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# Franking Privilege: Historical Development and Options for Change

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## Summary

The franking privilege, which allows Members of Congress to transmit mail matter under their signature without postage, has existed in the United States since colonial times. During the 18<sup>th</sup> and 19<sup>th</sup> centuries, the franking privilege served a fundamental democratic role, allowing Members of Congress to convey information to their constituents about the operations of government and policy matters before Congress. Conversely, it also provided a mechanism for citizens to communicate their feelings and concerns to Members (prior to 1873, Members could both send and receive mail under the frank). Congress has also occasionally granted the privilege to various executive branch officers and others. Although the rise of alternative methods of communication in the late 19<sup>th</sup> and early 20<sup>th</sup> centuries have arguably reduced the democratic necessity of franking, Members of Congress continue today to use the frank to facilitate communication with their constituents.

The franking privilege has carried an element of controversy throughout American history. During the 19<sup>th</sup> century, the privilege was commonly attacked as financially wasteful and subject to widespread abuse through its use for other than official business. Although concerns about cost and abuse continued in the 20<sup>th</sup> century, strong criticism of the franking privilege developed regarding the use of the frank as an influence in congressional elections and the perceived advantage it gives incumbent Members running for reelection. Contemporary opponents of the franking privilege continue to express concerns about both its cost and its effect on congressional elections.

In attempting to balance a democratic need for the franking privilege against charges of abuse, Congress has routinely amended the franking statutes. In general, the franking privileges granted to Members at any given point in time can be defined by five dimensions: *who* is entitled to frank mail, *what* is entitled to be franked, *how much* material can be sent, *where* franked material can be sent, and *when* franked material be sent. Historically, changes to the franking privilege typically have not altered all of these dimensions at once, resulting in a wide variety of legislative arrangements of the franking privilege. Similarly, proposed options for future legislative changes may involve altering some, but not all, of these dimensions.

This report will be updated as legislative action warrants. See also CRS Report RS22771, *Congressional Franking Privilege: Background and Recent Legislation*, by Matthew E. Glassman; CRS Report RL34188, *Congressional Official Mail Costs*, by Matthew E. Glassman; and CRS Report RL34458, *Franking Privilege: Mass Mailings and Mass Communications in the House, 1997-2013*, by Matthew E. Glassman.

# Contents

Introduction.....	1
History of the Congressional Franking Privilege .....	1
Origins of the Franking Privilege .....	2
Early Franking Law, 1789-1873.....	2
Significant Restrictions, 1873-1895 .....	3
Franking Restored, 1895-1973 .....	4
Franking Reform, 1973-1977 .....	5
Contemporary Reforms, 1986–Present .....	6
Mass Communications .....	7
Contemporary Activities of the Franking Commission.....	8
Other Recipients of the Franking Privilege .....	8
Vice President.....	9
Congressional Officers .....	9
Former Members of Congress.....	9
Members-elect.....	11
Relatives of Members of Congress .....	11
Former Presidents and Widows of Presidents .....	11
Executive Branch Officials .....	12
Postmasters.....	12
Soldiers.....	12
Criticism of the Franking Privilege .....	12
Cost of Franking.....	12
Illegal Abuse of Franking Privileges .....	14
Incumbency Advantage .....	15
Technological Advance .....	15
Defense of the Franking Privilege .....	15
Linking Citizens and Representatives .....	16
Facilitating the Spread of Political News .....	16
Institutional Defense of Congress .....	17
Dimensions of the Franking Privilege .....	17
Who Has the Franking Privilege? .....	17
When Can the Frank Be Used? .....	18
What Materials Can Members Send Under the Frank?.....	18
How Much Franked Mail Can Members Send?.....	18
Where Can Such Materials Be Sent? .....	19
Options for Future Franking Change.....	19
Abolish the Franking Privilege .....	19
Prohibit Mass Mailings .....	20
Prohibit Unsolicited Mailings .....	20
Extend the Pre-election Ban on Mass Mailings .....	20
Give Franking Privileges to Electoral Challengers.....	20
Reduce the Allowance Given to Members for Franked Mail.....	21
Increase Cost Disclosure Requirements.....	21
Concluding Observations .....	21

## **Contacts**

Author Contact Information..... 22

## Introduction

The franking privilege, which allows Members of Congress to transmit mail matter under their signature without postage, has existed in the United States since colonial times. During the 18<sup>th</sup> and 19<sup>th</sup> centuries, the franking privilege served a fundamental democratic role, allowing Members of Congress to convey information to their constituents about the operations of government and policy matters before Congress. Conversely, it also provided a mechanism for citizens to communicate their feelings and concerns to Members (prior to 1873, Members could both send and receive mail under the frank). Congress has also occasionally granted the privilege to various executive branch officers and others. Although the rise of alternative methods of communication in the late 19<sup>th</sup> and early 20<sup>th</sup> centuries have arguably reduced the democratic necessity of franking, Members of Congress continue today to use the frank to facilitate communication with their constituents.

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In attempting to balance a need for the franking privilege against charges of abuse, Congress has routinely amended the franking statutes. In general, the franking privileges granted at any time can be defined by five dimensions: *who* is entitled to frank mail, *what* is entitled to be franked, *how much* material can be sent, *where* the franked material can be sent, and *when* franked material can be sent. Changes to the franking privilege typically have not altered all of these dimensions, resulting in a variety of legislative arrangements of the privilege. Similarly, proposals for future changes may involve altering some, but not all, of these dimensions.

## History of the Congressional Franking Privilege<sup>1</sup>

Since 1789, Congress has statutorily altered the franking privilege numerous times.<sup>2</sup> In addition, other bodies empowered to regulate congressional use of the frank—the House and Senate, the U.S. Postal Service, the House Administration Committee, the House Commission on Congressional Mailing Standards, the Senate Rules and Administration Committee, and the Senate Select Committee on Ethics and their predecessors—have exercised their authority to reform the governance of the franking privilege.

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<sup>1</sup> Only Members of Congress are discussed in this section; other persons eligible for the franking privilege are discussed later in this report.

<sup>2</sup> This report does not cover penalty mail or other subsidized mailings. Penalty mail, defined as official mail of officers of the United States other than Members of Congress that is either required by law or sent upon official request, may be sent through the mails under official penalty covers, without payment, subject to law and regulations. See 39 U.S.C. §3202, 3204. The penalty mail system developed in the 19<sup>th</sup> century to replace use of the frank by executive branch officials. The name “penalty mail” is derived from official envelopes originally used to carry such mail. Printed on the envelopes were the phrases “official mail” and “A penalty of \$300 is fixed by law, for using this envelope for other than official business.”

## Origins of the Franking Privilege

The franking privilege has its roots in 17<sup>th</sup> century Great Britain. The British House of Commons instituted it in 1660 and free mail was available to many officials under the colonial postal system.<sup>3</sup> In 1775 the First Continental Congress passed legislation giving Members mailing privileges so they could communicate with their constituents, as well as giving free mailing privileges to soldiers.<sup>4</sup> In 1782, under the Articles of Confederation, Congress granted Members of the Continental Congress, heads of various departments, and military officers the right to send and receive letters, packets, and dispatches under the frank.<sup>5</sup>

## Early Franking Law, 1789-1873

After the adoption of the Constitution, the First Congress passed legislation for the establishment of federal post offices, which contained language continuing the franking privilege as enacted under the Articles of Confederation.<sup>6</sup> Under the Post Office Act of 1792, Members could send and receive under their frank all letters and packets up to two ounces in weight while Congress was in session.<sup>7</sup> Subsequent legislation extended Member use of the frank to a specific number of days before and after a session, first by 10 days in 1810, then by 30 days in 1816, and finally to 60 days in 1825.<sup>8</sup> The Act of 1825 also provided for the unlimited franking of newspapers and documents printed by Congress, regardless of weight.

Scholarly work suggests that franked mail played an important role in national politics during the early 19<sup>th</sup> century.<sup>9</sup> Members mailed copies of acts, bills, government reports, and speeches, serving as a distributor for government information and a proxy for the then non-existent Washington press corps, providing local newspapers across the country with information on Washington politics.<sup>10</sup> Because franking statutes allowed Members to both send and receive franked mail during much of the 19<sup>th</sup> century, constituents could also mail letters to their Senators and Representatives for free.<sup>11</sup>

According to one scholar, Members spent up to three hours each day signing their names on envelopes, some Members franking up to 3,000 items daily when Congress was in session and

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<sup>3</sup> Post Office Act, 12 Charles II (1660); Carl H. Scheele, *A Short History of the Mail Service* (Washington: Smithsonian Institution Press, 1970), pp. 47-55.

<sup>4</sup> *Journals of the Continental Congress, 1774-1789*, 34 vols., ed. Worthington C. Ford et al. (New York: Johnson Reprint Corp., 1968), vol. 3, p. 342 (November 8, 1775).

<sup>5</sup> *Journals of the Continental Congress, 1774-1789*, vol. 23, pp. 670-679 (October 18, 1782).

