It is the intent of the Congress that the franking privilege under this section shall not permit, and may not be used for, the transmission through the mails as franked mail, of matter which in its nature is purely personal to the sender or to any other person and is unrelated to the official business, activities, and duties of the public officials covered by subsection (b)(1) of this section.

(5) It is the intent of the Congress that a Member of or Member-elect to Congress may not mail as franked mail—

(A) mail matter which constitutes or includes any article, account, sketch, narration, or other text laudatory and complimentary of any Member of, or Member-elect to, Congress on a purely personal or political basis rather than on the basis of performance of official duties as a Member or on the basis of activities as a Member-elect;

(B) mail matter which constitutes or includes—

(i) greetings from the spouse or other members of the family of such Member or Member-elect unless it is a brief reference in otherwise frankable mail;

(ii) reports of how or when such Member or Member-elect, or the spouse or any other member of the family of such Member or Member-elect, spends time other than in the performance of, or in connection with, the legislative, representative, and other official functions of such Member or the activities of such Member-elect as a Member-elect; or

(iii) any card expressing holiday greetings from such Member or Member-elect; or

(C) mail matter which specifically solicits political support for the sender or any other person or any political party, or a vote or financial assistance for any candidate for any public office.

The House Commission on Congressional Mailing Standards and the Select Committee on Standards and Conduct of the Senate shall prescribe for their respective Houses such rules and regulations and shall take such other action, as the Commission or Committee considers necessary and proper for the Members and Members-elect to conform to the provisions of this clause and applicable rules and regulations. Such rules and regulations shall include, but not be limited to, provisions prescribing the time within which such mailings shall be mailed at or delivered to any postal facility to attain compliance with this clause and the time when such mailings shall be deemed to have been so mailed or delivered and such compliance attained.

(6)(A) It is the intent of Congress that a Member of, or Member-elect to, Congress may not mail any mass mailing as franked mail—

(i) if the mass mailing is postmarked fewer than 60 days (or, in the case of a Member of the House, fewer than 90 days) immediately before the date of any primary election or general election (whether regular, special, or runoff) in which the Member is a candidate for reelection; or

(ii) in the case of a Member of, or Member-elect to, the House who is a candidate for any other public office, if the mass mailing—

(I) is prepared for delivery within any portion of the jurisdiction of or the area covered by the public office which is outside the area constituting the congressional district from which the Member of Member-elect was elected; or

(II) is postmarked fewer than 90 days immediately before the date of any primary election or general election

(whether regular, special, or runoff) in which the Member or Member-elect is a candidate for any other public office.

(B) Any mass mailing which is mailed by the chairman of any organization referred to in the last sentence of section 3215 of this title which relates to the normal and regular business of the organization may be mailed without regard to the provisions of this paragraph.

(C) No Member of the Senate may mail any mass mailing as franked mail if such mass mailing is postmarked fewer than 60 days immediately before the date of any primary election or general election (whether regular, special, or runoff) for any national, State or local office in which such Member is a candidate for election.

(D) The Select Committee on Ethics of the Senate and the House Commission on Congressional Mailing Standards shall prescribe for their respective House rules and regulations, and shall take other action as the Committee or the Commission considers necessary and proper for Members and Members-elect to comply with the provisions of this paragraph and applicable rules and regulations. The rules and regulations shall include provisions prescribing the time within which mailings shall be mailed at or delivered to any postal facility and the time when the mailings shall be deemed to have been mailed or delivered to comply with the provisions of this paragraph.

(E) As used in this section, the term "mass mailing" means, with respect to a session of Congress, any mailing of newsletters or other pieces of mail with substantially identical content (whether such mail is deposited singly or in bulk, or at the same time or different times), totaling more than 500 pieces in that session, except that such term does not include any mailing—

(i) of matter in direct response to a communication from a person to whom the matter is mailed;

(ii) from a Member of Congress to other Members of Congress, or to Federal, State, or local government officials; or

(iii) of a news release to the communications media.

(F) For purposes of subparagraphs (A) and (C) if mail matter is of a type which is not customarily postmarked, the date on which such matter would have been postmarked if it were of a type customarily postmarked shall apply.

(7) A Member of the House of Representatives may not send any mass mailing outside the congressional district from which the Member was elected.

(b)(1) The Vice President, each Member of or Member-elect to Congress, the Secretary of the Senate, the Sergeant at Arms of the Senate, each of the elected officers of the House of Representatives (other than a Member of the House), the Legislative Counsels of the House of Representatives and the Senate, the Law Revision Counsel of the House of Representatives, and the Senate Legal Counsel, may send, as franked mail, matter relating to their official business, activities, and duties, as intended by Congress to be mailable as franked mail under subsection (a)(2) and (3) of this section.

(2) If a vacancy occurs in the Office of the Secretary of the Senate, the Sergeant at Arms of the Senate, an elected officer of the House of Representatives (other than a Member of the House), the

Legislative Counsel of the House of Representatives or the Senate, the Law Revision Counsel of the House of Representatives, or the Senate Legal Counsel, any authorized person may exercise the franking privilege in the officer's name during the period of the vacancy.

(3) The Vice President, each Member of Congress, the Secretary of the Senate, the Sergeant at Arms of the Senate, and each of the elected officers of the House (other than a Member of the House), during the 90-day period immediately following the date on which they leave office, may send, as franked mail, matter on official business relating to the closing of their respective offices. The House Commission on Congressional Mailing Standards and the Select Committee on Standards and Conduct of the Senate shall prescribe for their respective Houses such rules and regulations, and shall take such other action as the Commission or Committee considers necessary and proper, to carry out the provisions of this paragraph.

(c) Franked mail may be in any form appropriate for mail matter, including, but not limited to, correspondence, newsletters, questionnaires, recordings, facsimiles, reprints, and reproductions. Franked mail shall not include matter which is intended by Congress to be nonmailable as franked mail under subsection (a)(4) and (5) of this section.

(d)(1) A Member of Congress may mail franked mail with a simplified form of address for delivery within that area constituting the congressional district or State from which the Member was elected.

(2) A Member-elect to the Congress may mail franked mail with a simplified form of address for delivery within that area constituting the congressional district or the State from which he was elected.

(3) A Delegate, Delegate-elect, Resident Commissioner, or Resident Commissioner-elect to the House of Representatives may mail franked mail with a simplified form of address for delivery within the area from which he was elected.

(4) Any franked mail which is mailed under this subsection shall be mailed at the equivalent rate of postage which assures that the mail will be sent by the most economical means practicable.

(5) The Senate Committee on Rules and Administration and the House Commission on Congressional Mailing Standards shall prescribe for their respective Houses rules and regulations governing any franked mail which is mailed under this subsection and shall by regulation limit the number of such mailings allowed under this subsection.

(6)(A) Any Member of, or Member-elect to, the House of Representatives entitled to make any mailing as franked mail under this subsection shall, before making any mailing, submit a sample or description of the mail matter involved to the House Commission on Congressional Mailing Standards for an advisory opinion as to whether the proposed mailing is in compliance with the provisions of this subsection.

(B) The Senate Select Committee on Ethics may require any Member of, or Member-elect to, the Senate entitled to make any mailings as franked mail under this subsection to submit a sample

or description of the mail matter to the Committee for an advisory opinion as to whether the proposed mailing is in compliance with the provisions of this subsection.

(7) Franked mail mailed with a simplified form of address under this subsection—

(A) shall be prepared as directed by the Postal Service; and

(B) may be delivered to—

(i) each box holder or family on a rural or state route;

(ii) each post office box holder; and

(iii) each stop or box on a city carrier route.

(8) For the purposes of this subsection, a congressional district includes, in the case of a Representative at Large or Representative at Large-elect, the State from which he was elected.

(e) The frankability of mail matter shall be determined under the provisions of this section by the type and content of the mail sent, or to be sent.

(f) Any mass mailing which otherwise would be permitted to be mailed as franked mail under this section shall not be so mailed unless the cost of preparing and printing the mail matter is paid exclusively from funds appropriated by Congress, except that an otherwise frankable mass mailing may contain, as an enclosure or supplement, any public service material which is purely instructional or informational in nature, and which in content is frankable under this section.

(g) Notwithstanding any other provision of Federal, State, or local law, or any regulation thereunder, the equivalent amount of postage determined under section 3216 of this title on franked mail mailed under the frank of the Vice President or a Member of Congress, and the cost of preparing or printing such frankable matter for such mailing under the frank, shall not be considered as a contribution to, or an expenditure by, the Vice President or a Member of Congress for the purpose of determining any limitation on expenditures or contributions with respect to any such official, imposed by any Federal, State, or local law or regulation, in connection with any campaign of such official for election to any Federal office.

Pub. L. 91–375, Aug. 12, 1970, 84 Stat. 754; Pub. L. 92–51, § 101, July 9, 1971, 85 Stat. 132; Pub. L. 93–191, § 1(a), Dec. 18, 1973, 87 Stat. 737; Pub. L. 94–177, Dec. 23, 1975, 89 Stat. 1032; Pub. L. 95–521, title VII, § 714(a), Oct. 26, 1978, 92 Stat. 1884; Pub. L. 97–69, §§ 1–3(a), 4, Oct. 26, 1981, 95 Stat. 1041–1043; Pub. L. 97–263, § 1(1), (2), Sept. 24, 1982, 96 Stat. 1132; Pub. L. 101–163, title III, § 318, Nov. 21, 1989, 103 Stat. 1068; Pub. L. 101–520, title III, §§ 311(h)(1), 316, Nov. 5, 1990, 104 Stat. 2280, 2283; Pub. L. 102–392, title III, § 309(a), Oct. 6, 1992, 106 Stat. 1722; Pub. L. 104–197, title I, § 102(a), Sept. 16, 1996, 110 Stat. 2401; Pub. L. 109–435, title X, § 1010(g)(4), Dec. 20, 2006, 120 Stat. 3262.

39 U.S.C. § 3211. Public documents

The Vice President, Members of Congress, the Secretary of the Senate, the Sergeant at Arms of the Senate, each of the elected officers of the House of Representatives (other than a Member of the House) during the 90-day period immediately following the expira-

tion of their respective terms of office, may send and receive as franked mail all public documents printed by order of Congress.

Pub. L. 91–375, Aug. 12, 1970, 84 Stat. 754; Pub. L. 93–191, § 2, Dec. 18, 1973, 87 Stat. 741; Pub. L. 97–69, § 5(a), Oct. 26, 1981, 95 Stat. 1043.

39 U.S.C. § 3212. Congressional Record under frank of Members of Congress

(a) Members of Congress may send the Congressional Record as franked mail.

(b) Members of Congress may send, as franked mail, any part of, or a reprint any part of, the Congressional Record, including speeches or reports contained therein, if such matter is mailable as franked mail under section 3210 of this title.

Pub. L. 91–375, Aug. 12, 1970, 84 Stat. 754; Pub. L. 93–191, § 3, Dec. 18, 1973, 87 Stat. 741.

39 U.S.C. § 3213. Seeds and reports from Department of Agriculture

Seeds and agriculture reports emanating from the Department of Agriculture may be mailed—

(1) as penalty mail by the Secretary of Agriculture; and

(2) during the 90-day period immediately following the expiration of their terms of office, as franked mail by Members of Congress.

Pub. L. 91–375, Aug. 12, 1970, § 2, 84 Stat. 754; Pub. L. 97–69, § 5(b), Oct. 26, 1981, 95 Stat. 1043.

39 U.S.C. § 3215. Lending or permitting use of frank unlawful

A person entitled to use a frank may not lend it or permit its use by any committee, organization, or association, or permit its use by any person for the benefit or use of any committee, organization, or association. This section does not apply to any standing, select, special, or joint committee, or subcommittee thereof, or commission, of the Senate, House of Representatives, or Congress, composed of Members of Congress, or to the Democratic caucus or the Republican conference of the House of Representatives or of the Senate.

Pub. L. 91–375, Aug. 12, 1970, 84 Stat 754; Pub. L. 93–191, § 10, Dec. 18, 1973, 87 Stat. 746.

39 U.S.C. § 3216. Reimbursement for franked mailings

(a) The equivalent of—

(1) postage on, and fees and charges in connection with, mail matter sent through the mails—

(A) under the franking privilege (other than under section 3219 of this title), by the Vice President, Members of and Members-elect to Congress, the Secretary of the Senate, the Sergeant at Arms of the Senate, each of the elected officers of the House of Representatives (other than a Member of the House), the Legislative Counsels of the House of Representatives and the Senate, the Law Revi-

sion Counsel of the House of Representatives, and the Senate Legal Counsel; and

(B) by the survivors of a Member of Congress under section 3218 of this title; and

(2) those portions of fees and charges to be paid for handling and delivery by the Postal Service of Mailgrams considered as franked mail under section 3219 of this title;

shall be paid by appropriations for the official mail costs of the Senate and House of Representatives for that purpose and then paid to the Postal Service as postal revenue. Except as to Mailgrams and except as provided by sections 733 and 907 of title 44, envelopes, wrappers, cards, or labels used to transmit franked mail shall bear, in the upper right-hand corner, the sender's signature, or a facsimile thereof.

(b) Postage on, and fees and charges in connection with, mail matter sent through the mails under section 3214 of this title shall be paid each fiscal year, out of any appropriation made for that purpose, to the Postal Service as postal revenue in an amount equivalent to the postage, fees, and charges which would otherwise be payable on, or in connection with, such mail matter.

(c) Payment under subsection (a) or (b) of this section shall be deemed payment for all matter mailed under the frank and for all fees and charges due the Postal Service in connection therewith.

(d) Money collected for matter improperly mailed under the franking privilege shall be deposited as miscellaneous receipts in the general fund of the Treasury.

(e)(1) Not later than two weeks after the last day of each quarter of the fiscal year, or as soon as practicable thereafter, the Postmaster General shall send to the Chief Administrative Officer of the House of Representatives, the House of Commission on Congressional Mailing Standards, the Secretary of the Senate, and the Senate Committee on Rules and Administration a report which shall contain a tabulation of the estimated number of pieces and costs of franked mail, as defined in section 3201 of this title, in each mail classification sent through the mail for that quarter and for the preceding quarters in the fiscal year, together with separate tabulations of the number of pieces and costs of such mail sent by the House and by the Senate.

(2) Two weeks after the close of the second quarter of the fiscal year, or as soon as practicable thereafter, the Postmaster General shall send to the Chief Administrative Officer of the House of Representatives, the House Commission on Congressional Mailing Standards, the Committee on House Oversight, the Secretary of the Senate, and the Senate Committee on Rules and Administration, a statement of the costs of postage on, and fees and charges in connection with, mail matter sent through the mails as described in paragraph (1) of this subsection for the preceding two quarters together with an estimate of such costs for the balance of the fiscal year. As soon as practicable after receipt of this statement, the House Commission on Congressional Mailing Standards, the Committee on House Oversight, and the Senate Committee on Rules and Administration shall consider promulgating such regulations for their respective Houses as may be necessary to ensure that

total postage costs, as described in paragraph (1) of this subsection, will not exceed the amounts available for the fiscal year.

Pub. L. 91–375, Aug. 12, 1970, 84 Stat. 754; Pub. L. 92–51 § 101, July 9, 1971, 85 Stat. 132; Pub. L. 93–191, § 7, Dec. 18, 1973, 87 Stat. 745; Pub. L. 93–255, § 2(a), Mar. 27, 1974, 88 Stat. 52; Pub. L. 95–521, title VII, § 714(b), Oct. 26, 1978, 92 Stat. 1884; Pub. L. 97–69, § 6(a), Oct. 26, 1981, 95 Stat. 1043; Pub. L. 97–263, § 1(3), Sept. 24, 1982, 96 Stat. 1132; Pub. L. 101–163, title III, § 316(b), formerly § 316(c), § 317, Nov. 21, 1989, 103 Stat. 1067, renumbered Pub. L. 101–520, title III, § 311(h)(3)(B), Nov. 5, 1990, 104 Stat. 2280; Pub. L. 102–90, title III, § 306, Aug. 14, 1991, 105 Stat. 466; Pub. L. 104–186, title II, § 220, Aug. 20, 1996, 110 Stat. 1748.

39 U.S.C. § 3218. Franked mail for survivors of Members of Congress

Upon the death of a Member of Congress during his term of office, the surviving spouse of such Member (or, if there is no surviving spouse, a member of the immediate family of the Member designated by the Secretary of the Senate or the Clerk of the House of Representatives, as appropriate, in accordance with rules and procedures established by the Secretary or the Clerk) may send, for a period not to exceed 180 days after his death, as franked mail, nonpolitical correspondence relating to the death of the Member.

Pub. L. 91–375, Aug. 12, 1970, § 2, 84 Stat. 755; Pub. L. 93–191, § 11, Dec. 18, 1973, 87 Stat. 746; Pub. L. 97–69, § 6(b), (c)(1) Oct. 26, 1981, 95 Stat. 1043.

39 U.S.C. § 3219. Mailgrams

Any Mailgram sent by the Vice President, a Member of or Member-elect to Congress, the Secretary of the Senate, the Sergeant at Arms of the Senate, an elected officer of the House of Representatives (other than a Member of the House), the Legislative Counsel of the House of Representatives or the Senate, the Law Revision Counsel of the House of Representatives, or the Senate Legal Counsel, and then delivered by the Postal Service, shall be considered as franked mail, subject to section 3216(a)(2) of this title, if such Mailgram contains matter of the kind authorized to be sent by that official as franked mail under section 3210 of this title.

Added Pub. L. 93–191, § 12(a), Dec. 18, 1973, 87 Stat. 746; Pub. L. 95–521, title VII, § 714(c), Oct. 26, 1978, 92 Stat. 1884; Pub. L. 97–263, § (4), Sept. 24, 1982, 96 Stat. 1132.

39 U.S.C. § 3220. Use of official mail in the location and recovery of missing children

(a)(1) The Office of Juvenile Justice and Delinquency Prevention, after consultation with appropriate public and private agencies, shall prescribe general guidelines under which penalty mail may be used to assist in the location and recovery of missing children. The guidelines shall provide information relating to—

(A) the form and manner in which materials and information relating to missing children (such as biographical data and pictures, sketches, or other likenesses) may be included in penalty mail;

(B) appropriate sources from which such materials and information may be obtained;

(C) the procedures by which such materials and information may be obtained; and

(D) any other matter which the Office considers appropriate.

(2) Each executive department and independent establishment of the Government of the United States shall prescribe regulations under which penalty mail sent by such department or establishment may be used in conformance with the guidelines prescribed under paragraph (1).

(b) The Senate Committee on Rules and Administration and the House Commission on Congressional Mailing Standards shall prescribe for their respective Houses rules and regulations, and shall take such other action as the Committee or Commission considers necessary and proper, in order that purposes similar to those of subsection (a) may, in the discretion of the congressional official or office concerned, be carried out by the use of franked mail sent by such official or office.

(c) As used in this section, "Office of Juvenile Justice and Delinquency Prevention" and "Office" each means the Office of Juvenile Justice and Delinquency Prevention within the Department of Justice, as established by section 201 of the Juvenile Justice and Deliquency Prevention Act of 1974.

Added Pub. L. 99–87, § 1(a)(1), Aug. 9, 1985, 99 Stat. 290.

Advisory Opinions (title 2, United States Code) re Franking Privilege

2 U.S.C. § 502. Select Committee on Ethics of the Senate

(a) Advisory opinions or consultations respecting franked mail for persons entitled to franking privilege; franking privilege regulations

The Select Committee on Standards and Conduct [Select Committee on Ethics] of the Senate shall provide guidance, assistance, advice and counsel, through advisory opinions or consultations, in connection with the mailing or contemplated mailing of franked mail under section 3210, 3211, 3212, 3213(2), 3218, or 3219, and in connection with the operation of section 3215, of title 39, upon the request of any Member of the Senate or Member-elect, surviving spouse of any of the foregoing, or other Senate official, entitled to send mail as franked mail under any of those sections. The select committee shall prescribe regulations governing the proper use of the franking privilege under those sections by such persons.

(b) Complaint of franked mail violations; investigation; notice and hearing; decision of select committee; enforcement

Any complaint filed by any person with the select committee that a violation of any section of title 39 referred to in subsection (a) of this section is about to occur or has occurred within the immediately preceding period of one year, by any person referred to in such subsection (a), shall contain pertinent factual material and shall conform to regulations prescribed by the select committee. The select committee, if it determines there is reasonable justifica-

tion for the complaint, shall conduct an investigation of the matter, including an investigation of reports and statements filed by the complainant with respect to the matter which is the subject of the complaint. The committee shall afford to the person who is the subject of the complaint due notice and, if it determines that there is substantial reason to believe that such violation has occurred or is about to occur, opportunity for all parties to participate in a hearing before the select committee. The select committee shall issue a written decision of each complaint under this subsection not later than thirty days after such a complaint has been filed or, if a hearing is held, not later than thirty days after the conclusion of such hearing. Such decision shall be based on written findings of fact in the case by the select committee. If the select committee finds in its written decision, that a violation has occurred or is about to occur, the committee may take such action and enforcement as it considers appropriate in accordance with applicable rules, precedents, and standing orders of the Senate, and such other standards as may be prescribed by such committee.

(c) Administrative or judicial jurisdiction of civil actions respecting franking law violations or abuses of franking privilege dependent on filing of complaint with select committee and rendition of decision of such committee

Notwithstanding any other provision of law, no court or administrative body in the United States or in any territory thereof shall have jurisdiction to entertain any civil action of any character concerning or related to a violation of the franking laws or an abuse of the franking privilege by any person listed under subsection (a) of this section as entitled to send mail as franked mail, until a complaint has been filed with the select committee and the committee has rendered a decision under subsection (b) of this section.

(d) Administrative procedure regulations

The select committee shall prescribe regulations for the holding of investigations and hearings, the conduct of proceedings, and the rendering of decisions under this subsection providing for equitable procedures and the protection of individual, public, and Government interests. The regulations shall, insofar as practicable, contain the substance of the administrative procedure provisions of sections 551 to 559 and 701 to 706, of title 5. These regulations shall govern matters under this subsection subject to judicial review thereof.

(e) Property of Senate; records of select committee; voting record; location of records, data, and files

The select committee shall keep a complete record of all its actions, including a record of the votes on any question on which a record vote is demanded. All records, data, and files of the select committee shall be the property of the Senate and shall be kept in the offices of the select committee or such other places as the committee may direct.

Pub. L. 93–191, § 6, Dec. 18, 1973, 87 Stat. 743; Pub. L. 93–255, § 3(b), Mar. 27, 1974, 88 Stat. 52.

Regulations Governing Official Mail

As directed by Public Laws 97–69 and 99–87 and pursuant to other authorities, it is resolved by the Committee on Rules and Administration of the United States Senate, that use of Senate resources and facilities for preparing and sending franked mail shall be subject to the following regulations, effective Sept. 30, 1998.

DEFINITIONS

SEC. 1. As used in these regulations—

(a) the term "election fiscal year" means a Federal fiscal year in which regular biennial general elections of Senators are held;

(b) the term "final printing and mailing clearance" means an approval of a blue line, color key, or other page proof giving final authorization to print and mail material submitted by a Senate office to the Sergeant at Arms;

(c) the term "franked mail" as defined in section 3201(4) of title 39, U.S. Code, means—

". . . mail which is transmitted in the mail under a frank."

(d) the term "mass mailing" as defined in section 3210(a)(6)(E) of title 39, U.S. Code, as amended by the Legislative Branch Appropriations Act, 1995 (Pub. L. 103–283), means—

". . . with respect to a session of Congress, a mailing of more than five hundred newsletters or other pieces of mail with substantially identical content (whether such mail is deposited singly or in bulk, or at the same time or different times), but does not include any mailing—(i) of matter in direct response to a communication from a person to whom the matter is mailed; (ii) to other Members of Congress, or to Federal, State, or local government officials, or (iii) of a news release to the communications media, or (iv) of a town meeting notice, but no such mailing may be made fewer than 60 days immediately before the date of any primary election or general election (whether regular, special, or runoff) for any Federal, State, or local office in which a Member of the Senate is a candidate for election, or (v) of a Federal publication or other item that is provided by the Senate to all Senators or made available by the Senate for purchase by all Senators from official funds specifically for distribution." With respect to (i), a franked mailing made specifically and solely in response to, and mailed not more than 120 days after the date of receipt of a written request, inquiry, or expression of opinion or concern from the person to whom it is addressed is not a mass mailing. (S. Res. 212, 101st Congress)

(e) the term "name addressed mail" means any mailing sent to named individuals at specific addresses;

(f) the term "newsletter" means any professionally photocomposed mailing consisting of documents which set forth, in textual and graphic form (or both), factual information and commentary on prospective, pending, or past issues of public policy. Newsletters may not be mailed in franked envelopes;

(g) the term "non-election fiscal year" means a Federal fiscal year other than an election fiscal year;

(h) the term "postal patron mail" means any mailing prepared and mailed pursuant to section 3210(d) of title 39, U.S. Code;

(i) the term "official mail costs" means the equivalent of—

(1) postage on, and fees and charges in connection with, mail matter sent through the mail under the franking privilege; and

(2) the portions of the fees and charges paid for handling and delivery by the Postal Service of mailgrams considered as franked mail under section 3219 of title 39, U.S. Code; and

(3) all other official mail other than the franking privilege as defined in section 58(a)(3)(B) & (C) of title 2, U.S. Code.

(j) the term "opinion survey" means any assemblage of mass mailings and related individual mailings, including, but not limited to, survey questionnaires, pre-survey letters, response forms, follow-up letters, and instructions that are sent to a sample group of individuals for the purpose of obtaining a reliable estimate of the opinion of the population from which the survey sample is drawn and are processed in accordance with the "Guidelines for Opinion Surveys" issued by the Committee on Rules and Administration in September 1979.

(k) the term "Senate office" means the Vice President of the United States, a United States Senator, a United States Senator-elect, a committee of the Senate, the Joint Committee on Printing, the Joint Economic Committee, an officer of the Senate, or an office of the Senate authorized by section 3210(b)(1) of title 39, U.S. Code, to send franked mail.

(l) the term "town meeting notice" means any mailing which relates solely to a notice of the time and place at which a Senator or a member or members of his or her staff will be available to meet constituents regarding legislative issues or problems with Federal programs. The notice may include a short description as to the subject matter or purpose of the town meeting and an official photo in the banner of the notice.

(m) the term "prepared" means all necessary preparation prior to mailing, including the production of additional copies of a mailing, the folding of the mailing, and inserting of the mail into envelopes.

POSTAL ALLOCATIONS FOR NON-ELECTION FISCAL YEARS

SEC. 2. (a) With respect to a nonelection fiscal year, as soon as practicable after the enactment of the appropriation for Senate franked mail costs for such year, the Committee on Rules and Administration shall determine the following amounts:

(1) the amount that has been appropriated for franked mail costs of the Senate for the nonelection fiscal year;

(2) the amount necessary to be reserved for contingencies, which shall not exceed 10 percent of the amount determined pursuant to paragraph (1);

(3) the amount necessary for franked mail costs of Senate offices other than Senators for the nonelection fiscal year;

(4) the amount necessary for each Senator to send one Statewide postal patron mailing, based on total addresses in each state;

(5) one-third of the amount appropriated in paragraph 2(a)(1), after deducting the amount necessary for contingencies and offices other than Senators;

(6) the amount which may be available for allocation to Senators, when the amount in paragraph 2(a)(5) and amounts in paragraphs 2(a)(2) and 2(a)(3) are subtracted from the amount appropriated for official mail in paragraph 2(a)(1);

(7) the factor to be used to equitably distribute remaining appropriated funds, determined by dividing the amount in paragraph 2(a)(6) by the sum of the amounts in paragraph 2(a)(4).

(b) As soon as practicable after making the determination described in section (a), the Committee on Rules and Administration shall make the following allocations:

(1) the allocation to Senate offices (other than a Senator's personal office) for the nonelection fiscal year;

(2) the allocation for contingencies;

(3) the allocation to each Senator—

(A) to include the amount determined by paragraph 2(a)(5), divided by 100, establishing the base amount for each office; plus

(B) the amount to be allocated to each Member, determined by multiplying each amount in paragraph 2(a)(4) by the prorated percentage determined in paragraph 2(a)(7).

POSTAL ALLOCATIONS FOR ELECTION FISCAL YEARS

SEC. 3. (a) With respect to an election fiscal year, as soon as practicable after the enactment of the appropriation for Senate franked mail costs for such year, the Committee on Rules and Administration shall determine the following amounts:

(1) the amount that has been appropriated for franked mail costs of the Senate for the election fiscal year;

(2) the amount necessary to be reserved for contingencies, which shall not exceed 10 percent of the amount determined in paragraph 3(a)(1);

(3) for the election fiscal year, the amount necessary for franked mail costs of Senate offices other than Senators and Senators-elect;

(4) one-third of the amount appropriated in 3(a)(1), after deducting the amount necessary for contingencies and offices other than Senators;

(5) the amount which may be available for allocation to Senators, for an election fiscal year, when the amount in 3(a)(4), and the amounts in 3(a)(2), and 3(a)(3) are subtracted from the amount appropriated for official mail in paragraph 3(a)(1);

(6) for the period beginning on the date immediately following the date of the general election and ending January 3 of the election fiscal year, 10 percent of two-twelfths of the full funding amount necessary for each Senator-elect to send one state-wide postal patron mailing;

(7) for the period January 3 through September 30 of the election fiscal year, 75 percent of the full funding amount nec-

essary for each newly-elected Senator to send one state-wide postal patron mailing;

(8) for the period October 1 through January 3 of the election fiscal year, 25 percent of the full funding amount necessary for each Senator whose service as a Senator will end on January 3 of the election fiscal year to send one state-wide postal patron mailing;

(9) for the period January 3 through April 3 of the election fiscal year, 10 percent of 25 percent of the full funding amount necessary for each Senator whose service as a Senator will end on January 3 of the election fiscal year to send one state-wide postal patron mailing;

(10) for the election fiscal year, the full funding amounts necessary for each Senator, other than those Senators whose terms of service as Senators will begin or end on January 3 of the election fiscal year, to send one state-wide postal patron mailing;

(11) the factor to be used to equitably distribute remaining election fiscal year appropriated funds, determined by dividing the amount in paragraph 3(a)(5) by the sum of the amounts in paragraph 3(a)(6) through 3(a)(10).

(b) as soon as practicable after making the determination described in subsection (b), the Committee on Rules and Administration shall make the following allocations:

(1) the allocation to a Senate office (other than a Senator or Senator-elect) for the election fiscal year;

(2) the allocation for contingencies;

(3) the allocation to each Senator—

(A) to include the amount determined in subsection 3(a)(4), divided by 100, establishing the base amount for each office (¾ of the individual amount to Senators-elect, and ¼ to departing Senators); plus

(B) the amount determined in 3(a)(5), allocated—

(i) To each Senator referred to in 3(a)(6), adjusted by the amount determined in 3(a)(11);

(ii) To each Senator referred to in 3(a)(7), adjusted by the amount determined in 3(a)(11);

(iii) To each Senator referred to in 3(a)(8), adjusted by the amount determined in 3(a)(11);

(iv) To each Senator referred to in 3(a)(9), adjusted by the amount determined in 3(a)(11);

(v) To each Senator referred to in 3(a)(10), adjusted by the amount determined in 3(a)(11).

USES OF FUNDS RESERVED FOR CONTINGENCIES

SEC. 4. The amounts described in sections 2(a)(2) and 3(a)(2) shall be available for distribution by the Committee on Rules and Administration only for—

(a) providing a Senator appointed to complete the term of a Senator who dies or retires with an allocation for the fiscal year in which such appointment is effective;

(b) providing the Secretary of the Senate with sufficient postage to send franked mail as provided for by section 3218 of title 39, U.S. Code; and

(c) reimbursing a Senator for a charge to the Senator's allocation for franked mail costs when the charge is the result of an error on the part of an office of the Sergeant at Arms.

COST DETERMINATION AND REPORTING

Franked Mail, Mass Mail, Mail Prepared Pursuant to Section 9 of These Regulations

SEC. 5. (a)(1) The postage on all franked mail shall be determined by the Senate Customer Service Records Section and reported to the U.S. Postal Service. *State offices must advise their D.C. offices of their frank mail counts on a monthly basis. By the 5th of each month, the D.C. offices will inform the Service Department of these counts. Timely and accurate reports are required to ensure proper accounting of franked mail.*

(2) Not more than 250 extra copies of a mass mailing printed with the frank may be returned to an office for distribution in reception rooms and at town meetings. Additional copies, printed without the frank, may be requested on a separate workorder.

(3) No mass mailing and no mailing prepared pursuant to section 9 shall be mailed until the density analysis, indicating the total number of pieces to be mailed and the locations to which they will be mailed, has been approved by the office for which the mail is being sent. Such approval shall be signified by signing a statement of approval on the density analysis sheet. The approved copy of the density analysis shall be retained by the Customer Service Records Section with the work order and a copy of the mail matter.

(4) Before processing a request for a mass mailing submitted by a Member office, the Sergeant at Arms shall determine: (1) the postage cost of the mailing, and (2) that the postage cost of the request, when added to costs incurred or encumbered for mass mailings by that Member in the fiscal year, will not exceed the amount ($50,000) allowed for mass mailings by each Member each fiscal year. (Pub. L. 103–283) If the requested mailing exceeds that amount, the Sergeant at Arms shall notify the Member and take no further action on the request.

Record Keeping

(b)(1) The Sergeant at Arms shall maintain records of the following information for each Senate office to which postage allocations are applicable:

(A) the amount of the allocation for franked mail costs;

(B) each amount of franked mail cost determined pursuant to this section;

(C) the amount of the allocation for franked mail costs for such Senate office which remains after the amounts described in paragraph (B) is added to or subtracted from, as appropriate, the amount described in paragraph (A).

(2) The Sergeant at Arms shall provide offices with monthly reports on the status of their postal allocations.

(3) The Sergeant at Arms shall provide to each Member a monthly report detailing the postage costs associated with franked mailings and mass mailings, and shall provide the office of the Finan-

cial Clerk of the Senate a monthly certification of franked mailing and mass mailing costs for each Member. The Financial Clerk of the Senate shall debit these costs from the respective expense accounts for such franked mailing and mass mailing, and issue a check in payment.

Publication of Mass Mail Costs

(c) Two weeks after the close of each calendar quarter, or as soon as practicable thereafter, the Sergeant at Arms and Doorkeeper of the Senate shall send to each Senate office a statement of the cost of postage and paper and of the other operating expenses incurred as a result of mass mailings processed for such Senate office during such quarter. The statement shall provide information regarding the cost of postage and paper and other costs, and shall distinguish the costs attributable to mass mailings. The statement shall also include the total cost per capita in the State. A compilation of all such statements shall be sent to the Senate Committee on Rules and Administration. A summary tabulation of such information shall be published quarterly in the Congressional Record and included in the semiannual Report of the Secretary of the Senate. Such summary tabulation shall set forth for each Senate office the following information: the Senate office's name, the total number of pieces of mass mail mailed during the quarter, the total cost of such mail, and, in the case of Senators, the cost of such mail divided by the total population of the State from which the Senator was elected, the total number of pieces of mass mail divided by the total population of the State from which the Senator was elected, and the allocation made to each Senator from the appropriation for official mail expenses.

PREPARATION OF OFFICIAL MAIL

SEC. 6. (a) All mass mailings shall be submitted to and mailed by the Sergeant at Arms and shall be charged against the Senator's Official Personnel and Office Expense Account, pursuant to the Legislative Appropriations Act, 1995 (Pub. L. 103–283). All mailings are to be presented to the Sergeant at Arms for accountability *prior to* mailing. Such mailings *shall not* exceed total postage cost of $50,000 in any fiscal year, and must adhere to all regulations pertaining to mass mailings.

Two Sheet Limit

(b) A mass mailing by a Senator shall not exceed two sheets of legal size paper (or their equivalent), including any enclosure that—

(1) is prepared by or for the Senator who makes the mailing; or

(2) contains information concerning, expresses the views of, or otherwise relates to the Senator who makes the mailing.

Taxpayer Expense Notice

(c) Each mass mailing by a Senate office shall contain the following notice in a prominent place on the bottom of the cover page

of the document: "PREPARED, PUBLISHED, AND MAILED AT TAXPAYER EXPENSE." The notice shall be printed in a type size not smaller than 7 points.

Mail to be Mailed under the Frank

(d) All mass mailings by Senate offices shall be mailed under the frank.

Mail to the Mailed by the Sergeant at Arms

(e) The following mail matter shall be mailed through the Sergeant at Arms:

(1) all mass mailings by Senate offices, whether printed on the Sergeant at Arms' high speed laser printers or elsewhere;

(2) all mail prepared pursuant to section 9 of these regulations.

Town Meeting Notices

(3) Town meeting notices shall be processed as postal patron mail, unless sending name addressed mail to selected persons in the area served by the town meeting would be more economical, or the town meeting is to be on a subject or subjects that would not be of interest to all the people who would receive a postal patron mailing. Town meeting notices may not be mailed in franked envelopes.

(4) All franked and mass mail sent from Washington, DC offices, including flats and parcels, and constituent response mail and comparable mail prepared through an office's Office Automation System, shall be picked up by the Senate Post Office and delivered by the Senate Post Office to the Sergeant at Arms.

(5) Constituent response mail mailed through the Sergeant at Arms shall be sorted and bundled by zip code and endorsed with the most economical rate unless otherwise specified by the Senator for whom the mail is mailed. Senators may specify that such mail be endorsed "AUTO PRESORT" or "BLK. RATE."

Survey Questionnaires

(f) Mass mailings, other than opinion surveys, shall not contain franked response cards or forms. Any mass mailing containing a questionnaire shall contain instructions to the recipients on how properly to return their responses.

Rates and Endorsements

(g)(1) Name addressed mass mailings shall be sent at the lowest postal rate for which the mail qualifies, unless the office for whom the mail is being mailed directs, in writing, that it be mailed at a higher rate.

(2) Bulk rate mail will have no endorsement other than "BLK. RATE" or "AUTO PRESORT."

Pictures of Missing Children

(h)(1) Unless (A) a Senator, committee chairman, or other office head for whom a mass mailing or automated mail system mailing is being sent directs that such picture and information not be printed on a particular mailing, or (B) the Sergeant at Arms finds, with respect to any or all of the mass mailings in a period of time, that the printing of such pictures and information will significantly slow the processing of the mail, all mass mailings that are mailed as self-mailers shall bear on the address panel a picture of and information about a missing child in accordance with this subsection, and all letters prepared, folded, inserted in envelopes, and mailed by the Sergeant at Arms shall be inserted in window envelopes bearing the picture of and information about the same missing child whose picture appears on mass mailings during the same work-week. No other official mail of the Senate shall be used for the mass dissemination of pictures of, and information about, missing children.

(2) Only pictures of, and information about, missing children that are provided by the National Center for Missing and Exploited Children (hereinafter in this section referred to as the Center) are to be printed on mass mail and envelopes subject to this section. Sergeant at Arms shall be the liaison with the Center for obtaining such pictures and information.

(3) The Sergeant at Arms and the Director of the Center or his or her designee shall make arrangements for the Sergeant at Arms to periodically receive photographs of and information about a missing child from each State from which the Center has such photographs and information.

(4) The pictures of, and information about, missing children shall be made part of the printing plates prepared for mailings subject to this section. To the greatest extent possible, mail prepared for a Senator shall bear the photograph of, and information about, a missing child from the Senator's State.

(5) Whenever information is received from the Center that a child has been found whose picture and information are currently being printed on Senate mail, the Sergeant at Arms shall determine whether or not printing plates currently in use or awaiting use shall be discarded and new plates prepared. Whenever information is received from the Center that a child has been found whose picture and information were previously printed on Senate mail, the Sergeant at Arms shall notify offices on whose mail such picture and information were printed, and such offices shall destroy any extra copies of such mail that are on hand.

(6) The Sergeant at Arms shall transmit to the Center at the end of each month a list of the mass mailings and automated mail system letters mailed that month indicating for each mailing the State to which mailed, the number of pieces, and the child whose picture appeared thereon.

ORANGE BAG MAIL AND EXPRESS MAIL

Orange Bag Mail

SEC. 7. (a) *Orange bags are used by offices only for intra-office mail from Washington, DC to State offices.* These bags are charged at priority rates. (Orange bags used by State offices are only for transportation of franked mail to the Post Office.)

Express Mail

(b) The frank may not be used for Express mail. Expenses for non-frankable official mail, such as Express mail, Overseas mail, Registered and Certified mail, etc., may be defrayed from any source of funds only as provided by subsections (d) and (I) of section 311 of the Legislative Branch Appropriations Act, 1991 (Pub. L. 101–520). Offices are advised that the Senate Post Office has created a system through which offices may present Express mail, together with an authorization card similar to the cards used to purchase office supplies from the Keeper of Stationery, and have the cost of the Express mail charged to the office's official office expense account. Offices choosing to use Express mail originating outside Washington, DC may establish commercial accounts with the U.S. Postal Service instead of pre-paying each mailing.

RESTRICTION ON THE USE OF MASS MAIL AND TOWN MEETING NOTICES PRIOR TO A PRIMARY OR BIENNIAL FEDERAL GENERAL ELECTION

SEC. 8. (a) *No Senator* may send mass mailings during the period beginning 60 days before the date of any biennial Federal general election. The 60-day pre-election moratorium on mass mailings does not apply to a committee when such mass mailings are mailed under the frank of the Chairman and relate to the normal and regular business of the committee.

Use of mass mail by Senators who are candidates is further restricted (unless the Senator's candidacy has been certified as uncontested pursuant to procedures of the Committee on Rules and Administration):

(b) Mass mailings *may not be sent* fewer than 60 days immediately before the date of any primary or general election (whether regular, special, or runoff) for any Federal, State, or local office in which a Member of the Senate is a candidate for election, unless the candidacy of the Senator in such elections is uncontested.

(c) Town meeting notices in excess of 500 notices per town meeting *may not be sent* fewer than 60 days immediately before the date of any primary or general election (whether regular, special, or runoff) for any Federal, State, or local office in which a Member of the Senate is a candidate for election. There is no exception for uncontested candidacies. (Pub. L. 103–283)

(d) Solicitation forms provided by a Member through a mass mailing which are intended to be mailed back by constituents, *may not be responded to* during the 60 days immediately before the date of any primary or general election (whether regular, special, or runoff) for any Federal, State, or local office in which a Member of the Senate is a candidate for election.

RESPONSES TO ORGANIZED MAIL CAMPAIGNS

SEC. 9. (a) Whenever a Senator determines that he or she is the recipient of mail generated by an organized mail campaign and that the resources of his or her office are not sufficient to enter the names and addresses into the office's mail management system, the Senator may use the services of commercial vendors under contracts approved by the Committee on Rules and Administration. This service converts names and addresses to machine readable media which then may be added to such Senator's mail management system. The Sergeant at Arms has the responsibility for the processing and administrative support for this service.

(b) Expenses for work performed in accordance with this section shall be paid from funds from a Senator's Official Personnel and Office Expense Account and shall be reported to offices with their quarterly mass mail cost reports required by section 5(c).

CHANGE OF ADDRESS PROGRAMS

SEC. 10. Offices may have names and addresses on their mail files processed through the National Change of Address (NCOA) Program. A Senator may use any of the vendors certified by the U.S. Postal Service to provide NCOA service. A current list of vendors can be obtained from the Senate Computer Center. Processing costs charged by the NCOA vendor and transportation costs charged by the delivery service shall be billed, to, and paid by, such Senator from his or her Official Personnel and Office Expense Account.

(a) Such Senator shall request the Senate Computer Center to prepare his or her mail file for shipment to the vendor selected by the Senator, using the delivery service selected by the Senator. A Sergeant at Arms "Request for Assistance" form shall be used for this purpose, and shall include a statement in the following format:

> Processing and shipping costs will be paid by the
> Office of Senator _____ (insert name).
> Bills are to be submitted to _____ (insert address).
>
> _____
> Senator's Signature

(b) The Senate Computer Center will provide the Senator with information about the mail file that will assist the Senator in estimating processing costs that will be incurred. Please contact the Sergeant at Arms for other options regarding change of address.

(c) The Computer Center will prepare the Senator's file for processing, and arrange for transportation, using the delivery service designated by the Senator. The NCOA vendor and the delivery service will be provided with copies of the "Request for Assistance" for their use in billing the Senator for their services. On receipt of the corrected file from the NCOA vendor, the Senate Computer Center will restore it to the Senate Mail File System or provide the updated file to the appropriate vendor.

PAPER AND ENVELOPE ALLOWANCES

SEC. 12.* (a)(1)(A) Each year the Secretary of the Senate shall provide each Senator with the greater of—

(i) one and one-third sheets of blank paper per adult constituent, as reported by the Bureau of the Census; or

(ii) 1,800,000 sheets of blank paper.

(B) Each year the Secretary of the Senate shall provide each Senator with letterhead paper and envelopes in the greater of the following quantities:

(i) 100 sheets and 100 envelopes per 1,000 constituents of the Senator; or

(ii) 180,000 sheets and 180,000 envelopes.

(2) A portion of a Senator's allowance for paper that is unused at the end of a year may be used during the following year, but lapses at the end of that year and shall not be available for use thereafter.

(3) A portion of a Senator's allowance for paper that is unused at the time the Senator resigns, retires, or otherwise leaves office shall lapse and shall not be available for use thereafter.

(4) No portion of the paper allowance of a Senator may be given or otherwise transferred to another Senate office.

(b)(1) Each year the Secretary of the Senate shall provide each office set forth below with 180,000 sheets of blank paper, 180,000 sheets of letterhead paper, and 180,000 envelopes:

(A) Each standing committee of the Senate.

(B) Each select committee of the Senate.

(C) Each special committee of the Senate.

(D) Each impeachment trial committee of the Senate.

(2) A portion of an allowance for paper made pursuant to paragraph (1) that is unused at the end of a year shall not be available for use thereafter.

(c)(1) The Secretary of the Senate shall provide each of the following offices with such quantities of paper and envelopes as may be necessary for the performance of its official duties:

(A) The Joint Committee on the Library.

(B) The Joint Committee on Printing.

(C) The Joint Committee on Taxation.

(D) The Joint Economic Committee.

(E) The President of the Senate.

(F) The President pro tempore of the Senate.

(G) The Majority Leader of the Senate.

(H) The Assistant Majority Leader of the Senate.

(I) The Secretary for the Majority.

(J) The Minority Leader of the Senate.

(K) The Assistant Minority Leader of the Senate.

(L) The Secretary for the Minority.

(M) The Republican Conference.

(N) The Republican Policy Committee.

(O) The Republican Steering Committee.

(P) The Democratic Conference.

(Q) The Democratic Policy Committee.

* So numbered in original. No section 11.

(R) The Democratic Steering Committee.

(S) The Architect of the Capitol, including the Senate Restaurants and the Superintendent of the Senate Office Buildings.

(T) The Attending Physician.

(U) The Capitol Police.

(V) The Chaplain of the Senate.

(W) The Secretary of the Senate, including all offices reporting thereto.

(X) The Senate Legislative Counsel.

(Y) The Senate Legal Counsel.

(Z) The Senate Sergeant at Arms, including all offices reporting thereto.

(AA) The Congressional Budget Office.

(BB) The Democratic Senatorial Campaign Committee.

(CC) The Republican Senatorial Campaign Committee.

(DD) The Senate Employees' Federal Credit Union.

(EE) The Senate Day Care Center.

(FF) The Senate Defense Liaison Office.

(HH) The Senate Press Galleries.

(2) Except as provided in paragraph (3), no portion of an allowance for paper made pursuant to paragraph (1) may be given or otherwise transferred to a Senator or an office named in subsection (b)(1).

(3) Paper from the allowance of the Sergeant at Arms may be used to reprint matter previously printed and charged to the allowance of another office if—

(A) an error in the previously printed matter was caused by the Sergeant at Arms; and

(B)(i) the previously printed matter was destroyed prior to distribution; or

(ii) the previously printed matter was distributed before the discovery of the error, and the reprinted matter is noted as a corrected version of such previously printed matter.

(d) For the purposes of this section—

(1) blank paper means paper that is 8.5 inches by 11 inches or 8.5 inches by 14 inches; and

(2) letterhead means paper that is 8.5 inches by 11 inches.

(e) For the purposes of this section, the term "year" means the period beginning on January 3 of a calendar year and ending on January 2 of the following year. Paper for any mass mailing the work order for which is submitted prior to the close of business of the Sergeant at Arms on January 2 of any year shall be charged to the allotment for such year ending on January 2 (or, in the case of Senators, to any remaining balance from the previous year) if the office for which the mass mailing is being prepared gives the Sergeant at Arms, by its close of business the following February 14, a final printing and mailing clearance. If final clearance for printing is not given by close of business on February 14, the work order for such work shall be canceled and, if the office still desires to have the work completed, a new work order shall be prepared and the paper charged to the year in which such work order is dated (or, in the case of Senators, to any remaining balance from the previous year). Costs incurred in processing work order that is

canceled because the final clearance for printing was not received prior to close of business February 14 shall be reported in the cost report for the quarter ending March 31.

PRINTING OF LETTERHEAD STATIONERY AND ENVELOPES

SEC. 13. (a) The return address on envelopes to be used with franked mail must bear the nine-digit zip code of the office sending the mail.

(b) Envelopes with Senators' return addresses and nine-digit zip codes shall not be used for mail from committees. Envelopes with committee return addresses and nine-digit zip codes shall not be used for mail from Senators' offices.

(c) Senators' letterhead stationery and envelope allowances may be used for personal office letterhead stationery and envelopes and committee letterhead stationery. Such allowances shall not be used for committee envelopes.

(d) Paper used for the following purposes shall not be charged to an office's paper allowance—

(1) mailings that relate solely to a notice of appearance or scheduled itinerary of a Senator in the State represented by the Senator and which is mailed to the part of the State where such appearance is to occur;

(2) "Dear friend" letters or post cards processed in accordance with section 9 of these regulations;

(3) non-personalized Senate letterhead stationery used for automated mail system letters printed on the Sergeant at Arms' high speed laser printers.

(e) Committee envelopes may bear only the frank of the chairman or the ranking minority member, the name and address of the full committee, including the nine-digit zip code of the committee, and "Official Business" or "Public Document."

HISTORY

Approved by the Committee on Rules and Administration January 30, 1991 and revised pursuant to Pub. L. 102–392 effective Oct. 1, 1992, Pub. L. 103–69 effective Oct. 1, 1993, Pub. L. 103–283 effective Oct. 1, 1994, Pub. L. 105–55 effective Oct. 1, 1997; as amended by committee Oct. 30, 1997 and Sept. 30, 1998.

J. COMMUNICATIONS MEDIA (TITLE 47, UNITED STATES CODE)

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47 U.S.C. § 312. Administrative sanctions [Revocation of station license or construction permit]

(a) Revocation of station license or construction permit

The Commission may revoke any station license or construction permit—

* * * * * * *

(7) for willful or repeated failure to allow reasonable access to or to permit purchase of reasonable amounts of time for the use of a broadcasting station, other than a non-commercial educational broadcast station, by a legally qualified candidate for Federal elective office on behalf of his candidacy.

* * * * * * *

(f) "Willful" and "repeated" defined

For purposes of this section:

(1) The term "willful", when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this chapter or any rule or regulation of the Commission authorized by this chapter or by a treaty ratified by the United States.

(2) The term "repeated", when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.

June 19, 1934, c. 652, title III, § 312, 48 Stat. 1086; July 16, 1952, c. 879, § 10, 66 Stat. 716; Sept. 13, 1960, Pub. L. 86–752, § 6, 74 Stat. 893; Feb. 7, 1972, Pub. L. 92–225, title I, § 103(a)(2)(A), 86 Stat. 4; Sept. 13, 1982, Pub. L. 97–259, title I, § 117, 96 Stat. 1095; Feb. 8, 1996, Pub. L. 104–104, title IV, § 403(1), 110 Stat. 132; Pub. L. 106–554, § 1(a)(4), Dec. 21, 2000, 114 stat. 2763; Pub. L. 108–447, Div J, title II, § 213(3), title IX Dec. 8, 2004, 118 stat. 3431.

47 U.S.C. § 315. Candidates for Public Office

(a) Equal opportunities requirement; censorship prohibition; allowance of station use; news appearances exception; public interest; public issues discussion opportunities

If any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for

that office in the use of such broadcasting station: *Provided,* That such licensee shall have no power of censorship over the material broadcast under the provisions of this section. No obligation is imposed under this subsection upon any licensee to allow the use of its station by any such candidate. Appearance by a legally qualified candidate on any—

(1) bona fide newscast,

(2) bona fide news interview,

(3) bona fide news documentary (if the appearance of the candidate is incidental to the presentation of the subject or subjects covered by the news documentary), or

(4) on-the-spot coverage of bona fide news events (including but not limited to political conventions and activities incidental thereto),

shall not be deemed to be use of a broadcasting station within the meaning of this subsection. Nothing in the foregoing sentence shall be construed as relieving broadcasters, in connection with the presentation of newscasts, news interviews, news documentaries, and on-the-spot coverage of news events, from the obligation imposed upon them under this chapter to operate in the public interest and to afford reasonable opportunity for the discussion of conflicting views on issues of public importance.

(b) Charges.

(1) *In general*. The charges made for the use of any broadcasting station by any person who is a legally qualified candidate for any public office in connection with his campaign for nomination for election, or election, to such office shall not exceed—

(A) subject to paragraph (2), during the forty-five days preceding the date of a primary or primary runoff election and during the sixty days preceding the date of a general or special election in which such person is a candidate, the lowest unit charge of the station for the same class and amount of time for the same period; and

(B) at any time, the charges made for comparable use of such station by other users therof.

(2) Content of broadcasts.

(A) *In general*. In the case of a candidate for Federal office, such candidate shall not be entitled to receive the rate under paragraph (1)(A) for the use of any broadcasting station unless the candidate provides written certification to the broadcast station that the candidate (and any authorized committee of the candidate) shall not make any direct reference to another candidate for the same office, in any broadcast using the rights and conditions of access under this Act, unless such reference meets the requirements of subparagraph (C) or (D).

(B) Limitation on charges. If a candidate for Federal office (or any authorized committee or such candidate) makes a reference described in subparagraph (A) in any broadcast that does not meet the requirements of subparagraph (C) or (D), such candidate shall not be entitled to received the rate under paragraph (1)(A) for such broadcast or any other broadcast during any portion of the 45-day

and 60-day periods described in paragraph (1)(A), that occur on or after the date of such broadcast, for election to such office.

(C) Television broadcasts. A candidate meets the requirements of this subparagraph if, in the case of a television broadcast, at the end of such broadcast there appears simultaneously, for a period no less than 4 seconds—

(i) a clearly identifiable photographic or similar image of he candidate; and

(ii) a clearly readable printed statement, identifying the candidate and stating that the candidate has approved the broadcast and that the candidate's authorized committee paid for the broadcast.

