

STORAGE NAME: h2165a.go

DATE: April 13, 2000

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
GOVERNMENTAL OPERATIONS
ANALYSIS**

BILL #: HB 2165 (PCB ER 00-03)

RELATING TO: Definition of "Political Committee"

SPONSOR(S): Committee on Election Reform and Representative Flanagan

TIED BILL(S):

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

- (1) ELECTION REFORM YEAS 7 NAYS 0
 - (2) GOVERNMENTAL OPERATIONS YEAS 6 NAYS 0
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

HB 2165 amends the definition of "political committee" for purposes of the Florida Election Code [the definition is found in s. 106.011(1), F.S., (1999)]. This bill is a direct response to the Federal District Court for the Middle District of Florida's decision in *Florida Right to Life v. Mortham*, No. 98-770-CIV-ORL-19A (M.D. Fla. 1999), in which the court held the current definition of "political committee" unconstitutionally over broad and enjoined the Florida Elections Commission from enforcing the section.

Under this bill, the definition of "political committee" in Chapter 106, F.S., includes any group, in an aggregate amount of more than \$500 in a calendar year, which:

- accepts contributions in support of or in opposition to any candidate, ballot issue, or political party; or,
- makes expenditures which expressly advocate the election or defeat of a candidate or ballot issue.

Please see "Section VI. Amendments or Committee Substitute Changes" on page 5 of this analysis.

This bill does not appear to have a fiscal impact on state or local governments.

This bill provides an effective date upon becoming law.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Section 106.011(1), F.S., defines a "political committee," in relevant part, as follows:

[A] combination of two or more individuals, or a person other than an individual, the primary or **incidental** purpose of which is to support or oppose any candidate, issue,¹ or political party, which accepts contributions² or makes expenditures³ during a calendar year in an aggregate amount in excess of \$500. (Emphasis added).

On December 15, 1999, the Federal District Court for the Middle District of Florida held several provisions of the Florida Election Code, including the definition of "political committee," in violation of the First and Fourteenth Amendments to the United States Constitution.⁴ The court held that the existing statutory definition was too broad because it subjected pure issue advocacy groups to the registration and reporting requirements of Florida's campaign finance laws.⁵

¹Section 106.011(7), F.S., defines an "issue" as any proposition required by the State Constitution, by law or resolution of the Legislature, or by the charter, ordinance, or resolution of any political subdivision of this state, to be submitted to the electors for their approval or rejection at an election, or any proposition for which a petition is circulated in order to have such a proposition placed on the ballot at any election.

²Section 106.011(3), F.S. (1999) defines a "contribution," in relevant part, as essentially anything of value, including money, gifts, loans, etc., made for the purpose of influencing the results of an election.

³Section 106.011(4), F.S. (1999) defines an "expenditure," in relevant part, as essentially anything of value, including a purchase, payment, distribution, loan, transfer of funds, etc., made for the purpose of influencing the results of an election.

⁴*Florida Right to Life v. Mortham*, No. 98-770-CIV-ORL-19A (M.D. Fla. 1999).

⁵The term "issue advocacy" relates to organizations that support particular non-ballot issues, are uncontrolled by a candidate, and whose major purpose is not the election or defeat of a

At the preliminary injunction stage, the court was able to apply a narrowing construction to the statute, thereby limiting its reach to organizations whose *major* purpose was engaging in "express advocacy," as defined in *Buckley v. Valeo*.⁶ At the summary judgment stage, the court found that this narrowing construction was inadequate to address the Plaintiff's complaint of the chilling effect that the statute has on the exercise of First Amendment rights. Therefore, the court held that ***absent an authoritative narrowing construction***, s. 106.011(1), F.S., remains unconstitutionally over broad. The court issued an order permanently enjoining the Florida Elections Commission from enforcing the definition. Accordingly, there is no definition of "political committee" at this time.

Without a definition, it is questionable whether the Secretary of State may require any political committee to register and report their political contributions. The Secretary of State has appealed the decision to the federal Court of Appeals for the Eleventh Circuit. However, the appeal does not stay the effect of the permanent injunction, and it is uncertain whether this will be judicially resolved before the 2000 elections.

