

FEC REAUTHORIZATION ACT OF 1998

JUNE 25, 1998.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. THOMAS, from the Committee on House Oversight,
submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 3748]

[Including cost estimate of the Congressional Budget Office]

The Committee on House Oversight, to whom was referred the bill (H.R. 3748) to amend the Federal Election Campaign Act of 1971 to authorize appropriations for the Federal Election Commission for fiscal year 1999, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “FEC Reauthorization Act of 1998”.

SEC. 2. AUTHORIZATION OF APPROPRIATIONS FOR FEDERAL ELECTION COMMISSION FOR FISCAL YEAR 1999.

Section 314 of the Federal Election Campaign Act of 1971 (2 U.S.C. 439c) is amended—

(1) by striking “and \$9,400,000” and inserting “\$9,400,000”; and

(2) by striking the period at the end and inserting the following: “, and \$33,700,000 for the fiscal year ending September 30, 1999, of which \$2,800,000 shall be available only if at least 4 members of the Commission vote not later than September 30, 1998, to adopt a re-prioritization plan for the purpose of improving enforcement procedures and preventing the unnecessary dismissal of appropriate enforcement actions.”.

SEC. 3. APPOINTMENT AND SERVICE OF STAFF DIRECTOR AND GENERAL COUNSEL OF COMMISSION.

(a) **APPOINTMENT; LENGTH OF TERM OF SERVICE.**—

(1) **IN GENERAL.**—The first sentence of section 306(f)(1) of the Federal Election Campaign Act of 1971 (2 U.S.C. 437c(f)(1)) is amended by striking “by the Commission” and inserting the following: “by an affirmative vote of not less than 4 members of the Commission and may not serve for a term of more than 4 consecutive years without reappointment in accordance with this paragraph”.

(2) **EFFECTIVE DATE.**—The amendment made by paragraph (1) shall apply with respect to any individual serving as the staff director or general counsel of the Federal Election Commission on or after January 1, 1999, without regard to whether or not the individual served as staff director or general counsel prior to such date.

(b) **TREATMENT OF INDIVIDUALS FILLING VACANCIES; TERMINATION OF AUTHORITY UPON EXPIRATION OF TERM.**—Section 306(f)(1) of such Act (2 U.S.C. 437c(f)(1)) is amended by inserting after the first sentence the following new sentences: “An individual appointed as a staff director or general counsel 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 individual he or she succeeds. An individual serving as staff director or general counsel may not serve in any capacity on behalf of the Commission after the expiration of the individual’s term unless reappointed in accordance with this paragraph.”

SEC. 4. ALTERNATIVE PROCEDURES FOR IMPOSITION OF PENALTIES FOR REPORTING VIOLATIONS.

(a) **IN GENERAL.**—Section 309(a)(4) of the Federal Election Campaign Act of 1971 (2 U.S.C. 437g(a)(4)) is amended—

(1) in subparagraph (A)(i), by striking “clause (ii)” and inserting “clause (ii) and subparagraph (C)”; and

(2) by adding at the end the following new subparagraph:

“(C)(i) Notwithstanding subparagraph (A), in the case of a violation of any requirement under this Act relating to the reporting of receipts or disbursements, 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 for the determination to be made on the record.

“(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 is found, 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.”

(b) **CONFORMING AMENDMENT.**—Section 309(a)(6)(A) of such Act (2 U.S.C. 437g(a)(6)(A)) is amended by striking “paragraph (4)(A)” and inserting “paragraph (4)”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply with respect to violations occurring on or after January 1, 1999.

SEC. 5. STANDARD FOR INITIATION OF ACTIONS BY FEC.

(a) **IN GENERAL.**—Section 309(a)(2) of the Federal Election Campaign Act of 1971 (2 U.S.C. 437g(a)(2)) is amended to read as follows:

“(2) Not later than 90 days after the time for responding to a complaint under paragraph (1) has elapsed for all respondents, the general counsel of the Commission shall provide a recommendation to the Commission regarding whether there is sufficient or insufficient reason for the Commission to investigate any violation alleged in the complaint. 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 a sufficient reason to investigate whether a person has committed (or is about to commit) a violation of this Act or of chapter 95 or chapter 96 of the Internal Revenue Code of 1986, the Commission (through its chair or vice chair) shall notify the person of the alleged violation, and shall set forth in such

notification the factual and legal 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.”

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to complaints filed on or after January 1, 1999.

