

**Testimony before the Select Committee on the Modernization of Congress
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**“Congress and the Frank:
Bringing Congressional Mailing Standards into the 21st Century”
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Chairman Kilmer, Vice-Chairman Graves, and Members of the Select Committee: thank you for the opportunity to testify before the committee. My name is Matt Glassman. I’m a Senior Fellow at the Government Affairs Institute at Georgetown University, where I conduct programs that educate executive branch officials about the workings of Congress.

I am also an alum of the Congressional Research Service (CRS), where my portfolio consisted of institutional issues in congress, including constituent communications and the franking privilege. Much of my testimony here is drawn from my research and writing while at CRS. I also spent two fiscal cycles (FY2010 and FY2011) on loan to the House Committee on Appropriation Subcommittee on the Legislative Branch staff. I am a legislative branch patriot and strongly committed to the goal of a modern, capable, and powerful legislature.

In my testimony, I provide a historical and contextual overview of the franking privilege. Specifically, I discuss the origins and rationale for the franking privilege, the longstanding criticisms and concerns about it, the development of the frank in the context of modern communications technology, and the variety of frameworks Congress has used to regulate constituent communications.

Member-constituent communication is one of the basic building blocks of a representative democracy. If information about legislative activity cannot easily flow from Members to constituents, citizens will be less capable of drawing policy judgments regarding congressional actions or electoral judgments about Members. Likewise, if constituents cannot easily communicate preferences to Members, congressional action is less likely to reflect popular opinion.

FRANKING PRIVILEGE: HISTORY

The franking privilege is centuries old. The British House of Commons instituted it in 1660 and free mail for certain American public officials was available during colonial rule, under the revolution-era Continental Congress, and during the post-war period under the Articles of Confederation.¹ After the adoption of the Constitution, Congress passed legislation in 1789 for the establishment of federal post offices, which included the franking privilege.² Notably, the early franking statutes also allowed constituents to send mail to Congress, free of charge.

During the 19th century, Congress amended the franking statutes numerous times, in some cases expanding the period of time, the type of material allowed to be franked, or the recipients of the privilege, while in other cases reducing it.³ In 1873, in response to public discontent with high-profile abuses, the general franking privilege was abolished for Members of Congress.⁴ In 1895, Congress restored the general franking privilege for Members, allowing them to *send* under their frank “any mail matter related to official business.”⁵ However, unlike the pre-1873 legislation, Members were not allowed to *receive* mail free of postage.

The 1895 statute — with occasional minor amendment — governed Member use of the franking privilege during most of the 20th century. Because the statute was vague about the definition of “matter related to official business,” it became the practice of the Department of the Post Office to offer advisory opinions to Members of Congress on the frankability of individual mailings.

In 1961, Congress passed “postal patron” legislation, allowing franked mail to be sent without a name or street address on the mailing.⁶ The “postal patron” legislation also expanded the

¹ 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; *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); *Journals of the Continental Congress, 1774-1789*, vol. 23, pp. 670-679 (October 18, 1782).

² 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.

³ For example, Act of Congress, April 9, 1816, ch. 43, 3 Stat. 264 (1816), granted the franking privilege to the Members thirty days prior to and thirty days after each session of Congress; Act of Congress, March 3, 1825, ch. 64, 4 Stat. 102 (1825), limited franked mail to documents 2 ounces in weight or less; Act of Congress, March 2, 1799, ch. 43, 1 Stat. 733 (1799), which extended the franking privilege to various executive officers of the federal government; and Act of Congress, March 3, 1863, ch. 71, 12 Stat. 701 (1863), which abolished the franking privilege for former Members.

⁴ Act of Congress, Jan. 31, 1873, ch. 82, 17 Stat. 421 (1873).

⁵ Act of Congress, Jan 12, 1895, ch. 23, 28 Stat. 601 (1895).

⁶ P.L. 87-332; 75 Stat. 733.

definition of “official business.” The vague 1895 statute had usually been interpreted in a (somewhat) limited manner, mostly providing for the mailing of official documents, such as clips from the Congressional Record. Under the 1961 law, Congress explicitly gave its blessing to the franking of “information on the issues pending before Congress,” which led to the widespread franking of newsletters, questionnaires, and constituent reports.

