HB 402-FN - AS INTRODUCED

2023 SESSION

23-0613
06/10

HOUSE BILL ***402-FN***

AN ACT relative to prohibiting false statements against candidates.

SPONSORS: Rep. Hynes, Hills. 2

COMMITTEE: Election Law

ANALYSIS

This bill prohibits the publication of false statements by any candidate, political committee, or political party regarding another candidate's positions on issues.

- -

Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

HB 402-FN - AS INTRODUCED

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Three

AN ACT relative to prohibiting false statements against candidates.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 New Section; Political Advertising; Defamation. Amend RSA 664 by inserting after section 14-b the following new section:

644:14-c Prohibiting Political Defamation.

I. No candidate, political committee, or political party may knowingly or maliciously act with reckless disregard of the truth by publishing a false statement regarding a candidate's position on an issue or publish a false statement which would reasonably harm the candidate's reputation. False statements issued on the homepage of a candidate, political committee, or political party's website is evidence of their position on an issue and prima facie evidence of reckless disregard of the truth.

II.(a) A violation of this section shall include damages of $1 for each impression or for each recipient of a newspaper, radio, television, Internet, or similar media, or, $500 for each physical political sign belonging to a candidate, political committee, or political party.

(b) Any candidate injured by another candidate, political committee, or political party's violation of this section may bring an action for damages and for such equitable relief, including an injunction, as the court deems necessary and proper. If the court finds in favor of the plaintiff, recovery shall be in the amount of actual damages plus any damages awarded pursuant to this section. A prevailing plaintiff shall be awarded the costs of the suit and any reasonable attorney's fees, as determined by the court. Upon commencement of any action brought under this section, the clerk of the court shall mail a copy of the complaint or other initial pleadings to the attorney general and, upon entry of any judgment or decree in the action, shall mail a copy of such judgment or decree to the attorney general.

2 Effective Date. This act shall take effect January 1, 2024.

LBA
23-0613
1/3/23

HB 402-FN- FISCAL NOTE
AS INTRODUCED

AN ACT relative to prohibiting false statements against candidates.

FISCAL IMPACT: [X] State [ ] County [ ] Local [ ] None

	Estimated Increase / (Decrease)			
STATE:	**FY 2023**	**FY 2024**	**FY 2025**	**FY 2026**
Appropriation	$0	$0	$0	$0
Revenue	$0	$0	$0	$0
Expenditures	$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
Funding Source:	[X] General	[ ] Education	[ ] Highway	[ ] Other

METHODOLOGY:

This bill prohibits the publication of false statements by any candidate, political committee, or political party regarding another candidate's positions on issues. The bill would create a private cause of action for damages and equitable relief and, if successful, costs and attorney's fees. The Court must file a copy of any complaints or judgments under the new law to the Attorney General. The Judicial Branch assumes this new private cause of action would result in additional litigation in the courts, but the Judicial Branch is unable to determine how many such additional lawsuits would be filed.

AGENCIES CONTACTED:

Judicial Branch

CONSENT CALENDAR

March 15, 2023

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Committee on Election Law to which was referred HB 402-FN,

AN ACT relative to prohibiting false statements against candidates. Having considered the same, report the same with the following resolution: RESOLVED, that it is INEXPEDIENT TO LEGISLATE.

Rep. Stephen Kennedy

FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

COMMITTEE REPORT

Committee:	**Election Law**
Bill Number:	**HB 402-FN**
Title:	**relative to prohibiting false statements against candidates.**
Date:	**March 15, 2023**
Consent Calendar:	**CONSENT**
Recommendation:	**INEXPEDIENT TO LEGISLATE**

STATEMENT OF INTENT

Although the committee agreed with the sentiment that making false statements regarding a political opponent or their positions is reprehensible, there are strong First Amendment protections for political speech. For example, the Supreme Court has long considered political and ideological speech to be at the core of the First Amendment, including speech concerning "politics, nationalism, religion, or other matters of opinion." (*W. Va. State Bd. of Educ. v. Barnette, 319 U.S. 624, 642 (1943)*. One can sue for defamation under current laws, but generally, speech that touches on matters of public concern is highly protected, especially where restricting such speech could have a chilling effect on future speech. Campaign speech is considered the epitome of speech regarding matters of public concern because it is the core of our political democracy. There are exceptions. For example, if a person makes a statement with actual malice (i.e., the statement is made with knowing or reckless disregard for the truth of the matter) then that statement may fall outside the protections of the First Amendment. The bill states 'false statements issued on the homepage of a candidate, political committee, or political party's website is evidence of their position on an issue and prima facie evidence of reckless disregard of the truth,' but this may not automatically constitute 'reckless disregard'. In addition, the penalties prescribed in the bill seemed vague, and could be extremely punitive. That is, "a violation of this section shall include damages of $1 for each impression or for each recipient of a newspaper, radio, television, Internet, or similar media, or, $500 for each physical political sign belonging to a candidate, political committee, or political party."

