

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\_sb0190\_AC-CE\_pt01**

➤ Miscellaneous ... Misc

➤ \*\*

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”