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106TH CONGRESS, 2d Session | HOUSE OF REPRESENTATIVES | REPORT 106–702

FULL AND FAIR POLITICAL ACTIVITY DISCLOSURE ACT OF 2000

JUNE 27, 2000.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. ARCHER, from the Committee on Ways and Means, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 4717]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 4717) to amend the Internal Revenue Code of 1986 to require 527 organizations and certain other tax-exempt organizations to disclose their political activities, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Full and Fair Political Activity Disclosure Act of 2000".

SEC. 2. INCREASED REPORTING OF POLITICAL ACTIVITIES.

(a) IN GENERAL.—Subpart A of part III of subchapter A of chapter 61 of the Internal Revenue Code of 1986 (relating to information concerning persons subject to special provisions) is amended by inserting after section 6033 the following new section:

"SEC. 6033A. RETURNS RELATING TO POLITICAL ACTIVITIES.

"(a) GENERAL REPORTING REQUIREMENTS.—

"(1) IN GENERAL.—Every organization to which this subsection applies for a reporting period shall submit a return to the Secretary for such period. Such return shall include—

"(A) a detailed description of such organization's disclosable activities during the reporting period and the purpose and intended results for the major categories of expenditures for such activities, including the candidates intended to be affected,

"(B) a list identifying—

"(i) each expenditure made for a disclosable activity during the reporting period in an amount in excess of the threshold amount, and

"(ii) the name and address of each person to whom the organization made any expenditure required to be reported under clause (i), and

"(C) in the case of a reportable contributor—

"(i) the name and address of the contributor (and, if the contributor is an individual, the contributor's occupation and employer),

"(ii) the aggregate amount of contributions made by such contributor,

"(iii) the name and address of the person (if any) on whose behalf the contributor made any payment to such organization, and

"(iv) if any payment by the contributor was designated for a beneficiary other than such organization (including amounts which are in any way earmarked or otherwise directed through an intermediary), the name and address of the intended beneficiary.

The information required under the preceding sentence for any reporting period shall be set forth separately for such period and in the aggregate for such period and preceding reporting periods during the calendar year.

"(2) ORGANIZATIONS TO WHICH SUBSECTION APPLIES.—This subsection shall apply to any organization described in or subject to section 527 if—

"(A) such organization is described in paragraph (4), (5), or (6) of section 501(c), or

"(B) such organization is a 527 organization.

"(3) EXCEPTION FOR NON-527 ORGANIZATIONS HAVING AGGREGATE DISCLOSABLE EXPENDITURES OF LESS THAN $10,000.—This subsection shall not apply to an organization described in paragraph (2)(A) for any reporting period if the aggregate expenditures of the organization for disclosable activities during the period beginning on January 1 of the calendar year in which the reporting period begins and ending on the last day of the reporting period are less than $10,000.

"(4) REPORTABLE CONTRIBUTOR.—

"(A) IN GENERAL.—For purposes of paragraph (1), the term 'reportable contributor' means any person if the aggregate of the contributions and membership dues, fees, and assessments (within the meaning of section 527) received by the organization from such person during the testing period exceeds the threshold amount.

"(B) EXCEPTION FOR DUES NOT ATTRIBUTABLE TO DISCLOSABLE ACTIVITIES.—

"(i) IN GENERAL.—At the election of the organization, the only dues taken into account under subparagraph (A) shall be dues attributable to expenditures for disclosable activities.

"(ii) PORTION OF DUES ATTRIBUTABLE TO DISCLOSABLE ACTIVITIES.—For purposes of clause (i), the portion of dues attributable to expenditures for disclosable activities of an organization is the amount which bears the same ratio to the total amount of dues as the expenditures of the organization which are disclosable under paragraph (1) for the testing period bears to the total expenditures of the organization for such period.

"(C) TESTING PERIOD.—For purposes of this paragraph, the term 'testing period' means, with respect to any reporting period, the period—

"(i) beginning on January 1 of the calendar year in which the reporting period begins, and

"(ii) ending on the last day of the reporting period.

"(5) SPECIAL RULE FOR EARMARKED CONTRIBUTIONS DEPOSITED INTO A SEGREGATED DISCLOSABLE ACTIVITIES FUND.—

"(A) IN GENERAL.—In the case of an organization described in paragraph (4), (5), or (6) of section 501(c), paragraph (1)(C) shall apply only with respect to amounts received which are earmarked for a disclosable activity if the organization elects—

"(i) to maintain a segregated disclosable activities fund,

"(ii) to deposit into such fund only and all amounts received by such organization which are earmarked by the contributor for a disclosable activity, and

"(iii) to make no expenditures for disclosable activities other than from such fund.

In the case of such a fund, subsection (d) shall not apply and the threshold amount shall be $1,000.

"(B) NONCOMPLIANCE.—In the case of an organization with respect to which an election is in effect under subparagraph (A) and which fails to comply with a requirement in subparagraph (A) during any reporting period, subparagraph (A) shall not apply to such period or any subsequent reporting period during the calendar year in which such period begins.

"(C) DE MINIMIS EXPENDITURES.—Failures to meet the requirement of subparagraph (A)(iii) with respect to de minimis amounts shall not be treated as a failure to comply with such requirement.

"(6) THRESHOLD AMOUNT.—For purposes of this section, the term 'threshold amount' means—

"(A) $200 in the case of a 527 organization, and

"(B) $1,000 in any other case.

"(b) DISCLOSABLE ACTIVITIES.—For purposes of this section—

"(1) 527 ORGANIZATIONS.—In the case of a 527 organization, the term 'disclosable activities' means all activities of the organization.

"(2) OTHER ORGANIZATIONS.—In the case of an organization described in paragraph (4), (5), or (6) of section 501(c), the term 'disclosable activities' means—

"(A) a 527-type activity,

"(B) establishing, administering, or soliciting contributions to a 527 organization,

"(C) contributing directly or indirectly to a 527 organization,

"(D) contributing directly or indirectly to an organization which is described in paragraph (4), (5), or (6) of section 501(c) and which is required to file a return under this section for the year in which the contribution is received or for any of the 3 preceding years (or would be required to file such a return had this section been in effect for such years), and

"(E) any mass media communication (including any mass mailing) which is not a 527-type activity and which—

"(i) mentions a clearly identified candidate for election for Federal office (including any individual who has formed an exploratory committee for such election) or the political party of such candidate, or

"(ii) contains the picture or other likeness of such candidate.

"(3) EXCEPTION FOR COMMUNICATION WITH MEMBERS.—Subparagraph (E) of paragraph (2) shall not apply to communication with bona fide members of the organization unless such communication urges such members to communicate with another person or to take an action as a result of such communication.

"(c) ADDITIONAL INFORMATION FROM 527 ORGANIZATIONS.—

"(1) STATEMENT OF ORGANIZATION.—

"(A) IN GENERAL.—Every 527 organization shall file a statement of organization with the Secretary (in such form and manner as the Secretary

shall prescribe) which contains the information described in subparagraph (B). Such statement shall be filed not later than 10 days after the date that such organization is established (or, in the case of an organization in existence on the date of the enactment of this section, not later than 10 days after such date of enactment).

"(B) STATEMENT OF ORGANIZATION.—The information described in this subparagraph is—

"(i) the name and address of the 527 organization,

"(ii) the name, address, relationship, and type of any person which is directly or indirectly related to or affiliated with such 527 organization,

"(iii) the name, address, and position of the custodian of books and accounts of the 527 organization,

"(iv) the name and address of the treasurer of the 527 organization, and

"(v) a listing of all banks, safety deposit boxes, and other depositories used by the 527 organization.

"(C) CHANGES IN INFORMATION.—If there is a change in circumstances such that the most recent statement filed under this paragraph is no longer accurate, the 527 organization shall file a corrected statement with the Secretary (in such manner as the Secretary shall prescribe) not later than 10 days after the date that the statement first ceased to be accurate.

"(D) RELATED AND AFFILIATED PERSONS.—For purposes of subparagraph (B)(ii), a person is directly or indirectly related to or affiliated with a 527 organization if such person, at any time during the 3-year period ending on the date such statement is submitted to the Secretary—

"(i) was in a position to exercise substantial direct or indirect influence over the process of collecting or disbursing the exempt purpose funds of such organization, or

"(ii) was in a position to exercise substantial, overall direct or indirect influence over the activities of such organization.

"(2) OTHER INFORMATION.—

"(A) IN GENERAL.—In addition to the information required by subsection (a), every 527 organization shall include the information described in subparagraph (B) on the return required under subsection (a).

"(B) INFORMATION DESCRIBED.—The information described in this subparagraph is—

"(i) a certification, under penalty of perjury, whether such expenditure is made in cooperation, consultation, or concert with, or at the request or suggestion of, any candidate for public office or any authorized committee of such candidate or agent of such committee or candidate,

"(ii) the name, address, and business purpose of any entity, as well as whether the entity purports to be exempt from tax under this title and (if so) the provision under which the entity purports to be so exempt, which made (in the aggregate for the reporting period) a contribution in excess of the threshold amount to the 527 organization, and

"(iii) the original source and the intended ultimate recipient of all contributions made by a person, either directly or indirectly, on behalf of any particular person, including contributions which are in any way earmarked or otherwise directed through any intermediary.

"(d) REPORTING PERIODS AND DUE DATES FOR RETURNS AND STATEMENTS.—

"(1) IN GENERAL.—The reporting periods and deadlines for filing returns and statements required by this section shall be—

"(A) determined under paragraph (2), (3), or (4), whichever is selected by the reporting organization, and

"(B) in the case of disclosable activities which are independent expenditures, determined under paragraph (5).

"(2) QUARTERLY REPORTS, ETC.—

"(A) CALENDAR YEARS HAVING A REGULARLY SCHEDULED ELECTION.—In the case of a calendar year in which a regularly scheduled election is held—

"(i) QUARTERLY REPORTS.—

"(I) PERIOD.—The reporting periods shall be the calendar quarters beginning with the first quarter of the calendar year in which a contribution is accepted or expenditure is made for a disclosable activity.

"(II) FILING DEADLINE.—Reports under this clause shall be filed not later than the 15th day after the last day of each calendar quarter; except that the report for the quarter ending on December

31 of such calendar year shall be filed not later than January 31 of the following calendar year.

"(ii) PRE-ELECTION REPORT.—

"(I) PERIOD.—A pre-election report with respect to an election shall be filed for the period ending on the 20th day before the election and beginning on the first day of the calendar quarter which includes such 20th day.

"(II) FILING DEADLINE.—A pre-election report shall be filed not later than the 12th day before (or posted by registered or certified mail not later than the 15th day before) any election with respect to which the organization makes a contribution or expenditure for a disclosable activity.

"(iii) POST-GENERAL ELECTION REPORT.—

"(I) PERIOD.—A post-general election report with respect to an election shall be filed for the period ending on the 20th day after the election and beginning on the first day of the calendar quarter which includes such 20th day.

"(II) FILING DEADLINE.—A post-general election report shall be filed not later than the 30th day after the general election.

"(B) OTHER CALENDAR YEARS.—In the case of any other calendar year—

"(i) SEMIANNUAL REPORTS.—The reporting periods shall be—

"(I) the 1st 6 months of the calendar year, and

"(II) the 2d 6 months of such year.

"(ii) FILING DEADLINES.—The report for the period described in clause (i)(I) shall be filed no later than July 31, and the report for the period described in clause (i)(II) shall be filed no later than January 31 of the following calendar year.

"(C) SPECIAL ELECTIONS.—The Secretary shall set filing dates for reports to be filed with respect to organizations filing under this paragraph with respect to special elections. The Secretary shall require no more than one pre-election report for each election and one post-election report for the election which fills the vacancy. The Secretary may waive any reporting obligation of organizations required to file for special elections if any report required by this paragraph is required to be filed within 10 days of a report required under this subparagraph. The Secretary shall establish the reporting dates within 5 days of the setting of such election.

