

WISCONSIN STATE
LEGISLATURE
COMMITTEE HEARING
RECORDS

2003-04

(session year)

Assembly

(Assembly, Senate or Joint)

Committee on
Campaigns &
Elections
(AC-CE)

File Naming Example:

Record of Comm. Proceedings ... RCP

- > 05hr_AC-Ed_RCP_pt01a
- > 05hr_AC-Ed_RCP_pt01b
- > 05hr_AC-Ed_RCP_pt02

Published Documents

> Committee Hearings ... CH (Public Hearing Announcements)

> **

> Committee Reports ... CR

> **

> Executive Sessions ... ES

> **

> Record of Comm. Proceedings ... RCP

> **

*Information Collected For Or
Against Proposal*

> Appointments ... Appt

> **

> Clearinghouse Rules ... CRule

**

> Hearing Records ... HR (bills and resolutions)

> Miscellaneous ... Misc

> **03hr_AC-CE_Misc_pt02**

Memorandum

To: All Assembly Committee Chairs and Ranking Minority Members
Terry Anderson, Legislative Council

From: Representative Steve Freese

Date: February 6, 2003

Re: Interpretation of Assembly Rule 17d

Some members and their staff have recently brought to my attention that they are unclear on the intent of Assembly Rule 17d, in particular, par. (2).

Assembly Rule 17d reads:

Executive action. A committee may not vote on a proposal unless the proposal has been introduced, or offered, and made available to the public for at least 24 hours excluding:

- (1) Saturdays, Sundays, and state holidays specified in section 230.35 (4) (a) of the statutes; and*
- (2) Hours after 5 p.m. or before 8 a.m.*

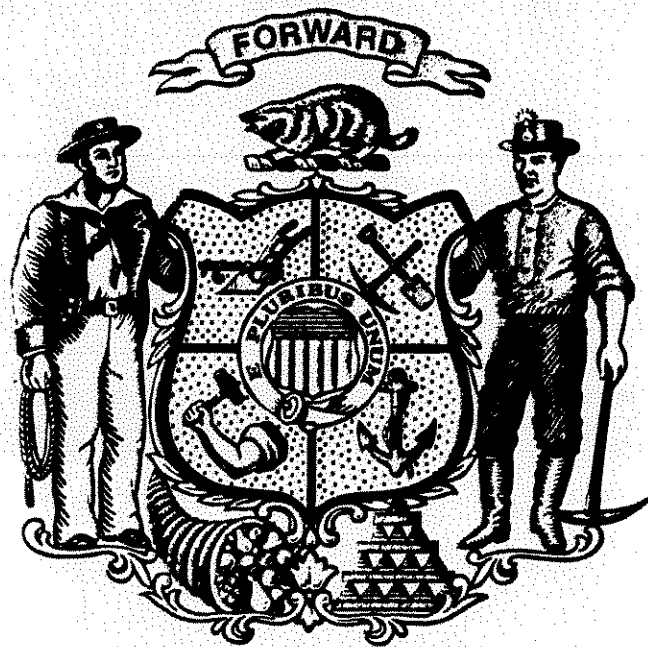
The intent of the rule is to give the general public a period of at least 24 hours to access and read a proposal after it has been formally introduced, or offered, before any executive action can be taken on the proposal. The general public does not have access to these documents until they are officially introduced.

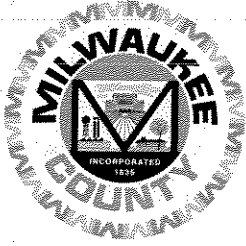
As the presiding officer, I will interpret this rule to mean that a proposal introduced, or offered, any time between 8:00 a.m. and 5:00 p.m. will be available for executive action exactly 24 hours after it has been introduced or offered, excluding days under AR 17d (1). Any proposal introduced, or offered, after 5:00 p.m. and before 8:00 a.m. will be available for executive action 24 hours after 8:00 a.m. the following day, excluding days under AR 17d (1).

For example, if a proposal is introduced at 3:00 p.m. on a normal day, then the clock will start and not stop until the 24-hour period is over the next day at 3:00 p.m. If a proposal is introduced at 7:00 p.m., whether we are in session or not, then the clock will not start until 8:00 a.m. the following morning.

To maintain consistency in the proceedings for all Assembly committees, I encourage committee chairs to interpret and follow this rule in a similar fashion.

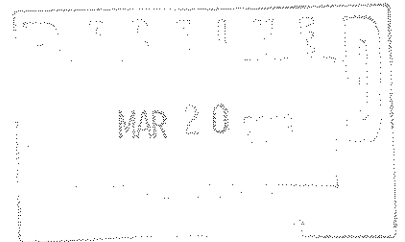
If you have any questions or concerns, please do not hesitate to contact me at 266-7502.





COUNTY BOARD OF SUPERVISORS

Milwaukee County



March 19, 2003

Representative John Gard
Room 308 East State Capitol
P.O. Box 8952
Madison, WI 53708

Rep. Freeze -
FYI
-Susan Howard

Dear Representative Gard:

We are writing to you regarding the recent problems incurred in the absentee voting process here in Milwaukee County.

We urge the state legislature to take timely and appropriate action to modify state law to close the loopholes in the absentee balloting process that allows absentee ballots to be sent to a third party. We believe that swift action is needed in order to restore public confidence in the State of Wisconsin election processes. Fixing the problems inherent in the current absentee balloting process will go a long way in that regard.

Sincerely,

Daniel J. Diliberti
Supervisor 8th District

Robert Krug
Supervisor 9th District

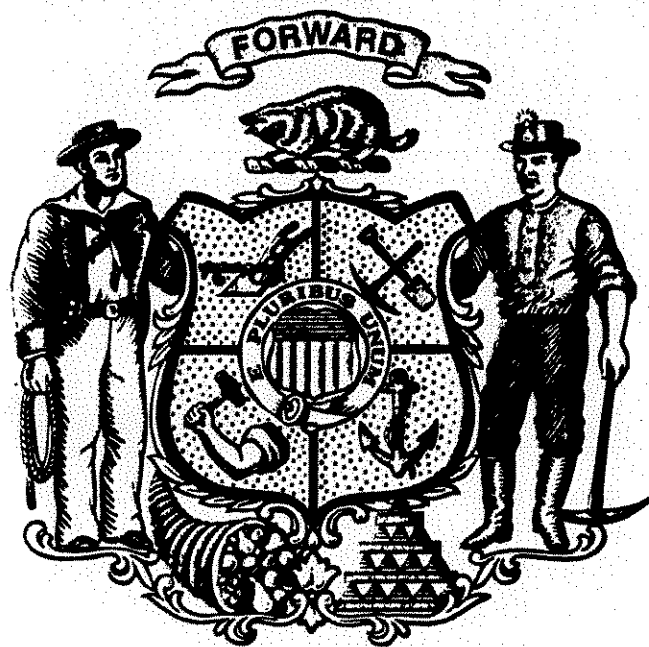
Lynne De Bruin
Supervisor 16th District

Mark A. Borkowski
Supervisor 11th District

Robert M. McDonald
Supervisor 6th District

Alvin J. (Bud) Endries
Supervisor 19th District

Peter G. Agnos
Supervisor 21st District



***** RULES COMMITTEE NOTICE *****

DATE: March 13, 2003
TO: Rules Committee Members
FROM: Majority Leader Steve Foti
RE: Proposed Session Calendar

The Assembly committee on Rules will meet in the Assembly Parlor upon adjournment of session on Thursday, March 13th to schedule bills and resolutions for session on Tuesday, March 18th and Wednesday, March 19th.

*The Assembly will convene at 11:00 A.M. on Tuesday, March 18th
* 1:00 P.M. * Wednesday, March 19th*

Proposed Calendar for Tuesday, March 18th

AJR 23 Hines
Relating to: declaring March Red Cross Month.

AB 79 Wieckert
Relating to: authorizing the Wisconsin Health and Educational Facilities Authority to issue bonds to finance a project undertaken for a facility used for education by a private, tax-exempt institution.
Committee on Education Reform: 8-5.

~~AB 115~~ ✓ Freese ^{101 AB1158}
relating to: filing of declarations of candidacy and recording of votes received by write-in candidates in certain elections.
Committee on Campaigns and Elections: 5-1.

~~AB 116~~ ✓ Ward ^{101 AB1141}
Relating to: use of moneys from the Wisconsin election campaign fund to make certain false representations.
Committee on Campaigns and Elections: 5-1.

✓ '01 AB 863
AB 118 Freese
Relating to: the method of filling vacancies in certain county, city, village, and town elective offices.
Committee on Campaigns and Elections: 5-1.

✓ '01 AB 184
AB 119 Seratti
Relating to: reporting of information by nonresident registrants under the campaign finance law.
Committee on Campaigns and Elections: 6-0.

'01 AB 40
AB 121 Freese
Relating to: recruitment, training, certification, and compensation of election officials.
Committee on Campaigns and Elections: 6-0.

AB 126 Jensen
Relating to: directing the Legislative Audit Bureau to administer a study of the Milwaukee Parental Choice Program.
Committee on Education Reform: 12-1.