Vote 19-0.

Rep. Stephen Kennedy
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

CONSENT CALENDAR

Election Law

HB 402-FN, relative to prohibiting false statements against candidates. **INEXPEDIENT TO LEGISLATE.**

Rep. Stephen Kennedy for Election Law. Although the committee agreed with the sentiment that making false statements regarding a political opponent or their positions is reprehensible, there are strong First Amendment protections for political speech. For example, the Supreme Court has long considered political and ideological speech to be at the core of the First Amendment, including speech concerning "politics, nationalism, religion, or other matters of opinion." (*W. Va. State Bd. of Educ. v. Barnette, 319 U.S. 624, 642 (1943).* One can sue for defamation under current laws, but generally, speech that touches on matters of public concern is highly protected, especially where restricting such speech could have a chilling effect on future speech. Campaign speech is considered the epitome of speech regarding matters of public concern because it is the core of our political democracy. There are exceptions. For example, if a person makes a statement with actual malice (i.e., the statement is made with knowing or reckless disregard for the truth of the matter) then that statement may fall outside the protections of the First Amendment. The bill states 'false statements issued on the homepage of a candidate, political committee, or political party's website is evidence of their position on an issue and prima facie evidence of reckless disregard of the truth,' but this may not automatically constitute 'reckless disregard'. In addition, the penalties prescribed in the bill seemed vague, and could be extremely punitive. That is, "a violation of this section shall include damages of $1 for each impression or for each recipient of a newspaper, radio, television, Internet, or similar media, or, $500 for each physical political sign belonging to a candidate, political committee, or political party." **Vote 19-0.**

Original: House Clerk
Cc: Committee Bill File

SIGN UP SHEET

To Register Opinion If Not Speaking

Bill #: HB402 Date: 3/7/23

Committee: Election Law

**** Please Print All Information ****

Name	Address	Phone	Representing	Pro	Con

House Remote Testify

Election Law Committee Testify List for Bill HB402 on 2023-01-17

Support: 9 Oppose: 9 Neutral: 1 Total to Testify: 0

Export to Excel

Name	City, State Email Address	Title	Representing	Position	Testifying	Non-Germane	S
Hayes, Colleen	Claremont, NH colleenannhayes@gmail.com	A Member of the Public	Myself	Support	No	No	1
Richardson, Daniel	Nashua, NH daniel6_22@comcast.net	A Member of the Public	Myself	Support	No	No	1
Trought, Elizabeth A	Dorchester, NH batrought@gmail.com	A Member of the Public	Myself	Support	No	No	1
Creem, Jeffrey	Nashua, NH jeff@thecreems.com	A Member of the Public	Myself	Oppose	No	No	1
Sims, Julie	Guild, NH jpmom39@gmail.com	A Member of the Public	Myself	Oppose	No	No	1
Steel, Sandy	PLAINFIELD, NH selizabethsteel@gmail.com	A Member of the Public	Myself	Oppose	No	No	1
Hackmann, Kent	Andover, NH hackmann@uidaho.edu	A Member of the Public	Myself	Support	No	No	1
Perry, Bob`	Strafford, NH perry4nh@gmail.com	A Member of the Public	Myself	Support	No	No	1
Hatcher, Phil	Dover, NH phil.hatcher@gmail.com	A Member of the Public	Myself	Oppose	No	No	1
Richman, Susan	Durham, NH susan7richman@gmail.com	A Member of the Public	Myself	Oppose	No	No	1
Oxenham, Lee	Plainfield, NH leeoxenham@comcast.net	A Member of the Public	Myself	Support	No	No	1
Petrusewicz, Carol	Rochester, NH clmcc2befree@yahoo.com	A Member of the Public	Myself	Support	No	No	1
Pierre, Sandra	Marlow, NH scitarel@yahoo.com	An Elected Official	Myself	Oppose	No	No	1
boudman, roberta	wolfeboro, NH boudwoman2@gmail.com	A Member of the Public	Myself	Neutral	No	No	1
Medeiros, Jesse	Plainfield, NH bgtrck458@gmail.com	A Member of the Public	Myself	Oppose	No	No	2
Coon, Kate	Peterborough, NH kate2coon@gmail.com	A Member of the Public	Myself	Oppose	No	No	2
Howland, Curtis	Manchester, NH howland@priss.com	A Member of the Public	Myself	Oppose	No	No	2
Petrusewicz, Carol	Rochester, NH clmcc2befree@yahoo.com	A Member of the Public	Myself	Support	No	No	2
Richardson, Daniel	Nashua, NH daniel6_22@comcast.net	A Member of the Public	Myself	Support	No	No	2

