

Union Calendar No. 113

109TH CONGRESS
1ST SESSION

H. R. 513

[Report No. 109-181]

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 HOUSE OF REPRESENTATIVES

FEBRUARY 2, 2005

Mr. SHAYS (for himself and Mr. MEEHAN) introduced the following bill; which was referred to the Committee on House Administration

JULY 22, 2005

Additional sponsors: Mr. CASTLE, Mr. BASS, Mr. BOYD, Mr. LEWIS of Georgia, Mr. SIMMONS, and Mr. OBERSTAR

Deleted sponsors: Mr. BISHOP of New York (added February 17, 2005; deleted April 13, 2005), Mr. McNULTY (added April 6, 2005; deleted May 3, 2005), Mr. BECERRA (added April 6, 2005; deleted April 28, 2005), and Ms. LEE (added April 27, 2005; deleted May 5, 2005)

JULY 22, 2005

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italic*]

[For text of introduced bill, see copy of bill as introduced on February 2, 2005]

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”.*

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

7 *(a) DEFINITION OF POLITICAL COMMITTEE.—Section*
 8 *301(4) of the Federal Election Campaign Act of 1971 (2*
 9 *U.S.C. 431(4)) is amended—*

10 *(1) by striking the period at the end of subpara-*
 11 *graph (C) and inserting “; or”; and*

12 *(2) by adding at the end the following:*

13 *“(D) any applicable 527 organization.”.*

14 *(b) DEFINITION OF APPLICABLE 527 ORGANIZA-*
 15 *TION.—Section 301 of such Act (2 U.S.C. 431) is amended*
 16 *by adding at the end the following new paragraph:*

17 *“(27) APPLICABLE 527 ORGANIZATION.—*

18 *“(A) IN GENERAL.—For purposes of paragraph*
 19 *(4)(D), the term ‘applicable 527 organization’ means*
 20 *a committee, club, association, or group of persons*
 21 *that—*

22 *“(i) has given notice to the Secretary of the*
 23 *Treasury under section 527(i) of the Internal*
 24 *Revenue Code of 1986 that it is to be treated as*

1 *an organization described in section 527 of such*
2 *Code; and*

3 “(i) *is not described in subparagraph (B).*

4 “(B) *EXCEPTED ORGANIZATIONS.—A committee,*
5 *club, association, or other group of persons described*
6 *in this subparagraph is—*

7 “(i) *an organization described in section*
8 *527(i)(5) of the Internal Revenue Code of 1986;*

9 “(ii) *an organization which is a committee,*
10 *club, association or other group of persons that*
11 *is organized, operated, and makes disbursements*
12 *exclusively for paying expenses described in the*
13 *last sentence of section 527(e)(2) of the Internal*
14 *Revenue Code of 1986 or expenses of a newsletter*
15 *fund described in section 527(g) of such Code;*

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

1 “(iv) an organization described in subpara-
2 graph (C).

3 “(C) *APPLICABLE ORGANIZATION.*—For purposes
4 of subparagraph (B)(iv), an organization described in
5 this subparagraph is a committee, club, association,
6 or other group of persons whose election or nomina-
7 tion activities relate exclusively to—

8 “(i) elections where no candidate for Fed-
9 eral office appears on the ballot; or

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

11 “(I) Influencing the selection, nomina-
12 tion, election, or appointment of one or
13 more candidates to non-Federal offices.

14 “(II) Influencing one or more applica-
15 ble State or local issues.

16 “(III) Influencing the selection, ap-
17 pointment, nomination, or confirmation of
18 one or more individuals to non-elected of-
19 fices.

20 “(D) *EXCLUSIVITY TEST.*—A committee, club, as-
21 sociation, or other group of persons shall not be treat-
22 ed as meeting the exclusivity requirement of subpara-
23 graph (C) if it makes disbursements aggregating more
24 than \$1,000 for any of the following:

1 “(i) A public communication that promotes,
2 supports, attacks, or opposes a clearly identified
3 candidate for Federal office during the 1-year
4 period ending on the date of the general election
5 for the office sought by the clearly identified can-
6 didate (or, if a runoff election is held with re-
7 spect to such general election, on the date of the
8 runoff election).

