

WISCONSIN STATE
LEGISLATURE
COMMITTEE HEARING
RECORDS

1999-00

(session year)

Assembly

(Assembly, Senate or Joint)

Committee on
Campaigns &
Elections
(AC-CE)

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Record of Comm. Proceedings ... RCP

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

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

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Common Cause In Wisconsin

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WISCONSIN STATE ASSEMBLY COMMITTEE ON CAMPAIGNS AND ELECTIONS REP. STEPHEN J. FREESE, CHAIR

*

TESTIMONY OF JAY HECK EXECUTIVE DIRECTOR OF *COMMON CAUSE IN WISCONSIN* WEDNESDAY, APRIL 28, 1999

Chairman Freese and Members of the Committee:

Thank you for inviting me to testify today. My name is Jay Heck and I am the executive director of *Common Cause In Wisconsin*, a non-partisan citizens advocacy organization with approximately 4,300 members in Wisconsin and 225,000 nationally.

This hearing is occurring at a time when campaign finance reform is at the very forefront of issues undergoing serious consideration by state policy makers to a degree not seen in Wisconsin in the last twenty years or more. Since last November's elections--the most costly and vicious in our state's history-- a week has not passed without some reform proposal being made, legislation being introduced, study being released or editorial being written about campaign finance reform and the urgent need for the Wisconsin Legislature to address this matter sooner rather than later.

We are all, by now, familiar with the litany of problems that have arisen as a result of our failure to revise and reform Wisconsin's campaign finance laws over the years and I will leave it to others to more clearly detail those problems. My purpose here today is to discuss some of the legislative remedies available to us.

It is indeed heartening to note that we are seeing the active involvement of statewide office holders and state legislative leaders in this issue in a way that is unprecedented. Already in 1999, we have had the introduction of major campaign

finance reform proposals by Governor Thompson--including for the first time-- public financing for state legislative campaigns; by the State Senate Minority Leader, Senator Ellis, and a variation of the Ellis plan by the State Senate Majority Leader, Senator Chvala; as well as by the Senate Co-Chair of the Joint Committee on Finance, Senator Burke whose legislation was recently co-sponsored by the Chair of this Committee, Representative Freese.

There is general agreement by almost everybody concerned that now is the time to overhaul Wisconsin's broken campaign finance laws, partly in fear that an already out-of-control problem will only become worse unless action is taken in time to have changes in place for the 2000 elections. There is also agreement among the principals involved thus far that some measure of public financing is critical to the reform of Wisconsin's partial public finance law--once the model for the nation--but now so plagued with problems and loopholes that it has been rendered virtually meaningless. The Governor and Senator Ellis have both reversed longstanding opposition to public financing of state campaigns because both have come to the realization that public money is the only viable incentive to get candidates to voluntarily abide by spending limits and because they recognize that candidates and elected officials ought to be beholden to the taxpayers to fund a larger portion of their campaigns rather than to the special interest groups who currently provide the most of the campaign cash. As Senator Ellis has said of the current system: "Everybody is thumbing their nose at the law. You get a big check from someone and there's payback time." And partly as a consequence of this corrupt system we are beginning to see the massive disengagement from the political process by Wisconsin's citizens who, four years ago, were second only to Minnesota in turning out to vote at election time. Now, according to one study, we have slipped all the way down to tenth in the nation in voter turnout..

Last Fall, *Common Cause In Wisconsin* suggested to Senator Brian Burke that Wisconsin rewrite its campaign finance law to resemble that of Minnesota--a state where there is virtually unanimous participation in their partial public financing system and where almost all statewide and legislative candidates abide by spending limits in return for public financing. Minnesota is also a state where its voters still maintain some degree of respect for their political process as evidenced by their nearly 60 percent voter turnout in 1998--by far the highest in the nation. Geographically, culturally and socially Minnesota has much in common with Wisconsin; in fact the Minnesota campaign finance laws had originally been modelled after Wisconsin's in the mid-1970's. It seemed to us to make a great deal of sense to examine why their system seems to be working while ours doesn't..

Support for public financing and spending limits seems to be as much supported by Republicans as by Democrats in Minnesota--which has not been the case here in Wisconsin. Significantly, Republicans gained a majority in the Minnesota House of Representatives last Fall with every one of their contested candidates in receipt of public funding and in compliance with statutory spending limits. Ideas rather than money won control of the House for Minnesota Republicans as well as for Reform Party candidate Jesse Ventura, who was elected Governor by spending only about \$300,000--in marked contrast to the more than \$6 million spent by Governor Thompson to win his fourth term.

Minnesota's system is financed through a state income tax checkoff which is now \$5 (\$10 for a joint return) in contrast to Wisconsin's \$1 and despite the higher amount, taxpayer participation is about 50 percent higher in Minnesota than in Wisconsin. In addition, the legislature makes an appropriation to fund the public grants so that they total nearly 50 percent of the statutory spending limits. Greater participation in the checkoff is attributed to the fact that in Minnesota you can designate which political party you want your \$5 to go to and not only to Republicans or Democrats. Three other parties have qualified for public financing and have their own checkoff box on the state income tax form, including Governor Ventura's Reform Party.

Another attractive feature of Minnesota's system is the institution of a state refund of up to \$50 for contributions made by Minnesota citizens to statewide or legislative candidates who abide by spending limits and/or to the state political parties. The idea behind the refund is to encourage smaller contributions to candidates and parties--which make them much less reliant on big individual and special interest contributions for their campaign funding--and therefore less beholden to those big donors. Far more contributions of \$50 and less fund elections in Minnesota than in Wisconsin and many of the state's elected officials characterize the contribution refunds as a form of tax relief to the state's politically-engaged citizens.

Minnesota also seems not to have experienced the huge independent expenditure advertisements and the phony issue ads that have virtually seized control of the campaign dialogue in Wisconsin elections in 1996 and 1998. It seems that there, special interest groups and the political parties have put much more of their resources "on the ground" in organizing their members at the local level and in get-out-the vote efforts--which generally is a more productive use of those resources than utilizing them in the "air wars."

Shortly after the elections last November, *Common Cause In Wisconsin* began to actively lobby for a "Minnesota Model" for Wisconsin and I talked to many members of the Legislature including most of you on this committee. In January, Senator Burke introduced the "Minnesota Model" proposal, with some adaptations, and we began to try to attract bipartisan support for it.

But then, at the end of January, I received a call from Senator Mike Ellis who said he didn't think the Minnesota bill went far enough! Coming, as it did, from a legislator who had opposed public financing for the past 28 years, I was startled--and interested--to say the least, in what he had to say and in what he was proposing. After a couple of weeks of discussion, the Ellis "Clean Government Fund" proposal was unveiled with *Common Cause In Wisconsin's* encouragement and it is, quite simply, the most revolutionary, far-reaching, bold and innovative campaign finance reform proposal--with any serious chance of passage and enactment--to be introduced in this legislature--or for that matter in any legislature in the nation thus far in 1999.

Much has been written and editorialized about this measure and you are likely familiar with most of its provisions and so I will not go into great detail. But the essence of the Ellis measure, Senate Bill 113, is to utilize public funding to combat excessive candidate spending and outside special interest spending. It seeks to provide candidates with sufficient funding for their campaigns without relying on special interests and it seeks to prevent special interests from influencing the outcome of elections. Above all, it seeks to make candidates and elected officials beholden to the taxpayers instead of to the special interest groups who now provide most of the funding for Wisconsin campaigns. Senator Ellis is betting that the expenditure of several million dollars each year of public money for the "Clean Government Fund" will result in the savings of tens of millions of dollars to the taxpayers of Wisconsin because the umbilical chord between public policy-making and special interest campaign contributions will have been severed.

