

STORAGE NAME: h3483.er

DATE: February 27, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
ELECTION REFORM
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 3483

RELATING TO: Polling Places

SPONSOR(S): Representatives Morroni and Mackey

COMPANION BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) ELECTION REFORM (GRC)
 - (2) CIVIL JUSTICE & CLAIMS (JC)
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

This bill increases the no-solicitation zone around polling places from 50 feet to 100 feet. In addition, the exceptions for when the solicitation restrictions will not apply have been removed.

This bill does not have any fiscal impact.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Presently, s. 102.031, F.S., restricts solicitation within 50 feet of the entrance to any polling place, or polling room where the polling place is also a polling room. However, this section also provides a number of exceptions to the restriction. The restriction does not apply if the solicitation of voters is occurring in a marked area that does not disturb, hinder, impede, obstruct or interfere with voter access to the polling place, and the solicitation activities and subject matter are easily identifiable by the voters as an activity in which they may voluntarily participate. In addition, the restriction does not apply if the solicitation activity is conducted at a residence, an established business, private property, a sidewalk, a park or property traditionally utilized as a public area for discussion within the 50-foot zone.

The various exceptions to the 50-foot no-solicitation zone have created a lot of confusion and make the zone difficult, if not impossible, to apply. First, the exceptions are so numerous that there is almost no area or activity that can be restricted. Second, the law contains conflicting provisions. For example, while paragraph (3)(c)1.c., states that solicitation on a sidewalk cannot be restricted, paragraph (3)(c)2. provides that solicitation on the sidewalk can be restricted if it is determined that the solicitation is impeding, obstructing or interfering with voter access to the polling place or room. This leaves a lot of discretion in the hands of the poll workers and has the potential to be applied inconsistently and in an arbitrary manner.

The State of Florida has a vital interest in preserving the integrity of the election process. The solicitation of voters in close proximity to polling places leads to voter intimidation and interferes with the maintenance of order at the polls. Supervisors of elections have complained that the current law does not give them the adequate authority to restrict solicitation around polling locations. They have also noted that many voters have objected to the proximity and intensity of solicitors, finding the practice intimidating and coercive, and a disincentive to vote.

B. EFFECT OF PROPOSED CHANGES:

The bill increases the no-solicitation zone around polling places from 50 feet to 100 feet. In addition, the exceptions for when the solicitation restrictions will not apply have been removed.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

- a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

Yes. It is presently lawful to solicit voters without restriction as close as 50 feet from the entrance to a polling place. Subject to some restrictions a person may solicit voters closer than 50 feet from the entrance to a polling place.

This bill makes it unlawful to solicit voter within 100 feet of the entrance of a polling place without exception.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Subsection (3) of section 102.031, Florida Statutes.

E. SECTION-BY-SECTION RESEARCH:

This section need be completed only in the discretion of the Committee.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

N/A

V. COMMENTS:

Section 102.031, F.S., in its present form was drafted in conformity with three court decisions: Clean-Up '84 v. Heinrich, 759 F.2d 1511 (11th Cir. 1985); News-Press Pub. Co., Inc. v. Firestone, 527 So.2d 223 (Fla. 2nd DCA 1988), *modified on other grounds*, 538 So.2d 457 (Fla. 1989) and; Florida Comm. for Liability Reform v. McMillan, 682 F.Supp. 1536 (M.D. Fla. 1988). In Clean-Up '84, the United States 11th Circuit Court of Appeals reviewed s. 104.36, F.S., making it a misdemeanor to solicit voters within 100 yards of a polling location. The court determined that while the state had a significant interest in maintaining order at the polls, the law was not narrowly tailored as required where fundamental first amendment rights were at stake. The court held that the statute was unconstitutionally overbroad and facially invalid for a number of reasons, including the fact that the 100-yard radius at certain polling sites would encompass private homes and businesses posing little or no threat to the voting process. The Legislature subsequently repealed s. 104.36, F.S., in 1987 (see Chapter 87-184, s. 5, Laws of Florida).

In 1988, the Florida Second District Court of Appeals in News-Press was faced with the constitutionality of s. 101.121, F.S., which prohibited non-voters from coming within 50 feet of any polling place, but which exempted commercial businesses and private property from the restriction. The News-Press court held the statute unconstitutionally overbroad, because the 50-foot restriction would: encompass traditional public forums for free speech (i.e. streets, sidewalks), and; prohibit the presence of individuals within the restricted area who in no way interfere with the orderly process of voting or the secrecy of the ballot. The Legislature subsequently repealed s. 101.121, F.S. (see Chapter 89-338, s. 37, Laws of Florida).

Also in 1988, the United States District Court for the Middle District of Florida in McMillan, for many of the same reasons cited in Clean Up '84 and News Press, struck down s. 102.031(3), F.S., which prohibited any voter solicitation, without exception, within 150 feet of any polling place or room.

In 1989, the Legislature amended s. 102.031, F.S., to conform with the rulings of the above three cases. Specifically, the Legislature decreased the restricted zone from 150 feet to 50 feet and added a number of exceptions for when solicitation would be permissible. The changes were intended to create a no-solicitation zone that would pass constitutional muster. Because of the broad application of the exceptions, however, the legislation failed to provide supervisors of elections with an effective tool for limiting solicitation in the restricted zone and furthering the state's interests in maintaining order and security at the polls. While supervisors of elections have been aware that many voters are intimidated by the coercive atmosphere created by solicitors at the polls, the 1989 legislation, which exists essentially unmodified in current Florida statutes, did not and does not allow supervisors to adequately address those concerns.

In 1992 the United States Supreme Court upheld a Tennessee statute that created a 100-foot "campaign-free zone." A plurality of the Supreme Court in Burson v. Freeman, 112 S.Ct. 1846 (1992), held that while this zone clearly affected fundamental first amendment rights, Tennessee's interest in protecting against voter intimidation and election fraud was sufficiently compelling and that the law was sufficiently narrowly tailored to achieve this objective. The Court went into great detail analyzing the state's interests in creating no-solicitation zones and determined that, "[t]he only way to preserve the secrecy of the ballot is to limit access to the area around the voter." Burson, 112 S.Ct. at 1856. With respect to the choice of making the zone 100 feet, the Court did not employ a litmus paper test that separated valid from invalid restrictions. The Court did note, however, that "the state of Tennessee has decided that the last 15 seconds before its citizens enter the polling place should be their own, as free from interference as possible. We do not find that this is an unconstitutional choice." Burson, 112 S.Ct. at 1857.

The Burson case demonstrates that a state may legitimately create a no-solicitation zone provided: there is in fact a compelling reason to do so and the statute is narrowly tailored to serve that objective. Given the problems regarding solicitation at the polls that have been reported by the supervisors of elections, it appears that Florida has a compelling interest in creating a no-solicitation zone that can be uniformly applied. Utilizing the same geographic restriction as in Burson (100-foot restricted zone) supports the proposition that a court would view the statute as narrowly tailored to serve the state's compelling interests.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

STORAGE NAME: h3483.er

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PAGE 9

VII. SIGNATURES:

COMMITTEE ON ELECTION REFORM:

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