

SENATE CONCURRENT RESOLUTION NO. 37

BY SENATOR LONG AND REPRESENTATIVES ADAMS, BACALA, BAGNERIS, BOURRIAQUE, TERRY BROWN, CARMODY, CONNICK, CREWS, DAVIS, DEVILLIER, LANCE HARRIS, HODGES, HOFFMANN, HORTON, HUVAL, JACKSON, MIKE JOHNSON, JORDAN, LARVADAIN, MARINO, MCMAHEN, MIGUEZ, GREGORY MILLER, JAY MORRIS, JIM MORRIS, MOSS, SEABAUGH, STEFANSKI, THOMAS AND ZERINGUE

A CONCURRENT RESOLUTION

To urge and request the Louisiana Supreme Court and the Louisiana State Bar Association to study solicitation advertising by attorneys, and the potential need for revisions and updates to the state Rules of Professional Conduct.

WHEREAS, Article V, Section 5(B) of the Constitution of Louisiana provides that the Louisiana Supreme Court has exclusive original jurisdiction of disciplinary proceedings against a member of the bar; and

WHEREAS, in 2009, the Louisiana Supreme Court adopted amendments to the Louisiana Rules of Professional Conduct, and the Louisiana State Bar Association created the Handbook on Lawyer Advertising and Solicitation, after months of study and hearings conducted in response to legislation and other calls for standards and guidance regarding attorney advertising; and

WHEREAS, subsequent challenges to the constitutionality of Rules of Professional Conduct regulating attorney advertising were filed in federal district court, and ultimately resulted in the federal Fifth Circuit Court of Appeals decision in *Public Citizen, Inc. v. Louisiana Attorney Disciplinary Board*, 632 F. 3d 212 (2011); and

WHEREAS, in the *Public Citizen* case, the Court struck down certain state rule requirements as infringing upon First Amendment protections regarding commercial speech, but upheld other rule requirements as the legitimate exercise by the state of its substantial interests in protecting the public from unethical and false, deceptive, and misleading lawyer advertising, and also in preserving the ethical integrity of the legal profession; and

WHEREAS, in the *Public Citizen* case, the Court reaffirmed that commercial free speech in the form of attorney advertising is not absolute, but instead merits a limited measure of protection subject to differing levels; and

WHEREAS, in the *Public Citizen* case, the Court reaffirmed that the state does have substantial interests in regulating attorney advertising to prevent unlawful activity and the deception and confusion of consumers, including claims and depictions of scenes and pictures in attorney advertising inherently likely to deceive the public; and

WHEREAS, in the *Public Citizen* case, the Court pointed out that the United States Supreme Court has recognized the government's substantial interests in "ensuring the accuracy of commercial information in the marketplace" and "maintaining standard of ethical conduct in the licensed professions", and has further recognized that a state's interest in regulating attorneys is especially great since lawyers are essential to the primary governmental function of administering justice, and have historically been "officers of the courts"; and

WHEREAS, in light of these substantial interests, the Louisiana Supreme Court and the Louisiana State Bar Association should undertake a review of the present practices and forms of attorney solicitation advertising in this state for the purposes of determining whether revisions and updates are needed to the current Louisiana Rules of Professional Conduct, and should further implement such changes in the rules as necessary to protect the public and preserve the ethical integrity of the legal profession.

THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does hereby urge and request the Louisiana Supreme Court and the Louisiana State Bar Association to study solicitation advertising by attorneys, and the potential need for revisions and updates to the state Rules of Professional Conduct.

BE IT FURTHER RESOLVED that copies of this Resolution be transmitted to the Louisiana Supreme Court and the Louisiana State Bar Association.

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PRESIDENT OF THE SENATE

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SPEAKER OF THE HOUSE OF REPRESENTATIVES