(D) Radio broadcasts. A candidate meets the requirements of this subparagraph if, in the case of a radio broadcast, the broadcast includes a personal audio statement by the candidate that identifies the candidate, the office the candidate is seeking, and indicates that the candidate has approved the broadcast.

(E) Certification. Certifications under this section shall be provided and certified as accurate by the candidate (or any authorized committee of the candidate) at the time of purchase.

(F) Definitions. For purposes of this paragraph, the terms "authorized committee" and "Federal office" have the meanings given such terms by section 301 of the Federal Election Campaign Act of 1971 (*2 U.S.C. 431*).

(c) Definitions. For purposes of this section—

(1) the term "broadcasting station" includes a community antenna television system; and

(2) the terms "licensee" and "station licensee" when used with respect to a community antenna television system mean the operator of such system.

(d) Rules and regulations. The Commission shall prescribe appropriate rules and regulations to carry out the provisions of this section.

(e) Political record.

(1) In general. A licensee shall maintain, and make available for pubic inspection, a complete record of a request to purchase broadcast time that—

(A) is made by or on behalf of a legally qualified candidate for public office; or

(B) communicates a message relating to any political matter of national importance, including—

(i) a legally qualified candidate;

(ii) any election to Federal office; or

(iii) a national legislative issue of pubic importance.

(2) Contents of record. A record maintained under paragraph (1) shall contain information regarding—

(A) whether the request to purchase broadcast time is accepted or rejected by the licensee;

(B) the rate charged for the broadcast time;

(C) the date and time on which the communication is aired;

(D) the class of time that is purchased;

(E) the name of the candidate to which the communication refers and the office to which the candidate is seeking election, the election to which the communication refers, or the issue to which the communication refers (as applicable);

(F) in the case of a request made by, or on behalf of, a candidate, the name of the candidate, the authorized committee of the candidate, and the treasurer of such committee; and

(G) in the case of any other request, the name of the person purchasing the time, the name, address, and phone number of a contact person for such person, and a list of the chief executive officers or members of the executive committee or of the broad of directors of such person.

(3) Time to maintain file. The information required under this subsection shall be placed in a political file as soon as possible and shall be retained by the licensee for a period of not less than 2 years.

June 19, 1934, ch. 652, title III, § 315, 48 Stat. 1088; July 16, 1952, ch. 879, § 11, 66 Stat. 717; Pub. L. 86–274, § 1, Sept. 14, 1959, 73 Stat. 557; Pub. L. 92–225, title I, §§ 103(a)(1), (2)(B), 104(c), Feb. 7, 1972, 86 Stat. 4, 7; Pub. L. 93–443, title IV, § 402, Oct. 15, 1974, 88 Stat. 1291; Pub. L. 107–155, title III, § 305(a), (b), title V, § 504, Mar. 27, 202, 116 Stat. 100, 101, 115.

K. UNIFORMED AND OVERSEAS VOTING (TITLE 42, UNITED STATES CODE)

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42 U.S.C. § 1973ff. Federal responsibilities

(a) *Presidential designee.* The President shall designate the head of an executive department to have primary responsibility for Federal functions under this title.

(b) *Duties of Presidential designee.* The Presidential designee shall—

(1) consult State and local election officials in carrying out this title, and ensure that such officials are aware of the requirements of this Act;

(2) prescribe an official post card form, containing both an absentee voter registration application and an absentee ballot application, for use by the States as required under section 102(4);

(3) carry out section 103 with respect to the Federal write-in absentee ballot for absent uniformed services voters and overseas voters in general elections for Federal office;

(4) prescribe a suggested design for absentee ballot mailing envelopes;

(5) compile and distribute (A) descriptive material on State absentee registration and voting procedures, and (B) to the extent practicable, facts relating to specific elections, including dates, offices involved, and the text of ballot questions;

(6) not later than the end of each year after a Presidential election year, transmit to the President and the Congress a report on the effectiveness of assistance under this title, including a statistical analysis of uniformed services voter participation, a separate statistical analysis of overseas nonmilitary participation, and a description of State-Federal cooperation;

(7) prescribe a standard oath for use with any document under this affirming that a material misstatement of fact in the completion of such a document may constitute grounds for a conviction for perjury;

(8) carry out section 103A with respect to the collection and delivery of marked absentee ballots of absent overseas uniformed services voters in elections for Federal office;

(9) to the greatest extent practicable, take such actions as may be necessary—

(A) to ensure that absent uniformed services voters who cast absentee ballots at locations or facilities under the jurisdiction of the Presidential designee are able to do so in a private and independent manner; and

(B) to protect the privacy of contents of absentee ballots cast by absentee uniformed services voters and overseas

voters while such ballots are in the possession or control of the Presidential designee;

(10) carry out section 103B with respect to Federal Voting Assistance Program Improvements; and

(11) working with the Election Assistance Commission and the chief State election official of each State, develop standards—

(A) for States to report data on the number of absentee ballots transmitted and received under section 102(c) and such other data as the Presidential designee determines appropriate; and

(B) for the Presidential designee to store the data reported.

(c) *Duties of other Federal officials.*

(1) *In general.* The head of each Government department, agency, or other entity shall, upon request of the Presidential designee, distribute balloting materials and otherwise cooperate in carrying out this title.

(2) *Administrator of General Services.* As directed by the Presidential designee, the Administrator of General Services shall furnish official post card forms (prescribed under subsection (b)) and Federal write-in absentee ballots (prescribed under section 103).

(d) *Authorization of appropriations for carrying out Federal Voting Assistance Program improvements.* There are authorized to be appropriated to the Presidential designee such sums as are necessary for purposes of carrying out subsection (b)(10).

Pub. L. 99–410, title I, § 101, Aug. 28, 1986, 100 Stat. 924; Pub. L. 105–277, div G, title XXII ch 1, § 2219(c), Oct. 21, 1998, 112 Stat. 2681–817; Pub. L. 107–107, div A, title XVI, § 1606(a)(2), Dec. 28, 2001, 115 Stat. 1279; Pub. L. 107–252, title VII, § 705(a), (b)(1), (c), Oct. 29, 2002, 116 Stat. 1724, 1725; Pub. L. 108–375, div A, title V, subtitle I, § 566(a), Oct. 28, 2004, 118 Stat. 1919; Pub. L. 111–84, div A, title V, subtitle H, §§ 580(b), (e), 583(a)(2), 584(a), 585(b)(1), Oct. 28, 2009, 123 Stat. 2325, 2328, 2330, 2331.

42 U.S.C. § 1973ff–1. State responsibilities

(a) *In general.* Each State shall—

(1) permit absent uniformed services voters and overseas voters to use absentee registration procedures and to vote by absentee ballot in general, special, primary, and runoff elections for Federal office;

(2) accept and process, with respect to any election for Federal office, any otherwise valid voter registration application and absentee ballot application from an absent uniformed services voter or overseas voter, if the application is received by the appropriate State election official not less than 30 days before the election;

(3) permit absent uniformed services voters and overseas voters to use Federal write-in absentee ballots (in accordance with section 103) in general elections for Federal office;

(4) use the official post card form (prescribed under section 101) for simultaneous voter registration application and absentee ballot application;

(5) if the State requires an oath or affirmation to accompany any document under this title, use the standard oath prescribed by the Presidential designee under section 101(b)(7);

(6) in addition to any other method of registering to vote or applying for an absentee ballot in the State, establish procedures—

(A) for absent uniformed services voters and overseas voters to request by mail and electronically voter registration applications and absentee ballot applications with respect to general, special, primary, and runoff elections for Federal office in accordance with subsection (e);

(B) for States to send by mail and electronically (in accordance with the preferred method of transmission designated by the absent uniformed services voter or overseas voter under subparagraph (C)) voter registration applications and absentee ballot applications requested under subparagraph (A) in accordance with subsection (e); and

(C) by which the absent uniformed services voter or overseas voter can designate whether the voter prefers that such voter registration application or absentee ballot application be transmitted by mail or electronically;

(7) in addition to any other method of transmitting blank absentee ballots in the State, establish procedures for transmitting by mail and electronically blank absentee ballots to absent uniformed services voters and overseas voters with respect to general, special, primary, and runoff elections for Federal office in accordance with subsection (f);

(8) transmit a validly requested absentee ballot to an absent uniformed services voter or overseas voter—

(A) except as provided in subsection (g), in the case in which the request is received at least 45 days before an election for Federal office, not later than 45 days before the election; and

(B) in the case in which the request is received less than 45 days before an election for Federal office—

(i) in accordance with State law; and

(ii) if practicable and as determined appropriate by the State, in a manner that expedites the transmission of such absentee ballot;

(9) if the State declares or otherwise holds a runoff election for Federal office, establish a written plan that provides absentee ballots are made available to absent uniformed services voters and overseas voters in a manner that gives them sufficient time to vote in the runoff election;

(10) carry out section 103A(b)(1) with respect to the processing and acceptance of marked absentee ballots of absent overseas uniformed services voters; and

(11) report data on the number of absentee ballots transmitted and received under section 102(c) and such other data as the Presidential designee determines appropriate in accord-

ance with the standards developed by the Presidential designee under section 101(b)(11).

(b) *Designation of single State office to provide information on registration and absentee ballot procedures for all voters in State.*

(1) *In general.* Each State shall designate a single office which shall be responsible for providing information regarding voter registration procedures and absentee ballot procedures to be used by absent uniformed services voters and overseas voters with respect to elections for Federal office (including procedures relating to the use of the Federal write-in absentee ballot) to all absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the State.

(2) *Recommendation regarding use of office to accept and process materials.* Congress recommends that the State office designated under paragraph (1) be responsible for carrying out the State's duties under this Act, including accepting valid voter registration applications, absentee ballot applications, and absentee ballots (including Federal write-in absentee ballots) from all absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the State.

(c) *Report on number of absentee ballots transmitted and received.* Not later than 90 days after the date of each regularly scheduled general election for Federal office, each State and unit of local government which administered the election shall (through the State, in the case of a unit of local government) submit a report to the Election Assistance Commission (established under the Help America Vote Act of 2002) on the combined number of absentee ballots transmitted to absent uniformed services voters and overseas voters for the election and the combined number of such ballots which were returned by such voters and cast in the election, and shall make such report available to the general public.

(d) *Registration notification.* With respect to each absent uniformed services voter and each overseas voter who submits a voter registration application or an absentee ballot request, if the State rejects the application or request, the State shall provide the voter with the reasons for the rejection.

(e) *Designation of means of electronic communication for absent uniformed services voters and overseas voters to request and for States to send voter registration applications and absentee ballot applications, and for other purposes related to voting information.*

(1) *In general.* Each State shall, in addition to the designation of a single State office under subsection (b), designate not less than 1 means of electronic communication—

(A) for use by absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the State to request voter registration applications and absentee ballot applications under subsection (a)(6);

(B) for use by States to send voter registration applications and absentee ballot applications requested under such subsection; and

(C) for the purpose of providing related voting, balloting, and election information to absent uniformed services voters and overseas voters.

(2) *Clarification regarding provision of multiple means of electronic communication.* A State may, in addition to the means of electronic communication so designated, provide multiple means of electronic communication to absent uniformed services voters and overseas voters, including a means of electronic communication for the appropriate jurisdiction of the State.

(3) *Inclusion of designated means of electronic communication with informational and instructional materials that accompany balloting materials.* Each State shall include a means of electronic communication so designated with all informational and instructional materials that accompany balloting materials sent by the State to absent uniformed services voters and overseas voters.

(4) *Availability and maintenance of online repository of State contact information.* The Federal Voting Assistance Program of the Department of Defense shall maintain and make available to the public an online repository of State contact information with respect to elections for Federal office, including the single State office designated under subsection (b) and the means of electronic communication designated under paragraph (1), to be used by absent uniformed services voters and overseas voters as a resource to send voter registration applications and absentee ballot applications to the appropriate jurisdiction in the State.

(5) *Transmission if no preference indicated.* In the case where an absent uniformed services voter or overseas voter does not designate a preference under subsection (a)(6)(C), the State shall transmit the voter registration application or absentee ballot application by any delivery method allowable in accordance with applicable State law, or if there is no applicable State law, by mail.

(6) Security and privacy protections.

(A) *Security protections.* To the extent practicable, States shall ensure that the procedures established under subsection (a)(6) protect the security and integrity of the voter registration and absentee ballot application request processes.

(b) *Privacy protections.* To the extent practicable, the procedures established under subsection (a)(6) shall ensure that the privacy of the identity and other personal data of an absent uniformed services voter or overseas voter who requests or is sent a voter registration application or absentee ballot application under such subsection is protected throughout the process of making such request or being sent such application.

(f) *Transmission of blank absentee ballots by mail and electronically.*

(1) *In general.* Each State shall establish procedures—

(A) to transmit blank absentee ballots by mail and electronically (in accordance with the preferred method of

transmission designated by the absent uniformed services voter or overseas voter under subparagraph (B)) to absent uniformed services voters and overseas voters for an election for Federal office; and

(B) by which the absent uniformed services voter or overseas voter can designate whether the voter prefers that such blank absentee ballot be transmitted by mail or electronically.

(2) *Transmission if no preference indicated.* In the case where an absent uniformed services voter or overseas voter does not designate a preference under paragraph (1)(B), the State shall transmit the ballot by any delivery method allowable in accordance with applicable State law, or if there is no applicable State law, by mail.

(3) *Security and privacy protections.*

(A) *Security protections.* To the extent practicable, States shall ensure that the procedures established under subsection (a)(7) protect the security and integrity of absentee ballots.

(B) *Privacy protections.* To the extent practicable, the procedures established under subsection (a)(7) shall ensure that the privacy of the identity and other personal data of an absent uniformed services voter or overseas voter to whom a blank absentee ballot is transmitted under such subsection is protected throughout the process of such transmission.

(g) *Hardship exemption.*

(1) *In general.* If the chief State election official determines that the State is unable to meet the requirement under subsection (a)(8)(A) with respect to an election for Federal office due to an undue hardship described in paragraph (2)(B), the chief State election official shall request that the Presidential designee grant a waiver to the State of the application of such subsection. Such request shall include—

(A) a recognition that the purpose of such subsection is to allow absent uniformed services voters and overseas voters enough time to vote in an election for Federal office;

(B) an explanation of the hardship that indicates why the State is unable to transmit absent uniformed services voters and overseas voters an absentee ballot in accordance with such subsection;

(C) the number of days prior to the election for Federal office that the State requires absentee ballots be transmitted to absent uniformed services voters and overseas voters; and

(D) a comprehensive plan to ensure that absent uniformed services voters and overseas voters are able to receive absentee ballots which they have requested and submit marked absentee ballots to the appropriate State election official in time to have that ballot counted in the election for Federal office, which includes—

(i) the steps the State will undertake to ensure that absent uniformed services voters and overseas voters

have time to receive, mark, and submit their ballots in time to have those ballots counted in the election;

(ii) why the plan provides absent uniformed services voters and overseas voters sufficient time to vote as a substitute for the requirements under such subsection; and

(iii) the underlying factual information which explains how the plan provides such sufficient time to vote as a substitute for such requirements.

(2) *Approval of waiver request.* After consulting with the Attorney General, the Presidential designee shall approve a waiver request under paragraph (1) if the Presidential designee determines each of the following requirements are met:

(A) The comprehensive plan under subparagraph (D) of such paragraph provides absent uniformed services voters and overseas voters sufficient time to receive absentee ballots they have requested and submit marked absentee ballots to the appropriate State election official in time to have that ballot counted in the election for Federal office.

(B) One or more of the following issues creates an undue hardship for the State:

(i) The State's primary election date prohibits the State from complying with subsection (a)(8)(A).

(ii) The State has suffered a delay in generating ballots due to a legal contest.

(iii) The State Constitution prohibits the State from complying with such subsection.

(3) *Timing of waiver.*

(A) *In general.* Except as provided under subparagraph (B), a State that requests a waiver under paragraph (1) shall submit to the Presidential designee the written waiver request not later than 90 days before the election for Federal office with respect to which the request is submitted. The Presidential designee shall approve or deny the waiver request not later than 65 days before such election.

(B) *Exception.* If a State requests a waiver under paragraph (1) as the result of an undue hardship described in paragraph (2)(B)(ii), the State shall submit to the Presidential designee the written waiver request as soon as practicable. The Presidential designee shall approve or deny the waiver request not later than 5 business days after the date on which the request is received.

(4) *Application of waiver.* A waiver approved under paragraph (2) shall only apply with respect to the election for Federal office for which the request was submitted. For each subsequent election for Federal office, the Presidential designee shall only approve a waiver if the State has submitted a request under paragraph (1) with respect to such election.

(h) *Tracking marked ballots.* The chief State election official, in coordination with local election jurisdictions, shall develop a free access system by which an absent uniformed services voter or overseas voter may determine whether the absentee ballot of the absent

uniformed services voter or overseas voter has been received by the appropriate State election official.

(i) *Prohibiting refusal to accept applications for failure to meet certain requirements.* A State shall not refuse to accept and process any otherwise valid voter registration application or absentee ballot application (including the official post card form prescribed under section 101) or marked absentee ballot submitted in any manner by an absent uniformed services voter or overseas voter solely on the basis of the following:

(1) Notarization requirements.

(2) Restrictions on paper type, including weight and size.

(3) Restrictions on envelope type, including weight and size.

Pub. L. 99–410, title I, § 102, Aug. 28, 1986, 100 Stat. 925; Pub. L. 107–107, div A, title XVI, § 1606(a)(1), Dec. 28, 2001, 115 Stat. 1278; Pub. L. 107–252, title VII, §§ 702, 703(a), 705(b)(2), 707, Oct. 29, 2002, 116 Stat. 1723, 1724, 1725; Pub. L. 108–375, div A, title V, subtitle I, § 566(b), Oct. 28, 2004, 118 Stat. 1919; Pub. L. 111–84, div A, title V, subtitle H. §§ 577(a), 578(a), 579(a), (b), 580(c), (d), 582(a), 584(b), Oct. 28, 2009, 123 Stat. 2319, 2321, 2322, 2325, 2327, 2330.

42 U.S.C. § 1973ff–2. Federal write-in absentee ballot in general elections for Federal office for absent uniformed services voters and overseas voters

(a) *In general.*

(1) Federal write-in absentee ballot. The Presidential designee shall prescribe a Federal write-in absentee ballot (including a secrecy envelope and mailing envelope for such ballot) for use in general, special, primary, and runoff elections for Federal office by absent uniformed services voters and overseas voters who make timely application for, and do not receive, States, absentee ballots.

(2) Promotion and expansion of use of Federal write-in absentee ballots.

(A) *In general.* Not later than December 31, 2011, the Presidential designee shall adopt procedures to promote and expand the use of the Federal write-in absentee ballot as a back-up measure to vote in elections for Federal office.

(B) *Use of technology.* Under such procedures, the Presidential designee shall utilize technology to implement a system under which the absent uniformed services voter or overseas voter may—

(i) enter the address of the voter or other information relevant in the appropriate jurisdiction of the State, and the system will generate a list of all candidates in the election for Federal office in that jurisdiction; and

(ii) submit the marked Federal write-in absentee ballot by printing the ballot (including complete instructions for submitting the marked Federal write-in absentee ballot to the appropriate State election offi-

cial and the mailing address of the single State office designated under section 102(b)).

(C) *Authorization of appropriations.* There are authorized to be appropriated to the Presidential designee such sums as may be necessary to carry out this paragraph.

(b) *Submission and processing.* Except as otherwise provided in this title, a Federal write-in absentee ballot shall be submitted and processed in the manner provided by law for absentee ballots in the State involved. A Federal write-in absentee ballot of an absent uniformed services voter or overseas voter shall not be counted—

(1) in the case of a ballot submitted by an overseas voter who is not an absent uniformed services voter, if the ballot is submitted from any location in the United States;

(2) if the application of the absent uniformed services voter or overseas voter for a State absentee ballot is received by the appropriate State election official after the later of—

(A) the deadline of the State for receipt of such application; or

(B) the date that is 30 days before the general election; or

(e) if a State absentee ballot of the absent uniformed services voter or overseas voter is received by the appropriate State election official not later than the deadline for receipt of the State absentee ballot under State law.

(c) *Special rules.* The following rules shall apply with respect to Federal write-in absentee ballots:

(1) In completing the ballot, the absent uniformed services voter or overseas voter may designate a candidate by writing in the name of the candidate or by writing in the name of a political party (in which case the ballot shall be counted for the candidate of that political party).

(2) In the case of the offices of President and Vice President, a vote for a named candidate or a vote by writing in the name of a political party shall be counted as a vote for the electors supporting the candidate involved.

(3) Any abbreviation, misspelling, or other minor variation in the form of the name of a candidate or a political party shall disregarded in determining the validity of the ballot, if the intention of the voter can be ascertained.

(d) *Second ballot submission; instruction to absent uniformed services voter or overseas voter.* An absent uniformed services voter or overseas voter who submits a Federal write-in absentee ballot and later receives a State absentee ballot, may submit the State absentee ballot. The Presidential designee shall assure that the instructions for each Federal write-in absentee ballot clearly state that an absent uniformed services voter or overseas voter who submits a Federal write-in absentee ballot and later receives and submits a State absentee ballot should make every reasonable effort to inform the appropriate State election official that the voter has submitted more than a ballot.

(e) *Use of approved State absentee ballot in place of Federal write-in absentee ballot.* The Federal write-in absentee ballot shall not be valid for use in a general, special, primary, or runoff election

for Federal office if the State involved provides a State absentee ballot that—

(1) at the request of the State, is approved by the Presidential designee for use in place of the Federal write-in absentee ballot; and

(2) is made available to absent uniformed services voters and overseas voters at least 60 days before the deadline for receipt of the State ballot under State law.

(f) *Prohibiting refusal to accept ballot for failure to meet certain requirements.* A State shall not refuse to accept and process any otherwise valid Federal write-in absentee ballot submitted in any manner by an absent uniformed services voter or overseas voter solely on the basis of the following:

(1) Notarization requirements.

(2) Restrictions on paper type, including weight and size.

(3) Restrictions on envelope type, including weight and size.

(g) *Certain States exempted.* A State is not required to permit use of the Federal write-in absentee ballot, if, on and after the date of the enactment of this title, the State has in effect a law providing that—

(1) a State absentee ballot is required to be available to any voter described in section 107(5)(A) at least 90 days before the general, special, primary, or runoff election for Federal office involved; and

(2) a State absentee ballot is required to be available to any voter described in section 107(5)(B) or (C), as soon as the official list of candidates in the general, special, primary, or runoff election for Federal office is complete.

Pub. L. 99–410, title I, § 103, Aug. 28, 1986, 100 Stat. 925; Pub. L. 108–375, div A, title V, subtitle I, § 566(c), (d), Oct. 28, 2004, 118 Stat. 1919; Pub. L. 111–84, div A, title V, subtitle H, §§ 581(a)(1), (b), 582(b), Oct. 28, 2009, 123 Stat. 2326, 2327.

42 U.S.C. § 1973ff–2a. Procedures for collection and delivery of marked absentee ballots of absent overseas uniformed services voters

(a) *Establishing of procedures.* The Presidential designee shall established procedures for collecting marked absentee ballots of absent overseas uniformed services voters in regularly scheduled general elections for Federal office, including absentee ballots prepared by States and the Federal write-in absentee ballot prescribed under section 103, and for delivering such marked absentee ballots to the appropriate election officials.

(b) *Delivery to appropriate election officials.*

(1) *In general.* Under the procedures established under this section, the Presidential designee shall implement procedures that facilities the delivery of marked absentee ballots of absent overseas uniformed services voters for regularly scheduled general elections for Federal office to the appropriate election officials, in accordance with this section, not later than the date by which an absentee ballot must be received in order to be counted in the election.

(2) *Cooperation and coordination with the United States Postal Service.* The Presidential designee shall carry out this section in cooperation and coordination with the United States Postal Service, and shall provide expedited mail delivery service for all such marked absentee ballots of absent uniformed services voters that are collected on or before the deadline described in paragraph (3) and then transferred to the United States Postal Service.

(3) *Deadline described.*

(A) *In general.* Except as provided in subparagraph (B), the deadline described in this paragraph is noon (in the location in which the ballot is collected) on the seventh day preceding the date of the regularly scheduled general election for Federal office.

(B) *Authority to establish alternative deadline for certain locations.* If the Presidential designee determines that the deadline described in subparagraph (A) is not sufficient to ensure timely delivery of the ballot under paragraph (1) with respect to a particular location because of remoteness or other factors, the Presidential designee may establish as an alternative deadline for that location the latest date occurring prior to the deadline described in subparagraph (A) which is sufficient to provide timely delivery of the ballot under paragraph (1).

(4) *No postage requirement.* In accordance with section 3406 of title 39, United States Code, such marked absentee ballots and other balloting materials shall be carried free of postage.

(5) *Date of mailing.* Such marked absentee ballots shall be postmarked with a record of the date on which the ballot is mailed.

(c) *Outreach for absent overseas uniformed services voters on procedures.* The Presidential designee shall take appropriate actions to inform individuals who are anticipated to be absent overseas uniformed services voters in a regularly scheduled general election for Federal office to which this section applies of the procedures for the election and delivery of marked absentee ballots established pursuant to this section, including the manner in which such voters may utilize such procedures for the submittal of marked absentee ballots pursuant to this section.

(d) *Absent overseas uniformed services voter defined.* In this section, the term "absent overseas uniformed services voter" means an overseas voter described in section 107(5)(A).

(e) *Authorization of appropriations.* There are authorized to be appropriated to the Presidential designee such sums as may be necessary to carry out this section.

Pub. L. 111–84, div. A, title V, subtitle H, § 580(a), Oct. 28, 2009, 123 Stat. 2324.

42 U.S.C. § 1973ff–2b. Federal Voting Assistance Program improvements

(a) *Duties.* The Presidential designee shall carry out the following duties:

(1) Develop online portals of information to inform absent uniformed services voters regarding voter registration procedures and absentee ballot procedures to be used by such voters with respect to elections for Federal office.

(2) Establish a program to notify absent uniformed services voters of voter registration information and resources, the availability of the Federal postcard application, and the availability of the Federal write-in absentee ballot on the military Global Network, and shall use the military Global Network to notify absent uniformed services voters of the foregoing 90, 60, and 30 days prior to each election for Federal office.

(b) *Clarification regarding other duties and obligations.* Nothing in this section shall relieve the Presidential designee of their duties and obligations under any directives or regulations issued by the Department of Defense, including the Department of Defense Directive 1000.04 (or any successor directive or regulation) that is not inconsistent or contradictory to the provisions of this section.

(c) *Authorization of appropriations.* There are authorized to be appropriated to the Federal Voting Assistance Program of the Department of Defense (or a successor program) such sums as are necessary for purposes of carrying out this section.

Pub. L. 111–84, div A, title V, subtitle H, § 583(a)(1), Oct. 28, 2009, 123 Stat. 2328.

42 U.S.C. § 1973ff–3. Prohibition of refusal of applications on grounds of early submission

A State may not refuse to accept or process, with respect to any election for Federal office, any otherwise valid voter registration application or absentee ballot application (including the postcard form prescribed under section 101) submitted by an absent uniformed services voter during a year on the grounds that the voter submitted the application before the first date on which the State otherwise accepts or processes such applications for that year submitted by absentee voters who are not members of the uniformed services.

Pub. L. 99–410, title I, § 104, Aug. 28, 1986, 100 Stat. 926; Pub. L. 107–107, div A, title XVI, § 1606(b), Dec. 28, 2001, 115 Stat. 1279; Pub. L. 107–252, title VII, §§ 704, 706(a), Oct. 29, 2002, 116 Stat. 1724, 1725; Pub. L. 111–84, div A, title V, subtitle H, § 585(a), (b)(2), Oct. 28, 2009, 123 Stat. 2331.

42 U.S.C. § 1973ff–4. Enforcement

(a) *In general.* The Attorney General may bring a civil action in an appropriate district court for such declaratory or injunctive relief as may be necessary to carry out this title.

(b) *Report to Congress.* Not later than December 31 of each year, the Attorney General shall submit to Congress an annual report on any civil action brought under subsection (a) during the preceding year.

Pub. L. 99–410, title I, § 105, Aug. 28, 1986, 100 Stat. 927; Pub. L. 111–84, div A, title V, subtitle H, § 587, Oct. 28, 2009, 123 Stat. 2323.

42 U.S.C. § 1973ff–4a. Reporting requirements

(a) *Report on status of implementation and assessment of programs.* Not later than 180 days after the date of the enactment of the Military and Overseas Voter Empowerment Act, the Presidential designee shall submit to the relevant committees of Congress a report containing the following information:

(1) The status of the implementing of the procedures established for the collection and delivery of marked absentee ballots of absent overseas uniformed services voters under section 103A, and a detailed description of the specific steps taken towards such implementation for the regularly scheduled general election for Federal office held in November 2010.

(2) An assessment of the effectiveness of the Voting Assistance Officer Program of the Department of Defense, which shall include the following:

(A) A thorough and complete assessment of whether the Program, as configured and implemented as of such date of enactment, is effectively assisting absent uniformed services voters in exercising their right to vote.

(B) An inventory and explanation of any areas of voter assistance in which the Program has failed to accomplish its stated objectives and effectively assist absent uniformed services voters in exercising their right to vote.

(C) As necessary, a detailed plan for the implementation of any new program to replace or supplement voter assistance activities required to be performed under this Act.

(3) A detailed description of the specific steps taken towards the implementation of voter registration assistance for absent uniformed services voters under section 1566a of title 10, United States Code.

(b) *Annual report on effectiveness of activities and utilization of certain procedures.* Not later than March 31 of each year, the Presidential designee shall transmit to the President and to the relevant committees of Congress a report containing the following information:

(1) An assessment of the effectiveness of activities carried out under section 103B, including the activities and actions of the Federal Voting Assistance Program of the Department of Defense, a separate assessment of voter registration and participation by absent uniformed services voters, a separate assessment of voter registration and participation by overseas voters who are not members of the uniformed services, and a description of the cooperation between States and the Federal Government in carrying out such section.

(2) A description of the utilization of voter registration assistance under section 1566a of title 10, United States Code, which shall include the following:

(A) A description of the specific programs implemented by each military department of the Armed Forces pursuant to such section.

(B) The number of absent uniformed services voters who utilized voter registration assistance provided under such section.

(3) In the case of a report submitted under this subsection in the year following a year in which a regularly scheduled general election for Federal office is held, a description of the utilization of the procedures for the collection and delivery of marked absentee ballots established pursuant to section 103A, which shall include the number of marked absentee ballots collected and delivered under such procedures and the number of such ballots which were not delivered by the time of the closing of the polls on the date of the election (and the reasons such ballots were not so delivered).

(c) *Definitions.* In this section:

(1) Absent overseas uniformed services voter. The term "absent overseas uniformed services voter" has the meaning given such term in section 103A(d).

(2) Presidential designee. The term "Presidential designee" means the Presidential designee under section 101(a).

(3) Relevant committees of Congress defined. The term "relevant committees of Congress" means—

(A) the Committees on Appropriations, Armed Services, and Rules and Administration of the Senate; and

(B) the Committees on Appropriations, Armed Services, and House Administration of the House of Representatives.

Pub. L. 111–84, div. A, title V, subtitle H, § 586, Oct. 28, 2009, 123 Stat. 2331.

42 U.S.C. § 1973ff–5. Effect on certain other laws

The exercise of any right under this title shall not affect, for purposes of any Federal, State, or local tax, the residence or domicile of a person exercising such right.

Pub. L. 99–410, title I, § 106, Aug. 28, 1986, 100 Stat. 927.

42 U.S.C. § 1973ff–6. Definitions

As used in this title, the term—

(1) "absent uniformed services voter" means—

(A) a member of a uniformed service on active duty who, by reason of such active duty, is absent from the place of residence where the member is otherwise qualified to vote;

(B) a member of the merchant marine who, by reason of service in the merchant marine, is absent from the place of residence where the member is otherwise qualified to vote; and

(C) a spouse or dependent of a member referred to in subparagraph (A) or (B) who, by reason of the active duty or service of the member, is absent from the place of residence where the spouse or dependent is otherwise qualified to vote;

(2) "balloting materials" means official post card forms (prescribed under section 101), Federal write-in absentee ballots (prescribed under section 103), and any State balloting materials that, as determined by the Presidential designee, are essential to the carrying out of this title;

(3) "Federal office" means the office of President or Vice President, or of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress;

(4) "member of the merchant marine" means an individual (other than a member of a uniformed service or an individual employed, enrolled, or maintained on the Great Lakes or the inland waterways)—

(A) employed as an officer or crew member of a vessel documented under the laws of the United States, or a vessel owned by the United States, or a vessel of foreign-flag registry under charter to or control of the United States; or

(B) enrolled with the United States for employment or training for employment, or maintained by the United States for emergency relief service, as an officer or crew member of any such vessel;

(5) "overseas voter" means—

(A) an absent uniformed services voter who, by reason of active duty or service is absent from the United States on the date of the election involved;

(B) a person who resides outside the United States and is qualified to vote in the last place in which the person was domiciled before leaving the United States; or

(C) a person who resides outside the United States and (but for such residence) would be qualified to vote in the last place in which the person was domiciled before leaving the United States.

(6) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and American Samoa;

(7) "uniformed services" means the Army, Navy, Air Force, Marine Corps, and Coast Guard, the commissioned corps of the Public Health Service, and the commissioned corps of the National Oceanic and Atmospheric Administration; and

(8) "United States", where used in the territorial sense, means the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and American Samoa.

Pub. L. 99–410, title I, § 107, Aug. 28, 1986, 100 Stat. 927.

42 U.S.C. § 1973ff–7. Technology pilot program

(a) *Definitions.* In this section:

(1) *Absent uniformed services voter.* The term "absent uniformed services voter" has the meaning given such term in section 107(a) of the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff et seq.).

(2) *Overseas voter.* The term "overseas voter" has the meaning given such term in section 107(5) of such Act.

(3) *Presidential designee.* The term "Presidential designee" means the individual designated under section 101(a) of such Act.

(b) *Establishment.*

(1) *In general.* The Presidential designee may establish 1 or more pilot programs under which the feasibility of new election technology is tested for the benefit of absent uniformed services voters and overseas voters claiming rights under the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff et seq.).

(2) *Design and conduct.* The design and conduct of a pilot program established under this subsection—

(A) shall be at the discretion of the Presidential designee; and

(B) shall not conflict with or substitute for existing laws, regulations, or procedures with respect to the participation of absent uniformed services voters and military voters in elections for Federal office.

(c) *Considerations.* In conducting a pilot program established under subsection (b), the Presidential designee may consider the following issues:

(1) The transmission of electronic voting material across military networks.

(2) Virtual private networks, cryptographic voting systems, centrally controlled voting stations, and other information security techniques.

(3) The transmission of ballot representations and scanned pictures in a secure manner.

(4) Capturing, retaining, and comparing electronic and physical ballot representations.

(5) Utilization of voting stations at military bases.

(6) Document delivery and upload systems.

(7) The functional effectiveness of the application or adoption of the pilot program to operational environments, taking into account environmental and logistical obstacles and State procedures.

(d) *Reports.* The Presidential designee shall submit to Congress reports on the progress and outcomes of any pilot program conducted under this subsection, together with recommendations—

(1) for the conduct of additional pilot programs under this section; and

(2) for such legislation and administrative action as the Presidential designee determines appropriate.

(e) *Technical assistance.*

(1) *In general.* The Election Assistance Commission and the National Institute of Standards and Technology shall provide the Presidential designee with best practices or standards in accordance with electronic absentee voting guidelines established under the first sentence of section 1604(a)(2) of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107; 115 Stat. 1277; 42 U.S.C. 1977ff note), as amended by section 567 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Public Law 108–375; 118 Stat. 1919) to support the pilot program or programs.

(2) *Report.* In the case in which the Election Assistance Commission has not established electronic absentee voting guidelines under such section 1604(a)(2), as so amended, by not later than 180 days after enactment of this Act, the Election Assist-

ance Commission shall submit to the relevant committees of Congress a report containing the following information:

(A) The reasons such guidelines have not been established as of such date.

(B) A detailed timeline for the establishment of such guidelines.

(C) A detailed explanation of the Commission's actions in establishing such guidelines since the date of enactment of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Public Law 108–375; 118 Stat. 1919).

(3) *Relevant committees of Congress defined*. In this subsection, the term "relevant committees of Congress" means—

(A) the Committees on Appropriations, Armed Services, and Rules and Administration of the Senate; and

(B) the Committees on Appropriations, Armed Services, and House Administration of the House of Representatives.

(f) *Authorization of appropriations.* There are authorized to be appropriated such sums as are necessary to carry out this section.

Pub. L. 111–84, div A, title V, subtitle H, § 589, Oct. 28, 2009, 123 Stat. 2334.

PART II

PERTINENT STANDING RULES OF THE SENATE RELATING TO THE ELECTION OF SENATORS

PERTINENT STANDING RULES OF THE SENATE RELATING TO THE ELECTION OF SENATORS

A. RULE II

PRESENTATION OF CREDENTIALS AND QUESTIONS OF PRIVILEGE

1. The presentation of the credentials of Senators elect or of Senators designate and other questions of privilege shall always be in order, except during the reading and correction of the Journal, while a question of order or a motion to adjourn is pending, or while the Senate is voting or ascertaining the presence of a quorum; and all questions and motions arising or made upon the presentation of such credentials shall be proceeded with until disposed of.

2. The Secretary shall keep a record of the certificates of election and certificates of appointment of Senators by entering in a well-bound book kept for that purpose the date of the election or appointment, the name of the person elected or appointed, the date of the certificate, the name of the governor and the secretary of state signing and countersigning the name, and the State from which such Senator is elected or appointed.

3. The Secretary of the Senate shall send copies of the following recommended forms to the governor and secretary of state of each State wherein an election is about to take place or an appointment is to be made so that they may use such forms if they see fit.

THE RECOMMENDED FORMS FOR CERTIFICATE OF ELECTION AND CERTIFICATE OF APPOINTMENT ARE AS FOLLOWS:

CERTIFICATE OF ELECTION FOR SIX-YEAR TERM

"To the President of the Senate of the United States:

"This is to certify that on the — day of —, 20—, A——— B——— was duly chosen by the qualified electors of the State of ——— a Senator from said State to represent said State in the Senate of the United States for the term of six years, beginning on the 3d day of January, 20——.

"Witness: His excellency our governor ———, and our seal hereto affixed at ——— this — day of ———, in the year of our Lord 19——.

"By the governor:

"C——— D———,
"Governor.

"E——— F———,
"Secretary of State."

CERTIFICATE OF ELECTION FOR UNEXPIRED TERM

"To the President of the Senate of the United States:

"This is to certify that on the — day of ——, 20——, A——— B——— was duly chosen by the qualified electors of the State of ——— a Senator for the unexpired term ending at noon on the 3d day of January, 20——, to fill the vacancy in the representation from said State in the Senate of the United States caused by the ——— of C——— D———.

"Witness: His excellency our governor ———, and our seal hereto affixed at ——— this — day of ———, in the year of our Lord 20——.

"By the governor:

"E——— F———,
"Governor.

"G——— H———,
"Secretary of State."

CERTIFICATE OF APPOINTMENT

"To the President of the Senate of the United States:

"This is to certify that, pursuant to the power vested in me by the Constitution of the United States and the laws of the State of ———, I, A——— B———, the governor of said State, do hereby appoint C——— D——— a Senator from said State to represent said State in the Senate of the United States until the vacancy therein caused by the ——— of E——— F———, is filed by election as provided by law.

"Witness: His excellency our governor ———, and our seal hereto affixed at ——— this — day of ———, in the year of our Lord 20——.

"By the governor:

"G——— H———,
"Governor.

"I——— J———,
"Secretary of State."

B. RULE III

OATHS

The oaths or affirmations required by the Constitution and prescribed by law shall be taken and subscribed by each Senator, in open Senate, before entering upon his duties.

OATH REQUIRED BY THE CONSTITUTION AND BY LAW TO BE TAKEN BY SENATORS

I, A——— B———, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter; so help me God. (5 U.S.C. 3331.)

C. RULE XXXIV

PUBLIC FINANCIAL DISCLOSURE

1. For purposes of this rule, the provisions of title I of the Ethics in Government Act of 1978 shall be deemed to be a rule of the Senate as it pertains to Members, officers, and employees of the Senate.

2. (a) The Select Committee on Ethics shall transmit a copy of each report filed with it under title I of the Ethics in Government Act of 1978 (other than a report filed by a Member of Congress) to the head of the employing office of the individual filing the report.

(b) For purposes of this rule, the head of the employing office shall be—

(1) in the case of an employee of a Member, the Member by whom that person is employed;

(2) in the case of an employee of a Committee, the chairman and ranking minority member of such Committee;

(3) in the case of an employee on the leadership staff, the Member of the leadership on whose staff such person serves; and

(4) in the case of any other employee of the legislative branch, the head of the office in which such individual serves.

3. In addition to the requirements of paragraph 1, Members, officers, and employees of the Senate shall include in each report filed under paragraph 1 the following additional information:

(a) For purposes of section 102(a)(1)(B) of the Ethics in Government Act of 1978 additional categories of income as follows:

(1) greater than $1,000,000 but not more than $5,000,000, or

(2) greater than $5,000,000.

(b) for purposes of section 102(d)(1) of the Ethics in Government Act of 1978 additional categories of value as follows:

(1) greater than $1,000,000 but not more than $5,000,000;

(2) greater than $5,000,000 but not more than $25,000,000;

(3) greater than $25,000,000 but not more than $50,000,000; and

(4) greater than $50,000,000.

(c) For purposes of this paragraph and section 102 of the Ethics in Government Act of 1978, additional categories with amounts or values greater than $1,000,000 set forth in section

102(a)(1)(B) and 102(d)(1) shall apply to the income, assets, or liabilities of spouses and dependent children only if the income, assets, or liabilities are held jointly with the reporting individual. All other income, assets, or liabilities of the spouse or dependent children required to be reported under section 102 and this paragraph in an amount or value greater than $1,000,000 shall be categorized only as an amount or value greater than $1,000,000.

4. In addition to the requirements of paragraph 1, Members, officers, and employees of the Senate shall include in each report filed under paragraph 1 an additional statement under section 102(a) of the Ethics in Government Act of 1978 listing the category of the total cash value of any interest of the reporting individual in a qualified blind trust as provided in section 102(d)(1) of the Ethics in Government Act of 1978, unless the trust instrument was executed prior to July 24, 1995 and precludes the beneficiary from receiving information on the total cash value of any interest in the qualified blind trust.

D. RULE XXXV

GIFTS

1. (a)(1) No Member, officer, or employee of the Senate shall knowingly accept a gift except as provided in this rule.

(2)(A) A Member, officer, or employee may accept a gift (other than cash or cash equivalent) which the Member, officer, or employee reasonably and in good faith believes to have a value of less than $50, and a cumulative value from one source during a calendar year of less than $100. No gift with a value below $10 shall count toward the $100 annual limit. No formal recordkeeping is required by this paragraph, but a Member, officer, or employee shall make a good faith effort to comply with this paragraph.

(B) A Member, officer, or employee may not knowingly accept a gift from a registered lobbyist, an agent of a foreign principal, or a private entity that retains or employs a registered lobbyist or an agent of a foreign principal, except as provided in subparagraphs (c) and (d).

(b)(1) For the purpose of this rule, the term "gift" means any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. The term includes gifts of services, training, transportation, lodging, and meals, whether provided in kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred.

(2)(A) A gift to a family member of a Member, officer, or employee, or a gift to any other individual based on that individual's relationship with the Member, officer, or employee, shall be considered a gift to the Member, officer, or employee if it is given with the knowledge and acquiescence of the Member, officer, or employee and the Member, officer, or employee has reason to believe the gift was given because of the official position of the Member, officer, or employee.

(B) If food or refreshment is provided at the same time and place to both a Member, officer, or employee and the spouse or dependent

thereof, only the food or refreshment provided to the Member, officer, or employee shall be treated as a gift for purposes of this rule.

(C) The restrictions in subparagraph (a) shall not apply to the following:

(1)(A) Anything for which the Member, officer, or employee pays the market value, or does not use and promptly returns to the donor.

(B) The market value of a ticket to an entertainment or sporting event shall be the face value of the ticket or, in the case of a ticket without a face value, the value of the ticket with the highest face value for the event, except that if a ticket holder can establish in advance of the event to the Select Committee on Ethics that the ticket at issue is equivalent to another ticket with a face value, then the market value shall be set at the face value of the equivalent ticket. In establishing equivalency, the ticket holder shall provide written and independently verifiable information related to the primary features of the ticket, including, at minimum, the seat location, access to parking, availability of food and refreshments, and access to venue areas not open to the public. The Select Committee on Ethics may make a determination of equivalency only if such information is provided in advance of the event.

(C)(i) Fair market value for a flight on an aircraft described in item (ii) shall be the pro rata share of the fair market value of the normal and usual charter fare or rental charge for a comparable plane of comparable size, as determined by dividing such cost by the number of Members, officers, or employees of Congress on the flight.

(ii) A flight on an aircraft described in this item is any flight on an aircraft that is not—

(I) operated or paid for by an air carrier or commercial operator certificated by the Federal Aviation Administration and required to be conducted under air carrier safety rules; or

(II) in the case of travel which is abroad, an air carrier or commercial operator certificated by an appropriate foreign civil aviation authority and the flight is required to be conducted under air carrier safety rules.

(iii) This subclause shall not apply to an aircraft owned or leased by a governmental entity or by a Member of Congress or a Member's immediate family member (including an aircraft owned by an entity that is not a public corporation in which the Member on Member's immediate family member had an ownership interest), provided that the Member does not use the aircraft any more than the Member's or immediate family member's proportionate share of ownership allows.

(2) A contribution, as defined in the Federal Election Campaign Act of 1971 (2 U.S.C. 431 et seq.) that is lawfully made under that Act, or attendance at a fundraising event sponsored by a political organization described in section 527(e) of the Internal Revenue Code of 1986.

(3) A gift from a relative as described in section 109(16) of title I of the Ethics Reform Act of 1989 (5 U.S.C. App. 6).

(4)(A) Anything, including personal hospitality, provided by an individual on the basis of a personal friendship unless the Member, officer, or employee has reason to believe that, under the circumstances, the gift was provided because of the official position of the Member, officer, or employee and not because of the personal friendship.

(B) In determining whether a gift is provided on the basis of personal friendship, the Member, officer, or employee shall consider the circumstances under which the gift was offered, such as:

(i) The history of the relationship between the individual giving the gift and the recipient of the gift, including any previous exchange of gifts between such individuals.

(ii) Whether to the actual knowledge of the Member, officer, or employee the individual who gave the gift personally paid for the gift or sought a tax deduction or business reimbursement for the gift.

(iii) Whether to the actual knowledge of the Member, officer, or employee the individual who gave the gift also at the same time gave the same or similar gifts to other Members, officers, or employees.

(5) A contribution or other payment to a legal expense fund established for the benefit of a Member, officer, or employee, that is otherwise lawfully made, subject to the disclosure requirements of the Select Committee on Ethics, except as provided in paragraph 3(c).

(6) Any gift from another Member, officer, or employee of the Senate or the House of Representatives.

(7) Food, refreshments, lodging, and other benefits—

(A) resulting from the outside business or employment activities (or other outside activities that are not connected to the duties of the Member, officer, or employee as an officeholder) of the Member, officer, or employee, or the spouse of the Member, officer, or employee, if such benefits have not been offered or enhanced because of the official position of the Member, officer, or employee and are customarily provided to others in similar circumstances;

(B) customarily provided by a prospective employer in connection with bona fide employment discussions; or

(C) provided by a political organization described in section 527(e) of the Internal Revenue Code of 1986 in connection with a fundraising or campaign event sponsored by such an organization.

(8) Pension and other benefits resulting from continued participation in an employee welfare and benefits plan maintained by a former employer.

(9) Informational materials that are sent to the office of the Member, officer, or employee in the form of books, articles, periodicals, other written materials, audiotapes, videotapes, or other forms of communication.

(10) Awards or prizes which are given to competitors in contests or events open to the public, including random drawings.

(11) Honorary degrees (and associated travel, food, refreshments, and entertainment) and other bona fide, nonmonetary

awards presented in recognition of public service (and associated food, refreshments, and entertainment provided in the presentation of such degrees and awards).

(12) Donations of products from the State that the Member represents that are intended primarily for promotional purposes, such as display or free distribution, and are of minimal value to any individual recipient.

(13) Training (including food and refreshments furnished to all attendees as an integral part of the training) provided to a Member, officer, or employee, if such training is in the interest of the Senate.

(14) Bequests, inheritances, and other transfers at death.

(15) Any item, the receipt of which is authorized by the Foreign Gifts and Decorations Act, the Mutual Educational and Cultural Exchange Act, or any other statute.

(16) Anything which is paid for by the Federal Government, by a State or local government, or secured by the Government under a Government contract.

(17) A gift of personal hospitality (as defined in section 109(14)[1] of the Ethics in Government Act) of an individual other than a registered lobbyist or agent of a foreign principal.

(18) Free attendance at a widely attended event permitted pursuant to subparagraph (d).

(19) Opportunities and benefits which are—

(A) available to the public or to a class consisting of all Federal employees, whether or not restricted on the basis of geographic consideration;

(B) offered to members of a group or class in which membership is unrelated to congressional employment;

(C) offered to members of an organization, such as an employees' association or congressional credit union, in which membership is related to congressional employment and similar opportunities are available to large segments of the public through organizations of similar size;

(D) offered to any group or class that is not defined in a manner that specifically discriminates among Government employees on the basis of branch of Government or type of responsibility, or on a basis that favors those of higher rank or rate of pay;

(E) in the form of loans from banks and other financial institutions on terms generally available to the public; or

(F) in the form of reduced membership or other fees for participation in organization activities offered to all Government employees by professional organizations if the only restrictions on membership relate to professional qualifications.

(20) A plaque, trophy, or other item that is substantially commemorative in nature and which is intended solely for presentation.

(21) Anything for which, in an unusual case, a waiver is granted by the Select Committee on Ethics.

[1] Definitions are found at 5 U.S.C. App. 6.

(22) Food or refreshments of a nominal value offered other than as a part of a meal.

(23) An item of little intrinsic value such as a greeting card, baseball cap, or a T-shirt.

(24) Subject to the restrictions in subparagraph (a)(2)(A), free attendance at a constituent event permitted pursuant to subparagraph (g).

(d)(1) A Member, officer, or employee may accept an offer of free attendance at a widely attended convention, conference, symposium, forum, panel discussion, dinner, viewing, reception, or similar event, provided by the sponsor of the event, if—

(A) the Member, officer, or employee participates in the event as a speaker or a panel participant, by presenting information related to Congress or matters before Congress, or by performing a ceremonial function appropriate to the Member's, officer's, or employee's official position; or

(B) attendance at the event is appropriate to the performance of the official duties or representative function of the Member, officer, or employee.

(2) A Member, officer, or employee who attends an event described in clause (1) may accept a sponsor's unsolicited offer of free attendance at the event for an accompanying individual if others in attendance will generally be similarly accompanied or if such attendance is appropriate to assist in the representation of the Senate.

(3) A Member, officer, or employee, or the spouse or dependent thereof, may accept a sponsor's unsolicited offer of free attendance at a charity event, except that reimbursement for transportation and lodging may not be accepted in connection with an event that does not meet the standards provided in paragraph 2.

(4) For purposes of this paragraph, the term "free attendance" may include waiver of all or part of a conference or other fee, the provision of local transportation, or the provision of food, refreshments, entertainment, and instructional materials furnished to all attendees as an integral part of the event. The term does not include entertainment collateral to the event, nor does it include food or refreshments taken other than in a group setting with all or substantially all other attendees.

(5) During the dates of the national party convention for the political party to which a Member belongs, a Member may not participate in an event honoring that Member, other than in his or her capacity as the party's presidential or vice presidential nominee or presumptive nominee, if such event is directly paid for by a registered lobbyist or a private entity that retains or employs a registered lobbyist.

(e) No Member, officer, or employee may accept a gift the value of which exceeds $250 on the basis of the personal friendship exception in subparagraph (c)(4) unless the Select Committee on Ethics issues a written determination that such exception applies. No determination under this subparagraph is required for gifts given on the basis of the family relationship exception.

(f) When it is not practicable to return a tangible item because it is perishable, the item may, at the discretion of the recipient, be given to an appropriate charity or destroyed.

(g)(1) A Member, officer, or employee may accept an offer of free attendance in the Member's home State at a conference, symposium, forum, panel discussion, dinner event, site visit, viewing, reception, or similar event, provided by a sponsor of the event, if—

(A) the cost of meals provided the Member, officer, or employee is less than $50;

(B)(i) the event is sponsored by constituents of, or a group that consists primarily of constituents of, the Member (or the Member by whom the officer or employee is employed); and

(ii) the event will be attended primarily by a group of at least 5 constituents of the Member (or the Member by whom the officer or employee is employed) provided that a registered lobbyist shall not attend the event; and

(C)(i) the Member, officer, or employee participates in the event as a speaker or a panel participant, by presenting information related to Congress or matters before Congress, or by performing a ceremonial function appropriate to the Member's, officer's, or employee's official position; or

(ii) attendance at the event is appropriate to the performance of the official duties or representative function of the Member, officer, or employee.

(2) A Member, officer, or employee who attends an event described in clause (1) may accept a sponsor's unsolicited offer of free attendance at the event for an accompanying individual if others in attendance will generally be similarly accompanied or if such attendance is appropriate to assist in the representation of the Senate.

(3) For purposes of this subparagraph, the term 'free attendance' has the same meaning given such term in subparagraph (d).

2. (a)(1) A reimbursement (including payment in kind) to a Member, officer, or employee from an individual other than a registered lobbyist or agent of a foreign principal or a private entity that retains or employs 1 or more registered lobbyists or agents of a foreign principal for necessary transportation, lodging and related expenses for travel to a meeting, speaking engagement, factfinding trip or similar event in connection with the duties of the Member, officer, or employee as an officeholder shall be deemed to be a reimbursement to the Senate and not a gift prohibited by this rule, if the Member, officer, or employee complies with the requirements of this paragraph.

(2)(A) Notwithstanding clause (1), a reimbursement (including payment in kind) to a Member, officer, or employee of the Senate from an individual, other than a registered lobbyist or agent of a foreign principal, that is a private entity that retains or employs 1 or more registered lobbyists or agents of a foreign principal shall be deemed to be a reimbursement to the Senate under clause (1) if—

(i) the reimbursement is for necessary transportation, lodging, and related expenses for travel to a meeting, speaking engagement, factfinding trip, or similar event described in clause (1) in connection with the duties of the Member, officer, or employee and the reimbursement is provided only for attendance at or participation for 1 day (exclusive of travel time and an overnight stay) at an event described in clause (1); or

(ii) the reimbursement is for necessary transportation, lodging, and related expenses for travel to a meeting, speaking engagement, factfinding trip, or similar event described in clause (1) in connection with the duties of the Member, officer, or employee and the reimbursement is from an organization designated under section 501(c)(3) of the Internal Revenue Code of 1986.

