

Franking Privilege: Mass Mailings and Mass Communications in the House, 1997-2012

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Summary

Despite significant reductions in congressional mail postage costs over the past 25 years, critics continue to raise concerns that the franking privilege is both financially wasteful and gives an unfair advantage to incumbents in congressional elections. In particular, mass mailings have come under increased scrutiny as critics argue that the vast majority of franked mail is unsolicited and, in effect, publicly funded campaign literature.

This report provides an analysis of House Member mass mailings (1997-2008, 2012) and mass communications (2009-2012). A mass mailing is defined by statute as a franked mailing of 500 or more substantially similar pieces of unsolicited mail sent in the same session of Congress. Mass communications include all unsolicited mailings or communications of substantially identical content distributed to 500 or more persons, regardless of media. Examples of mass communications include radio, television, newspaper, and Internet advertisements; automated phone calls; mass facsimiles; and mass emails distributed to a non-subscriber e-mailing list.

Between 1997 and 2008, House Members sent 1.34 billion pieces of mass mail at a total postage cost of $224.5 million, producing a calendar-year average of 111.6 million pieces of mass mail costing an average of $18.7 million (**Table 1**). Most Representatives sent mass mailings. During each calendar year 1997-2008, an average of 84% of House Members sent at least one mass mailing. Among Members who sent at least one mass mailing, the average annual number of pieces of mail sent by a Member was 303,270 at a postage cost of $50,834.

Although the annual number of pieces of mail sent remained relatively constant between 1997 and 2008, significant quarterly variations occurred within each Congress (**Figure 1**). These expenditures continue a historical pattern of Congress spending less on official mail costs during non-election years than during election years (**Table 3**). However, analysis of quarterly data on Member mass mailing 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, since they also capture the effect of a large spike in mass mailings from the fourth quarter of the previous calendar year.

At the direction of the Committee on House Administration, in January 2009, the House began reporting the volume and cost of individual mass communications instead of only mass mailings. Between 2009 and 2011, House Members sent 1.27 billion pieces of mass communication at a total cost of $131.5 million, producing a calendar-year average of 573.1 million pieces of mass communication costing an average of $43.8 million (**Table 2**). During 2009 and 2010, an annual average of 92% of House Members sent at least one mass communication.

Beginning with the second quarter of calendar year 2011, the House began separately reporting the volume and cost of both mass mailings and mass communications. House Members sent 1.11 billion pieces of mass communication in 2012, at a total cost of $7.4 million, and 61.4 million pieces of mass mail, at a cost of $22.9 million.

See also CRS Report RL34188, *Congressional Official Mail Costs*; CRS Report RS22771, *Congressional Franking Privilege: Background and Recent Legislation*; and CRS Report RL34274, *Franking Privilege: Historical Development and Options for Change*.

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Introduction

Beginning in 1986, Congress passed several pieces of legislation that placed individual limits on Members' mail costs and required public disclosure of each Member's overall franking expenditures.[1] These changes helped reduce overall congressional mail postage costs to $35.1 million during the 112th Congress (2011-2012), down from a high of $177.4 million during the 100th Congress (1987-1988).[2] Despite the significant reduction in costs, critics continue to raise concerns about the franking privilege.[3]

In particular, mass mailings—franked mailings of 500 or more substantially similar pieces of unsolicited mail sent by individual Members during the same session of Congress[4]—have come under increased scrutiny as critics argue that the vast majority of franked mail is unsolicited and, in effect, publicly funded campaign literature.[5]

Between 1997 and 2008, the House publicly reported the volume and cost of individual Member mass mailings. At the direction of the Committee on House Administration, in January 2009 the House began reporting the volume and cost of individual mass communications instead of mass mailings.[6] Mass communications include all unsolicited mailings or communications of substantially identical content distributed to 500 or more persons, regardless of media.[7] In April 2011, the House began separately reporting mass mailing and mass communications volumes and costs.

This report provides an analysis of Member mass mailings during the period 1997-2008; mass communications during the period 2009-2011; and both mass mailings and mass communications during the period 2011-2012.[8] First, it examines aggregate Member mass mailing and mass communication data to ascertain how many pieces of mass mail or communication were sent by Representatives annually, the total cost of those communications, and the annual percentage of Members who sent at least one mass mailing or mass communication.