GENERAL DISCUSSION

PURPOSES AND GOALS OF THE LEGISLATION

Provides funding for FEC

HR 3748, provides \$33.7 million for the Federal Election Commission for Fiscal Year 1999. The Commission, which was established in 1974, discloses Federal campaign activity, promulgates and enforces campaign regulations, audits Presidential campaigns and advises campaigns regarding proper compliance.

The budget of the Commission has increased by more than 100% over the past 10 years and over 20% since the beginning of the 104th Congress. This budget keeps pace, not only with inflation, but exceeds that of the growth of the Federal government. The authorization of the House Oversight Committee provides the FEC with a 9% budget increase at the same time that the general Federal budget increase is only expected to be 3.5%. The FEC budget has grown at a rate nearly twice as fast as that of the Federal budget over the last 15 years.

That is more significant within the context of the Republican Majority's efforts to control the rate of government spending. The Committee, by reporting this measure, grants the Commission resources sufficient to enforce the current campaign regulations while improving the productivity and processes of the agency.

This authorization does not mandate how the Commission ought to spend its budget. The Commission will allocate its own financial resources, with Congressional oversight and guidance. This bill provides funds for the FEC to increase its staff to pursue enforcement if it chooses.

This authorization provides funds that will keep the Commission's modernization efforts on-track. Technology enhancements will increase the speed and scope of public disclosure. Currently, only 41 of the over 8000 campaign committees that exist are using the new FEC sponsored software. Therefore, there are great opportunities for the FEC to take advantage of enhanced computerization.

Funding increase for Commission conditioned on adoption of reprioritization plan that improves enforcement and prevents needless dismissal of cases

H.R. 3748 provides \$33.7 million for the Commission. Of this amount, \$2.8 million is conditioned on the adoption, by four votes, of a reprioritization plan. A reprioritization plan would prevent the needless dismissal of cases by reallocating resources from other functions toward. The Commission and some of its critics have claimed that its enforcement operations lack the necessary funding and staff. The \$2.8 million increase will not be released until this requirement is met. With the overall funding increase and this incentive, the Commission should have more than adequate resources to fulfill its enforcement responsibilities.

Periodic Commission approval for the FEC's "statutory staff"

H.R. 3748 requires periodic review and approval of the General Counsel and Staff Director positions by an absolute majority of the Commission (4 votes). (Note: Under current FEC procedures, an acting General Counsel can be selected to serve until a permanent General Counsel is selected.) This provision will provide Commissioners with a device that will make the institution's staff more responsive and accountable. Increased accountability will promote efficiency. This provision was included in the 1996 House Republican Leadership campaign reform bill.

Currently, only a majority vote by the Commissioners allows the dismissal of statutory staff. Unresponsive or partisan staff may continue as long as one party protects them. Commission staff should be more accountable to the Commission as a whole, and not just the Commissioners from one party. This is important given the agency's balance of three Commissioners from each party.

Currently, the Equal Employment Opportunity Commission (42 U.S.C. 2000e-4(a)), the Federal Labor Relations Authority (5 U.S.C. 7104) and the National Labor Relations Board (29 U.S.C. 153) have set terms limited to four or five years for their senior staff as well.

Authority for FEC to issue a schedule of fines for reporting violations

H.R. 3748 grants the Commission the authority to assess fines (published in a schedule) for minor violations relating to the reporting of receipts and disbursements. Such minor and accidental reporting violations would not have to be treated as full-blown enforcement matters and the Commission would therefore be able to focus on more serious cases. This provision will save the time and resources of the Commission by streamlining its enforcement procedures. The Commission has regularly suggested such a fine schedule in its yearly list of legislative recommendations. It appeared in the Commission's most recent legislative recommendations that were forwarded to Congress in March 1998.

Requiring general counsel's office to recommend reason to investigate or not to investigate within 90 days of receiving responses from respondent

This provides that the General Counsel's office of the FEC would recommend either "sufficient" or "insufficient" "reason to investigate" within 90 days of receiving a response from all respondents. This will reduce Commission-generated delays in the enforcement process and provide justice to respondents in a more timely manner.

The Commission does not need large funding increases in order to reform itself. This proposal does not require the Commission to do anything more than it already does. It merely requires that some of its enforcement actions be completed sooner rather than later. In fact, this requirement may save the Commission money.

The current system allows cases to linger for months, if not years. This system is unfair to both the complainants and the respondents. Beyond delaying due process, this system is wasteful, especially since the FEC eventually dismisses over 75% of its cases.

