SB302

YFGA26N-1

By Senator Smitherman

RFD: Judiciary

First Read: 04-Apr-24

SYNOPSIS:

Under existing law, "electioneering communication" under the Fair Campaign Practices Act is generally defined as a communications disseminated through a specified manner that is made within 120 days of an election intended to influence the outcome of an election.

This bill would revise the definition of "electioneering communication" as paid advertising disseminated through a specified manner that occurs 30 days before a primary election or 60 days before a general election, is targeted to the relevant electorate in the geographic area where the candidate is on the ballot, and is an appeal to vote for or against a specific candidate.

Under existing law, "expenditure" under the Fair Campaign Practices Act is generally defined as a purchase, payment, distribution, loan, or gift of money or anything of value to influence the result of an election. There are a number of exclusions from the definition.

This bill would also exclude from the definition of "expenditure" a payment or disbursement related to an advertisement or other communication by a person that is not a principal campaign committee or political

action committee unless the communication includes express advocacy to vote for or against a candidate or proposition on the ballot.

Under existing law, a "political action committee" under the Fair Campaign Practices Act is generally defined as an entity that receives contributions or makes expenditures to or on behalf of a candidate, proposition, principal campaign committee, or other political action committee.

This bill would revise the definition of "political action committee" to apply only if the major purpose of the entity is making the contributions or expenditures to or on behalf of one of these entities.

Under existing law, contributions and expenditures of electioneering communications must be reported by the payor of the electioneering communication.

This bill would provide that electioneering communications would only have to be reported once during an election cycle unless the payor makes additional contributions or expenditures of electioneering communications.

This bill would also delete certain exemptions of reporting of electioneering communications by churches in certain circumstances and used by the membership of trade organizations.

A BILL

TO BE ENTITLED

AN ACT

Relating to the Fair Campaign Practices Act; to amend Section 17-5-2, Code of Alabama 1975, to revise the definitions of "electioneering communication," "expenditure," and "political action committee;" to amend Section 17-5-8, Code of Alabama 1975, to revise the reporting requirements for electioneering communications and remove certain exceptions relating to electioneering communications reporting.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 17-5-2 and 17-5-8, Code of Alabama 1975, are amended to read as follows:

"§17-5-2

(a) For purposes of this chapter, the following terms ~~shall~~ have the following meanings:

(1) CANDIDATE. An individual who has done any of the following:

a. Taken the action necessary under the laws of the state to qualify himself or herself for nomination or for election to any state office or local office or in the case of an independent seeking ballot access, on the date when he or she files a petition with the judge of probate in the case of county offices, with the appropriate qualifying municipal official in the case of municipal offices, or the Secretary of State in all other cases.

b. Received contributions or made expenditures in

excess of one thousand dollars ($1,000), or given his or her consent for any other person or persons to receive contributions or make expenditures in excess of one thousand dollars ($1,000), with a view to bringing about his or her nomination or election to any state office or local office.

(2) COMMISSION. The State Ethics Commission created pursuant to Section 36-25-3.

(3) CONTRIBUTION.

a. Any of the following shall be considered a contribution:

1. A gift, subscription, loan, advance, deposit of money or anything of value, a payment, a forgiveness of a loan, or payment of a third party, made for the purpose of influencing the result of an election.

2. A contract or agreement to make a gift, subscription, loan, advance, or deposit of money or anything of value for the purpose of influencing the result of an election.

3. Any transfer of anything of value received by a political committee from another political committee, political party, or other source.

4. The payment of compensation by any person for the personal services or expenses of any other person if the services are rendered or expenses incurred on behalf of a candidate, political committee, or political party without payment of full and adequate compensation by the candidate, political committee, or political party. Provided, however, that the payment of compensation by a corporation for the

purpose of establishing, administering, or soliciting voluntary contributions to a separate, segregated fund as permitted in this chapter, shall not constitute a contribution.

b. The term "contribution" does not include:

1. The value of services provided without compensation by individuals who volunteer a portion or all of their time on behalf of a candidate or political committee.

2. The use of real or personal property and the cost of invitations, food, or beverages, voluntarily provided by an individual to a candidate or political committee in rendering voluntary personal services on the individual's residential or business premises for election-related activities.

3. The sale of any food or beverage by a vendor for use in an election campaign at a charge to a candidate or political committee less than the normal comparable charge, if the charge to the political committee for use in an election campaign is at least equal to the cost of the food or beverage to the vendor.

4. Any unreimbursed payment for travel expenses made by an individual who, on his or her own behalf, volunteers personal services to a candidate or political committee.

5. The payment by a state or local committee of a political party of the cost of preparation, display, or mailing or other distribution incurred by the committee with respect to a printed slate card or sample ballot, or other printed listing of two or more candidates for any public office for which an election is held in the state, except that

this subparagraph shall not apply in the case of costs incurred by the committee with respect to a display of the listing made on broadcasting stations, or in newspapers, magazines, or other similar types of general public political advertising.

