



Legislative Bulletin.....April 5, 2006

Contents:
H.R. 513 — 527 Reform Act

Summary of the Bills Under Consideration Today:

Total Number of New Government Programs: 0

Total Cost of Discretionary Authorizations: \$1 million in the first year and insignificant amounts afterwards

Effect on Revenue: \$0

Total Change in Mandatory Spending: \$0

Total New State & Local Government Mandates: 0

Total New Private Sector Mandates: Numerous

Number of Bills Without Committee Reports: 0

Number of Reported Bills that Don't Cite Specific Clauses of Constitutional Authority: 0

H.R. 513 — 527 Reform Act (Shays, R-CT)

Order of Business: H.R. 513 is scheduled to be considered on the House floor on Wednesday, April 5, 2006, subject to a closed rule (H.Res. 755) allowing no amendments. The rule will self-execute (i.e. automatically add to the underlying bill) a provision by Rep. Dreier (R-CA), summarized below. **Note:** H.R. 513, as amended by the self-executing amendment, is substantively identical to Title VI of House Leadership's lobbying reform bill (H.R. 4975).

Background: H.R. 513 has been referred to as "Shays-Meehan Part 2," in reference to the last major campaign finance regulation bill that became law (The Bipartisan Campaign

Reform Act, Public Law 107-155), which also was a Shays-Meehan bill. To see how Members voted on the first round of Shays-Meehan, visit this webpage:
<http://clerk.house.gov/evs/2002/roll034.xml>

Many supporters of H.R. 513 cite the need to shut down George Soros' 527, MoveOn.org, as justification for this legislation. According to the IRS website, the MoveOn.org Voter Fund (their 527) reported just \$14,544 in total expenditures and zero contributions over \$200 during the last six months of 2005. To view the documentation, visit this webpage:
<http://forms.irs.gov/politicalOrgsSearch/search/Print.action?formId=18641&formType=E72>

But MoveOn.org's PAC, which would NOT be affected by H.R. 513, reported \$3,912,559 in funds raised during the last half of 2005 and \$1,245,463 cash-on-hand as of Dec 31, 2005. To view the documentation, visit this webpage:
http://images.nictusa.com/cgi-bin/fecimg/?_26990181462+0 (page 2)

Summary: In short, H.R. 513 would make more independent citizens' advocacy groups organized under Section 527 of the Internal Revenue Code subject to the most restrictive federal campaign finance regulations.

Specifically, the bill:

- Amends the Federal Election Campaign Act of 1971 (FECA) to include any applicable 527 organization in the definition of "political committee."
- Exempts from the definition of a 527 organization under FECA a committee, club, association, or other group of persons that
 - is a 501(c);
 - will not have more than \$25,000 in receipts in a year;
 - is a political committee of a state or local candidate or which is a state or local committee of a political party;
 - is organized, operated, and makes disbursements exclusively for paying certain tax-deductible business expenses or expenses of a certain kind of political newsletter fund;
 - consists solely of candidates for or individuals holding state or local office, but only if the organization refers only to one or more non-federal candidates or applicable state or local issues in all of its voter drive activities, without reference to any federal candidate; or
 - engages in election or nomination activities relating exclusively to elections where no federal candidate appears on the ballot, or to influencing the selection, nomination, election, or appointment of one or more candidates to non-federal offices or individuals to non-elected offices, or to influencing one or more applicable state or local issues.

- Denies the above exclusivity test for any committee, club, association, or other group of persons that makes disbursements aggregating more than \$1,000 for:
 - a public communication that promotes, supports, attacks, or opposes a clearly identified federal candidate during the year leading up to the relevant general or runoff election; or
 - any voter drive activity during a calendar year, except if the group makes a voter drive in only one state with no reference to, or affiliation with, federal candidates or national parties and makes no contributions to federal candidates.

- Allows organizations to avoid FECA regulation if they, as part of a voter drive, refer to a federal candidate only in connection with an election for a non-federal office in which such federal candidate is also a candidate or in connection with the fact that the candidate has endorsed a non-federal candidate or has taken a position on an applicable state or local issue.

- Allows organizations to avoid FECA regulation if they, as part of a voter drive, refer to a national party only:
 - for the purpose of identifying a non-federal candidate;
 - for the purpose of identifying the entity making the public communication or carrying out the voter drive activity; or
 - in a manner or context that does not reflect support for or opposition to a federal candidate and does reflect support for or opposition to a state or local candidate or an applicable state or local issue.

- Defines “voter drive activity” as any of the following activities conducted in connection with an election in which a federal candidate appears on the ballot (regardless of whether a state or local candidate also appears on the ballot):
 - voter registration activity;
 - voter identification;
 - get-out-the-vote activity;
 - generic campaign activity; or
 - any public communication related to these four activities.