Proposed Calendar for Wednesday, March 19th

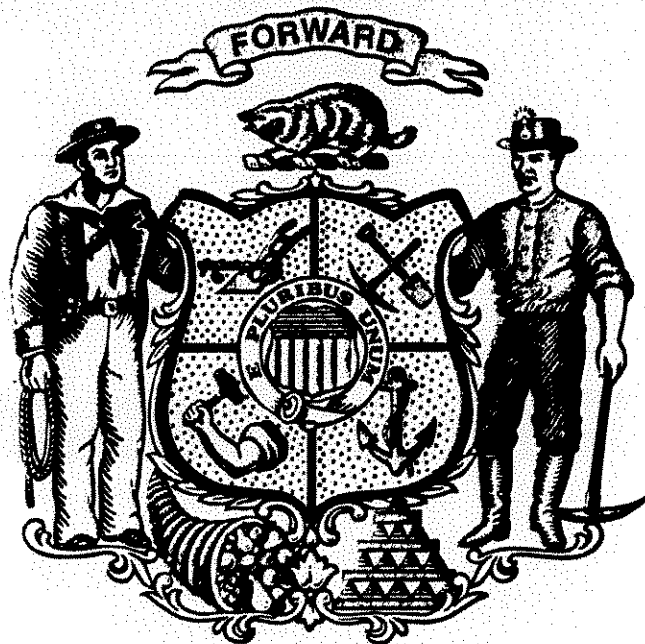
AB 19 Towns
Relating to: benefits and eligibility of Wisconsin residents who are members of the National Guard in another state.
Committee on Veterans and Military Affairs: 12-0.

AB 20 Musser
Relating to: staffing and military rank changes in the Department of Military Affairs.
Committee on Veterans and Military Affairs: 12-0.

AB 59 Gundrum
Relating to: name changes and names used by sex offenders and providing a penalty.
Committee on Judiciary: 8-0.

AB 60 Gundrum
Relating to: failing to register as a sex offender and providing a penalty.
Committee on Judiciary: 8-0.

End



Griffiths, Terri

From: Griffiths, Terri
Sent: Friday, April 04, 2003 3:57 PM
To: Wavrunek, Glenn
Subject: RE: Committee Hearing/Exec

Thanks for letting me know Mark's availability. Here are the preliminary records of each of the bills we heard yesterday. Let me know if you have any questions or need something else. Thanks. Terri



AB0047_20030404 AB0141_20030404 AB0172_20030404 AB0175_20030404 AJR0015_2003040
_2003ACAM.doc _2003ACAM.doc _2003ACAM.doc _2003ACAM.doc 4_2003ACAM.doc

-----Original Message-----

From: Wavrunek, Glenn
Sent: Friday, April 04, 2003 3:09 PM
To: Griffiths, Terri
Cc: Whitmore2, Lori
Subject: RE: Committee Hearing/Exec

Terri --

The exec on the 17th works for Mark. However, Mark will be out of town for the exec on the 22nd and will not be able to attend. Please call if you have any other questions. Thanks,

Glenn Wavrunek
Office of Rep. Mark Pocan

ps - Could you also forward the list of individuals who registered during yesterday's hearing?
Thanks!!

-----Original Message-----

From: Griffiths, Terri
Sent: Thursday, April 03, 2003 3:23 PM
To: Bob Karius; Ellen Nowak; Jolene Churchill; Maggie Delaporte; Martha Hess; Rep.Freese; Rep.Grothman; Rep.Gundrum; Rep.Pocan;
Rep.Travis; Rep.WoodJ; Robert Conlin; Terri Griffiths
Subject: Committee Hearing/Exec

Members,

*For your scheduling purposes we will hold another public hearing on **April 17 at 10:00 in room 300 N.E.** We will also take executive action on some of the bills heard in today's public hearing.*

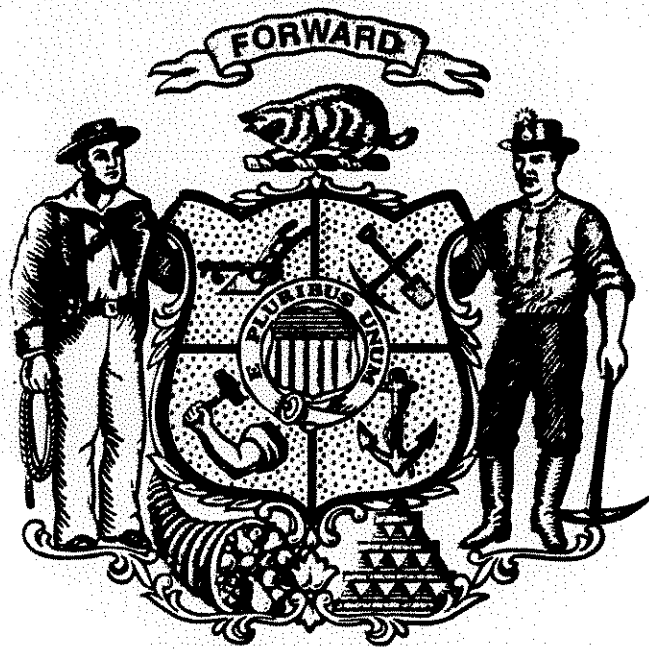
*There will likely be an executive session scheduled for **April 22 at 10:00 a.m. in room 400 N.E.** This is not our regular committee day and permission has been granted for this executive session by Speaker Gard's office. Please let me know if you have committee conflicts on this date so that we may make arrangements for voting.*

Amendments to bills should be submitted to Rep. Freese at least 24 hours prior to an executive session.

Any questions regarding this notice please give me a call. Official hearing notices are forthcoming.

Thank you.

*Terri S. Griffiths
Administrative Assistant/Committee Clerk
Assembly Committee on Campaigns & Elections
Office of Rep. Stephen J. Freese
(608) 266-7502*



Richard, Rob

From: Hansen, Barbara on behalf of Kennedy, Kevin
Sent: Wednesday, April 09, 2003 10:13 PM
To: Ellis, Mike; Freese, Steve
Subject: Important Information about the State Elections Board Study of Statewide Voter Registration Systems



Memo SVRS LegE
April 9 2003.do...

I have attached this memorandum on the status of the statewide voter registration system study that the Elections Board is currently engaged in. I wanted to make sure you received this important information. If you have any questions, please contact me or Barbara Hansen. Thank you.

Kevin Kennedy, Executive Director

Wisconsin State Elections Board
132 East Wilson Street, Suite 200
PO Box 2973
Madison, WI 53701-2973
608-266-8087
608-267-0500 (Fax)
kevin.kennedy@seb.state.wi.us
<http://elections.state.wi.us>

Barbara A. Hansen

Elections, Training & Information Technology Director
Wisconsin State Elections Board
P.O. Box 2973
Madison, WI 53701-2973
608-267-0714
608-267-0500 (FAX)
<<mailto:barbara.hansen@seb.state.wi.us>>
<<http://elections.state.wi.us>>

State of Wisconsin \ Elections Board

Post Office Box 2973
132 East Wilson Street, 2nd Floor
Madison, WI 53701-2973
Voice (608) 266-8005
Fax (608) 267-0500
E-mail: seb@seb.state.wi.us
<http://elections.state.wi.us>



STEVEN V. PONTO
Chairperson

KEVIN J. KENNEDY
Executive Director

MEMORANDUM

TO: Senator Mike Ellis
Representative Steve Freese

FROM: Kevin J. Kennedy
Executive Director

DATE: April 9, 2003

SUBJECT: Statewide Voter Registration System Study

On October 29, 2002 President Bush signed the *Help America Vote Act of 2002 (HAVA)*. The Act establishes certain election requirements for all states regarding the conduct of federal elections. One of the requirements is that states establish a computerized statewide voter registration list.

Why is a statewide voter registration system (SVRS) required?

Under HAVA, each state must implement, in a uniform and nondiscriminatory manner, a single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the state level that contains the name and registration information of every legally registered voter in the state. The computerized list serves as the single system for storing and managing the official list of registered voters throughout the State. Congress set January 1, 2004 as the effective date for the SVRS. However, that deadline can be extended to January 1, 2006 if the state certifies that for good cause it cannot meet the January 1, 2004 deadline and includes the reasons for failure to meet the deadline in its certification. The State Elections Board (SEB) is actively pursuing that extension.

What is Wisconsin's Statewide Voter Registration System Study?

The Elections Board secured an externally contracted project management resource to assist agency staff in preparing a study on the development and implementation of a SVRS. The consultant developed a Request for Information (RFI) to identify costs for development, implementation and maintenance of the project. In addition, a staff person from the Department of Electronic Government oversees the project study in reviewing the work of the consultant. The consultant will prepare a report on their study to the Legislature by May 15, 2003.

What will the SVRS look like?

The SVRS will be a computerized single list for storing and managing the name and registration information of every legally registered voter in the state. The computerized list will be interactive with municipalities and will be coordinated with other state agency databases. All voter registration information obtained by a local election official in the state will be electronically entered into the computerized list on an expedited basis at the time the information is provided to the local official.

Who is involved in the study?

As part of the SVRS study, the consultant and Board staff recently met with local election officials to help define both the business and technical requirements of the system. In order to gather further information, the Elections Board sent a voter registration survey to all municipal clerks in the state and invited clerks in municipalities that require voter registration to respond to a web-based survey. Representatives from the Department of Transportation/Division of Motor Vehicles (DMV), Department of Corrections (DOC), Department of Health and Family Services/Office of Vital Records, the State Court System and Department of Electronic Government (DEG) were interviewed in order to obtain necessary information about coordination of the list. In addition, the Department of Justice (DOJ) will also be interviewed. The study includes interviews with other states.

What is the impact on state entities?

HAVA requires that specific state entity information be used to validate the data within the SVRS application. The following direct impact entities have been in discussions with SEB on the data required for validation and the best approach to share the data for HAVA compliance. Challenges already identified are unique identification and exception handling processes when comparing entity data to SEB data.