(B) When deciding whether to preapprove a trip under this clause, the Select Committee on Ethics shall make a determination consistent with regulations issued pursuant to section 544(b) of the Honest Leadership and Open Government Act of 2007. The committee through regulations to implement subclause (A)(i) may permit a longer stay when determined by the committee to be practically required to participate in the event, but in no event may the stay exceed 2 nights.

(3) For purposes of clauses (1) and (2), events, the activities of which are substantially recreational in nature, shall not be considered to be in connection with duties of a Member, officer, or employee as an officeholder.

(b) Before an employee may accept reimbursement pursuant to subparagraph (a), the employee shall receive advance written authorization from the Member or officer under whose direct supervision the employee works. Each advance authorization to accept reimbursement shall be signed by the Member or officer under whose direct supervision the employee works and shall include—

(1) the name of the employee;

(2) the name of the person who will make the reimbursement;

(3) the time, place, and purpose of the travel; and

(4) a determination that the travel is in connection with the duties of the employee as an officeholder and would not create the appearance that the employee is using public office for private gain.

(c) Each Member, officer, or employee that receives reimbursement under this paragraph shall disclose the expenses reimbursed or to be reimbursed, the authorization under subparagraph (b) (for an employee), and a copy of the certification in subparagraph (e)(1) to the Secretary of the Senate not later than 30 days after the travel is completed. Each disclosure made under this subparagraph of expenses reimbursed or to be reimbursed shall be signed by the Member or officer (in the case of travel by that Member or officer) or by the Member or officer under whose direct supervision the employee works (in the case of travel by an employee) and shall include—

(1) a good faith estimate of total transportation expenses reimbursed or to be reimbursed;

(2) a good faith estimate of total lodging expenses reimbursed or to be reimbursed;

(3) a good faith estimate of total meal expenses reimbursed or to be reimbursed;

(4) a good faith estimate of the total of other expenses reimbursed or to be reimbursed;

(5) a determination that all such expenses are necessary transportation, lodging, and related expenses as defined in this paragraph;

(6) a description of meetings and events attended; and

(7) in the case of a reimbursement to a Member or officer, a determination that the travel was in connection with the duties of the Member or officer as an officeholder and would not create the appearance that the Member or officer is using public office for private gain.

(d)(1) A Member, officer, or employee of the Senate may not accept a reimbursement (including payment in kind) for transportation, lodging, or related expenses under subparagraph (a) for a trip that was—

(A) planned, organized, or arranged by or at the request of a registered lobbyist or agent of a foreign principal; or

(B)(i) for trips described under subparagraph (a)(2)(A)(i) on which a registered lobbyist accompanies the Member, officer, or employee on any segment of the trip; or

(ii) for all other trips allowed under this paragraph, on which a registered lobbyist accompanies the Member, officer, or employee at any point throughout the trip.

(2) The Select Committee on Ethics shall issue regulations identifying de minimis activities by registered lobbyists or foreign agents that would not violate this subparagraph.

(e) A Member, officer, or employee shall, before accepting travel otherwise permissible under this paragraph from any source—

(1) provide to the Select Committee on Ethics a written certification from such source that—

(A) the trip will not be financed in any part by a registered lobbyist or agent of a foreign principal;

(B) the source either—

(i) does not retain or employ registered lobbyists or agents of a foreign principal and is not itself a registered lobbyist or agent of a foreign principal; or

(ii) certifies that the trip meets the requirements of subclause (i) or (ii) of subparagraph (a)(2)(A);

(C) the source will not accept from a registered lobbyist or agent of a foreign principal or a private entity that retains or employs 1 or more registered lobbyists or agents of a foreign principal, funds earmarked directly or indirectly for the purpose of financing the specific trip; and

(D) the trip will not in any part be planned, organized, requested, or arranged by a registered lobbyist or agent of a foreign principal and the traveler will not be accompanied on the trip consistent with the applicable requirements of subparagraph (d)(1)(B) by a registered lobbyist or agent of a foreign principal, except as permitted by regulations issued under subparagraph (d)(2); and

(2) after the Select Committee on Ethics has promulgated regulations pursuant to section 544(b) of the Honest Leadership and Open Government Act of 2007, obtain the prior approval of the committee for such reimbursement.

(f) For the purposes of this paragraph, the term "necessary transportation, lodging, and related expenses"—

(1) includes reasonable expenses that are necessary for travel for a period not exceeding 3 days exclusive of travel time within the United States or 7 days exclusive of travel time outside of the United States unless approved in advance by the Select Committee on Ethics;

(2) is limited to reasonable expenditures for transportation, lodging, conference fees and materials, and food and refreshments, including reimbursement for necessary transportation, whether or not such transportation occurs within the periods described in clause (1);

(3) does not include expenditures for recreational activities, nor does it include entertainment other than that provided to all attendees as an integral part of the event, except for activities or entertainment otherwise permissible under this rule; and

(4) may include travel expenses incurred on behalf of either the spouse or a child of the Member, officer, or employee, subject to a determination signed by the Member or officer (or in the case of an employee, the Member or officer under whose direct supervision the employee works) that the attendance of the spouse or child is appropriate to assist in the representation of the Senate.

(g) The Secretary of the Senate shall make all advance authorizations, certifications, and disclosures filed pursuant to this paragraph available for public inspection as soon as possible after they are received, but in no event prior to the completion of the relevant travel.

3. A gift prohibited by paragraph 1(a) includes the following: (a) Anything provided by a registered lobbyist or an agent of a foreign principal to an entity that is maintained or controlled by a Member, officer, or employee.

(b) A charitable contribution (as defined in section 170(c) of the Internal Revenue Code of 1986) made by a registered lobbyist or an agent of a foreign principal on the basis of a designation, recommendation, or other specification of a Member, officer, or employee (not including a mass mailing or other solicitation directed to a broad category of persons or entities), other than a charitable contribution permitted by paragraph 4.

(c) A contribution or other payment by a registered lobbyist or an agent of a foreign principal to a legal expense fund established for the benefit of a Member, officer, or employee.

(d) A financial contribution or expenditure made by a registered lobbyist or an agent of a foreign principal relating to a conference, retreat, or similar event, sponsored by or affiliated with an official congressional organization, for or on behalf of Members, officers, or employees.

4. (a) A charitable contribution (as defined in section 170(c) of the Internal Revenue Code of 1986) made by a registered lobbyist or an agent of a foreign principal in lieu of an honorarium to a Member, officer, or employee shall not be considered a gift under this rule if it is reported as provided in subparagraph (b).

(b) A Member, officer, or employee who designates or recommends a contribution to a charitable organization in lieu of honoraria described in subparagraph (a) shall report within 30

days after such designation or recommendation to the Secretary of the Senate—

(1) the name and address of the registered lobbyist who is making the contribution in lieu of honoraria;

(2) the date and amount of the contribution; and

(3) the name and address of the charitable organization designated or recommended by the Member.

The Secretary of the Senate shall make public information received pursuant to this subparagraph as soon as possible after it is received.

5. For purposes of this rule—(a) the term "registered lobbyist" means a lobbyist registered under the Federal Regulation of Lobbying Act or any successor statute; and

(b) the term "agent of a foreign principal" means an agent of a foreign principal registered under the Foreign Agents Registration Act.

6. All the provisions of this rule shall be interpreted and enforced solely by the Select Committee on Ethics. The Select Committee on Ethics is authorized to issue guidance or any matter contained in this rule.

E. RULE XXXVI

OUTSIDE EARNED INCOME

For purposes of this rule, the provisions of section 501 of the Ethics in Government Act of 1978 (5 U.S.C. App. 7 501) shall be deemed to be a rule of the Senate as it pertains to Members, officers, and employees of the Senate.

F. RULE XXXVII

CONFLICT OF INTEREST

1. A Member, officer, or employee of the Senate shall not receive any compensation, nor shall he permit any compensation to accrue to his beneficial interest from any source, the receipt or accrual of which would occur by virtue of influence improperly exerted from his position as a Member, officer, or employee.

2. No Member, officer, or employee shall engage in any outside business or professional activity or employment for compensation which is inconsistent or in conflict with the conscientious performance of official duties.

3. No officer or employee shall engage in any outside business or professional activity or employment for compensation unless he has reported in writing when such activity or employment commences and on May 15 of each year thereafter so long as such activity or employment continues, the nature of such activity or employment to his supervisor. The supervisor shall then, in the discharge of his duties, take such action as he considers necessary for the avoidance of conflict of interest or interference with duties to the Senate.

4. No Member, officer, or employee shall knowingly use his official position to introduce or aid the progress or passage of legislation, a principal purpose of which is to further only his pecuniary interest, only the pecuniary interest of his immediate family, or

only the pecuniary interest of a limited class of persons or enterprises, when he, or his immediate family, or enterprises controlled by them, are members of the affected class.

5. (a) No Member, officer, or employee of the Senate compensated at a rate in excess of $25,000 per annum and employed for more than ninety days in a calendar year shall (1) affiliate with a firm, partnership, association, or corporation for the purpose of providing professional services for compensation; (2) permit that individual's name to be used by such firm, partnership, association or corporation; or (3) practice a profession for compensation to any extent during regular office hours of the Senate office in which employed. For the purpose of this paragraph, "professional services" shall include but not be limited to those which involve a fiduciary relationship.

(b) A Member or an officer or employee whose rate of basic pay is equal to or greater than 120 percent of the annual rate of basic pay in effect for grade GS–15 of the General Schedule shall not—

(1) receive compensation for affiliating with or being employed by a firm, partnership, association, corporation, or other entity which provides professional services involving a fiduciary relationship;

(2) permit that Member's, officer's, or employee's name to be used by any such firm, partnership, association, corporation, or other entity;

(3) receive compensation for practicing a profession which involves a fiduciary relationship; or

(4) receive compensation for teaching, without the prior notification and approval of the Select Committee on Ethics.

6. (a) No Member, officer, or employee of the Senate compensated at a rate in excess of $25,000 per annum and employed for more than ninety days in a calendar year shall serve as an officer or member of the board of any publicly held or publicly regulated corporation, financial institution, or business entity. The preceding sentence shall not apply to service of a Member, officer, or employee as—

(1) an officer or member of the board of an organization which is exempt from taxation under section 501(c) of the Internal Revenue code of 1954, if such service is performed without compensation;

(2) an officer or member of the board of an institution or organization which is principally available to Members, officers, or employees of the Senate, or their families, if such service is performed without compensation; or

(3) a member of the board of a corporation, institution, or other business entity, if (A) the Member, officer, or employee has served continuously as a member of the board thereof for at least two years prior to his election or appointment as a Member, officer, or employee of the Senate, (B) the amount of time required to perform such service is minimal, and (C) the Member, officer, or employee is not a member of, or a member of the staff of any Senate committee which has legislative jurisdiction over any agency of the Government charged with regulating the activities of the corporation, institution, or other business entity.

(b) A Member or an officer or employee whose rate of basic pay is equal to or greater than 120 percent of the annual rate of basic pay in effect for grade GS–15 of the General Schedule shall not serve for compensation as an officer or member of the board of any association, corporation, or other entity.

7. An employee on the staff of a committee who is compensated at a rate in excess of $25,000 per annum and employed for more than ninety days in a calendar year shall divest himself of any substantial holdings which may be directly affected by the actions of the committee for which he works, unless the Select Committee, after consultation with the employee's supervisor, grants permission in writing to retain such holdings or the employee makes other arrangements acceptable to the Select Committee and the employee's supervisor to avoid participation in committee actions where there is a conflict of interest, or the appearance thereof.

8. If a Member, upon leaving office, becomes a registered lobbyist under the Federal Regulation of Lobbying Act of 1946 or any successor statute, or is employed or retained by such a registered lobbyist or an entity that hires or retains a registered lobbyist for the purpose of influencing legislation, he shall not lobby Members, officers, or employees of the Senate for a period of one year after leaving office.

9. (a) If an employee on the staff of a Member, upon leaving that position, becomes a registered lobbyist under the Federal Regulation of Lobbying Act of 1946 or any successor statute, or is employed or retained by such a registered lobbyist for the purpose of influencing legislation, such employee may not lobby the Member for whom he worked or that Member's staff for a period of one year after leaving that position.

(b) If an employee on the staff of a committee, upon leaving his position, becomes such a registered lobbyist or is employed or retained by such a registered lobbyist for the purpose of influencing legislation, such employee may not lobby the members of the committee for which he worked, or the staff of that committee, for a period of one year after leaving his position.

(c) If an officer of the Senate or an employee on the staff of a Member or on the staff of a committee whose rate of pay is equal to or greater than 75 percent of the rate of pay of a Member and employed at such rate for more than 60 days in a calendar year, upon leaving that position, becomes a registered lobbyist, or is employed or retained by such a registered lobbyist or an entity that employs or retains a registered lobbyist for the purpose of influencing legislation, such employee may not lobby any Member, officer, or employee of the Senate for a period of 1 year after leaving that position.

10. Paragraphs 8 and 9 shall not apply to contacts with the staff of the Secretary of the Senate regarding compliance with the lobbying disclosure requirements of the Lobbying Disclosure Act of 1995.

11. (a) If a Member's spouse or immediate family member is a registered lobbyist, or is employed or retained by such a registered lobbyist or an entity that hires or retains a registered lobbyist for the purpose of influencing legislation, the Member shall prohibit all staff employed or supervised by that Member (including staff in

personal, committee, and leadership offices) from having any contact with the Member's spouse or immediate family member that constitutes a lobbying contact as defined by section 3 of the Lobbying Disclosure Act of 1995 by such person.

(b) Members and employees on the staff of a Member (including staff in personal, committee, and leadership offices) shall be prohibited from having any contact that constitutes a lobbying contact as defined by section 3 of the Lobbying Disclosure Act of 1995 by any spouse of a Member who is a registered lobbyist, or is employed or retained by such a registered lobbyist.

(c) The prohibition in subparagraph (b) shall not apply to the spouse of a Member who was serving as a registered lobbyist at least 1 year prior to the most recent election of that Member to office or at least 1 year prior to his or her marriage to that Member.

12. (a) Except as provided by subparagraph (b), any employee of the Senate who is required to file a report pursuant to rule XXXIV shall refrain from participating personally and substantially as an employee of the Senate in any contact with any agency of the executive or judicial branch of Government with respect to non-legislative matters affecting any non-governmental person in which the employee has a significant financial interest.

(b) Subparagraph (a) shall not apply if an employee first advises his supervising authority of his significant financial interest and obtains from his employing authority a written waiver stating that the participation of the employee is necessary. A copy of each such waiver shall be filed with the Select Committee.

13. For purposes of this rule—

(a) "employee of the Senate" includes an employee or individual described in paragraphs 2, 3, and 4(c) of rule XLI;

(b) an individual who is an employee on the staff of a subcommittee of a committee shall be treated as an employee on the staff of such committee; and

(c) the term "lobbying" means any oral or written communication to influence the content or disposition of any issue before Congress, including any pending or future bill, resolution, treaty, nomination, hearing, report, or investigation; but does not include—

(1) a communication (i) made in the form of testimony given before a committee or office of the Congress, or (ii) submitted for inclusion in the public record, public docket, or public file of a hearing; or

(2) a communication by an individual, acting solely on his own behalf, for redress of personal grievances, or to express his personal opinion.

14. (a) A Member shall not negotiate or have any arrangement concerning prospective private employment until after his or her successor has been elected, unless such Member files a signed statement with the Secretary of the Senate, for public disclosure, regarding such negotiations or arrangements not later than 3 business days after the commencement of such negotiation or arrangement, including the name of the private entity or entities involved in such negotiations or arrangements, and the date such negotiations or arrangements commenced.

(b) A Member shall not negotiate or have any arrangement concerning prospective employment for a job involving lobbying activities as defined by the Lobbying Disclosure Act of 1995 until after his or her successor has been elected.

(c)(1) An employee of the Senate earning in excess of 75 percent of the salary paid to a Senator shall notify the Select Committee on Ethics that he or she is negotiating or has any arrangement concerning prospective private employment.

(2) The notification under this subparagraph shall be made not later than 3 business days after the commencement of such negotiation or arrangement.

(3) An employee to whom this subparagraph applies shall—

(A) recuse himself or herself from—

(i) any contact or communication with the prospective employer on issues of legislative interest to the prospective employer; and

(ii) any legislative matter in which there is a conflict of interest or an appearance of a conflict for that employee under this subparagraph; and

(B) notify the Select Committee on Ethics of such recusal.

15. For purposes of this rule—

(a) a Senator or the Vice President is the supervisor of his administrative, clerical, or other assistants;

(b) a Senator who is the chairman of a committee is the supervisor of the professional, clerical, or other assistants to the committee except that minority staff members shall be under the supervision of the ranking minority Senator on the committee;

(c) a Senator who is a chairman of a subcommittee which has its own staff and financial authorization is the supervisor of the professional, clerical, or other assistants to the subcommittee except that minority staff members shall be under the supervision of the ranking minority Senator on the subcommittee;

(d) the President pro tempore is the supervisor of the Secretary of the Senate, Sergeant at Arms and Doorkeeper, the Chaplain, the Legislative Counsel, and the employees of the Office of the Legislative Counsel;

(e) the Secretary of the Senate is the supervisor of the employees of his office;

(f) the Sergeant at Arms and Doorkeeper is the supervisor of the employees of his office;

(g) the Majority and Minority Leaders and the Majority and Minority Whips are the supervisors of the research, clerical, or other assistants assigned to their respective offices;

(h) the Majority Leader is the supervisor of the Secretary for the Majority and the Secretary for the Majority is the supervisor of the employees of his office; and

(i) the Minority Leader is the supervisor of the Secretary for the Minority and the Secretary for the Minority is the supervisor of the employees of his office.

G. RULE XXXVIII

PROHIBITION OF UNOFFICIAL OFFICE ACCOUNTS

1. (a) No Member may maintain or have maintained for his use an unofficial office account. The term "unofficial office account" means an account or repository into which funds are received for the purpose, at least in part, of defraying otherwise unreimbursed expenses allowable in connection with the operation of a Member's office. An unofficial office account does not include, and expenses incurred by a Member in connection with his official duties shall be defrayed only from—

(1) personal funds of the Member;

(2) official funds specifically appropriated for that purpose;

(3) funds derived from a political committee (as defined in section 301(d) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431)); and

(4) funds received as reasonable reimbursement for expenses incurred by a Member in connection with personal services provided by the Member to the organization making the reimbursement.

(b) Notwithstanding subparagraph (a), official expenses may be defrayed only as provided by subsections (d) and (i) of section 311 of the Legislative Appropriations Act, 1991 (Pub. L. 101–520).

(c) For purposes of reimbursement under this rule, fair market value of a flight on an aircraft shall be determined as provided in paragraph 1(c)(1)(C) of rule XXXV.

2. No contribution (as defined in section 301(e) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431)) shall be converted to the personal use of any Member or any former Member. For the purposes of this rule "personal use" does not include reimbursement of expenses incurred by a Member in connection with his official duties.

H. RULE XXXIX

FOREIGN TRAVEL

1. (a) Unless authorized by the Senate (or by the President of the United States after an adjournment sine die), no funds from the United States Government (including foreign currencies made available under section 502(b) of the Mutual Security Act of 1954 (22 U.S.C. 1754(b))) shall be received for the purpose of travel outside the United States by any Member of the Senate whose term will expire at the end of a Congress after—

(1) the date of the general election in which his successor is elected; or

(2) in the case of a Member who is not a candidate in such general election, the earlier of the date of such general election or the adjournment sine die of the second regular session of that Congress.

(b) The travel restrictions provided by subparagraph (a) with respect to a Member of the Senate whose term will expire at the end of a Congress shall apply to travel by—

(1) any employee of the Member;

(2) any elected officer of the Senate whose employment will terminate at the end of a Congress; and

(3) any employee of a committee whose employment will terminate at the end of a Congress.

2. No Member, officer, or employee engaged in foreign travel may claim payment or accept funds from the United States Government (including foreign currencies made available under section 502(b) of the Mutual Security Act of 1954 (22 U.S.C. 1754(b)) for any expense for which the individual has received reimbursement from any other source; nor may such Member, officer, or employee receive reimbursement for the same expense more than once from the United States Government. No Member, officer, or employee shall use any funds furnished to him to defray ordinary and necessary expenses of foreign travel for any purpose other than the purpose or purposes for which such funds were furnished.

3. A per diem allowance provided a Member, officer, or employee in connection with foreign travel shall be used solely for lodging, food, and related expenses and it is the responsibility of the Member, officer, or employee receiving such an allowance to return to the United States Government that portion of the allowance received which is not actually used for necessary lodging, food, and related expenses.

I. RULE XL

FRANKING PRIVILEGE AND RADIO AND TELEVISION STUDIOS

1. A Senator or an individual who is a candidate for nomination for election, or election, to the Senate may not use the frank for any mass mailing (as defined in section 3210(a)(6)(E) of title 39, United States Code) if such mass mailing is mailed at or delivered to any postal facility less than sixty days immediately before the date of any primary or general election (whether regular, special, or runoff) in which the Senator is a candidate for public office or the individual is a candidate for Senator, unless the candidacy of the Senator in such election is uncontested.

2. A Senator shall use only official funds of the Senate, including his official Senate allowances, to purchase paper, to print, or to prepare any mass mailing material which is to be sent out under the frank.

3. (a) When a Senator disseminates information under the frank by a mass mailing (as defined in section 3210(a)(6)(E) of title 39, United States Code), the Senator shall register quarterly with the Secretary of the Senate such mass mailings. Such registration shall be made by filing with the Secretary a copy of the matter mailed and providing, on a form supplied by the Secretary, a description of the group or groups of persons to whom the mass mailing was mailed.

(b) The Secretary of the Senate shall promptly make available for public inspection and copying a copy of the mail matter registered, and a description of the group or groups of persons to whom the mass mailing was mailed.

4. Nothing in this rule shall apply to any mailing under the frank which is (a) in direct response to inquiries or requests from persons to whom the matter is mailed; (b) addressed to colleagues

in Congress or to government officials (whether Federal, State, or local); or (c) consists entirely of news releases to the communications media.

5. The Senate computer facilities shall not be used (a) to store, maintain, or otherwise process any list or categories of lists of names and addresses identifying the individuals included in such lists as campaign workers or contributors, as members of a political party, or by any other partisan political designation, (b) to produce computer printouts except as authorized by user guides approved by the Committee on Rules and Administration, or (c) to produce mailing labels for mass mailings, or computer tapes and discs, for use other than in service facilities maintained and operated by the Senate or under contract to the Senate. The Committee on Rules and Administration shall prescribe such regulations not inconsistent with the purposes of this paragraph as it determines necessary to carry out such purposes.

6. (a) The radio and television studios provided by the Senate or by the House of Representatives may not be used by a Senator or an individual who is a candidate for nomination for election, or election, to the Senate less than sixty days immediately before the date of any primary or general election (whether regular, special, or runoff) in which that Senator is a candidate for public office or that individual is a candidate for Senator, unless the candidacy of the Senator in such election is uncontested.

(b) This paragraph shall not apply if the facilities are to be used at the request of, and at the expense of, a licensed broadcast organization or an organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1954.

J. RULE XLI

POLITICAL FUND ACTIVITY; DEFINITIONS

1. No officer or employee of the Senate may receive, solicit, be a custodian of, or distribute any funds in connection with any campaign for the nomination for election, or the election, of any individual to be a Member of the Senate or to any other Federal office. This prohibition does not apply to three assistants to a Senator, at least one of whom is in Washington, District of Columbia, who have been designated by that Senator to perform any of the functions described in the first sentence of this paragraph and who are compensated at an annual rate in excess of $10,000 if such designation has been made in writing and filed with the Secretary of the Senate and if each such assistant files a financial statement in the form provided under rule XXXIV for each year during which he is designated under this rule. The Majority Leader and the Minority Leader may each designate an employee of their respective leadership office staff as one of the 3 designees referred to in the second sentence. The Secretary of the Senate shall make the designation available for public inspection.

2. For purposes of the Senate Code of Official Conduct—

(a) an employee of the Senate includes any employee whose salary is disbursed by the Secretary of the Senate; and

(b) the compensation of an officer or employee of the Senate who is a reemployed annuitant shall include amounts received

by such officer or employee as an annuity, and such amounts shall be treated as disbursed by the Secretary of the Senate.

3. Before approving the utilization by any committee of the Senate of the services of an officer or employee of the Government in accordance with paragraph 4 of rule XXVII or with an authorization provided by Senate resolution, the Committee on Rules and Administration shall require such officer or employee to agree in writing to comply with the Senate Code of Official Conduct in the same manner and to the same extent as an employee of the Senate. Any such officer or employee shall, for purposes of such Code, be treated as an employee of the Senate receiving compensation disbursed by the Secretary of the Senate in an amount equal to the amount of compensation he is receiving as an officer or employee of the Government.

4. No Member, officer, or employee of the Senate shall utilize the full-time services of an individual for more than ninety days in a calendar year in the conduct of official duties of any committee or office of the Senate (including a Member's office) unless such individual—

(a) is an officer or employee of the Senate,

(b) is an officer or employee of the Government (other than the Senate), or

(c) agrees in writing to comply with the Senate Code of Official Conduct in the same manner and to the same extent as an employee of the Senate.

Any individual to whom subparagraph (c) applies shall, for purposes of such Code, be treated as an employee of the Senate receiving compensation disbursed by the Secretary of the Senate in an amount equal to the amount of compensation which such individual is receiving from any source for performing such services.

5. In exceptional circumstances for good cause shown, the Select Committee on Ethics may waive the applicability of any provision of the Senate Code of Official Conduct to an employee hired on a per diem basis.

6. (a) The supervisor of an individual who performs services for any Member, committee, or office of the Senate for a period in excess of four weeks and who receives compensation therefor from any source other than the United States Government shall report to the Select Committee on Ethics with respect to the utilization of the services of such individual.

(b) A report under subparagraph (a) shall be made with respect to an individual—

(1) when such individual begins performing services described in such subparagraph;

(2) at the close of each calendar quarter while such individual is performing such services; and

(3) when such individual ceases to perform such services.

Each such report shall include the identity of the source of the compensation received by such individual and the amount or rate of compensation paid by such source.

(c) No report shall be required under subparagraph (a) with respect to an individual who normally performs services for a Member, committee, or office for less than eight hours a week.

(d) For purposes of this paragraph, the supervisor of an individual shall be determined under paragraph 11 of Rule XXXVII.

K. RULE XLIII

REPRESENTATION BY MEMBERS

1. In responding to petitions for assistance, a Member of the Senate, acting directly or through employees, has the right to assist petitioners before executive and independent government officials and agencies.

2. At the request of a petitioner, a Member of the Senate, or a Senate employee, may communicate with an executive or independent government official or agency on any matter to—

(a) request information or a status report;

(b) urge prompt consideration;

(c) arrange for interviews or appointments;

(d) express judgment;

(e) call for reconsideration of an administrative response which the Member believes is not reasonably supported by statutes, regulations or considerations of equity or public policy; or

(f) perform any other service of a similar nature consistent with the provisions of this rule.

3. The decision to provide assistance to petitioners may not be made on the basis of contributions or services, or promises of contributions or services, to the Member's political campaigns or to other organizations in which the Member has a political, personal, or financial interest.

4. A Member shall make a reasonable effort to assure that representations made in the Member's name by any Senate employee are accurate and conform to the Member's instructions and to this rule.

5. Nothing in this rule shall be construed to limit the authority of Members, and Senate employees, to perform legislative, including committee, responsibilities.

6. No Member, with the intent to influence solely on the basis of partisan political affiliation an employment decision or employment practice of any private entity, shall—

(a) take or withhold, or offer or threaten to take or withhold, an official act; or

(b) influence, or offer or threaten to influence the official act of another.

L. STANDING ORDER OF THE SENATE, SECTION 103, TAPE DUPLICATION OF SENATE PROCEEDINGS

TO IMPROVE SENATE PROCEDURES

* * * * * * *

SEC. 6. (a) The use of any tape duplication of radio or television coverage of the proceedings of the Senate for political campaign purposes is strictly prohibited.

(b)(1) Except as provided in paragraph (2), any tape duplication of radio or television coverage of the proceedings of the Senate furnished to any person or organization shall be made on the condi-

tion, agreed to in writing, that the tape duplication shall not be used for political campaign purposes.

(2) Any public or commercial news organization furnished a tape duplication described in paragraph (1) shall be subject to the provisions of paragraph (1) but shall not be required to enter into a written agreement.

PART III

STATE ELECTION LAWS RELATING TO CANDIDATES FOR THE UNITED STATES SENATE

Unless otherwise designated, references are to the Code of Alabama, current through Acts 2010, No. 10232.

Primary Elections, when held.

Primary elections are not compulsory (§ 17–13–42). If held, primary elections shall be held on the first Tuesday in June (June 1, 2010) (§ 17–13–3). If no candidate has majority, a second or runoff primary election shall be held on the sixth Tuesday following the primary election (July 13, 2010) (§ 17–13–3).

Nominating Papers, Petitions, Etc.

Party candidate for primary

Declaration of candidacy.—File with chairman of state party chair not later than 5 p.m. on 60th day before primary (§ 17–13–5).

Convention, caucus, or mass meeting, certificate of nominations.—File with Secretary of State on or before 5 p.m. on the date of the first primary election. (§ 17–9–3(a)(2)).

Independent candidate

Candidate petition.—Petition bearing signatures of three percent of the qualified electors who voted in the last gubernatorial general election in the State must be filed with Secretary of State on or before 5 p.m. on the date of the first primary election (§ 17–9–3(a)(3)).

Filing Fees and Assessments.

May be assessed by parties on candidates able to pay.

Amount.—Not to exceed 2 percent of one year's salary of the office sought.

Date of payment. Apparently set by party.

To whom paid.—Apparently set by party. (§ 17–13–47).

Crossfiling by Candidates.

Prohibited. Candidate must pledge to support party (§§ 17–13–6, 17–13–7, 17–13–8).

Subversive Parties Barred from Ballot.

No provisions were found.

Write-in Provisions.

Permitted in general election (§ 17–6–28, § 17–6–40); on voting machines in general elections (§ 17–7–21(8)).

Vacancy in Office.

The Governor may make temporary appointment of a Senator in the Senate of the Congress of the United States from Alabama, whenever a vacancy exists in that office, the appointee to hold office until his successor is elected and qualified (§ 36–9–7).

Whenever a vacancy occurs in the office of Senator of and from the State of Alabama in the Senate of the United States more than 4 months before a general election, the Governor of Alabama shall forthwith order an election to be held by the

qualified electors of the State to elect a Senator of and from the State of Alabama to the United States Senate for the unexpired term. If the vacancy occurs within 4 months of but more than 60 days before a general election, the vacancy shall be filled at that election. If the vacancy occurs within 60 days before a general election, the Governor shall order a special election to be held on the first Tuesday after the lapse of 60 days from and after the day on which the vacancy is known to the Governor, and the Senator elected at such special election shall hold office for the unexpired term (§ 36–9–8).

The Governor must give notice of a special election to elect a Senator for an unexpired term in the same manner and for the same time as is prescribed for special elections to fill a vacancy in the office of Members of the House of Representatives (§ 36–9–9), i.e., by proclamation (§ 17–15–4). For special election procedures, see §§ 17–15–1—17–15–7.

ALASKA

Unless otherwise indicated, references are to Alaska Statutes, current through the 2009 first session of Twenty-Sixth State Legislature.

Primary Elections, when held.

Fourth Tuesday in August in every even-numbered year (§ 15.25.020). (August 24, 2010).

Nominating Papers, Petitions, Etc.

Party candidate for primary

Declaration of candidacy.—Candidate should file on or before June 1, prior to the primary. File with director of elections or an election supervisor (§§ 15.25.030, 15.25.040 (a), (c)). The declaration is filed by either—

(1) the actual physical delivery of the declaration by mail or in person at or before 5 p.m., prevailing time, June 1 of the year in which a general election is held for the office, or

(2) reliable electronic transmission of a copy in substance for specified parts of the statement at or before 5 p.m., prevailing time, June 1 of the year in which a general election is held for the office and also the actual physical delivery of the entire declaration by mail which is received not more than 15 days after that time (§ 15.25.040(a)).

Independent candidates

"No-party candidates"—Petition signed by not less than one percent of the number of voters who cast ballots in the preceding general election, should be filed with director of elections on or before 5 p.m. on the day of the primary election in election year (§§ 15.25.140–15.25.200).

Filing Fees and Assessments *Primary Candidates* (§§ 15.25.050).

Amount.—$100.

Date of payment.—At a time of filing declaration of candidacy.

To whom paid.—Director of Elections.

Crossfiling by candidates.

Declaration of candidacy must state that the candidate is not a candidate for any other office to be voted on at the primary or general election and that he has not filed another declaration of candidacy or nominating petition for the office for which this declaration is filed (§ 15.25.030(14)).

Subversive Parties Barred from Ballot.

No specific provisions, but persons advocating forceful overthrow of government, or members of parties advocating such, are not qualified for public office (Const. of Alaska, Art. XII, § 4).

Write-in Provisions.

Prohibited in primary (§§ 15.25.060, 15.25.070); permitted in general election (§ 15.15.030(5)).

Vacancy in Office.

When a vacancy occurs in the office of United States senator or United States representative, the governor shall, by proclamation, call a special election to be held on a date not less than 60, nor more than 90, days after the date the vacancy occurs. However, if the vacancy occurs on a date that is less than 60 days before or is on or after the date of the primary election in the general election year during which a candidate to fill the office is regularly elected, the governor may not call a special election (§ 15.40.140).

When a vacancy occurs in the office of United States senator, the governor may, at least five days after the date of the vacancy but within 30 days after the date of the vacancy, appoint a qualified individual to fill the vacancy temporarily until the results of the special election called to fill the vacancy are certified. If a special election is not called for the reasons set out in AS 15.40.140, the individual shall fill the vacancy temporarily until the results of the next general election are certified (§ 15.40.145).

If the vacancy occurs on a date not less than 60, nor more than 90, days before the date of the primary election, the governor shall, by proclamation, call the special election to be held on the date of the primary election (§ 15.40.150).

The Governor shall issue the proclamation calling the special election at least 50 days before the election (§ 15.40.160).

At the special election a United States Senator shall be elected to fill the remainder of the unexpired term (§ 15.40.165) (2005).

ARIZONA

Unless otherwise designated, references are to the Arizona Revised Statutes Annotated, current through the Forty-Ninth Legislature.

Primary Elections, when held.

Tenth Tuesday prior to general election (§ 16–201). (August 24, 2010).

Nominating Papers, Petitions, Etc.

Representation on ballot.—A political organization which at the last preceding general election cast for Governor or presidential electors or for county attorney or for mayor, whichever

applies, not less than 5 percent of the total votes cast for Governor or presidential elector, in the State or in the county, city or town; or, alternatively, a political organization which has registered voters equal to two-thirds of 1 percent of the total registered electors in a jurisdiction, is entitled to representation on the official ballot (§ 16–804).

Party candidate for primary

Nominating petition and nomination papers.—File with Secretary of State not more than 120 days before or later than 5 p.m. on the 90th day before the primary election (§ 16–311). Petition must be signed by qualified electors qualified to vote for the candidate equal to at least one-half of 1 percent of the voter registration of the party of the Candidate in at least three counties in the State, but not less than one-half of 1 percent nor more than 10 percent of the total voter registration of his party in the State (§ 16–322).

Independent candidates

Certification of nomination for candidates nominated otherwise than by primary.—Signatures required, equal in number to three percent of qualified electors in the State who are not members of a political party qualified for a ballot position in primary and general election and who did not sign a nominating petition for party primary candidate. File with Secretary of State not more than 120 days before or later than 5 p.m. on the 90th day before the primary election (§ 16–341).

New party.—To be recognized in the primary and general election, a new political party must file a petition signed by qualified electors numbering no less than one and one-third percent of the votes cast for Governor or presidential elector in the last preceding election (§ 16–801). A petition for recognition of a new political party shall be filed with the secretary of state not less than one hundred forty days before the primary election. If seeking both state and county recognition, may file the original petition with the officer in charge of elections for the county and a certified copy of the petition with the Secretary of State. (§§ 16–803).

The signatures on the petition shall be verified by the county recorder of each county; the petition shall not be submitted for verification to such county recorder later than 180 days prior to the primary election (§ 16–803). The petition shall be verified by the affidavit of ten qualified electors of the State, asking that the signers thereof be recognized as a new political party; the status as qualified electors of the signers of the affidavit shall be certified by the county recorder of the state in which they reside (§ 16–801).

Write-in candidate

Nomination papers.—File with Secretary of State no later than 5 p.m. on the 40th day before the election (§ 16–312).

Filing Fees and Assessments.—Prohibited (Const., Art. 7, § 14)

Crossfiling by Candidates.

Prohibited.—Candidate must be a member of party whose nomination he seeks (§§ 16–311(A), 16–314). If a person is nominated on more than one ticket he must choose one (§ 16–467).

A candidate defeated in the primary is prohibited from seeking nomination as a write-in candidate (§ 16–312).

Subversive Parties Barred from Ballot.

Communist Party.—§§ 16–805, 16–806; but see *Blawis* v. *Bolin*, 358 F. Supp. 349 (D. Ariz. 1973), where provisions of the (Federal) Communist Control Act, 50 U.S.C. §§ 841–842 and former §§ 16–205, 16–206. Ariz. Rev. Stats. (comparable to present §§ 16–805, 16–806), which specifically disenfranchised the Communist Party U.S.A. and its affiliates were held unconstitutional as bills of attainder that denied party members due process and equal protection of law.

Advocating overthrow of Government by force.—§ 16–806.

Write-in Provisions.

Allowed in primary (§ 16–462); general election (§ 16–502), on voting machines (§ 16–424); on electronic voting systems (§§ 16–446, 16–448).

In order to be nominated by a write-in vote at a primary election, a write-in candidate must receive a number of votes equivalent to the number of signatures required on the nomination papers of a party candidate for the primary (§ 16–645).

Vacancy in Office.

When a vacancy occurs in the office of United States Senator by reason of death or resignation, or from any other cause, the vacancy shall be filled at the next general election. At such election the person elected shall fill the unexpired term of the vacated office. In the interim, the governor shall appoint a person to fill the vacancy. That appointee shall be of the same political party as the person vacating the office and shall serve until the person elected at the next general election is qualified and assumes office (§ 16–222).

ARKANSAS

Unless otherwise designated, references are to Arkansas Code Annotated, current through the 2010 Fiscal Session and updates from the Arkansas Code Revision Commission through April 21, 2010.

Primary Elections, when held.

Preferential primary.—On the Tuesday 3 weeks prior to the general primary (§ 7–7–203). (May 18, 2010) If at such preferential primary a candidate receives a majority of the votes cast for the office, such person shall be declared the party nominee, and it shall not be necessary for his name to appear on the general primary ballot (§§ 7–7–203, 7–7–304).

General primary (runoff).—Second Tuesday in June preceding general election (§ 7–7–203). (June 8, 2010) If no candidate receives a majority of votes cast for that office at the preferential primary election, the names of the two candidates who received the highest number of votes shall be printed on the ballot at the general primary election (§§ 7–7–202, 7–7–304).

Nominating Papers, Petitions, Etc.

Party pledge.—Not earlier than noon of the 3rd Tuesday in March or later than noon on the 7th day thereafter candidate to file with secretary of State party committee (§ 7–7–203).

Political practice pledge.—File pledge with secretary of state party committee no earlier than noon of the first weekday in March or later than noon on the 14th day thereafter (§ 7–7–203(c)).

Certification of nomination.

Party candidate for primary.—No later than seventy (70) days before the preferential primary election the Secretary of State shall certify to the various county committees and the various county boards of election commissioners the names of all candidates who have qualified with the state committee for election by filing the party pledge and paying the ballot fee within the time required by law (§ 7–7–203(d)).

New party.—A group desiring to form a new political party may file a petition with the Secretary of State containing the signatures of at least ten thousand (10,000) registered voters in the state. The petitions can be circulated during any ninety-day period. The Secretary of State shall determine the sufficiency of the signatures submitted within thirty days of filing. Upon certification of sufficiency and declaration of the new party by the Secretary of State, the new party may nominate candidates by convention for the first election after certification. Nominated candidates shall file a political practice pledge with the Secretary of State or county clerk, as the case may be, no later than sixty days prior to the general election. If the new party maintains party status by obtaining three percent of the total vote cast for the office of Governor or nominees for presidential electors at the first election after certification, the new political party shall nominate candidates in the party. (§ 7–7–205).

Independent candidate.—File with Secretary of State, by time required for filing political practice pledges and party pledges, a request that name be placed on general election ballot, together with petitions, signed by not less than 3 percent of the qualified electors of the State or 10,000, whichever is less (§§ 7–7–103(b)(2), 7–7–401).

Write-in candidate.—No votes for write-in candidates shall be counted or tabulated unless the candidate notifies in writing the county board of election commissioners and the Secretary of State of his intention to be a write-in candidate, and files a political practices pledge and an affidavit of eligibility for the office at the same time. The notice of write-in candidacy, the political practices pledge, and the affidavit of eligibility are filed no earlier than noon on the last day of the party filing period and not later than ninety (90) days before the election day (§ 7–5–205).

Filing Fees and Assessments.

Amount.—As established by the state executive committee for the political party (§ 7–7–301).

Date of payment.—By party candidates, on or before noon of the last day of the political party filing period (§§ 7–7–203(c), 7–7–301(a)).

To whom paid.—The secretary of the state committee of the political party or his designated agent (§ 7–7–301(a)(1)).

Crossfiling by Candidates.

Prohibited.—Candidates for nomination may not be a nominee of any other political party for the same office. (§ 7–7–204). Person defeated at the primary shall not be permitted to file as an independent candidate for the same office at the general election (§ 7–7–103(e); 7–7–204(b)).

Subversive Parties Barred from Ballot.

Parties that either directly or indirectly advocates, teaches, justifies, aids, or abets the overthrow by force or violence, or by any unlawful means, of the government of the United States or this state, or an act of terrorism will not be recognized, qualified to participate, or permitted to have the names of its candidates printed on the ballot in any election. (§ 7–3–108).

Write-in Provision.

Permitted in general election if candidate or his agent notifies the county board of election commissioners and the Secretary of State in writing no earlier than noon on the last day of the party filing period and not later than 90 days prior to election, of his intention to be a write-in candidate (§§ 7–5–205); on voting machines (§ 7–5–525); where electronic voting systems are used (§ 7–5–610).

Vacancy in Office.

A vacancy in the United States Senate from Arkansas shall be filled by the governor by temporary appointment until the people fill the vacancy at the next ensuing general election for state and county officers to be held more than 60 days and less than 12 months after such vacancy shall occur; provided that if no general election for state and county officers shall occur within 12 months after such vacancy, the governor shall call a special election to be held but in no event more than 120 days after the vacancy occurs (§ 7–8–102).

CALIFORNIA

Unless otherwise indicated, references are to the Deering's California Code Annotated, current through 2009–2010 Extraordinary Session 1–5, 7, and 8, and Urgency Legislation through ch. 21 of the 2010 Regular Session.

Primary Elections, when held.

The statewide direct primary shall be held on the first Tuesday after the first Monday in June of each even-numbered year. (§ 1201) (June 8, 2010).

Nominating Papers, Petitions, Etc.

Party candidate for primary

Declaration of candidacy.—No candidate's name may be printed on the ballot to be used at a direct primary unless nomination documents are filed not later than 5 p.m. on the 88th day before nor earlier than the 113th day before the direct primary. Include with declaration nomination papers signed by not less than 65 nor more than 100 qualified party voters (§§ 8020, 8041, 8062). All nomination documents must be filed in the office of the Secretary of State (§ 8100) and also with the county election officials (§ 8020).

Independent candidate (§§ 8003, 8300–8550).

Declaration of candidacy.—88 days before election, candidate must leave a declaration of candidacy in same office as nomination papers (§ 8550).

Nomination papers.—Signatures are required equal in number to not less than 1 percent of the entire number of registered voters at the preceding general election (§ 8400). Leave with county elections official for examination no earlier than 148 days before the election and no later than 5 p.m. 88 days before (§ 8403).

Alternatively, file petition signed by 10,000 registered voters with clerk from whom nomination papers were obtained, at least 15 days prior to the close of the nomination period (§ 8106).

Crossfiling.

Prohibited.—Candidate must have been affiliated with party whose nomination he seeks for at least 3 months immediately prior to filing of declaration of candidacy, as shown by his affidavit of registration, and must not have registered affiliation with any other party within 12 months immediately prior to filing (§ 8001). A candidate of a party who was defeated at the primary is ineligible for nomination as an independent candidate (§ 8003(a), § 8301). No person may file nomination papers for a party nomination and an independent nomination for the same office, or for more than one office at the same election (§ 8003(b)).

Subversive Parties Barred from Ballot.

Parties advocating overthrow of Government by force or advocating a program of sabotage, force and violence, sedition or treason against the Government disqualified from participating in primary (§ 5102).

Write-in Provisions.

Permitted in all elections (§§ 15340, 15341, 15342), on voting machines (§ 19304), on punchcard voting system, (§ 13262). The use of pressure-sensitive stickers, glued stamps, or any other device not provided for in the voting procedures for the voting system approved by the Secretary of State to indicate the name of the write-in candidate are not valid. (§ 15342(c)). Write-in candidate must comply with filing requirements (§§ 15341, 8600–8605).

Vacancy in Office.

If a vacancy occurs in the representation of this State in the Senate of the United States, the Governor may appoint and commission an elector of this State, who possesses the qualifications for the office, to fill the vacancy until his successor is elected and qualifies and is admitted to his seat by the United States Senate. However, whenever a vacancy occurs within term fixed by law to expire on the third day of January following the next general election, the person so appointed shall hold office for the remainder of the unexpired term unless such vacancy is filled at a special election held prior to such general election, in which case the person elected at such special election shall hold office for the remainder of the unexpired term. An election to fill a vacancy in the term of a United States Senator shall be held at the general election next succeeding

the occurrence of the vacancy or at any special election (§ 10720).

The special election shall be proclaimed within 14 calendar days after the occurrence of the vacancy (§ 10700).

When the vacancy occurs in a congressional office after the close of the nomination period in the final year of the term of office, the Governor may decline to issue an election proclamation at his discretion (§ 10701).

COLORADO

Unless otherwise designated, references are to Colorado Revised Statutes Annotated current through October 15, 2009.

Primary Elections, when held.

Second Tuesday in August in each even-numbered year (§§ 1–1–104(32), 1–4–101). (August 10, 2010).

Nominating Papers, Petitions, Etc.

Major party candidate for primary

Certificate of designation for candidates selected by assembly of political party.—An assembly shall take no more than two ballots for party candidates for each office to be filled at the next general election. Every candidate receiving thirty percent or more of the votes of all duly accredited assembly delegates who are present and voting on that office shall be certified by affidavit of the presiding officer and secretary of the assembly. If no candidate receives thirty percent or more of the votes of all duly accredited assembly delegates who are present and voting, a second ballot shall be cast on all the candidates for that office. If on the second ballot no candidate receives thirty percent or more of the votes cast, the two candidates receiving the highest number of votes shall be certified as candidates for that office by the assembly. The certificate of designation by assembly shall state the name of the office for which each person is a candidate and the candidate's name and address, shall designate in not more than three words the name of the political party which the candidate represents, and shall certify that the candidate has been a member of the political party for the period of time required by party rule or by law if the party has no such rule. The candidate's affiliation, as shown on the registration books of the county clerk and recorder, is prima facie evidence of political party membership. The certificate of designation shall indicate the order of the vote received at the assembly by candidates for each office, but no assembly shall declare that any one candidate has received the nomination of the assembly. The certificate of designation shall be filed in accordance with section 1–4–604. If two or more candidates receiving designation under the provisions of this subsection (2) have received an equal number of votes, the order of certification of designation shall be determined by lot by the candidates. The assembly shall select a vacancy committee for vacancies in designation or nomination only. (§ 1–4–601).

A party assembly shall be held no later than 70 days preceding the primary election (§ 1–4–601).

File certificate of designation in the office of the Secretary of State within 4 days after the adjournment of the assembly (§ 1–4–604).

Acceptance of nomination by candidate designated by party assemblies must be filed in writing with the Secretary of State within 4 days after the adjournment of the assembly (§ 1–4–601(3)).

Petition.—A candidate may be placed on the direct primary ballot by a petition signed by eligible electors in a number equal to at least one thousand five hundred in each congressional district for candidates for U.S. Senator (§§ 1–4–603, 1–4–801(2)(c).

No person who attempted and failed to receive at least ten percent of the votes for the nomination of a political party assembly for a particular office shall be placed in nomination by petition on behalf of the political party for the same office (§ 1–4–801(4)). Petitions shall not be circulated before the last Monday in March (§ 1–4–801(5)). Petitions shall be filed no later than 15 days before the primary election (§ 1–4–801(5)).

Minor party candidate

Minor political party may nominate candidates in accordance with 1–4–302, 1–4–402(1)(a), and 1–4–502(1). (§ 1–4–1304).

Independent candidate

Certificate of nomination.—Signatures of eligible voters, equal in number to the lesser of 1000 or two percent of the votes cast for the office of Senator in the most recent general election, are required. File with Secretary of State not later than 3 p.m. on the 55th day preceding the congressional vacancy election (§ 1–4–802(c), (f)).

Filing Fees and Assessments.—No statutory provision.

Crossfiling by Candidates.

Prohibited. Candidate must have been affiliated with party whose nomination he seeks for at least twelve months prior to nomination (§§ 1–4–101(3), 1–4–601(4), 1–4–801(3)).

Write-in Provisions.

Permitted in primary and in general election (§§ 1–4–1101, 1–5–407(3)); on electronic voting ballots (§ 1–5–408(2)).

A write-in candidate for any election must file an affidavit of intent with the Secretary of State by the close of business on the 67th day before the election, and no write-in vote shall be counted unless the candidate for whom the vote was cast has filed such affidavit of intent (§§ 1–4–1101, 1–4–1102).

Vacancy in Office.

(1) Whenever a vacancy happens in the office of United States Senator from this State, the Governor shall make a temporary appointment to fill such vacancy until the same is filled by election.

(2) When a vacancy happens, the Governor shall direct the Secretary of State to include in the general election notice for the next general election a notice of the filling of such vacancy. The Secretary of State shall give notice accordingly. At such election the vacancy shall be filled for the unexpired term. If for any reason, no United States Senator is elected at the next general election, the person temporarily appointed by the Gov-

ernor shall hold the office until a United States Senator is elected at a succeeding general election (§ 1–12–201).

CONNECTICUT

Unless otherwise designated, references are to Connecticut General Statutes Annotated, current through the 2009 legislation.

Primary Elections, when held.

Primary Date. The second Tuesday in August in the year in which such state election is held § 9–423 (August 10, 2010).

Nominating Papers, Petitions, Etc.

Party candidate for primary, if held

Party-endorsed candidate.—State convention shall choose candidate according to party rules (§ 9–382). Such convention shall be convened not earlier than the 68th day and closed not later than the 50th day preceding the primary election (respectively). Filing deadline is the fourteenth day after the State convention (§ 9–400).

Certificate of endorsement

Whenever a convention of a political party is held for the endorsement of candidates for nomination to state or district office, each candidate endorsed at such convention shall file with the secretary of the state a certificate, signed by him, stating that he was endorsed by such convention, his name and full residence address, and the title and district, if applicable, of the office for which he was endorsed. Such certificate shall be attested by either (1) the chairman or presiding officer or (2) the secretary of such convention and shall be received by the secretary of the state not later than 4 p.m. on the 14th day after the close of such convention (§§ 9–388, 9–400).

Candidates of minor parties

The nomination by a minor party of any candidate for office, including an office established after the last-preceding election may be made in the manner prescribed in the rule of such party, or alterations or amendments thereto, filed with the Secretary of the State (§ 9–451).

Parties whose candidate for this office at the last general election for such office received at least 1 percent of total vote for all candidates for such office may nominate candidate in accordance with their party rules which were filed with the Secretary of State at least 60 days in advance of such nomination. Presiding officer of nominating body shall certify candidate to Secretary of State not less than 60 days before election (§§ 9–372(6); 9–374; 9–451; 9–452).

Nominating petition—Signatures of qualified voters are required, equal in number to the lesser of 1 percent of all votes cast for the same office at last general election for such office or 7,500 (§ 9–453d). File with the town clerk of the town in which the signers reside or with the secretary of state not later than 4 p.m. of the 90th day prior to the regular election (§ 9–453i). No party designation may be specified in the petition unless such designation has been reserved in accordance with § 9–453u or unless the designation is the same name as a

minor party entitled to nominate candidates for a different office or offices on the same ballot.

Filing Fees and Assessments

No statutory provisions were found.

Crossfiling by Candidates

Candidates who are nominated by a major or minor party are prohibited from appearing on the ballot by a nominating petition unless such petition is circulated by an existing minor party with the same party designation at the time of such nomination, and the minor party is otherwise qualified to nominate candidates on the same ballot. (§ 9–453t). And being a candidate in any other political party or organization is prima facie evidence of party disaffiliation (§ 9–61 as amended by Public Act 97–154, § 10).

Communist Party Barred From Ballot. (Op. Atty. Gen. (June 17, 1964), 25 Conn. L.J. No. 32, p. 17).

Write-in Provisions.

Apparently permitted in any election upon registration of candidacy with the Secretary of State not earlier than 90 days before the election and not later than 4 p.m. on the 14th day before the election (§ 9–373a); on voting machines (§ 9–265).

Vacancy in Office.

In case of a vacancy in the office of Senator in Congress, the Governor is empowered to fill such vacancy by appointment. If such vacancy occurs 60 or more days prior to a state election, the appointee shall serve until the third day of January following such election, and at such election there shall be elected a Senator in Congress to serve for the remaining portion, if any, of the term vacated. If such vacancy occurs within less than 60 days of a state election and the term vacated does not expire on the third day of January following such election, the appointee shall serve until the third day of January following the next such election but one, and at such next election but one there shall be elected a Senator in Congress to serve for the remaining portion, if any, of the term vacated. If such vacancy occurs within less than 60 days of a state election and the term vacated expires on the third day of January following, the appointee shall serve until such third day of January (§ 9–211).

DELAWARE

Unless otherwise indicated, references are to Title 15 of the Delaware Code Annotated current through 77 Del. Laws, ch. 274.

Primary Elections, when held.

Primary elections for all political parties shall be conducted on the second Tuesday in September (§ 3101(3)) (September 14, 2010).

Nominating Papers, Petitions, Etc.

