

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRBb1452/1dn  
JTK&RJM:jld:cmh

June 25, 2001

Representative Black:

Per the instructions of your staff, this amendment is based on ASA 1 to 2001 AB-18.

1. Currently, ch. 11., stats., generally requires disclosure of financial activity by individuals and committees seeking to influence the election or defeat of candidates for state or local office [see ss. 11.01 (6), (7), (11), and (16), 11.05, and 11.06, stats.], unless a disbursement is made or obligation incurred by an individual other than a candidate or by a committee which is not organized primarily for political purposes, the disbursement is not a contribution as defined in the law and the disbursement is not made to expressly advocate the election or defeat of a clearly identified candidate [see s. 11.06 (2), stats.]. This language pretty closely tracks the holding of the U.S. Supreme Court in *Buckley v. Valeo, et al.*, 96 S. Ct. 612, 656-664 (1976), which prescribes the boundaries of disclosure that may be constitutionally enforced (except as those requirements affect certain minor parties and independent candidates). Proposed s. 11.01 (16) (a) 3., which requires registration and reporting by individuals who or committees that make certain mass communications within 60 days of an election containing a name or likeness of a candidate at that election or an office to be filled at that election, appears to extend beyond the boundaries which the court permitted in 1976. As a result, its enforceability at the current time appears to rest upon a shift by the court in its stance on this issue.

2. We want to note briefly that proposed s. 11.24 (1v), which restricts the acceptance of contributions made by nonresident contributors, is innovative, and we do not yet have, to my knowledge, specific guidance from the U.S. Supreme Court concerning the enforceability of provisions of this type. It is well possible that a court may find a rational basis for this provision that would permit it to be upheld. However, because of the concerns expressed by the U.S. Supreme Court in *Buckley v. Valeo, et al.*, 96 S. Ct. 612 (1976), and certain other cases, that attempts to regulate campaign financing activities may, in some instances, impermissibly intrude upon freedom of speech or association or upon equal protection guarantees, it is possible that enforceability problems with this provision may occur.

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