

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

99HR_CRule_99-150_AC-CE_pt01

> Hearing Records ... HR (bills and resolutions)

> **

> Miscellaneous ... Misc

> **

Vote Record

Assembly Committee on Campaigns and Elections

Motion to object to 99-150

Date: 5/11/99 ~~2/11/00~~
 Moved by: Freese Seconded by: Cullen
 AB: _____ Clearinghouse Rule: 99-150
 AB: _____ SB: _____ Appointment: _____
 AJR: _____ SJR: _____ Other: _____
 A: _____ SR: _____

A/S Amdt: _____ to A/S Amdt: _____
 A/S Amdt: _____ to A/S Sub Amdt: _____
 A/S Amdt: _____ to A/S Amdt: _____
 A/S Amdt: _____ to A/S Sub Amdt: _____

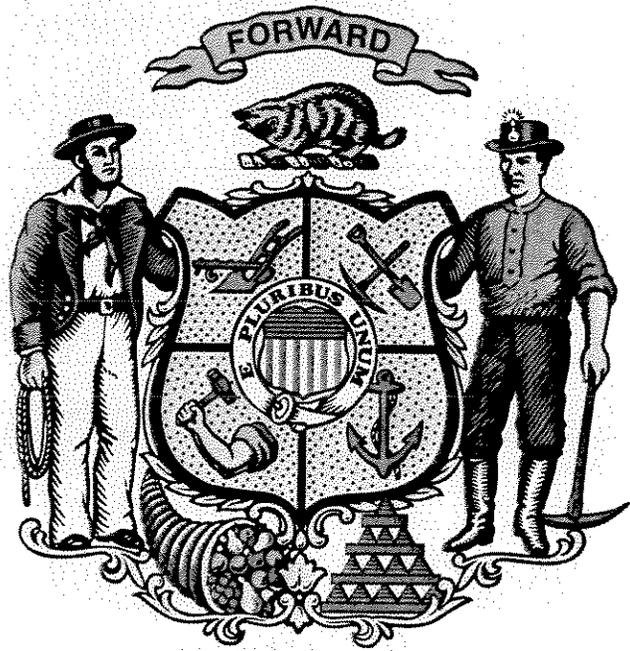
- Be recommended for:
- | | |
|---------------------------------------|--|
| <input type="checkbox"/> Passage | <input type="checkbox"/> Indefinite Postponement |
| <input type="checkbox"/> Introduction | <input type="checkbox"/> Tabling |
| <input type="checkbox"/> Adoption | <input type="checkbox"/> Concurrence |
| <input type="checkbox"/> Rejection | <input type="checkbox"/> Nonconcurrency |
| | <input type="checkbox"/> Confirmation |

Committee Member	Aye	No	Absent	Not Voting
Rep. Stephen Freese, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Scott Suder	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Scott Walker	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Phil Montgomery	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Bonnie Ladwig	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/> <u>excused</u>
Rep. David Travis	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. David Cullen	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Mark Miller	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Gary Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Motion is: Totals: 8 - 1

*The committee on Campaigns & Elections
 Objects to Clearinghouse Rule 99-150, related
 to express advocacy, pursuant to section
 227.19 (4) (d) 6 of WI Statutes and 227.19 (4) (d) 2 of
 WI Statutes 5
 Change in circumstances*

Motion Carried Motion Failed



Assembly Hearing Slip

(Please print plainly)

Date: 1/27/2000

Bill No. 99-150

Or Subject Express Advocacy

Name Bob Spindell

Street Address or Route Number 1626 N. Prospect Ave

City & Zip Code Wisc. WI 53202

Representing Self

Speaking in favor:

Speaking against:

Registering in favor:

Registering against:

Speaking for information only; Neither for nor against:

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms
Room 411 West
State Capitol
Madison, WI 53702

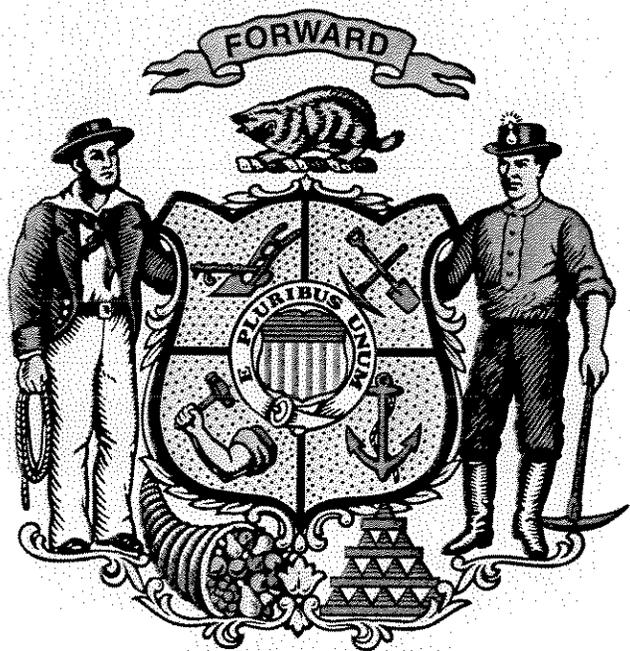
TERRE,

Grigg, Rep Young's off

info Spindell

6-3786

QUESTIONS ON "CAMPAIGNS + ELECTIONS" TESTIMONY



NOTICE

This notice is to inform you that the proposed rule-making of the State Elections Board, appearing in Clearinghouse Rule 99-150, amending ElBd 1.28(1)(intro.) and repealing and recreating ElBd. 1.28(2)(c), is submitted to the presiding officer of each house of the legislature. This submission includes the proposed rule, the Legislative Council's staff's report and the Elections Board's report. In addition, the Elections Board is placing in the Wisconsin Administrative Register a notice that the proposed rules have been submitted to the presiding officer of each house.

Dated December 21, 1999

STATE ELECTIONS BOARD


George A. Dunst
Legal Counsel

WISCONSIN ADMINISTRATIVE CODE

STATE ELECTIONS BOARD

SECTION 1. EIBd 1.28(1)(intro.) is amended to read:

EIBd 1.28 Scope of regulated activities; election of candidates

(1) Definitions. As used in this ~~rule~~ section:

SECTION 2. EIBd 1.28(2)(c) is repealed and recreated to read:

(2) Individuals other than candidates and committees other than political committees are subject to the applicable disclosure-related and recordkeeping-related requirements of ch.11, Stats., only when they:

(c) Make a communication containing terms such as the following or their functional equivalents, with reference to a clearly identified candidate, that expressly advocates the election or defeat of that candidate and that unambiguously relates to the campaign of that candidate:

1. "Vote for."
2. "Elect."
3. "Support."
4. "Cast your ballot for."
5. "Smith for Assembly."
6. "Vote against."
7. "Defeat."
8. "Reject."

9.

