

CRS Report for Congress

Received through the CRS Web

527 Political Organizations: Legislation in the 109th Congress

June 20, 2005

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Summary

The 109th Congress is examining the role of groups organized under section 527 of the Internal Revenue Code (IRC) that are involved in federal elections, but are not operating under the requirements and restrictions of federal election law. While such groups only recently emerged into public awareness, in 2004, they were widely seen as major players in the presidential election, with more than \$400 million spent seeking to influence the outcome.

Strictly speaking, the term “527” refers to a section of the Internal Revenue Code, which was added in 1975 to provide tax-exempt status to federal, state, and local *political organizations*, as defined in that statute. While most 527s operating today are also *political committees* operating under federal and state election law, certain groups with 527 status are arguably not being so regulated because their public communications do not contain express advocacy language which had generally been held to be the standard for election law regulation. The controversy over these 527 groups arises from two factors: the different definitions used in federal election law and tax law as to what constitutes election-related activity and, further, the lack of certainty as to what election law itself regulates or may permissibly regulate.

Eight bills have been proposed in the 109th Congress to address the 527 issue: H.R. 471, H.R. 513, H.R. 914, H.R. 1316, H.R. 1942, H.R. 2204, S. 271, and S. 1053. Two of these — S. 1053 (McCain-Feingold-Lott) and H.R. 1316 (Pence-Wynn) — have been ordered reported by the respective Senate and House committees. These bills reflect vastly different approaches to the 527 issue and to campaign finance regulation in general. This report will be updated as further developments so warrant.

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527 Political Organizations: Legislation in the 109th Congress

The 109th Congress is examining the role of groups organized under section 527 of the Internal Revenue Code (IRC) that are involved in federal elections, but are not operating under the requirements and restrictions of federal election law. While such groups only recently emerged into public awareness, by 2004, they were widely seen as major players in the presidential election, with more than \$400 million spent seeking to influence the outcome.

Strictly speaking, the term “527” refers to a section of the Internal Revenue Code, which was added in 1975 to provide tax-exempt status to federal, state, and local *political organizations*, as defined in that statute. Until the 1990s, it was generally thought that such status correlated directly with those groups labeled *political committees* operating under federal and state election law. Indeed, political committees — whether political parties, political action committees (PACs), or candidate committees — have or are eligible for 527 status under the IRC. What has made 527 groups the subject of controversy arises from two factors: the different definitions used in federal election law and tax law as to what constitutes election-related activity and, further, the lack of uniform opinion as to what election law itself regulates or may permissibly regulate.

In 2000, it came to light that some groups engaged in federal election-related issue advocacy were operating under section 527 of the IRC while not being regulated under the Federal Election Campaign Act (FECA), ostensibly because their communications with the public did not contain language expressly advocating the election or defeat of clearly identified candidates. (Prevailing judicial interpretation of Supreme Court precedent prior to and arguably since enactment of the Bipartisan Campaign Reform Act of 2002, or BCRA, has created a conundrum by permitting regulation of only those communications containing express advocacy, that is, communications containing explicit terms urging the election or defeat of clearly identified federal candidates.) Because no disclosure was required under either the tax or election laws before 2000, these groups were shrouded in mystery. Congress addressed the 527 issue that year by requiring disclosure to the Internal Revenue Service (IRS), and amended the new requirements in 2002, primarily to exempt state and local political organizations. Under these disclosure rules, 527 organizations are required to report to the IRS information that is similar to what political committees report to the Federal Election Commission (FEC).

But the continued activities of certain 527 organizations heightened concerns about circumvention of federal election law and the continued role of soft money in federal elections, even after enactment of BCRA. Title II of BCRA addressed the express advocacy issue, but only with regard to broadcast advertisements in the period just prior to federal elections, called “electioneering communications.” BCRA

was silent regarding interest groups' involvement in such other election-related activities as public communications through non-broadcast methods, broadcasts prior to the last 30 days before a primary or 60 days before a general election, voter identification, and get-out-the-vote and registration drives. These activities loom particularly large in the wake of BCRA's prohibition on national political party use of non-federally-permissible funds (i.e., soft money) to pay for voter mobilization activities.

In 2004, 527 groups extended their activities beyond the broadcast messages containing election-related issue advocacy, for which they had become known in 2000, into grassroots voter mobilization efforts as well. Since the 2004 elections, public attention has shifted to these new patterns of electioneering, raising questions as to whether requiring disclosure to the IRS is sufficient.

109th Congress Activity

Eight bills have been proposed in the 109th Congress to address the 527 issue: H.R. 471, H.R. 513, H.R. 914, H.R. 1316, H.R. 1942, H.R. 2204, S. 271, and S. 1053. In the spring of 2005, the House and Senate committees which oversee federal election law held hearings and reported two bills with vastly different approaches to the issue. These bills represent two distinctive schools of thought that have long framed the debate on laws governing campaign finance. One approach fully favors the regulation of money and politics, with the imposition of restrictions and prohibitions justified as being conducive to a less corrupt electoral system or at least one that can promote greater confidence by the electorate. The opposing view takes a generally de-regulatory approach, based on the belief that money will always find its way into politics and that the more one seeks to regulate, the more one contributes to such unintended consequences as money flowing through less visible, less accountable channels. These two schools of thought are reflected in the two principal measures ordered reported by House and Senate committees.