House Oversight's FEC accomplishments

The House Oversight Committee's Republican Majority has a significant record of accomplishments on FEC oversight and reform in the 104th and 105th Congresses.

1. In 1995, the House Oversight Committee reported, the House passed, and the President signed HR 2527 requiring the electronic filing of campaign reports. Now candidate reports can be instantly filed over the Internet.

2. HR 2527 also required House campaigns to file directly with the FEC, instead of the Clerk's office. By removing this unnecessary step, campaign reports are disclosed to the public promptly and efficiently.

3. In the FY 1998 appropriations bill, the Committee was instrumental in promoting the first ever, agency-wide private-sector audit and management review since its creation over 25 years ago.

4. The Committee was also instrumental in placing language in the FY 98 Appropriations bill requiring that all filed campaign reports be available on the Internet within 24 hours. Now, Americans can see the actual filings of candidates without leaving their home.

5. In March, the House passed by an overwhelming margin HR 3582, the "Campaign Reporting and Disclosure Act of 1998" which was the most significant bipartisan campaign reform bill since 1979. This bill expedites the reporting of campaign information within 24 hours 90 days prior to an election and promotes more effective disclosure by the FEC.

White House fails to fill Commission vacancies

President Clinton has so far failed to nominate a full slate of individuals to fill the vacant slots on the Commission. The current FEC Commissioner nominees have been delayed since the resignation of Commissioner Potter in October 1995. It is troubling that the bi-partisan agency that is responsible for enforcing the campaign laws has had a Democrat majority for nearly two years. The agency needs to have its full compliment of Commissioners.

SECTION BY SECTION DESCRIPTION

Section 1. Short title

Section 2. Authorization of appropriations for Federal Election Commission for fiscal year 1999

This provision provides \$33,700,000 for the FEC for Fiscal Year 1999. \$2,800,000 of that amount shall be available only if a majority of Commissioners (four) vote to adopt a re-prioritization plan that would improve enforcement procedures and prevent the unnecessary dismissal of enforcement actions.

Section 3. Appointment and service of staff director and general counsel of Commission

This provision provides that the Commission's Staff Director and General Counsel may not serve more than 4 consecutive years without being re-appointed. A majority vote by the Commissioners (four) is necessary to fill these positions.

Section 4. Alternative procedures for imposition of penalties for reporting violations

The FEC may choose to fine a person a civil money penalty in an amount that is determined by an established schedule of penalties, without first attempting to enter into a conciliation agreement with the person. A fined individual has the right to have the decision reviewed by a US District Court.

Section 5. Standard for initiation of actions by FEC

The FEC's General counsel has 90 days to recommend to the Commission whether there is sufficient or insufficient reason for the Commission to investigate any violation alleged in the complaint. The Commission then would vote on the recommendation.

COMMITTEE ACTION

On April 30, 1998 by roll call vote (4-2), a quorum being present, the Committee agreed to a motion to report the bill favorably to the House, as amended. Voting Yes: Mr. Ney; Mr. Boehner; Mr. Ehlers; and Mr. Mica. Voting No: Mr. Gejdenson, Mr. Hoyer.

ROLL CALL VOTES

In compliance with clause 2(1)(2)(B) of Rule XI of the Rules of the House of Representatives, with respect to each roll call vote on a motion to report the bill and on any amendment offered to the bill, the total number of votes cast for and against, and the names of those Members voting for and against, are as follows:

ROLL CALL NO. 1

Subject: Amendment to H.R. 3478. Offered by: Mr. Gejdenson.

	Aye	No	Present
Mr. Thomas .....	.....	.....	.....
Mr. Ney .....	.....	X	.....
Mr. Boehner .....	.....	X	.....
Mr. Ehlers .....	.....	X	.....
Ms. Granger .....	.....	.....	.....
Mr. Mica .....	.....	X	.....
Mr. Gejdenson	X	.....	.....
Mr. Hoyer	X	.....	.....
Ms. Kilpatrick .....	.....	.....	.....
Total	2	4	.....

ROLL CALL NO. 2

Subject: Amendment in the Nature of a Substitute Offered by: Mr. Ehlers

	Aye	No	Present
Mr. Thomas .....	.....	.....	.....
Mr. Ney	X	.....	.....
Mr. Boehner	X	.....	.....
Mr. Ehlers	X	.....	.....
Ms. Granger .....	.....	.....	.....