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

15 “(I) makes disbursements for voter
16 drive activities with respect to elections in
17 only 1 State and complies with all applica-
18 ble election laws of that State, including
19 laws related to registration and reporting
20 requirements and contribution limitations;

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

1 *any political party in any of its voter drive*
2 *activities;*

3 “(III) *does not have a candidate for*
4 *Federal office, an individual who holds any*
5 *Federal office, a national political party, or*
6 *an agent of any of the foregoing, control or*
7 *materially participate in the direction of*
8 *the organization, solicit contributions to the*
9 *organization (other than funds which are*
10 *described under clauses (i) and (ii) of sec-*
11 *tion 323(e)(1)(B)), or direct disbursements,*
12 *in whole or in part, by the organization;*
13 *and*

14 “(IV) *makes no contributions to Fed-*
15 *eral candidates.*

16 “(E) *CERTAIN REFERENCES TO FEDERAL CAN-*
17 *DIDATES NOT TAKEN INTO ACCOUNT.—For purposes of*
18 *subparagraphs (B)(iii) and (D)(ii)(II), a voter drive*
19 *activity shall not be treated as referring to a clearly*
20 *identified Federal candidate if the only reference to*
21 *the candidate in the activity is—*

22 “(i) *a reference in connection with an elec-*
23 *tion for a non-Federal office in which such Fed-*
24 *eral candidate is also a candidate for such non-*
25 *Federal office; or*

1 “(ii) a reference to the fact that the can-
2 didate has endorsed a non-Federal candidate or
3 has taken a position on an applicable State or
4 local issue, including a reference that constitutes
5 the endorsement or position itself.

6 “(F) CERTAIN REFERENCES TO POLITICAL PAR-
7 TIES NOT TAKEN INTO ACCOUNT.—For purposes of
8 subparagraphs (B)(iii) and (D)(ii)(II), a voter drive
9 activity shall not be treated as referring to a political
10 party if the only reference to the party in the activity
11 is—

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

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

17 “(iii) a reference in a manner or context
18 that does not reflect support for or opposition to
19 a Federal candidate or candidates and does re-
20 flect support for or opposition to a State or local
21 candidate or candidates or an applicable State
22 or local issue.

23 “(G) APPLICABLE STATE OR LOCAL ISSUE.—For
24 purposes of this paragraph, the term ‘applicable State
25 or local issue’ means any State or local ballot initia-

1 *tive, State or local referendum, State or local con-*
2 *stitutional amendment, State or local bond issue, or*
3 *other State or local ballot issue.”.*

4 *(c) DEFINITION OF VOTER DRIVE ACTIVITY.—Section*
5 *301 of such Act (2 U.S.C. 431), as amended by subsection*
6 *(b), is further amended by adding at the end the following*
7 *new paragraph:*

8 *“(28) VOTER DRIVE ACTIVITY.—The term ‘voter drive*
9 *activity’ means any of the following activities conducted in*
10 *connection with an election in which a candidate for Fed-*
11 *eral office appears on the ballot (regardless of whether a*
12 *candidate for State or local office also appears on the bal-*
13 *lot):*

14 *“(A) Voter registration activity.*

15 *“(B) Voter identification.*

16 *“(C) Get-out-the-vote activity.*

17 *“(D) Generic campaign activity.*

18 *“(E) Any public communication related to ac-*
19 *tivities described in subparagraphs (A) through (D).*
20 *Such term shall not include any activity described in sub-*
21 *paragraph (A) or (B) of section 316(b)(2).”.*

22 *(d) REGULATIONS.—The Federal Election Commission*
23 *shall promulgate regulations to implement this section not*
24 *later than 60 days after the date of enactment of this Act.*

1 (e) *EFFECTIVE DATE.*—*The amendments made by this*
2 *section shall take effect on the date which is 60 days after*
3 *the date of enactment of this Act.*

