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Section 527 Political Organizations: Background and Issues for Federal Election and Tax Laws

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February 8, 2008

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Section 527 Political Organizations: Background and Issues for Federal Election and Tax Laws

Summary

Several prominent groups organized under § 527 of the Internal Revenue Code (IRC) were prominent players in the 2004 presidential election, raising and spending approximately $435 million and being widely seen as having an impact on the outcome of the race. Yet, some so-called "527" organizations remain outside the purview of federal election law. Section 527, added to the IRC in 1975, provides tax-exempt status to federal, state, and local *political organizations*. At first, it was generally thought that, with respect to federal election activities, *political organizations* correlated directly with *political committees* as defined under the Federal Election Campaign Act (FECA). It became clear by 2000, however, that this was not necessarily true because prevailing judicial interpretation of Supreme Court precedent has permitted FECA regulation of only those communications containing *express advocacy* (i.e., explicitly urging the election or defeat of clearly identified federal candidates). By avoiding such terms, groups could arguably promote issue positions in reference to particular federal elected officials without triggering FECA's disclosure, contribution limits, and source restrictions. Still, the groups qualified for the favorable tax treatment of § 527 organizations because that benefit is not limited to groups that conduct express advocacy.

In 2002, the Bipartisan Campaign Reform Act (BCRA) addressed express advocacy, but regulated only messages broadcast within 30 days of a primary or 60 days of a general election that referred to a federal office candidate. BCRA left unregulated such areas as broadcasts aired before elections and voter mobilization efforts. Groups wishing to engage in these activities and still avail themselves of the unlimited funding sources no longer available to political parties generally qualify for tax-exempt status under IRC § 527. Supporters of BCRA have led the effort to extend federal election law regulation to these types of 527 organizations, seeing the enormous amounts of money raised and spent in recent years as a result of the FEC's failure to enforce existing law. BCRA critics, however, insist that what occurred since 2004 was the predictable result of the ban on soft money activity by national parties, thus redirecting massive amounts of unregulated money to outside groups that are less accountable to the political system; they insist that many of these groups not engaging in express advocacy cannot be constitutionally regulated.

In the 109th Congress, the House twice passed similar bills to add 527 organizations to FECA's *political committee* definition, unless involved solely in state and local elections. The Senate Rules and Administration Committee reported a similar measure, but the Senate did not act on it. Similar bills (H.R. 420 and S. 463) have been offered in the 110th Congress. Other bills (H.R. 2316; H.R. 1204) that would affect 527s have also been introduced in the 110th Congress. This report explores the evolution of the 527 issue and attempts to address it in the courts, the Federal Election Commission, and Congress. It will be updated periodically to reflect further developments.

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Introduction[1]

In recent years, the terms "527 organizations," "527 groups," and "527s" have been used interchangeably to describe groups that intend to influence federal elections in ways that may be outside the scope of federal election law. The terms stem from the fact that these organizations are provided tax-exempt status under Section 527 of the Internal Revenue Code (IRC).[2] These groups have become the subject of controversy due to the different definitions used in federal election law and tax law as to what constitutes political or election-related activity and the lack of uniform opinion as to what election law itself regulates or may permissibly regulate.

Strictly speaking, IRC § 527 provides tax-exempt status to many more organizations than just those that are colloquially referred to as 527s. The section applies not only to organizations that are active in federal elections, but also to organizations involved in state and local elections and certain non-electoral activities. While IRC § 527 applies to a broad range of organizations, only the groups colloquially referred to as 527s (i.e., those groups that intend to influence federal elections in ways that may be outside the scope of federal election law) are the focus of current controversy. This report discusses this limited subset of organizations exempt under IRC § 527 and uses the terms *527 organizations*, *527 groups*, and *527s* interchangeably to refer to them.

Section 527 was added to the IRC in 1975 to provide tax-exempt status to *political organizations*, as defined in that statute. At that time, it was generally thought that, with respect to groups participating in federal elections, *political organizations* correlated directly with *political committees* as labeled by and operating under federal election law. Indeed, political committees — whether political parties, political action committees (PACs), or candidate committees — have tax-exempt status under IRC § 527. In 2000, however, it came to light that some groups engaged in federal-election-related issue advocacy were claiming exempt status under IRC § 527 while not being regulated under the Federal Election Campaign Act (FECA). These groups were shrouded in mystery because no disclosure was required under either the tax or election laws at that time.

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[1] Now-retired CRS specialist Joseph E. Cantor co-authored this report. CRS analyst R. Sam Garrett provided recent updates.

[2] 26 U.S.C. § 527.

Foundations of the 527 Issue

Federal Election Campaign Act

Financial activity in federal elections is governed by the Federal Election Campaign Act (FECA) of 1971, as amended, (2 U.S.C. §431 *et seq*.) as well as by certain court rulings. Generally, FECA imposes limitations and prohibitions on money from certain sources and requires public disclosure of money raised and spent in federal elections. Due to the Supreme Court striking down spending limits as unconstitutional in its landmark 1976 *Buckley v. Valeo* ruling,[3] federal law does not impose mandatory limits on campaign spending by candidates or groups.[4]

Key Provisions of FECA. Key features of federal election law regulation include the following:

- *Source Prohibitions* — Unions and corporations are prohibited from making contributions or expenditures in federal elections. The corporate ban was first enacted in 1907, the labor ban in 1943. While union treasury and corporate money may not be used in federal elections, a separate segregated fund (i.e., political action committee (PAC)) may raise voluntary contributions from designated classes of individuals, to give or spend in federal elections. [2 U.S.C.§ 441b] Foreign nationals are also prohibited from contributing or spending money in any American election, at the federal, state, or local level, with an exemption for permanent resident aliens (i.e., green card holders). [2 U.S.C.§ 441b]

- *Contribution Limits* — Contributions to candidates, parties, and PACs in federal elections are limited (e.g., for an individual — $2,300 per candidate, per election; $5,000 per year to a PAC; and an aggregate of $108,200 in a two-year election cycle to all federal candidates, parties, and PACs).[5] Most PACs and party committees may give a candidate $5,000 per election. (Parties may also make *coordinated expenditures* to pay for campaign services or advertisements for and with the cooperation of a candidate, subject to formula-based limits, indexed for inflation.) [2 U.S.C.§ 441a]

[3] Buckley v. Valeo, 424 U.S. 1 (1976).

[4] Although such limits exist in presidential races (and in some states and localities), these limits are accepted *voluntarily* by candidates, usually in exchange for public funds or benefits.

[5] These limits are in effect for the 2007-2008 election cycle, as adjusted, where required by law, for inflation.

- *Disclosure Requirements* — Candidates, PACs, and parties involved in federal elections must register with the FEC and file periodic reports on receipts and expenditures, itemizing for amounts over $200. [2 U.S.C.§ 432-437]

Express Advocacy and the "Major Purpose Test". Only money raised and spent according to the requirements and restrictions of federal law may be used to influence an election for federal office. Such funds are often referred to as *hard money*. FECA defines both "contribution" and "expenditure" as monies or anything of value "for the purpose of influencing any election for Federal office."[6] In order to preserve the law's regulation of contributions and expenditures against invalidation for constitutional vagueness, the Supreme Court in *Buckley v. Valeo* construed the terms "contribution" and "expenditure" to encompass only funds donated for or spent for *express advocacy* (that is, voter communications using explicit phrases and words such as "vote for," "vote against," "elect," and "defeat").[7] Likewise, the Court construed the term "political committee" to include only "organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate."[8] In so doing, the *Buckley* Court established the "major purpose test," which determines whether or not an organization, if it raises more than $1,000 in "contributions" or makes more than $1,000 in "expenditures," is subject to regulation under FECA as a "political committee."[9]

Neither FECA nor the Supreme Court, however, has yet defined precisely *how* to ascertain the major purpose of an organization. Indeed, how the major purpose test works, and to what groups it applies, are at the heart of a debate concerning the circumstances under which non-party organizations, including 527s, can constitutionally be considered FECA regulated "political committees." For example, some observers proffer that it is relevant to examine an organization's activities beyond express advocacy to ascertain its major purpose, while others maintain that Supreme Court precedent still limits FECA regulation through the designation of "political committee" status to only those organizations engaging in express advocacy.[10]

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[6] 2 U.S.C. § 431(8)(A), (9)(A).

[7] Buckley, 424 U.S. at 44, n.52.

[8] *Id.* at 79.

[9] *See* 2 U.S.C. § 431(4)(A).

[10] *See, e.g.*, Edward B. Foley, *The "Major Purpose" Test: Distinguishing Between Election-Focused and Issue-Focused Groups*, 31 N. KY. L. REV. 341, 355 (2004)(arguing that "it makes no sense" to examine only whether an organization spends most of its funds on express advocacy in order to determine whether its major purpose is nomination or election of a candidate); and James Bopp, Jr. and Richard E. Coleson, *The First Amendment is Still not a Loophole: Examining McConnell's Exception to Buckley's General Rule Protecting Issue Advocacy*, 31 N. KY. L. REV. 289, 323 (2004) (arguing that "it is only proper" to examine an organization's express advocacy activity in order to determine whether its major purpose is nomination or election of a candidate).

P.L. 93-625 and Section 527 of the Internal Revenue Code

Prior to 1975, the Internal Revenue Code was silent as to the tax treatment of organizations whose primary purpose is influencing elections. The Internal Revenue Service (IRS) did not generally require these organizations to file tax returns or pay taxes. It appears this was because the IRS treated contributions to political organizations as gifts,[11] which meant that the organizations did not have taxable income. By the early 1970s, it became apparent that these organizations had sources of income other than contributions, such as investment income and gain from the sale of donated property. In 1973, the IRS announced it would begin requiring political committees and parties with investment and other types of income to file tax returns and pay taxes.[12] Parties and committees were taxed as corporations, trusts, or partnerships, depending on the surrounding circumstances.[13]

In 1975, Congress responded to the IRS action by adding Section 527 to the Internal Revenue Code (P.L. 93-625; 88 Stat. 2108).[14] Section 527 as enacted by P.L. 93-625 is similar to the current version, with the exception of the reporting requirements that currently exist (these are discussed below in the section on P.L. 106-230 and P.L. 107-276 and in the Appendix).

Section 527 applies to "political organizations" which are those organizations, including a party, committee, association, or fund, that are organized and operated primarily to directly or indirectly accept contributions and/or make expenditures for an "exempt function." An exempt function is the influencing or attempting to influence the selection, nomination, election, or appointment of an individual to a federal, state, or local public office, to an office in a political organization, or as a presidential or vice-presidential elector.

Section 527 political organizations are subject to tax only on "political organization taxable income." This is the organization's gross income, excluding "exempt function income," less $100 and any allowable deductions. Exempt function income is any amount received, to the extent that it is segregated to use for an exempt function, as

- contributions of money or other property,
- membership dues, fees, or assessments,
- proceeds, which are not received in the ordinary course of business, from political fundraising and entertainment events or from the sale of campaign materials, and
- proceeds from conducting a bingo game.

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[11] *See* IRS Notice of Opportunity to Submit Written Comments and to Request Public Hearing with Respect to the Tax Treatment of Contributions of Appreciated Property to Committees of Political Parties, 37 *Fed. Reg*. 22,427-28 (October 19, 1972).

