

1 SB123
2 79535-1
3 By Senators Lindsey, Barron, Tanner, Figures, Sanders, Denton,
4 McClain, Little (T), Smitherman, Singleton, Escott, Butler,
5 Ross, Penn, Roberts, and Means
6 RFD: Constitution, Campaign Finance, Ethics, and Elections
7 First Read: 10-JAN-06

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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 17-22A-2, 17-22A-8, and 17-22A-12,
24 Code 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 17-22A-2 (3), Code of Alabama 1975, and with respect to
9 constitutional amendments proposed in a session of the Alabama
10 Legislature. The Legislature further finds that these
11 compelling interests should be designed to protect the
12 public's right to know while protecting free speech of
13 individuals as guaranteed in the U.S. Constitution and the
14 Constitution of Alabama of 1901.

15 (b) Currently, the Fair Campaign Practices Act,
16 Section 17-22A-1, et seq., Code of Alabama 1975, regulates the
17 disclosure of contributions and expenditures made for the
18 purpose of influencing the outcome of an election. This
19 amendatory act is intended to regulate the disclosure of
20 contributions and expenditures for "electioneering
21 communications" which currently do not fall within the ambit
22 of the Fair Campaign Practices Act.

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

26 Section 2. Section 17-22A-2, Code of Alabama 1975,
27 is amended to read as follows:

1 "§17-22A-2.

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

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

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

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

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

1 "2. Five thousand dollars (\$5,000) or more, with a
2 view toward bringing about nomination or election to any state
3 office, excluding legislative office, filled by election of
4 the registered voters of any circuit or district.

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

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

13 "(2) CONTRIBUTION.

14 "a. Any of the following shall be considered a
15 contribution:

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

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

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

1 "4. The payment of compensation by any person for
2 the personal services or expenses of any other person if the
3 services are rendered or expenses incurred on behalf of a
4 candidate, political committee, or political party without
5 payment of full and adequate compensation by the candidate,
6 political committee, or political party. Provided, however,
7 that the payment of compensation by a corporation for the
8 purpose of establishing, administering, or soliciting
9 voluntary contributions to a separate, segregated fund as
10 permitted by Section 10-1-2, shall not constitute a
11 contribution.

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

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

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

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

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

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

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

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

25 "(4) ELECTIONEERING COMMUNICATION. Any communication
26 disseminated through any federally regulated broadcast media,
27 any mailing, or other distributions, phone bank, or

1 publication which a. contains the name or image of a candidate
2 or a statement, description, or summary of a proposition in an
3 election or of a proposed constitutional amendment then being
4 considered by the Alabama Legislature during a session of the
5 Legislature; b. except with respect to a proposed
6 constitutional amendment then being considered by the
7 Legislature, is made within 90 days of an election in which
8 the candidate or proposition included in the electioneering
9 communication will appear on the ballot; c. the only
10 reasonable conclusion to be drawn from the presentation and
11 content of the communication is that it is intended to
12 influence the outcome of an election or of a vote of the
13 Alabama Legislature on a proposed constitutional amendment;
14 and d. entails an expenditure in excess of one thousand
15 dollars (\$1,000) in connection with a local election or an
16 election for members of the Alabama Legislature or entails an
17 expenditure in excess of ten thousand dollars (\$10,000) in
18 connection with a constitutional amendment then being
19 considered by the Alabama Legislature during a session of the
20 Legislature or in connection with a state election.

21 ~~"(4)~~ (5) EXPENDITURE.

22 "a. The following shall be considered expenditures:

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

26 "2. A contract or agreement to make any purchase,
27 payment, distribution, loan, advance, deposit, or gift of

1 money or anything of value, for the purpose of influencing the
2 result of an election.

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

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

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

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

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

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

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

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

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

15 "~~(5)~~ (6) IDENTIFICATION. The full name and complete
16 address.

17 "~~(6)~~ (7) LOAN. A transfer of money, property, or
18 anything of value in consideration of a promise or obligation,
19 conditional or not, to repay in whole or part.

20 "~~(7)~~ (8) LOCAL OFFICE. Any office under the
21 constitution and laws of the state, except circuit, district,
22 or legislative offices, filled by election of the registered
23 voters of a single county or municipality, or by the voters of
24 a division contained within a county or municipality.

25 "~~(8)~~ (9) PERSON. An individual, partnership,
26 committee, association, corporation, labor organization, or
27 any other organization or group of persons.

1 "~~(9)~~ (10) PERSONAL AND LEGISLATIVE LIVING EXPENSES.

2 Household supplies, personal clothing, tuition payments,
3 mortgage, rent, or utility payments for a personal residence;
4 admission to an entertainment event or fees for a country club
5 or social club, unless tied to a specific campaign event or
6 functions involving constituents; and any other expense,
7 excluding food and beverages, that would exist irrespective of
8 the candidate's campaign or duties as a Legislator. Personal
9 and legislative living expenses shall not include expenses for
10 food, beverages, travel, or communications incurred by the
11 Legislator in the performance of the office held.

