

# Minority Views of Ranking Democratic Member Robert A. Brady, Representative Zoe Lofgren and Representative Charles A. Gonzalez

## ELECTIONS

### H.R. 672

The Majority has noted that they “conducted vigorous oversight of Federal election policy”. What oversight we have seen has been singularly focused on dismantling the key election administration and campaign finance reforms of the past several decades.

The history of voting in the United States is not one of free and fair elections. Poll taxes, literacy tests, voter intimidation, and outright, *de jure* denial of the franchise to U.S. citizens of this most fundamental of American rights has been commonplace throughout our history. While the most egregious and obvious methods of denying the basic principle of “one man, one vote” have been eradicated, problems still persist in ensuring that every eligible voter has access to our voting system.

The Election Assistance Commission (EAC) is an imperfect but important agency created with bipartisan support in the shadow of the 2000 presidential election and tasked with helping states to avoid a repeat of that catastrophic failure. Since its inception, the EAC has provided state and local election officials with resources to support efforts by the states to improve their voting systems. Through its national database for voters, poll workers, and states to create a more perfect voting system, it has provided guidance on best practices, technical certifications, and other means to ensure the integrity of elections in every jurisdiction in the Union.

### *Terminating the EAC would not save money*

While the Majority insists that the termination of the EAC would yield cost savings by moving the functions of the EAC to the Federal Election Commission (FEC), FEC Chair Cynthia Bauerly has made it clear that the FEC would require additional resources to assume the functions currently administered by the EAC, while also fulfilling its primary mission - regulating campaign finances.

In response to a request from the Ranking Democratic Member, Chair Bauerly writes:

“Should Congress enact this bill **and provide an appropriation that adequately reflects this change** we believe that the FEC could absorb the added functions and responsibilities while continuing to fulfill our current mission successfully.”  
(emphasis added)

It is important to note that during the mark-up of H.R. 672, Representative Gonzalez offered a perfecting amendment requiring a GAO study to determine if the FEC could assume the additional responsibilities of the EAC and if any cost savings to the federal government would be realized without disfranchising voters. Such a common sense amendment could only buttress the claims of the Majority as they contend that there would be no negative consequence to voters or

to the FEC with the termination of the EAC. Instead of a bi-partisan embrace, this amendment was rejected on a party line vote.

*EAC integral in improving accessibility for Military and Overseas Voters*

The Committee held two hearings on military and overseas voting during the 2010 election; “*Military and Overseas Voting: Effectiveness of the MOVE Act in the 2010 Election*”, and “*The 2010 Election: A Look Back at What Went Right and Wrong*.” A focus of both hearings was the accessibility of our voting systems to military and overseas voters. The EAC maintains and compiles data that make up the most comprehensive repository of information on military and overseas voters. The information EAC has gathered provides state and local election officials with a blueprint to ensure that military personnel stationed overseas can exercise their most basic of rights.

EAC is currently working with the Department of Defense on a pilot program to develop a full set of testable standards for overseas voters. During FY 2010, the EAC provided grants to research the implementation of new technologies that will improve accessibility for injured military personnel. Elimination of the EAC could jeopardize the improvements already made and negatively impact projects underway that are designed to improve accessibility for overseas military and citizens.

The Majority’s plan to eliminate the EAC, H.R. 672, does not include provisions for transferring these initiatives to the FEC. This inherent deficiency in the legislation could result in the disfranchisement of military voters and Americans living overseas.

*EAC integral in improving accessibility for persons with disabilities*

Since the creation of the EAC and its emphasis on assuring compliance with the Americans with Disabilities Act, there has been a decrease in the number of polling places cited for insufficient access for voters with physical disabilities. Additionally, EAC efforts have contributed to the increase of the number of disabled voters who have been able to vote privately and independent of assistance. The EAC guidance can point out to election officials barriers the disabled face of which they were not even aware, as well as provide proven solutions to those problems and ways to make polling places more accessible for voters with disabilities.

The management guide for disabled and elderly voters in long term care facilities that EAC developed and published provides state and local election officials with new tools to reach out to mobility-challenged voters of all ages. The agency has also established a grant program to advance technology that allows people with disabilities to vote privately and independently.

The National Disability Rights Network, an advocacy group representing [tens of] millions of individuals with disabilities, may say it best: “[a]bolishing the EAC at this point in time would be a step back for people with disabilities and the goal of full accessibility to the voting process, and prevent people with disabilities from partaking of this most fundamental civil right.”

