111TH CONGRESS
1st Session
HOUSE OF REPRESENTATIVES
REPORT
111–363

FEDERAL ELECTION INTEGRITY ACT OF 2009

DECEMBER 8, 2009.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BRADY of Pennsylvania, from the Committee on House Administration, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 512]

[Including cost estimate of the Congressional Budget Office]

The Committee on House Administration, to whom was referred the bill (H.R. 512) to amend the Federal Election Campaign Act of 1971 to prohibit certain State election administration officials from actively participating in electoral campaigns, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Federal Election Integrity Act of 2009".

SEC. 2. FINDINGS.

Congress finds that—

(1) chief State election administration officials have served on political campaigns for Federal candidates whose elections those officials will supervise;

(2) such partisan activity by the chief State election administration official, an individual charged with certifying the validity of an election, represents a fundamental conflict of interest that may prevent the official from ensuring a fair and accurate election;

(3) this conflict impedes the legal duty of chief State election administration officials to supervise Federal elections, undermines the integrity of Federal elections, and diminishes the people's confidence in our electoral system by casting doubt on the results of Federal elections;

(4) the Supreme Court has long recognized that Congress's power to regulate Congressional elections under Article I, Section 4, Clause 1 of the Constitution is both plenary and powerful; and

(5) the Supreme Court and numerous appellate courts have recognized that the broad power given to Congress over Congressional elections extends to Presidential elections.

SEC. 3. PROHIBITION ON CAMPAIGN ACTIVITIES BY CHIEF STATE ELECTION ADMINISTRATION OFFICIALS.

(a) IN GENERAL.—Title III of the Federal Election Campaign Act of 1971 (2 U.S.C. 431 et seq.) is amended by inserting after section 319 the following new section:

"CAMPAIGN ACTIVITIES BY CHIEF STATE ELECTION ADMINISTRATION OFFICIALS

"SEC. 319A. (a) PROHIBITION.—It shall be unlawful for a chief State election administration official to take an active part in political management or in a political campaign with respect to any election for Federal office over which such official has supervisory authority.

"(b) CHIEF STATE ELECTION ADMINISTRATION OFFICIAL.—The term 'chief State election administration official' means the highest State official with responsibility for the administration of Federal elections under State law.

"(c) ACTIVE PART IN POLITICAL MANAGEMENT OR IN A POLITICAL CAMPAIGN.—The term 'active part in political management or in a political campaign' means—

"(1) serving as a member of an authorized committee of a candidate for Federal office;

"(2) the use of official authority or influence for the purpose of interfering with or affecting the result of an election for Federal office;

"(3) the solicitation, acceptance, or receipt of a contribution from any person on behalf of a candidate for Federal office; and

"(4) any other act which would be prohibited under paragraph (2) or (3) of section 7323(b) of title 5, United States Code, if taken by an individual to whom such paragraph applies (other than any prohibition on running for public office).

"(d) EXCEPTION FOR CAMPAIGNS OF OFFICIAL OR IMMEDIATE FAMILY MEMBERS.—

"(1) IN GENERAL.—This section does not apply to a chief State election administration official with respect to an election for Federal office in which the official or an immediate family member of the official is a candidate.

"(2) IMMEDIATE FAMILY MEMBER DEFINED.—In paragraph (1), the term 'immediate family member' means, with respect to a candidate, a father, mother, son, daughter, brother, sister, husband, wife, father-in-law, or mother-in-law.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply with respect to the regularly scheduled general election for Federal office held in November 2010 and each succeeding election for Federal office.

PURPOSE OF THE LEGISLATION

In almost every state, the secretary of state or an appointed official administers elections. Most of these officials administer fair elections and execute the laws to the best of their ability, yet there are few standards to guide state election officers, and no guarantee that they will not act in a partisan manner. Chief state election officials serving as state campaign chairs create the appearance of a conflict of interest, even if none actually exists. In previous general elections, the secretaries of state of Florida and Ohio came under intense scrutiny because of their positions as state chairs for presidential campaigns. There also have been accusations that partisan election officials act to benefit their political parties, rather than discharge their responsibilities even-handedly. The perception of impropriety alone is enough to undermine the legitimacy of the electoral process.

Accordingly, the purpose of the Federal Election Integrity Act (H.R. 512) is to prevent those partisan election activities by chief state election officials in campaigns for Federal elections that could give rise to perceived conflicts of interest. As amended in Committee, H.R. 512 prohibits chief election officials from taking an "active part in the political management or in a political campaign" (which is clearly defined in the bill) and balances these restrictions

by preserving a chief election official's free speech rights and right to run his or her own campaign for federal office.