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[1] For a historical overview of franking regulations, see CRS Report RL34274, *Franking Privilege: Historical Development and Options for Change*, by Matthew Eric Glassman.

[2] For an overview of official mail cost trends, see CRS Report RL34188, *Congressional Official Mail Costs*, by Matthew Eric Glassman.

[3] For example, see Grover Norquist, quoted in Emily Yehle, "CRS: Franked Mail Has Cost $1.4 Billion," *Roll Call*, October 2, 2007, p. 18.

[4] 39 U.S.C. §3210(a)(6)(E).

[5] Andrew H. Wasmund, "Use and Abuse of the Congressional Franking Privilege," *Loyola University of Los Angeles Law Review*, Volume 5, Number 1 (January 1972), pp. 65-67; Elizabeth Brotherton, "Franking Critics Want Full Disclosure of Costs," *Roll Call*, September 25, 2007, p. 3.

[6] Committee amendment to regulations, September 25, 2008; U.S. Congress, House Committee on House Administration, *Report on the Activities of the Committee on House Administration of the House of Representatives During the One Hundred Tenth Congress*, 110th Cong., 2nd sess., H.Rept. 110-924 (Washington: GPO, 2008), p. 47.

[7] Committee on House Administration, Members' Handbook, *Unsolicited Mass Communications Restrictions*, available at http://cha.house.gov/index.php?option=com_content&view=article&id=25&Itemid=185#Members%27%20Handbook%20Unsolicited%20Mass%20Restrictions.

[8] Other types of official mail sent by the House—including Member responses to constituent inquiries, unsolicited Member mailings totaling fewer than 500 pieces, officer and committee mail, and other franked mail—are not considered.

Second, quarterly Member mass mailing and mass communication data are evaluated to determine whether there was quarterly variation in Member mass mailing and mass communication volume and whether the variation reflected cyclical trends. Finally, the question of whether mass mailing and mass communication volume was higher in election years than in non-election years is considered.

Methodology

Data

Data on Member mass mailings and mass communications were compiled using the quarterly *Statement of Disbursements of the House*, which report the number of pieces of mail sent by each Member of the House in mass mailings (1997-2008, 2011-2012) and mass communications (2009-2012) during the preceding quarter and the total postage cost of the quarter's mass mailings or mass communications.[9] The unit of analysis is the mail/communication statistic for each Member's office. Therefore, any Congress might contain more or fewer than the typical 441 Members, due to vacancies or to Members elected in special elections to fill vacancies.

Mass Mailings vs. Mass Communications

A mass mailing is statutorily defined as "any mailing of newsletters or other pieces of mail with substantially identical content (whether such mail is deposited singly or in bulk, or at the same time or different times), totaling more than 500 pieces" in one session of Congress.[10] An unsolicited mass communication is defined by the Committee on House Administration as "any unsolicited communication of substantially identical content to 500 or more persons in a session of Congress."[11] Examples of mass communications include radio, television, newspaper, and Internet advertisements; automated phone calls; mass facsimiles; and mass emails distributed to a non-subscriber e-mailing list. All mass mailings sent through the first quarter of 2011 are mass communications. Beginning in the second quarter of 2011, mass communications no longer include mass mailings.

Summary Statistics

Mass mailing data were examined for 55 quarters, from the first quarter of calendar year (CY) 1997 through the fourth quarter of CY2008, and from the second quarter of CY2011 through the fourth quarter of CY2012. Mass communication data were examined for 16 consecutive quarters, from the first quarter of CY2009 through the fourth quarter of CY2012. The universe of data includes 63,150 observations, half corresponding to the number of pieces sent by an individual

[9] The Statement of Disbursements for both the first and second quarter of 2009 labels the data as "mass mailings" rather than "mass communications." Given the aggregate data analysis, however, it is reasonable to assume that the entries in those two quarters are mass communications data, as required by committee regulations.

[10] 39 U.S.C.§3210(6)(e).

[11] Committee on House Administration, Members' Handbook, *Unsolicited Mass Communications Restrictions*, available at http://cha.house.gov/index.php?option=com_content&view=article&id=25&Itemid=185#Members%27%20Handbook%20Unsolicited%20Mass%20Restrictions.

