

S 1053 PCS

**Calendar No. 107**  
109th CONGRESS  
1st Session  
**S. 1053**

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**

**May 17, 2005**

Mr. LOTT, from the Committee on Rules and Administration, reported the following original bill; which was read twice and placed on the calendar

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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.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the '527 Reform Act of 2005'.

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

(a) Definition of Political Committee- Section 301(4) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431(4)) is amended by striking the period at the end of subparagraph (C) and inserting `; or' and by adding at the end the following:

`(D) any applicable 527 organization.'.

(b) Definition of Applicable 527 Organization- Section 301 of the Federal Election Campaign Act of 1971 (2 U.S.C. 431) is amended by adding at the end the following new paragraph:

`(27) APPLICABLE 527 ORGANIZATION- For purposes of paragraph (4)(D)--

`(A) IN GENERAL- The term `applicable 527 organization' means a committee, club, association, or group of persons that--

`(i) has given notice to the Secretary of the Treasury under section 527(i) of the Internal Revenue Code of 1986 that it is to be treated as an organization described in section 527 of such Code, and

`(ii) is not described in subparagraph (B).

`(B) EXCEPTED ORGANIZATIONS- A committee, club, association, or other group of persons described in this subparagraph is--

`(i) an organization described in section 527(i)(5) of the Internal Revenue Code of 1986,

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

`(iii) an organization which is a committee, club, association, or other group that consists solely of candidates for State or local office, individuals holding State or local office, or any combination of either, 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 and does not refer to a Federal candidate or a political party in any of its voter drive activities,

`(iv) an organization which is a committee, club, association, or other group of persons--

`(I) the election or nomination activities of which relate exclusively to any voter drive activity described in subparagraphs (A) through (D) of section 325(d)(1),

`(II) the public communications of which relate exclusively to activities described in subparagraphs (A) through (D) of section 325(d)(1), and

`(III) which does not engage in any broadcast, cable, or satellite communications, or

`(v) an organization described in subparagraph (C).

`(C) APPLICABLE ORGANIZATION- For purposes of subparagraph (B)(v), 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 subparagraphs (B)(iv) and (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 (but if a run-off election is held for that office, the 1-year period shall be extended and shall end on the date of the run-off 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 a Federal candidate or a political party;

`(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 materially participate in the direction of the organization, solicit contributions to the organization (other than funds which are described under clauses (i) and (ii) of section 323(e)(1)(B)), or direct disbursements, in whole or in part, by the organization; and

`(IV) makes no contributions to Federal candidates. Clause (ii) shall not apply to disbursements by any committee, club, or association, or other group of persons described in subparagraph (B)(iv).

`(E) VOTER DRIVE ACTIVITY- For purposes of this paragraph, the term `voter drive activity' has the meaning given such term by section 325(d)(1).

`(F) 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.

`(G) REFERENCE TO FEDERAL CANDIDATES- For purposes of this paragraph, any prohibition on a reference to a Federal candidate shall not include any reference described in section 325(d)(4).

`(H) REFERENCE TO POLITICAL PARTIES- For purposes of this paragraph, any prohibition on a reference to a political party shall not include any reference described in section 325(d)(5).'

(c) Regulations- The Federal Election Commission shall promulgate regulations to implement this section not later than 60 days after the date of enactment of this Act.

(d) Effective Date- The amendments made by this section shall take effect on the date which is 60 days after the date of enactment of this Act.

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

(a) In General- Title III of the Federal Election Campaign Act of 1971 (2 U.S.C. 431 et seq.) is amended by adding at the end the following:

#### **`SEC. 325. ALLOCATION AND FUNDING RULES FOR CERTAIN EXPENSES RELATING TO FEDERAL AND NON-FEDERAL ACTIVITIES.**

`(a) In General- In the case of any disbursements by any political committee that is a separate segregated fund or nonconnected committee for which allocation rules are provided under subsection (b)--

`(1) the disbursements shall be allocated between Federal and non-Federal accounts in accordance with this section and regulations prescribed by the Commission, and

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

`(b) Costs To Be Allocated and Allocation Rules- Disbursements by any separate segregated fund or nonconnected committee, other than an organization described in section 323(b)(1), for any of the following categories of activity shall be allocated as follows:

`(1) 100 percent 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, shall be paid with funds from a Federal account, without regard to whether the communication refers to a political party.

`(2) At least 50 percent, or a greater percentage if the Commission so determines by regulation, of the expenses for public communications 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 Federal account, without regard to whether the communication refers to a political party.

`(3) At least 50 percent, or a greater percentage if the Commission 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, shall be paid with funds from a Federal account, except that this paragraph shall not apply to communications or activities that relate exclusively to elections where no candidate for Federal office appears on the ballot.

