

1 SB284
2 126919-2
3 By Senator Orr
4 RFD: Constitution, Campaign Finance, Ethics, and Elections
5 First Read: 24-MAR-11

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8 SYNOPSIS: Under existing law, paid political
9 advertising must contain the identification of the
10 person, principal campaign committee, or other
11 political committee that paid for or otherwise
12 authorized the advertising.

13 This bill would provide that electioneering
14 communications and paid political advertisements
15 paid for by an organization or entity shall
16 disclose the names of the source of the funding of
17 the organization or entity.

18
19 A BILL
20 TO BE ENTITLED
21 AN ACT

22
23 To amend Sections 17-5-2, 17-5-8, and 17-5-12, Code
24 of Alabama 1975, relating to paid electioneering
25 communications and political advertising, to provide that
26 electioneering communications and paid political
27 advertisements paid for by an organization or entity shall

1 disclose the names of the source of the funding of the
2 organization or entity.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. (a) The Legislature determines that there
5 is a compelling state and public interest in the disclosure of
6 the source of funds used to advertise or otherwise influence
7 public opinion with regard to elections as defined in Section
8 17-5-2(3), Code of Alabama 1975. The Legislature further finds
9 that these compelling interests should be designed to protect
10 the public's right to know while protecting free speech of
11 individuals as guaranteed in the U.S. Constitution and the
12 Constitution of Alabama of 1901.

13 (b) Currently, the Fair Campaign Practices Act,
14 Title 17, Chapter 5, commencing with Section 17-5-1, et seq.,
15 Code of Alabama 1975, regulates the disclosure of
16 contributions and expenditures made for the purpose of
17 influencing the outcome of an election. This 2011 amendatory
18 act is intended to regulate the disclosure of contributions
19 and expenditures for "electioneering communications" which
20 currently do not fall within the ambit of the Fair Campaign
21 Practices Act.

22 (c) The Legislature finds and declares that Alabama
23 voters have a right to know who pays for the costs of
24 electioneering communications.

25 Section 2. Sections 17-5-2, 17-5-8, and 17-5-12 of
26 the Code of Alabama 1975, are amended to read as follows:

27 "§17-5-2.

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

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

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

13 "b. Received contributions or made expenditures, or
14 given his or her consent for any other person or persons to
15 receive contributions or make expenditures, with a view to
16 bringing about his or her nomination or election to any state
17 office or local office. Notwithstanding the foregoing, no
18 person shall be considered a candidate within the meaning of
19 this subdivision until the time that he or she has either
20 received contributions or made expenditures as provided herein
21 in the following amounts:

22 "1. Twenty-five thousand dollars (\$25,000) or more,
23 with a view toward bringing about nomination or election to
24 any state office other than one filled by election of the
25 registered voters of any circuit or district within the state.

26 "2. Five thousand dollars (\$5,000) or more, with a
27 view toward bringing about nomination or election to any state

1 office, excluding legislative office, filled by election of
2 the registered voters of any circuit or district.

3 "3. Ten thousand dollars (\$10,000) or more, with a
4 view toward bringing about nomination or election to the
5 Alabama Senate and five thousand dollars (\$5,000) or more,
6 with a view toward bringing about nomination or election to
7 the Alabama House of Representatives.

8 "4. One thousand dollars (\$1,000) or more, with a
9 view toward bringing about nomination or election to any local
10 office.

11 "(2) CONTRIBUTION.

12 "a. Any of the following shall be considered a
13 contribution:

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

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

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

25 "4. The payment of compensation by any person for
26 the personal services or expenses of any other person if the
27 services are rendered or expenses incurred on behalf of a

1 candidate, political committee, or political party without
2 payment of full and adequate compensation by the candidate,
3 political committee, or political party. Provided, however,
4 that the payment of compensation by a corporation for the
5 purpose of establishing, administering, or soliciting
6 voluntary contributions to a separate, segregated fund as
7 permitted by Section 10-1-2, shall not constitute a
8 contribution.

9 "b. The term "contribution" does not include:

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

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

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

25 "4. Any unreimbursed payment for travel expenses
26 made by an individual who, on his or her own behalf,

1 volunteers personal services to a candidate or political
2 committee.

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

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

19 "(3) ELECTION. Unless otherwise specified, any
20 general, special, primary, or runoff election, or any
21 convention or caucus of a political party held to nominate a
22 candidate, or any election at which a constitutional amendment
23 or other proposition is submitted to the popular vote.

24 "(4) ELECTIONEERING COMMUNICATION. Any communication
25 disseminated through any federally regulated broadcast media,
26 any mailing, or other distribution, electronic communication,
27 phone bank, or publication which (i) contains the name or

1 image of a candidate; (ii) is made within 120 days of an
2 election in which the candidate will appear on the ballot;
3 (iii) the only reasonable conclusion to be drawn from the
4 presentation and content of the communication is that it is
5 intended to influence the outcome of an election; and (iv)
6 entails an expenditure in excess of one thousand dollars
7 (\$1,000).