<sup>6</sup> Act of Congress, September 22, 1789, 1 Stat. 70. See also Act of Congress, August 4, 1790, 1 Stat. 178; Act of Congress, March 3, 1791, 1 Stat. 218.

<sup>7</sup> Act of Congress, February 20, 1792, 1 Stat. 232, 237.

<sup>8</sup> Act of Congress, May 1, 1810, 2 Stat. 592, 600; Act of Congress, April 9, 1816, 3 Stat. 264, 265; Act of Congress, March 3, 1825, 4 Stat. 102, 110.

<sup>9</sup> See Richard R. John, *Spreading the News: The American Postal Service From Franklin to Morse* (Cambridge, Massachusetts: Harvard University Press, 1995); Edward G. Daniel, "United States Postal Service and Postal Policy, 1789-1861" (Ph.D. diss, Harvard University, 1941); Ross Allan McReynolds, "History of the United States Post Office, 1607-1931," (Ph.D. diss, University of Chicago, 1935).

<sup>10</sup> John, *Spreading the News: The American Postal Service From Franklin to Morse*, p. 57.

<sup>11</sup> In addition, the Post Office Department did not require prepayment for mail until January 1, 1856. See Act of Congress, March 3, 1885, 10 Stat. 642.

occasionally hiring ghost-writers to sign their signature for them.<sup>12</sup> This led one Member to describe the House of Representatives as a “bookbinder’s shop.”<sup>13</sup>

In 1845, Congress passed comprehensive franking legislation that instituted an accounting system, in which executive departments would pay for mail through general tax revenue, in hopes of easing the burden on the Post Office Department and reducing paid mail rates.<sup>14</sup> Members of Congress continued to have their franking privilege paid for out of postal revenue.<sup>15</sup> The accounting system was repealed in 1847 in favor of an annual appropriation to the Post Office Department to subsidize free and franked mail costs.<sup>16</sup> After repeal of the accounting system, executive branch use of the frank reverted to the pre-1845 system.

### Significant Restrictions, 1873-1895

Popular perception of abuse of the franking privilege during the middle of the 19<sup>th</sup> century led Congress to abolish the privilege in 1873.<sup>17</sup> Members were provided with special stamps for official government communications, including responses to constituent letters, paid for out of the contingent funds of the House and Senate, but could not use free mail to contact constituents unsolicited.<sup>18</sup>

Over the following 22 years, the restrictions were gradually relaxed. In 1874, reduced postal rates for mailing the *Congressional Record* and bound public documents were approved.<sup>19</sup> In 1875, Members were permitted to send printed speeches and reports for free under their frank, as well as seeds and agricultural reports.<sup>20</sup> In 1891, Congress allowed Members to send mail under their frank to any officer of the federal government.<sup>21</sup> Finally, in 1895, Congress restored the general right of Members to mail under the frank, including unsolicited mail to constituents.<sup>22</sup>

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<sup>12</sup> John, *Spreading the News: The American Postal Service From Franklin to Morse*, p. 58. Prior to the use of pre-printed envelopes containing Member names, some Members resorted to using rubber stamps with their signatures on them. See Ross M. English, “Franking Privilege,” included in Donald C. Bacon et al., eds, *The Encyclopedia of the United States Congress* (New York: Simon & Schuster, 1995), pp. 222-223.

<sup>13</sup> Kelly B. Olds, “The Challenge to the U.S. Postal Monopoly, 1839-1851,” *The CATO Journal*, vol. 15, no. 1 (Spring/Summer 1995), p. 7.

<sup>14</sup> Act of Congress, March 3, 1845, 5 Stat. 732. As detailed later in this report, use of the frank had a significant impact on the cost of paid mail. The 1845 law also required postmasters to use special envelopes for free mail, a precursor to the penalty mail envelope later developed.

<sup>15</sup> The Act of 1845 also extended the period of time Members could use the privilege to the December following the end of a session of Congress.

<sup>16</sup> Act of Congress, March 3, 1847, 9 Stat. 188, 201. The appropriation was increased in 1851 but then abolished in 1872. See Act of March 3, 1851, 9 Stat. 587, 591; Act of June 1, 1872, 17 Stat. 199, 202. See also Daniel, “United States Postal Service and Postal Policy, 1789-1861,” pp. 452-454.

<sup>17</sup> Act of Congress, January 31, 1873, 17 Stat. 421; Act of Congress, March 3, 1873, 17 Stat. 559.

<sup>18</sup> These official stamps were also used for all official mail sent by employees in the executive branch. In 1877, the stamps were discontinued and replaced with so-called penalty envelopes, the basis for the contemporary penalty mail system. 19 Stat. 336 (March 3, 1877).

<sup>19</sup> Act of Congress, June 23, 1874, 18 Stat. 231, 237.

<sup>20</sup> Act of Congress, March 3, 1875, 18 Stat. 340, 343.

<sup>21</sup> Act of Congress, March 3, 1891, 26 Stat. 1079, 1081.

<sup>22</sup> Act of Congress, January 12, 1895, 28 Stat. 601, 622.

## Franking Restored, 1895-1973

After the franking privilege was restored in 1895, Members were allowed to send (but no longer receive) “any mail matter to any Government official or to any person, correspondence, not exceeding one ounce in weight, upon official or departmental business.”<sup>23</sup>

In 1904, the franking weight limit was raised to four ounces.<sup>24</sup> In 1906, Congress explicitly prohibited the loan or use of the frank by anyone not legally entitled to use the frank, as well as use of the frank for the benefit of anyone not legally entitled to use it.<sup>25</sup> In 1926, when the 69<sup>th</sup> Congress consolidated and restated the general and permanent laws of the United States, both penalty mail and the franking privilege were placed in Title 39, the Postal Service.<sup>26</sup>

In 1953, in order to encourage fiscal responsibility and allow for more accurate financial management of the Post Office Department, Congress began reimbursing the Department for franking costs, which the Department would treat as revenue.<sup>27</sup> In order to properly account for these costs, the Post Office Department also began systematic accounting of congressional franked mail costs.

Beginning in 1961, Congress passed legislation that allowed Members to frank mail to “postal patrons,” without a name or street address on the mailing.<sup>28</sup> Strong objections to this policy, largely in the Senate, triggered a repeal in 1962.<sup>29</sup> After a year of inter-chamber negotiation over such mailings, a compromise was reached: each chamber would handle “postal patron” mailings as it saw fit.<sup>30</sup> That was the first instance of the House and Senate having different franking policies.

The “postal patron” legislation also implicitly expanded the definition of “official business.” Previously, a limited (albeit flexible) definition—including department documents to be forwarded and related correspondence—had been the common interpretation of the 1895 provisions. The House report accompanying the 1961 postal patron statute, however, suggested that the new law would help Members deliver “information on the issues pending before Congress” to their constituents.<sup>31</sup> The nature of the postal patron provision meant that newsletters, questionnaires, and constituent reports might now be included in “official business.”

During this period, the Post Office Department was responsible for monitoring and regulating the use of free mailings. Post Office Department general counsel issued advisory opinions concerning use of the frank, and the Post Office Department attempted to collect postage due on mailings it

<sup>23</sup> Act of Congress, January 12, 1895, 28 Stat. 601, 622, §§85, 86.

<sup>24</sup> Act of Congress, April 28, 1904, 33 Stat. 429, 441.

<sup>25</sup> Act of Congress, June 26, 1906, 33 Stat. 467, 477.

<sup>26</sup> Act of Congress, June 30, 1926, 44 Stat. Pt. I, 1256-1257.

<sup>27</sup> P.L. 83-286; 67 Stat. 614. The act also directed executive branch penalty mail, also previously paid for out of the budget of the Post Office Department, to be charged against agency budgets and treated as revenue.

<sup>28</sup> P.L. 87-332; 75 Stat. 733.

<sup>29</sup> P.L. 87-730; 76 Stat. 680.

<sup>30</sup> P.L. 88-248; 77 Stat. 803.

<sup>31</sup> U.S. Congress, House Committee on Appropriations, *Treasury and Post Office Departments and the Tax Court of the United States Appropriations Bill*, report to accompany H.R. 10569, 86<sup>th</sup> Cong., 2<sup>nd</sup> sess., H.Rept. 86-1281 (Washington: GPO, 1961), p. 17. The law also limited postal patron mailings to the district a Member represented.



found improper.<sup>32</sup> Although the Post Office Department issued franking regulations,<sup>33</sup> enforcement placed the Post Office in an awkward position, as an executive branch agency charged with monitoring the activities of Congress.<sup>34</sup> In 1968, the Post Office Department stated that, although it would continue advisory opinions, “the final judge as to whether or not the franking privilege has been properly used must be the Congressman himself.”<sup>35</sup> In 1971, the Postal Service<sup>36</sup> discontinued offering advisory opinions.<sup>37</sup>

With the Postal Service no longer offering advisory opinions, a series of lawsuits were brought in 1973 in response to alleged franking abuses by Members of Congress preceding the 1972 election, including a direct challenge to the constitutionality of the privilege. Some of the lawsuits contended that the franking statutes were being broken by Members of Congress; other lawsuits contended that the frank was unconstitutional because it gave incumbents an unfair advantage over challengers in congressional elections.<sup>38</sup>

### Franking Reform, 1973-1977

In response to the legal challenges and a general sense that Congress was losing control over the franking privilege to judicial decisions, a new comprehensive franking statute was passed in 1973.<sup>39</sup> It included tighter definitions of the types of mail eligible for the frank, prohibited Member mass mailings (defined as 500 or more pieces of substantially similar unsolicited mail) less than 28 days before primary and general elections in which the Member was a candidate for public office,<sup>40</sup> and restricted the frankability of the *Congressional Record* to items that would be frankable if sent as letters.<sup>41</sup> The statute created the Commission on Congressional Mailing Standards (“Franking Commission”) to oversee the use of the frank in the House, and designated the Senate Select Committee on Standards and Conduct to make routine decisions regarding the use of the frank by that chamber.<sup>42</sup>

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<sup>32</sup> In several cases, the Post Office Department was unsuccessful in collection efforts. See Comment, “The Franking Privilege—A Threat to the Electoral Process,” *American University Law Review*, vol. 23 (Summer 1974), p. 888, n. 33.

