**STORAGE NAME:** h1315.prc.doc
**DATE:** February 14, 2002

**HOUSE OF REPRESENTATIVES**

**PROCEDURAL & REDISTRICTING COUNCIL**
**ANALYSIS**

**BILL #:** HB 1315

**RELATING TO:** Definition of "Political Committee"

**SPONSOR(S):** Committee on Rules, Ethics & Elections, Representative(s) Goodlette & Others

**TIED BILL(S):**

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

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I. SUMMARY:

HB 1315 modifies the definition of "political committee" in response to the federal court decision, *Florida Right to Life, Inc. v. Mortham.*[1] The current definition found in s. 106.011(1), F.S., was determined to be unconstitutionally overbroad because it subjected pure issue advocacy groups to the registration and reporting requirements of Florida's campaign finance laws.

The provisions of HB 1315 were adopted by the House in the 2000 Legislative Session (HB 2165) but died in returning messages after the Senate placed an amendment on the bill. The provisions were again adopted by the House in the 2001 Legislative Session as part of CS/CS/HB 273 but died in Senate Appropriations.

[1] 1999 WL 33204523 (M.D. Fla. 1999), *affirmed*, *sub nom.*, *Florida Right to Life, Inc. v. Lamar*, 238 F.3d 1288 (11th Cir. 2001).

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

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

B. PRESENT SITUATION:

**Definition of "Political Committee"**

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

> [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[2], or political party, which accepts contributions or makes expenditures 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. The court held that the existing statutory definition is overbroad because it subjects pure issue advocacy groups to the registration and reporting requirements of Florida's campaign finance laws.[3] The term "issue advocacy" generally refers to advertisements run by non-candidate groups and organizations that support or oppose a particular public issue but do not expressly advocate the election or defeat of a candidate.[4]

At the preliminary injunction stage, the court applied a narrowing construction to the statute, thereby limiting the statutory definition to organizations whose *major* purpose was engaging in "express advocacy," as defined by the United States Supreme Court in *Buckley v. Valeo*, 424 U.S. 1 (1976). In *Buckley*, 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

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[2] "Issue" is defined in s. 106.011(7), F.S., as "any proposition which is 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 proposition placed on the ballot at any election."

[3] *Florida Right to Life, Inc. v. Mortham*.

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

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."[5]

Nonetheless, at summary judgment the court found that this narrowing construction was inadequate to address the Plaintiff's complaint that the statute has a chilling effect on the exercise of First Amendment rights. Therefore, the court held that absent an authoritative narrowing construction, s. 106.011(1), F.S., was unconstitutionally overbroad. The court then issued an order permanently enjoining the Florida Elections Commission from enforcing the definition. On January 17, 2001, the United States Court of Appeals for the Eleventh Circuit affirmed the lower court's order enjoining the enforcement of s. 106.011(1), F.S.[6] Accordingly, there is currently no enforceable definition of "political committee" and therefore, the Secretary of State's ability to require any political committee to register and report its political contributions or expenditures is uncertain.

C. EFFECT OF PROPOSED CHANGES:

**Definition of "Political Committee"**

The bill clarifies what is considered a "political committee" and what is not a "political committee." Similar language was adopted by the House in the 2000 Legislative Session (HB 2165), but died in returning messages after an amendment was placed on the bill by the Senate. The legislation was again introduced in 2001 (HB 273), but died in Senate Appropriations. The proposed definition provides that a political committee is a group which, in an aggregate amount in excess of $500 during a calendar year:

- Accepts contributions for the purpose of making contributions to any candidate, political committee, committee of continuous existence or political party;
- Accepts contributions for the purpose of expressly advocating the election or defeat of a candidate or the passage or defeat of an issue;
- Makes expenditures for the purpose of expressly advocating the election or defeat of a candidate or the passage or defeat of an 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.

D. SECTION-BY-SECTION ANALYSIS:

N/A

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

[5] *Buckley* at 44, n. 52.

[6] *Florida Right to Life, Inc. v. Lamar.*

2. Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

N/A

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:

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

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

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

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

There have been a series of significant federal cases on the regulation of issue advocacy groups. In 1974 the Federal Election Campaign Act of 1974 (the "Act") sought to regulate federal campaigns by placing limitations and disclosure requirements on campaign contributions and expenditures. Challenges to the constitutionality of various provisions of the Act were considered by the United States Supreme Court in *Buckley v. Valeo.*[7] In reviewing the Act, the Court held unconstitutional a number of statutory limits but upheld limitations on contributions. In its analysis, the Court used the long established practice of applying a "strict scrutiny" standard to balance First Amendment rights and governmental interests. This standard dictates that any encroachment on constitutionally protected freedoms must be *narrowly tailored* to advance a demonstrated *compelling state interest*.[8]

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[7] 96 S.Ct. 612 (1976).

[8] *Williams v. Rhodes*, 393 U.S., at 31, and *NAACP v. Button*, 371 U.S. 415, 438.