4 **SEC. 3. RULES FOR ALLOCATION OF EXPENSES BETWEEN**
5 **FEDERAL AND NON-FEDERAL ACTIVITIES.**

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

9 **“SEC. 325. ALLOCATION AND FUNDING RULES FOR CERTAIN**
10 **EXPENSES RELATING TO FEDERAL AND NON-**
11 **FEDERAL ACTIVITIES.**

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

16 “(1) *the disbursements shall be allocated between*
17 *Federal and non-Federal accounts in accordance with*
18 *this section and regulations prescribed by the Com-*
19 *mission; and*

20 “(2) *in the case of disbursements allocated to*
21 *non-Federal accounts, may be paid only from a quali-*
22 *fied non-Federal account.*

23 “(b) *COSTS TO BE ALLOCATED AND ALLOCATION*
24 *RULES.*—

1 “(1) *IN GENERAL.*—*Disbursements by any separate segregated fund or nonconnected committee, other*
2 *than an organization described in section 323(b)(1),*
3 *for any of the following categories of activity shall be*
4 *allocated as follows:*

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

14 “(B) *At least 50 percent, or a greater percentage if the Commission so determines by regulation, of the expenses for public communications*
15 *and voter drive activities that refer to one or*
16 *more clearly identified candidates for Federal office and one or more clearly identified non-Federal candidates shall be paid with funds from a*
17 *Federal account, without regard to whether the*
18 *communication refers to a political party.*

19 “(C) *At least 50 percent, or a greater percentage if the Commission so determines by regulation, of the expenses for public communications*
20 *and voter drive activities that refer to one or more clearly identified candidates for Federal office and one or more clearly identified non-Federal candidates shall be paid with funds from a*
21 *Federal account, without regard to whether the*
22 *communication refers to a political party.*

1 *or voter drive activities that refer to a political*
2 *party, but do not refer to any clearly identified*
3 *Federal or non-Federal candidate, shall be paid*
4 *with funds from a Federal account, except that*
5 *this paragraph shall not apply to communica-*
6 *tions or activities that relate exclusively to elec-*
7 *tions where no candidate for Federal office ap-*
8 *pears on the ballot.*

9 “(D) *At least 50 percent, or a greater per-*
10 *centage if the Commission so determines by regu-*
11 *lation, of the expenses for public communications*
12 *or voter drive activities that refer to a political*
13 *party and refer to one or more clearly identified*
14 *non-Federal candidates, but do not refer to any*
15 *clearly identified Federal candidates, shall be*
16 *paid with funds from a Federal account, except*
17 *that this paragraph shall not apply to commu-*
18 *nications or activities that relate exclusively to*
19 *elections where no candidate for Federal office*
20 *appears on the ballot.*

21 “(E) *Unless otherwise determined by the*
22 *Commission in its regulations, at least 50 per-*
23 *cent of any administrative expenses, including*
24 *rent, utilities, office supplies, and salaries not*
25 *attributable to a clearly identified candidate,*

1 shall be paid with funds from a Federal account,
2 except that for a separate segregated fund such
3 expenses may be paid instead by its connected
4 organization.

5 “(F) At least 50 percent, or a greater per-
6 centage if the Commission so determines by regu-
7 lation, of the direct costs of a fundraising pro-
8 gram or event, including disbursements for solici-
9 tation of funds and for planning and adminis-
10 tration of actual fundraising events, where Fed-
11 eral and non-Federal funds are collected through
12 such program or event shall be paid with funds
13 from a Federal account, except that for a sepa-
14 rate segregated fund such costs may be paid in-
15 stead by its connected organization. This para-
16 graph shall not apply to any fundraising solici-
17 tations or any other activity that constitutes a
18 public communication.

19 “(2) CERTAIN REFERENCES TO FEDERAL CAN-
20 DIDATES NOT TAKEN INTO ACCOUNT.—For purposes of
21 paragraph (1), a public communication or voter drive
22 activity shall not be treated as referring to a clearly
23 identified Federal candidate if the only reference to
24 the candidate in the communication or activity is—

1 “(A) a reference in connection with an elec-
2 tion for a non-Federal office in which such Fed-
3 eral candidate is also a candidate for such non-
4 Federal office; or

5 “(B) a reference to the fact that the can-
6 didate has endorsed a non-Federal candidate or
7 has taken a position on an applicable State or
8 local issue (as defined in section 301(27)(G)), in-
9 cluding a reference that constitutes the endorse-
10 ment or position itself.