Member in a given quarter and half corresponding to the cost to an individual Member in a given quarter.

Aggregate Volume and Costs

Mass Mailings, 1997-2008; 2011-2012

House Members sent 1.48 billion pieces of mass mail between 1997 and 2008 and between 2011 and 2012, at a total cost of $275.2 million. As shown in **Table 1**, House Members sent a calendar year average of 105.6 million pieces of mass mail, costing an average of $19.7 million. The total number of mass mail pieces sent by the House ranged from a low of 61.4 million pieces in 2012 to a high of 122.6 million in 1997. While total annual costs have risen, constant dollar costs for mass mailings remained relatively stable, ranging from highs of $19.8 million in 2011 to a low of $14.8 million in 2002.

Table 1. Total Member Mass Mail Pieces Sent and Total Costs, House, CY1997-CY2012

(millions of pieces and dollars)

Year	Total Mass Mail Pieces	Total Costs (current dollars)	Total Costs (constant 1997 dollars)
1997	122.6	$16.9	$16.9
1998	116.4	$16.3	$16.0
1999	112.9	$15.7	$15.1
2000	112.3	$17.6	$16.4
2001	117.1	$17.9	$16.2
2002	102.7	$16.6	$14.8
2003	110.0	$18.7	$16.3
2004	117.1	$19.9	$16.9
2005	110.6	$19.0	$15.7
2006	116.5	$20.6	$16.4
2007	98.0	$20.1	$15.6
2008	103.0	$25.2	$18.8
2009	Data not available	Data not available	Data not available
2010	Data not available	Data not available	Data not available
2011	77.6[a]	$27.8[a]	$19.8[a]
2012	61.4	$22.9	$16.0
Totals	1,478.2	$275.2	$230.9
Average	105.6	$19.7	$16.5

Source: CRS analysis of mass mailing data.

a. Data for the 1st quarter of 2011 are not available. Figures for 2011 reflect totals for 3 quarters.

Between 1997 and 2012, an annual average of 82% of House Members sent at least one mass mailing.

Mass Communications, 2009-2011

House Members sent 1.72 billion pieces of mass communication between 2009 and 2011, at a total cost of $131.5 million. As shown in **Table 2**, House Members sent a calendar year average of 573.1 million pieces of mass communication, costing an average of $43.8 million.

In the second quarter of 2011, the House began separately reporting mass mailing and mass communications volumes and costs.[12] For the purpose of reporting, "mass communications" no longer includes mass mailings. For the purpose of the analysis presented here, this is not problematic. A 2011 figure comparable to the 2009 and 2010 "mass communication" figures can be obtained by summing total 2011 mass mailings and 2011 mass communications. The 2011 data in **Table 2** reflect this summation.

Table 2. Total Member Mass Communication Pieces Sent and Total Costs, House, CY2009-CY2011

(millions of pieces and dollars)

Year	Total Mass Communication Pieces	Total Costs (current dollars)	Total Costs (constant 1997 dollars)
2009	339.0	$46.2	$34.5
2010	348.9	$46.9	$34.5
2011	1031.3	$38.4	$28.4
Totals	1719.2	$131.5	$97.4
Average	573.1	$43.8	$32.5

Source: CRS analysis of mass mailing data.

Between 2009 and 2011, an annual average of 92% of House Members sent at least one mass communication. Among Members who sent at least one mass communication, the average calendar year number of pieces of communication sent by a Member was 1,407,364 at a cost of $107,431. In 2011, there was a large increase in the total number of pieces of mass communications, but a decrease in total cost. This is probably attributable to a large increase in the use of electronic communication that has no marginal cost, as well as a decrease in overall amount of mass mailing.

Mass Communications (Not Including Mass Mailings), 2012

House Members sent 1.11 billion pieces of mass communication in 2012, at a total cost of $7.4 million. These data are not directly comparable to previous years, as mass communications data for 2012 no longer include the volume or cost of mass mailings. If, however, the total volume and cost of CY2012 mass mailings are added, comparable figures for CY2012 and previous years of

[12] Analysis of these separate mass mailing and mass communications data for 2011 is not undertaken here, due to the limited amount of data (three fiscal quarters) currently available.

mass communications can be realized. These figures—1.17 billion pieces at a cost of $30.3 million—indicate similar use of mass communications in CY2012 and CY2011, but show a large reduction in total costs.