The Ellis proposal funds campaigns at 33 percent of the revised statutory spending levels--lower than the 50 percent in the Minnesota Model bill and lower than *Common Cause In Wisconsin* would ordinarily support. But Senate Bill 113 also contains what I characterize as a "hammer" not currently in effect in any campaign finance law in the nation for state legislative elections. It would provide a publicly-funded dollar for dollar match to any candidate who abides by spending limits and accepts public funding and whose opponent spends more than 83 percent of the spending limit. A more effective way to make candidates abide by spending limits I

can hardly envision. Is it constitutional? In our judgement and that of the state's Legislative Council, yes. A similar measure in place in Kentucky at the gubernatorial level has been upheld by the courts. We think this would be as well.

The Ellis proposal also would ban any contributions from being accepted during the last ten days before the election, it eliminates legislative campaign committees and prevents publicly-funded candidates from receiving any conduit or political action committee money--all very positive reforms in our judgement.

Perhaps the most radical and controversial aspect of the Ellis plan is the way it goes after the so-called independent expenditures made by special interest groups which have come to dominate our state elections. The measure treats those campaign communications that masquerade as issue advocacy in a manner *Common Cause In Wisconsin* has long advocated: Any depiction of a candidate or mention of his or her name 60 days or less before the general election is considered express advocacy and the communication is subject to the same regulations, limitations and disclosure requirements that candidate ads and independent expenditures are subject to. This is essentially the language contained in the McCain-Feingold bill at the federal level. But Ellis takes it one step further by adding that the candidate's office or political party can not be mentioned for the communication to still be considered as "legitimate" issue advocacy.

The Ellis plan goes even further by seeking to enable candidates to be able to compete equally with outside spending by providing a dollar for dollar public match to any candidate who is the "victim" of an independent expenditure. This is another revolutionary provision in effect nowhere else in the nation. It is also admittedly very controversial and would certainly invite a legal challenge were it to be enacted. Minnesota is the only other state where a similar measure was enacted, in 1993, and it was struck down by the Eighth Circuit the following year, but on relatively narrow grounds. The Court ruled that since there was nearly full participation in Minnesota's public funding system, the state did not have a compelling interest in trying to discourage independent expenditures as a means of compelling candidates to abide by the statutory spending limits. In Wisconsin, of course, there is far from full participation in our public funding system and we have a much more extensive record of independent spending by outside groups. Wisconsin may just have a compelling enough case that the Courts could conceivably rule that there is indeed a genuine state interest in establishing a public funding match of these independent expenditures to deter corruption or the appearance of corruption. In any event, we think this radical provision is worth pursuing.

In sum, Senator Ellis's plan calls the bluff that many legislators have made over the years concerning campaign finance reform. From Democrats we often hear that there must be sufficient public funding to make the system work effectively. We agree and the Ellis measure supplies it--both up front and in the unprecedented "hammer" it contains to deter excessive campaign spending. From Republicans we have heard that the only campaign finance reform system they could support is one that goes after independent expenditures. The Ellis proposal does so in the most effective manner possible--pushing the Buckley decision of 1976 to its very limits. The Ellis plan pleases neither those who advocate that nothing less than 100 percent public financing is acceptable, or, those who argue--unconvincingly--that all we need is simply more complete disclosure and then we can just let the voters decide how much money is too much, assuming of course that anyone will even bother to vote in the next election if we continue to do nothing. But for the vast majority of Wisconsinites, this plan may just be what the doctor ordered to fix what ails us.

Common Cause In Wisconsin has embraced and encouraged Senator Ellis' initiative because we believe it provides the most viable vehicle from both a public policy and a political standpoint to actually gain the necessary support in *this* Legislature to pass and to be signed into law by *this* Governor. The Ellis initiative is supported by other reform groups, including the Wisconsin Democracy Campaign and by numerous other organizations. Senator Ellis' measure has won the praise of the editorial boards of many of the state's newspapers including the *Wisconsin State Journal*, *The Capital Times*, *Milwaukee Journal Sentinel*, *Appleton Post-Crescent*, *Oshkosh Northwestern* and *Sheboygan Press*, to name quite a few. We believe that Senate Bill 113 is a measure that members of both political parties on this committee can and should agree upon and it is our fervent hope that Senator Ellis and Senator Chvala, perhaps with some of the compromises proposed by reformers addressing their differences, can come to an agreement and move this measure forward.

* * *

We sincerely believe that Wisconsin now has the best opportunity in years to bring about meaningful, comprehensive campaign finance reform and that this opportunity cannot be squandered because of personality differences or over petty partisan bickering. The time is ripe for the Legislature to begin to restore a measure of trust by the citizens of Wisconsin in their election process by setting to the task of repairing our broken campaign finance laws and not relinquishing that task until the job is complete. Thank you.

Republican Sen. Mike Ellis' proposal represents a sea change in the debate on public financing of campaigns in Wisconsin.
Jay Heck and Gail Shea

GUEST COLUMN

Don't let partisanship stop reform

By Jay Heck and Gail Shea

As the Wisconsin State Journal's designated "election watchdogs," ("Election, watchdogs — show your teeth," March 26), we are pleased to have this forum to provide some "detailed barking" about the state campaign finance plan being advanced by Republican State Senate Leader Mike Ellis, R-Neenah, and the revisions to it proposed by Senate Majority Leader Chuck Chvala, D-Madison.

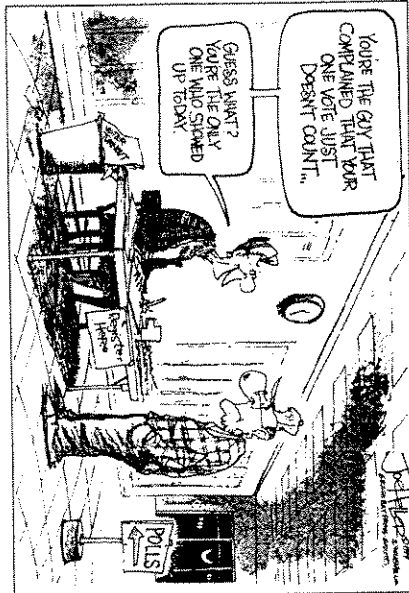
We have a precious window of opportunity to achieve real campaign finance reform in Wisconsin, restore integrity to our election system and regain the confidence of the voters. We cannot allow this window to close because of a partisan standoff.

We commend Ellis for putting forth his courageous and visionary campaign finance reform plan that offers the genuine possibility of gaining bipartisan support. We commend Chvala for recognizing the significance of Ellis' measure and making campaign finance reform a top priority for senate Democrats. Now is the time to come together and pass this reform package, send it to the governor for passage, and to the Assembly for enactment into law.

We must not lose sight of the basic purposes of campaign finance reform: to reconnect voters to our political system and to put candidates back in charge of campaigns. Voters want a system that:

- Reduces special interest influence.
- Allows all qualified candidates the opportunity to present their ideas through a vibrant campaign based on direct voter contact.
- Ensures that the qualifications for running for office are based on ideas, energy and a commitment to public service, not on fund-raising ability.
- Encourages stronger state political parties that play a bigger role in recruiting, training and funding candidates.

Ellis' proposal represents a sea change in the debate on public financing of campaigns in Wisconsin. It is like Nixon going to China — only a Republican could have made a proposal of this magnitude. Therefore, we believe that special weight must be given to his position. This is not simply a matter of dividing the differences equally. It is a question of supporting fundamental campaign finance reform that can be enacted with



bipartisan support in time for the 2000 elections.

The Ellis proposal addresses the most serious problems plaguing Wisconsin elections today. It is nothing short of revolutionary in its willingness to tackle head-on the overwhelming problem of "outsider" spending — the huge independent expenditures made by deep-pocketed special interest groups to flood the airwaves with negative campaign ads and phony issue ads and attempt to seize control of the campaign dialogue.

Ellis and Chvala agree about the need and the means to combat this problem. Their differences are in other areas (See related article).

This opportunity to achieve comprehensive reform must not be allowed to slip through our fingers. It is the best opportunity that we have had in Wisconsin in more than two decades and we may not have it again for years to come. We have already dropped from second in the nation to 10th in voter turnout. We desperately need to fix our current campaign finance system before they hold an election and nobody shows up. Let's do it now — before the beginning of the next century.

