

109<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# S. 271

To amend the Federal Election Campaign Act of 1971 to clarify when organizations described in section 527 of the Internal Revenue Code of 1986 must register as political committees, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 2, 2005

Mr. MCCAIN (for himself, Mr. FEINGOLD, Mr. LOTT, Mr. LIEBERMAN, Mr. SCHUMER, Ms. SNOWE, Ms. COLLINS, and Mr. SALAZAR) introduced the following bill; which was read twice and referred to the Committee on Rules and Administration

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## A BILL

To amend the Federal Election Campaign Act of 1971 to clarify when organizations described in section 527 of the Internal Revenue Code of 1986 must register as political committees, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “527 Reform Act of  
5       2005”.

1 **SEC. 2. TREATMENT OF SECTION 527 ORGANIZATIONS.**

2 (a) DEFINITION OF POLITICAL COMMITTEE.—Sec-  
 3 tion 301(4) of the Federal Election Campaign Act of 1971  
 4 (2 U.S.C. 431(4)) is amended by striking the period at  
 5 the end of subparagraph (C) and inserting “; or” and by  
 6 adding at the end the following:

7 “(D) any applicable 527 organization.”.

8 (b) DEFINITION OF APPLICABLE 527 ORGANIZA-  
 9 TION.—Section 301 of the Federal Election Campaign Act  
 10 of 1971 (2 U.S.C. 431) is amended by adding at the end  
 11 the following new paragraph:

12 “(27) APPLICABLE 527 ORGANIZATION.—For  
 13 purposes of paragraph (4)(D)—

14 “(A) IN GENERAL.—The term ‘applicable  
 15 527 organization’ means a committee, club, as-  
 16 sociation, or group of persons that—

17 “(i) is an organization described in  
 18 section 527 of the Internal Revenue Code  
 19 of 1986, and

20 “(ii) is not described in subparagraph  
 21 (B).

22 “(B) EXCEPTED ORGANIZATIONS.—Sub-  
 23 ject to subparagraph (D), a committee, club,  
 24 association, or other group of persons described  
 25 in this subparagraph is—

1           “(i) an organization described in sec-  
2           tion 527(i)(5) of the Internal Revenue  
3           Code of 1986,

4           “(ii) an organization which is a com-  
5           mittee, club, association or other group of  
6           persons that is organized, operated, and  
7           makes disbursements exclusively for paying  
8           expenses described in the last sentence of  
9           section 527(e)(2) of the Internal Revenue  
10          Code of 1986 or expenses of a newsletter  
11          fund described in section 527(g) of such  
12          Code, or

13          “(iii) an organization which is a com-  
14          mittee, club, association, or other group of  
15          persons whose election or nomination ac-  
16          tivities relate exclusively to—

17                  “(I) elections where no candidate  
18                  for Federal office appears on the bal-  
19                  lot, or

20                  “(II) one or more of the purposes  
21                  described in subparagraph (C).

22          “(C) ALLOWABLE PURPOSES.—The pur-  
23          poses described in this subparagraph are the  
24          following:

1           “(i) Influencing the selection, nomina-  
2           tion, election, or appointment of one or  
3           more candidates to non-Federal offices.

4           “(ii) Influencing one or more State or  
5           local ballot initiatives, State or local  
6           referenda, State or local constitutional  
7           amendments, State or local bond issues, or  
8           other State or local ballot issues.

9           “(iii) Influencing the selection, ap-  
10          pointment, nomination, or confirmation of  
11          one or more individuals to non-elected of-  
12          fices.

13          “(D) SECTION 527 ORGANIZATIONS MAKING  
14          CERTAIN DISBURSEMENTS.—A committee, club,  
15          association, or other group of persons described  
16          in subparagraph (B)(ii) or (B)(iii) shall not be  
17          considered to be described in such paragraph  
18          for purposes of subparagraph (A)(ii) if it makes  
19          disbursements aggregating more than \$1000  
20          during any calendar year for any of the fol-  
21          lowing:

22               “(i) A public communication that pro-  
23               motes, supports, attacks, or opposes a  
24               clearly identified candidate for Federal of-  
25               fice during the 1-year period ending on the

1 date of the general election for the office  
 2 sought by the clearly identified candidate  
 3 occurs.

4 “(ii) Any voter drive activity (as de-  
 5 fined in section 325(d)(1)).”.

6 **SEC. 3. RULES FOR ALLOCATION OF EXPENSES BETWEEN**  
 7 **FEDERAL AND NON-FEDERAL ACTIVITIES.**

8 (a) IN GENERAL.—Title III of the Federal Election  
 9 Campaign Act of 1971 (2 U.S.C. 431 et seq.) is amended  
 10 by adding at the end the following:

11 **“SEC. 325. ALLOCATION AND FUNDING RULES FOR CER-**  
 12 **TAIN EXPENSES RELATING TO FEDERAL AND**  
 13 **NON-FEDERAL ACTIVITIES.**

14 “(a) IN GENERAL.—In the case of any disbursements  
 15 by any political committee that is a separate segregated  
 16 fund or nonconnected committee for which allocation rules  
 17 are provided under subsection (b)—

18 “(1) the disbursements shall be allocated be-  
 19 tween Federal and non-Federal accounts in accord-  
 20 ance with this section and regulations prescribed by  
 21 the Commission, and

22 “(2) in the case of disbursements allocated to  
 23 non-Federal accounts, may be paid only from a  
 24 qualified non-Federal account.

