DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB–2224/1dn
JTK:wlj:jf

April 2, 1999

1. Concerning the period for use of a public financing benefit in the spring primary campaign, you are correct that under proposed ss. 11.501 (14) and 11.51 (2), this period is tight; in fact, it could be as little as two weeks. Please let me know if you would like to see a change in this provision.

2. In *McIntyre v. Ohio Elections Commission*, 115 S.Ct. 1151 (1995), the U.S. Supreme Court found unconstitutional, under the First Amendment, a statute that prohibited publication or distribution of any material designed to promote the nomination or election of a candidate or the adoption or defeat of any issue or to influence the voters at any election without identification of the name and address of the person who publishes or distributes the material. The court, however, indicated that a state's interest in preventing fraud might justify a more limited disclosure requirement (115 S.Ct. at 1522). Further, the court indicated that it still approved of requirements to disclose independent expenditures, which it upheld in *Buckley v. Valeo*, et. al., 96 S.Ct. 612, 661–662 (1976), (*McIntyre*, 115 S.Ct. at 1523). In view of this opinion, the constitutionality of disclosure statutes such as proposed s. 11.522, relating to labeling of certain political communications by candidates for the office of attorney general of justice of the supreme court who fail to qualify for a public financing benefit is not clear at this point. We will have to await further decisions from the court before we know the exact limits of a state's ability to regulate in this field.

3. Proposed ss. 11.512 (2) and 11.513 (2), which increase the public financing benefit available to a candidate when independent disbursements are made against the candidate or for his or her opponents, or when the candidate's opponents make disbursements exceeding a specified level, may result in an abridgement of the First Amendment rights of the persons making the disbursements. See *Day v. Holahan*, 34F.3d 1356 (8th Cir., 1994), in which a Minnesota law that included provisions similar to proposed s. 11.31 (3p) was voided. It should be noted that there are viable arguments to be made on both sides of this issue, this case is not binding in Wisconsin because it did not arise in the circuit that includes Wisconsin and the U.S. Supreme Court has not yet spoken on this issue.

4. Proposed s. 11.512 (1), which imposes additional reporting requirements upon candidates for the office of attorney general or justice of the supreme court who fail to qualify for a public financing benefit, may raise an equal protection issue under the 14th Amendment to the U.S. Constitution.

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