Comparing Mass Mailings and Mass Communication Volumes and Costs

As shown in **Table 1** and **Table 2**, the average number of pieces of mass communication sent annually between 2009 and 2011 was about 500% greater than the average number of annual pieces of mass mail sent between 1997 and 2008. This is an expected result; the definition of mass communication used during that period is inclusive of all mass mailings as well as numerous other forms of communication. It is important to note, however, that this should not be interpreted as an increase in overall communication between Members and constituents. While it is possible that total mass communications increased between 2008 and 2011, the lack of data on mass communications in 2008 makes it impossible to draw a valid comparison.

If we were to assume that mass mailings between 2009 and 2011 remained roughly constant with 2007 and 2008, it would imply that non-mail mass communications accounted for approximately 83% of all mass communications in 2009 and 2010. The assumption, however, cannot be verified.

However, the House began reporting separate mass mailing and mass communication figures in the second quarter of 2011. During the final three quarters of 2011, total pieces of mass mailings (77,609,370) were similar to the last comparable set of three quarters from the first session of a Congress (83,286,364 pieces in 2007). However, they accounted for just 8% of total communications, while mass communications aside from mass mailing accounted for 92%. This suggests that while Members are still sending a similar amount of mass mail as in the past, the use of non-mail mass communications has increased significantly.

In 2012, mass communications accounted for 94.7% of total mass constituent contact, and mass mailings accounted for 5.3% of total mass contact. Mass communications, however, were only 24.7% of total mass constituent contact costs. This reflects a significant difference in the per piece cost of mass mailings and mass communications. In 2012, the cost per piece of mass mailing in the House was 38 cents. The cost per piece of mass communication was less than 1 cent.[13]

Quarterly Variation

Mass Mailings, 1997-2008

Although the overall amount and cost of House mass mailing remained relatively constant between 1997 and 2008, significant variations occurred within these years. As shown in **Figure 1**, the total number of pieces of mass mail sent by House Members produced an eight-quarter cyclical pattern, corresponding to the two-year cycle of each Congress.

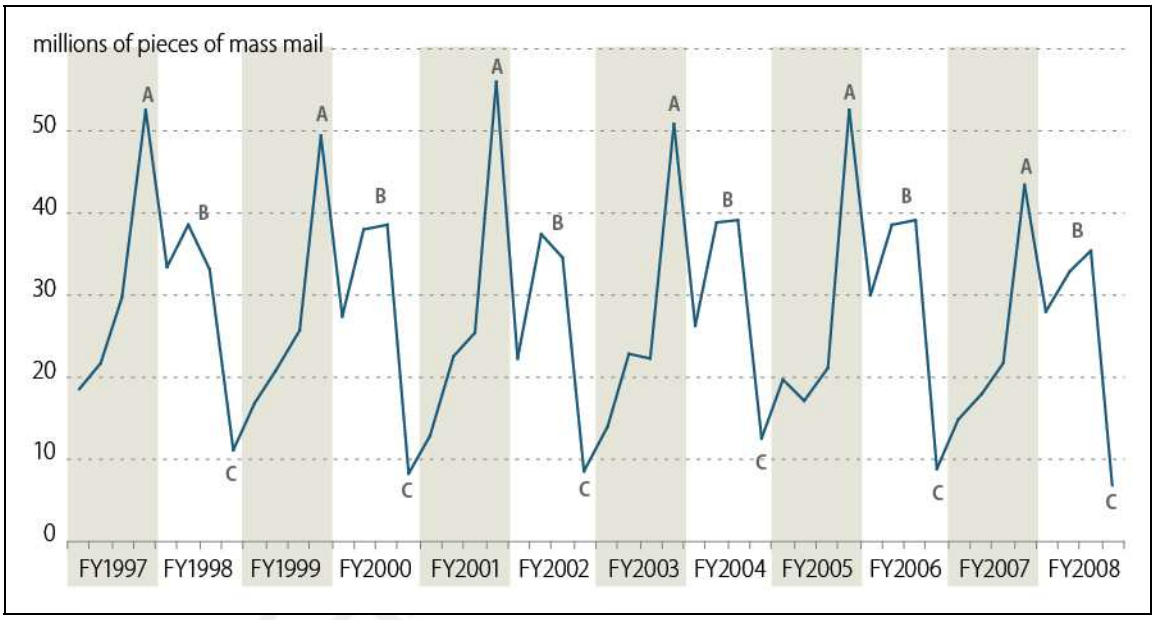
[13] One caveat to these data should be noted: accounting for both the number of pieces sent and the cost of some mass communications is difficult. For example, the number of listeners who hear a radio advertisement or see a newspaper advertisement is much tougher to accurately ascertain than the number of people who were sent a mass mailing. Similarly, the cost of electronic advertisements may or may not take into account the cost of hardware and software support.

