

2001-2002 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBb3117/P1ins
...kmg:kmg

Insert 104-4

of the statutes,

1. Page 445, line 20: after that line insert:

"(1zx) CAMPAIGN FINANCE AND RELATED CHANGES. The repeal of sections 11.01 (12s), 11.05 (3) (o), 11.265, 11.50 (3) and 11.50 (10) ^{the} ~~to~~ renumber ^{ing of sections} 11.05 (2r) (title), 11.24 (2) ^v and 11.50 (1) (a) 1. ^{of the statutes, the} ~~to~~ renumber and amend ^{ing} 11.05 (1), 11.05 (2), 11.05 (2r), 11.12 (6), 11.26 (9) (a), 11.31 (2m), 11.50 (1) (a) 2., 11.50 (5), 11.50 (9), 19.49 (5), 19.59 (7) ^{of the statutes, the} ~~and 11.10 (8) (a) 1.~~ amend ^{ment of sections} 5.02 (13), 5.05 (2), 7.08 (2) (c), 7.08 (2) (cm), 8.30 (2), 8.35 (4) (a) 1. a. and b., 8.35 (4) (c) and (d), 11.05 (3) (c), 11.05 (5), 11.05 (9) (b), 11.05 (12) (b), 11.05 (13), 11.06 (1) (intro.), 11.06 (1) (e), 11.06 (2), 11.06 (3) (b) (intro.), 11.06 (4) (b), 11.06 (5), 11.06 (7m) (a), 11.06 (7m) (b), 11.06 (7m) (c), 11.07 (1), 11.07 (5), 11.09 (3), 11.10 (1), 11.12 (2), 11.12 (4), 11.12 (5), 11.14 (3), 11.16 (2), 11.16 (5), 11.19 (title), 11.19 (1), 11.20 (1), 11.20 (2), 11.20 (3) (a) and (b), 11.20 (7), 11.20 (8) (intro.), 11.20 (8) (a), 11.20 (9), 11.20 (10) (a), 11.20 (12), 11.21 (2), 11.21 (15), 11.21 (16), 11.22 (3), 11.23 (1), 11.23 (2), 11.26 (1) (intro.), 11.26 (2) (intro.), 11.26 (2) (a), 11.26 (3), 11.26 (4), 11.26 (5), 11.26 (6), 11.26 (8), 11.26 (9) (b), 11.26 (10), 11.26 (15), 11.26 (17) (a), 11.31 (1) (intro.), 11.31 (1) (a) to (d), 11.31 (1) (e) and (f), 11.31 (2), 11.31 (2m) (title), 11.31 (3), 11.38 (1) (a) 2., 11.38 (6), 11.38 (8) (b), 11.50 (2) (a), 11.50 (2) (b) 4., 11.50 (2) (b) 5., 11.50 (2) (c), 11.50 (2) (f), 11.50 (2) (g), 11.50 (2) (h), 11.50 (2) (i), 11.50 (6), 11.50 (7) (intro.), 11.50 (8), 11.50 (10m), 11.50 (11) (e), 11.60 (4), 11.61 (1) (a), 19.53 (6), 19.59 (8) (c), 20.510 (1) (q), 25.42 ^{and} ~~11.08 (1) (intro.) and 11.10 (8) (b)~~ ^{of the statutes, the} ~~to~~ repeal and recreate ^{of sections} 11.05 (9) (title) and 11.50 (4) ^{of the statutes,} ~~and to~~ create ^{the} 11.001 (2m), 11.01 (4m), 11.01 (12w), (13) and (14), 11.01 (16) (a) 3., 11.01 (17g) and (17r), 11.05 (1) (b), 11.05 (2) (b), 11.05 (3) (m), 11.05 (3) (r), 11.06 (1) (cm) and (dm), 11.06 (2m) (b) to (d), 11.06 (11) (bm), 11.12 (6) (am), 11.12 (6) (c) and (d), 11.12 (8) and (9), 11.20 (2s), 11.20 (2t), 11.20 (8) (am),