12 "~~(10)~~ (11) POLITICAL COMMITTEE. Any political

13 committee, club, association, principal campaign committee,
14 political party, or other group of one or more persons which
15 receives or anticipates receiving contributions or makes or
16 anticipates making expenditures to or on behalf of any elected
17 official, proposition, candidate, principal campaign committee
18 or other political committee. For the purposes of this
19 chapter, an individual who makes a personal political
20 contribution, other than a candidate who makes a contribution
21 to himself or herself, shall not be considered a political
22 committee.

23 "~~(11)~~ (12) PRINCIPAL CAMPAIGN COMMITTEE. The

24 principal campaign committee designated by a candidate under
25 Section 17-22A-4. A political committee established primarily
26 to benefit an individual candidate or an individual elected

1 official shall be considered a principal campaign committee
2 for purposes of this chapter.

3 "~~(12)~~ (13) PROPOSITION. Any proposal for submission
4 to the general public for its approval or rejection, including
5 proposed as well as qualified ballot questions.

6 "~~(13)~~ (14) PUBLIC OFFICIAL. Any person elected to
7 public office, whether or not that person has taken office, by
8 the vote of the people at the state, county, or municipal
9 level of government or their instrumentalities, including
10 governmental corporations, and any person appointed to a
11 position at the state, county, or municipal level of
12 government or their instrumentalities, including governmental
13 corporations. For purposes of this chapter, a public official
14 includes the chairs and vice-chairs or the equivalent offices
15 of each state political party as defined in Section 17-16-2.

16 "~~(14)~~ (15) STATE. The State of Alabama.

17 "~~(15)~~ (16) STATE OFFICE. All offices under the
18 constitution and laws of the state filled by election of the
19 registered voters of the state or of any circuit or district
20 and shall include legislative offices.

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

24 Section 3. Section 17-22A-8, Code of Alabama 1975,
25 is amended to read as follows:

26 "§17-22A-8.

1 "(a) The treasurer of each principal campaign
2 committee or other political committee shall file with the
3 Secretary of State or judge of probate, as designated in
4 Section 17-22A-9, reports of contributions and expenditures at
5 the following times in any year in which an election is held:

6 "(1) ~~Forty-five~~ Between 45 and 40 days before and
7 between 10 and five days before the date of any election for
8 which a political committee receives contributions or makes
9 expenditures with a view toward influencing such election's
10 result;

11 "(2) Provided, however, that a report shall not be
12 required except between five and 10 days before a run-off
13 election.

14 "(b) All candidates, political committees, and
15 elected state and local officials covered under the provisions
16 of this chapter, shall annually file with the Secretary of
17 State or judge of probate, as designated in Section 17-22A-9,
18 reports of contributions and expenditures made during that
19 year. The annual reports required under this subsection shall
20 be made on or before January 31 of the succeeding year.

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

22 "(1) The amount of cash or other assets on hand at
23 the beginning of the reporting period; provided, however, that
24 the initial report required by this chapter shall include cash
25 and assets acquired from the date of July 1, 1988, and forward
26 until the end of that reporting period and disbursements made
27 from same;

1 "(2) The identification of each person who has made
2 contributions to such committee or candidate within the
3 calendar year in an aggregate amount greater than ~~\$100.00~~ two
4 hundred dollars (\$200), together with the amount and date of
5 all such contributions; provided, however, in the case of a
6 political committee, other than a principal campaign
7 committee, identification shall mean the name and city of
8 residence of each person who has made contributions within the
9 calendar year in an aggregate amount greater than ~~\$100.00~~ two
10 hundred dollars (\$200);

11 "(3) The total amount of other contributions
12 received during the calendar year but not reported under
13 subdivision (c) (2) of this section;

14 "(4) Each loan to or from any person within the
15 calendar year in an aggregate amount greater than ~~\$100.00~~ two
16 hundred dollars (\$200), together with the identification of
17 the lender, the identification of the endorsers, or
18 guarantors, if any, and the date and amount of such loans;

19 "(5) The total amount of receipts from any other
20 source during such calendar year;

21 "(6) The grand total of all receipts by or for such
22 committee during the calendar year;

23 "(7) The identification of each person to whom
24 expenditures have been made by or on behalf of such committee
25 or elected official within the calendar year in an aggregate
26 amount greater than ~~\$100.00~~ two hundred dollars (\$200), the
27 amount, date, and purpose of each such expenditure, and, if

1 applicable, the designation of each constitutional amendment
2 or other proposition with respect to which an expenditure was
3 made;