If the timing of mass mailing was evenly distributed, one would expect 12.5% of total mass mailing to have occurred in each of the eight quarters of each Congress. As shown in **Figure 1**, that is not the case; significant peaks and valleys occur in quarterly mass mailing.

Above-average totals are observed in the fourth quarter of the first year of each Congress (marked as 'A' in **Figure 1**), as well as in the second and third quarters of the second year of each Congress (marked as 'B'). The highest peak occurs in the fourth quarter of the first year, when 24.7% of all pieces of mass mail are sent. Although mass mailing data are not available by month, monthly data on overall official mail costs indicate that almost all of the fourth quarter spike is due to a large amount of mail sent in December, at the end of the first session.

Figure 1. Pieces of Mass Mail Sent

(by quarter, 1997-2008)



Source: CRS analysis of mass mail data.

Note: The fourth quarter of the first session of each Congress, the second and third quarters of the second session of each Congress, and the fourth quarter of the second session of each Congress are denoted with an "A," "B," and "C," respectively.

Increased mailings in the second and third quarters (15.5% and 15.0% of the total) of the second year of each Congress corresponds to the period just prior to the 90-day pre-election period in which Members are not allowed to send mass mailings. In particular, mass mail sent in the third quarter of the second year of any Congress (July-September) must be sent during the first month of the quarter, prior to the beginning of the prohibited period in early August. Thus, the above-average third quarter mass mailing totals for even-numbered years somewhat understate the increased rate of mailing prior to the election; all third-quarter mail is sent in the six-week period between July 1 and the beginning of the prohibited period in early August.

Below-average totals are observed in the fourth quarter of the second year of each Congress and the first quarter of the first year of each Congress (marked as 'C'). The fourth quarter of the second year of each Congress (October-December) includes approximately five weeks during

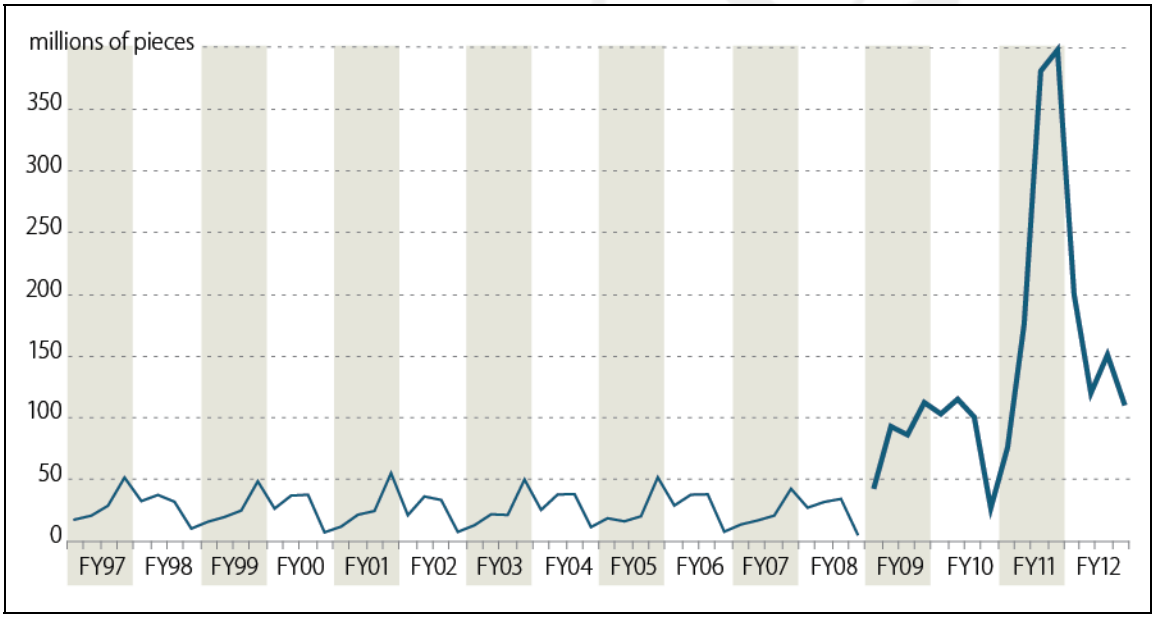
which mass mailings are prohibited, and otherwise comprises the period between the election and the start of the next Congress, a period in which Congress is not typically in session.