<sup>33</sup> For instance, in April 1968, the Post Office Department issued *The Congressional Franking Privilege*, which offered guidance and illustrative rulings on the frankability of different mail matter. Post Office Department Publication 126, “The Congressional Franking Privilege,” April 1968.

<sup>34</sup> Comment, “The Franking Privilege,” p. 888.

<sup>35</sup> Memorandum of Timothy J. May, general counsel, Post Office Department, December 26, 1968, in U.S. Congress, House Committee on Post Office and Civil Service, Subcommittee on Postal Service, *Law and Regulations Regarding Use of the Congressional Frank*, committee print, 92<sup>nd</sup> Cong., 1<sup>st</sup> sess., CP-14 (Washington: GPO, 1971), pp. 5-6.

<sup>36</sup> The Post Office Department was reorganized as the Postal Service in 1970. P.L. 91-375; 84 Stat. 719.

<sup>37</sup> Letter from David A. Nelson, senior assistant postmaster general and general counsel, United States Postal Service, to Thaddeus J. Dulski, chairman, House Committee on Post Office and Civil Service, August 12, 1971, in *Law and Regulations Regarding Use of the Congressional Frank*, pp. 6-7.

<sup>38</sup> See, e.g., *Common Cause v. Bolger*, 512 F. Supp. 26, 32 (D.D.C. 1980).

<sup>39</sup> P.L. 93-191; 87 Stat. 737.

<sup>40</sup> Subsequent interpretive rulings in the House and Senate have produced a more precise definition of “candidate” for the purposes of the pre-election mail ban. See CRS Report R40569, *Election Year Restrictions on Mass Mailings by Members of Congress: How H.R. 2056 Would Change Current Law*, by Matthew E. Glassman.

<sup>41</sup> Since Members could insert anything they wanted into it, the *Congressional Record* had long been a loophole for mailing things that would have otherwise been unfrankable. See Andrew H. Wasmund, “Use and Abuse of the Congressional Franking Privilege,” *Loyola University of Los Angeles Law Review*, vol. 5 (January 1972), pp. 65-67.

<sup>42</sup> P.L. 93-191, §§(5)(a), (6)(a).

The Commission on Congressional Mailing Standards, consisting of six Members chosen by the Speaker, three from each major political party, including a chairman selected by the Speaker from among the Members on the Committee on House Administration,<sup>43</sup> was authorized “to (1) issue regulations governing the proper use of the franking privilege; (2) to provide guidance in connection with mailings;<sup>44</sup> and (3) to act as a quasi-judicial body for the disposition of formal complaints against Members of Congress who have allegedly violated franking laws or regulations.”<sup>45</sup>

Franking reform continued in 1977, when the House and Senate amended their respective chamber rules. A temporary House Commission on Administrative Review, created in July 1976, recommended, with respect to the franking privilege, placing a ban on the use of private funds to print mailings distributed under the frank, limiting Members to six district-wide mailings per year, extending the pre-election mass mailing ban to 60 days from 28, and requiring that postal patron mailings be submitted to the Franking Commission for review.<sup>46</sup> The commission’s recommendations on the franking privilege were subsequently adopted by the House.<sup>47</sup> The Senate adopted a resolution that extended the pre-election mass mailing ban to 60 days, placed a ban on the use of private funds to prepare franked materials, and required Senators to file public copies of postal patron mailings.<sup>48</sup>

## Contemporary Reforms, 1986–Present

Although the reforms of the 1970s addressed perceived problems of franking abuse, the cost of franking increased dramatically between FY1970 and FY1988.<sup>49</sup> In response, Congress placed individual limits on Members’ mail costs and required public disclosure of individual Member franking expenditures.

In 1986, the Senate established a franking allowance for each Senator and for the first time disclosed individual Member mail costs.<sup>50</sup> In 1990, the House established a separate franking allowance for its Members and required public disclosure of individual mail costs.<sup>51</sup> The act also required the postmaster general to (1) monitor use of the frank by each Representative and Senator; (2) notify each Member on a monthly basis of the amount of his or her franking allowance used; and (3) prohibit the delivery of franked mail in excess of a Member’s allowance.<sup>52</sup>

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<sup>43</sup> P.L. 93-191, §(5)(b).

<sup>44</sup> This authority includes the issuing of advisory opinions on individual mass mail items.

<sup>45</sup> P.L. 93-191, §(5)(d)-(f). The Senate Select Committee on Standards and Conduct was given similar authority in §(6)(b)-(e).

<sup>46</sup> U.S. Congress, House, *Communication from the Chairman, Commission on Administrative Review, Report on Financial Ethics*, 95<sup>th</sup> Cong., 1<sup>st</sup> sess., February 1977, H. Doc 95-73 (Washington: GPO, 1977), pp. 19-20.

<sup>47</sup> H.Res. 287, 95<sup>th</sup> Cong., 1<sup>st</sup> sess., agreed to in the House March 2, 1977.

<sup>48</sup> S.Res. 110, 95<sup>th</sup> Cong., 1<sup>st</sup> sess., agreed to in the Senate April 1, 1977. Congress later statutorily required both Representatives and Senators to pay the costs of franked mail from funds specifically appropriated for that purpose, and prohibited the use of supplemental funds from private and public sources. See P.L. 101-520, 104 Stat. 2279.

<sup>49</sup> For a historical overview of franking costs, see CRS Report RL34188, *Congressional Official Mail Costs*, by Matthew E. Glassman.

<sup>50</sup> S.Res. 500, 99<sup>th</sup> Cong., 2<sup>nd</sup> sess., agreed to in the Senate October 8, 1986.

<sup>51</sup> Legislative Branch Appropriations Act, FY1991, P.L. 101-520, 104 Stat. 2254, 2279, §311.

<sup>52</sup> *Ibid.*, §311(b).

Tighter restrictions were also placed on Member mass mailings. Since October 1992, Members have been prohibited from sending mass mailings outside their districts.<sup>53</sup> This action followed a U.S. court of appeals ruling that found the practice unconstitutional.<sup>54</sup> Since October 1994, Senators have been limited to mass mailings that do not exceed \$50,000 per session of Congress. Senators may not use the frank for mass mailings above that amount.<sup>55</sup>

In 1995, the House consolidated Members' allowances for clerk-hire, official office expenses, and mail costs into a single allowance, "Member's Representational Allowance" (MRA). Although a Representative's franking expenses were still restricted to the mail costs portion of the MRA, Members could use excess funds in the mail costs allocation for clerk-hire or office expenses.<sup>56</sup> In 1999, House regulations were amended such that the combined funds in the MRA may be used without limitation in any one allocation category, subject to law and House regulation.

In 1996, Congress extended the pre-election cutoff for Representative mass mailings to 90 days from 60, required each mass mailing to contain the statement, "This mailing was prepared, published, and mailed at taxpayer expense," and required that the Statement of Disbursements of the House contain Member mass mailing information.<sup>57</sup>

During the 109<sup>th</sup> Congress, in response to allegations of misuse, the Committee on House Administration adopted a resolution restricting mass mailings made by House committees.<sup>58</sup> The committee funding resolution for the 109<sup>th</sup> Congress limited House committees to an aggregate franking cost of \$5,000, and prohibited the use of committee funds for the production of material for a mass mailing unless the mailing fell under specific exceptions related to committee business.<sup>59</sup> Under the new regulations, the chairman or ranking minority Member of a committee is required to submit a sample of the material to the House Commission on Congressional Mailing Standards for approval. In addition, no committee is permitted to send franked mail into a Member's district within 90 days of an election in which the Member is a candidate. Similar restrictions were adopted by the House Administration Committee in subsequent Congresses.<sup>60</sup>

## **Mass Communications**

During the 106<sup>th</sup> Congress, the Committee on House Administration (at the time called the Committee on House Oversight) adopted a policy requiring advisory opinions for all unsolicited mass communications.<sup>61</sup> Mass communications are defined as any unsolicited communication of

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<sup>53</sup> Legislative Branch Appropriations Act, FY1993, P.L. 102-292, 106 Stat. 1703, 1722, §309.