11 “(3) CERTAIN REFERENCES TO POLITICAL PAR-
12 TIES NOT TAKEN INTO ACCOUNT.—For purposes of
13 paragraph (1), a public communication or voter drive
14 activity shall not be treated as referring to a political
15 party if the only reference to the party in the commu-
16 nication or activity is—

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

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

22 “(C) a reference in a manner or context
23 that does not reflect support for or opposition to
24 a Federal candidate or candidates and does re-
25 flect support for or opposition to a State or local

1 candidate or candidates or an applicable State
2 or local issue.

3 “(c) *QUALIFIED NON-FEDERAL ACCOUNT.*—

4 “(1) *IN GENERAL.*—For purposes of this section,
5 the term ‘qualified non-Federal account’ means an ac-
6 count which consists solely of amounts—

7 “(A) that, subject to the limitations of para-
8 graphs (2) and (3), are raised by the separate
9 segregated fund or nonconnected committee only
10 from individuals, and

11 “(B) with respect to which all requirements
12 of Federal, State, or local law (including any
13 law relating to contribution limits) are met.

14 “(2) *LIMITATION ON INDIVIDUAL DONATIONS.*—

15 “(A) *IN GENERAL.*—A separate segregated
16 fund or nonconnected committee may not accept
17 more than \$25,000 in funds for its qualified
18 non-Federal account from any one individual in
19 any calendar year.

20 “(B) *AFFILIATION.*—For purposes of this
21 paragraph, all qualified non-Federal accounts of
22 separate segregated funds or nonconnected com-
23 mittees which are directly or indirectly estab-
24 lished, financed, maintained, or controlled by the

1 same person or persons shall be treated as one
2 account.

3 “(3) *FUNDRAISING LIMITATION.*—

4 “(A) *IN GENERAL.*—No donation to a quali-
5 fied non-Federal account may be solicited, re-
6 ceived, directed, transferred, or spent by or in the
7 name of any person described in subsection (a)
8 or (e) of section 323.

9 “(B) *FUNDS NOT TREATED AS SUBJECT TO*
10 *ACT.*—Except as provided in subsection (a)(2)
11 and this subsection, any funds raised for a
12 qualified non-Federal account in accordance
13 with the requirements of this section shall not be
14 considered funds subject to the limitations, pro-
15 hibitions, and reporting requirements of this Act
16 for any purpose (including for purposes of sub-
17 section (a) or (e) of section 323 or subsection
18 (d)(1) of this section).

19 “(d) *DEFINITIONS.*—

20 “(1) *FEDERAL ACCOUNT.*—The term ‘Federal ac-
21 count’ means an account which consists solely of con-
22 tributions subject to the limitations, prohibitions, and
23 reporting requirements of this Act. Nothing in this
24 section or in section 323(b)(2)(B)(iii) shall be con-
25 strued to infer that a limit other than the limit under

1 *section 315(a)(1)(C) applies to contributions to the*
2 *account.*

3 “(2) *NONCONNECTED COMMITTEE.*—*The term*
4 *‘nonconnected committee’ shall not include a political*
5 *committee of a political party.*

6 “(3) *VOTER DRIVE ACTIVITY.*—*The term ‘voter*
7 *drive activity’ has the meaning given such term in*
8 *section 301(28).”.*

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—*

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

14 *(2) by inserting after paragraph (2) the fol-*
15 *lowing new paragraph:*

16 “(3) *RECEIPTS AND DISBURSEMENTS FROM*
17 *QUALIFIED NON-FEDERAL ACCOUNTS.*—*In addition to*
18 *any other reporting requirement applicable under this*
19 *Act, a political committee to which section 325(a) ap-*
20 *plies shall report all receipts and disbursements from*
21 *a qualified non-Federal account (as defined in section*
22 *325(c)).”.*

23 *(c) REGULATIONS.*—*The Federal Election Commission*
24 *shall promulgate regulations to implement the amendments*

