

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

LRB-3750/3dn

JTK:cmh:km

October 18, 1999

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). This proposal 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. In this connection, see also *North Carolina Right to Life Inc. v. Bartlett*, 67 U.S.L.W. 4148 (U.S.C.A., 4th Cir., 1999), in which the court voided North Carolina's attempt to regulate issue advocacy as inconsistent with *Buckley*. I know that the McCain-Feingold language has been looked at by respected constitutional scholars who convincingly argue that it passes constitutional muster; however, current state law is specifically molded to fit within the confines of the *Buckley* decision, whereas this language casts aside that decision and takes the stance that another mold should be acceptable. There is also another issue with this language in that under the Fifth, Sixth and Fourteenth amendments, the state has the burden of proof in prosecutions. To the extent that this provision operates to shift that burden to the defendant under certain circumstances, it may be difficult to enforce.

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