6. The value or cost of polling data and voter preference data and information if provided to a candidate or political committee, unless the information was compiled with the advance knowledge of and approval of the candidate or the political committee.

c. For purposes of reporting contributions as required by this chapter, the date of receipt of a contribution shall be the first date the recipient of the contribution is able to make use of the contribution. In the case of a contribution in the form of a check, the date of receipt is the earlier of either of the following:

1. Ten days from the date that the check came within the recipient's control.

2. The date that the check was deposited into the recipient's account.

(4) DESIGNATED FILING AGENT. An individual appointed and authorized as attorney in fact to electronically submit any report or other filing required by this chapter on behalf of a candidate, his or her principal campaign committee, or a political action committee.

(5) ELECTION. Unless otherwise specified, any general, special, primary, or runoff election, or any convention or caucus of a political party held to nominate a candidate, or

any election at which a constitutional amendment or other proposition is submitted to the popular vote.

(6) ELECTIONEERING COMMUNICATION.

a. Any ~~communication~~ paid advertising disseminated through any federally regulated broadcast media, any mass mailing of more than 500 pieces of identical or substantially similar materials within any 30-day period, ~~or other distribution, electronic communication~~paid digital advertising, any phone bank of more than 500 telephone calls of an identical or substantially similar nature within any 30-day period, or ~~publication~~ paid print advertising which: (i) contains the name or image of a candidate; (ii) is made within ~~120 days of an~~ 30 days before a primary or primary runoff election or 60 days before any other election in which the candidate will appear on the ballot; (iii) is targeted to the relevant electorate in the geographic area the candidate would represent if elected; (iv) the only reasonable conclusion to be drawn from the presentation and content of the communication is that it is ~~intended to influence the outcome of an election~~ an appeal to vote for or against a specific candidate; and ~~(iv)~~ (v) entails an expenditure in excess of one thousand dollars ($1,000).

b. The term "electioneering communication" does not include either of the following:

1. A communication that is used by an organization or entity to communicate with or inform members, employees, members' employees, directors, owners, shareholders of that organization or entity, or the family members of the

foregoing.

2. A communication disseminated by a church unless the church's expenditures are used to appeal to vote for or against a specific candidate. Nothing in this subparagraph shall require a church to disclose the identities, donations, or contributions of members of the church. As used in this section, the term "church" is defined in accordance with and recognized by guidelines and regulations of the Internal Revenue Service.

(7) EXPENDITURE.

a. The following shall be considered expenditures:

1. A purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value made for the purpose of influencing the result of an election.

2. A contract or agreement to make any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, for the purpose of influencing the result of an election.

3. The transfer, gift, or contribution of funds of a political committee to another political committee.

4. The payment of any qualifying fee or other cost associated with qualifying to run for office.

b. The term "expenditure" does not include:

1. Any news story, commentary, or editorial prepared by and distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless the facilities are owned or controlled by any political party or political committee.

2. Nonpartisan activity designed to encourage individuals to register to vote, or to vote.

3. Any communication by any membership organization to its members or by a corporation to its stockholders and employees if the membership organization or corporation is not organized primarily for the purpose of influencing the result of an election.

4. The use of real or personal property and the cost of invitations, food, or beverages, voluntarily provided by an individual in rendering voluntary personal services on the individual's residential or business premises for election-related activities.

5. Any unreimbursed payment for travel expenses made by an individual who, on his or her own behalf, volunteers personal services to a candidate or political committee.

6. Any communication by any person which is not made for the purposes of influencing the result of an election.

7. The payment by a state or local committee of a political party of the cost of preparation, display, or mailing or other distribution incurred by the committee with respect to a printed slate card or sample ballot, or other printed listing of two or more candidates for any public office for which an election is held in the state, except that this subparagraph shall not apply in the case of costs incurred by the committee with respect to a display of the listing made on broadcasting stations, or in newspapers, magazines, or other similar types of general public political advertising.

8. A payment or disbursement related to an advertisement or other communication by an individual or entity that is not a principal campaign committee or political action committee unless the communication includes express advocacy. For purposes of this subparagraph, "express advocacy" means a communication containing express words of advocacy of election or defeat, including "vote for," "elect," "support," "cast your ballot for," "Smith for Congress," "vote against," "defeat," or "reject."

c. For purposes of reporting expenditures as required by this chapter, the date an expenditure is made is the date the instrument authorizes the expenditure. In the case of an expenditure made by check or electronic payment, the date of expenditure is the date of the check or electronic payment.

(8) IDENTIFICATION. The full name and complete address.

(9) LOAN. A transfer of money, property, or anything of value in consideration of a promise or obligation, conditional or not, to repay in whole or part.