Party candidates.—Notify Chairman of State political party committee on or before 12 p.m. of the last Friday in July (§§ 3106(a)(1), 3101(1)).

Independent candidates.—Filing deadline for ballot access is September 1 of the election year (§ 3002). Must file a sworn

declaration of candidacy with the State Election Commissioner. Must also file nominating petitions signed by not less than 1 percent of the total number of voters registered as of December 31 of the year immediately preceding the general election year in the State (§ 3002(b)).

Filing Fees and Assessments.

Filing fees required on giving notice of candidacy (§ 3106(a)(1)(b)). The filing fee is to be set by the State Executive Committee of the respective political party (§ 3103(a)(1)); but in no event is to exceed 1 percent of the total salary for the entire term of office for which the candidate is filing (§ 3103(b)).

Crossfiling by Candidates. Unaffiliated candidates must state in their declarations of candidacy that they have not been affiliated with any political party 3 months prior to the filing of such declarations (§ 3002(b)).

Write-in Provisions.

Permitted in general election (§§ 4502, 4506, 4976); on voting machines (§ 5001(a)(3)); for electronic voting systems (§ 5001A(a)(3). Apparently permitted in the primaries (§§ 3126, 4502, 4976, 5000A, 5001A(a)(3)).

Vacancy in Office.

When a vacancy occurs in the office of the United States Senate, it shall be filled for the unexpired term at the next general election. The Governor may make a temporary appointment from among the qualified electors of the State until the vacancy is filled by the next general election (§ 7321).

FLORIDA

Unless otherwise indicated, references are to the Florida Statutes Annotated current through the 2010–29 Regular Session.

Primary Elections, when held.

In each year in which a general election is held, a primary election for nomination of candidates of political parties shall be held on the Tuesday 10 weeks prior to the general election (August 24, 2010). The candidate receiving the highest number of votes shall receive the nomination. If two or more candidates tie for the highest number of votes, the candidates shall draw lots to determine which is nominated (§ 100.061).

Nominating Papers, Petitions, Etc.

Qualification papers, which include candidate's oath, (§ 99.021), to be filed any time after noon of 120th day but before noon of 116th day before the first primary; file with Department of State (§ 99.061(1).).

Independent candidate.—Independent candidates shall file his or her qualifying papers and pay the qualifying fee or qualify by the petition process pursuant to s. 99.095 with the officer and during the times and under the circumstances prescribed in s. 99.061 (§ 99.0955). A candidate must obtain the number of signatures of voters in the geographical area represented by the office sought equal to at least 1 percent of the total number of registered voters of that geographical area, as shown by the compilation by the department for the immediately preceding

general election. Signatures may not be obtained until the candidate has filed the appointment of campaign treasurer and designation of campaign depository pursuant to s. 106.021 and are valid only for the qualifying period immediately following such filings (§ 99.095).

Minor party candidates.—Minor political party is any group which on January 1 preceding a primary election does not have registered as members seventeen percent of the total registered electors of the State (§ 97.0215)(17).

A candidate of a minor political party shall file his or her qualifying papers with, and pay the qualifying fee and, if one has been levied, the party assessment, or qualify by the petition process pursuant to s. 99.095, with the officer and at the times and under the circumstances provided in s. 99.061. (§ 99.096).

Filing Fees and Assessments.

Amount—filing fee. Three percent of annual salary of the office sought (§ 99.092).

Election assessment.—One percent of annual salary of the office sought (*ibid.*).

Party assessment.—Two percent of annual salary of the office sought (*ibid.*).

Date of payment.—Filing fee and party assessment shall be paid when qualification papers are filed (*ibid.*).

To whom paid.—Department of State (§ 99.061(1)).

Alternative petition.—A person may qualify to have his name on the ballot by a petitioning process and is not required to pay the qualifying or party assessment. (§ 99.095).

Crossfiling by Candidate.

Prohibited. A candidate shall, at the time of subscribing to the oath or affirmation, state in writing: the party of which the person is a member; and that the person is not a registered member of any other political party and has not been a candidate for nomination for any other political party for a period of 6 months preceding the general election for which the person seeks to qualify (§ 99.021).

Subversive Parties Barred from Ballot.

Communist Party.—§§ 876.01, 876.02, 876.30.

Advocating overthrow of Government by force—§§ 876.01, 876.30.

Write-in Provisions.

(§ 101.6951 providing for write-in ballots).

Vacancy in Office.

If a vacancy happens in the representation of the State in the United States Senate, the Governor shall issue a writ of election to fill such vacancy at the next general election; and the Governor may make a temporary appointment until the vacancy is filled by election (§ 100.161).

GEORGIA

Unless otherwise designated, references are to the Georgia Code Annotated (2010), current through 2009 Regular Session.

Primary Elections, when held.

Primary elections are held on the third Tuesday in July in each even-numbered year (§ 21–2–150). (July 20, 2010).

Candidates may qualify for an election by (1) nomination in party primary; (2) filing nomination petition as an independent or as nominee of political convention; (3) nomination for a state-wide office by a duly constituted political body convention; (4) nomination of presidential electors; (5) substitute nomination of a political party; (6) participation in special election; or (7) being an incumbent (§ 21–2–130).

Nominating Papers, Petitions, Etc.

Political party nominees

The names of nominees of political parties nominated in a primary shall be placed on the ballots without their filing the notice of candidacy otherwise required (§ 21–2–132).

Political bodies shall hold their conventions in accordance with Code Section 21–2–172 and candidates nominated for state-wide public office in convention shall file a notice of candidacy no earlier than 9 a.m. on the fourth Monday in June and no later than 12 noon on the Friday following the fourth Monday in June as prescribed in Code Section 21–2–132; provided, however, that the political body must file its qualifying petition no later than 12 noon on the second Tuesday in July following the convention as prescribed in Code Section 21–2–172 in order to qualify its candidates to be listed on the general election ballot (§ 21–2–187).

A candidate for any party nomination in a primary may qualify by either of the two following methods:

(1) Payment of a qualifying fee pursuant to Code Section § 21–2–131; [3% of annual salary of the office sought] or

(2) The submission of a pauper's affidavit by any candidate who has filed a qualifying petition by which the candidate under oath affirms his poverty and his resulting inability to pay the qualifying fee otherwise required (§ 21–2–153).

No candidate shall be authorized to file a pauper's affidavit in lieu of paying the qualifying fee otherwise required unless such a candidate has filed a qualifying petition which complies with the following requirements:

A qualifying petition of a candidate seeking an office which is voted upon state wide shall be signed by a number of voters equal to one-fourth of 1 percent of the total number of registered voters eligible to vote in the last election for the filling of the office the candidate is seeking and the signers of such petition shall be registered and eligible to vote in the election at which such candidate seeks to be elected (§ 21–2–153).

Unless otherwise provided by law, all candidates for party nomination in a primary shall qualify as such candidates in accordance with the procedural rules of their party; provided, however, that no person shall be prohibited from qualifying for such office if he:

(1) Meets the requirements of such procedural rules;

(2) Is eligible to hold the office which he seeks;

(3) Is not prohibited from being nominated or elected by provisions of Code Section § 21–2–7 or § 21–2–8; and

(4) If party rules so require, affirms his allegiance to his party by signing the following oath: "I do hereby swear or affirm my allegiance to the (name of party) Party." (§ 21–2–153(b)).

In the case of general primary, the candidates shall commence qualifying at 9 a.m. on the fourth Monday in April and shall cease qualifying at 12 noon on the Friday following the fourth Monday in April (§ 21–2–153(c)).

Each candidate for party nomination shall file an affidavit with the political party at the time of his qualifying. (For details concerning such affidavit, see § 21–2–153.)

Independent candidates

All other candidates shall file their notice of candidacy and pay the prescribed qualifying fee by the date prescribed in this Code section in order to be eligible to have their names placed on the election ballot by the Secretary of State or election superintendent, as the case may be, in the following manner:

Each candidate for federal or state office, or his agent, desiring to have his name placed on the election ballot shall file a notice of his candidacy, giving his name, residence address, and the office he is seeking, in the office of the Secretary of State no earlier than 9 a.m. on the fourth Monday in June and no later than 12 noon on the Friday following the fourth Monday in June in the case of a general election (§ 21–2–132(c)).

Each candidate required to file a notice of candidacy by this Code section shall, no earlier than 9 a.m. on the fourth Monday in June and no later than 12 noon on the second Tuesday in July immediately prior to the election, file with the same official with whom he filed his notice of candidacy a nomination petition in the form prescribed in Code Section 21–2–170 (exceptions to this requirement are stipulated) (§ 21–2–132(d)). Each candidate required by this Code section to file a notice of candidacy shall accompany his notice of candidacy with an affidavit. (For details concerning such affidavit, see § 21–2–132(f).)

A nomination petition of a candidate seeking an office which is voted upon state wide shall be signed by a number of voters equal to 1 percent of the total number of registered voters eligible to vote in the last election for the filling of the office the candidate is seeking and the signers of such petition shall be registered and eligible to vote in the election at which such candidate seeks to be elected (§ 21–2–170(b)). No nomination petition shall be circulated prior to 180 days before the last day on which such petition may be filed, and no signature shall be counted unless it was signed within 180 days of the last day for filing the same (§ 21–2–170(e)).

Filing Fees and Assessments.

Each candidate qualifying for a primary with a state political party and each non-primary candidate filing notice of candidacy with Secretary of State, to pay filing fee of three percent of annual salary of the office sought (§ 21–2–131(a)(1)(A)). Party primary candidates to pay fee to state political party at time of qualification; all other candidates to pay fee to Sec-

retary of State at time of filing notice of candidacy (§ 21–2–131(b)).

Alternatively, party primary candidate may file pauper's affidavit, under oath, certifying inability to pay fee (§ 21–2–153(a)(2)(A)).

Crossfiling by Candidates.

Candidates shall qualify according to party rules and pledge allegiance to party (§ 21–2–153(b)).

Subversive Parties Barred from Ballot.

No person who has been adjudged a "subversive person," as defined in Part 2 of Article 1 of Chapter 11 of Title 16, the "Sedition and Subversive Activities Act of 1953," shall be nominated or elected (§ 21–2–7).

Write-in Provisions.

Permitted in general election (§ 21–2–2, 21–2–133, 21–2–381.1, & 21–2–381.2).

No person elected on a write-in vote shall be eligible to hold office unless notice of intention of candidacy was given no earlier than January 1 and no later than the Tuesday after the first Monday in September prior to a general election, or at least 20 days prior to a special election, to the Secretary of State and by publication in a paper of general circulation in the State (§ 21–2–133).

Vacancy in Office.

In the event of a vacancy, it shall be filled by special election at the next November election, occurring at least 40 days after the occurrence of such vacancy, and until such election, the Governor may make a temporary appointment to fill such vacancy (§ 21–2–542).

HAWAII

Unless otherwise indicated, references are to the Michie's Hawaii Revised Statutes Annotated, current for 2010 Legislation Acts 1 through 11.

Primary Elections, when held.

Second to last Saturday of September (September 18, 2010) in every even numbered year, provided that in no case shall any primary election precede a general election by less than 45 days (§ 12–2).

Nominating Papers, Petitions, Etc.

No person shall be a candidate for any general election unless he has been nominated in the preceding primary (§ 12–2).

Party candidate for primary.—Nominating paper signed by not less than 25 registered voters (§§ 12–3 and 12–5) who are eligible to vote for the candidate at the next election (§ 12–4), to be filed with the chief election officer (see §§ 11–1, 11–2) not later than 4:30 p.m. on the 60th day before the primary (§ 12–6).

Non-partisan candidate.—Same as party candidate (§ 12–3).

Loyalty oath.—File with nomination papers (§ 12–7).

New Party.—Must file petition with signatures of not less than one-tenth of one percent of total registered voters of the state by 4:30 p.m. on the 170th day before the next primary (§ 11–62).

Filing Fees and Assessments (§ 12–6).

Amount.—$75.

Date of payment.—When filing nomination papers.

To whom paid.—Chief Election Officer (i.e., see §§ 11–1, 11–2).

Alternatively, file statement of indigency and petition signed by at least one-half of one percent of the total voters registered statewide at the time of filing.

Crossfiling by Candidates (§ 12–3).

Prohibited. Candidate must certify that he is a member of the party. Also, nomination papers may not be filed in behalf of any person for more than one party or for more than one office nor shall any person file nomination papers both as a party candidate and as a nonpartisan candidate.

Subversive parties Barred from Ballot.

Candidate must swear allegiance to laws of Nation and State (§ 12–7). No person shall hold any public office or employment who has been convicted of any act to overthrow, or attempt to overthrow, or conspiracy with any person to overthrow the government of Hawaii or of the United States by force or violence (Const. of Hawaii, Art. XVI, § 3).

Write-in Provisions.

No provisions were found.

Vacancy in Office.

When a vacancy occurs in the office of a United States Senator, the vacancy shall be filled for the unexpired term at the following state general election, provided that the vacancy occurs not later than 4:30 p.m. on the 60th day prior to the date of the primary for nominating candidates to be voted for at the election; otherwise at the state general election next following. The chief election officer shall issue a proclamation designating the election for filling the vacancy. Pending the election, the governor shall make a temporary appointment to fill the vacancy and the person so appointed shall serve until the election and qualification of the person duly elected to fill the vacancy and shall be a registered member of the same political party as the Senator causing the vacancy. All candidates for the unexpired term shall be nominated and elected in accordance with this title (§ 17–1).

IDAHO

Unless otherwise designated, references are to the Idaho Code Statutes Annotated, current through 2009 Regular Session.

Primary Elections, when held.

Fourth Tuesday in May (May 25, 2010). (§ 34–601).

Political Party.

Created in one of three ways: either (1) having three or more candidates for state or national office listed under party name at last general election; (2) having one of its state or national candidates poll at least 3 percent of the aggregate vote cast for governor; or (3) by a petition of qualified electors equal to 2 percent of the aggregate vote cast for presidential elections at

the last presidential election, filed with Secretary of State on or before August 30 of even numbered years (§ 34–501).

All candidates for U.S. Senator to be nominated at primary or as otherwise provided by law (§ 34–703).

Nominating Papers, Petitions, Etc.

Party candidates.—File declaration of candidacy between 8 a.m. on the twelfth Monday and 5 p.m. on the tenth Friday before primary (§ 34–704) with Secretary of State (§§ 34–604, 34–705).

Independent candidates.—Prohibited in primary (§ 34–708(1)). In general election, between 8 a.m. on the tenth Monday preceding the primary and 5 p.m. on the eighth Friday preceding the primary, file declaration of candidacy with Secretary of State (§ 34–705), along with petition containing 1,000 signatures of qualified electors (§ 34–708(2)).

Filing Fees and Assessments.

$500. (§ 34–604), payable when filing declaration of candidacy.

Crossfiling by Candidates.

Prohibited. All candidates must declare party affiliation in declaration of candidacy; and candidates who file a declaration of candidacy under a party name and are not nominated at the primary election may not be allowed to appear on the general election ballot under any other political party name, or as an independent candidate (§ 34–704).

Write-in Provisions.

Permitted in primary (§ 34–904); and general elections (§ 34–906); on voting machines (§ 34–2410(1)(c)). To get on the general election ballot, write-in candidate must receive 1,000 write-in votes in the primary (§ 34–702). Write-in candidates must file a declaration of candidacy with the secretary of state and pay the filing fee required by the office within 10 days following the primary election (§ 34–702).

Vacancy in Office.

Whenever any vacancy shall occur in the office of United States Senator from the State of Idaho by death, resignation or otherwise, the governor shall have the power and is hereby authorized and empowered to fill such vacancy by appointment, and the person so appointed shall hold office until such time as a United States Senator is regularly elected to fill such vacancy at the next succeeding general election, and qualifies by virtue of such election; provided, however, that in case a vacancy occurs in the position of United States Senator from the state of Idaho within 30 days of any general election, no election for United States Senator to fill said vacancy shall be held at such general election (§ 59–910).

ILLINOIS

Unless otherwise indicated, references are to Chapter 10 of the Illinois Compiled Statutes Annotated, 1993, current through Public Act 96–903 of the 2010 Legislative Session.

Primary Elections, when held.

First Tuesday in February (February 2, 2010). (§ 5/2A–1.1).

Nominating Papers, Petitions, Etc.

Party candidate for primary

Petition for nomination, including statement of candidacy (§ 5/7–10). Petitions for nomination must be signed by not less than 5,000 nor more than 10,000 primary electors of party (§ 5/7–10); file with State Board of Elections not more than 99 days and not less than 92 days before primary (§ 5/7–12(1)).

Nomination papers filed under section 5/7–12 are not valid if the candidate fails to file a statement of economic interests as required by the Illinois Governmental Ethics Code in relation to his candidacy with the appropriate officer by the end of the period of the filing of nomination papers, unless he has filed a statement of economic interests in relation to the same governmental unit with that officer within a year preceding the date on which the nomination papers were filed (§ 5/7–12(8)).

Minor and new party candidates and independent candidates

Petition for nomination (minor and new parties) *and nomination papers* (independents). Include signatures of not less than one percent of voters who voted at the last statewide election or 25,000 qualified voters, whichever is less (§§ 5/10–2, 5/10–3). Present to State Election Board at least 134 days but not more than 141 days before the day of election for which candidates are nominated (§ 5/10–6).

Filing Fees and Assessments.

No statutory provisions were found.

Crossfiling by Candidates.

Prohibited. If candidate's name appears on petition of more than one party or group, candidate must choose one. If nominated for two or more incompatible offices, candidate must choose one (§§ 5/8–9, 5/10–7).

Subversive Parties Barred from Ballot.

Communist Party.—§§ 5/7–2, 5/10–2.

Party advocating overthrow of Government by force or violence.—§§ 5/7–2, 5/10–2.

Write-in Provisions.

Permitted in primary (§ 5/7–46), in general election (§ 5/17–11), on voting machines (§ 5/24–1), on punch card voting system (§ 5/24A–7), and on electronic voting systems (§ 5/24A–7).

Vacancy in Office.

When a vacancy shall occur in the office of United States Senator from Illinois, the Governor shall make temporary appointment to fill such vacancy until the next election of representatives in Congress, at which time such vacancy shall be filled by election, and the senator so elected shall take office as soon thereafter as he shall receive his certificate of election (§ 5/25–8).

INDIANA

Unless otherwise indicated, references are to the Burns Indiana Statutes Annotated, current through the 2010 Second Regular Session.

Primary Elections, when held.

First Tuesday after first Monday in May in general election years (§ 3–10–1–3). (May 4, 2010).

Nominating papers, petitions, etc., for candidate for United States Senate.

Party primary candidate

Declaration of candidacy.—File declaration of candidacy with secretary of state, by noon on the 74th day preceding the primary (earliest filing date: 104 days before primary) (§§ 3–8–2–4, 3–8–2–5).

Nominating Petitions.—File petitions, signed by at least 4,500 registered voters of the State (at least 500 from each congressional district), with declaration of candidacy (§ 3–8–2–8).

Independent candidate, and *candidate of new and minor party*

Petition of nomination.—Signatures required, from registered voters, equal in number to two percent, of total vote cast for secretary of state at last preceding general election (§ 3–8–6–3). File with Secretary of State by 12 noon July 15 (§§ 3–8–6–10).

Filing Fees and Assessments.

No provisions were found.

Crossfiling by Candidates.

Prohibited. Candidate must be registered voter and member of party in primary election. Any person who executes and files a declaration of candidacy for that office in the same primary election in a different political party until the original declaration is withdrawn (§ 3–8–2–16).

Write-in Provisions.

Permitted in general elections (§§ 3–8–2–2.5, 3–8–2–4, 3–8–2–5); on electronic voting systems (§ 3–11–14–3.5).

Vacancy in Office.

(a) A vacancy that occurs, other than by resignation, in the United States Senate shall be certified to the governor by the secretary of state.

(b) The governor shall immediately fill a vacancy in the United States Senate by appointing a person possessing the qualifications required under Article 1, Section 3, Clause 3 of the Constitution of the United States. The person appointed holds office until the next general election, when the vacancy shall be filled by the election of a Senator in a special election to hold office for the unexpired term.

(c) If a vacancy in the United States Senate occurs after the last day on which notice of the special election can be published under IC 3–10–8–4, the person appointed under subsection (b) holds office until the vacancy is filled in a special election held at the time of the next general election for which notice can be published under IC 3–10–8–4 (§ 3–13–3–1).

IOWA

Unless otherwise indicated references are to the Iowa Annotated Statutes current through the 2009 Supplement (2009 Legislation).

Primary Elections, when held.

First Tuesday after the first Monday in June in even-numbered years (June 8, 2010) (§ 43.7).

United States Senators shall be nominated and elected in the year preceding the expiration of term of office of incumbent (§ 43.6).

Nominating Papers, Petitions, Etc.

Party candidate for primary

Nomination papers.—Signatures are required of at least one percent of the party voters in each of at least ten counties of the State and in the aggregate not less than one-half of 1 percent of total party vote in State as shown in last general election (§ 43.20). File with State Commissioner of Elections not more than 99 nor less than 81 days before primary (filing deadline: 5 p.m.) (§ 43.11(2)).

Affidavit by candidate of eligibility to party candidacy.—File with nomination papers (§§ 43.18, 43.19).

Candidacy of nonparty political organizations.—Party which did not cast at least 2 percent of total vote cast for President or Governor at last general election (§ 43.2) may nominate one candidate by convention or caucus (§ 44.1).

Nomination certificate signed by the chairman and secretary of convention or caucus shall be filed with State Commissioner of Elections not more than 99 or less than 81 days (filing deadline: 5 p.m.) before general election (§§ 44.2, 44.3, 44.4) together with names of at least 250 qualified electors who attended convention caucus, with at least one elector from each of 25 counties (§ 44.1).

Independent candidates

Nomination petition.—Signatures are required of not less than 1,500 eligible voters residing in not less than ten counties of the State (§ 45.1). File with State Commissioner of Elections not more than 99 nor less than 81 days (deadline: 5 p.m.) before general election (§§ 44.4, 45.4).

Mininum Requirement for Nomination.

Party candidate.—The candidate receiving the highest number of votes at the primary shall be the party nominee provided he received not less than 35 percent of all votes cast by his party for United States Senator (§ 43.65).

If no candidate receives the required percentage, the nomination shall be made by State convention (§§ 43.65, 43.78(1)(a)).

Filing Fees and Assessments.

No statutory provisions were found.

Crossfiling by Candidates.

Prohibited. Candidate must be affiliated with party (§ 43.18, generally; § 43.67 write-in candidates). If nominated by more than one party, candidate must select one (§ 49.39). Voter in primary may write in the name of a person who is a candidate on some other party ticket, but this is not counted on the other party ticket (§ 43.39). Name of any candidate shall not appear more than once on ballot for the same office (§ 49.38). No one may be a candidate for more than one office filled at a primary (§ 43.20) or filled at the same election (§ 49.41).

The name of a candidate nominated by any other method than by petition shall not be added to the general election ballot by petition (§ 45.2).

Write-in Provisions.

Permitted in primary (§ 43.66) and in general election (§ 49.99); optical scan machines (§ 52.26).

Vacancy in Office.

In the office of United States Senator, when the vacancy occurs when the Senate of the United States is in session or when such Senate will convene prior to the next general election, it shall be filled by the Governor. Such appointment shall be for the period until the vacancy is filled by election pursuant to law (§ 69.8).

If a vacancy occurs in the office of Senator in the Congress of the United States 89 or more days prior to a general election, and the unexpired term in which the vacancy exists has more than 70 days to run after the date of that general election, the vacancy shall be filled for the balance of the unexpired term at that general election and the person elected to fill the vacancy shall assume office as soon as a certificate of election has been issued and the person qualified (§ 69.13).

KANSAS

Unless otherwise designated, references are to Kansas Statutes Annotated, through the 2009 Supplement.

Primary Elections, when held.

First Tuesday in August of even-numbered years (§ 25–203), for nomination of candidates for United States Senator whose term will expire during next succeeding calendar year (§ 25–101). (August 3, 2010).

Nominating Petitions (See generally Sufficiency of Petitions, §§ 25–3601 to 3607).

Party candidate for primary

Nomination papers.—Signatures are required, equal in number to not less than one percent of the total voter registration of the party designated in the state (§ 25–205). File with Secretary of State (§ 25–208) not later than 12 o'clock noon on June 10, prior to primary (§ 25–205).

Declaration of intention to become a candidate.—May be filed by candidate in lieu of nomination petitions, with Secretary of State, not later than 12 o'clock noon on June 10, prior to primary (§ 25–205).

New or minor parties

Candidate of new party having a State or national organization or minor party which appeared on general election ballot at last preceding general election but whose candidate did not poll at least 5 percent of total State vote (§ 25–202).

Such parties may nominate candidates by convention or caucus to be called by State chairperson only after filing with the Secretary of State not later than 12 o'clock noon, June 1, prior to the primary election held on the first Tuesday of August in even-numbered years, petitions signed by qualified electors equal in number to at least 2 percent of the total vote cast for all candidates for Governor in the State in the last preceding general election (§§ 25–302, 25–302a).

Party certificate of nomination, signed by presiding officer and secretary of convention or caucus, should be filed with Sec-

retary of State not later than 12 o'clock noon June 10 (§§ 25–202, 25–302, 25–305).

Independent candidate

Independent certificate of nominations.—Signatures of not less than 5,000 qualified voters of the State are required (§ 25–303). File with Secretary of State not later than 12 o'clock noon on the Monday preceding the first Tuesday of August (§ 25–305).

Filing Fees and Assessments (§ 25–206).

Fee is required only when party candidate for primary, in lieu of nomination petitions, files declaration of intention to become a candidate.

Amount.—One percent of one year's salary.

Date of payment.—At time of filing declaration of intention to become candidate.

To whom paid.—Secretary of State.

Crossfiling by Candidates.

Prohibited. Candidate must be affiliated with party whose nomination he seeks (§§ 25–205; 25–206). Candidate's name may appear only one place on ballot (§§ 25–213, 25–613).

No person shall accept more than one nomination for the same office (§ 25–306). No candidate shall file for office as a partisan candidate in a primary election and also file thereafter as an independent candidate (§ 25–202).

Subversive Parties Barred from Ballot.

Communist Party.—(§§ 25–116, 25–117).

Write-in Provisions.

Permitted in primary only if there are no nomination petitions or declarations on file for any particular office. In such case the title of the office shall be printed on the ballot and names may be written in. In order to receive a write-in nomination in such a case, a person must receive at least votes equal in number to 5 percent of the electors who voted for the Office of Secretary of State in the last preceding general election (§ 25–213). Permitted in general election (§ 25–616); on electronic voting systems (§ 25–4406).

Vacancy in Office.

When a vacancy shall occur in the office of United States Senator from this state, the governor shall make a temporary appointment to fill such vacancy until the next election of representatives in Congress, at which time such vacancy shall be filled by election, and the senator so elected shall take office as soon thereafter as he shall receive his certificate of election (§ 25–318).

KENTUCKY

Unless otherwise designated, references are to Kentucky's Revised Statutes Annotated, current through the 2009 First Extraordinary Session.

Primary Elections, when held.

First Tuesday after the third Monday in May (§ 118.025) (May 18, 2010).

Party candidate for primary (of party whose candidate received at least twenty percent of total vote at last presidential election) (§§ 118–105, 118.015(1)).

Notification and declaration of candidate signed by the candidate and at least two registered voters who are members of his party. File with Secretary of State no later than 4 p.m. on the last Tuesday in January, before primary (§§ 118–125, 118.165).

Candidate of minor political party

Certificate of nomination.—Party which cast at least 2 percent of total vote of last presidential election may nominate by convention or primary election held by party in accordance with its constitution and bylaws. The certificate of nomination by such a convention or primary election, signed by presiding officer and secretary of convention or by the proper committee chairman and secretary, shall be filed with Secretary of State not later than 4 p.m. on the second Tuesday in August before general election (§§ 118.325, 118.356, 118.365). Minor political parties that have failed to nominate candidates by convention may nominate by petition under same requirements as in the case of an independent candidate (§ 118.325).

Statement of candidate.—A candidate for nomination by convention shall file a statement with the Secretary of State. (§ 118.325(3)).

Independent candidate

Nomination petition.—Signatures are required of 5,000 legally qualified voters of the State (§ 118.315). File with Secretary of State (§ 118.356) not later than the second Tuesday in August before general election (§ 118.365).

Filing Fees and Assessments. (§ 118.255).

Amount.—$500.

Date of payment.—At the time of filing nomination papers by candidate.

To whom paid.—Secretary of State.

Crossfiling by Candidates.

Candidate who is defeated in primary cannot have his name printed on general ballot as candidate for same office as an independent or otherwise (§ 118.345).

Candidate nominated by primary or party convention and also by petition can only have his name printed on ballot once and he may choose whether to be party candidate or independent (§ 118.335).

Write-in Provisions.

Permitted in regular and special elections (§ 117.265), on voting machines (§§ 117.125(15), 117.145(3)), and on electronic voting systems (§ 117.381(4)). Write-in votes are counted only for candidates who have filed a declaration of intent with the Secretary of State not less than 10 days before the date of any regular or special election (§ 117.265).

Vacancy in Office.

The Governor shall fill vacancies in the office of United States Senator by appointment until the next regular election at which members of the lower branch of Congress are elected, and shall, under the Seal of the Commonwealth, certify the ap-

pointment to the President of the Senate of the United States. The certificate of appointment shall be countersigned by the Secretary of State (§ 63.200).

LOUISIANA

Unless otherwise designated, references are to the Louisiana Statutes Annotated, Title 18 (2004) current through the 2009 Regular Session.

Primary Elections, when held.

First Saturday in September. (§§ 402(B)(1), 1272(A)). (August 28, 2010; see below). The primary election involves all candidates; the two candidates with the highest number of votes appear on the general election ballot on the first Tuesday following the first Monday in November (November 7, 2006) (§§ 402(B)(2), 481, 482, 1272). No election of any kind shall be held on any of the days of Rosh Hashanah, Yom Kippur, Sukkoth, Shimini Atzereth, Simchas Torah, the first two days and the last two days of Passover, Shavuoth, Fast of AV, the two days preceeding Labor Day, or the three days preceding Easter. If the date of any election falls on any of the above named days, the election shall be held on the same weekday of the preceding week (§ 402(G)).

Nominating Papers, Petitions, Etc.

A person who desires to become a candidate in a primary election shall qualify as a candidate by timely filing notice of his candidacy, which shall be accompanied either by the qualifying fee and any additional fee imposed or by a nominating petition (§ 461).

Notice of candidacy

A notice of candidacy shall be in writing and shall state the candidate's name, the office he seeks, the address of his domicile, the parish, ward, and precinct where he is registered to vote, and the political party, if any, with which he is registered as being affiliated. The notice of candidacy shall also include a certificate, signed by the candidate, certifying that he had read the notice of his candidacy that he meets the qualifications of the office for which he is qualifying, that he is not currently under an order of imprisonment for conviction of a felony, that he has attached the financial statement (if applicable), that he does not owe any outstanding fines, fees, or penalties pursuant to the Code of Governmental Ethics, and that all the statements contained in it are true and correct, and shall be executed before a notary public or witnessed by two persons who are registered to vote on the office the candidate seeks. The notice of candidacy shall also include a certificate, signed by the candidate, certifying that he is knowledgeable of certain prohibitions regarding the posting of political campaign signs (§ 463). Shall be filed with the Secretary of State during the period beginning on the second Wednesday in July and ending on the following Friday at 5:00 p.m. (§§ 462(A), 467, 468).

Nominating petition

Shall be filed with the Secretary of State and shall accompany the notice of candidacy (§§ 462(A), 465(A)). A person may

only be nominated by persons who are registered to vote on the office he seeks and sign a nominating petition for him no more than 120 days before the qualifying period opens for candidates in the primary election. Each voter who signs a nominating petition shall provide specified information and may not withdraw the nomination (§ 465(B)).

The number of qualified voters who must timely sign a nominating petition for an office voted on throughout the State is 5,000, not less than 500 of which shall be from each of the congressional districts into which the State is divided (§ 465(C)(1)).

Filing Fees and Assessments (§ 464(A), (B)(1)).

Amount.—$600.

Date of payment.—At time of filing notice of candidacy.

To whom paid.—Secretary of State.

A state central committee of a political party may fix and impose an additional fee to be collected in the manner provided in § 464(C).

Crossfiling by Candidates.

Prohibited. A person shall not become a candidate in a primary or general election for more than one office unless one of the offices is membership on a political party committee (§ 453(A)).

Subversive Parties Barred from Ballot.

No provisions were found.

Write-in Provisions.

No statutory provisions found.

Vacancy in Office.

The Governor may fill any vacancy in the office of United States Senator by appointment; however, if the United States Senate is in session when the vacancy occurs, the Governor, within ten days after receiving official notice of the vacancy, shall appoint a Senator to fill the vacancy.

If a vacancy occurs in the office of United States Senator and the unexpired term is more than one year, any appointment to fill the vacancy shall be temporary, and any Senator so appointed shall serve until his successor is elected at a special election and takes office, and the Governor, within ten days after receiving official notice of the vacancy, shall issue his proclamation for a special election to fill the vacancy for the unexpired term. The date of the special election shall be established by the Governor in accordance with the provisions of R.S. 18:402(E). The election shall be conducted and the returns shall be certified as in regular elections for United States Senator. (§ 1278).

If a vacancy occurs and the unexpired term is less than one year, no special election shall be held and if a senator is appointed to fill the vacancy, he shall serve for the remainder of the unexpired term, and his successor shall be elected at the next regular election for United States senator.

MAINE

Unless otherwise designated, references are to Title 21–A of the Maine Revised Statutes Annotated, current with Emergency Legislation through Chapter 510 of the 2009 Second Regular Session of the 124th Legislature.

Primary Elections, when held.

Second Tuesday of June of each general election year (§ 339) (June 8, 2010).

Nominating Papers, Petitions, Etc.

Party candidate for primary (§§ 334–336).

Primary petition.—Signatures by qualified voters of his party are required, equal in number to at least 2,000 but not more than 3,000. File with Secretary of State before 5 p.m. on March 15 of the election year in which it is to be used (§ 335).

Consent of candidate.—Written consent of candidate must be filed with his petition (§ 336).

Independent candidate.—(§§ 353–355).

Nomination by petition.—Signatures by qualified voters of State are required, equal in number to at least 4,000 and not more than 6,000 voters. Must file petition in the office of the Secretary of State by 5 p.m. on June 1 in the election year in which it is to be used (§ 354). Must withdraw enrollment in a party on or before March 1 of the election year (§ 353).

Written consent of each candidate must be filed with his nomination petition (§ 355).

NOTE. A person may file as a candidate for any federal, state, or county office either by primary election or nomination petition, but not by both (§ 351).

Write-in candidate.

A person, whose name will not appear on the printed primary ballot because he did not file a petition and consent as required but who is otherwise eligible to be a candidate, may be nominated at the primary election if that person complies with either section 722–A or section 737–A, subsection 2–A and who fulfills the other qualifications under section 334, may be nominated at the primary election if that person receives a number of valid write-in votes equal to at least twice the minimum number of signatures required under section 335, subsection 5, on a primary petition for a candidate for that office. (§§ 338, 723(1)(a)).

Filing Fees and Assessments: No statutory provisions.

Crossfiling by Candidates.

Prohibited. Primary petition must contain the name of candidate's political party (§ 335(1)). Candidate's consent which must be filed with petition must state that candidate will accept the nomination of the party (§ 336(1)). Candidate must be enrolled on or before March 15 in party named in petition (§ 334). An independent candidate for nomination by nomination petition must withdraw his enrollment in a party on or before March 1 of the election year (§ 353).

A person may file as a candidate for any federal, state, or county office either by primary election or nomination petition, but not by both. A person may not file, whether by primary election or nomination petition, as a candidate for more than

one federal, state, or county office at any election except when one of the offices is either membership in a county charter commission or presidential elector (§ 351).

Write-in Provisions.

Permitted in primary (§§ 338, 691, 723); in general election (§ 692); on voting machines (§ 812); on electronic voting systems (§ 843).

Must write in the name of the candidate (§§ 691, 692).

Vacancy in Office.

Within a reasonable time after a vacancy occurs, the Governor shall appoint a qualified person to fill the vacancy until his successor is elected and qualified.

If the vacancy occurs 60 days or more before a regular primary election, nominees must be chosen at the primary and a successor elected for the remainder of the term at the general election.

If the vacancy occurs less than 60 days before a regular primary election, nominees must be chosen at the next regular primary following the one in question, and a successor elected for the remainder of the term at the general election (§ 391).

MARYLAND

Unless otherwise designated, references are to the Annotated Code of Maryland current through all Chapters of the 2010 Regular Session.

Primary Elections, when held.

In 2000 and every sixth year thereafter (§ 8–601) in the year in which the Governor is elected, on the second Tuesday after the first Monday in September; and in the year in which the President of the United States is elected, on the second Tuesday in February (§ 8–201) (February 14, 2012).

Nominating Papers, Petitions, Etc.

Nominations shall be made by party primary, for candidates of a principal political party; by petition, for candidates not affiliated with any political party; or in accordance with the constitution and by-laws of the political party, for candidates of a political party that does not nominate by party primary (§ 5–701).

Nomination by party primary.—Certificates of candidacy for the nomination shall be filed with the State Board of Elections (§ 5–302). Deadline for filing: Monday, 9 p.m., 10 weeks or 70 days before the primary election (§ 5–303). Filing fee: $290 must be paid to the State Board (§§ 5–401, 5–403).

Nomination by petition.—A declaration of intent to seek nomination shall be filed with the State Board of Elections. Deadline for filing: Monday, 9 p.m., 10 weeks or 70 days before the primary election (§§§ 5–703, 8–203, and 5–303). Filing fee: No fee charged for declaration of intent (5–703).

A certificate of candidacy shall be filed along with petitions signed by not less than 1% of the total number of voters except that the petitions shall be signed by at least 250 registered voters who are eligible to vote for the office. (§§ 5–301, 5–703). Petition must be filed with Secretary of State (§ 6–205). Deadline for filing certificate and petition: No later than 5 p.m. on the

first Monday in August in the year of the general election (§ 5–703).

Independent candidate.—Nominations are made by petition (§ 5–701).

Candidate of minor party.—Nomination is made in accordance with the constitution and by-laws of the political party (§ 5–701).

Crossfiling by candidates.

Candidate must be affiliated with the nominating party and may not be simultaneously a candidate for more than one public office (§§ 5–203, 5–204).

Write in provisions.

The certificate of candidacy for the election of a write-in candidate shall be filed by the earlier of 7 days after a total expenditure of at least $51 is made to promote the candidacy by a campaign finance entity of the candidate or 5 p.m. on the Wednesday proceeding the day of the election (§§§ 5–301, 5–704, 5–303). Write-in candidates are prohibited during a primary election (§ 8–205).

Vacancy in office.

If there is a vacancy in the office of the United States Senator, the Governor shall appoint an eligible individual to fill the vacancy. If the vacancy occurs before the date that is 21 days before the deadline for filing certificates of candidacy for the next succeeding regular election, the Governor shall issue a proclamation declaring a special election (§ 8–602). Special election may be held to fill a vacancy in the office of United States Senator concurrently with a regular election (§ 8–401).

MASSACHUSETTS

Unless otherwise designated, references are to the Annotated Laws of Massachusetts Current through Act 91 of the 2010 Legislative Session.

Primary Elections, when held.

Seventh Tuesday preceding biennial State elections (ch. 53, § 28) (September 14, 2010).

Usually, primary elections are held only by political parties which polled at least 3 percent of the State vote for any office at the last preceding biennial election or which shall have enrolled a number of voters with its political designation equal to or greater than one percent of the entire number of voters registered in the commonwealth (see ch. 50, § 1, definition of "political party").

Nominating Papers, Petitions, Etc.

Political party candidate for primary

Nomination papers and candidate written acceptance.—Signatures of at least 10,000 qualified voters of his party are required (ch. 53, § 44). A nomination paper must contain the candidate's written acceptance (ch. 53, § 45). Submit nomination papers to registrars of city or town for *certification* on or before 5 p.m. of the 28th day before date of filing (ch. 53, § 46). File with Secretary of State on or before first Tuesday in June of the year in which a State election is to be held (ch. 53, § 48).

Registrar's certificate, showing that candidate is enrolled voter of party whose nomination he seeks for 90 days prior to the last day for filing nomination papers. File with Secretary of State on or before deadline for filing nomination papers (ch. 53, § 48).

Independent candidate

Nomination papers. 10,000 signatures of voters are required (ch. 53, § 6). Candidate's written acceptance must accompany nomination papers (ch. 53, § 9). Submit nomination papers to registrars of signers' city or town of voting residence, for certification on or before 5 p.m. of the 28th day before the date of filing (ch. 53, § 7). File with Secretary of State (ch. 53, § 9) on or before last Tuesday in August of the year in which a State election is held (ch. 53, § 10) (August 29, 2000). Also file certificate of registration as voter by deadline for filing nomination papers (ch. 53, § 9).

No person may be nominated as an independent candidate for any office to be filled at a state election if he has been enrolled as a member of a political party during the 90 days prior to the last day for filing nomination papers (ch. 53, §§ 6, 48). Candidate must file, on or before the last day for filing nomination papers, a registrar's certificate showing that he is not enrolled as a member of any political party. (ch. 53, § 6).

Write-in candidate

Candidate's written acceptance.—Candidate who was nominated by write-in votes at a primary must file, with Secretary of State, a written acceptance by 5 p.m. of the 13th day after the primary (ch. 53, § 3).

Filing Fees and Assessments.—No statutory provisions.

Crossfiling by Candidates.

Prohibited. Candidate must be enrolled member of political party whose nomination he seeks (ch. 53, § 48). No person may be nominated as an independent candidate if he has been enrolled as a member of a political party during the 90 days prior to the last day for filing nomination papers (ch. 53, §§ 6, 48). No person shall be a candidate for nomination for more than one office, except membership in political committees (ch. 53, § 46).

Write-in Provisions.

Permitted in primary (ch. 53, § 3), but to be deemed nominated (or elected at general election) person must receive at least as many write-in votes as equal to signatures that would be required to place his name on ballot as primary candidate (ch. 53, § 40), and, in general election, on voting machines (ch. 54, § 33D) and electronic voting systems (ch. 54, § 33E).

Vacancy in Office.

Upon upon creation of a vacancy in that office, the governor shall immediately cause precepts to be issued to the aldermen in every city and the selectmen in every town in the district, directing them to call an election on the day appointed in the precepts for the election of such senator or representative. The day so appointed shall not be more than 160 nor less than 145 days after the date that a vacancy is created or a failure to choose occurs. If a vacancy under this section is created after

February 1 of an even-numbered year, the governor shall not issue the precepts. If a vacancy is created for senator in congress after April 10 of an even-numbered year, the governor shall issue precepts under this section, unless section 152 requires that office to appear on the biennial state election ballot in that year. If this section prevents issuance of precepts for senator, the office shall appear on the biennial state election ballot in that year. If a vacancy for senator is created after April 10 of an even-numbered year, but on or before the seventieth day preceding the regular state primary, the precepts shall appoint the day of the regular state primary and the biennial state election for holding the special primary and special election required by this section (ch. 54, § 140).

MICHIGAN

Unless otherwise designated, references are to Michigan Compiled Laws Service current through P.A. 55 of the 2010 Legislative Session.

Primary Elections, when held.

Tuesday after first Monday in August preceding general November elections (§§ 168.92, 168.534) (August 3, 2006).

Nominating Papers, Petitions, Etc.

Party candidate for primary

Nominating petition and affidavit of identification.—Signatures of qualified registered electors are required and include at least 100 electors in each of at least one-half of the congressional districts of the state. File with Secretary of State not later than 4 p.m. of 12th Tuesday preceding August primary (§§ 168.93, 168.551). Candidate shall also file two copies of affidavit of identification with the Secretary of State at time of filing nomination petition (§ 168.558).

Candidate of minor party.—Whose principal candidate received less than 5 percent of total vote cast for Secretary of State office in last preceding election—nomination shall be by caucus or convention (§§§ 168.92, 168.532, 168.686a). County caucuses and state conventions must be held not later than the August primary. A certificate of nomination, a written notice of acceptance by the candidate, and an affidavit of identity must be filed with the Secretary of State within 1 business day after the conclusion of the convention (§ 168.686a).

Independent candidate.—The qualifying petition shall be signed by a number of qualified and registered electors of this state equal to not less than 1 percent of the total number of votes cast for all candidates for governor at the last election in which a governor was elected, which shall include at least 100 registered electors in each of at least ½ of the congressional districts of the state. All signatures shall be obtained not more than 180 days immediately before the date of filing (§ 168.590b). A qualifying petition for an office elected at the general election shall be filed with the Secretary of State not later than 4 p.m. of the 110th day before the general election (§ 168.590c). An independent candidate cannot also be nominated as a write-in or political party candidate for an office at the same election at which he is seeking office as an inde-

pendent, or at any other election during the same calendar year (§ 168.590g).

Filing Fees and Assessments.—No provisions were found.

Crossfiling by Candidates.

Prohibited. If candidate is nominated by more than one political party, he must select one (§§ 168.692, 168.693). Candidate on primary ballot of one political party is not eligible as candidate of any other political party on general election ballot (§ 168.695).

Write-in Provisions.

Permitted in primary (§ 168.576); a write-in candidate must file a declaration of intent to be a write-in candidate with the Secretary of State on or before 4 p.m. on the second Friday immediately before the election (§ 168.737a). However, write-in candidate on primary ballot shall not be certified as a nominee unless he receives a total vote equal to not less than .15 of 1 percent of the total population of the state, but not less than 10 votes, or a total equal to 5 percent of the greatest number of votes cast by the party for any office at the primary in the state, for a candidate or for all candidates for nomination for an office for which only one person is to be nominated, whichever is greater (§ 168.582).

Permitted in general election (§§ 168.706, 168.737(d)), on voting machines (§§ 168.782a, 168.784). A write-in candidate must file a declaration of intent to be a write-in candidate with the Secretary of State on or before 4 p.m. on the second Friday immediately before the election (§ 168.737a).

Vacancy in Office.

Whenever a vacancy shall occur in the office of United States Senator, the Governor shall appoint some suitable person having the necessary qualifications for Senator. The person shall hold office from the time of his appointment and qualification until the first day of December following the next general election which occurs more than one hundred twenty days after such vacancy happens. At such general election, a United States Senator shall hold office from the first day of December following such election for the balance of the unexpired term (§ 168.105).

MINNESOTA

Unless otherwise designated, references are to Minnesota Annotated Statutes current throught the 2009 Regular Session.

Primary Elections, when held.

Second Tuesday in August in even-numbered years (§ 204D.03) (August 10, 2006).

Nominating Papers, Petitions, Etc.

Major party candidate for primary. A major political party must have presented at least one candidate for election to a partisan office at the last preceding general election, which candidate received votes in each county and received votes from not less than 5 percent of the total number of individuals who voted in that election, or must have presented to the secretary of state a petition for a place on the state partisan pri-

mary ballot, which contains signatures of a number of party members equal to at least 5 percent of the total number of individuals who voted in the preceding general election (§ 200.02, Subd. 7). The candidate for nomination of a major political party for a partisan office on the state partisan primary ballot who receives the highest number of votes shall be the nominee of that political party of that office (§ 204D.10, Subd. 1). File affidavit of candidacy with Secretary of State not more than 70 nor less than 56 days before primary (§§ 204B.03, 204B.09, Subd. 1).

Minor party or independent candidate.—To be considered a minor party in all elections statewide, a political party must have presented at least one candidate for a partisan office voted on statewide at the preceding general election who received votes in each county that in the aggregate equal at least 1 percent of the total number of individuals who voted in the election, or its members must have presented to the secretary of state a nominating petition in a form prescribed by the secretary of state containing the signatures of party members in a number equal to at least 1 percent of the total number of individuals who voted in the preceding general election (§ 200.02, Subd. 23).

Signatures are required to be obtained during the period allowed for filing nominating petitions (§ 204B.08, Subd. 1), equal in number to 1 percent of the total number of persons voting at the last preceding State general election, or 2,000, whichever is less (§ 204B.08, Subd. 3). File nominating petitions and affidavit of candidacy with Secretary of State not more than 70 nor less than 56 days before primary (§ 204B.09, Subd. 1).

Filing Fees and Assessments.

Amount.—$400.

Date of payment.—At time of filing affidavit of candidacy.

To whom paid.—Secretary of State.

A petition signed by 2,000 voters may be presented in lieu of the filing fee. (§ 204B.11).

Crossfiling by Candidates.

No individual shall be named on any ballot as the candidate of more than one major political party.

A candidate may not seek the nomination of either a major or minor political party, or both, and file a nominating petition as an independent candidate for the same election. (§ 204B.04).

Write-in Provisions.

Not permitted in primary (§§ 204B.36, Subd. 2, 204D.08, Subd. 2).

Permitted in general election (§ 204B.36, Subd. 2).

Vacancy in Office.

Every vacancy shall be filled for the remainder of the term by a special election, except that no special election shall be held in the year before the term expires. The special election shall be held at the next November election if the vacancy occurs at least 6 weeks before the regular primary preceding that election. If the vacancy occurs less than 6 weeks before the regular primary preceding the next November election, the special

election shall be held at the second November election after the vacancy occurs. The Governor may make a temporary appointment to fill any vacancy until a successor is elected and qualified at a special or regular election (§ 204D.28).

MISSISSIPPI

Unless otherwise designated, references are to Mississippi Code 2005.

Primary Election held.

The first Tuesday in June of the years in which congressmen are elected, and the second primary, when one is necessary, shall be held three (3) weeks thereafter. Each year in which a presidential election is held, the congressional primary shall be held the second Tuesday in March of each year (§§ 23–15–1031, 23–15–1081) (June 1, 2010).

Nominating Papers, Petition, Etc.

Party candidate for primary. Candidates shall be nominated at the primary next preceding the general election and the chairman and Secretary of the State Executive Committee shall certify the vote (§§ 23–15–1031, 12–15–307). A written statement containing name, address, party affiliation, and the office sought must be filed with the Secretary of the State Executive Committee 60 days before the presidential preference primary or by 5 p.m. on March 1 of the year another primary is held (§ 23–15–299).

Independent candidate.

Nominating petition. The name of a candidate shall be printed on the ballot for whom a petition signed by not less than 1,000 qualified electors shall have been filed with the State Board of Election Commissioners no later than 5 p.m. on the same date by which candidates for nominations in party primary elections are required to pay the filing fees however, no petition may be filed before January 1 of the year in which the election is held. (§ 23–15–359).

Filing Fees and Assessments.

Party primary candidates for United States Senator shall pay a filing fee not to exceed $300 to the Secretary of the State Executive Committee by 5 p.m. 60 days before the presidential preference primary or by 5 p.m. on March 1 of the year another primary is held (§§ 23–15–297(f), 23–15–299(3)).

Crossfiling by Candidates.

Prohibited. Candidate required to support party (§§ 23–15–299, 23–15–359(2)).

Write-in Provisions.

Permitted on printed ballots (§ 23–15–365), electronic voting systems (§ 23–15–469).

Vacancy in Office.

The Governor shall, within 10 days after notice of vacancy, issue proclamation for an election to fill the unexpired term, provided the unexpired term is more than 12 months and the election shall be held within 90 days from the time the proclamation is issued. If vacancy occurs in general election year, the proclamation shall designate the election day as time for elect-

ing a Senator. The Governor may appoint a Senator to fill such vacancy temporarily (§ 23–15–835).

MISSOURI

Unless otherwise designated, references are to Missouri Annotated Statutes current through the 95th General Assembly, First Regular Session 2009.

Primary Elections, when held.

First Tuesday after first Monday in August of even-numbered years (§§ 115.121, 115.341) (August 3, 2010).

If two or more persons receive an equal number of votes for nomination as a party's candidate for any federal office and a higher number of votes than any other candidate for the same office on the same party ballot, the Governor shall issue a proclamation stating that fact and order a special primary election to determine the party's nominee for the office (§ 115.515).

Nominating Papers, Petitions, Etc.

Party candidate for primary

Declaration of candidacy.—On or before 5 p.m. on the last Tuesday in March preceding the primary (§ 115.349(1)). File with Secretary of State (§ 115.353(1)), in person (§ 115.355).

New parties and independents

Nomination petition.—A person wishing to be an independent candidate or a group wishing to form a new party with candidates for state-wide offices must file a petition with the Secretary of State containing the signatures of at least 10,000 registered voters (§§ 115.315(2) & (5), 115.321(1) & (3)). A new party shall also submit a certified list of all its candidates and the office each seeks (§ 115.327). The Secretary of State shall not accept for filing any petition for the formation of a new party or for the nomination of an independent candidate which is submitted prior to 8 a.m. on the day immediately following the general election next preceding the general election for which the petition is submitted or which is submitted after 5 p.m. on the fifteenth Monday immediately preceding the general election for which the petition is submitted (§ 115.329(1)).

Declaration of candidacy.—Each petition for the nomination of an independent candidate or the formation of a new party must be accompanied by a declaration of candidacy for each candidate to be nominated by petition or by the party, stating that the candidate is legally qualified to hold the office he seeks (§ 115.327).

Filing Fees and Assessments (§ 115.357).

Amount.—$200.

Date of payment.—Before filing declaration of candidacy.

To whom paid.—To the treasurer of the State central committee of the political party.

Exceptions.—(1) Any person who cannot pay the fee required to file as a candidate may have the fee waived by filing a declaration of inability to pay and a petition with his declaration of candidacy. (2) No filing fee shall be required of any person who proposes to be an independent candidate, the candidate of a new party, or a candidate for presidential elector.

Crossfiling by Candidates.

Prohibited. No person who files as a party candidate for nomination or election to an office shall, without withdrawing, file as another party's candidate or an independent candidate for nomination or election to the office for the same term. No person who files as an independent candidate for election to an office shall, without withdrawing, file as a party candidate for nomination or election to the office for the same term. No person shall file for one office and, without withdrawing, file for another office to be filled at the same election (§ 115.351).

Write-in Provisions.

Not permitted in primary (§ 115.395(3)). Permitted in general election (§ 115.439(3)), on voting machines and electronic devices (§§ 115.225(2); 115.231(3)).

Vacancy in Office.

Whenever a vacancy in the office of Senator of the United States occurs, the Governor shall appoint a person to fill such vacancy who shall continue in office until a successor shall have been duly elected and qualified according to law (§ 105.040).

MONTANA

Unless otherwise specified, references are to the Montana Code Annotated current through the 2009 Regular and Special Session.

Primary Elections, when held.

First Tuesday after first Monday in June before the general elections (§ 13–1–107(1)). (June 8, 2010).

Nominating Papers, Petitions, Etc.

Party candidate for primary

Declaration of nomination.—No sooner than 135 days before the election in which the office first appears on the ballot and no later than 5 p.m. 75 days before the primary (§ 13–10–201(6)). File with Secretary of State (§ 13–10–201(2)(a)).