"(D) EXCEPTION FROM QUARTERLY REPORT.—The requirement to file a quarterly report under subparagraph (A)(i) for a calendar quarter shall be waived if the organization is required to file a pre-election report under subparagraph (A)(ii) during the period beginning on the 5th day after the close of the calendar quarter and ending on the 15th day after the close of the calendar quarter.

"(3) MONTHLY REPORTS, ETC.—

"(A) PERIOD.—The reporting periods shall be monthly for all calendar years beginning with the first month of the calendar year in which a contribution is accepted or expenditure is made for a disclosable activity.

"(B) FILING DEADLINE.—Reports under this paragraph shall be filed not later than the 20th day after the last day of the month.

"(C) REPORTS IN LIEU OF NOVEMBER AND DECEMBER REPORTS DURING ELECTION YEARS.—In lieu of filing the reports otherwise due under this paragraph in November and December of any year in which a regularly scheduled general election is held—

"(i) a pre-general election report shall be filed in accordance with paragraph (2)(A)(ii),

"(ii) a post-general election report shall be filed in accordance with paragraph (2)(A)(iii), and

"(iii) a year-end report shall be filed not later than January 31 of the following calendar year.

"(4) CERTAIN ORGANIZATIONS FILE ANNUALLY.—

"(A) IN GENERAL.—In the case of a 527 organization described in subparagraph (B)—

"(i) the reporting period shall be such organization's taxable year, and

"(ii) the due date for the returns and statements required by this section shall be the due date (without regard to extensions) for filing the return of tax for such year, whether or not such organization is required to file a return for such taxable year.

"(B) ORGANIZATION DESCRIBED.—An organization is described in this subparagraph if such organization is a 527 organization which is organized and

operated exclusively for the purpose of securing the nomination, election, or appointment of a clearly identified candidate for State, local, or judicial office.

"(5) REPORTING OF INDEPENDENT EXPENDITURES.—

"(A) IN GENERAL.—In the case of a disclosable activity which is an independent expenditure by an organization to which subsection (a) applies, the organization shall file the statement described in subparagraph (B).

"(B) STATEMENT.—The statement described in this subparagraph is a statement (filed in accordance with paragraph (1)(A) unless subparagraph (C) applies) which includes the information required under subsection (a)(1) with respect to such independent expenditure.

"(C) SEPARATE REPORTING WITH RESPECT TO INDEPENDENT EXPENDITURES MADE WITHIN 20 DAYS OF ELECTION.—The statement required by subparagraph (B) in the case of a disclosable activity which is an independent expenditure described in subparagraph (A) aggregating $1,000 or more made after the 20th day, but more than 24 hours, before any election shall be filed within 24 hours after such independent expenditure is made. Such statement shall be filed with the Secretary.

"(e) DEFINITIONS.—For purposes of this section—

"(1) 527 ORGANIZATION.—The term '527 organization' means any political organization (as defined by section 527(e)(1)).

"(2) 527-TYPE ACTIVITY.—The term '527-type activity' means influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any Federal, State, or local public office or office in a political organization, or the election of Presidential or Vice-Presidential electors, whether or not such individual or electors are selected, nominated, elected, or appointed. Such term includes the making of expenditures relating to an office described in the preceding sentence which, if incurred by the individual, would be allowable as a deduction under section 162(a).

"(3) CONTRIBUTIONS.—The term 'contributions' has the meaning given to such term by section 271(b)(2).

"(4) EXPENDITURES.—The term 'expenditures' has the meaning given to such term by section 271(b)(3).

"(f) SPECIAL RULES.—

"(1) ELECTRONIC FILING.—The Secretary shall develop procedures for submission in electronic form of returns and statements required to be filed under this section.

"(2) PAPERWORK AND BURDEN REDUCTION FOR ORGANIZATIONS OTHERWISE DISCLOSING INFORMATION.—An organization shall not be required to file any return or statement under this section for any period if, with respect to such period, such organization submits to the Secretary, under penalty of perjury, a certified statement that the organization has made a filing, which is publicly available, with another Federal agency which includes all of the information required to be included in such return or statement and which specifies the public location where such information may be found.".

(b) PUBLIC INSPECTION OF RETURNS AND STATEMENTS.—

(1) IN GENERAL.—Section 6104 of such Code (relating to publicity of information required from certain exempt organizations and certain trusts) is amended by adding at the end the following new subsection:

"(e) INSPECTION OF DOCUMENTS RELATING TO POLITICAL ACTIVITIES OF CERTAIN 501(c) ORGANIZATIONS AND 527 ORGANIZATIONS.—

"(1) IN GENERAL.—In the case of any organization required to submit a document under section 6033A—

"(A) a copy of such document shall be made available by such organization for inspection during regular business hours by any individual at the principal office of such organization and, if such organization regularly maintains 1 or more regional or district offices having 3 or more employees, at each such regional or district office, and

"(B) upon request of an individual made at such principal office or such a regional or district office, a copy of such document shall be provided to such individual without charge other than a reasonable fee for any reproduction and mailing costs.

The request described in subparagraph (B) must be made in person or in writing. If such request is made in person, such copy shall be provided immediately and, if made in writing, shall be provided within 30 days.

"(2) ANNUAL INCOME TAX RETURNS OF 527 ORGANIZATIONS.—In the case of an organization required to file a return under section 6012(a)(6), the requirements of paragraph (1) shall also apply to such return.

"(3) TIMELY AVAILABILITY.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), documents required to be available under this subsection shall be available no later than 2 business days after being filed.

"(B) EXCEPTION.—Subparagraph (A) shall not apply to—

"(i) any document filed under section 6033A with respect to an annual period, and

"(ii) any return filed under section 6012(a)(6).

"(4) 3-YEAR LIMITATION ON INSPECTION DOCUMENTS.—Paragraphs (1) and (2) shall apply to any document only during the 3-year period beginning on the last day prescribed for its filing (determined with regard to any extension of time for filing).

"(5) LIMITATION ON PROVIDING COPIES.—A rule similar to the rule of subsection (d)(4) shall apply for purposes of this subsection.".

(2) INSPECTION OF INFORMATION RETURNS AND INCOME TAX RETURNS OF POLITICAL ORGANIZATIONS.—Subsection (b) of section 6104 of such Code (relating to inspection of annual information returns) is amended to read as follows:

"(b) INSPECTION OF INFORMATION RETURNS AND INCOME TAX RETURNS OF POLITICAL ORGANIZATIONS.—

"(1) IN GENERAL.—The information required to be furnished by sections 6033, 6033A, 6034, and 6058 (together with the names and addresses of such organizations and trusts) and returns filed under section 6012(a)(6) shall be made available to the public at such times and in such places as the Secretary may prescribe.

"(2) EXCEPTIONS.—

"(A) NONDISCLOSURE OF NAMES AND ADDRESSES OF CONTRIBUTORS.—

"(i) IN GENERAL.—Nothing in this subsection shall authorize the Secretary to disclose the name or address of any contributor to any organization or trust which is required to furnish such information.

"(ii) EXCEPTION.—Clause (i) shall not apply to a private foundation (as defined in section 509(a)), a 527 organization (as defined in section 6033A(e)), or information on a return under section 6033A(a) of an organization described in paragraph (4), (5) or (6) of section 501(c).

"(B) RELIGIOUS AND APOSTOLIC ORGANIZATIONS.—In the case of an organization described in section 501(d), this subsection shall not apply to copies referred to in section 6031(b) with respect to such organization.

"(3) SPECIAL RULES FOR INFORMATION UNDER SECTION 6033A.—

"(A) TIMELY AVAILABILITY.—Documents filed under section 6033A (other than with respect to an annual period) shall be available under paragraph (1) no later than 2 business days after being filed.

"(B) AVAILABILITY ON WORLD WIDE WEB.—To the extent practicable, documents filed under section 6033A shall also be made available to the public on the world wide web.

"(4) COOPERATION WITH OTHER FEDERAL AGENCIES.—The Secretary may cooperate with another Federal agency to carry out the requirements of this subsection with respect to returns and statements required to be filed under section 6033A.".

(c) PENALTIES FOR FAILURE TO FILE DOCUMENTS OR PROVIDE PUBLIC INSPECTION OF DOCUMENTS.—

(1) PENALTY FOR FAILURE TO REPORT DISCLOSABLE ACTIVITIES.—Subsection (c) of section 6652 of such Code is amended by redesignating paragraphs (2), (3), and (4) as paragraphs (3), (4), and (5), respectively, and by inserting after paragraph (1) the following new paragraph:

"(2) INFORMATION UNDER SECTION 6033A.—

"(A) IN GENERAL.—In the case of—

"(i) a failure to file a document required under section 6033A (relating to returns relating to political activities) at the time and in the manner prescribed therefor (determined without regard to any extension of time for filing), or

"(ii) a failure to include any of the information required to be shown on such a return or statement or to show the correct information,

there shall be paid by the organization an amount equal to the rate of tax specified in section 527(b)(1) multiplied by the amount to which the failure relates.

"(B) PUBLIC INSPECTION.—In the case of a failure to comply with the requirements of section 6104(e) at the time and in the manner prescribed therefor (determined without regard to any extension of time for filing), there shall be paid by the person failing to meet such requirements $20 for each day during which such failure continues. The maximum penalty im-

posed under this subparagraph on all persons for failures with respect to any 1 statement shall not exceed $10,000.

"(C) ADDITIONAL PENALTY ON MANAGERS OF 527 ORGANIZATIONS.—

"(i) IN GENERAL.—The Secretary may make a written demand on any 527 organization subject to penalty under subparagraph (A) specifying therein a reasonable future date by which the return or statement shall be filed (or the information furnished) for purposes of this subparagraph.

"(ii) FAILURE TO COMPLY WITH DEMAND.—If any person fails to comply with any demand under clause (i) on or before the date specified in such demand, there shall be paid by the person failing to so comply $10 for each day after the expiration of the time specified in such demand during which such failure continues. The maximum penalty imposed under this subparagraph on all persons for failures with respect to any 1 statement shall not exceed $5,000.".

(2) OTHER PENALTIES.—

(A) Section 6685 of such Code (relating to assessable penalty with respect to public inspection requirements for certain tax-exempt organizations) is amended—

(i) by striking "subsection (d)" and inserting "subsection (d) or (e)", and

(ii) by striking "return or application" each place it appears and inserting "return, application, or statement".

(B) Section 7207 of such Code (relating to fraudulent returns, statements, and other documents) is amended by striking "subsection (d)" and inserting "subsection (d) or (e)".

(d) CONFORMING AMENDMENTS.—

(1) Section 527 of such Code is amended by adding at the end the following new subsection:

"(i) CROSS REFERENCES.—

"(1) For reporting and inspection requirements, see sections 6033A and 6104.

"(2) For penalties for failure to file returns and statements, see sections 6652, 6685, and 7207.".

(2) The table of sections for subpart A of part III of subchapter A of chapter 61 of such Code is amended by inserting after the item relating to section 6033 the following new item:

"Sec. 6033A. Returns relating to political activities.".

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to——

(A) expenditures made and contributions received with respect to disclosable activities in reporting periods beginning after the date of the enactment of this Act, and

(B) expenditures made and contributions received in annual reporting periods ending after the date of the enactment of this Act, except that only expenditures and contributions described in subparagraph (A) shall be taken into account.

(2) STATEMENT OF ORGANIZATION.—Paragraph (1) of section 6033A(c) of the Internal Revenue Code of 1986 (as added by this section) shall take effect on the date of the enactment of this Act.

I. SUMMARY AND BACKGROUND

A. PURPOSE AND SUMMARY

Purpose

The bill, H.R. 4717, as amended ("The Full and Fair Political Activity Disclosure Act of 2000") requires increased reporting and disclosure by section 527 organizations and by certain other tax-exempt organizations with respect to their political activities.

The bill has a negligible effect on Federal fiscal year budget receipts over the fiscal years 2001–2005.