4 "(8) The identification of each person to whom an
5 expenditure for personal services, salaries, and reimbursed
6 expenses greater than ~~\$100.00~~ two hundred dollars (\$200) has
7 been made, and which is not otherwise reported or exempted
8 from the provisions of this chapter, including the amount,
9 date and purpose of such expenditure;

10 "(9) The grand total of all expenditures made by
11 such committee or elected official during the calendar year;
12 and

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

18 "(d) Each report required by this section shall be
19 signed and filed by the elected official or on behalf of the
20 political committee by its chairman or treasurer and, if filed
21 on behalf of a principal campaign committee, by the candidate
22 represented by such committee. There shall be attached to each
23 such report an affidavit subscribed and sworn to by the
24 official or chairman or treasurer and, if filed by a principal
25 campaign committee, the candidate represented by such
26 committee, setting forth in substance that such report is to
27 the best of his or her knowledge and belief in all respects

1 true and complete, and, if made by a candidate, that he or she
2 has not received any contributions or made any expenditures
3 which are not set forth and covered by such report.

4 "(e) In connection with any electioneering
5 communication paid for by a person, nonprofit corporation,
6 entity, principal campaign committee or other political
7 committee or entity, the payor shall disclose its
8 contributions and expenditures in accordance with this
9 section. The disclosure shall be made between 45 and 40 days
10 and between 10 and five days before the date of any election
11 in connection with which any person, nonprofit corporation,
12 entity, principal campaign or other political committee or
13 entity has paid for an electioneering communication; provided,
14 however, no duplicate reporting shall be required by a
15 political committee. In addition, any person, nonprofit
16 corporation, or entity, other than a principal campaign
17 committee or political committee that engages in an
18 electioneering communication in excess of the amounts set
19 forth in Section 17-22A-2(a)(4) shall file no later than 11:00
20 A.M. Central Time Zone on the day before the election for
21 which the electioneering communication was made a final report
22 disclosing its contributions and expenditures in accordance
23 with this section. Such report shall be filed so that it is
24 actually received by the Secretary of State or judge of
25 probate, as appropriate, no later than 11:00 A.M. Central Time
26 Zone either by hand delivery, facsimile transmission, or
27 electronically. With respect to electioneering communications

1 related to a proposed constitutional amendment then being
2 considered by the Alabama Legislature during a session of the
3 Legislature, disclosure must be made within 10 days of paying
4 for such electioneering communication.

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

14 "(g) Notwithstanding the disclosure requirements of
15 this section, the provisions of this section shall not be
16 interpreted to nor shall they require any disclosure for
17 expenses incurred for any electioneering communication used by
18 any membership or trade organization to communicate with or
19 inform its members, its members' families, or its members'
20 employees. The members of any organization need not be
21 disclosed unless membership dues are used for electioneering
22 communications.

23 "(h) The corporate contribution limits contained in
24 Sections 10-2A-70, 10-2A-70.1, and 10-2A-70.2 shall not apply
25 in any respect to an electioneering communication; provided,
26 however, the corporate contribution limits contained in
27 Sections 10-2A-70, 10-2A-70.1, and 10-2A-70.2 shall continue

1 in force and effect for contributions by corporations to
2 principal campaign committees, political committees, and to
3 political parties."

4 Section 4. Section 17-22A-12, Code of Alabama 1975,
5 is amended to read as follows:

6 "§17-22A-12.

7 "Any paid political advertisement or electioneering
8 communication appearing in any print media or broadcast on any
9 electronic media shall ~~be clearly identified or marked as a~~
10 ~~paid advertisement~~ clearly and distinctly identify the entity
11 responsible for paying for the advertisement or electioneering
12 communication. It shall be unlawful for any person, nonprofit
13 corporation, entity, candidate, principal campaign committee,
14 nonprofit corporation, entity, or other political committee to
15 broadcast, publish or circulate any campaign literature, ~~or~~
16 political advertisement, or electioneering communication
17 without a notice appearing on the ~~face or front page of any~~
18 printed matter with a clear and unmistakable identification of
19 the entity responsible for directly paying for the
20 advertisement or electioneering communication, or on the
21 broadcast at the beginning, during, or end of a radio or
22 television spot, stating that the communication was a paid
23 advertisement, clearly identifying the entity directly
24 responsible for paying for the advertisement or electioneering
25 communication, and giving the identification of the person,
26 nonprofit corporation, entity, principal campaign committee or

1 other political committee or entity that paid for ~~or otherwise~~
2 ~~authorized~~ such communication."

3 Section 5. The provisions of this act are severable.
4 If any part of this act is declared invalid or
5 unconstitutional, that declaration shall not affect the part
6 which remains.

7 Section 6. This act shall become effective July 1,
8 2006, following its passage and approval by the Governor, or
9 its otherwise becoming law.