The Committee on Election Reform staff met with the staffs of the Senate Ethics and Elections Committee, the Division of Elections, and the Florida Elections Commission to obtain input on the practical impact of this ruling. While there was disagreement over the impact of the case on existing, currently registered "political committees," it was generally agreed upon that new political groups which are not currently registered with the Division of Elections as political committees under s. 106.03, F.S., may not be required to do so. These groups, consequently, would not be required to file contribution and expenditure reports.

The Florida Elections Commission staff has suggested that the Commission might have the authority to construct and adopt a definition of "political committee" which comports with concerns raised by the Court in *Florida Right to Life*, on a case-by-case basis. The staff also indicated an intent to continue enforcing contribution and expenditure reporting requirements for political committees [s. 106.07, F.S.], and limiting contributions to \$500 for political committees supporting or opposing candidates [s. 106.08(1), F.S.] for groups who are currently registered with the Division of Elections as political committees. While this may be an appropriate stance for the Commission to take given their charge to enforce Florida's campaign finance laws, the reality is that the *Florida Right to Life* case probably has a much broader impact.

candidate. See, *Federal Election Commission v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 252 n.6 (1986).

⁶424 U.S. 1, 42-44 (1976). "Express advocacy" is defined in *Buckley v. Valeo*, 424 U.S. at 42-44. In order to avoid "'trap[ping] the innocent by not providing fair warning,'" the Court stated that "express advocacy" is present only when there are "explicit words of advocacy of election or defeat of a candidate." For purposes of providing further clarity, the Court listed words that constituted "express words of advocacy" as follows: "vote for," "elect," "support," "cast your ballot for," "Smith for Congress," "vote against," "defeat," "reject." See, *Buckley v. Valeo*, 424 U.S. at 44, n.52.

C. EFFECT OF PROPOSED CHANGES:

This bill carves out an exemption from the registration and reporting requirements of Florida's campaign finance laws for groups engaging exclusively in issue advocacy. Specifically, the bill amends the definition of "political committee" to delete those words which the court found problematic in the *Florida Right to Life* case and insert the narrowing construction terminology used by the court at the preliminary injunction stage, while still retaining as much of the current statutory language as possible.

Under this bill, s. 106.011(1), F.S., defines a "political committee," in relevant part, as follows:

[A] combination of two or more individuals, or a person other than an individual, the **major** purpose of which is to support or oppose any candidate, issue, or political party. For purposes of this subsection, "major purpose" means accepting contributions or making expenditures which **expressly advocate the election or defeat of a** **candidate or issue** during a calendar year in an aggregate amount in excess of \$500. (Emphasis added).

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 106.011(1), F.S., redefining "political committee," in direct response to the federal district court's decision in *Florida Right to Life v. Mortham*.⁷

Section 2. Provides an effective date upon becoming law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

⁷No. 98-770-CIV-ORL-19A (M.D. Fla. 1999).

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2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

Election laws are exempt from the mandates of Art. VII, s. 18 of the Florida Constitution.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

See response above.

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

See response above.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 12, 2000, the Committee on Governmental Operations considered HB 2165 and passed it out favorably with an amendment. The amendment clarifies the definition of a "political committee" and what is *not* a "political committee." This language corresponds with the Senate companion.

The amendment provides that a political committee is a group which, in an aggregate amount in excess of \$500 during a calendar year:

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- accepts contributions for the purpose of making contributions to candidates, political committees, committees of continuous existence or political parties;
- accepts contributions for the purpose of expressly advocating the election or defeat of a candidate or issue;
- makes expenditures for the purpose of expressly advocating the election or defeat of a candidate or issue; or
- makes contributions to a common fund, other than a joint checking account between spouses, from which contributions are made to any candidate, political committee, committee of continuous existence or political party.

VII. SIGNATURES:

COMMITTEE ON ELECTION REFORM:

Prepared by:

Staff Director:

Dawn K. Roberts, Esq.

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AS REVISED BY THE COMMITTEE ON GOVERNMENTAL OPERATIONS:

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