Mass Mail and Mass Communications, 2009-2012

Figure 2 reports both the quarterly number of pieces of mass mail sent between 1997 and 2008; and the quarterly number of pieces of mass communication sent between 2009 and 2012. Quarterly totals for mass communications between the second quarter of 2011 and the fourth quarter of 2012 were calculated by adding total mass communications costs and total mass mail costs for those quarters. The lighter-weighted line represents mass mailings; the heavier-weighted line represents mass communications. As shown in **Figure 2**, there appears to be variation in the quarterly number of mass communications sent. Above-average totals are observed in the fourth quarter of 2009 and the second and third quarters of 2010; below-average totals are observed in the first quarter of 2009 and the fourth quarter of 2010. In 2011, the number of pieces of mass communications sent increases dramatically, only to return to lower levels in 2012.

Figure 2. Pieces of Mass Mail and Mass Communication Sent

(by quarter, 1997-2012)



Source: CRS analysis of mass mail and mass communications data.

Notes: Lighter-weighted line is mass mailings; heavier-weighted line is mass communications.

These findings should be interpreted with some caution. With only 16 quarters of data on mass communications, it cannot be determined whether the observed variation is cyclical (like the mass mailing data from 1997-2008) by Congress or merely random variation within the observed four-year period. Since mass mailings are a component of mass communications and it is probable that mass mailings volumes would continue on a cyclical pattern as in the past, it might be expected that mass communications would also systematically vary, in similar patterns. However, such observable variation may disappear or be strongly attenuated if the volume of mass communications other than mass mailings did not vary by quarter, or if such variation followed a

different pattern than mass mailing variation. In addition, the large increase in 2011 suggests that Member use of mass communications is changing, and future use may defy past patterns.

Election vs. Non-Election Year

Critics of the franking privilege have often cited increased election-year mail costs as evidence of political use of the frank prior to elections.[14] Although mass mail costs do rise in the quarters prior to the pre-election prohibited period (as shown in **Figure 1**), the structure of the fiscal calendar is also important in creating large disparities between election-year and non-election-year mail costs.

Table 3. Total Pieces of Mass Mail (1997-2008) and Communication (2009-2012)

(by fiscal and calendar year; millions of pieces)

Year	Fiscal Year[a]	Calendar Year[a]
1998	157.6	116.4
1999	74.6	112.9
2000	153.5	112.3
2001	69.3	117.1
2002	150.0	102.7
2003	67.8	110.0
2004	155.3	117.1
2005	70.6	110.6
2006	160.3	116.5
2007	63.3	98.0
2008	139.8	103.1
2009	232.8	339.0
2010	434.0	348.9
2011	382.3	1031.3
2012	870.2	1170.3

Source: CRS analysis of mass mail and mass communications data.

a. Columns do not sum to the same total because fiscal years and calendar years do not correspond. FY1998 includes data from October-December 1997 whereas CY2012 includes data from October-December 2010.

As shown in **Table 3**, between 1997-2008, when mass mailings are compared by fiscal year, both the December spike and the pre-election increase are in the same year, so the data show inflated election-year numbers and suppressed non-election-year numbers. When annual data are compared by calendar year, the December spike and the pre-election increase balance out, and the

[14] For example, see Common Cause, "Franks A Lot," press release, June 16, 1989, Common Cause Records, 1968-1991, Series 15, Box 293, Princeton University, Seeley G. Mudd Manuscript Library; *Common Cause v. Bolger*, 512 F. Supp. 26, 32 (D.D.C. 1980).

totals are relatively similar. Thus comparisons of fiscal year mass mail data tend to overstate the effect of pre-election increases in mail costs, since they also capture the effect of the December spike in mail costs.