Regulatory Approach

The initial response to the perceived 527 problems came from the sponsors of the Bipartisan Campaign Reform Act of 2002 (BCRA) — Senators McCain and Feingold and Representatives Shays and Meehan — who offered identical bills in September 2004, at the end of the 108th Congress (H.R. 5127 and S. 2828) to require that 527s involved in federal elections comply fully with federal election law by adding 527 organizations to the FECA definition of “political committee.” Revised versions of these bills were offered on February 2, 2005, in the 109th Congress, as the 527 Reform Act of 2005: H.R. 513 and S. 271. Senate sponsors were bolstered by the addition of Rules and Administration Committee Chairman Trent Lott, who had opposed BCRA but whose sponsorship of S. 271 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. However, 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, an original bill was reported from the Committee as S. 1053, thus supplanting S. 271, and placed on the Senate's legislative calendar.

Deregulatory Approach

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 expect 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), the companion to the McCain-Feingold-Lott bill (and identical to S. 271 as introduced). On June 7, 2005, the committee voted to report H.R. 1316, as amended by a committee substitute. The version of H.R. 1316 ordered reported adds new provisions, many of which were added to S. 1053 in committee before it was reported.

Comparison of the Two Major Approaches

Table 1 offers a comparison of H.R. 1316 (Pence-Wynn), S. 1053 (McCain-Feingold-Lott), and H.R. 513 (Shays-Meehan), as well as relevant provisions of current law. This table does not specifically address S. 271 because it has since been supplanted by S. 1053. However, its provisions are identical to the House bill (H.R. 513) still under consideration in that body.

In order to highlight changes made in committee to the two bills ordered reported, provisions added by committee are shown in *italics*. One can readily see that there is substantial similarity between S. 1053 and H.R. 513 in the non-italicized text, reflecting some fine-tuning of the substantive provisions of S. 1053 since S. 271 was introduced. One can also see significant similarity in the italicized portions of S. 1053 and H.R. 1316, reflecting the deregulation provisions added to the Senate bill in committee and then mirrored in the committee substitute in the House. A fuller discussion of these proposals follows **Table 1**.

Table 1.¹ H.R. 1316 (Pence-Wynn), S. 1053 (McCain-Feingold-Lott) & H.R. 513 (Shays-Meehan)²

Current law	H.R. 1316 (Pence-Wynn)	S. 1053 (McCain-Feingold-Lott)	H.R. 513 (Shays-Meehan)
SOFT MONEY			
Political Parties			
<p>Generally prohibits state and local party committees from spending money not subject to limitations, prohibitions, and reporting requirements of federal election law for a “federal election activity” [2 U.S.C. §441i(b)(1)]</p> <p>“Federal election activity” is defined to include voter registration drives in last 120 days of a federal election; voter drives and generic activity in an election in which a federal candidate is on ballot; “public communications” that refer to a clearly identified federal candidate and promote, support, attack, or oppose a candidate for that office; and services by a state or local party employee who spends at least 25% of time on federal elections) [2 U.S.C. § 431(20)]</p>	<p>Removes voter registration activities in the last 120 days of a federal election from definition of “federal election activity,” and specifies that “federal election activity” does not include either voter registration activity or costs of sample ballots in elections with both federal and state or local candidates on the ballot <i>[original provision modified slightly by chairman’s amendment]</i></p> <p>This provision would thus allow soft money to be used by state and local parties for all voter registration activities and for sample ballots, as specified, subject to FEC allocation rules [Sec. 12]</p>	<p>No provision</p>	<p>No provision</p>

¹ In **Table 1**, italicized text indicates provisions added by amendment in committee.

² H.R. 513 is identical to S. 271, the McCain-Feingold-Lott bill, as originally introduced, but later supplanted by S. 1053.

Current law	H.R. 1316 (Pence-Wynn)	S. 1053 (McCain-Feingold-Lott)	H.R. 513 (Shays-Meehan)
<p>Notwithstanding prohibition on federal candidates and officeholders from raising soft money, such individuals may attend, speak, or be a featured guest at state or local party fundraiser [2 U.S.C. §441i(e)(3)]</p> <p>FEC regulations state that such individuals may speak at such events without restriction or regulation [11 C.F.R. §300.64]</p>	<p><i>Codifies FEC regulation by stating that federal candidates and officeholders may speak without restriction or regulation at state or local party fundraisers [Sec. 13]</i></p>	<p>No provision</p>	<p>No provision</p>
<p>If a person makes an electioneering communication and it is coordinated with candidate or his/her authorized committee, or a federal, state, or local party committee, or agents thereof, disbursement is to be treated as a contribution to candidate (or his/her party) supported by the communication and as an expenditure by that candidate or his/her party [2 U.S.C. §441a(a)(7)(C)]</p>	<p>Provides that an electioneering communication which refers to a federal candidate shall not be treated as a coordinated disbursement solely on the ground that communication contains an endorsement of a state or local candidate or ballot initiative or referendum (or if communication contains endorsement, that candidate reviewed, approved, or otherwise participated in communication's preparation or dissemination) [Sec. 15]</p>	<p>No provision</p>	<p>No provision</p>

Current law	H.R. 1316 (Pence-Wynn)	S. 1053 (McCain-Feingold-Lott)	H.R. 513 (Shays-Meehan)
Tax-exempt Organizations			
<p>Defines political committee (thus triggering FECA regulation) as:</p> <p>(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;</p> <p>(B) a separate segregated fund (PAC set up by a union, corporation, trade assoc., or membership group); or</p> <p>(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)]</p>	<p>No provision</p>	<p>Includes in definition of political committee any IRC §527 organization, unless it:</p> <ul style="list-style-type: none"> • has annual gross receipts of less than \$25,000; • is a political committee of a state/local party or candidate; • exists solely to pay certain admin. 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; • <i>is solely involved in voter drive activities, incl. public communications devoted to such, but does not engage in broadcast communications {Schumer amendment};</i> 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] 	<p>Includes in definition of political committee any IRC §527 organization, unless it:</p> <ul style="list-style-type: none"> • 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; 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]