Beginning in 1968, a series of events led Congress to revise the franking statutes. First, the Post Office indicated that it would no longer offer advisory opinions to Members on the use of the frank; Members would themselves need to determine the proper use of the frank.⁷ Second, several groups filed lawsuits against individual Members of Congress, arguing that their use of congressional franking privilege during campaigns was unconstitutional.⁸

These events led Congress to pass comprehensive franking reform legislation in 1973.⁹ The vague definitions of the 1895 statute were replaced with specific limitations on what Members could frank, mass mailings were restricted prior to elections, and both chambers of Congress empowered bodies to produce regulations regarding the franking privilege for their Members.

Since 1973, the franking statutes and chamber rules have been amended to further restrict use of the frank, including prohibitions of the use of private money in the production of franked mail material,¹⁰ limits on overall franking expenditures,¹¹ public disclosure of individual member franking expenditures,¹² expanded pre-election restrictions on mass mailings,¹³ and restrictions on the franking privileges of congressional committees.¹⁴

⁷ Letter of Timothy J. May, General Counsel, Post Office Department, Dec. 26, 1968 and Letter of David A. Nelson, Senior Assistant Postmaster General and General Counsel, August 12, 1971, reprinted in U.S. Congress, House Committee on Post Office and Civil Service, *Law and Regulations Regarding Use of the Congressional Frank*, committee print, 92nd Cong., 1st sess. (Washington: GPO, 1971), pp. 5-7.

⁸ *Common Cause v. Bolger*, 512 F. Supp. 26, 32 (D.D.C. 1980).

⁹ P.L. 93-191, 85 Stat. 737.

¹⁰ H.Res. 287, agreed to in the House March 2, 1977.

¹¹ S. Con. Res. 139, May 14, 1986; P.L. 104-197, 110 Stat. 2401, Sec. 311, Legislative Branch Appropriations Act, FY1977.

¹² P.L. 101-163, 103 Stat. 1052, Legislative Branch Appropriations Act, FY1990; P.L. 101-520, 104 Stat. 2279, Sec. 311(c), Legislative Branch Appropriations Act, FY1991.

¹³ H. Res. 287, Mar. 2, 1977; S. Res. 110, Apr. 1, 1977; P.L. 104-197, 110 Stat. 2401, Sec. 102, Legislative Branch Appropriations Act, FY1997).

¹⁴ H. Res 224, Apr. 27, 2005.

In 1999, the Committee on House Oversight began requiring advisory opinions for all unsolicited mass communications.¹⁵ In 2008, the Committee on House Administration adopted regulations requiring Members disclose the volume and cost of mass communications.¹⁶ In recent years, regulations regarding email, members website, and the use of third-party communications software have been regulated by both the House and Senate, largely within the existing framework of the postal franking regulations.

FRANKING PRIVILEGE: RATIONALE

Historically, the frank has allowed Members to fulfill their representative duties by providing the bulk of the communication between Members and individual constituents. Indeed, for most of the 19th century, *franked mail could also be sent to Congress by constituents*. Regular, direct communication with constituents allows Members to explain policy positions, discuss issues on the agenda in Congress, and notify citizens of upcoming town-hall meetings. This in turn helps citizens to better judge both public policy and future electoral vote choices. Without publicly funded communications, most Members of Congress could not afford to directly reach their constituents and might need to rely on third-party media intermediaries.¹⁷

Separation of powers concerns also implicate the franking privilege. In the modern age, presidents have gained a significant media advantage over Congress. With a gaggle of press waiting on his every word and the resources of the executive branch available to promote his unitary message, the president has no difficulty getting his political positions out into the public. Members of Congress lack both the press attention and resources to compete with the President, particularly because Congress has no unity of message. One way to offer some balance to the situation is to provide Members with the franking privilege.¹⁸

¹⁵ U.S. Congress, Committee on House Oversight, *Report on the Activities of the Committee on House Oversight during the 106th Congress*, 106th Cong., 2nd sess., H.Rept. 106-1056 (Washington: GPO, 2001), p. 14.

