

SB302 INTRODUCED



1 SB302
2 YFGA26N-1
3 By Senator Smitherman
4 RFD: Judiciary
5 First Read: 04-Apr-24



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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



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

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

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

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

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

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

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57 A BILL
58 TO BE ENTITLED
59 AN ACT

60
61 Relating to the Fair Campaign Practices Act; to amend
62 Section 17-5-2, Code of Alabama 1975, to revise the
63 definitions of "electioneering communication," "expenditure,"
64 and "political action committee;" to amend Section 17-5-8,
65 Code of Alabama 1975, to revise the reporting requirements for
66 electioneering communications and remove certain exceptions
67 relating to electioneering communications reporting.

68 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

69 Section 1. Sections 17-5-2 and 17-5-8, Code of Alabama
70 1975, are amended to read as follows:

71 "§17-5-2

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

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

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

84 b. Received contributions or made expenditures in



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

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

92 (3) CONTRIBUTION.

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

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

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

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

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



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

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

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

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

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

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

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



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

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

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

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

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

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

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



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

171 (6) ELECTIONEERING COMMUNICATION.

172 a. Any ~~communication~~ paid advertising disseminated
173 through any federally regulated broadcast media, any mass
174 mailing of more than 500 pieces of identical or substantially
175 similar materials within any 30-day period, ~~or other~~
176 distribution, ~~electronic communication~~ paid digital
177 advertising, any phone bank of more than 500 telephone calls
178 of an identical or substantially similar nature within any
179 30-day period, or ~~publication~~ paid print advertising which:
180 (i) contains the name or image of a candidate; (ii) is made
181 within ~~120 days of an~~ 30 days before a primary or primary
182 runoff election or 60 days before any other election in which
183 the candidate will appear on the ballot; (iii) is targeted to
184 the relevant electorate in the geographic area the candidate
185 would represent if elected; (iv) the only reasonable
186 conclusion to be drawn from the presentation and content of
187 the communication is that it is ~~intended to influence the~~
188 ~~outcome of an election~~ an appeal to vote for or against a
189 specific candidate; and ~~(iv)~~ (v) entails an expenditure in
190 excess of one thousand dollars (\$1,000).

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

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



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197 foregoing.

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

206 (7) EXPENDITURE.

207 a. The following shall be considered expenditures:

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

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

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

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

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

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



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

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

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

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

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

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



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

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

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

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

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

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

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



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

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

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

308 (15) PRINCIPAL CAMPAIGN COMMITTEE. The principal



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309 campaign committee designated by a candidate under Section
310 17-5-4. A political action committee established primarily to
311 benefit an individual candidate or an individual elected
312 official shall be considered a principal campaign committee
313 for purposes of this chapter.

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

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

327 (18) STATE. The State of Alabama.

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

332 (b) The words and terms used in this chapter ~~shall~~ have
333 the same meanings respectively ascribed to them in Section
334 36-25-1."

335 "§17-5-8

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



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

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

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

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

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



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

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

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

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



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393 that reporting period and disbursements made from same.

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

410 (3) The total amount of other contributions received
411 during the calendar year but not reported under subdivision
412 (2).

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

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

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



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421 committee during the calendar year.

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

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

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

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

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



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

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

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

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



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

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

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

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



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

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

513 Section 2. This act shall become effective on October
514 1, 2024.