

WISCONSIN STATE
LEGISLATURE
COMMITTEE HEARING
RECORDS

1999-00

(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)

➤ **99hr_ab0256_AC-CE_pt01**

➤ Miscellaneous ... Misc

➤ **

WISCONSIN EDUCATION ASSOCIATION COUNCIL

AB 256

Affiliated with the National Education Association

Testimony to the Assembly Committee on Campaigns and Elections in Support of Assembly Bill 256

John Stocks
Director of Government Relations
Wisconsin Education Association Council

April 28, 1999

The Wisconsin Education Association Council (WEAC) believes that campaign finance reform is a critical issue in Wisconsin. The campaign spending abuses in the past several elections have led the public to believe that money, as opposed to ideas and issues, is the only political currency. WEAC believes that if the campaign playing field can be leveled and the emphasis shifted away from a spending arms race and back to issues, campaigns can be cleaner and more competitive, and the public will become more active in the voting booth.

The reforms set forth in Assembly Bill 256 are based on those proposed by the Kettl Commission. The reporting requirements, the redefined disclosure requirements for mass media activities, the increased incentives for voluntary spending limits, the PAC-to-PAC restrictions, and the restrictions on conduit and bundling abuses will help create a campaign finance system upon which all participants can participate along with large corporations and individuals.

As a whole, the Kettl Commission's reforms represent a great improvement over the current system of campaign financing, and are consistent with WEAC's goals. WEAC supports the adoption and enactment of the Kettl Commission's proposed campaign finance reforms. Because the commission's report is a carefully crafted compromise proposal, it must be adopted without any major amendments.

Along with other groups and individuals that play an active role in the political process, WEAC would face greater administrative burdens and some of its previous activities would be prohibited or curtailed under the Kettl Commission proposal. WEAC feels this is a small price to pay in order to restore public confidence in our election system and as long as the new standards are applied evenly to all election participants, which the proposal does.

The Kettl Commission's plan is consistent with WEAC goals for campaign finance reform:

- 1) Leveling the campaign financing system to restore public confidence in elections and shifting away from a spending arms race so campaigns can be clean and more competitive.**

Terry Craney, President
Donald E. Krahn, Executive Director

To this end, the Kettl Commission would do the following:

- **Establish reasonable voluntary spending limits, coupled with incentives for compliance.**

The Kettl Commission's proposal would increase the amount of public financing available to candidates while at the same time raising the spending limits to realistic levels. In addition, candidates whose opponents do not agree to abide by the voluntary spending limits will receive a portion of the public money which had been available to the opponent.

In 1976, the United States Supreme Court ruled in *Buckley v. Valeo* that spending limits for individual candidates were unconstitutional. With no constraints, however, spending has skyrocketed. For example, the total amount spent in last year's 27th Senate District election exceeded \$1 million.

Meaningful incentives, combined with realistic voluntary spending limits, will encourage candidates to voluntarily limit campaign spending. With limited spending, the opportunity for money to improperly influence campaigns is lessened.

- **Require full disclosure by groups engaged in so-called "issue advocacy" which is clearly designed to influence an election.**

The Kettl Commission's proposal would require registration and disclosure by groups engaging in "election-oriented" mass media activity which occurs within 30 days of an election or primary, when the mass media activity includes the name or likeness of a candidate.

In the Supreme Court's decision in *Buckley v. Valeo*, a distinction was drawn between "express advocacy" and "issue advocacy," with the latter held to be beyond the government's power to regulate. In recent elections, groups such as Wisconsin Manufacturers and Commerce (WMC) and the Sierra Club have advocated for and against candidates, by name, without any disclosures, based on the presumption that because the ads did not use magic words such as "vote for" or "vote against," they were merely "issue advocacy."

- **Regulate the improper use of conduits and bundling.**

The Kettl Commission proposal would prohibit the practice of collecting checks that do not include the amount or the intended recipient. In addition, all contributors to a conduit would be required to provide instructions on how the contribution is to be used. Finally, all amounts contributed by a conduit or through bundling would be required to be sent to the recipient within five days of the date of the check or financial instrument.

It has been a common practice for some conduits and bundlers to collect undated or unspecified checks from donors and then fill in the blanks when the conduit or bundler decides that a contribution is going to be made. This practice improperly places the control of funds in the hands of the conduit or bundler, rather than the actual contributor.

This reform will serve to level the playing field by requiring everyone to abide by the same rules, and will ensure that it is the contributor who is deciding where his or her money will go.