Division of Motor Vehicles (DMV)

Overview: HAVA requires the voter registration list to be validated against driver's license information currently housed at DMV. The fields required from DMV include:

- Name
- Drivers License/State ID Number
- Social Security Number
- Residential Address
- Any Other Unique DMV Identifier

Technical Approach: We have discussed the following approaches to share data between SEB and DMV. Several options exist:

- Design and develop an extract file of the driver's license information and use file transfer protocol (ftp) to SEB as an input file to the SVRS application. We may be able to leverage the jury selection extraction currently in place at DMV.
- Design and develop an interface of driver license information for SEB to use as an input file to the SVRS application.
- Leverage existing driver license extract tapes/cartridges used as an input file to the SVRS application.

Department of Corrections (DOC) and State Court System

Overview: HAVA requires the voter registration list to be validated against DOC and Courts information for felony status. Conviction and felony information is currently housed within systems at DOC and the Courts. The fields required from DOC and/or the Court System include:

- Judgment of Conviction Name (Name Used within Court System)
- Alias Names (Several Alias Names May Exist)
- Date of Birth (If Available)
- Social Security Number (If Available)
- DOC Number/ Case Number
- Court Case Number
- Last Known Address

- Sentence Date
- Conviction Date
- Felon Status
- Conviction Number
- Discharged Date
- Juvenile Adjudication

Technical Approach DOC: We have discussed the following approaches to share data between SEB and DOC. Several options exist:

- Design and develop an extract file of felony conviction records and use ftp to SEB as an input file to the SVRS application.
- Design and develop a system-to-system interface to obtain felony conviction records for SEB to use as an input file to the SVRS application.
- Leverage existing felony conviction record extract tapes/cartridges used as an input file to the SVRS application.

Technical Approach Courts: We have discussed the following approaches to share data between SEB and the Courts. Several options exist:

- Use the Wisconsin Circuit Court Access website to obtain information relative to felony convictions.
- In the future, the Courts may have a system in place to do bulk extractions from the website.
- On a case-by-case basis, the Courts currently send a direct data stream in XML format to outside entities such as DOJ and the District Attorneys.

Office of Vital Records

Overview: HAVA requires the voter registration list to be validated against Office of Vital Records data for recent death information. Vital statistic information will be used to inactivate voters who have died. The fields required include:

- Name
- Address
- Social Security Number
- Date of Birth
- Birth Certificate Number
- Death Certificate Number
- Date of Death

Technical Approach: We have discussed the following approaches to share data between SEB and the Office of Vital Records. Several options exist:

- Design and develop an extract file of death records and use ftp to SEB as an input file to the SVRS application.
- Design and develop a system-to-system interface to obtain death records for SEB to use as an input file to the SVRS application.
- Leverage existing death records with extract tapes/cartridges used as an input file to the SVRS application.

Department of Electronic Government (DEG)

Overview: SEB requires DEG assistance from a technology integration and support perspective. DEG technical staff assisted in the definition of technical requirements of the SVRS. The final solution for SVRS may include DEG hosting the database and application.

What is the impact on local municipalities and counties?

HAVA requires that all municipalities in the state register voters. Currently, only municipalities with a population greater than 5,000 are required to have voter registration. All municipalities will be required to use the SVRS to maintain their respective voter registration records.

The State Elections Board recognizes that municipalities with voter registration currently use a variety of systems for database and communication needs. Some municipalities maintain voter information manually. Most municipalities without voter registration have no system in place at all. The Elections Board is developing enabling legislation that will allow municipalities to contract with counties or other municipalities to enter and maintain voter registration information into the state system. Some counties already provide and maintain lists of eligible voters on behalf of municipalities in their county. These counties and other counties may wish to maintain voter registration information for their municipalities.

Who will maintain the system?

The State Elections Board will maintain the system and be the custodian of the records. Local municipalities will be responsible for adding or changing information concerning voters registered in their municipalities.

How will SVRS be funded?

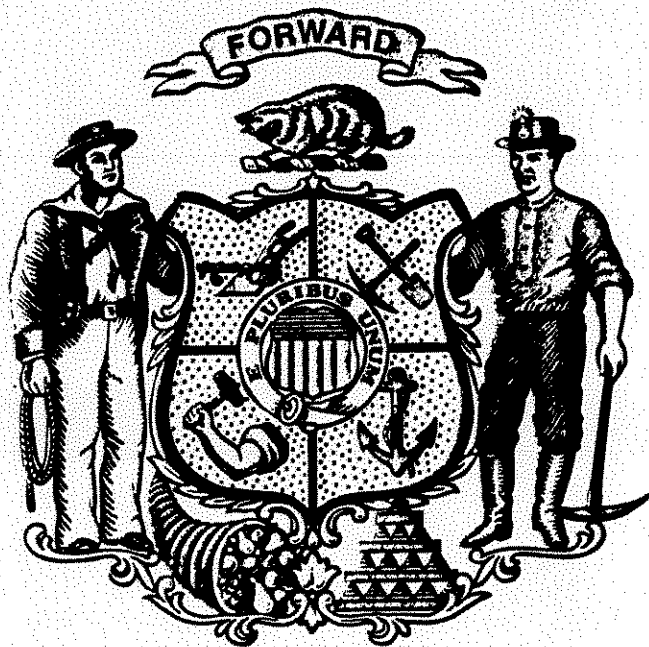
There are two major forms of election reform funding provided by HAVA in the federal fiscal year 2003 appropriations: election reform payments and requirements payments. The requirements payments require a 5% state match for all federal funds spent under this mandate. In order to qualify for federal funds, the State must develop a plan on how the state will implement HAVA requirements. Currently, the State Plan Committee, made up of local election officials and representatives of voter advocacy groups, is meeting to draft the state plan.

The State Elections Board recognizes that all levels of government have limited resources and will strive to design a SVRS in a way that minimizes the fiscal impact on state and local budgets, staff and other resources, while ensuring that the state complies with HAVA requirements. Municipalities that currently have voter registration systems will no longer need to fund their separate, stand-alone systems, but will continue to support the maintenance of their voter registration records through the SVRS.

How will I be informed about the status of the SVRS project?

The State Elections Board will provide periodic updates about the status of the study effort through informational memos, press releases and meetings.

For more information about the *Help America Vote Act of 2002* or the Statewide Voter Registration Study, please contact me at 608-266-8087 or kevin.kennedy@seb.state.wi.us. You may also contact Barbara Hansen, staff project manager for the study, at 608-267-0714 or barbara.hansen@seb.state.wi.us. Additional information can be found by visiting the State Elections Board's website at <http://elections.state.wi.us>.



May 16, 2003

State Rep. Stephen Freese, Chair
Committee on Campaigns and Elections
State Capitol
Room 115 West
P. O. Box 8952
Madison, WI 53708

Dear Representative Freese:

I am very concerned about free and fair and legal elections in Wisconsin. I have been involved in recent elections and know that the voting process was severely compromised. I understand that dead people voted in the last statewide election and that the total number of voters was 5,000 more than the number of people in the state that should be eligible to vote.

Election reform is needed right away. Please take action to pass a voter ID bill and clean up Wisconsin elections. When I was a poll watcher many people pulled out their ID. They were surprised that the bill had not been passed. My activities in the last 14 months have shown me that most people are law abiding decent people and want to uphold the constitution and the laws of the land. The fraud is minimal, and must be stopped. Please take action and pass a Voter ID quickly.

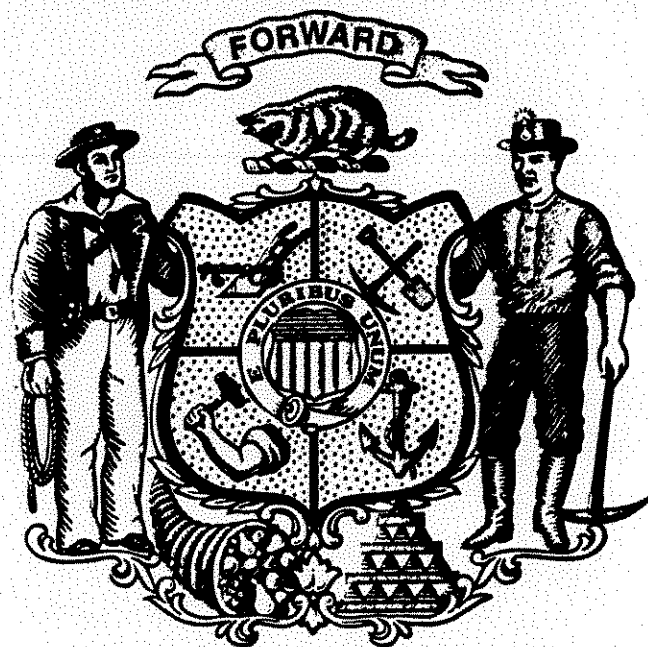
Thank you for doing the right thing.