(b) SECTION 2D

11.21 (17), 11.24 (1w), 11.24 (4), 11.26 (1m), 11.26 (1t), 11.26 (2) (ae), (am), (as) and (av), 11.26 (2m), 11.26 (2t), 11.26 (8n), 11.26 (8r), 11.26 (9) (a) 1. to 4., 11.26 (9) (am), 11.26 (9m), 11.26 (10a), 11.31 (1) (de), 11.31 (2m) (a), 11.31 (3p), 11.31 (9), 11.385, 11.50 (1) (a) 1. (intro.), 11.50 (1) (a) 2m., 11.50 (1) (am), 11.50 (1) (bm) and (cm), 11.50 (2) (b) 6., 11.50 (2) (j), 11.50 (2m), 11.50 (2s), 11.50 (2w), 11.50 (9) (b), 11.50 (14), 11.60 (3r), 19.42 (3m), (4g) and (4r), 19.45 (13), 19.49 (1m), 19.49 (5) (b), 19.535, 19.59 (1) (br), 19.59 (7) (b), 19.59 (8) (cm) and (cn), ~~11.07 (5a) and 11.07 (5b) and 11.10 (2) and 11.10 (3) and 11.10 (4) and 11.10 (5) and 11.10 (6) and 11.10 (7) and 11.10 (8) and 11.10 (9) and 11.10 (10) and 11.10 (11) and 11.10 (12) and 11.10 (13) and 11.10 (14) and 11.10 (15) and 11.10 (16) and 11.10 (17) and 11.10 (18) and 11.10 (19) and 11.10 (20) and 11.10 (21) and 11.10 (22) and 11.10 (23) and 11.10 (24) and 11.10 (25) and 11.10 (26) and 11.10 (27) and 11.10 (28) and 11.10 (29) and 11.10 (30) and 11.10 (31) and 11.10 (32) and 11.10 (33) and 11.10 (34) and 11.10 (35) and 11.10 (36) and 11.10 (37) and 11.10 (38) and 11.10 (39) and 11.10 (40) and 11.10 (41) and 11.10 (42) and 11.10 (43) and 11.10 (44) and 11.10 (45) and 11.10 (46) and 11.10 (47) and 11.10 (48) and 11.10 (49) and 11.10 (50) and 11.10 (51) and 11.10 (52) and 11.10 (53) and 11.10 (54) and 11.10 (55) and 11.10 (56) and 11.10 (57) and 11.10 (58) and 11.10 (59) and 11.10 (60) and 11.10 (61) and 11.10 (62) and 11.10 (63) and 11.10 (64) and 11.10 (65) and 11.10 (66) and 11.10 (67) and 11.10 (68) and 11.10 (69) and 11.10 (70) and 11.10 (71) and 11.10 (72) and 11.10 (73) and 11.10 (74) and 11.10 (75) and 11.10 (76) and 11.10 (77) and 11.10 (78) and 11.10 (79) and 11.10 (80) and 11.10 (81) and 11.10 (82) and 11.10 (83) and 11.10 (84) and 11.10 (85) and 11.10 (86) and 11.10 (87) and 11.10 (88) and 11.10 (89) and 11.10 (90) and 11.10 (91) and 11.10 (92) and 11.10 (93) and 11.10 (94) and 11.10 (95) and 11.10 (96) and 11.10 (97) and 11.10 (98) and 11.10 (99) and 11.10 (100)~~ 806.04 (11m) of the statutes and SECTIONS ~~of the act~~ of this act take effect on July 1, 2003.”

9115 (2v), (2w), (2x), and (2y),
 9132 (4v) and

~~9215 (3v)~~
~~9244 (6v)~~

9315 (2v) and (2w) 7

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB:0207/P1dn
JTK&RJM:jd&kf&kg:rs

b3117

July 2, 2002

This draft attempts to reflect the intent of your July 2, 2002, proposal. As you review the draft, please note the issues listed below.

