

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 366

SPONSOR: Committee on Ethics and Elections

SUBJECT: Political campaigns

DATE: December 8, 1999 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Fox</u>	<u>Bradshaw</u>	<u>EE</u>	<u>Favorable/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

Committee Substitute for Senate Bill 366 allows individuals acting independent of any other individual or group, and spending \$500 or less, to make anonymous political advertisements. The bill 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 s. 106.071, Florida Statutes.

The bill also 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 essentially codifies the Florida Supreme Court's holding in *Doe v. Mortham*, 708 So.2d 929 (Fla. 1998), and Florida Second Circuit Court's decision in *Vicory v. Democratic State Executive Committee*, No. 93-3595 (Fla. 2nd Circuit 1991)(Final Summary Judgment).

This bill substantially amends sections 106.071 and 106.143 of the Florida Statutes, and repeals subsection (5) of section 103.121, Florida Statutes.

II. Present Situation:

Doe v. Mortham

One of the most important Florida election cases in recent years is *Doe v. Mortham*, 708 So.2d 929 (Fla. 1998). In *Doe*, the Florida Supreme Court was faced with a facial overbreadth challenge to the constitutionality of two sections of Florida Statutes requiring sponsors of campaign ads to identify themselves in the ad. The court upheld the facial constitutionality of the State's laws while creating a narrow, as-applied exemption to the sponsorship identification requirement for political ads by an *individual* who acts *independently* and who funds the political messages exclusively with his or her *own modest resources*. The court also clarified that independent expenditures must

expressly advocate the election or defeat of a candidate or ballot issue to be subject to the reporting requirements of Chapter 106.

The *Doe* plaintiffs were individuals in Palm Beach County who wished to engage in anonymous political advocacy. *Doe v. Mortham*, No. 96-630, Complaint for Declaratory Judgment (Fla. 2nd Judicial Circuit, 1996). The plaintiffs 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. 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 *Doe* plaintiffs challenged sections of Florida law requiring sponsors to identify themselves on political advertisements (106.143, F.S.) and independent expenditures (106.071, F.S.). The plaintiffs challenged the statutes under the First Amendment overbreadth doctrine. 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). However, application of the First Amendment overbreadth doctrine is "strong medicine." *Doe*, 708 So.2d at 931. A court will only use it to invalidate a statute if it cannot place a limiting construction on the challenged statute.

The Florida Supreme Court, relying heavily on the U.S. 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 Division of Elections subsequently 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), 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.

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). In *Vicory v. Democratic State Executive Committee*, No. 93-3595 (Fla. 2nd Circuit 1991)(Final Summary Judgment), a primary candidate who 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 U.S. Supreme Court invalidated a provision of the California Code completely banning party primary endorsements on similar grounds. 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) (finding unconstitutional prior Florida statute completely banning political party endorsements of primary candidates).

III. Effect of Proposed Changes:*Doe v. Mortham*

Committee Substitute for Senate Bill 366 provides that:

- individuals;
- acting independent of any other individual or group; and,
- spending \$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 ads.

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.

Vicory v. Democratic State Executive Committee

In response to *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.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The bill amends Florida Statutes to incorporate the Florida Supreme Court holding in *Doe v. Mortham*, 708 So.2d 929 (Fla 1998) and the Florida Second Circuit Court decision in *Vicory v. Democratic State Executive Committee*, No. 93-3595 (Fla. 2nd Circuit 1991)(Final Summary Judgment).

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