Summary

The bill adopts reporting and disclosure requirements applicable to the political activities of section 527 organizations and certain other tax-exempt organizations. Under the bill, section 527 organizations and civic leagues and social welfare organizations (described in section 501(c)(4)), labor, agricultural, and horticultural organizations (described in section 501(c)(5)), and business leagues, chambers of commerce, trade associations, and professional football leagues (described in section 501(c)(6)) generally are required to file returns with the Secretary of the Treasury to report contributions and expenditures relating to their political activities. These returns are required to be made available to the public by the organization and by the Internal Revenue Service ("IRS"). In addition, section 527 organizations are required to file a statement of organization with the Secretary of the Treasury.

B. Background and Need for Legislation

The provisions approved by the Committee reflect the need for increased reporting of activities by section 527 organizations and certain other tax-exempt organizations with respect to political activities.

C. Legislative History

Subcommittee hearing

The Subcommittee on Oversight held a hearing on June 20, 2000, with respect to the political activities of tax-exempt organizations and section 527 political organizations.

Committee action

The bill, H.R. 4717, was introduced by Mr. Houghton on June 22, 2000. The Committee on Ways and Means marked up the bill on June 22, 2000, and approved the bill with a Chairman's amendment in the nature of a substitute, by a roll call vote of 23 yeas and 14 nays, with a quorum present.

II. EXPLANATION OF THE BILL

A. Present Law

Overview

Present-law section 501(c) provides for twenty-seven different categories of nonprofit organizations that generally are exempt from Federal income tax. Among the types of organizations described in section 501(c) are: civic leagues and social welfare organizations (described in section 501(c)(4)); labor, agricultural, and horticultural organizations (described in section 501(c)(5)); and business leagues, chambers of commerce, trade associations, and professional football leagues (described in section 501(c)(6)).

Section 527 provides a limited tax-exempt status to "political organizations," meaning a party, committee, association, fund, account, or other organization (whether or not incorporated) organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures (or both) for an "exempt function." These organizations are generally exempt

from Federal income tax on contributions they receive, but are subject to tax on their net investment income and certain other income at the highest corporate income tax rate (currently 35 percent). Donors are exempt from gift tax on their contributions to such organizations. For purposes of section 527, the term "exempt function" means: the function of influencing or attempting to influence the selection, nomination, election or appointment of any individual to any Federal, State, or local public office or office in a political organization, or the election of Presidential or Vice-Presidential electors, whether or not such individual or electors are selected, nominated, elected, or appointed. Thus, by definition, the purpose of a section 527 organization is to accept contributions or make expenditures for political campaign (and similar) activities.

Present-law rules governing political activities of tax-exempt organizations

The Federal tax rules applicable to political activities of tax-exempt organizations depend on the nature of the organization and the nature and extent of the activities. There is no bright-line test for determining whether particular activities are political campaign activities, lobbying activities, or other activities (e.g., educational activity).

Tax-exempt organizations other than those described in section 501(c)(3) generally are permitted to engage in political activities. For many of these organizations, political activities are inconsistent with the purpose for which the particular organization was established; thus, most such organizations do not engage in any significant political activities. However, for those organizations (such as civic leagues and social welfare organizations (described in section 501(c)(4)), labor, agricultural, and horticultural organizations (described in section 501(c)(5)), and business leagues, chambers of commerce, trade associations, and professional football leagues (described in section 501(c)(6))) that do engage in significant political activities, such activities cannot be the primary activities of such an organization.

Even though a non–501(c)(3) tax-exempt organization that engages in political activities will generally retain its tax-exempt status so long as such activities are not the primary means of accomplishing its purposes, such activities will result in the organization being subject to tax under section 527(f) on the lesser of the amount of its investment income or the amount expended on political activities. However, a non-501(c)(3) organization may establish a separate segregated fund, which may be treated as a separate organization under section 527(f)(3), so that the expenditures and net investment income of the fund will not be attributed to the sponsoring organization.

Present-law filing and disclosure requirements

Recognition of tax-exempt status

Most non-section 501(c)(3) organizations are not required to notify the IRS that they are seeking recognition of their tax-exempt status. Such organizations may voluntarily file exemption applications in order to establish their qualifications for tax exemption with the IRS.

Section 527 organizations are subject to no notification requirement when they are formed and there is no separate application for recognition of status as a section 527 organization. However, an organization wishing to receive confirmation of its status as a section 527 organization may request a written determination from the IRS in the form of a private letter ruling.

Annual filing requirements

Tax-exempt organizations generally are required to file an annual information return with the IRS. An organization that has not received a determination of its tax-exempt status, but that claims tax-exempt status under section 501(a), is subject to the same annual reporting requirements and exceptions as organizations that have received a tax-exemption determination.

Most tax-exempt organizations are required to file annually Form 990 (Return of Organization Exempt From Income Tax). Section 501(c) organizations are required to disclose on their Form 990 for each year the total amount of direct or indirect political expenditures made by the organization during the year. No detailed accounting of such expenditures is required. In addition, the Form 990 requires tax-exempt organizations to report the total amount of dues and contributions received by the organization during the taxable year. Tax-exempt organizations generally are required to report with the Form 990 a list of major contributors (i.e., generally persons making gifts of $5,000 or more during the year).

Section 527 political organizations are not required to file Form 990. If a section 527 political organization has taxable income, it is required annually to file Form 1120–POL (U.S. Income Tax Return for Certain Political Organizations); however, if the political organization does not have taxable income, the Form 1120–POL is not required to be filed. A tax-exempt organization (other than a section 501(c)(3) organization) also is required to file Form 1120–POL if the organization's political expenditures and net investment income both exceed $100 for the year and must disclose on the Form 990 the fact that it has filed the Form 1120–POL. If such a tax-exempt organization establishes and maintains a section 527(f)(3) separate segregated fund, the fund may be required to file Form 1120–POL if the fund has taxable income.

Because it is an income tax return, the Form 1120–POL requires information related to the amount of income and deductible expenses of the filing organization (or separate segregated fund) for the year. The Form 1120–POL does not contain information relating to the political activities of the organization or contributors to the organization and does not require such organizations to report even their total expenses relating to political activities. Thus, the Form 1120–POL does not contain information relating to contributors to the organization or the specific activities of the organization (or fund).

Disclosure requirements

Under present law, section 501(c) organizations are required to make a copy of their application for recognition of tax-exempt status (and certain related documents) and their annual information return (Form 990) available for inspection by any individual during regular business hours at the organization's principal office or any

regional or district office that has three or more employees. All tax-exempt organizations are required to comply with requests made in person or in writing by individuals who seek a copy of the organization's Form 990 for any of the organization's three most recent taxable years. Upon such a request, the organization is required to supply copies without charge other than a reasonable fee for reproduction and mailing costs. If the request for copies is made in person, then the organization must provide such copies immediately. If the request for copies is made in writing, then copies must be provided within 30 days. An organization is not required to supply copies if its application or Form 990 is widely available, such as on the World Wide Web.

Upon written request to the IRS, members of the general public also are permitted to inspect annual information returns of tax-exempt organizations and applications for recognition of tax-exempt status (and related documents). A person making such a written request is notified by the IRS when the material is available for inspection, and where notes may be taken of the material open for inspection, photographs taken with the person's own equipment, or copies of such material obtained from the IRS for a fee. Annual information returns must be made available for a three-year period beginning with the due date for the return (including any extension of time for filing).

Tax-exempt organizations described in section 501(c) and section 527 organizations are not required to disclose their Forms 1120–POL to the general public. In addition, most tax-exempt organizations are not required to disclose to the general public the names of contributors.

Separability clause

Under present law, if any provision of the Internal Revenue Code or the application of any such provision to any person or circumstance is held invalid, the remainder of the Internal Revenue Code and its application to any other person or circumstance is not affected.

B. Reasons for Change

Recent press reports have focused on the use of section 527 political organizations to fund political activities that are not disclosed to the public under either the Federal tax law or under the Federal election laws. These reports make clear that section 527 organizations are being used in ways that were not necessarily contemplated when section 527 was enacted in 1975. Based on recent IRS rulings, the Committee believes that the activities of many of these organizations are being limited to ensure that the organizations are not engaged in express advocacy that would be reported and disclosed under the Federal election laws. Thus, the Committee finds that section 527 organizations are being used to exploit the lack of information reporting and disclosure under the present-law Federal tax rules. This finding is supported by the fact that IRS Statistics of Income data show a clear trend toward increased use of section 527 organizations in recent years and by the fact that the IRS has been asked to rule on a number of occasions with respect to section 527 organizations that, by their charter, cannot engage in express advocacy.

In addition, the Committee believes that the use of tax-exempt organizations generally to engage in political activities is substantial and increasing. For example, an Associated Press story (reporting that the National Education Association, the nation's largest teachers union, spent millions of dollars to "help elect 'pro-education candidates', produce political training guides, and gather teachers' voting records," but reported no expenditures for political activities to the Internal Revenue Service) was cited during the Committee's markup on the issue of political activities by tax-exempt organizations.[1] Thus, the Committee believes that any solution to the present-law problems relating to the lack of disclosure of information by section 527 organizations must also address the growing use of certain other tax-exempt organizations to engage in significant political activities and the limited disclosure that is required with respect to such activities under present law.

The Committee understands that there is no bright-line test under present law for determining when the activities of a tax-exempt organization are political activities or educational activities. The IRS determines whether an organization is participating or intervening, directly or indirectly, in a political campaign based upon all of the facts and circumstances of each case. Unlike a bright-line test, the facts and circumstances test of present law permits the definition of political activity to be flexible to address a changing political environment. The Committee believes that the IRS is, in fact, administering the law in this area through its ruling process. The Committee understands that more than 100 rulings (or other forms of guidance) have been issued on the issue of whether any particular activities of a tax-exempt organization are political, lobbying, or educational activities. The Committee urges the IRS to continue to provide guidance to tax-exempt organizations to provide clear guidelines with respect to the delineation of nonpartisan educational activities and partisan political activities.

Tax-exempt organizations are required under present law to report their aggregate political expenditures on their annual return (Form 990). In order to satisfy this reporting requirement, organizations are required to keep records of such political expenditures. Indeed, the Committee is aware that tax-exempt organizations are reporting substantial aggregate political expenditures on their Form 990s. In 1994, nearly 1,300 section 501(c)(4), section 501(c)(5), and section 501(c)(6) organizations reported a total of over $29 million in political expenditures on their Form 990s. However, under present law, such organizations are not required to provide any detailed description or accounting of such activities to the IRS or to the public. In addition, there are no substantial dollar penalties under present law to encourage proper classification and disclosure of such activities. In the absence of rules requiring detailed disclosure of their political activities with adequate dollar penalties for failure to disclose, organizations have no strong incentives to make a reasoned determination of whether their activities are educational or political and to disclose them accurately.

The Committee believes that enhancing the information reported to the IRS with respect to section 527 organizations and section 501(c)(4), section 501(c)(5), and section 501(c)(6) organizations

[1] Margasak, Larry and Solomon, John AP, 6/22/2000.

would enable the IRS to better monitor whether such organizations are complying with the present-law rules requiring the organizations to pay tax on the net investment income used to engage in political activities. Furthermore, requiring additional reporting of activities that appear to be political in nature would assist the IRS in its efforts to ensure that organizations are not impermissibly characterizing certain activities as educational, rather than political.

In addition, the Committee believes that, given the tax benefits conferred under present law (e.g., the benefits of tax-exempt status to section 501(c)(4), section 501(c)(5), and section 501(c)(6) organizations and the benefits of the gift tax exemption for contributions to section 527 organizations), the public interest is served by greater public disclosure of information relating to the political activities of such organizations, including a detailed listing of expenditures for political activities and the source of funds (i.e., contributions) used for this purpose. Public disclosure of information enables the general public to provide oversight of the political activities of these organizations.

These enhanced disclosure and reporting rules are intended to make no changes to the present-law substantive rules regarding the extent to which tax-exempt organizations are permitted to engage in political activities. Thus, the Committee bill is not intended to alter the involvement of such organizations in the political process, but rather it is intended to shed sunlight on these activities so that the general public can be informed as to the types and extent of activities in which such organizations engage. This increased information will assist individuals in determining, for example, whether to make a contribution to any specific tax-exempt organization.

