ORIGINAL

IN THE SUPREME COURT OF FLORIDA

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JOHN DOE, et al.,

Appellants,

CASE NO. 88,677
FIRST DCA CASE NO, 96-2583

vs.

SANDRA MORTHAM, etc.

Appellee.
_____/

ON CERTIFICATION BY THE
FIRST DISTRICT COURT OF APPEAL
AS A OUESTION OF GREAT PUBLIC IMPORTANCE

APPELLEE MORTHAM'S ANSWER BRIEF ON THE MERITS

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PRELIMINARY STATEMENT

Appellants in this cause shall be referred to collectively as "Does"; appellee shall be referred to by her last name, Mortham.

STATEMENT OF THE CASE AND FACTS

Because the precise nature of the Does' claims is not set out in their statement of the case and facts, it is necessary for Mortham to do so in order for this Court to properly gauge the extent of the Does' interests in the political process.

As the complaint points out (R1-3), the Does want to make independent expenditures using their own funds, either on their own or with others, both for and against candidates and issues, in amounts that will exceed $100 aggregate, for the purpose of engaging in the entire panoply of political activities. And they want to do all of these activities anonymously.

SUMMARY OF THE ARGUMENT

Does' argument for an immutable right to independent expenditure anonymity based on the holding in McIntyre v. Ohio Board of Elections, U. S. ___, 115 s. Ct. 1511, 131 L. Ed. 2d 426 (1995) seeks to expand the scope of that ruling, sweeps far too broadly, and contravenes well-established jurisprudence rejecting anonymity, thereby precluding the vitality of their facial constitutional challenge.

McIntyre involves only a statute which totally banned the distribution of anonymous political campaign literature as it applied to her personal distribution, paid for from her own "modest resources, " 115 S. Ct. at 1521, of a pamphlet on a particular issue. The Does want this Court to expand that holding to cover statutes that address all independent expenditures for issues and candidates (§ 106.07 1, Fla. Stat.), as well as statutes that deal with all political advertisements (§ 106.143, Fla. Stat.) and all associational endorsements or oppositions (§ 106.144, Fla. Stat.)---not only those pertaining to personally distributed political pamphlets.

Against this backdrop, $106.071, by its application only to independent expenditures in excess of $100, already addresses McIntvre's narrow concern with personal pamphleteering on issues through the expenditure of one's modest resources.

The broad coverage of $106.143 has already received constitutional sanctioning by this Court in Winn-Dixie Stores. Inc. v. State, 408 So.2d 211, 213 (Fla. 198 1) and the federal circuit court in Let's Help Florida v. McCrary, 62 1 F. 2d 195, 201 (5th Cir. 1980); affirmed, 454 U.S. 130, cert. denied, 454 U.S. 1142 (1982); and the Does have made no showing that the endorsement or opposition requirements of § 106.144, in light of First National Bank v. Bellotti, 435 U.S. 765, 98 S. Ct. 1407, 55 L. Ed. 2d 707, reh. denied, 438 U. S. 907, 98 S. Ct. 3126, 57 L. Ed. 2d 1150 (1978) and its progeny, offend their associational rights.

ARGUMENT

THE TRIAL COURT'S GRANT OF SUMMARY JUDGMENT TO MORTHAM IS CORRECT AS A MATTER OF LAW IN THAT THE DOES' CASE AUTHORITY DOES NOT SUPPORT THE FAR-REACHING CAMPAIGN FINANCING ANONYMITY THEY SEEK HERE.

Stripped of the emotive ring of Does' broad constitutional free speech and associational claims, they press their facial challenge to three Florida statutes on the authority of McIntyre v. Ohio Elections Commission, supra. Briefly, the Does contend that this case is absolute authority for an unfettered First Amendment right to anonymity in making independent expenditures in all elections involving candidates and issues, regardless of the amount of the expenditures and the number of people shielded by this shroud of anonymity.

Specifically, the Does challenge §§106.071, 106.143 and 106.144 as facially unconstitutional. As demonstrated below, however, the Does seek to expand McIntyre's narrow holding and supporting rationale to proportions far beyond their particularized status as independent expenditure seekers. In essence, they ask this

Court to throw out the baby with the bath water by arguing for the striking of these statutes in toto.