Current law	H.R. 1316 (Pence-Wynn)	S. 1053 (McCain-Feingold-Lott)	H.R. 513 (Shays-Meehan)
No provision	No provision	<p>Makes last exemption (above) inapplicable if the IRC §527 organization spends more than \$1,000 for:</p> <ul style="list-style-type: none"> • public communications that promote, support, attack, or oppose a clearly identified federal candidate within one year of the general election in which that candidate seeks office; or • for any voter drive activity conducted by a group in a calendar year, unless: <ol style="list-style-type: none"> (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 <p>[Sec. 2]</p>	<p>Makes last two exemptions (above) inapplicable if the IRC §527 organization spends more than \$1,000 for:</p> <ul style="list-style-type: none"> • 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 in connection with an election in which a candidate for federal office is on the ballot <p>[Sec. 2]</p>

<p>Current law</p>	<p>H.R. 1316 (Pence-Wynn)</p>	<p>S. 1053 (McCain-Feingold-Lott)</p>	<p>H.R. 513 (Shays-Meehan)</p>
<p>FEC regulations that took effect Jan. 1, 2005, require PACs (non-candidate, non-party political committees) 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]</p>	<p>No provision</p>	<p>Codifies newly effective FEC regulations [Sec. 3]</p>	<p>Codifies newly effective FEC regulations [Sec. 3]</p>

Current law	H.R. 1316 (Pence-Wynn)	S. 1053 (McCain-Feingold-Lott)	H.R. 513 (Shays-Meehan)
<p>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 which 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)]</p>	<p>No provision</p>	<p>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; states that funds in such non-federal accounts are not otherwise subject to FECA [Sec. 3]</p>	<p>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]</p>
<p>N.A.</p>	<p>No provision</p>	<p>States that this act shall have no bearing on FEC regulations, on any definitions of political organizations 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]</p>	<p>Same as S. 1053 [Sec. 4]</p>

Current law	H.R. 1316 (Pence-Wynn)	S. 1053 (McCain-Feingold-Lott)	H.R. 513 (Shays-Meehan)
N.A.	No provision	Provides special expedited judicial review procedures, similar to those in BCRA, for a challenge to the act on constitutional grounds, and allows any Member to bring or intervene in any such case [Sec. 9]	Same as S. 1053 [Sec. 5]
<ul style="list-style-type: none"> • Bans union, corporate, or natl. bank funding of electioneering communications (broadcast, cable, or satellite ads that refer to a clearly identified federal candidate, are made within 60 days of a general election or 30 days of a primary, and, if for House or Senate, are “targeted to relevant electorate”) [2 U.S.C. §441b(a), (b)] • Exempts IRC §501(c)(4) and §527 tax-exempt corps. making electioneering communications with funds solely donated by individuals who are U.S. citizens or nationals or permanent resident aliens [2 U.S.C. 441b(c)(2)] • Makes exemption inapplicable if communication is “targeted communication,” i.e., was distributed from a broadcaster or cable or satellite service and is received by 50,000 or more persons in state or district where Senate or House election, respectively, is occurring [2 U.S.C. §441c(6)] 	Removes “targeted communications” exception to exemption of IRC §501(c)(4) and §527 organizations from ban on electioneering communications by unions and corporations, thus allowing IRC §501(c)(4) and §527 corporations to make electioneering communications with funds donated solely by individuals who are citizens, nationals, or permanent resident aliens [Sec.10]	No provision	No provision

Current law	H.R. 1316 (Pence-Wynn)	S. 1053 (McCain-Feingold-Lott)	H.R. 513 (Shays-Meehan)
Bans funding of an electioneering communication with funds from unions, corporations, or national banks [2 U.S.C. §441b(a), (b)], but exempts IRC §501(c)(4) or §527 tax-exempt corporations making electioneering communications with funds solely donated by individuals who are U.S. citizens or nationals or permanent resident aliens [2 U.S.C. §441b(c)(2)]	Extends same authority granted to IRC §501(c)(4) organizations with regard to electioneering communications to IRC §501(c)(5) and §501(c)(6) organizations (respectively, labor unions and trade associations) [Sec.10]	No provision	No provision
Provisions in election law relating to electioneering communications and tax-exempt organizations do not authorize the organizations to do anything not allowed under the tax code [2 U.S.C. § 441b(c)(5)]	Adds statement that the election law provisions do not affect the tax treatment of expenditures for electioneering communications by tax-exempt organizations [Sec. 10]	No provision	No provision
Bans direct or indirect contributions from foreign nationals (including soft money), or their solicitation or receipt, or any promise to make such donations, in connection with any U.S. election, to a national party committee, or for any expenditure, disbursement, or independent expenditure for an “electioneering communication” [2 U.S.C. §441e(a)]	<i>Adds to existing ban a prohibition against foreign nationals contributing to a 527 organization</i> [Sec. 8]	No provision	No provision

