

109TH CONGRESS
2D SESSION

S. 2511

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.

IN THE SENATE OF THE UNITED STATES

APRIL 5, 2006

Mr. MCCAIN introduced the following bill; which was read twice and referred to the Committee on Rules and Administration

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 2006”.

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—

5 (1) by striking the period at the end of sub-
 6 paragraph (C) and inserting “; or”; and

7 (2) by adding at the end the following:

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

9 (b) DEFINITION OF APPLICABLE 527 ORGANIZA-
 10 TION.—Section 301 of such Act (2 U.S.C. 431) is amend-
 11 ed by adding at the end the following new paragraph:

12 “(27) APPLICABLE 527 ORGANIZATION.—

13 “(A) IN GENERAL.—For purposes of para-
 14 graph (4)(D), the term ‘applicable 527 organi-
 15 zation’ means a committee, club, association, or
 16 group of persons that—

17 “(i) has given notice to the Secretary
 18 of the Treasury under section 527(i) of the
 19 Internal Revenue Code of 1986 that it is
 20 to be treated as an organization described
 21 in section 527 of such Code; and

22 “(ii) is not described in subparagraph
 23 (B).

24 “(B) EXCEPTED ORGANIZATIONS.—A com-
 25 mittee, club, association, or other group of per-
 26 sons described 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;

13 “(iii) an organization which is a com-
14 mittee, club, association, or other group
15 that consists solely of candidates for State
16 or local office, individuals holding State or
17 local office, or any combination of either,
18 but only if the organization refers only to
19 one or more non-Federal candidates or ap-
20 plicable State or local issues in all of its
21 voter drive activities and does not refer to
22 a Federal candidate or a political party in
23 any of its voter drive activities; or

24 “(iv) an organization described in sub-
25 paragraph (C).

“(C) APPLICABLE ORGANIZATION.—For purposes of subparagraph (B)(iv), an organization described in this subparagraph is a committee, club, association, or other group of persons whose election or nomination activities relate exclusively to—

“(i) elections where no candidate for Federal office appears on the ballot; or

“(ii) one or more of the following purposes:

“(I) Influencing the selection, nomination, election, or appointment of one or more candidates to non-Federal offices.

“(II) Influencing one or more applicable State or local issues.

“(III) Influencing the selection, appointment, nomination, or confirmation of one or more individuals to non-elected offices.

“(D) EXCLUSIVITY TEST.—A committee, club, association, or other group of persons shall not be treated as meeting the exclusivity requirement of subparagraph (C) if it makes

1 disbursements aggregating more than \$1,000
2 for any of the following:

3 “(i) A public communication that pro-
4 motes, supports, attacks, or opposes a
5 clearly identified candidate for Federal of-
6 fice during the 1-year period ending on the
7 date of the general election for the office
8 sought by the clearly identified candidate
9 (or, if a runoff election is held with respect
10 to such general election, on the date of the
11 runoff election).

12 “(ii) Any voter drive activity during a
13 calendar year, except that no disburse-
14 ments for any voter drive activity shall be
15 taken into account under this subpara-
16 graph if the committee, club, association,
17 or other group of persons during such cal-
18 endar year—

19 “(I) makes disbursements for
20 voter drive activities with respect to
21 elections in only 1 State and complies
22 with all applicable election laws of
23 that State, including laws related to
24 registration and reporting require-
25 ments and contribution limitations;

1 “(II) refers to one or more non-
2 Federal candidates or applicable State
3 or local issues in all of its voter drive
4 activities and does not refer to any
5 Federal candidate or any political
6 party in any of its voter drive activi-
7 ties;

8 “(III) does not have a candidate
9 for Federal office, an individual who
10 holds any Federal office, a national
11 political party, or an agent of any of
12 the foregoing, control or materially
13 participate in the direction of the or-
14 ganization, solicit contributions to the
15 organization (other than funds which
16 are described under clauses (i) and
17 (ii) of section 323(e)(1)(B)), or direct
18 disbursements, in whole or in part, by
19 the organization; and

20 “(IV) makes no contributions to
21 Federal candidates.

