

### SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: April 14, 1998 Revised: \_\_\_\_\_

Subject: Candidates; Judges and Justices; Speech

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Fox</u>	<u>Bradshaw</u>	<u>EE</u>	<u>Favorable</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

#### I. Summary:

Senate Bill 2686 prohibits any government agency from restricting the right of a public candidate, including a candidate for judicial office, from publicly expressing his or her opinion on public issues. The bill repeals unspecified provisions of the Code of Judicial Conduct which conflict with the foregoing principle, to the extent of that conflict.

This bill creates unnumbered sections of the Florida Statutes.

#### II. Present Situation:

The Code of Judicial Conduct, adopted by the Florida Supreme Court, establishes standards for the ethical conduct of judges. *In re Code of Judicial Conduct*, 643 So.2d 1037 (Fla. 1995); Code of Judicial Conduct, Preamble. The Code is divided up into broad statements called “canons,” addressing issues such as upholding the integrity of the judiciary, avoiding impropriety and the appearance of impropriety, etc. Each canon contains a number of specific “sections” which house the authoritative rules of the Code. Code of Judicial Conduct, Preamble.

Canon 7 restricts judges and candidates for judicial office from engaging in “inappropriate political activity.” Code of Judicial Conduct, Canon 7. Several sections of Canon 7 contain restrictions on candidate speech. For example, Canon 7A(3)(d) provides that a candidate for judicial office shall not:

- (ii) [M]ake statements that commit or appear to commit the candidate with respect to cases, controversies, or issues that are likely to come before the court; or

(iii) [K]nowingly misrepresent the identity, qualifications, present position or other fact concerning the candidate or an opponent.

Other Canons also address public speech by judges. Canon 3B(9), for instance, prohibits a judge from making a public comment while a proceeding is pending in any court which might reasonably be expected to affect the outcome or impair its fairness.

### **III. Effect of Proposed Changes:**

Senate Bill 2686 establishes the right of any candidate, including a candidate for judicial office, to publicly express his or her position on public issues, and this right may not be restricted by any government agency. The bill also generally repeals any provisions of the Code of Judicial Conduct to the extent they conflict with this right.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

#### **D. Other Constitutional Issues:**

Because the administration of the court system is generally reserved to the supreme court, the State Constitution requires a super majority vote (two-thirds vote) of both the Senate and the House of Representatives and Executive Approval under Art. III, s. 8, Florida Constitution, to effect a repeal of the provisions of the Code of Judicial Conduct. Art. V, s. 2, Fla. Const.

### **V. Economic Impact and Fiscal Note:**

#### **A. Tax/Fee Issues:**

None.

#### **B. Private Sector Impact:**

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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