

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_sb0111_AC-CE_pt01**

➤ Miscellaneous ... Misc

➤ **



"URGENT" 1999 SB 111

Common Cause In Wisconsin

152 W. Johnson Street, #210 ♦ P.O. Box 2597 ♦ Madison, WI 53701-2597 ♦ (608) 256-2686

MEMORANDUM

DATE: September 23, 1999

TO: State Rep. Steve Freese

FROM: Jay Heck *Jay*

SUBJECT: Assembly Committee on Campaigns & Elections -- Proposed
Comprehensive Legislation

In our wide-ranging discussion this past Monday, in which you outlined the components of a possible bi-partisan campaign finance reform bill, I inadvertently neglected to propose one vitally important, key element that probably must be part of any meaningful package.

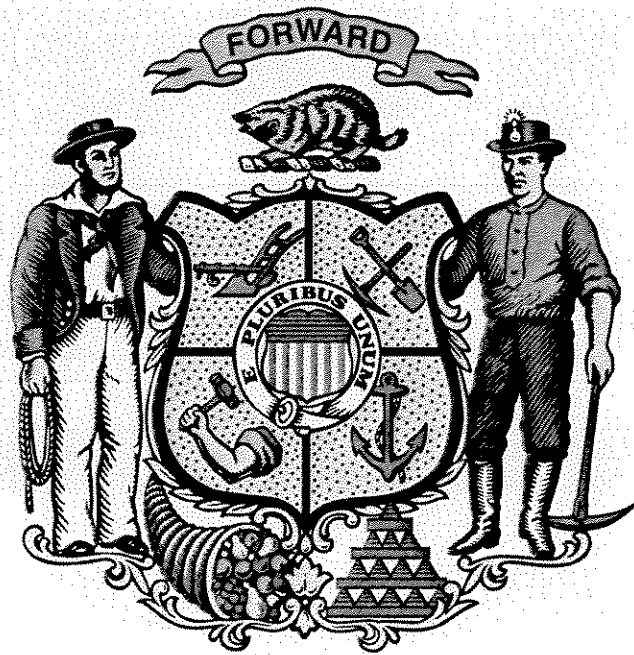
Senate Bill 113 (Ellis) and Senate Bill 190 (Clausing/Chvala) both contain the very effective and essential provision that a dollar for dollar public match would be provided to any candidate complying with the statutory spending limits and in receipt of a public grant, of the amount that is raised by his or her non-complying opponent over the spending limit. This "hammer" provision is what would keep virtually all candidates in compliance of the spending limit and would be particularly important if spending limits are at the lower levels you have proposed (\$35,000 for Assembly and \$70,000 for State Senate elections). I know that Senator Burke has talked about adding this provision to Senate Bill 111, if he hasn't done so already.

This matching provision would likely survive any court challenge according to Wisconsin Legislative Council attorney Jane Henkel and national Common Cause legal counsel, Don Simon and other experts in the field. It is currently in effective in only one other state, Kentucky, and there only at the gubernatorial level.

The inclusion of this matching provision is essential to gain adherence to spending limits in the most competitive races and its mere existence in the statutes would, I believe, result in that compliance and therefore the likely expenditure of virtually no public funding to enforce those limits. It is the "heart" of the Ellis proposal and perhaps the primary reason Common Cause endorsed Senate Bill 113.

If you need further information or supporting documents, please let me know.

Thanks.



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”