Sincerely,

Mrs. Marilyn Kruchell

K

Mrs. Marilyn Kruchell
3401 S 113th St Apt 3
Milwaukee WI 53227



May 16, 2003

State Rep. Stephen Freese, Chair
Committee on Campaigns and Elections
State Capitol
Room 115 West
P.O. Box 8952
Madison, WI 53708

Dear Representative Freese:

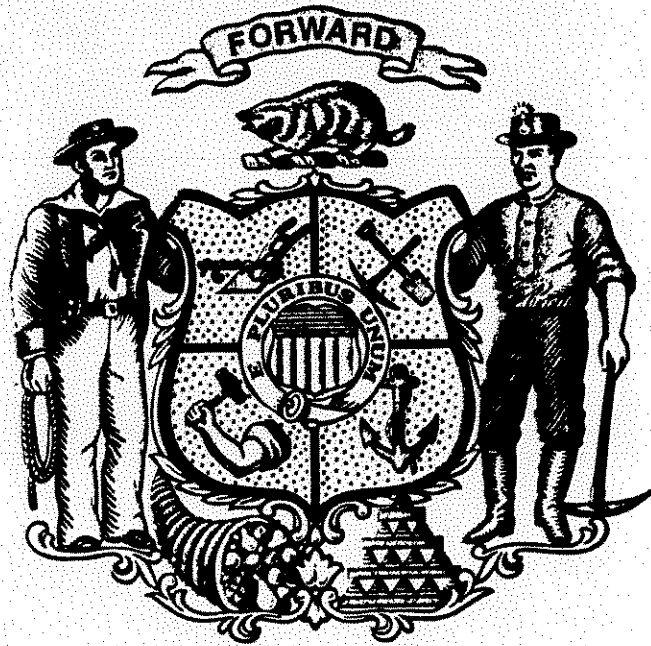
I am very concerned about the election process in the State of Wisconsin. Specifically, conducting fair and legal elections. I am a member of the Wisconsin Federation of Republican Women. At our most recent convention, we were told a significant number of "dead" people voted in recent elections. We both know this is impossible, but how does one explain the vote of a dead person? We were also told that the address of numerous voters cannot be verified by election officials, i.e., the voter reported a non-existent address when they registered to vote via same-day registration. Yet these individuals were permitted to vote and their votes were included in the count. This is a travesty and mocks the "fair election" process.

Election reform is an immediate necessity. Please take action to pass a strong Voter ID bill to clean up Wisconsin elections!

Sincerely,



Victoria Ostry
1409 N. 64th St.
Wauwatosa, WI 53213



Request 17th

9:00 a.m.

9/29/03

2 bills to keep policy and funding separate

* early morning

schedule immediately

intro - 11th
hear -
bill -

Statewide voter registration

towns can have county do the work for them
or they can do the list themselves

Provisional voting - were exempt, but this
calms the concerns over no identification

Voter Equipment -

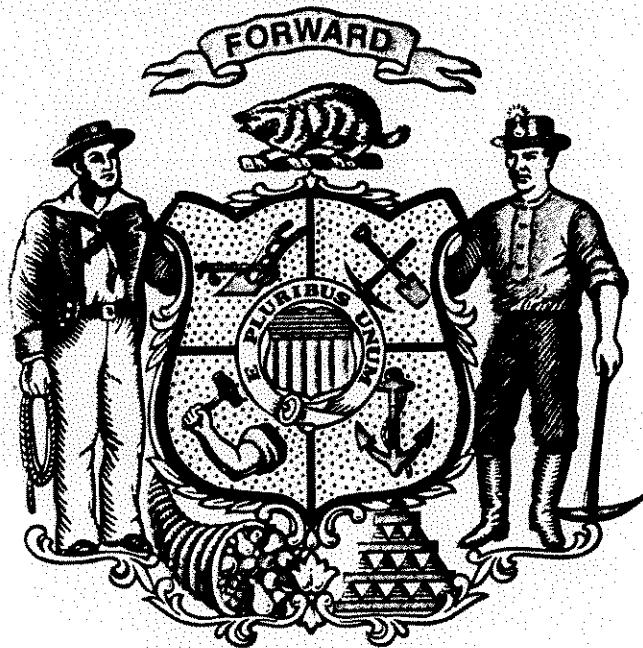
Does not do away w/ the ^{paper} ballot.

Feds didn't want to eliminate any system
due to cost and other factors.

* 10-20 million needed to get the equip. for
state. ~~state.~~

~~XXXXXXXXXX~~

\$15 million
coming to
WI will go
to statewide
voting equip.



Griffiths, Terri

From: Hess, Martha
Sent: Tuesday, September 30, 2003 10:42 AM
To: Griffiths, Terri
Subject: campaigns & elections 10/17
 I've got it on the calendar.

Martha Hess
 Office of Rep. Jeff Wood

✓ Gundrum (really screwed up his life!)
 ✓ Grothman
 ✓ Wood, J.
 Travis (not a good time)
 ✓ Pocar
 ✓ Conlin

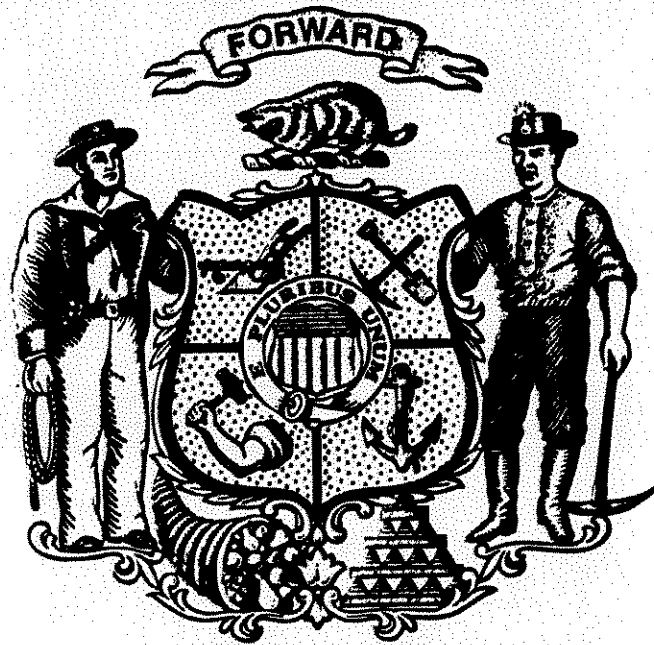
300 5810 0025/200 FORMS 81M 001

PHONE MESSAGE	TO	T.S.	DATE	9/29	TIME
	FROM	GLENN WAYRNEK	AREA CODE		EXT
	COMPANY	REP. POCAN	NUMBER		
	PAGER		MOBILE		FAX
MESSAGE					
"ACCEPTED" COMMITTEE HEARING ON THE 17th					

300 5810 0025/200 FORMS 81M 002/400 FORMS

PHONE MESSAGE	TO	T.S.	DATE	9/29	TIME
	FROM	JIM EMERSON	AREA CODE		EXT
	COMPANY	GROTHMAN	NUMBER		
	PAGER		MOBILE		FAX
MESSAGE					
"ACCEPTED" OCT 17 HEARING DATE					
					SIGNED
<input type="checkbox"/> PHONED	<input type="checkbox"/> CALL BACK	<input type="checkbox"/> RETURNED CALL	<input type="checkbox"/> WILL CALL AGAIN	<input type="checkbox"/> WAS IN	<input type="checkbox"/> URGENT

					SIGNED
<input type="checkbox"/> CALL BACK	<input type="checkbox"/> RETURNED CALL	<input type="checkbox"/> WILL CALL AGAIN	<input type="checkbox"/> WAS IN	<input type="checkbox"/> URGENT	





Wisconsin Speaker Pro Tempore
Representative Stephen J. Freese

October 13, 2003

The Records of the Assembly Committee on Campaigns & Elections were reviewed by:

Mr. Eitan Silver (representing himself)
330 N Carroll Street, Apt 103
Madison, WI 53703

Submitted by:

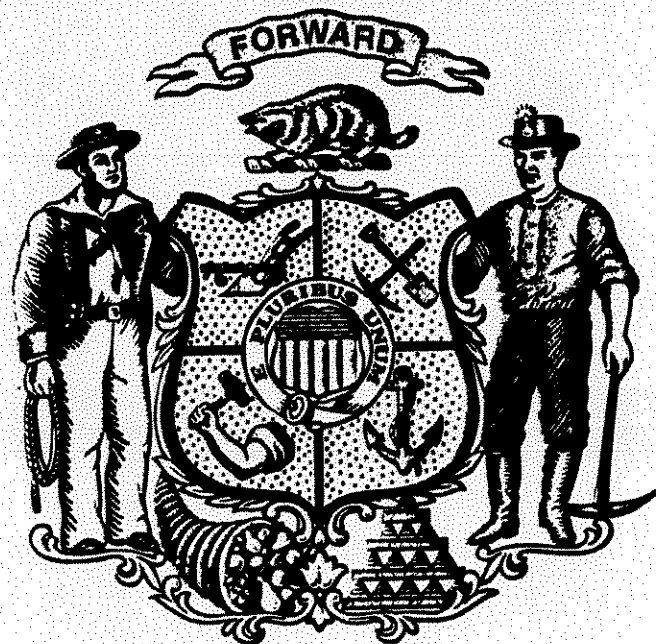
Terri S. Griffiths
Committee Clerk

A handwritten signature in cursive script, appearing to read "Terri S. Griffiths".

Fifty-First Assembly District

Office: Post Office Box 8952 • Madison, Wisconsin 53708-8952 • (608) 266-7502 • Fax: (608) 261-9474 • Rep.Freese@legis.state.wi.us
District: 1121 Professional Drive • Dodgeville, Wisconsin 53533 • (608) 935-3789

Printed on recycled paper with soy-based ink.



WE Voter Lists 10/17/03
\$100 for access annually -

will allow a list to all members -
takes the political output
of the state legislative
office level.

900 municipalities currently
use paper ballots.

