S T A T E O F N E W Y O R K

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2009-2010 Regular Sessions

I N S E N A T E

April 2, 2009

Introduced by Sens. STEWART-COUSINS, C. JOHNSON, THOMPSON -- read twice and ordered printed, and when printed to be committed to the Committee on Elections

AN ACT to amend the election law, in relation to identifying the sources of campaign telephone canvasses or "push polls"

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subdivision 1 of section 3-106 of the election law, as amended by chapter 8 of the laws of 1978 and as redesignated by chapter 9 of the laws of 1978, is amended to read as follows:

1. (A) In addition to the powers and duties elsewhere enumerated in this article, the state board of elections, after public hearings, shall adopt a "fair campaign code" [setting] WHICH SHALL SET forth ethical standards of conduct for persons, political parties and committees engaged in election campaigns including, but not limited to, specific prohibitions against practices of political espionage and other political practices [involving] WHICH INVOLVE subversion of the political parties and process, SUCH AS, BUT NOT LIMITED TO, THE MISREPRESENTATION OF THE CRIMINAL RECORD OR BACKGROUND, MORAL TURPITUDE, CHARACTER, VOTING RECORD OR OTHER SPECIFIC ACTS OR OMISSIONS OF A CANDIDATE, TO A POTENTIAL VOTER, BY MEANS OF PERSONAL CONTACT OR TELEPHONE CANVASS FROM A LIST OF NAMES OF POTENTIAL VOTERS NOT DERIVED FROM A SCIENTIFICALLY MEASURABLE AND RANDOM SAMPLING TECHNIQUE AND WHICH CONTACT OR CANVASS IS DESIGNED TO PERSUADE VOTERS RATHER THAN TO GATHER A RANDOM SAMPLE OF OPINION, AS A FOUNDATION FOR ASKING A POTENTIAL VOTER IN ONE OR MORE CANVASS QUESTIONS OR CANVASS SAMPLINGS WHICH ARE SPECIFICALLY DIRECTED AT PERSUADING A VOTER RATHER THAN AT GATHERING A RANDOM SAMPLE OF OPINION, AND CONDUCTED IN PERSON OR BY TELEPHONE HIS OR HER OPINION OR HOW HE OR SHE WILL VOTE, AND SPECIFIC REQUIREMENTS TO DISCLOSE THE TRUE IDENTITY OF THE CALLER AND BY WHOM THE CANVASS WAS COMMISSIONED AND BY WHOM IT IS CONDUCTED, SPONSORED AND PAID, AND IF PAID FOR OR SPONSORED

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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BY ONE OR MORE CANDIDATES OR BY A POLITICAL COMMITTEE SUPPORTING ONE OR MORE CANDIDATES, REQUIRING THAT FACT AND THEIR IDENTITIES TO BE DISCLOSED TO THE POTENTIAL VOTER.

(B) NO CANDIDATE, POLITICAL PARTY OR COMMITTEE SHALL ATTEMPT TO PROMOTE THE SUCCESS OR DEFEAT OF A CANDIDATE BY, DIRECTLY OR INDIRECTLY, DISCLOSING OR CAUSING TO BE DISCLOSED, THE RESULTS OF ANY CANVASS OR POLL RELATING TO A CANDIDATE FOR SUCH OFFICE OR POSITION, UNLESS WITHIN FORTY-EIGHT HOURS AFTER SUCH DISCLOSURE, THEY PROVIDE THE FOLLOWING INFORMATION CONCERNING THE CANVASS OR POLL TO THE BOARD OR OFFICER WITH WHOM STATEMENTS OR COPIES OF STATEMENTS OF CAMPAIGN RECEIPTS AND EXPENDITURES ARE REQUIRED TO BE FILED BY THE CANDIDATE TO WHOM SUCH CANVASS OR POLL RELATES:

(I) THE NAME OF THE PERSON, PARTY OR ORGANIZATION THAT CONTRACTED FOR OR WHOM COMMISSIONED THE CANVASS OR POLL AND/OR PAID FOR IT.

(II) THE NAME AND ADDRESS OF THE ORGANIZATION THAT CONDUCTED THE CANVASS OR POLL.

(III) THE NUMERICAL SIZE OF THE TOTAL CANVASS OR POLL SAMPLE, THE GEOGRAPHIC AREA COVERED BY THE CANVASS OR POLL AND ANY SPECIAL CHARACTERISTICS OF THE POPULATION INCLUDED IN THE CANVASS OR POLL SAMPLE.

(IV) THE EXACT WORDING OF THE QUESTIONS ASKED IN THE CANVASS OR POLL AND THE SEQUENCE OF SUCH QUESTIONS.

(V) THE METHOD OF CANVASSING OR POLLING WHETHER BY PERSONAL INTERVIEW, TELEPHONE, MAIL OR OTHER.

(VI) THE TIME PERIOD DURING WHICH THE CANVASS OR POLL WAS CONDUCTED.

(VII) THE NUMBER OF PERSONS IN THE CANVASS OR POLL SAMPLE; THE NUMBER CONTACTED WHO RESPONDED TO EACH SPECIFIC CANVASS OR POLL QUESTION; THE NUMBER OF PERSONS CONTACTED WHO DID NOT SO RESPOND.

(VIII) THE RESULTS OF THE CANVASS OR POLL.