HOUSE COMMITTEE ON ELECTION LAW

PUBLIC HEARING ON HB 402-FN

BILL TITLE: **relative to prohibiting false statements against candidates.**

DATE: **March 7, 2023**

LOB ROOM: **306-308** **Time Public Hearing Called to Order:** **10:30 a.m.**

Time Adjourned: **10:37 a.m.**

Committee Members: Reps. Prudhomme-O'Brien, Qualey, Burnham, Kennedy, Wood, Lane, Ward, Hamer, Hamblet, Bay, Brennan and H. Howard

Bill Sponsors:
Rep. Hynes

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Rep Dan Hynes - Introduced the bill

- Election integrity bill
- Applies to candidates
- Not to lie about candidates
- Nummerous PACs making false statements
- Lines 6,7,8 need to be clarified, there are typos

Question - Rep Kennedy - Who would adjudicate what is a lie?
Answer - Rep Hynes - A jury

Question - Rep Prudhomme-O'Brien - Do any other states do this?
Answer - Rep Hynes - Not aware

Daniel Richardson

Accountability for false statements is long overdue. A demonstrable dissemination basis for grave financial penalty is needed. The lies, libel, false flags, slander and frame-ups has to stop.

Phil Hatcher

I think laws limiting political speech are dubious at best. I do not think this bill would withstand a First Amendment challenge.

Sandra Pierre

We already have slander and libel laws. Also, who gets to decide which statements are "false"?

Carol Petrusewicz

Lying should never be allowed. A moral society has always behaved accordingly. It is time to restore a moral society. It is sad that this bill is needed to be drafted, but thank you, Sponsor, for drafting it. If people won't use self discipline to behave morally, than maybe these guardrails will help with that journey. Thank you for supporting HB402

HOUSE COMMITTEE ON ELECTION LAW

EXECUTIVE SESSION on HB 402-FN

BILL TITLE: relative to prohibiting false statements against candidates.

DATE: March 15, 2023

LOB ROOM: 206-208

MOTIONS: **INEXPEDIENT TO LEGISLATE**

Moved by Rep. Kennedy | Seconded by Rep. Berry | Vote: 19-0

CONSENT CALENDAR: YES

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep Jessica Grill, Clerk

STATE OF NEW HAMPSHIRE
OFFICE OF THE HOUSE CLERK

1/5/2023 1:43:00 PM
Roll Call Committee Registers Report

2023 SESSION

Election Law

Bill #: HB 402-FN Motion: ITL AM #: _____ Exec Session Date: MARCH 15, 2023

Members	YEAS	Nays	NV
Smith, Steven D. Chairman ABSENT			
Berry, Ross Vice Chairman	X		
Prudhomme-O'Brien, Katherine J.	X		
Boehm, Ralph G.	X		
~~Qualey, James R.~~ HARVEY-BOLIA	X		
~~Ankarberg, Aidan~~ HARRINGTON	X		
Burnham, Claudine R	X		
Kennedy, Stephen J.	X		
Wherry, Robert J	X		
Wood, Clayton D	X		
Lane, Connie Boyles	X		
Ward, Gerald W.R.	X		
Hamer, Heidi M.	X		
Hamblet, Joan L.	X		
Muirhead, Russell	X		
~~Bay, Luz~~ KNAB	X		
Brennan, Angela	X		
Grill, Jessica	X		
Howard, Heath	X		
TOTAL VOTE:	19	0	
PALMER	X		