(10) LOCAL OFFICE. Any office under the constitution and laws of the state, except circuit, district, or legislative offices, filled by election of the registered voters of a single county or municipality, or by the voters of a division contained within a county or municipality.

(11) PERSON. An individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons.

(12) PERSONAL AND LEGISLATIVE LIVING EXPENSES. Household supplies, personal clothing, tuition payments,

mortgage, rent, or utility payments for a personal residence; admission to an entertainment event or fees for a country club or social club, unless tied to a specific campaign event or functions involving constituents; and any other expense, excluding food and beverages, that would exist irrespective of the candidate's campaign or duties as a legislator. Personal and legislative living expenses shall not include expenses for food, beverages, travel, or communications incurred by the legislator in the performance of the office held.

(13) POLITICAL ACTION COMMITTEE. Any committee, club, association, political party, or other group of one or more persons, whether in-state or out-of-state, which: (i) receives or anticipates receiving contributions; ~~and~~ (ii) makes or anticipates making expenditures; and (iii) has the major purpose of making contributions to or expenditures on behalf of any Alabama state or local elected official, proposition, candidate, principal campaign committee or other political action committee. For the purposes of this chapter, a person who makes a political contribution shall not be considered a political action committee by virtue of making such contribution. For purposes of this subdivision, "major purpose" means that making contributions or expenditures constitutes the preponderance of the spending of the committee, club, association, political party, or other group during a calendar year.

(14) POLITICAL PARTY. A political party as defined in Section 17-13-40.

(15) PRINCIPAL CAMPAIGN COMMITTEE. The principal

campaign committee designated by a candidate under Section 17-5-4. A political action committee established primarily to benefit an individual candidate or an individual elected official shall be considered a principal campaign committee for purposes of this chapter.

(16) PROPOSITION. Any proposal for submission to the general public for its approval or rejection, including proposed as well as qualified ballot questions.

(17) PUBLIC OFFICIAL. Any person elected to public office, whether or not that person has taken office, by the vote of the people at the state, county, or municipal level of government or their instrumentalities, including governmental corporations, and any person appointed to a position at the state, county, or municipal level of government or their instrumentalities, including governmental corporations. For purposes of this chapter, a public official includes the chairs and vice chairs or the equivalent offices of each state political party as defined in Section 17-13-40.

(18) STATE. The State of Alabama.

(19) STATE OFFICE. All offices under the constitution and laws of the state filled by election of the registered voters of the state or of any circuit or district and shall include legislative offices.

(b) The words and terms used in this chapter ~~shall~~ have the same meanings respectively ascribed to them in Section 36-25-1."

"§17-5-8

(a) All filings with the Secretary of State under this

section shall be made electronically. Electronic filings shall be available to the public on a searchable database maintained on the Secretary of State's public website.

(b) The treasurer, designated filing agent, or candidate shall file with the Secretary of State periodic reports of contributions and expenditures at the following times once a principal campaign committee files its statement under Section 17-5-4 or a political action committee files its statement of organization under Section 17-5-5:

(1) Regardless of whether a candidate has opposition in any election, monthly reports not later than the second business day of the subsequent month, beginning 12 months before the date of any primary, special, runoff, or general election for which a political action committee or principal campaign committee receives contributions or makes expenditures with a view toward influencing the election's result. A monthly report shall include all reportable transactions for the previous full month period. Reports shall be required as provided in subdivisions (2) and (3).

(2) With regard to a primary, special, runoff, or general election, a report shall be required weekly on the Monday of the succeeding week for each of the four weeks before the election that includes all reportable activities for the previous week.

(3) In addition to the reporting dates specified in subdivisions (1) and (2), reports required to be filed with the Secretary of State shall be filed with the Secretary of State on the eighth, seventh, sixth, fifth, fourth, third, and

second day preceding a legislative, state school board, or other statewide primary, special, runoff, or general election, and by 12:01 p.m. on the day preceding a legislative, state school board, or statewide, primary, special, runoff, or general election if any principal campaign committee or political action committee receives or spends in the aggregate five thousand dollars ($5,000) or more on that day with a view toward influencing an election's results. If a daily report is required pursuant to this subdivision, the report shall include all reportable activity occurring on the day of the report as well as all reportable activity that has occurred on each day since the most recent prior report.

(c) Except as provided in subsection ~~(i)~~ (g), each principal campaign committee, political action committee, and elected state and local official covered under this chapter who has not closed his or her principal campaign committee shall file annually with the Secretary of State reports of contributions and expenditures made during that year. No annual report is required to be filed by a person who holds office because he or she was appointed to serve the remainder of a term vacated by another person until the person serving has created a principal campaign committee. The annual reports required under this subsection shall be made on or before January 31 of the succeeding year.

(d) Each report under this section shall disclose all of the following:

(1) The amount of cash or other assets on hand at the beginning of the reporting period and forward until the end of

that reporting period and disbursements made from same.