At the outset, by their representation of political activities in which they wish to engage, the Does do not---and make no attempt to ---bring themselves within the factual circumstances set out in McIntyre. Rather than seeking to print and distribute issue-related pamphlets or leaflets paid for from their own modest resources, they want to engage in the full range of political activity both as to issues and candidates involving unrestricted and financially uncapped advertising in the media, and use of billboards, handouts, and on and on. And they want to do all of this anonymously.

To be sure, certain types of anonymous publications discussing and taking stands on issues enjoy a rich history in our country. See McIntyre, 13 1 L. Ed. 2d at 436-37, fns. 5 and 6. But the authors cited in that case would turn over in the graves if they knew how their efforts are being construed so as to constitutionally sanction the far-reaching, wholesale political activities involving unlimited financial transactions that the Does intend to engage in.

While anonymity as set out in McIntyre enjoys a sanctified place in our nation's history, what the Does seek here curries no such favor and, indeed, anonymity in the political arena is the exception, and not the rule the Does want it

to be.

Moreover, it is axiomatic that in addressing the constitutionality of a statute such as the ones at issue here, the courts look to the entire scheme---in this case Chapter 106, Fla. Stat. which deals with campaign financing---of which the three challenged statutes are a part, see for example, U. S . Taxnavers Party of Florida v. Smith, 871 F. Supp. 426, 432 (N.D. Fla. 1993), aff'd, 51 F. 3d 241 (11th Cir. 1995), taking into account the overriding purpose behind Chapter 106 which is to assure honesty and integrity in campaign and election activities by informing of who gave it and who got it, and thereby discerning the role that money plays in the political process.

Because the courts have rejected broad-based claims of campaign financing anonymity, Does' facial challenge must fail, and their claim for total anonymity beyond McIntyre's scope similarly cannot stand.

A. Section 106.07 1 Passes Constitutional Muster

Interestingly, of the three statutes the Does challenge, § 106.07 1 is the only one that deals specifically with independent expenditures. [1] This statute applies only

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'Section 106.011(5) defines an "independent expenditure" as "an expenditure by a person for the purpose of advocating the election or defeat of a candidate or the approval or rejection of an issue, which expenditure is not controlled by, coordinated with, or made upon consultation with, any candidate, political committee, or agent of such candidate or committee."

to independent expenditures in excess of $100 for each candidate or issue; the statute in McIntyre contained no such limitation. In this light, the subject statute already takes into account the individual pamphleteer who desires to expend his or her "modest resources" in engaging in an historically protected form of speech. And the protection of the individual in expending modest resources in distributing a pamphlet or leaflet on an issue is all that McIntyre addresses. A statutory distinction alone vitiates Does' challenge to this statute. There are, however, other flaws in their argument.

First, the challenged statute deals with candidates and issues. McIntyre deals only with issue campaigns.

The Supreme Court has recognized the differences between support for and opposition to issues on the one hand, and the choice of political candidates on the other. See Citizens Against Rent Control v. City of Berkeley, 454 U.S. 290, 102 S.Ct. 434, 70 L.Ed.2d 492 (1981); First National Bank of Boston v. Bellotti, supra; Buckley v. Valeo, 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976).[2]

In Bellotti, the Court said:

> Referenda are held on issues, not candidates for public

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[2]Other courts have also recognized these differences. See, for example C & C Plywood Corporation v. Hanson, 583 F.2d 424 (9th Cir. 1978) and Bemis Pentecostal Church v. State, 731 S.W. 2d 897 (Term. 1987), appeal dismissed, 485 U.S. 930, reh. denied, 485 U.S. 1025 (1988).

> office. The risk of corruption perceived in cases involving candidate elections (citations omitted) simply is not present in a popular vote on a public issue.