<sup>54</sup> *Coalition to End the Permanent Government v. Marvin T. Runyon et al.*, 979 F.2d 219 (D.C.Cir. 1992).

<sup>55</sup> Legislative Branch Appropriations Act, FY1995, P.L. 103-283, Stat. 1423, 1427-1428, §§5, 108.

<sup>56</sup> Legislative Branch Appropriations Act, FY1996, P.L. 104-53, 109 Stat. 514, 519.

<sup>57</sup> Legislative Branch Appropriations Act, FY1997, P.L. 104-197, 110 Stat. 2394, 2414-2415, §311.

<sup>58</sup> Resolution of the Committee on House Administration, April 21, 2005, available at [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109\\_house\\_hearings&docid=f:21196.wais](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_house_hearings&docid=f:21196.wais), visited November 19, 2007.

<sup>59</sup> H.Res. 224, adopted in the House April 27, 2005; see U.S. Congress, Committee on House Administration, *Providing for the Expenses of Certain Committees of the House of Representatives for the 109<sup>th</sup> Congress*, report to accompany H.Res. 224, 109<sup>th</sup> Cong., 1<sup>st</sup> sess., H.Rept. 109-224 (Washington: GPO, 2005), p. 4.

<sup>60</sup> Resolution of the Committee on House Administration, May 7, 2007, available at [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110\\_house\\_hearings&docid=f:36562.wais](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_house_hearings&docid=f:36562.wais), visited November 19, 2007.

<sup>61</sup> U.S. Congress, Committee on House Oversight, *Report on the Activities of the Committee on House Oversight during the 106<sup>th</sup> Congress*, 106<sup>th</sup> Cong., 2<sup>nd</sup> sess., H.Rept. 106-1056 (Washington: GPO, 2001), p. 14.

substantial identical content to 500 or more persons in a session of Congress, and includes mailings, advertisements, automated phone calls, video or audio communications, and e-mails.<sup>62</sup> E-mails to constituents on subscriber lists, however, can be treated as solicited mailings not subject to the pre-election or mass mailing restrictions.<sup>63</sup> During the 110<sup>th</sup> Congress, the Committee on House Administration amended committee regulations to require that Members disclose the volume and cost of mass communications on a quarterly basis.<sup>64</sup>

## Contemporary Activities of the Franking Commission

The day-to-day operations of the Franking Commission are extensive. The commission offers both formal and informal advisory opinions on the eligibility for the frank of roughly 6,000 to 8,000 pieces of mail each year.<sup>65</sup> Since its establishment in 1973, the commission has issued regulations and made rulings regarding, among other things, the allowable content of franked mail; the size, number, and placement of photographs in franked newsletters; and disclosure of Member mass mailings for public examination.<sup>66</sup>

The Franking Commission also handles, on average, about four or five formal complaints each year about particular pieces of franked mail.<sup>67</sup> After a finding of fact, the commission is empowered to punish Members if appropriate. Inadvertent violations typically result in the Member simply reimbursing the House for the cost of the mailing. More serious violations can result in Members losing a portion of their representational allowance, or referral to the House for further action.<sup>68</sup>

## Other Recipients of the Franking Privilege

Historically, Congress has regularly expanded and contracted the group of individuals granted the franking privilege. Currently, the franking privilege is granted (with differing restrictions) to Members of Congress, the Vice President, certain congressional officers, former Members of Congress, former Presidents, former Vice Presidents, widows of Presidents, and a relative of a Member who dies in office. In the past, Congress has granted the franking privilege to high-ranking officers in the executive branch, postmasters, military leaders, and soldiers during wartime.

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<sup>62</sup> Certain communications, such as news releases and information posted to Member websites, are exempted from these restrictions. See House of Representatives, *Member's Handbook*, available at <http://cha.house.gov/handbooks/members-congressional-handbook>.

<sup>63</sup> House of Representatives, *Member's Handbook*, available at <http://cha.house.gov/handbooks/members-congressional-handbook>.

<sup>64</sup> Resolution of the Committee on House Administration, September 25, 2008.

<sup>65</sup> Interviews with Charles Howell and Ellen McCarthy, Committee on House Administration, April 3, 2007.

<sup>66</sup> U.S. Congress, House Commission On Congressional Mailing Standards, *Regulations on the Use of the Congressional Frank By Members of the House of Representatives* (Washington: GPO, 1998), pp. 5, 9, 19.

<sup>67</sup> Franking Commission rules provide specific procedures for the filing and disposition of complaints. See *ibid.*, pp. 33-45.

<sup>68</sup> Interviews with Charles Howell and Ellen McCarthy, Committee on House Administration, April 3, 2007.

## Vice President

The Vice President is currently eligible for the franking privilege under similar terms as Members of Congress.<sup>69</sup> The Vice President was first granted the franking privilege in 1792.<sup>70</sup> Prior to 1873, the Vice President was treated as an official of the executive branch who had the franking privilege, and thus could use the frank without time or weight restriction. When the frank was restored in 1895, the Vice President was again granted the privilege.<sup>71</sup> He was, however, subject to similar restrictions as Members.

## Congressional Officers

Currently, the secretary of the Senate, the sergeant at arms of the Senate, each of the elected officers of the House (other than a Member of the House), the legislative counsels of the House and Senate, the law revision counsel of the House, and the Senate legal counsel are granted the franking privilege.<sup>72</sup> This follows a historical pattern of Congress granting the privilege to various officers of the legislative branch.

## Former Members of Congress

Former Members of Congress are currently eligible for the franking privilege for the 90-day period immediately following the date on which they leave office.<sup>73</sup> Prior to 1847, former Members of Congress were not granted any franking privileges. In 1847, Congress authorized former Members to send and receive public documents, letters, and packages under the frank until the first Monday of December following the expiration of their term of office.<sup>74</sup> In 1863, the privilege for former Members was repealed; in 1872 it was restored.<sup>75</sup> Former Members lost the privilege when Congress abolished all franking in 1873.<sup>76</sup> In 1875, former Members were granted reduced rate postage for nine months after the expiration of their terms.<sup>77</sup> In 1877, the date of expiration of the privilege was changed to the first day of December following the expiration of the Member's term in office.<sup>78</sup> In 1895, Congress repealed the reduced rate privilege and restored

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<sup>69</sup> 39 U.S.C. §3210(b)(1).

<sup>70</sup> Act of Congress, February 20, 1792, 1 Stat. 232, 237.

<sup>71</sup> Act of Congress, January 12, 1895, 28 Stat. 601, 622.

<sup>72</sup> 39 U.S.C. §3210(b)(1).

<sup>73</sup> 39 U.S.C. 3210(b)(3). The privilege is restricted to the sending of mail relating to the closing of their office. During the same period, former Members may send and receive as franked mail all public documents printed by order of Congress (39 U.S.C. 3211).

<sup>74</sup> Act of Congress, March 1, 1847, 9 Stat. 147, 148. This structured the franking privilege of former Members to run from the end of the previous Congress until the constitutionally prescribed default start of the 1<sup>st</sup> session of the next Congress, approximately 275 days. Article 1, §4 of the Constitution directed Congress to meet “on the first Monday of December, unless they shall by Law appoint a different Day.” Prior to the adoption of the 20<sup>th</sup> Amendment, congressional terms ran from March 4<sup>th</sup> of odd-numbered years to March 3<sup>rd</sup> of the following odd-numbered year, as Congress under the Articles of Confederation set March 4<sup>th</sup>, 1789, as the first day of the First Congress under the new Constitution. With rare exceptions, prior to the 20<sup>th</sup> Amendment, new Congresses did not begin their first session until the following December.

<sup>75</sup> Act of Congress, March 3, 1863, 12 Stat. 701, 708; Act of Congress, June 8, 1872, 17 Stat. 283, 306.

<sup>76</sup> Act of Congress, January 31, 1873, 17 Stat. 421.

<sup>77</sup> Act of Congress, March 3, 1875, 18 Stat. 340, 343.

<sup>78</sup> Act of Congress, March 3, 1877, 19 Stat. 319, 336.

the franking privilege. Former Members were again granted the franking privilege until December 1. After the Twentieth Amendment<sup>79</sup> shifted the end of the congressional term to January 3 from March 4, Congress adjusted the date of expiration on the frank for Members of Congress to June 30 from December 1.<sup>80</sup>

In 1970, Congress authorized Members to send and receive as franked mail all public documents printed by order of Congress, until the last day of June following the expiration of their term in office.<sup>81</sup> In 1973, Congress moved the expiration date to April 30.<sup>82</sup> In 1975, Congress enacted the current law, authorizing the franking privilege for former Members for 90 days following the expiration of their term in office, and only for the sending of mail related to the closing of their office.<sup>83</sup>

Upon expiration of their term in office, Members who at some point during their career served as Speaker of the House are granted enhanced franking privileges. For five years after leaving Congress, former Speakers are granted the same franking privilege as current Members of Congress. This privilege entitles them to send as franked mail correspondence related to their official duties and to send and receive public documents ordered printed by Congress.<sup>84</sup>

The franking privilege was first authorized for a former Speaker in December 1970. H.Res. 1238 authorized a general allowance package for the outgoing Speaker, John W. McCormack, who was scheduled to retire from the House at the end of the 91<sup>st</sup> Congress.<sup>85</sup> McCormack was granted a franking privilege for 18 months beyond the 90 days granted to former Members. In 1974, Congress permanently authorized the franking privilege and other allowances to any former Speaker upon expiration of his/her term as a Representative, for “as long as he determines there is a need therefor.”<sup>86</sup> In 1993, Congress limited the period of time for use of the allowance to five years.<sup>87</sup>

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<sup>79</sup> Ratified January 23, 1933.

