

110TH CONGRESS
1ST SESSION

S. 463

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

JANUARY 31, 2007

Mr. MCCAIN (for himself and Mr. FEINGOLD) 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 2007”.

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 paragraph
14 (4)(D), the term ‘applicable 527 organization’ means
15 a committee, club, association, or group of persons
16 that—

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

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

23 “(B) EXCEPTED ORGANIZATIONS.—A com-
24 mittee, club, association, or other group of persons
25 described in this subparagraph is—

1 “(i) an organization described in section
 2 527(i)(5) of the Internal Revenue Code of
 3 1986;

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

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

22 “(iv) an organization described in subpara-
 23 graph (C).

24 “(C) APPLICABLE ORGANIZATION.—For pur-
 25 poses of subparagraph (B)(iv), an organization de-

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

“(i) A public communication that promotes, supports, attacks, or opposes a clearly identified candidate for Federal office during the 1-year period ending on the date of the general election for the office sought by the clearly

identified candidate (or, if a runoff election is held with respect to such general election, on the date of the runoff election).

“(ii) Any voter drive activity during a calendar year, except that no disbursements for any voter drive activity shall be taken into account under this subparagraph if the committee, club, association, or other group of persons during such calendar year—

“(I) makes disbursements for voter drive activities with respect to elections in only 1 State and complies with all applicable election laws of that State, including laws related to registration and reporting requirements and contribution limitations;

“(II) refers to one or more non-Federal candidates or applicable State or local issues in all of its voter drive activities and does not refer to any Federal candidate or any political party in any of its voter drive activities;

“(III) does not have a candidate for Federal office, an individual who holds any Federal office, a national political party, or an agent of any of the foregoing, control or

1 materially participate in the direction of
 2 the organization, solicit contributions to
 3 the organization (other than funds which
 4 are described under clauses (i) and (ii) of
 5 section 323(e)(1)(B)), or direct disburse-
 6 ments, in whole or in part, by the organi-
 7 zation; and

8 “(IV) makes no contributions to Fed-
 9 eral candidates.

10 “(E) CERTAIN REFERENCES TO FEDERAL CAN-
 11 DIDATES NOT TAKEN INTO ACCOUNT.—For purposes
 12 of subparagraphs (B)(iii) and (D)(ii)(II), a voter
 13 drive activity shall not be treated as referring to a
 14 clearly identified Federal candidate if the only ref-
 15 erence to the candidate in the activity is—

16 “(i) a reference in connection with an elec-
 17 tion for a non-Federal office in which such Fed-
 18 eral candidate is also a candidate for such non-
 19 Federal office; or

20 “(ii) a reference to the fact that the can-
 21 didate has endorsed a non-Federal candidate or
 22 has taken a position on an applicable State or
 23 local issue, including a reference that con-
 24 stitutes the endorsement or position itself.

1 “(F) CERTAIN REFERENCES TO POLITICAL
 2 PARTIES NOT TAKEN INTO ACCOUNT.—For purposes
 3 of subparagraphs (B)(iii) and (D)(ii)(II), a voter
 4 drive activity shall not be treated as referring to a
 5 political party if the only reference to the party in
 6 the activity is—

7 “(i) a reference for the purpose of identi-
 8 fying a non-Federal candidate;

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

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

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

24 (c) DEFINITION OF VOTER DRIVE ACTIVITY.—Sec-
 25 tion 301 of such Act (2 U.S.C. 431), as amended by sub-

1 section (b), is further amended by adding at the end the
 2 following new paragraph:

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

9 “(A) Voter registration activity.

10 “(B) Voter identification.

11 “(C) Get-out-the-vote activity.

12 “(D) Generic campaign activity.

13 “(E) Any public communication related to ac-
 14 tivities described in subparagraphs (A) through (D).

15 Such term shall not include any activity described in sub-
 16 paragraph (A) or (B) of section 316(b)(2).”.

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

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

1 **“SEC. 325. ALLOCATION AND FUNDING RULES FOR CER-**
 2 **TAIN EXPENSES RELATING TO FEDERAL AND**
 3 **NON-FEDERAL ACTIVITIES.**

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

8 “(1) the disbursements shall be allocated be-
 9 tween Federal and non-Federal accounts in accord-
 10 ance with this section and regulations prescribed by
 11 the Commission; and

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

15 “(b) COSTS TO BE ALLOCATED AND ALLOCATION
 16 RULES.—

17 “(1) IN GENERAL.—Disbursements by any sep-
 18 arate segregated fund or nonconnected committee,
 19 other than an organization described in section
 20 323(b)(1), for any of the following categories of ac-
 21 tivity shall be allocated as follows:

22 “(A) 100 percent of the expenses for public
 23 communications or voter drive activities that
 24 refer to one or more clearly identified Federal
 25 candidates, but do not refer to any clearly iden-
 26 tified non-Federal candidates, shall be paid with

1 funds from a Federal account, without regard
2 to whether the communication refers to a polit-
3 ical party.