¹⁶ Resolution of the Committee on House Administration, September 25, 2008.

¹⁷ 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.

¹⁸ 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.

FRANKING PRIVILEGE: CRITICISMS

Two criticisms¹⁹ are generally lodged against the contemporary franking privilege:

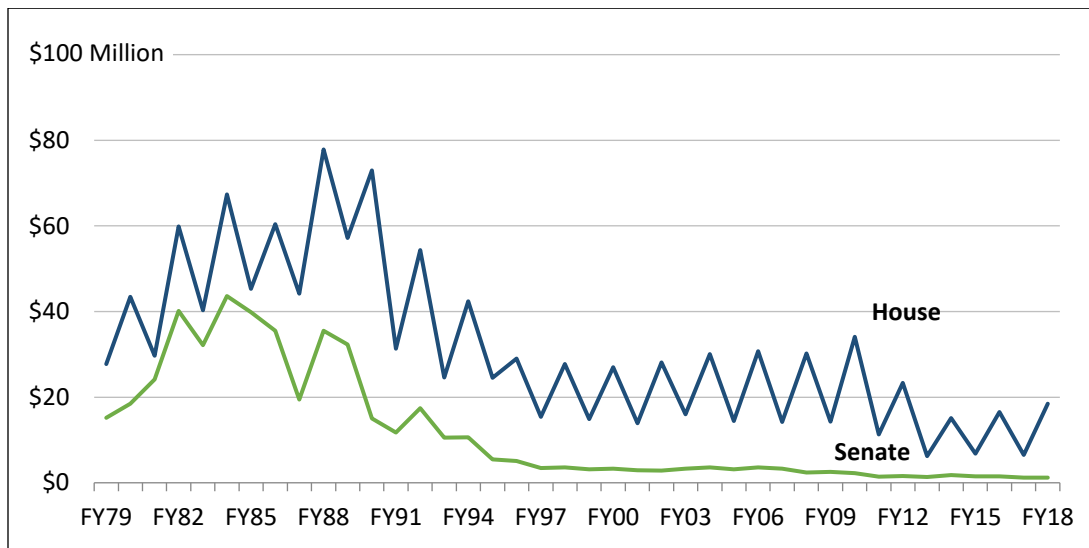
(1) it is financially wasteful; and

(2) it provides unfair advantages to incumbents in congressional elections.

Financial Cost

The cost of the frank has generated almost nonstop criticism throughout its history. A pair of studies in the 1840's estimated that most of the mail leaving Washington when Congress was in session was going under the frank—over 300,000 letters and 4.3 million documents each year.²⁰

The contemporary franking privilege continues to be viewed by many as an unnecessary public expense. The criticisms persist despite reforms that reduced official mail postage costs by over 80% between FY1988 and FY2018 (see chart) *without even adjusting for inflation*.



House and Senate Official Mail Postage Costs, FY1979-FY2018

¹⁹ Critics have also historically objected to the franking privilege because of abuse of it for illegal private gain. In the 19th century, franking limitations were often ignored, and all sorts of private correspondence and packages were mailed illegally under the frank, sometimes in fantastical fashion. Contemporary regulations and enforcement have virtually eliminated the type of overt illegal franking abuse common in the 19th century.

²⁰ 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.

In FY2018, total expenditures on congressional official mail postage were \$19.8 million. House official mail postage costs (\$18.5 million) were 94% of the total. In FY2017, total expenditures on official mail postage were \$7.7 million. House official mail postage costs (\$6.5 million) were 85% of the total.

Postage isn't the only cost associated with franked mail. Member offices also incur charges for printing and reproduction of mailed materials, as well as for the maintenance of constituent relationships management software, such as IQ.

While total costs (including printing and reproduction) for all franking can't be determined from publicly reported data, members are required to report total costs for unsolicited mass mailings, which account for most total franking costs. In FY2018, House Members spent \$27.6 million on mass mailings, including postal cost, printing, and reproduction, to send 77.9 million pieces of unsolicited mass mail, for an average cost of 35 cents/piece.