8 "~~(4)~~(5) EXPENDITURE.

9 "a. The following shall be considered expenditures:

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

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

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

19 "b. The term "expenditure" does not include:

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

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

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

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

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

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

18 "7. The payment by a state or local committee of a
19 political party of the cost of preparation, display, or
20 mailing or other distribution incurred by the committee with
21 respect to a printed slate card or sample ballot, or other
22 printed listing of two or more candidates for any public
23 office for which an election is held in the state, except that
24 this subparagraph shall not apply in the case of costs
25 incurred by the committee with respect to a display of the
26 listing made on broadcasting stations, or in newspapers,

1 magazines, or other similar types of general public political
2 advertising.

3 ~~"(5)(6)~~ IDENTIFICATION. The full name and complete
4 address.

5 ~~"(6)(7)~~ LOAN. A transfer of money, property, or
6 anything of value in consideration of a promise or obligation,
7 conditional or not, to repay in whole or part.

8 ~~"(7)(8)~~ LOCAL OFFICE. Any office under the
9 constitution and laws of the state, except circuit, district,
10 or legislative offices, filled by election of the registered
11 voters of a single county or municipality, or by the voters of
12 a division contained within a county or municipality.

13 ~~"(8)(9)~~ PERSON. An individual, partnership,
14 committee, association, corporation, labor organization, or
15 any other organization or group of persons.

16 ~~"(9)(10)~~ PERSONAL AND LEGISLATIVE LIVING EXPENSES.
17 Household supplies, personal clothing, tuition payments,
18 mortgage, rent, or utility payments for a personal residence;
19 admission to an entertainment event or fees for a country club
20 or social club, unless tied to a specific campaign event or
21 functions involving constituents; and any other expense,
22 excluding food and beverages, that would exist irrespective of
23 the candidate's campaign or duties as a legislator. Personal
24 and legislative living expenses shall not include expenses for
25 food, beverages, travel, or communications incurred by the
26 legislator in the performance of the office held.

1 "~~(10)~~(11) POLITICAL ACTION COMMITTEE. Any political
2 action committee, club, association, political party, or other
3 group of one or more persons which receives or anticipates
4 receiving contributions or makes or anticipates making
5 expenditures to or on behalf of any elected official,
6 proposition, candidate, principal campaign committee or other
7 political action committee. For the purposes of this chapter,
8 an individual who makes a personal political contribution
9 shall not be considered a political action committee.

10 "~~(11)~~(12) PRINCIPAL CAMPAIGN COMMITTEE. The
11 principal campaign committee designated by a candidate under
12 Section 17-5-4. A political action committee established
13 primarily to benefit an individual candidate or an individual
14 elected official shall be considered a principal campaign
15 committee for purposes of this chapter.

16 "~~(12)~~(13) PROPOSITION. Any proposal for submission
17 to the general public for its approval or rejection, including
18 proposed as well as qualified ballot questions.

19 "~~(13)~~(14) PUBLIC OFFICIAL. Any person elected to
20 public office, whether or not that person has taken office, by
21 the vote of the people at the state, county, or municipal
22 level of government or their instrumentalities, including
23 governmental corporations, and any person appointed to a
24 position at the state, county, or municipal level of
25 government or their instrumentalities, including governmental
26 corporations. For purposes of this chapter, a public official

1 includes the chairs and vice chairs or the equivalent offices
2 of each state political party as defined in Section 17-13-40.

3 ~~"(14)~~ (15) STATE. The State of Alabama.

4 ~~"(15)~~ (16) STATE OFFICE. All offices under the
5 constitution and laws of the state filled by election of the
6 registered voters of the state or of any circuit or district
7 and shall include legislative offices.

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

11 "§17-5-8.

12 "(a) Each principal campaign committee or political
13 action committee shall file with the Secretary of State or
14 judge of probate, as designated in Section 17-5-9, reports of
15 contributions and expenditures at the following times in any
16 year in which an election is held:

17 "(1) Regardless of whether the candidate has
18 opposition in any election, between 50 and 45 days before and
19 between 10 and five days before the date of any primary,
20 special, runoff, or general election for which a political
21 action committee or principal campaign committee receives
22 contributions or makes expenditures with a view toward
23 influencing such election's result.

24 "(2) Provided, however, that with regard to a runoff
25 election a report shall not be required except between five
26 and 10 days before the runoff election.

1 "(b) Each principal campaign committee, political
2 action committee, and elected state and local official covered
3 under the provisions of this chapter, shall annually file with
4 the Secretary of State or judge of probate, as designated in
5 Section 17-5-9, reports of contributions and expenditures made
6 during that year. The annual reports required under this
7 subsection shall be made on or before January 31 of the
8 succeeding year.