OPINION

Suggestions for reconciling campaign finance reform

Here are our recommendations for resolving differences in the campaign finance reform plans submitted by Sens. Mike Ellis, R-Neenah, and Chuck Chvala, D-Madison:

■ We support a spending limit of \$120,000 for a state Senate election, with a grant of \$40,000 to a candidate who agrees to abide by the limit (half those amounts for Assembly candidates). This grant will guarantee a qualified candidate enough money to run a vigorous campaign based on direct voter contact, and the spending limit will stop any one candidate from drowning out the other. This limit is realistic enough to "cap" even the most competitive races as we enter the 21st century.

Ellis proposes campaign spending limits of \$150,000 with a \$50,000 grant for state Senate elections, while Chvala set the spending limit at \$100,000 with the grant also at \$50,000.

Ellis' proposal is for the public grant to equal one-third of the amount of the spending limit and Chvala pegs it at one half of the limit. Frankly, we prefer to have the percentage proposed by Chvala, but recognize that it means the loss of bipartisan support.

In addition to providing an initial grant for candidates who agree to spending limits, the Ellis proposal provides a dollar-for-dollar match with public money to any candidate whose opponent exceeds the spending limit or who is attacked by independent expenditures — an extremely effective measure that is in place in only one other state in the nation.

This ability to receive additional public funds, when spending limits are exceeded, justifies the initial 33 percent grant, provided that the entire measure is fully funded.

■ Special treatment for legislative campaign committees, organized by the leadership to collect PAC contributions, should be terminated. Ellis proposes eliminating legislative campaign committees; Chvala wants to keep them. These groups are little more than repositories of special-interest money and they undermine the strength and purpose of political parties — which is where money ought to be directed.

Legislative campaign committees have become tools of legislative leaders used to control the Legislature by doing out campaign cash rather than through the force of their ideas. That's just plain wrong. Get rid of them.

■ Individual contribution limits should be \$250 to Assembly candidates, \$300 to Senate candidates, and \$1,000 for statewide candidates. Chvala proposes this reduction; Ellis leaves the existing maximum contribution levels in place.

We agree that reducing the size of maximum contributions to the levels Chvala advocates would reduce the influence large contributors have on the recipients. The need for larger contributions is reduced when there are effective spending ceilings with fully funded public grants. Very few candidates receive contributions at the high ends of the current limits, and most of this money comes from outside the district in the highly competitive races.

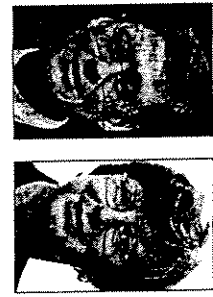
The current law that does not allow a publicly financed candidate to accept any PAC contributions should be retained. Ellis' proposal keeps current law. He further proposes that no conduit

money may be received by a publicly funded candidate — a vast improvement on current law. Chvala proposes that a publicly-funded candidate be permitted to accept some PAC and conduit funds.

On this point, we strongly agree with Ellis. Public financing should replace special-interest PAC funds. Providing taxpayer money free of special-interest taint to candidates allowing them to run vibrant, issue-based campaigns is the main purpose of campaign reform.

■ A candidate should be required to show the ability to put together a credible campaign, based on support in the district, in return for the substantial grant provided in these proposals. Chvala proposes that state Senate candidates raise \$4,000, and that it may come from anywhere in the state. Ellis says this money ought to come only from the legislative district in which the candidate is running and that the level be set at \$6,000.

We think that with lower spending level, \$120,000 for a state Senate race, the qualifying threshold ought to be reduced to \$5,000 and that it must be raised from people residing in the legislative district. However, we recognize that this may make it difficult for candidates from poorer districts and for challengers to qualify for a grant. Therefore, some provision ought to be made to help them.



On this point, we strongly agree with Ellis. Public financing should replace special-interest PAC funds. Providing taxpayer money free of special-interest taint to candidates allowing them to run vibrant, issue-based campaigns is the main purpose of campaign reform.

— Jay Heck and Gail Shea

'The public is growing cynical of the political process and abandoning it to those who can pay the price.'

Katharine Lyall, guest column

WISCONSIN STATE JOURNAL

OPINION

Sunday, April 25, 1999

Dollar's influence hinders access to political system

By Katharine Lyall

GUEST COLUMN

Two years ago, in the best tradition of the "Wisconsin Idea," Don Kettl of UW-Madison's La Follette Institute chaired Gov. Tommy Thompson's commission on campaign finance reform. At issue was the growing public concern that money had become too influential in the political life of the state.

Kettl's report got the ball rolling, but was not enough by itself to force legislative action. Then, last fall, we had the spectacle of more than \$1.4 million being spent for one (albeit pivotal) seat in the state Senate. Less than half the money spent in that campaign came from the candidates' own fund-raising committees. The rest came from so-called "independent expenditures" by labor unions, trade associations and others with a self-interest in the outcome of the election.

One veteran observer, Mike Ellis, R-Neenah, the minority leader in the state Senate, said recently that "The kind of money that was spent in the last election cycle was obscene, and was a clear message that something had to be done to make it stop."

I agree.

Here's why.

Treating the polling place like a marketplace ensures that the public will have less and less access to legislative consideration of issues, on the merit of those issues. Lobbyists, unions and corporations that make serious contributions to candidates (or who

fund so-called "issue advocacy ads") have an edge over the average citizen, or a university or other non-profit organization that has no political action committee and can't write checks for campaign contributions.

Don't get me wrong: The last thing I want is for the university to join in the auctioning of legislative issues. My point is simply that non-partisan public interest organizations always suffer when the balance of public debate swings toward the dollar sign and away from the even-handed search for good public policy. Wisconsin has always been known for drawing its policy-making from the marketplace of ideas; a tradition that is fading in the current environment of campaign finance.

That is the heart of my second concern: that the public is growing cynical of the political process and abandoning it to those who can pay the price. The recent splurge of campaign spending, and the endless barrage of sound bites, suggests to many that single votes don't matter, that debate and reason don't matter, that only money matters.

That is why I find Sen. Ellis' Clean Government Campaign Plan so encouraging. As he noted recently, the bill is "a direct response to the public outcry to get at the ridiculous spending, and once and for all put an end to one group or another literally buying an election."

At a cost of less than one dollar per person in Wisconsin, the Ellis plan would provide public funding for state elections, set voluntary campaign spending limits for state offices, and rein in the worst abuses of issue advocacy ads. It would impose stiff penalties for infractions, and would restore a sense of sanity to the election process. I think it could become a model piece of legislation for other states to follow.

Right now, however, the state I'm

most concerned about is Wisconsin. I think the Ellis plan, or something like it, would restore the people's faith in their government. The Senate's majority leader, Chuck Chvala, D-Madison, more recently unveiled a similar Senate Democratic proposal to achieve the shared goal of comprehensive campaign finance reform. And let's not forget that in January, Sen. Brian Burke, D-Milwaukee, also stepped up with a plan of his own to get the ball rolling.

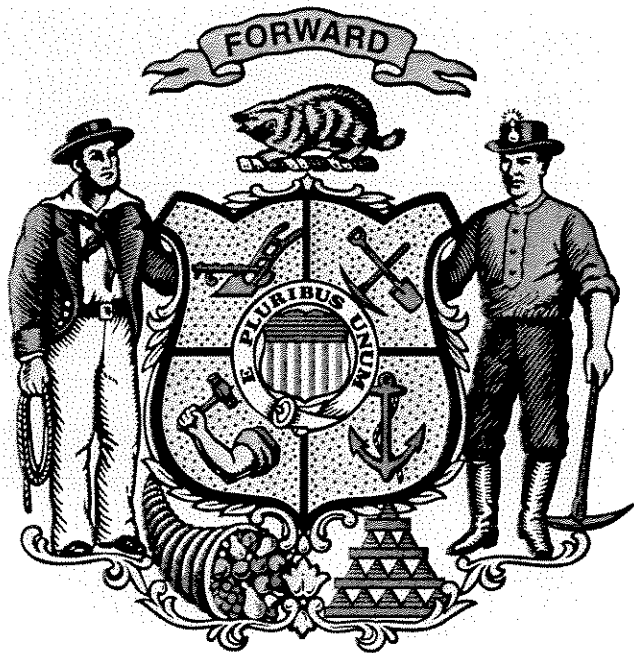
The common thread in these plans is no different than our desire to maintain the UW's high level of access for students. We also want to maintain Wisconsin's high level of access for ordinary citizens to their legislators and the process of determining public policy. We want to bring the voice of the people back into politics. It won't happen so long as the need to raise vast sums of money limits who can run for office and unduly influences who they listen to once they're elected.