435 U.S. at 790.

In McIntyre, the Supreme Court, relying on Buckley,

> stressed the importance of providing "the electorate with information 'as to where political campaign money comes from and how it is spent by the candidate.'" (Citation omitted.) We observed that the "sources of a candidate's financial support also alert the voter to the interests to which a candidate is most likely to be responsive and thus facilitate predictions of future performance in office." (Citation omitted.) Those comments concerned contributions to the candidate or expenditures authorized by the candidate or his responsible agent. They have no reference to the kind of independent activity pursued by Mrs. McIntyre . Required disclosures about the level of financial support a candidate has received from various sources are supported by an interest in avoiding the appearance of corruption.. . .
>
> * * *
>
> In candidate elections, the Government can identify a compelling state interest in avoiding the corruption that might result from campaign expenditures. Disclosure of expenditures lessens the risk that individuals will spend money to support a candidate as a quid pro quo for special treatment after the candidate is in office. Curriers of favor will be deterred by the knowledge that all expenditures will be scrutinized.. .by the public for just this sort of abuse.

131 L.Ed.2d at 444-46.

And in Berkeley, the Supreme Court specifically recognized the evil of anonymity in approving a law that requires publication of the identity of contributors in advance of an election.

> It is true that when individuals or corporations speak through committees, they often adopt seductive names that may tend to conceal the true identity of the source. Here, there is no risk that the Berkeley voters will be in doubt as to the identity of those whose money supports or opposes a given ballot measure since contributors must make their identities known under (law), which requires publication of a list of contributors in advance of the voting.

454 U.S. at 298.

Yet, despite these recognized differences between campaigns involving candidates on one hand and issues on the other, the Does ask this Court to ignore these distinctions and use the limited holding of McIntyre as the basis for striking the entirety of the statute's coverage.

A second flaw in their argument is that, when pressing a facial challenge, the argument they make here must be the same whether the anonymity seekers are few in number (one, two or three) or many (dozens, hundreds, thousands), and whether the amount expended is "modest" ($100 or less) or unlimited. This is because a facial challenge means that the law is invalid in toto "'and therefore incapable of

any valid application. '" Village of Hoffman Estates v. Flipside, 455 U.S. 489, 102 S.Ct. 1186, 1191 n.5, 71 L.Ed.2d 362 (1982); Whiting v. Town of Westerly, 942 F.2d 18, 21 n.3 (1st Cir. 1991). In determining facial unconstitutionality, this Court has established the following test:

> [T]he vice of constitutional invalidity must inhere in the very terms of the title or body of the act. If this cannot be made to appear from argument deduced from its terms or from matters of which the court can take judicial knowledge, we will not go beyond the face of the act to seek grounds for holding it invalid.

Crandon v. Hazlett, I57 Fla. 574, 26 So. 638, 643 (1946), quoting State v. Armstrong, 127 Fla. 170, 172 So. 861, 862 (1937) (Terrell, J.)

Accordingly, the Does bear the burden of establishing that under no circumstances may a valid application of these statutes be made regardless of the set of circumstances that might be applicable in a particular case.

By way of example, the Does must argue that McIntyre supports the notion that if Ross Perot, wanting to reach out to family, friends, associates, and well-heeled political movers and shakers, surreptitiously formed a group called "Concerned Citizens and Taxpayers"[3] and decided to spend $30 million of his own money to engage in the full panoply of political activities in support of or in

[3]This is the same name chosen by Mrs. McIntyre.

opposition to candidates and issues anonymously, he must be allowed to do so, and the public will never know the true source of this activity.

The fundamental problem with the logical extension of Does' argument is that the courts have rejected blanket anonymity in connection with the financing of campaigns. For example, in Austin v. Michigan Chamber of Commerce, 494 U. S. 652, 110 S. Ct. 1391, 108 L. Ed. 2d 652 (1990), the Supreme Court upheld a statute restricting corporate independent expenditures, including its disclosural requirements. Similarly, a requirement under the Federal Election Campaign Act that a corporation and public interest group identify themselves as providing funding for solicitation of contributions was validated in Federal Election Commission v. Survival Education Fund, Inc., 65 F. 3d 285 (2d Cir. 1995). In Vote Choice, Inc v. Distefano, 4 F. 3d 26, 33 (1st Cir. 1993), that Court, citing Citizens Against Rent Control v. City of Berkeley, 454 U. S. at 300, recognized that "if it is thought wise, legislation can outlaw anonymous contributions." And in Goland v. U. S., 903 F. 2d 1247, 1259-61 (9th Cir. 1990), the Court rejected a claim of a constitutional right to anonymous contributions to a minor party candidate. These cases join Buckley and Bellotti, supra, in flatly rejecting the type of broad-based claim of anonymity pressed by the Does here.