[12] IRS Announcement 73-84, 1973-2 C.B. 461.

[13] *Id*.

[14] *See* H.Rept. 93-1502 at 104.

The tax rate is generally the highest corporate income tax rate. Under IRC § 527(h), however, income of the principal campaign committee of a congressional candidate is taxed using the graduated corporate tax rate schedule. This special rule does not apply for campaign committees of candidates for state or local office.

Under P.L. 93-625, political organizations only had contact with the IRS if they were required to file a tax return because they had taxable income. Thus, the law *was* properly thought of as addressing the tax treatment of these organizations, rather than regulating them. The lack of reporting requirements may have been because, at the time of the law's enactment, political organizations were generally thought of as candidate funds and political parties and committees[15] (i.e, the same types of entities that, when involved in federal elections, are regulated by FECA).

Emergence of Issue Advocacy Campaigns

During the 1996 election cycle, a new phenomenon was seen in campaigns for President and Congress that marked a turning point both in the way in which campaigns for federal office are conducted and in efforts to regulate the flow of money in federal elections. Political parties and interest groups had in 1995 and 1996 made broadcast communications that discussed candidates' merits in conjunction with particular issue positions, which, while technically not meeting federal election law criteria for election-related activity, were widely viewed as intending to influence federal races. As public policy messages without express advocacy language, such activities were labeled *issue advocacy*. By not explicitly urging the defeat or election of clearly identified candidates, entities could present information to the public which encouraged more positive or negative views of public officials who also were candidates. Not only could these communications be paid for with funds from any source and in any amount (i.e., soft money), but they were not uniformly disclosed either.

While issue advocacy caught much of the political world by surprise in 1996, it quickly caught on as the new growth area of money in politics. While the lack of disclosure made it impossible to know for sure the extent of such activity, the Annenberg Public Policy Center estimated that between $135 and $150 million was spent on broadcast issue advocacy in 1996, rising to between $250 and $341 million in 1998, and some $509 million in 2000.[16]

Effect on Campaign Finance Reform Debate. The highly visible and increasing levels of "issue spending" in the 1996-2000 elections reinforced perceptions of a major loophole by which politically interested groups were

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[15] *See, e.g.*, H.Rept. 93-1642 at 22 (describing the provision that added IRC § 527 as "provid[ing] that political parties or committees (and separate campaign funds) are to be taxed on investment income and on income from a trade or business, but not on campaign contributions they receive").

[16] Annenberg Public Policy Center, *Issue Advertising in the 1999-2000 Election Cycle*, at [http://www.annenbergpublicpolicycenter.org/ISSUEADS/02_01_2001_1999-2000issueadvocacy.pdf].

circumventing federal election law. But even before the evidence of a growing trend was established, proponents of campaign finance reform recognized the potential for such growth and responded quickly by redirecting their efforts toward addressing issue advocacy.

During the 1980s and early 1990s, pressure had been building in Congress to address concerns about the role of money in politics, primarily involving the high costs of seeking office and the concomitant need for private sources of campaign funds. Those interested in campaign finance "reform" — generally characterized by favoring greater regulation — had focused their efforts during much of this time on two issues: the rising costs of elections to federal office and the growing funding role played therein by political action committees. The most prominent legislative proposals came to feature provisions to curb, if not eliminate, PAC money as a funding source in federal elections, and to impose voluntary spending limits in congressional elections, in exchange for candidates' receiving either public funding or some form of cost-reducing public benefit (such as postal or broadcast rate reductions).

These provisions were key elements in comprehensive reform bills passed by the House and Senate in the 101st, 102nd, and 103rd Congresses.[17] While other aspects of campaign finance law were included in these measures, such as ones dealing with party soft money,[18] the major point of contention was the insistence of the reform advocates on spending limits and public funding or benefits. The dynamics of the debate over PACs shifted over time, and even that provision eventually became relatively less a point of contention.

On September 7, 1995, during the 104th Congress, Senators John McCain and Russell Feingold introduced their first campaign finance reform bill, establishing themselves as the leading reform advocates in the Senate. That bill, S. 1219, was the successor to the reform bills that had passed in the previous three Congresses, and it reflected the same pre-1996 consensus among advocates of campaign finance reform that prioritized curbing the high cost of congressional elections and replacing the need for private funds, especially PACs, with other funding sources. (S. 1219 also expanded on the earlier bills' treatment of party soft money, with inclusion of stricter curbs on the raising and spending of soft money by national and state and local political parties.)

Following the watershed election of 1996, in which unregulated campaign activity appeared to overshadow the regulated activity, the leading reform advocates in Congress responded with significant changes in their proposed legislation at the start of the 105th Congress. In S. 25, introduced by Senators McCain and Feingold,

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[17] In the 101st Congress — S. 137 and H.R. 5400; in the 102nd Congress — S. 3 and H.R. 3750; and in the 103rd Congress — H.R. 3 and S. 3. Only the 102nd Congress bills were reconciled in conference (as S. 3) and sent to the President, who vetoed it on May 9, 1992.

[18] Party soft money, since prohibited by BCRA, most commonly took the form of funds raised by national parties from sources not permissible in federal elections and transferred to states where such sources were permissible in state elections, and which could be arranged in a manner suggesting an attempt to at least indirectly influence federal elections.

and its companion measure H.R. 493, offered by Representatives Christopher Shays and Martin Meehan, provisions were added to their 104th Congress bills to redefine "express advocacy" to allow federal regulation of more election-related activity. By the fall of 1997, following the most intensive congressional activity on campaign finance reform since the 1970s, a revised S. 25 was offered. As modified by floor amendment, S. 25 featured provisions addressing the issues of party soft money and issue advocacy. The provisions on congressional spending limits and public benefits, and on PACs, the key elements of reformers' objectives for at least the previous 10 years, were eliminated from the bill entirely. Thus, in one year's time, the very nature of the campaign finance debate had shifted from an attempt to improve the existing regulatory system to saving it from becoming meaningless in the face of newly emerging campaign practices. This debate, started in the wake of the 1996 elections, would continue until the enactment of the Bipartisan Campaign Reform Act (BCRA) in 2002.

Emergence of the 527 Issue

Not only was 1996 the year in which issue advocacy emerged, but it was also the year in which the IRS began issuing several private rulings on the types of activities that qualify as influencing an election for purposes of IRC § 527.[19] Under these rulings, it became apparent that some of the issue advocacy activities described above could qualify as election-influencing activities under IRC § 527. Thus, these rulings helped create an awareness that groups participating in these issue advocacy activities, while arguably not required to report to the FEC, could still qualify for the benefit of tax-exempt status under IRC § 527.

After the 1996 election, media and congressional attention turned to groups with 527 status that were engaging in activities aimed at influencing federal elections without conforming to FECA rules. Sporadic news accounts of their activities tended to categorize them simply as tax-exempt groups, without the more specific label as a 527.[20] One 1997 news account, on the activities of Triad Management Services, Inc., notably did make specific reference to 527 status. The article began as follows:

> Call it the Cayman Islands of the campaign finance world. Several politically active non-profit groups are abandoning their traditional tax-exempt status with the IRS and reclassifying themselves as political groups, taking a bold gamble that they will still remain outside of the reach of federal election law.
>
> The groups have found a safe haven exactly at the point at which the tax code intersects with federal election laws. Switching their tax status may allow generous tax breaks for their largest donors while thickening the veil of secrecy over the groups' activities.

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[19] *See* Priv. Ltr. Rul. 9652026 (October 1, 1996); Priv. Ltr. Rul. 9725036 (March 24, 1997); Priv. Ltr. Rul. 9808037 (November 21, 1997); Priv. Ltr. Rul. 199925051 (March 29, 1999).

[20] Carles R. Babcock and Ruth Marcus, "For Their Targets, Mystery Groups' Ads Hit Like Attacks from Nowhere," *Washington Post*, March 9, 1997, at A6; Leslie Wayne, "A Back Door for the Conservative Donor," *New York Times*, May 22, 1997, at A24; Jill Abramson and Leslie Wayne, "Nonprofit Groups Were Partners to Both Parties in Last Election," *New York Times*, October 24, 1997, at A1, A28.

> Two of the groups making the switch are Citizens for Reform and Citizens for the Republic Education Fund — non-profit arms of the controversial Triad Management Services, Inc., a conservative consulting and fundraising organization that will soon be the subject of the Senate's investigative hearings into the 1996 elections.[21]

The emerging 527 groups also received some attention during the Senate Governmental Affairs Committee's investigation of illegal or improper activities in connection with the 1996 federal election campaigns.[22] In 1998, during the 105th Congress, Senator Joseph Lieberman introduced a bill — S. 1666 — to, among other things, "seek to better define the limits on the election-related activities of tax exempt organizations." In his floor statement, Senator Lieberman made reference to 527 groups:

> A number of 501(c)(4) groups active in federal election campaigns apparently have switched their tax status to Section 527, which offers tax benefits with fewer restrictions on political activity. At the same time, these groups claim they are not subject to FECA because they don't engage in express advocacy of particular candidates, even though FECA defines the groups it covers in essentially the same terms as Section 527.[23]

During this time period, 527s were established by such groups as the Sierra Club and NAACP and as new entities, such as Citizens for Better Medicare, all to engage in election-related issue advocacy campaigns.

527 Activity in 2000. By 2000, issue advocacy had emerged as the thorniest issue of the ongoing campaign finance debate, owing to the conundrum based on prevailing judicial interpretation of Supreme Court precedent. That interpretation permitted regulation of only those communications containing express advocacy (i.e., communications containing explicit terms urging the election or defeat of clearly identified federal candidates). By avoiding such terms, groups arguably could promote their views and issue positions in reference to particular elected officials, without triggering the disclosure and source restrictions of FECA.

It was into this environment of rapidly evolving methods of alleged circumvention of federal election law restrictions that a group called Republicans for Clean Air entered during the presidential primaries of 2000. As described in a March 3, 2000, news account,

> A mysterious group called Republicans for Clean Air is broadcasting more than $2 million worth of television commercials in presidential primary states

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[21] Damon Chappie and Amy Keller, "Several Political Groups Seek IRS Safe Haven," *Roll Call*, October 20, 1997, pp. 1, 24.

[22] Notably, in 2005, a U.S. district court ordered Triad, generally considered to have been the forerunner of the 527 groups at issue, to pay a fine to the FEC for failing to register as a political committee, FEC v. Malenick, D.D.C., No. 02-1237, (July 26, 2005). *See* Kenneth P. Doyle, "FEC Enforcement: After Decade-Long Pursuit by FEC, Court Orders Triad to Pay Fine," *BNA Money & Politics Report*, July 27, 2005.

[23] 144 CONG. REC. 1568 (1998) (statement of Sen. Lieberman).

> attacking Senator John McCain and defending Texas Gov. George W. Bush's environmental record.[24]

While that article identified the sponsor of the ad (Texas businessman Sam Wyly), it did not label the group as a 527 organization. Its activities did, however, call attention to that section of the code in dramatic enough fashion that, within weeks, news accounts were focusing specifically on 527 groups. A *New York Times* account, at the end of March 2000, identified groups with 527 status across the political spectrum and analyzed the advantages of various vehicles under the tax code for waging issue advocacy campaigns.[25] A *Wall Street Journal* article in May 2000 outlined how the newly discovered 527 vehicle was by then being used to create soft money leadership PACs for elected officials.[26] In a few months, the 527 issue had burst on the scene.