1. Proposed s. 11.24 (4), which relates to a restriction upon contributions to incumbent partisan elective state officials during certain periods, and proposed s. 11.385, which relates to a restriction upon contributions made or received by incumbent legislators in conjunction with certain fund-raising social events during certain periods, are not drafted in cognizance of one another. In some cases, activity that would be permitted under one of the provisions is prohibited by the other provision. We do not see this as creating a conflict because the effect of one provision is not negated by the failure of the other provision to reflect its full breadth. However, you may wish to review whether the scope of these provisions is consistent with your intent. In addition, with respect to proposed s. 11.385:

a. The language does not prohibit making contributions in conjunction with nonsocial fund-raising events such as auctions.

b. In recent years, some special sessions have extended for more than a year, although meeting days have been infrequent. The effect of this practice may be to prohibit contributions from being made during interim periods when the legislature is not actually meeting in regular, special, or extraordinary session. If the legislature recesses a special or extraordinary session to a date on or after the date of the next floorperiod, you may wish to consider permitting contributions to be made.

c. In proposed s. 11.385 (3) and (4), you may wish to consider making the exemptions available to a member after any primary is held only if the member wins the primary.

d. There is some overlap between proposed s. 11.385 (3) and (4). Subsection (3) applies only if an event is held within the jurisdiction or district served by the office for which the member is a candidate, while sub. (4) does not contain this limitation but applies only if the member is a candidate for an office other than member of the house in which the member serves.

2. Concerning the treatment of s. 11.50 (2) (h), stats., which specifies the deadline for withdrawing an application for a grant from the Wisconsin election campaign fund, you requested that we fix this date as the filing deadline for the preprimary report (the eighth day before the primary). In nonpartisan elections and partisan special

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elections, there is no primary unless the number of candidates who qualify to have their names appear on the ballot warrants that a primary be held. For nonpartisan elections, therefore, this draft provides that the deadline for withdrawal is *the day that the primary would be held, if a primary were required*, and for partisan special elections, because there is no window of time provided to hold the primary, this draft provides that the deadline for withdrawal is *the 35th day before the special election*. Please let us know if you would like to see this treated differently.

3. Under *Buckley v. Valeo, et al.*, 96 S. Ct. 612 (1976), we cannot require a candidate to accept self-contribution limits except by voluntary agreement. Currently, however, under s. 11.50 (2) (a), stats., a candidate who accepts a grant must agree to abide by *all* contribution limits. Currently, under s. 11.31 (2m), stats., a candidate who files an affidavit accepting disbursement and contribution limits agrees to abide by *all* contribution limits. Consistently with this policy, we recommend that the reference to s. 11.26 (10) in proposed s. 11.31 (2m) (b) (affidavit of adherence to limits) be made consistent with the corresponding reference in proposed s. 11.26 (2m) (a) by deleting the reference to sub. (10). In this regard, we would also correct the text of s. 11.50 (2) (i), stats., to substitute a reference to s. 11.26 (10) for the reference to s. 11.26, stats. Alternatively, we could change current law to require candidates who accept grants or who voluntarily accept limits only to agree to accept *self-contribution* limits. In any event, the draft needs to be made consistent on this point. 9132 (4v)

4. Concerning proposed SECTION ~~602~~⁴¹¹⁵, which directs the attorney general (or, if he fails to do so within 60 days after the bill resulting from this draft becomes law, the joint committee on legislative organization) to commence a declaratory action seeking a determination that certain provisions of this proposal are constitutional, may not be effective in view of the position of the Wisconsin Supreme Court that, generally, the court will not permit a claim for declaratory relief to be asserted unless there is a justiciable controversy. Under this requirement, "...a controversy is not a proper subject for declaratory relief unless it: (1) involves a claim or right on the part of the plaintiff which is asserted against one who has an interest in contesting it; (2) is between two persons whose interests are adverse; (3) involves a legally protectable interest in the person seeking declaratory relief; and (4) is ripe for judicial determination. These prerequisites to the maintenance of a declaratory judgment action are designed to insure that a bona fide controversy exists and that the court, in resolving the questions raised, will not be acting in merely an advisory capacity. *Lister v. Board of Regents*, 72 Wis. 2d. 282, 306 (1976). The court has also stated that it generally will not entertain constitutional questions brought by a party who is not directly affected by the facts presented to the court in an actual case or controversy. *Schmidt v. Local Affairs and Development Dept.*, 38 Wis. 2d 46, 61-62 (1968). There are exceptions to this rule where issues are of great public importance; the constitutionality of a statute is involved; the situation is likely to recur and guidance to the trial courts is essential, the court should address the situation to avoid *uncertainty, or the question evades review because it cannot be decided in time to have a practical effect upon the parties. In the Matter of G.S.*, 118 Wis. 2d 803, 805 (1984). Nevertheless, when the court has made an exception, there have generally been an