*Committee Majority has missed opportunity to strengthen voting protections*

During the markup of H.R. 672, the Majority had the opportunity to strengthen voting accessibility. Representative Gonzalez offered a substitute that would have made polling places more accessible by ensuring compliance with the Americans with Disabilities Act. It would also have increased efficiency and cost savings by having EAC conduct a comprehensive study of how federal, state, and local governments could reduce the costs of election administration. The substitute would have also increased transparency by overhauling the system of payments for and disclosure of testing and certification of voting equipment. These are all commonsense steps that would strengthen voter accessibility, improve elections' efficiency, and produce cost savings while still protecting the rights of eligible voters. Unfortunately, this attempt to "amend it rather than end it" was defeated on a party line vote.

*Major Civil Rights organizations oppose H.R. 672*

H.R. 672 is opposed by a broad spectrum of civil rights organizations such as the NAACP, League of Women Voters, National Association of Latino Appointed and Elected Officials, National Disability Rights Network, and Public Citizen.

**H.R. 359**

Congress created the Presidential Election Campaign Fund to empower the public to reclaim the power of funding Presidential elections from large corporations and monied interests. Over the last five years, an average of 33 million taxpayers voluntarily chose to donate \$3 of their income tax money to the fund each year. When a taxpayer chooses to donate \$3, the entire sum is put towards the Presidential Election Campaign Fund. Costs associated with the administration of the program are paid out of the FEC's annual appropriations.

The fund currently collects approximately \$42 million annually. Campaigns that receive funding from the PECF must return any unspent funds. Approximately \$8.7 million in unspent funds has been returned since 1976.

One of the most notable candidates to receive public funding is former President Ronald Reagan. During his 1976 presidential primary, Reagan's opponent, Gerald Ford, had fifteen times more cash on hand. Reagan's acceptance of public funds allowed him to shape that debate by remaining a viable candidate. Reagan used the public financing system to such an extent that he holds the record as the only candidate to reach the public funding primary campaign maximum. In addition to President Reagan, several other qualified candidates owe their campaign viability to public funds: Jimmy Carter in 1976, George H. W. Bush in 1980, Gary Hart in 1984, Jesse Jackson in 1988, Paul Tsongas in 1992, Pat Buchanan in 1996 and John McCain in 2000. Public funds allow all qualified candidates to compete, even against well-funded incumbents.

The use of public campaign funds for qualified presidential candidates is regulated and monitored by the FEC. In addition, the FEC audits campaigns that receive public funds at the end of every Presidential election to ensure good stewardship. This emphasis on disclosure and transparency and what Justice Scalia has called "civic courage, without which democracy is doomed" (*Doe v. Reed*, \_\_\_ U.S. \_\_\_, 130 S. Ct. 2811, 2817-18 (2010)) stands in sharp contrast

to the growth of electioneering funded by unlimited, anonymous donations, from corporations as well as individuals after the recent *Citizens United* decision.

In the opening days of the 112<sup>th</sup> Congress, the House considered H.R. 359 without any Committee consideration of this legislation. The failure to convene a single hearing, call a single witness, or hold a mark-up where amendments would be considered is a highly unflattering reflection on the Majority Leadership's priorities and the respect granted to such important matters, and this Committee, in the 112<sup>th</sup> Congress. Had H.R. 359 followed regular order, the Majority might never have propounded such a misguided bill.

#### *ACTIVITIES OF THE OFFICE OF THE GENERAL COUNSEL*

The Defense of Marriage Act (DOMA) was enacted in 1996 to legally prohibit federal recognition of same-sex marriages. On February 23, 2011, the Obama Administration made a decision no longer to defend, even while they continue to enforce, a section of the law after concluding that it is unconstitutional under the Equal Protection clause.

