

By the Committee on Ethics and Elections; and Senators
Constantine and Smith

313-1107-03

1 A bill to be entitled
2 An act relating to elections; providing a short
3 title; amending s. 106.011, F.S.; redefining
4 the term "communications media"; amending s.
5 106.11, F.S.; extending the time for unopposed
6 candidates to purchase "thank you" advertising;
7 amending s. 106.141, F.S.; extending the date
8 for unopposed candidates to file a termination
9 report, to conform; amending s. 106.1437, F.S.;
10 modifying reporting requirements for
11 miscellaneous advertisements intended to
12 influence public policy; prescribing
13 prohibitions and exemptions; prescribing
14 penalties; providing for severability;
15 providing an effective date.

16
17 Be It Enacted by the Legislature of the State of Florida:

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19 Section 1. This act may be cited as the "Florida
20 Advertising Campaign Exposure Act."

21 Section 2. Subsection (13) of section 106.011, Florida
22 Statutes, is amended to read:

23 106.011 Definitions.--As used in this chapter, the
24 following terms have the following meanings unless the context
25 clearly indicates otherwise:

26 (13) "Communications media" means broadcasting
27 stations, newspapers, magazines, outdoor advertising
28 facilities, printers, direct mailing companies, advertising
29 agencies, the internet, and telephone companies; but with
30 respect to telephones, an expenditure shall be deemed to be an
31 expenditure for the use of communications media only if made

1 for the costs of telephones, paid telephonists, or automatic
2 telephone equipment to be used by a candidate or a political
3 committee to communicate with potential voters but excluding
4 any costs of telephones incurred by a volunteer for use of
5 telephones by such volunteer.

6 Section 3. Subsection (5) of section 106.11, Florida
7 Statutes, is amended to read:

8 106.11 Expenses of and expenditures by candidates and
9 political committees.--Each candidate and each political
10 committee which designates a primary campaign depository
11 pursuant to s. 106.021(1) shall make expenditures from funds
12 on deposit in such primary campaign depository only in the
13 following manner, with the exception of expenditures made from
14 petty cash funds provided by s. 106.12:

15 (5) A candidate who withdraws his or her candidacy,
16 becomes an unopposed candidate, or is eliminated as a
17 candidate or elected to office may expend funds from the
18 campaign account to:

19 (a) Purchase "thank you" advertising for up to 75 days
20 after he or she withdraws, ~~becomes unopposed,~~ or is eliminated
21 or elected.

22 (b) Pay for items which were obligated before he or
23 she withdrew, became unopposed, or was eliminated or elected.

24 (c) Pay for expenditures necessary to close down the
25 campaign office and to prepare final campaign reports.

26 (d) Dispose of surplus funds as provided in s.
27 106.141.

28 Section 4. Subsection (1) of section 106.141, Florida
29 Statutes, is amended to read:

30 106.141 Disposition of surplus funds by candidates.--
31

1 (1) Each candidate who withdraws his or her candidacy,
2 ~~becomes an unopposed candidate, or~~ is eliminated as a
3 candidate, or is elected to office shall, no later than 90
4 days after such withdrawal, elimination, or election ~~within 90~~
5 ~~days~~, dispose of the funds on deposit in his or her campaign
6 account and file a report reflecting the disposition of all
7 remaining funds. Such candidate shall not accept any
8 contributions, nor shall any person accept contributions on
9 behalf of such candidate, after the candidate withdraws his or
10 her candidacy, becomes an unopposed candidate, or is
11 eliminated or elected. However, if a candidate receives a
12 refund check after all surplus funds have been disposed of,
13 the check may be endorsed by the candidate and the refund
14 disposed of under this section. An amended report must be
15 filed showing the refund and subsequent disposition.