REPORT
OF
STATE ELECTIONS BOARD

Clearinghouse Rule 99-150
Rules Chapter ElBd. 1.28(1)(intro.) and (2)(c)
Wisconsin Administrative Code

El.Bd. 1.28(1)(intro.) and (2)(c)

1. Findings of fact:

This amended rule interprets ss.11.01(3), (6), (7) and (16), Stats. The amendment attempts to define more specifically those communications that are considered to be express advocacy subject to regulation by ch.11 of the Wisconsin Statutes. The rule is thought to be necessary to implement the 1976 U.S. Supreme Court decision in Buckley v. Valeo, 424 U.S. 1, which has been reiterated in 1999 by the Wisconsin Supreme Court in Wisconsin Manufacturers & Commerce, WMC Issues Mobilization Council, Inc., et al. v. Elections Board of the State of Wisconsin, (227 Wis.2d 650, 597 N.W.2d 721). The rule codifies the express advocacy test set forth in those decisions by establishing a nonexclusive list of terms that have been considered by the courts to expressly advocate election or defeat. The rule also extends express advocacy to the functional equivalents of those terms. The term "functional equivalents" has been used to make clear that the term "express advocacy" includes both verbal and non-verbal forms of expression.

2. Conclusion and recommended action:

The State Elections Board unanimously concludes that ss.ElBd. 1.28(1)(intro.) and (2)(c) should be amended. The amendment of these rules is necessary to make clear that ch.11, of the Wisconsin Statutes applies to political speech that expressly advocates the election or defeat of a clearly identified candidate or expressly advocates a specific vote at a referendum. The Board recommends promulgation of this rule.

3. Explanations of modifications to the proposed rule:

The State Elections Board makes no substantive modifications to this rule.

4. List of persons appearing at the public hearing:

No public hearing was held. The rule was submitted pursuant to the 30-day notice procedure of s.227.16(2)(e), Stats. No person who will be affected by the rule filed a petition for a public hearing within the 30-day period provided by that statute.

5. Response to Legislative Council staff report:

The State Elections Board adopts the Legislative Council's staff's comments and has incorporated the suggested changes in the rule with the principal exception that it could not re-write the language of the proposed definition of "express advocacy" because that language was taken directly from the U.S. Supreme Court's language in Buckley v. Valeo.

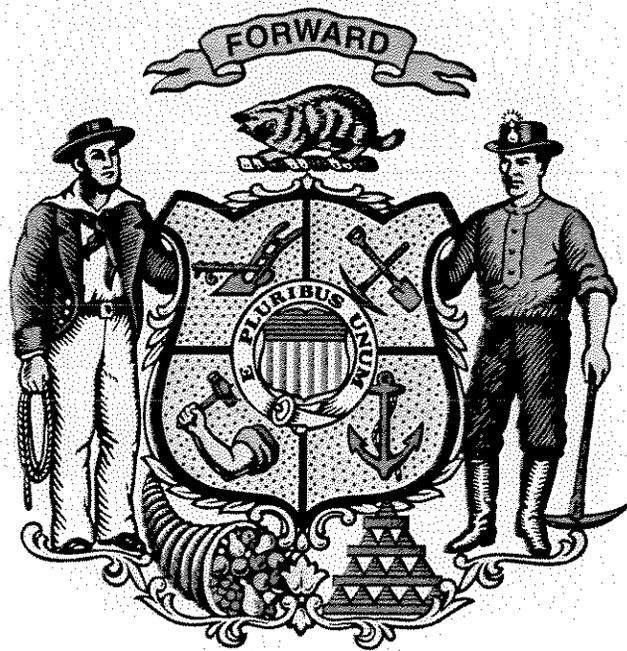
Respectfully submitted,

December 21, 1999

STATE ELECTIONS BOARD



George A. Dunst
Legal Counsel





FILE

Wisconsin Speaker Pro Tempore
Representative Stephen J. Freese **DRAFT**

TO: Members of the Assembly Campaigns and Elections Committee

Rep. Scott Suder, Vice-Chair	Rep. David Travis
Rep. Scott Walker	Rep. David Cullen
Rep. Phil Montgomery	Rep. Mark Miller
Rep. Bonnie Ladwig	Rep. Gary Sherman

FROM: Representative Stephen Freese, Chair

DATE: January 4, 2000

RE: Clearinghouse rule 99-150

On January 3, 2000, the following clearinghouse rule was referred to the Assembly Campaigns and Elections Committee:

Clearinghouse Rule 99-150, relating to express advocacy.

Get to Jensen

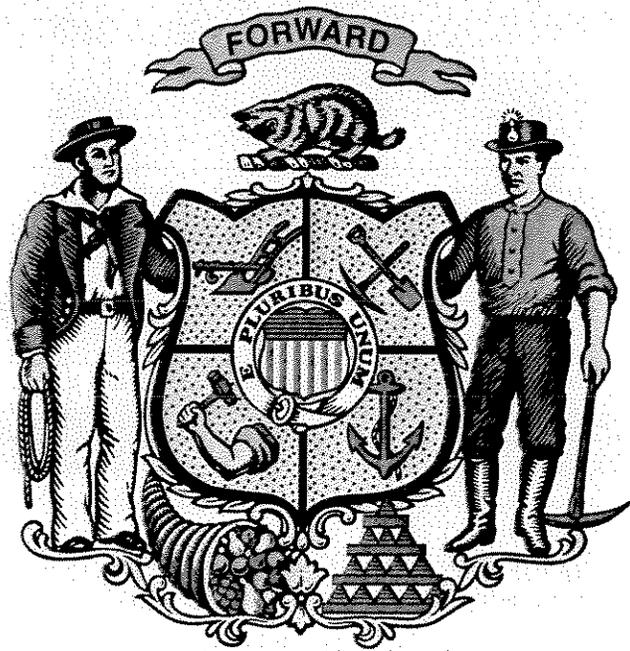
The deadline for committee action on this rule is **February 2, 2000**. If you would like a copy of the rule, please contact Terri Griffiths in my office at 266-7502. If you are interested in requesting a hearing and/or submitting comments, please do so prior to the deadline date.

*Get issues
this rule with
Jensen*

Fifty-First Assembly District

Office: Post Office Box 8952 • Madison, Wisconsin 53708-8952 • (608) 266-7502 • Fax: (608) 261-9474 • Rep.Freese@legis.state.wi.us
District: 1121 Professional Drive • Dodgeville, Wisconsin 53533 • (608) 935-3789

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DAVE TRAVIS
STATE REPRESENTATIVE

1/11/00
tg



STATE CAPITOL
P.O. BOX 8953
MADISON, WISCONSIN 53708
266-5340

January 10, 2000

Rep. Steve Freese, Chair
Committee on Campaigns and Elections
115 West, State Capitol
Madison WI 53702

Dear Rep. Freese:

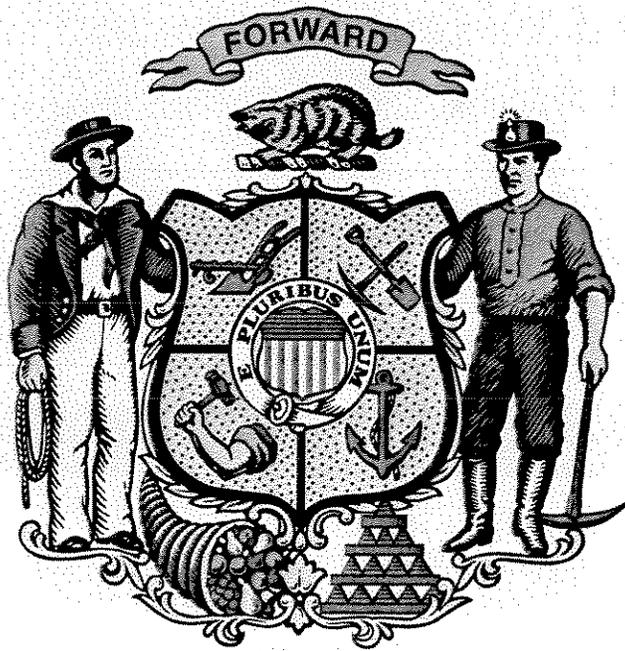
I am writing to request that the Assembly Committee on Campaigns and Elections hold a hearing on the State Elections Board's Clearinghouse Rule 99-150, relating to express advocacy.