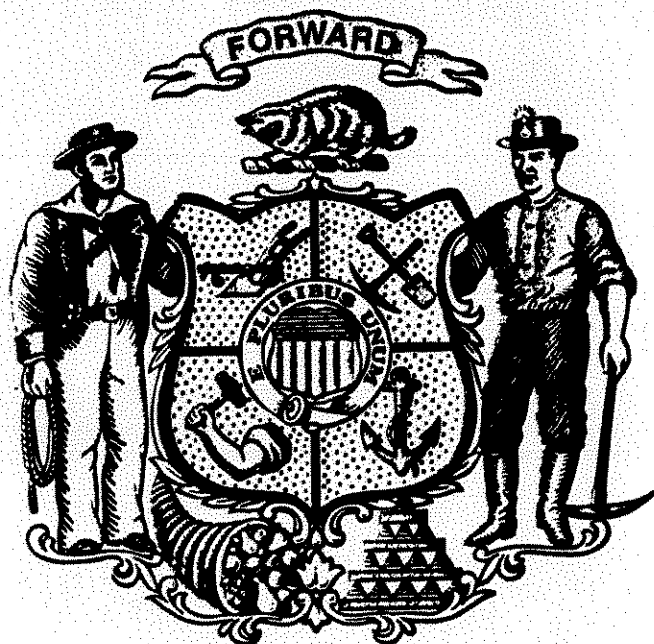
Funding is just to meet
the requirements designated
by feds.

50% spending match
required.

34191
allows us to meet the first
part of the match

US Dept. of Justice
division dealing
specifically w/ HAVA

Dec. 1 target date to
verify it is available



Griffiths, Terri

From: Richard, Rob
Sent: Tuesday, November 25, 2003 10:16 AM
To: Griffiths, Terri
Subject: FW: Wisconsin campaign finance & ethics reform!

Another insightful e-mail.

-----Original Message-----

From: Sharon McQueen [mailto:smq@csd.uwm.edu]
Sent: Tuesday, November 25, 2003 10:14 AM
To: rep.freese@legis.state.wi.us
Subject: Wisconsin campaign finance & ethics reform!

To Representative Stephen Freese:

It is my understanding that you are holding up campaign finance & ethics reform in our state. This reform is not only necessary, but long overdue. In addition, the vast majority of voters have repeatedly told you they want it.

What else do you need?? Please get busy now. It is more important than the ridiculous "priorities" you all have set "for us" of defining marriage and letting every dufus in the state carry a gun. Please stop the antics and get on with something important!

No excuses please. We're sick to death of them.

Thank you

Sharon McQueen
Lecturer and Doctoral Candidate
School of Library and Information Studies
University of Wisconsin - Madison

Griffiths, Terri

From: Richard, Rob
Sent: Monday, November 24, 2003 5:35 PM
To: Griffiths, Terri
Subject: FW: Campaign Finance Reform

This sounds like one for the committee clerk.

-----Original Message-----

From: saludb@juno.com [mailto:saludb@juno.com]
Sent: Monday, November 24, 2003 4:53 PM
To: rep.freese@legis.state.wi.us
Subject: Campaign Finance Reform

Hon. Freese,

What is being done about campaign finance reform? I did read that you said the Wisconsin Democracy Campaign used extreme tactics like writing letters to the editors which derailed your projects. Did you really say that? How ridiculous is that? Please tell me what you are doing on this critical issue; I'm really bothered by all the corruption trials and other scandals in our legislature when people are struggling to find jobs, fund schools, or obtain health insurance.

Sincerely,

Salud Garcia
3001 Harvey Street Apt. B
Madison, WI 53705

« back to article

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When it comes to convincing state government officials to represent us instead of their wealthy benefactors, shame is not an option.

Profiles in plutocracy

By Mike McCabe

The people in charge of Wisconsin government have got shame licked. The more shameful their behavior, the more shameless they are about it. Evidently it all balances out in their minds.

If you would rather not ponder such ethical gymnastics, you had best fast forward through the autumn of 2003.

With jobs vanishing by the thousands throughout Wisconsin, state lawmakers hauled out weapons of mass distraction – concealed weapons, that is. Never mind that two-thirds of the people are telling pollster after pollster they do not want neighbors much less strangers walking around with guns stuffed in their undies. Their “elected representatives” – eager to please the powerful gun lobby – pushed to legalize concealed carry law anyway.

With books cooked Enron style to make the state budget appear balanced, the state Legislature turned its attention to the pressing task of clarifying the always-confusing law defining marriage as a union between a husband and wife.

With a growing legion scared to death that they are a pink slip away from not being able to take their kids to the doctor, state legislators moved quickly to allay the growing fear of...shopping cart theft.

Since when does shopping cart theft trump health care reform on the public's to-do list? Since the grocers and other backers of the bill greased the legislative skids with more than \$1 million in campaign contributions to legislators, including nearly \$184,000 to the bill's author and sponsors.

With the nation at war against terrorism, Wisconsin lawmakers should have known that fighting crime so trivial would not do. But it took a helpful nudge from retail gas dealers and related businesses who gave legislators more than \$1.2 million to convince the Legislature to broaden its fall anti-crime agenda to include cracking down on gas station drive-offs.

Captains of industry who have showered legislators with \$7 million in campaign contributions saw a faltering economy as a perfect opening for more deregulation of their enterprises. But they weren't born yesterday. They know the "Business Deregulation Act of 2003" would be about as popular as the news about next season's Brewers' payroll. So they gave their pet bill a name that sets Orwell's grave to trembling – the "Job Creation Act."

To create untold numbers of jobs, the bill does things like allow trout streams and lakebeds to be dredged without any opportunity for public comment or DNR oversight. This recipe for economic development runs on for 114 pages.

Who in the Legislature gets to claim pride of authorship? Well, technically, no one. Legislative leaders John Gard and Mary Panzer, themselves marinated in nearly \$300,000 worth of campaign donations from backers of the bill, let industry lobbyists write the bill. It is not the first time. A senior bill drafter with the Legislature says it is now common practice for lobbyists to write their own bills at the Capitol.

While legislators were busy dancing around issues the public wants addressed, Dick Strong and his mutual fund company were playing fast and loose with investors' money. New York's attorney general – not the state Ethics Board or Wisconsin's College Savings Program Board – blew the whistle.

Members of the College Savings Program Board stood behind Strong even as rumors of illegal trading turned into a criminal investigation. That is hardly surprising considering the board's chair, Senator Alberta Darling, is a longtime recipient of campaign contributions from Dick Strong, his wife and employees of his company. Darling told the Associated Press her "conscience is very clear" because she had not taken Strong money since she joined the board in 2000. It turns out that was a lie. Campaign finance records show Darling received contributions from Strong employees as recently as January 28 of this year.

Darling is not the only board member with a flagrant conflict of interest. Senator Jeff Plale also has been fed a steady diet of contributions from Strong. In fact, he is a former Strong employee and to this day has much of his net worth tied up in Strong funds. Sort of puts the board's sweetheart deal with Strong to manage the state's EdVest program – and its loyalty to the embattled company now that it faces criminal charges – in a new light, doesn't it?

Thorny conflicts of interest among state officials extend well beyond the Capitol grounds. University of Wisconsin System President Katharine Lyall and the Board of Regents made headlines as they came under fire for approving pay increases for senior executives in a secret meeting. What has not made headlines, however, is the fact that Lyall supplements her \$304,980 annual salary with an estimated \$210,000 in compensation for serving on three corporate boards.

Among the corporate boards on which Lyall sits is Alliant Energy, which was paid \$2.5 million by the UW in 2003 and stands to receive more than \$6 million as project manager for a new power plant on the UW-Madison campus under a no-bid contract. Lyall also is on the board of M&I Corporation, which has pioneered the use of tax dodges that have enabled the bank to avoid paying any corporate income tax in Wisconsin, a source of funding for the UW.

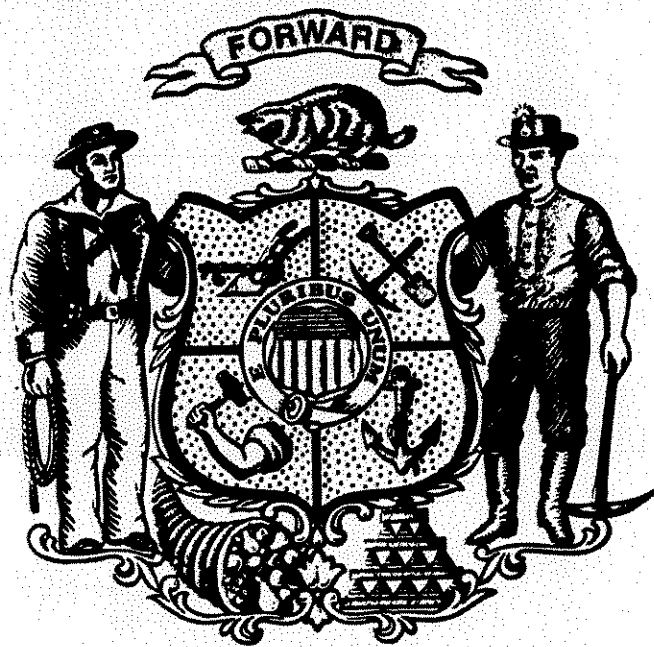
Nowhere to be found on the Legislature's agenda this fall was campaign finance reform. Three years after 90 percent of voters in a statewide referendum said they want campaign reform, the people are still waiting for their own elected representatives to stop debating concealed weapons or the definition of marriage or shopping cart theft long enough to give us back our democracy.