16 Section 5. Section 106.1437, Florida Statutes, is
17 amended to read:

18 106.1437 Miscellaneous advertisements.--

19 (1) As used in this section, the term:

20 (a) "Electioneering advertisement" means a paid
21 expression in any communications media prescribed in s.
22 106.011(13) published on the day of any election or any of the
23 the preceding 29 days which names or depicts a candidate for
24 office in that election or which references a clearly
25 identifiable ballot measure in that election. Any
26 advertisement that qualifies as an independent expenditure
27 pursuant to s. 106.011(5) or a political advertisement
28 pursuant to s. 106.011(17) is not an electioneering
29 advertisement for purposes of this section. However, the term
30 does not include:

31

1 1. A statement or depiction by an organization, in
2 existence prior to the time during which the candidate named
3 or depicted qualifies or the issue clearly-referenced is
4 placed on the ballot for that election, made in that
5 organization's newsletter, which newsletter is distributed
6 only to members of that organization.

7 2. An editorial endorsement by any newspaper, radio,
8 or television station or other recognized news medium.

9 (b) "Contribution" means:

10 1. A gift, subscription, conveyance, deposit, loan,
11 payment, or distribution of money or anything of value,
12 including contributions in kind having an attributable
13 monetary value in any form, made for the purpose of funding or
14 sponsoring an electioneering advertisement.

15 2. A transfer of funds between a political committee
16 or a committee or continuous existence and a person funding or
17 sponsoring an electioneering advertisement.

18 3. The payment, by any person other than a candidate
19 or political committee, of compensation for the personal
20 services of another person which are rendered to a person
21 funding or sponsoring an electioneering advertisement.

22 (c) "Expenditure" means a purchase, payment,
23 distribution, loan, advance, or gift of money or anything of
24 value made for the purpose of funding or sponsoring an
25 electioneering advertisement. However, the term does not
26 include a purchase, payment, distribution, loan, advance, or
27 gift of money or anything of value made for the purpose of
28 funding or sponsoring an electioneering advertisement when
29 made by an organization, in existence prior to the time during
30 which a candidate qualifies or a ballot measure is placed on
31 the ballot for that election, for the purpose of printing or

1 distributing such organization's newsletter, containing a
2 statement by such organization in support of or opposition to
3 a candidate or ballot measure, which newsletter is distributed
4 only to members of such organization.

5 (2) Each person that sponsors or funds an
6 electioneering advertisement must file regular reports of all
7 contributions received and all expenditures made by such
8 person with the same officer as a political committee
9 supporting or opposing the candidate named or depicted or the
10 ballot measure referenced in the advertisement. Such reports
11 must contain the same information and are subject to the same
12 filing requirements as reports required under s. 106.07 for
13 candidates not receiving public financing.

14 (3)(a) If the initial publication of the
15 electioneering advertisement occurs after the final regular
16 report is due under subsection (2) but prior to the closing of
17 the polls on election day, the person funding or sponsoring
18 the advertisement must file a report electronically with the
19 division no later than 1 hour after the initial publication of
20 the advertisement. The report must contain the same
21 information as required of a candidate by s. 106.07(4). Upon
22 receipt of the filing, the division shall electronically
23 transmit a confirmation of receipt to the person filing the
24 report. If the person is unable to file electronically for any
25 reason, a written report containing the required information
26 may be faxed or hand delivered to the division no later than 1
27 hour after the initial publication of the advertisement.
28 However, if a report due to be filed under this paragraph on a
29 Saturday, Sunday, or legal holiday cannot be electronically
30 filed because of problems with Internet communications, the
31 report must be filed either electronically, by facsimile, or

1 by hand delivery with the division no later than 10 a.m. on
2 the next business day.

3 (b) The division shall adopt rules providing for
4 electronic filing which must, at a minimum, provide that:

5 1. The division develop an electronic filing system
6 using the Internet or other on-line technologies; and

7 2. The system be reasonably secure and be designed to
8 elicit the name, address, birthdate, and any other information
9 necessary to authenticate the identity of the person
10 submitting the report.

11 (c) Information filed with the division pursuant to
12 this subsection must also be included on the next regular
13 report required under subsection (2).