The Committee understands that some people contend that the oversight of political activities in the bill, which merely requires reporting of additional information to the IRS and making such information public, is unconstitutional. The Committee believes that this argument has already been considered and rejected by the Supreme Court with respect to section 501(c)(3) organizations and that the analysis with respect to other tax-subsidized organizations, including section 527 organizations, would be the same. The Committee notes that the Supreme Court has held that, when Congress chooses simply not to provide a tax subsidy with respect to certain activities by a section 501(c)(3) organization, no First Amendment or Fifth Amendment rights have been infringed. In its decision in *Regan v. Taxation With Representation of Washington,*[2] the Supreme Court addressed the issue of the rules restricting section 501(c)(3) organizations from engaging in any substantial lobbying activities. The Court stated that tax exemptions and tax deductions are subsidies that are administered through the Federal tax system. The Court noted that tax exemption has much the same effect as a cash grant to an organization of the amount of tax it would have to pay if it were not tax exempt. The Court held that a legislature's decision not to subsidize the exercise of a fundamental right does not infringe that right and, therefore, is not subject to strict scrutiny by the courts. The Court also noted that the

[2] 461 U.S. 540 (1983).

organization in the *Taxation With Representation*[3] case had the ability to reorganize itself to avoid the proscription on substantial lobbying by section 501(c)(3) organizations. The Committee believes that, because the Committee's bill does not change the present-law rules relating to the ability of section 501(c)(4), section 501(c)(5), and section 501(c)(6) organizations and section 527 organizations to engage in certain activities, the analysis of the Supreme Court in *Taxation With Representation*[4] should apply. It is difficult to imagine that the Supreme Court would conclude that it is constitutional to eliminate a tax subsidy for certain activities, but not constitutional to require that organizations comply with reporting requirements with respect to those activities so that the IRS can monitor compliance with the law.

The Committee notes that section 501(c)(4), section 501(c)(5), and section 501(c)(6) organizations can avoid the reporting and disclosure requirements of the bill by using a special rule for earmarked contributions deposited into a segregated disclosable activities fund. This point addresses the argument made by some that requiring an organization to report its contributors denies such contributors their right to free association and free speech. The Committee finds that, by permitting organizations to earmark contributions for political activities and to deposit such contributions in a segregated fund, contributors need only be disclosed if they earmark their contributions for political activities.

The Committee understands that some believe that the bill is unconstitutional under the rationale found in *Buckley* v. *Valeo*[5], which declared certain Federal election laws unconstitutional due to, among other things, vagueness. However, because the bill does not regulate political activities, but instead merely requires the disclosure of such activities and because the bill relies on present-law section 527, which has not been constitutionally challenged, the Committee does not believe that this criticism has merit.

The Committee finally notes that, by establishing thresholds above which expenditures and contributors are disclosed, the bill focuses reporting and disclosure on activities, expenditures, and contributors of more than de minimis amounts.

For the foregoing reasons, the Committee finds it appropriate to adopt reporting and disclosure requirements applicable to the political activities of and contributors to section 527 organizations, to expand the reporting of political activity expenditures with respect to section 501(c)(4), section 501(c)(5), and section 501(c)(6) organizations, and generally to require the reporting of contributors to section 501(c)(4), section 501(c)(5), and section 501(c)(6) organizations.

C. Explanation of Provisions

In general

The bill adopts reporting and disclosure requirements applicable to the political activities of and contributors to section 527 organizations, expands the reporting of political activity expenditures with respect to civic leagues and social welfare organizations (de-

[3] Id.
[4] Id.
[5] 424 U.S. 1 (1976).

scribed in section 501(c)(4)), labor, agricultural, and horticultural organizations (described in section 501(c)(5)), and business leagues, chambers or commerce, trade associations, and professional football leagues (described in section 501(c)(6)), and generally requires the reporting of contributors to section 501(c)(4), section 501(c)(5), and section 501(c)(6) organizations. Under the bill, section 527 organizations and section 501(c)(4), section 501(c)(5), and section 501(c)(6) organizations generally are required to file returns with the Secretary of the Treasury to report contributions and expenditures relating to their disclosable activities. In addition, section 527 organizations are required to file a statement of organization with the Secretary of the Treasury.

Information required to be disclosed

Under the bill, a section 501(c)(4), section 501(c)(5), or section 501(c)(6) organization or a section 527 organization subject to the reporting and disclosure requirements is required to include the following information in its return reports:

(1) a detailed description of the organization's disclosable activities during the reporting period and the purpose and intended results for the major categories of expenditures for such disclosable activities, including the candidates intended to be affected by the expenditures;

(2) a list containing each expenditure made for a disclosable activity during the reporting period in excess of $200 (in the case of expenditures by section 527 organizations) and $1,000 (in the case of expenditures by section 501(c)(4), section 501(c)(5), and section 501(c)(6) organizations subject to the reporting and disclosure requirement);

(3) a list containing the name and address of each person to whom the organization made any expenditure during the reporting period in an aggregate amount in excess of $200 (in the case of expenditures by section 527 organizations) and $1,000 (in the case of expenditures by section 501(c)(4), section 501(c)(5), and section 501(c)(6) organizations subject to the reporting and disclosure requirement); and

(4) in the case of a reportable contributor,

(a) the name and address of the contributor (and, if the contributor is an individual, the contributor's occupation and employer),

(b) the aggregate amount of contributions made by such contributor,

(c) the name and address (if any) of the person on whose behalf the contributor made a payment to the organization, and

(d) the name and address of any intended beneficiary of a payment that was designated for a beneficiary other than the organization to which the payment was made (including amounts earmarked or otherwise directed through an intermediary).

In the case of a section 527 organization, the following additional information is required to be included on the return:

(1) a certification, under penalty of perjury, whether an expenditure is made in cooperation, consultation, or concert with,

or at the request or suggestion of, any candidate for public office or any authorized committee or agent of such a candidate;

(2) the name, address, and business purpose of any entity that is a reportable contributor during the reporting period;

(3) in the case of an entity described in (2), whether the entity claims to be exempt from tax and the basis for the tax-exempt status; and

(4) the original source and the intended ultimate recipient of all contributions made by a person directly or indirectly, including contributions that are earmarked or otherwise directed through an intermediary.

Under the bill, this information must be provided for the applicable reporting period and cumulatively for the calendar year.

The bill defines the term contribution to include a gift, subscription, loan, advance, or deposit of money, or anything or value, and includes a contract, promise, or agreement to make a contribution, whether or not legally enforceable. It is assumed that such term includes all grants and transfers of money. In addition, the term expenditure includes a payment, distribution, loan, advance, deposit, or gift of money, or anything of value, and includes a contract, promise, or agreement to make an expenditure, whether or not legally enforceable.

Reporting periods and due dates

Under the bill, the reporting periods and deadlines generally are the same as those required for reports under 2 U.S.C. 434(a) codifying the Federal Election Campaign Act of 1971 ("FECA"). In general, the FECA specifies different reporting periods and deadlines depending upon whether it is an election or non-election year and the nature of the organization (i.e., principal campaign committee of a candidate for the House of Representatives or Senate, principal campaign committee of a candidate for the office of President, or a political committee other than an authorized committee of a candidate). Under the FECA, reporting can be required monthly, quarterly, or semi-annually and special pre- and post-general election reports are required.

As under the FECA, there is separate reporting of independent expenditures made within 20 days of an election. For this purpose, the term "independent expenditure" is intended to be defined by reference to mass media communications as described in the definition of disclosable activities, below.

In the case of a section 501(c)(4), a section 501(c)(5), or a section 501(c)(6) organization, the reporting and disclosure requirements do not apply for any reporting period if the aggregate expenditures of the organization for disclosable activities are less than $10,000 for the period beginning January 1 of the calendar year through the end of the reporting period.

Under the bill, in the case of a section 527 organization organized and operated exclusively for the purpose of securing the nomination, election, or appointment of a candidate for State, local, or judicial office, the reporting period is the organization's taxable year and the deadline for reporting is the due date for the organization's annual return, whether or not the organization is required to file an annual return.

Definition of reportable contributor

Under the bill, a reportable contributor means any person if the aggregate of such person's contributions and membership dues, fees, and assessments (as defined in section 527) received by the organization from the person exceed $200 (in the case of a section 527 organization) or $1,000 (in the case of a section 501(c)(4) organization, a section 501(c)(5) organization, or a section 501(c)(6) organization subject to the reporting and disclosure requirements) during the period beginning January 1 and ending on the last day of the applicable reporting period.

In determining the amount of dues of any person, an organization may elect under the bill only to take into account dues that are attributable to the disclosable activities of the organization. For purposes of this election, the portion of dues attributable to expenditures for disclosable activities is the amount that bears the same ratio to the total amount of the dues of the organization as the expenditures for disclosable activities bears to the total expenditures of the organization for the period.

In addition, the bill provides a special election for earmarked contributions deposited into a segregated disclosable activities fund by a section 501(c)(4) organization, a section 501(c)(5) organization, or a section 501(c)(6) organization. Under the election, an organization may limit the rule requiring disclosure of reportable contributors to those persons contributing to the segregated disclosable activities fund. This election is available only if the organization (1) maintains a separate, segregated fund for such contributions, (2) deposits into such fund only and all amounts received by the organization that are earmarked for a disclosable activity, and (3) makes expenditures for disclosable activities only from such separate fund. If the organization makes the election to use this special rule, but fails to satisfy all of the requirements for the election during a reporting period, the exception to the general rule on reportable contributors does not apply for the reporting period or for any subsequent reporting period during the calendar year. However, under the bill, failure to meet the requirement of (3), above, with respect to de minimis amounts is not treated as a failure to satisfy all of the requirements for the election. If an organization makes this election, the segregated disclosable activities fund is not treated as a section 527 organization solely for purposes of the reporting and disclosure requirements. Thus, the applicable dollar threshold amount is $1,000, rather than $200 in such a case.

Definition of disclosable activities

Under the bill, in the case of a section 527 organization, disclosable activities include all activities of the organization.

In the case of an organization described in section 501(c)(4), section 501(c)(5), or section 501(c)(6), disclosable activities are:

(1) section 527–type activities (i.e., activities to influence or attempt to influence the selection, nomination, election, or appointment of any individual to any Federal, State, or local public office or office in a political organization, or the election of Presidential or Vice-Presidential electors, as defined in section 527);

(2) establishing, administering, or soliciting contributions to a section 527 organization;

(3) contributing directly or indirectly to a section 527 organization;

(4) contributing directly or indirectly to a section 501(c)(4), section 501(c)(5), or section 501(c)(6) organization that is required, by reason of its disclosable activities, to file a return for the year for which the contribution is made or for any of the preceding three years (or would have been required to file a return if the bill had been in effect in the preceding three years); and

(5) any mass media communication (including any mass mailing) that is not a section 527–type activity and that mentions a clearly identified candidate for election for Federal office (including an individual who has formed an exploratory committee for such an election) or the political party of such a candidate or any mass media communication (including any mass mailing) that contains the picture or other likeness of such an individual or candidate.

The definition contained in (4), above, is intended to exempt from the definition of a disclosable activity any contribution to a section 501(c)(4), section 501(c)(5), or section 501(c)(6) organization if the ultimate transferee organization does not itself engage in disclosable activities. Thus, for example, if a section 501(c)(4) organization, which does not directly engage in any disclosable activities, transfers contributions to another section 501(c)(4), which does not engage in any disclosable activities for the current (and has not done so for the three preceding years), the contributing organization is not required to report the transfer as a disclosable activity. On the other hand, if a section 501(c)(4) organization, which does not engage in any otherwise disclosable activities during the year, makes a contribution to a section 501(c)(4) organization that does engage in such activities (or has engaged in such activities during any of the preceding three years), then the transferor organization is required to treat the transfer as a disclosable activity under the bill and, if the amount transferred is at least $10,000 (the applicable threshold at which the reporting requirements apply), the organization is subject to the reporting and disclosure requirements under the bill. This rule is intended to ensure that section 501(c)(4), section 501(c)(5), and section 501(c)(6) organizations do not avoid the reporting and disclosure requirements by making transfers to other such organizations.

