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HOUSE OF REPRESENTATIVES
COMMITTEE ON
GOVERNMENTAL OPERATIONS
ANALYSIS

BILL #: HB 2269

RELATING TO: Political Campaigns

SPONSOR(S): Representative Harrington

TIED BILL(S):

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

(1) GOVERNMENTAL OPERATIONS
(2) ELECTION REFORM
(3)
(4)
(5)

I. SUMMARY:

HB 2269 codifies the Florida Supreme Court's holding in *Doe v. Mortham*, 708 So.2d 929 (Fla. 1998), the Fifteenth Circuit Court's decision in *Palm Beach County Republican Executive Committee v. Smith*, No. CL93-8124-A6 (15th Cir., Jan. 18, 1994), and the Second Circuit Court's decision in *Vicory v. Democratic State Executive Committee*, No. 93-3595 (Fla. 2nd Circuit 1991)(Final Summary Judgment).

Specifically, HB 2269 removes restrictions which discourage a state or local executive committee of a political party from endorsing, certifying, screening, or otherwise recommending one or more primary candidates. The bill also allows individuals acting independent of any other individual or group, and spending $500 or less, to make anonymous political advertisements. The bill further clarifies that independent expenditures must *expressly advocate* the election or defeat of a candidate or ballot issue in order to be subject to the reporting requirements of the Florida Election Code.

HB 2269 also clarifies that any telephone call conducted for the purpose of polling respondents concerning a candidate or elected public official, which is a part of a series of like telephone calls that consist of fewer than 1,000 completed calls and averages more than 2 minutes in duration, is a political poll and is not subject to the disclosure requirements set forth in the Florida Election Code applicable to political telephone solicitation.

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

HB 2269 shall take effect upon becoming a law.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1.	Less Government	Yes [x]	No []	N/A []
2.	Lower Taxes	Yes []	No []	N/A [x]
3.	Individual Freedom	Yes [x]	No []	N/A []
4.	Personal Responsibility	Yes []	No []	N/A [x]
5.	Family Empowerment	Yes []	No []	N/A [x]

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

B. PRESENT SITUATION:

Palm Beach County Republican Executive Committee v. Smith
Vicory v. Democratic State Executive Committee

Florida law provides that any state or county executive committee of a political party which endorses, screens, certifies, or otherwise recommends one or more candidates in a primary election contest forfeits all party assessments to which it would otherwise be entitled. [s. 103.121(5), F.S. (1999)]. The Fifteenth Judicial Circuit Court invalidated s. 103.121(5)(a), F.S., in 1994. *Palm Beach County Republican Executive Committee v. Smith*, No. CL93-8124-A6 (15th Cir., Jan. 18, 1994). In sum, the court found that the statute violated the committee's rights to freedom of speech and association under the First and Fourteenth Amendments to the United States Constitution. Similarly, the Second Judicial Circuit Court has invalidated s. 103.121(5)(b), F.S. *Vicory v. Democratic State Executive Committee*, No. 90-3595 (2nd Cir., Jan. 16, 1991).

In *Vicory*, a primary candidate who had lost to a candidate who received financial support from the state political party sought an order requiring the party to forfeit its party assessment. Florida's Second Judicial Circuit Court refused to order the forfeiture, holding that the forfeiture provision violated the political party's First Amendment rights to free speech and association. A year earlier, the United States Supreme Court had invalidated on similar grounds a provision of the California Code which completely banned party primary endorsements. See *Eu v. San Francisco County Democratic Central Committee*, 109 S.Ct. 1013 (1989); see also *Abrams v. Reno*, 452 F.Supp. 1166 (S.D. Fla. 1978), *aff'd*, 649 F.2d 342 (5th Cir. 1981), *cert. denied*, 455 U.S. 1016 (1982) (holding unconstitutional prior Florida statute which completely banned political party endorsements of primary candidates).

Doe v. Mortham

Florida law generally requires sponsors to identify themselves on political advertisements (s. 106.143, F.S.) and independent expenditures (s. 106.071, F.S.). In 1996, certain individuals in Palm Beach County sought to engage in anonymous political advocacy. *Doe v. Mortham*, No. 96-630, Complaint for Declaratory Judgment (Fla. 2nd Judicial Circuit, 1996). The plaintiffs in *Doe* sought to make independent expenditures supporting and opposing candidates and referendums during the 1996 election cycle, either individually, in

association with each other, or in association with other individuals or groups. Specifically, they planned to publish their ads in several different communications mediums, including billboards, direct mail, radio, television, newspapers, and periodicals. The specific independent expenditures were to exceed $100 in the aggregate for each individual election.

The plaintiffs challenged s. 106.143, F.S., requiring sponsors to identify themselves on political advertisements, and s. 106.071, F.S., requiring sponsors to identify themselves on independent expenditures. The plaintiffs challenged the statutes under the First Amendment overbreadth doctrine.[1] A court will only use the overbreadth doctrine to invalidate a statute if it cannot place a limiting construction on the challenged statute.

The Florida Supreme Court, relying heavily on the United States Supreme Court decision in *McIntyre v. Ohio Elections Commission*, 115 S.Ct. 1511 (1995), determined that the statutes could be read not to apply to political ads by *individuals* who *act independently* and expend only their own *modest resources*. So read, the court found that the disclaimer statutes at issue *were not* overbroad, and that "any alleged infirmity left uncured by our construction . . . is insubstantial and can be dealt with on an 'as applied' basis." *Doe*, 708 So.2d at 931-32.