It is appropriate to enact legislation limiting the political activities of chief state election administration officials. These individuals are charged with certifying the validity of our elections and their partisan activities present a conflict of interest that may prevent the officials from ensuring a fair and accurate election or otherwise undermine the integrity of Federal elections and voters' confidence in our electoral system. In recognition of this perceived conflict, several states, including Colorado, Massachusetts, Ohio and Virginia, have enacted laws limiting the political activity of election officials. Rather than unduly burden, the Federal Election Integrity Act will help to insulate chief election officers from political pressure by their parties.

SUMMARY OF THE LEGISLATION

H.R. 512, as amended, amends section 319 of the Federal Election Campaign Act of 1971 to prohibit a chief state election officer from taking an active part in a political campaign of an election for Federal office which they administer. H.R. 512 defines "active part in political management or in a political campaign" as: (1) serving as a member of an authorized committee of a candidate for Federal office; (2) the use of official authority or influence for the purpose of interfering with or affecting the results of an election for Federal office; (3) the solicitation, acceptance, or receipt of a contribution from any person on behalf of a candidate for Federal office; and (4) any other act which would be prohibited under paragraph (2) or (3) of section 7323(b) of Title 5 [the Hatch Act], (except for the prohibition on running for public office). H.R. 512 exempts those chief state election administration officials who are running for Federal office, or those who have an immediate family member who is a Federal candidate.

COMMITTEE CONSIDERATION OF THE LEGISLATION

INTRODUCTION & REFERRAL

On January 14, 2009, Mrs. Davis of California introduced H.R. 512, which was referred to the Committee on House Administration.

MARKUP

On June 10, 2009, the Committee on House Administration met to markup H.R. 512. During the markup Mrs. Davis of California offered an amendment in the nature of a substitute which made the following changes:

- Both section 3(c)(4) and 3(c)(5) were removed, which defined active part in political management or in a political campaign as the solicitation or discouragement of the participation in any political activity of any person and the engagement in partisan political activity on behalf of a candidate for federal office.
- Language was added to Section 3 of the bill to provide an exemption to chief state election officials from the provisions of H.R. 512 when they or an immediate family member is a candidate for federal office.

• Language was removed from Section 3 of the bill that outlined enforcement procedures related to violations of the provisions established in H.R. 512.
• Established an effective date to apply to the regularly scheduled general election for Federal office in November 2010 and each succeeding election for Federal office.

The amendment was agreed to by a voice vote. With a quorum present, the Committee then ordered H.R. 512 reported favorably, as amended, by voice vote.

MATTERS REQUIRED UNDER THE RULES OF THE HOUSE

COMMITTEE RECORD VOTES

Clause 3(b) of House rule XIII requires the results of each record vote on an amendment or motion to report, together with the names of those voting for and against, to be printed in the committee report. There were no recorded votes taken on H.R. 512.

COMMITTEE OVERSIGHT FINDINGS

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

GENERAL PERFORMANCE GOALS AND OBJECTIVES

The Committee states, with respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, that the goal and objective of H.R. 512 is to improve the performance of state election officials in administering Federal elections in a non-partisan manner.

CONSTITUTIONAL AUTHORITY

In compliance with clause 3(d)(1) of rule XIII, the Committee states that Article I, Section 4, Clause 1 of the U.S. Constitution grants Congress the authority to make laws governing the time, place and manner of holding Federal elections.

FEDERAL MANDATES

Section 423 of the Congressional Budget Act requires a committee report on any public bill or joint resolution that includes a federal mandate to include specific information about such mandates. The Committee states that H.R. 512 does not include federal mandates.

PREEMPTION CLARIFICATION

Section 423 of the Congressional Budget Act requires a committee report on any public bill or joint resolution to include a statement on the extent to which the measure is intended to preempt state or local law. The Committee states that H.R. 512 is not intended to preempt any state or local law.

EARMARK IDENTIFICATION

In response to the requirements of clause 9 of rule XXI, the Committee reports that H.R. 512 does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of rule XXI.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 26, 2009.

Hon. ROBERT A. BRADY,
Chairman, Committee on House Administration,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 512, the Federal Election Integrity Act of 2009.

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

Sincerely,

DOUGLAS W. ELMENDORF,
Director.

