

# 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: SB 1714

SPONSOR: Senators Latvala, Saunders, and others

SUBJECT: Campaign finance

DATE: March 7, 2000 REVISED: \_\_\_\_\_

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

## I. Summary:

Senate Bill 1714 imposes an aggregate \$5,000 per person limit on contributions to the state or county executive committees of political parties during the general election cycle.

The bill modifies the requirements for political committee and political party expenditures which jointly endorse three or more candidates. The bill revises the current exemption for these so-called "3-packs," providing that such multiple endorsement advertisements are only exempt from campaign finance requirements if: the endorsement allocates substantially equal time, space, or service to each candidate; or, for endorsements in a general election, the endorsement lists all the nominees of a political party in the area covered by the broadcast or mailing and no candidate in the endorsement is allocated more than three times as much time or space as any other candidate.

Senate Bill 1714 also requires *state* executive committees of political parties to electronically report (on-line reporting) contributions received which exceed \$5,000 to the Division of Elections, within 3 days of receipt of the contribution.

The bill's effective date is July 1, 2000.

This bill substantially amends ss. 106.021 and 106.08 of the Florida Statutes, and creates s. 106.293, Florida Statutes.

## II. Present Situation:

### *Limits on Contributions to Political Parties*

There is no limit on the amount of contributions by persons or groups, including political committees<sup>1</sup> and committees of continuous existence, to the executive committee of state or county political parties. Florida law does provide, however, that any funds received by a political party less than 5 days before an election may not be used or expended in behalf of any candidate, issue, or political party participating in the election. s. 106.29(4), F.S. Florida law also prohibits “earmarked” contributions to political parties — contributions specifically designated for use by a particular candidate. s. 106.08(6), F.S. Despite this prohibition against earmarked funds, public interest groups claim that corporations, special interest groups, and wealthy individual donors are able to funnel large sums of money in support of candidates through unrestricted contributions to the candidates’ political parties --- thereby effectively circumventing the \$500 general contribution limit.

Federal law limits contributions to the executive committee of a national party “in connection with” federal elections, known as “hard money.” However, there is no limit to the amount of “soft money” which a person or organization, including a corporation or labor union, can contribute to a national political party for so-called “get-out-the-vote” or “party-building” activities, or, more recently, to fund issue ads.<sup>2</sup>

Twenty-two states plus the District of Columbia place some limits on the amount which an individual may contribute to a political party. Feigenbaum and Palmer, *Campaign Finance Law* 98, at Chart 2A, “Contribution and Solicitation Limitations” (published by Federal Elections Commission, 1998). Twenty-one states plus the District of Columbia restrict contributions by political action committees to political parties. *Id.* Thirty-six states plus the District of Columbia limit or prohibit contributions by corporations to political parties, and thirty states limit or prohibit contributions by labor unions. *Id.* In a few of the states, like Maryland and New York, the limits apply only to “hard money” contributions. *Id.*

### *3-Packs*

Florida law exempts a political committee or political party advertisement jointly endorsing three or more candidates from the contribution limits. s. 106.021(3), F.S. The law provides that an expenditure for these so-called “3-packs” is considered neither a contribution to nor an expenditure to or on behalf of any candidate. *Id.* The Legislature created the “3-packs” in the major election reform package of 1997, reducing the minimum number of candidates which the ad

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<sup>1</sup> In December, 1999, a federal district court in Orlando struck down the current statutory definition of “political committee” as unconstitutionally over broad, and enjoined the Florida Elections Commission from enforcing the definition. *Florida Right to Life v. Mortham*, No. 98-770-CIV-ORL-19A (M.D. Fla. 1999). The case is currently on appeal to Eleventh Circuit. However, until the “political committee” issue is resolved either by the courts or by the Legislature’s adoption of a new definition, the precise impact of this bill’s provisions as applied to political committees will remain unclear.

<sup>2</sup> Issue ads discuss non-referendum issues of public interest and often include references to or likenesses of candidates, although they stop short of expressly advocating for or against any candidate.

needs to jointly endorse from six to three in order to qualify for the exemption. Ch. 97-13, s. 9, at 22, Laws of Fla.

#### *Campaign Finance Reports by Political Parties*

State political party executive committees are required to file periodic reports with the Division of Elections identifying contributions and expenditures. The reports are due on the 10th day following the end of each calendar quarter, except that during the election cycle (end of candidate qualifying through the general election) the report is due on the Friday preceding the first primary, second primary, and general election. s. 106.29(1), F.S. Even with this periodic reporting, there can be quite a lag between the time a contribution is received and the date it is reported to the Division.

### **III. Effect of Proposed Changes:**

#### *Limits on Contributions to Political Parties*

Senate Bill 1714 limits contributions to any state or county political party executive committee, or any subordinate committee, to an aggregate amount of \$5,000 from the Thursday preceding the first primary through the general election. Although the bill limits contributions to \$5,000 “through the general election,” any funds collected by the party less than five days before the date of the election could not be used or expended in behalf of any candidate, issue, or political party participating in the general election. s. 106.29(4), F.S. A single knowing and willful violation is a first-degree misdemeanor; a multiple violation is a third-degree felony. Corporations and other business entities, political committees and political parties are also subject to enhanced civil penalties and other equitable remedies.

#### *3-Packs*

The bill revises the current exemption for “3-packs,” providing that such multiple endorsement advertisements are only exempt from campaign finance requirements if: the endorsement allocates substantially equal time, space, or service to each candidate; or, for endorsements in a general election, the endorsement lists all the nominees of a political party in the area covered by the broadcast or mailing and no candidate in the endorsement is allocated more than three times as much time or space as any other candidate.