The *Doe* court also recognized that s. 106.071, F.S., was vague.[2] Section 106.071, F.S., requires persons sponsoring independent expenditure ads exceeding $100 to file periodic reports identifying the expenditures. The court in *Doe* stated that the language of s. 106.071, F.S., could be read as applying to communications that merely discuss in general terms political issues and candidates. Specifically, the court was concerned with the phrase, "with respect to any candidate or issue." The court cured the vagueness problem by reading the section to only reach those funds used for communications that *expressly advocate* the election or defeat of a clearly identified candidate or referendum issue. *Doe*, 708 at 933.

Subsequent to the *Doe* decision, the Division of Elections issued an advisory opinion interpreting *Doe*. Division of Elections Opinion 98-04 (April 2, 1998) (*hereinafter*, DE 98-04). The Division opinion stated:

> In our opinion, the court's holding in *Doe* is simple and straightforward. ... The common theme in this analysis is that the court was concerned with individuals like Margaret McIntyre who use their "own modest resources" to make political statements and was attempting to give a saving construction to the statutes at issue here. ... In view of the foregoing, we do not believe that the decision affects candidates, political committees, political parties, corporations, or other groups or entities that spend large amounts of money on political advertising. As a result, we believe that sections 106.143(1) and 106.071(1),

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[1]A statute is overbroad if, in addition to proscribing activities which may be constitutionally forbidden, it also sweeps within its coverage speech or conduct which is protected by the guarantees of free speech and association. *Thornhill v. Alabama*, 310 U.S. 88 (1940). The overbreadth of a statute must not only be real, but also substantial, when judged in relation to the statute's plainly legitimate sweep. *Doe*, 708 at 931 (Fla. 1998), quoting, *Broadrick v. United States*, 93 S.Ct. 2908, 2915-18 (1973).

[2]A statute will be held void for vagueness if it fails to clearly define the conduct prohibited, such that persons "of common intelligence must necessarily guess at its meaning and differ as to its application." *Connally v. General Construction Co*., 269 U.S. 385 (1926).

> Florida Statutes, still require the full political disclaimer, unless the person responsible for the advertisement is a private individual who has made only modest expenditures ...

DE 98-04, at p. 1-2.

Telephone Solicitation

Florida law requires, with certain exceptions, any telephone call supporting or opposing a candidate, elected public official, or ballot proposal to identify the persons or organizations sponsoring the call by stating either: "paid for by . . . " or "paid for on behalf of . . . " (person or organization would have to authorize the call). [s. 106.147, F.S. (1999)]. Legitimate political polling is protected by exempting phone calls that are a part of a series of like telephone calls; consisting of fewer than 1,000 completed calls; and averaging more than two minutes in duration. Florida law specifically prohibits misrepresentations of affiliations with real or fictitious organizations or persons. Additionally, any telephone call, other than those conducted by an independent expenditure, supporting or opposing a candidate or ballot proposal, requires prior written authorization by the candidate or sponsor of the ballot proposal that the call supports. A copy of the authorization must be placed on file with the qualifying officer by the candidate or sponsor of the ballot proposal prior to the time the calls commence.

C. EFFECT OF PROPOSED CHANGES:

Palm Beach County Republican Executive Committee v. Smith
Vicory v. Democratic State Executive Committee

In response to *Palm Beach County Republican Executive Committee* and *Vicory*, the bill repeals the provision of Florida law which requires a state or county executive committee of a political party to forfeit all party assessments if it endorses, certifies, screens, or otherwise recommends one or more primary candidates.

Doe v. Mortham

In response to *Doe*, HB 2269 provides that individuals, acting independent of any other individual or group, who spend $500 or less do not need to identify themselves on political advertisements. The bill does not impact groups of any kind. Corporations, associations, political parties, political committees, committees of continuous existence, and any other combination of individuals having collective capacity must include a sponsorship identification disclaimer on all independent expenditures and political advertisements.

The bill also clarifies that independent expenditures must *expressly advocate* the election or defeat of a candidate or ballot issue in order to be subject to reporting requirements.

Telephone Solicitation

In response to recent inquiries regarding investigations by the Florida Elections Commission into political polling under s. 106.147, F.S., the bill clarifies that any telephone call conducted for the purpose of polling respondents concerning a candidate or elected public official which is a part of a series of like telephone calls that consists of fewer than 1,000 completed calls and averages more than 2 minutes in duration ***is*** a political poll and ***is not*** subject to the disclosure requirements.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends s. 103.121, F.S., to delete a provision which limits political party endorsements or recommendations of primary candidates.

Section 2: Amends s. 106.071, F.S., to clarify that certain persons who make independent expenditures that expressly advocate the election or defeat of candidate or the approval or rejection of issues must file periodic expenditure reports. Also provides that certain individuals may make anonymous independent expenditures.

Section 3: Amends s. 106.143, F.S., authorizing certain individuals to engage in anonymous political advertising.

Section 4: Amends s. 106.147, F.S., clarifying that certain telephone calls are political polls.

Section 5: Provides that this act shall take effect upon becoming a 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.

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:

Please see response above.

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

Please see response above.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

HB 2269 amends Florida Statutes to incorporate the Florida Supreme Court holding in *Doe v. Mortham*, 708 So.2d 929 (Fla. 1998), the Fifteenth Circuit Court's decision in *Palm Beach County Republican Executive Committee v. Smith*, No. CL93-8124-A6 (15th Cir., Jan. 18, 1994), and the Second Circuit Court decision in *Vicory v. Democratic State Executive Committee*, No. 93-3595 (Fla. 2nd Circuit 1991) (Final Summary Judgment).

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

COMMITTEE ON GOVERNMENTAL OPERATIONS:

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