When the 527 issue emerged in 2000, Congress was enmeshed in consideration of BCRA, and opinion was still evolving about whether and how Congress could regulate activity that was not express advocacy. With the emergence of 527s, Congress was confronted with the practice of election-related issue advocacy by groups receiving the benefit of tax-exempt status under the IRC. Rather than short-circuit the debate on regulating non-express advocacy activity and begin yet another on the also-complicated issue of differing definitions of *political organization* under the IRC and *political committee* under the FECA, Congress adopted a different approach by having regulation triggered not by the nature of the activity but by the nature of the entity engaging in it. By simply requiring disclosure to the IRS by groups with tax-exempt 527 status in P.L. 106-230 (discussed in next section), Congress thus kept the debate going about standards for regulation under the election law and addressed what was seen as the most urgent need at that point.

Sponsors of what was ultimately to become BCRA recognized the need for this action as a provisional measure. In prepared testimony for the House Ways and Means Subcommittee on Oversight, Senator Feingold stated,

> I hope that the Ways and Means Committee and the full House will promptly pass a bill that, if nothing else, will end the veil of secrecy behind which 527s now hide. There is, of course, much more that can and should be done on the campaign finance issue generally and to strengthen disclosure in particular.... I want to make it very clear that none of us who support reform are under any illusion that a positive resolution of the 527 problems is all that needs to be done to cure the ills of the campaign finance system. It is a crucial first step, but only a first step. Our fight in the Senate for more far reaching reform, including a ban on soft money, will continue. At the same time, we cannot let our desire for

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[24] John Mintz, "'Clean Air' Group Clouds the Airwaves," *Washington Post*, March 3, 2000, at A19.

[25] John M. Broder and Raymond Bonner, "A Political Voice, Without Strings," *New York Times,* March 29, 2000, at A1, A18.

[26] Leadership PACs refer to PACs set up and maintained by elected officials to promote not only their political philosophies but their political ambitions also. Greg Hitt, "'527 Groups' Use Tax Loopholes to Promote Politicians," *Wall Street Journal*, May 25, 2000, at A28.

> more sweeping reform, or for broader disclosure, prevent us from dealing with the 527 problem in this Congress, and hopefully in the next few weeks. [27]

Congress's Response to 527s and Issue Advocacy

The 106th and 107th Congresses passed two laws addressing disclosure by 527 organizations and one law, BCRA, which addressed, among other things, the larger question of election-related issue advocacy.

527 Disclosure Requirements: P.L. 106-230 and P.L. 107-276

Prior to 2000, the only time an organization exempt from tax under IRC § 527 had to disclose information to the IRS was if it had taxable income. Congress added disclosure requirements in 2000 (P.L. 106-230; 114 Stat. 477) and 2002 (P.L. 107-276; 116 Stat. 1929).[28] As a result of these two laws, the general rule is that IRC § 527 political organizations are required to report information to the IRS, the FEC, or a state. **Table 11**, in the Appendix, summarizes the disclosure requirements as they currently exist.

The first disclosure requirement added by P.L. 106-230 is that IRC § 527 organizations must notify the IRS of their existence within 24 hours of formation unless an organization expects to have annual gross receipts of less than $25,000 or is required to report to the FEC as a political committee. P.L. 107-276 amended the requirement by adding an exemption for political committees of state and local candidates and state and local committees of political parties.

In addition to the initial notification requirement, P.L. 106-230 also included a provision that requires the periodic disclosure of contributions and expenditures to the IRS.[29] Under this provision, any organization that accepts a contribution or makes an expenditure for a Section 527 exempt function during the year is required to file a disclosure report with the IRS on either a quarterly or monthly basis. A periodic report must include (1) the name, address, occupation, and employer of any contributor who made a contribution during the reporting period and gave at least $200 during the year, along with the amount and date of the contribution; and (2) the

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[27] *Disclosure of Political Activities of Tax-Exempt Organizations: Hearing Before the Subcomm. on Oversight of the House Comm. on Ways and Means*, 106th Cong. 10 (2000) (statement of Sen. Feingold).

[28] The bill that became P.L. 106-230, H.R. 4762, was approved by a vote of 385 to 39 in the House on June 28, 2000, and by a vote of 92 to 6 in the Senate on June 29, 2000. It was signed into law on July 1, 2000. The bill that became P.L. 107-276, H.R. 5596, was passed by unanimous consent in the House on October 16, 2002, and in the Senate on October 17, 2002. It was signed into law on November 2, 2002.

[29] In 2002, a U.S. district court held that most of the disclosure provisions were unconstitutional. National Fed'n of Republican Assemblies v. United States, 218 F.Supp.2d 1300 (S.D.Ala. 2002), *as amended by* 2002 U.S. Dist. LEXIS 20845 (S.D.Ala. 2002). In 2003, however, the Court of Appeals for the Eleventh Circuit reversed and remanded the decision with instructions to dismiss for lack of jurisdiction. Mobile Republican Assembly v. United States, 353 F.3d 1357 (11th Cir. 2003).

amount, date, and purpose of each expenditure made to a person if the total annual expenditures to that person was at least $500, along with the person's name, address, occupation, and employer. The disclosure requirements do not apply to any political organization that is required to report to the FEC as a political committee, is a state or local committee of a political party or a political committee of a non-federal candidate, or expects to have gross receipts of less than $25,000. They also do not apply to independent expenditures, which are expenditures that expressly advocate for a candidate but are made without the candidate's involvement or cooperation. Additionally, P.L. 107-276 added an exemption for state and local political committees if they are required to report similar information to a state.

P.L. 106-230 and P.L. 107-276 also changed the rules for when political organizations must file tax and information returns. Under prior law, a political organization only filed a tax return if it had political organization taxable income and never had to file an information return. P.L. 106-230 required any organization with at least $25,000 in gross receipts to file a tax return, regardless of whether it had political organization taxable income, and required that any organization that filed a tax return also file an information return. P.L. 107-276 amended both of these provisions. With respect to tax returns, P.L. 107-276 reversed the change made by P.L. 106-230, so that currently only organizations with taxable income are required to file a tax return. With respect to information returns, P.L. 107-276 requires that a political organization file a return if it has gross receipts of at least $25,000 ($100,000 if a qualified state or local political organization) unless it is a state or local committee of a political party or a political committee of a state or local candidate, a caucus or association of state or local officials, an authorized committee under FECA § 301(6) of a candidate for federal office, a national committee under FECA § 301(14) of a political party, a congressional campaign committee of a political party committee, or required to report to the FEC as a political committee.

Under P.L. 106-230, the initial notification of Section 527 status, the expenditures and contributions disclosures, and the information return must be made publically available by the organization and the IRS, and the IRS must post the names and addresses of all organizations on the Internet. P.L. 107-276 imposes an additional requirement that the IRS post all electronically submitted disclosure reports on the Internet and also required the IRS to improve its online database. While P.L. 106-230 had required that the tax returns be made public, this was eliminated by P.L. 107-276.

Finally, P.L. 107-276 grants the IRS the authority to waive any notification or disclosure penalty if the failure was due to reasonable cause and not willful neglect.

Bipartisan Campaign Reform Act of 2002 (BCRA)

On March 27, 2002, H.R. 2356, the Bipartisan Campaign Reform Act of 2002 (BCRA), was signed into law by President Bush, as P.L. 107-155 (116 Stat. 81). Title II of BCRA addressed the express advocacy issue, but in a limited fashion, in large measure to enhance its chances of withstanding judicial scrutiny. Without amending FECA's definition of "political committee," "expenditure," or "contribution," Title II created a new term in federal election law, "electioneering

communications" — political advertisements that refer to clearly identified federal candidates, broadcast within 30 days of a primary or 60 days of a general election. Generally, the law prohibits such communications from being funded with union or corporate treasury funds, and disbursements of over $10,000 and donors of $1,000 or more are required to be disclosed to the FEC. BCRA did not address interest group involvement in such other election-related activities as broadcasts prior to the specified period before an election, public communications through non-broadcast methods, voter identification, and get-out-the-vote and registration drives.

Shortly after BCRA was enacted, plaintiffs filed suit arguing that key portions of the new law violated the First Amendment and other provisions of the U.S. Constitution. Due to its regulation in the area of express advocacy, some commentators predicted that Title II, in particular, was potentially vulnerable to being struck down. In December 2003, however, the Supreme Court, in *McConnell v. FEC*,[30] largely upheld the entire law, including Title II.[31] In upholding Title II, the Court determined that its decision in *Buckley v. Valeo* construed FECA's disclosure and reporting requirements, as well as its expenditure limitations, to apply only to funds used for communications that contain express advocacy of the election or defeat of a clearly identified candidate.[32] The *McConnell* Court held that neither the First Amendment nor *Buckley*, however, prohibits BCRA's regulation of "electioneering communications," even though electioneering communications, by definition, do not necessarily contain express advocacy. The Court determined that when the *Buckley* Court distinguished between express and issue advocacy it did so as a matter of statutory interpretation, not constitutional command. Moreover, the Court announced that, by narrowly reading the FECA provisions in *Buckley* to avoid problems of vagueness and overbreadth, it "did not suggest that a statute that was neither vague nor overbroad would be required to toe the same express advocacy line."[33] "[T]he presence or absence of magic words cannot meaningfully distinguish electioneering speech from a true issue ad," the Court observed.[34] The Supreme Court in *McConnell* also specifically noted that even with the electioneering provisions of BCRA intact, IRC Section 501(c) and 527 organizations would continue to be involved in federal election activity. Such interest groups, according to the Court, "remain free to raise soft money to fund voter registration, GOTV activities, mailings, and broadcast advertising (other than electioneering communications)."[35]

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[30] McConnell v. FEC, 540 U.S. 93 (2003).

[31] For further discussion of McConnell v. FEC, *see* CRS Report RL32245, *Campaign Finance Law: A Legal Analysis of the Supreme Court Ruling in McConnell v. FEC*, by L. Paige Whitaker.

[32] Buckley, 424 U.S. at 80.

[33] McConnell, 540 U.S. at 192.

[34] *Id.* at 193.

[35] *Id.* at 187-188.

The activities not addressed by BCRA in Title II have loomed particularly large in the wake of Title I's prohibition on national political party use of non-federally-permissible funds (i.e., soft money) to pay for voter mobilization activities. Groups wishing to engage in these activities and still avail themselves of the unlimited sources of money no longer available to political parties may qualify for tax-exempt status under IRC § 527.