	Aye	No	Present
Mr. Mica	X	.....	.....
Mr. Gejdenson .....	.....	X	.....
Mr. Hoyer .....	.....	X	.....
Ms. Kilpatrick .....	.....	.....	.....
Total	4	2	.....

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee states that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

OVERSIGHT FINDINGS OF COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

The Committee states, with respect to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, that the Committee on Government Reform and Oversight did not submit findings or recommendations based on investigations under clause 4(c)(2) of Rule X of the Rules of the House of Representatives.

CONSTITUTIONAL AUTHORITY

Article 1, Section 4, gives Congress the authority to make laws governing the time, place and manner of holding Federal elections.

FEDERAL MANDATES

The Committee states, with respect to section 423 of the Congressional Budget Act of 1974, that the bill does not include any significant Federal mandate.

STATEMENT OF BUDGET AUTHORITY AND RELATED ITEMS

The bill provides for \$33.7 million of budget authority for the Federal Election Commission for the Fiscal Year 1999.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(l)(3)(C) of the rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
 CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 11, 1998.

Hon. WILLIAM M. THOMAS,
*Chairman, Committee on House Oversight,
 House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3748, the FEC Reauthorization Act of 1998.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is John R. Righter.

Sincerely,

JAMES L. BLUM,
 (For June E. O'Neill, Director).

Enclosure.

H.R. 3748—FEC Reauthorization Act of 1998

Summary: H.R. 3748 would authorize an appropriation of \$33.7 million for the Federal Election Commission (FEC) in fiscal year 1999. Of that amount, the bill would make \$2.8 million contingent on the FEC adopting a new plan to prioritize enforcement actions by September 30, 1998. The bill also would establish four-year terms for the staff director and general counsel of the FEC and would require that at least four of the six commissioners approve candidates for each position. In addition, the bill would allow the FEC to begin imposing penalties for violations of reporting requirements that occur after January 1, 1999. The FEC would be required to publish a schedule of the penalties. Finally, the bill would require the general counsel to recommend that the commission either dismiss or further investigate complaints filed with the FEC within a given period of time.

Assuming appropriation of the authorized amount, CBO estimates that enacting H.R. 3748 would result in additional discretionary spending of \$33.7 million over fiscal years 1999 and 2000. We estimate that the bill's other provisions would not significantly affect discretionary costs at the FEC. In addition, by permitting the FEC to begin imposing penalties for certain violations that occur after January 1, 1999, we estimate that enacting H.R. 3748 would increase civil monetary penalties, which are classified as governmental receipts, by less than \$500,000 a year. Consequently, pay-as-you-go procedures would apply to this bill.

H.R. 3748 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act of 1995 (UMRA) and would not affect the budgets of state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 3748 is shown in the following table. For the purposes of this estimate, CBO assumes that the amount authorized in H.R. 3748 will be appropriated by the start of fiscal year 1999 and that outlays will follow the historical spending pattern of the FEC. In addition, we assume that the FEC will adopt a new plan for prioritizing enforcement actions by September 30, 1998, and thus, will receive the full \$33.7 million. Enacting H.R. 3748

would probably increase receipts from civil penalties, but by amounts of less than \$500,000 a year. We estimate that the bill's other provisions would not significantly affect discretionary costs at the FEC. The costs of this legislation fall within budget function 800 (general government).

[By fiscal year, in millions of dollars]

	1998	1999	2000	2001	2002	2003
SPENDING SUBJECT TO APPROPRIATION						
FEC spending under current law:						
Budget Authority ¹	31	0	0	0	0	0
Estimated Outlays	31	3	0	0	0	0
Proposed changes:						
Authorization Level	0	34	0	0	0	0
Estimated Outlays	0	31	3	0	0	0
FEC spending under H.R. 3748:						
Authorization Level ¹	31	34	0	0	0	0
Estimated Outlays	31	34	3	0	0	0

¹The 1998 level is the amount appropriated for that year.

Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act of 1985 specifies procedures for legislation affecting direct spending and receipts. Pay-as-you-go procedures would apply to H.R. 3748 because it would allow the FEC to begin imposing penalties according to a published schedule for violations of reporting requirements that occur after January 1, 1999. (Civil monetary penalties are classified as governmental receipts.) Currently, the FEC has no authority to impose penalties, but rather must either negotiate the amount of such fines with the violator or pursue a civil action in court. Over the last five years, the FEC, on average, has negotiated about \$1 million a year in civil penalties. Based on information provided by the FEC, CBO estimates that H.R. 3748 would increase the annual amount of civil penalties collected by the FEC by less than \$500,000 a year.

