

Learning about Legislation #28: Franking Privileges

This week a [news report](#) from *City & State Pennsylvania* showed that Rep. Brian Fitzpatrick has spent over \$290,000 of taxpayer funds in sending mailers to constituents. Unlike many legislator communications, which are sent in standard letter format, these were styled like the glossy campaign mailers that many of us are inundated with in the weeks prior to an election. The article notes that Mr. Fitzpatrick ranked #8 of the 435 Members of Congress in his expenditures, but that this was a legal expense of taxpayer funds, as Congresspeople are granted “franking privileges.” Let’s explore what that term means:

According to [US Legal](#) (a website with useful legal definitions), franking privileges are the right of “sending mail without payment of postage. This privilege is exercised in pursuance of personal or official designations. The members of Congress have the right to send mail to their constituents at the government’s expense. ‘Cover letters from a U.S. Congressman in mailings about official business are a permissible use of the franking privilege’. [Van Hecke v. Reuss, 350 F. Supp. 21, 24 (D. Wis. 1972)].”

In 2015 the Congressional Research Service issued a [white paper](#) on franking privileges. They tracked how those rights have changed over the years in response to abuse of the system. In the summary of the report, they observe:

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.

The franking privilege dates back to 1775, when the First Continental Congress allowed members mailing privileges. For our nation’s first century, Congress members were allowed to send and receive mail for free, but only while Congress was in session, and for a short period of time before and after. For a 22-year period in the 19th century, all franking privileges were rescinded due to abuse of the system, but in 1895 those rights were restored, including the right to send unsolicited mail to constituents. The last 50 years have seen changes to franking policy to address new abuses. In 1973 rules were put in place to prohibit franked mass mailings from members of Congress within 28 days before primary or general elections. That was extended to 90 days in 1996. In 2008 a new regulation required members disclose the volume and cost of mass communications each quarter.

The white paper also includes criticisms of the franking privilege. In a section titled “Incumbency Advantage,” the report says:

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. 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. 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.

It will be interesting to see whether a future reform-minded Congress that supports cleaner government behavior decides to outlaw franking privileges for correspondence that copies the format of standard campaign literature or perhaps outlaws this expenditure completely.