

SENATE, No. 821

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 22, 1996

By Senators McGREEVEY and Schluter

1 ANACT concerning campaign advertising and supplementing Title 19
2 of the Revised Statutes.

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4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

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7 1. The Legislature finds and declares that:

8 a. the United States Constitution and the Constitution of the State
9 of New Jersey guarantee the citizens of this State the fundamental
10 right to freedom of political expression;

11 b. in recognition of the essential importance of this right to the
12 democratic process, the federal and State courts have accorded
13 political speech the highest degree of protection and subjected
14 government regulation thereof to the strictest scrutiny;

15 c. for over two centuries the unfettered expression of ideas and
16 discussion of issues in the course of campaigns for public office have
17 helped to preserve our democratic form of government;

18 d. while campaigns for public office have traditionally been far
19 from sedate, the vicious personal attacks, deceptive statements and
20 outright lies which now constitute so-called "negative advertising"
21 threaten to undermine the political process;

22 e. part of the cost of democracy is toleration of offensive speech
23 and much of what constitutes "negative advertising" is protected
24 speech which is beyond the reach of government regulation;

25 f. nevertheless, the courts have recognized that certain types of
26 deliberately false statements made in the context of a campaign for
27 public office may be subject to punishment; and

28 g. it is, therefore, time for New Jersey to join approximately 20
29 other states which penalize certain types of deliberately false campaign
30 advertising.

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32 2. As used in this act:

33 "campaign advertisement" means a press release, pamphlet, flyer,
34 form letter, sign, billboard or paid advertisement printed in any
35 newspaper or other publication or broadcast on radio or television, or
36 any other form of advertising directed to the electorate, which urges
37 the election or defeat of any candidate for nomination or election to a

1 State or local elective public office;

2 "material fact" means a fact about a candidate for nomination or
3 election to a State or local elective public office which has real
4 importance or significant consequences in regard to how a reasonably
5 prudent person views that candidate and includes, but is not limited to,
6 the following facts about a candidate: the titles of any offices held or
7 previously held, status as an incumbent, academic degrees or
8 certificates held, the dates or location of education or training,
9 criminal history, mental health history, military record, voting record
10 or endorsements by others.

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12 3. No person, with intent to affect the outcome of a campaign for
13 nomination or election to a State or local elective public office, shall
14 publish, broadcast or otherwise disseminate to members of the public
15 any campaign advertisement which contains a false statement of
16 material fact about a candidate for nomination or election to that
17 office, with knowledge that the statement is false or with reckless
18 disregard for whether it is false. The provisions of this section shall
19 apply to statements made on behalf of, or in opposition to, a candidate
20 and to statements made about oneself or another.

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22 4. Any person who is found to have violated the provisions of this
23 act shall be guilty of a disorderly persons offense and subject to up to
24 six months imprisonment or a fine of up to \$1,000, or both.

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26 5. a. The provisions of this act shall not be construed to apply to
27 any bona fide news item or editorial contained in any publication of
28 bona fide general circulation. No penalty shall be imposed under this
29 act upon acts done by the publisher, owner, agent, or employee of a
30 newspaper or periodical or a radio or television station in the
31 publication or dissemination of any advertisement.

32 b. The provisions of this act shall not be construed to apply to any
33 candidate for an office of a political party.

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35 6. This act shall take effect immediately.

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STATEMENT

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40 This bill would prohibit certain types of false statements in
41 campaign advertising.

42 The bill provides that no person, with intent to affect the outcome
43 of a campaign for nomination or election to a State or local elective
44 public office, shall publish, broadcast or otherwise disseminate to the
45 public any campaign advertisement which contains a false statement of
46 material fact about a candidate for nomination or election to a State or

1 local elective public office, with knowledge that the statement is false
2 or with reckless disregard for whether it is false. The prohibition
3 would apply to statements made on behalf of, or in opposition to, a
4 candidate and to statements made about oneself or another.

5 The bill defines a "material fact" as a fact about a candidate which
6 has real importance or significant consequences in regard to how a
7 reasonably prudent person views a candidate. It includes, but is not
8 limited to, the titles of any offices held or previously held, status as an
9 incumbent, academic degrees or certificates held, the dates or location
10 of education or training, criminal history, mental health history,
11 military record, voting record or endorsements by others.

12 A violation of the bill's provisions would be a disorderly persons
13 offense and punishable by up to six months' imprisonment, a fine of up
14 to \$1,000, or both.

15 A bona fide news item or editorial contained in any publication of
16 bona fide general circulation would be exempt from coverage under
17 the bill. In addition, acts done by the publisher, owner, agent or
18 employee of a newspaper or periodical or a radio or television station
19 in the publication of any advertisement would not be subject to penalty
20 under the bill.

21 The bill also incorporates the exemption from penalty under the
22 legislation of acts by media publishers, owners, agents and employees
23 in the publication of any advertisement.

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28 Prohibits certain false statements in campaign advertisements.