1       “(b) COSTS TO BE ALLOCATED AND ALLOCATION  
2 RULES.—Disbursements by any separate segregated fund  
3 or nonconnected committee for any of the following cat-  
4 egories of activity shall be allocated as follows:

5           “(1) 100 percent of the expenses for public  
6 communications or voter drive activities that refer to  
7 one or more clearly identified Federal candidates,  
8 but do not refer to any clearly identified non-Federal  
9 candidates, shall be paid with funds from a Federal  
10 account, without regard to whether the communica-  
11 tion refers to a political party.

12           “(2) At least 50 percent of the expenses for  
13 public communications and voter drive activities that  
14 refer to one or more clearly identified candidates for  
15 Federal office and one or more clearly defined non-  
16 Federal candidates shall be paid with funds from a  
17 Federal account, without regard to whether the com-  
18 munication refers to a political party.

19           “(3) At least 50 percent of the expenses for  
20 public communications or voter drive activities that  
21 refer to a political party, but do not refer to any  
22 clearly identified Federal or non-Federal candidate,  
23 shall be paid with funds from a Federal account, ex-  
24 cept that this paragraph shall not apply to commu-  
25 nications or activities that relate exclusively to elec-

1 tions where no candidate for Federal office appears  
2 on the ballot.

3 “(4) At least 50 percent of the expenses for  
4 public communications or voter drive activities that  
5 refer to a political party, and refer to one or more  
6 clearly identified non-Federal candidates, but do not  
7 refer to any clearly identified Federal candidates,  
8 shall be paid with funds from a Federal account, ex-  
9 cept that this paragraph shall not apply to commu-  
10 nications or activities that relate exclusively to elec-  
11 tions where no candidate for Federal office appears  
12 on the ballot.

13 “(5) At least 50 percent of any administrative  
14 expenses, including rent, utilities, office supplies,  
15 and salaries not attributable to a clearly identified  
16 candidate, shall be paid with funds from a Federal  
17 account, except that for a separate segregated fund  
18 such expenses may be paid instead by its connected  
19 organization.

20 “(6) At least 50 percent of the direct costs of  
21 a fundraising program or event, including disburse-  
22 ments for solicitation of funds and for planning and  
23 administration of actual fundraising events, where  
24 Federal and non-Federal funds are collected through  
25 such program or event shall be paid with funds from

1 a Federal account, except that for a separate seg-  
2 regated fund such costs may be paid instead by its  
3 connected organization.

4 “(c) QUALIFIED NON-FEDERAL ACCOUNT.—For  
5 purposes of this section—

6 “(1) IN GENERAL.—The term ‘qualified non-  
7 Federal account’ means an account which consists  
8 solely of amounts—

9 “(A) that, subject to the limitations of  
10 paragraphs (2) and (3), are raised by the sepa-  
11 rate segregated fund or nonconnected com-  
12 mittee only from individuals, and

13 “(B) with respect to which all other re-  
14 quirements of Federal, State, or local law are  
15 met.

16 “(2) LIMITATION ON INDIVIDUAL DONA-  
17 TIONS.—

18 “(A) IN GENERAL.—A separate segregated  
19 fund or nonconnected committee may not ac-  
20 cept more than \$25,000 in funds for its quali-  
21 fied non-Federal account from any one indi-  
22 vidual in any calendar year.

23 “(B) AFFILIATION.—For purposes of this  
24 paragraph, all qualified non-Federal accounts of  
25 separate segregated funds or nonconnected

1 committees which are directly or indirectly es-  
 2 tablished, financed, maintained, or controlled by  
 3 the same person or persons shall be treated as  
 4 one account.

5 “(3) FUNDRAISING LIMITATION.—No donation  
 6 to a qualified non-Federal account may be solicited,  
 7 received, directed, transferred, or spent by or in the  
 8 name of any person described in subsection (a) or  
 9 (e) of section 323.

10 “(d) DEFINITIONS.—For purposes of this section—

11 “(1) VOTER DRIVE ACTIVITY.—The term ‘voter  
 12 drive activity’ means any of the following activities  
 13 conducted in connection with an election in which a  
 14 candidate for Federal office appears on the ballot  
 15 (regardless of whether a candidate for State or local  
 16 office also appears on the ballot):

17 “(A) Voter registration activity.

18 “(B) Voter identification.

19 “(C) Get-out-the-vote activity.

20 “(D) Generic campaign activity.