<p>Current law</p>	<p>H.R. 1316 (Pence-Wynn)</p>	<p>S. 1053 (McCain-Feingold-Lott)</p>	<p>H.R. 513 (Shays-Meehan)</p>
<p>IRC generally requires 527s to make periodic, scheduled disclosure of financial activity to IRS, unless they are PACs, or party or candidate committees already required to file under FECA. Reporting schedule mirrors that for political committees under FECA: (1) monthly in all years; or (2) quarterly in election year, as well as pre-election and post-general election, and semi-annually in non-election year [26 U.S.C. § 527(j)(2)]</p>	<p><i>Requires 527 organizations currently required to file reports only with IRS to file reports with FEC as well, in the same manner as is required for PACs (non-candidate, non-party political committees) under FECA [Sec. 9]</i></p>	<p>No provision</p>	<p>No provision</p>

Current law	H.R. 1316 (Pence-Wynn)	S. 1053 (McCain-Feingold-Lott)	H.R. 513 (Shays-Meehan)
HARD MONEY			
Individuals			
<p><i>Aggregate limit</i> Imposes aggregate limit on all contributions in a two-year election cycle to federal candidates, political parties, and political action committees (PACs): \$101,400, with sub-limits of \$40,000 to candidates and \$61,400 to PACs and parties (but no more than \$40,000 to PACs and state or local party committees)³ [2 U.S.C. §441a(a)(3)]</p>	<p>Removes aggregate limit on contributions by individuals [Sec. 2]</p>	<p>No provision</p>	<p>No provision</p>
<p><i>To PACs</i> Individuals may give up to \$5,000 per year to a PAC (non-candidate, non-party political committee), not indexed for inflation [2 U.S.C. §441a(a)(1)(C)]</p>	<p><i>Increases limit to \$7,500 per year on contributions to a PAC</i> [Sec. 4] Provides for indexing of limit for future inflation [Sec. 5]</p>	<p><i>Increases limit to \$7,500 per year on contributions to a PAC {Bennett amendment}</i> [Sec. 6]</p>	<p>No provision</p>
<p><i>To state/local parties</i> Individuals may give up to \$10,000 per year to a state party committee, not indexed for inflation [2 U.S.C. §441a(a)(1)(D)]</p>	<p><i>Indexes limit for future inflation</i> [Sec. 5]</p>	<p><i>Indexes limit for future inflation {Bennett amendment}</i> [Sec. 6]</p>	<p>No provision</p>

³ These limits, established by BCRA, reflect the 2005 adjustments for inflation also mandated by BCRA.

Current law	H.R. 1316 (Pence-Wynn)	S. 1053 (McCain-Feingold-Lott)	H.R. 513 (Shays-Meehan)
Political Parties			
<p>National and state party committees may make coordinated expenditures on behalf of their general election nominees, subject to limits: House candidate in a multi-district state — \$10,000 plus COLA; Senate candidate or at-large House candidate — the greater of \$20,000 plus COLA or 2¢ per eligible voter plus COLA; and presidential candidate — 2 ¢ per eligible voter plus COLA [2 U.S.C. §441a(d)]</p> <p>In 2004, parties could spend \$37,310 in House races in multiple district states, \$74,620 in at-large House races, from \$74,620 to \$1.9 million in Senate races, and \$16.2 million in presidential race. In congressional races, state parties may designate national party as spending agent, thus in effect doubling House and Senate limits shown here</p>	<p>Removes limit on party coordinated expenditures [Sec. 3]</p>	<p>No provision</p>	<p>No provision</p>

Current law	H.R. 1316 (Pence-Wynn)	S. 1053 (McCain-Feingold-Lott)	H.R. 513 (Shays-Meehan)
Political Action Committees (PACs)			
<p>Multicandidate political committees⁴ may contribute \$5,000 per candidate per election, not indexed for inflation [2 U.S.C. §441a(a)(2)(A)]</p>	<p><i>Increases limit to \$7,500 per candidate per election</i> [Sec. 4] Indexes limit for future inflation [Sec. 5]</p>	<p><i>Increases limit to \$7,500 per candidate per election, with indexing for future inflation {Bennett amendment}</i> [Sec. 6]</p>	<p>No provision</p>
<p>Multicandidate political committees may contribute \$15,000 to a national party committee, not indexed for inflation [2 U.S.C. §441a(a)(2)(B)]</p>	<p><i>Increases limit to \$25,000 per year on contributions to a national party</i> [Sec. 4] Indexes limit for future inflation [Sec. 5]</p>	<p><i>Increases limit to \$25,000 per year on contributions to a national party, with indexing for future inflation {Bennett amendment}</i> [Sec. 6]</p>	<p>No provision</p>
<p>Multicandidate political committees may contribute \$5,000 per year to any other political committee, not indexed for inflation [2 U.S.C. §441a(a)(2)(C)]</p>	<p><i>Increases limit to \$7,500 per year on contributions to another committee</i> [Sec. 4] Indexes limit for future inflation [Sec. 5]</p>	<p><i>Increases limit to \$7,500 per year on contributions to another political committee, with indexing for future inflation {Bennett amendment}</i> [Sec. 6]</p>	<p>No provision</p>
<p>Allows unlimited transfers of funds from a federal candidate’s campaign to a national, state, or local party committee [2 U.S.C. §439a(a)] Allows unlimited transfers of funds among national, state, and local committees of the same political party [2 U.S.C. §441a(a)(4)]</p>	<p><i>Allows unlimited transfers of funds between leadership PACs (those established, financed, maintained, or controlled by a federal candidate or officeholder) and national party committees</i> [Sec. 6]</p>	<p><i>Allows unlimited transfers of funds between leadership PACs (those established, financed, maintained, or controlled by a federal candidate or officeholder) and national party committees {Bennett amendment}</i> [Sec. 6]</p>	<p>No provision</p>

⁴ Most PACs qualify for *multicandidate status* (have at least 50 contributors, are registered for at least six months, and, except for a state party, contribute to at least five federal candidates).