1 *made by this section not later than 180 days after the date*
2 *of enactment of this Act.*

3 (d) *EFFECTIVE DATE.*—*The amendments made by this*
4 *section shall take effect on the date which is 180 days after*
5 *the date of enactment of this Act.*

6 **SEC. 4. CONSTRUCTION.**

7 *No provision of this Act, or amendment made by this*
8 *Act, shall be construed—*

9 (1) *as approving, ratifying, or endorsing a regu-*
10 *lation promulgated by the Federal Election Commis-*
11 *sion;*

12 (2) *as establishing, modifying, or otherwise af-*
13 *fecting the definition of political organization for*
14 *purposes of the Internal Revenue Code of 1986; or*

15 (3) *as affecting the determination of whether a*
16 *group organized under section 501(c) of the Internal*
17 *Revenue Code of 1986 is a political committee under*
18 *section 301(4) of the Federal Election Campaign Act*
19 *of 1971.*

20 **SEC. 5. JUDICIAL REVIEW.**

21 (a) *SPECIAL RULES FOR ACTIONS BROUGHT ON CON-*
22 *STITUTIONAL GROUNDS.*—*If any action is brought for de-*
23 *claratory or injunctive relief to challenge the constitu-*
24 *tionality of any provision of this Act or any amendment*
25 *made by this Act, the following rules shall apply:*

1 (1) *The action shall be filed in the United States*
2 *District Court for the District of Columbia and shall*
3 *be heard by a 3-judge court convened pursuant to sec-*
4 *tion 2284 of title 28, United States Code.*

5 (2) *A copy of the complaint shall be delivered*
6 *promptly to the Clerk of the House of Representatives*
7 *and the Secretary of the Senate.*

8 (3) *A final decision in the action shall be review-*
9 *able only by appeal directly to the Supreme Court of*
10 *the United States. Such appeal shall be taken by the*
11 *filing of a notice of appeal within 10 days, and the*
12 *filing of a jurisdictional statement within 30 days, of*
13 *the entry of the final decision.*

14 (4) *It shall be the duty of the United States Dis-*
15 *trict Court for the District of Columbia and the Su-*
16 *preme Court of the United States to advance on the*
17 *docket and to expedite to the greatest possible extent*
18 *the disposition of the action and appeal.*

19 (b) *INTERVENTION BY MEMBERS OF CONGRESS.—In*
20 *any action in which the constitutionality of any provision*
21 *of this Act or any amendment made by this Act is raised*
22 *(including but not limited to an action described in sub-*
23 *section (a)), any Member of the House of Representatives*
24 *(including a Delegate or Resident Commissioner to Con-*
25 *gress) or Senate shall have the right to intervene either in*

1 *support of or opposition to the position of a party to the*
2 *case regarding the constitutionality of the provision or*
3 *amendment. To avoid duplication of efforts and reduce the*
4 *burdens placed on the parties to the action, the court in*
5 *any such action may make such orders as it considers nec-*
6 *essary, including orders to require intervenors taking simi-*
7 *lar positions to file joint papers or to be represented by a*
8 *single attorney at oral argument.*

9 (c) *CHALLENGE BY MEMBERS OF CONGRESS.—Any*
10 *Member of Congress may bring an action, subject to the spe-*
11 *cial rules described in subsection (a), for declaratory or in-*
12 *junctive relief to challenge the constitutionality of any pro-*
13 *vision of this Act or any amendment made by this Act.*

14 (d) *APPLICABILITY.—*

15 (1) *INITIAL CLAIMS.—With respect to any action*
16 *initially filed on or before December 31, 2008, the*
17 *provisions of subsection (a) shall apply with respect*
18 *to each action described in such subsection.*

19 (2) *SUBSEQUENT ACTIONS.—With respect to any*
20 *action initially filed after December 31, 2008, the*
21 *provisions of subsection (a) shall not apply to any ac-*
22 *tion described in such subsection unless the person fil-*
23 *ing such action elects such provisions to apply to the*
24 *action.*

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H. R. 513

[Report No. 109-181]

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.

JULY 22, 2005

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed