Lynda J. Jacobsen *Legislative Service Commission*

H.B. 618

124th General Assembly
(As Introduced)

Rep. Flannery

BILL SUMMARY

- Prohibits a person holding an elective state office who is a candidate for the same or another elective state office, from appearing in public service announcements or informational advertisements in the six months preceding the general election.

CONTENT AND OPERATION

Existing advertising restrictions

Existing law regulates the financing and, to a certain extent, the content of advertising in support of or in opposition to a candidate. For example, candidates are required to file campaign finance statements identifying contributions made and received and expenditures made, and political advertising in support of or in opposition to a candidate must contain certain information identifying the source of the communication (secs. 3517.10 and 3517.20—not in the bill). The Campaign Finance Law does not currently regulate advertising or public service announcements in which a candidate for a particular office may participate, if the communication is not for the purpose of supporting or opposing a particular candidate.

Changes proposed by the bill

The bill prohibits any person who (1) holds an elective state office and (2) is a candidate for nomination or election to the same or another elective state office, from doing either of the following during the six months immediately preceding the general election at which the person is seeking election to office (sec. 3599.07(B)):[1]

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[1] *The bill defines "elective state office" as the office of Governor, Lieutenant Governor, Secretary of State, Auditor of State, Treasurer of State, Attorney General, Chief Justice*

- Appearing on radio or television in a public service announcement or informational advertisement that relates to the performance of the duties of the elective state office that the person holds;

- Authorizing the person's name to appear in such an advertisement or announcement.

It appears, however, that a person's name could appear in such an advertisement or announcement during the proscribed period, as long as the authorization for the use of the person's name is made prior to six months before the date of the general election.

Anyone violating this prohibition is guilty of a misdemeanor of the first degree (sec. 3599.07(C)). Such a misdemeanor is punishable by imprisonment of not more than six months, a fine of not more than $1,000, or both (sec. 2929.21—not in the bill).

COMMENT

1. ***Constitutional issues***. There are two potential constitutional problems with the bill; if enacted and then subjected to a court challenge, a court might view it as violating either the First Amendment's freedom of speech provisions or the Equal Protection Clause of the 14th Amendment.

The bill restricts the ability of elective state officeholders to appear in public service announcements or informational advertisements. But, by not defining what constitutes a "public service announcement" or "informational advertisement," the bill is unclear what conduct is actually prohibited. Without definitional guidance, a person might restrict his or her speech beyond that required in order to avoid potential criminal penalties--the First Amendment issue.

Second, since only elective state officeholders are prohibited from appearing in public service announcements or information advertisements, a court could find an equal protection problem with the bill. Other candidates for the same office, who may hold similarly high profile positions, would not be subject to the prohibition. By not subjecting, then, all candidates for the same office to the same requirements, a court could determine that this provision violates the Equal Protection Clause of the 14th Amendment.

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or Justice of the Supreme Court, member of the General Assembly, or member of the State Board of Education (sec. 3599.07(A)).

2. ***Statutory conflicts***. It is possible that the bill's prohibition could conflict with statutory duties imposed on elective state officeholders under existing law. Generally, courts interpret explicit provisions as controlling over more general provisions. Thus, if an elective state officeholder has an explicit statutory duty to make certain public notices, a court could enforce that specific statutory provision over the bill's more general prohibition.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	07-25-02	p. 1986