Current law	H.R. 1316 (Pence-Wynn)	S. 1053 (McCain-Feingold-Lott)	H.R. 513 (Shays-Meehan)
<p>Corporations and unions may make up to two written solicitations per year to their restricted classes (stockholders, executive/ administrative employees, and their families for a corporation, and union members and families for a labor union) for funds for their PACs. Solicitations must be by mail addressed to them at their residence [2 U.S.C. §441b(b)(4)(B)]</p>	<p>Allows solicitations of restricted classes by communications (not necessarily mail) addressed or otherwise delivered to their residences [Sec. 11]</p>	<p><i>Eliminates twice-a-year limit on solicitations by unions and corporations of their restricted classes {Bennett amendment}</i> [Sec. 6]</p>	<p>No provision</p>
<p>Allows trade associations to solicit member corporations' restricted classes but requires that they have prior approval by corporation and that no more than one association may solicit such classes in a calendar year [2 U.S.C. §441b(b)(4)(D)]</p>	<p>Removes prior approval requirement and restriction that only one trade association may solicit a corporation's restricted classes per year [Sec. 11]</p>	<p><i>Removes prior approval requirement and restriction that only one trade association may solicit a corporation's restricted classes per year {Bennett amendment}</i></p>	<p>No provision</p>
OTHER FECA PROVISIONS			
Advertising			
<p>Broadcasters must sell time to candidates during last 45 days of a primary and 60 days of a general election at lowest unit rate (LUR) for same class and amount of time for same period [47 U.S.C. §315(b)]</p>	<p>No provision</p>	<ul style="list-style-type: none"> • <i>Makes TV, cable, and satellite LUR broadcast time non-preemptible, with rates based on comparison with prior 365 days;</i> • <i>extends such rates to national parties for time on behalf of candidates;</i> • <i>provides for random audits to insure compliance {Durbin amendment}</i> [Sec. 4] 	<p>No provision</p>

Current law	H.R. 1316 (Pence-Wynn)	S. 1053 (McCain-Feingold-Lott)	H.R. 513 (Shays-Meehan)
<p>Defines “public communication” as a communication by broadcast, satellite, or cable facility, newspaper, magazine, outdoor advertising facility, mass mailing, phone bank to general public, or any other form of general public political advertising [2 U.S.C. §431(22)]</p>	<p><i>States that communications over the Internet shall not be considered “public communications” (hence subject to regulation under FECA)</i> [Sec. 14]</p>	<p><i>States that communications over the Internet shall not be considered “public communications” (hence subject to regulation under FECA) {Bennett amendment}</i> [Sec. 5]</p>	<p>No provision</p>
Other			
<p>Defines political committee as: (A) a committee, club, assoc., or other group which receives contributions or makes expenditures in excess of \$1,000 in a year; (B) a separate segregated fund; or (C) a local party committee which makes contributions or expenditures in excess of \$1,000 in a year, receives contributions in excess of \$5,000 in a year, or makes payments exempt from definition of contribution/expenditure in excess of \$5,000 in a year [2 U.S.C. §431(4)]</p>	<p><i>Increases annual contribution and expenditure threshold for determining political committee status to \$10,000 in all instances enumerated in definition</i> [Sec. 7]</p>	<p><i>Increases annual contribution and expenditure threshold for determining political committee status to \$10,000 in all instances enumerated in definition {Bennett amendment}</i> [Sec. 6]</p>	<p>No provision</p>

527 Reform Act of 2005: S. 1053, H.R. 513, and S. 271

Soft money (Non-federal funds). The key provision of the 527 Reform Act of 2005 would add 527 organizations to the FECA definition of “political committee,” thus subjecting them to the full scope of federal election law regulation: source limits and prohibitions and disclosure requirements. The bills enumerate activities which would exempt 527s from FECA regulation, generally those that seek to affect state and local but not federal elections, as well as activities that would negate such exemptions, generally ones that could be construed as having some potential, substantive impact on federal elections. Additionally, the bills would codify FEC regulations which took effect in January 2005 to require that at least 50% of PAC spending for activities that benefit federal as well as state and local elections be from hard money, and that donations to a PAC’s nonfederal account be limited to \$25,000 a year, from individuals only.

These provisions are the heart of all three bills entitled 527 Reform Act, although the reported Senate bill reflects more fine-tuning to allow a greater range of activities to avoid triggering regulation under FECA. Most notable of these is reflected in the Schumer amendment to S. 1053, adopted despite the opposition of bill sponsors, to allow a 527 group solely engaged in voter mobilization efforts but no broadcast, cable, or satellite activities to escape from FECA regulation.

The bills thus seek to address the issues raised during the 2004 elections by highly visible 527 groups, which raised money in amounts and from sources which would have been prohibited were they regulated under the FECA. In a larger sense, S. 1053, S. 271, and H.R. 513 attempt to reconcile the different regulatory approaches of federal election and tax codes as well as different interpretations of what constitutes election-related activity. Much like the sponsors of BCRA, proponents of the 527 Reform Act were faced with the basic challenge of trying to regulate in the area of protected free speech rights, requiring that provisions be narrowly drawn so as to be easily understood by the regulated community and not be overly broad and thus impinge on free speech. They also had to contend with the prospect that by imposing greater regulation directly on 527s, they could provide incentives for groups to reorganize as other tax-exempt entities to avoid onerous regulation as 527s. Supporters and opponents of these bills reach very different conclusions as to the bills’ success in meeting those goals.