<sup>80</sup> Act of Congress, June 18, 1934, 48 Stat. 1017, 1018. Although this change only slightly altered the amount of time former Members could use the frank, it illustrates a development in the congressional intent of granting the franking privilege to former Members. The original 1847 law was structured to allow former Members use of the frank until the beginning first session of the next Congress. The 1934 law was structured to give Members use of the frank for a specified length of time, unrelated to the start of the next session of Congress. The legislative history suggests that in 1934, Congress understood the purpose of the law as giving former Members a period of time to close up unfinished business and dispose of their allotment of public documents, not as a mechanism for providing uninterrupted communication between constituents and representatives. U.S. Congress, Senate Committee on Printing, *Allotment of Public Documents and Date of Expiration of Franking Privilege to Members of Congress*, report to accompany S.J.Res. 130, 73<sup>rd</sup> Cong., 2<sup>nd</sup> sess., S.Rept. 1253 (Washington: GPO, 1934), p. 1.

<sup>81</sup> P.L. 91-374; 84 Stat. 719, 754.

<sup>82</sup> P.L. 93-191; 85 Stat. 737, 741.

<sup>83</sup> P.L. 94-177; 89 Stat. 1032.

<sup>84</sup> 2 U.S.C. §31b-4.

<sup>85</sup> H.Res. 1238, agreed to by the House December 22, 1970. For more information on the general allowance of former Speakers, see CRS Report RS20099, *Former Speakers of the House: Office Allowances, Franking Privileges, and Staff Assistance*, by Matthew E. Glassman.

<sup>86</sup> P.L. 93-532; 88 Stat. 1723.

<sup>87</sup> P.L. 103-69; 107 Stat. 692, 699.

## **Members-elect**

Persons elected to Congress, prior to being sworn in, are currently granted the franking privilege on the same terms as sitting Members of Congress.<sup>88</sup>

## **Relatives of Members of Congress**

Certain relatives of Members of Congress are eligible for the franking privilege when a Member dies in office. Originally enacted in 1968, this law extends the franking privilege to the spouse of a Member who dies in office. The privilege exists for 180 days and is to be used only to send mail related to the death of the Member.<sup>89</sup> In 1981, the statute was broadened to allow a Member of the immediate family of the Member who dies in office to have the franking privilege in the event that there is no surviving spouse.<sup>90</sup>

## **Former Presidents and Widows of Presidents**

Former Presidents have routinely been granted the franking privilege by statute, and in 1958 a general statute was passed providing franking privileges for all former Presidents.<sup>91</sup>

Since 1800, Congress has regularly, except for two instances, granted the franking privilege to widows of former Presidents. From 1789 until 1973, the privilege was granted through individual pieces of legislation.<sup>92</sup> The first such grant was to Martha Washington in 1800.<sup>93</sup> In 1973, Congress enacted general legislation to provide the franking privilege to all future surviving spouses of Presidents.<sup>94</sup>

Unlike Members of Congress and other federal officials legally entitled to use the frank, few restrictions regarding weight, substantive content, or volume of use have been placed on the franking privilege of former Presidents or widows of Presidents, particularly prior to 1973.<sup>95</sup> As governed by the 1973 law, the current franking privilege for Presidents, spouses of Presidents, and surviving spouses of Presidents applies only to “nonpolitical mail sent within the United States and its territories.”<sup>96</sup> No limitation is imposed on volume of use or weight of franked mailings.

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<sup>88</sup> 39 U.S.C. §3210(b).

<sup>89</sup> P.L. 90-368; 82 Stat. 278.

<sup>90</sup> P.L. 97-69; 95 Stat. 1041, 1043.

<sup>91</sup> P.L. 85-745; 72 Stat. 838.

<sup>92</sup> Of the 34 U.S. Presidents who died prior to 1973, 23 were survived by a spouse. Only two—Mrs. John (Letitia) Tyler and Mrs. Andrew (Eliza) Johnson—were not granted the franking privilege. Mrs. Harry (Bess) Truman and Mrs. Lyndon (Lady Bird) Johnson, whose husbands died in December 1972 and January 1973, respectively, were granted the privilege in a law enacted in 1973.

<sup>93</sup> Act of Congress, April 3, 1800, 2 Stat. 19.

<sup>94</sup> P.L. 93-191; 87 Stat. 737, 742, §311.

<sup>95</sup> *Ibid.*

<sup>96</sup> Prior to 1973, the privilege was granted without restriction on the political content of the mail.

## Executive Branch Officials

Since 1873, officials in the executive branch have used penalty mail for official government correspondence.<sup>97</sup> Prior to 1873, officials in the executive branch were occasionally granted the franking privilege: heads of departments, the President and Vice-President, and high ranking military officials.

## Postmasters

Early franking statutes granted the franking privilege to local postmasters. For many citizens seeking postmaster positions, the franking privilege was as important, or more important, than the salaried compensation for the job.<sup>98</sup> When Congress chose to end the franking privilege for postmasters in 1845, over one-third quit.<sup>99</sup> The privilege was restored in 1847.<sup>100</sup> When the general franking privilege was abolished in 1873, postmasters were restricted to the use of penalty mail for official government communications.<sup>101</sup>

## Soldiers

The first franking statute, passed by the Continental Congress in 1776, authorized free mail for Revolutionary soldiers.<sup>102</sup> Similar legislation has occasionally been provided to American soldiers in other conflicts.<sup>103</sup>

## Criticism of the Franking Privilege

Contemporary critics of the franking privilege generally articulate four objections: (1) the franking privilege is financially wasteful; (2) the franking privilege is abused for private and political gain; (3) the franking privilege gives unfair advantages to incumbents in congressional elections; and (4) the franking privilege has become outdated with the advent of other forms of communication.

## Cost of Franking

Although the word “frank” is derived from the Latin *francus*, meaning “free,” the franking privilege is not free. Despite reforms that reduced official mail costs by over 85% between FY1988 and FY2014, critics continue to view the franking privilege as an unnecessary public expense. Overall congressional mail costs include official mail sent by Members (both regular

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<sup>97</sup> Act of Congress, January 31, 1873, 17 Stat. 421.

<sup>98</sup> Ross Allan McReynolds, “History of the United States Post Office, 1607-1931,” p. 189.

<sup>99</sup> *Ibid.*, p. 189.

<sup>100</sup> Act of Congress, March 3, 1847, 9 Stat. 188, 201.

<sup>101</sup> Act of Congress, January 31, 1873, 17 Stat. 421.

<sup>102</sup> *Journals of the Continental Congress, 1774-1789*, vol. 3, p. 342 (November 8, 1775).

<sup>103</sup> See, e.g., P.L. 65-254, 40 Stat. 1057, 1150, which provided during World War I that “letters written and mailed by soldiers, sailors, and marines assigned to duty in a foreign country engaged in the present war may be mailed free of postage.”



and mass mail), committees, and chamber officers.<sup>104</sup> During FY2014, Congress spent \$16.9 million on official mail according to the U.S. Postal Service, representing slightly less than four-tenths of 1% of the \$4.3 billion budget for the entire legislative branch for FY2014.<sup>105</sup> House official mail costs (\$15.1 million) were 89% of the total, whereas Senate official mail costs (\$1.8 million) were 11% of the total. During FY2013, Congress spent \$7.6 million on official mail. House official mail costs (\$6.2 million) were 82% of the total, whereas Senate official mail costs (\$1.4 million) were 18% of the total.

These expenditures continue a historical pattern of Congress spending less on official mail costs during non-election years than during election years. However, analysis of monthly data on official mail costs indicates that, due to the structure of the fiscal year calendar, comparisons of election-year and non-election-year mailing data tend to overstate the effect of pre-election increases in mail costs, because they also capture the effect of a large spike in mail costs from December of the previous calendar year.<sup>106</sup>

Reform efforts during the past 30 years have reduced overall franking expenditures in both election and non-election years. Even-numbered-year franking expenditures have been reduced by over 85% from \$113.4 million in FY1988 to \$16.9 million in FY2014, while odd-numbered-year franking expenditures have been reduced by over 90% from \$89.5 million in FY1989 to \$7.6 million in FY2013. House mail costs have decreased from a high of \$77.9 million in FY1988 to \$15.1 million in FY2014. The Senate has dramatically reduced its costs, from \$43.6 million in FY1984 to \$1.8 million in FY2014.