`(4) At least 50 percent, or a greater percentage if the Commission 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, shall be paid with funds from a Federal account, except that this paragraph shall not apply to communications or activities that relate exclusively to elections where no candidate for Federal office appears on the ballot.

`(5) Unless otherwise determined by the Commission in its regulations, at least 50 percent of any administrative expenses, including rent, utilities, office supplies, and salaries not attributable to a clearly identified candidate, shall be paid with funds from a Federal account, except that for a separate segregated fund such expenses may be paid instead by its connected organization.

`(6) At least 50 percent, or a greater percentage if the Commission 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 shall be paid with funds from a Federal account, except that for a separate segregated fund such costs may be paid instead by its connected organization. This paragraph shall not apply to any fundraising solicitations or any other activity that constitutes a public communication.

`(c) Qualified Non-Federal Account- For purposes of this section--

`(1) IN GENERAL- The term `qualified non-Federal account' means an account which consists solely of amounts--

`(A) that, subject to the limitations of paragraphs (2) and (3), are raised by the separate segregated fund or nonconnected committee only from individuals, and

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

`(2) LIMITATION ON INDIVIDUAL DONATIONS-

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

`(B) AFFILIATION- For purposes of this paragraph, all qualified non-Federal accounts of separate segregated funds or nonconnected committees which are directly or indirectly established, financed, maintained, or controlled by the same person or persons shall be treated as one account.

`(3) FUNDRAISING LIMITATION-

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

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

`(d) Definitions and Special Rules- For purposes of this section--

`(1) 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.

`(B) Voter identification.

`(C) Get-out-the-vote activity.

`(D) Generic campaign activity.

`(E) Any public communication related to activities described in subparagraphs (A) through (D).

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

`(2) FEDERAL ACCOUNT- The term `Federal account' means an account which consists solely of contributions subject to the limitations, prohibitions, and reporting requirements of this Act. Nothing in this

section or in section 323(b)(2)(B)(iii) shall be construed to infer that a limit other than the limit under section 315(a)(1)(C) applies to contributions to the account.

`(3) NONCONNECTED COMMITTEE- The term `nonconnected committee' shall not include a political committee of a political party.

`(4) CERTAIN REFERENCES TO FEDERAL CANDIDATES NOT TAKEN INTO ACCOUNT- A public communication or voter drive activity shall not be treated as referring to any clearly identified Federal candidate if the only reference is--

`(A) a reference, in connection with an election for a non-Federal office, to a Federal candidate who is also a candidate for such non-Federal office; or

`(B) a reference to the fact that a Federal candidate has endorsed a non-Federal candidate or an applicable State or local issue (as defined in section 301(27)(F)), including a reference that constitutes the endorsement itself.

`(5) CERTAIN REFERENCES TO POLITICAL PARTIES NOT TAKEN INTO ACCOUNT- A public communication or voter drive activity shall not be treated as referring to a political party if the only reference is--

`(A) a reference to a political party for the purpose of identifying a non-Federal candidate;

`(B) a reference to a political party for the purpose of identifying the entity making the public communication or carrying out the voter drive activity; or

`(C) a reference to a political party 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.'

(b) Reporting Requirements- Section 304(e) of the Federal Election Campaign Act of 1971 (2 U.S.C. 434(e)) is amended by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively, and by inserting after paragraph (2) the following new paragraph:

`(3) RECEIPTS AND DISBURSEMENTS FROM QUALIFIED NON-FEDERAL ACCOUNTS- In addition to any other reporting requirement applicable under this Act, a political committee to which section 325(a) applies shall report all receipts and disbursements from a qualified non-Federal account (as defined in section 325(c)).'

(c) Regulations- The Federal Election Commission shall promulgate regulations to implement the amendments made by this section not later than 180 days after the date of enactment of this Act.

(d) Effective Date- The amendments made by this section shall take effect on the date which is 180 days after the date of enactment of this Act.

## **SEC. 4. TELEVISION MEDIA RATES.**

(a) Lowest Unit Charge- Section 315 of the Communications Act of 1934 (47 U.S.C. 315) is amended by adding at the end the following:

`(f) Television Media Rates-

`(1) LOWEST UNIT CHARGE- Notwithstanding any other provision of law, the charges made for the use of any television broadcast station, or by a provider of cable or satellite television service, to any person who is a legally qualified candidate for any public office in connection with the campaign of such candidate for nomination for election, or election, to such office or by a national committee of a political party on behalf of such candidate in connection with such campaign, shall not exceed the lowest charge of the station (at any time during the 365-day period preceding the date of the use) for pre-emptible use thereof for the same amount of time for the same period.