Intergovernmental and private-sector impact: H.R. 3748 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Estimate prepared by: John R. Righter.

Estimate approved by: Paul N. Van de Water, Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

FEDERAL ELECTION CAMPAIGN ACT OF 1971

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TITLE III—DISCLOSURE OF FEDERAL CAMPAIGN FUNDS

* * * * *

FEDERAL ELECTION COMMISSION

SEC. 306. (a) * * *

* * * * *

(f)(1) The Commission shall have a staff director and a general counsel who shall be appointed **by the Commission** *by an affirmative vote of not less than 4 members of the Commission and may not serve for a term of more than 4 consecutive years without reappointment in accordance with this paragraph. An individual appointed as a staff director or general counsel 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 individual he or she succeeds. An individual serving as staff director or general counsel may not serve in any capacity on behalf of the Commission after the expiration of the individual's term unless reappointed in accordance with this paragraph.* 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.

* * * * *

ENFORCEMENT

SEC. 309. (a)(1) * * *

[(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 of chapter 95 or chapter 96 of the Internal Revenue Code of 1954, 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.]

(2) Not later than 90 days after the time for responding to a complaint under paragraph (1) has elapsed for all respondents, the general counsel of the Commission shall provide a recommendation to the Commission regarding whether there is sufficient or insufficient reason for the Commission to investigate any violation alleged in the complaint. 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 a sufficient reason to investigate whether a person has committed (or is about to commit) a violation of this Act or of chapter 95 or chapter 96 of the Internal Revenue Code of 1986, the Commission (through its chair or vice chair) shall notify the person of the alleged viola-

tion, and shall set forth in such notification the factual and legal 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.

* * * * *

(4)(A)(i) Except as provided in **clause (ii)** *clause (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 the Internal Revenue Code of 1954, 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).

* * * * *

(C)(i) *Notwithstanding subparagraph (A), in the case of a violation of any requirement under this Act relating to the reporting of receipts or disbursements, 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 for the determination to be made on the record.

(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 is found, 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.

* * * * *

(6)(A) If the Commission is unable to correct or prevent any violation of this Act or of chapter 95 or chapter 96 of the Internal Revenue Code of 1954, by the methods specified in **paragraph (4)(A)** *paragraph (4)*, the Commission may, upon an affirmative

vote of 4 of its members, insitute 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.

* * * * *

AUTHORIZATION OF APPROPRIATIONS

SEC. 314. There are authorized to be appropriated to the Commission for the purpose of carrying out its functions under this Act, and under chapters 95 and 96 of the Internal Revenue Code of 1954, not to exceed, \$5,000,000 for the fiscal year ending June 30, 1975. There are authorized to be appropriated to the Commission \$6,000,000 for the fiscal year ending June 30, 1976, \$1,500,000 for the period beginning July 1, 1976, and ending September 30, 1976, \$6,000,000 for fiscal year ending September 30, 1977, \$7,811,500 for the fiscal year ending September 30, 1978, [and] \$9,400,000 (of which not more than \$400,000 are authorized to be appropriated for the national clearinghouse function described in section 311(a)(10)) for the fiscal year ending September 30, 1981[.], and \$33,700,000 for the fiscal year ending September 30, 1999, of which \$2,800,000 shall be available only if at least 4 members of the Commission vote not later than September 30, 1998, to adopt a re-prioritization plan for the purpose of improving enforcement procedures and preventing the unnecessary dismissal of appropriate enforcement actions.

* * * * *

MINORITY VIEWS

I. H.R. 3748 SHOULD BE DEFEATED

Proper funding of the Federal Election Commission (“FEC” or “Commission”) is itself a reform issue. Consistent with their opposition to meaningful reform of any kind, the Majority Members of the Committee on House Oversight (“CHO”) refused to take the reform-minded stance on the issue of FEC funding when they ordered reported H.R. 3748.

H.R. 3748, reported out of the Committee on House Oversight on a straight party line vote, should be defeated because it would: (1) grant the FEC insufficient resources to enforce the current law; (2) undermine the FEC’s statutory independence.