22 “(E) CERTAIN REFERENCES TO FEDERAL
23 CANDIDATES NOT TAKEN INTO ACCOUNT.—For
24 purposes of subparagraphs (B)(iii) and
25 (D)(ii)(II), a voter drive activity shall not be

1 treated as referring to a clearly identified Fed-
 2 eral candidate if the only reference to the can-
 3 didate in the activity is—

4 “(i) a reference in connection with an
 5 election for a non-Federal office in which
 6 such Federal candidate is also a candidate
 7 for such non-Federal office; or

8 “(ii) a reference to the fact that the
 9 candidate has endorsed a non-Federal can-
 10 didate or has taken a position on an appli-
 11 cable State or local issue, including a ref-
 12 erence that constitutes the endorsement or
 13 position itself.

14 “(F) CERTAIN REFERENCES TO POLITICAL
 15 PARTIES NOT TAKEN INTO ACCOUNT.—For pur-
 16 poses of subparagraphs (B)(iii) and (D)(ii)(II),
 17 a voter drive activity shall not be treated as re-
 18 ferring to a political party if the only reference
 19 to the party in the activity is—

20 “(i) a reference for the purpose of
 21 identifying a non-Federal candidate;

22 “(ii) a reference for the purpose of
 23 identifying the entity making the public
 24 communication or carrying out the voter
 25 drive activity; or

“(iii) a reference in a manner or context that does not reflect support for or opposition to a Federal candidate or candidates and does reflect support for or opposition to a State or local candidate or candidates or an applicable State or local issue.

“(G) APPLICABLE STATE OR LOCAL ISSUE.—For purposes of this paragraph, the term ‘applicable State or local issue’ means any State or local ballot initiative, State or local referendum, State or local constitutional amendment, State or local bond issue, or other State or local ballot issue.”.

(c) DEFINITION OF VOTER DRIVE ACTIVITY.—Section 301 of such Act (2 U.S.C. 431), as amended by subsection (b), is further amended by adding at the end the following new paragraph:

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

“(A) Voter registration activity.

1 “(B) Voter identification.

2 “(C) Get-out-the-vote activity.

3 “(D) Generic campaign activity.

4 “(E) Any public communication related to
5 activities described in subparagraphs (A)
6 through (D).

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

9 (d) REGULATIONS.—The Federal Election Commis-
10 sion shall promulgate regulations to implement this sec-
11 tion not later than 60 days after the date of enactment
12 of this Act.

13 (e) EFFECTIVE DATE.—The amendments made by
14 this section shall take effect on the date which is 60 days
15 after the date of enactment of this Act.

16 **SEC. 3. RULES FOR ALLOCATION OF EXPENSES BETWEEN**
17 **FEDERAL AND NON-FEDERAL ACTIVITIES.**

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

21 **“SEC. 325. ALLOCATION AND FUNDING RULES FOR CER-**
22 **TAIN EXPENSES RELATING TO FEDERAL AND**
23 **NON-FEDERAL ACTIVITIES.**

24 “(a) IN GENERAL.—In the case of any disbursements
25 by any political committee that is a separate segregated

1 fund or nonconnected committee for which allocation rules
 2 are provided under subsection (b)—

3 “(1) the disbursements shall be allocated be-
 4 tween Federal and non-Federal accounts in accord-
 5 ance with this section and regulations prescribed by
 6 the Commission; and

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

10 “(b) COSTS TO BE ALLOCATED AND ALLOCATION
 11 RULES.—

12 “(1) IN GENERAL.—Disbursements by any sep-
 13 arate segregated fund or nonconnected committee,
 14 other than an organization described in section
 15 323(b)(1), for any of the following categories of ac-
 16 tivity shall be allocated as follows:

17 “(A) 100 percent of the expenses for public
 18 communications or voter drive activities that
 19 refer to one or more clearly identified Federal
 20 candidates, but do not refer to any clearly iden-
 21 tified non-Federal candidates, shall be paid with
 22 funds from a Federal account, without regard
 23 to whether the communication refers to a polit-
 24 ical party.