`(2) PREEMPTION-

`(A) IN GENERAL- Except as provided in subparagraph (B), and notwithstanding the requirements of paragraph (1), a licensee shall not preempt the use of a broadcasting station by an eligible candidate or political committee of a political party who has purchased and paid for such use.

`(B) CIRCUMSTANCES BEYOND CONTROL OF LICENSEE- If a program to be broadcast by a broadcasting station is preempted because of circumstances beyond the control of the station, any candidate or party advertising spot scheduled to be broadcast during that program shall be treated in the same fashion as a comparable commercial advertising spot.

`(3) AUDITS-

`(A) IN GENERAL- During the 45-day period preceding a primary election and the 60-day period preceding a general election, the Commission shall conduct such audits as it deems necessary to ensure that each broadcaster to which this subsection applies is allocating television broadcast advertising time in accordance with this subsection and section 312.

`(B) MARKETS- Each audit conducted under subparagraph (A) shall cover the following markets:

`(i) At least 6 of the top 50 largest designated market areas (as defined in section 122(j)(2)(C) of title 17, United States Code).

`(ii) At least 3 of the 51-100 largest designated market areas (as so defined).

`(iii) At least 3 of the 101-150 largest designated market areas (as so defined).

`(iv) At least 3 of the 151-210 largest designated market areas (as so defined).

`(C) BROADCAST STATIONS- Each audit conducted under subparagraph (A) shall include each of the 3 largest television broadcast networks, 1 independent network, and 1 cable network.'

(b) Conforming Amendment- Section 504 of the Bipartisan Campaign Reform Act of 2002 (Public Law 107-155) is amended by striking `315), as amended by this Act, is amended by redesignating subsections (e) and (f) as subsections (f) and (g), respectively, and' and inserting `315) is amended by'.

(c) Stylistic Amendments- Section 315(c) the Communications Act of 1934 (47 U.S.C. 315(c)) is amended--

(1) by striking `For purposes of this section--' and inserting `In this section:';

(2) in paragraph (1), by striking `the' and inserting `BROADCASTING STATION- The'; and

(3) in paragraph (2), by striking `the' and inserting `LICENSEE; STATION LICENSEE- The'.

## **SEC. 5. MODIFICATION OF DEFINITION OF PUBLIC COMMUNICATION.**

(a) In General- Paragraph (22) of section 301 of the Federal Election Campaign Act of 1971 (2 U.S.C. 431(22)) is amended by adding at the end the following new sentence: `Such term shall not include communications over the Internet.'.

(b) Effective Date- The amendment made by this section shall take effect on the date of the enactment of this Act.

## **SEC. 6. INCREASE IN CONTRIBUTION LIMITS FOR POLITICAL COMMITTEES.**

(a) Increase in Political Committee Contribution Limits- Section 315(a)(1)(C) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(a)(1)(C)) is amended by striking `\$5,000' and inserting `\$7,500'.

(b) Increase in Multicandidate Limits- Section 315(a)(2) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(a)(2)) is amended--

(1) in subparagraph (A), by striking `\$5,000' and inserting `\$7,500';

(2) in subparagraph (B), by striking `\$15,000' and inserting `\$25,000'; and

(3) in subparagraph (C), by striking `\$5,000' and inserting `\$7,500'.

(c) Indexing-

(1) IN GENERAL- Section 315(c)(1)(B) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(c)(1)(B)) is amended to read as follows:

    ` (B) Except as provided in subparagraph (C)--

        ` (i) in any calendar year after 2002--

            ` (I) a limitation established by subsection (a)(1)(A), (a)(1)(B), (a)(3), (b), (d), or (h) shall be increased by the percent difference determined under subparagraph (A);

`(II) each amount so increased shall remain in effect for the calendar year; and

`(III) if any amount after the adjustment under subclause (I) is not a multiple of \$100, such amount shall be rounded to the nearest multiple of \$100; and

`(ii) in any calendar year after 2006--

`(I) a limitation established by subsection (a)(1)(C), (a)(1)(D), or (a)(2) shall be increased by the percent difference determined under subparagraph (A);

`(II) each amount so increased shall remain in effect for the calendar year; and

`(III) if any amount after the adjustment under subclause (I) is not a multiple of \$100, such amount shall be rounded to the nearest multiple of \$100.'.

(2) CONFORMING AMENDMENTS- Section 315(c) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(c)) is amended--

(A) in paragraph (1)(C), by striking `subsections (a)(1)(A), (a)(1)(B), (a)(3),' and inserting `subsections (a)'; and

(B) in paragraph (2)(B)--

(i) by striking `and' at the end of clause (i);

(ii) by striking the period at the end of clause (ii) and inserting `; and'; and

(iii) by adding at the end the following new clause:

`(iii) for purposes of subsections (a)(1)(C), (a)(1)(D) and (a)(2), calendar year 2005.'.