Thank you for your attention to this request.

Sincerely,

A handwritten signature in cursive script that reads "Dave Travis".

DAVE TRAVIS
State Representative
81st Assembly District



FAX MEMO

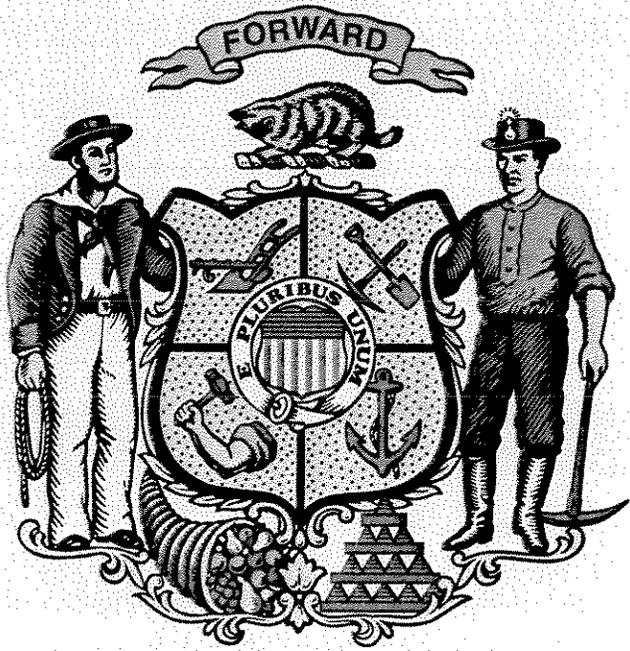
TO: Sue Armacost, WRL
414-778-5785

FROM: Office of Rep. Steve Freese
608-266-7502 (Contact: Terri)

DATE: January 12, 2000

RE: Clearinghouse Rule 99-150

Six total pages in facsimile



Wisconsin Democracy Campaign

16 NORTH CARROLL STREET • SUITE 420 • MADISON, WI 53703 • 608-255-4260

January 25, 2000

TO: Members of the Assembly Campaigns & Elections Committee

FROM: Gail Shea, Executive Director
Wisconsin Democracy Campaign

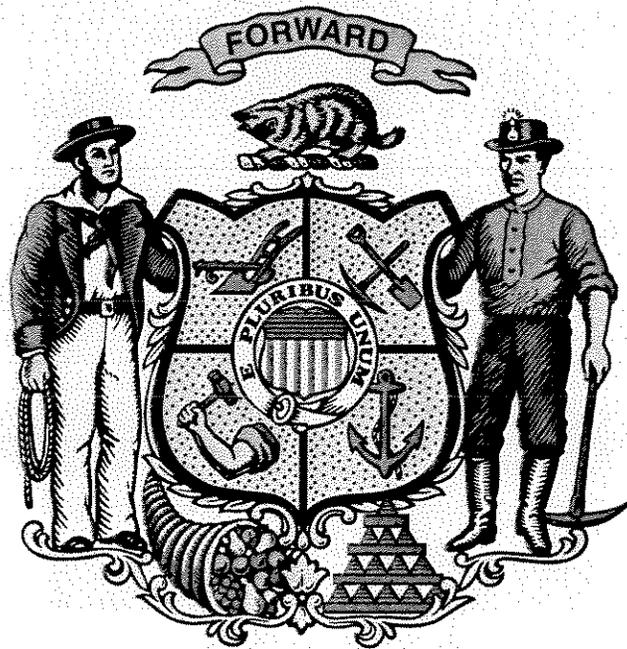
SUBJECT: Opposition to Assembly Clearinghouse Rule 99-150 (proposed Elections Board rule on express advocacy)

The Elections Board's proposed rule does nothing to remedy the problems presented by so-called "issue ads," most notably the growing cancer of undisclosed money used to influence campaigns. It is abundantly clear that it is up to the legislature to enact reforms to stop this abuse of the political process. Without legislative action, candidates and voters will increasingly become bystanders as the major special interests take over campaigns.

The proposed rule utterly fails to respond to the state Supreme Court's open invitation to delineate between communications that are truly aimed at educating voters on issues and the blatantly political messages that plainly aim to elect or defeat specific candidates. It institutionalizes the loophole special interest groups are using to get around Wisconsin's longstanding ban on the use of corporate money to influence elections.

There is no trend as hazardous to the health of our democracy as the emergence of independent spending campaigns conducted by special interest groups and the phony "issue ads" that have become one of their trademarks. Thanks to this fast-growing blight on our democratic process, candidates' messages to voters are being drowned out by expensive advertising campaigns paid for by powerful special interests. If voters must be subjected to these poisonous attack ads, then these communications should be treated the same as all other political ads. Sadly, the Elections Board shirked its duty to act in the public interest.

If this problem is going to be seriously addressed, the legislature is going to have to do it. We urge you in the strongest possible terms to prevent the proposed rule's promulgation. And we implore you to pass reform legislation that treats issue ads as the political communications they are.





WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main Street, Suite 401; P.O. Box 2536; Madison, WI 53701-2536

Telephone: (608) 266-1304

Fax: (608) 266-3830

Email: leg.council@legis.state.wi.us

DATE: February 15, 2000

TO: MEMBERS OF THE ASSEMBLY COMMITTEE ON CAMPAIGNS AND ELECTIONS

FROM: Shaun Haas, Senior Staff Attorney

SUBJECT: Origin of WLCS: 0250/1, Relating to the Definition of Expressly Advocates

At the February 2, 2000 meeting of the Assembly Committee on Campaigns and Elections, the Committee briefly discussed Committee options in addressing Committee member concerns regarding Clearinghouse Rule 99-150, relating to express advocacy. Pursuant to that discussion and at the request of Committee members, I offered to prepare legislation for Committee consideration based on the Federal Elections Commission regulation defining "expressly advocating" [11 C.F.R. s. 100.22], which is discussed by both the majority and minority opinions of the State Supreme Court in *State Elections Board v. Wisconsin Manufacturers and Commerce, et al.*, 227 Wis. 2d 650, 597 N.W.2d 721 (1999). WLCS: 0250/1, relating to the definition of expressly advocates, attached, responds to the Committee's request.

