

Florida Changes Campaign Finance Laws

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On May 26, 2004, Florida Governor Jeb Bush signed into law the Florida Advertising Campaign Exposure Act (Act), former SB 2346. Following in the footsteps of the Bipartisan Campaign Reform Act of 2002 (BCRA), which the U.S. Supreme Court largely upheld in December 2003, the new law regulates issue advocacy in general and political advocacy on the Internet and modifies the reporting requirements for Florida Committees of Continuous Existence (CCE). The new law, which became effective July 1, 2004, is primarily designed to disclose the identity of persons paying for political or issue-related advertising during elections. According to press reports, some of the impetus for the bill comes from an increasing number of "last-minute attack ads" in recent legislative and statewide races.

Issue Advocacy Regulation

The Act regulates through reporting requirements a new category of issue advocacy, "electioneering communications," which it defines as "paid expression in any communications media" (excluding direct, spoken conversation) that clearly refers to or depicts a candidate or an issue to be voted on without expressly advocating for the election or defeat of a candidate or passage or defeat of a ballot issue. Under the definition, in order to be electioneering communications, advertisements referring to a candidate also must be targeted to the "relevant electorate" and be published after the candidate qualifying period for the office sought. Advertisements about ballot issues are considered electioneering communications if they are issued 120 days before the election or after the issue is designated a ballot position, whichever comes first.

In addition to direct, spoken conversation, several other types of communications are excluded from the definition of electioneering communications, including:

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- Internal newsletters of existing organizations;
- Editorials, news stories or commentary by recognized news sources;
- Public debates or forums including at least two opposing candidates/positions on issues and hosted by a "recognized news medium" or charitable organization that does not engage in other electioneering communications;
- Independent expenditures and
- Contributions to political campaigns.

To further delineate electioneering communications from other forms of advocacy, the law modifies the word "advocating" with "expressly" in the definition of "independent expenditure" and includes "expressly advocate [ing]" the defeat or election/passage of a candidate/issue in the definition of "political advertisement."

Also under the Act, the definitions of "contribution" and "expenditure" are amended to include "making an electioneering communication." An expenditure for an electioneering communication occurs when the contract for the communication is executed, a partial or full payment for the communication is made or the communication is publicly disseminated, whichever occurs first.

Further, the law adds a new provision exempting from the definition of political committees organizations that limit their activities to making expenditures or accepting contributions for electioneering communications. These electioneering communications-only organizations, however, are required to register and report contributions and expenditures in the same time and manner, and are subject to the same penalties, as political committees. All electioneering communications are subject to disclaimer requirements and must prominently state "[p]aid electioneering communication paid for by (Name and address of person paying for the communication)." Failure to comply with this requirement is a misdemeanor of the first degree.

Moreover, rules regarding reports and disclaimers for independent expenditures now apply to electioneering communications, making them subject to the same reporting requirements as independent expenditures. According to a press release issued by Governor Bush, "[a]ny person or group that engages in political advertising or other elections-type communication will now be required to register as a political committee and report contributions and expenditures as provided in current law." Thus, the new electioneering communications reporting requirements apparently cover electioneering communications made by corporations using their own treasury funds. In addition to the information currently required under Florida law, the reports now must include the name and address of the person making the expenditure and the issue to which it relates. These reports are subject to the same penalties as political committee reports.

Independent Expenditures and Political Advertising

Under the new law, disclaimers on political advertisements paid for by independent expenditures, with the exception of novelty items with a retail value less than \$10 that do not oppose a candidate, must include the address of the person paying for the advertisement. Similarly, political advertisements paid for by a candidate must include a disclaimer stating the advertisement is a "[p]olitical advertisement paid for and approved by" (name and party affiliation of the candidate and the office sought). "Any other political

advertisement[s]," circulated prior to the election must now also include the name and address of the persons sponsoring the advertisement. Other changes to the rules governing independent expenditures include a lifting of the restriction that capped at \$1,000 contributions from one person to another person for making independent expenditures.

Finally, "[t]he Internet" is added to the definition of "communications media." Costs associated with internal communications of a campaign or group that use a computer information system, however, are not considered expenditures for communications media.

Committees of Continuous Existence

The law closes what is known as the "membership dues loophole" by requiring CCE's to include in their regular reports the full name, address and occupation of individuals making one or more contributions, including contributions of more than \$250 per calendar year that are considered the payment of membership dues. (Please note that CCEs are not regular political committees and that federal PACs making contributions in Florida do not become CCEs.) The CCE reports must also now include the full name and address of the person making the CCE expenditures; the amount, date and purpose of the expenditure; the full name and address and office sought of the beneficiary of CCE expenditures and the total amount of expenditures by the CCE.

The law also clarifies a disputed topic in Florida law: CCE's may not make electioneering communications.