- Sets the allocation and funding rules for certain expenses relating to a 527’s federal and non-federal activities, as follows:
 - 100% of the expenses for public communications or voter drive activities that refer to one or more clearly identified federal candidates, but do not refer to any clearly identified non-federal candidates, would have to be paid with funds from a federal account;
 - At least 50% (or greater if the FEC so determines by regulation) of the expenses for public communications and voter drive activities that refer to one or more clearly identified federal candidate(s) and one or more clearly identified non-federal candidate(s) would have to be paid with funds from a federal account;
 - At least 50% (or greater if the FEC so determines by regulation) of the expenses for public communications or voter drive activities that refer to a

political party, but do not refer to any clearly identified federal or non-federal candidate, would have to be paid with funds from a federal account, except if the communications or activities relate exclusively to elections where no federal candidate appears on the ballot;

- At least 50% (or greater if the FEC so determines by regulation) of the expenses for public communications or voter drive activities that refer to a political party and refer to one or more clearly identified non-federal candidates, but do not refer to any clearly identified federal candidates, would have to be paid with funds from a federal account, except if the communications or activities relate exclusively to elections where no candidate for federal office appears on the ballot;
- At least 50% (unless otherwise determined by the FEC) of any administrative expenses, including rent, utilities, office supplies, and salaries not attributable to a clearly identified candidate, would have to be paid with funds from a federal account; and
- At least 50% (or greater if the FEC so determines by regulation) of the direct costs of a fundraising program or event, including disbursements for solicitation of funds and for planning and administration of actual fundraising events, where federal and non-federal funds are collected through such program or event (unless the solicitations or related activities constitute a public communication—then it's 100% federal).

- Defines the term “federal account” as an account that consists solely of contributions subject to FECA’s limitations, prohibitions, and reporting requirements. Funds in “nonfederal accounts” could only be raised from individuals but would not otherwise be subject to FECA’s limitations and prohibitions (yet would be subject to certain reporting requirements).
- For purposes of the allocation provisions detailed above, a public communication or voter drive activity would not be treated as referring to a clearly identified federal candidate if it refers to a federal candidate only in connection with an election for a non-federal office in which such federal candidate is also a candidate or in connection with the fact that the candidate has endorsed a non-federal candidate or has taken a position on an applicable state or local issue.
- For purposes of the allocation provisions just detailed, a public communication or voter drive activity would not be treated as referring to a national party if such reference is only:
 - for the purpose of identifying a non-federal candidate;
 - for the purpose of identifying the entity making the public communication or carrying out the voter drive activity; or
 - in a manner or context that does not reflect support for or opposition to a federal candidate and does reflect support for or opposition to a state or local candidate or an applicable state or local issue.

- Prohibits a non-federal account from accepting more than \$25,000 from any one individual in any calendar year.
- Deems as one account the non-federal accounts of 527s that are directly or indirectly established, financed, maintained, or controlled by the same person or persons.
- Prohibits donations to a qualified non-federal account from being solicited, received, directed, transferred, or spent by or in the name of any federal officeholder or any agent, officer, or employee of a national party committee.
- Clarifies that no provision of this legislation should be construed as:
 - approving, ratifying, or endorsing an FEC regulation;
 - establishing, modifying, or otherwise affecting the definition of “political organization” for purposes of the Internal Revenue Code of 1986; or
 - affecting the determination of whether a 501(c) is a political committee under FECA.
- Prescribes special rules for legal actions brought before 2009 to challenge the constitutionality of any provision in this legislation, including requiring that such action be filed in the U.S. District Court for the District of Columbia, be heard in expedited fashion by a three-judge panel, and be appealed in expedited fashion directly to, and only by, the U.S. Supreme Court.
- Explicitly authorizes Members of Congress to bring an action challenging the constitutionality of this legislation or otherwise intervene in any such action brought against it. The court could require interveners taking similar positions to file joint papers or to be represented by a single attorney at oral argument.

Summary of the Dreier amendment that will self-execute onto H.R. 513 upon passage of the rule (H.Res. 755):

- Removes the party coordinated expenditure limits in current law, so that parties can spend an unlimited amount of money on their own candidates—even when they coordinate such spending with the affected candidates. This is identical to section 3 of “Pence-Wynn” (H.R. 1316), as it was reported from the House Administration Committee. *[Current law allows parties to spend an unlimited amount of INDEPENDENT expenditures on their candidates, but if parties COORDINATE with their own candidates on spending, they can only spend certain limited amounts per House or Senate candidate.]*

Additional Background: A 527 organization, as defined by section 527 of the Internal Revenue Code, is a party, committee, association, fund, or other organization (whether or not incorporated) organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures, or both, for influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any federal, state, or local public office or office in a political organization, or the election of presidential

or vice-presidential electors (whether or not such individuals or electors are selected, nominated, elected, or appointed).