For purposes of the rule treating a mass media communication as a disclosable activity (i.e., an activity described in (5), above), the term "mass media" includes mass media as described in Treasury regulations section 56.4911–2(b)(5)(iii) relating to the definition of grass roots lobbying. In addition, an activity described in (5), above, is not treated as a disclosable activity if the activity relates solely to bona fide members of the organization. Thus, communications with bona fide members of an organization generally are not treated as disclosable activities. However, this exception does not apply to any communication that urges the members of the organization to communicate with another person or urges such members to take an action as a result of the communication. In addition, an activity described in (5), above, that otherwise is treated as a 527–type activity in (1), above, is not treated as a disclosable activity under (5), above, but rather is described in (1), above. Thus, the ex-

ception for activities relating to bona fide members of the organization does not apply to a 527–type activity as under the present-law tax rules.

Statement of organization by section 527 organization

Under the bill, every 527 organization is required to file a statement of organization with the Secretary of the Treasury no later than 10 days after the date that the organization is established or, in the case of an organization in existence on the date of enactment of the bill, no later than 10 days after the date of enactment.

The statement of organization is required to contain the following information:

(1) the name and address of the organization;

(2) the name, address, relationship, and type of any person that is directly or indirectly related to or affiliated with the organization;

(3) the name, address, and position of the custodian of books and accounts of the organization;

(4) the name and address of the treasurer of the organization;

(5) a listing of all banks, safety deposit boxes, and other depositories used by the organization.

In addition, under the bill, if the information contained in the statement of organization ceases to be accurate, the organization is required to file a corrected statement with the Secretary of the Treasury no later than 10 days after the information ceases to be accurate.

For purposes of the statement of organization, a person is considered directly or indirectly related to or affiliated with a political organization if, at any time during the 3-year period ending on the date of the statement, the person was in a position to exercise substantial direct or indirect influence (whether or not as a officer of the organization) over the process of collecting or disbursing the exempt purpose funds of the organization or was in a position to exercise substantial, overall direct or indirect influence over the activities of the organization.

Filing procedures

Under the bill, the Secretary of the Treasury is directed to develop procedures for submission in electronic form of the returns and statements required under the bill. In addition, the bill provides that an organization is not required to file any return or statement for any period, if the organization submits to the Secretary of the Treasury, under penalty of perjury, a certified statement that the organization has made a filing for such period that is publicly available with another Federal agency and that such filing includes all of the information otherwise required to be filed under the bill and specifies the public location where such information may be found. Thus, for example, a section 527 organization that is subject to reporting and disclosure requirements under the Federal election law may file a certified statement with the Secretary if all of the information that is otherwise required to be disclosed under the bill is disclosed in the filing under the Federal election law.

Public inspection of statements and returns

Under the bill, the present-law public inspection requirements of section 6104 are extended to the returns required to be filed under the bill and to the statement of organization required to be filed for section 527 organizations. In addition, under the bill, the income tax return (Form 1120–POL) filed by a section 527 organization (or a segregated fund of another tax-exempt organization that is treated as a section 527 organization) is subject to the public inspection requirements. Thus, a copy of the return or statement of organization is required to be made available by the organization for inspection during regular business hours at the principal office of the organization and, if the organization maintains at least one regional or district office with 3 or more employees, at each such regional or district office. In addition, an individual is permitted to request in person or in writing a copy of such statement of organization and the organization is required to provide such a copy without charge other than a reasonable fee for any reproduction and mailing costs. If such a request is made in person, it must be provided immediately. If the request is made in writing, it must be provided within 30 days. As under present law, the public disclosure requirement may be satisfied by making the information widely available, such as on the World Wide Web.

The bill generally requires documents that are required to be made publicly available to be available no later than 2 business days after being filed. However, this rule does not apply to the annual returns required by the bill or to the Form 1120–POL. In addition, the public disclosure requirement applies to any document during the 3-year period beginning on the last date prescribed for its filing.

The bill also provides that the present-law rules permitting public disclosure by the Secretary of the Treasury of the Form 990 filed by tax-exempt organizations also applies (1) to any returns and statements required to be filed under the bill and (2) the Form 1120–POL. Thus, such information shall be made available to the public at such times and in such places as the Secretary may prescribe. Under the bill, such information is required to be made available publicly no later than two business days after the return containing such information is filed and, to the extent practicable, will be made available to the public on the World Wide Web. The present-law rule that prohibits the Secretary from disclosing the names and address of contributors does not apply to any section 527 organization or to any section 501(c)(4), 501(c)(5), or 501(c)(6) organization required to provide such information on returns required to be filed under the bill. The Secretary of the Treasury is permitted to cooperate with another Federal agency to carry out the requirements with respect to public inspection of returns and statements required to be filed under the bill. Thus, for example, the Secretary could arrange for the Federal Election Commission to process the reports required by this bill and make them available to the public.

Penalties

The penalty for failure to file properly the returns or statements required under the bill is an amount equal to the tax rate applicable to section 527 organizations (i.e., 35 percent) multiplied by the

amount to which the failure relates. In the case of the failure to report an expenditure or contribution as required under the bill, the amount to which the failure relates is the amount of the expenditure or contribution required to be disclosed. In the case of a failure to provide full information (for example, the name and address of a contributor) with respect to an expenditure or contribution, the amount to which the failure relates is the amount of such expenditure or contribution. If an organization fails to file a return as required, the amount to which the failure relates is the total amount of expenditures and contributions that should have been reported on the return.

The bill permits the Secretary of Treasury to make a written demand of a section 527 organization of a reasonable future date by which a return or statement will be filed. Any person who fails to comply with such a written demand is subject to a penalty of $10 per day for each day after the expiration of the time specified in the demand for filing, up to a maximum penalty with respect to such statement of $5,000.

The penalty for failure to satisfy the public inspection requirements with respect to a statement of organization is $20 for each day during which such failure continues up to a maximum of $10,000 with respect to each failure.

Separability clause

The bill does not modify the present-law separability clause contained in the Internal Revenue Code. Thus, if any portion of the bill is held invalid, any portions of the bill not found to be invalid remain in effect.

Effective date

The bill is generally effective for expenditures made and contributions received with respect to disclosable activities taking place in reporting periods beginning after the date of enactment and expenditures made and contributions received with respect to disclosable activities taking place after the date of enactment in annual reporting periods ending after the date of enactment. The statement of organization required to be filed by section 527 organizations is effective on the date of enactment. The Committee intends that, within five days after the date of enactment. the Secretary shall issue guidance on the manner in which these organizations can comply with the required disclosures.

III. VOTES OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statements are made concerning the votes of the Committee on Ways and Means in its consideration of the bill, H.R. 4717.

MOTION TO REPORT THE BILL

The bill, H.R. 4717, as amended, was ordered favorably reported by a roll call vote of 23 yeas to 14 nays (with a quorum being present). The vote was as follows:

Representatives	Yea	Nay	Present	Representatives	Yea	Nay	Present
Mr. Archer	X			Mr. Rangel			
Mr. Crane	X			Mr. Stark			
Mr. Thomas	X			Mr. Matsui		X	
Mr. Shaw	X			Mr. Coyne		X	
Mrs. Johnson	X			Mr. Levin		X	
Mr. Houghton	X			Mr. Cardin		X	
Mr. Herger	X			Mr. McDermott		X	
Mr. McCrery	X			Mr. Kleczka		X	
Mr. Camp	X			Mr. Lewis (GA)		X	
Mr. Ramstad	X			Mr. Neal		X	
Mr. Nussle	X			Mr. McNulty		X	
Mr. Johnson	X			Mr. Jefferson		X	
Ms. Dunn	X			Mr. Tanner		X	
Mr. Collins	X			Mr. Becerra		X	
Mr. Portman	X			Mrs. Thurman		X	
Mr. English	X			Mr. Doggett		X	
Mr. Watkins	X						
Mr. Hayworth	X						
Mr. Weller	X						
Mr. Hulshof	X						
Mr. McInnis	X						
Mr. Lewis (KY)	X						
Mr. Foley	X						

Votes on Amendments

A roll call vote was conducted on the following amendment to the Chairman's amendment in the nature of a substitute.

A substitute amendment by Mr. Coyne, was defeated by a roll call vote of 14 yeas to 23 nays. The vote was as follows:

Representatives	Yea	Nay	Present	Representatives	Yea	Nay	Present
Mr. Archer		X		Mr. Rangel			
Mr. Crane		X		Mr. Stark			
Mr. Thomas		X		Mr. Matsui	X		
Mr. Shaw		X		Mr. Coyne	X		
Mrs. Johnson		X		Mr. Levin	X		
Mr. Houghton		X		Mr. Cardin	X		
Mr. Herger		X		Mr. McDermott	X		
Mr. McCrery		X		Mr. Kleczka	X		
Mr. Camp		X		Mr. Lewis (GA)	X		
Mr. Ramstad		X		Mr. Neal	X		
Mr. Nussle		X		Mr. McNulty	X		
Mr. Johnson		X		Mr. Jefferson	X		
Ms. Dunn		X		Mr. Tanner	X		
Mr. Collins		X		Mr. Becerra	X		
Mr. Portman		X		Mrs. Thurman	X		
Mr. English		X		Mr. Doggett	X		
Mr. Watkins		X					
Mr. Hayworth		X					
Mr. Weller		X					
Mr. Hulshof		X					
Mr. McInnis		X					
Mr. Lewis (KY)		X					
Mr. Foley		X					

IV. BUDGET EFFECTS OF THE BILL

A. Committee Estimate of Budgetary Effects

In compliance with clause 3(d)(2) of Rule XIII of the Rules of the House of Representatives, the following statement is made con-

cerning the effects on the budget of the revenue provisions of the bill, H. R. 4717, as reported.

The bill is estimated to have the following effects on budget receipts for fiscal years 2000–2005:

ESTIMATED BUDGET EFFECTS OF H.R. 4717, THE ''FULL AND FAIR POLITICAL ACTIVITY DISCLOSURE ACT OF 2000,'' AS REPORTED BY THE COMMITTEE ON WAYS AND MEANS—FISCAL YEARS 2001–2005

[Millions of Dollars}

Provision	Effective	2001	2002	2003	2004	2005	2001–05
Require Section 527 Organizations and Certain Tax-Exempt Organizations to Disclose Their Political Activities and Contributors	[1]	Negligible Revenue Effect					

[1] Effective for expenditures made and contributions received in reporting periods beginning after the date of enactment and for expenditures made and contributions received in annual reporting periods ending after the date of enactment. The general reporting requirements of disclosable activities are effective on the date of enactment.

Source: Joint Committee on Taxation.

B. Statement Regarding New Budget Authority and Tax Expenditures

Budget authority

In compliance with clause 3(c)(2) of Rule XIII of the Rules of the House of Representatives, the Committee states that the bill involves no new or increased budget authority.

Tax expenditures

In compliance with clause 2(c)(2) of Rule XIII of the Rules of the House of Representatives, the Committee states that the bill does not involve increased tax expenditures.

C. Cost Estimate Prepared by the Congressional Budget Office

In compliance with clause 3(c)(3) of Rule XIII of the Rules of the House of Representatives, requiring a cost estimate prepared by the Congressional Budget Office ("CBO"), the following statement by CBO is provided.

U.S. Congress,
Congressional Budget Office,
Washington, DC, June 27, 2000.

Hon. Bill Archer,
Chairman, Committee on Ways and Means,
House of Representatives, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4717, the Full and Fair Political Activity Disclosure Act of 2000.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is John R. Righter.

Sincerely,

Barry B. Anderson
(For Dan L. Crippen, Director).

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

H.R. 4717.—Full and Fair Political Activity Disclosure Act of 2000

H.R. 4717 would require certain private, nonprofit organizations to disclose their political expenditures and contributions to the Internal Revenue Service (IRS). Political organizations, as defined by section 527 of the tax code, would be required to report any contributions or expenditures of $200 or more. The bill would require certain tax-exempt organizations that spend more than $10,000 on election-related activities—such as civic and business groups and labor and agriculture organizations—to disclose contributions and expenditures of $1,000 or more. H.R. 4717 would require that these organizations and the IRS both make the reported information available to the public.