#### *Deal done behind closed doors – Committee Minority excluded*

At the direction of the Speaker, Majority Leader, and Majority Whip, the Majority approved a contract with the firm of King & Spalding, LLP, on behalf of the Office of the General Counsel, to defend DOMA-related cases in court. They released no information on how those arrangements were arrived at, explanation for the rates to be paid, nor explanation of whence those funds would come. When this arrangement was made public, Minority Leader Pelosi and Minority Members of the Committee expressed concerns about the process and result of that contract. After King & Spalding withdrew from the case, the Committee approved an identical contract with the law firm Bancroft PLLC. Once again, and in spite of the aforementioned and prior complaints, the Minority members were neither consulted nor given the opportunity to review any parts of this contract nor even informed of it before its completion. We are unaware of even an attempt to address the concerns which had been expressed by the Minority. As a result, the Committee may have repeated and, thus, compounded errors that may cost the federal government significantly. If the Minority had been included in this process, we would have scrutinized the \$500,000 fee, including how that figure was arrived at and whether it accurately reflected the reasonably expected costs of the contract's fulfillment, and insisted on a thorough review by the Ethics Committee for compliance with applicable rules and regulations of the House.

#### *Lack of transparency - Democratic requests for answers ignored*

In letters dated April 26, 2011 and May 18, 2011, the Democratic Members of the Committee asked Speaker Boehner for more information regarding the process, fees, and scope of these contracts (see attachments). To this day, the Speaker has failed to provide any response.

#### *Irresponsible use of funds*

By forcing the Committee to enter a \$500,000 contract to defend discrimination, the Republican leadership may have jeopardized the Office of General Counsel's ability to perform its core mission. By failing to disclose, if they even determined, the source of these funds, the

Republican leadership has not been forthright with the Minority or the public on the details or ramifications of this contract. The extent of its impact and any potential overruns or funding shortfalls on House operations remains wholly unclear. This is not only irresponsible but creates a troubling atmosphere of uncertainty that could surround all House operations until these questions are resolved.

*(following are the two letters referred to previously)*

DANIEL E. LUNGREN, CALIFORNIA  
CHAIRMAN

GREGG HARPER, MISSISSIPPI  
PHIL GINGREY, GEORGIA  
AARON SCHOCK, ILLINOIS  
TODD ROKITA, INDIANA  
RICH NUGENT, FLORIDA

PHILIP KIKO, STAFF DIRECTOR

# Congress of the United States

## House of Representatives

### COMMITTEE ON HOUSE ADMINISTRATION

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ROBERT A. BRADY, PENNSYLVANIA  
RANKING MINORITY MEMBER

ZOE LOFGREN, CALIFORNIA  
CHARLES A. GONZALEZ, TEXAS

ONE HUNDRED TWELFTH CONGRESS

JAMIE FLEET, MINORITY STAFF DIRECTOR

April 26, 2011

The Honorable John Boehner  
Speaker of the House of Representatives  
United States Capitol  
H-232 The Capitol  
Washington, DC 20515

Dear Mr. Speaker:

We learned yesterday through press accounts of a decision by the law firm of King & Spalding to withdraw from its engagement to represent the House regarding the Defense of Marriage Act (DOMA). It is abundantly clear that "inadequate vetting" of the contract occurred not only at King & Spalding, as its chairman admitted in withdrawing from the contract, but also in the Congress whose Members were unaware a contract had been signed. We are particularly concerned, as the Democratic Members of the Committee on House Administration, that we were not informed of such a contract nor given the opportunity to review its provisions, including the as much as \$500,000 cost.

Your spokesperson, Brendan Buck, confirmed that the attorney who had been assigned the case by King & Spalding, Paul Clement, has now joined Bancroft PLLC and will continue to represent the House in the DOMA litigation. While The Hill newspaper states that "Buck said the structure of the House contract on the case will stay the same, meaning Congress will pay as much as \$500,000 in legal fees to Bancroft," we presume that a new contract for these services will have to be signed since the original contract was between the House and King & Spalding.

If a new contract is to be signed, we are requesting that all members of the Committee on House Administration have a full opportunity to review and raise questions about its provisions. The questions that were raised by Leader Pelosi on the issues of transparency, cost, and ethical considerations regarding the earlier contract with King & Spalding in her letters to you of April 18 and April 20 continue to be pertinent both to the original and to any proposed successor contract, and we would appreciate your answers to those questions.

In addition, we request the following information:

#### **TIMELY NOTIFICATION**

The King & Spalding statement made clear that preparations for their withdrawal occurred last week. When was your office informed of their plans to withdraw—and when were you planning to alert the Democratic Members of this Committee and the Bipartisan Legal Advisory Group (BLAG)?