SPH:rv;jal

Attachment

SPH:jal;ksm

02/14/2000

1 **AN ACT** to create 11.07 (7m) of the statutes; relating to: the definition of expressly
2 advocates.

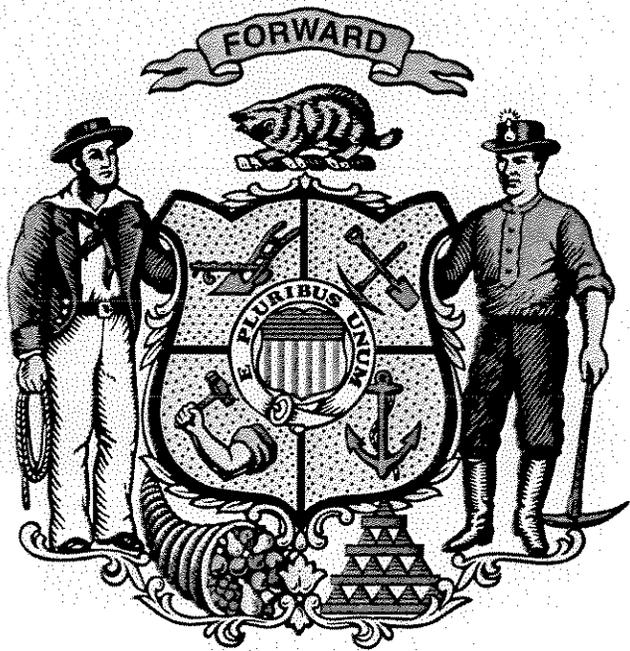
The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

LEGISLATIVE COUNCIL STAFF PREFATORY NOTE: Under current law, political committees, groups and individuals are subject to the registration and reporting requirements of the campaign finance law [ch. 11, stats.] if they make political contributions or disbursements for “political purposes” in an aggregate amount in excess of \$25 in a calendar year. The key term “political purposes” is statutorily defined as an act that is done “for the purpose of influencing the election or nomination for election” of a candidate for state or local office. [s. 11.01 (16), stats.] The statutory definition also describes acts which are for “political purposes” to include without limitation: “1. The making of a communication which expressly advocates the election, defeat, recall or retention of a clearly identified candidate or particular vote at a referendum”. The term “clearly identified” candidate, as used in this definition, is defined in s. 11.01 (3), stats., to mean: “(a) The candidate’s name appears; (b) A photograph or drawing of the candidate appears; or (c) The identity of the candidate is apparent by unambiguous reference”. The term “expressly advocates”, as used in this definition, is not defined.

This draft defines “expressly advocates” and thereby provides further guidance to determine which actions trigger the registration and reporting requirement of the campaign finance law. The definition is derived from a regulation of the federal elections commission which defines a comparable term used to determine when federal election regulatory requirements apply. [11 CFR s. 100.22.] The federal elections commission definition is based on U.S. Supreme Court and lower federal court decisions construing the meaning of express advocacy in the context of federal election campaign finance regulation.

As defined in this draft, “expressly advocates” means the use of language:

(a) Which in its context can have no other reasonable meaning than to urge election, defeat, recall or retention or the casting of a particular vote; or





Wisconsin Speaker Pro Tempore
Representative Stephen J. Freese

February 16, 2000

Hon. Robert Wirch, Chair
Senate Committee on Economic Development,
Housing and Government Operations
310 South, State Capitol

Dear Senator Wirch,

As chair of the Assembly Campaigns and Elections Committee I am notifying you that the committee voted today to object to Clearinghouse Rule 99-150 in its entirety. We base our objection on the following:

Pursuant to section 227.19 (4) (d) 2, 5, and 6 of Wisconsin Statutes

The Rule will now be referred to the Joint Committee for Review of Administrative Rules.

Sincerely,

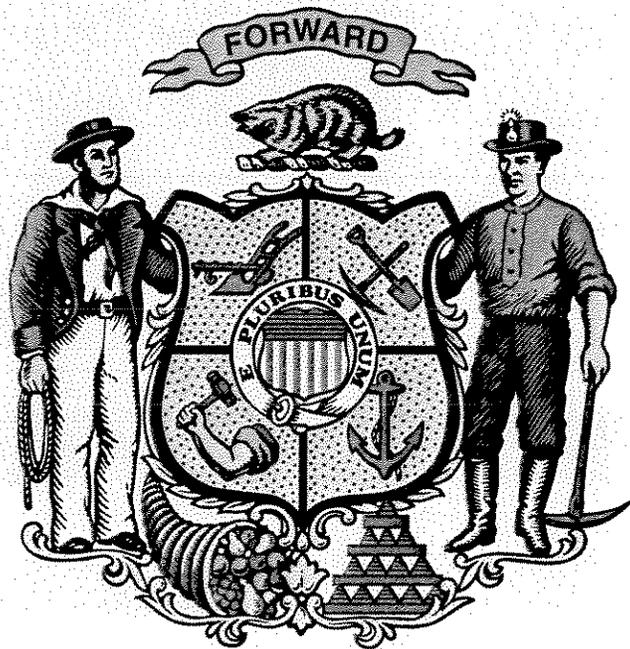
A handwritten signature in cursive script that reads "Stephen J. Freese".

STEPHEN J. FREESE

Chair
Assembly Committee on Campaigns and Elections

Fifty-First Assembly District

Capitol Office: P.O. Box 8952 • Madison, Wisconsin 53708-8952
(608) 266-7502 • Toll-Free: (888) 534-0051 • Fax: (608) 261-9474 • Rep.Freese@legis.state.wi.us
District: 310 E. North • Dodgeville, Wisconsin 53533 • (608) 935-3789





ROBERT W. WIRCH
STATE SENATOR TWENTY-SECOND DISTRICT

February 17, 2000

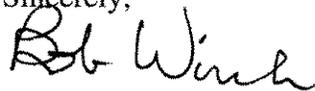
Honorable Stephen J. Freese
Speaker Pro Tempore
State Capitol, Room 115 West
Madison, WI 53702

Dear Representative Freese:

As chairman of the Senate Committee on Economic Development, Housing and Government Operations, I am notifying you that the committee has voted to object to Clearinghouse Rule 99-150 in its entirety. This is done pursuant to Section 227.19 (4) (d) 6 of the Wisconsin Statutes.

The rule will now be referred to the Joint Committee for Review of Administrative Rules.