Rep. Steve Freese, who controls the fate of reform in the Assembly as chair of the lower house's elections committee, has not so much as held a public hearing let alone a vote this session on campaign finance reform. He told the *Capital Times* that every time he thinks about getting around to it "we'd have the Democracy Campaign do something stupid – like writing letters to the editor." He told the newspaper such actions were "extreme tactics."

Like I said, the folks in charge of state government have got shame licked.

November 22, 2003

Mike McCabe is executive director of the Wisconsin Democracy Campaign, a Madison-based non-partisan watchdog organization that tracks money in state politics and advocates for campaign finance reform.





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MEMORANDUM – U.S. SUPREME COURT UPDATE

TO: Colleagues / Friends

FROM: Brady Williamson / Mike Wittenwyler
Godfrey & Kahn, S.C.

DATE: Wednesday / December 10, 2003 / 12:30 p.m.

SUBJECT: *McConnell v. FEC* – U.S. Supreme Court Decision (Initial Analysis)

A few hours ago, the U.S. Supreme Court on a 5-4 vote largely upheld the provisions of the Bipartisan Campaign Reform Act (“McCain-Feingold”), including its ban on “soft money” and its new time-based prohibition on some issue advocacy communications by corporations and labor organizations. Written principally by Justices Stevens and O’Connor, the majority opinion’s 120 pages will reshape current campaign finance law – giving Congress and, by extension, state legislatures broader authority to regulate candidates, political parties and the organizations that attempt to influence elections.

In the most general terms, the U.S. Supreme Court today:

- Upheld the ban on soft money fundraising and spending by national political party committees as well as the prohibition on the participation of federal officeholders and candidates in soliciting and raising soft money in connection with federal elections;
- Upheld an expanded regulatory framework for political communications that prohibits corporations and labor organizations from engaging in certain forms of broadcast (but not print or telephone) issue advocacy communications within 30 days of a primary election or 60 days of a general election; and,
- Upheld the ability of Congress to enact stricter restrictions on coordinated political activities between candidates and political organizations, including political parties.

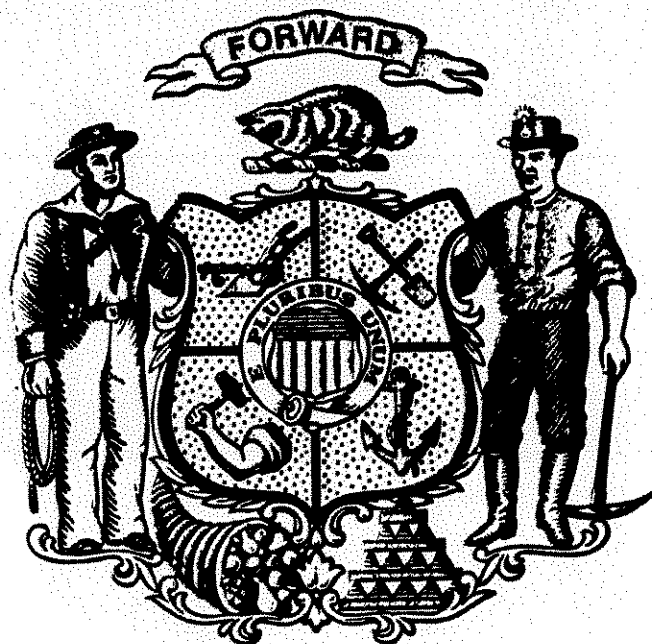
The federal law has been in effect for just over a year. The decision, accordingly, does not literally change anything – although relatively less significant parts of the law have now been found invalid. It is essential to note, moreover, that the decision does *not* directly affect state campaign finance law. However, the proponents of campaign finance reform in Wisconsin and in other states no doubt will rely on the decision to try to move forward with a variety of legislative proposals next year, including proposals that would prohibit certain forms of issue advocacy in a defined period before a state general or primary election.

Given the length of the decision, and number of opinions, it is always perilous to provide instant analysis. That said, these may well be some of the practical effects of the Supreme Court's decision:

- An enhanced role for political action committees (PACs), especially those with the financial resources and political willingness to engage in express advocacy (independent expenditures) up to and including election day. PAC contributions and spending are, of course, publicly disclosed under state and federal law. For most PACs, the distinction between issue advocacy and express advocacy will be irrelevant because PACs always have been able to spend unlimited amounts on express advocacy as long as that spending is independent of a candidate or political party and PAC contributions are disclosed.
- An emphasis by section 527 and section 501(c)(4) organizations on issue advocacy *earlier* in political campaigns. The federal prohibition on issue advocacy communications in the period immediately before an election does not mean *no* issue advocacy; rather, it means no *broadcast* issue advocacy in the immediate pre-election period. This will place a premium on the early and selective purchase of broadcast time.
- A greater role for non-broadcast communication. It is essential to remember that the federal law only regulates *broadcast* advertising. A group interested in issue advocacy communications, funded by corporations or labor organizations, can continue to spend unlimited amounts (regardless of timing) on direct mail and newspaper advertising, just to name two non-broadcast alternatives.
- A need for even greater vigilance and care on coordination. If anything, the Supreme Court's decision imposes stricter standards on coordination between parties and candidates, on the one hand, and any other political group, on the other hand. Every organization will need to take additional steps to ensure that its "independent" activities remain truly independent.

There will be countless summaries, analyses, predictions and strategies arising out of the U.S. Supreme Court's decision today. This is only the first summary report. There is no substitute for reading the entire decision, of course, and this initial memorandum will need to be supplemented in the next few days and over the next few weeks. In time, the federal and state courts will apply and help define the principles articulated and re-articulated this morning by the U.S. Supreme Court. Moreover, the state legislature no doubt will revisit the question of campaign finance reform in Wisconsin -- in a new environment, in an election year, and shaped in large part by today's decision.

As always, please let us know if you have any questions or comments. We look forward to discussing the decision and its ramifications with you.





WISCONSIN LEGISLATIVE COUNCIL LEGAL MEMORANDUM

U.S. Supreme Court Case on Campaign Finance: *McConnell v. FEC*

INTRODUCTION

On December 10, 2003, the U.S. Supreme Court released its much-anticipated decision on the constitutionality of the Bipartisan Campaign Reform Act of 2002 (BCRA). In *McConnell v. FEC*, 540 U.S. ___ (2003), the U.S. Supreme Court, in a five to four decision, upheld the major provisions of the BCRA.

This memorandum describes the court's decision with respect to two of the major provisions of the BCRA: (1) the regulation of "electioneering communications" or "issue ads"; and (2) the regulation of "soft money." In addition, this memorandum will briefly describe the ramifications of the decision on the regulation of issue ads for state campaign regulation purposes.

BACKGROUND

By way of background, BCRA, enacted in 2002, constituted a major overhaul of the nation's system of financing campaigns for federal office. Upon enactment of BCRA, several plaintiffs brought suit seeking declaratory rulings in federal court that various provisions of BCRA were unconstitutional. The cases were consolidated and assigned to a federal district court consisting of three judges in April 2002. After months of discovery and briefing, the court held oral argument on December 4 and 5, 2002. On May 2, 2003, the court issued its decision consisting of four separate opinions

and over 1,600 pages of text. When taken as a whole, the opinions had the effect of upholding a number of aspects of BCRA, striking down others, and modifying some others. On May 19, 2003, however, the court stayed, or suspended, its ruling pending final disposition in the Supreme Court of the United States. Subsequently, the Supreme Court heard oral arguments in the case on September 8, 2003 and, as noted, issued its final ruling on the matter on December 10, 2003.

BCRA'S PROVISIONS: ELECTIONEERING COMMUNICATIONS

BCRA generally requires every person who makes a disbursement for the direct cost of producing and airing "electioneering communications" in an aggregate amount in excess of \$10,000 during any calendar year to file with the Federal Election Commission (FEC) a statement containing certain information. Generally, the statement must be filed within 24 hours after reaching the \$10,000 aggregate annual disbursement limit and additional reports are due within 24 hours after any additional expenditures aggregating in excess of \$10,000 since the last statement was filed. In addition to actual disbursements, a person is treated as having made a disbursement if the person has executed a contract to make a disbursement.

The statement filed with the FEC must include, among other things: (1) the identification of the

person making the disbursement and of any person sharing or exercising direction or control over the activities of such person; (2) the principal place of business of the person making the disbursement if not an individual; (3) the amount of each disbursement of more than \$200 during the period covered by the statement and the identification of the person to whom the disbursement was made; (4) the election to which the electioneering communication pertains and the names of the candidates identified or to be identified; and generally (5) the names and addresses of individuals contributing \$1,000 or more.

BCRA, with some exceptions, defines "electioneering communication" as:

Any broadcast, cable, or satellite communication which--

- (1) refers to a clearly identified candidate for federal office;*
- (2) is made within--*
 - a. 60 days before a general, special, or runoff election for the office sought by the candidate; or*
 - b. 30 days before a primary or preference election or a convention or caucus of a political party that has authority to nominate a candidate for the office sought by the candidate; and*
- (3) in the case of a communication which refers to a candidate for an office other than President or Vice-President, is targeted to the relevant electorate.*

In addition to the above-described disclosure requirements, BCRA also effectively prohibits corporations and labor unions from funding electioneering communications from their general treasuries.