I am grateful to Ellis and his Democratic colleagues, Chvala and Burke, for having the courage to face up to this issue squarely. They are offering a new bipartisan response that holds out hope to the citizens of this state. I urge thoughtful citizens and legislators of both parties to give serious consideration to the Ellis plan and other proposals that would restore the unquestioned integrity of elections in Wisconsin.



Lyall

Lyall is president of the University of Wisconsin System.





Wisconsin Speaker Pro Tempore
Representative Stephen J. Freese

MEMORANDUM

TO: Members, Committee on Campaigns & Elections

FROM: Rep. Steve Freese

DATE: May 4, 1999

RE: Document relevant to testimony provided by Jay Heck of Common Cause of Wisconsin on April 28, 1999

For your reference, I requested that Jay Heck provide each of us a copy of the Court of Appeals Decision relating to expenditures by candidates.

Fifty-First Assembly District

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C. EXPENDITURES BY CANDIDATE'S OPPONENT

1. Relevant Court of Appeals Decision

The issue of increasing a candidate's public financing grant based on expenditures by the candidate's opponent in excess of a specified limit was reviewed by the Sixth Circuit Court of Appeals in *Gable, et al. v. Patton, et al.*, 142 F.3d 940, 1998 U.S. App. LEXIS 8328 (6th Cir., Apr. 30, 1998), *reh. denied*, ___ F.3d ___, 1998 U.S. App. LEXIS 21514 (1998).

The Kentucky statute reviewed in *Gable* imposed the following restrictions on candidates for Governor and Lieutenant Governor (who, in Kentucky, are required to run on a single slate rather than individually):

d. A gubernatorial candidate slate may not accept contributions during the 28 days preceding the primary or general election, regardless of whether it participates in public financing. This prohibition applies to candidates' contributions to their own campaigns, as well as to contributions from outside sources.

e. A gubernatorial candidate slate which elects to participate in public financing is subject to a \$1.8 million campaign spending limit. However, when a nonparticipating slate collects more than \$1.8 million in campaign funds in a primary or general election, including contributions from the candidates themselves, a "trigger" is activated. The result is that the spending limit for participating slates is lifted and the 28-day window is lifted for all slates.

f. Before the "trigger" is activated, participating slates may raise up to \$600,000 which, when combined with two-for-one matching public funds results in campaign funds of up to \$1.8 million. After the trigger is activated, a participating slate may raise an unlimited amount of money, all of which is matched by the two-for-one public funding.

The 28-day limitation was, apparently, included in the statute to ensure that all contributions (including those to the candidate's own campaign) are made before the final pre-election reporting date so that, if a nonparticipating slate exceeds the \$1.8 million threshold, it can be detected in time to activate the "trigger" and allow participating slates a meaningful amount of time to solicit additional contributions.

The Sixth Circuit Court of Appeals noted that there is little case law truly on point with regard to the issues raised by the Kentucky statute. However, the court noted that the Eighth Circuit Court of Appeals upheld a provision of Minnesota's campaign finance law which, in some respects, went further than the "trigger" in the Kentucky law in strongly discouraging nonparticipation in campaign financing. [*Gable* at 949, citing *Rosenstiel v. Rodriguez*, 101 F.3d 1544 (8th Cir., Dec. 1996), hereinafter, "*Rosenstiel*."] Like the Kentucky statute, the Minnesota statute permits publicly financed candidates to exceed an expenditure limit when their nonparticipating opponents raise funds in excess of a certain triggering amount. According to the Sixth Circuit Court of Appeals, Minnesota's trigger provides a bigger advantage to participating candidates than does Kentucky's because the triggering amount in Minnesota's is less than the Minnesota ceiling. However, the court noted that, in other respects, the Minnesota law does not go as far as Kentucky's in discouraging nonparticipation because the Minnesota law does not

provide any additional financing to a participating candidate to match an opponent's "excess" expenditures. Instead, under the Minnesota law, the amount of public funds a candidate may receive is limited to 50% of the expenditure limit, regardless of the amount of expenditures made by the candidate's opponent.

Citing *Buckley* at 57 n. 65, the Sixth Circuit Court of Appeals said that, in general, the public funding of candidates in return for their acceptance of expenditure limits is constitutional, despite the potential of pressuring candidates into accepting expenditure limits. However, the court cited the U.S. Eighth Circuit Court of Appeals decision in *Rosenstiel* and a campaign finance case decided by the U.S. First Circuit Court of Appeals [*Vote Choice, Inc. v. DiStefano*, 4 F.3d 26, 38 (1st Cir., 1993)] for the proposition that there is a point at which public financing incentives "snowball" or "stray beyond the pale" and become impermissibly coercive upon a nonparticipating candidate. The court cited, apparently with approval, an example given by the district court in *Gable* as an example of impermissible coercion. The district court said that if Kentucky provided \$4 in matching funds, instead of \$2, for every dollar raised by participating candidates, a nonparticipating candidate would have no way of remaining competitive once the \$1.8 million ceiling was lifted. As a result, according to the district court, the candidate would have no real choice but to participate in the scheme, making it unconstitutional. According to the court of appeals, the conclusion that benefits provided to participating candidates can become unconstitutionally coercive, if they are overwhelming enough, follows logically from the holding in *Buckley* that *involuntary* limits on a candidate's campaign expenditures are unconstitutional. According to the court of appeals, *Buckley's* holding regarding involuntary spending limits would be rendered meaningless if government could effectively force a candidate into accepting expenditure limits by providing overwhelming benefits to participating candidates. [*Gable* at 948, citing *Buckley* at 58.]

Thus, according to the court of appeals, the central question is whether the trigger under the Kentucky law rises to the level of unconstitutional coercion. According to the court, it is clear that candidates in Kentucky are under financial pressure to participate in public financing and that participation is a rational choice in a large majority of cases. However, any voluntary campaign finance scheme must rely on incentives for participation which, by definition, means structuring the scheme so that participation is usually the rational choice. The court said that if it was to conclude that the incentives provided by Kentucky were unconstitutional, it would be making a distinction based on "degree" and *Buckley* did provide some guidance related to courts making such distinctions. In upholding a \$1,000 limit on campaign contributions by individuals, the U.S. Supreme Court stated, in *Buckley*, that if "some limit on contributions is necessary, a court has no scalpel to probe, whether, say, a \$2,000 ceiling might not serve as well as \$1,000. Such distinctions in degree become significant only when they can be said to amount to differences in kind." [*Gable* at 949, quoting *Buckley* at 30 (citation and internal quotation marks omitted).] The Sixth Circuit Court of Appeals said that it believed the same principle applied to the Kentucky statute. It declined to find that the incentives inherent in the trigger provision are different in "kind" from clearly constitutional incentives. [*Gable* at 949.]

The court of appeals also upheld the prohibition against a slate accepting any contributions during the 28 days preceding the primary or general election as it applied to contributions from outside sources, but held that it was unconstitutional with respect to nonparticipating candidates' contributions to their own campaigns. This distinction was based on the court's

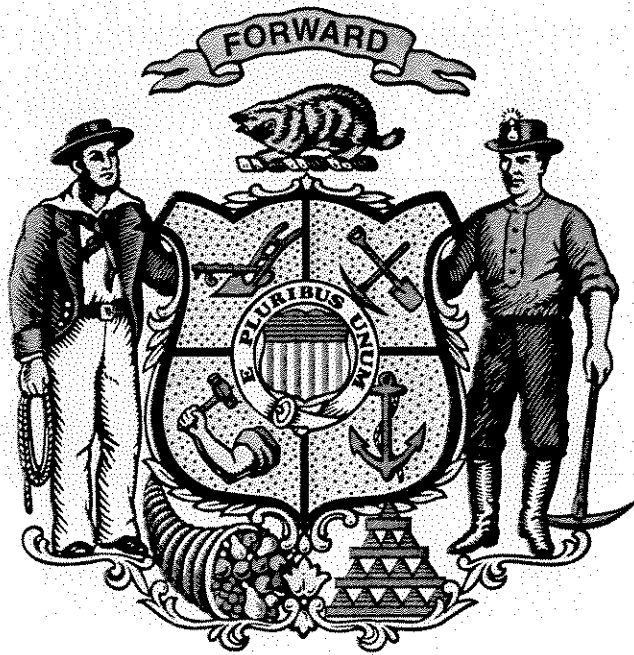
acceptance of the contention that the purpose of the Kentucky campaign financing scheme was to limit the actuality and appearance of corruption. The court was willing to accept that the 28-day window as applied to outside contributions was an important part of that scheme. However, the court noted that a central holding in *Buckley* is that spending money on one's own speech must be permitted. [*Gable* at 949-50.]

2. Application to Proposal

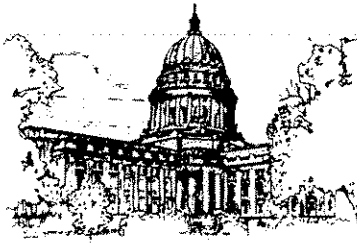
Based on the Sixth Circuit Court of Appeals' reasoning in *Gable*, as well as the Eighth Circuit Court of Appeals' reasoning in *Rosenstiel*, it appears that a court would uphold a law increasing public financing for a candidate based on expenditures by his or her opponent in excess of the expenditure limit. In particular, the amount of the increase in the proposal you have described is significantly less than the two-for-one funding provided in similar circumstances under the Kentucky statute examined in *Gable*.

If you would like any further information on this subject, please feel free to contact me at the Legislative Council Staff offices.

JRH:wu:tlj:jal:kjf:jal



MICHAEL G. ELLIS
SENATE REPUBLICAN LEADER



19TH SENATE DISTRICT

Wisconsin State Senate

ELLIS AGREES TO COMPROMISE ON CAMPAIGN FINANCE REFORM
Republican leader says changes suggested by reform advocates strengthen his bill

FOR IMMEDIATE RELEASE
May 19, 1999

Contact: Senator Michael Ellis
(608) 266-0718

(Madison) - State Senate Republican Leader Michael Ellis (R-Neenah) has announced he's making changes to his major campaign finance reform proposal. The changes are based on suggestions made by two highly regarded advocates of reform, changes which Ellis says will strengthen his bill and improve it's chances of passage.

In February, Ellis unveiled his "**CLEAN GOVERNMENT CAMPAIGN PLAN**" to dramatically reduce campaign spending and limit the influence of special interest groups.

On April 6, Jay Heck of COMMON CAUSE and Gail Shea of the WISCONSIN DEMOCRACY CAMPAIGN offered recommendations on reform in a guest column in the *Wisconsin State Journal*.

After reviewing those suggestions, Ellis is now incorporating them in his "**CLEAN GOVERNMENT CAMPAIGN PLAN**."

"In the spirit of cooperation, and for the good of campaign finance reform, I wholeheartedly agree to this compromise," said Ellis. "I agree with Heck and Shea that this is the best opportunity to clean up our elections, and the changes we're making, I believe, are necessary to make this happen."

Here are the changes suggested by Heck and Shea that Ellis is adopting:

- The voluntary spending limit for a State Senate campaign would be \$120,000. Candidates who agree to the limit receive a state grant of \$40,000. Ellis' original plan set a limit of \$150,000, with a grant of \$50,000.

Ellis agrees with Heck and Shea that these limits still afford a candidate the opportunity to stage an aggressive campaign with an emphasis on voter contact. The spending limit will prevent one candidate from squashing the other.

- An individual contribution to a State Senate campaign would be \$500. That's a reduction from the current maximum allowable contribution of \$1,000, which Ellis had originally supported.

The need for larger contributions is diminished because of the spending limits and the state grants. Heck and Shea emphasize that few candidates receive individual contributions at the high end of the current limits.

- Before becoming eligible for state grants, a State Senate candidate must raise \$5,000 from people living inside their State Senate district in contributions of \$100 or less. Originally, Ellis had supported a figure of \$6,000.

Ellis agrees with Heck and Shea that before a candidate can receive substantial state grants, the candidate must demonstrate that he or she can run a legitimate campaign in the district. The candidate can clearly do so by raising \$5,000 in the district. Ellis agrees that with a lower spending level, the amount needed to be raised to be eligible for a grant should also be lowered.

Ellis also emphasizes that in their *Wisconsin State Journal* column, Heck and Shea endorsed two other provisions in the "CLEAN GOVERNMENT CAMPAIGN PLAN." One would eliminate legislative campaign committees, which collect contributions from political action committees, or PAC's. The other provision would retain a law that prohibits a publicly financed candidate from accepting PAC contributions. Both of these recommendations remain in Ellis' proposal.

"We must put partisan politics aside on this issue," said Ellis. "It's the only way we are going to make meaningful and effective reform pass this time around."

"After careful review, I'm ready to embrace and accept these changes to my plan. This compromise is the best opportunity Wisconsin has to achieving true campaign finance reform," said Ellis.

Ellis' proposal, Senate Bill 113 (SB 113) drew praise from both Democrats and Republicans when first announced in February, and received favorable editorials from nearly every major newspaper in the state. Here's what some of them have said about the Ellis plan:

"Robert La Follette made the state a leader in clean, fair, and efficient government. Special interests have spent the last several election cycles attempting to destroy La Follette's legacy. Michael Ellis is a profile in courage for trying to claim it back."
The Tomah Journal

".....undoubtedly the best proposal to date to return sanity to running for office in the state of Wisconsin." The Oshkosh Northwestern

".....unique plan has a chance of becoming law. The Legislature could do worse, and not much better." The Milwaukee Journal/Sentinel

"It's your government. The Ellis plan gives it back to you." The Sheboygan Press.

Common Cause Democracy Campaign Compromise

Senate Limit:

\$120,000

**Qualifying
Money:**

\$5,000 in district
with provisions for
poorer districts

**Individual
Contributions:**

Lower to \$500 maximum
(Senate)