(d) Special Rule for Transfers From Leadership PACs to National Party Committees- Paragraph (4) of section 315(a) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(a)(4)) is amended--

(1) by inserting `(A)' before `The limitations'; and

(2) by adding at the end the following:

`(B) The limitations on contributions contained in paragraphs (1) and (2) do not apply to transfers between any committee (other than an authorized committee) established, financed, maintained, or controlled by a candidate or an individual holding a Federal office and political committees established and maintained by a national political party.'.

(e) Elimination of Certain Restrictions on Solicitations by Corporations and Labor Organizations-

(1) WRITTEN SOLICITATIONS- Subparagraph (B) of section 316(b)(4) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441b(b)(4)(B)) is amended--

(A) by striking `2'; and

(B) by striking `during the calendar year'.

(2) PRIOR APPROVAL OF SOLICITATION FOR TRADE

ASSOCIATIONS- Subparagraph (D) of section 316(b)(4) of the Federal

Election Campaign Act of 1971 (2 U.S.C. 441b(b)(4)(D)) is amended by striking `to the extent that such solicitation' and all that follows and inserting a period.

(f) Increase in Threshold for Political Committees-

(1) IN GENERAL- Section 301(4)(A) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431(4)(A)) is amended by striking ` \$1,000' each place it appears and inserting ` \$10,000'.

(2) LOCAL COMMITTEES-

(A) CONTRIBUTIONS RECEIVED- Section 301(4)(C) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431(4)(C)) is amended by striking ` \$5,000' each place it appears and inserting ` \$10,000'.

(B) CONTRIBUTIONS MADE- Section 301(4)(C) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431(4)(C)) is amended by striking ` \$1,000' each place it appears and inserting ` \$10,000'.

(g) Effective Date- The amendments made by this section shall apply to calendar years beginning after December 31, 2005.

## **SEC. 7. SEVERABILITY.**

If any provision of this Act or amendment made by this Act, or the application of a provision or amendment to any person or circumstance, is held to be unconstitutional, the remainder of this Act and amendments made by this Act, and the application of the provisions and amendment to any person or circumstance, shall not be affected by the holding.

## **SEC. 8. CONSTRUCTION.**

No provision of this Act, or amendment made by this Act, shall be construed--

(1) as approving, ratifying, or endorsing a regulation promulgated by the Federal Election Commission,

(2) as establishing, modifying, or otherwise affecting the definition of political organization for purposes of the Internal Revenue Code of 1986, or

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

## **SEC. 9. JUDICIAL REVIEW.**

(a) Special Rules for Actions Brought on Constitutional Grounds- If any action is brought for declaratory or injunctive relief to challenge the constitutionality of

any provision of this Act or any amendment made by this Act, the following rules shall apply:

- (1) The action shall be filed in the United States District Court for the District of Columbia and shall be heard by a 3-judge court convened pursuant to section 2284 of title 28, United States Code.
  - (2) A copy of the complaint shall be delivered promptly to the Clerk of the House of Representatives and the Secretary of the Senate.
  - (3) A final decision in the action shall be reviewable only by appeal directly to the Supreme Court of the United States. Such appeal shall be taken by the filing of a notice of appeal within 10 days, and the filing of a jurisdictional statement within 30 days, of the entry of the final decision.
  - (4) It shall be the duty of the United States District Court for the District of Columbia and the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of the action and appeal.
- (b) Intervention by Members of Congress- In any action in which the constitutionality of any provision of this Act or any amendment made by this Act is raised (including but not limited to an action described in subsection (a)), any Member of the House of Representatives (including a Delegate or Resident Commissioner to Congress) or Senate shall have the right to intervene either in support of or opposition to the position of a party to the case regarding the constitutionality of the provision or amendment. To avoid duplication of efforts and reduce the burdens placed on the parties to the action, the court in any such action may make such orders as it considers necessary, including orders to require intervenors taking similar positions to file joint papers or to be represented by a single attorney at oral argument.
- (c) Challenge by Members of Congress- Any Member of Congress may bring an action, subject to the special rules described in subsection (a), for declaratory or injunctive relief to challenge the constitutionality of any provision of this Act or any amendment made by this Act.
- (d) Applicability-
- (1) INITIAL CLAIMS- With respect to any action initially filed on or before December 31, 2008, the provisions of subsection (a) shall apply with respect to each action described in such subsection.
  - (2) SUBSEQUENT ACTIONS- With respect to any action initially filed after December 31, 2008, the provisions of subsection (a) shall not apply to any action described in such subsection unless the person filing such action elects such provisions to apply to the action.

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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.

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**May 17, 2005**

**Read twice and placed on the calendar**

*END*