Enclosure.

H.R. 512—Federal Election Integrity Act of 2009

H.R. 512 would amend the Federal Election Campaign Act of 1971 to prohibit any chief state election administration official from taking part in the political management or campaign of any official vying for federal office, except under certain specified circumstances. Under current law, there is no prohibition on those activities.

Based on information from the Federal Election Commission (FEC) and subject to the availability of appropriated funds, CBO estimates that implementing H.R. 512 would cost less than $500,000 in 2010. That amount would include one-time computer expenses as well as the cost of issuing new regulations and enforcement activities to implement this provision. In future years under the legislation, general administrative costs of the FEC would increase by negligible amounts.

Enacting H.R. 512 could affect federal revenues by increasing the collections of fines for violations of the law. Such collections are recorded in the budget as revenues and, in certain cases, may be spent without further appropriation. CBO estimates any additional revenues and direct spending under H.R. 512 would be insignificant because of the small number of anticipated violations.

H.R. 512 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

By prohibiting the chief election administration official of a state from taking an active part in political management or in a political campaign with respect to any federal election over which the official has supervisory authority, the bill could impose a private-sector mandate. CBO estimates that the cost to comply with the prohibition would be minimal and would fall well below the annual threshold established in UMRA for private-sector mandates ($139 million in 2009, adjusted annually for inflation).

The CBO staff contact for this estimate is Matthew Pickford. The estimate was approved by Peter H. Fontaine, Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

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

FEDERAL ELECTION CAMPAIGN ACT OF 1971

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TITLE III—DISCLOSURE OF FEDERAL CAMPAIGN FUNDS

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CAMPAIGN ACTIVITIES BY CHIEF STATE ELECTION ADMINISTRATION OFFICIALS

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(3) the solicitation, acceptance, or receipt of a contribution from any person on behalf of a candidate for Federal office; and

(4) any other act which would be prohibited under paragraph (2) or (3) of section 7323(b) of title 5, United States Code, if taken by an individual to whom such paragraph applies (other than any prohibition on running for public office).

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Federal office in which the official or an immediate family member of the official is a candidate.

(2) IMMEDIATE FAMILY MEMBER DEFINED.—In paragraph (1), the term "immediate family member" means, with respect to a candidate, a father, mother, son, daughter, brother, sister, husband, wife, father-in-law, or mother-in-law.

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ADDITIONAL VIEWS OF THE HONORABLE DANIEL E. LUNGREN, THE HONORABLE KEVIN MCCARTHY, AND THE HONORABLE GREGG HARPER

H.R. 512, To amend the Federal Election Campaign Act of 1971 to prohibit certain State election administration officials from actively participating in electoral campaigns.

Any time Congress seeks to restrict free speech rights, especially political speech, we should be diligent to ensure there are compelling reasons for such an extreme remedy. Unfortunately, while H.R. 512 contains a significant restriction on political speech for chief election officers such as Secretaries of State, it does not contain any justification for its necessity. The majority made no accusation of misfeasance, malfeasance or nonfeasance on the part of Secretaries of State that would require the remedy put forth by this legislation. This omission leaves us puzzled as to why the committee decided this legislation was appropriate and necessary.

This legislation presupposes that state election officials are incapable of demonstrating impartiality in fulfilling their oath of office. If such a presupposition is to be accepted, then we set the stage for excluding a whole host of election officials, from Secretaries of State down to Registrars of Voters and poll workers. If we cannot trust Secretaries of State, why should we trust anyone to show impartiality in the administrations of elections when they have shown a political affiliation or persuasion?

Moreover, if we accept as fundamental the lack of impartiality that this bill suggests, why should we believe that an absence from formal participation in campaign activities would do anything to lessen an election official's propensity for misconduct?

We also question the provision in the manager's amendment which exempts the campaigns of the official and immediate family members from the prohibition. If it is a prohibitive conflict to work on someone else's campaign wouldn't that conflict of interest be even more disconcerting for the public when working on one's own campaign or the campaign of a family member? The exemption undercuts the entire purported purpose of the legislation.

We must be vigilant protectors of both the integrity of federal elections and the precious rights of our citizens to participate in the election of their federal officials. This bill seems to endanger both those fundamental principles while at the same time trampling on the civil liberties of elected officials without cause. We hope the majority will reconsider their support of this legislation before taking further action.

DANIEL E. LUNGREN.
KEVIN MCCARTHY.
GREGG HARPER.

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