527 Activity in 2000 - 2006 Federal Elections

2000 Elections

Enactment of P.L. 106-230 meant that data on the financial activity of 527 groups would become available for the first time, at least for the period after July 1, 2000, when the law took effect. Reports filed with the IRS under the new law showed receipts of $73.5 million and expenditures of $103.0 million (the $30 million difference owing largely to cash-on-hand at the start of the law's coverage). Of particular relevance, however, was the financial activity of groups solely involved in federal elections. An examination of reports of all groups filing with the IRS by PoliticalMoneyLine found that "key groups" (i.e., those that were clearly related to federal elections) had receipts of $61.3 million and expenditures of $88.6 million. Among these key groups, $39.7 million was raised by Democratic-oriented groups and $21.6 million by Republican-oriented groups.[36]

The largest and most prominent 527 group during the 2000 elections was Citizens for Better Medicare, which spent an estimated $40-$65 million on issue advocacy.[37] The aggregate totals, however, do not include this group's activity, as it stopped accepting contributions as of July 1, 2000, and switched to section 501(c)(4) status (where limited disclosure rules apply).[38] Prominent, established interest groups, such as the Sierra Club and the NAACP, also established 527s for the 2000 election.[39]

Tables 1 and **2** provide data on the largest 527 groups filing with the IRS under the new statute and the largest donors to those groups in the 2000 election cycle, as compiled by PoliticalMoneyLine.

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[36] PoliticalMoneyLine, *Money in Politics Databases: 527 Groups*, at [http://www.tray.com/cgi-win/irs_ef_527.exe?DoFn=&sYR=2000].

[37] Cigler, Allan J., "Interest Groups and Financing the 2000 Election," in *Financing the 2000 Election*, p. 180 (David B. Magleby, ed., 2002).

[38] CAMPAIGN FINANCE INSTITUTE TASK FORCE ON DISCLOSURE, ISSUE AD DISCLOSURE: RECOMMENDATIONS FOR A NEW APPROACH A8-A9 (2001).

[39] Cigler, *supra* note 36, p. 182.

Table 1. Top Ten 527s in 2000 Elections, Ranked by Receipts

Name	Receipts[a]
1. Pro Choice Vote	$12, 364,150
2. Planned Parenthood Votes	$ 7,217,204
3. Bush-Cheney 2000, Inc. - Recount Fund	$ 7,211,773
4. New York Senate 2000	$ 6,337,785
5. Gore-Lieberman Recount Committee	$ 3,685,287
6. Democratic Legislative Campaign Cttee.	$ 3,542,722
7. Republican Leadership Council	$ 3,059,730
8. Working Families 2000	$ 2,954,655
9. EMILY's List Non-federal	$ 2,810,939
10. Democratic Governor's Assn.	$ 2,016,475

Source: PoliticalMoneyLine, *2000 Cycle 527 Committees*, at [http://www.tray.com/cgi-win/irs_ef_527.exe?DoFn=&sYR=2000].

a. Figures represent gross receipts, reflecting some double-counting due to transfers among affiliated committees

Table 2. Top Ten Donors to Key 527s in 2000 Elections

Name	Total Donations[a]
1. Jane Fonda	$11,955,000
2. Pro-Choice Vote	$ 8,233,648
3. AFSCME	$ 1,655,071
4. AFL-CIO	$ 1,442,755
5. Dem. Congressional Campaign Cttee.	$ 1,429,935
6. DNC Services Corp.	$ 1,110,000
7. Alida Rockefeller Messinger	$ 970,000
8. Service Employees Intl. Union	$ 925,250
9. Steven T. and Michele Kirsch	$ 750,000
10. Mr. And Mrs. John A. Harris, IV	$ 652,500

Source: PoliticalMoneyLine, *2000 Cycle Large Donors to PoliticalMoneyLine's Key 527 Groups*, at [http://www.tray.com/cgi-win/irs_ef_527.exe?DoFn=&sYR=2000].

a. Excludes transfers

2002 Elections

Reports filed with the IRS showed receipts of $215.2 million and expenditures of $229.5 million in the 2002 election cycle. The "key groups" identified by PoliticalMoneyLine had receipts of $183.6 million and expenditures of $193.6 million; this represented more than double the level of spending by key groups in 2000. Among these key groups, $104.3 million was raised by Democratic-oriented groups and $78.2 million by Republican-oriented groups.[40]

Tables 3 and **4** provide data on the largest 527 groups filing with the IRS under the new statute and the largest donors to those groups in the 2002 election cycle, as compiled by PoliticalMoneyLine.

Table 3. Top Ten 527s in 2002 Elections, Ranked by Receipts

Name	Receipts[a]
1. Democratic Governor's Association	$16,115,035
2. Michael Steele for Maryland Cttee.	$ 8,781,418
3. College Republican National Cttee.	$ 8,435,903
4. Democratic Legislative Campaign Cttee.	$ 7,421,456
5. IMPAC 2000	$ 6,948,686
6. Republican Governors Association	$ 6,729,860
7. EMILY's List Non-federal	$ 6,662,333
8. AFL-CIO COPE Treasury Fund	$ 5,533,588
9. New American Optimists	$ 4,621,154
10. New Democratic Network — Non-fed.	$ 4,235,722

Source: PoliticalMoneyLine, *2002 Cycle 527 Committees*, at [http://www.tray.com/cgi-win/irs_ef_527.exe?DoFn=&sYR=2002].

a. Figures represent gross receipts, reflecting some double-counting due to transfers among affiliated committees

[40] PoliticalMoneyLine, *Money in Politics Databases: 527 Groups*, at [http://www.tray.com/cgi-win/irs_ef_527.exe?DoFn=&sYR=2002].

Table 4. Top Ten Donors to Key 527s in 2002 Elections

Name	Total Donations[a]
1. Gordon Humphrey	$ 3,950,968
2. AT&T	$ 2,667,240
3. Democratic Congressional Campaign Cttee.	$ 2,500,329
4. AFSCME	$ 2,452,000
5. Sierra Club	$ 2,305,000
6. Democratic National Committee	$ 2,094,826
7. Woodland Group Indiana L.L.C.	$ 1,805,000
8. Mr. And Mrs. John A. Harris, IV	$ 1,715,000
9. Stephen L. Bing	$ 1,677,090
10. Republican National Committee	$ 1,539,900

Source: PoliticalMoneyLine, *2002 Cycle 527 Committees*, at [http://www.tray.com/cgi-win/irs_ef_527.exe?DoFn=&sYR=2002].

a. Excludes transfers

2004 Elections

In the 2004 elections, several factors produced an exponential rise in both the financial level and importance of 527 organizations: the unresolved issue of whether federal election regulation reached beyond the "express advocacy" standard, the examples set by 527s in the 2000 and 2002 elections, the ban on party soft money in BCRA, and the extraordinary level of voter interest and intensity regarding the 2004 presidential election. According to a December 2004 study by the Center for Public Integrity,

> Although the 527 committees have been operating on the fringes of American politics for at least the past three election cycles, election 2004 was the first time they played a major role, perhaps a decisive role, in determining the outcome of a national election.[41]

Reports filed with the IRS showed receipts of $582.1 million and expenditures of $595.5 million in the 2004 election cycle. The "key groups" identified by PoliticalMoneyLine had receipts of $431.5 million and expenditures of $434.9 million; this represented more than double the level of spending by key groups in 2002. Among these key groups, $264.0 million was raised by Democratic-oriented

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[41] Center for Public Integrity, *527s in 2004 Shatter Previous Records for Political Fundraising*, at [http://www.publicintegrity.org/527/report.aspx?aid=435].

groups and $165.7 million by Republican-oriented groups.[42] **Tables 5** and **6** provide data on the largest 527 groups filing with the IRS under the new statute and largest donors to those groups in the 2004 election cycle, as compiled by PoliticalMoneyLine.

Table 5. Top Ten 527s in 2004 Elections, Ranked by Receipts

Name	Receipts[a]
1. ACT NOW PAC Non-federal Account	$79,795,487
2. Joint Victory Campaign 2004	$71,811,666
3. The Media Fund	$59,414,183
4. Progress for America Voter Fund	$44,929,178
5. Service Employees Intl. Union (SEIU) Political Education and Action Intl. Fund	$40,237,236
6. Republican Governors Association	$33,848,421
7. Democratic Governors Association	$24,172,761
8. AFSCME Special Acct.	$22,227,050
9. Swift Boat Veterans and POWs for Truth	$17,008,090
10. College Republican National Cttee.	$12,780,126

Source: PoliticalMoneyLine, *2004 Cycle 527 Committees*, at [http://www.tray.com/cgi-win/irs_ef_527.exe?DoFn=&sYR=2004].

a. Figures represent gross receipts, reflecting some double-counting due to transfers among affiliated committees

[42] PoliticalMoneyLine, *Money in Politics Databases: 527 Groups*, at [http://www.tray.com/cgi-win/irs_ef_527.exe?DoFn=&sYR=2004].

Table 6. Top Ten Donors to Key 527s in 2004 Elections

Name	Total Donations[a]
1. Victory Campaign 2004	$70,019,391
2. George Soros	$27,030,105
3. Peter B. Lewis	$23,997,220
4. Stephen L. Bing	$13,952,682
5. Herbert M. and Marion O. Sandler	$13,510,679
6. Service Employees Intl. Union (SEIU)	$ 9,777,589
7. AFSCME	$ 8,793,700
8. Bob J. Perry	$ 8,090,000
9. US Chamber of Commerce (and local branches)	$ 5,688,000
10. T. Boone Pickens	$ 5,620,000

Source: PoliticalMoneyLine, *2004 Cycle Large Donors to PoliticalMoneyLine Key 527 Groups*, at [http://www.tray.com/cgi-win/irs_ef_527.exe?DoFn=&sYR=2004].

a. Excludes transfers

Fundraising by 527s in 2004. In studying the activity of groups active in the 2004 elections, analysts have in part sought to understand what impact the prohibition on party soft money in BCRA had in the upsurge in donations to 527s in the 2004 elections. Certainly there had been the expectation by skeptics prior to BCRA's passage that the soft money ban would in fact lead to more unregulated money flowing to outside groups. In the one major study thus far on sources of 527 funding in 2004, the Campaign Finance Institute found that while this did occur to some extent, the groups "replaced part, but not the majority of soft money banned by the McCain-Feingold law."[43] Looking at the big picture, the study contrasted what it found to be a $273 million increase in 2004 receipts by 527s over 2002 receipts, with the $591 million it found had been raised in soft money by all party committees in 2002:

> ...[s]ince the 527s raised only $273 million more in 2004 than in the last year of party and candidate soft money, this 527 money failed to replace $318 million of the $591 million.[44]

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[43] Campaign Finance Institute (CFI), *New CFI Study of "527" Groups*, at [http://www.cfinst.org/pr/prRelease.aspx?ReleaseID=63].

[44] Steve Weissman and Ruth Hassan, "BCRA and the 527 Groups," in *The Election After Reform: Money, Politics and the Bipartisan Campaign Reform Act*, p. 81 (Michael J. Malbin, ed., 2006).