actual set of facts with interested parties before the court, even though the particular case may have been moot. This might not be the situation in this instance.

In addition, this type of provision may not be effective because: 1) the attorney general and the legislators who constitute JCLO enjoy certain constitutional prerogatives, and there is some doubt as to whether these officers may be forced to file suit if they are not willing to do so; 2) someone else may file suit first, perhaps in federal court, and the state could be a defendant in that suit; and 3) a favorable ruling by the Wisconsin Supreme Court might not settle the matter if federal constitutional issues are involved. In any event, you may want to provide an exception from the requirement to file suit if a private party has already filed a suit raising all of the relevant issues and the state is a party to that suit.

On the last occasion that the legislature requested the attorney general to file a declaratory judgement action, the attorney general declined to do so and issued a statement explaining his reasons. You may wish to provide that, if the attorney general fails to file the action within 60 days of the effective date *or declines to do so before that time*, JCLO shall retain counsel to file the suit. This will avoid having to await the expiration of the 60-day period if it is apparent that the attorney general will not proceed.

5. Per your instructions, this draft directs the Elections Board to include a proposal for implementation of a statewide voter registration system, based upon a study that must include at least 13 specified components, in its 2003-05 biennial budget request. Under s. 16.42 (1), stats., this request is due on *September 15, 2002*. The study is to be completed by the first day of the 10th month after publication of the act resulting from this draft. That date is likely to be *May 1, 2003*. In recent years, the biennial budget act has not generally become law before August of the odd-numbered year. Because the system must be operational by September of 2004, this time schedule would give the Elections Board and local governments about one year to implement the system. This timing may be challenging. You may wish to seek input from the board and local government organizations regarding this time schedule.

6. Currently, ch. 11, stats., generally requires disclosure of financial activity by individuals and committees seeking to influence the election or defeat of candidates for state or local office [see ss. 11.01 (6), (7), (11), and (16), 11.05, and 11.06, stats.], unless a disbursement is made or obligation incurred by an individual other than a candidate or by a committee which is not organized primarily for political purposes, the disbursement is not a contribution as defined in the law and the disbursement is not made to expressly advocate the election or defeat of a clearly identified candidate [see s. 11.06 (2), stats.]. This language pretty closely tracks the holding of the U.S. Supreme Court in *Buckley v. Valeo, et al.*, 96 S. Ct. 612, 656-664 (1976), which prescribes the boundaries of disclosure that may be constitutionally enforced (except as those requirements affect certain minor parties and independent candidates). Proposed ss. 11.01 (4m), (11m), and (16) (a) 3. and the treatment of s. 11.06 (2), stats., which together require registration and reporting by individuals or committees that make certain mass communications within specified periods preceding an election containing a reference to or depiction of a candidate at that election and proposed s. 11.12 (6) (c),

which requires pre-reporting of certain independent disbursements and mass communications, appear to extend beyond the boundaries which the court permitted in 1976 and, as a result, their enforceability appears to rest upon a shift by the court in its stance on this issue. In this connection, see also *North Carolina Right to Life, Inc. v. Bartlett*, 168 F. 3d 705 (4th Cir. 1999), *cert. den.*, 120 S. Ct. 1156 (2000). Proposed s. 11.12 (6) (c) also may constitute an unconstitutional prior restraint on the exercise of protected free speech rights. To support these provisions, it would be necessary for the state to demonstrate a compelling state interest.