The Does cavalierly contend that the statute's disclaimer does nothing to address corruption of the political process. They are wrong. This statute, by requiring identification, goes a long way toward demonstrating whether the expenditure truly is independent of the candidate or issue sponsors.

The Does' three overbreadth arguments are easily disposed of. First, contrary to their contention as to the statute's application to officials either not facing or not eligible for reelection, this statute deals with candidates. And a candidate is defined by §97.021(3) as one who seeks to qualify, or who is involved in contributions or expenditures for the purpose of securing nomination or election, or who appoints a treasurer and names a primary depository for campaign financing purposes, or who files candidate qualifying papers and is thereby eligible to raise funds and make expenditures. (Parenthetically, one may wonder why anyone would want to spend his or her own money in excess of $100 on a non-candidate; but if someone does, the public certainly has an arguable interest in who is giving, and who is getting, this money so they can determine, among other things, why this is being done.)

Second, to reiterate, while this statute makes no distinction between candidates and issues, McIntyre does. As previously noted, McIntyre deals only with issue campaigns and affords no solace to the Does' candidate-based claims. This is so because, as the cases cited above demonstrate, there are significant differences

between issue-based campaigns and the lesser threat of corruption, and candidate campaigns and the concomitant greater risks of political skullduggery and corruption.

Pointedly, this statute places no restrictions on the amount that may be spent. It is precisely because of this unlimited opportunity to grease the political vine that the public's right to know whether large sums of money are flowing into a campaign and, if so, whether the sums and those behind them are corrupting the process, is of the greatest importance.

Against this backdrop, the Does cite to this Court's decision in Winn-Dixie Stores, Inc. v. State, supra, as supportive of their position.[4] That case deals with a statute that set a limit on political contributions in an issue-based campaign. The asserted interests were "that corporations and wealthy individuals would mask their participation in a referendum campaign by funneling large sums of money into a committee which the public would see only under a innocuous title. ... " However, the statutory system in place then and now in part requires disclosure of corporate status (including officers and directors) as well as individuals who are officials in political action committees, This Court recognizes these---and other---disclosural

[4] We know that this case involves Winn-Dixie; however, under Does' blanket anonymity claim, that identity could well be compromised,

requirements, see 408 So. 2d at 2 13 .[5] A scrutinizing public may then compare lists of names and sufficiently identify who gave it and who got it. The anonymity the Does seek here would eliminate this critical opportunity.

Third, the Does maintain that the state's interest extends only to "expressive activity." That is precisely what a political advertisement is! The American Heritage Dictionary of the English Language (1981) defines "advertise" as "(t)o make public announcement of; especially, to proclaim the qualities or advantages of (a product or business) so as to increase sales. " With specific regard to political advertisements, a former statute, §104.371, Fla. Stat. (1953), defined this phrase as "an expression by any mass media, attracting public attention . . . which shall transmit any idea furthering the candidacy for public office of any person." See Ervin v. Capital Weekly Post, 97 So. 2d 464, 468-69 (Fla. 1957).

Finally on this matter, the filing requirement applies only to substantial, and not modest, expenditures. Obviously, the more money spent, the greater the need for public scrutiny in avoiding corruption. In this light, this statute applies only when an independent expenditure---a clear form of advocacy as defined by §106.011(5)---is made in the amount of $100 or more. Does' arguments directed

[5] As previously noted, this Court recognizes the valuable disclosure requirements of § 106.143 as "provid(ing) adequate disclosure without directly restricting contributions or other important first amendment rights." (Emphasis added.)

to this statute therefore do not withstand analytical scrutiny.

Where, as has already been demonstrated, there are differences between candidate campaigns and issue campaigns, and where there is a stark difference between the statute stricken in McIntyre and the one at issue here, the Does' overreaching claim against § 106 .07 1 cannot stand.

B. Section 106.143 is Constitutional

The Does' second attack continues their argument for unfettered anonymity by the striking of this provision in its entirety. However, this statute addresses more than McIntyre-type independent expenditures. As previously demonstrated, the holding in McIntyre is directed exclusively to an individual who personally seeks to voice an opinion with respect to an issue by circulating or distributing an anonymous leaflet prepared or paid for by that individual. Against this backdrop, Does' challenge can only be directed to the precise situation found in McIntyre; McIntyre is not authority for the broad-based challenge they make here; McIntyre has no application to campaign contributions or expenditures for or against particular political candidates, or similar activities involving groups or individuals pertaining to issues (other than the person making the independent expenditure from modest resources).

Stripped of its gloss, Does' claim calls for the constitutional sanctioning of anonymity in connection with the financing of political campaigns, with the choice of anonymity being wholly that of the contributor or source of expenditure. The specter referenced in Buckley of an anonymous contributor devising a scheme of multiple anonymous designations in order to pour tens of thousands of dollars of his or her money into a candidate's treasury, 424 U.S. at 27, is reason enough to reject Does' overbroad reading of McIntyre. Moreover, the evils wrought by their broad-based claims here are graphically set out in the affidavit of David A. Rancourt, Director of the Division of Elections, Florida Department of State. (R10, attachment.)

McIntyre simply is not authority for transforming to anonymity all financial transactions associated with political activity.

In fact, the federal courts already have blessed various provisions of Chapter 106, Fla. Stat., pertaining to campaign financing despite First Amendment claims. In Let's Heln Florida v. McCrary, supra, the Court held that § 106.07, Fla. Stat., which requires a political committee to file information about each contribution and contributor, and the subject statute---5106.143, Fla. Stat., [6]---which requires

[6] This Court, as demonstrated by Winn-Dixie Stores. Inc., supra, and the old Fifth Circuit are of a like mind on this statute.

disclosure of the source of payment for all political advertisements and campaign literature and makes this information available to the public and the media, provide adequate disclosure of large contributors without directly restricting contributions or without infringing on other important First Amendment rights.

In Falzone v. State, 500 So.2d 1337 (Fla. 1987), this Court held that a requirement that political committees file a statement of organization, while impinging on First Amendment rights, is supported by a compelling state interest of informing the electorate as to who is involved in raising and spending money for elections and thus was constitutional. And in Ferre v. State ex rel. Reno, 478 So.2d 1077 (Fla. 3d DCA 1985), approved, 494 So.2d 214 (Fla. 1986), cert. denied, 481 U.S. 1037 (1987), the court found that certain provisions of Chapter 106 do not unconstitutionally interfere with freedom of political association in violation of the First Amendment in view of the compelling state interests involved, including prevention of corruption and the appearance of corruption, and the goal of allowing the public to be informed before an election of the identities of persons contributing to the campaign of a particular candidate.

These cases demonstrate that, at least with respect to the choice among candidates for public office, the state's compelling interests in informing the public of "who gave it, who got it" overcome Does' First Amendment claim here with

regard to candidate elections. In fact, the Court in C & C Plywood Corp., 583 F. 2d at 425, specifically held that it is constitutionally permissible to enact regulations insuring disclosure of the source of campaign payments or contributions. Thus, after McIntyre, it is permissible to prohibit anonymous contributions to political candidates or those acting on their behalf. It is also permissible to prohibit anonymous expenditures in connection with political candidates. It is also permissible to prevent anonymous contributions to, and expenditures made by, other individuals or groups in connection with an issue campaign.

The bottom line is that Buckley and its progeny unwaveringly demonstrate government's compelling interest in assuring accountability that Does' blanket anonymity would destroy; McIntyre simply does not serve as authority for relegating campaign financing to blanket anonymity.

Buckley recognizes that there is a compelling interest not only in preventing undue influence over candidates' positions and their actions but also in alleviating the public's perception that politicians are responding only to moneyed interests rather than the public interest.

The D.C. Circuit Court identified this interest as one that had been recognized previously by the Supreme Court:

> The Constitution also takes account of the governmental interest in curbing the appearance of undue influence, in order to avoid the corrosion of public confidence that is indispensable to democratic survival. In Civil Service Commission v. Letter Carriers, 413 U.S. 548, 565, 93 S.Ct. 2880, 2890, 37 L.Ed.2d 796 (1973), Justice White articulated this:
>
> > [I]t is not only important that the Government and its employees in fact avoid practicing political justice, but it is also critical that they appear to the public to be avoiding it, if confidence in the system of representative Government is not to be eroded to a disastrous extent. [7]

Buckley also explicitly extended the interest in avoiding corruption to protecting the integrity of the process and preserving public confidence in the process:

> To the extent that large contributions are given to secure political quid pro quo's from current and potential office holders, the integrity of our system of representative democracy is undermined.. .
>
> Of almost equal concern as the danger of actual quid pro quo arrangements is the impact of the appearance of corruption stemming from public awareness of the opportunities for abuse inherent in a regime of large individual financial contributions. Congress could legitimately conclude that the avoidance of the appearance

[7] Buckley v. Valeo, 519 F.2d 821, 841 (D.C. Cir. 1975).

> of improper influence "is also critical.. .if confidence in the system of representative Government is not to be eroded to a disastrous extent." CSC v. Letter Carriers, 413 U.S. 548 (1973) at 565[8]

Thus, the compelling interest identified by the Court in Buckley includes the interest in avoiding the public perception that the political process itself is corrupt because of the influence wielded by special interests, and the resulting diminution of the public and individual's interests.[9] This threat to the political process was similarly recognized by the United States Supreme Court in California Medical Association v. FEC, which identified the government's compelling interests as "preventing the actual or apparent corruption of the political process. "[10]

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[8] 424 U.S. at 27.

[9] This erosion of the public's confidence in the integrity of the system was identified by Congress and by the D.C. Circuit:

> Large contributions are intended to and do, gain access to the elected official after the campaign for consideration of the contribution's particular concerns. Senator Mathis [in the FECA Congressional Findings,] not only describes this but also the corollary, that the feeling that big contributors gain special treatment produces a reaction that the average American has no significant role in the political process,

Buckley v. Valeo, 519 F.2d 821, 838 (D.C. Cir. 1975). The court reproduced an opinion poll which revealed that in 1974, nearly 70% of voters agreed with the statement that "the government is pretty much run by a few big interests looking out for themselves [rather than] run for the benefit of all people." Id. at 839,

[10] 453 U.S. 182, 197-98, 101 S.Ct. 2712, 69 L.Ed. 2d 567 (1981)

Subsequently, the Court in Federal Election Commission v. National Right to Work, emphasized that in Buckley:

> we specifically affirmed the importance of preventing both the actual corruption threatened by large financial contributions and the eroding of public confidence in the electoral process through the appearance of corruption. These interests directly implicate "the integrity of our electoral process, and, not less, the responsibility of the individual citizen for the successful functioning of that process." United States v. Auto Workers, [352 U.S. 567, 570 (1957)][11]

In Federal Election Commission v. Massachusetts Citizens For Life, the Court similarly acknowledged "the historical role of contributions in corruption of the electoral process. "[12] The compelling nature of the interest in protecting the integrity of the process was most recently recognized in Austin v. Michigan State Chamber of Commerce, where the Court once again looked beyond the financial quid pro quo to recognize Michigan's compelling interest in resisting

> a different type of corruption in the political arena: the corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form and that have little or no correlation to the public's support for the corporation's political ideas. [13]

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[11] 459 U.S. 197,208, 103 S.Ct. 539, 74 L.Ed. 2d 567 (1982)

[12] 479 U.S. 238,260, 107 S.Ct. 616, 93 L.Ed. 2d 539 (1986)

[13] 494 U.S. 652,660, 110 S.Ct. 1391, 108 L.Ed.2d 652 (1990)

As David Rancourt points out, anonymity the Does seek here would severely undermine the government's ability to protect against the evils set out above.

Next, the Does maintain that the challenged statutes are facially overbroad. Interestingly, however, they offer no telling authority for this proposition, except their self-serving rationale and generalized snippets from cases having nothing to do with the anonymity issue presented by McIntyre. As demonstrated below, Does' facially overbroad argument is without merit.

To be facially overbroad, a plaintiff must show that the challenged law affects conduct that is protected by the First Amendment, and that the law is susceptible to enforcement against protected activities. 3299 N. Federal Hwy. v. Broward County Commissioners, 646 So. 2d 2 15, 225 (Fla. 4th DCA 1994). In this case, the only conduct protected is that embraced by McIntyre; the statutes lawfully apply to candidate and issue activities, and financial matters covered by Buckley and its progeny. The singular fact that only Mrs. McIntyre's activities are at issue in this cause vitiates Does' facial constitutional challenge here. In sum, the Does seek to greatly expand McIntyre's coverage to include matters not addressed therein. They cannot do in attempting to justify their sweeping challenge here.