Most of the costs of the mass mailings are being driven by an increasingly smaller number of members. While 85% of Members sent at least one mass postal mailing in 2004, only 61% did so in 2018. Furthermore, over half the cost of postal mass mailings were accrued by the 65 highest spending offices, which *averaged* \$216,000 in mass mailing expenses. Several offices spent over 1/4 of their MRA on mass postal mailings.

The expenses associated with the postal frank, while not trivial, also need to be put into perspective. FY2018 mass mailings in the House (\$27.6 million) were just under six-tenths of 1% of the overall legislative branch appropriations for FY2018. At an average cost of \$63,000 per member, these costs represent less than 5% of the average Members' MRA.

Incumbency Advantage

The second common contemporary criticism of franking is that it provides an unfair advantage to incumbent members in congressional elections.

Critics charge that most franked mail is unsolicited and essentially publicly funded campaign literature,²¹ that incumbent House Members sometimes spend more on franked mail than

²¹ 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.

challengers spend on their whole campaign,²² and that freshmen members and members in electoral swing districts spend much more on mass mailing than senior members in electorally safe districts. Franked mail costs have also traditionally been higher in election years than non-election years, indicating that Members may see electoral advantages to the frank.²³

Recent data confirm that contemporary franking expenditures continue this historical pattern. Comparisons of election-year and non-election-year mailing data by fiscal year, however, tend to overstate the effect of pre-election increases in mail costs, because they also capture the effect of a traditional large spike in mail costs from December of the previous calendar year, when end of the first session newsletters are typically franked.

FRANKING PRIVILEGE: TECHNOLOGICAL CHANGE

Another concern about the postal franking privilege is that modern communications technology has rendered it obsolete. For centuries, concerns about these vital democratic connections underpinned the existence of the franking privilege. Technological changes during the late 19th and 20th centuries—most notably the rise of mass newspapers, the invention of the telephone, and advances in transportation that allowed Members to travel more easily—aided Members and constituents in exchanging information with each other, reducing the reliance on letters.

Although virtually all Members continue to use these traditional modes of constituent communication—postal mail, telephone calls, press releases, and face-to-face meetings—congressional use of new electronic communications technology has dramatically increased. Email is now the dominant form of constituent communication with the Hill, with tens of millions of constituent emails to Congress each year. Member official websites, blogs, YouTube channels, and Facebook pages—all nonexistent in 1994—also receive significant traffic. In less than 25 years, the entire nature of Member-constituent communication has been transformed, perhaps more than in any other period in American history. The postal franking privilege should

²² 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, viewed November 26, 2007.

²³ 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.

now be viewed as a part of overall constituent communications, and one that is increasingly a smaller portion of Member communication strategies.

The rise of such electronic communication has altered the traditional patterns of communication between Members and constituents. Electronic technology has reduced the marginal cost of constituent communications; unlike postal letters, Members can reach large numbers of constituents for a fixed cost, and constituents can reach Members at virtually zero cost. Likewise, the relay of information from Capitol Hill to the rest of the country (and vice versa) has been reduced, timewise, to almost zero. As soon as something happens in Congress, it is known everywhere in real time. Finally, Members can reach large numbers of citizens who are not their own constituents.

These changes call into question the relevance of traditional franked postal mail, which has become a smaller portion of most members constituent communication in recent years. While Members sent 77.9 million pieces of mass mail in FY2018, they sent over 1.2 billion pieces of mass communications. The cost/piece of mass postal mail (35 cents in 2018) is over 70 times higher than the cost/piece of mass communications (less than half a cent in 2018).

On the other hand, technological change has also mitigated some of the concerns about the frank and incumbency advantage, as electoral challengers can equally take advantage of many of the free third-party electronic communications tools that have become popular among members.

FRANKING PRIVILEGE: REGULATORY FRAMEWORKS

The franking privilege for House Members is currently regulated by federal law, House rules, orders of the Committee on House Administration, and regulations of the House Commission on Congressional Mailing Standards. Mass communications are largely regulated by orders of the Committee on House Administration, often by reference to the franking laws, rules, and regulations.