Concerns about the public expense of franking have existed virtually continuously since the earliest days of the nation. Two estimates made in the 1840s suggest that Congress was franking 300,000 letters and 4.3 million documents each year, with free mail accounting for more than half of the mail leaving Washington each day.<sup>107</sup>

These arrangements strained the Post Office Department. Congressional franking, combined with franking privileges granted to local postmasters and executive branch officials, meant that a significant portion of mail in the United States was posted for free. Because the Post Office Department was expected to generate revenue to cover costs, franked and other free mails forced the adoption of higher rates for paid mail.<sup>108</sup> Memorials from many state legislatures urged Congress to restrict franking and reduce postage rates.<sup>109</sup> Between 1840 and 1845, the postmaster

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<sup>104</sup> Official mail costs include franked mail only, and do not include the cost of stationery supplies or production costs.

<sup>105</sup> Throughout this report, cost figures are based on U.S. Postal Service data found in the *Annual Report of the Postmaster General*, additional data provided by the Postal Service, and mass mailing information contained in the *Statement of Disbursements of the House* and the *Report of the Secretary of the Senate*.

<sup>106</sup> See CRS Report RL34188, *Congressional Official Mail Costs*, by Matthew E. Glassman.

<sup>107</sup> Olds, "The Challenge to the U.S. Postal Monopoly," pp. 7-8; Daniel, "United States Postal Service and Postal Policy, 1789-1860," pp. 450-451.

<sup>108</sup> U.S. Congress, House Committee on the Post Office and Post Roads, *Franking Privilege and Rates of Postage*, 28<sup>th</sup> Cong., 1<sup>st</sup> sess., H. Rep. 483, Serial Set 446 (1844), pp. 7-10.

<sup>109</sup> For example, see U.S. Congress, Senate, *Resolution of the General Assembly of Vermont*, 28<sup>th</sup> Congress, 2<sup>nd</sup> sess., S. Doc. 70, Serial Set 451 (1845); U.S. Congress, Senate, *Resolution of the General Assembly of New Hampshire*, 28<sup>th</sup> Cong., 2<sup>nd</sup> sess., S. Doc. 8, Serial Set 449 (1844); U.S. Congress, Senate, *Resolutions of the Legislature of New York*, 27<sup>th</sup> Cong., 2<sup>nd</sup> sess., S. Doc. 291, Serial Set 398 (1842).

general repeatedly asked Congress to abolish or restrict the franking privilege, or to have the government pay for free mail through general tax revenue instead of postal revenue.<sup>110</sup>

## Illegal Abuse of Franking Privileges

As with concerns about cost, critics have long objected to the franking privilege because of its abuse for illegal private and political gain. During the 19<sup>th</sup> century, abuse of the franking privilege—either through loan of the frank to non-authorized users or its misuse by those entitled to the privilege—was common.<sup>111</sup> Reports to Congress during the mid-19<sup>th</sup> century routinely suggested that the laws prohibiting private use of the frank were universally “disregarded,” most people possessing the privilege used it as a “private convenience for themselves and their friends,” private companies regularly “secured envelopes with the frank on them,” and that “a very small proportion of the matter transmitted through the mails [under the frank] ha[d] any reference to the actual business of Congress.”<sup>112</sup>

John Quincy Adams, during his first year as a United States Senator (1803) noted that the franking regulations requiring all Senators to leave a copy of their signature with the local postal clerk for verification purposes were universally ignored.<sup>113</sup> There is also the famous (and perhaps apocryphal) story of a Member franking his horse for transportation back home, claiming it was a “public document.”<sup>114</sup> The franking privilege of the postmasters was also valuable as a party-based patronage benefit, especially in the smaller offices.<sup>115</sup> In 1840, Amos Kendall, auditor to the postmaster general, franked 13,000 letters to postmasters throughout the country, suggesting they subscribe to his newspaper, and implicitly threatening them politically if they did not.<sup>116</sup>

Contemporary regulations on the franking privilege severely restrict the types of overt franking abuse common in the 19<sup>th</sup> century. Both the House and Senate require that Members receive an advisory opinion on all mass mailings. Contemporary critics of “abuse” of the franking privilege are often criticizing the incumbency advantage of the frank rather than abuse through the loan or illegal use of the frank.<sup>117</sup>

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<sup>110</sup> U.S. Post Office Department, *Postmaster General’s Annual Report, 1840*, 26<sup>th</sup> Cong., 2<sup>nd</sup> sess., S. Doc. 1, Serial Set 375 (1840), pp. 481-482; Post Office Department, *Postmaster General’s Annual Report, 1842*, 27<sup>th</sup> Cong., 3<sup>rd</sup> sess., S. Doc. 1, Serial Set 418 (1842), p. 724; Post Office Department, *Postmaster General’s Annual Report, 1843*, 28<sup>th</sup> Cong., 1<sup>st</sup> sess., S. Doc. 1, Serial Set 431(1843), p. 605.

<sup>111</sup> For an overview of 19<sup>th</sup> century franking abuses, see Daniel, “United States Postal Service and Postal Policy, 1789-1860,” pp. 449-458.

<sup>112</sup> U.S. Congress, House Select Committee on Retrenchment, *Franking Privilege—To Abolish*, report to accompany H.R. 292, 27<sup>th</sup> Cong., 2<sup>nd</sup> sess., H.Rept. 452, Serial Set 408 (1842) p. 1; U.S. Congress, House Committee on the Post Office and Post Roads, *Franking Privilege*, report to accompany S. 177, 30<sup>th</sup> Cong., 1<sup>st</sup> sess., H.Rept. 608, Serial Set 526 (1848), pp. 6-7.

<sup>113</sup> Charles Francis Adams, ed., *Memoirs of John Quincy Adams, Comprising Portions of His Diary from 1795 to 1848*, 12 vols. (Philadelphia: J.B. Lippincott & Co., 1874), vol. 1, p. 265.

<sup>114</sup> Gerald Cullinan, *The United States Postal Service* (New York: Praeger Publishers, 1968), p. 68; Andrew H. Wasmund, “Use and Abuse of the Congressional Franking Privilege,” *Loyola University of Los Angeles Law Review*, vol. 6 (January 1972), p. 56.

<sup>115</sup> John, *Spreading the News*, p. 240.

<sup>116</sup> Cullinan, *The United States Postal Service*, p. 64.

<sup>117</sup> See, e.g., Wasmund, “Use and Abuse of the Congressional Franking Privilege,” which focuses entirely on use of the frank to influence congressional elections.

## Incumbency Advantage

Although contemporary franking critics continue to voice concerns about the costs and abuses of the franking privilege, the most common contemporary criticism of franking regards its use in congressional elections, and the perceived advantage it gives incumbent Members running for reelection. Critics argue that the vast majority of franked mail is unsolicited and, in effect, publicly funded campaign literature.<sup>118</sup> Critics also argue that incumbent House Members may spend as much on franked mail in a year as a challenger spends on his or her entire campaign.<sup>119</sup> Critics also point out that franked mail costs are higher in election years than non-election years, indicating that Members may be using the frank in attempts to influence an election.<sup>120</sup>

Historically, although reformers of the franking privilege in the 19<sup>th</sup> century were chiefly concerned with abuses that created unnecessary costs, the relationship between the frank and reelection was not unnoticed.<sup>121</sup> Speeches in Washington, DC, were often delivered not for consumption by other Members, but for the purpose of publication and dissemination back in a Member's home district.<sup>122</sup> Several observers noted that the objective was to send a signal to constituents that a Member was working hard on their behalf.<sup>123</sup>

## Technological Advance

Even when conceding that the franking privilege serves important purposes, some critics argue that these purposes have been outdated with modern technology. They point out that telephone, radio, television, and the Internet have expanded the mediums by which Members can communicate with their constituencies. E-mail now allows Members and constituents to communicate in written form without the marginal costs associated with letter writing.

## Defense of the Franking Privilege

Defenders of congressional franking argue that the privilege continues to facilitate the same important democratic purposes—communication between citizens and representatives and the spreading of political news—that it served during the 18<sup>th</sup> and 19<sup>th</sup> centuries. In addition, proponents of franking argue that the rise of modern mass media has given the President certain media advantage over Congress, which can be partially counteracted by the franking privilege.

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<sup>118</sup> Wasmund, "Use and Abuse of the Congressional Franking Privilege," p. 68; Elizabeth Brotherton, "Franking Critics Want Full Disclosure of Costs," *Roll Call*, September 25, 2007, p. 3.

<sup>119</sup> Letter from Pete Sepp, president, National Taxpayer's Union, to Representative Brad Sherman, July 13, 2004, available at [http://www.ntu.org/main/letters\\_detail.php?letter\\_id=198](http://www.ntu.org/main/letters_detail.php?letter_id=198), viewed November 26, 2007.

<sup>120</sup> Common Cause, "Franks A Lot," press release, June 16, 1989, Common Cause Records, 1968-1991, Series 15, Box 293, Princeton University, Seely G. Mudd Manuscript Library.