THE COURT'S DECISION: ELECTIONEERING COMMUNICATIONS

In upholding BCRA's provisions relating to electioneering communications, the court rejected the argument that its past decisions, primarily *Buckley v. Valeo*, had established a constitutionally mandated line between express advocacy and issue advocacy which protected the latter from government regulation. The court instructed that its "magic words" test, which many lower courts had interpreted to mean that the government could not regulate campaign ads that did not use the "magic words" of "vote for," "vote against," "elect," "defeat," or similar words, was merely a product of statutory interpretation and not a constitutional command. In fact, the court noted that Buckley's magic words test is "functionally meaningless" because it is easily evadable and advertisers would seldom choose to use the "magic words" even if doing so had no legal ramifications. The court pointed out that even though "issue ads" do not explicitly urge viewers to vote for or against a candidate, they are no less clearly intended to influence elections.

Turning to BCRA's electioneering communications disclosure requirements, the court sustained the disclosure requirements because they are intended to provide the electorate with information, deter actual corruption and avoid the appearance thereof, and aid in the gathering of data necessary to enforce more substantive electioneering restrictions. However, the court acknowledged that in some situations, donor disclosure requirements could do unconstitutional harm to, for example, minor parties and independent candidates, if such donor disclosure requirements would cause potential donors to not donate for fear of threats, harassment, or reprisals. In this case, however, none of the plaintiffs could show any harm due to the disclosure requirements.

The court also upheld BCRA's requirement that makers of electioneering communications also disclose contracts to disburse funds to make such communications because such a requirement effectively prevented circumvention of the reporting requirements by timing payments until after the election.

With respect to BCRA's limits on corporations and unions funding electioneering communications from their general treasuries, the court noted that the government's ability to prohibit corporations and unions from using funds in their treasuries to finance advertisements expressly advocating the election or defeat of a candidate has been firmly embedded in the law since its decision in *Buckley v. Valeo*. The court also pointed out that such a limitation was not a total ban on such communications because corporations and labor unions could still fund such communications through separately administered segregated funds, or political action committees (PACs). Because the court had previously found that there was no real difference between express and issue advocacy, the court concluded that the government could regulate corporate and union use of issue ads.

The court also rejected the argument that the limitation was too broad because it applies to ads that have no electioneering purpose (true issue ads) but are run within the time frames of BCRA. The court pointed out that the vast majority of ads studied and submitted as evidence in the case were intended to have an electioneering purpose, and even if BCRA inhibited some constitutionally protected corporate and union speech, the court would not prohibit enforcement of the law unless the application to protected speech is substantial, especially in light of the law's plainly legitimate applications. The court concluded that the plaintiffs failed to show a substantial burden.

Additionally, the court rejected the claim that the law was underinclusive because it did not

apply to all forms of communication. The court said that Congress had the right to address the problem one step at a time, dealing with what it perceives is the biggest problem at the moment.

BCRA'S PROVISIONS: SOFT MONEY

BCRA prohibits national party committees and their agents from soliciting, receiving, directing or spending any soft, or unregulated, money. It also prohibits state and local party committees from using soft money for activities that affect federal elections and prohibits political parties from soliciting and donating funds to tax-exempt organizations that engage in electioneering activities. The law also restricts federal candidates and officeholders from receiving, spending, or soliciting soft money in connection with federal elections and limits the ability to do so in connection with state and local elections. Finally, BCRA prohibits state and local candidates from raising and spending soft money to fund advertisements and other public communications that promote or attack a candidate for federal office.

Plaintiffs challenged these provisions on a variety of constitutional grounds.

THE COURT'S DECISION: SOFT MONEY

In short, the court characterized the complex soft money regulations of BCRA as simply regulating the ability of wealthy individuals, corporations, and unions to contribute large sums of money to influence federal elections, federal candidates, and federal officeholders. The court indicated that the main question it had to decide with respect to the soft money regulations of BCRA was whether large soft money contributions to national party committees have a corrupting influence or give rise to the appearance of corruption. The court concluded that both common sense and the record in the case confirmed Congress's belief that such contributions do. The court noted that the evidence submitted to the lower court

showed that parties regularly keep track of soft money contributions, that candidates and officeholders knew who the contributors were, and that the donors made contributions to secure influence over federal officeholders or officials. The court also found evidence that these soft money contributions may have affected the congressional calendar so as to cause Congress to fail to enact high profile legislation. The court noted that the prevention of corruption justifying regulation is not limited to "cash for votes" but extends to "undue influence."

In sum, the court concluded that there was substantial evidence to support Congress's determination that large soft money contributions to national political parties give rise to corruption and the appearance of corruption. Accordingly, the court upheld the soft money bans.

THE COURT'S ISSUE AD RULING AND WISCONSIN

Over the last several sessions, proposals have been introduced in the Wisconsin Legislature to regulate issue ads that use the name or an image of a candidate within a certain period of time prior to an election but which do not specifically advocate the election or defeat of a candidate. The issue ad regulation contained in 2003 Senate Bill 12 is representative of many of these proposals. Among other things, Senate Bill 12 imposes registration and reporting requirements upon committees that, within 60 days of an election, make a communication by a communication media that includes a reference to a candidate at that election, an office to be filled at that election, or a political party. Specifically, if a committee receives any contribution, makes any disbursement, or incurs any obligation to make a disbursement to make such a communication, without cooperation or consultation with a candidate, the committee must report to the Elections Board within 24 hours the name of each candidate who is supported or whose opponent is opposed and the

total amount of contributions received, disbursements made, and obligations incurred for such a purpose. The committee must also report the name of the candidate in support of or in opposition to whom the contribution was received, a disbursement made, or the obligation incurred. These reports are used, in part, to determine the amount of supplemental grants certain candidates are eligible to receive in order to respond to these communications. In addition, Senate Bill 12, in conjunction with the state's current ban on corporate contributions, would effectively prohibit corporations from using their general treasury funds for the purpose of making such issue ads.

This regulatory scheme is very similar to that employed in BCRA and upheld in *McConnell v. FEC*. The Supreme Court's ruling in *McConnell v. FEC* clearly opens the door for the regulation of issue ads on the state level. While the form of that regulation will ultimately be up to the Legislature or the Elections Board (which has maintained administrative rules on election-related communications), several things appear clear:

1. The state may regulate election-related communications that do not use the "magic words" of express advocacy, which are made within a certain time period before an election.
2. The state may impose reasonable reporting requirements on groups that run such "issue ads."
3. Any regulation of issue ads which results in corporations or labor unions being prohibited from running such ads with funds from their general treasuries would likely survive constitutional challenge so long as such groups could still engage in such ads through funding made by PACs.
4. Any regulation of such issue ads may require the reporting of contracts to make disbursements prior to their actual disbursement. While such

reporting under various state versions of campaign finance reform, like Senate Bill 12, may result in additional public grants to candidates based upon expenditures that have not yet been made, the constitutional implications of requiring reporting of those obligations appear to have been resolved.

The memorandum was prepared on December 19, 2003, by Robert J. Conlin, Senior Staff Attorney. The information memorandum is not a policy statement of the Joint Legislative Council or its staff.

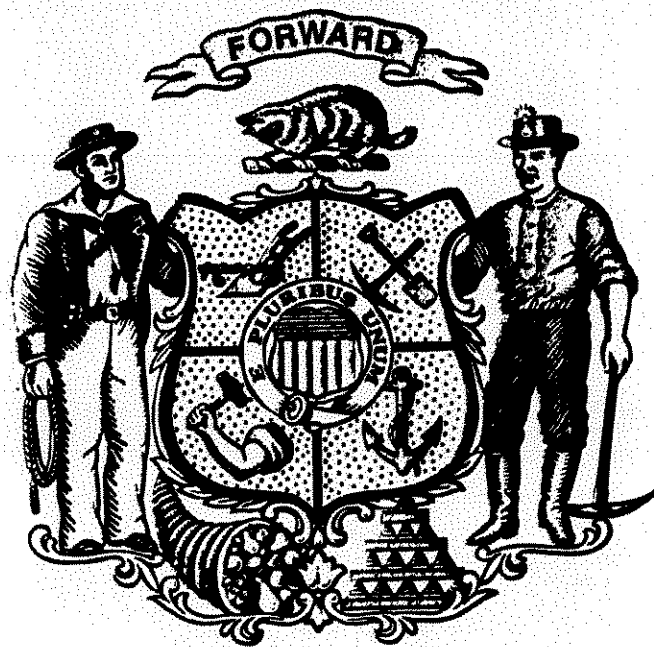
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State Representative **Spencer Black**



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FOR IMMEDIATE RELEASE
December 23, 2003

Black Asks Doyle To Call Special Session on Campaign Finance Reform

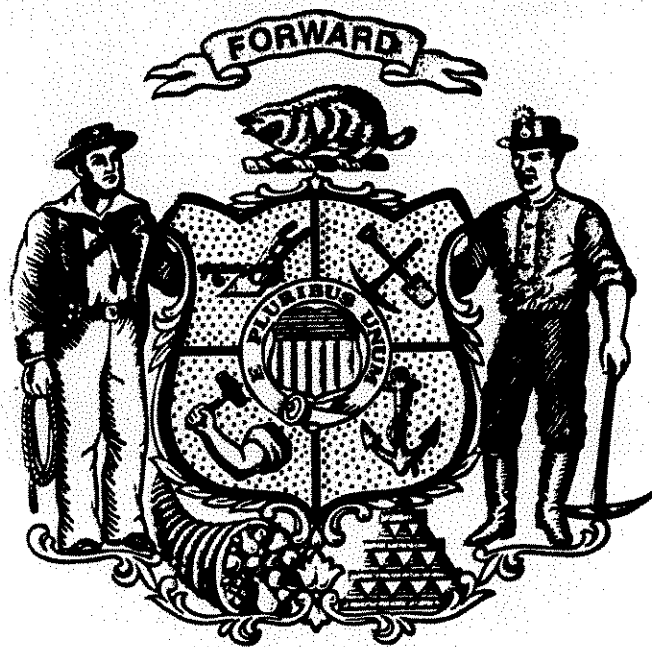
Representative Spencer Black today asked Governor Jim Doyle to call a special session in early January to pass comprehensive campaign finance reform.