**Legislative
Campaign
Committees:**

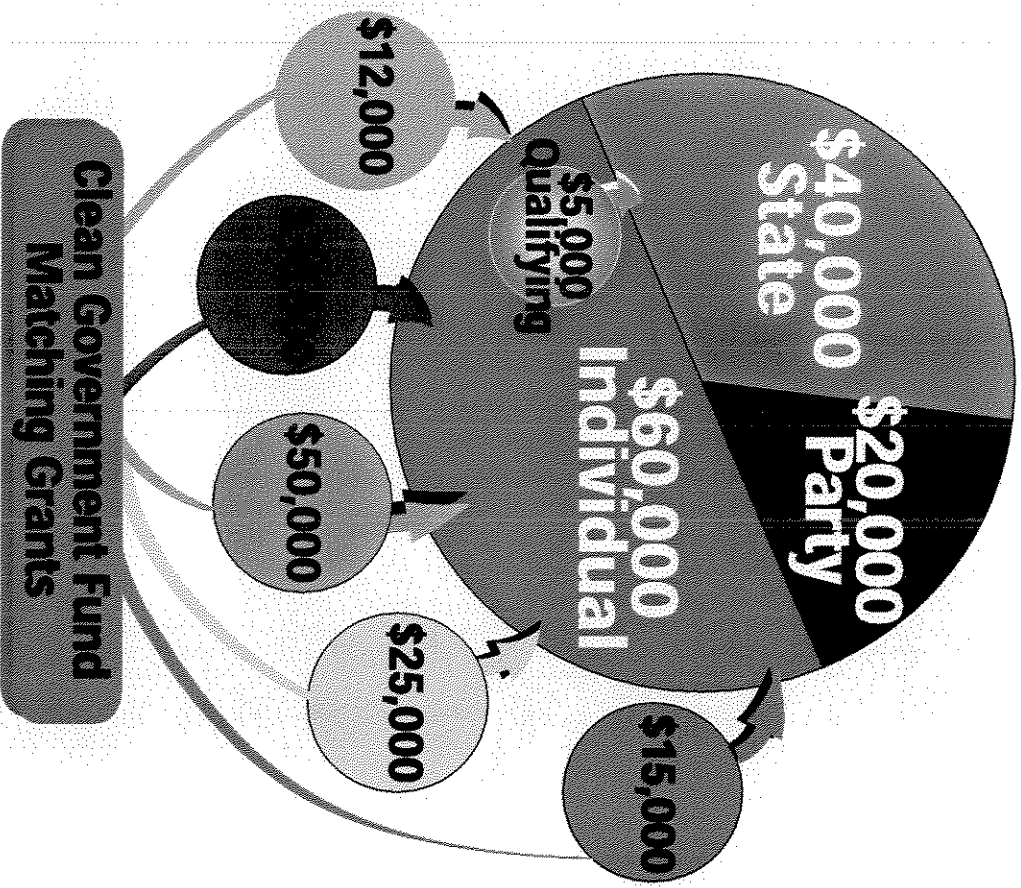
Eliminated

**PAC/Conduit
Money:**

Not allowed if candidate
receives public grant
(Current Law)

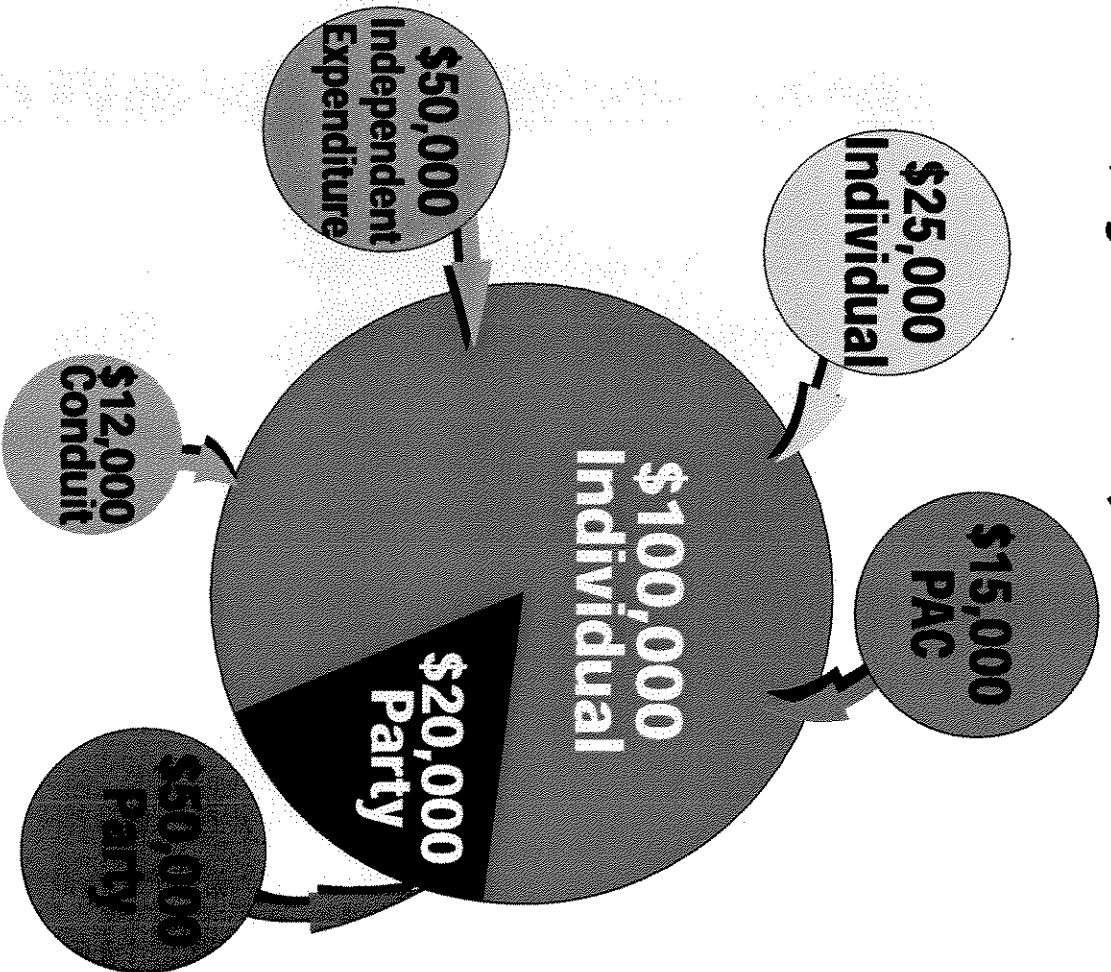
Candidate A

(Agrees to Clean Government Fund)



Candidate B

(Rejects Limits)



WISCONSIN STATE JOURNAL

Phil Blake, publisher Frank Denton, editor Thomas W. Still, associate editor
Sunny Schubert, editorial writer Chuck Martin, editorial writer

Opinions above are shaped by this board, independent of news coverage decisions elsewhere in the paper.

GUEST COLUMN

Don't let partisanship stop reform

By Jay Heck and Gail Shea

As the Wisconsin State Journal's designated "election watchdogs," ("Election watchdogs — show your teeth," March 26), we are pleased to have this forum to provide some "detailed barking" about the state campaign finance plan being advanced by Republican State Senate Leader Mike Ellis, R-Neenah, and the revisions to it proposed by Senate Majority Leader Chuck Chvala, D-Madison.

We have a precious window of opportunity to achieve real campaign finance reform in Wisconsin, restore integrity to our election system and regain the confidence of the voters. We cannot allow this window to close because of a partisan standoff.

We commend Ellis for putting forth his courageous and visionary campaign finance reform plan that offers the genuine possibility of gaining bipartisan support. We commend Chvala for recognizing the significance of Ellis' measure and making campaign finance reform a top priority for senate Democrats. Now is the time to come together and pass this reform package, send it to the Assembly for passage, and to the governor for enactment into law.

We must not lose sight of the basic purposes of campaign fi-

Heck is executive director of Common Cause in Wisconsin. Shea is executive director of the Wisconsin Democracy Campaign.



nance reform: to reconnect voters to our political system and to put candidates back in charge of campaigns. Voters want a system that:

- Controls spending.
- Reduces special interest influence.
- Allows all qualified candidates the opportunity to present their ideas through a vibrant campaign based on direct voter contact.
- Ensures that the qualifications for running for office are based on ideas, energy and a commitment to public service, not on fund-raising ability.
- Encourages stronger state political parties that play a bigger role in recruiting, training and funding candidates.

Ellis' proposal represents a sea change in the debate on public financing of campaigns in Wisconsin. It is like Nixon going to China — only a Republican could have made a proposal of this magnitude. Therefore, we believe that special weight must be given to his position. This is not simply a matter of dividing the differences equally. It is a question of supporting fundamental campaign finance reform that can be enacted with

bipartisan support in time for the 2000 elections.

The Ellis proposal addresses the most serious problems plaguing Wisconsin elections today. It is nothing short of revolutionary in its willingness to tackle head-on the overwhelming problem of "outside" spending — the huge independent expenditures made by deep-pocketed special interest groups to flood the airwaves with negative campaign ads and phony issue ads and attempt to seize control of the campaign dialogue.

Ellis and Chvala agree about the need and the means to combat this problem. Their differences are in other areas. (See related article.)

This opportunity to achieve comprehensive reform must not be allowed to slip through our fingers. It is the best opportunity that we have had in Wisconsin in more than two decades and we may not have it again for years to come. We have already dropped from second in the nation to 10th in voter turnout. We desperately need to fix our current campaign finance system before they hold an election and nobody shows up. Let's do it now — before the beginning of the next century.