<sup>121</sup> Representative Francis Smith of Maine noted in 1844 that every Member of Congress "feels that his reelection is more or less dependent on an active exercise of [the franking privilege]." Francis Smith, "The Post-Office Department: Considered with Reference to Its Conditions, Policy, Prospects, and Remedies," *Hunt's Merchants' Magazine*, vol. 2, June 1844, pp. 530-531.

<sup>122</sup> John, *Spreading the News*, pg. 58

<sup>123</sup> Charles Augustus Murray, *Travels in North America During the Years 1834, 1835, and 1836*, 2 vols. (London: Richard Bentley, 1839), vol. 2, p. 315; Thomas Hamilton, *Men and Manners in America*, 2 vols. (Edinburgh: William Blackwood, 1833), vol. 2, p. 78.

## Linking Citizens and Representatives

Proponents of the franking privilege argue that the frank allows Members to fulfill their representative duties by providing for greater communication between the Member and an individual constituent. One defender of the frank has argued that “free transmission of letters on governmental business is directly connected to the well-being of the people because of the nature of the legislative function.”<sup>124</sup>

Proponents of the franking privilege argue that representative accountability is enhanced by use of the frank. They contend that by regularly maintaining direct communication with their constituents, Members provide citizens with information by which they can consider current public policy issues, as well as policy positions on which voters can judge them in future elections.<sup>125</sup> In addition, proponents argue that if legislative matters could not be easily transmitted to constituents free of charge, most Members could not afford to pay for direct communications with their constituents.<sup>126</sup>

Historically, the franking privilege was seen as a right of the constituents, not of the Member.<sup>127</sup> When the franking statutes were first revised in 1792, a proponent argued that “the privilege of franking was granted to the Members ... as a benefit to their constituents.”<sup>128</sup> More generally, President Andrew Jackson suggested that the Post Office Department itself was an important element of a democratic republic:

This Department is chiefly important as a means of diffusing knowledge. It is to the body politic what the veins and arteries are to the natural - carrying, conveying, rapidly and regularly to the remotest parts of the system correct information of the operations of the Government, and bringing back to it the wishes and the feelings of the people.<sup>129</sup>

## Facilitating the Spread of Political News

Beyond direct communications with constituents about matters of public concern, proponents of franking argue that free use of the mails allows Members to inform their constituents about upcoming town-hall meetings, important developments in Congress, and other civic concerns. Without a method of directly reaching his or her constituents, proponents maintain that Members would be forced to rely on intermediaries in the media or significant personal costs in order to publicize information the Member wished the constituents to receive.<sup>130</sup>

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<sup>124</sup> Wasmund, “Use and Abuse of the Congressional Franking Privilege,” p. 56. See also Wesley Everett Rich, *History of the United States Post Office to the Year 1829* (Cambridge: Harvard University Press, 1924), pp. 91-99.

<sup>125</sup> *Roll Call*, “CRS: Franked Mail,” p. 18.

<sup>126</sup> Scott Bice, “Project: Post Office,” *Southern California Law Review*, vol. 41, Spring 1968, pp. 643, 658.

<sup>127</sup> Daniel, “United States Postal Service and Postal Policy,” p. 446.

<sup>128</sup> House debate, *Annals of Congress*, vol. 3, December 16, 1792, pp. 252-53.

<sup>129</sup> U.S. Congress, Senate, *Message from the President of the United States, to the Two Houses of Congress, at the Commencement of the First Session of the Twenty-first Congress, 21<sup>st</sup> Cong., 1<sup>st</sup> sess., S. Doc. 1* (Washington: Duff Green, 1830), p. 18.

<sup>130</sup> Alfred A. Porro and Stuart A. Ascher, “The Case for the Congressional Franking Privilege,” *University of Toledo Law Review*, vol. 5 (Winter 1974), pp. 280-281.

Historically, the franking privilege has long been perceived as serving this role. In 1782, James Madison described the postal system as the “principal channel” that provided citizens with information about public affairs.<sup>131</sup> The franking privilege allowed Congress to function as a central location for the dissemination of political news, and a large proportion of political news in the United States was delivered to citizens in the form of franked documents, reports, reprinted speeches, and proceedings of Congress.<sup>132</sup>

## Institutional Defense of Congress

Scholars of Congress and the presidency have argued that the rise of mass media, particularly television media, have given the President a comparative advantage over Congress.<sup>133</sup> While the President can employ the resources of the executive branch to promote his unitary message, individual Members of Congress lack the institutional resources to compete with the President and Congress as a whole lacks a unity of message.<sup>134</sup> Proponents of franking argue that this puts Congress at an institutional disadvantage relative to the President. One way to maintain a balance between the President and the Congress, they argue, is to allow Members use of the franking privilege.

## Dimensions of the Franking Privilege

In general, the franking privileges granted to Members at any given point in time can be defined by five dimensions: *who* is entitled to frank mail, *what* is entitled to be franked, *how much* material can be sent, *where* franked material can be sent, and *when* franked material can be sent. Changes to the franking privilege typically have not altered all of these dimensions at once, resulting in a wide variety of legislative arrangements of the franking privilege. Similarly, proposed options for future legislative changes may involve altering some, but not all, of these dimensions.

## Who Has the Franking Privilege?

Historically, the franking privilege has been expanded and contracted by Congress to cover as few as several hundred persons and as many as 10,000 or more. Currently, the franking privilege is limited to the Vice-President, Members of Congress, certain congressional officers, former Presidents, spouses of former Presidents, and widows of former Presidents. The frank is available for a limited period to former Members and certain relatives of former Members who die in office.

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<sup>131</sup> James Madison, “Notes on Debates,” December 6 1782, in William T. Hutchinson et al., eds., *Papers of James Madison* (Chicago: University of Chicago Press, 1962), vol. 5, p. 372.

<sup>132</sup> John, *Spreading the News*, p. 57.

<sup>133</sup> Samuel Kernell and Gary C. Jacobson, “Congress and the Presidency as News in the Nineteenth Century,” *The Journal of Politics*, vol. 49, no. 4, November 1987, pp. 1016-1035. See also John Kingdon, *Agendas, Alternatives, and Public Policies* (Boston: Little, Brown, 1995), pp. 45-47.

<sup>134</sup> Kernell and Jacobson, “Congress and the Presidency,” p. 1017.

## **When Can the Frank Be Used?**

Currently, there are no *general* restrictions regarding when the franking privilege may be used. Historically, Congress limited use of the privilege to when Congress was in session or specific dates surrounding the period when Congress was in session.

Senators are currently restricted from mass mailing during the 60 day period prior to federal elections, and during the 60 period prior to primary elections in which they are a candidate for any public office. The restriction for Representatives is 90 days prior to federal or primary elections in which they are a candidate for any public office.<sup>135</sup> In the past, Congress has not restricted the franking privilege prior to elections or has restricted it for shorter periods of time, such as 28 days.

## **What Materials Can Members Send Under the Frank?**

Current law, chamber rules, and committee regulations place substantial restrictions on the content of franked mail. The frank may not be used to solicit money or votes, and the materials being mailed cannot relate to political campaigns, political parties, biographical accounts, or holiday greetings. Current law also places specific regulations on the content of individual pieces of mail. Members are restricted in the number and placement of pictures of themselves, repeated use of their name, and the use of biographical material, most commonly found in constituent newsletters. Historically, there was less regulation on the content of franked mail.

## **How Much Franked Mail Can Members Send?**

Historically, Congress has regulated the amount of franked mail Members may send in a variety of ways. During all of the 19<sup>th</sup> century and most of the 20<sup>th</sup> century, the total amount of franked mail individual Members could send was not limited. After the authorization of “postal patron” mailings, Members were limited to a specific number of mass mailings.

Currently, Members are limited in their total amount of franked mail by cost. The House and Senate Appropriations Committees, and subsequently the respective chambers, determine the amount to be appropriated for each of the two bodies. Each Member receives an allotment from these appropriations. In the Senate, the allowance is administered by the Committee on Rules and Administration; in the House, by the Committee on House Administration.

Representatives and Senators are authorized a specific dollar allotment for franked mail, according to a formula based on the number of addresses in their districts/states. In the Senate, the mail allowance is one of three allowances that comprise each Senator’s “personnel and official expense accounts.” The other two accounts provide funds for office staff and office expenses.

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<sup>135</sup> The House and Senate define “candidate” differently. For Representatives, a candidate is a “Member whose name appears anywhere on any official ballot to be used in such election.” Senate rules do not specifically define “candidate.” In regards to primary elections, Senate rules exempt candidates running unopposed from the mass mailing restrictions. See Commission on Congressional Mailing Standards, *Regulation of the Use of the Congressional Frank By Members of the House of Representatives*, p. 25; Senate Rule XL. See also *U.S. Senate Handbook*, Appendix I-K, and *Senate Ethics Manual*, p. 171.

Subject to law and Senate regulations, the combined funds may be used without limitation in any one allocation category.<sup>136</sup>

Since January 3, 1999, in the House the combined funds for each Representative's franked mail, office staff, and office expenses ("Members Representational Allowance") may be used without limitation in any one allocation category, subject to law and House regulation.