In a letter to Doyle, Black wrote, "Wisconsin has had a proud tradition of clean government, but that proud tradition has been severely eroded due to the pernicious influence of special interest campaign contribution. We have seen criminal indictments of legislators stemming from campaign fundraising and we have witnessed a dramatic increase in the level of campaign spending. We need to reclaim Wisconsin's proud legacy of clean government and kick the big money influence out of election campaigns and out of decisions made at the Capitol. Now is the time to return our state government to the citizens and taxpayers of Wisconsin."

Black pointed out in his letter to Doyle that the recent U.S. Supreme Court decision on the McCain-Feingold bill has given a constitutional green light to comprehensive campaign finance reform and also eliminated the excuse the legislative leaders have been using to block consideration of reform.

Black said recent actions at the Capitol have shown why it is imperative to pass reform. "More and more, we see legislation that is introduced, budget decisions that are made and contracts that awarded based on the interests of big campaign contributors. It is time to give our government back to the average Wisconsin citizen who cannot afford to write out \$1,000 checks to political candidates," Black said.

A special session will focus attention on the failure of the legislature to act on campaign finance reform and force the Legislature to act quickly. "The Legislature must act swiftly to curb the influence of special interest money on next fall's state elections. Further delay will mean that Wisconsin's once proud reputation of clean government will remain sullied. Further delay will mean that we will again see record spending in elections for state Senate and Assembly. Further delay will mean that special interests will continue to buy favorable treatment at the Capitol through their campaign contributions," Black concluded.



TO: Persons and Committees Interested in a Rule Regulating Issue Advocacy

FROM: George A. Dunst, Legal Counsel State Elections Board *GD*

DATE: February 10, 2004

SUBJECT: Draft of Rule Regulating Issue Advocacy

Governing bodies

The Elections Board has directed its staff to commence the rulemaking process for a rule regulating "issue advocacy" pursuant to the authority recognized by the United States Supreme Court in its December 10, 2003 decision: *McConnell et al. v. Federal Election Commission, et al.* (No.02-1674).

The *McConnell* decision is a review of recent federal legislation – The Bipartisan Campaign Reform Act of 2002 (BICRA) – amending, principally, the Federal Election Campaign Act of 1971 (as amended). A substantial portion of the Court's decision upholds provisions of BICRA that establish a new form of regulated communication – "electioneering communications" – and that subject that form of communication to disclosure requirements as well as to other limitations.¹

In *McConnell*, the Court held that Congress and the states have (and, apparently, always have had) the authority to regulate communications that may not reach the threshold of express advocacy, but that, nevertheless, influence voting at elections.

The Elections Board's staff has been directed to publish a scope statement declaring its intent to consider promulgating a rule on this subject. The Board's staff has published that scope statement and now is looking for guidance in the drafting of a rule regulating issue advocacy.

The Board's authority to promulgate a rule regulating issue advocacy derives from the legislature's definition of "political purpose" in s.11.01(16), Stats., as follows:

11.01 Definitions. *As used in this chapter:*

(16) An act is for "political purposes" when it is done for the purpose of influencing the election or nomination for election of any individual to state or local office, for the purpose of influencing the recall from or retention in office of an individual holding a state or local office, for the purpose of payment of expenses incurred as a result of a recount at an election, or for the purpose of influencing a particular vote at a referendum. In the case of a candidate, or a committee or group which is organized primarily for the purpose of influencing the election or nomination for election of any individual to state or local office, for the purpose of influencing the recall from or retention in office of an individual holding a state or local office, or for the purpose of influencing a particular vote at a referendum, all administrative and overhead expenses

¹ Such as the prohibition of corporate and labor disbursements for electioneering communications in s.203 BICRA.

for the maintenance of an office or staff which are used principally for any such purpose are deemed to be for a political purpose.

(a) Acts which are for "political purposes" include but are not limited to:

- 1. The making of a communication which expressly advocates the election, defeat, recall or retention of a clearly identified candidate or a particular vote at a referendum.*
- 2. The conduct of or attempting to influence an endorsement or nomination to be made at a convention of political party members or supporters concerning, in whole or in part, any campaign for state or local office.*

(b) A "political purpose" does not include expenditures made for the purpose of supporting or defending a person who is being investigated for, charged with or convicted of a criminal violation of state or federal law, or an agent or dependent of such a person.

Currently, the Elections Board has a rule, EIBd 1.28, Wis. Adm. Code, defining the scope of regulated activity under ch.11 of the Wisconsin Statutes, (the Campaign Finance Chapter of the statutes). That rule limits regulated activity to "express advocacy" or its "functional equivalent." The Board's staff's initial response to its mission to draft a proposed rule regulating issue advocacy is to amend EIBd 1.28 to incorporate into the definition of regulated activity the definition of "electioneering communication" found in the federal legislation² that was approved by the U.S. Supreme Court in *McConnell*, as follows. (The language in bold type in s.(2)(d) of the rule below is the new language incorporating *McConnell*.)

EIBd 1.28 Scope of regulated activity; election of candidates.

(1) Definitions. As used in this rule:

(a) "Political committee" means every committee which is formed primarily to influence elections or which is under the control of a candidate.

(b) "Contributions for political purposes" means contributions made to 1) a candidate, or 2) a political committee or 3) an individual who makes contributions to a candidate or political committee or incurs obligations or makes disbursements for the purpose of expressly advocating the election or defeat of an identified candidate.

(2) Individuals other than candidates and committees other than political committees are subject to the applicable disclosure-related and recordkeeping-related requirements of ch. 11, Stats., only when they:

(a) Make contributions for political purposes, or

(b) Make contributions to any person at the request or with the authorization of a candidate or political committee, or

(c) Make a communication containing terms such as the following or their functional equivalents with reference to a clearly identified candidate that expressly advocates the election or defeat of that

² The Board's counsel has, at least temporarily, excluded the federal language regarding "targeted audience" because of the administrative burden in attempting to enforce that provision and because it is the identification of a candidate and not the identity of the message's recipient that is at the heart of this rule's reach.

candidate and that unambiguously relates to the campaign of that candidate:

1. "Vote for;"
2. "Elect;"
3. "Support;"
4. "Cast your ballot for;"
5. "Smith for Assembly;"
6. "Vote against;"
7. "Defeat;"
8. "Reject."

(d) Make an "electioneering communication." For purposes of this section, an "electioneering communication" is any communication that:

1. refers to a clearly identified candidate for state or local office.

2. is made within –

- i. 60 days before a general or special election for the office sought by the candidate;*
- ii. 30 days before a primary election held to nominate a candidate for the office sought by the candidate*

(3) Consistent with s. 11.05 (2), Stats., nothing in sub. (1) or (2) should be construed as requiring registration and reporting, under ss. 11.05 and 11.06, Stats., of an individual whose only activity is the making of contributions.

EIBd 1.28 - ANNOT.



History: Emerg. cr. eff. 8-25-76; cr. Register, January, 1977, No. 253, eff. 2-1-77; am. (1) (b) and (2) (a), Register, February, 1986, No. 362, eff. 3-1-86; am. (2) (c), Register, May, 2001, No. 545, eff. 6-1-01.

Mike McCabe of Wisconsin Democracy Campaign has communicated to the Board's staff the language of a rule that is in use in Illinois that regulates issue advocacy in the form of a rule governing "electioneering communications," but also contains the following exclusions from the definition of "electioneering communication":

(b) "Electioneering communication" does not include:

(1) A communication, other than an advertisement, appearing in a news story, commentary, or editorial distributed through the facilities of any legitimate news organization, unless the facilities are owned and controlled by any political party, political committee or candidate.

(2) A communication made solely to promote a candidate debate or forum that is made by or on behalf of the person sponsoring the debate or forum.

(3) A communication made as part of a non-partisan activity designed to encourage individuals to vote or to register to vote.

(4) A communication by an organization operating and remaining in good standing under Section 501 (c) (3) of the Internal Revenue Code of 1986.

The Board's staff is seeking suggestions or commentary from other individuals and organizations regarding a proposed rule regulating "issue advocacy" and regarding activity, if any, that ought to be excluded from that regulation. The Board probably does not have the authority to create a whole new form of registration and reporting – outside of that provided in ch.11, Stats. – for issue advocacy activity. Thus, any activity regulated under the Board's new rule will be subject to the same disclosure requirements, and contribution limits, under ch.11, Stats., as express advocacy activity is now.

The Board's staff is sending this memorandum to a number of individuals and organizations that have been or may be interested in the regulation of issue advocacy and in this rule-making, but that list is not intended to be exclusive. If you know of any other individuals or organizations who wish to be heard on this subject, please share this memorandum with them. They may also submit suggestions or comments to the Board at the addresses below.

Please submit your proposed rule changes or other comments to the Board's legal counsel by both hard copy and e-mail to the following addresses not later than March 1, 2004:

STATE ELECTIONS BOARD
P.O. Box 2973
Madison, Wisconsin 53717
Attn: George A. Dunst, Legal Counsel

E-Mail: george.dunst@seb.state.wi.us