S 2. Section 14-106 of the election law, as amended by chapter 8 of the laws of 1978, is amended to read as follows:

S 14-106. Political advertisements and literature. The statements required to be filed under the provisions of this article next succeeding a primary, general or special election shall be accompanied by a facsimile or copy of all advertisements, pamphlets, circulars, flyers, brochures, letterheads and other printed matter purchased or produced and a schedule of all radio or television time, AND OF ANY CANVASSING DESIGNED OR SPECIFICALLY DIRECTED TO PERSUADE POTENTIAL VOTERS AND CONDUCTED EITHER IN PERSON OR BY TELEPHONE, AS DESCRIBED IN PARAGRAPH (A) OF SUBDIVISION ONE OF SECTION 3-106 OF THIS CHAPTER, and scripts used therein, purchased in connection with such election by or under the authority of the person filing the statement or the committee or the person on whose behalf it is filed, as the case may be. Such facsimiles, copies, schedules and scripts shall be preserved by the officer with whom or the board with which it is required to be filed for a period of one year from the date of filing thereof.

S 3. The election law is amended by adding a new section 17-153 to read as follows:

S 17-153. UNLAWFUL CANVASSING. IT SHALL BE UNLAWFUL FOR ANY CANDIDATE, POLITICAL COMMITTEE OR CONSTITUTED COMMITTEE, OR FOR AN AGENT OR EMPLOYEE OF, OR CONTRACTOR OR FIRM HIRED BY, ANY OF THE FOREGOING, OR FOR ANY OTHER COMMITTEE, ASSOCIATION, PARTNERSHIP, CORPORATION, CAMPAIGN WORKER OR VOLUNTEER OR OTHER PERSON, TO INITIATE, COMMISSION, SPONSOR OR PARTICIPATE IN A CANVASS CONDUCTED EITHER IN PERSON OR BY TELEPHONE FROM A LIST OF NAMES OF POTENTIAL VOTERS NOT DERIVED FROM A SCIENTIFICALLY MEASURABLE AND RANDOM SAMPLING TECHNIQUE AND WHICH CONTACT OR CANVASS IS DESIGNED TO PERSUADE VOTERS RATHER THAN TO GATHER A RANDOM SAMPLE OF

OPINION, OF POTENTIAL VOTERS RESPECTING ONE OR MORE OF SUCH VOTER'S PREFERENCES AMONG CANDIDATES OR FOR WHOM SUCH VOTER WILL VOTE, OR SOLICITING SUCH VOTER'S OPINION ON A CAMPAIGN ISSUE, PRECEDED BY ONE OR MORE MISREPRESENTATIONS FROM THE KINDS DESCRIBED IN PARAGRAPH (A) OF SUBDIVISION ONE OF SECTION 3-106 OF THIS CHAPTER, IN ANY INSTANCE IN CONNECTION WITH A SUBSEQUENT PRIMARY, GENERAL, SPECIAL OR SCHOOL BOARD ELECTION TO BE HELD WITHIN THIS STATE UNLESS AT THE BEGINNING OF THE EXECUTION OF THE CANVASS, THE PERSON IN DIRECT CONTACT WITH THE POTENTIAL VOTER IDENTIFIES TO THE POTENTIAL VOTER THE TRUE NAME OF THE SPONSOR OR SOURCE, OF THE CANVASS, INCLUDING THE TRUE NAME, IF ANY, OF THE SPECIFIC CANDIDATE OR COMMITTEE SUPPORTING A CANDIDATE ON BEHALF OF WHOM THE PERSON IN DIRECT CONTACT WITH THE POTENTIAL VOTER WILL BE ASKING QUESTIONS OR IMPARTING INFORMATION; AND, IF THE NAME OF THE COMMITTEE OR OTHER ENTITY OR PERSON WHICH HAS OR WHO HAS INITIATED, COMMISSIONED, SPONSORED OR PARTICIPATED IN THE TELEPHONE OR IN-PERSON CANVASS OF POTENTIAL VOTERS DOES NOT INCLUDE THE NAME OF THE CANDIDATE AFFILIATED WITH OR SUPPORTED BY SUCH COMMITTEE, OTHER ENTITY OR PERSON, THEN THE CANDIDATE'S NAME MUST BE DISCLOSED AT THE BEGINNING OF THE EXECUTION OF SUCH CANVASS, IN ADDITION TO THE NAME OF SUCH COMMITTEE, OTHER ENTITY OR PERSON.

ANY CANDIDATE, POLITICAL COMMITTEE OR CONSTITUTED COMMITTEE, OR AGENT OR EMPLOYEE OF, OR CONTRACTOR OR FIRM HIRED BY, ANY OF THE FOREGOING, OR ANY OTHER COMMITTEE, ASSOCIATION, PARTNERSHIP, CORPORATION, CAMPAIGN WORKER OR VOLUNTEER OR OTHER PERSON, WHO OR WHICH VIOLATES ANY OF THE FOREGOING PROVISIONS OF THIS SECTION SHALL BE GUILTY OF A CLASS A MISDEMEANOR, WHICH SHALL BE PUNISHABLE AS PROVIDED IN THE PENAL LAW NOTWITHSTANDING THE PROVISIONS OF SECTION 17-166 OF THIS ARTICLE.

S 4. This act shall take effect on the first of December next succeeding the date on which it shall have become a law, provided, however, that effective immediately, the addition, amendment and repeal of any rules and regulations necessary for the implementation of this act on its effective date are authorized and directed to be made and completed on or before such effective date.