Suggestions for reconciling campaign finance reform

Here are our recommendations for resolving differences in the campaign finance reform plans submitted by Sens. Mike Ellis, R-Neenah, and Chuck Chvala, D-Madison:

■ We support a spending limit of \$120,000 for a state Senate election, with a grant of \$40,000 to a candidate who agrees to abide by the limit (half those amounts for Assembly candidates). This grant will guarantee a qualified candidate enough money to run a vigorous campaign based on direct voter contact, and the spending limit will stop any one candidate from drowning out the other. This limit is realistic enough to "capture" even the most competitive races as we enter the 21st century.

Ellis proposes campaign spending limits of \$150,000 with a \$50,000 grant for state Senate elections, while Chvala set the spending limit at \$100,000 with the grant also at \$50,000.

Ellis' proposal is for the public grant to equal one-third of the amount of the spending limit and Chvala pegs it at one half of the limit. Frankly, we prefer to have the percentage proposed by Chvala, but recognize that it means the loss of bipartisan support.

In addition to providing an initial grant for candidates who agree to spending limits, the Ellis proposal provides a dollar-for-dollar match with public money to any candidate whose opponent exceeds the spending limit or who is attacked by independent expenditures — an extremely effective measure that is in place in only one other state in the nation.

This ability to receive additional public funds, when spending limits are exceeded, justifies the initial 33 percent grant, pro-

vided that the entire measure is fully funded.

■ Special treatment for legislative campaign committees, organized by the leadership to collect PAC contributions, should be terminated. Ellis proposes eliminating legislative campaign committees; Chvala wants to keep them. These groups are little more than repositories of special-interest money and they undermine the strength and purpose of political parties — which is where money ought to be directed.

Legislative campaign committees have become tools of legislative leaders used to control the Legislature by doling out campaign cash, rather than through the force of their ideas. That's just plain wrong. Get rid of them.

■ Individual contribution limits should be \$250 to Assembly candidates, \$500 to Senate candidates, and \$1,000 for statewide candidates. Chvala proposes this reduction; Ellis leaves the existing maximum contribution levels in place.

We agree that reducing the size of maximum contributions to the levels Chvala advocates would reduce the influence large contributors have on the recipients. The need for larger contributions is reduced when there are effective spending ceilings with fully funded public grants. Very few candidates receive contributions at the high ends of the current limits, and most of this money comes from outside the district in the highly competitive races.

■ The current law that does not allow a publicly financed candidate to accept any PAC contributions should be retained. Ellis' proposal keeps current law. He further proposes that no conduit



Heck



Shea

money may be received by a publicly funded candidate — a vast improvement on current law. Chvala proposes that a publicly-funded candidate be permitted to accept some PAC and conduit funds.

On this point, we strongly agree with Ellis. Public funding should replace special-interest PAC funds. Providing taxpayer money free of special-interest taint to candidates allowing them to run vibrant, issue-based campaigns is the main purpose of campaign reform.

■ A candidate should be required to show the ability to put together a credible campaign, based on support in the district, in return for the substantial grant provided in these proposals. Chvala proposes that state Senate candidates raise \$4,000, and that it may come from anywhere in the state. Ellis says this money ought to come only from the legislative district in which the candidate is running and that the level be set at \$6,000.

We think that with lower spending level, \$120,000 for a state Senate race, the qualifying threshold ought to be reduced to \$5,000 and that it must be raised from people residing in the legislative district. However, we recognize that this may make it difficult for candidates from poorer districts and for challengers to qualify for a grant. Therefore, some provision ought to be made to help them.

— Jay Heck and Gail Shea

**Clean Government Campaign Plan –
Common Cause/Wisconsin Democracy Campaign Compromise**

- **Changes in bold are result of Common Cause and Wisconsin Democracy Campaign Compromise**

Campaign Financing

I) Legislature

- A) There would be a voluntary limit on campaign spending of **\$120,000 for the Senate and \$60,000 for the Assembly**. If a candidate agrees to the voluntary limit the candidate would receive:
 - 1) State grant - **\$40,000 Senate/\$20,000 Assembly**
To qualify for the grant, a candidate would have to raise \$5,000 in contributions of not more than \$100 for Senate, \$2,500 for Assembly, all from within their district.
 - 2) Party/Campaign committees - **\$20,000/Senate, \$10,000/ Assembly**
 - 3) Individual contributions – up to **\$60,000/Senate, \$30,000/Assembly**
- B) If a candidate does not agree to the voluntary limit, the candidate are subject to the following reporting requirements:
 - 1) A campaign must file a campaign finance report to the state elections board within 24 hours of raising **\$100,000/Senate, \$50,000/Assembly** and/or **\$20,000 Senate/10,000/Assembly from a party**.
 - 2) After raising **\$100,000 Senate/\$50,000 Assembly** and/or **\$20,000 Senate/10,000 Assembly** from a party, a campaign must file, upon receipt of a contribution, a campaign finance report within 24 hours.
- C) Any campaign, regardless of whether or not it has agreed to the voluntary spending limit, cannot accept contributions to the campaign within ten days of the election.

II) Governor/Lieutenant Governor

- A) There would be a voluntary spending limit of \$2,000,000
 - 1) State Grant: \$670,000 *To qualify for the grant, a candidate would have to raise \$80,400 in amounts of not more than \$100 within the state.*
 - 2) Party/Campaign committees: \$330,000
 - 3) Individual contributions: \$1,000,000
- B) If a candidate does not agree to the voluntary limit, they are subject to the following reporting requirements:
 - 1) A campaign must file a campaign finance report to the state elections board within 24 hours of raising \$1,670,000 and/or \$330,000 from a party.
 - 2) After raising \$1,670,000 and/or \$330,000 from a party, a campaign must file, upon receipt of a contribution, a campaign finance report within 24 hours.

III) Attorney General

- A) There would be a voluntary spending limit of \$400,000
 - 1) State Grant: \$135,000 *To qualify for the grant, a candidate would have to raise \$16,200 in amounts of not more than \$100 within the state.*

- 2) Party/Campaign committee: \$65,000
- 3) Individual contributions: \$200,000
- B) If a candidate does not agree to the voluntary limit, they are subject to the following reporting requirements:
 - 1) A campaign must file a campaign finance report to the state elections board within 24 hours of raising \$335,000 and/or \$65,000 from a party.
 - 2) After raising \$335,000 and/or \$65,000 from a party, a campaign must file, upon receipt of a contribution, a campaign finance report within 24 hours.
- IV) Secretary of State/State Treasurer/State Superintendent/Supreme Court
 - A) There would be a voluntary spending limit of \$200,000
 - 1) State Grant: \$67,000 *To qualify for the grant, a candidate would have to raise \$8,040 in amounts of not more than \$100 within the state.*
 - 2) Party/Campaign committee: \$33,000
 - 3) Individual Contributions: \$100,000
 - B) If a candidate does not agree to the voluntary limit, they are subject to the following reporting requirements:
 - 1) A campaign must file a campaign finance report to the state elections board within 24 hours of raising \$167,000 and/or \$33,000 from a party.
 - 2) After raising \$167,000 and/or \$33,000 from a party, a campaign must file, upon receipt of a contribution, a campaign finance report within 24 hours.

Public Financing

- A) Each candidate who signs up for the plan, would receive, from the clean government fund, 100% of the amount to be spent on behalf of their opponent or against them by an IE or PAC.
- B) Each candidate, whose opponent does not agree to the voluntary spending limit will receive, from the clean government fund, 100% of the amount above the limits which trigger the 24 hour reporting requirement.
- C) Each candidate, whose opponent does not agree to the voluntary spending limit, will receive from the clean government fund, the amount above the party limit which trigger the 24 hour reporting requirement.
- D) Each candidate, whose opponent does not agree to the voluntary spending limit, will receive from the clean government fund, an amount equaling the amount donated to their opponent from a PAC or conduit.