(1) H.R. 3748 WOULD GRANT THE FEC INSUFFICIENT RESOURCES TO ENFORCE THE CURRENT LAW

Not only does H.R. 3748 cut 10 percent from the Commission/OMB budget request of \$36.5 million, but it effectively holds in escrow \$2.8 million of the authorized \$33.7 million until the Commission adopts new case management procedures, a justification for which the Majority failed to offer during the markup. In effect, H.R. 3748 guarantees the FEC only \$30.9 million in fiscal year 1999, exactly the same as its current budget.

We find it inconsistent that even as the Republican-controlled House and Senate have spent in excess of \$11 million investigating only one segment of the 1996 elections, they are unwilling to grant the Commission a budget sufficient to enforce the very laws they allege were broken, or at a minimum guarantee a spending allowance that keeps pace with the annual inflation rate.

(2) H.R. 3748 WOULD UNDERMINE THE FEC’S STATUTORY INDEPENDENCE

H.R. 3748 includes a section specifically designed to remove the present general counsel and staff director from their positions and deprive the offices in which they serve of the independence essential to investigating allegations of campaign abuse. With respect to the general counsel, this is nothing less than a Republican vendetta precipitated by his efforts to carry out the Commission’s directed investigation of GOPAC and other outrageous Republican violations of the Federal Election Campaign Act.

We believe the new procedures for appointing a staff director and general counsel, and new terms of office for them, are needless encroachments on the prerogatives of an independent agency whose commissioners can decide for themselves, in a bipartisan fashion, what best serves the agency.

II: FEC TASKS FOR FISCAL YEAR 1999

Members have an obligation to take a hard look at the FEC's mission in the next fiscal year and ask themselves if the agency has enough funds to ensure that campaign laws are obeyed. We anticipate that members from both sides of the aisle will agree, as we did, that H.R. 3748 will severely restrict the FEC's ability to perform its duties:

(1) FY 1999 coincides with the heaviest filing period of the 1998 congressional election, which occurs in the first quarter of the new fiscal year.

(2) FY 1999's last three quarters coincide with the "run-up" period for the 2000 presidential election.

(3) FY 1999 occurs in the midst of the busiest and most expensive period of the FEC's six year program of computer system upgrades.

(4) In FY 1999, the FEC will still be resolving compliance matters pertaining to the 1996 elections.

(5) In the absence of effective caps on soft money and hard money activities, the FEC in 1998–1999 faces enormous disclosure duties. If present trends continue, 1998 will be the most expensive congressional election in history.

Given this scope of responsibilities, we are convinced the Majority is not serious about having the FEC enforce the laws. H.R. 3748 signals to candidates that they can skirt federal election laws with impunity. If the Majority truly believed its oft-repeated line that what American politics needs is not comprehensive campaign finance reform but compliance with the current law, it would give the Commission the tools it needs to perform all of its tasks: disclosing, enforcing, auditing, and advising.

III. SPECIFIC FLAWS IN H.R. 3748

SECTION 2. AUTHORIZATION OF APPROPRIATIONS FOR FEC FOR FISCAL YEAR 1999

Not only is the \$33,700,000 figure authorized by Majority \$2,804,000 less than the amount the FEC requested, but \$2,800,000 of that is held in escrow until the Commission agrees on revised procedures for managing its caseload. Given the major cases the FEC has from the 1996 election cycles, as well as its normal workload, this amount is inadequate to fund the work pending before the agency. The result is that several significant investigations now in progress will have to be curtailed, and several additional ones will have to be dropped outright.

If the FEC is authorized at the \$33,700,000 level, it will have to choose between funding some or all elements of its ADP plan and greatly limiting the resources devoted to compliance matters resulting from the 1996 elections. This level will leave the FEC about \$920,000—1/3 what is asked for—to handle the compliance component of the budget. The FEC could hire no more than 10–15 new people rather than the 37 planned for in compliance.

Section 2's requirement that the Commission adopt a "re-prioritization plan for the purpose of improving enforcement procedures and preventing unnecessary dismissal of appropriate enforce-

ment actions” is, at best, meaningless, and at worst, counter-productive. The present Enforcement Priority System (EPS) allows the Commission to make the necessary “triage decisions” based on objective criteria, and it is regularly reviewed and updated by the Commission. The problem is not the EPS but the fact that too many cases are dismissed under the EPS because the FEC does not have the resources to investigate them. Without sufficient resources, altering the EPS will only result in different cases being dismissed, not fewer cases. In addition, developing an entirely new EPS will take tie up resources that would otherwise be devoted to actual case work.

SECTION 3. APPOINTMENT AND SERVICE OF STAFF DIRECTOR AND GENERAL COUNSEL

Under the present law, the appointment and removal of the staff director and general counsel are carried out the way all decisions at the Commission are carried out. It currently requires four of six votes to appoint the staff director and general counsel and they serve at the pleasure of the Commission. At any time, either or both officers can be removed by four votes of the Commission.

The Majority provision would require the Commission to reappoint the staff director and general counsel every four years by four affirmative votes of the Commission. This change would weaken the bipartisan character of the Commission by, in effect, requiring the removal of people in these positions based on the vote of three commissioners. This would eliminate the independence of the staff director and general counsel; if either of them recommended actions unpopular to one or both of the major political parties, the commissioners could simply vote along party lines to remove the officer.

Equally troubling is that these provisions create the very real prospect that the Commission will not be able to appoint a staff director and/or general counsel, after failing to get four votes to retain a person in one of these positions. The consequent leadership vacuum will limit the ability of these offices to consider all the facts surrounding a complaint before reporting to the Commission that the complaint has merit. For example, pursuant to 2 U.S.C. 437g(a)(3), the general counsel must notify a respondent of his or her recommendation as to whether there is probable cause to believe the law was violated, and provide a brief supporting that recommendation. The Commission must consider that brief and the respondent’s response before it can vote on whether there is probable cause to believe the law was violated. If there is a vacancy in the position of general counsel, the Commission will not be able to proceed to a vote on probable cause.

Finally, Section 2 does not permit anyone who may have served as staff director or general counsel for an unexpired term to return to a subordinate position within the FEC once a new staff director or general counsel is named or the term expires. This may make it impossible to persuade someone from a lower tier of management to serve on an interim basis while the Commission seeks a permanent replacement.

We believe that Section 2 is nothing less than an effort by the Majority to cripple the FEC’s ability to investigate allegations of

abuse, enforce the law, and deter future violations. The effect will be the same as depriving a big-city police force of a strong, politically independent police commissioner.

SECTION 5. STANDARD FOR INITIATION OF ACTION BY FEC

For each complaint filed with the agency, Section 5 requires the general counsel to report to the Commission within 90 days whether there is sufficient reason to investigate the complaint. To meet this deadline, the FEC will either require an even larger increase in resources than it asked for or divert current resources from important investigations.

Under the present system, cases are rated under the Enforcement Priority System. Cases deemed less important compared to others are recommended for dismissal based on their rating, without a substantive judgment of the merits of the allegations. Cases that are rated as deserving of attention are placed on the Central Enforcement Docket and are assigned as staff become available. If a case is not assigned within a certain amount of time, the law requires that it be dismissed as “stale.”

This triage system is based on the idea that a case will be assigned when sufficient resources are available to handle the case. Under the Majority amendment, every complaint-generated case would have to be assigned so that a substantive report to the Commission can be made within 90 days regarding whether there is reason to investigate.

We would be inclined to endorse this expedited procedure if Congress granted the resources to carry it out. H.R. 3748 does not. If enacted, Section 5 will limit staff members from conducting actual investigations because they will be busy preparing a report on each complaint, regardless of the facial merits of the complaint. In addition, without additional resources, should the Commission find there are grounds to investigate a complaint under this new procedure, the case may still have to be held as inactive because of a lack of resources, and ultimately may still be dismissed as stale. Under the current system, many of those complaints would be dismissed by the Commission with a minimal amount of time and attention because they simply are not serious enough to warrant action. Ironically, this change, without additional resources, will result in even less enforcement and fewer investigations.

IV. CONCLUSION: THE MAJORITY WANTS IT BOTH WAYS

Once again the Republican Majority’s response to the public’s support of campaign finance reform is to deprive the Federal Election Commission of the funds, discretion, and independence it needs to enforce the law and disclose information to the public.

The Majority wants to have it both ways. On the one hand, it wants to criticize the Commission for not fulfilling its statutorily required duties and, on the other, seeks to limit the Commission’s budget at every opportunity so that it cannot fulfill its duties. If the Commission cannot enforce the law with the funds available to satisfy all of us, then shortchanging the agency in critical areas certainly will not improve enforcement.

It is our view that if Congress wants the FEC to do its job well, whether it be in enforcement, computerization, or disclosure, we had better make the funds available for these purposes. If H.R. 3748 is adopted, Congress will be culpable for thwarting the agency's essential mission.

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