**TERMS OF TERMINATING PRIOR CONTRACT AND TERMS OF PROPOSED CONTRACT**

What arrangements or terms did your office and/or any House entity under your direction make with respect to the termination of the King & Spalding law contract? Were any fees paid for work already completed by King & Spalding? Please provide the Committee with the proposed new contract which it appears would similarly obligate at least a half million dollars of taxpayer resources to the services of Mr. Clement and the Bancroft law firm. Are any other firms proposed to be engaged for professional services?

**HOUSE FUNDING SOURCES**

How much of the cost will be borne by the budget of the House General Counsel? This Committee is aware that the office of the General Counsel does not have \$500,000, let alone the millions of taxpayer dollars which may be required to defend at least 12 DOMA-related lawsuits. If funding for the contract is reprogrammed or transferred from another source, what is that source and what is the approval authority?

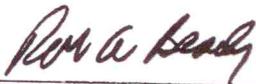
**ETHICS REVIEW**

Will the new contract be reviewed by the Ethics Committee, particularly in regard to whether any restrictions on lobbying by members of the new firm should apply to the Republican Leadership and any provision which would provide discounted services to the House?

We should be creating jobs for the American people, not spending half a million taxpayer dollars – and likely much more – defending discrimination. To the extent that the Republican leadership of the House continues to focus on expending taxpayer resources on litigating DOMA rather than focusing on our nation's urgent needs, the highest standards of transparency, accountability, and ethics must be adhered to.

We look forward to your answers.

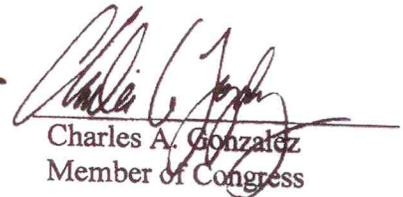
Sincerely,



Robert A. Brady  
Member of Congress



Zoe Lofgren  
Member of Congress



Charles A. Gonzalez  
Member of Congress

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CHAIRMAN

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**Congress of the United States**  
**House of Representatives**

**COMMITTEE ON HOUSE ADMINISTRATION**

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ONE HUNDRED TWELFTH  
CONGRESS

JAMIE FLEET, MINORITY STAFF DIRECTOR

May 18, 2011

The Honorable John Boehner  
Speaker of United States House of Representatives  
H-232, The Capitol  
Washington, DC 20515

Dear Mr. Speaker:

We are yet to receive any reply from earlier letters concerning the decision to engage outside counsel to defend the Defense of Marriage Act. As you are aware, a number of questions concerning the decision and financing of this \$500,000 contract have been raised in our letter to you of April 26<sup>th</sup> and Democratic Leader Pelosi's letters of April 18<sup>th</sup> and 20<sup>th</sup>.

During a hearing of the Legislative Branch Appropriations subcommittee last week, we learned that this contract may violate the fundamental principle of the Anti-Deficiency Act by improperly committing taxpayer funds without appropriate authorization. We were also disturbed to learn that the House General Counsel's office did not seek guidance from the Committee on Ethics regarding the 25% discount on non-attorney time provided by the contract, which still provides for more than \$500 an hour in attorneys fees to be paid by taxpayers. The failure to consult the Committee on Ethics raises questions about how the blended rate was developed. We request you instruct the General Counsel to furnish the Committee a list of the hourly rate paid each employee of the Bancroft firm working on the litigation and an explanation on how the blended rate was calculated.

In addition, we question why neither we, as the Democratic Members of the Committee on House Administration, nor the Democratic Members of the Bipartisan Legal Advisory Group, were advised of the selection of the Bancroft firm or provided the opportunity to review the contract, particularly in light of the controversy surrounding the earlier contract with King & Spaulding.

We join Leader Pelosi in requesting that you respond to our prior correspondence without further delay. The American people deserve a fuller explanation about the circumstances surrounding the decision to spend \$500,000, and most likely much more, of their tax dollars to defend this indefensible statute.

We look forward to your reply.

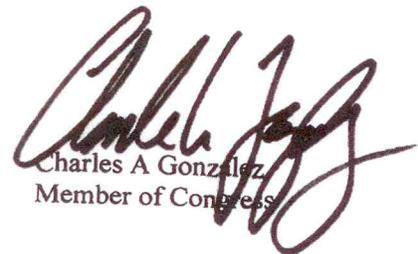
Sincerely,



Robert A. Brady  
Member of Congress



Zoe Lofgren  
Member of Congress



Charles A. Gonzalez  
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Representative Robert A. Brady

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