

**STORAGE NAME:** h0351.er

**DATE:** February 3, 1999

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
ELECTION REFORM  
ANALYSIS**

**BILL #:** HJR 351

**RELATING TO:** Judicial Candidates

**SPONSOR(S):** Representative Brummer and others

**COMPANION BILL(S):** None.

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

- (1) ELECTION REFORM (PRC)
  - (2) JUDICIARY (CJC)
  - (3) RULES AND CALENDAR (PRC)
  - (4)
  - (5)
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I. SUMMARY:

HJR 351 is a joint resolution amending the Florida Constitution allowing candidates for judicial office to take public positions on issues.

This bill has a fiscal impact to the extent that the Division of Elections must advertise proposed constitutional amendments.

This bill would be effective in January the year following acceptance by the general electorate in the next general election.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Currently, the State Constitution is silent with respect to a judicial candidates' ability to take a public position on issues. The only prohibition on activities of a political nature unique to judicial candidates is found in Art. V, sec. 13, Florida Constitution, which bars justices and judges from holding office in a political party.

Chapter 105, F.S., generally provides for the election of judicial offices in a nonpartisan manner. Section 105.071, F.S., specifically sets limitations on political activity for judicial candidates. Candidates to, or retention for, judicial office may not:

- (1) Participate in any partisan political party activities, except that such candidate may register to vote as a member of any political party and may vote in any party primary for candidates for nomination of the party in which she or he is registered to vote.
- (2) Campaign as a member of any political party.
- (3) Publicly represent or advertise herself or himself as a member of any political party.
- (4) Endorse any candidate.
- (5) Make political speeches other than in the candidate's own behalf.
- (6) Make contributions to political party funds.
- (7) Accept contributions from any political party.
- (8) Solicit contributions for any political party.
- (9) Accept or retain a place on any political party committee.
- (10) Make any contribution to any person, group, or organization for its endorsement to judicial office.
- (11) Agree to pay all or any part of any advertisement sponsored by any person, group, or organization wherein the candidate may be endorsed for judicial office by any such person, group, or organization.

Further, judges are guided by rules referred to as "Canons" which are set forth in the Code for Judicial Conduct. The purpose for the Canons is to provide guidance to judges and candidates for judicial office and to provide structure for regulating conduct through disciplinary agencies.

Canon 7 regulates political activity for judges and judicial candidates. Subparagraph (3)(d)(ii) of Canon 7 of the Code of Judicial Conduct, prohibits judges and candidates for

judicial office from making statements that commit or appear to commit the candidate with respect to cases, controversies or **issues** that are likely to come before the court.

**B. EFFECT OF PROPOSED CHANGES:**

The proposed amendment to the State Constitution would grant judges and judicial candidates the express right to take public positions on issues.

**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?

Yes. To the extent that the Canons may have to be addressed to conform to the Constitution.

(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?

No.

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:

Section 10, Article V of the Florida Constitution.

E. SECTION-BY-SECTION ANALYSIS:

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

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

The Division of Elections is required to advertise proposed constitutional amendments in newspapers of general circulation in each county two times prior to the general election. This cost is estimated at \$46,000 for each amendment.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

See A.1. above.

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:

See A.1. above.

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:**

Election laws are exempt from the provisions of Article VII, Section 18 of the Florida Constitution.

B. **REDUCTION OF REVENUE RAISING AUTHORITY:**

N/A

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

N/A

V. COMMENTS:

The Florida Supreme Court has consistently maintained that the impartiality of judges is central to Florida's system of justice and the courts. Through the Canons, the judiciary sets forth the ethical standards by which the public trust in the court system is maintained. Judges are required to avoid impropriety or the appearance thereof; perform their duties impartially; regulate extrajudicial activities to minimize the risk of conflict; and refrain from inappropriate political activity, among others.

Prior to its amendment in 1995, the Canon which regulated a judge or judicial candidate's ability to speak on political issues was Canon 7(B)(1)(c) which read in part:

A candidate, including an incumbent judge ... *should not announce his views on disputed legal or political issues.*  
(Emphasis added).

The Florida Supreme Court in upholding the rational of Canon 7, reprimanded a judge who wrote a letter supporting the retention of a Supreme Court Justice in an upcoming election [See, *In re Glickstein*, 620 So. 2d 1000 (Fla. 1993)]. The Court felt that the "... judge's involvement in political activity diminishes his or her ability to maintain independence on the bench." The Court further stated that "[a] judges neutrality in everything he or she does is necessary to sustain the public's confidence in individual judges and in the judicial system as a whole."

However, several challenges ensued in Florida and other jurisdictions on similar political speech restrictions. In *American Civil Liberties Union v. The Florida Bar*, 744 F.Supp. 1094 (N.D. Fla. 1990), the court held that the prohibition against all discussion of disputed legal or political issues was not the most narrowly drawn means of protecting the State's compelling interest.

An identical provision was struck down as unconstitutionally overbroad and vague in *Stretton v. Disciplinary Bd. Of Supreme Court of Pennsylvania*, 944 F.2d 137 (1991), where the Pennsylvania Code of Judicial Conduct prohibited candidates from announcing their views *on disputed legal or political issues*.

The courts have recognized that a state has a duty to regulate the conduct of the bar and the judiciary however, such regulations must be subjected to an increasing strict level of scrutiny as they move closer to core First Amendment values. [See generally, *Morial v. Judiciary Comm'n*, 565 F.2d 295 (5th Cir. 1977), *cert. denied*. 435 U.S. 1013, 98 S.Ct. 1887, 56 L.Ed.2d 395 (1978)]. A state may treat candidates for judicial office different than candidates for other elective offices, *Id.* at 305. Nonetheless, an individuals constitutional right to freedom of speech is not automatically abridged when he or she becomes a candidate for judicial office. *American Civil Liberties Union* at 1097.

Canon 7 was amended in 1995 [January 1, 1995 (643 So.2d 1037)]. The amended section regarding political activity for judicial candidates is now found in Canon 7A(3)(d) which prohibits a candidate for judicial office from making statements that appear to commit the candidate regarding cases, controversies or issues likely to come before the court. Although no challenges have been brought to Canon 7A(3)(d) with respect to political speech, proponents of HJR 351 contend that the Canon continues to chill political speech in the judicial arena.

Finally, Article V, section 2 of the Florida Constitution grants the power to adopt rules for the practice and procedure in all courts in the state of Florida with the Florida Supreme Court. Due to the separation of powers, statutory fixes would not bind the judiciary branch where it is not specifically granted by the constitution. Therefore, absent a willingness by the Florida Supreme Court to expressly allow judicial candidates to take a public position on issues, it must be accomplished through a constitutional amendment.



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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON ELECTION REFORM:

Prepared by:

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