9 "(c) Each report under this section shall disclose:

10 "(1) The amount of cash or other assets on hand at
11 the beginning of the reporting period and forward until the
12 end of that reporting period and disbursements made from same.

13 "(2) The identification of each person who has made
14 contributions to such committee or candidate within the
15 calendar year in an aggregate amount greater than one hundred
16 dollars (\$100), together with the amount and date of all such
17 contributions; provided, however, in the case of a political
18 action committee identification shall mean the name and city
19 of residence of each person who has made contributions within
20 the calendar year in an aggregate amount greater than one
21 hundred dollars (\$100).

22 "(3) The total amount of other contributions
23 received during the calendar year but not reported under
24 subdivision (c) (2) of this section.

25 "(4) Each loan to or from any person within the
26 calendar year in an aggregate amount greater than one hundred
27 dollars (\$100), together with the identification of the

1 lender, the identification of the endorsers, or guarantors, if
2 any, and the date and amount of such loans.

3 "(5) The total amount of receipts from any other
4 source during such calendar year.

5 "(6) The grand total of all receipts by or for such
6 committee during the calendar year.

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

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

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

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

1 "(d) Each report required by this section shall be
2 signed and filed by the elected official or on behalf of the
3 political action committee by its chair or treasurer and, if
4 filed on behalf of a principal campaign committee, by the
5 candidate represented by such committee. There shall be
6 attached to each such report an affidavit subscribed and sworn
7 to by the official or chair or treasurer and, if filed by a
8 principal campaign committee, the candidate represented by
9 such committee, setting forth in substance that such report is
10 to the best of his or her knowledge and belief in all respects
11 true and complete, and, if made by a candidate, that he or she
12 has not received any contributions or made any expenditures
13 which are not set forth and covered by such report.

14 "(e) In connection with any electioneering
15 communication paid for by a person, nonprofit corporation,
16 entity, principal campaign committee, or other political
17 committee or entity, the payor shall disclose its
18 contributions and expenditures in accordance with this
19 section. The disclosure shall be made in the same form and at
20 the same time as is required of political action committees in
21 this section; provided, however, no duplicate reporting shall
22 be required by a political committee.

23 "(f) Notwithstanding any disclosure requirements of
24 subsection (e), churches are exempt from the requirements of
25 this section unless the church's expenditures are used to
26 influence the outcome of an election. Nothing herein shall
27 require a church to disclose the identities, donations, or

1 contributions of members of the church. As used in this
2 section, the term "church" is defined in accordance with and
3 recognized by Internal Revenue Service guidelines and
4 regulations.

5 "(g) Notwithstanding the disclosure requirements of
6 this section, the provisions of this section shall not be
7 interpreted to nor shall they require any disclosure for
8 expenses incurred for any electioneering communication used by
9 any membership or trade organization to communicate with or
10 inform its members, its members' families, or its members'
11 employees. The members of any organization need not be
12 disclosed unless membership dues are used for electioneering
13 communication.

14 "(h) The corporate contribution limits contained in
15 Sections 10A-21-1.02, 10A-21-1.03, and 10A-21-1.04 shall not
16 apply in any respect to an electioneering communication;
17 provided, however, the corporate contribution limits contained
18 in Sections 10A-21-1.02, 10A-21-1.03, and 10A-21-1.04 shall
19 continue in force and effect for contributions by corporations
20 to principal campaign committees, political committees, and to
21 political parties.

22 "§17-5-12.

23 "Any paid political advertisement or electioneering
24 communication appearing in any print media or broadcast on any
25 electronic media shall ~~be clearly identified or marked as a~~
26 paid political advertisement and provide the identification
27 required by Section 17-5-2(a)(5) clearly and distinctly

1 identify the entity responsible for paying for the
2 advertisement or electioneering communication. It shall be
3 unlawful for any person, nonprofit corporation, entity,
4 candidate, principal campaign committee, nonprofit
5 corporation, entity, or other political action committee to
6 broadcast, publish, or circulate any campaign literature ~~or,~~
7 political advertisement, or electioneering communication
8 without a notice appearing on the ~~face or front page of any~~
9 printed matter with a clear and unmistakable identification of
10 the entity responsible for directly paying for the
11 advertisement or electioneering communication, or on the
12 broadcast at the beginning, during, or end of a radio or
13 television spot, stating that the communication was a paid
14 ~~political~~ advertisement, clearly identifying the entity
15 directly responsible for paying for the advertisement or
16 electioneering communication, and giving the identification of
17 the person, nonprofit corporation, entity, principal campaign
18 committee, or political action committee or entity that paid
19 for ~~or otherwise authorized~~ such communication."

20 Section 3. The provisions of this act are severable.
21 If any part of this act is declared invalid or
22 unconstitutional, that declaration shall not affect the part
23 which remains.

24 Section 4. This act shall become effective July 1,
25 2011, following its passage and approval by the Governor, or
26 its otherwise becoming law.