Because fiscal years run from October 1 to September 30, both the spike in mass mailings in the fourth quarter of the first session and the pre-election rise in mass mailings occur in the same fiscal year, despite taking place in different calendar years and different sessions of Congress.

A similar result is obtained when examining mass communications during 2009 and 2010. A fiscal year comparison results in a large difference, while a calendar year comparison results in virtually no difference. In 2011 and 2012, however, there is a substantial difference. This is due to a large increase in the amount of mass communications sent in the third and fourth quarters of 2011.

Discussion

Critics of the franking privilege have generally articulated two concerns. First, the franking privilege is financially wasteful and, second, the franking privilege gives unfair advantages to incumbents in congressional elections.[15] In particular, mass mailings have come under increased scrutiny during the past 20 years as critics argue that the vast majority of franked mail is unsolicited and, in effect, publicly funded campaign literature.[16] Critics assert that incumbent House Members may spend as much on franked mail in a year as a challenger spends on his or her entire campaign.[17]

Proponents of the franking privilege argue that the frank allows Members to fulfill their representational duties by providing for greater communication between the Member and individual constituents.[18] Proponents of the franking privilege also argue that Representative accountability is enhanced by use of the frank. 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 information on policy positions by which voters can judge a Member in future elections.[19] It is maintained that if legislative matters could not be easily transmitted to constituents free of charge to Members, most Members could not afford to pay for direct communications with their constituents.[20]

The analysis presented here offers three contributions to this debate. First, the analysis finds that most Representatives make use of mass communications, mass mailings, or both to communicate with their constituents, with an annual average of 84% of Members sending at least one mass mailing during the period 1997-2008, and an annual average of 94% of Members sending at least one mass communication between 2009 and 2012. Second, the analysis confirms that the cost per

[15] For example, see Yehle, "CRS: Franked Mail Has Cost $1.4 Billion."

[16] Wasmund, "Use and Abuse of the Congressional Franking Privilege," pp. 65-67; Brotherton, "Franking Critics Want Full Disclosure of Costs," p. 3.

[17] Letter from Pete Sepp, president, National Taxpayers Union, to Representative Brad Sherman, July 13, 2004, available at http://www.ntu.org/main/letters_detail.php?letter_id=198.

[18] Wasmund, "Use and Abuse of the Congressional Franking Privilege," p. 56.

[19] Yehle, "CRS: Franked Mail Has Cost $1.4 Billion."

[20] Scott Bice, "Project: Post Office," *Southern California Law Review*, vol. 41 (Spring 1968), pp. 643, 658.

piece of mass communication is indeed less than the cost per piece of mass mailing. Although this is not an unexpected finding, it implies that new communications technology may lower the overall cost to Congress for constituent communication, or allow for a greater amount of communication at the same cost.

Finally, the analysis finds significant and regular quarterly variation in Member mass mailing through 2008, with the total number of pieces sent by Members following an eight-quarter pattern that corresponds to the two-year cycle of each Congress. The analysis shows two peaks in mailings, the first during the last quarter of the first session of Congress and the second during the two quarters prior to the pre-election prohibition on Member mass mailings. While there is currently not enough data on mass communications to conclude that similar patterns exist beyond 2008, the observed variation implies that mass communications are probably not evenly distributed throughout a Congress.

These findings provide insight regarding concerns about election-year mass mailing expenditures. Although they confirm that Members send more pieces of mass mail or communications in the quarters just prior to the biennial elections, the findings also show that mass mailing peaks twice, and the larger peak takes place not prior to the election, but at the end of the first session.

These findings also suggest that previous comparisons of election-year and non-election-year franked mail data may need to be considered. When mass mailings are compared by fiscal year, both the first session spike and the pre-election increase are in the same year, so the data show inflated election-year numbers and suppressed non-election-year numbers. Thus comparisons of fiscal year official mail costs tend to overstate the effect of pre-election increases in mail costs, since they also capture the effect of the December spike in mail costs.

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