Hard money (Federal funds). The bill emerging from the Senate Rules and Administration Committee contained two amendments unrelated to the 527 issue. The Bennett amendment added several provisions to loosen some FECA hard money restrictions, particularly affecting PACs. While BCRA had raised contribution limits on individuals and parties, and provided for indexing for inflation, money given to and by PACs was not affected. Under the Bennett amendment, such limits would be raised and amounts indexed for future inflation. Corporations, unions, and trade associations would be given freer authority to solicit restricted classes for funds for their PACs, measures long favored by the business PAC community. Leadership PACs would be given the right to transfer unlimited amounts of money to a national political party, just as is the case for a candidate’s principal campaign committee (often applicable to leftover funds of retiring federal officeholders). Also, the Bennett amendment added language identical to several

bills in Congress seeking to exclude communications over the Internet from regulation under the FECA.⁵

The Durbin amendment added a provision to lower broadcast costs for political candidates by changing the way the lowest unit rate (LUR) is calculated, making time purchased under LUR non-preemptible, and extending the rate to national political parties buying time on behalf of their candidates. This measure had been included in the Senate-passed version of BCRA in 2001 but was deleted by the House before enactment in 2002.

527 Fairness Act of 2005: H.R. 1316

Both as introduced and in the version reported from the House Administration Committee, H.R. 1316 is overwhelmingly aimed at deregulating both the hard and soft money aspects of federal election law.

Soft money (Non-federal funds). IRC §501(c)(4) organizations are generally referred to as “social welfare organizations”; IRC §501(c)(5) organizations include labor unions; §501(c)(6) organizations include trade associations; and IRC §527 organizations are political organizations. Under BCRA, IRC §501(c)(4) and §527 organizations are exempted from the prohibition against corporations paying for electioneering communications, unless, per the so-called Wellstone amendment, they are for “targeted communications.” H.R. 1316 would repeal the targeted communications exception, thus generally allowing incorporated §501(c)(4) and §527 organizations to engage in electioneering communications. The bill would also expand the exemption to include IRC §501(c)(5) and §501(c)(6) organizations.

There is no requirement in the tax laws that IRC §501(c)(4), §501(c)(5), §501(c)(6), and §527 organizations be incorporated. Thus, for any of these organizations that are not incorporated, the current law that relates to electioneering communications is inapplicable, and such organizations would not be affected by the amendments made by H.R. 1316 to those provisions. Most IRC §501(c)(4), §501(c)(5), and §501(c)(6) organizations are incorporated, but it is rare for IRC §527 organizations to be incorporated.

Current law specifies that the provisions on electioneering communications do not authorize any IRC §501(c) organization to take actions that are prohibited under the tax laws. H.R. 1316 would also specify that the electioneering communications provisions do not affect the tax treatment of expenditures for such communications by IRC §501(c) organizations. Under the tax laws, if these organizations make certain political expenditures, then they are subject to tax on the lesser of their net investment income or the amount of the expenditure. Taxable political expenditures could include expenditures for electioneering communications. While this tax may provide a disincentive for organizations with substantial investment income from making such expenditures, it may not affect organizations with little or no investment income or those that make low-cost expenditures. H.R. 1316 would clarify that while the bill would allow incorporated IRC §501(c)(4),

⁵ H.R. 1605 and H.R. 1606 (Hensarling); S. 678 (Reid).

§501(c)(5), and §501(c)(6) organizations to make expenditures for electioneering communications, the organizations could still be taxed on the amount of the expenditures under the tax laws.

Two provisions added to H.R. 1316 in committee would impose further regulation of 527 groups. One would prohibit foreign nationals from donating to 527s; the other would require 527s currently reporting only to the IRS to report to the FEC as well, as though they were federally-registered PACs.

H.R. 1316 also addresses some of the soft money restrictions imposed under BCRA. Whereas BCRA prohibits state and local parties from spending soft money for voter registration activities in the last 120 days of a federal election, H.R. 1316 would remove that prohibition and allow state and local parties to spend nonfederal funds, subject to allocation requirements, for any voter registration activity, as well as for sample ballots. The bill would also allow federal candidates and officeholders to endorse and appear in advertisements for state and local candidates without constituting a coordinated disbursement by the federal candidate or officeholder. It would also codify an existing FEC regulation that allows federal candidates and officeholders to speak “without restriction or regulation” at state and local party fundraisers.

Hard money (Federal funds). In the hard money arena, H.R. 1316 would provide greater freedom for individuals, political parties, and PACs to influence the electoral process, within the context of the federal election law’s regulatory system. As such, it would provide the sources of funds with greater leverage in the hard money arena, in order to make the less regulated soft money arena less appealing.

Perhaps no provision signals a move toward deregulation more than the proposed removal of the aggregate limit on individual contributions. As originally imposed in the 1974 Amendments to FECA, individuals were limited to \$25,000 per year on all contributions to federal candidates, parties, and PACs. BCRA raised the limit to \$95,000 per two-year election cycle (with specified sub-limits) and indexed it for inflation; in 2005, that limit is \$101,400. By removing the aggregate limit, the bill would allow individual citizens to give substantially more money in two-year period than they can now, while still subjecting them to the per entity limitations. In other words, while an individual’s opportunity for influence with a particular candidate, PAC, or party committee would be constrained as it is now, the opportunity for an individual to gain greater stature in the political community would be allowed to rise considerably.