Independent and minor party candidates

Nominating petitions.—May be made by a petition for nomination signed by a number of registered voters equal to 5 percent or more of the total votes cast for the successful candidate for the same office at the last general election, and filed with the Secretary of State before the primary election. A petition for nomination and the affidavits of circulation required by 13–27–302, accompanied by the required filing fee, must be filed with the same officer with whom other nominations for the office sought are filed. Petitions must be submitted, at least 1 week before the deadline for filing, to the election administrator in the county where the signer resides for verification and certification by the procedures provided in 13–27–303 through 13–27–306. If there are insufficient signatures on the petition, additional signatures may be submitted before the deadline for filing. If sufficient signatures are verified and certified pursuant to 13–10–502, the county election administrator shall file the petition for nomination with the Secretary of State (§§ 13–10–501, 13–10–502, 13–10–503).

Write-in Candidate (§ 13–10–204).

Declaration of intent.—A person seeking to become a write-in candidate in any election shall file a declaration of intent with the Secretary of State no later than 5 p.m. on the 10th day before the date established under 13–13–205 on which a ballot must be available for absentee voting for the election (§ 13–10–211).

Declaration of acceptance of nomination.—Within ten days after canvass, file with Secretary of State (§ 13–10–204).

Number of write-in votes required.—At least 5 percent of the votes cast for successful candidate for United States Senator at last preceding general election (§ 13–10–204).

Filing Fees and Assessments

Amount for party, minority party, independent, and write-in candidates.—One percent of annual salary (§ 13–10–202(3)).

Date of payment.—No later than 5 p.m. 75 days before the primary (§ 13–10–201(6)). For minor party and independent candidates, before the primary election (§ 13–10–503). For write-in candidates, no later than 10 days after official primary canvass (§ 13–10–204).

To whom paid.—Secretary of State (§ 13–10–201(2)(a)).

Indigent candidates.—If a candidate is unable to pay the filing fee, he may submit in lieu thereof a verified statement that he is unable to pay the fee and, if a candidate for party nomination, a nomination petition signed by at least 5 percent of the total vote cast for the successful candidate for U.S. Senator at the last general election (§ 13–10–203).

Crossfiling by Candidates.

If nominated by more than one party, candidate shall make a choice by filing written document with Secretary of State within 10 days after nomination (§ 13–10–303).

An individual who has filed as an independent forfeits his place on the general election ballot as an independent candidate if he accepts a write-in nomination (§ 13–10–305).

Write-in Provisions.

Permitted in primary and in general election (§§ 13–10–302, 13–12–202); on voting machines (§ 13–17–103).

Vacancy in Office.

If a vacancy occurs, an election to fill the vacancy shall be held at the next general election. If the election is invalid or not held at that time, the election to fill the vacancy shall be held at the next succeeding general election. The Governor may make a temporary appointment to fill the vacancy until an election is held (§ 13–25–202).

NEBRASKA

Unless otherwise designated, references are to the Revised Statutes of Nebraska Annotated, current through the 2009 101st First Special Session.

Primary Elections, when held.

First Tuesday after second Monday in May in even-numbered years (§ 32–401). (May 11, 2010).

Primary Candidates.—Any candidate may place his or her name on the primary election ballot by filing a candidate filing form prescribed by the Secretary of State as provided in section

32–607. If a candidate for an elective office is the incumbent, the deadline for filing the candidate filing form shall be February 15 prior to the date of the primary election. No incumbent who resigns from elective office prior to the expiration of his or her term shall file for any office after February 15 of that election year. All other candidates shall file for office by March 1 prior to the date of the primary election (§ 32–606). A filing fee of one percent of the annual salary for the office of U.S. Senator shall be paid prior to filing for office (§ 32–608(1), (2)(a)).

No person shall be allowed to file a candidate filing form as a partisan candidate or to have his or her name placed upon a primary election ballot of a political party unless (1) he or she is a registered voter of the political party and (2) at the last election the political party polled at least 5 percent of the entire vote in the state, county, political subdivision, or district in which the candidate seeks the nomination for office (§ 32–610).

Twenty-five registered voters of the same political party may seek to have a person's name placed on the primary election ballot as a partisan candidate by filing an affidavit stating that they are registered voters, the political party with which they are registered, the name of the proposed candidate, and that the proposed candidate is a registered voter of the same political party. The affidavit shall be filed in the same manner and with the same filing officer as provided for candidate filing forms. The proposed candidate shall, within 5 days from the date of the filing of the affidavit, file a candidate filing form stating that he or she is a registered voter and is affiliated with the political party named in the affidavit. If the candidate filing form is not filed within such 5-day period, the name of the candidate shall not be placed upon the primary election ballot (§ 32–611).

Independent and Third Party Candidacies For Nomination For General Election

Any registered voter who was not a candidate in the primary election may have his or her named placed on the general election ballot for partisan office by filing nominating petitions or by nomination by political party convention or committee. (§ 32–616). The nominating petition must be signed by at least 4,000 registered voters of the State and at least 50 signatures shall be obtained in each one-third of the counties in the state. (§ 32–618(2)(a)). The nomination petition with the required signatures must be filed by September 1st in the general election year along with the required filing fee of 1 percent of the annual salary for the office of U.S. Senator (§ 32–617).

Filing Fees and Assessments.

By primary candidates and by candidates by petition (§ 32–608(2)(a)).

Amount.—One percent of annual salary.

Date of payment.—Prior to filing for office.

To whom paid.—Secretary of State (§ 32–608).

Crossfiling by Candidates.

Prohibited. No registered voter, candidate, or proposed candidate shall swear falsely as to political party affiliation or shall swear that he or she affiliates with two or more political parties. Any candidate who swears falsely as to political party affiliation or swears that he or she affiliates with two or more political parties shall not be the candidate of such party and shall not be entitled to assume the office for which he or she filed even if he or she receives a majority or plurality of the votes therefor at the following general election. The name of a candidate shall not appear printed on more than one political party ballot. A candidate who is a registered voter of one political party shall not accept the nomination of another political party (§ 32–612(2)(3)).

Write-in Provisions.

A blank space shall be provided at the end of each office division on the ballot for registered voters to write in the name of any person for whom they wish to vote and whose name is not printed upon the ballot. The Secretary of State shall approve write-in space for optical-scan ballots and electronic voting systems. (§ 32–816).

Vacancy in Office.

When a vacancy occurs in the representation of the State of Nebraska in the Senate of the United States, the Governor shall appoint a suitable person possessing the qualifications necessary for senator to fill such vacancy. If the vacancy occurs within 60 days of a statewide general election and if the term vacated expires on the following January 3, the appointee shall serve until the following January 3, and if the term extends beyond the following January 3, the appointee shall serve until January 3 following the second statewide general election next succeeding his or her appointment. If the vacancy occurs more than 60 days before a statewide general election, the appointee shall serve until January 3 following the statewide general election and at the statewide general election a senator shall be elected to serve the unexpired term if any (§ 32–565).

NEVADA

Unless otherwise designated, references are to Nevada Revised Statutes Annotated, current through the 74th Legislature (2007) and 24th and 25th special session (2008), and updates received from the Legislative Counsel Bureau through April 2009.

Primary Elections, when held.

Second Tuesday in June in each even-numbered year. (June 8, 2010) (§ 293.175(1).

Nominating Papers, Petitions, Etc.

Party candidate for primary (§§ 293.167, 293.177, 293.185).

Declaration of candidacy.—File with Secretary of State not earlier than the first Monday in May of the year in which the election is to be held not later than 5 p.m. on the second Friday after the first Monday in May (§ 293.177).

Certificate of Candidacy—Ten or more registered voters of his party may file with Secretary of State not earlier than the first Monday in April of the year in which the election is to be held nor later than 5 p.m. on the first Friday in May. In such

a case, however, candidate must file an Acceptance of Nomination with the Secretary of State and at the same time must pay the required filing fee (§ 293.180, 293.185).

Independent candidate. (§ 293.200).

Petition of candidate.—Signatures are required of electors in the State, equal in number to at least 1 percent of entire State vote cast in last general election. File with Secretary of State not earlier than the first Monday in May and not later than 5 p.m. on the second Friday after the first Monday in May (§§ 293.200, 293.185).

Filing Fees and Assessments.

For party candidates and for independents (§§ 293.180, 293.193, 293.200).

Amount.—$500.

Date of payment.—At time of filing nomination papers by candidate.

To whom paid.—Secretary of State.

Crossfiling by Candidates.

Prohibited.—No person may be a candidate of a major political party for partisan office in any election if he has changed (a) The designation of his political party affiliation; or (b) His designation of political party from nonpartisan to a designation of a political party affiliation, on an application to register to vote in the State of Nevada or in any other state during the time beginning on December 31 preceding the closing filing date for that election and ending on the date of that election whether or not his previous registration was still effective at the time of the change in party designation (§ 293.176).

Write-in Provisions.

Not permitted. (§ 293.270.)

Vacancy in Office.

If a vacancy occurs due to death, resignation or otherwise, the Governor may appoint some qualified person to fill the vacancy, who shall hold office until the next general election and until his successor shall be elected and seated (§ 304.030).

NEW HAMPSHIRE

Unless otherwise designated references are to the New Hampshire Revised Statutes, current through Chapter 4 of the 2010 Session.

Primary Elections, when held.

Second Tuesday in September of every even-numbered year (§ 653:8) (September 14, 2010).

Nomination Papers, Petitions, Etc.

Party candidate for primary

Declaration of candidacy.—File with Secretary of State between the first Wednesday in June and the Friday of the following week. (§§ 655:14, 655:15, 655:17.)

Voluntary spending limits.—$625,000 voluntary spending limit for the primary election and a $625,000 voluntary spending limit for the general election for U.S. senatorial candidates. If the U.S. senatorial candidates voluntarily agree to such spending limits, they will not be required to pay a filing fee and obtain notarized signatures by party members on nomi-

nating petitions. Those candidates not agreeing to voluntarily abide by such spending limits, will be required to pay a $5,000 filing fee and obtain 2,000 notarized signatures from members of their political party. (§§ 655:19, 655:19–b, 664:56, 655:20).

Primary petitions and assent to candidacy.—Signatures on separate petitions are required of 2,000 voters who are members of the candidate's party (§ 655:22). Petitions must be accompanied by written assent to candidacy (§ 655:25). File with Secretary of State (in person if filing on last day) (§§ 655:14, 655:15, 655:16).

Filing fee.—In lieu of filing primary petitions and an assent to candidacy, a candidate may pay a filing fee of $5,000 at the time of filing declaration of candidacy (§ 655:19).

Independent candidate

Nomination papers.—Separate signed petitions of 3,000 qualified voters of the State, 1,500 from each U.S. congressional district in the State, are required (§§ 655:40, 655:42). File with Secretary of State no later than 5 p.m. on the Wednesday one week before the primary (§ 655:43).

Declaration of intent.—Candidates who intend to have their names placed on the general election ballot by means other than nomination by party primary shall file a declaration of intent with the Secretary of State between the first Wednesday in June and the Friday of the following week (§ 655:14–a).

Filing Fees and Assessments (required of candidates who file a declaration of candidacy. The filing fee is $5,000 for a candidate for the U.S. Senate (§ 655:19).

Crossfiling by Candidates.

Prohibited.—Candidate required to be affiliated with political party (§ 655:14).

A person nominated by the same party for incompatible offices must notify the Secretary of State no later than Monday following the date of the primary of which nomination he will accept (§ 659:91).

Any person who is a candidate of any party's state primary election ballot shall not run as the nominee of a different political party in the general election (§ 659:91–a).

Write-in Provisions.

Permitted in primary (§ 656:23) and in general elections (§ 656:12 and see generally § 659:88).

Vacancy in Office.

If a vacancy occurs, the Governor shall fill the vacancy by temporary appointment until it is filled at the next general election (§ 661:5).

NEW JERSEY

Unless otherwise designated, references are to New Jersey Statutes Annotated current through the 214th Legislature.

Primary Elections, when held.

Tuesday after first Monday in June (§ 19:23–40). (June 8, 2010).

Nominating Papers, Petitions, Etc.

Nominating petition and acceptance of nomination, with oath of allegiance annexed (see generally §§ 19:13–7, 19:13–8).

Party candidate for primary.—Signatures of 1,000 voters of his party are required (§§ 19:23–5, 19:23–7, 19:23–8). File with Attorney General by 4 p.m. of the 57th day prior to primary (§§ 19:13–9, 19:23–14).

New and minor party candidate and independent candidate.—(See § 19:13–4, par. 3; § 19:1–1, definition of "Political Party.") Independent filing deadline is 4 p.m. of the day of the primary election (§ 19:13–9).

Petition shall be signed by 800 legally qualified voters and filed with the Secretary of State (§§§ 19:13–3, 19:13–5).

Write-in candidate.—Person nominated at primary by write-in votes must file with Attorney General, certificate of acceptance with oath of allegiance annexed (§ 19:23–16).

Filing fees and Assessments.—No statutory provision.

Crossfiling by Candidates.

Prohibited.—Candidate who chooses to seek nomination in primary election is precluded from subsequent attempt at nomination by direct petition (§ 19:13–8.1).

If nominated by more than one political party or group, candidate must choose one (§§ 19:13–8, 19:14–9).

Subversive Parties Barred from Ballot.

Advocating overthrow of Government by force.—Oath of allegiance by candidates (§§ 19:23–7, 19:23–15, 19:23–16, 41:1–1, 41:1–3).

Write-in Provisions.

Permitted in primary (§ 19:23–25) and general elections (§§ 19:14–4(4); 19:14–6, 19:15–28; 19:16–3(d)); voting machines (§ 19:48–1(m)); electronic voting systems (§§ 19:53A–3, 19:53A–5).

Vacancy in Office.

If a vacancy occurs, the Governor shall issue a writ of election to fill the same unless the term of service of the person whose office shall become vacant will expire within 6 months next after the happening of the vacancy (§ 19:27–4). If the vacancy shall happen within 64 days next preceding the primary prior to the general election, it shall be filled by election at the second succeeding election unless the Governor shall deem it advisable to call a special election therefor (§ 19:27–6).

The Governor may make a temporary appointment of a Senator whenever a vacancy shall occur by reason of any cause other than the expiration of the term; and such appointee shall serve as such Senator until a special election or general election shall have been held pursuant to law and the board of state canvassers can deliver to his successor a certificate of election (§ 19:3–26).

NEW MEXICO

Unless otherwise designated, references are to New Mexico Statutes, current through the First Special Session of the 49th Legislature.

Primary Elections, when held.

First Tuesday in June of each even-numbered year (§ 1–8–11). (June 1, 2010).

Nominations, Papers, Petitions, Etc.

Party candidate for primary

A "major political party" is defined by § 1–1–9 as a party, any of whose candidates received 5 percent of the total number of votes cast at the last preceding general election for Governor or President.

Declarations of candidacy.—File with the Secretary of State between 9 a.m. and 5 p.m. on second Tuesday in February of each even-numbered year (§§ 1–8–25, 1–8–26).

Nominating petition.—A nominating petition, signed by a number of voters equal to at least 3 percent of the vote of the candidates party in the state (§ 1–8–33).

Minor parties.

A "minor political party" is defined by § 1–1–9 as a party, none of whose candidates received 5 percent or more of the total number of votes cast at the last preceding general election for Governor or President. If the minor party rules require nomination by convention, the chairman and the Secretary of the State political convention, shall certify to the Secretary of State the name of the party's nominee on the twenty first day following the primary election. The certificate must be accompanied by a petition containing a list of signatures and addresses of voters totaling not less than 1 percent of the total vote cast at the last preceding general election for Governor or President (§ 1–8–2).

Independent candidates.

Nominating petition.—Signed by a number of voters equal to at least 3 percent of the total number of votes cast in the State for Governor at the last preceding general election at which a Governor was elected. The voter shall not sign a petition for an independent candidate if he has signed a petition for another independent candidate for the same office (§ 1–8–51).

Such petitions shall be filed with the Secretary of State during the period commencing at 9 a.m. on the day following the primary election of each even-numbered year and ending at 5 p.m. of the same day (§ 1–8–52).

Declaration of candidacy.—Candidate shall swear that he has declined to designate his party affiliation and has not changed his declination subsequent to the date of issuance of the governor's proclamation for the primary election in the year of the general election at which he seeks to be a candidate (§ 1–8–48).

Filing Fees and Assessments.—No statutory provision.

Crossfiling by Candidates.

Prohibited.—No person may become a candidate for nomination by a party unless his record or registration shows his affiliation with that party and residence within New Mexico on the date of the Governor's proclamation for the primary (§§ 1–8–18, 1–8–29).

If a person has been a candidate for the nomination of a party in the primary, he shall not have his name printed on

the ballot at the next succeeding general election under any party name except the name of the party designated on his declaration of candidacy filed for the primary (§ 1–8–19).

No person shall be a candidate in the primary for more than one office except that a person may be a candidate for both the expiring term and the next succeeding term for an office when both terms are to be voted upon at the next succeeding general election (§ 1–8–20).

Write-in Provisions.

Permitted in primary under certain conditions (§ 1–8–36.1).

Permitted in general elections (§ 1–12–19.1); on voting machines (§ 1–12–19.1).

Vacancy in Office.

If a vacancy occurs, the Governor shall make a temporary appointment to fill the vacancy until such time as an election is held to fill the vacancy for the unexpired term.

The election to fill the vacancy for the unexpired term shall be held at the next general election occurring not less than thirty (30) days subsequent to the happening of such vacancy.

If the vacancy occurs within thirty (30) days next preceding a general election, the person appointed by the Governor to fill the vacancy shall hold office until the next general election occurring more than thirty (30) days subsequent to the happening of the vacancy unless the term of office for such Senator shall sooner expire.

Candidates to fill a vacancy in the office of United States Senator for an unexpired term shall be nominated and elected in the same manner as candidates are nominated and elected for the full term (§ 1–15–14).

NEW YORK

Unless other designated, references are to New York Consolidated Laws Service current through March 24, 2010.

Primary Elections, when held.

First Tuesday after second Monday in September (§ 8–100). (September 14, 2010).

Nomination for United States Senator is made by party State committee or by the enrolled voters of the party (§ 6–104).

Nominating Papers, Petitions, Etc.

Party candidate.

Certificate of nomination.—State party committee may designate a candidate for U.S. Senate by majority vote at a meeting held not earlier than twenty-one days before the first day to sign designating petitions and not later than the first day to sign designating petitions for the primary election (§ 6–104).

Each committee member casts number of votes in accordance with ratio which number of votes cast for party's candidate for governor in committee member's assembly district in preceding gubernatorial election bears to total party vote cast for governor in the entire State in that election. Name of the candidate who has received the designation of the state committee and the office for which designated shall be filed with the State

Board of Election within four days after such meeting (§ 6–104).

Other party candidates, who received 25 percent or more of total vote cast by party State committee on any one balloting, shall also be filed by the committee with the State Board of Elections at the same time (§ 6–104(7)). Such persons may be placed on party primary ballot by making written demand to the State Board of Elections not later than 7 days after party state committee meeting (§ 6–104(2)).

Petition by enrolled party members may also be used to have candidate's name placed on primary ballot (§ 6–104(5)). Petition must be signed by not less than 15,000 or 5 percent, whichever is less, of enrolled party voters within the state of whom not less than 100 or 5 percent, whichever is less, of such enrolled voters shall reside in each of one-half of the congressional districts of the State (§ 6–136(1)). Petition shall be filed with the State Board of Elections not earlier than the 10th Monday and not later than the 9th Thursday before the primary (§ 6–158(1)).

If more than one candidate is designated for the nomination of a party for the office of U.S. Senator, the party nomination shall be made at the primary election (§ 6–160(1)).

Independent candidate.

Nominating petition.— Signatures of at least 15,000 voters required, of whom at least 100 shall reside in each of one-half of the congressional districts of the State (§ 6–142(1)). File not earlier than 12 weeks and not later than 11 weeks preceding the general election (§ 6–158(9) with the State Board of Elections (§ 6–144).

First nominations by new party may be made in such manner as the party rules provide (§ 6–128(1)). An independent body becomes a party when its candidate for Governor at the last preceding gubernatorial election polled at least 50,000 votes (§ 1–104(3)).

Certificate of acceptance of party nomination.— If nominated by party of which he is not a duly enrolled member, or if nominated by more than one party or independent body, such person shall file a certificate accepting the nomination as a candidate of each such party or independent body other than that of the party with which he is enrolled (§ 6–146(1)). File with the State Board of Elections (§ 6–144) not later than the third day after the 11th Tuesday preceding the general election (§ 6–158(11)).

Filing Fees and Assessments.—No statutory provision.

Crossfiling by Candidates.

Candidate must be enrolled member of party at time State party committee files certificate of nomination or when designating petition for primary is filed by party members (§§ 6–120(1); 6–120(2)). However, the State committee of a party, at a meeting, may by a majority vote of those present authorize the nomination of a person who is not so enrolled (§ 6–120(3)). If nominated by party of which he is not a duly enrolled member, a candidate shall file a certificate accepting the nomina-

tion as a candidate of such party or independent body other than of the party with which he is enrolled (§ 6–146(1)).

Write-in Provision.

Permitted in primary (§ 7–114g) and in general election (§ 7–104), on voting machines (§§ 8–308; 7–104(7)).

Vacancy in Office.

If a vacancy occurs in any even-numbered calendar year on or after the 59th day prior to an annual primary election, the Governor shall make a temporary appointment to fill such vacancy until the third day of January in the year following the next even-numbered calendar year. If such vacancy occurs in any even-numbered calendar year on or before the 60th day prior to an annual primary election, the Governor shall make a temporary appointment to fill such vacancy until the third day of January in the next calendar year. If a vacancy occurs in any odd-numbered year, the Governor shall make a temporary appointment to fill such vacancy until the third day of January in the next odd-numbered calendar year. Such an appointment shall be evidenced by a certificate of the Governor which shall be filed in the Office of the State Board of Elections along with a writ of election (N.Y. Pub. Off. Law § 42(4–a)).

NORTH CAROLINA

Unless otherwise designated, references are to North Carolina General Statutes current through the 2009 Regular Session.

Primary Elections, when held.

Tuesday next after the first Monday in May (§ 163–1(b)). (May 4, 2010).

Second Primary (runoff), when held.

In case no candidate receives a substantial plurality, or in case of a tie between two candidates or more, a second primary shall be held 7 weeks after the first primary (§ 163–111(e)). (June 22, 2010).

Nominating Papers, Petitions, Etc.

Party candidate for primary

Notice of candidacy and pledge not to run as write-in candidate if defeated in the primary.—File with State Board of Elections no earlier than 12 noon on the second Monday in February and no later than 12 noon on the last business day in February preceding the primary (§ 163–106(c)).

Independent candidate

Nominating petition accompanied by affidavit of candidate that he seeks independent nomination and is not affiliated with any political party.—Signatures are required of at least 2 percent of total number of registered voters in the State. Also, the petition must be signed by at least 200 registered voters from each of 4 congressional districts. File with State Board of Elections on or before 12 noon on the last Friday in June (§ 163–122(a)(1)).

Filing Fees and Assessments (§ 163–107).—Required of candidates in primary.

Amount.—One percent of annual salary.

Date of payment.—Time of filing notice of candidacy.

To whom paid.—State Board of Elections.

The petition must be filed with the State Board of Elections no earlier than 12 noon on the second Monday in February and no later than 12 noon on the last business day in February preceding the primary (§§ 163–106(c), 163–107(a)).

Crossfiling by Candidates.

Prohibited. Candidate must be affiliated with party whose nomination he seeks, and must pledge that if defeated in the primary he will not run for the same office as a write-in candidate in the next general election (§ 163–106).

Write-in Provisions.

Permitted in primary and general election (§ 163–165.5).

Vacancy in Office.

Whenever there shall be a vacancy in the office of United States Senator, whether caused by death, resignation, or otherwise than by expiration of term, the Governor shall appoint to fill the vacancy until an election shall be held to fill the office. The Governor shall issue his writ for the election of a Senator to be held at the time of the first election for members of the General Assembly that is held more than 60 days after the vacancy occurs. The person elected shall hold office for the remainder of the unexpired term. The election shall take effect from the date of the canvassing of the returns (§ 163–12).

NORTH DAKOTA

Unless otherwise designated, references are to the North Dakota Century Code current through the 2009 Legislative Session.

Primary Elections, when held.

Second Tuesday in June in general election years (§ 16.1–11–01). (June 8, 2010).

Nominating Papers, Petitions, Etc.

Party candidate for primary

Candidate's petition, accompanied by *candidate's affidavit* that he seeks nomination of certain political party.—Signatures of legal voters of his party are required, equal in number to 3 percent of the total vote cast for candidates of such party for the same position at the last general election, but not more than 300 signatures may be required. (§ 16.1–11–06). A candidate's affidavit must accompany the petition. (§ 16.1–11–10). File with Secretary of State, before 4 p.m. of the 60th day prior to any primary election (§ 16.1–11–06).

A certificate of endorsement, may be presented in lieu of a candidate's petition, signed by the state chairman of a legally recognized political party containing the candidate's name, post-office address, and telephone number, the title of the office, and the party the candidate represents (§ 16.1–11–06).

Independent candidate

Certificate of nomination.—No fewer than 1000 signatures are required of qualified electors residing in the State (§ 16.1–12–02). File with the Secretary of State not later than 4 p.m. of the 60th day before general election (§ 16.1–12–04).

Filing Fees and Assessments.—No statutory provisions.

Crossfiling by Candidates.

Prohibited. Must represent the party whose nomination he seeks (§ 16.1–11–10). If nominated by more than one party, candidate must make a selection (§ 16.1–12–06). A defeated primary candidate is ineligible to have his name printed on the general election ballot as candidate for the same office (§ 16.1–13–06).

Write-in Provisions.

Permitted in primary and general election (§ 16.1–11–35, 16.1–13–25); however, no person shall be deemed nominated at any primary election unless the number of votes received by him equals the number of signatures needed on the petition to have a candidate's name printed on the primary ballot (§ 16.1–11–36).

Vacancy in Office.

When a vacancy occurs in the office of United States Senator, the governor shall issue a writ of election to fill the vacancy at the next statewide primary or general election, whichever occurs first, and that occurs at least ninety days after the vacancy. However, if the next primary or general election at which the vacancy could be filled, occurs in the year immediately preceding the expiration of the term, then no election may be held. The governor, by appointment, may fill the vacancy temporarily, but any person so appointed shall serve only until the vacancy is filled by election or until the term expires if no election can be held (§ 16.1–13–08).

OHIO

Unless otherwise indicated, references are to the Ohio Revised Code current through legislation passed by the 128th Ohio General Assembly and filed with the Secretary of State through File 30.

Primary Elections, when held.

On the first Tuesday after the first Monday in May of every other year (§ 3513.01(A)). (May 4, 2010)

Nominating Papers, Petitions, Etc.

Party candidates for primary

Declaration of candidacy and petition.—Signatures required of at least 1,000 qualified voters of his party. File with Secretary of State, not later than 4 p.m. of the 75th day before primary (§§ 3513.04, 3513.05, 3513.07).

Independent candidates

Nomination petition and statement of candidacy.—Must have no less than 5,000 signatures. File with Secretary of State not later than 4 p.m. of the day before the primary election (§ 3513.257).

Filing Fees and Assessments (§ 3513.10).

By all candidates. Including independent and write-in candidates.

Amount.—$100.

Date of payment.—At time of filing nominating papers or declaration of intent to be a write-in candidate.

To whom paid.—Secretary of State.

Crossfiling by Candidates.

Prohibited.—Candidate required to support party (§ 3513.07). No person shall be a candidate for nomination or election at a party primary if he voted in the primary of a different party within the current year and the immediately preceding two calendar years (§ 3513.191). Person who seeks party nomination in primary by declaration of candidacy or by declaration of intent to be a write-in candidate shall not be permitted to become a candidate at the following general election for any office by nominating petition or by write-in (§ 3513.04).

Subversive Parties Barred from Ballot.

Advocating overthrow of Government by force—Parties or groups engaged in un-American activities are barred from the ballot (§ 3517.07).

Write-in Provisions.

Permitted in primary (§§ 3513.14, 3513.23) and in general election; but write-in votes shall not be counted for any candidate who has not filed a declaration of intent to be a write-in candidate. File such declaration with Secretary of State before 4 p.m. of the seventy-second day preceding the election (§ 3513.041).

Statutes provide for write-ins on voting machines—(§ 3506.10(B)), and on punch card voting systems—(§ 3506.06(B)).

Candidate defeated in primary may not become a candidate at the following general election by nominating petition or by write-ins (§ 3513.04).

Vacancy in Office.

If a vacancy occurs, the Governor shall make a temporary appointment of some suitable person having the necessary qualifications for Senator. The appointee shall hold office until the 15th of December succeeding the next regular state election which occurs more than 180 days after such vacancy happens. At that next regular state election, a special election to fill the vacancy shall be held, provided, that when the unexpired term ends within 1 year immediately following the date of such regular state election the appointment shall be for the unexpired term (§ 3521.02).

OKLAHOMA

Unless otherwise indicated, references are to the Oklahoma Statutes current through the 2009 First Regular Session of the 52nd Legislature.

Primary Elections, when held.

Last Tuesday in July in even-numbered years (§ 1–102). (July 27, 2010).

Second (Runoff) Primary, when held.

If no candidate receives a majority of the votes cast, a second (runoff) primary shall be held on the fourth Tuesday in August (§ 1–103). (August 24, 2010).

Nominating Papers, Petitions, Etc.

Party candidate for primary

Declaration of candidacy.—File with Secretary of the State Election Board no earlier than 8 a.m. on the first Monday in

June and no later than 5 p.m. on the next succeeding Wednesday (§§ 5–102, 5–110).

Petition supporting candidate's filing.—A declaration of candidacy must be accompanied by a petition supporting a candidate's filing signed by 5 percent of the registered voters eligible to vote for a candidate in the first election wherein the candidate's name could appear on the ballot, as reflected by the latest January 15 registration report; or by a cashier's check or certified check in the amount of $1,000 for candidates filing with the Secretary of the State Election Board (§ 5–112).

New party candidates

Only candidates of "recognized political parties," i.e., those appearing on the general election ballot or those which are formed according to law may file for party nomination (§ 5–104 and § 1–107).

To file as a candidate for nomination by a political party, a person must have been a registered voter of that party for the 6-month period immediately preceding the first day of the filing period prescribed by law and, under oath, so state. This requirement shall not apply to a candidate for the nomination of a political party which attains recognition less than 6 months preceding the first day of the filing period required by law. However, the candidate shall be required to have registered with the newly recognized party within 15 days after such party recognition (§ 5–105).

Filing Fees and Assessments (§ 5–112).

May be paid by party candidates for primary in lieu of a petition signed by 5 percent of voters registered and eligible to vote for such candidate in the first election wherein the candidate's name could appear on the ballot.

Amount.—$1,000.

Date of payment.—When filing declaration.

To whom paid.—Secretary of State Election Board.

If a candidate is unopposed in the primary, becomes a candidate in the runoff primary, or receives more than 15 percent of the votes cast for the office for which he is a candidate at the first election wherein his name appears on the ballot, the filing fee shall be immediately returned to the candidate (§ 5–113).

Crossfiling by Candidates.

To file as a candidate for nomination of a party, a person must be a registered voter of the party (§ 5–105). May file for no more than one office at any election (§ 5–106).

Subversive Parties and Individuals Barred from Ballot.

No provisions.

Write-in Provisions.

No statutory provisions.

Vacancy in Office.

Whenever a vacancy shall occur in the office of a member of the United States Senate from Oklahoma, such vacancy shall be filled at a special election to be called by the Governor within 30 days after occurrence of the vacancy. No special election shall be called if the vacancy occurs after March 1 of any even-numbered year if the term of the office expires the following

year. In this case the candidate elected to the office at the regular General Election shall be appointed by the Governor to fill the unexpired term (§ 12–101).

OREGON

Unless otherwise designated, references are to the Oregon Revised Statutes through the 2009 Session of the 75th Legislative Assembly.

Primary Elections, when held.

Third Tuesday in May of each even-numbered year (§ 254.056(2)). (May 18, 2010).

Nominating Papers, Petitions, Etc.

A nominating petition for an office to be voted for in the state at large shall contain signatures of members of the same major political party as the candidate. Except as provided in this subsection, there shall be at least 1,000 signatures or the number of signatures at least equal to two percent of the vote cast in the state or congressional district, as the case may be, for the candidates of that major political party for presidential electors at the last presidential election, whichever is less (§ 249.068).

A nominating petition or declaration of candidacy shall be filed not sooner than the 250th day and not later than the 70th day before the date of the primary election (§ 249.037). File with Secretary of State (§ 249.035).

Declaration of candidacy

In lieu of petition for nomination with required number of signatures, a person can have his name printed as a candidate on his party's primary ballot by filing a declaration of candidacy and paying required filing fee (§ 249.020). File with Secretary of State (§ 249.035) not sooner than the 250th day and not later than the 70th day before the date of the primary election (§ 249.037).

Candidates of other than major parties

A minor political party, assembly of electors or individual electors may nominate one candidate for each partisan public office to be filled at the general election by preparing and filing a certificate of nomination as provided in ORS 249.712 to 249.850 (§ 249.705).

If nomination is made by a convention or assembly, a copy of the minutes of the meeting must accompany the certificate of nomination (§ 249.735).

If nomination is made by individual electors, the certificate of nomination shall contain a number of signatures of electors in the electoral district equal to not less than one percent of the total votes cast in the electoral district for which the nomination is intended to be made (§ 249.740).

Filing Fees and Assessments (required only of candidates who file a declaration of candidacy) (§§ 249.056, 249.035).

Amount.—$150 for U.S. senatorial candidate.

Date of payment.—At time of filing declaration of candidacy.

To whom paid.—Secretary of State.

Crossfiling by Candidates.

Prohibited. If the candidate is seeking the nomination of a major political party, a statement that the candidate, if not nominated, will not accept the nomination or endorsement of any political party other than the one of which the candidate is a member on the date the petition or declaration is filed. (§ 249.031(g)).

If a candidate has not been a member of the major political party for at least 180 days before the deadline for filing a nominating petition or declaration of candidacy, the candidate shall not be entitled to receive the nomination of that major political party. If a candidate's registration becomes inactive, the inactive status shall not constitute a lapse of membership in the party if, immediately before the registration became inactive, the candidate was a member of the party and was not a member of any other political party within the 180 days preceding the deadline for filing a nominating petition or declaration of candidacy. The requirement that the candidate be qualified by length of membership does not apply to any candidate whose 18th birthday falls within the period of 180 days or to a write-in candidate (§ 249.046).

A candidate for nomination of a major political party to a public office who fails to receive the nomination may not be the candidate of any other political party or a nonaffiliated candidate for the same office at the succeeding general election (§ 249.048).

As to candidates not nominated at primary elections, the acceptance of the nominee shall either accompany the certificate of nomination or it must be filed after the certificate is filed but before the time for filing nominations for the office has expired (§ 249.712). Independent candidates and candidates nominated by an assembly of electors must state in their certificates of nomination that they were not affiliated with any political party for at least 180 days before the deadline for the filing of certificates of nomination (§ 249.720(e)).

Subversive Parties Barred from Ballot.

Advocating overthrow of Government by force.—§ 236.030.

Write-in Provisions.

Permitted in primary and general elections and on voting machines (§ 254.145).

Vacancy in Office.

Under Article V, Section 16 of the Constitution of Oregon, if a vacancy occurs in the office of United States Senator, the vacancy shall be filled at the next general election provided such vacancy occurs more than 61 days prior to such general election.

If a vacancy in election or office of United States Senator occurs before the 61st day before the general election, the Governor shall call a special election to fill that vacancy. If a vacancy in election or office of United States Senator occurs after the 62nd day before the general election but on or before the general election, and if the term of that office is not regularly filled at that election, the Governor shall call a special election to fill the vacancy as soon as practicable after the general election.

If a special election to fill the vacancy in election or office of United States Senator is called before the 80th day after the vacancy occurs, each major political party shall select its nominee for the office and certify the name of the nominee to the Secretary of State. The Secretary of State shall place the name of the nominee on the ballot.

If a special election to fill the vacancy in election or office of United States Senator is called after the 79th day after the vacancy occurs, a special primary election shall be conducted by the Secretary of State for the purpose of nominating a candidate of each major political party. A declaration of candidacy or nominating petition may be filed not later than the 10th day following the issuance of the writ of election (§ 188.120).

PENNSYLVANIA

Unless otherwise designated, references are to title 25 Pennsylvania Statutes Annotated current through Act 17 of the 2010 Legislative Session.

Primary Elections, when held.

Third Tuesday in May in even-numbered years, except in presidential election years, when it shall be held on the 4th Tuesday in April (§ 2753) (May 18, 2010).

Nominating Papers, Petitions, Etc.

Party candidates for primary

Candidates for nomination for the United States Senate shall present a nomination petition containing 2,000 signatures of registered and enrolled party members (§ 2872.1). File with Secretary of the Commonwealth (§ 2873(a)), on or before the 10th Tuesday prior to the primary (§ 2873(d)).

Candidates of political bodies which do not qualify as political parties (§ 2831(c)).

Nomination papers signed by qualified electors of the State are to be filed with the Secretary of the Commonwealth (§ 2911). Signatures are required equal in number to 2 percent of largest entire vote cast for any elected candidates in the State at large in last preceding election (§ 2911(b)). The nomination papers are to be filed with the Secretary of the Commonwealth on or before the second Friday subsequent to the primary (§ 2913(c)).

Loyalty affidavits.

All candidates must file with nomination petition, nomination paper, or nomination certificate a statement under oath or affirmation that he is not a subversive person. Write-in candidate nominated at a primary must file affidavit within 60 days after primary. Write-in candidate elected in general election must file affidavit prior to being sworn into the office to which he is elected (Title 65, § 224).

Filing Fees and Assessments.

Amount.—Party candidates, $200 (§ 2873(b.1)).

Date of payments.—At time of filing nomination petitions (§ 2873(b.1)) or nomination papers (§ 2914).

To whom paid.—Secretary of Commonwealth (§§ 2873(a)).

Crossfiling by Candidates.

Prohibited. Person may not be candidate of more than one party (§ 2911(e)(5)).

Subversive Parties Barred from Ballot.

Advocating overthrow of Government by force.—(§ 2831(d)).

Write-in Provisions.

Permitted in primary (§ 2962(b)), and in general election (§ 2963(a)); electronic voting system (§ 3031.12(a)(3)).

Vacancy in Office.

If a vacancy occurs, it shall be filled for the unexpired term by the vote of the electors of the State at a special election held at the next general or municipal election, occurring at least 90 days after the happening of such vacancy.

Candidates shall be nominated by political parties in accordance with party rules and by means of nomination certificates. Until such time as the vacancy shall be filled by an election, the Governor may make a temporary appointment to fill the vacancy (§ 2776).

RHODE ISLAND

Unless otherwise specified, references are to the General Laws of Rhode Island, current through the January 2009 Session.

Primary Elections, when held.

Second Tuesday after first Monday in September of even numbered years (§ 17–15–1). (September 14, 2010). When any primary falls on a religious holiday such primary shall be held on the next business day following, other than Saturday (§ 17–15–2).

Nominating Papers, Petitions, Etc.

Party candidate for primary

Declaration of candidacy.—During the last consecutive Monday, Tuesday, and Wednesday in June in the even years preceding a primary. The declaration of candidacy must be filed not later than 4 p.m., on the last day for filing with the Secretary of State (§ 17–14–1).

Nomination papers.—Upon receipt of declaration of candidacy, the Secretary of State shall prepare nomination papers for each person who has filed a declaration of candidacy. (17–14–4).

Signatures are required of at least 1,000 voters for a U.S. Senatorial candidate (§ 17–14–7). Submit nomination papers for verification on the 60th day before primary to local board of elections of city or town where signers vote (§ 17–14–11).

State party committee may endorse a candidate for the United States Senate by filing notification of same with Secretary of State by 4 p.m. on the second day after the final day for filing declarations of candidacy. (§ 17–12–4). Candidates for nomination endorsed by party committee shall be combined on the same nomination papers (§ 17–14–4).

Certificate of signatures.—Local board shall certify number of names and qualifications of signers and shall file all nomination papers for State officers with Secretary of State (§ 17–14–11). Nomination papers shall be filed not later than 60 days before primary (§ 17–14–11).

Independent candidate on final nomination papers

Declaration of candidacy.—Nomination papers must be filed not later than 4 p.m. 60 days before the primary with Secretary of State (§§ 17–14–11).

Nomination papers.—Upon receipt of declaration, the Secretary of State shall prepare nomination papers for each candidate who has filed a declaration of candidacy and shall furnish nomination papers to the candidate (§§ 17–14–4). Signatures of at least one thousand voters are required for the nomination papers of a U.S. senatorial candidate (§ 17–14–7).

Filing Fees and Assessments.—No statutory provisions.

Crossfiling by Candidates.

Party candidates are not eligible for independent nomination, and independent candidates are not eligible for party nomination (§ 17–14–2.1). Whenever any person seeks elective office, that person shall not have been a member of a political party other than the declared political party within 90 days of the filing of his or her declaration of candidacy. (§ 17–14–1.1).

Subversive Parties Barred From Ballot.—No statutory provisions.

Write-in Provisions.

Permitted in general elections (§ 17–19–31).

Vacancy in Office.

Whenever a person elected a senator in congress, at any time between the day of that person's election and the beginning of his or her term of office, refuses to serve and so declares to the secretary of state, or dies, becomes insane, removes from the state, or is otherwise incapacitated, or whenever a vacancy happens in the representation of this state in the United States senate, the governor shall issue his or her writ of election directed to the several city and town clerks, or local boards as the case may be, ordering a new election of senator to fill the vacancy to be held in the state at as early a date, to be stated in the writ, as will be in compliance with the provisions of law in relation to these elections, but not election provided for by this section shall be held exclusively on Saturday; provided, that whenever a vacancy occurs between the first day of July and the first day of October in any even numbered year, the governor shall, unless in his or her opinion the public good requires an earlier special election, issue his or her writ for a special election to fill the vacancy to be held with the general election on the Tuesday next after the first Monday in November of that year (§ 17–4–9).

SOUTH CAROLINA

Unless otherwise designated, references are to the South Carolina Code of Laws Annotated current through the 2009 Regular Session.

Primary Elections, when held.

Second Tuesday in June in general election years (§ 7–13–40) (June 8, 2010).

If no candidate receives a majority in the first primary, a second shall be held and, if necessary, a third, each two weeks successively thereafter (§ 7–13–40, § 7–13–50).

State Convention.

Candiates for U.S. Senator may also be nominated by convention (§§ 7–11–10, 7–11–30).

Nominating Papers, Petitions, Etc.

Party candidate for primary

Notice of candidacy and pledge to support party candidates.

File with treasurer of State committee of his political party by 12 noon on March 30 (§ 7–11–210).

Party candidate nominated by convention (§ 7–11–30).

Use of convention method must be approved by a three-fourths vote of the total membership of such convention (§ 7–11–30).

Independent candidate

Nominating petition.—Signatures of at least 5 percent of qualified registered electors in the State, but not more than 10,000. The petition must be certified to State Election Commission (§ 7–11–70).

Nominees by petition.—Any nominee by petition for offices to be voted on in the general election must be placed upon the appropriate ballot by the officer, commissioners or other authority charged by law with preparing the ballot if the petition is submitted to the officer, commissioner, or other authority, as the case may be, for general elections held under § 7–13–10, not later than 12 noon on July 15th, or if July 15th falls on Saturday or Sunday, not later than 12 noon on the following Monday (§ 7–13–351).

Certified for ballot.—Nominees in a party primary or party convention to be voted on in the general election must be placed on the appropriate ballot for the election as candidates nominated by the party by the authority charged by law with preparing the ballot if the names are certified by the political party chairman, vice chairman, or secretary to the authority not later than 12 noon on August 15th or, if August 15th falls on Saturday or Sunday, not later than 12 noon on the following Monday (§ 7–13–350).

Filing Fees and Assessments (for primary candidates)—

The filing fees for all candidates filing to run in all primaries must be transmitted by the respective political parties to the State Election Commission and placed by the executive director of the commission in a special account designated for use in conducting the primaries and must be used for that purpose. The filing fee for each office is one percent of the total salary for the term of that office or one hundred dollars, whichever amount is greater (§ 7–13–40).

Crossfiling by Candidates.

Prohibited. If a person defeated as a candidate for nomination in the primary campaign is a candidate against his party's nominee, party officials should institute court action for an injunction (§ 7–11–210).

Subversive Parties Barred from Ballot.

No statutory provisions.

Write-in Provisions.

Permitted in general election (§ 7–13–360); on voting machines (§ 7–13–1850).

Nothing contained in this section shall be construed to prevent the use of electronic methods of casting write-in ballots or the use of voting machines which do not employ paper and handwriting methods or technology for casting write-in ballots. (§ 7–13–800).

Vacancy in Office.

If a vacancy occurs, the Governor may fill such vacancy by appointment for the period of time intervening between the date of such appointment and January 3 following the next succeeding general election. But, if such vacancy occurs less than 100 days prior to any general election, the appointment shall be for the period of time intervening between the date of such appointment and January 3 following the second general election next succeeding. The Governor shall within 5 days after any such appointment order an election to occur at the time of the general election immediately preceding the expiration date of the appointment if at the expiration of such appointment an unexpired term shall remain. (§ 7–19–20).

SOUTH DAKOTA

Unless otherwise indicated, references are to the South Dakota Statutes Annotated current through all 2009 legislation passed at the 84th Regular Session

Primary Elections, when held.

First Tuesday after the first Monday in June in even-numbered years (§§ 12–2–1). (June 8, 2010).

If no candidate receives 35 percent of the votes of his party, a secondary election is held 3 weeks from the date of the first primary (§§ 12–6–51.1).

Nominating Papers, Petitions, Etc.

Party candidate for primary

Nominating petition.—Signatures are required of not less than 1 percent of the number of voters who cast their votes for that party's candidate for Governor at the last general election (§ 12–6–7). No candidate for any office to be filled, or nomination to be made, at the primary election, other than a presidential election, may have that person's name printed upon the official primary election ballot of that person's party, unless a petition has been filed on that person's behalf not prior to January first, and not later than the last Tuesday of March at five p.m. prior to the date of the primary election (§ 12–6–4).

Independent candidate

Certificate of nomination.—Signatures are required of not less than 1 percent of total State vote cast for Governor at the last general election. File with Secretary of State between 8 a.m. on January 1 and 5 p.m. on the first Tuesday after the first Monday in June. Certificate of nomination may not be circulated before January 1 of the year of the election (§ 12–7–1, 12–7–1.1).

Filing Fees and Assessments.—No statutory provision.

Crossfiling by Candidates.

No person may be a candidate for nomination to more than one public office (§§ 12–6–3, 12–7–5).

Subversive Parties Barred from Ballot.

No statutory provisions.

Write-in Provisions.

No statutory provisions.

Vacancy in Office.

If a vacancy occurs, it is the duty of the Governor within 10 days of the occurrence to issue a proclamation setting the date of and calling for a special election to fill the vacancy. The election shall be held not less than 80 nor more than 90 days after the vacancy occurs (§ 12–11–1). The Governor may fill by temporary appointment, until a special election is held, vacancies in the office of U.S. Senator (§ 12–11–4).

TENNESSEE

Unless otherwise designated, references are to be the Tennessee Code Annotated, current through the 2010 First Extraordinary Session

Primary Elections, when held.

First Thursday in August in even-numbered years (§ 2–13–202, 2–1–104(25)). (August 5, 2010).

Nominating Papers, Petitions, etc.

Nominating petition must have candidate's signature as well as signatures of at least 25 registered voters eligible to vote to fill the office. File original with State Election Commission and certified duplicates with the coordinator of elections and with the chairman of the party's state executive committee, not later than 12 noon on the first Thursday in April (§§ 2–5–101 and 2–5–103).

Filing Fees.

No statutory provisions.

Crossfiling by Candidate.

No person may qualify as a candidate in a primary election with more than one party in which he seeks the same office. It is also unlawful for any person to qualify as an independent candidate and as a primary candidate for the same office in the same year. No person defeated in a primary election, or party caucus in any county having a population of not less than twenty-seven thousand five hundred (27,500) nor more than twenty-seven thousand seven hundred fifty (27,750), according to the 1990 federal census or any subsequent federal census, shall qualify as an independent for the general election. No candidate in a party primary election, or party caucus in any county having a population of not less than twenty-seven thousand five hundred (27,500) nor more than twenty-seven thousand seven hundred fifty (27,750), according to the 1990 federal census or any subsequent federal census, may appear on the ballot in a general election as the nominee of a different political party, or as an independent (§ 2–5–101(f)).

Subversive Parties Barred from Ballot.

Advocating overthrow of Government by force (§ 2–1–114).

Write-in Provisions.

Permitted in all elections using paper ballots (§§ 2–7–114, 2–5–207), when using a voting machine a paper ballot should be requested (§ 2–7–117). In order for any person to receive a party nomination by write-in ballots, he must receive at least

5 percent of the total number of registered voters of the district unless there are candidates for the office involved listed on the official ballot (§ 2–8–113).

Vacancy in Office.

If a vacancy occurs in the office of United States Senator, a successor shall be elected at the next regular November election and shall hold office until the term for which his predecessor was elected expires. If the vacancy will deprive the State of its full representation at any time Congress may be in session, the governor shall fill the vacancy by appointment until a successor is elected at the next regular November election and is qualified (§ 2–16–101).

TEXAS

Unless otherwise indicated, references are to Texas Annotated statutes current through the 2009 1st Called Session.

Primary Elections, when held.

First Tuesday in March in even-numbered years (§ 41.007(a)). (March 2, 2010).

Second Primary (runoff), when held.

The runoff primary election date is the second Tuesday in April following the general primary election (§ 41.007(b)).

Nominating Papers, Petitions, Etc.

Party candidate for primary.—Parties which received over 20 percent of the vote for Governor at the last election (§ 172.001). To be entitled to a place on the general primary election ballot, a candidate must make an application for a place on the ballot. An application must, in addition to complying with section 141.031 (general requirements for application), be accompanied by the appropriate filing fee or, instead of the filing fee, a petition that satisfies the requirements prescribed by Section 141.062 (validity of petition) (§ 172.021). The filing fee for a candidate for nomination in the general primary election for United States senator is $5,000 (§ 172.024).

An application must be filed with the state chair of a political party for an office filed by votes of more than one county (§ 172.022). An application for a place on the general primary election ballot must be filed not later than 6 p.m. on January 2 of the primary election year unless the filing deadline is extended (§ 172.023).

Petition signatures required.—The minimum number of signatures that must appear on a petition for a statewide office is 5,000 (§ 172.025). Not later than the 57th day before the general primary election day, the state chair shall deliver the certification to the county chairman in each county in which the candidate's name is to appear on the ballot (§ 172.028(b)).

Independent candidates.—Independent candidates must file an application for a place on the general election ballot with the secretary of state accompanied by a petition not later than 5 p.m. of the 30th day after the runoff primary (§§ 142.004, 142.005, and 142.006). The petition for a statewide office must include signatures equal to 1 percent of the total vote received

by all candidates for governor at the most recent gubernatorial general election (§ 142.007).

Minor party nomination.—To be entitled to have the names of its nominees placed on the general election ballot, a political party required to make nominations by convention must file with the secretary of state, not later than the 75th day after the date of the precinct conventions held under this chapter, lists of precinct convention participants indicating that the number of participants equals at least one percent of the total number of votes received by all candidates for governor in the most recent gubernatorial general election. The lists must include each participant's residence address and voter registration number. A political party is entitled to have the names of its nominees placed on the ballot, without qualifying, in each subsequent general election following a general election in which the party had a nominee for a statewide office who received a number of votes equal to at least five percent of the total number of votes received by all candidates for that office. (§ 181.005). An application for nomination by convention must be filed with the state chair not later than 5 p.m. on January 2 preceding the convention (§ 181.033(a)). A political party nominating by convention must make its nomination for statewide offices at a state convention held on the second Saturday in June in the election year (§ 181.061(a)).

Filing Fees and Assessments.

Amount.—$5,000.

Date of payment.—The time of filing an application for a place on the general primary ballot (§ 172.021).

To whom paid.—State chair of state executive committee of a political party (§§ 172.022, 171.001).

Crossfiling by Candidates.

Prohibited.—Candidate required to be affiliated with party whose nomination he seeks (§ 172.021).

Subversive Parties Barred From Ballot.

Candidate must take an oath to support and defend the constitutions and the laws of the United States and the State of Texas (§ 141.031(K)).

Write-in Provisions.

Voting systems must permit write-in voting (§ 122.001(a)(9)). Write-in voting is not permitted in primary elections (§ 172.112).

Vacancy in Office.

The governor shall appoint a person to fill a vacancy in office if the vacancy exists or will exist when congress is in session. The appointee serves until a successor has been elected and has qualified (§ 204.002).

If a vacancy occurs during an odd-numbered year or after the 62nd day before general primary election day in an even-numbered year, the remainder of the unexpired term shall be filled by a special election except that the minimum number of signatures that must appear on a petition accompanying a candidate's application for a place on the ballot is 5,000 (§ 204.005).

UTAH

Unless otherwise designated, references are to Utah Code Annotated, current through the 2009 First Special Session.

Primary Elections, when held

Fourth Tuesday in June in each even-numbered year (§ 20A–9–403) (June 22, 2010).

Nominating Papers, Petitions Etc.

Independent candidates (§ 20A–9–501).

Certificate of nominations.—Signatures of 1,000 legal voters are required. File with Lieutenant Governor between March 7 and March 17 (§§ 20A–9–502, 20A–9–503).

Filing Fees and Assessments.

Amount.—One-eighth of 1 percent of total salary for full term (§ 20A–9–201).

Date of payment.—When filing nomination paper or acceptance (§ 20A–9–201).

To whom paid.—Lieutenant Governor (§ 20A–9–201).

Crossfiling by Candidates.

No candidate may file as an independent who has previously filed in the same year a declaration of candidacy with any political party (§ 20A–9–501).

Subversive Parties Barred From Ballot.

No statutory provisions.

Write-in Provisions.

Each person wishing to become a valid write-in candidate shall file a declaration of candidacy in person with the appropriate filing officer not later than 30 days before the regular general election or municipal general election in which the person intends to be a write-in candidate. The filing officer shall read to the candidate the constitutional and statutory requirements for the office; and ask the candidate whether or not the candidate meets the requirements. If the candidate cannot meet the requirements of office, the filing officer may not accept the write-in candidate's declaration of candicacy (§ 20A–9–601). Voters may insert the name of a valid write-in candidate (§ 20A–3–106).

Vacancy in Office.