(2) The identification of each person who has made contributions to the committee or candidate within the calendar year in an aggregate amount greater than ~~one~~ two hundred dollars ~~($100)~~ ($200), together with the amount and date of all the contributions; provided, however, in the case of a political action committee, identification shall mean the name and city of residence of each person who has made contributions within the calendar year in an aggregate amount greater than ~~one~~ two hundred dollars ~~($100)~~ ($200). The Secretary of State shall adjust by one-dollar ($1) increments, or a different increment as determined by the Secretary of State, not later than January 1 following any year in which the value, as adjusted pursuant to the U.S. Department of Labor's Consumer Price Index or a successor index, exceeds the current amount by one dollar ($1) or more, or by the increment determined by the Secretary of State.

(3) The total amount of other contributions received during the calendar year but not reported under subdivision (2).

(4) Each loan to or from any person within the calendar year in an aggregate amount greater than one hundred dollars ($100), together with the identification of the lender, the identification of the endorsers, or guarantors, if any, and the date and amount of the loans.

(5) The total amount of receipts from any other source during the calendar year.

(6) The grand total of all receipts by or for the

committee during the calendar year.

(7) The identification of each person to whom expenditures have been made by or on behalf of the committee or elected official within the calendar year in an aggregate amount greater than one hundred dollars ($100), the amount, date, and purpose of each expenditure, and, if applicable, the designation of each constitutional amendment or other proposition with respect to which an expenditure was made.

(8) The identification of each person to whom an expenditure for personal services, salaries, or reimbursed expenses greater than one hundred dollars ($100) has been made, and which is not otherwise reported or exempted from this chapter, including the amount, date, and purpose of the expenditure.

(9) The grand total of all expenditures made by the committee or elected official during the calendar year.

(10) The amount and nature of debts and obligations owed by or to the committee or elected official, together with a statement as to the circumstances and conditions under which any debt or obligation was extinguished and the consideration therefor.

(e) Each report required by this section shall be signed and filed by the elected official or on behalf of the political action committee by its chair or treasurer and, if filed on behalf of a principal campaign committee, by the candidate represented by the committee. There shall be attached to each report an affidavit subscribed and sworn to by the official or chair or treasurer and, if filed by a

principal campaign committee, the candidate represented by the committee, setting forth in substance that the report is to the best of his or her knowledge and belief in all respects true and complete, and, if made by a candidate, that he or she has not received any contributions or made any expenditures which are not set forth and covered by the report.

(f) In connection with any electioneering communication paid for by a person, nonprofit corporation, entity, principal campaign committee, or other political committee or entity, the payor shall ~~disclose its contributions and expenditures in accordance with this section~~ make a communication-specific disclosure to the Secretary of State of the amount involved and nature of the communication, such as broadcast media or mass mailing, using a form prescribed by rule by the Secretary of State. The disclosure of an electioneering communication shall be made ~~in the same form and at the same time as is required of political action committees in this section~~ within five business days of the commencement of the communication; provided~~, however, no~~:

(1) The payor shall not be required to report an electioneering communication more than once during an election cycle unless the payor pays for any additional electioneering communications during that election cycle, in which event the payor shall make disclosures as described in this subsection within five business days of the commencement of the additional communication; and

(2) No duplicate reporting shall be required by a political action committee that reports an electioneering

communication with a report the political action committee otherwise files under this chapter.

~~(g) Notwithstanding any disclosure requirements of subsection (f), churches are exempt from the requirements of this section unless the church's expenditures are used to influence the outcome of an election. Nothing herein shall require a church to disclose the identities, donations, or contributions of members of the church. As used in this section, the term church is defined in accordance with and recognized by Internal Revenue Service guidelines and regulations.~~

~~(h) Notwithstanding the disclosure requirements of this section, this section shall not be interpreted to nor shall they require any disclosure for expenses incurred for any electioneering communication used by any membership or trade organization to communicate with or inform its members, its members' families, or its members' employees or for any electioneering communication by a business entity of any type to its employees or stockholders or their families.~~

~~(i)~~ (g) Each report required by this section shall include all reportable transactions occurring since the most recent prior report; however, duplicate reporting is not required by this section. A political action committee or principal campaign committee that is required to file a daily report is not required to also file a weekly report for the week preceding an election specified in subdivision (b)~~—~~(3); a committee required to file a weekly report is not required to also file a monthly report in the month in which the election

is held; and a committee required to file a monthly report is not required to also file an annual report in the year in which the election is held. The monetary balance in a report of each committee shall begin at the monetary amount appearing in the most recent prior report.

~~(j)~~ (h) The Secretary of State may adopt administrative rules pursuant to the Alabama Administrative Procedure Act as are necessary to implement and administer this section."

Section 2. This act shall become effective on October 1, 2024.