1 “(B) At least 50 percent, or a greater per-
2 centage if the Commission so determines by
3 regulation, of the expenses for public commu-
4 nications and voter drive activities that refer to
5 one or more clearly identified candidates for
6 Federal office and one or more clearly identified
7 non-Federal candidates shall be paid with funds
8 from a Federal account, without regard to
9 whether the communication refers to a political
10 party.

11 “(C) At least 50 percent, or a greater per-
12 centage if the Commission so determines by
13 regulation, of the expenses for public commu-
14 nications or voter drive activities that refer to
15 a political party, but do not refer to any clearly
16 identified Federal or non-Federal candidate,
17 shall be paid with funds from a Federal ac-
18 count, except that this paragraph shall not
19 apply to communications or activities that re-
20 late exclusively to elections where no candidate
21 for Federal office appears on the ballot.

22 “(D) At least 50 percent, or a greater per-
23 centage if the Commission so determines by
24 regulation, of the expenses for public commu-
25 nications or voter drive activities that refer to

1 a political party and refer to one or more clear-
2 ly identified non-Federal candidates, but do not
3 refer to any clearly identified Federal can-
4 didates, shall be paid with funds from a Federal
5 account, except that this paragraph shall not
6 apply to communications or activities that re-
7 late exclusively to elections where no candidate
8 for Federal office appears on the ballot.

9 “(E) Unless otherwise determined by the
10 Commission in its regulations, at least 50 per-
11 cent of any administrative expenses, including
12 rent, utilities, office supplies, and salaries not
13 attributable to a clearly identified candidate,
14 shall be paid with funds from a Federal ac-
15 count, except that for a separate segregated
16 fund such expenses may be paid instead by its
17 connected organization.

18 “(F) At least 50 percent, or a greater per-
19 centage if the Commission so determines by
20 regulation, of the direct costs of a fundraising
21 program or event, including disbursements for
22 solicitation of funds and for planning and ad-
23 ministration of actual fundraising events, where
24 Federal and non-Federal funds are collected
25 through such program or event shall be paid

1 with funds from a Federal account, except that
 2 for a separate segregated fund such costs may
 3 be paid instead by its connected organization.
 4 This paragraph shall not apply to any fund-
 5 raising solicitations or any other activity that
 6 constitutes a public communication.

7 “(2) CERTAIN REFERENCES TO FEDERAL CAN-
 8 DIDATES NOT TAKEN INTO ACCOUNT.—For purposes
 9 of paragraph (1), a public communication or voter
 10 drive activity shall not be treated as referring to a
 11 clearly identified Federal candidate if the only ref-
 12 erence to the candidate in the communication or ac-
 13 tivity is—

14 “(A) a reference in connection with an
 15 election for a non-Federal office in which such
 16 Federal candidate is also a candidate for such
 17 non-Federal office; or

18 “(B) a reference to the fact that the can-
 19 didate has endorsed a non-Federal candidate or
 20 has taken a position on an applicable State or
 21 local issue (as defined in section 301(27)(G)),
 22 including a reference that constitutes the en-
 23 dorsement or position itself.

24 “(3) CERTAIN REFERENCES TO POLITICAL PAR-
 25 TIES NOT TAKEN INTO ACCOUNT.—For purposes of

1 paragraph (1), a public communication or voter
 2 drive activity shall not be treated as referring to a
 3 political party if the only reference to the party in
 4 the communication or activity is—

5 “(A) a reference for the purpose of identi-
 6 fying a non-Federal candidate;

7 “(B) a reference for the purpose of identi-
 8 fying the entity making the public communica-
 9 tion or carrying out the voter drive activity; or

10 “(C) a reference in a manner or context
 11 that does not reflect support for or opposition
 12 to a Federal candidate or candidates and does
 13 reflect support for or opposition to a State or
 14 local candidate or candidates or an applicable
 15 State or local issue.