Sincerely,



Robert Wirch
State Senator
22nd District

RW:bes

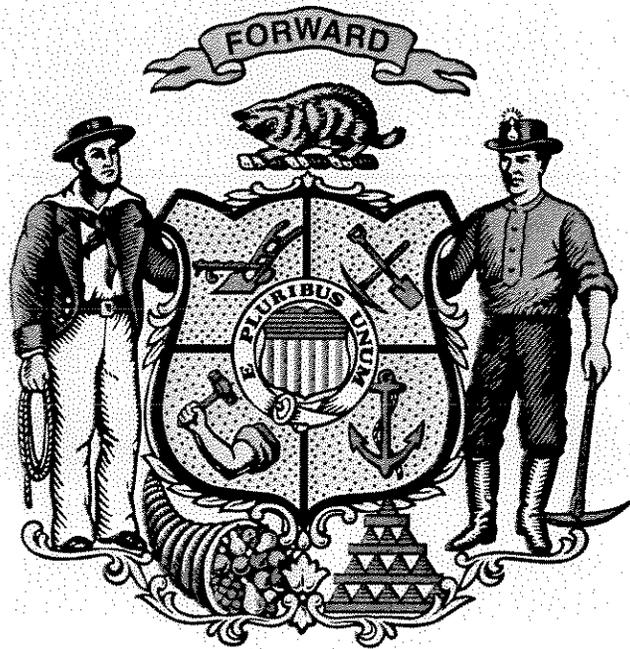
State Capitol, P.O. Box 7882, Madison, Wisconsin 53707-7882 • 608-267-8979

Toll-Free Office Hotline: 1-888-769-4724

Email: Sen.Wirch@legis.state.wi.us • Website: www.legis.state.wi.us/senate/sen22/sen22.html • Fax: (608) 267-0984

Home: 3007 Springbrook Road, Pleasant Prairie, Wisconsin 53158 • (262) 694-7379

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MADISON, WI 53707-7882
(608) 266-2253

P.O. Box 8952
MADISON, WI 53708-8952
(608) 264-8486

JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

April 12, 2000

The Honorable Fred Risser
Senate President
State Capitol Building, Room 220 South
Madison, WI 53702

The Honorable Scott Jensen
Assembly Speaker
State Capitol Building, Room 211 West
Madison, WI 53702

Dear President Risser and Speaker Jensen:

The Joint Committee for the Review of Administrative Rules met in Executive Session on April 11, 2000 and adopted the following motions:

Emergency Rule CVRB 1

Relating to the rights of crime victims. Extension of the effective period of this emergency rule by **60 days** by the request of the Crime Victims Rights Board. *Second Consideration.*

Moved by Representative Grothman, seconded by Representative Black that pursuant to Section 227.24(2)(a), Stats., the Joint Committee for Review of Administrative Rules extend the effective period of emergency rule CRVB 1 by 60 days, at the request of the Crime Victims Rights Board recommended, Ayes 9, Noes 0, Absent 1

Ayes: (9) Representatives Grothman, Gunderson, Seratti, and Black; Senators Robson, Grobschmidt, Shibilski, Schultz and Welch.

Noes: (0)

Absent: (1) Representative Kreuser

Emergency Rule HFS 50

Relating to: Adoption Assistance Extension of the effective period of this emergency rule by **60 days**, at the request of the Department of Health and Family Services. *First Consideration.*

Moved by Representative Grothman, seconded by Senator Robson that pursuant to Section 227.24(2)(a), Stats., the Joint Committee for Review of Administrative Rules extend the effective period of emergency rule HFS 50 by 60 days, at the request of the Department of Health and Family Services. recommended, Ayes 7, Noes 2, Absent 1

Ayes: (7) Representatives Grothman, Gunderson, Seratti, and Black; Senators Robson, Grobschmidt, and Shibilski

Noes: (2) Senators Schultz and Welch.

Absent: (1) Representative Kreuser

CR 99-150

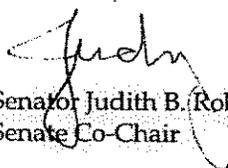
Relating to express advocacy. Objection recommended by the Assembly Committee on Campaigns and Elections and the Senate Committee on Economic Development, Housing and Government Operations.

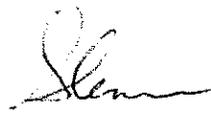
Moved by Senator Robson, seconded by Senator Welch that pursuant to Section 227.19(4)(d)6, Stats., the Joint Committee for Review of Administrative Rules concurs in the objection of the Senate Committee on Economic Development, Housing and Government Operations and the Assembly Committee on Campaigns and Elections. Recommended, Ayes 9, Noes 0, Absent 1

Ayes: (9) Representatives Grothman, Gunderson,
Seratti, and Black; Senators Robson, Grobschmidt, and Shibilski
Noes: (0)
Absent: (1) Representative Kreuser

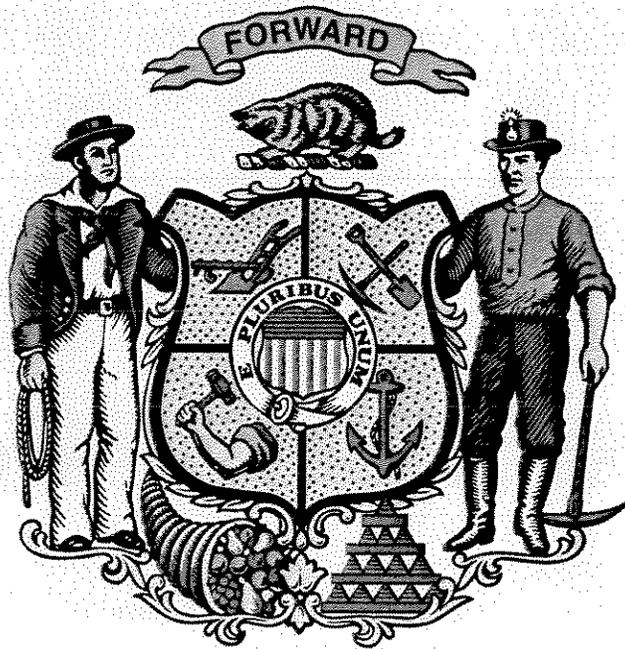
Pursuant to s. 227.24(2)(c), stats., as treated by 1997 Wisconsin Act 185, please forward a copy of this notice to the chairperson of the standing committee in your respective house most likely to have jurisdiction over the Clearinghouse Rule corresponding to these emergency rules.

Sincerely,


Senator Judith B. Robson
Senate Co-Chair


Representative Glenn Grothman
Assembly Co-Chair

BW:GG:mjg



WISCONSIN LEGISLATIVE COUNCIL STAFF



RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266-1946

Richard Sweet
Assistant Director
(608) 266-2982



Jane R. Henkel, Acting Director
Legislative Council Staff
(608) 266-1304

One E. Main St., Ste. 401
P.O. Box 2536
Madison, WI 53701-2536
FAX: (608) 266-3830

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 99-150

AN ORDER to amend ElBd 1.28 (2) (c), relating to express advocacy.

Submitted by **ELECTIONS BOARD**

10-26-99 RECEIVED BY LEGISLATIVE COUNCIL.

11-22-99 REPORT SENT TO AGENCY.