Numerous policy changes to the franking privilege have been proposed in the last decade, including hard monetary caps or complete bans on either mass mailings or all unsolicited mailings, extensions of the pre-election blackout period, and complete abolition of the frank.

Given the rapid shift toward inexpensive mass electronic communications, Congress should strongly consider revisiting the entirety of the regulatory structure surrounding both postal and electronic Member communications.

When considering policy changes, five general dimensions exist for any framework regulating franking:

- (1) *who* is entitled to frank mail;
- (2) *what* is entitled to be mailed;
- (3) *where* can it be sent; and
- (4) *when* can it be sent; and
- (5) *how much* material can be sent;

In addition, any regulatory framework might also be governed by transparency and reporting requirements, as well as decisions about how franking costs will be paid.

When can mail be franked?

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

On the other hand, House Members are currently restricted from mass mailing during the 90 days prior to federal or primary elections in which they are a candidate for any public office. 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 can be franked?

Current regulations strictly regulate the content of franked mail, sometimes in excruciating detail. Current law prescribes the number and placement of Member pictures, the use of biographical material, and the number of times the Member's name can be mentioned. Historically, there was less regulation on the content of franked mail, and restrictions were much vaguer in nature. Weight limits have also varied throughout American history.

How much can be franked?

Congress has regulated the amount of franked mail Members may send in a variety of ways. Prior to the 1960s, individual Members had no limit on the amount of franked mail they could send. After “postal patron” mailings began, limits were put in place that capped the number of batches of mass mailing Members could send. The comprehensive reforms of 1973 specifically defined “mass mailing” and put further restrictions on them.

Currently, general limits are enforced by cost. Since 1999, Representatives can use any portion of their Member’s Representational Allowance (MRA) for franked mail. This practice has proven effective at putting a market cap on mass mailings; Members now must weigh the value of “more mail vs. more staff,” which has tended to decrease overall mail since the change. On the other hand, Members who engage in substantial mailing are allocating resources that might be otherwise be used for different purposes, such as the hiring of additional Washington or district staff. Senators are subject to similar cost limitations, but also have a hard cap on the total dollar value of mass postal mailings.²⁴ This hard cap has dramatically reduced Senate expenses on franked mail since its introduction in 1994.

Where can franked mail be sent?

Since October 1992, Representatives have been prohibited from sending mass mailings outside their districts.²⁵ This action followed a U.S. court of appeals ruling that found the practice unconstitutional.²⁶ Historically, there were no geographic limits on the franking privilege.

Who pays for the franked mail?

Traditionally, careful account was not kept of franking costs. The Post Office Department simply moved the franked mail for free and absorbed the cost of doing so. In 1953, Congress began reimbursing the Post Office out of appropriated funds for the Legislative Branch. The Senate and

²⁴ Legislative Branch Appropriations Act, FY1995, P.L. 103-283, Stat. 1423, 1427-1428, §§5, 108.

²⁵ Legislative Branch Appropriations Act, FY1993, P.L. 102-292, 106 Stat. 1703, 1722, §309.

²⁶ *Coalition to End the Permanent Government v. Marvin T. Runyon et al.*, 979 F.2d 219 (D.C.Cir. 1992).

House established separate individual franking allowances for members in 1986 and 1990, respectively.²⁷

What public disclosure is required?

In 1990, the House required public disclosure of individual mail costs, which are published quarterly in the Statement of Disbursements of the House.²⁸ Prior to this, individual amounts and costs of franking were not publicly disclosed.

Who can frank mail?

Current regulations limit the frank to the Vice-President, Members of Congress, certain congressional officers, former Presidents, spouses of former Presidents, and widows of former Presidents. Former Members, or a relative of a former Member who dies in office, have franking privileges for a limited period. In the past, Congress has expanded and contracted the set of recipients of the privilege, with over 10,000 people eligible at some points in the 19th century.

²⁷ S.Res. 500, 99th Cong., 2nd sess., agreed to in the Senate October 8, 1986; Legislative Branch Appropriations Act, FY1991, P.L. 101-520, 104 Stat. 2254, 2279, §311.

²⁸ Legislative Branch Appropriations Act, FY1991, P.L. 101-520, 104 Stat. 2254, 2279, §311.