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

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

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

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

22 “(F) At least 50 percent, or a greater per-
23 centage if the Commission so determines by
24 regulation, of the direct costs of a fundraising
25 program or event, including disbursements for

1 solicitation of funds and for planning and ad-
 2 ministration of actual fundraising events, where
 3 Federal and non-Federal funds are collected
 4 through such program or event shall be paid
 5 with funds from a Federal account, except that
 6 for a separate segregated fund such costs may
 7 be paid instead by its connected organization.
 8 This paragraph shall not apply to any fund-
 9 raising solicitations or any other activity that
 10 constitutes a public communication.

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

18 “(A) a reference in connection with an
 19 election for a non-Federal office in which such
 20 Federal candidate is also a candidate for such
 21 non-Federal office; or

22 “(B) a reference to the fact that the can-
 23 didate has endorsed a non-Federal candidate or
 24 has taken a position on an applicable State or
 25 local issue (as defined in section 301(27)(G)),

1 including a reference that constitutes the en-
 2 dorsement or position itself.

3 “(3) CERTAIN REFERENCES TO POLITICAL PAR-
 4 TIES NOT TAKEN INTO ACCOUNT.—For purposes of
 5 paragraph (1), a public communication or voter
 6 drive activity shall not be treated as referring to a
 7 political party if the only reference to the party in
 8 the communication or activity is—

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

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

14 “(C) a reference in a manner or context
 15 that does not reflect support for or opposition
 16 to a Federal candidate or candidates and does
 17 reflect support for or opposition to a State or
 18 local candidate or candidates or an applicable
 19 State or local issue.

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

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

24 “(A) that, subject to the limitations of
 25 paragraphs (2) and (3), are raised by the sepa-

1 rate segregated fund or nonconnected com-
 2 mittee only from individuals, and

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

6 “(2) LIMITATION ON INDIVIDUAL DONA-
 7 TIONS.—

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

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

20 “(3) FUNDRAISING LIMITATION.—

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

1 “(B) FUNDS NOT TREATED AS SUBJECT
2 TO ACT.—Except as provided in subsection
3 (a)(2) and this subsection, any funds raised for
4 a qualified non-Federal account in accordance
5 with the requirements of this section shall not
6 be considered funds subject to the limitations,
7 prohibitions, and reporting requirements of this
8 Act for any purpose (including for purposes of
9 subsection (a) or (e) of section 323 or sub-
10 section (d)(1) of this section).

11 “(d) DEFINITIONS.—

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

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

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

1 (b) REPORTING REQUIREMENTS.—Section 304(e) of
 2 such Act (2 U.S.C. 434(e)) is amended—

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

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

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

14 **SEC. 4. CONSTRUCTION.**

15 No provision of this Act, or amendment made by this
 16 Act, shall be construed—

17 (1) as approving, ratifying, or endorsing a regu-
 18 lation promulgated by the Federal Election Commis-
 19 sion;

20 (2) as establishing, modifying, or otherwise af-
 21 fecting the definition of political organization for
 22 purposes of the Internal Revenue Code of 1986; or

23 (3) as affecting the determination of whether a
 24 group organized under section 501(c) of the Internal
 25 Revenue Code of 1986 is a political committee under

1 section 301(4) of the Federal Election Campaign
2 Act of 1971.

3 **SEC. 5. JUDICIAL REVIEW.**

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

9 (1) The action shall be filed in the United
10 States District Court for the District of Columbia
11 and shall be heard by a 3-judge court convened pur-
12 suant to section 2284 of title 28, United States
13 Code.

14 (2) A copy of the complaint shall be delivered
15 promptly to the Clerk of the House of Representa-
16 tives and the Secretary of the Senate.

17 (3) A final decision in the action shall be re-
18 viewable only by appeal directly to the Supreme
19 Court of the United States. Such appeal shall be
20 taken by the filing of a notice of appeal within 10
21 days, and the filing of a jurisdictional statement
22 within 30 days, of the entry of the final decision.

23 (4) It shall be the duty of the United States
24 District Court for the District of Columbia and the
25 Supreme Court of the United States to advance on

1 the docket and to expedite to the greatest possible
2 extent the disposition of the action and appeal.

3 (b) INTERVENTION BY MEMBERS OF CONGRESS.—In
4 any action in which the constitutionality of any provision
5 of this Act or any amendment made by this Act is raised
6 (including but not limited to an action described in sub-
7 section (a)), any Member of the House of Representatives
8 (including a Delegate or Resident Commissioner to Con-
9 gress) or Senate shall have the right to intervene either
10 in support of or opposition to the position of a party to
11 the case regarding the constitutionality of the provision
12 or amendment. To avoid duplication of efforts and reduce
13 the burdens placed on the parties to the action, the court
14 in any such action may make such orders as it considers
15 necessary, including orders to require intervenors taking
16 similar positions to file joint papers or to be represented
17 by a single attorney at oral argument.

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

23 (d) APPLICABILITY.—

24 (1) INITIAL CLAIMS.—With respect to any ac-
25 tion initially filed on or before December 31, 2010,

1 the provisions of subsection (a) shall apply with re-
2 spect to each action described in such subsection.

3 (2) SUBSEQUENT ACTIONS.—With respect to
4 any action initially filed after December 31, 2010,
5 the provisions of subsection (a) shall not apply to
6 any action described in such subsection unless the
7 person filing such action elects such provisions to
8 apply to the action.

9 **SEC. 6. EFFECTIVE DATE.**

10 The amendments made by this Act shall take effect
11 on the date of the enactment of this Act.

○