While proponents favorably contrast the prospect of wealthy individuals giving a considerable sum of regulated hard money with the many millions of dollars given by some donors to 527 groups in 2004, opponents assert that the move toward individuals giving much larger sums under federal law sends the wrong message to the electorate. These opponents note that because BCRA prohibits federal candidates and officeholders and national party officials from raising soft money, there is far less chance for corruption when an individual donates large sums to an independent group than when a policymaker raises large sums from a contributor. Hence, any move toward substantial increases in hard money limits is particularly troubling to these

opponents. Supporters insist that the per entity limitations would remain in place, thus mitigating concerns about potential for corruption.

The second most notable hard money provision — the removal of party coordinated expenditure limits — may have less of a practical effect than first appears to be the case. This form of spending, whereby a party makes expenditures in coordination with a candidate’s campaign, has been subject to limits since the 1974 FECA Amendments. The limits are relatively high, compared with the limits on contributions, with typical House candidates eligible for \$74,620 in 2004 and a Senate candidate as much as \$3.8 million (in California) that year. Ever since the Supreme Court ruling in *Colorado Republican Federal Campaign Committee v. FEC* (518 U.S. 604 (1996)) which permitted parties to make independent expenditures on behalf of their candidates, the importance of coordinated expenditures has been diminished. The prospect of unlimited independent expenditures has been increasingly appealing to the parties, and it has become common for parties to make both independent expenditures and coordinated expenditures for the same candidates, albeit from at least nominally different departments of a party committee. BCRA had contained a provision to require a party to choose making either independent or coordinated expenditures for one of its nominees, but not both; this, however, was one of two BCRA provisions struck down by the Supreme Court in *McConnell v. FEC* (549 U.S. 93(2003)).⁶

Hence, while abolishing the limit on coordinated expenditures would appear to allow the parties to spend unlimited amounts on behalf of their candidates they already have that right, albeit through expenditures that are technically made without any coordination with the favored candidate. In a sense, the removal of these limits could be seen as acceptance of the current reality. Opponents assert that, like removing the aggregate individual limit, this provision sends the wrong message to an electorate cynical about the role of money in politics. They further insist that the national parties are now playing a significant role, especially in light of increased hard money limits under BCRA, with a combined fundraising record of nearly \$1.5 billion in the 2004 election cycle (all hard money), more than ever had been raised in combined hard and soft money by the national parties.

Many other hard money provisions in H.R. 1316, either in the introduced version or as added in committee, correspond with provisions added to S. 1053 in committee. Provisions that are now in both H.R. 1316 and S. 1053 include: the higher PAC limits; the indexing of all limits for inflation; the greater freedom given to unions, corporations, and trade associations to solicit restricted classes for PAC donations; the unlimited authority given to leadership PACs to transfer funds to national parties; the increase in the dollar threshold for triggering “political committee” status; and the removal of Internet communications from regulation under FECA.

⁶ For further discussion of the Supreme Court’s ruling in *McConnell*, see CRS Report RL32245, *Campaign Finance Law: A Legal Analysis of the Supreme Court Ruling in McConnell v. FEC*, by L. Paige Whitaker.

Bills to Regulate 527s through Disclosure Requirements

Four bills in the 109th Congress seek 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 seek to bolster the disclosure requirements in the IRC and thus offer voters a greater opportunity to know about these groups and who finances them.

Table 2 offers a comparison of these four bills — H.R. 471 (Larson), H.R. 914 (English), H.R. 1942 (Shaw), and H.R. 2204 (Shaw) — with each other and with current law.

Table 2. Other Bills to Regulate 527 Organizations

Current law	H.R. 471 (Larson)	H.R. 914 (English)	H.R. 1942 (Shaw)	H.R. 2204 (Shaw)
PERIODIC DISCLOSURE to the INTERNAL REVENUE SERVICE of EXPENDITURES and CONTRIBUTIONS				
Timing of Reports to the IRS				
<p>IRC §527 organizations that report to the IRS may choose to disclose their expenditures and contributions on (1) a monthly basis or (2) a quarterly basis in an election year and semi-annually in any other year. There are special rules for pre-election, post-election, and year-end reports [26 U.S.C. § 527(j)(2)]</p>	<p>Requires IRC §527 orgs. with at least \$25,000 in contributions and/or expenditures to disclose on a monthly basis in an election year and semiannually in non-election years. Requires IRC §527 organizations with less than \$25,000 in contributions and/or expenditures to disclose on a quarterly basis in an election year and on a semi-annual basis in non-election years. All organizations would have special rules for pre-election and post-election reports. An organization may elect to file monthly reports, with special rules for pre-election, post-election, and year-end reports [Sec. 1]</p>	<p>Requires IRC §527 organizations to disclose on a monthly basis, with special rules for pre-election, post-election, and year-end reports [Sec. 2]</p>	<p>Requires IRC §527 organizations that disclose on a semi-annual basis in non-election years to disclose on a quarterly basis in those years. Thus, such organizations would report on a quarterly basis, regardless of whether it is an election year [Sec 2]</p>	<p>Requires IRC §527 organizations to disclose on a monthly basis, with special rules for pre-election, post-election, and year-end reports [Sec. 2]</p>

