

IN THE CIRCUIT COURT OF THE  
SECOND JUDICIAL CIRCUIT IN AND  
FOR LEON COUNTY, FLORIDA

RAY SMITHERS,

Plaintiff,

-vs-

CASE NO. 96-5705

FLORIDA ELECTIONS COMMISSION,  
et al.,

Defendants.

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**Amended Summary Judgment**

THIS ACTION is before the Court upon the Order of the First District Court of Appeal relinquishing jurisdiction for the purpose of the Court revisiting its previously entered Summary Judgment in light of certain agreements reached by the parties. As a result the Court hereby withdraws its previously entered Summary Judgment and enters the following:

~~THIS ACTION was heard on plaintiffs motion for summary judgment, defendants' motion to dismiss or to abate, and defendants' motion for summary judgment, and~~

THE COURT FINDS that:

1. The parties have stipulated, and the court agrees, that there are no disputed issues of material fact.
2. This Court has concurrent jurisdiction with the Florida Elections Commission under the facts presented in this proceeding. ~~It would serve no useful propose to refer the matter to the Commission to make findings of fact to which the parties have already stipulated. Moreover, any legal~~

~~issues which either party may wish to raise on appeal can be reviewed by the First District Court of Appeal in an appellate proceeding arising from an adverse ruling either by this Court or by the Commission.~~

3. On June 28, 1996, the Florida Elections Commission advised plaintiff that he was under investigation. He was told:

“... the Division of Elections has determined that it will investigate the following:

Section 106.14'(1), Florida Statutes, failure of a person to mark all political advertisements as a "pd. Pol. Adv " or a "paid political advertisement" and to identify the sponsor."

4. The staff of the Florida Elections Commission, as is required whenever it receives a legally sufficient sworn complaint, did institute an investigation of Plaintiff for two possible violations of the election code from which Plaintiff seeks declaratory judgment and injunctive relief: The Commission staff, however, because of the pendency of this action has never made any findings or recommendations to the Commission and the Commission has never made any determination that Plaintiff has violated any provision of Chapter 106.

(a) First, Plaintiff was accused by a sworn complaint filed with the Commission of sending to an unnamed source a facsimile transmission of a newspaper article criticizing Rep. Ken Pruitt (R-81). The alleged violation of the election code was that the fax was anonymous, and did not have on its face "paid political advertisement." For the purposes of this proceeding, Defendants abandon the allegation.

(b) Second, Plaintiff was accused by a sworn complaint filed with the Commission of purchasing and distributing approximately one thousand rear window stickers which said in bold letters "Dump Pruitt." The price of the one thousand rear window stickers was more than \$ 100, but less than \$500. It

is uncertain as to how many of the stickers were distributed during the time period when there was a Pruitt candidacy. However, certain of the stickers were disseminated to the public during the election cycle and thus did advocate Pruitt's defeat as a candidate. Therefore, in light of the fact that some at least of the stickers were "political advertisements, the alleged violation of the election code similarly was that the rear window stickers were ~~are~~ anonymous (the rear window stickers do have Plaintiff's telephone number displayed in large type, but not his name) and did ~~do~~ not have on their face "paid political advertisement." The Court can make no specific finding as to the value of the stickers distributed during the election cycle, which are the only "political advertisements" at issue herein, except to observe that the dollar value was surely "modest." and was likely under \$100.00

5. Plaintiff acknowledges that the "Pruitt" in "Dump Pruitt" referred to Ken Pruitt, the state representative from Port St. Lucie.

6. Plaintiff also acknowledges that the rear window stickers do not technically comply with Section 106.143(1)(a), Florida Statutes (1997).

7. The actions of Plaintiff were not part of an organized political campaign. Nor did Plaintiff act has a member of a political action committee. Plaintiff's actions were an individual protest against a position taken by his elected state representative with which he strongly disagreed.

8. The law applicable to this case regarding the required disclosure of Plaintiff's identity as the author of the above described rear window stickers is essentially governed by three cases Doe v Mortham, 708 So. 2d 929 (Fla. 1998), McIntyre v Ohio Elections Commission, 514 U S 334 (1995), and Buckley v. Valeo, 424 U.S. 1 (1976).

9. In light of the facts discussed above, the political speech involving the required disclosure of Plaintiff's identity on a political advertisement questioned by Defendants in this

*proceeding may be summarized as the actions of a single individual conducting a private protest against an elected public official ~~with an insignificant expenditure of personal funds~~ using his own “modest resources.”*

10. This is precisely the type of activity which the Courts have held may not be regulated by the Government. To the extent that the Defendants seek to investigate and conceivably take action against Plaintiff for failing to disclose his identity as required by Section 106.143(l), Florida Statutes (1997), the Court finds that this required disclosure is unenforceable under is inapplicable to the facts of this case.

11. The required generic disclosure “Paid Political Advertisement” which was also not contained on the rear window stickers is, however, another matter. Nevertheless the Court declines to reach the question as to whether such a disclosure may be constitutionally required under the facts of this case. In addition, because the Plaintiff has not raised the issue and there is no evidence that the Defendants intend to institute any proceeding, the Court also declines to reach the question of the applicability of the independent expenditure reporting requirements of Section 106.071, Florida Statutes, to the facts of this case.

12. The Court’s decision to take no action and to make no finding as to the enforceability of the generic disclosure requirement is based upon the fact that the Defendants have represented to the Court that, in order for a violation justifying any action by the Florida Elections Commission to be found, the act must be “willful” (Sections 106.26, 106.37, Florida Statutes). Based upon the facts presented, the Court finds that Plaintiff’s actions were not “willful” and, in light of the two year limitation on actions before the Commission (Section 106.28, Florida Statutes), finds that there is no likelihood that any action against Plaintiff will arise again under these facts.

13. As a result, the Court finds no need to reach the question as to whether the generic disclosure requirement can be constitutionally applied to Plaintiff's political advertisement at issue herein.

IT IS THEREFORE ADJUDGED that:

14. Defendants' motion to dismiss or abate is denied.

15. Defendants' motion for summary judgment is denied.

16. Defendants' are permanently enjoined from further investigating and prosecuting Plaintiff, under the facts of this case, for any alleged violation of Section 106.143 (1), Florida Statutes (1997) relating to the required disclosure of Plaintiff's identity on the political advertisements at issue. For the reasons set forth above, the Court declines to reach the issue of the lack of the required generic disclosure.

17. The parties have agreed that Plaintiff is a prevailing party as to the proceedings before this Court for purposes of an award of attorneys fees, costs and expenses. The Court reserves ruling on the amount of Plaintiffs request for attorney's fees, expenses and court costs to be awarded.

ORDERED in Tallahassee, Florida on [August 23, 1999]

[Ralph Smith] \_\_\_\_\_  
Circuit Judge

Copies furnished to

Larry Helm Spalding  
ACLU Foundation of Florida, Inc.  
3 14 West Jefferson Street  
Tallahassee, Florida 32301

John J. Rimes, III