When a vacancy occurs in the office of U.S. senator, it shall be filled for the unexpired term at the next regular general election. The governor shall appoint a person to serve as U.S. senator until the vacancy is filled by election from one of three persons nominated by the state central committee of the same political party as the prior office-holder (§ 20A–1–502).

VERMONT

Unless otherwise designated, references are to Title 17 of the Vermont Statutes Annotated, current through the 2009 Regular Session and the 2009 Special Session.

Primary Elections, when held.

Fourth Tuesday in August in each even-numbered year. (§ 2351). (August 24, 2010).

Nominating Papers, Petitions, Etc.

Party candidate for primary

Primary petitions with assent of candidate and 500 signatures of legal voters are required (§§ 2353, 2354, and 2355). File with Secretary of State (§ 2357) no sooner than the first Monday in June and not later than 5 p.m. on the third Monday of July preceding the primary election (§ 2356).

A voter shall not sign more than one primary petition for the same office, unless more than one nomination is to be made, in which case he may sign as many petitions as there are nominations to be made for the same office (§ 2354).

Candidate of minor political party (political party whose candidate for any State office in the most recent general election polled less than 5 percent of the vote cast for that office) may be nominated and have his name printed on the general election ballot (§§ 2103(23) and 2381).

Certificate of nomination.—These candidates may be nominated by the state committee (§ 2382). When a nomination is made under these provisions, the chairman and the secretary of the committee making the nomination shall file a statement under oath, setting forth the name and residence of the candidate, the office for which the nomination is made, and the committee making the nomination. The candidate shall file a consent to have his name printed on the ballot (§ 2385). Statements shall be filed not more than 60 days before the day of the general election and not later than 5 p.m. on the third day following the primary election (§ 2386). File with Secretary of State (§ 2387).

Independent candidate

Certificate of nomination.—Signatures of voters qualified to vote in an election for the office, equal in number to at least 500 (§ 2402(b)(1)). Primary petitions and statements of nomination from independent candidates shall be filed no sooner than the second Monday in May and not later than 5:00 p.m. on the second Thursday after the first Monday in June preceding the primary election and not later than 5:00 p.m. on the 62nd day prior to the day of a special primary election. No public official receiving nominations shall accept a petition unless a completed and signed consent form is filed at the same time (§§ 2356, 2402).

Filing Fees and Assessments—No statutory provision.

Crossfiling by candidates.

Not prohibited.—Person nominated for the same office by more than one party at a primary or convention, or as an independent, not later than the second Friday following the primary election may elect the party or parties in which he will be a candidate (§ 2474).

Subversive Parties Barred from Ballot.

Advocating overthrow of Government by force.—In order to qualify as an elector, a person must first take the voter's oath (§ 2121).

Write-in Provisions.

Permitted in primary (§ 2362) and in general elections (§ 2472).

Vacancy in Office.

If a vacancy occurs in the office of United States Senator, the governor shall call a special election to fill the vacancy. His proclamation shall specify a day for the special election and a day for a special primary. The special election shall be held not more than 3 months from the date that the vacancy occurs, except that, if vacancy occurs within 6 months of a general election, the special election may be held the same day as the general election (§ 2621). The governor may make an interim appointment to fill a vacancy in the office of United States Senator, pending the filling of the vacancy by special election (§ 2622).

VIRGINIA

Unless otherwise designated, references are to the Code of Virginia, current through the 2009 Regular Session, Acts 2009, cc. 1 to 879, and Acts 2009, Special Session I, cc. 1 to 4.

Primary Elections, when held.

Second Tuesday in June next preceding the general election (§ 24.2–515). (June 8, 2010).

Party to determine method of nominating

Each party shall have the power to provide whether a party nomination shall be made by direct primary or by some other method. (§ 24.2–509(A)).

Nomination Papers, Petitions, Etc.

Party candidate for primary

Declaration of candidacy and petition.—Signatures of 10,000 qualified voters of the state including at least 400 qualified voters from each congressional district (§ 24.2–521). Candidates must file declaration of candidacy, together with petition, affidavit and filing fee receipt with the State Board of Elections not earlier than noon of the 77th day and not later than 5 p.m. of the 60th day before the primary. (§ 24.2–522).

Independent candidate

Notice of candidacy and petition.—Signatures of 10,000 qualified voters of the state, including at least 400 qualified voters from each congressional district. (§ 24.2–506).

Filing Fees and Assessments.

For primary candidates

Amount.—Two percent of 1 year's minimum salary attached to the office for which he is candidate in effect in the year in which he files (§ 24.2–523).

Date of payment.—Before filing declaration of candidacy (§ 24.2–523).

To whom paid.—State Board of Elections (§ 24.2–524).

Crossfiling by Candidates.

Prohibited.—Candidate must be a member of the party whose nomination he seeks. Declaration of candidacy contains authorization to election officials not to print candidate's name on general election ballot if candidate is defeated at primary (§ 24.2–520).

Subversive Parties Barred From Ballot.

No statutory provisions.

Write-in Provisions.

Permitted on voting machines (§ 24.2–648).

Vacancy in Office.

When any vacancy occurs in the representation of the Commonwealth of Virginia in the United States Senate, the Governor shall issue a write of election to fill the vacancy for the remainder of the unexpired term. The election shall be held on the next succeeding November general election date or, if the vacancy occurs within 120 days prior to that date, on the second succeeding November general election date. The Governor may make a temporary appointment to fill the vacancy until the qualified voters fill the same by election. (§ 24.2–207).

WASHINGTON

Unless otherwise designated, references are to Revised Code of Washington and current through the 2010 Cumulative Annual Pocket Part.

Primary Elections, when held.

Nominating primaries for general elections to be held in November, and the election of precinct committee officers, must be held on the third Tuesday of the preceding August. (§ 29A.04.311)

Nominating Papers, Petitions, Etc.

Party convention for primary

Declaration of candidacy (§ 29A.24.031).—File with Secretary of State not earlier than the first Monday in June and no later than the following Friday (§ § 29A.24.50, 29A.24.070).

Minor Parties and Independent Candidates

Any nomination of a candidate for partisan public office by other than a major political party may be made only: (a) In a convention held not earlier than the first Saturday in May and not later than the second Saturday in May or during any of the seven days immediately preceding the first day for filing declarations of candidacy as fixed in accordance with RCW 29A.28.041; (b) as provided by RCW 29A.60.021; or (c) as otherwise provided in this section. Minor political party and independent candidates may appear only on the general election ballot. (§ 29A.20.121(1))

If a special filing period for a partisan office is opened under RCW 29A.24.211, candidates of minor political parties and independent candidates may file for office during that special filing period. The names of those candidates may not appear on the general election ballot unless they are nominated by convention held no later than five days after the close of the special filing period and a certificate of nomination is filed with the filing officer no later than three days after the convention. The requirements of RCW 29A.20.131 do not apply to such a convention. (§ 29A.20.121(3))

A minor political party may hold more than one convention but in no case shall any such party nominate more than one candidate for any one partisan public office or position. For the purpose of nominating candidates for the offices of president and vice president, United States senator, United States representative, or a statewide office, a minor party or independent candidate holding multiple conventions may add together the number of signatures of different individuals from each conven-

tion obtained in support of the candidate or candidates in order to obtain the number required by RCW 29A.20.141. For all other offices for which nominations are made, signatures of the requisite number of registered voters must be obtained at a single convention. (§ 29A.20.121(4))

A nominating petition submitted shall clearly identify the name of the minor party or independent candidate convention as it appears on the certificate of nomination. The petition shall also contain a statement that the person signing the petition is a registered voter of the state of Washington and shall have a space for the voter to sign his or her name and to print his or her name and address. No person may sign more than one nominating petition under this chapter for an office for a primary or election (§ 29A.20.151).

Filing Fees and Assessments.

Amount.—One percent of annual salary.

Date of payment.—When filing declaration of candidacy.

To whom paid.—Secretary of State (§ 29A.24.091).

Crossfiling by Candidates.

Prohibited.—No candidate's name shall appear more than once on general election ballot. (§ 29A.36.201).

Subversive Parties Barred From Ballot.

Communist Party.—(§ 9.81.083).

Write-in Provisions.

For any office at any election or primary, any voter may write in on the ballot the name of any person for an office who has filed as a write-in candidate for the office in the manner provided by RCW 29A.24.311 and such vote shall be counted the same as if the name had been printed on the ballot and marked by the voter. For a partisan primary in a jurisdiction using the physically separate ballot format, a voter may write in on a party ballot only the names of write-in candidates who affiliate with that major political party. No write-in vote made for any person who has not filed a declaration of candidacy pursuant to RCW 29A.24.311 is valid if that person filed for the same office, either as a regular candidate or a write-in candidate, at the preceding primary. Any abbreviation used to designate office, position, or political party shall be accepted if the canvassing board can determine, to their satisfaction, the voter's intent (§ 29A.60.021).

Vacancy in Office.

When a vacancy happens in the representation of the State in the Senate of the United States, the Governor shall make a temporary appointment until the people fill the vacancy by election (§ 29A.28.30).

Whenever a vacancy occurs in the office of United States senator from this state, the governor shall order a special election to fill the vacancy. Within 10 days of such vacancy occurring, he or she shall issue a writ of election fixing a date for the special vacancy election not less than 90 days after the issuance of the writ, fixing a date for the primary for nominating major political party candidates for the special vacancy election not less than 30 days before the day fixed for holding the special vacancy election, fixing the dates for the special fil-

ing period, and designating the term or part of the term for which the vacancy exists. If the vacancy occurs less than 6 months before a state general election and before the second Friday following the close of the filing period for that general election, the special primary, special vacancy election and minor party and independent candidate nominating conventions must be held in concert with the state primary and state general election in that year.

If the vacancy occurs on or after the first day for filing under RCW 29A.24.050 and on or before the second Friday following the close of the filing period, a special filing period of 3 normal business days shall be fixed by the governor and notice thereof given to all media, including press, radio, and television within the area in which the vacancy election is to be held, to the end that, insofar as possible, all interested persons will be aware of such filing period. The last day of the filing period shall not be later than the third Tuesday before the primary at which candidates are to be nominated. The names of major political party candidates who have filed valid declarations of candidacy during this 3-day period shall appear on the approaching primary ballot. If the vacancy occurs later than the second Friday following the close of the filing period, a special primary, special vacancy election and the minor party and independent candidate conventions to fill the position shall be held after the next state general election but, in any event, no later than the 90th day following the November election. (§ 29A.28.041).

WEST VIRGINIA

Unless otherwise designated, references are to the West Virginia Code Annotated current through 2009 Regular and First through Fourth Extraordinary Sessions.

Primary Elections, when held.

Second Tuesday in May (§ 3–5–1) (May 11, 2010).

Nominating Papers, Petitions, Etc.

Certificate of announcement of candidacy.—File with Secretary of State not earlier than the second Monday in January and not later than the last Saturday in January preceding the primary election (§ 3–5–7).

Candidates of minor parties (which polled less than 10 percent of total vote cast for Governor at last general election).—Nomination may be by convention or by certificate in the same manner as independents (§ 3–5–22). If by convention, file certificate of nomination with Secretary of State not later than August 1 preceding the general election. (§ 3–5–24).

Independent candidates.—Groups of citizens having no party organization may nominate candidates who are not already candidates in the primary election for public office otherwise than by conventions or primary elections. The certificate shall be personally signed by duly registered voters. The number of signatures shall be equal to not less than one percent of the entire vote cast at the last preceding general election for any statewide but in no event shall the number be less than twenty-five (§ 3–5–23). All certificates nominating candidates shall

be filed not later than August 1 preceding the general election (§ 3–5–24).

Filing Fees and Assessments.

Amount.—One percent of annual salary (§ 3–5–8).

Date of payment.—At time of filing certificate of announcement of candidacy (§ 3–5–8).

To whom paid.—Secretary of State (§ 3–5–8).

The West Virginia Supreme Court of Appeals held that the failure to provide a reasonable alternative to filing fees for impecunious candidates to obtain access to the ballot renders the filing fee requirement unconstitutional as to such candidates, *West Virginia Libertarian Party* v. *Manchin*, 270 S.E. 2d 634, (1980).

Crossfiling by Candidates.

Prohibited.—Generally, no person shall be a candidate for more than one office except that a candidate for an office may also be a candidate for president of the United States. (§ 3–5–7).

Subversive Parties Barred From Ballot.

No statutory provisions.

Write-in Provisions.

Permitted in general election (§ 3–6–5(b)(3)); on voting machines (§ 3–4–8(3)); on electronic voting system (§ 3–4A–9(3)).

Vacancy in Office.

Any vacancy occurring in the office of United States Senator or in any office created or made elective, to be filled by the voters of the entire state, shall be filled by the governor of the state by appointment. If the unexpired term be for less than 2 years and 6 months, the appointment to fill the vacancy shall be for the unexpired term. If the unexpired term of any office be for a longer period than above specified, the appointment shall be until a successor to the office has timely filed a certificate of candidacy, has been nominated at the primary election next following such timely filing and has thereafter been elected and qualified to fill the unexpired term. Proclamation of any election to fill an unexpired term shall be made by the governor of the state, and, in the case of an office to be filled by the voters of the entire state, shall be published prior to such election as a Class II–0 legal advertisement in compliance with the provisions of article 3 [§ 59–3–1 et seq.], chapter 59 of this code, and the publication area for such publication shall be each county of the state (§ 3–10–3).

WISCONSIN

Unless otherwise designated references are to the Wisconsin Statutes Annotated (2004) and to the 2005 Cumulative Annual Pocket Part.

Primary Elections, when held.

Second Tuesday in September in even-numbered years. (§ 5.02(18)) (September 14, 2010).

Nominating Papers, Petitions, Etc.

Party candidate for primary

Nomination papers.—Nomination papers shall be circulated no sooner than June 1 preceding the general election

(§ 8.15(1)). Signatures of party members are required equal in number to not less than 2,000 nor more than 4,000 electors (§ 8.15(6)(a)). File with the elections board not later than 5 p.m. on second Tuesday in July preceding primary (§§ 8.15(1), 8.15(8)(a)).

Declaration of candidate.—Declaration must accompany nominating papers, that if nominated and elected, candidate will qualify for office for which he seeks nomination (§ 8.15(4)(b), 8.21(2)(b)).

Independent candidate

Nomination papers.—Nomination papers should be circulated no sooner than June 1 preceding the election (§ 8.20(8)(a)). Signatures are required of not less than 2,000 nor more than 4,000 electors (§ 8.20(4)). File with elections board not later than 5 p.m. on second Tuesday in July (§ 8.20(8)(a)).

Filing Fees and Assessments—No statutory provision.

Crossfiling by Candidates.

Prohibited.—A candidate may not run in more than one party primary at the same time. No filing official may accept nomination papers for the same person in the same election for more than one party. An independent candidate at a partisan primary or other election may not file nomination papers as the candidate of a recognized political party for the same office at the same election. A person who files nomination papers as the candidate of a recognized political party may not file nomination papers as an independent candidate for the same office at the same election (§ 8.15(7)).

If nominated to the same office by more than one party, or nominated for more than one partisan or state nonpartisan office, candidate's name shall appear under the first party nominating him or under the office to which he was first nominated. If the double nomination is simultaneous, candidate shall file statement declaring his party or office preference (§ 8.03(1)). However, this provision does not apply when a candidate for President or Vice President of the United States is nominated for another elective office during the same election. If the candidate is elected President or Vice President, such election shall void his election to any other office. A special election shall be held to fill any office vacated under this subsection (§ 8.03(2)).

Subversive Parties Barred From Ballot.

No provisions.

Write-in Provisions.

Permitted in primary (§ 8.16(2)) and in general elections (§§ 5.64(1)(a), 7.50(2)(a)); on voting machines (§ 7.50(2)(h)).

Vacancy in Office.

Vacancies in the office of U.S. Senator shall be filled by election, as provided in § 8.50(4)(b), for the residue of the unexpired term (§ 17.18). A vacancy in the office of U.S. Senator occurring prior to the 2nd Tuesday in May in the year of the general election shall be filled at a special primary and election. A vacancy in that office occurring between the 2nd Tuesday in May and the 2nd Tuesday in July in the year of the general

election shall be filled at the September primary and general election (§ 8.50(4)(b)).

WYOMING

Unless otherwise designated, references are to the Wyoming Statutes Annotated current through the 2009 General Session of the Legislature, Annotated.

Primary Elections, when held.

First Tuesday after the third Monday in August in general election year (§ 22–2–104). (August 17, 2010).

Nominating Papers, Petitions, etc.

Party candidate for primary

Application for nomination.—File with Secretary of State not more than 96 and not less than 81 days before primary (§§ 22–5–206(a), 22–5–209).

Independent candidate

Nomination by petition.—Signatures required from registered electors not less than two percent of total number of votes cast for Representative in Congress in last general election in state (§§ 22–5–301, 22–5–304.) File with Secretary of State 70 days before general election (§§ 22–5–306, 22–5–206(a), 22–5–307).

Write-in candidate in primary.

Acceptance of nomination.—Write-in candidate must receive at least 25 votes (§ 22–5–215).

Filing Fees and Assessments.

Primary candidates.

Amount.—$200 (§ 22–5–208).

Date of payment.—When filing application for nomination.

To whom paid.—Secretary of State. (§ 22–5–206, § 22–5–208).

Independent candidates.

Amount.—$200 (§ 22–5–208).

Date of payment.—When filing nomination petition (§ 22–5–306).

To whom paid.—Secretary of State (§§ 22–5–208, § 22–5–306).

Write-in candidates.—No provision.

Crossfiling by Candidates.

Prohibited.—Must be a member of party whose nomination he seeks (§ 22–5–204).

A candidate defeated in a primary election is disqualified from being a candidate by petition (§ 22–5–302).

The name of a candidate shall be printed on the ballot but once (§ 22–6–112).

Write-in Provisions.

Permitted in primary (§ 22–6–119); in general election (§ 22–6–120); on voting machines (§ 22–10–101); on electronic voting systems (§ 22–11–103).

Vacancy in Office.

If a vacancy occurs in the office of United States senator, the governor shall immediately notify in writing the chairman of the state central committee of the political party which the last incumbent represented at the time of his election, or at the time of his appointment if not elected to office. The chairman

shall call a meeting of the state central committee to be held not later than fifteen (15) days after he receives notice of the vacancy. At the meeting the state central committee shall select and transmit to the governor the names of three (3) persons qualified to fill the vacancy. Within five (5) days after receiving these three (3) names, the governor shall fill the vacancy by temporary appointment of one (1) of the three (3) to hold the office. If the incumbent who has vacated office did not represent a political party at the time of his election, or at the time of his appointment if not elected to office, the governor shall notify in writing the chairman of all state central committees of parties registered with the secretary of state. The state central committees shall submit to the governor, within fifteen (15) days after notice of the vacancy, the name of one (1) person qualified to fill the vacancy (§ 22–18–111(a)(i)).

PART IV

CAMPAIGN ACTIVITIES BY CONGRESSIONAL EMPLOYEES

CAMPAIGN ACTIVITIES BY CONGRESSIONAL EMPLOYEES [1]

A. General Campaign Activities

There are no Federal statutes, regulations, or rules of Congress which specifically prohibit congressional employees from voluntarily engaging in general campaign activity. The broad prohibition against partisan political campaigning, even on one's own free time, which had been in effect for most executive branch employees in the federal civil service under what was commonly known as the "Hatch Act," has not been applicable to the staff of elected federal officials, such as congressional employees.[2] Apart from certain restrictions in the area of campaign funds and finances,[3] Senate staffers may continue to participate in political campaign activities during their free time.

Although there are no broad prohibitions on campaign activities by congressional staff on their own free time, there do exist general guidelines, ethical standards, and rules in Congress which indicate that official congressional staff, since they are federal employees paid by monies appropriated from the United States Treasury, are considered to be compensated for services rendered for public purposes, that is, for the performance of "official" congressional duties,[4] rather than for personal campaigning for a Member. It is a general principle of federal appropriations law that federal monies are to be used only for the purposes for which they were appropriated.[5] These various standards and principles have been generally interpreted in Congress to mean that employees may not engage in campaign activities on behalf of a Member to the neglect of their official duties; but that once employees have fulfilled their official congressional duties for which they are compensated from public funds, they may then generally engage in partisan campaign activities on their own "free time" or "off-duty" hours.[6]

In addition to congressional ethical standards and rulings, there may be potential legal implications if salaries are claimed from public appropriations for individuals merely for their performance of non-official, campaign services on behalf of a Member, or anyone

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[1] By Jack H. Maskell, Legislative Attorney, American Law Division, Congressional Research Service, Library of Congress.

[2] Most restrictions prohibiting voluntary campaign activities on one's free time have now been removed from the "Hatch Act" for most federal employees. Pub. L. 103–94, 107 Stat. 1001; 5 U.S.C. §§ 7321 et seq.

[3] *See* 18 U.S.C. §§ 602 (contributions to one's employer), 603 (soliciting contributions from federal employees), 607 (soliciting contributions in a federal building), and Senate Rule 41 (campaign fund activity by Senate staff).

[4] *See now* "Senate Ethics Manual," S. Pub. 108–1, 108th Cong., 1st Sess. at 13 (2003); note also S. Rept. 95–500, 95th Cong. 1st Sess. p. 4; S. Rept. 95–241, 95th Cong., 1st Sess. p. 1.

[5] 31 U.S.C. § 1301(a); see Principles of Federal Appropriations Law, United States Government Accountability Office, 4–6 to 4–7 (2004).

[6] Senate Select Committee on Ethics Interpretative Rulings Nos. 3, 5, 22, 59, 88, 154, 194, 263, 302, 326, 349; note also House Committee on Standards Advisory Opinion No. 2 (1973).

else. Although federal court decisions have shown that there may be questions of justiciability of civil liability claims under the specific provisions of the federal False Claims Act,[7] criminal liability might possibly attach in certain severe factual circumstances where schemes to compensate individuals from public monies merely for campaign services rendered to a Member, or to another, are considered to constitute a fraud against the government,[8] or a "theft" of government salary or services.[9]

Even though an individual is on a Member's official payroll and receiving salary for official duties, there is no flat prohibition upon an employee of a Member of Congress receiving outside compensation from a campaign committee for campaign related duties during such person's non-congressional and non-official time.[10] In fact, if a staffer is to perform extensive campaign activities for the Member, such person might have his or her official salary reduced commensurate with the decrease in official duties to be performed during this period, or be removed from the official payroll, and have the campaign committee compensate that person for the outside political campaign duties performed, to assist in avoiding any implication that official funds are compensating one for political activities.

Finally, at any time, but particularly during a campaign, the public's perception of the conduct of an elected official and his or her staff may have significance beyond the mere conformity with the technical requirements of rules or statutes. When official staff are involved in a Member's reelection campaign, such activity may be an easy target for political opponents seeking media attention by charging that official government personnel are being used for private political campaigning, raising the specter of appearances of impropriety. Although one can not insulate a Member of Congress/candidate completely from specious and unfair political attacks, sufficiently precise and accurate record keeping and time logs of one's official congressional work and duties, for which one receives a salary from the government, may be useful for documentation during a period when the staffer is also working on the campaign during his or her "free" or "non-official" time.

1. CAMPAIGNING AND OFFICIAL DUTIES

A. Congressional Standards and Rulings

Congressional standards and rulings on campaign activities by staffers, and on the use of staff appropriations to pay individuals for campaign services, have established a clear ethical principle and rule to be observed in both Houses of Congress: Congressional staff are compensated from public funds for the performance of official congressional duties; that is, to assist a Member with his official legislative and representative duties, rather than merely for

[7] 31 U.S.C. §§ 3729, 3730, see *United States ex rel. Joseph* v. *Cannon,* 642 F.2d 1373 (D.C. Cir. 1981), cert. denied 455 U.S 999 (1982).

[8] See *United States* v. *Clark,* Criminal No. 78–207 (W.D. Pa. 1978); note also in other contexts, *United States* v. *Diggs,* 613 F.2d 988 (D.C. Cir. 1979), cert. denied, 446 U.S. 982 (1980); and *United States* v. *Pintar,* 630 F.2d 1270, 1275 (8th Cir. 1980).

[9] 18 U.S.C. § 641. See *United States* v. *Bresnahan,* Criminal No. 93–0409 (D.D.C. 1993).

[10] Note, for example, Senate Select Committee on Ethics Interpretative Ruling Nos. 357, December 16, 1982, and 402, October 18, 1985.

services rendered to the Member's reelection campaign. In a federal court decision concerning the congressional franking privilege, the United States District Court for the District of Columbia noted Congress' recognition of the principle that public funds are to be used for official congressional, and not for campaign purposes: "It is clear from the record that Congress has recognized the basic principle that government funds should not be spent to help incumbents gain reelection." [11] However, a congressional staffer may engage in campaign activities on his own "free time" or "off duty" hours as long as the staffer fulfills, and does not neglect those official duties required of him.

Since congressional staff may work irregular hours often depending upon the time the Senate or House stays in session, and since a staffer's specific official duties are assigned by the Member within his discretion, it is generally recognized that a staffer's "free time" or "off-duty" hours might occur in what is typically considered the conventional work day. It is also recognized that in the practical operation of a Member's office some minimal campaign related activities might unavoidably be performed by a Member's staff in the course of their official congressional duties for a Member. It has been suggested that although some minimal "overlap" may reasonably exist, it is the Member's responsibility to keep such campaign related activities by staff during duty hours to a "de minimis" amount, and to observe the general principle that staff are compensated from public funds for their assistance in the Member's official legislative and representative duties, rather than merely for services to the Member's own political campaign.

B. Senate Rulings and Interpretations

The use of staff on political campaigns was reviewed during the 95th Congress by various committees in the Senate. In recommending changes in the Senate Rules, the Special Committee on Official Conduct of the 95th Congress had proposed a rule which would have specifically required Senate employees who engaged "substantially" in campaign work to be removed from the Senate payroll. The proposal was dropped from the final measure, however, and as a compromise the measure directed the Senate Rules and Administration Committee to study this issue and to report proposals concerning the use of official staff by holders of public office.[12] The Special Committee had been desirous of some specific rule to express the existing general standard with regard to Senate employees since it felt that "the public is entitled to know that those employees in the Senate, receiving government salaries, are doing the public's business and not working directly for the reelection of their employer." [13]

In its report on the rules, standards, and laws governing the use of Senate staff for political campaigns, as directed by S. Res. 110, 95th Congress, the Senate Rules and Administration Committee found that the standard and practice in the Senate was that staffers may engage in political campaign activities on behalf of their

[11] *Common Cause* v. *Bolger,* 574 F.Supp. 672, 683 (D.D.C. 1982).
[12] *See* 123 Cong. Rec. 8041 (1977).
[13] S. Rept. 95–49, 95th Cong., 1st Sess. p. 14.

employer as long as they fulfill the official congressional duties required of them. That report states in part as follows:

> . . . [T]he general rule . . . which has been relied on to date by Senators and officers and employees of the Senate for guidance [is]: that members of the Senator's staff are permitted to engage in the reelection campaign of a Senator, as long as that staff member does not neglect his or her Senate duties. The nature and scope of a staff member's Senate duties are determined by each Member of the Senate. Such duties necessarily encompass political and representational responsibilities, as well as legislative, administrative, or clerical ones, and are often performed during irregular and unconventional work hours. A similar rule of practice has been followed in the House of Representatives, and would be generally applicable to other Federal employees not covered by the Hatch Act.[14]

The report of the Senate Rules and Administration Committee on a 1977 amendment to the Senate Rule restricting campaign fund activity of Senate staff (now Rule XLI) is further illustrative of the standards in the Senate concerning campaigning by staff employees. The Committee concluded that Senate employees may participate in campaign activities on behalf of a Senator "so long as they don't neglect their Senate duties"; and may do so during vacation time, annual leave or on a leave of absence:

> The committee is not aware of any laws which prohibit individuals who are part of a Senator's staff from participating in a Senator's reelection campaign as long as they do not neglect their Senate duties, and the committee does not feel there should be such proscriptions. Furthermore, it is neither illegal nor a violation of Senate Rules for a member of a Senator's staff to work full time in political campaigns while on annual leave or vacation time or while on leave of absence from his or her Senate duties, and the committee feels there should not be any proscription of such actions.[15]

Subsequent interpretative rulings by the Senate Select Committee on Ethics have similarly expressed the ethical principle and rule to be observed in the Senate. Although the Senate Rules do not specifically require it, the Senate Select Committee on Ethics has advised Members and staff that to assure that a staffer is performing official duties commensurate with his congressional salary, a staffer who is to engage in political campaign activities on behalf of a Member for any "extended period" should be removed from the public payrolls, or have his salary reduced to reflect his reduction in official duties. Some of these rulings are excerpted below:

Interpretative Ruling No. 3, May 5, 1977:

> No provision of the Code of Official Conduct prohibits staff from attending a campaign fundraising event outside office hours or while on recorded vacation leave. The interim position of this Committee is that Senators should encourage staff to remove themselves from the payroll during periods which they expect to be heavily involved in campaign activities. Routine

[14] S. Rept. 95–500, 95th Cong., 1st Sess. p. 4.

[15] S. Rept. 95–241, 95th Cong., 1st Sess. p. 1. *See* Senate Ethics Manual, *supra* at Chapter 6.

participation after hours or an annual leave time is not now prohibited by the Code of Conduct.

Interpretative Ruling No. 59, September 13, 1977:

. . . Members can and should remove staff from the Senate payroll when they are to participate for an extended period in substantial campaign activities. One is not removed from the payroll by being placed in a "terminal vacation leave" status.

Interpretative Ruling No. 88, November 16, 1977:

Although the staff member cannot make a direct contribution to a Member of Congress (and thus cannot attend as a paying guest), nothing in the Code of Official Conduct prohibits the staff member from attending the fundraiser on his own time . . . .

Interpretative Ruling No. 154, June 22, 1978:

As to the possibility of minimal involvement by a staff assistant with campaign-related business, the Select Committee believes that in a Senator's reelection campaign there might be some inadvertent and minimal overlap between the duties of a Senator's staff with respect to the Senator's representational function and his reelection campaign. However, a Senator has the responsibility to insure that such an overlap is of a de minimis nature and that staff duties do not conflict with campaign responsibilities.

Interpretative Ruling No. 194, October 8, 1978:

. . . [T]he Select Committee ruled that it is preferable for a Senator to either reduce the salary or remove an employee from the Senate payroll when the employee intends to spend additional time on campaign activities, over and above leave or vacation time. The Committee recognizes that staff members ought to be able to use bona fide vacation time for political campaign activity. As long as an office has an established and reasonable annual leave policy, and as long as an employee takes no more than the amount of time normally allowed for such leave, the Committee believes that an employee may engage in campaign activities during that time.

Interpretative Ruling No. 263, June 12, 1979:

Other than the restrictions on political fund activity in Senate Rule 49 [now Rule 41], no rule expressly prohibits campaign activity by staff during off-duty hours or during established and reasonable annual leave time. In addition, the Committee believes that Senate employees may engage in limited campaign-related activities during Senate hours, provided that the time involved is de minimis and such activity does not interfere with the employee's official Senate duties. However, if an employee intends to spend a substantial amount of time on campaign activities, the Committee has ruled that a Senator should use his or her best judgment in determining whether to remove the staff member from the Senate pay roll or reduce his or her salary commensurately.

Interpretative Ruling No. 302, February 21, 1980:

It is a Member's prerogative in staffing his or her office to prescribe an employee's duties and hours, and to consent to certain outside activities. Other than the restrictions on political fund activity in Senate Rule 41, no rule expressly prohibits

political activity by staff during off-duty hours or during established and reasonable annual leave time. However, if an employee intends to spend a substantial amount of time on campaign activities, the Committee has ruled that a Senator should use his or her best judgment in determining whether to remove the staff member from the Senate payroll or reduce his or her Senate salary commensurately.

Interpretative Ruling No. 326, July 1, 1980:

There is no provision of the Code of Official Conduct which prohibits such service [as a political party's National Committee Chairwoman from staffer's home state during off-hours and without compensation] by a member of the personal staff of a Senator. As S. Rept. 95–241 (95th Cong.) indicated, except for prohibitions of Rule 41 with respect to the handling of campaign funds, "it is neither illegal nor a violation of Senate Rules for a member of a Senator's staff to work full-time in political campaigns while on annual leave or vacation time or while on leave of absence from his or her Senate duties. . . ."

If involvement in any campaign activity becomes extensive, however, the supervising Member may find it wise to remove the employee from the payroll for the period of extensive campaign involvement. See for example, Interpretative Ruling No. 3 (May 5, 1977); Interpretative Ruling No. 309 (February 21, 1980). This is important for the supervising Senator to recognize, because the position of National Committeeman or Committeewoman for a political party is an important position which could conceivably require a great deal of time on the part of the Senate employee.

Interpretative Ruling No. 402, October 18, 1985

In light of the Senator's apparent determination that his secretary's services for his campaign committees do not conflict with her Senate duties, her receipt of compensation is not prohibited by Senate Rules.

C. Official Duties Versus Campaign Activities

Although the ethical standards, guidelines and rules in Congress discussed above generally permit "campaign" activities on behalf of a Member once staffers have fulfilled their "official" duties, there are generally no specific job descriptions for committee or Member staff which are comparable to the job descriptions currently in force in the civil service. There is therefore no detailing of what a staffer's "official" duties may entail, or precisely what activities are involved in or excluded from assisting a Member with his "official and representative" duties. Traditionally, the specific duties of a Member's staff are within the discretion of the employing Member to best meet the Member's needs and those of his or her constituents. As to the exercise of this discretion, however, the United States Court of Appeals for the District of Columbia, in upholding a conviction of a Member of Congress for using clerk hire appropriations to compensate individuals who performed mostly non-congressional duties, agreed with expert testimony that it is "within a congressman's discretion to define the parameters of an employ-

ee's responsibilities as long as those responsibilities relate to the congressman's 'official and representative' duties."[16]

The general distinction between "official" legislative and representative duties on the one hand, and "campaign" activities on the other, is a traditional distinction of long-standing in Congress. For example, in the use of the Member's franking (free mailing) privilege Members may frank "official" mail matter but may not send "political" campaign material under the frank. The franking statute and regulations instruct Members and staff that it is permissible to frank materials relating to "the conduct of the official business, activities, and duties of the Congress" . . . covering "all matters which directly or indirectly pertain to the legislative process or to any congressional representative functions generally, or to the functioning, working or operating of the Congress and the performance of official duties in connection therewith. . . ,"[17] but that the frank is not available for sending material complimentary or laudatory of a Member on a purely "political basis rather than on the basis or performance of official duties" nor material "which specifically solicits political support for the sender or any other person or any political party, or a vote or financial assistance for any candidate for any public office."[18] In upholding the franking statute against a constitutional challenge, a three judge panel of the District Court for the District of Columbia noted that Congress had drawn a statutory distinction between "official mailings, those related directly to the legislative and representative functions of Congress," and "unofficial" mailings such as political material.[19] The Court stated: "It is clear from the record that Congress has recognized the basic principle that government funds should not be spent to help incumbents gain reelection. The details of the franking scheme, including its distinction between official and unofficial mailings, appear to be rationally designed to work for that end." Id. This distinction between campaign activities and official duties is also recognized and inherent in congressional rules and regulations such as the Senate rule on unofficial office accounts,[20] computer facilities,[21] and in other statutory provisions such as the Federal Election Campaign Act (see 2 U.S.C. § 439a) and the provision of the franking law on "mass mailings" of newsletters and similar material.[22]

Although the distinction between "official" duties and "campaign" activities is a common one in congressional matters, because of the various public, political, and official roles which a Member may assume in connection with his position in Congress, there may be instances where this distinction is less clear than in others, or where one area may intrude into the other. As noted by the United States District Court in the franking case: "To state the obvious, it is sim-

[16] *United States* v. *Diggs,* 613 F.2d 988 at 997 (D.C. Cir. 1979), cert. denied 446 U.S. 982 (1980).
[17] 39 U.S.C. § 3210(a)(1) and (2).
[18] 39 U.S.C. § 3210(a)(5)(A) and (C)).
[19] *Common Cause* v. *Bolger,* 574 F.Supp. 672, 683 (D.D.C. 1982).
[20] *See* Senate Rule 38, and S. Rept. 95–49, 95th Cong., 1st Sess. pp. 11, 46; note also for comparison, House Rule XLV; see H. Doc. 95–73, 95th Cong. 1st Sess. pp. 16–17, discussing proposal of this rule.
[21] Senate Rule XL(5).
[22] 39 U.S.C. § 3210(f); *see* discussion in H. Rept. 96–281, 96th Cong. 1st Sess. p. 5.

ply impossible to draw and enforce a perfect line between the official and political business of Members of Congress."[23]

Some confusion may initially be caused by the labelling of some of the official representational duties of a Member of Congress as "political" in nature. The Supreme Court in a case concerning the immunity of Members from prosecution under the constitutional "Speech or Debate Clause", noted that in addition to the "purely legislative activities protected by the Speech or Debate Clause," there are representational duties of a Member of Congress which, although "appropriate" and "legitimate," might be characterized as "political in nature . . . because they are a means of developing continuing support for future elections," and which do not have "the protection afforded by the Speech or Debate Clause."[24] These "appropriate" representational duties of Members of Congress may include "legitimate errands performed for constituents, the making of appointments with Government agencies, assistance in securing Government contracts, preparing so-called 'newsletters' to constituents, news releases, and speeches delivered outside of Congress."[25] This distinction made by the Supreme Court, it should be noted, was for purposes only of coverage of the Speech or Debate Clause immunity, which the Court said extends to the official legislative duties of a Member, but not necessarily to all of the official representative functions of the Member.

Even though these constituent services and communications to constituents, which are part of the Member's legitimate representative duties, might arguably be characterized as "political in nature," they are generally distinguishable, as far as the congressional ethical principle involved, from those activities typically understood by congressional rule, statute, and practice to be political "campaign" activities, such as the solicitation of political contributions, canvassing votes for a candidate in a primary or general election, organizing a political fundraiser, coordinating campaign volunteer lists, etc. The Supreme Court in *Buckley* v. *Valeo,*[26] noted that a particular statute in the federal campaign laws is specifically directed at Congress' accommodating this distinction "between the legitimate and necessary efforts of legislators to communicate with their constituents" on the one hand, and "activities designed to win elections by legislators in their other role as politicians," on the other.[27]

There is some practical concern, however, expressed over the potential and arguably unavoidable, "overlap" or intrusion of some minimal campaign related activities into the official operation of a Member's office. In responding to official inquiries from the press or inquiries from constituents, congressional staffers may need to respond to questions dealing with issues or matters which relate to or bear upon a Member's political campaign as well as his official legislative and representative duties.[28] Similarly, scheduling assist-

[23] *Common Cause* v. *Bolger,* supra at 683.
[24] *United States* v. *Brewster,* 408 U.S. 501, 512 (1972).
[25] *Id.* at 512.
[26] 424 U.S. 1 (1976).
[27] *Id.* at 84, n. 112; *see also Common Cause* v. *Bolger,* supra.
[28] "Answering questions about one's voting record is clearly part of a Senator's official responsibilities. The fact that he explains his voting record in response to a political attack does not

ance and information from the Member's official staff may be requested by the campaign staff to assure that the Member's campaign schedule does not conflict with his official agenda. Both ethics committees in Congress realize that some of this minimal overlapping may exist in the practical operation of a Member's office, and thus the Senate Select Committee on Ethics has noted that "there might be some inadvertent and minimal overlap" between the staff's official duties and activities related to a Member's campaign but that "a Senator has the responsibility to insure that such an overlap is of a de minimis nature and that staff duties do not conflict with campaign responsibilities."[29] Similarly, the House Committee on Standards of Official Conduct has recognized that in a practical sense it may not be possible to have an absolute separation of duties during the work day but that the "Committee expects Members of the House to abide by the general proposition" that staffers are to work on campaign related matters during their "free time" after the completion of their official duties.[30]

To avoid some of the more serious problems which may arise by the performance of regular campaign responsibilities by a staff employee on the public payroll, the Senate Select Committee on Ethics has recommended on various occasions that when a staffer is to engage in campaign activities on behalf of the Member for any "extended" period or to any "substantial" degree that the Member either remove the staffer from the Senate payroll for that period and compensate the staffer with campaign funds, or reduce the staffer's compensation from public funds commensurately with the reduction in official duties of the staffer during his time of increased campaign activities.[31] Congressional employees may also campaign on behalf of a Member of Congress while on established annual leave or other vacation time.[32] There is no general prohibition in the House or the Senate on a congressional staffer receiving reimbursement or compensation from a campaign committee for campaign work performed on off-duty, non-official time, even while still on the congressional payroll and being compensated from official funds for the performance of official congressional duties.[33]

2. FALSE CLAIMS, FRAUD AND THEFT: FEDERAL CRIMINAL LAW

In addition to the congressional ethical standards and guidelines discussed, it is possible that legal implications may arise for Members and staff if individuals, compensated from public funds, perform no congressional duties or only a nominal percentage of official duties for such compensation, but rather mainly provide campaign services to the Member. It has been argued that since a Member makes a claim to the United States Government for the staffer's salary, and that since such salary is intended as compensation for assisting the Member in his "official" duties, then

turn such explanations into campaign activities." Senate Select Committee on Ethics, Interpretative Ruling No. 419, September 22, 1987.

[29] Interpretative Ruling No. 154, June 22, 1978.

[30] Advisory Opinion No. 2, July 11, 1973.

[31] Interpretative Ruling Nos. 3, 5, 59, 194, and 263.

[32] *See,* for example, Senate Select Committee on Ethics, Interpretative Ruling Nos. 194, 263.

[33] Note, for example, Senate Select Committee on Ethics, Interpretative Ruling Nos. 357, 402.

using that individual for other than the official purposes contemplated might involve a false claim, a false statement, or a fraud upon the government. This may be particularly relevant where the employing Member or committee chairman must certify in writing that the employee is regularly performing official duties.

There have been several civil suits initiated by private citizens under the False Claims Act (31 U.S.C. §§ 3729, 3730) against Members of Congress for compensating individuals from the clerk-hire or other staff allowances when those individuals allegedly did not perform any, or did not mainly perform, official congressional duties for such compensation. These civil suits, however, have generally been dismissed on jurisdictional or procedural grounds without a trial on the merits of the facts alleged.[34]

In *United States ex rel. Joseph* v. *Cannon*,[35] a three judge panel of the United States Court of Appeals for the District of Columbia dismissed as a non-justiciable "political question" a civil suit under the False Claims Act initiated by a private citizen against a Member of Congress for making claims for a staffer's official salary when that staffer allegedly worked extensively and exclusively on the Member's reelection campaign for a period of time while continuing to receive a salary from appropriated funds. The Court of Appeals noted that "political questions are denied judicial scrutiny" because the courts are "underequipped to formulate national policies or develop standards of conduct for matters not legal in nature."[36] The courts might thus find a non-justiciable political question where there is a "lack of judicially discoverable and manageable standards" for resolving an issue. As to the use of senatorial staff on a Member's reelection campaign, the court found that the lack of specificity in the ethical guidelines existing in 1976 concerning "official" duties of Senate staff, and the failure of the Senate to promulgate a specific rule on campaigning by staffers at that time "reveals the lack of firm standard during that period relevant to this case, and vividly portrays the keen difficulties with which courts would be faced were they to attempt to design guidelines on their own,"[37] Thus, the Court found that "in the absence of any discernible legal standard . . . we are loathe to give the False Claims Act an interpretation that would require the judiciary to develop rules of behavior for the Legislative Branch."[38] In dismissing the action, the Court of Appeals warned that "[i]n doing so, we do not, of course, say that Members of Congress or their aides may defraud the Government without subjecting themselves to statutory liabilities."

The Court of Appeals' warning concerning statutory liability for fraud is well taken considering past criminal actions against former Members of the House of Representatives for false statements and fraud involving the compensation of individuals from

[34] *United States ex rel. Thompson* v. *Hays,* Civil Action Nos. 76–1068, 1132 and 1140; *United States ex rel. Martin-Trigona* v. *Daley,* Civil Action No. 1164 (D.D.C. 1976); *United States ex rel. Joseph* v. *Cannon* 642 F.2d 1373 (D.C. Cir. 1981), cert. denied, 455 U.S. 999 (1982); but see *United States ex rel. Hollander* v. *Clay,* 420 Supp. 853 (D.D.C. 1976), concerning appropriations for transportation.

[35] 642 F.2d 1373 (D.C. Cir. 1981), cert. denied, 455 U.S. 999 (1982).

[36] *Id.* at 1379.

[37] *Id.* at 1380.

[38] *Id.* at 1385.

clerk-hire appropriations when such individuals performed few or no official congressional duties in return for that compensation. In an appeal of a criminal case,[39] the United States Court of Appeals for the District of Columbia upheld the conviction of a Member of the House for false statements (18 U.S.C. § 1001) and mail fraud (18 U.S.C. § 1341) for a scheme whereby individuals were being compensated from public funds, that is, clerk hire appropriations, but were performing only nominal official congressional duties. The Court of Appeals found that although the "employees" involved may have performed some official congressional services for the Member, "only a nominal percentage of [the employees'] responsibilities were congressionally related," and thus there was sufficient evidence for a jury to conclude that the employees were paid from the clerk hire allowance "with the intention of compensating them for services rendered to the [defendant's private business concern] or the defendant."[40] Although it might be argued that "it was a matter of [the Member's] discretion to fix their duties and salaries as congressional employees," the "defendant's representations to the House Office of Finance that [the employees] were bona fide congressional employees were fraudulent and material in violation of 18 U.S.C. § 1001."[41]

United States v. *Pintar*,[42] did not involve Members of Congress and congressional employees, but did involve a fact situation where federal monies in a federal program were being used to pay persons for political campaign activities. In that case the court upheld a charge of a conspiracy to defraud the United States (18 U.S.C. § 371) where there was "strong evidence that the Pintars used [their authority] to direct employees whose salaries were funded by federal grants to perform political work during office hours,"[43] and that such concerted activities constituted a "scheme to impair, obstruct, defeat or interfere with lawful governmental functions."[44]

In a criminal action specifically involving campaign activities by congressional employees compensated from clerk-hire funds, the Department of Justice in 1978 obtained a criminal indictment against a former Member of the House of Representatives, charging that the former Member while in Congress had defrauded the United States by placing 11 persons on his congressional payroll to pay them for operating and staffing various campaign headquarters in the former Member's reelection campaign.[45] The indictment specifically charged violations of the mail fraud statute (18 U.S.C. § 1341), among other violations, for using the mails to send payroll checks in executing "a scheme and artifice to defraud the United States of America, and to obtain money and property by means of false and fraudulent pretenses, representations and promises. . . ."[46] The "scheme," as charged in the indictment, was that the defendant "would prepare and submit . . . clerk-hire allowance and payroll authorization forms to the Office of Finance of the

[39] *United States* v. *Diggs,* 613 F.2d 988 (D.C. Cir. 1979), cert. denied 446 U.S. 982, (1980).
[40] *Id.* at 1002.
[41] *Id.*
[42] 630 F.2d 1270 (8th Cir. 1980).
[43] *Id.* at 1276.
[44] *Id.* at 1278.
[45] *United States* v. *Clark,* Criminal No. 78–207 (W.D. Pa. 1978).
[46] Grand Jury indictment, at 2.

House of Representatives which falsely represented that [certain named individuals] were bona fide employees of the defendant's congressional staff and that they were performing the type of services which entitled them to salaries stated in the clerk-hire forms," while willfully concealing that those named individuals were in fact placed on the House payroll "in order to pay them for their work in maintaining, staffing, and operating various campaign headquarters opened for the purpose of reelecting the defendant to Congress."[47] On February 13, 1979, the defendant/former Member of Congress pleaded guilty to the mail fraud and income tax evasion charges in this indictment in connection with those activities charged, and on June 12, 1979 was sentenced to two years in prison and fined $11,000.

A congressional employee has also pleaded guilty in United States District Court to a criminal information in *United States* v. *Bresnahan,*[48] concerning the receipt of a government salary and expenses for performing campaign duties in a congressional campaign. The criminal information charged that the defendant, an Administrative Assistant to a Member of Congress, "traveled and caused other employees" of the Congressman "to travel from Washington, D.C., to Long Beach, California to work on the primary and general election campaign of a Congressional candidate. The defendant, at the direction of another, made it appear and directed the other employees to make it appear, that they were conducting official business. In fact, they worked on a Congressional campaign." During the time they worked on the congressional campaign, the employees "claimed to be performing official business, [and] the United States House of Representatives reimbursed the defendant and the other employees for diem expenses . . .[and they] also received money in the form of salary paid for the time that they campaigned." The congressional staffer pleaded guilty to 18 U.S.C. § 641, theft of government property, that is, the "salary and expenses paid to them by the United States House of Representatives. . . ."

The substantial conformance by Members and staff to the general ethical guidelines and principles established by the rulings and opinions of the Senate Select Committee on Ethics regarding the limitation of regular campaigning by congressional staff to their own "free time" or "off-duty" hours may thus work to assist a Member in assuring that public appropriations are not being utilized merely to finance one's own political campaign, and that persons compensated from staff appropriations are in fact "bona fide" congressional employees, performing the official congressional duties contemplated in the appropriation of their salaries, to which the Member may have certified in writing. This would apparently prevent the types of abuses and misrepresentations concerning the misuse of staff appropriations and public funds which have led to criminal fraud and theft charges against Members and staff in the past.

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[47] Grand Jury indictment, at 2–3. See also report of guilty plea of former member and spouse for "using Congressional employees in [a] 1992 House campaign." Roll Call, July 4, 1994, at p. 3.

[48] Criminal No. 93–0409 (D.D.C. 1993).

3. RUNNING FOR ELECTIVE OFFICE

As noted above, congressional employees do not come within the restrictions of the so-called "Hatch Act." Thus, unlike executive branch employees who are still barred from running for partisan elective office,[49] the permissible campaign activities by staff employees of Members of Congress include running as a candidate for partisan elective office. A congressional employee is thus not prohibited by statute, or by congressional rule from running for such positions as delegate to party conventions, or for elective state, local or federal office. The considerations discussed above concerning electioneering or campaigning during "free time," as opposed to "working hours" for which compensation is derived from the United States Treasury, would, of course, apply to running and campaigning for elective office in one's own campaign, as well as to campaign activity for another. Furthermore, any specific rules or guidelines of a particular Member's office should be examined and considered before undertaking any such outside endeavors.

Although congressional employees are not expressly prohibited from running for elective office, they may effectively be barred from simultaneously holding a full-time elective office and retaining their congressional employment. Federal statutes such as those dealing with dual pay and dual employment, and precedents and constitutional provisions with regard to "incompatible offices" would eliminate the possibility of holding two, full-time paid positions or offices with the federal government.

As far as State, local, or any other outside positions, various Senate Rules concerning outside employment and conflicts of interest, may severely restrict, and effectively prohibit, a congressional employee from holding an outside, full-time position. When a State or local elective position, however, is intended merely to be a part-time position, entailing only evening and weekend hours or intermittent duties, the potential "time" conflict with one's congressional employment may be eliminated. In such an instance, when there is no apparent incompatibility or "subject matter" conflict of interest between the State or local office and one's congressional employment, a congressional employee might be able to hold such a position when approval is received from his or her employing congressional office.

Interpretative Rulings by the Senate Select Committee on Ethics have, for example, expressly permitted a full-time employee of a Member (the Member's press relations coordinator) to serve as a city council member at a salary of less than $200 a month.[50] Similarly, the Select Committee ruled that if adjustments were made in the official congressional salary of a staff member to reflect the decrease in the congressional work performed by the staffer because of a new position held, and if a restriction on Senate duties were imposed if necessary to avoid conflicts of interest, the staffer could run for and hold a compensated elected office in the state legisla-

[49] *See now* 5 U.S.C. § 7323(a)(3), as amended by Pub. L. 103–94.
[50] Interpretative Ruling No. 55, September 7, 1977.

ture and still remain a Senate employee in the district office of the Member.[51]

Although federal laws and rules might not prohibit such office-holding, state and local statutes and ordinances of the jurisdiction concerned should be examined, as those provisions often expressly prohibit an elected or appointed officer of the jurisdiction from simultaneously holding federal office or employment.

[51] Interpretative Ruling No. 109, March 23, 1978; see also Interpretative Ruling No. 155, June 28, 1978.

B. Campaign Funds and Finances

1. POLITICAL CONTRIBUTIONS

There are specific restrictions within current federal law upon congressional employees in the area of soliciting or making political contributions. Federal criminal statutes presently prohibit a congressional employee from: (a) soliciting a political contribution for a federal campaign from any other federal officer, employee, or person receiving a salary or compensation for services from the United States Treasury (18 U.S.C. § 602); and (b) making any political contribution to a federal officer, employee, person receiving a salary from the United States Treasury, or Member of Congress who is the employer or employing authority of the congressional staffer (now 18 U.S.C. § 603).

The relevant statutory language of these provisions reads as follows:

§ 602. Solicitation of Political Contributions

(a) It shall be unlawful for—

(1) a candidate for the Congress;

(2) an individual elected to or serving in the office of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress;

(3) an officer or employee of the United States or any Department or agency thereof; or

(4) a person receiving any salary or compensation for services from money derived from the Treasury of the United States; to knowingly solicit, any contributions within the meaning of section 301(8) of the Federal Election Campaign Act of 1971 from any other such officer, employee, or person. Any person who violates this section shall be fined under this title or imprisoned not more than three years, or both.

§ 603. Making Political Contributions

(a) It shall be unlawful for an officer or employee of the United States or any department or agency thereof, or a person receiving any salary or compensation for services from money derived from the Treasury of the United States, to make any contribution within the meaning of section 301(8) of the Federal Election Campaign Act of 1971 to any other such officer, employee or person or to any Senator or Representative in, or Delegate or Resident Commissioner to, the Congress, if the person receiving such contribution is the employer or employing authority of the person making the contribution. Any person who violates this section shall be fined not more than $5,000 or imprisoned not more than three years or both.

(b) For purposes of this section, a contribution to an authorized committee as defined in section 302(e)(1) of the Federal Elec-

tion Campaign Act of 1971 shall be considered a contribution to the individual who has authorized such committee.

A. Soliciting Political Contributions from Federal Employees

The statute at 18 U.S.C. § 602, as amended, prohibits congressional employees from "knowingly" soliciting political contributions from any other federal employee, officer, or person receiving salary for services from the United States Treasury.[52] Inadvertent solicitations of federal employees, therefore, such as when part of a general fund raising campaign aimed at the general public, was not intended to be a violation of this provision or its predecessor.[53] As stated in the House Report on the Federal Election Campaign Act Amendments of 1979, amending § 602:

> In order for a solicitation to be a violation of this section, it must be actually known that the person who is being solicited is a federal employee. Merely mailing to a list will no doubt contain names of federal employees [and] is not a violation of this section.[54]

Unlike the statute prior to the amendments in 1979 (Pub. L. 96–187) the current § 602 prohibits only the "solicitation" of political contributions from other federal employees and does not prohibit the "receipt" of such contributions. The House Report on the changes to § 602 noted: "The provision prohibiting receipt of contributions by federal employees has been eliminated."[55] It would not appear to violate the criminal statute at § 602, therefore, for congressional employees to receive unsolicited political contributions from other federal employees, although Senate employees who are not political fund designees are prohibited from such activity under Senate Rule 41, discussed below.