Current law	H.R. 471 (Larson)	H.R. 914 (English)	H.R. 1942 (Shaw)	H.R. 2204 (Shaw)
Penalty Tax for Failure to Meet Disclosure Requirements				
<p>IRC §527 organizations that report to the IRS and fail to make the periodic disclosures are subject to a penalty equal to the highest corporate income tax rate multiplied by the amount to which the failure relates [26 U.S.C. § 527(j)(1)]</p>	<p>No provision</p>	<p>No provision</p>	<p>Creates new penalty that applies in addition to existing penalty. Under the new penalty, IRC §527 organizations that report to the IRS and fail to make the periodic disclosures are subject to a penalty tax equal to 30% of the amount to which the failure relates. The organization's managers are jointly and severally liable for the tax [Sec. 3]</p>	<p>Same as H.R. 1942 [Sec. 3]</p>
Coordination with the FEC				
<p>IRC §527 organizations that report to the IRS are not required to file copies of periodic disclosure reports with FEC [26 U.S.C. § 527(j)(5)(A)]</p>	<p>No provision</p>	<p>No provision</p>	<p>No provision</p>	<p>Requires IRC §527 organizations that report to the IRS to simultaneously file copies of periodic disclosure reports with FEC [Sec. 4]</p>
<p>Both the FEC and IRS are required to maintain public databases that contain disclosure reports filed with that agency [26 U.S.C. § 527(k); 2 U.S.C. § 438, 438a]</p>	<p>Requires the FEC and Treasury Department to improve the linkage of their databases and report their actions to Congress [Sec. 2]</p>	<p>No provision</p>	<p>No provision</p>	<p>No provision</p>

Current law	H.R. 471 (Larson)	H.R. 914 (English)	H.R. 1942 (Shaw)	H.R. 2204 (Shaw)
Denial of Gift Tax Exclusion⁷				
Contributions to 527 organizations are not subject to the gift tax [26 U.S.C. § 2501(5)]	No provision	No provision	Provides that contributions to 527 organizations that report to the IRS would be subject to the gift tax in any year the organization fails to make periodic disclosures to IRS. The organization must notify contributors within 90 days after IRS has determined the failure occurred [Sec. 3]	Same as H.R. 1942 [Sec. 3]

⁷ The reference in H.R. 1942 and H.R. 2204 to IRC § 2501(a)(4) should be to IRC § 2501(a)(5).

The four bills in **Table 2** affect only IRC §527 organizations that must file periodic disclosure reports with the IRS. Under current law, IRC §527 organizations must periodically disclose contributions and expenditures to the IRS unless they (1) report to the FEC as a political committee, (2) have less than \$25,000 in annual gross receipts, (3) are political committees of a state or local candidate or state or local committees of a political party, or (4) are qualified state or local political committees that report similar information to a state.

H.R. 471

H.R. 471 creates special filing rules for IRC §527 organizations that make expenditures or receive contributions of no more than \$25,000 in a year. Specifically, these organizations would have to file quarterly disclosure reports with the IRS in an election year and semi-annual reports in any other year. Under existing law, these organizations may be exempt from the disclosure rules because they have less than \$25,000 in annual gross receipts.⁸ Since the organizations described in the bill's special filing rules and the existing exemption may overlap, it may be unclear as to how the two provisions would interact.

H.R. 1942 and H.R. 2204

Gift tax. Under the federal gift tax, an individual is taxed on the amount of gifts made over his or her lifetime. Not all gifts are subject to tax. First, some transfers are excluded from the gift tax; e.g., contributions to IRC §527 organizations are not subject to the tax.⁹ Second, an individual is able to give annually a certain amount that is free from tax. The annual exclusion amount is \$10,000 per donee, and it is adjusted for inflation (\$11,000 in 2005).¹⁰ For example, in 2005, an individual who gave three donees each gifts of \$11,001 would have made only \$3 in taxable gifts. Third, an individual is able to give \$1 million in taxable gifts during his or her lifetime without being subject to tax — it is not until that threshold is passed that the individual is taxed.¹¹ Thus, the individual who made \$3 in taxable gifts would only be currently taxed on that amount if he or she had already given more than \$1 million in taxable gifts over his or her lifetime. Regardless of whether he or she owes tax, the individual would be required to file a gift tax return reporting the \$3 in gifts.

Under H.R. 1942 and H.R. 2204, contributions to IRC §527 organizations would be taxable gifts. An individual would be able to make tax-free donations that did not exceed the annual exclusion amount (\$11,000 in 2005) to an unlimited number of IRC §527 organizations, subject to the campaign finance laws. Any contributions that exceeded the annual exclusion amount would be considered a

⁸ IRC §527(j)(5)(D).

⁹ IRC §2501(a)(5).

¹⁰ IRC §2503(b).

¹¹ IRC §2505(a). The gift tax and estate tax are unified, so that any taxable gifts given by an individual during his or her lifetime decrease the amount of his or her estate that may pass tax-free [the estate tax, but not the gift tax, is repealed in 2010; it is scheduled to return in 2011]. IRC §2102(c)(3)(B).

taxable gift, although the individual would not be subject to the gift tax in the current year unless he or she had already given more than \$1 million in lifetime taxable gifts. Regardless of whether the donor was subject to the gift tax in the current year, the donor would need to file a gift tax return if he or she had given more than the annual exclusion amount to any IRC §527 organization.

Copy of report to the FEC. H.R. 1942 and H.R. 2204 would require IRC §527 organizations to file a copy of their IRS periodic disclosure reports with the FEC. It would appear that an organization that failed to file the copy would be subject to the existing penalties that apply for failure to file a report with the FEC¹² and that the FEC would need to disclose the copy on its public database.¹³

¹² 2 U.S.C. §437g.

¹³ 2 U.S.C. § 438a.