#### *Campaign Finance Reports by Political Parties*

Senate Bill 1714 requires *state* executive committees of political parties to electronically report contributions received which exceed \$5,000 to the Division of Elections, no later than 5 p.m. of the third day after receipt of the contribution. The bill authorizes the Division to develop a secure on-line filing system. Contributions reported electronically must also be reported by the parties on the periodic reports currently required by law. Failure to timely electronically file will subject the political party to enhanced civil penalties, with a maximum penalty of 25% of the amount of the contribution which was not timely reported.

Since the bill also prohibits aggregate contributions of more than \$5,000 to political parties during the general election cycle (from the Thursday preceding the first primary through the general election), this reporting requirement will have the most practical effect in the period preceding the first primary election.

#### 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:

###### *Limits on Contributions to Political Parties*

There is an ongoing debate among legal scholars and practitioners concerning the constitutionality of limiting contributions to political parties. No court has ruled definitively on the issue. However, on balance, it appears more likely than not that some form of restriction on contributions to political parties will pass constitutional muster.

Limits on contributions implicate First Amendment free speech and association rights. The U.S. Supreme Court has employed a test called “closest scrutiny” to review the constitutionality of contribution limits --- a contribution limit will be upheld if the government can demonstrate that the limit is “closely drawn” to match a “sufficiently important interest.” *Nixon v. Shrink Missouri Government PAC*, 120 S.Ct. 897, 904 (2000); *Buckley v. Valeo*, 96 S.Ct. 612, 637-38 (1976). While the precise parameters of this constitutional test are uncertain, it is clear that the “closest scrutiny” test is something much less than the “strict scrutiny” standard the Court has historically applied to review other government regulations which abridge fundamental constitutional rights. *Shrink*, 120 S.Ct. at 922 (Thomas, J., dissenting).

Perhaps the most instructive case bearing on the issue of the constitutionality of limiting contributions to political parties is *California Medical Ass’n v. Federal Election Comm’n*, 101 S.Ct. 2712 (1981). In *California Medical*, the U.S. Supreme Court upheld a \$5,000 per year limit on the amount an individual or unincorporated association could contribute to a multi-candidate political action committee under the Federal Election Campaign Act. The Court specifically rejected the argument that because the contributions flow to a political committee rather than a candidate, the danger of corruption or the appearance of corruption

as recognized in *Buckley v. Valeo*<sup>3</sup> as justification for contribution restrictions is not present. *California Medical*, 101 S.Ct. at 2721. The Court held that the restriction furthered the government's interest in preventing actual or apparent corruption, by preventing individuals and unincorporated associations from circumventing the limitations on contributions upheld as constitutional in *Buckley* (\$1,000 limit on contributions from individuals and unincorporated associations *directly* to candidates). *Id.* at 2722-23. The Court explained:

If appellants' position -- that Congress cannot prohibit individuals and unincorporated associations from making unlimited contributions to multicandidate political committees -- is accepted, then ... (this) contribution limit could easily be evaded. ... It is clear that this provision is an appropriate means by which Congress could seek to protect the integrity of the contribution restrictions upheld by this Court in *Buckley*.

*Id.* at 2723.

*California Medical* can reasonably be read for the proposition that limits on contributions to certain *groups* supporting candidates can be constitutional if they prevent persons from circumventing the type of direct contribution limits held constitutional under *Buckley*. *Cf. Colorado Republican Federal Campaign Committee v. Federal Election Comm'n*, 116 S.Ct. 2309, 2316 (1996). The same circumvention argument was viewed favorably in *Austin v. Michigan Chamber of Commerce*, 108 L.Ed.2d 652 (1990) to uphold limitations on independent expenditures by the Michigan Chamber of Commerce. See *Austin*, 108 L.Ed.2d at 667 (absent restriction, business corporations could circumvent the contribution limits in Michigan's campaign finance statute by funneling money through the Michigan Chamber of Commerce's general treasury). Restrictions on contributions, such as those contemplated in the bill, require less compelling justification than restrictions on independent expenditures. *FEC v. Mass. Citizens for Life*, 107 S.Ct. 616, 629 (1986).

A strong argument can be made that limits on contributions to political parties in Senate Bill 1714 are similar to the limits approved by the U.S. Supreme Court in *California Medical*; they restrict contributions to a political organization for the purpose of preventing corporations, labor unions, and wealthy individual donors from circumventing the \$500 direct contribution limit in Florida law. This, so the argument goes, is "closely drawn" to promote the state's "sufficiently important" interest in preventing the "reality or appearance of corruption" by restricting large campaign contributions from special interest donors. Provided that a "sufficient quantum of empirical evidence" exists to demonstrate that the direct contribution limits in Florida law may be circumvented by unrestricted donations to political parties, this argument may well prove determinative.

Although no court has specifically ruled on the issue, it appears more likely than not that a reasonable limitation on contributions to political parties implemented for the purpose of preventing special interests from circumventing Florida's \$500 limit on contributions to candidates will survive First Amendment scrutiny.

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<sup>3</sup> 96 S.Ct. 612 (1976).

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

The \$5,000 aggregate limit on contributions to political parties may impact the amount of money the parties can raise for use in the elections.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:****Amendment #1 by Ethics and Elections**

Changes the beginning date for the \$5,000 aggregate limit on contributions to political parties from the Thursday to the Friday immediately preceding the first primary election, to take account of a Florida Division of Elections advisory opinion which allows a candidate to use contributions received on that Thursday in the first primary contest. See DE 00-01 (January 21, 2000).