21 Such term shall not include any activity described in  
 22 subparagraph (A) or (B) of section 316(b)(2).

23 “(2) FEDERAL ACCOUNT.—The term ‘Federal  
 24 account’ means an account which consists solely of  
 25 contributions subject to the limitations, prohibitions,

1 and reporting requirements of this Act. Nothing in  
2 this section or in section 323(b)(2)(B)(iii) shall be  
3 construed to infer that a limit other than the limit  
4 under section 315(a)(1)(C) applies to contributions  
5 to the account.

6 “(3) NONCONNECTED COMMITTEE.—The term  
7 ‘nonconnected committee’ shall not include a polit-  
8 ical committee of a political party.”

9 (b) REPORTING REQUIREMENTS.—Section 304(e) of  
10 the Federal Election Campaign Act of 1971 (2 U.S.C.  
11 434(e)) is amended by redesignating paragraphs (3) and  
12 (4) as paragraphs (4) and (5), respectively, and by insert-  
13 ing after paragraph (2) the following new paragraph:

14 “(3) RECEIPTS AND DISBURSEMENTS FROM  
15 QUALIFIED NON-FEDERAL ACCOUNTS.—In addition  
16 to any other reporting requirement applicable under  
17 this Act, a political committee to which section  
18 325(a) applies shall report all receipts and disburse-  
19 ments from a qualified non-Federal account (as de-  
20 fined in section 325(c)).”

21 **SEC. 4. CONSTRUCTION.**

22 No provision of this Act, or amendment made by this  
23 Act, shall be construed—

1           (1) as approving, ratifying, or endorsing a regu-  
2           lation promulgated by the Federal Election Commis-  
3           sion,

4           (2) as establishing, modifying, or otherwise af-  
5           fecting the definition of political organization for  
6           purposes of the Internal Revenue Code of 1986, or

7           (3) as affecting the determination of whether a  
8           group organized under section 501(c) of the Internal  
9           Revenue Code of 1986 is a political committee under  
10          section 301(4) of the Federal Election Campaign  
11          Act of 1971.

12 **SEC. 5. JUDICIAL REVIEW.**

13          (a) SPECIAL RULES FOR ACTIONS BROUGHT ON  
14          CONSTITUTIONAL GROUNDS.—If any action is brought for  
15          declaratory or injunctive relief to challenge the constitu-  
16          tionality of any provision of this Act or any amendment  
17          made by this Act, the following rules shall apply:

18           (1) The action shall be filed in the United  
19           States District Court for the District of Columbia  
20           and shall be heard by a 3-judge court convened pur-  
21           suant to section 2284 of title 28, United States  
22           Code.

23           (2) A copy of the complaint shall be delivered  
24           promptly to the Clerk of the House of Representa-  
25           tives and the Secretary of the Senate.

1           (3) A final decision in the action shall be re-  
2 viewable only by appeal directly to the Supreme  
3 Court of the United States. Such appeal shall be  
4 taken by the filing of a notice of appeal within 10  
5 days, and the filing of a jurisdictional statement  
6 within 30 days, of the entry of the final decision.

7           (4) It shall be the duty of the United States  
8 District Court for the District of Columbia and the  
9 Supreme Court of the United States to advance on  
10 the docket and to expedite to the greatest possible  
11 extent the disposition of the action and appeal.

12       (b) INTERVENTION BY MEMBERS OF CONGRESS.—In  
13 any action in which the constitutionality of any provision  
14 of this Act or any amendment made by this Act is raised  
15 (including but not limited to an action described in sub-  
16 section (a)), any Member of the House of Representatives  
17 (including a Delegate or Resident Commissioner to Con-  
18 gress) or Senate shall have the right to intervene either  
19 in support of or opposition to the position of a party to  
20 the case regarding the constitutionality of the provision  
21 or amendment. To avoid duplication of efforts and reduce  
22 the burdens placed on the parties to the action, the court  
23 in any such action may make such orders as it considers  
24 necessary, including orders to require intervenors taking

1 similar positions to file joint papers or to be represented  
2 by a single attorney at oral argument.

3 (c) CHALLENGE BY MEMBERS OF CONGRESS.—Any  
4 Member of Congress may bring an action, subject to the  
5 special rules described in subsection (a), for declaratory  
6 or injunctive relief to challenge the constitutionality of any  
7 provision of this Act or any amendment made by this Act.

8 (d) APPLICABILITY.—

9 (1) INITIAL CLAIMS.—With respect to any ac-  
10 tion initially filed on or before December 31, 2006,  
11 the provisions of subsection (a) shall apply with re-  
12 spect to each action described in such subsection.

13 (2) SUBSEQUENT ACTIONS.—With respect to  
14 any action initially filed after December 31, 2006,  
15 the provisions of subsection (a) shall not apply to  
16 any action described in such subsection unless the  
17 person filing such action elects such provisions to  
18 apply to the action.

19 **SEC. 6. EFFECTIVE DATE.**

20 The amendments made by this Act shall take effect  
21 on the date which is 60 days after the date of the enact-  
22 ment of this Act.

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