RNS:RJC:jal;rv

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO

WISCONSIN LEGISLATIVE COUNCIL STAFF

RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266-1946

Richard Sweet
Assistant Director
(608) 266-2982



Jane R. Henkel,
Acting Director
Legislative Council Staff
(608) 266-1304

One E. Main St., Ste. 401
P.O. Box 2536
Madison, WI 53701-2536
FAX: (608) 266-3830

CLEARINGHOUSE RULE 99-150

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

2. Form, Style and Placement in Administrative Code

a. Only those provisions of the current administrative code actually being amended should be replicated in the rule. Thus, s. EIBd 1.28 (1) (intro.) and (2) (intro.) should be deleted. However, the board may wish to use this rule to correct s. EIBd 1.28 (1) (intro.) to read: "As used in this section:".

b. Since the bulk of s. EIBd 1.28 (2) (c) is being added, it may be preferable to simply repeal and recreate the entire paragraph. This would remove the need for such significant underscoring. Also, each subdivision in par. (c) should end with a period, rather than a semicolon.

4. Adequacy of References to Related Statutes, Rules and Forms

a. The cover letter to the rule submitted to the Clearinghouse asserts that there are no court decisions directly relating to the content or adoption of the rule. The analysis to the rule correctly contradicts that assertion. In addition, the Wisconsin Supreme Court case referenced can now be referred to by its reporter citations (227 Wis. 2d 650, 597 N.W.2d 721). The official caption of that case should also be reviewed and corrected in the rule as necessary.

b. The "NOTICE OF PROPOSED RULE" lists several statutory sections as authority for, or as being interpreted by, the rule. It appears that only the references to ss. 5.05 (1) (f) and

227.11 (2) (a) directly relate to the contents of the rule. The other references should be reviewed closely and changed if necessary. This same problem exists in the paragraph immediately preceding SECTION 1 of the rule, the introductory clause. In addition, that paragraph misidentifies the administrative rule sections being amended in the rule. The statutory basis for the rule, the statutes being interpreted by the rule and the administrative code provisions modified by the rule should all be reviewed carefully so accurate information is being presented to readers of the rule.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. The rule's analysis is largely unhelpful in understanding the intent and impact of the rule. First, the analysis fails to put the rule changes in context. It does not explain why the rule is necessary or why the current rule is insufficient. This omission seems even more egregious when one considers that the current rule, and the statute which it interprets, also appear to be based on the holding of *Buckley*. The analysis is also silent with respect to the necessity and effect of the extension of the express advocacy tests, which the rule asserts were set forth in the two cases cited, to include the "functional equivalents" of the listed terms. As noted in the comment below, the rule's clarity with respect to the term "functional equivalents" is less than ideal. The analysis could go a long way in clarifying the term's meaning. Finally, the analysis fails to answer the question which readers of the rule will most likely want to know: How does the rule treat the types of communications like the ones at issue in the *WMC* case? Is it the board's intent to bring those types of communications within the scope of the rule, apply a case-by-case test or exclude them altogether? If this rule is a reaction to the *WMC* case, which the contents of the analysis seem to imply, it would be helpful to clarify in plain language the import and meaning of that reaction.

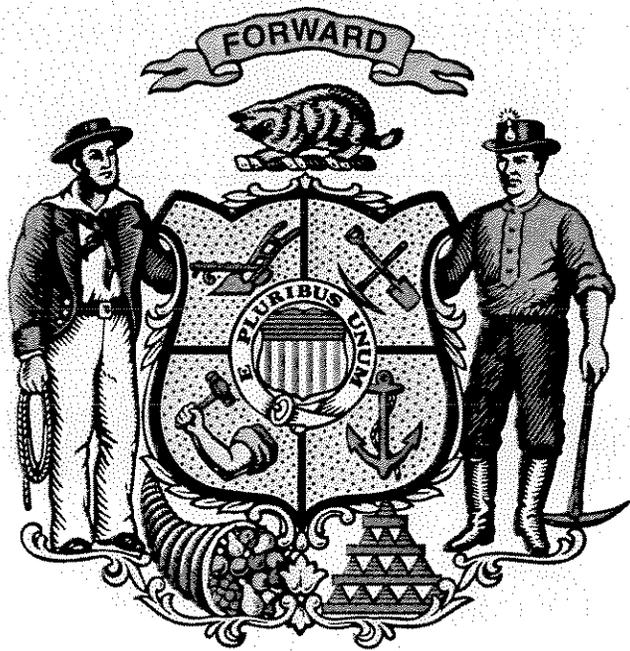
b. Although it is clear from the text of s. EIBd 1.28 (2) (c) that the identified list of words and phrases are not intended as an exhaustive list, the rule's clarity is considerably lessened by the use of both phrases "such as the following" and "or their functional equivalents." One might suggest that the two phrases are trying to identify the same type of terms. For example, "Vote for Smith," because it is one of the identified terms, would clearly fall under the rule. Additionally, it is presumed that the slogan "Pick Smith" would also become subject to reporting requirements because it is a term such as "vote for" and because it acts as a "functional equivalent" to "vote for." Thus, it appears that there would be no need for the use of both descriptive phrases. Since it seems the phrase "such as the following" is broad enough to include the "functional equivalents" of the terms, it could be argued that the second term is redundant and should be deleted from the rule.

Another possibility evident from the use of both phrases, however, is that something other than literal functional equivalents are intended to be included under the scope of the rule. In other words, "functional equivalent" is intended to include words and phrases that, depending on their use, serve the same function as the listed terms. Thus, the rule creates a context-based test in which communications will be reviewed to determine whether they contain terms that function like the listed terms based on factors such as the way they are used, the timing of the communications and the intended audience. Under this possible interpretation, the phrase "Let

Smith know how you feel" run on the eve of an election could be considered a functional equivalent of "Vote for Smith" or "Defeat Smith."

Whatever the intent of the rule, however, the rule should be clarified so that the public, especially members of the public who might be subject to the rule, know the intended scope of the rule. Clarifying the rule would help to provide sufficient warning before communications are run that a context-based standard is, or is not, going to be used to determine whether the communications are subject to regulation.

c. The phrase "and that unambiguously relates to the campaign of that candidate" is somewhat confusing in light of its use as an additional criterion to determine whether or not a communication is subject to the rule. The rule requires that the triggering terms be used with reference to a "clearly identified candidate" and be used to "expressly advocate[] the election or defeat of that candidate." Could a communication expressly advocate the election or defeat of a candidate without unambiguously relating to the campaign of that candidate while using the triggering terms? Perhaps this is additional evidence that the rule intends to use a context-based analysis. In any event, the rule's clarity could be enhanced, possibly through an explanatory note to the rule or examples of the rule's application to various communications, by identifying how the above phrases are intended to be interpreted in conjunction with each other.



Corporate cash fills politicians' charities

Critics view trend as a way to skirt campaign limits

By Paul Egan
Lansing State Journal

Two months before the 1998 general election, state Rep. Bob Brown gave 800 voters a speech and free plates of spaghetti — all courtesy of the Bob Brown Charitable Foundation. Brown's charity paid the \$6,000 tab for the Dearborn Heights dinner using donations from corporations. They are legally barred from donating to Brown's Democratic campaign but are free to donate to a "non-political" charity. And unlike donors to political candidates, charitable donors face no contribution limits and may even get a tax deduction. Brown's charity, set up last year to "improve the quality of life" in his district, is part of a growing trend in Michigan. At least nine state legislators — including House Speaker Charles Perricone and House Minority Leader Michael Hanley — have charities or nonprofit foundations, a Lansing State Journal investigation found. Six of them started since 1997 and more are planned. Michigan's campaign finance law bans direct corporate donations to political cam-

paigns. Instead, corporations have to use political action committees and follow rules about how those committees raise their money and how their political donations are reported.