The bill would require the IRS to make the reported information available within two business days of its filing. The IRS also would be responsible for issuing regulations and ensuring that organizations comply with the bill's provisions, although it is possible that the bill would allow the IRS to enter into an interagency agreement to have the Federal Election Commission (FEC) perform such work on its behalf.

Implementing H.R. 4717 would increase administrative costs of the IRS, but CBO has not had sufficient time to estimate the amount of such higher costs, which would be subject to the availability of appropriated funds. If implementing the bill would require that the IRS develop new systems to accept, catalogue, and make available the reported information within two days, the costs could be substantial. Alternately, if the IRS were able to enter into an interagency agreement with the FEC to accept and post the information on the IRS's behalf, the costs would likely be significantly less since the FEC already performs such work for political candidates and parties.

Because the bill would create new penalties for violating campaign finance disclosure laws, pay-as-you-go procedures would apply. However, CBO estimates that additional payments to the federal government from such penalties, which are classified as governmental receipts (revenues), would total less than $500,000 a year.

The Joint Committee on Taxation (JCT) has determined that the bill's requirements on section 527 organizations and certain tax-exempt organizations to disclose their political activities and contributions would be private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). JCT estimates that the aggregate cost to the private-sector to comply with these mandates would not exceed the threshold established in UMRA ($109 million in 2000, adjusted annually for inflation) in any of the first five fiscal years after enactment. The bill contains no intergovernmental mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact is John R. Righter. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. Committee Oversight Findings and Recommendations

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives (relating to oversight findings), the Committee advises that it was a result of the Committee's oversight review concerning the reporting of information by tax-exempt organizations that the Committee concluded that it is appropriate and timely to enact the provisions included in the bill as reported.

B. Summary of Findings and Recommendations of the Committee on Government Reform

With respect to clause 3(c)(4) of rule XII of the Rules of the House of Representatives, the Committee advises that no oversight findings or recommendations have been submitted to this Committee by the Committee on Government Reform with respect to the provisions contained in the bill.

C. Constitutional Authority Statement

With respect to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives (relating to Constitutional Authority), the Committee states that the Committee's action in reporting this bill is derived from Article I of the Constitution, Section 8 ("The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises * * *"), and from the 16th Amendment to the Constitution.

D. Information Relating to Unfunded Mandates

This information is provided in accordance with section 423 of the Unfunded Mandates Act of 1995 (P.L. 104–4).

The Committee has determined that the provisions of the bill contain Federal private sector mandates. The estimated aggregate amounts that the private sector will be required to spend in order to comply with the Federal private sector mandate is less than $100 million in any of the first five fiscal years. The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, and tribal governments.

E. Applicability of House Rule XXI 5(b)

Rule XXI 5(b) of the Rules of the House of Representatives provides, in part, that "No bill or joint resolution, amendment, or conference report carrying a Federal income tax rate increase shall be considered as passed or agreed to unless determined by a vote of not less than three-fifths of the Members." The Committee has carefully reviewed the provisions of the bill, and states that the provisions of the bill do not involve any Federal income tax rate increase within the meaning of the rule.

F. Tax Complexity Analysis

Section 4022(b) of the Internal Revenue Service Reform and Restructuring Act of 1998 (the "IRS Reform Act") requires the Joint

Committee on Taxation (in consultation with the Internal Revenue Service and the Department of the Treasury) to provide a tax complexity analysis. The complexity analysis is required for all legislation reported by the House Committee on Ways and Means, the Senate Committee on Finance, or any committee of conference if the legislation includes a provision that directly or indirectly amends the Internal Revenue Code and has widespread applicability to individuals or small businesses.

The staff of the Joint Committee on Taxation has determined that a complexity analysis is not required under section 4022(b) of the IRS Reform Act because the bill contains no provisions that amend the Internal Revenue Code and that have "widespread applicability" to individuals or small businesses.

VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

INTERNAL REVENUE CODE OF 1968

Subtitle A—Income Taxes

* * * * * * *

CHAPTER 1—NORMAL TAXES AND SURTAXES

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Subchapter F—Exempt organizations

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PART VI—POLITICAL ORGANIZATIONS

* * * * * * *

SEC. 527. POLITICAL ORGANIZATIONS.

(a) * * *

* * * * * * *

(i) CROSS REFERENCES.—

(1) For reporting and inspection requirements, see sections 6033A and 6104.

(2) For penalties for failure to file returns and statements, see sections 6652, 6685, and 7207.

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Subtitle F—Procedure and Administration

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CHAPTER 61—INFORMATION AND RETURNS

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Subchapter A—Returns and Records

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PART III—INFORMATIONAL RETURNS

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Subpart A—Information Concerning Persons Subject to Special Provisions

Sec. 6031. Return of partnership income.

* * * * * * *

Sec. 6033A. Returns relating to political activities.

* * * * * * *

SEC. 6033A. RETURNS RELATING TO POLITICAL ACTIVITIES.

(a) GENERAL REPORTING REQUIREMENTS.—

(1) IN GENERAL.—Every organization to which this subsection applies for a reporting period shall submit a return to the Secretary for such period. Such return shall include—

(A) a detailed description of such organization's disclosable activities during the reporting period and the purpose and intended results for the major categories of expenditures for such activities, including the candidates intended to be affected,

(B) a list identifying—

(i) each expenditure made for a disclosable activity during the reporting period in an amount in excess of the threshold amount, and

(ii) the name and address of each person to whom the organization made any expenditure required to be reported under clause (i), and

(C) in the case of a reportable contributor—

(i) the name and address of the contributor (and, if the contributor is an individual, the contributor's occupation and employer),

(ii) the aggregate amount of contributions made by such contributor,

(iii) the name and address of the person (if any) on whose behalf the contributor made any payment to such organization, and

(iv) if any payment by the contributor was designated for a beneficiary other than such organization (including amounts which are in any way earmarked or otherwise directed through an intermediary), the name and address of the intended beneficiary.

The information required under the preceding sentence for any reporting period shall be set forth separately for such period and in the aggregate for such period and preceding reporting periods during the calendar year.

(2) ORGANIZATIONS TO WHICH SUBSECTION APPLIES.—This subsection shall apply to any organization described in or subject to section 527 if—

(A) such organization is described in paragraph (4), (5), or (6) of section 501(c), or

(B) such organization is a 527 organization.

(3) EXCEPTION FOR NON–527 ORGANIZATIONS HAVING AGGREGATE DISCLOSABLE EXPENDITURES OF LESS THAN $10,000.—This subsection shall not apply to an organization described in paragraph (2)(A) for any reporting period if the aggregate expenditures of the organization for disclosable activities during the period beginning on January 1 of the calendar year in which the reporting period begins and ending on the last day of the reporting period are less than $10,000.

(4) REPORTABLE CONTRIBUTOR.—

(A) IN GENERAL.—For purposes of paragraph (1), the term "reportable contributor" means any person if the aggregate of the contributions and membership dues, fees, and assessments (within the meaning of section 527) received by the organization from such person during the testing period exceeds the threshold amount.

(B) EXCEPTION FOR DUES NOT ATTRIBUTABLE TO DISCLOSABLE ACTIVITIES.—

(i) IN GENERAL.—At the election of the organization, the only dues taken into account under subparagraph (A) shall be dues attributable to expenditures for disclosable activities.

(ii) PORTION OF DUES ATTRIBUTABLE TO DISCLOSABLE ACTIVITIES.—For purposes of clause (i), the portion of dues attributable to expenditures for disclosable activities of an organization is the amount which bears the same ratio to the total amount of dues as the expenditures of the organization which are disclosable under paragraph (1) for the testing period bears to the total expenditures of the organization for such period.

(C) TESTING PERIOD.—For purposes of this paragraph, the term "testing period" means, with respect to any reporting period, the period—

(i) beginning on January 1 of the calendar year in which the reporting period begins, and

(ii) ending on the last day of the reporting period.

(5) SPECIAL RULE FOR EARMARKED CONTRIBUTIONS DEPOSITED INTO A SEGREGATED DISCLOSABLE ACTIVITIES FUND.—

(A) IN GENERAL.—In the case of an organization described in paragraph (4), (5), or (6) of section 501(c), paragraph (1)(C) shall apply only with respect to amounts received which are earmarked for a disclosable activity if the organization elects—

(i) to maintain a segregated disclosable activities fund,

(ii) to deposit into such fund only and all amounts received by such organization which are earmarked by the contributor for a disclosable activity, and

(iii) to make no expenditures for disclosable activities other than from such fund.

In the case of such a fund, subsection (d) shall not apply and the threshold amount shall be $1,000.

(B) NONCOMPLIANCE.—In the case of an organization with respect to which an election is in effect under subparagraph (A) and which fails to comply with a requirement in subparagraph (A) during any reporting period, subparagraph (A) shall not apply to such period or any subsequent reporting period during the calendar year in which such period begins.

(C) DE MINIMIS EXPENDITURES.—Failures to meet the requirement of subparagraph (A)(iii) with respect to de minimis amounts shall not be treated as a failure to comply with such requirement.

(6) THRESHOLD AMOUNT.—For purposes of this section, the term "threshold amount" means—

(A) $200 in the case of a 527 organization, and

(B) $1,000 in any other case.

(b) DISCLOSABLE ACTIVITIES.—For purposes of this section—

(1) 527 ORGANIZATIONS.—In the case of a 527 organization, the term "disclosable activities" means all activities of the organization.

(2) OTHER ORGANIZATIONS.—In the case of an organization described in paragraph (4), (5), or (6) of section 501(c), the term "disclosable activities" means—

(A) a 527-type activity,

(B) establishing, administering, or soliciting contributions to a 527 organization,

(C) contributing directly or indirectly to a 527 organization,

(D) contributing directly or indirectly to an organization which is described in paragraph (4), (5), or (6) of section 501(c) and which is required to file a return under this section for the year in which the contribution is received or for any of the 3 preceding years (or would be required to file such a return had this section been in effect for such years), and

(E) any mass media communication (including any mass mailing) which is not a 527-type activity and which—

(i) mentions a clearly identified candidate for election for Federal office (including any individual who has formed an exploratory committee for such election) or the political party of such candidate, or

(ii) contains the picture or other likeness of such candidate.

(3) EXCEPTION FOR COMMUNICATION WITH MEMBERS.—Subparagraph (E) of paragraph (2) shall not apply to communication with bona fide members of the organization unless such communication urges such members to communicate with another person or to take an action as a result of such communication.

(c) ADDITIONAL INFORMATION FROM 527 ORGANIZATIONS.—

(1) STATEMENT OF ORGANIZATION.—

(A) IN GENERAL.—Every 527 organization shall file a statement of organization with the Secretary (in such form and manner as the Secretary shall prescribe) which con-

tains the information described in subparagraph (B). Such statement shall be filed not later than 10 days after the date that such organization is established (or, in the case of an organization in existence on the date of the enactment of this section, not later than 10 days after such date of enactment).

(B) STATEMENT OF ORGANIZATION.—The information described in this subparagraph is—

(i) the name and address of the 527 organization,

(ii) the name, address, relationship, and type of any person which is directly or indirectly related to or affiliated with such 527 organization,

(iii) the name, address, and position of the custodian of books and accounts of the 527 organization,

(iv) the name and address of the treasurer of the 527 organization, and

(v) a listing of all banks, safety deposit boxes, and other depositories used by the 527 organization.

(C) CHANGES IN INFORMATION.—If there is a change in circumstances such that the most recent statement filed under this paragraph is no longer accurate, the 527 organization shall file a corrected statement with the Secretary (in such manner as the Secretary shall prescribe) not later than 10 days after the date that the statement first ceased to be accurate.

(D) RELATED AND AFFILIATED PERSONS.—For purposes of subparagraph (B)(ii), a person is directly or indirectly related to or affiliated with a 527 organization if such person, at any time during the 3-year period ending on the date such statement is submitted to the Secretary—

(i) was in a position to exercise substantial direct or indirect influence over the process of collecting or disbursing the exempt purpose funds of such organization, or

(ii) was in a position to exercise substantial, overall direct or indirect influence over the activities of such organization.