Under current law, independent 527s (i.e. 527s that are not PACs or political parties or otherwise connected to officeholders) can raise individual and corporate funds (though corporate funds can't be used for electioneering communications) without limit (as long as the contributions were not solicited in a way to indicate that they'd be used in federal elections). 527s have to disclose donors over \$200 to the IRS (and the FEC for electioneering communications).

Under current law:

- 527s can engage in lobbying, educational, political/campaign activities (not express advocacy of federal candidates), and electioneering communications (using individual contributions only).
- 527s cannot engage in express advocacy of federal candidates, make contributions to candidates, or use corporate contributions to make electioneering communications.
- Non-political expenditures and interest income greater than \$100 per year are taxable for 527s.

When the FEC promulgated regulations for the first round of Shays-Meehan (Public Law 107-155), it deliberately left independent 527s out of the regulations, saying it was not clear that Congress had intended to include 527s in the new campaign finance law. Recently, a federal judge has ordered the FEC to either provide stronger justification for not including 527s in its regulations, or to promulgate regulations that incorporate 527s into the current Shays-Meehan law.

To read the RSC document, "Fast Facts on 527s," visit this webpage:
http://www.house.gov/pence/rsc/doc/FastFacts_527s.doc.

To read the RSC document, "527 v. 501(c)4," which compares what 527s can do now to what 501(c)4s (a likely focus of future campaign activity) can do now, visit this webpage:
http://www.house.gov/pence/rsc/doc/040306_527v501c4.doc.

To read the RSC document, "Where Will 527s Go?" which highlights two examples of well-funded entities that will continue to play a large role in the campaign system if 527s cease to function, visit this webpage:
http://www.house.gov/pence/rsc/doc/040306_527swherewilltheygo.doc.

Outside Organizations:

- H.R. 513 is supported by groups typically associated with an increased regulatory approach to campaign finance, such as Democracy 21 and Common Cause, among others.
- The following conservative groups are publicly **opposing** Shays-Meehan: Dick Armey's FreedomWorks, Pat Toomey's Club for Growth, National Taxpayers Union, Council for Citizens Against Government Waste, American Conservative Union,

Americans for Tax Reform, Traditional Values Coalition, National Tax Limitation Committee, Coalitions for America, Competitive Enterprise Institute, 60 Plus Association, Center for Individual Freedom, Black America's PAC, Institute for Liberty, RightMarch.com, LobbySense.com, CatholicVote.org, Tradition, Family, Property, Inc., Let Freedom Ring, Coalition for a Fair Judiciary, American Coalition for Fathers and Children, Illinois Family Institute, Maryland Taxpayers Association, Inc., the Liberty Committee, Republican Leadership Coalition, and Government Is Not God - PAC.

- The Club for Growth, Citizens Against Government Waste, and the National Taxpayers Union have said they will include the vote on final passage of H.R. 513 in their annual vote ratings of Congress.
- *The Wall Street Journal* and *National Review* have opined against H.R. 513.
- H.R. 513 is also opposed by liberal groups, such as America Votes and the Sierra Club.

Committee Action: On February 2, 2005, H.R. 513 was referred to the Committee on House Administration, which, on June 29, 2005, marked up and ordered the bill reported to the full House by a vote of 5-3.

Possible Conservative Concerns: Some conservatives might be concerned about:

- the new and complex federal regulations placed on citizens' advocacy groups commonly known as 527s;
- **a large expansion of the original Shays-Meehan law, against which most conservatives voted;** and
- the attempt by some supporters of H.R. 513 to "shut down" an entire class of legally operating citizens' advocacy groups.

Administration Position: The Administration has expressed support for H.R. 513.

Cost to Taxpayers: CBO estimates that H.R. 513 would authorize \$1 million in the first year and insignificant amounts in subsequent years.

Does the Bill Expand the Size and Scope of the Federal Government?: Yes, the bill would expand federal regulations to limit the speech and activities of certain nonprofit entities organized under Section 527 of the tax code.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: Yes, the bill would require independent 527s to register as political committees with the FEC and comply with a litany of federal campaign finance regulations, including certain disclosure requirements and limits on contributions. The bill contains no intergovernmental mandates.

Constitutional Authority: The House Administration Committee, in House Report 109-181, cites constitutional authority in Article I, Section 4, Clause 1 (the congressional power to make or alter regulations regarding the times, places, and manner of holding elections for senators and representatives). The First Amendment to the Constitution states that, “Congress shall make no law...abridging the freedom of speech....”

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