- **Prohibit PAC-to-PAC transfers**

The Kettl Commission proposal would ban PAC-to-PAC contributions, as well as candidate-to-candidate contributions, of more than \$100. Many PACs have made and received contributions from other PACs. WEAC-PAC, for instance, has made contributions to other PACs. As part of the effort to clean up spending on campaigns, WEAC supports the goal of preventing PAC-to-PAC transfers of more than \$100.

- 2) **Ensuring that the public has access to full and complete information on the sources of campaign funds, independent expenditures, and “issue advocacy” expenditures intended to influence elections, and how such moneys are spent.**

To this end, the Kettl Commission would do the following:

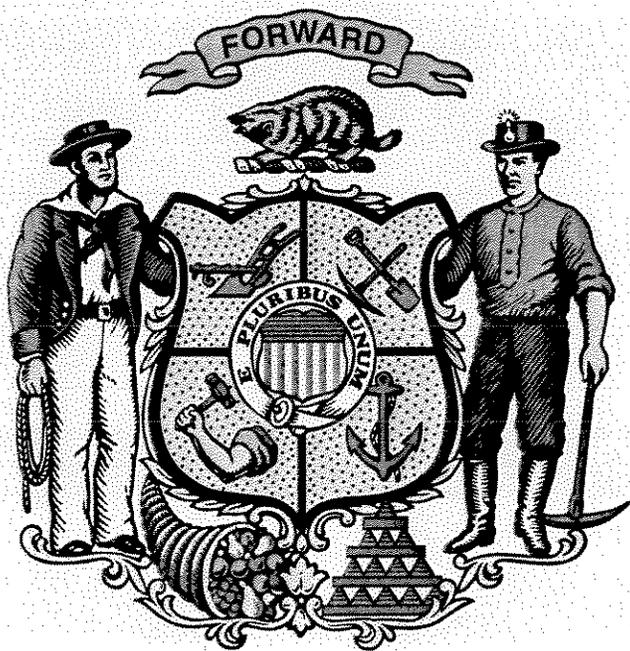
- **Ensure full and timely disclosure of independent expenditures and election-oriented advocacy campaigns.**

The Kettl Commission proposal would require that all mass media activities by an individual or organization that exceed \$1,000 and are “election-oriented” must be registered and reported as a PAC must do under current law. The expenditures would need to be reported electronically within 24 hours of being made.

An independent expenditure is a communications effort to the public that advocates for the election or defeat of a candidate and that is not coordinated with a candidate’s campaign. Independent expenditures and “issue advocacy” expenditures constitute a growing segment of campaign-related spending. The sources of such expenditures should be made fully available to the press and the public before, not after, the election to which they relate. The public should be able to assess the message with full knowledge of its source.

Conclusion

WEAC commends Representative Meyer for introducing AB 256, which accurately reflects the intent of the Kettl Commission report. WEAC urges the Legislature to pass AB 256 without any major amendments.



WISCONSIN EDUCATION ASSOCIATION COUNCIL

Affiliated with the National Education Association

TO: Members of the Assembly Committee on Campaigns & Elections
FROM: John Stocks, WEAC Government Relations Director
DATE: October 20, 1999
RE: Proposed Legislation Concerning Independent Expenditures and Issue Advocacy

This memo will outline WEAC's position with respect to the various campaign finance reform proposals concerning independent expenditures and issue advocacy.

1999 AB 256 (Kettl)

Issue Advocacy (Sec. 23 - proposed § 11.065)

- Regulates mass media, mass mailing or phone bank communications within 30 days of election which includes name or likeness of candidate
- Must report name of candidate, donations over \$20 and expenditures over \$20
- If such spending exceeds 5% of disbursement level, the disbursement limitation does not apply and contribution limits are doubled for both candidates
- WEAC does not oppose these reforms but has the following concerns:
 - (1) Constitutionality of reporting requirements for issue advocacy in question after the Wisconsin Supreme Court's recent *WMC* decision.

1999 LRB 3054/1 (New Kettl)

Independent Expenditure (Sec. 16 - proposed § 11.05(2e))

- Would require committees or individuals intending to engage in independent expenditures to register and provide the same filing information as PACs.
- WEAC is not opposed to this requirement

Issue Advocacy (Sec. 46 - proposed § 11.065)

- Regulates mass media, mass mailing or phone bank communications within 30 days of election which includes name or likeness of candidate