(2) OTHER INFORMATION.—

(A) IN GENERAL.—In addition to the information required by subsection (a), every 527 organization shall include the information described in subparagraph (B) on the return required under subsection (a).

(B) INFORMATION DESCRIBED.—The information described in this subparagraph is—

(i) a certification, under penalty of perjury, whether such expenditure is made in cooperation, consultation, or concert with, or at the request or suggestion of, any candidate for public office or any authorized committee of such candidate or agent of such committee or candidate,

(ii) the name, address, and business purpose of any entity, as well as whether the entity purports to be exempt from tax under this title and (if so) the provision under which the entity purports to be so exempt, which made (in the aggregate for the reporting period) a con-

tribution in excess of the threshold amount to the 527 organization, and

(iii) the original source and the intended ultimate recipient of all contributions made by a person, either directly or indirectly, on behalf of any particular person, including contributions which are in any way earmarked or otherwise directed through any intermediary.

(d) REPORTING PERIODS AND DUE DATES FOR RETURNS AND STATEMENTS.—

(1) IN GENERAL.—The reporting periods and deadlines for filing returns and statements required by this section shall be—

(A) determined under paragraph (2), (3), or (4), whichever is selected by the reporting organization, and

(B) in the case of disclosable activities which are independent expenditures, determined under paragraph (5).

(2) QUARTERLY REPORTS, ETC.—

(A) CALENDAR YEARS HAVING A REGULARLY SCHEDULED ELECTION.—In the case of a calendar year in which a regularly scheduled election is held—

(i) QUARTERLY REPORTS.—

(I) PERIOD.—The reporting periods shall be the calendar quarters beginning with the first quarter of the calendar year in which a contribution is accepted or expenditure is made for a disclosable activity.

(II) FILING DEADLINE.—Reports under this clause shall be filed not later than the 15th day after the last day of each calendar quarter; except that the report for the quarter ending on December 31 of such calendar year shall be filed not later than January 31 of the following calendar year.

(ii) PRE-ELECTION REPORT.—

(I) PERIOD.—A pre-election report with respect to an election shall be filed for the period ending on the 20th day before the election and beginning on the first day of the calendar quarter which includes such 20th day.

(II) FILING DEADLINE.—A pre-election report shall be filed not later than the 12th day before (or posted by registered or certified mail not later than the 15th day before) any election with respect to which the organization makes a contribution or expenditure for a disclosable activity.

(iii) POST-GENERAL ELECTION REPORT.—

(I) PERIOD.—A post-general election report with respect to an election shall be filed for the period ending on the 20th day after the election and beginning on the first day of the calendar quarter which includes such 20th day.

(II) FILING DEADLINE.—A post-general election report shall be filed not later than the 30th day after the general election.

(B) OTHER CALENDAR YEARS.—In the case of any other calendar year—

(i) SEMIANNUAL REPORTS.—The reporting periods shall be—

(I) the 1st 6 months of the calendar year, and

(II) the 2d 6 months of such year.

(ii) FILING DEADLINES.—The report for the period described in clause (i)(I) shall be filed no later than July 31, and the report for the period described in clause (i)(II) shall be filed no later than January 31 of the following calendar year.

(C) SPECIAL ELECTIONS.—The Secretary shall set filing dates for reports to be filed with respect to organizations filing under this paragraph with respect to special elections. The Secretary shall require no more than one pre-election report for each election and one post-election report for the election which fills the vacancy. The Secretary may waive any reporting obligation of organizations required to file for special elections if any report required by this paragraph is required to be filed within 10 days of a report required under this subparagraph. The Secretary shall establish the reporting dates within 5 days of the setting of such election.

(D) EXCEPTION FROM QUARTERLY REPORT.—The requirement to file a quarterly report under subparagraph (A)(i) for a calendar quarter shall be waived if the organization is required to file a pre-election report under subparagraph (A)(ii) during the period beginning on the 5th day after the close of the calendar quarter and ending on the 15th day after the close of the calendar quarter.

(3) MONTHLY REPORTS, ETC.—

(A) PERIOD.—The reporting periods shall be monthly for all calendar years beginning with the first month of the calendar year in which a contribution is accepted or expenditure is made for a disclosable activity.

(B) FILING DEADLINE.—Reports under this paragraph shall be filed not later than the 20th day after the last day of the month.

(C) REPORTS IN LIEU OF NOVEMBER AND DECEMBER REPORTS DURING ELECTION YEARS.—In lieu of filing the reports otherwise due under this paragraph in November and December of any year in which a regularly scheduled general election is held—

(i) a pre-general election report shall be filed in accordance with paragraph (2)(A)(ii),

(ii) a post-general election report shall be filed in accordance with paragraph (2)(A)(iii), and

(iii) a year-end report shall be filed not later than January 31 of the following calendar year.

(4) CERTAIN ORGANIZATIONS FILE ANNUALLY.—

(A) IN GENERAL.—In the case of a 527 organization described in subparagraph (B)—

(i) the reporting period shall be such organization's taxable year, and

(ii) the due date for the returns and statements required by this section shall be the due date (without regard to extensions) for filing the return of tax for such

year, whether or not such organization is required to file a return for such taxable year.

(B) ORGANIZATION DESCRIBED.—An organization is described in this subparagraph if such organization is a 527 organization which is organized and operated exclusively for the purpose of securing the nomination, election, or appointment of a clearly identified candidate for State, local, or judicial office.

(5) REPORTING OF INDEPENDENT EXPENDITURES.—

(A) IN GENERAL.—In the case of a disclosable activity which is an independent expenditure by an organization to which subsection (a) applies, the organization shall file the statement described in subparagraph (B).

(B) STATEMENT.—The statement described in this subparagraph is a statement (filed in accordance with paragraph (1)(A) unless subparagraph (C) applies) which includes the information required under subsection (a)(1) with respect to such independent expenditure.

(C) SEPARATE REPORTING WITH RESPECT TO INDEPENDENT EXPENDITURES MADE WITHIN 20 DAYS OF ELECTION.—The statement required by subparagraph (B) in the case of a disclosable activity which is an independent expenditure described in subparagraph (A) aggregating $1,000 or more made after the 20th day, but more than 24 hours, before any election shall be filed within 24 hours after such independent expenditure is made. Such statement shall be filed with the Secretary.

(e) DEFINITIONS.—For purposes of this section—

(1) 527 ORGANIZATION.—The term "527 organization" means any political organization (as defined by section 527(e)(1)).

(2) 527-TYPE ACTIVITY.—The term "527-type activity" means influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any Federal, State, or local public office or office in a political organization, or the election of Presidential or Vice-Presidential electors, whether or not such individual or electors are selected, nominated, elected, or appointed. Such term includes the making of expenditures relating to an office described in the preceding sentence which, if incurred by the individual, would be allowable as a deduction under section 162(a).

(3) CONTRIBUTIONS.—The term "contributions" has the meaning given to such term by section 271(b)(2).

(4) EXPENDITURES.—The term "expenditures" has the meaning given to such term by section 271(b)(3).

(f) SPECIAL RULES.—

(1) ELECTRONIC FILING.—The Secretary shall develop procedures for submission in electronic form of returns and statements required to be filed under this section.

(2) PAPERWORK AND BURDEN REDUCTION FOR ORGANIZATIONS OTHERWISE DISCLOSING INFORMATION.—An organization shall not be required to file any return or statement under this section for any period if, with respect to such period, such organization submits to the Secretary, under penalty of perjury, a certified statement that the organization has made a filing, which is publicly available, with another Federal agency which in-

cludes all of the information required to be included in such return or statement and which specifies the public location where such information may be found.

* * * * * * *

Subchapter B—Miscellaneous Provisions

* * * * * * *

SEC. 6104. PUBLICITY OF INFORMATION REQUIRED FROM CERTAIN EXEMPT ORGANIZATIONS AND CERTAIN TRUSTS.

(a) * * *

[(b) INSPECTION OF ANNUAL INFORMATION RETURNS.—The information required to be furnished by sections 6033, 6034, and 6058, together with the names and addresses of such organizations and trusts, shall be made available to the public at such times and in such places as the Secretary may prescribe. Nothing in this subsection shall authorize the Secretary to disclose the name or address of any contributor to any organization or trust (other than a private foundation, as defined in section 509(a)) which is required to furnish such information. In the case of an organization described in section 501(d), this subsection shall not apply to copies referred to in section 6031(b) with respect to such organization.]

(b) INSPECTION OF INFORMATION RETURNS AND INCOME TAX RETURNS OF POLITICAL ORGANIZATIONS.—

(1) IN GENERAL.—The information required to be furnished by sections 6033, 6033A, 6034, and 6058 (together with the names and addresses of such organizations and trusts) and returns filed under section 6012(a)(6) shall be made available to the public at such times and in such places as the Secretary may prescribe.

(2) EXCEPTIONS.—

(A) NONDISCLOSURE OF NAMES AND ADDRESSES OF CONTRIBUTORS.—

(i) IN GENERAL.—Nothing in this subsection shall authorize the Secretary to disclose the name or address of any contributor to any organization or trust which is required to furnish such information.

(ii) EXCEPTION.—Clause (i) shall not apply to a private foundation (as defined in section 509(a)), a 527 organization (as defined in section 6033A(e)), or information on a return under section 6033A(a) of an organization described in paragraph (4), (5) or (6) of section 501(c).

(B) RELIGIOUS AND APOSTOLIC ORGANIZATIONS.—In the case of an organization described in section 501(d), this subsection shall not apply to copies referred to in section 6031(b) with respect to such organization.

(3) SPECIAL RULES FOR INFORMATION UNDER SECTION 6033A.—

(A) TIMELY AVAILABILITY.—Documents filed under section 6033A (other than with respect to an annual period) shall be available under paragraph (1) no later than 2 business days after being filed.

(B) AVAILABILITY ON WORLD WIDE WEB.—To the extent practicable, documents filed under section 6033A shall also be made available to the public on the world wide web.

(4) COOPERATION WITH OTHER FEDERAL AGENCIES.—The Secretary may cooperate with another Federal agency to carry out the requirements of this subsection with respect to returns and statements required to be filed under section 6033A.

* * * * * * *

(e) INSPECTION OF DOCUMENTS RELATING TO POLITICAL ACTIVITIES OF CERTAIN 501(c) ORGANIZATIONS AND 527 ORGANIZATIONS.—

(1) IN GENERAL.—In the case of any organization required to submit a document under section 6033A—

(A) a copy of such document shall be made available by such organization for inspection during regular business hours by any individual at the principal office of such organization and, if such organization regularly maintains 1 or more regional or district offices having 3 or more employees, at each such regional or district office, and

(B) upon request of an individual made at such principal office or such a regional or district office, a copy of such document shall be provided to such individual without charge other than a reasonable fee for any reproduction and mailing costs.

The request described in subparagraph (B) must be made in person or in writing. If such request is made in person, such copy shall be provided immediately and, if made in writing, shall be provided within 30 days.

(2) ANNUAL INCOME TAX RETURNS OF 527 ORGANIZATIONS.—In the case of an organization required to file a return under section 6012(a)(6), the requirements of paragraph (1) shall also apply to such return.

(3) TIMELY AVAILABILITY.—

(A) IN GENERAL.—Except as provided in subparagraph (B), documents required to be available under this subsection shall be available no later than 2 business days after being filed.

(B) EXCEPTION.—Subparagraph (A) shall not apply to—

(i) any document filed under section 6033A with respect to an annual period, and

(ii) any return filed under section 6012(a)(6).

(4) 3-YEAR LIMITATION ON INSPECTION DOCUMENTS.—Paragraphs (1) and (2) shall apply to any document only during the 3-year period beginning on the last day prescribed for its filing (determined with regard to any extension of time for filing).

(5) LIMITATION ON PROVIDING COPIES.—A rule similar to the rule of subsection (d)(4) shall apply for purposes of this subsection.