Notwithstanding that conclusion, however, there is no doubt that BCRA did not put an end to very large donations by wealthy individuals and entities. The Center for Public Integrity study found that more than one-fourth of all receipts of 527s in 2004 came from the top 15 individual donors.[45] Moreover, the Campaign Finance Institute found that 73 of the 113 donors who gave at least $250,000 to 527s in 2004 had given soft money to the political parties in 2000 or 2002.[46] The same study, however, found that these donors gave three times more to the 527s in 2004 than they had to the parties in 2000 and 2002 combined, indicating that soft money donations had not merely transferred to 527s.[47]

Of the $405 million in 527 receipts found by the Campaign Finance Institute, $256 million was from individual donors, $112 million was from labor unions, and $30 million was from businesses (including corporations, trade associations, and unincorporated entities). The business level actually dropped slightly from 2002, but the union level doubled and the individual component rose sevenfold.[48]

Spending by 527s in 2004 and Its Impact. It appears that few observers would disagree with preliminary findings of a study by Brigham Young University that 527s had "a substantial impact on the 2004 campaign ground and air wars."[49] It found that major Democratic-leaning groups (the Media Fund, AFL-CIO, and MoveOn) kept the presidential race close in the spring and summer of 2004, but that Republican-leaning groups (notably Swift Boat Veterans For Truth and Progress for America) organized later in the election had substantial impact in the fall campaign. Noting that 527s placed a much greater emphasis on voter mobilization and registration (i.e., the ground war) than they had before, the findings stated that "the big story of 2004, in addition to the tremendous ground strategy run by the Republican National Committee, was the ground work of the liberal America Votes coalition." Led by America Coming Together, the largest 527, this coalition included the Sierra Club, the League of Conservation Voters, Planned Parenthood, NARAL Pro-Choice America.

Still, it remains open to debate and a topic for further study whether the legal prohibition against coordinating their activities with candidates and political parties limited the potential effectiveness of the major 527s in 2004. Since some observers credit the Bush victory in 2004 in part to the clarity of its campaign "message," the ability to coordinate the messages being communicated, whether by campaigns or by

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[45] Center for Public Integrity, *527s in 2004 Shatter Previous Records for Political Fundraising*, *supra* note 40.

[46] CFI, *New CFI Study of "527" Groups*, *supra* note 42.

[47] *Id.*

[48] Weissman and Hassan, *BCRA and the 527 Groups, supra* note 43, pp. 11-12.

[49] Center for the Study of Elections and Democracy, Brigham Young University, *527s Had a Substantial Impact on the Ground and Air Wars in 2004, Will Return*, at [http://csed.byu.edu/PressReleases/Dec%20%2016%20CSED%20Press%20Release%20%282%29.doc].

sympathetic outside groups, could well have had an impact on the final outcome.[50] (Coordinating the 527's messages with a candidate's campaign would have constituted an in-kind contribution to the candidate, thus placing the organization in legal jeopardy.) It may well be that the most novel aspect of 527 activity in 2004 related to the voter mobilization efforts, an area traditionally dominated to a large extent by the political parties. There seems to be widespread agreement that here at least, 527 activity had a clear impact on the election.

2006 Elections

Reports filed with the IRS showed receipts of $361.3 million and expenditures of $395.6 million in the 2006 election cycle; these figures are likely to climb once final reports are filed for 2006. The "key groups" identified by PoliticalMoneyLine had receipts of $215.2 million and expenditures of $234.7 million; while this was roughly half the level of financial activity in 2004, this represented an increase over 2002 (the last comparable midterm election). Among these key groups, $109.4 million was raised by Democratic-oriented groups and $103.0 million by Republican-oriented groups, near parity between the parties for the first time since disclosure was instituted in 2000.[51]

Tables 7 and **8** provide data on the largest 527 groups filing with the IRS under the new statute and the largest donors to those groups in the 2006 election cycle, as compiled by PoliticalMoneyLine.

[50] Kenneth P. Doyle, "Leaders Say Nonparty Groups Obeyed Law But Had Major Impact on 2004 Campaign," *Money & Politics Report*, February 9, 2005.

[51] PoliticalMoneyLine, *Money in Politics Databases: 527 Groups*, at [http://www.tray.com/cgi-win/irs_ef_527.exe?DoFn=&sYR=2002].

Table 7. Top Ten 527s in 2006 Elections, Ranked by Receipts

Name	Receipts[a]
1. Republican Governors Association	$40,763,546
2. Democratic Governors Association	$28,045,313
3. SEIU Political Education and Action Intl. Fund	$22,367,120
4. Republican State Leadership Committee (RSLC)	$19,122,544
5. AFSCME Special Acct.	$17,410,657
6. EMILY's List - Non-federal	$11,775,201
7. Democratic Legislative Campaign Committee	$ 8,676,292
8. America Votes, Inc.	$ 8,094,443
9. Club for Growth	$ 6,346,665
10. Progress for America Voter Fund	$ 6,175,025

Source: PoliticalMoneyLine, *2006 Cycle 527 Committees*, at [http://www.tray.com/cgi-win/irs_ef_527.exe?DoFn=&sYR=2006].

a. Figures represent gross receipts, reflecting some double-counting due to transfers among affiliated committees.

Table 8. Top Ten Donors to Key 527s in 2006 Elections

Name	Total Donations[a]
1. Bob J. Perry	$12,300,000
2. Service Employees Intl. Union	$10,239,703
3. Andrew Jerrold and Margaret Perenchio	$ 5,450,000
4. George Soros	$ 4,067,500
5. AFSCME	$ 3,720,000
6. US Chamber of Commerce (and local branches)	$ 3,692,000
7. Linda Pritzker	$ 2,946,000
8. Peter B. Lewis	$ 2,684,458
9. National Education Association	$ 2,370,980
10. Richard and Betsy DeVos	$ 2,060,000

Source: PoliticalMoneyLine, *2006 Cycle Large Donors to PoliticalMoneyLine Key 527 Groups*, at [http://www.tray.com/cgi-win/irs_ef_527.exe?DoFn=&sYR=2006].

a. Excludes transfers

Summary of 2000 - 2006 Data

Table 9 summarizes data compiled by PoliticalMoneyLine on spending and receipts by 527 organizations clearly involved in federal elections.

Table 9. Receipts and Disbursements by Federal-Related 527s: 2000-2006

(dollars in millions)

Election Cycle	Total Spending	Receipts		
		Total	Democratic-oriented 527s	Republican-oriented 527s
2000	$88.6	$61.3	$39.7	$21.6
2002	$193.6	$183.6	$104.3	$78.2
2004	$434.9	$431.5	$264.0	$165.7
2006	$234.7	$215.2	$109.4	$103.0

Source: PoliticalMoneyLine, *PoliticalMoneyLine's Key 527 Groups*, at [http://www.tray.com/cgi-win/irs_ef_527.exe?DoFn=&sYR=2000].

Efforts to Regulate 527s

During and since the 2004 elections, efforts to address the activity of 527 organizations operating outside the regulatory framework of the FECA have been underway on several fronts: in the courts, at the FEC, and in Congress. Supporters of BCRA have led these efforts, insisting that existing federal election law requires that groups working for the election or defeat of candidates for federal office must register as political committees and comply with all aspects of that law, regardless of the nature of the specific activities in which they engage. These BCRA advocates have expressed dismay over the FEC's failure to issue regulations to enforce that view of the law and have filed court challenges to the activities of prominent 527 groups on that basis.

Concerns about this issue have by no means been limited to BCRA supporters. The Bush-Cheney campaign filed its own lawsuit to block activities of some prominent 527 groups during the 2004 elections; both the House Administration and Senate Rules and Administration Committees held hearings in 2004 and 2005; both committees reported bills to regulate 527 organizations under FECA in the 109th Congress; and the House passed such legislation on two occasions in 2006. While concern about the 527s has been voiced across the political spectrum, to some extent those concerns have different origins. BCRA supporters have tended to see the enormous amounts of money raised and spent in recent elections as a result of what they argue is the FEC's failure to enforce existing law, and they have also launched an effort to replace the agency with what they see as a more effective enforcement

body.[52] BCRA critics, however, insist that what has occurred has been the predictable result of the ban on soft money activity by the national parties, thus redirecting massive amounts of unregulated money to outside groups that are less accountable to the political system.

FEC-Proposed Rules in 2004 and Constitutional Concerns

On March 11, 2004, the FEC issued a Notice of Proposed Rule Making (NPRM), which presented various approaches for classifying 527 organizations as regulated "political committees" under FECA.[53] On April 14, 2004, the FEC held two days of hearings regarding the NPRM and received a record 150,000 public comments. The FEC voted to defer consideration of the NPRM for 90 days in May 2004, but when that deadline expired in August, the Commission considered two alternative final rule proposals, neither of which garnered the requisite votes of four of the six commissioners. Hence, the FEC did not adopt any new regulations prior to the November 2004 presidential election that would have addressed the key issues relevant to the regulation of 527 organizations, and with the exception of the political committee rules adopted in October 2004, discussed below, it has not adopted any such new regulations as of the date of this report.

Proposal to Redefine *Political Committee*. FECA generally defines a *political committee* as any group that receives *contributions* or makes *expenditures* exceeding $1,000 in the aggregate during a calendar year.[54] It further defines *contributions* and *expenditures* to apply when any gift or purchase is made "for the purpose of influencing any election for Federal office."[55] In interpreting the definition of *political committee*, the Supreme Court in its 1976 decision, *Buckley v. Valeo*, cautioned that the phrase "for the purpose of influencing" an election or nomination has the "potential for encompassing both issue discussion and advocacy of a political result."[56] Therefore, in order to avoid overbreadth, the Court found that "it need only encompass organizations that are under the control of a candidate or the *major purpose* of which is the nomination or election of a candidate."[57] As has been discussed, the second part of the court's determination has come to be known as the "major purpose test."

In its NPRM, the FEC discussed whether and how it should amend its regulations promulgated under FECA defining when an entity is considered a nonconnected political committee (a PAC which is not sponsored by another entity,

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[52] *See* H.R. 421 (Meehan-Shays) and S. 478 (McCain-Feingold) in the 110th Congress.

[53] Federal Election Commn., *Notice of Proposed Rulemaking*, 69 *Fed. Reg*. 11,736 (March 11, 2004).

[54] 2 U.S.C. § 431(4).

[55] 2 U.S.C. §§ 431(8),(9).

[56] Buckley v. Valeo, 424 U.S. 1, 79 (1976).