But in 1997-98 alone, corporations sent tens of thousands of dollars to charities and nonprofits started by state legislators. That's based on interviews with legislators, their staff and company officials, as well as public records that provide limited details about donations.

"These are clearly an end-run around the state law and the intent of the state law and the right of the public to know who's pulling the strings," said Larry Makinson, executive director of the Center for Responsive Politics in Washington, D.C., which tracks campaign donations. "I can think of few things, short of bribery, that are more blatant."

Brown, who started his charity but doesn't sit on its board, said he doesn't see a problem. "If I can get people to look at Dearborn Heights and Redford and then work together for their betterment, I think it's a wonderful thing."

Brown sits on the House Energy and Technology Committee, which deals with deregulation of the electric industry. He said his main role with the

Continued FROM 1A

charity is raising money, including \$10,000 from the Detroit Edison Foundation over the past two years.

"Nobody's ever going to buy my vote," Brown said. "Are they trying to influence? That's the wrong question to me. You should ask them."

Scott Simons, a spokesman for Detroit Edison, said political action committee donations are aimed at helping ensure access to legislators, but charitable donations are not. "Every grant application is scrutinized for its benefit to the community," Simons said. "The donations that we provided his foundation have gone for a senior citizen spaghetti dinner."

Detroit Edison's PAC gave \$1,200 to Brown's campaign in 1997-98. The maximum allowed was \$5,000.

Jason Maciejewski, a legislative aide to Brown and the treasurer of his charity, identified Detroit Edison and a few other corporate donors. But he wouldn't release a complete list.

Charities report the names of donors who give more than \$5,000 to the Internal Revenue Service, but that's considered tax information and isn't available to the public, said Robert Kobel, an IRS spokesman in New York City.

The only tax form Brown's charity has filed with the IRS, dated April 15, doesn't include totals for amounts received in 1998 nor the amounts spent.

Under federal law, charities only have to give that information if they receive more than \$25,000 a year. Until that happens, Brown's charity won't have to report to the IRS again, Kobel said.

Reporting a must

With few exceptions, Michigan charities must register with the state Attorney General's Office, reporting such information as the charitable purpose, who the directors are and what assets it holds.

In general, charities holding assets worth more than 100,000 and those receiving 1,000 a year or more in donations must file annual reports at detail how much money

they raised and how they spent it. But the reports don't include donors' names, said Marion Gorton, a spokeswoman for the Attorney General's Office.

The Bob Brown Charitable Foundation has never registered with the attorney general, although the law requires it within two months of receiving its first donation, Gorton said.

Failure to file a required annual financial statement is a misdemeanor punishable by a \$500 fine or up to six months in jail. The law doesn't spell out a penalty for failing to register, Gorton said.

Michigan's main charity laws are 24 and 38 years old. Gorton said they need to be updated. With a staff of five to oversee more than 7,000 Michigan charities, her office largely relies on voluntary compliance, she said.

Perricone, R-Kalamazoo Township, Hanley, D-Saginaw, and at least seven other legislators have charities or nonprofit foundations. Their purposes range from education, to helping the needy, to having a fund they can draw from when they get asked for charitable donations.

All acknowledged receiving corporate contributions. None would provide a list of donors to the State Journal.

"The corporate contributors might be uncomfortable with that," said Hanley, whose charity took in about \$16,000 in 1998.

"The donations came on the understanding that there wasn't going to be public information," said Mike Meyers, chief of staff to Sen. Mat Dunaskiss, the Lake Orion Republican who started the Oakland Foundation.

While little known, politicians' foundations aren't new. Lt. Gov. Dick Posthumus and former House Speaker Curtis Hertel are among former legislators who had foundations. They are no longer active.

The oldest ones date back almost 25 years, to the time Michigan and most other states banned or restricted corporate donations to politicians in response to the Watergate scandal.

'Never heard of it'

National experts on campaign finance said they aren't aware of similar foundations started by politicians in other states.

"I've never heard of it," said Samantha Sanchez, co-director of the National Institute on Money in State Politics in Helena, Mont. "My first reaction to something like this is I can't imagine that that's legal under Michigan law. If it is, then I think that's remarkable."

Other legislators, such as Rep. Lingg Brewer, D-Holt, have foundations in the works. Brewer, who can't seek re-election as a state representative in 2000, is setting up a foundation to seek grants and explore ways to improve mass transit, aide Mary Lindemann said.

Many others are considering the idea, sometimes spurred on by lobbyists.

"Everyone is thinking about it," said Karen Adams-Powell, an aide to Rep. Nancy Quarles, D-Southfield, who hasn't decided whether to start one.

"There are many lobbying firms advocating for that," said Dennis Louney, legislative assistant to Rep. Thomas Kelly, D-Wayne, who has no plans to start a foundation. "They've said they can walk you through it. They can get everything set up for you and have you start soliciting for corporate donations."

The IRS and the Attorney General's Office don't charge fees for registering charities, but legal and ongoing reporting costs can range from a few hundred dollars to a few thousand dollars a year, officials said.

Rep. Laura Baird, D-Okeemos, noted that even casino owners — who are banned from donating to political campaigns — can contribute to politicians' charities and nonprofit agencies.

"Having a charitable foundation gets into legal ways to circumvent the campaign finance laws," Baird said. "Even if you adhere to the letter of the law, I think you're defying the intent."

For Diane Turner of Saginaw, a single mother of three, such concerns are secondary. Last Christmas, the Hanley Charitable Foundation brought her family a turkey, canned goods and toys, such as a doll for her 10-year-old daughter.

"It helped out a whole lot," Turner said.

Hanley is term-limited, but Turner said she'd vote for him if he were running again. "If it wasn't for him, I wouldn't have even got what I got for my kids for Christmas."

Whether the charities do good work or not, legislators could be influenced by the donations they receive. "Politicians ... don't have to be crooks," Makinson said. "All they have to be is naturally grateful to someone who's helping them out."

Brown and Hanley have IRS-recognized 501(c)(3) charities, which pay no taxes on their income and also can offer tax deductions to donors. These are traditional charities that must do such things as help the poor or the sick.

So far, Brown's charity has only held two free dinners for seniors, but he said it plans to donate to Dearborn Heights firefighters who are buying a mobile home to educate residents about fire safety.

Most legislators who have nonprofits use 501(c)(4) organizations. They also don't pay taxes on their income, but can't offer tax deductions. They are supposed to promote social welfare. While they can educate voters about issues, they're not supposed to try to influence the outcome of elections.

But the lines are often blurred.