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CHAPTER 68—ADDITIONS TO THE TAX, ADDITIONAL AMOUNTS, AND ASSESSABLE PENALTIES

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Subchapter A—Additions to the Tax, Additional Amounts

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PART I—GENERAL PROVISIONS

SEC. 6652. FAILURE TO FILE CERTAIN INFORMATION RETURNS, REGISTRATION STATEMENTS, ETC.

(a) * * *

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(c) RETURNS BY EXEMPT ORGANIZATIONS AND BY CERTAIN TRUSTS.—

(1) * * *

(2) INFORMATION UNDER SECTION 6033A.—

(A) IN GENERAL.—In the case of—

(i) a failure to file a document required under section 6033A (relating to returns relating to political activities) at the time and in the manner prescribed therefor (determined without regard to any extension of time for filing), or

(ii) a failure to include any of the information required to be shown on such a return or statement or to show the correct information,

there shall be paid by the organization an amount equal to the rate of tax specified in section 527(b)(1) multiplied by the amount to which the failure relates.

(B) PUBLIC INSPECTION.—In the case of a failure to comply with the requirements of section 6104(e) at the time and in the manner prescribed therefor (determined without regard to any extension of time for filing), there shall be paid by the person failing to meet such requirements $20 for each day during which such failure continues. The maximum penalty imposed under this subparagraph on all persons for failures with respect to any 1 statement shall not exceed $10,000.

(C) ADDITIONAL PENALTY ON MANAGERS OF 527 ORGANIZATIONS.—

(i) IN GENERAL.—The Secretary may make a written demand on any 527 organization subject to penalty under subparagraph (A) specifying therein a reasonable future date by which the return or statement shall be filed (or the information furnished) for purposes of this subparagraph.

(ii) FAILURE TO COMPLY WITH DEMAND.—If any person fails to comply with any demand under clause (i) on or before the date specified in such demand, there shall be paid by the person failing to so comply $10 for

each day after the expiration of the time specified in such demand during which such failure continues. The maximum penalty imposed under this subparagraph on all persons for failures with respect to any 1 statement shall not exceed $5,000.

[(2)] *(3)* RETURNS UNDER SECTION 6034 OR 6043(b).—

(A) * * *

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[(3)] *(4)* REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under this subsection with respect to any failure if it is shown that such failure is due to reasonable cause.

[(4)] *(5)* OTHER SPECIAL RULES.—

(A) * * *

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Subchapter B—Assessable Penalties

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PART I—GENERAL PROVISIONS

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SEC. 6685. ASSESSABLE PENALTY WITH RESPECT TO PUBLIC INSPECTION REQUIREMENTS FOR CERTAIN TAX-EXEMPT ORGANIZATIONS.

In addition to the penalty imposed by section 7207 (relating to fraudulent returns, statements, or other documents), any person who is required to comply with the requirements of [subsection (d)] *subsection (d) or (e)* of section 6104 and who fails to so comply with respect to any [return or application] *return, application, or statement*, if such failure is willful, shall pay a penalty of $5,000 with respect to each such [return or application] *return, application, or statement*.

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CHAPTER 75—CRIMES, OTHER OFFENSES AND FORFEITURES

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Subchapter A—Crimes

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PART I—GENERAL PROVISIONS

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SEC. 7207. FRAUDULENT RETURNS, STATEMENTS, OR OTHER DOCUMENTS.

Any person who willfully delivers or discloses to the Secretary any list, return, account, statement, or other document, known by him to be fraudulent or to be false as to any material matter, shall be fined not more than $10,000 ($50,000 in the case of a corporation), or imprisoned not more than 1 year, or both. Any person re-

quired pursuant to subsection (b) of section 6047 or pursuant to [subsection (d)] *subsection (d) or (e)* of section 6104 to furnish any information to the Secretary or any other person who willfully furnishes to the Secretary or such other person any information known by him to be fraudulent or to be false as to any material matter shall be fined not more than $10,000 ($50,000 in the case of a corporation), or imprisoned not more than 1 year, or both.

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VII. DISSENTING VIEWS

We sought unsuccessfully to have the Ways and Means Committee Members come together, on a bipartisan basis, and report legislation to address the election finance abuses involving Internal Revenue Code section 527 organizations. These organizations do not apply for tax-exempt status with the Internal Revenue Service nor file annual returns with the IRS describing their activities and contributors. These entities often are multi-million dollar "slush accounts" set up specifically to influence an election. These tax-exempt section 527's operate in total secrecy outside the view of the public.

Legislation to require full disclosure of the activities and sponsors of section 527 organizations was introduced by Congressman Lloyd Doggett months ago. Since that time, the substance of his bill, H.R. 4168, was voted down by the Republicans twice in Committee, and twice in the House of Representatives. It was only after the House Republican Leadership learned that identical legislation offered by Senator McCain and others passed the Senate, on a bipartisan basis, that the House Republicans relented and announced "hearings" and a "bigger" bill to be considered by the House before the July 4th recess. Unfortunately, this was only a way to assure that section 527 disclosure would never be enacted into law.

The "poison pill" they planned to add to the section 527 disclosure bill was well-planned and quite comprehensive. It now is contained in the Committee bill. The Republicans faced, however, one major problem in keeping a straight face during debate on the Republicans' bill in Committee. That is, the Oversight Subcommittee hearing testimony two days earlier specifically, and repeatedly, argued against exactly what the Republicans have now done in their bill. In contrast, the Democratic Substitute does exactly what the witnesses urged and has bipartisan support.

The testimony before the Oversight Subcommittee on June 20, 2000, uniformly urged quick action on disclosure by section 527 entities. In shutting down the secrecy of section 527 entities, witnesses agreed that those intent on hiding their activities and funding sources would move, with a little creativity in words and methods, to other tax-exempt and taxable entities. In developing any broader legislation, the witnesses repeatedly said that any expansions beyond section 527 organizations should apply fairly to all entities—taxable and tax-exempt. Further, the legislation must be narrow in focus, clear in definition, and tied in time to the election process so as to withstand any First Amendment challenge.

In the words of Senator McCain, "Let's not let the perfect be the enemy of the good. Greater disclosure is not a black and white issue. We can, and should, all agree that greater disclosure is better than the status quo as it exists today. And, yes, while we work to develop the best bill possible, we must also move forward expedi-

tiously." He emphasized the critical importance of bipartisanship in this very sensitive area and recommended targeted and reasonable expansions into tax-exempt and taxable activities.

The Executive Director of the Center for Responsive Politics, a well-respected, non-partisan research organization that monitors and analyzes campaign contributions in federal elections, was clear in his message. He stated, "The fact is, if Saddam Hussein wanted to plunk $100 million into a barrage of TV ads the final week before we pick our next president he could do it. He could also fly under the radar with direct mail pieces, or pre-recorded phone messages, to every mailbox and telephone in America. So could the American Trial Lawyers Association, the Teamsters Union, Philip Morris, the National Rifle Association, the Sierra Club, or Microsoft—all without anyone knowing where the money came from or how much was even spent. They have found the ultimate loophole in these 527 committees, which are seen as 100% political by the IRS, and 100% non-political by the FEC. This legal alchemy has effectively rendered their finances 100% invisible."

A broad bipartisan group of Members presented a fair and reasonable legislative approach to Subcommittee Chairman Houghton by letter dated June 15, 2000. The letter sets forth principles that could be enacted into law, in short-order on a bipartisan basis, and would eliminate the widely-publicized abuse of section 527 organizations. First, the legislation should contain the provisions contained in Congressman Doggett's bill to require disclosure by section 527 organizations. The Senate already has taken the important first step in this process by passing the legislation proposed by Senators McCain, Feingold and Lieberman. Second, the disclosure requirements outside the context of section 527's must be narrowly focused, as in the approach taken in legislation authored by Senators Snowe and Jeffords. This, or a version similar to this, is the best way to avoid constitutional challenges. Third, the disclosure requirements outside the context of section 527 must be even-handed and applicable to all types of entities spending significant sums on electioneering activities. This letter and the testimony at the hearing are totally consistent with the Democratic Substitute.

The Democratic Substitute: (1) provides for the section 527 organization reporting and disclosure requirements of the Doggett bill; (2) requires reporting by all organizations (taxable and nontaxable) which spend more than $10,000 in any calendar year on electioneering and related disclosure of contributors who provide the organization more than $1,000 in any calendar year; (3) clearly defines "electioneering" activities as any mass media communication (radio, television, newspapers and other periodicals of general circulation, billboards, paid Internet advertising, and mass mailings to non-members) that refers to a clearly identified candidate for Federal office or that urges support or opposition to a specific political party and which is made 90 days before a general election or 60 days before a primary; and (4) applies the reporting disclosure requirements to all receipts and disbursements during calendar year 2000 and subsequent years.

The Majority of the Committee deliberately chose to disregard the Oversight Subcommittee testimony and the principles outlined by Members of the House and Senate on a bipartisan basis. In-

stead, they chose to write punitive and unconstitutional legislation. An article in the Wall Street Journal on Friday, June 23, 2000, stated the underlying motive for writing such legislation. A Republican lawmaker, who chose not to be identified, is quoted as stating "this is all about self preservation."

The legislation reported by the Committee is designed to ensure that no restraints on section 527 organizations will be enacted this year. The Republican bill exempts all of year 2000 from the new disclosure rules by considering only expenditures and contributions "received in reportable periods after date of enactment." Since reportable periods are calendar quarters, this means that unlimited political activities with no disclosure reporting can occur before October 1, 2000 and, with pre-funding, unreported political ads could be run after October 1 through the end of this year.

The Republican legislation reported by the Committee is seriously deficient in its failure to impose reporting requirements on taxable entities making "section 527-like" expenditures. There is no rationale for not applying the same rules to corporations as the Republicans see fit to apply to tax-exempt social welfare groups, business leagues, and unions. The shift of hidden electioneering activities from section 527 entities to other tax-exempt and taxable operations is known, and the Republicans have failed to address the latter in any way. Instead, they have found it appropriate to apply their rules only to tax-exempt groups such as the NAACP, National Right to Life Committee, League of Women Voters, environmental advocacy groups, unions and trade associations. The Committee bill does not in any way require disclosure from taxable corporations.

The Republican legislation reported by the Committee subjects tax-exempt organizations to overly broad and uncertain disclosure requirements. Organizations would be required to disclose all activities intended to influence Federal elections with no guidance as to what those uncertain terms mean and what conduct is at risk. During the Committee markup, when asked whether voter registration drives, voter education efforts, "get out the vote" efforts, or issue advocacy groups fell within the Republican's definition of political activity, the answer was "it depends on the facts and circumstances." This is another way of saying "your guess is as good as mine." The Committee bill is extremely vague and does not have a meaningful definition of what activities are subject to reporting and the disclosure of contributors. This is unfair to tax-exempt organizations serving the needs of this country and unfair to those wishing to support them.

Under the Republican bill, if an organization makes the wrong guess about whether its activities fall within their uncertain definition, the organization and its managers are subject to large penalties, which could have a chilling effect on organization members exercising their rights of association and free speech.

Further, the Republican bill will require disclosure when one organization contributes funds to another organization—even if the use of those contributions by the recipient organization is totally for nonpolitical reasons. For example, the national chapter of a gay rights or civil rights organization would be required to report expenditures and its membership list for transfers of funds to any of

its local affiliates, even if the transfers had nothing to do with influencing an election.

The disclosure of contributor lists is serious business. The Republican bill would require an organization subject to the disclosure requirements to list and place in the public domain the name, address, occupation and employer of each contributor of more than $1,000 to the organization. This is not acceptable on a broad scale without a compelling reason. Some organizations subject to the broad reach of the Committee bill's disclosure requirements are defending unpopular causes. Exposure of their contributors creates the potentiality of retribution from employers or other individuals who disagree with the goals of the organization.

We oppose the Committee bill because it is wrong. We oppose the Committee bill because it is unfair and does not address the abuse by covering both tax-exempt and taxable entities engaged in political activities. We oppose the Committee bill because it is unconstitutionally vague and impinges on Americans' freedom of speech and freedom of association. The Committee bill is not narrowly focused on the acts of political electioneering and not broadly designed to cover all the players.

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