### **Where Can Such Materials Be Sent?**

Since October 1992, Representatives have been prohibited from sending mass mailings outside their districts.<sup>137</sup> This action followed a U.S. court of appeals ruling that found the practice unconstitutional.<sup>138</sup>

### **Options for Future Franking Change**

Contemporary critics of the franking privilege have offered a number of suggestions to abolish or change the privilege. Several of these ideas have been incorporated in bills in recent Congresses. Among the ideas are the following proposals.

#### **Abolish the Franking Privilege**

Although the franking privilege has only been abolished once, bills for its abolition have been introduced regularly in Congress since the 1830s.<sup>139</sup> Most proponents of abolishing the franking privilege, however, do not support a complete ban on free mail, and disagreement exists on what system would replace the frank. Some proponents advocate replacing the frank with a postage stamp allowance for Members as part of their representational allowance. This option, however, does not directly address contemporary concerns about the frank. Because all franking is now individually charged against Member expense accounts, switching to a stamp allowance would have only a symbolic effect as an abolition of the frank.

A second option would be for Members to use the penalty mail system under the same restriction as other federal employees.<sup>140</sup> This would restrict Members from sending any mail matter other than official correspondence in response to constituent requests. This option would likely reduce congressional mail costs significantly. It could also impair the ability of Members to communicate with their constituents.

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<sup>136</sup> Since October 1994, Senators have been limited to mass mailings that do not exceed \$50,000 per session of Congress. Legislative Branch Appropriations Act, FY1995, P.L. 103-283, 108 Stat. 1423, 1427-1428, §5.

<sup>137</sup> Legislative Branch Appropriations Act, FY1993, P.L. 102-292, 106 Stat. 1703, 1722, §309.

<sup>138</sup> *Coalition to End the Permanent Government v. Marvin T. Runyon et al.*, 979 F.2d 219 (D.C.Cir. 1992).

<sup>139</sup> Recent bills to abolish the frank include H.R. 2308, 104<sup>th</sup> Congress; H.R. 331, 103<sup>rd</sup> Congress; H.R. 1541, 103<sup>rd</sup> Congress; and H.R. 771, 102<sup>nd</sup> Congress.

<sup>140</sup> 39 U.S.C. §3204.

## Prohibit Mass Mailings

A ban on all unsolicited mass mailings could potentially save millions of dollars in congressional mail costs and reduce concerns about the effect of franked mass mailings on congressional elections. A related option would be to reduce the number of mailings that constitute a mass mailing to a smaller number from 500.<sup>141</sup>

H.R. 2687 introduced by Representative Ray LaHood during the 110<sup>th</sup> Congress, would have effectively prohibited Representatives from mass mailing newsletters, questionnaires, or congratulatory notices. The prohibition would not have covered certain other types of mass mailings made by Members, including federal documents (such as the *Congressional Record*) or voter registration information. The proposed legislation would have applied only to Representatives; it would not have affected mass mailings made by Senators. Similarly, H.R. 5151, introduced in the 111<sup>th</sup> Congress, would have restricted franked materials to documents transmitted under the official letterhead of Members.

## Prohibit Unsolicited Mailings

A ban on all unsolicited mass mailings could potentially save millions of dollars in congressional mail costs and reduce concerns about the effect of franked mass mailings on congressional elections. Unlike a ban on mass mailing, however, a ban on unsolicited mailings might be governed by rules similar to the House's current e-mail policy, allowing unsolicited mass communications to constituents on a subscriber list. Opponents argue that a prohibition on unsolicited mail would restrict the ability of Members to communicate with their constituents.

## Extend the Pre-election Ban on Mass Mailings

Bills to extend the current pre-election ban on mass mailings have been introduced in Congress in recent years, ranging from an extension of the prohibited period to 120 days prior to the general and primary elections to a year-long ban that would prohibit mass mailings during the second session of each Congress.<sup>142</sup>

## Give Franking Privileges to Electoral Challengers

Some critics of the franking privilege have raised concerns about its effect on elections and have advocated giving franking privileges to challengers in congressional elections.<sup>143</sup> Advocates argue that giving the frank to challengers would reduce the incumbency advantage of Members of Congress by allowing non-incumbent candidates a similar ability to contact constituents. Opponents have argued that use of the frank is currently prohibited for political purposes and that challengers in congressional elections would inherently be using the frank for campaign purposes.

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<sup>141</sup> A mass mailing is defined in 39 U.S.C. §3210(a)(6)(E) as 500 or more substantially similar pieces of unsolicited mail sent in the same session of Congress.

<sup>142</sup> See, e.g., H.R. 1614, 110<sup>th</sup> Cong., 1<sup>st</sup> sess.

<sup>143</sup> H.R. 9692, 95<sup>th</sup> Cong., 2<sup>nd</sup> sess.



## Reduce the Allowance Given to Members for Franked Mail

Critics of the frank advocate reducing the overall mail allowance for both Senators and Representatives. Currently, each Senator’s franking allowance is determined by a formula that gives a maximum allowance equal to the cost of one first-class mailing to every address in their state.<sup>144</sup> Senate offices that exceed their allowance may supplement the allowance with official office account funds. Senators are, however, limited to \$50,000 for mass mailings in any fiscal year.<sup>145</sup> In the House, each Representative’s mail allowance is combined with allowances for office staff and official office expenses to form the Member’s Representational Allowance (MRA).<sup>146</sup> Members may spend any portion of their MRA on franked mail, subject to applicable law and House regulations.<sup>147</sup> Critics also suggest restricting Representatives to a total mass mailing limit, similar to the current restriction on Senate mass mail.

## Increase Cost Disclosure Requirements

Currently, individual Member franking costs are disclosed by both the House and Senate.<sup>148</sup> In addition, all mass mailings contain the statement, “This mailing was prepared, published, and mailed at taxpayer expense.”<sup>149</sup> Advocates of increased disclosure support individual disclosure of all franking-related costs, not just mail costs. H.R. 5151 in the 111<sup>th</sup> Congress, for example, would have required that current House disclosures include a break-down of expenses for each type of mass communication sent by Members.

Other proponents propose putting the individual cost of each mass mailing on each piece of the mailing. H.R. 2788, introduced in the 110<sup>th</sup> Congress, would have required that each individual piece of franked mail contained in a mass mailing made by a Member of the House contain a statement indicating the aggregate cost of producing and mailing the mass mailing. Each piece of franked mail would have contained the statement, “The aggregate cost of this mailing to the taxpayer is \_\_\_\_\_,” with the blank space containing the total cost of producing and franking the mass mailing. The legislation would not have affected mass mailings made by Senators.

## Concluding Observations

Although the franking privilege has existed almost continuously since the founding of the nation, the legal restrictions on its use have routinely been altered by Congress. Two important trends emerge from this analysis. First, restrictions on the use of the frank—*who* is entitled to frank

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<sup>144</sup> “Regulations governing official mail,” adopted October 30, 1997, amended September 30, 1998, *Congressional Record* vol. 144, part 16 (October 2, 1998), pp. 23105-23108. If the total Senate appropriation for official mail is less than the amount required for the maximum allowance, each Senator’s allowance is proportionally reduced.

<sup>145</sup> Legislative Branch Appropriations Act, FY1995; P.L. 103-283, 108 Stat. 1427, §5.

<sup>146</sup> Legislative Branch Appropriations Act, FY1991, P.L. 101-520, 104 Stat. 2254, 2279, §311. Funds for franked mail are allocated according to a formula based on the number of addresses in each Member’s district.

<sup>147</sup> Committee Order No. 42, U.S. Congress, Committee on House Oversight, *Report on the Activities of the Committee on House Oversight During the 105<sup>th</sup> Congress*, 105<sup>th</sup> Cong., 2<sup>nd</sup> sess., H.Rept. 105-850 (Washington: GPO, 1999), p. 16; Legislative Branch Appropriations Act, FY2000, P.L. 106-57, 113 Stat. 416, §103.

<sup>148</sup> Individual House Member mailing costs and mass mailing costs are available in the quarterly *Statement of Disbursements of the House*. Senate costs are available in the bi-annual *Report of the Secretary of the Senate*.

<sup>149</sup> Legislative Branch Appropriations Act, FY1997, P.L. 104-197, 110 Stat. 2394, 2414-2415, §311.

mail, *what* is entitled to be franked, *how much* material can be sent, *where* the franked material can be sent, and *when* franked material can be sent—have been both tightened and loosened by Congress throughout history. This reflects a normative ambiguity about the privilege, with Congress seeking to balance a perceived democratic need for the franking privilege against charges of abuse, wastefulness, and incumbency protection.

Second, Members of Congress continue to use the frank to communicate with constituents, despite the rise of alternative forms of mass communication. Although illegal use of the frank has been largely curtailed, contemporary critics of the privilege continue to voice concerns about wastefulness and incumbency protection. Recent proposed changes to the franking privilege reflect these concerns, seeking to reduce the overall volume of franked mail and the impact of mass mailings on elections, while maintaining the ability of Members to effectively communicate with constituents.

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