Since the term "contribution" is defined for purposes of this restriction as that term is defined in § 301(8) of the Federal Election Campaign Act of 1971, the prohibition on soliciting contributions from fellow federal employees will apparently not reach political contributions to support only state or local candidates. Section 301(8) of the FECA of 1971 is now codified at 2 U.S.C. § 431(8) and defines "contribution" to mean "any gift, subscription, loan, advance, or deposit or money or anything of value made by any person for the purpose of influencing any election for Federal office." Similarly, since Senate Rule 41 restricts political fund activity relating only to federal elections, Senate staffers would not be barred from soliciting and receiving voluntary contributions strictly for state or local candidates from fellow staffers or from other federal employees.

In addition to prohibiting congressional employees from soliciting political contributions for federal elections from other federal employees, the statute likewise prohibits Members of and candidates for Congress from soliciting such contributions from federal employees. Members of Congress may therefore not "solicit," but may

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[52] Note amendments in Pub. L. 103–94, as to competitive service employees covered by new "Hatch Act" provisions.

[53] *See* 113 Cong. Rec. 25703 (1973).

[54] H. Rept. 96–422, 96th Cong. 1st Sess. p. 25.

[55] *Id.*

now apparently accept unsolicited, voluntary contributions from federal employees. However, it should be noted that congressional staffers who are the Member's employees or under the employing authority of that Member are specifically prohibited from making even unsolicited, voluntary contributions to that Member of Congress, under 18 U.S.C. § 603. As a practical matter, then, Members of Congress should not accept such contributions from their own employees.[56]

The intent of the prohibition on solicitations, as discussed by its sponsors, was to prevent federal employees from being "subject to any form of political assessment."[57] Since the statute is directed at protecting employees who, because of their employment and positions may be subject to coercion, the prohibition of § 602, as noted in the discussion prior to the adoption of the 1979 amendments, "does not apply to solicitation of Members of Congress."[58] This interpretation is consistent with the interpretation of the predecessor statute to 18 U.S.C. § 602 which, as noted in a resolution adopted by the House in the 63rd Congress, 2d Session (1913), "should not be construed to prohibit one Senator or Member of Congress from soliciting campaign contributions from another Senator or Member of Congress."[59]

The Department of Justice has also indicated in the past that in the exercise of prosecutorial discretion, the application of the statute in a criminal context would focus on "coercive" contributions, and indications of political "shakedowns."[60] It should be emphasized, however, that the plain language of the statutory prohibition does not expressly require this element of the offense, that is, does not expressly require coercion, and no judicial interpretation of the law has as yet expressly added such an element as being required in the indictment or proof to establish a violation, although cases have indicated that the underlying intent and ultimate objective of the statute was to protect employees from less-than-voluntary political conduct.[61] Finally, in this regard, it should be noted that an employer-employee, or supervisor-supervisee relationship, might in itself arguably provide an initial presumption or indication of a coerced political solicitation; and even where solicitations are made by non-supervisory co-workers, if made during working time, fellow employees might conclude that the solicitation represented the in-

[56] Under the former statute, Members of Congress were also prohibited from receiving contributions from federal employees, including their staff, even where no solicitation of the contribution was shown. See *Brehm* v. *United States,* 196 F.2d 769 (D.C. Cir.), cert. denied., 344 U.S. 838 (1952), upholding conviction of Member of Congress for receiving campaign contribution from staff even without specific finding of solicitation. Id. at 770.

[57] 125 Cong. Rec. 36754, December 18, 1979.

[58] *Id.*

[59] *See* VI Cannon's Precedents of the House of Representatives, § 401, at 571–573; see also H. Rept. 99–277, 99th Cong., 1st Sess., pp. 13–14 (1985), House Committee on Standards of Official Conduct.

[60] *See,* for example, U.S. Department of Justice, Federal Prosecution of Election Offenses 15 (October 1980); H. Rept. 99–277, supra at pp. 4, 13–14.

[61] In *Ex Parte Curtis,* 106 U.S. 371, 374 (1882), the Supreme Court found that an earlier version on the ban on contributing to and soliciting from federal employees extended even to non-coercive activities since "what begins as a request may end as a demand. . . ." In *Brehm* v. *United States,* 196 F.2d 769 (D.C.Cir. 1952), cert. denied, 344 U.S. 838, a Member of Congress was found in violation of statute for receiving contributions from staff even where grand jury was presented testimony that staffer voluntarily initiated offer of contributions. 196 F.2d at 770–771. See also *United States* v. *Wurzbach,* 280 U.S. 396 (1930), where "coercion" was not specifically alleged or proven in Member's receipt of contributions from federal employees, and where court found the law "clearly embraces the acts charged."

terests of those higher in the organization and thus the element of coercion could be present.[62] In light of these factors, and the express language of the criminal statute prohibiting such activity, the more cautious course of conduct for congressional employees would be to avoid any knowing and intentional solicitation of political contributions for a federal election from any other federal employee.

B. Making Political Contributions

Prior to the Federal Election Campaign Act Amendments of 1979, effective January 8, 1980, congressional employees and other employees of the federal government were prohibited from making political contributions to any other federal officer, employee, or Member of Congress, regardless of whether such individual was the contributor's employer or employing authority.[63] Although in practice there was no strict enforcement of the statute,[64] such a restriction on employees had been on the statute books in some form since 1883. See section 14 of the Pendleton Act, 22 Stat. 403.[65]

Under the current statutory provision now codified at 18 U.S.C. § 603, however, congressional employees are only prohibited from making political contributions to their "boss," that is, their employer or employing authority. As explained in the House Report on the Federal Election Campaign Act Amendments of 1979, Pub. L. 96–187, political contributions would be barred from a Member's staff to that Member, and from committee staff to the chairman of that committee. Persons employed by the minority of a committee are also barred from contributing to the ranking minority member of the committee, as well as to the chairman.

Section 603 has been amended to allow voluntary contributions from federal employees to other federal employees. If, however, the individual is employed by a Senator, Representative, or Delegate or Resident Commissioner to Congress that employee cannot contribute to his or her employer although voluntary contributions to other Members of Congress would be allowed. An individual employed by a congressional committee cannot contribute to the chairman of that particular committee. If the individual is employed by the minority that individual cannot contribute to the ranking minority member of the committee or the chairman of the committee.[66]

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[62] *See* as an analogy "Hatch Act" cases on coerced political contributions from federal and state employees, for example, *In the Matter of Hawkins* (CSC No. S–7–42), and *Wolfstein* (CSC No. S–11–42), 2 P.A.R. 23, 26 (1942); *In the Matter of Mulhair* (CSC No. F–1349–52), 1 P.A.R. 607, 609 (1952). The threat of depriving any federal job or any federal benefit or appropriation to coerce political contributions is a specific violation of 18 U.S.C. § 601.

[63] *See* 18 U.S.C. § 607, (1976); note letter from Attorney General to House Judiciary Committee, October 14, 1952, discussed in "Congressional Quarterly Weekly Report", Oct. 19, 1952, at 1021; S. Rept. 500, 95th Cong. 1st Sess. pp. 5–6; Federal Election Commission, Commissioner's Memorandum No. 1434, August 25, 1977, at 2; H. Doc. 96–134, 96th Cong. 1st Sess. pp. 116–118.

[64] *See* letter from Assistant Attorney General, Criminal Division, Fraud Section, Department of Justice, August 12, 1974. Available from Congressional Research Service files.

[65] Similar restrictions on some federal employees have been upheld against constitutional challenges alleging interference with employees' political rights (*Ex Parte Curtis, supra,* and *United States* v. *Wurzbach, supra*), as have those restrictions on general campaign activities by executive branch employees who come within the "Hatch Act" (*United Public Workers* v. *Mitchell*, 330 U.S. 75 (1946); *United States Civil Service Commission* v. *National Association of Letter Carriers, AFL–CIO,* 413 U.S. 458 (1973)).

[66] H. Rept. 96–422, 96th Cong., 1st Sess. p. 26.

In addition to permissible contributions by congressional staff to a candidate, including a Member of Congress, who is not the employer or employing authority of the staffer, congressional employees may contribute to a committee or an organization which is not an "authorized committee" of the staffer's employer or employing authority. An "authorized committee" of a candidate is one which is designated in writing by the candidate to accept contributions and make expenditure on his behalf (see 18 U.S.C. § 603(b), 2 U.S.C. § 432(e)(1)), and includes the candidate's principal campaign committee. Generally, under federal campaign law, a multi-candidate committee, that is, one which supports more than one federal candidate, may not be designated as an "authorized committee" of a candidate (2 U.S.C. § 432(e)(3)). Therefore, congressional staffers may generally make political contributions to multi-candidate political committees, such as the Democratic or Republican Congressional Campaign Committees or the Republican or Democratic National Committee, even though some of the proceeds received by such committees may eventually be expended for the benefit of the contributor's employer. In making such contributions to multi-candidate committees, however, the staffer should not specifically "earmark" the contribution for use only in the campaign of his employer, since such "earmarking" of a contribution may be considered as a contribution from the staffer/contributor to that Member/candidate (see Regulations of Federal Election Commission, 11 C.F.R. § 110.6), and thus a potential violation of the criminal prohibition on contributions to one's employer or employing authority.

For purposes of the current restrictions on contributions by congressional staffers, the term "contribution" is defined as in 2 U.S.C. § 431(8) (§ 301(8) of the F.E.C.A., as amended). Specifically excluded from the term "contribution" is the value of voluntary services by an individual provided a candidate or committee.[67] Congressional staffers may, therefore, voluntarily provide services, their own free time, and their assistance to a Member's campaign, even their employer's campaign, without violating the prohibition on making campaign "contributions" to one's employer.

The definition of the term "contribution" under federal campaign law also demonstrates that the prohibition goes only to the contribution of things of value in connection with a federal election campaign (2 U.S.C. § 431, § 301(8)(A)(i) of the FECA as amended). A staffer might, therefore, make a political contribution to an officer or employee of the federal government for a candidate to state or local office.

2. FUNDRAISING DINNERS AND TESTIMONIALS

Fundraising dinners and testimonials are common methods for candidates to raise money for an upcoming political campaign, or to pay off previous campaign debts. The money paid for a ticket to such an event is generally considered under federal law as a cam-

[67] *See* § 301(8)(i) of the F.E.C.A., as amended.

paign contribution from the purchaser of the ticket to the candidate on whose behalf the event is being held.[68]

Since the purchase of a ticket to a fundraiser or testimonial would generally be considered a political contribution to the candidate involved, a congressional employee should not under the provisions of 18 U.S.C. § 603, as amended, purchase such a ticket or contribute money to a fundraiser or testimonial given for the Member who is the staffer's employer or employing authority.

Although a congressional employee should not attend such a fundraiser or testimonial as a paying guest, the employee could apparently attend as a nonpaying guest without violating provisions against making political contributions to one's employer. Furthermore, a congressional employee may also volunteer his or her own free time to work on the fundraiser or testimonial for the Member's campaign since voluntary services are not considered "contributions" under federal campaign law.[69] Senate employees, however, are prohibited from being involved in the solicitation, receipt, disbursement, or in being the custodian of any campaign funds for use in a federal election unless such employee is one of three persons specifically designated by a Senator to handle campaign funds. Unless so designated, a Senate employee should not be involved in that part of a fundraiser, but may be involved in the planning, arrangement making, etc., of the event.[70]

Finally, although a congressional employee could not contribute to a fundraiser or testimonial on behalf of his or her boss, or purchase a ticket to it, the employee might arguably be permitted to "host" such a fundraiser or dinner at his or her residence without violating the federal campaign laws. The definition of the term "contribution" within the campaign laws exempts certain costs in connection with a fundraising event on behalf of a candidate held on an individual's residential premises, up to an amount of $1,000 per any election. Expenses included in the $1,000 exemption are the cost of invitations, food, and beverages.[71]

3. CAMPAIGN FUND ACTIVITY BY SENATE EMPLOYEES

As discussed briefly above, Senate Rules restrict campaign fund activity by Senate officers and employees. Senate Rule XLI prohibits most Senate officers and employees from "handling" any campaign funds for a federal election. An employee or officer of the Senate may therefore not receive, solicit, be the custodian of, or distribute campaign funds of any federal candidate, except that three assistants may be designated by the Senator to perform such activities on behalf of that Senator, or for a committee or organization established and controlled by a Senator or a group of Senators. The Select Committee on Ethics has found under the Rule that Senate employees may not "solicit others to solicit funds or other-

[68] *See* 2 U.S.C. § 434, as amended, note explanation in H. Rept. 96–422, 96th Cong., 1st Sess. p. 16, to accompany FECA Amendments of 1979; see Internal Revenue Service, Revenue Ruling 72–412 (TIR 1191), 1972–2 CB–5; see also House Rule XLIII, paragraph 7.

[69] § 301(8)(B)(i) of the FECA, as amended.

[70] Senate Select Committee on Ethics, Interpretative Rulings Nos. 3, 5, 22, and 88.

[71] *See* 2 U.S.C. § 431(8)(B)(ii), amended by the FECA Amendments of 1979, Sec. 301(8)(B)(ii) of the FECA.

wise become involved to any substantial degree in political fund activity."[72]

The relevant portion of Rule XLI states as follows:

RULE XLI

POLITICAL FUND ACTIVITY; DEFINITIONS

1. No officer or employee of the Senate may receive, solicit, be a custodian of, or distribute any funds in connection with any campaign for the nomination for election, or the election, of any individual to be a Member of the Senate or to any other Federal office. This prohibition does not apply to three assistants to a Senator, at least one of whom is in Washington, District of Columbia, who have been designated by that Senator to perform any of the functions described in the first sentence of this paragraph and who are compensated at an annual rate in excess of $10,000 if such designation has been made in writing and filed with the Secretary of the Senate and if each such assistant files a financial statement in the form provided under rule XXXIV for each year during which he is designated under this rule. The Majority Leader and the Minority Leader may each designate an employee of their respective leadership office staff as one of the 3 designees referred to in the second sentence. The Secretary of the Senate shall make the designation available for public inspection.

The Senate Rule on campaign fund activities by Senate employees had originally been interpreted to permit the designated employees of the Senator to handle campaign funds for a federal campaign only on behalf of the Senator designating them.[73] However, the rule is now interpreted to permit the three designated employees of the Senator to handle campaign funds on behalf of a committee for any individual for elective federal office, as long as the committee is controlled by a Senator or a group or Senators, and the employing Senator gives his permission.[74] The three designated employees, with the permission of their employing Senator, could therefore be involved in the solicitation, receipt, distribution, or in being the custodian of campaign funds on behalf of a Senator's principal campaign committee, or for multi-candidate political committees or political action committees which are involved in the federal campaigns of persons other than their employing Senator, as long as the committees are established and controlled by a Senator or group of Senators. Employees may not handle funds for committees set up by trade associations, interest groups, corporations or labor organizations.

A Senate employee, even a political fund designee, could not hold a position of chief executive officer of a state political party committee, since the duties of the position would entail in the normal course of business "the acceptance, solicitation, retention or expenditures of funds in connection with federal elections" and for federal candidates other than the employee's supervising Senator (Interpretative Ruling No. 291, November 26, 1979), and such com-

[72] Interpretative Ruling Nos. 326, July 1, 1980; and 25, June 2, 1977.
[73] Senate Select Committee on Ethics, Interpretative Ruling Nos. 32, 45, 222, and 223.
[74] Interpretative Ruling No. 387, September 17, 1987.

mittee is not established and controlled by a Senator. However, the Senate Select Ethics Committee found that a campaign fund designee could hold a position as a national party chairperson for one's state when the duties concerning political funds were not of a similar nature to those described above.[75]

The restriction on employees of the Senate in Rule 41 does not extend to fundraising activity or campaign finance activity in relation to strictly state or local political contests.[76] The Senate Select Committee on Ethics has made it clear, however, that "the State and local political fund activity must be clearly separate and distinct from any activities in connection with a Federal election in order to be permitted under the Rule."[77]

4. CAMPAIGN ACTIVITY IN A FEDERAL BUILDING

When congressional employees become involved in campaign financing activities, an important consideration is a provision now codified at 18 U.S.C. § 607, which restricts the solicitation or receipt of political contributions in federal buildings or other federal facilities. The amended and renumbered version of the prohibition states as follows:

§ 607. Place of Solicitation

(a) Prohibition—

(1) In general.—It shall be unlawful for any person to solicit or receive a donation of money or other thing of value in connection with a Federal, State, or local election from a person who is located in a room or building occupied in the discharge of official duties by an officer or employee of the United States. It shall by unlawful for an individual who is an officer or employee of the Federal Government, including the President, and Members of Congress, to solicit or receive a donation of money or other thing of value in connection with a Federal, State, or local election, while in any room or building occupied in the discharge of official duties by an officer or employee of the United States, from any person.

Although prohibiting the receipt or solicitation of campaign contributions in a federal building, the amended statute recognizes that it is often unavoidable that unsolicited campaign contributions will be received through the mail or a contribution by a supporter will be tendered in person, within a congressional office. When this situation occurs the statute specifically provides that a staff employee of a Member of Congress may accept the contribution as a transmittal for subsequent forwarding, within seven days of receipt, to an appropriate campaign organization outside of the congressional office. This provision of 18 U.S.C. § 607 states as follows:

Section 607.

(b) The prohibition in subsection (a) shall not apply to the receipt of contributions by persons on the staff of a Senator or Representative in, or Delegate or Resident Commissioner to,

[75] Interpretative Ruling No. 326, July 1, 1980.

[76] Interpretative Ruling No. 204, December 5, 1978; and No. 182, September 29, 1978.

[77] Interpretative Ruling No. 291, November 26, 1979; see also Interpretative Ruling No. 326, July 1, 1980.

> the Congress or Executive Office of the President, provided that such contributions have not been solicited in any manner which directs the contributor to mail or deliver a contribution to any room, building, or other facility referred to in subsection (a), and provided that such contributions are transferred within seven days of receipt to a political committee within the meaning of section 302(e) of the Federal Election Campaign Act of 1971.

The prohibition of this statute and the exception to it were discussed on the floor of the Senate prior to the adoption of this provision as part of the Federal Election Campaign Act Amendments of 1979:

> Solicitation or receipt of contributions in any room or building occupied by a Federal employee in the course of official duties is prohibited. The sole exception is for contributions received by an individual on the staff of a Member of Congress, provided the contributions are transferred to the Member's political committee within 7 days. This exception is intended to cover situations in which a contributor, although not requested to, mails or delivers a contribution to a Federal office. The exception does not authorize solicitations from a Federal office, nor does it permit receipt of contributions in a Federal office where such contributions have been solicited in any manner which directs the contributor to return contributions to a Federal office.[78]

The use of federal office space, including congressional office space, official government equipment and supplies paid for from federal tax dollars for purposes of soliciting campaign contributions or for other clearly political campaign activities could involve violations of other federal laws, congressional regulations and standards. Provisions of the United States Code, congressional regulations governing allowances, and appropriations provisions specify that amounts provided a Member of Congress from appropriated funds for such items as telephone, mail, office space, stationery, etc., are for the use of such items only for "official" or "strictly official" purposes.[79] These provisions would thus apparently work to bar the use or conversion of such supplies, equipment, or facilities for "campaign" purposes, rather than for "official" congressional business. As discussed earlier in this report with respect to the official allowances for congressional staff, the use of official allowances or supplies, services, or goods secured by such allowances, for other than the official purposes for which the appropriations were made, or for other purposes than those which the Member had certified or documented in vouchers, might potentially subject someone to legal liabilities concerning false claims, fraud or possibly even conversion or theft. The ethics committees in both the House and the Senate have thus found that general campaign or campaign fund activities should be conducted outside of the official office space provided Members of Congress, and should generally be conducted with equipment, supplies or other facilities which are secured by

[78] 125 Cong. Rec. 36754–36755 (Dec. 18, 1979) remarks of Sen. Hatfield.

[79] *See,* for example 2 U.S.C. §§ 42a, 43c, 46g, 46g–1, 56–59, 122a, among others, as well as regulations issued by the Committee on House Oversight and the Senate Committee on Rules and Administration governing use of official allowances.

private funds or contributions and not official congressional allowances or appropriations.[80]

[80] *See,* for example, disciplinary report from House Committee on Standards of Official Conduct, H. Rept. 101–293, 101st Cong., 1st Sess. (1989), In the Matter of Representative Jim Bates, at p. 8, 10–11. The Committee concluded: "Moreover, use of House resources (including employees on official time) to solicit political contributions is improper." Id. at p. 12.

C. Quick Reference List of Specific Campaign Prohibitions

1. GENERAL

An employee may not:

(1) Deprive, attempt to deprive, or threaten to deprive anyone of employment or any other benefit, provided for or made possible by an Act of Congress appropriating relief funds because of that person's political affiliation. 18 U.S.C. § 246.

(2) Make or offer to make an expenditure to any person either to vote or withhold one's vote or to vote for or against any candidate in a federal election. 18 U.S.C. § 597.

(3) Solicit, accept, or receive an expenditure in consideration of his vote or the withholding of his vote in a federal election. 18 U.S.C. § 597.

(4) Use any appropriation by Congress for work relief, relief, or for increasing employment, or exercise any authority conferred by an appropriations act for the purpose of interfering with, restraining, or coercing any individual in the exercise of his right to vote. 18 U.S.C. § 598.

(5) If a candidate, directly or indirectly promise or pledge the appointment of any person to any public or private position or employment, for the purpose of procuring support of one's candidacy. 18 U.S.C. § 599.

(6) Promise employment or any other benefit provided for or made possible by an act of Congress as reward for political activity or support. 18 U.S.C. § 600.

(7) Furnish, disclose, or receive for political purposes the names of persons receiving relief payments under any act of Congress. 18 U.S.C. § 605.

(8) Make any expenditure for any general public political advertising which anonymously advocates the election or defeat of a clearly identified candidate. 2 U.S.C. § 441d.

(9) Fraudulently misrepresent oneself as speaking or acting on behalf of a candidate. 2 U.S.C. § 441h.

2. SOLICITING OR RECEIVING CAMPAIGN CONTRIBUTIONS

An employee may not:

(1) Promise to use support or influence to obtain federal employment for anyone in return for a political contribution. 18 U.S.C. § 211.

(2) Cause or attempt to cause anyone to make a political contribution by means of denying or threatening to deny any governmental employment or benefit provided for or made possible, in whole or in part, by any act of Congress. 18 U.S.C. § 601.

(3) Solicit political contributions from any other federal employee or any "person receiving any salary or compensation or services

from money derived from the Treasury of the United States." 18 U.S.C. § 602.

(4) Solicit or receive political contributions from persons known to be entitled to or to be receiving relief payments under any act of Congress. 18 U.S.C. § 604.

(5) Intimidate any federal officer or employee to secure political contributions. 18 U.S.C. § 606.

(6) Solicit or receive political contributions in a federal building, other than unsolicited contributions transferred to a political committee within seven days. 18 U.S.C. § 607.

(7) Knowingly accept a contribution in excess of limitations under federal law of $2,400 to a candidate from any person, and $5,000 to a candidate from multi-candidate committees. 2 U.S.C. § 441a(a).

(8) Accept or receive any political contributions from the organizational or treasury funds of a national bank, corporation, or labor organization. 2 U.S.C. § 441(b) (contributions from separate segregated funds of these organizations may be received).

(9) Knowingly solicit contributions from federal government contractors. 2 U.S.C. § 441(c).

(10) Solicit, accept, or receive a contribution from a foreign national. 2 U.S.C. § 441e.

(11) Knowingly accept a contribution made by one person in the name of another person. 2 U.S.C. § 441f.

(12) If an employee of the Senate, receive, solicit, be custodian of, or distribute any campaign funds for federal elections unless the employee is one of three assistants whom the Senator has designated to perform such functions, the employee is compensated at a rate in excess of $10,000 per annum, the Senator's designation has been made in writing and filed with the Secretary of the Senate, and the employee files an annual financial disclosure statement. Rule XLI, Standing Rules of the Senate.

3. MAKING POLITICAL CONTRIBUTIONS

An employee may not:

(1) Make a political contribution to any Member of Congress or federal official who is the employer or employing authority of the congressional staffer. 18 U.S.C. § 603.

(2) Make a cash contribution in excess of $100. 2 U.S.C. § 441g.

(3) Make contributions in excess of $2,400 per election to any candidate, $5,000 per calendar year to a political committee, and $30,400 to a national party committee per year, or make contributions aggregating over $115,500 per calendar year. 2 U.S.C. § 441a(a).

(4) Make a contribution in the name of another. 2 U.S.C. § 441f.

(5) Make contributions or expenditures in excess of $100 other than by contribution to a committee or candidate, without filing a report with the Federal Election Commission. 2 U.S.C. § 434(e).

PART V

QUALIFICATIONS OF MEMBERS OF CONGRESS FOR ELIGIBILITY FOR OFFICE

QUALIFICATIONS OF MEMBERS OF CONGRESS FOR ELIGIBILITY FOR OFFICE *

A. Introduction and Background

Under Article I, section 1 of the U.S. Constitution, the Congress is organized into a bicameral legislative body consisting of a Senate and a House of Representatives.[1] Article I, section 2 prescribes the qualifications for Members of the House: (1) twenty-five years of age, (2) a citizen for seven years, and (3) inhabitancy in the state from which the Member is to be chosen.[2] For Members of the Senate, Article I, section 3 prescribes the following qualifications: (1) thirty years of age, (2) a citizen for nine years, and (3) inhabitancy in the state from which the Member is to be chosen.[3]

Other qualifications for Members of Congress were considered by delegates to the Constitutional Convention of 1787 requiring: (1) a freehold or other property of a certain value including, (2) the payment of taxes, (3) and a certain period of residency.[4] Ultimately, the Convention decided that the qualifications for both the House and Senate should be few and simple reflecting only age, citizenship, and inhabitancy.[5]

With regard to age, it was decided after much debate that Representatives must have attained twenty-five years and Senators thirty years. The delegates agreed that some qualifications of age for Members of Congress was proper. The age of twenty-one was dismissed because persons of this age are often inexperienced and need more time to "try their virtues, develop their talents, enlarge their resources, and give them a practical insight into the business of life adequate to their own immediate wants and duties."[6] The age of Senators was set at thirty, an additional five years more than the age qualification for Representative, because it was thought that the nature of the duties of a Senator require more experience, knowledge, and maturity than that of a Representative.[7]

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[1] U.S. Const., art. I, § 1.

[2] U.S. Const., art I, § 2 provides: "No person shall be a Representative who shall not have attained to the Age of twenty-five Years, and has been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen."

[3] U.S. Const., art I, § 3 provides: "No person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen."

[4] 2 J. Story, *Commentaries on the Constitution of the United States* (Boston; 1833; reprinted DeCapo Press, New York: 1970) §§ 613–614, at 90.

[5] *Id.* at 90–91, § 615.

[6] *Id.* at 91–92, § 616.

[7] *Id.* at 204–205, §§ 726–727. Note that a similar qualification as to age was required of the Members of the Roman Senate, and persons were not considered of full age in Rome until the age of twenty-five. *Id.,* at 205.

As to citizenship, Representatives must have been citizens for seven years, while for Senators the requirement was set at nine years. The obvious reasons for the citizenship requirement were (1) to negate foreign influence, (2) to allow sufficient time for foreigners to acquire knowledge of the institutions and interests of the Country,[8] and (3) to avoid situations whereby U.S. citizens would be represented by foreign Representatives who may not have their best interests in mind.[9] Originally, the delegates to the Convention proposed a three year citizenship requirement for Representatives, but later changed it to seven years.[10] For Senators, a term of four years' citizenship was originally proposed, but it was later changed to nine years.[11]

With regard to inhabitancy, the constitutional requirement for both Representatives and Senators is that, when elected, they are inhabitants of the state in which they are chosen. The purpose of this qualification was to secure an attachment to the state so that its interests would be properly represented. The inhabitancy required of Representatives and Senators is merely within a state, not in any particular district of the state in which a Member is chosen. A one year residence requirement was considered at the Convention, but failed to pass.[12]

The age, citizenship, and inhabitancy requirements are the only qualifications for Members of Congress. They are paramount and exclusive qualifications, and state constitutions, as well as state and federal laws can neither add to nor take away from these qualifications.[13] The Constitution has not delegated any authority to the states or the Congress to add to or diminish such qualifications of Members of Congress as prescribed by Article I of the Constitution. In case of a conflict between a state's laws or constitutional provisions relating to the qualifications of Members of Congress, the provisions of the U.S. Constitution prevail. Thus, the mere possession of such qualifications would make a person eligible for election to the Congress.[14] As Alexander Hamilton observed, "[t]he qualifications of the persons who . . . may . . . be chosen . . . are defined and fixed in the Constitution, and are unalterable by the legislature."[15]

Even though the qualifications for Members of Congress were made quite few and simple by the authors of the Constitution, on several occasions, Congress seemed to add additional qualifications

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[8] *Id.* at 206, § 728. *See also The Federalist*, No. 62.

[9] *Id.* at 93, § 617.

[10] *Id.*

[11] *Id.* at 206–207, § 728. As noted in *The Federalist*, "The term of nine years appears to be a prudent mediocrity between a total exclusion of adopted citizens, whose merits and talents may claim a share in the public confidence, and in indiscriminate and hasty admission of them, which might create a channel for foreign influence in the national councils." *See The Federalist*. No. 62.

[12] *Id.* at 94–207, §§ 618, 729.

[13] 1 *Hinds' Precedents of the House of Representatives* (Washington: 1907), § 414, at 382. *See also* 2 J. Story, *Commentaries* § 625 at 1011. Powell v. McCormack, 395 U.S. 486 (1969); U.S. Term Limits, Inc. v. Thornton, 514 U.S. 779 (1995); Cook v. Gralike, 531 U.S. 510 (2001).

[14] 1 *Hinds' Precedents, supra* at 382–383, § 414.

[15] *The Federalist.* No. 60 (Modern Library ed. 1937), at 394. Also note that in Article I, section 6, clause 2 of the Constitution, there are certain other disqualifications: "[N]o person holding any Office under the United States shall be a Member of either House during his Continuance in Office." Moreover, Article 1, section 6, clause 2 would disqualify a Member of Congress "during the time for which he was elected" from being appointed "to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been increased during such time. . . ."

including the enactment of the 1862 disloyalty oath and the exclusion in 1900 of a Member-elect for polygamy. The issue of whether Congress could add additional qualifications for Members of Congress was not clarified until the 1969 Supreme Court decision, *Powell* v. *McCormack*, in which the Court conclusively established that the constitutional qualifications for Members of Congress under Article I were exclusive and that Congress could not add to them.[16] While such qualifications appear to be quite clear, a number of issues regarding them have arisen nonetheless.

B. State Residency Requirements

Questions have arisen concerning whether a state has a right to prescribe residence requirements for Members of Congress and, more particularly, congressional district residence requirements for Members of the House. For example, a 1790 Maryland law required a Member to be an inhabitant of the district at the time of election and to have resided there twelve months immediately prior to the election. In 1807, a House contested election case arose concerning whether an elected candidate to the House of Representatives has met the residence requirements of the State of Maryland. After much debate in the House, a report was issued that asserted: (1) that the qualifications for Members of Congress should be national in character and uniform throughout the nation, (2) that neither the States nor the Congress could add to or diminish such qualifications, and (3) that the States could not reserve a power to add to the qualifications of members.[17]

In a 1958 Maryland Court of Appeals decision, *Hellmann* v. *Collier,*[18] involving a Maryland statute that required every candidate for the House of Representatives to be a resident of the congressional district in which the candidate sought election,[19] the court held the statute invalid because the state does not have any power to fix the qualifications for Representatives in Congress. Moreover, the congressional district residency requirement was an attempt by the state to impose an additional qualification to the provision of Article I, section 2 which establishes the qualifications for Representatives of Congress. The Maryland Court of Appeals decision was based on the ground that the state cannot in any manner impose additional qualifications for Members of the House of Representatives[20] despite the fact that Congress has enacted laws providing for the reapportionment and redistricting for Members of the House.[21]

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[16] 395 U.S. 486, 543–547 (1969). *See* Act of July 2, 1862, 12 Stat. 502.

[17] *1 Hinds' Precedents of the House of Representatives,* § 414, at 381–382. *See now* Dillon v. Fiorina, 340 F. Supp. 729, 731 (N.M. 1972); Campbell v. Davidson, 233 F.3d 1229 (10th Cir. 2000), cert. denied, 532 U.S. 973 (2000); Schaefer v. Thownsend, 215 F.3d 1031 (9th Cir. 2000), cert. denied, Jones v. Schaefer, 532 U.S. 904 (2001), as to impermissibility of state "dutational" residency requirements.

[18] 217 Md. 93, 141 A. 2d 908 (1958).

[19] Maryland Annotated Code, Art. 33, sec. 158(c) (1957).

[20] 141 A. 2d at 911–912.

[21] *See* the following Federal statutory provisions relating to reapportionment and redistricting: 2 U.S.C. § 2 (number and apportionment of Representatives); 2 U.S.C. § 2a (reapportionment of Representatives: time and manner); 2 U.S.C. § 2b (number of Representatives from each state); and 2 U.S.C. § 2c (number of congressional districts, number of Representatives from each district).

By custom and precedent, however, it has become the norm that Representatives are residents of the congressional districts that they are elected to represent. For a state to require this by a law, though, as the State of Maryland did, would present immediate constitutional problems as it is a well settled principle that states cannot add to the qualifications for Members of Congress.[22]

C. Definition of Inhabitancy

The constitutional qualifications of Articles 1, section 2 and 3 for members of the House and Senate require inhabitancy in the state in which a Member is chosen, but these provisions do not use the terms "residency" or "domicile." Black's Law Dictionary defines an inhabitant as: "One who resides actually and permanently in a given place, and has his domicile there."[23] The terms "resident" and "inhabitant" are not necessarily synonymous. Inhabitancy implies a more fixed and permanent abode and imparts certain privileges and responsibilities that residency would not have.[24] "Residence" is defined as the "[P]ersonal presence at some place of abode with no present intention of definite or early removal and with purpose to remain for undetermined period, not infrequently, but not necessarily combined with design to stay permanently."[25] And "domicile" is "[T]hat place where a man has his true, fixed, and permanent home and principal establishment, and to which whenever he is absent he has the intention of returning."[26]

What are the criteria that would establish inhabitancy for the purpose of meeting that qualification under Article I, sections 2 and 3 of the Constitution? Some of the early contested election cases in the House of Representatives concerning the issue of inhabitancy provide us with certain criteria. To determine inhabitancy of House Members, the following factors were considered:

(1) citizen of the state involved;
(2) native of state involved;
(3) residence in state involved;
(4) residence in other states;
(5) type of home in state (vacation home or permanent home);
(6) professional licensure in state (e.g., license to practice law in state);
(7) pension from a foreign country;[27]
(8) residence abroad;
(9) property in state—both real and personal;
(10) intention to return to state if outside of state;[28]

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[22] Bernard Schwartz, *A Commentary on the Constitution of the United States, Part 1 "The Powers of Government"* (New York: The MacMillan Co., 1963) at 97. For an analysis of the terms "bonafide inhabitant" for the purpose of congressional eligibility for office, *see* H. Rept. 94–762, 94th Cong. 1st Sess. (1975).

[23] Black's Law Dictionary at 703 (6th ed. 1990). See also *Ex Parte Shaw,* 145 U.S. 444, 447 (1892).

[24] *Id.*

[25] *Id.* at 1176.

[26] *Id.* at 435.

[27] These seven criteria were considered in the House contested election case of Philip B. Key of Maryland in the Tenth Congress (1807–1808). See *1 Hinds' Precedents of the House of Representatives* § 432, at 417–419 (1907).

[28] Factors numbered 8, 9, and 10 were considered in the House contested election case of John Bailey in 1824 who was elected from Massachusetts to the Eighteenth Congress, but Congress concluded that, since he held an office and resided with his family for a series of years in the

(11) state usage of the term "inhabitant".[29]

The House has used a number of these factors to establish the inhabitancy of a Member when it has been questioned. In the 1824 election contest case of John Bailey, who was elected from Massachusetts and found disqualified to sit because of insufficient indices of inhabitancy, the House Committee on Elections observed that the term "resident" had first been proposed by the Framers of the Constitution but was later changed to "inhabitant" because it was thought that the latter would express more clearly their intention that Members of Congress should be completely identified with the state they represent.[30] The Committee also observed that the inhabitancy qualification in Article I of the Constitution did not necessarily mean that a Member must be actually residing in the state at the time of election.[31]

The Senate election contest cases concerning the issue of inhabitancy generally have not analyzed the inhabitancy qualification as much as the pertinent House election contest cases have. For example, in the 1809 Senate election contest case of Stanley Griswold from Ohio, the Senate found that, because the term of residence to entitle a person to become an inhabitant of the State was not defined by either the Ohio Constitution or the laws of the State of Ohio, the certificate of the Governor that Griswold was a citizen of Ohio was sufficient to entitle him to a seat.[32] In the 1870 Senate election contest case of Adelbert Ames from Mississippi, the Senate Judiciary Committee determined that he was not, when elected, an inhabitant of the State as he only went to Mississippi due to military orders stationing him there and because only shortly before the election did he decide to become a senatorial candidate and remain and reside in Mississippi. Despite the Judiciary Committee's report, the Senate, after a long debate, allowed Mr. Ames to take the oath to office after resolving that he was eligible to be a Member of the Senate.[33] In a 1992 unpublished decision of the Louisiana Court of Appeals, (Doc. No. 92 CA 1768), it was held that "inhabitancy" is a requirement only at the time of election and that allegations concerning inhabitancy cannot state a cause of action prior to the election.

District of Columbia exclusively, he was disqualified to sit as a Member from Massachusetts. *1 Hinds' Precedents of the House of Representatives* § 434, at 419–422 (1907). However, in the 1824 contested election case of John Forsyth of Georgia, the House held that residence abroad in the service of the Government does not constitute a disqualification. *1 Hinds' Precedents supra* § 433 at 419.

[29] For example, in Massachusetts in regard to the election contest case of John Bailey in 1824, the term "inhabitant" referred to a person as a member of a certain political community and not as a resident, *see 1 Hinds' Precedents supra* § 433 at p. 422. *Cf.* Senate election contest case of *Stanley Griswold* in 1809 in which it was determined that since the State of Ohio did not have any laws or constitutional provisions construing the term "inhabitant," citizenship in the State would be sufficient to meet the inhabitancy qualification. *See Senate Election, Expulsion And Censure Cases From 1793 to 1972.* S. Doc. 92–7, 92d Cong., 1st Sess., at 5 (1972).

[30] 1 *Hinds' Precedents, of the House of Representatives,* § 434, at 420.

[31] *Id.* at 421. *See also* House Contested Case Re 21st Cong. Dist. of Ohio, H. Rept. 94–702, 94th Cong., 1st Sess. (1975).

[32] *Senate Election Cases,* S. Doc. 92–7 at 5.

[33] *Id.* at 45.

D. Holding Public Office and Eligibility for Congressional Office

When state constitutional or statutory provisions have disqualified certain Members-elect because they held certain state offices, both the House and the Senate have nevertheless seated these Members-elect. Such state provisions have almost universally been held by Congress, in contested election cases, and by the courts, predominantly state courts, to be additional qualifications to those set forth in Article I, sections 2 and 3 and hence, unconstitutional, as no state may add to the constitutional qualifications for Members of the House and Senate.[34]

For example, in an 1852 Senate election contest case, the Senate voted to seat Lyman Trumbull of Illinois, who was a judge of the Supreme Court of Illinois, despite the Constitution of Illinois having a provision that would disqualify him.[35] The Senate concluded that the State of Illinois could not add qualifications for eligibility to the Senate to those as defined by Article I, section 3, clause 3 of the United States Constitution.[36] Moreover, in an 1887 Senate election contest case involving a Senator-elect from West Virginia, who at the time of his election was a judge of the 13th Judicial Circuit, it was alleged that the Senator-elect was ineligible because of a state disqualification of eligibility in the West Virginia Constitution (Art. VIII, § 16) providing that a judge could not, during his continuance in office, be eligible to any political office. The Senate concluded that the Senator-elect could be seated since the West Virginia constitutional provision constituted an additional qualification to those set forth in the United States Constitution and was thus unconstitutional.[37]

Likewise, a number of state court holdings provide that states cannot add to qualifications for Members of Congress that appear in sections 2 and 3 of Article I of the Constitution. In a 1918 decision, the Supreme Court of the State of Washington held that the state cannot change the qualifications for either House of Congress as fixed by the United States Constitution by the Constitution of Washington (Article 4, § 15), which requires that judges of the Supreme Court and superior courts shall be ineligible for any other office during their term.[38] In 1940, the Arizona Supreme Court similarly held that the provision of the Constitution of Arizona (Constitution of Arizona, Article 6, section 11), providing that the judges of the Supreme and Superior courts shall not be eligible to any office of public employment other than a judicial office of employment during the time for which they have been elected, does not affect the qualifications of a candidate for Congress either in a primary or a general election. And, when there is a conflict between state and federal constitutional provisions relating to the

[34] *See generally 1 Hinds' Precedents of the House of Representatives,* §§ 414–417, at 381–389.

[35] The Constitution of Illinois provided that the judges of the Supreme Court should not be eligible to any office of public trust or profit in the United States during the term for which they were elected nor for one year thereafter and that the votes for them for any elected office should be void. *See Senate Election Cases,* S. Doc. 92–7 at 23.

[36] *Id.*

[37] *Id.* at 53–57.

[38] *State ex rel. Chandler* v. *Howell,* 104 Wash 99, 175 P. 2d 569, 571 (1918).

qualifications of Members of Congress, the provisions of the United States Constitution prevail.[39]

In a 1970 federal court decision regarding congressional elections in the State of Florida, a three-judge district court held that a Florida election statute, which required a condition precedent to qualification that a person resign from any state public office, violated Article I, section 2, clause 2 of the United States Constitution setting forth the qualifications for such office.[40] The district court asserted that the qualifications prescribed in the United States Constitution are exclusive and that state constitutional and statutory provisions can neither add to nor take away from them. The court further noted that this proposition is universally accepted and recognized and that state courts with singular unanimity have arrived at the same holding.[41]

E. Subversive Activities and Eligibility for Congress

A congressional candidate cannot be required to file an affidavit stating that he or she is not a subversive seeking the forcible overthrow of the Government.[42] In 1950, for example, the Court of Appeals of Maryland held that the statute requiring candidates for public office to file with their nomination certificates affidavits stating that they are not subversive persons was operative for candidates for state office but not for candidates for congressional office.[43] The Maryland Court of Appeals made the following findings: (1) that the qualifications for a Representative in Congress are set out in Section 2 of Article I of the Federal Constitution, (2) that there are no other qualifications prescribed by the Constitution, (3) that Section 5 of Article I of the Constitution provides that each House of Congress shall be the judge of the qualifications of its own Members, and (4) that Members of Congress take the oath prescribed by Article VI of the Constitution and not the oath prescribed by Maryland statutory and constitutional provisions.

Consequently, the Maryland Court of Appeals concluded that there is nothing in the Federal Constitution preventing a Member of Congress from being a subversive seeking to overthrow the Government by force or violence. And, if that is to constitute a dis-

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[39] *Stockton* v. *McFarland,* 56 Ariz. 138, 106 P. 2d 330–331 (1940). *See also* the following decisions which held that similar state disqualifications would not prevent candidates for Congress from running for office, being nominated for office, and being eligible for office because they would be additional qualifications to those prescribed by the United States Constitution: *State ex rel. Wettengel* v. *Zimmerman,* 249 Wis. 237, 24 N.W. 2d 504, 508–509 (1946); *Riley* v. *Cordell,* 200 Okla. 390, 194 P. 2d 857, 861–862 (1948); *State ex rel. Johnson* v. *Crane,* 65 Wyo. 189, 197 P. 2d 864 (1948); N.E. 2d 508, 512–513 (1958); and *Florida ex rel. Davis* v. *Adams,* 238 So. 2d 415 (Fla. 1970), *stay granted,* 400 U.S. 1203 (1970) (Justice Black in Chambers); and *Stack* v. *Adams,* 315 F. Supp. 1295, 1297–98 (N.D. Fla 1970), *interim relief granted,* 400 U.S. 1205 (1970) (Justice Black in Chambers).

[40] *Stack* v. *Adams.* 315 F. Supp. 1295, 1297 (N.D. Fla. 1970), three-judge district court. *Interim relief granted,* 400 U.S. 1205 (1970) (Justice Black in Chambers). However, statutory restrictions often known commonly as "Hatch Acts" or little Hatch Acts which prohibit state employees from running for office in a partisan election (and thus would require a resignation to run) have been upheld against challenges of additional qualifications. Merle v. United States, 351 F3d 92,197 (3rd Cir. 2003) cert. denied, 541 U.S. 972.

[41] *Id.* at 1297, *Cf. Exon* v. *Tiemann,* 279 F. Supp. 609, 613–14 (D. Neb. 1968, three-judge court).

[42] Bernard Schwartz, *A Commentary* at 97. However, note that in 1862 due to the Civil War, Congress enacted a law requiring its Members to take an oath that they had never been disloyal to the Government (Act of July 2, 1862, 12 Stat. 502), and several House and Senate candidates were refused their seats in 1868 on charges of disloyalty. See *1 Hinds Precedents of the House of Representatives,* §§ 449, 451, and 457 at 431, 451, and 466.

[43] *Shub* v. *Simpson*, 76 A. 2d 332, 335–336 (Ct. of App. Md. 1950).

qualification, it must be determined by Congress, and not by a state court or a state legislature.[44] Moreover, a 1940 New York decision held that where a candidate for the U.S. House of Representatives was otherwise qualified, the fact that he was a leader of the Communist Party in America and openly espoused international communism did not render him ineligible.[45]

F. Felony Conviction and Eligibility for Congress

Generally, the conviction of or pleading guilty to a crime, which constitutes a felony offense, does not automatically affect the eligibility to be a Member of Congress or to be a candidate for a future Congress, unless the conviction is for insurrection or rebellion against the United States or for aiding or abetting the enemies of the United States. [See, United States Constitution, Fourteenth Amendment, Section 3, which would disqualify one who would commit such offenses after holding public office and swearing to uphold the Constitution.] This issue was addressed in a 1918 Minnesota Supreme Court decision holding that the State constitutional provisions disqualifying convicted felons can have no application to the office of United States Senator.[46] The Court further held that the qualifications of those aspiring to or holding congressional office are prescribed by the Federal Constitution, which the State cannot modify or enlarge in any way. Consequently, the candidate who was a convicted felon was not disqualified under the provisions of the United States Constitution.[47]

G. Eligibility of Congressional Candidates After Defeat in Primary Election

On occasion, the issue arises as to whether a candidate for Congress can run in a general election for congressional office, after a primary election defeat, despite a state election law prohibiting defeated primary candidates from running in the general election. Generally, state ballot access provisions, which are merely regulatory and are concerned only with the manner of holding elections, do not impose additional qualifications for holding congressional office.

For example, a 1902 decision by the Supreme Court of Minnesota held that a statute prohibiting an unsuccessful congressional candidate at a primary election from having his name printed on the general election ballot as an independent candidate for the same congressional office was a reasonable and valid regulation that did not affect his eligibility for congressional office because the official ballot had a provision for write-in votes.[48] Thus, when state election laws prohibit congressional candidates defeated in primary elections from having their names printed on general election ballots, these provisions do not affect their eligibility to congressional office as defined by the Constitution. The presence of a write-in provision protects congressional eligibility and enables congres-

[44] *Id.* at 340.
[45] *In re O'Connor*, 173 Misc. 419, 17 N.Y.S. 2d 758, 759 (1940).
[46] *State ex rel. Eaton* v. *Schmahl,* 167 N.W. 481 (Sup. Ct. Minn. 1918).
[47] *Id.*
[48] *State ex rel. McCarthy* v. *Moore, County Auditor,* 87 Minn. 308, 92 N.W. 4 (1902).

sional candidates to be elected if the requisite number of write-in votes are received. Likewise, a 1934 Nebraska Supreme Court decision held that a candidate who was defeated at a primary election for the office of governor could not, by petition, become a candidate for the office of United States Senator.[49] The Court concluded that the candidate was not entitled to have his name printed on the ballot, even though he was seeking the office of U.S. Senator, since he may still be a write-in candidate and win the election if a sufficient number of voters wrote in his name on the ballot.[50] According to the court, the state statute prohibiting defeated primary candidates from being on the general election ballot by petition did not impose an additional qualification to be a United States Senator and did not prevent him from being a candidate in the general election due to the write-in provisions.[51]

However, a 1942 North Dakota Supreme Court decision held that a statute prohibiting a defeated primary candidate from being a candidate for the same office at the general election was inapplicable to congressional candidates because it was not regulatory and added a qualification for holding congressional office in addition to those fixed by the Federal Constitution.[52] The court concluded that, when a state election law bars the placement of a candidate's name on a general election ballot after a primary election defeat, it consequently makes the congressional candidate ineligible for said office. Thus, according to the court, this ineligibility to general election ballot access, whether as a candidate of another political party or as an independent candidate, imposes an additional qualification for congressional office in violation of the U.S. Constitution.[53] However, the current state of the law appears to indicate that, as long as write-in access is available to the congressional candidate, such a bar would not be absolute and therefore, would not constitute an added qualification to Federal office, and such requirement has been allowed as a type of permissible "ballot access" requirement of the State to prevent ballot clutter and confusion.[54]

H. State Requirements for Obtaining Ballot Access

All state election laws have certain regulatory provisions requiring both state and Federal candidates to do all or some of the following: (1) file a declaration of candidacy, (2) file a nominating petition with a requisite number of signatures, and (3) pay a filing fee in certain jurisdictions.[55] As such requirements are regulatory and are concerned with the formation of the ballots of the primary and general elections and the procedure and conduct of such elections, they do not impose additional qualifications for holding congressional offices.[56]

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[49] *State ex rel. O'Sullivan* v. *Swanson,* 257 N.W. 255 (Sup. Ct. Neb. 1934).
[50] *Id.* at 255, 256.
[51] *Id.* at 256.
[52] *State ex rel. Sundfor* v. *Thorson,* 6 N.W. 2d 89, 91–92 (Sup. Ct. N.D. 1942).
[53] *Id.* at 90.
[54] Storer v. Brown, 415 U.S. 724 (1974).
[55] *See, e.g.,* Part II, concerning various state election law requirements for the nomination and election of congressional candidates, which include *inter alia* provisions relating to declarations of candidacy, nominating petitions, and filing fees.
[56] *Sundfor,* 6 N.W. 2d at 90.

The filing fee requirements in a couple of states have been challenged on the ground that they impose an additional qualification on the right to hold a certain office in violation of constitutional provisions setting forth elective office qualifications. This issue was addressed by a 1961 Florida Supreme Court decision which upheld an $875.00 filing fee for the office of Supreme Court Justice. The Court asserted that the filing fee requirement imposed no additional qualification upon the right to hold office and that it dealt only with the requirements to become a candidate for the office.[57] As long as such filing fee provisions are not arbitrary or unreasonable, they are valid legislative enactments that help defray the costs of nomination and election procedures and help maintain a reasonably limited ballot size for the sake of insuring the efficiency of the election process.[58] In a 1905 Court of Appeals decision in Maryland, it was similarly held that the exaction of a filing fee was not an imposition of a property qualification on the candidates.[59] However, it should be noted that the United States Supreme Court on two occasions in 1972 and 1974, in *Bullock* v. *Carter*[60] and *Lubin* v. *Panish,*[61] held that when state election statutes provide for filing fee requirements without providing for reasonable alternative means of access to the ballot, they are unconstitutional by denying equal protection of the laws to indigent candidates who are unable to pay.

In 1974, the Supreme Court in *Storer* v. *Brown* upheld the ballot access requirements of the California Elections Code for independent candidates for the U.S. Congress and concluded that such provisions do not add to the qualifications for the office of U.S. Representative and therefore, do not conflict with Article I, section 2, clause 2 of the U.S. Constitution.[62] The provisions of the California Elections Code denied ballot access to all independent candidates for state or Federal office who voted in the immediately preceding primary election or who had a registered affiliation with a political party at any time within one year prior to the immediately preceding primary election.[63] Moreover, the ballot access provisions required all independent candidates (even those for federal office) to file nomination papers signed by at least 5 percent of the vote cast at the preceding general election for the office which the candidate seeks to run and filed with the secretary of state 60 days before the general election.[64]

The *Storer* Court held that the independent congressional candidates were properly barred from ballot positions for failing to comply with the California Election Code's party disaffiliation requirement. Moreover, the court found that the ballot access provisions for independent congressional candidates were not unconstitutional as adding qualifications to the office of U.S. Representative.[65] The party disaffiliation requirement, according to *Storer*,

[57] *Bonder* v. *Gray*, 220 So. 2d 419, 421 (Sup. Ct. of Fla. 1961).
[58] 25 Am Jur. 2d Elections § 182 (Payment of Filing Fees).
[59] *Kenneweg* v. *Allegancy County Com'rs*., 62 A. 249, 251 (Ct. of App. Md. 1905).
[60] 405 U.S. 134, 140–149 (1972).
[61] 415 U.S. 709, 717–718 (1974).
[62] 415 U.S. 724, 728 (1974).
[63] California Elections Code. §§ 6830(c), 6830(d)(1974).
[64] *Id.* at §§ 6830, 6831, 6833 (1974).
[65] 415 U.S. at 746, n. 16.

was supported by California's compelling interests in preserving the direct primary process and in maintaining the stability of its political system and involved no discrimination against independent candidates.[66] Thus, the procedural and regulatory requirements for independent congressional candidates to attain general election ballot access were not unconstitutional under Article I, section 2, clause 2 of the U.S. Constitution. That is, such requirements were not found to establish an additional qualification for the office of U.S. Representative as the procedural requirements for independent congressional candidates are no more an additional qualification for Congress than the primary election requirements would be in order to be placed on the general election ballot.[67] In addition, an independent congressional candidate barred from the general election ballot for failing to comply with mandatory ballot access procedural requirements for independent candidates would still have a chance to be elected to the U.S. Congress as a write-in alternative under the California Elections Code.[68]

Arguably if in *Storer,* if certain congressional candidates were absolutely barred from running for Congress by stringent and exclusive state procedural and regulatory laws governing general election ballot access by preventing placement on the general election ballot, (either as a party nominee through the primary election process or as an independent candidate or even as a write-in candidate), then such election laws might be invalid as providing an additional qualification for U.S. congressional office. It appears that the absolute bar feature would render a state election code provision unconstitutional as an additional qualification. This was not the case in *Storer* because if the independent congressional candidates had timely complied with the procedures for independent candidacies under the California Elections Code, they could have been on the general election ballot as independent candidates or could they have chosen to be write-in candidates on the general election ballot.