Finally on this point, the Does make the disingenuous argument that this statute violates their right to petition for redress of grievances. At the heart of this

right is the desire to have government respond. But if government does not know who the petitioner is, or even if the anonymous group or entity really exists, how is government to deal with the legitimacy of the petition?

With regard to § 106.143, Winn-Dixie Stores, Inc., and Let's Help Florida, supra, are most dispositive: Statutes such as this "provide adequate disclosure without directly restricting contributions or other important first amendment rights." The Does' challenge here is without merit.

C. Section 106.144 is Valid

As demonstrated with regard to the other challenged statutes, the Does seek to use McIntyre as the key to unlock the door to the dark ages of political campaigning when the public did not know "who gave it" and "who got it" and did not know who was in favor of or in opposition to candidates and issues.

This statute exacts no penalty for association, but if that association is going to engage in political activities as defined by this provision, the association must identify itself in a meaningful manner. This Court may take judicial notice that endorsements and testimonials are a vital part of the political process. This statute deals with potential corruption in this manner: if a group calling itself Citizens for a Free America makes a sizeable independent expenditure (or contribution) to a candidate who supports the tobacco industry, the voters need to know whether the

group's members are officials with R.J. Reynolds. Anonymity destroys this opportunity to know and thereby make informed judgments.

But it is not necessary to address the coverage of this statute in the context of this case because the Does have made no showing that they (along with others) are desirous of organizing a structured association that meets the criteria set out in the statute. Obviously, if two or more associate and decide not to organize as contemplated by this statute, then no statement is, or can be, required. Moreover, no officer or director, etc., can be held accountable precisely because there is no structured organization. In that the Does have not shown that they formed an organization as contemplated by this statute, they have no standing to challenge it.

In fact, although there is authority under §106.23(2), Fla. Stat., to request an elections-related opinion, the Does made no such request of the appellee as to whether they come within 5106.144.

The obvious purpose of this statute is to allow the public to learn which organizations support and oppose candidates and issues so as to make an informed decision. If associational support and opposition were relegated to anonymity, the adverse effect on the public's ability to make wise choices would be at least severely compromised, and the floodgates to corruption would be wide open.

There is no inherent evil in requiring the type of disclosure sought here; the

courts have repeatedly approved disclosural requirements; and the Does offer no case authority for the proposition that the information sought here from those who voluntarily choose to enter the political arena offends the First Amendment.

Against this backdrop, the Does' reliance on NAACP v. Button, 37 1 U.S. 415, 83 S. Ct. 328, 9 L.Ed.2d 405 (1963) and Gibson v. Florida Legislative Investigation Committee, 372 U.S. 539, 83 S. Ct. 889, 9 L.Ed.2d 929 (1963), is woefully misplaced. It is a far cry from being compelled to answer questions about associational membership at the time of the Red Scare (Gibson) or about belonging to an association at all (Button) on one hand, and associating for the purpose of engaging in political activities on the other. The subject statute does not criminalize association membership; it only requires information designed to allow the public to know who supports or opposes who (or what). McIntyre affords the Does no solace in their broadside against this statute.

CONCLUSION

Amid the sound and fury of the Does' several claims, the reality is that nothing in *McIntyre* supports their challenges to these three statutes. Section 106.07 1 by itself demonstrates that personal pamphleteering from modest resources is already protected. Section 106.17 1 has already passed constitutional scrutiny by this Court and the federal circuit court. And § 106.144 does not apply to the Does because they have not demonstrated a desire to form the type of association contemplated by that provision. And even if they did, that voluntary choice to engage in political activity is far different than the associational cases on which they rely.

As the trial court so found, the Does' claims signify nothing. That judgment should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Answer Brief has been furnished by U. S. Mail to **Philip** G. **Butler, Jr.,** Suite 3 12, 324 Datura Street, West Palm Beach, FL 33401 on this 4th day of October, 1996.

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