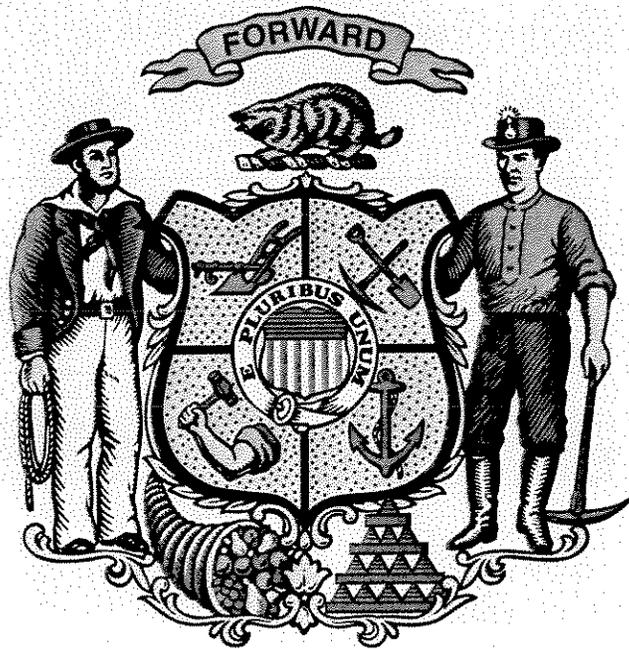
Voter education

Sen. Bill Schuette, R-Midland, started the Tittabawassee River Fund to educate the public about and advocate for a wide range of economic and public policy issues, his chief of staff, Phil Ginotti, said.

In 1998, the fund spent close to \$20,000 printing and distributing leaflets in Macomb County, 135 miles from Midland, to educate the public about the voting record of Democratic Sen. Ken DeBeaussiaert, Ginotti said. DeBeaussiaert beat Republican Jack Brandenburg in one of the tightest Senate races in the state.

"It arrived the Saturday before the election," said DeBeaussiaert, who learned from the Lansing State Journal the cost of the leaflets and the fact

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MILWAUKEE JOURNAL SENTINEL

THURSDAY, SEPTEMBER 30, 1999 — STATE EDITION — WWW.JSONLINE.COM

Elections Board moves to regulate advocacy ads

Panel adopts rule after
high court decision
favoring business group

By STEVEN WALTERS
of the Journal Sentinel staff

Madison — The state Elections Board Wednesday approved the first rule to regulate "express advocacy" ads, which criticize or praise specific candidates running for the Legislature but stop just short of telling voters exactly how to vote.

If approved by committees of the Legislature, and if it survives an expected court challenge, the rule could be in

place for the November 2000 elections, which will determine control of the Legislature, said Elections Board Executive Director Kevin Kennedy.

In a rare show of unity, the board unanimously adopted the rule in response to a July 7 decision by the state Supreme Court.

In that major political free-speech ruling, the court threw out the Elections Board's efforts to regulate the ads and require groups running them to disclose who paid for them. The board may have legal authority to regulate the ads, the

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Re: CLHR 99-150
(-OVER-)

Advocacy/Elections Board adopts campaign ad rule

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court said, but it had never adopted standards to do so.

The court ruling was a victory for the state's largest business group, Wisconsin Manufacturers & Commerce, which ran 1996 express-advocacy ads that targeted Democratic legislators and praised Republican candidates.

For example, WMC in fall 1996 ran an ad with this ending that criticized state Sen. Chuck Chvala (D-Madison), who was then up for re-election: "Make another right call to Chuck Chvala. . . . He never met a tax hike he didn't like."

Elections Board member Christine Wiseman, a Marquette University law school professor, Wednesday pushed the eight-member panel to finally adopt a rule regulating the ads. She and another board member, Don Mills, reworked it until opposition dissolved.

"Are we going to take the risk or not? Are we going to go forward?" Wiseman asked. "The court has invited us to go forth and make a rule."

Board Chairman Randy Nash said there is a "compelling state

interest" in regulating the ads. Legislators have told the board to act on the issue, Nash added, because the Legislature may not act on major campaign-finance reforms.

The rule says the board can regulate any political "communication" or the "functional equivalent" — a term not even board members could define — of communication that "advocates the election or defeat of that candidate, and that unambiguously relates to the campaign of that candidate."

Also, the rule specifically applies to terms in ads such as "vote for," "elect," "support," "cast your ballot for," "vote against," "defeat" and "reject" — words taken almost directly from a U.S. Supreme Court ruling in the 1970s that established the free-speech right of corporations and other groups to run campaign ads.

Although board members backed the new rule, some of them wondered whether it would really lead to Elections Board regulation of the ads or simply prompt major special-interest groups who want to elect their candidates to adopt new tactics.

"No matter what we do . . . they're going to find a way around it," said board member Judd Stevenson.

Although he voted for the rule, board member Greg Paradise said: "I think it's very important that we protect the right of individuals and businesses to speak anonymously. . . . I don't blame people who want to spend money right before there's an election because that's when people have their 'ears' on."

WMC's chief legislative and political strategist, Jim Buchen, called the new rule "as good as any" in offering advice to groups planning to run future express advocacy ads. WMC spent about \$400,000 on those type of ads in five 1998 campaigns for the legislature.

Susan Arnacost, the chief lobbyist for the state's largest anti-abortion group, Wisconsin Right to Life Inc., said she did not expect her group to oppose the new rule. Wisconsin Right to

Life spent about \$200,000 on express advocacy ads in 1998, she estimated.

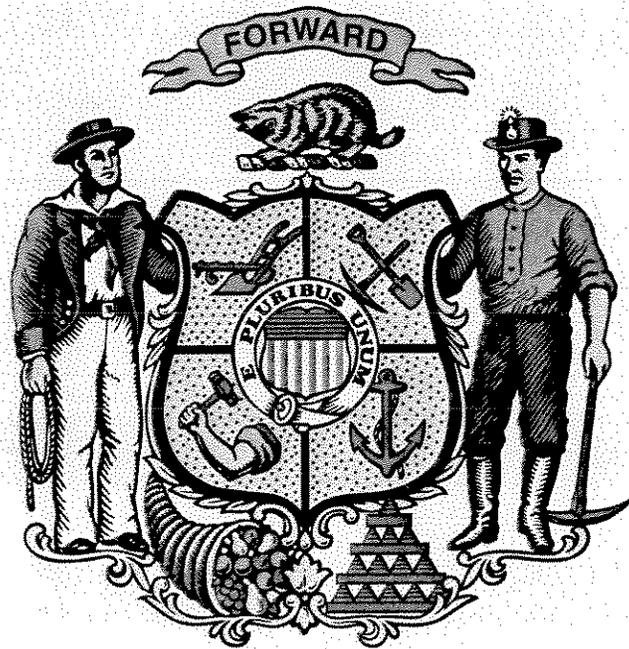
But Jay Heck, executive director of Common Cause, criticized the rule.

"This doesn't give clear direction to the Legislature," Heck

said. "It is not a bright-line rule that can be clearly understood. . . . It will be litigated."

Wednesday's vote by the board means the rule will be formally submitted in upcoming weeks to the Legislature, which could block it.





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to Section 227.19(4)(d)
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