This line of authority holds that the only compelling interest sufficient to justify infringement on First Amendment rights is the prevention of corruption or the appearance of corruption.

In saving various provisions of the Act from an overbreadth problem, the Court interpreted the term "expenditure" to encompass "only funds used for communications that *expressly advocate the election or defeat of a clearly identified candidate*."[9] (emphasis added). As previously stated, express advocacy was limited to communications containing express words of advocacy of election or defeat such as "vote for," "elect," "support," "vote against," and other identical synonyms.[10] By adopting this bright line limitation, the *Buckley* Court effectively segregated political advocacy into two categories: "express" and "issue" advocacy. Advocacy using the "magic words" expressed in *Buckley* and later affirmed in *Federal Election Comm'n. v. Massachusetts Citizens for Life, Inc.*[11] can be regulated. Conversely, advocacy falling outside these parameters cannot.[12]

Although most courts have directly followed this strict definition, a few courts, most notably the Ninth Circuit in *Federal Election Comm'n v. Furgatch*[13], have attempted to broaden this strict interpretation. The *Furgatch* Court held that "speech need not include any of the words listed in *Buckley* to be express advocacy ... but when read as a whole, and with limited reference to external events, be susceptible of *no other reasonable interpretation* but as an exhortation to vote for or against a specific candidate."[14] (emphasis added). *Furgatch* held that an advertisement could expressly advocate in the absence of the "magic" words if the content and context of the advertisement unmistakably advocate in support or opposition to a candidate, and no alternative reading could be suggested. Other cases support this view. The Oregon State Court of Appeals has held that an advertisement with no "magic words" nonetheless contained express advocacy and therefore could be regulated under Oregon state law.[15] Similarly, in *Chamber of Commerce v. Moore*, an unreported case from the Southern District of Mississippi, the United States District Court concluded, "a finding of any use of 'magic words' becomes unnecessary when an advertisement

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[9] *Buckley*, 96 S.Ct. at 663.

[10] *Id.* at 646 n. 52.

[11] 107 S.Ct. 616 (1986).

[12] See, *West Virginians for Life, Inc. v. Smith*, 960 F.Supp. 1036, 1039 (S.D.W.Va. 1996) (it is clear from *Buckley* and its progeny that the Supreme Court has made a definite distinction between express advocacy, which generally can be regulated, and issue advocacy, which cannot); *Planned Parenthood Affiliates of Michigan, Inc. v. Miller*, 21 F.Supp. 2d 740, 743 (E.D. Mich. 1998) (government can regulate express advocacy but issue advocacy cannot be prohibited or regulated, citing *Buckley* and *MCFL*); *Maine Right to Life Committee, Inc. v. Federal Elections Commission*, 914 F.Supp. 8 (D. Maine 1996) , *affirmed.*, 98 F.3d 1 (1st Cir. 1996), *cert. denied*, 118 S.Ct. 52 (1997) (*Buckley* adopted a bright line test that expenditures must in express terms advocate the election or defeat of a candidate in order to be subject to limitation); *Citizens for Responsible Government v. Davidson*, Nos. 99-1414, 99-1431, 99-1434 & 99-1435 (10th Cir. December 26, 2000)(applied a bright line view of what constitutes "express advocacy"); *Perry v. Bartlett*, No. 99-1955(L) (4th Cir. October 3, 2000)(North Carolina statute requiring the disclosure of sponsors of political advertisements that "intended" to advocate the election or defeat of a candidate was unconstitutionally overbroad).

[13] 807 F.2d 857 (9th Cir. 1987) *cert. denied*, 108 S.Ct. 151.

[14] *Id*. at 864.

[15] *Crumpton v. Keisling*, 1999 WL 308739 (Or. App., May 5, 1999); see also, *State of Wisconsin v. Wisconsin Manufacturers & Commerce*, Case No. 98-0596 (Supreme Court of Wisconsin, July 7, 1999) (deferred ruling on express advocacy, but suggested a middle course between "magic words" and "context factors" tests).

clearly champions the election of a particular candidate." The case is currently pending on appeal in the Fifth Circuit Court of Appeals.[16]

Critics of the judicial authority emanating from *Buckley* point out that advertisements which include the name or likeness of a candidate but do not expressly advocate the election or defeat of a candidate by using *express words of advocacy* are a loophole increasingly being used by political parties and other groups to circumvent either contribution limits and/or disclosure requirements. The *Buckley* decision and the prevailing opinion of most federal courts, however, suggest that issue advocacy advertisements which do not expressly advocate the election or defeat of a candidate using *express words of advocacy* may be beyond state regulation.

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON RULES, ETHICS & ELECTIONS:

| Prepared by: | Staff Director: |
|---|---|
| Emmett Mitchell, IV | Richard Hixson |

AS REVISED BY THE PROCEDURAL & REDISTRICTING COUNCIL:

| Prepared by: | Council Director: |
|---|---|
| Paul Lowell, J.D. | P.K. Jameson, J.D. |

[16] Docket No. 00-60779.