16 “(c) QUALIFIED NON-FEDERAL ACCOUNT.—

17 “(1) IN GENERAL.—For purposes of this sec-
 18 tion, the term ‘qualified non-Federal account’ means
 19 an account which consists solely of amounts—

20 “(A) that, subject to the limitations of
 21 paragraphs (2) and (3), are raised by the sepa-
 22 rate segregated fund or nonconnected com-
 23 mittee only from individuals, and

1 “(B) with respect to which all require-
 2 ments of Federal, State, or local law (including
 3 any law relating to contribution limits) are met.

4 “(2) LIMITATION ON INDIVIDUAL DONA-
 5 TIONS.—

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

11 “(B) AFFILIATION.—For purposes of this
 12 paragraph, all qualified non-Federal accounts of
 13 separate segregated funds or nonconnected
 14 committees which are directly or indirectly es-
 15 tablished, financed, maintained, or controlled by
 16 the same person or persons shall be treated as
 17 one account.

18 “(3) FUNDRAISING LIMITATION.—

19 “(A) IN GENERAL.—No donation to a
 20 qualified non-Federal account may be solicited,
 21 received, directed, transferred, or spent by or in
 22 the name of any person described in subsection
 23 (a) or (e) of section 323.

24 “(B) FUNDS NOT TREATED AS SUBJECT
 25 TO ACT.—Except as provided in subsection

1 (a)(2) and this subsection, any funds raised for
2 a qualified non-Federal account in accordance
3 with the requirements of this section shall not
4 be considered funds subject to the limitations,
5 prohibitions, and reporting requirements of this
6 Act for any purpose (including for purposes of
7 subsection (a) or (e) of section 323 or sub-
8 section (d)(1) of this section).

9 “(d) DEFINITIONS.—

10 “(1) FEDERAL ACCOUNT.—The term ‘Federal
11 account’ means an account which consists solely of
12 contributions subject to the limitations, prohibitions,
13 and reporting requirements of this Act. Nothing in
14 this section or in section 323(b)(2)(B)(iii) shall be
15 construed to infer that a limit other than the limit
16 under section 315(a)(1)(C) applies to contributions
17 to the account.

18 “(2) NONCONNECTED COMMITTEE.—The term
19 ‘nonconnected committee’ shall not include a polit-
20 ical committee of a political party.

21 “(3) VOTER DRIVE ACTIVITY.—The term ‘voter
22 drive activity’ has the meaning given such term in
23 section 301(28).”.

1 (b) REPORTING REQUIREMENTS.—Section 304(e) of
 2 the Federal Election Campaign Act of 1971 (2 U.S.C.
 3 434(e)) is amended—

4 (1) by redesignating paragraphs (3) and (4) as
 5 paragraphs (4) and (5); and

6 (2) by inserting after paragraph (2) the fol-
 7 lowing new paragraph:

8 “(3) RECEIPTS AND DISBURSEMENTS FROM
 9 QUALIFIED NON-FEDERAL ACCOUNTS.—In addition
 10 to any other reporting requirement applicable under
 11 this Act, a political committee to which section
 12 325(a) applies shall report all receipts and disburse-
 13 ments from a qualified non-Federal account (as de-
 14 fined in section 325(c)).”.

15 (c) REGULATIONS.—The Federal Election Commis-
 16 sion shall promulgate regulations to implement the amend-
 17 ments made by this section not later than 180 days after
 18 the date of enactment of this Act.

19 (d) EFFECTIVE DATE.—The amendments made by
 20 this section shall take effect on the date which is 180 days
 21 after the date of enactment of this Act.

22 **SEC. 4. CONSTRUCTION.**

23 No provision of this Act, or amendment made by this
 24 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, 2008,
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, 2008,
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. SEVERABILITY.**

20 If any provision of this Act or any amendment made
21 by this Act, or the application of a provision or amend-
22 ment to any person or circumstance, is held to be uncon-
23 stitutional, the remainder of this Act and the amendments
24 made by this Act, and the application of the provisions

- 1 and amendments to any person or circumstance, shall not
- 2 be affected by the holding.