I. The Issue of Term Limitations for Members of Congress

Certain states, either by state statutory or constitutional provisions or by popularly enacted initiative measures, have limited the number of terms their legislators may hold office. When these states enact statutes or initiative measures attempting to limit the number of terms of their U.S. Representatives and U.S. Senators, serious constitutional problems are raised. Under Article I, sections 2 and 3 of the U.S. Constitution the specific qualifications of Members of the U.S. House of Representatives and the U.S. Senate are set forth. Article I, section 2 specifies the qualifications of Members of the House of Representatives—age 25, U.S. citizenship for 7 years, and inhabitancy in the state. Article I, section 3 specifies the qualifications for Members of the U.S. Senate—age 30, U.S. citizenship for 9 years, and inhabitancy in the state. These constitutional

[66] *Id.* at 734–37.
[67] *Id.* at 746, n. 16.
[68] *Id.* at 736, n. 7.

qualifications are defined and fixed by the U.S. Constitution and are thus unalterable by State statutes or initiative measures.[69]

The Framers of the U.S. Constitution at the Constitutional Convention of 1787 debated the issue of the qualifications for Representatives and Senators and arrived at the above-mentioned age, citizenship, and inhabitancy qualifications for eligibility for U.S. congressional office. In the drafting and the markup of the U.S. Constitution, the Convention delegates on June 12, 1787 in the Committee of the Whole rejected and expunged a clause forbidding reelection for several years to the House of Representatives.[70] On June 23, 1787, the Convention delegates rejected a provision making Members of Congress ineligible for office for one year after the expiration of their terms.[71] After considerable debate, the delegates also rejected the concept of rotation of Members of Congress[72] similar to the rotation of the delegates to Congress under the Articles of Confederation.[73] Consequently, it appears that the Framers of the U.S. Constitution did not intend term limitations for Members of Congress as they expressly rejected similar term limit concepts.

Any change in the term limitations for Members of Congress can only occur by the passage and ratification of a constitutional amendment in accordance with Article V of the Constitution. Neither an act of Congress nor an act of a state by statute or initiative measure can change or add to the prescribed constitutional qualifications of Members of Congress. Only a U.S. constitutional amendment can change or add to such qualifications. The prescribed constitutional qualifications for Members of the House of Representatives and the Senate are paramount and exclusive qualifications which cannot be amended, changed, diminished, altered or added to by any state laws or constitutional provisions.[74]

The Supreme Court in the 1969 landmark decision *Powell* v. *McCormack* held that the constitutional qualifications for Members of Congress under Article I, sections 2 and 3 were exclusive and that Congress could not add to them.[75] The Court in *Powell* found that the House of Representatives had no power to exclude from its membership any person who was duly elected and who met the age, citizenship, and residence requirements of Article I, sections 2 and 3 of the Constitution. According to the Court, under the Constitution, Congress is authorized to judge the qualifications of its members, but not to prescribe the qualifications for Members of the U.S. House and Senate.[76]

In 1995, the Supreme Court in *U.S. Term Limits, Inc.* v. *Thornton* concluded that a state-imposed limitation on congressional terms of office was unconstitutional because it established an additional qualification for congressional office in violation of Article I, sections 2 and 3, setting forth the three basic congressional quali-

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[69] Alexander Hamilton observed that the qualifications of Members of Congress "are defined and fixed in the Constitution, and are unalterable by the legislature." *The Federalist,* No. 60 (Modern Library ed. 1937), 394–95. *Cf., The Federalist Papers* 371 (Mentor ed. 1961).

[70] C. Tansill, *Documents.* "Debates in the Federal Constitution of 1787 as reported by James Madison" at 195, 1091 (1927).

[71] *Id.* at 800–03.

[72] *See, 2 Debates on the Adoption of the Federal Constitution,* at 288–298, 310–20 (J. Elliott) (1988).

[73] Under Article V, clause 2 of the Articles of Confederation, "no person [Member] shall be capable of being a delegate for more than three years in any term of six years. . . ."

[74] 1 *Hinds' Precedents of the House of Representatives* § 414, at 382; 2 J. Story, *Commentaries* § 625 at p. 1011.

[75] 395 U.S. 486, 543–47 (1969).

[76] 395 U.S. at 543 *quoting* Committee of Elections 17 *Annals of Congress* at 871–72 (1807).

fications of age, citizenship, and inhabitancy.[77] The Court reaffirmed its holdings in *Powell* that the qualifications for service in Congress set forth in the Constitution are fixed and cannot be supplemented by the States nor by Congress. Changing these qualifications would require a constitutional amendment ratified by three-quarters of the States.[78]

[77] 514 U.S. 779 (1995).
[78] *Id.* at 787–798.

PART VI

DISQUALIFICATION, DEATH, OR INELIGIBILITY OF THE WINNER OF A CONGRESSIONAL ELECTION

DISQUALIFICATION, DEATH, OR INELIGIBILITY OF THE WINNER OF A CONGRESSIONAL ELECTION[1]

A. INTRODUCTION AND BACKGROUND

If a candidate who has been elected to the United States House of Representatives or the United States Senate subsequently dies (prior to taking the oath of office), or later acquires or has discovered a legal disability such that he or she is no longer eligible to serve or to be seated in the House or the Senate, then precedent and practice indicate that a "vacancy" in that office would be established. Such a vacancy would then be filled according to the United States Constitution.

However, if a candidate dies *prior* to a general election for the House or Senate, but because of the imminence of the election the candidate's name remains on the ballot under State election law procedures, and that deceased candidate then receives the most votes in the election, should this be treated as *other* than a "vacancy" in the office which will occur at the beginning of the congressional session?

As expressly provided in the United States Constitution, at Article I, Section 5, cl. 1, the House and the Senate each "shall be the Judge of the Elections, Returns and Qualifications of its own Members . . . ." In judging congressional elections, the overwhelming weight of precedent in both the House and the Senate has been to follow the so-called "American Rule," whereby an absolute disability or ineligibility of a candidate receiving the most votes in an election (the "majority candidate") creates a "vacancy" in the office, which is then filled according to the Constitution. The next highest qualified vote-getter in such an election is *not* deemed by the House or Senate to be entitled to the seat under this "American Rule" (unlike under the so-called "British Rule"), nor is the entire election considered a "nullity" (such that a new election or "do-over" must proceed immediately).[2] Under congressional precedent and practice, it has not mattered whether the majority candidate was actually ineligible or not qualified *before* or *after* the time of the election, or whether the voters knew of such ineligibility, death or disqualification before or at the time of the election—the "vacancy" was deemed created, and filled in the manner prescribed in the United States Constitution.

[1] By Jack H. Maskell, Legislative Attorney, American Law Division, Congressional Research Service, Library of Congress.

[2] Riddick and Fruman, *Riddick's Senate Procedure, Precedents and Practice*, S. Doc. No. 101–28, 101st Cong., 2d Sess. 701 (1992); 2 *Deschler's Precedents of the U.S. House of Representatives*, Ch. 7, § 9, at 96; *see* discussion of "American Rule" versus "English Rule," in *Smith v. Brown* (40th Cong.), Rowell's Digest of Contested Election Cases, 220–221.

As to vacancies in the United States Senate, the Seventeenth Amendment to the Constitution provides that when there are vacancies in the representation of any State in the Senate, the Governor of the State "shall issue writs of election to fill such vacancies"; however, in the alternative, if expressly authorized by that State's legislature, Governors may make "temporary appointments" to fill a Senate seat until an election is held to fill the remainder of the term, as directed by State law.[3] In the case of vacancies in the House of Representatives, the Constitution does not authorize the Governor of a State to fill a seat on an interim basis, but rather instructs only that "Writs of Election" for a special election shall be issued by the Governor.[4] The timing of the election to fill vacancies for Representative or Delegate, and thus how long the vacancy will continue, is generally within the discretion of the individual States as a matter of State law.[5]

On the several occasions of the death of a candidate for the United States House of Representatives so close to the election that a new candidate could not qualify in time to be printed on the general election ballot under applicable State election administration laws—and that deceased candidate subsequently received the most votes in the election (or when the majority candidate on the ballot was otherwise constitutionally ineligible for the office)—the so-called "American Rule" was applied. That is, the receipt of the most votes by the deceased or otherwise ineligible candidate on the ballot was deemed to have created a *vacancy* in the office of Representative, which was then filled as prescribed under the United States Constitution for vacancies in House seats, that is, through the issuance of "writs of election" for a special election. Representatives Hale Boggs (Louisiana) and Nick Begich (Alaska) were lost and presumed dead in an airplane crash in Alaska on October 16, 1972, less than a month before their general elections. Under State election procedures, their names remained on the ballot, and they received the most votes in their respective general elections, whereupon vacancies were declared, and special elections to fill the vacancies were held.[6] The living candidate with the next highest vote total, that is, the "runner-up" in the regular general election on the ballot, or from write-ins (Representative Boggs was unopposed), was *not* declared the winner. On October 7, 1962, Representative Clement Miller of California died also in a plane crash shortly before the 1962 general congressional election. As reported, "[u]nder California law, it was too late for the Democratic party to place a new nominee on the ballot for the November 6 election," and Rep-

[3] *United States Constitution*, Amendment 17. "A vacancy in the Senate may be filled either by a writ of election or by state executive appointment under the Seventeenth Amendment." *Deschler's Precedents, supra* at Ch. 8, § 9, at 250.

[4] Article I, Section 2, cl. 4. For a general discussion on the process of filling House and Senate vacancies, *see* Neale, "House and Senate Vacancies: How Are They Filled?" CRS Report 97–1009.

[5] 2 U.S.C. § 8. *See Jackson v. Ogilvie*, 426 F.2d 1333 (8th Cir. 1970), *cert. denied*, 400 U.S. 833 (1970), on mandatory duty of Governor to issue writ of election.

[6] Washington Post, November 9, 1972, at A25; Washington Star, December 7, 1972, at A16; Washington Post, December 8, 1972, at A7; New York Times, December 13, 1972, at 48; 2 *Deschler's Precedents*, Ch. 8, § 9.5; Congressional Quarterly, *Congress and the Nation,* Volume III, 1969–1972, at 24. A "vacancy" is generally announced by the executive of a State, as incident to the procedures for issuing writs of election for a special election, but may, where appropriate, be formally announced by the House with notification sent to the Governor. *Deschler's Precedents, supra* at Ch. 8, § 9.

resentative Miller's name remained on the ballot.[7] When he received the most votes, a "vacancy" was declared in the seat, and filled according to the Constitution.

Similarly, in the one instance in the Senate when a candidate who had qualified for the ballot as a major party candidate for the Senate died *prior* to the time of the general election, but *after* the time established by State law for finalization of the ballot, and who then received the most votes in the election, a "vacancy" in the office of United States Senator was deemed to have occurred in that State, and such vacancy was filled as prescribed in the United States Constitution and State law, that is, by an interim appointment by the Governor. Former Governor Mel Carnahan of Missouri, the Democratic nominee for Senator, died in a plane crash on October 16, 2000, three weeks before the general election. Under Missouri election law, the names of deceased candidates remain on the ballot if they die so close to the election that the filing deadline, or the time for political parties to submit substitute candidates, has passed.[8] The Missouri statute then states expressly what is understood as the so-called "American Rule," that is, "if a sufficient number of votes are cast for the deceased candidate to entitle the candidate to . . . election had the candidate not died, a vacancy shall exist . . . in the office to be filled in the manner provided by law."[9] The acting Missouri Governor had indicated after the candidate's death that if the deceased candidate received the most votes, the Governor intended to appoint the candidate's wife, Jean Carnahan, to fill the vacancy such election result would create.[10] After the Missouri Board of Canvassers certified that the deceased candidate, Mr. Carnahan, had in fact received the most votes in the election, the Governor formally announced on December 4, 2000, that he was appointing, effective January 3, 2001, the deceased candidate's widow, Mrs. Jean Carnahan, to fill the vacant seat until the next general election for the remainder of the term.[11] The credentials of the Governor's appointee, Mrs. Carnahan, were accepted by the Senate, and she was given the oath of office and seated without objection in the Senate on January 3, 2001.[12]

B. ISSUES RAISED CONCERNING DECEASED CANDIDATE ON THE BALLOT, AND SUCH CANDIDATE RECEIVING THE MOST VOTES

During the most recent case of the 2000 Senate race in Missouri, there were arguments raised in certain quarters that it was in some way unconstitutional for the State to allow the name of a deceased candidate to remain on the ballot for United States Senator, regardless of the timing of the candidate's demise in relation to the election; and that because the deceased candidate on the ballot could not actually *hold* the office of United States Senator (being

[7] 1962 *Congressional Quarterly Almanac* 25–26.

[8] Annotated Missouri Statutes, §§ 115.379; 115.363, para. 3. A political party may submit a substitute party candidate for the deceased candidate if the original nominee dies "at or before 5:00 p.m. on the fourth Tuesday prior to the general election." § 115.363, para. 3(1).

[9] Annotated Missouri Statutes, § 115.379, para. 1.

[10] *See* Washington Post, October 31, 2000, at A1.

[11] Washington Post, December 6, 2000, at A6. *See* Annotated Missouri Statutes, § 105.040.

[12] *Congressional Record*, January 3, 2001, at S 3 (daily edition), credentials accepted; *Id.* at S 5 (daily edition), oath of office given and Member-elect seated without objection.

deceased, he was not an "inhabitant" of the State as required by Article I, Section 3, cl. 3), that either the election in which the deceased candidate received the most votes should be ignored or set aside and a new election held immediately, or that the minority candidate, as being the qualified candidate who received the most votes, should win.[13]

These arguments, in the first instance, would appear to call into question the viability and constitutionality of a State's authority to set a specific deadline for finalizing the ballot, that is, a certain time or date prior to the day of an election, after which the ballot for that election could not be changed to add, remove or substitute the names of candidates. Secondly, these arguments would appear to press the so-called "British Rule" upon the Senate in judging the elections and qualifications of its Members, whereby the will of the plurality or majority of the voters of the State would be disregarded either by acting as if the election did not occur, or by not counting the votes cast for the deceased or otherwise ineligible candidate and seating the minority candidate.

Finally, certain arguments were forwarded that even if it had not been improper to allow the deceased candidate's name to remain on the ballot when the death of the candidate occurred in such proximity to the election, the State should not be allowed to treat as a "prospective vacancy" the death of the candidate who remains on the ballot. Under such argument, if the deceased candidate received the most votes, the Governor would not be able to make a temporary appointment to fill the "vacant" seat under the Seventeenth Amendment, even if expressly authorized under the laws of the State as specifically provided for in the Seventeenth Amendment, but rather could only issue writs of election for a special election to fill vacancies in the office of United States Senator which occur by virtue of the election of a disqualified candidate.[14]

C. STATE AUTHORITY OVER ELECTION PROCEDURES, ADMINISTRATION

As to a State's authority to establish a deadline where the ballot is "fixed" such that no new or substitute candidates could be added immediately prior to an election, it should be noted initially that a division of jurisdiction under our federal system occurs in the case of elections to federal office. In the first instance, the terms of federal offices and the qualifications of candidates eligible for federal offices are established and fixed by the agreement of the States within the instrument which created those federal offices, that is, the United States Constitution, and are unalterable by the Congress or by any State unilaterally.[15] The Constitution expressly provides, however, that the individual States generally have the authority to *administer* elections, even ones for federal congres-

[13] Brooks Jackson/CNN, "Republicans Could Block Carnahan's Widow if She Wins Senate Seat," October 31, 2000 (CNN.Com); Robert Novack, Chicago Sun-Times, October 30, 2000, at 33: "[A] national GOP leader told me flatly: 'Jean Carnahan will never be seated in the U.S. Senate'"; Kevin Murphy, Kansas City Star, "GOP Denies Plan to Challenge a Carnahan Election," November 01, 2000; David Thibault, CNSNews.com, "Constitution Party Will Challenge Carnahan Election in Missouri," November 9, 2000.

[14] Viet D. Dinh, "Dead Men Can't Win," The Wall Street Journal, November 9, 2000, at A26.

[15] *Powell v. McCormack*, 395 U.S. 486 (1969); *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779 (1995); *Cook v. Gralike*, 531 U.S. 510 (2001).

sional office,[16] while at the same time expressly providing that each House of Congress has the authority to be the final judge of the *results* of those elections.[17] Furthermore, the Constitution expressly provides that each House of Congress is to be the judge of the three constitutional *qualifications* for office of the Members-elect in those elections, that is, the age, citizenship and inhabitancy in the State of the Members-elect.

Under the States' "Times, Places and Manner" authority in the Constitution, the States may promulgate regulatory and administrative provisions over the mechanics and *procedures* even for federal elections within their States regarding such things as forms of the ballots, "ballot access" by candidates (including new party or independent candidates), voting procedures, and the nominating and electoral process generally, to prevent election fraud, voter confusion, ballot overcrowding, the proliferation of frivolous candidates, and to facilitate proper election administration.[18] Legitimate "ballot access" procedures, including filing requirements, filing deadlines, a show of qualifying support by new or minor party or independent candidates, "sore loser" laws and other restrictions on cross-filing, are generally within the State's purview to "regulate[ ] election *procedures*" to serve the State interest of "protecting the integrity and regularity of the election process. . . .," and are not impermissible additional qualifications for federal office.[19]

As part of these administrative duties involving ballot access, preparation and printing of the ballots, a State must by necessity, because of the exigencies of time and duties, limit or establish a time-frame or deadline by which the ballot must be "set" or finalized, that is, a reasonable time before the general or primary election when no more candidates may be placed on the ballot or programmed into the voting machines. Courts have noted that States have a "compelling interest" in setting deadlines and in finalizing the ballot "so that general election ballots can be properly and timely prepared and distributed."[20] One of the consequences of *not* having a "set" ballot at some reasonable point prior to an election (and of allowing last-minute changes in the candidates on the printed ballot and on voting machines), would be the disenfranchisement of military and other absentee voters, since such last-minute changes would not allow sufficient time before election day

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[16] Article I, Section 4, cl. 1: "The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators."

[17] Article I, Section 5, cl. 1: "Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members. . . ."

[18] *Storer v. Brown*, 415 U.S. 724 (1974); *Jenness v. Fortson*, 403 U.S. 431 (1971); *Bullock v. Carter*, 405 U.S. 134, 145 (1972); *Williams v. Tucker*, 382 F. Supp. 381, 387–388 (M.D.Pa. 1974). Requirements for "ballot access," in addition to the requirement that they impose no substantive, new qualifications to federal office, must not violate equal protection provisions of the Constitution by impermissibly discriminating against new or independent candidates, nor impermissibly infringe upon First Amendment rights of voters to associate freely and express their political opinions through support of their chosen candidates.

[19] *See U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 832–835 (1995), comparing legitimate "ballot access" provisions as in *Storer v. Brown, supra*, with impermissible additional qualifications for federal office, such as individual State-imposed term limits.

[20] *Whig Party of Alabama v. Siegelman*, 500 F. Supp. 1195, 1205 (D.C. Ala. 1980). These deadlines may not be unreasonable and discriminate unfairly in favor of major party candidates over minor or new parties or independent candidates.

to prepare, print, mail out and then to receive back by mail new absentee ballots with such changes.

As found by one federal court, with an election a "mere five weeks away" even if plaintiffs had prevailed on the merits of their arguments against their exclusion from the ballot, the court would have still refused to require the State to change its ballots by including petitioners' names, since the court recognized the overriding administrative necessities of deadlines to insure "time available for election officials to complete their election preparations" before the election.[21] The court noted the "risk [of] substantial disruption of the electoral process" that could ensue by changing a ballot after the State-established administrative deadline for finalization of those ballots, and noted the "tight schedule" of election officials, and the myriad duties and responsibilities that are valid administrative reasons for reasonable deadlines for finalizing ballots:

> Last minute voter registration, processing of many absentee ballot requests, supervising the printing of voting machine ballots, sample ballots, tally sheets, and instruction sheets, instruction classes for election judges and clerks [*footnote*: mailing of absentee ballots and classes for election judges and clerks have already begun], final preparation of voter lists and signature cards, and distribution of voting machines and supplies remain to be accomplished before [the] November [election].[22]

Courts have thus been loathe to require or allow parties to force changes to ballots close to an election, that is, at the "eleventh hour," with an election "close at hand," or with "the imminence of election," because of "the potential for seriously disrupting the State's electoral process."[23] With an election "less than three weeks away," a federal court refused to require the changing of a ballot to add petitioners' names, even on a strong First Amendment showing by petitioners, since "much of the ballot and voting machine preparation" had already taken place, and there needed to be a balancing and a proper weight given to the State's needs and interests in an "orderly" election, including the prevention of the "possible disenfranchisement of absentee and military voters caused by eleventh hour changes to the ballot."[24] Justice Marshall, on circuit, turned down on October 1 a request to order names to be printed on a ballot for an upcoming November election citing, among other reasons, the State's concern for the potential "chaotic and disruptive effect upon the electoral process," since the "Presidential and overseas ballots have already been printed; some have been distributed. The general absentee ballots are currently being printed."[25]

The length of time before the election of a deadline which fixes the ballot, in relation to the administrative tasks that must be accomplished during that time, is generally relevant in judging the

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[21] *Maddox v. Wrightson*, 421 F. Supp. 1249, 1252 (D.C. Del. 1976).

[22] *Id.* at 1252.

[23] *NAACP v. New York*, 413 U.S. 345, 369 (1973); *Valenti v. Mitchell*, 962 F.2d 288 (3rd Cir. 1992); *Smith v. Board of Elections*, 586 F. Supp. 309, 312 (N.D. Ill. 1984).

[24] *Valenti v. Mitchell, supra* at 301.

[25] *Fishman v. Schaffer*, 429 U.S. 1325, 1330 (1976). The State election procedure in question provided a filing deadline for petitions of nine weeks before an election.

reasonableness and necessity of such deadline. The courts have noted that overly long deadlines for the filing of petitions by candidates, such as March or April deadlines for a November election, may not be of such a necessity as to overcome Fourteenth Amendment and First Amendment complaints of unfair treatment of supporters of those candidates who must file petitions to gain ballot access (as opposed to nominated party candidates who had much later deadlines).[26] In the context of a deceased candidate, it is conceivable or at least arguable, that an issue of this nature could arise, for example, if a deceased Senatorial candidate whose name remains on the ballot is of a *different* political party from that of the Governor of the State, and if there is an unusually long period of time before the general election when the ballot is "fixed" by State law. In such a situation voters affiliated with the deceased candidate's party might argue that they have no choice on the ballot to select someone of their own political persuasion for Senator, at least for the "temporary" period before the next election to fill the term. That is, just as a vote for the other candidate on the ballot is a vote for someone from the other party, a vote for the deceased candidate of their own party may also be choosing someone from the other party, since the Governor would most likely appoint someone from his own political party to fill the "vacancy." There may in such cases be a need to balance the constitutional rights and interests of voters and supporters of the political party of the deceased candidate,[27] with the right of the State to finalize its ballot for administrative purposes and the reasonableness and necessity of those time deadlines to perform such administrative duties as printing and distribution of ballots, including absentee and overseas ballots, preparing and programing voting machines, preparing voter instructions and sample ballots, and training of poll workers and officials.[28]

In sum, there has been found no legal or constitutional problem with a State "finalizing" its ballot and refusing to add, substitute or withdraw names from the ballot within a "reasonable" timeframe in proximity to an election. Such ballot deadlines are not only common in the States, but are seen as absolute administrative necessities for fairness and orderly elections, and for the prevention of disenfranchisement of military and other absentee voters, all of which the courts have recognized as compelling State interests. Unfortunately, it is therefore not unprecedented nor uncommon for a candidate to die in such proximity to an election that the ballots

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[26] *Anderson v. Celebrezze*, 460 U.S. 780 (1983) (Ohio filing deadline in March for independent candidates not justified by State administrative need for so much time to verify petition signatures); *New Alliance Party of Alabama v. Hand*, 933 F.2d 1568, 1574 (11th Cir. 1991) (April deadline for new and minor party candidates not justified as ". . . evidence tends to show that the State would be able to place the name of a candidate on the ballot at a fairly late date without unduly impairing the administrative task of printing the ballot . . . ."); *McCarthy v. Kirkpatrick*, 420 F. Supp. 366, 374 (W.D. Mo. 1976), deadline of 188 days before election for independent candidates to file petitions was too long, as State of Missouri could conceivably add or take names off ballot as late as September for a November election; *McCarthy v. Austin*, 423 F. Supp. 990, 999 (W.D. Mich. 1976), ordering the placement of a name on the ballot on August 27 would not "seriously disrupt [State] preparations for the general election" in November.

[27] *Note, e.g.*, arguments of supporters of minor party candidates left off ballot in *Williams v. Rhodes*, 393 U.S. 23 (1968).

[28] Such constitutional considerations were not present in the case of the 2000 Missouri Senate race, however, as the Governor was of the same political party as the deceased candidate and indicated that he would appoint a member of that party (the candidate's spouse) if the deceased candidate received the most votes.

have already been finalized, and to have that deceased candidate's name remain on the ballot for the election. Under the majority "American Rule," recognized and followed by both the House and the Senate for judging the elections of their Members, as well as most of the States for their own non-federal offices,[29] votes for the deceased candidate are not illegal, improper, "thrown away," or otherwise deemed to be nullities, nor is the election considered a non-event, but rather, if the deceased candidate receives the most votes, such expression is considered indicative that the majority or plurality of the voters favored the creation of a temporary "vacancy" in the office, to be filled according to the Constitution and the laws of the State.

The issue, in an imminent federal election, concerning the remaining on the ballot of the name of a deceased candidate is clearly *not* whether the candidate who has died is, or is not now,"qualified" to "be a Senator" under Article I, Section 3, clause 3, or a Representative under Article I, Section 2, clause 2 of the United States Constitution. Obviously, the deceased candidate could not and will not serve in or hold the office to which he or she had aspired while alive; nor has it ever been suggested that a State intended to issue "credentials" to the deceased candidate from the State to present the issue of "qualifications" to the House or Senate in an effort to *seat* the deceased candidate. As far as the State's participation in the process is concerned, however, the candidate was qualified (as certified) when placed on the ballot, no timely contests were filed to challenge the candidate's qualifications and ballot access at that time, and the deadline established by State law for finalizing the ballots or for substituting candidates on the ballot by political parties had passed. In *this* context, the issue of "qualifications" for a candidate receiving the most votes in a congressional election would arise at the time a Member-elect, with credentials from the State (as a result of either a special election or an interim appointment in the case of a Senator-elect), presents himself or herself to the House or to the Senate for being sworn in and seated to fill the vacancy created by the death of the original majority candidate in the general election.[30]

D. SENATE AND HOUSE DECISIONS ON "QUALIFICATIONS"

As noted, while the States administer federal elections, including such administrative, housekeeping, and procedural matters as ballot access and placement on the ballot, the question of the *qualifications* of a candidate for the United States Congress is decided, in the first instance exclusively as provided for in the United States Constitution, and then, as to whether a person has met such

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[29] 133 ALR 319, 321, "Deceased or disqualified person, result of election as affected by votes cast for"; *see*, e.g., *Evans v. State Election Board,* 804 P.2d 1125 (Okla. 1990), citing, among other supporting cases: *Petition of Keogh-Dwyer,* 256 A.2d 314, 318 (N.J. 1969); *Jackson v. County Court,* 166 S.E.2d 554 (W.Va. 1969); *Saunders v. Haynes,* 13 Ca. 145 (1859); *Derringe v. Donovan,* 162 A. 439, 441 (Pa. 1932); *Ingersoll v. Lamb,* 333 P.2d 982 (Nev. 1959); *Tellez v. Superior Court,* 450 P.2d 106 (Ariz. 1969); *Banks v. Zippert,* 470 So.2d 1147 (Ala. 1985).

[30] "[E]lection does not, of itself, constitute membership. . . ." *Deschler's Precedents, supra* at Ch. 9, § 47, p. 481. ". . . Neither do election and return create membership. . . . [A] person may be selected by the people, destitute of certain qualifications, without which he cannot be admitted to a seat." *Deschler's Precedents, id.,* citing *Hammond v. Herrick,* 1 *Hinds' Precedents* § 499.

constitutional qualifications, by each House of Congress judging the elections, returns and qualifications of its own Members.[31] Although there had been in the history of our country some debate over the nature of the authority of Congress to judge general "qualifications" and/or suitability of a Member-elect for office, the extent of the authority to exclude a Member-elect by majority vote based on the Member-elect's "qualifications," was expressly and narrowly delineated by the Supreme Court in 1969 in *Powell v. McCormack*.[32] The Supreme Court in that case clearly stated that "in judging the qualifications of its members Congress is limited to the standing qualifications prescribed in the Constitution,"[33] that is, the Member-elect's age, citizenship, and inhabitancy in the State from where elected.[34] The Court noted that the House is "without authority to *exclude* any person, duly elected by his constituents, who meets all the requirements for membership expressly prescribed in the Constitution."[35]

Modern decisions in the House or Senate on determining "qualifications" are fairly rare, in part because of the clarification by the Supreme Court in *Powell v. McCormack* delineating Congress' authority in judging qualifications to judge only the three express constitutional "qualifications" for office,[36] and because modern communications and media coverage make it more likely that an actual disqualifying condition (such as a candidate's age or lack of citizenship) would be revealed before nominations by a major political party are made. It should be noted that an appointment by the Governor of California under the Seventeenth Amendment and the laws of California was challenged in 1964 on the basis of "qualifications" of the appointee, Pierre Salinger. Under the laws of the State of California one needed to be a "qualified elector" to be a candidate for United States Senate, which would have required one to have resided in the State for a particular amount of time. Some Senators argued that Salinger was not qualified to be chosen to fill the unexpired term of a Senator from California because, under the laws of the State of California, he had not resided in California long enough to meet the State's qualifications of being an "elector," as required by State law for candidacy.[37] The Senate found, in accordance with the findings of the Privileges and Elections Subcommittee of the Committee on Rules, however, that such a State law would have force and effect only as to State and local offices, and could not disqualify one from being chosen as a United States Senator. State provisions cannot bind the Senate in determining the constitutional qualifications for office of those presenting credentials for seating, nor can State law add a "durational" residency requirement to the inhabitancy qualification for Senator set out in

[31] Constitution, Article I, Section 5, cl. 1

[32] 395 U.S. 486 (1969).

[33] *Id.* at 550.

[34] Article I, Section 2, clause 2 (Representatives); Article I, Section 3, clause 3 (Senators).

[35] *Powell v. McCormack, supra* at 522.

[36] The precedents of both the House and Senate pre-dating 1969, where a Member-elect's "character" or pre-election "conduct" was examined in judging "qualifications" to office, are thus of limited relevance to modern congressional practice and constitutional interpretation. *Deschler's Precedents, supra* at Ch. 7, §9, at 98.

[37] *See* discussion in election case of Pierre E.G. Salinger, Case 134, *United States Senate Election, Expulsion, and Censure Cases,* 1793–1990, Senate Doc. 103–33, at 413 (1995); S. Rpt. 1381, 88th Cong., 2d Sess. (1964).

the United States Constitution—that is, to be an "inhabitant" of the State "when elected."[38]

In the Senate, there has since the adoption of the Seventeenth Amendment been one other case (in addition to the 2000 Missouri election) in which an ineligible candidate was on the ballot, and then received the most votes in the election. In that instance, the Senate candidate receiving the most votes was not *yet* eligible to serve in the Senate at the time he was on the ballot for the general election, nor at the time of the beginning of the new congressional session, because he was only 29 years of age. The Senate found that since the issue of "qualifications" arises when the candidate or Member-elect presents his credentials to the Senate for seating, the Senate could and did allow the candidate/Member-elect to delay presenting his credentials until the time he was 30 years old, and thus qualified.[39] The precedents in the House similarly indicate that the issue of qualifications would arise at the time a Member-elect presents his or her credentials for seating, generally at the commencement of the session, and that the Member-elect would have to meet the "age" and "citizenship" requirements at that time (but must meet the "inhabitancy" requirement at the time of the election, that is, "when elected"). The House has in the past also allowed a Member-elect to defer taking the oath of office until the beginning of the second session of the Congress (even though Congress was called into session earlier by a Presidential proclamation), at which time the Member-elect had met the seven-year citizenship requirement, notwithstanding the fact that he was "ineligible," that is, he was not a citizen for seven years at the time he was on the ballot and elected in the November congressional election, nor at the beginning of the first session of the new Congress.[40] The House earlier, in 1859, had apparently also allowed a Member-elect, Mr. John Y. Brown of Kentucky, to defer taking the oath of office beyond the opening of the Congress, until the beginning of the next session in December of 1860, at which time Mr. Brown met the constitutional age requirement.[41]

E. JUDGING ELECTIONS IN CONGRESS AND THE "AMERICAN RULE"

As expressly provided in the Constitution, the House or the Senate as an institution, in addition to judging "qualifications" of its Members, is empowered to examine the "elections" and "returns" of its own Members beyond a limited examination of a Member-elect's three constitutional "qualifications." That is, as stated by the Supreme Court, each House may inquire and judge as to whether a member-elect was "duly elected by his constituents."[42] The Supreme Court in *Roudebush v. Hartke,* affirmed the Senate's authority to be the final judge of the elections and returns of its own Members, and expressly recognized the constitutional authority for "an independent evaluation by the Senate" of an election and the election returns for the United States Senate: "The Senate is free

[38] S. Rpt. 1381, *supra* at 4–6.
[39] *Hatfield v. Holt,* Case No. 119, *Election, Expulsion and Censure Cases, supra* at 360.
[40] In re Ellenbogen (1934), *Deschler's Precedents, supra* at Ch. 9, § 47, pp. 479–482.
[41] 1 *Hinds' Precedents of the House of Representatives* § 418, pp. 389–390.
[42] *Powell v. McCormack, supra* at 522.

to accept or reject the apparent winner in either count [original or recount], and, if it chooses, to conduct its own recount."[43]

Given the express textual commitment within the Constitution to each House of Congress to be the judge of its own Members' elections, the congressional precedent and practice in this area, although not technically binding on a future Congress, is of primary importance.[44] Furthermore, given this express textual commitment within the Constitution, it is not surprising that there is no apparent judicial authority on the question of whether Congress should seat the next-highest vote-getter when the majority candidate is ineligible, dead, or otherwise disqualified, or declare the election a "non-event" and require an immediate "do-over," since it is not at all clear that the federal courts, absent any apparent violation of another express constitutional provision, would have entertained challenges to review congressional determinations on the elections of their own Members.[45]

The practice and experience in both the House and the Senate on elections of "ineligible" candidates is clear, and is remarkably consistent given the great potential for partisan division on this issue when it arises with respect to a particular Member-elect. The overwhelming weight of authority in both the Senate and the House, as well as the express statements of official Senate and House procedural and parliamentary guides, clearly indicate that the ineligibility of the majority candidate in a congressional election, whether because of death, disability or other incapacity before or after the election, gives no title or right to the office to the runner-up candidate, but rather merely creates a "vacancy" in the office from that State.[46] This has been the case whether or not the law of the particular State in which the election was held would have, under express State law or practice, given the election to the runner-up. In the Indiana election case of *Lowery v. White* in the Fiftieth Congress, notwithstanding the fact that Indiana law at that time followed the minority "English Rule" and would have awarded the election to the runner-up if the majority candidate was ineligible, the majority of the Committee on Elections found that the clear and long line of congressional precedent follows the so-called "American Rule," and that despite the State law the run-

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[43] 405 U.S. 15, 25–26 (1972). *See* also *Barry v. United States ex rel. Cunningham,* 279 U.S. 597, 614, (1929), concerning the "jurisdiction of the Senate to determine the rightfulness of the claim [to a Senate seat] . . . and its power to adjudicate such right. . . ."

[44] Brown, *House Practice,* "Rules and Precedents of the House," § 2, at p. 809: "On the theory that a government of laws is preferable to a government of men, the House has repeatedly recognized the importance of following its precedents and obeying its well-established procedural rules."

[45] "The Senate [has the] *sole authority* under the Constitution to judge of the elections, returns and qualifications of its members . . ." and "to render a judgment which is beyond the authority of any other tribunal to review." *Barry v. Cunningham,* 279 U.S. 587, 613, 619 (1929); *Reed v. County Commissioners,* 277 U.S. 376, 388 (1928); *Keogh v. Horner,* 8 F. Supp. 933, 935 (S.D. Ill. 1934). *See* also, generally, *Baker v. Carr,* 369 U.S. 186, 210 (1962), as to "nonjusticiability" of a political question under the separation of powers doctrine where there is "found a textually demonstrable constitutional commitment of the issue to a coordinate political department. . . ."

[46] *Riddick's Senate Procedure, Precedents and Practices, supra* at 701; *Deschler's Precedents, supra* at Ch. 7, § 9, p. 96. For the opposite and minority conclusion in the House of Representatives, *see Lawson v. Owen,* H.R. Rpt. No. 968, 71st Cong., 2d Sess. (1930), *Deschlers' Precedents, supra* at Ch. 9, App., pp. 862–863. The recognition of the so-called "British Rule" by the majority of the Committee on Elections was not, however, dispositive nor relevant to the final decision of the Committee, nor expressly approved by the House in this case, as the majority candidate was found to possess the requisite citizenship qualifications and was seated.

ner-up is not entitled to a congressional seat upon the disqualification of the majority candidate.[47]

As early as 1868 the House had under its consideration a challenge to a "vacancy" where the contesting candidate claimed a seat by virtue of the fact that the winning candidate on the ballot in the original election had been constitutionally disqualified because he was not an "inhabitant" of the State. The House explained that the constitutional disqualification of the candidate on the ballot because of a lack of "inhabitancy" in the State was immaterial to the challenger's claim to the seat, since the disqualification of the majority candidate on the ballot for lack of inhabitancy would merely create a "vacancy" in the office, and would not elect the minority or second place vote-getter:

> Contestant further contended that Mr. Mann was not at the time of his election an inhabitant of the State, and was therefore ineligible. . . . [T]he committee held that it was immaterial whether he was ineligible or not, as under the principles already settled by the decisions of other cases the ineligibility of the majority candidate would give no title to the minority candidate. The committee were therefore unanimous in the opinion that Mr. Jones was not elected, and that the death of Mr. Mann had caused a vacancy.[48]

In the Senate, it is plainly noted in the Senate's procedural treatise that: "In election cases the ineligibility of a majority candidate, for a seat in the Congress gives no title to the candidate receiving the next highest number of votes."[49] Senate precedents, citing similar rulings in the House of Representatives, have stated the "well-established Senate rule that the ineligibility of the winning candidate gives no title to the candidate receiving the next highest number of votes."[50] In the Senate election case of *Henry D. Hatfield v. Rush D. Holt,* where the candidate on the ballot who had been elected by the people was only twenty-nine years old, "the Senate . . . reaffirmed that even if a winning candidate was ruled ineligible, the runner-up in the election would not be declared elected."[51] The Committee on Privileges and Elections in the 74th Congress explained as follows:

> Also, that the said Henry D. Hatfield, by virtue of his having received the next highest number of eligible votes for United States Senator in the general election held in and for the State of West Virginia in November 1934, is not the duly elected Senator from the State of West Virginia. The rule is well settled that in election cases the ineligibility of a majority candidate for a seat in the Congress gives no title to the minority candidate or to the candidate receiv-

[47] *Rowell's Digest, supra* at 426–427; 1 *Hinds' Precedents, supra* at § 424, p. 403: "The universal weight of authority in the United States in both branches of the Congress thereof render an extended discussion of this point quite unnecessary." The House did not need to rule on or confirm the majority opinion of the Committee, as the House found that the majority candidate was qualified, seating the Member-elect and dismissing the contest.

[48] *Jones v. Mann,* Rowell's Digest, *supra* at 226, 1 *Hinds' Precedents, supra* at § 326.

[49] *Riddick's Senate Procedure, Precedents and Practices, supra* at 701.

[50] *Senate Election, Expulsion and Censure Cases, supra* at 360, Case No. 119.

[51] *Id.* at 361.

> ing the next highest numbers of votes. See *Jones v. Mann* (40th Cong.); Rowell's Digest 220, 2 Bartlett 475; *Cannon v. Campbell* (47th Cong.), Rowell's Digest 391.[52]

It should be noted that one early authority on parliaments and legislative assemblies, Luther Stearns Cushing, had suggested that, although it would be a "harsh" result, votes cast for a candidate whom the electors knew to be disqualified should be considered "thrown away" and "the opposing candidate elected."[53] In the early election case of *Smith v. Brown* (1861) in the House, however, Cushing's opinion, based on English parliamentary practice and called the "English Rule," was criticized and expressly rejected in favor of the "American Rule" of representative democracy. As explained in Rowell's Digest, the committee in that case found:

> But the English rule had never been applied in this country and was hostile to the genius of our institutions. Mr. Cushing, in stating the English parliamentary rule, states that in his opinion the same rule applies in this country, but he gives no case to sustain his statement, which is the best of evidence that there are none. There had been numerous cases in the House and Senate where members were deprived of their seats because of ineligibility, but in no case had it ever been claimed that any title was thereby given to the minority candidate.[54]

The so-called "American Rule" is based on principles of representative democracy, that in such a system the overriding issue in an election contest in the House or Senate is to attempt to effectuate the will of the majority (or plurality) of the voters of that State or district, usually in determining who was "actually elected" or "duly elected" by the people to represent them, that is, who has received the most votes.[55] Under these principles, one who has, in fact, lost an election, that is, has received fewer votes than someone else on the ballot, is therefore not seated by the legislature in contravention of the choice of the people of the State or district upon a finding by the legislature of an ineligibility and disqualification of the actual winner of the election. When, under the American Rule, a majority or plurality of voters vote for a candidate widely *known* to be ineligible (such as in the case of a candidate who dies shortly before the election but whose name remains on the ballot), it is assumed that the will of the majority or plurality of voters was to choose a "vacancy." In the case of Senate races, if the Governor has already indicated the person whom he will appoint to fill the vacancy should the deceased candidate receive the most votes, then the will of the electorate, in giving the most votes to the deceased

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[52] S. Rpt. No. 904, 74th Cong., 1st Sess. 3 (1935). *See* also *Bayley v. Barbour,* 1 *Hinds' Precedents, supra* at § 435, p. 422: "The Elections Committee held that a contestant could have no claim to a seat declared vacant because of the constitutional disqualifications of the sitting Member."

[53] Cushing, *Elements of the Law and Practice of Legislative Assemblies,* at 67 (Boston 1856).

[54] *Smith v. Brown,* Rowell's Digest, *supra* 220–221.

[55] Justice Joseph Story, *Commentaries on the Constitution of the United States,* Volume I, § 833, p. 585 (1873); Tucker and Tucker, *The Constitution of the United States, A Critical Discussion of Its Genesis, Development and Interpretation,* Vol. I, at pp. 426–427 (1899): "The power of election is vested . . . in the constituency,"and it is left to each House finally to determine who the constituency has "duly elected." *See* also *Powell v. McCormack, supra* at 522; *Roudebush v. Hartke,* 405 U.S. 15 (1972).

candidate, would arguably have been expressed in favor of that proposed appointee over the other candidates on the ballot. In one case in the Senate concerning an "anticipatory appointment," where there arose an issue as to which Governor (the outgoing or incoming) had the authority to appoint an interim Senator to the vacancy created by the in-coming Governor who was giving up his Senate seat to be Governor, the Senate precedent indicates that the decision was made, in part, on a recognition that "the voters had known when they elected Matthew Neely governor that he intended to name his Senate successor, since he made his plan clear during the campaign."[56]

F. SEVENTEENTH AMENDMENT

It was argued during the 2000 Senate race in Missouri that the Seventeenth Amendment, adopted principally to provide for popular election of United States Senators, should limit a Governor's authority (and the authority of the State legislatures in empowering the Governor) to require a Governor to issue only "writs of election" for a special election when there is a vacancy which has been created by the election of a candidate known to be disqualified or ineligible at the time of the election, rather than making a "temporary appointment" to fill such vacancy until a later scheduled election.[57] Although there are some interesting policy arguments concerning such proposed limitations on State Governors' authority to make "temporary appointments" in these circumstances, particularly where the Governor is of the same major political party as the surviving candidate,[58] there is nothing on the face of the language of the Seventeenth Amendment, its enactment history, nor any judicial interpretations or congressional precedents which support such a restrictive construction of State authority under the Amendment.

The language of the vacancy clause of the Seventeenth Amendment clearly provides *no* distinctions as to when or how the "vacancy" in the office has been created:

> When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: *Provided,* That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

The text and the actual language of the Amendment clearly show, therefore, that there is no express restriction on a State legislature's or Governor's authority which is dependent or based upon any distinctions in the nature or the timing of how or when the Senate vacancy occurs. Rather, the language of the Amendment appears to provide on its face two alternate ways for a State to fill

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[56] *Martin v. Rosier, Senate Election, Expulsion and Censure Cases, supra* at 373, Case 124.

[57] Viet D. Dinh, "Dead Men Can't Win," The Wall Street Journal, November 9, 2000, at A26.

[58] Some States require the Governor to select someone from the same political party as the deceased Member to fill a vacancy, but such additional requirement might prove difficult to enforce in court, as it may be seen as a qualification for the Senate additional to those established in the Constitution.

any vacancy in the State's representation in the Senate: either the executive of the State shall issue writs of election for a special election to fill the vacancy, or, if expressly authorized by the legislature of the State, the Governor may make a "temporary appointment" to fill the vacancy until the people select a replacement for the remainder of the term in a future election as the State "legislature may direct." As noted in dicta by the Supreme Court, "the Seventeenth Amendment permits a state, if it chooses, to forgo a special election in favor of a temporary appointment to the United States Senate. . . ."[59] In practice, most of the States provide for a temporary appointment by the Governor until the next regularly scheduled biennial congressional election, but a State might also provide for a more immediate "special election" and authorize an appointment by the Governor until the time of such election.[60]

Generally speaking, in provisions such as the Seventeenth Amendment, the "plain meaning" of the text and the words of the provision should be employed in discerning its import and intent, unless there is some clear and express countervailing enactment history.[61] Furthermore, under long-established principles of constitutional interpretation, meaning must be given to all the words in a provision, and thus phrases and words in the text of the Constitution may not be ignored.[62] Thus, while the principal purpose of the Seventeenth Amendment was certainly to provide for the popular election of Senators, the express discretion and authority delegated to the State legislatures to allow the Governor of the State to make temporary appointments to fill Senate vacancies can not be disregarded.[63]

In the enactment history of the Seventeenth Amendment there is no express indication that a State is *required* to hold a more immediate "special election" to fill a vacancy created by the death or other ineligibility of the majority candidate in a general election, as opposed to using the alternative method of allowing a temporary appointment by the Governor until a later election is held, as directed by the State legislature. In fact, in the earliest formulations of the vacancy language used in what became the Seventeenth Amendment, the drafter was cognizant of the expense of State-wide elections, and expressly intended to allow the State to be spared

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[59] *Rodriquez* v. *Popular Democratic Party,* 457 U.S. 1, 11 (1982).

[60] For a general discussion of experiences of States in filling Senate vacancies, *see* Alan L. Clem, "Popular Representation and Senate Vacancies," 10 *Midwest Journal of Political Science*, 52–77 (Feb. 1966); for recent compilation of State provisions, *see* S. Doc. 106–14, 106th Cong., 2d Sess., *Senate Election Law Guidebook 2000* (1999).

[61] *United States* v. *Sprague,* 282 U.S. 716, 731–732 (1931) (in providing two alternative methods of ratification, there is nothing in the text of the Constitution which requires the legislature [Congress] to select one method over the other); *McPherson* v. *Blacker*, 146 U.S. 1, 27 (1892); *see* generally, Justice Joseph Story, *Commentaries on the Constitution,* § 451.

[62] *Marbury* v. *Madison,* 5 U.S. 137, 174 (1803); *Holmes* v. *Jennison,* 39 U.S. 540, 571 (1840).

[63] One existing problem expressly recognized in the enactment history of the Seventeenth Amendment was that of extended vacancies in State delegations to the Senate caused by inaction and political stalemate and intrigue in the State legislatures. S. Rpt. No. 961, 61st Cong., 3rd Sess. 13–14 (1911); David E. Kyvig, *Explicit and Authentic Acts, Amending the U.S. Constitution, 1776–1995,* at 209, noting that "Delaware was represented by only one senator in three Congresses and none at all from 1901 until 1908." The provision of a mechanism for the temporary appointment by the *Governor* of a State in cases of Senate vacancies until an election is held, providing a quick and efficient method to fill a Senate vacancy, may have been intended in part as an effort to address this problem.

the expense of having to hold another State-wide "special election" soon after or before a regular State-wide election.[64]

There is also no express indication in the enactment history that the Amendment, contrary to its express language, was intended to limit or restrict the authority or power of a State legislature over the details of the procedures of elections in their respective States to fill vacancies. The enactment history of the Seventeenth Amendment in the United States Congress shows a serious debate and division concerning "States" rights," with one of the major contentions in the debate being over a provision, adopted in one House, which went so far as to remove entirely Congress' residual authority over the "Times, Places and Manners" of federal elections in the States under Article I, Section 4, clause 1 of the Constitution.[65] The author of the substitute amendment eventually adopted by Congress, Senator Bristow, noted explicitly that the direct election provisions were not intended to "add new powers of control to the Federal Government" at the expense of the authority of the State legislatures over such elections.[66] The constitutional provision adopted expressly provides as to vacancies, in fact, that after a temporary appointment, the people of the State will fill the vacancy by election "as the legislature may direct." This is a direct grant in the United States Constitution of authority and discretion to the State legislatures,[67] limited only by the requirement that the Governor's appointment be "temporary," and there is no indication of a silent or implicit agenda to limit that authority or discretion when vacancies arise from the death of a candidate, or otherwise, at the beginning of the term.

Federal courts looking at the issue of whether the Seventeenth Amendment requires a State to hold a "special election" to fill a Senate vacancy have concluded that the Constitution delegated to the State legislatures significant discretion and authority as to the mechanics and procedures of how and when vacancies in the Senate from their respective States are to be filled. In *Valenti v. Rockefeller,* a federal court, in a case expressly affirmed by the United States Supreme Court, found that there is nothing in the Seventeenth Amendment, nor its history, that requires the State to hold a special election to fill a vacancy, rather than to have a temporary gubernatorial appointment, even if such appointment extends, because of the State's statutory nominating procedures, more than two years and thus beyond the next immediate State-wide election.[68] The court noted there that the pre-Seventeenth Amendment history, as well as the Amendment's enactment history, "provides

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[64] Representative Tucker of Virginia originally drafted and offered in 1892 the vacancy provision eventually adopted in 1912. As reported in the House, one reason discretion was given to the State legislatures to allow a "temporary appointment" until a later election, such as a regularly scheduled state-wide election, was that mandatory special elections might be a "hardship" on the State which recently had or soon will have a state election, since "to add another State election would be imposing an unnecessary expense on the people." H.R. Rep. No. 368, 52d Cong., 1st Sess. 5 (1892).

[65] This provision was reported out of committee in the Senate, and had passed the House. S. Doc. No. 666, 62d Cong., 2d Sess. 6–9, "Resolution for the Direct Election of Senators," by Senator Joseph L. Bristow (1912); Kyvig, *Explicit and Authentic Acts, supra* at 210–213.

[66] S. Doc. No. 666, 62d Cong., *supra* at 9. *Trinsey* v. *Commonwealth of Pennsylvania,* 941 F.2d 224, 234 (3rd Cir. 1982), cert. denied, 502 U.S. 1014 (1991).

[67] *See McPherson* v. *Blacker,* 146 U.S. 1 (1892), as to express constitutional delegation to the State legislatures of role in electoral scheme for choosing presidential electors.

[68] *Valenti* v. *Rockefeller,* 292 F. Supp. 851 (D.C.N.Y. 1968), *aff'd,* 393 U.S. 404, 405, 406 (1969), *rehearing denied,* 393 U.S. 1124 (1969).

no support for plaintiff's contention that special elections are required to fill vacancies under the Seventeenth Amendment."[69] Noting the discretion expressly given in the text of the Constitution to the State legislatures over this issue, the court found:

> The Seventeenth Amendment's vacancy provision explicitly confers upon the state legislatures discretion concerning the timing of vacancy elections. If the legislature authorizes the governor to make a temporary appointment, the appointee may hold office "until the people fill the vacanc[y] by election *as the legislature may direct.*" . . . [W]e believe that we must give effect to the natural reading of the Seventeenth Amendment as adopted since there is no indication that the Congress which proposed the Amendment, or the state legislatures which ratified it, intended a different meaning. This natural reading grants to the states some reasonable discretion concerning both the timing of vacancy elections and the procedures to be used in selecting candidates for such elections. This interpretation gains support from Art. I, § 4 of the Constitution which gives to the state legislatures the initial power to prescribe the "Times, Places and Manner of holding Elections for Senators and Representatives. . . ." If the drafters of the Seventeenth Amendment had intended to bring about a radical departure from this normal rule of state discretion in the instance of the timing and manner of holding vacancy elections, such as by requiring special elections, it is likely that they would have employed clear language to that effect. . . .[70]

The court found that the Seventeenth Amendment did place "some limit on the discretion of the states" by requiring that the Governor's appointment be "temporary" until an election is held.[71] The majority of the court did not, however, attempt to set an outer limit to that time. In the case of the New York statutory provisions in effect and reviewed in *Valenti* v. *Rockefeller,* the "temporary appointment" by Governor Rockefeller after the death of Senator Robert Kennedy worked out to 29 months.[72]

In a similar manner, in *Trinsey* v. *Commonwealth of Pennsylvania,*[73] the United States Court of Appeals found that the discretion granted to the State legislatures in the Seventeenth Amendment to establish the details of the procedures and timing of *vacancy* elections for the Senate was so broad and significant that, even though the Seventeenth Amendment itself required popular general elections for the Senate, the Commonwealth of Pennsylvania was within its authority under the vacancy clause to provide by statute that nominations for a special election to fill a Senate vacancy may be made without a popular primary election. The court noted that the legislative history of the Seventeenth Amendment indicated that the Congress "was resistant to any change that would decrease the power and authority of the states and enlarge

[69] *Id.* at 865.
[70] *Id.* at 855–856.
[71] *Id.* at 856.
[72] 292 F. Supp. at 868.
[73] 941 F.2d 224 (3rd Cir. 1991), *cert. denied,* 502 U.S. 1014 (1991).

that of the federal government," and that the "explicit provision in the vacancy paragraph of the Seventeenth Amendment vesting discretion in the state legislatures . . . itself could be deemed dispositive of the issue."[74]

[74] *Id.* at 234.