Terry Craney, President
Michael A. Butera, Executive Director

- Must report name of candidate, donations over \$20 and expenditures over \$20
- Requires pre-reporting if expenditures exceed \$1,000
- Report must include oath identical to that required for independent expenditures
- If expenditures with “purpose or effect” of opposing candidate or supporting a candidate’s opponent exceed 25% of candidate’s disbursement level, contribution limits go up to 200% and candidate’s disbursement limitations go away
- WEAC has serious concerns with this approach:
 - (1) Constitutionality of reporting requirements in question after *WMC*
 - (2) Problem with government deciding who is supported or opposed (e.g., ad simply showing candidate as pro-choice)
 - (3) Similar law was struck down in Minnesota (*Day v. Holahan*, 34 F.3d 1356 (8th Cir. 1994) (increased limits and provided funding to candidate subject to independent expenditures)

1999 SB 190 (Clausing)

Independent Expenditures (Secs. 21 & 95 - proposed 11.12(6) & 11.60(3t))

- Would require committees to report intended independent expenditures 21 days prior to the expenditure, and create a sliding scale of penalties depending upon the percentage a committee over- or under-spends in relation to its pre-report.
- WEAC opposes these requirements and believes they are unconstitutional because:
 - (1) prior restraint on political speech
 - (2) forces public disclosure of intended First Amendment activities
 - (3) improperly locks parties into expenditures for a 3-week period
 - (4) would improperly chill and limit free speech

Issue Advocacy (Sec. 13 - proposed § 11.05(14))

- Would subject media communications within 60 days of election including the likeness of a candidate and “substantially directed toward the electorate” to regulation under Chapter 11, unless the speaker can prove otherwise.
- WEAC believes this provision would be held unconstitutional because:
 - (1) “substantially directed toward the electorate” is vague;

- (2) shifting the burden to the speaker impermissibly infringes upon and chills First Amendment activity; and
- (3) would subject legitimate issue advocacy (which is by definition directed at the electorate) to the same regulation as express advocacy.

1999 SB 111 (Burke/Freese)

Issue Advocacy (Sec. 4 - proposed § 11.05(14))

- Would subject communications within 60 days of election including the likeness of a candidate and “substantially directed toward the electorate” to regulation under Chapter 11, unless the speaker can prove otherwise.
- WEAC believes this provision would be held unconstitutional because:
 - (1) “substantially directed toward the electorate” is vague
 - (2) shifting the burden to the speaker impermissibly infringes upon and chills First Amendment activity
 - (3) would subject legitimate issue advocacy (which is by definition directed at the electorate) to the same regulation as express advocacy

1999 SB 113 (Ellis)

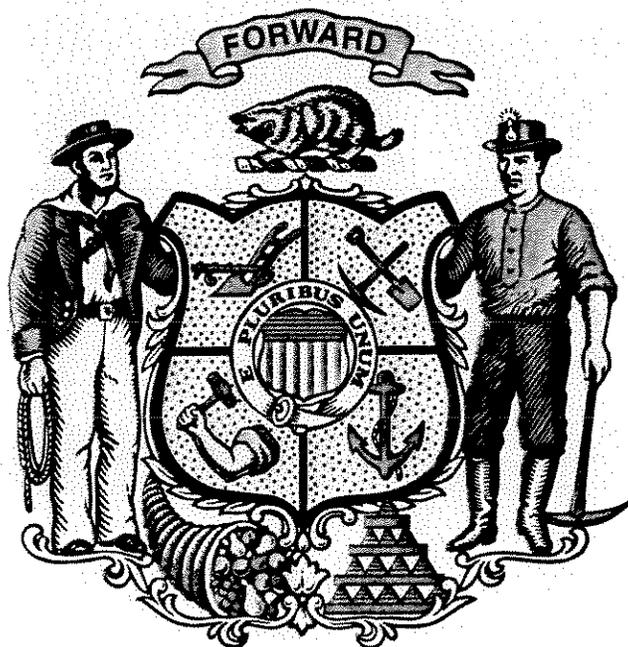
Independent Expenditures (Sec. 19 - proposed § 11.12(6)(c))

- Pre-reporting requirement for each of the three 21-day periods before election, and sliding scale of penalties depending upon the percentage a committee over- or under-spends in relation to its pre-report.
- Would allow a losing candidate to commence a civil action to nullify election.
- WEAC opposes these requirements and believes they are unconstitutional because:
 - (1) prior restraint on political speech
 - (2) forces public disclosure of intended First Amendment activities
 - (3) improperly locks parties into expenditures for a 3-week period
 - (4) would improperly chill and limit free speech

Issue Advocacy (Sec. 8 -- proposed § 11.01(16)(a)(3))

- Would subject all media communications within 60 days of election which reference a candidate, office or political party to regulation under Chapter 11.
- WEAC believes this reform would have constitutional problems because:

- (1) Under *WMC* it is unconstitutional to “place reporting or disclosure requirements” on communications which do not expressly advocate
- (2) Under *WMC* express advocacy must contain “explicit language advocating the election or defeat of a candidate”



Overview of Major Differences in the Legislative Campaign Finance Reform Proposals and Full Public Funding Proposal

Columns 1 thru 4 by Wisconsin Democracy Campaign - April 14, 1999 (Items in parenthesis by Herman Holtzman)
Column 5 by Herman Holtzman, based on an updated report by the Heffernan Citizens' Panel on a Clean Elections Option

TOPIC	BURKE/FREESE PROPOSAL (SB 111) 1	ELLIS PROPOSAL (SB 113) 2	CHVALA PROPOSAL 3	WDC SUGGESTED COMPROMISE 4	FULL PUBLIC FUNDING PROPOSAL 5
Public Financing	\$5 check-off with partisan option plus \$3 million annual GPR appropriation	Sum-sufficient for grants plus matching funds	Sum-sufficient for grants plus matching funds		Sum-sufficient for grants plus matching funds
Spending Limits	Senate \$100,000 Assembly \$50,000	Senate \$150,000 Assembly \$75,000	Senate \$100,000 Assembly \$50,000	Senate \$120,000 Assembly \$60,000	Senate \$50,000 Assembly \$25,000
Public Grants	50% Senate \$50,000 Assembly \$25,000	33 1/3% Senate \$50,000 Assembly \$25,000	50% Senate \$50,000 Assembly \$25,000	33 1/3% Senate \$40,000 Assembly \$20,000	100% Senate \$50,000 Assembly \$25,000
To qualify for grant	Senate - Raise \$5,000 in not more than \$50 individual contributions, 1/2 within the district Assembly - Raise \$2,500 in not more than \$50 individual contributions, 1/2 within the district. (No provision for candidates to receive public grants for a primary election)	Senate - Raise \$6,000 in not more than \$100 individual contributions, all in the district Assembly - Raise \$3,000 in not more than \$100 individual contributions, all in the district. (No provision for candidates to receive public grants for a primary election)	Senate - Raise \$4,000 in not more than \$100 individual contributions, anywhere in state Assembly - Raise \$2,000 in not more than \$50 individual contributions, anywhere in state. (No provision for candidates to receive public grants for a primary election)	Senate - \$5,000 Assembly - \$2,500 Focus on in-district contributions, but make provisions for poorer districts and for challengers. (No provision for candidates to receive public grants for a primary election)	Senate - Obtain 1,200 nomination signatures and 600 \$5 qualifying contributions Assembly - Obtain 600 nomination signatures and 300 \$5 qualifying contributions Qualifying candidates will receive one third of the public grant if required to participate in the primary

TOPIC	BURKE/FREESE PROPOSAL (SB 111) 1	ELLIS PROPOSAL (SB 113) 2	CHVALA PROPOSAL 3	WDC SUGGESTED COMPROMISE 4	FULL PUBLIC FUNDING PROPOSAL 5
Individual /PAC contribution limits	Reduces both limits to: Senate - \$500 Assembly - \$250	No change from current law: Senate - \$1,000 Assembly - \$500 Limits total of individual contributions for grant recipients to: Senate - \$75,000 Assembly - \$37,500 Matches total of individual contributions to opponent over: Senate - \$125,000 Assembly - \$62,500	Reduces individual limits: law: Senate - \$1,000 Assembly - \$500 Limits total of individual contributions for grant recipients to: Senate - \$25,000 Assembly - \$12,500 Matches total of individual contributions to opponent over: Senate - \$75,000 Assembly - \$37,500	Reduces individual limits: law: Senate - \$1,000 Assembly - \$500	No contributions to candidates.
Party/ PAC/ conduit contributions	Treats conduits the same as PACs. Limits total of party, LCC, PAC, and conduit contributions to: Senate - \$25,000 Assembly - \$12,500	Conduit transfers treated as individual contributions. No PAC contributions to grant recipients. PAC contributions to opponent are matched with additional grant. Party contributions limited to: Senate - \$25,000 Assembly - \$12,500 LCCs treated as PACs	Treats conduits the same as PACs. Limits total of party, LCC, PAC and conduit contributions to: Senate - \$25,000 Assembly - \$12,500	Treats conduits the same as PACs. Treats LLCs the same as PACs. Retain current law that prohibits PAC contributions when a candidate accepts a grant. Allow PACs to contribute more directly to political parties.	None