14 (4)(a) The following persons shall be responsible for
15 filing the reports required in subsections (2) and (3), shall
16 certify as to the correctness of each report, and shall bear
17 the responsibility for the accuracy and veracity of each
18 report:

19 1. The candidate and his or her campaign treasurer, if
20 the person funding or sponsoring the electioneering
21 advertisement is a candidate.

22 2. The committee chair and treasurer of the committee,
23 if the person funding or sponsoring the electioneering
24 advertisement is a political committee, committee of
25 continuous existence, or executive committee of a political
26 party;

27 3. The individual, if the person funding or sponsoring
28 the electioneering advertisement is a natural person who is
29 not a candidate; or

30 4. An individual designated by the organization, if
31 the person funding or sponsoring the electioneering

1 advertisement is a group other than a political committee,
2 committee of continuous existence, or executive committee of a
3 political party. The name, address, and title of the
4 designated individual must be filed with the division in
5 writing prior to, or contemporaneous with, the filing of the
6 initial report.

7
8 Such a person is liable for violations of report filing
9 requirements to the same extent as candidates pursuant to ss.
10 106.07(5), 106.19, and 106.265.

11 (b) In addition to the penalties prescribed in
12 paragraph (a), the person funding or sponsoring an
13 electioneering advertisement and the person responsible for
14 reporting pursuant to this subsection shall be jointly and
15 severally liable for late filing fines assessed by the Florida
16 Elections Commission pursuant to s. 106.07(8). Any such person
17 may appeal or dispute the fine in accordance with the
18 provisions of s. 106.07(8)(c).

19 (5)(a) Any electioneering advertisement must
20 prominently state, "Paid advertisement paid for or sponsored
21 by ... (Name of person funding or sponsoring the
22 electioneering advertisement)...," followed by the address of
23 the person funding or sponsoring the advertisement.

24 (b) The Florida Elections Commission is authorized
25 upon finding a violation of this subsection to impose a civil
26 penalty in the form of fines not to exceed \$5,000 or the total
27 cost of the advertisements without the proper disclaimer,
28 whichever is greater. In determining the amount of the
29 penalty, the commission must consider any mitigating or
30 aggravating circumstances prescribed in s. 106.265. This
31 penalty shall substitute for the penalties provided in s.

1 106.265, shall be deposited into the General Revenue Fund of
2 the state, and, if necessary, shall be collected pursuant to
3 s. 106.265(2).

4 (6) A person may not make a contribution through or in
5 the name of another, directly or indirectly, for the purpose
6 of funding an electioneering advertisement.~~Any advertisement,~~
7 ~~other than a political advertisement, on billboards, bumper~~
8 ~~stickers, radio, or television, or in a newspaper, a magazine,~~
9 ~~or a periodical, intended to influence public policy or the~~
10 ~~vote of a public official, shall clearly designate the sponsor~~
11 ~~of such advertisement by including a clearly readable~~
12 ~~statement of sponsorship. If the advertisement is broadcast~~
13 ~~on television, the advertisement shall also contain a verbal~~
14 ~~statement of sponsorship. This section shall not apply to an~~
15 ~~editorial endorsement.~~

16 Section 6. If any provision of this act or its
17 application to any person or circumstance is held invalid, the
18 invalidity does not affect other provisions or applications of
19 the act which can be given effect without the invalid
20 provision or application, and to this end the provisions of
21 this act are severable.

22 Section 7. This act shall take effect January 1, 2004.

23
24 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
25 COMMITTEE SUBSTITUTE FOR
26 Senate Bill 114

27 The Committee Substitute differs from the original bill in
28 that it: extends the time for unopposed candidates to
29 purchase "thank you" advertising and to file the final
30 termination report on the disposition of surplus campaign
31 funds; creates certain exemptions to electioneering reporting
and disclaimer requirements; adopts a prohibition against
making indirect contributions to fund electioneering
advertisements; titles the Act; and, makes technical
revisions.