

By Senator Constantine

22-158-04

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.--
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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 of 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 the organization's newsletter, containing a
2 statement by the organization in support of or opposition to a
3 candidate or ballot measure, which newsletter is distributed
4 only to members of the 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 before the polls close
17 on election day, the person funding or sponsoring the
18 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 shall develop an electronic filing
6 system using the Internet or other on-line technologies; and

7 2. The system must be reasonably secure and be
8 designed to elicit the name, address, birthdate, and any other
9 information necessary to authenticate the identity of the
10 person 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 file the reports
15 required in subsections (2) and (3), shall certify as to the
16 correctness of each report, and shall bear the responsibility
17 for the accuracy and veracity of each report:

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

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

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

29 4. An individual designated by the organization, if
30 the person funding or sponsoring the electioneering
31 advertisement is a group other than a political committee,

1 committee of continuous existence, or executive committee of a
2 political party. The name, address, and title of the
3 designated individual must be filed with the division in
4 writing before, or at the same time as, the filing of the
5 initial report.

6
7 Such a person is liable for a violation of report-filing
8 requirements to the same extent as candidates pursuant to ss.
9 106.07(5), 106.19, and 106.265.

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

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

22 (b) The Florida Elections Commission may, upon finding
23 a violation of this subsection, impose a civil penalty in the
24 form of fines not exceeding \$5,000 or the total cost of the
25 advertisements without the proper disclaimer, whichever is
26 greater. In determining the amount of the penalty, the
27 commission must consider any mitigating or aggravating
28 circumstances prescribed in s. 106.265. This penalty shall
29 substitute for the penalties provided in s. 106.265, shall be
30 deposited into the General Revenue Fund of the state, and, if
31 necessary, shall be collected pursuant to s. 106.265(2).

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

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

19 Section 7. This act shall take effect January 1, 2005.

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22 SENATE SUMMARY

23 Creates the "Florida Advertising Campaign Exposure Act."
 24 Redefines the term "communications media." Extends the
 25 time for unopposed candidates to purchase "thank-you"
 26 advertising. Extends the date by which unopposed
 27 candidates must file a termination report, to conform.
 28 Modifies reporting requirements for miscellaneous
 29 advertisements intended to influence public policy.
 30 Prescribes prohibitions and exemptions. Provides
 31 penalties. Provides for severability.