[57] *Id.* (emphasis added). In a subsequent opinion, the Court reaffirmed the applicability of this "major purpose" test. *See* FEC v. Massachusetts Citizens for Life, Inc., 479 U.S. 238 (1986).

such as a corporation or labor union). Current FECA regulations, at 11 CFR § 100.5(a), do not expressly incorporate the Supreme Court's "major purpose test" within the definition of "political committee." The NPRM proposed to redefine political committee to encompass the "major purpose test" so that, under the proposed regulations, whether an organization is a political committee would be determined by a two-part test: whether it receives contributions or makes expenditures aggregating over $1,000 per calendar year, and whether it has "the major purpose of nominating or electing a federal office candidate."[58]

In defining how the FEC would ascertain whether an organization has "the major purpose of nominating or electing a federal office candidate," the proposed regulation set forth three alternative tests for comment and consideration by the regulated community. As stated in the NPRM, the FEC did not make a final decision on a proposed regulatory test, and hence, sought comment on the three alternatives it was considering: whether an organization has spent $10,000, $50,000, or 50% of its total annual disbursements on a combination of contributions, expenditures (including independent expenditures), electioneering communications, and *federal election activities*.[59] FECA defines "federal election activity" to include (1) voter registration drives in last 120 days of a federal election; (2) voter identification, Get-Out-the-Vote (GOTV) drives, and generic activity in connection with an election in which a federal candidate is on the ballot; (3) public communications that refer to a clearly identified federal candidate and promote, support, attack, or oppose a candidate for that office (regardless of whether they expressly advocate a vote for or against); or (4) services by a state or local party employee who spends at least 25% of paid time in a month on activities in connection with a federal election.[60]

The FEC also sought comment on a fourth alternative method of determining whether an organization has "the major purpose of nominating or electing a federal office candidate," that would specifically only apply to 527 organizations. The fourth alternative consisted of two "sub-alternative" tests: Alternative 2-A would consider that all 527s have the major purpose of nominating or electing federal office candidates, with five exceptions: (1) if the 527 is the campaign organization of an individual seeking nomination, election, appointment, or selection to a non-federal office; (2) if the 527 is organized solely for the purpose of promoting the nomination or election of a candidate to a non-federal office; (3) if the 527 is a group of persons whose election or nomination activities relate solely to elections where no candidate for federal office appears on the ballot; (4) if the 527 operates solely within one state and, pursuant to state law, must file financial disclosure reports with the state government, showing all activities within that state; or (5) if the 527 is organized solely for the purpose of influencing the nomination or appointment of individuals to a non-elected office or to political party leadership positions. In contrast,

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[58] Federal Election Commission, *Notice of Proposed Rulemaking*, 69 *Fed. Reg*. 11,736, 11,756 (2004).

[59] *Id.* at 11756-57.

[60] 2 U.S.C. § 431(20).

Alternative 2-B would categorize any 527 organization as meeting the major purpose test, without any exemptions.[61]

If the FEC promulgates regulations classifying certain 527 organizations (other than party committees, FEC-registered political committees, and candidate committees) as *political committees*, they would be subject to FECA regulation. That is, for example, such organizations would be required to register with the FEC and file disclosure reports;[62] corporations and labor unions would be required to use separate segregated funds (political action committees or PACs) instead of unregulated treasury funds, to make contributions to the organizations;[63] and individuals would be limited to contributing no more than $5,000 annually to such organizations.[64] Further, such organizations could contribute no more than $5,000 per candidate per election.[65]

Those opposing the proposed regulations argue that they risk subjecting too many organizations, for example, 501(c) non-profit groups, to the status of political committee and thus, erroneously and unconstitutionally subjecting them to FECA regulation. Furthermore, they argue, such regulation will threaten grassroots advocacy. On the other hand, those favoring greater regulation by the FEC reject the argument that it will chill speech by non-profit groups because 501(c) organizations cannot, by definition, have a major purpose of influencing federal elections. Hence, proponents maintain, non-profits would not fall within the proposed definition and accordingly, would not be subject to FECA regulation.[66]

Proposal to Redefine "Expenditure". In addition to proposing options for redefining what constitutes a *political committee*, the NPRM presented options for amending FECA regulations to redefine the term *expenditure*. The definition of *expenditure* is also critical for determining which organizations and activities are subject to the FECA regulation of contribution limits, source restrictions, and disclosure requirements.[67] In *Buckley*, the Supreme Court found that the ambiguity of the operative phrase, "for the purpose of influencing any election for Federal office," created constitutional problems as applied to expenditures made by individuals other than candidates, and organizations other than political committees.[68] Therefore, in order to avoid the vagueness and potential overbreadth of the statutory

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[61] Federal Election Commission., *Notice of Proposed Rulemaking*, 69 Fed. Reg. 11,736, 11,757. (2004).

[62] *See* 2 U.S.C. §§ 432, 433, 434.

[63] *See* 2 U.S.C. § 441b(a), (b).

[64] *See* 2 U.S.C. § 441a(a)(1)(C).

[65] *See* 2 U.S.C. § 441a(a)(2)(A).

[66] *See, e.g.*, Federal Election Commission, *Transcript from Hearing on Political Committee Status* (April 14, 2004), (visited January 8, 2007) [http://www.fec.gov/pdf/nprm/political_comm_status/trans_04_14_04.pdf].

[67] *Id.* at 11756-57.

[68] Buckley, 424 U.S. at 77.

definition, *Buckley* adopted a narrow construction so that FECA's definition of expenditure only applies to "funds used for communications that expressly advocate the election or defeat of a clearly identified candidate."[69]

Over time, many in the campaign finance reform community observed that the Court's express advocacy test articulated in *Buckley* failed to provide a meaningful distinction between true issue ads and campaign ads. Indeed, when the Supreme Court considered the constitutionality of BCRA in its 2003 decision, *McConnell v. FEC*,[70] it concluded that certain communications can have the purpose or effect of influencing elections regardless of whether they contain express advocacy. Clarifying the express advocacy standard, the court determined that it is not a constitutional barrier in ascertaining whether an expenditure is "for the purpose of influencing any Federal election." That is, according to the court, "[i]n narrowly reading the FECA provisions in *Buckley* to avoid problems of vagueness and overbreadth, we nowhere suggested that a statute that was neither vague nor overbroad would be required to toe the same express advocacy line."[71]

In view of the Supreme Court's jurisprudence in this area, in its NPRM, the FEC also proposed to amend the definition of *expenditure* to include

> a payment, distribution, loan, advance, or deposit of money or anything of value made by, or on behalf of any person for a public communication, as defined in 11 C.F.R. § 100.26, is an expenditure if the public communication:
> (a) Refers to a clearly identified candidate for Federal office, and promotes or supports, or attacks or opposes any candidate for Federal office; or
> (b) Promotes or opposes any political party.[72]

Those opposing the proposed amended definition of *expenditure* argue that the importation of the "promote, support, attack or oppose" standard risks categorizing as political committees many non-party groups that make public communications, thereby potentially creating a problem of overbreadth. On the other hand, those favoring the change to the definition maintain that it is sufficiently narrowly tailored and would pass constitutional muster.[73]

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[69] *Id.* at 79-80. In a footnote to the decision, the Court supplied examples of express words of advocacy, "such as, 'vote for,' 'elect,' 'support,' 'cast your ballot for,' 'Smith for Congress,' 'vote against,' 'defeat,' 'reject.'" *Id.* at 44, n.52.

[70] 540 U.S. 93 (2003).

[71] *Id.* at 93.

[72] Federal Election Commission., *Notice of Proposed Rulemaking*, 69 Fed. Reg. 11,736, 11,757 (2004).

[73] *See*, e.g., Federal Election Commission, T*ranscript from Hearing on Political Committee Status* (visited January 8, 2007) [http://www.fec.gov/pdf/nprm/political_comm_status/trans_04_14_04.pdf].

2004 FEC Rule and Related Litigation

While the FEC was unable to adopt new regulations central to the issues of 527 regulation, as a compromise, in October 2004, it adopted a new regulation relevant to political committees.[74] Accordingly, this new rule was in effect during the November 2004 presidential election. Entitled "Funds received in response to solicitations," the new rule provides that political groups are regulated under FECA based on whether they conduct fundraising with solicitations that include appeals to "support or oppose" the election of a federal candidate. Funds or anything of value collected as a result of such solicitations are considered a *contribution* under FECA. Therefore, any organization with $1,000 or more in such contributions is subject to FECA regulation.[75] Notably, it has been reported that the FEC acknowledged that the new rule failed to address the key question of if and when, based on their solicitation messages, nonparty groups are required to register with the FEC as political committees.[76]

The new rule also revised its allocation regulations requiring that such regulated organizations pay at least 50% of their expenses for federal election related activities — such as get-out-the-vote (GOTV) efforts — with federally regulated hard money. Communications that support or oppose clearly identified federal candidates must be paid entirely with federally regulated hard money.[77]

In January 2005, EMILY's List, a nonconnected political committee, filed suit in U.S. District Court for the District of Columbia seeking to enjoin the new FEC rule. In its complaint, EMILY's List argued that the FEC did not provide proper notice for the new rule and that it violates the organization's First Amendment rights, particularly with regard to its state and local election activities. On February 25, 2005, the court denied the EMILY's List motion for a preliminary injunction and upheld the new rule.[78] Citing the Supreme Court's jurisprudence beginning with *Buckley v. Valeo* in 1976, the court found that it is clear that the government has an important interest in preventing corruption and the appearance of corruption in elections and that the Supreme Court has upheld FEC action to prevent circumvention of contribution limits designed to protect that interest. According to the court, "it is apparent that the FEC promulgated these rules in an effort to close an

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[74] *See* 11 C.F.R. § 100.57 (2006).

[75] FECA defines "political committee" as "any committee, club, association, or other group of persons that receives contributions aggregating in excess of $1,000 during a calendar year." 2 U.S.C. § 431(4).

[76] Kenneth P. Doyle, "FEC Faces Court Battles Over New Rule Imposing Limits on Section 527 Groups," *Money & Politics Report*, January 21, 2005. According to the Money & Politics article, Liz Kurland, of the FEC's information division, stated that the effect of the new rule on 527 organizations that were involved in federal elections, but claimed exemption from FEC regulation, is "going to be kind of a hairy issue, I have to admit." *Id.*

[77] 11 C.F.R. § 100.57(b) (2006).

[78] EMILY's List v. FEC, 362 F. Supp. 2d 43 (D.D.C. 2005), *aff'd*, 170 Fed. Appx. 719 (D.C. Cir. 2005).

oft-exploited loophole in federal election law."[79] The court further determined that the FEC appeared to have followed proper procedures in issuing its new rules, and concluded that the regulations appeared to pass constitutional muster.

On February 1, 2007, the FEC issued a "Supplemental Explanation and Justification," entitled "Political Committee Status," to more fully explain the basis for its 2004 rule and the reasons it declined to revise the regulatory definition of *political committee* in such a manner to specifically regulate 527 organizations.[80] According to the FEC, Section 527 status under the Internal Revenue Code is insufficient evidence *alone* to determine whether an organization is a political committee under FECA. It found that an organization's tax status under Section 527 does not necessarily satisfy "FECA and Supreme Court contribution, expenditure, and major purpose requirements."[81] In addition, the Commission determined that the IRS's requirements for granting tax exemption under Section 527 are based on "a different and broader set of criteria" than is used by the FEC in determining political committee status.[82]

Pursuant to FECA and Supreme Court precedent, the FEC stated that it will continue to determine *political committee* status based on whether an organization received contributions or made expenditures over $1,000 in a calendar year and whether the organization's "major purpose" was campaign activity. To that end, the FEC specifically noted that it will consider whether any of the organization's solicitations resulted in contributions "because the solicitations indicated that any portion of the funds received would be used to support or oppose the election of a clearly identified Federal candidate," and will analyze whether any of the organization's expenditures for communications, made independently of a candidate, "constituted express advocacy" under its regulations.[83]

In concluding, the FEC announced that its recent enforcement actions and guidance, provided through publicly available advisory opinions and filings in civil enforcement cases, evidence a "very effective mechanism for regulating organizations that should be registered as political committees under FECA, regardless of that organization's tax status." Moreover, the FEC announced, its new and amended rules, the "Supplemental Explanation and Justification," and its recent enforcement actions "places the regulated community on notice of the state of the law regarding expenditures, the major purpose doctrine, and solicitations resulting in contributions."[84]

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[79] *Id.* at 57.