Independent Groups

- A) **PACs & Conduits cannot contribute to a campaign which agrees to the limit.**
- B) Any group (PAC, conduit, political party, independent expenditure) which will make expenditures on behalf of or contributions to a campaign must file reports with the elections board 63, 42, and 21 days before the election. These reports must include the amount of money being spent or contributed and the campaign which the money is to support or oppose.
- C) **Legislative Campaign Committees cease to exist**

Issue Advocacy (60 days from election)

- A) Issue advocacy ads cannot mention a candidate for office

- B) Issue advocacy ads cannot mention a political party
- C) Issue advocacy ads cannot mention an office

Contribution Limits:

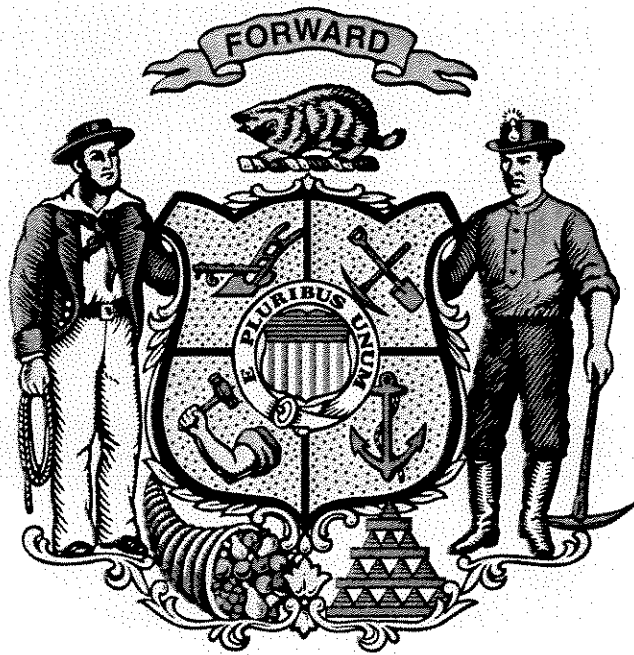
A) Maximum contribution limits of \$500/Senate, \$250 Assembly, and \$1,000 statewide office.

Funding the Clean Government Fund

- A) 10% of billable lobby hours as reported to the State Ethics Board (above what is spent on lobbying, paid for by organization hiring lobbyist)
- B) Sum-Sufficient Appropriation from Budget.

Penalties

- A) If a candidate or outside group violates reporting requirements, the fine is \$500 per day.
- B) If a candidate or outside group violates reporting requirements with intent to conceal or deceive, the penalty is a Class E Felony.
- C) If a candidate or outside group spends above 5% over the limits, either statutorily or according to their own statement (21 day maps), the fine is four times the amount spent.
- D) If a candidate or outside group spends above 10% over the limits, either statutorily or according to their own statement (21 day maps), the fine is 6 times the amount spent
- E) If a candidate or outside group spends above 15% over the limits, either statutorily or according to their own statement (21 day maps), a nullification process can begin.
- F) Nullification can be filed by either the victim of the election (losing candidate) or the elections board.
- G) Nullification begins with a finding of fact by the circuit court.
- H) Circuit Court decisions are appealable to the Appellate and Wisconsin Supreme Court.



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)

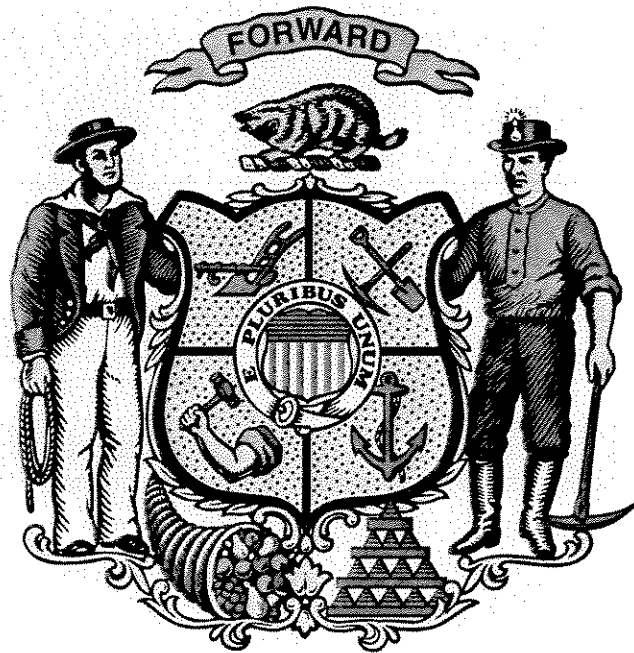
Independent Expenditures (Sec. 19 - proposed § 11.12(6)(c))

- 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”



How much was spent by

Candidates

Independent

parties

How much out of State \$
last election cycle money.

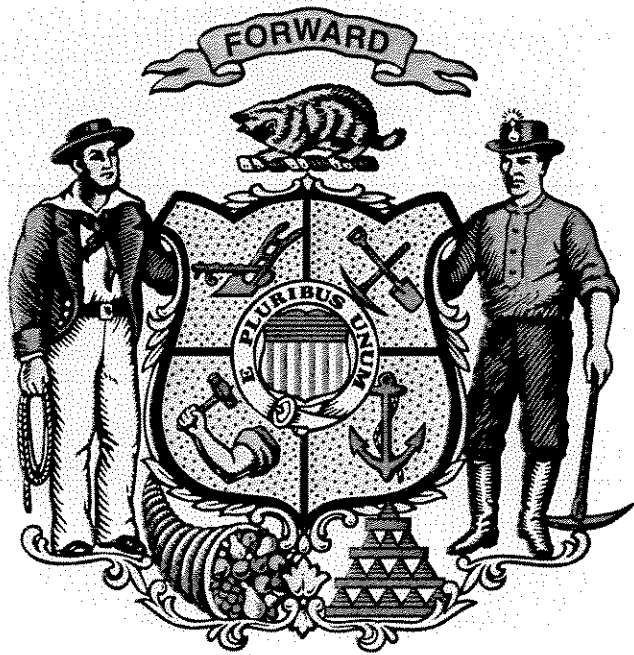
What should the Federal
fee

50,000

Assembly

100,000 Senate

✓ How is the software development
coming.



Changes for the Substitute

to 80113

- ✓ 1) Eliminate the Lobby Tax
- ✓ 2) PAC contributions to campaigns who take the grant need to be matched (Like Conduits)
- ✓ 3) 200% level for contributions to own campaign.
- ✓ 4) Pg 4: Dollar amount for justice, superintendent (should be same as sec of state & treasurer
- ✓ 5) Pg 20: Dollar amount for justice, superintendent
- ✓ 6) Attorney General 24 hour report \$ should be \$335,000
- ✓ 7) New Dollar Amounts

• **Changes in bold are result of Common Cause and Wisconsin Democracy Campaign Compromise**

Campaign Financing

D) Legislature

✓ A) There would be a voluntary limit on campaign spending of **\$120,000 for the Senate and \$60,000 for the Assembly**. If a candidate agrees to the voluntary limit the candidate would receive:

1) State grant - **\$40,000 Senate/\$20,000 Assembly**
To qualify for the grant, a candidate would have to raise \$5,000 in contributions of not more than \$100 for Senate, \$2,500 for Assembly, all from within their district.

2) Party/~~Campaign~~ committees - **\$20,000/Senate, \$10,000/ Assembly**
3) Individual contributions - up to **\$60,000/Senate, \$30,000/Assembly**

B) If a candidate does not agree to the voluntary limit, the candidate are subject to the following reporting requirements:

1) A campaign must file a campaign finance report to the state elections board within 24 hours of raising **\$100,000/Senate, \$50,000/Assembly** and/or **\$20,000 Senate/10,000/Assembly** from a party.

2) After raising **\$100,000 Senate/\$50,000 Assembly** and/or **\$20,000 Senate/10,000 Assembly** from a party, a campaign must file, upon receipt of a contribution, a campaign finance report within 24 hours.

✓ 8) Change Maximum ^{individual} contribution limits to **\$500/Senate, \$250 Assembly, and \$1,000** statewide office.

from individuals