[80] Federal Election Commission, *Political Committee Status,* (visited February 1, 2007) [http://www.fec.gov/law/cfr/ej_compilation/2007/notice_2007-3.pdf].

[81] *Id.* at 10.

[82] *Id.* at 11.

[83] *Id.* at 43, citing 11 C.F.R. §100.22(a) or 11 C.F.R. § 100.22(b).

[84] *Id.* at 44.

FEC Enforcement Action Against Three 527s for 2004 Activities

The FEC has assessed major fines for some 527 activities in recent elections. In several notable cases, the FEC determined that certain 527s should have registered as political committees and were subject to FECA regulation. On December 13, 2006, the FEC announced that it had reached settlements with three 527 organizations accused of violating FECA during the 2004 presidential election cycle. The League of Conservation Voters 527 and 527II agreed to pay $180,000; MoveOn.org Voter Fund agreed to pay $150,000; and Swiftboat Veterans and POWs for Truth agreed to pay $299,500, all in civil penalties. By a unanimous vote of 6 to 0, the FEC determined that through their public statements, solicitations for contributions, and other public communications, the organizations had established that they were political committees, but had failed to register with the FEC, comply with contribution limits and prohibitions, and file disclosure reports. According to the FEC, "[i]f an organization receives contributions or makes expenditures in excess of $1,000, and its major purpose is involvement in campaign activity, it must register with the Commission and abide by the contribution restrictions and reporting requirements of the Federal Election Campaign Act."[85]

The FEC reached similar conclusions in two notable 2007 enforcement actions. In August 2007, the FEC announced that it had reached a $775,000 settlement agreement with America Coming Together (ACT) for certain 2004 campaign activities. The FEC determined that ACT, which maintained both a federal PAC account and a non-federal (527) account, had improperly spent non-federal funds on federal election activities, including get-out-the-vote (GOTV) efforts that mentioned clearly identified federal candidates — traditionally a trigger for FECA enforcement.[86] In another case, the agency reached a conciliation agreement with The Media Fund (TMF) in November 2007. The FEC determined that TMF, a 527, had failed to register as a political committee and had accepted some contributions that exceeded FECA limits or were from impermissible sources. TMF agreed to pay a $580,000 civil penalty.[87] In these and other cases, the FEC has emphasized the number of enforcement actions taken against 527s and the large fines assessed in some of those cases.[88] Some campaign finance interest groups have countered that the agency has been too slow to act on 527 enforcement matters and that even large

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[85] Federal Election Commission, *FEC Collects $630,000 in Civil Penalties from Three 527 Organizations*, at [http://www.fec.gov/press/press2006/20061213murs.html].

[86] Federal Election Commission, "FEC To Collect $775,000 Civil Penalty From America Coming Together," press release, August 29, 2007; and Federal Election Commission, Conciliation Agreement in Matters Under Review 5403 and 5466 at [http://eqs.sdrdc.com/eqsdocs/000061AA.pdf].

[87] Federal Election Commission, "Media Fund to Pay $580,000 Civil Penalty," press release November 19, 2007; and Federal Election Commission, Conciliation Agreement in Matter Under Review 5440 at [http://eqs.nictusa.com/eqsdocs/000066D5.pdf].

[88] As of November 2007, the FEC had reached conciliation agreements with 11 527s and 501(c)(4) organizations during the past year. Federal Election Commission, "Media Fund to Pay $580,000 Civil Penalty," press release November 19, 2007.

fines represented a small share of those organizations' allegedly illegal campaign spending.[89]

Legislative Activity to Regulate 527s

108th Congress. The House Administration Committee began an examination of the role of tax-exempt 527 political organizations since enactment of BCRA. On November 20, 2003, the committee authorized its chairman to issue subpoenas to compel testimony from several groups that had declined to testify in its scheduled hearing that day. On May 20, 2004, the committee held an oversight hearing on the FEC and the 527 rulemaking process, prompted by the agency's postponement of a decision on a proposed regulation to redefine "political committee" to include activity by many 527 groups then in operation. The 527 issue was also addressed on March 1, 2004, at a hearing by the Senate Rules and Administration Committee, which, on July 14, 2004, also held an oversight hearing on the FEC.

The initial legislative response to the perceived 527 problems came from the sponsors of the BCRA — Senators McCain and Feingold and Representatives Shays and Meehan — who offered identical bills in September 2004, at the end of the 108th Congress. The 527 Reform Act of 2004 (S. 2828 and H.R. 5127) sought to bridge the differences in how federal election law and tax law defined who is covered under the respective statutes, by specifically declaring that 527 organizations under the IRC have the major purpose of influencing elections (unless they have annual receipts of less than $25,000 or are exclusively devoted to non-federal elections). By thus adding 527 organizations to the FECA definition of "political committee," such entities would have to fully comply with that law's requirements.

109th Congress. Revised versions of the bills offered at the end of the 108th Congress were introduced February 2, 2005, as the 527 Reform Act of 2005: H.R. 513, sponsored by Representatives Shays and Meehan, and S. 271, sponsored by Senators McCain, Feingold, and Trent Lott.[90] The bills proposed to treat 527 political organizations as political committees under FECA, unless they met certain specified standards for exemption (such as involvement solely in non-federal elections). In the revised bills, the "major purpose" standard contained in the 108th Congress bills was dropped, apparently to address concerns voiced by § 501(c) tax-exempt organizations that their activities could be subjected to FECA regulation as well.[91] Senate sponsors were bolstered by the addition of Rules and Administration Committee Chairman Lott, who had opposed BCRA but whose sponsorship of S. 271

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[89] See, for example, Democracy 21, "Democracy 21 and Campaign Legal Center Statement on FEC Finding that The Media Fund Illegally Spent Over $50 Million in 2004 Election," press release, November 19, 2007. Democracy 21 filed an FEC complaint in The Media Fund case.

[90] For a more complete discussion of the legislation, see CRS Report RL32954, *527 Political Organizations: Legislation in the 109th Congress*, by Joseph E. Cantor and Erika Lunder.

[91] Amy Keller, "527s Prepare Their Defense," *Roll Call*, February 22, 2005.

appeared to signal a broadening of support for this aspect of federal election law regulation.

On March 8, 2005, the Senate Rules and Administration Committee held a hearing on S. 271 (McCain-Feingold-Lott) and on April 27 proceeded to a markup of the bill. While the primary thrust of S. 271 was to apply the full scope of federal election law regulation to 527s involved in federal elections (source limits and prohibitions and disclosure requirements), the bill ordered reported by the Rules and Administration Committee expanded its focus considerably. Amendments were added to loosen certain hard money restrictions, to lower broadcast rates, and to free communications over the Internet from election law regulation. On May 17, 2005, an original bill was reported from the committee as S. 1053, thus supplanting S. 271, and placed on the Senate's legislative calendar.

On March 15, 2005, Representatives Mike Pence and Albert Wynn introduced H.R. 1316, the 527 Fairness Act of 2005. Essentially, this bill adopted the converse approach to the perceived 527 problem as was taken by sponsors of the 527 Reform Act of 2005 (i.e., to loosen restrictions on other players in the political process so that they could assume a greater role and hence offset the perceived undue role played by the 527s). By so doing, proponents expected that there would be less of an incentive for political money to flow to 527 groups operating outside the framework of the FECA.

The House Administration Committee held a hearing April 20, 2005, on H.R. 1316 (Pence-Wynn) and H.R. 513 (Shays-Meehan). On June 7, H.R. 1316, as amended by a committee substitute, was ordered reported favorably.[92] The reported version added new provisions, many of which had been added to S. 1053 in committee before it was reported. On June 29, 2005, the House Administration Committee held a markup of H.R. 513 (Shays-Meehan), and ordered it reported, as amended to reflect the sponsors' changes, without recommendation.[93] This set the stage for a potential House floor debate on the two contrasting measures: H.R. 1316 and H.R. 513. That debate never occurred, but on April 5, 2006, the House passed H.R. 513 (Shays-Meehan), as amended, by a 218-209 vote. As passed, the bill, the 527 Reform Act of 2006, included one floor amendment, to remove political party coordinated expenditure limits.

The text of H.R. 513, as passed, was later added to H.R. 4975, the Lobbying Accountability and Transparency Act of 2006, which passed the House on May 3, 2006; it also included an amendment added by the House Committee on Rules to prohibit leadership PAC funds from being converted to personal use but to allow them to be transferred without limit to national party committees (as is the case with funds in principal campaign committees). After passing H.R. 4975, the House substituted it for the text of S. 2349, the Senate-passed version of the bill, to enable a conference with the Senate. The Senate-passed bill did not contain the 527 provisions, and the Senate resisted considering 527s in the context of ethics reform.

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[92] *See* H.Rept. 109-146 (2005).

[93] *See* H.Rept. 109-181 (2005).

This conflict between the House and Senate kept the issue from being resolved in the 109th Congress.

Another bill offered in the second session reflected a limited regulatory approach. H.R. 4696, sponsored by Representative Mike Rogers, would prohibit 527 organizations that are not also political committees under the FECA from making electioneering communications, the most visible, but hardly the only, form of election-related issue advocacy. Four additional bills were offered in the 109th Congress, seeking a more limited approach to the 527 issue than reflected in the bills discussed above. To the extent that what has concerned many observers about 527 groups' activity is their lack of accountability relative to organizations regulated under federal election law, these proposals sought to bolster the disclosure requirements in the Internal Revenue Code and thus offer voters a greater opportunity to know about these groups and who finances them. These bills included H.R. 471, sponsored by Representative John Larson; H.R. 914, sponsored by Representative Phil English; and H.R. 1942 and H.R. 2204, sponsored by Representative Clay Shaw.

110th Congress. BCRA sponsors in the House introduced their legislation to regulate 527s early in the 110th Congress.[94] H.R. 420, sponsored by Representatives Marty Meehan and Christopher Shays, and S. 463, sponsored by Senators John McCain and Russell Feingold, the 527 Reform Act of 2007, are identical to the two measures passed by the House in the 109th Congress, as they pertained strictly to 527s (amendments on party coordinated expenditures and leadership PACs were omitted). A summary of these bills, compared with current law, follows in **Table 10**.

Two other 527 bills have also been introduced in the 110th Congress.[95] First, a lobbying and ethics reform bill (H.R. 2316, Conyers) passed by the House in May 2007 would have required lobbyists to disclose certain contributions to non-political committee 527s.[96] However, the lobbying reform measure that ultimately became law (P.L. 110-81) did not address 527s.[97] Second, H.R. 1204 (English) would change periodic disclosure requirements for those 527 organizations that report to the IRS rather than the FEC. The bill would also amend the penalties for failing to file such reports in a timely manner. Finally, the bill would require that the periodic disclosure reports filed with the IRS also be filed with the FEC.

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[94] On campaign finance activity during the 110th Congress, see CRS Report RL34324, *Campaign Finance: Legislative Developments and Policy Issues in the 110th Congress*, by R. Sam Garrett.

[95] The text refers to two bills affecting *non-political committee* 527s. As noted elsewhere in this report, political committees, as defined in FECA, are also considered 527s for tax purposes. H.R. 3771 (Sensenbrenner), a bill affecting political-committee 527s (or state-level equivalents), would permit taxation of state and local candidates' principal campaign committees at the same rate as congressional candidates' principal campaign committees.

[96] See H.R. 2316 as passed by the House, Sec. 204.

[97] On 110th Congress lobbying reform, see CRS Report RL34166, *Lobby Law and Ethics Rules Changes in the 110th Congress*, by Jack Maskell.

Table 10. H.R. 420 (Meehan-Shays) and S. 463 (McCain-Feingold), the 527 Reform Act of 2007, Compared with Current Law

Current law	H.R. 420 (Meehan-Shays) S. 463 (McCain-Feingold)
Defines political committee (thus triggering FECA regulation) as: (A) a committee, club, association, or other group of persons which receives contributions or makes expenditures aggregating in excess of $1,000 during a calendar year; (B) a separate segregated fund (PAC set up by a union, corporation, trade assoc., or membership group); or (C) a local committee of a party which makes contributions or expenditures aggregating in excess of $1,000 in a calendar year, receives contributions aggregating in excess of $5,000 in a calendar year, or makes payments exempted from definition of contribution/expenditure in excess of $5,000 in a cal. year [2 U.S.C. § 431(4)]	Includes in definition of political committee any IRC §527 organization, unless it: • has annual gross receipts of less than $25,000; • is a political committee of a state or local party or candidate; • exists solely to pay certain administrative expenses or expenses of a qualified newsletter; • is composed solely of state or local officeholders or candidates whose voter drive activities refer only to state/ local candidates and parties; or • is exclusively devoted to elections where no federal candidate is on ballot, to non-federal elections, ballot issues, or to selection of non-elected officials [Sec. 2/1002]
No provision	Makes last exemption (above) inapplicable if the IRC §527 organization spends more than $1,000 for: • public communications that promote, support, attack, or oppose a clearly identified federal candidate within one year of the general election in which that candidate is seeking office; or • for any voter drive effort conducted by a group in a calendar year, unless: (1) sponsor confines activity solely to one state; (2) non-federal candidates are referred to in all voter drive activities and no federal candidate or party is referred to in any substantive way; (3) no federal candidate or officeholder or natl. party official/agent is involved in organization's direction, funding, or spending; AND (4) no contributions are made by the group to federal candidates [Sec. 2/1002]

Current law	H.R. 420 (Meehan-Shays) S. 463 (McCain-Feingold)
FEC regulations that took effect Jan. 1, 2005, require PACs (non-candidate, non-party political committees) — including those associated with non-FECA-compliant 527 groups — that make disbursements for voter mobilization activities or public communications that affect both federal and non-federal elections to generally use at least 50% hard money from federal accounts to finance such activities, but require that public communications and voter drive activities that refer to only federal candidates be financed with 100% hard money from a federal account, regardless of whether communication refers to a political party [11 C.F.R. §106.6]	Codifies 2005 FEC regulations and makes them applicable to 527s not affected by current rules [Sec. 3/1003]
No limits on funding sources for PACs' non-federal accounts, but BCRA added a provision to FECA that imposes some regulation of special non-federal accounts of state and local party committees that may undertake certain "federal election activities" using a mix of federal and non-federal funds. These so-called Levin accounts operate under several conditions on the use of these funds and the raising of money for them, including that they accept no more than $10,000 a year (or less, if state law so limits) from any person and that they use no funds that were solicited, received, directed, transferred, or spent by or in the name of a national party, federal candidate or official, or joint fundraising activities by two or more state or local party committees [2 U.S.C. §441i(b)]	Allows contributions to non-federal accounts making allocations (above) only by individuals and subject to limit of $25,000 per year; prohibits fundraising for such accounts by national parties and officials and federal candidates and officeholders [Sec. 3/1003]
N.A.	States that this act shall have no bearing on FEC regulations, on any definitions of political organization in Internal Revenue Code, or on any determination of whether a 501(c) tax-exempt organization may be a political committee under FECA [Sec. 8]
N.A.	Provides special expedited judicial review procedures, similar to BCRA's, for a challenge on constitutional grounds, and allows any Member to bring or intervene in any such case [Sec. 9]

Conclusion

If the 110th Congress chooses to address 527s, a key question will be whether additional regulation should occur via legislation, new FEC or other regulation, or enforcement of existing regulations. Regardless of how policy change occurs, perhaps most importantly, it remains unclear whether the courts would uphold additional attempts to regulate 527 activity. Indeed, whether regulation of 527 activity needs to be limited to only those organizations engaging in express advocacy is a topic of much controversy and debate. Nevertheless, there is likely to be continued criticism that activity by 527s in the manner seen in recent elections threatens to undermine the effectiveness of regulation under federal election law.

Another issue that has received attention is whether, in the event that Congress does require further regulation of 527 organizations, money might flow to other types of tax-exempt organizations, such as IRC § 501(c)(4) social welfare organizations and § 501(c)(6) trade associations.[98] These types of organizations may engage in political campaign activity so long as it is consistent with the organization's exempt purpose. There are, however, two limitations in the IRC that would make these organizations less efficient than Section 527 political organizations for carrying on election-related activities. First, the IRC implicitly restricts the amount of political campaign activity that these organizations may conduct — specifically, participating in political campaign activity cannot be the organization's primary activity.[99] Second, under IRC § 527(f), IRC § 501(c) organizations are subject to tax if they make an expenditure for an IRC § 527 exempt function. As discussed above, an exempt function is influencing or attempting to influence the selection, nomination, election, or appointment of an individual to a federal, state, or local public office, to an office in a political organization, or as a presidential or vice-presidential elector. Under IRC § 527(f), the organization is taxed at the highest corporate rate on the lesser of the organization's net investment income or its total amount of exempt function expenditures.[100] Finally, it should be noted that tax-exempt organizations must also abide by any applicable election laws. For example, since campaign finance laws ban unions and corporations from making any contribution or expenditure in connection with federal elections, IRC § 501(c)(5) labor unions and any incorporated tax-exempt organizations are generally prohibited from doing so, as well.

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[98] For more information on the political activity restrictions on tax-exempt organizations, *see* CRS Report RL33377, *Tax-Exempt Organizations: Political Activity Restrictions and Disclosure Requirements*, by Erika Lunder.

[99] *See* Treas. Reg. § 1.501(c)(4)-1(a)(2)(ii); IRS Gen. Couns. Mem. 34233 (December 30, 1969).

[100] IRC § 501(c) organizations may set up a separate segregated fund under IRC § 527(f)(3). Assuming the fund is set up and administered properly, it will be treated as an IRC § 527 political organization and the IRC § 501(c) organization will not be subject to tax.

Appendix. Summary of Internal Revenue Code Provisions Applicable to 527 Organizations

Table 11. Disclosure Requirements under the Internal Revenue Code

	Notification of 527 Status	Disclosure of Expenditures and Contributions	Information Return	Tax Return
IRS Form	Form 8871	Form 8872	Form 990	Form 1120-POL
Description of Requirement	Organization must notify the IRS of its existence. Notification must include the organization's name, address, and purpose; names and addresses of certain employees and directors; and name of and relationship to any related entities. [IRC § 527(i)]	Organization that accepts a contribution or makes an expenditure for an *exempt function* must file a disclosure report with the IRS. Report includes (1) name, address, and employer of a contributor who gives during the reporting period and has given at least $200 during the year, and the amount of the contribution; and (2) the amount and purpose of each expenditure made to a person during the reporting period if that person has received at least $500 during the year, along with the person's name, address, and employer. [IRC § 527(j)]	Organization must file an information return with the IRS. Return includes such information as the organization's revenue sources and functional expenses. Contributions of at least $5,000 must be reported on the return's Schedule B. [IRC § 6033]	Organization with political organization taxable income must file a tax return with the IRS. [IRC § 6012(a)(6)]

	Notification of 527 Status	Disclosure of Expenditures and Contributions	Information Return	Tax Return
Frequency	Once — the organization must notify the IRS within 24 hours of its formation.	Either on a quarterly basis in a year with a regularly scheduled election and semi-annually in any other year or a monthly basis. Additional requirements for pre-general election, post-general election, and year-end reports.	Annually	Annually
Disclosed to the Public?[a]	Yes	Yes	Yes	No
Exceptions	Any organization that - anticipates having gross receipts of less than $25,000 for any year - is a political committee of a state or local candidate or a state or local committee of a political party, or - is required to report to the FEC as a political committee.	Any organization that - is not required to or did not file a Form 8871, or - is a state or local political organization that reports similar information to a state agency. The requirement also does not apply to any expenditure that is an independent expenditure (i.e., an expenditure that expressly advocates for a candidate but is made without the candidate's cooperation).	Any organization that: - has gross receipts of less than $25,000 ($100,000 if a qualified state or local political organization); - is a state or local committee of a political party or a political committee of a state or local candidate, - is required to report to the FEC as a political committee, - is a caucus or association of state or local officials, - is an authorized committee under FECA § 301(6) of a candidate for federal office, - is a national committee under FECA § 301(14) of a political party, or - is a Congressional campaign committee of a political party committee.	Any organization with less than $100 in political organization taxable income.

	Notification of 527 Status	Disclosure of Expenditures and Contributions	Information Return	Tax Return
Penalty for failing to file the return in a timely or accurate manner	Organization will be subject to tax on all income for the period between its formation and the filing. An organization that fails to notify the IRS within thirty days of any material change to the reported information will not be treated as a 527 organization for the period between the change and the notification.	Organization will be subject to a penalty that equals the highest corporate tax rate multiplied by the amount of contributions and/or expenditures to which the failure relates.	Organization will be subject to a penalty of $20 per day, not to exceed the lesser of $10,000 or 5% of the organization's gross receipts (for organizations with more than $1 million in gross receipts, the penalty is $100 per day and is limited to $50,000.) [IRC § 6652(c)(1)(A)]	Organization will be penalized for each month the return is late in an amount that equals 5% of the tax due, not to exceed 25% of the tax due. [IRC § 6651(a)(1)][b] An organization that is late in paying its taxes will be penalized for each month the payment is late in an amount that equals 0.5% of the unpaid tax, not to exceed 25% of the unpaid tax. [IRC § 6651(a)(2)] Penalties will not be assessed if the failure was due to reasonable cause, but will be increased for negligence or fraud. [IRC § 6662 and 6663]

a.The IRS and 527 organization must make Forms 8871, 8872, and 990 publicly available. An organization that fails to do so is subject to a penalty of $20 per day, which is limited to $10,000 for failures relating to Forms 8872 and 990. The IRS must post electronically-submitted Forms 8871 and 8872 in an on-line database within 48 hours of their filing. The database also includes some organizations' Forms 8871, 8872, and 990 that were submitted on paper. The database is available at [http://www.irs.gov].

b. Under IRC § 6652(c)(1)(A), the penalty for failing to file Form 1120-POL is the same penalty that applies for failing to file Form 990. It appears to be the IRS position that the penalty under IRC § 6651 applies rather than the penalty under IRC § 6652 and that "[a] technical correction may be needed to clarify that penalties under § 6652 that apply to failure to file Form 990 ... do not apply to a failure to file Form 1120-POL." Rev. Rul. 2003-49, 2003-1 C.B. 903.