7. We also want to note briefly that a few of the provisions of this draft are innovative, and we do not yet have, to our knowledge, specific guidance from the U.S. Supreme Court concerning the enforceability of provisions of these types. It is well possible that a court may find a rational basis for these provisions that would permit them to be upheld. However, because of the concerns expressed by the U.S. Supreme Court in *Buckley*, and certain other cases, that attempts to regulate campaign financing activities may, in some instances, impermissibly intrude upon freedom of speech or association or upon equal protection guarantees, it is possible that enforceability problems with these provisions may occur.

a. Proposed s. 11.26 (1), (1m), (2), and (2m), which allow individuals and committees to make double the amount of contributions to candidates who participate in the Wisconsin Election Campaign Fund. There is a possibility that this 2-1 contribution cap gap, in combination with the other incentives under the bill for participating in the Wisconsin Election Campaign Fund, may be challenged as unconstitutionally coercing candidates to accept public financing and, thereby, be bound by contribution and disbursement limits. The First Circuit U.S. Court of Appeals has held that a 2-1 cap gap is constitutional. See *Vote Choice, Inc. v. DiStefano*, 4 F. 3d 26, 38-39 (1st Cir. 1993). This case provides some support for the proposition that the 2-1 cap gap established by this bill is constitutional. However, because neither the U.S. Supreme Court nor the U.S. Court of Appeals with jurisdiction over Wisconsin has ruled on this issue, and because the 2-1 cap gap must be viewed in combination with the other incentives established in the bill, it is possible that the 2-1 cap gap could still be held unconstitutionally coercive.

b. Proposed s. 11.26 (8r), which prohibits committees from making contributions to certain other committees. Although the U.S. Supreme Court has not ruled on the enforceability of a provision of this type, the court has indicated some willingness to permit limits on contributions beyond those specifically approved in *Buckley v. Valeo*, 424 U.S. 1. See *California Med. Assn. v. FEC*, 453 U.S. 182, 193-99 (1981) (\$5,000 limitation on individual-to-PAC contributions is a reasonable method of preventing individuals from evading limits on direct campaign contributions).

c. Proposed ss. 11.26 (9) (a) 1., 2., and 3. and 11.31 (3p), which, among other things, allow candidates to raise and spend additional funds in order to permit them to respond to certain independent disbursements.

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s. 11.26 (10) in proposed s. 11.31 (2m) (b) (affidavit of adherence to limits) be made consistent with the corresponding reference in proposed s. 11.26 (2m) (a) by deleting the reference to sub. (10). In this regard, we would also correct the text of s. 11.50 (2) (i), stats., to substitute a reference to s. 11.26 (10) for the reference to s. 11.26, stats. Alternatively, we could change current law to require candidates who accept grants or who voluntarily accept limits only to agree to accept *self-contribution* limits. In any event, the draft needs to be made consistent on this point.

9. The instructions specified that only a candidate who has an opponent who received at least 6% of the vote cast for the office that the candidate seeks at the primary election should qualify for a grant. Because there is not necessarily any spring primary election or any primary in a special election unless the number of candidates who qualify for ballot placement is sufficient to require that a primary be held, this draft, in s. 11.50 (2) (b) 3., stats., applies this qualification only to candidates at the general election.

10. Concerning the treatment of s. 11.50 (2) (h), stats., which specifies the deadline for withdrawing an application for a grant from the Wisconsin election campaign fund, you requested that we fix this date as the filing deadline for the preprimary report (the 3rd day after the primary). In nonpartisan elections and partisan special elections, there is no primary unless the number of candidates who qualify to have their names appear on the ballot warrants that a primary be held. For nonpartisan elections, therefore, this draft provides that the deadline for withdrawal is *the day that the primary would be held, if a primary were required*, and for partisan special elections, because there is no window of time provided to hold the primary, this draft provides that the deadline for withdrawal is *the 25th day before the special election*. Please let us know if you would like to see this treated differently.

11. Concerning proposed SECTION 216 (3), which directs the attorney general (or, if he fails to do so within 60 days after the bill resulting from this draft becomes law, the joint committee on legislative organization) to commence a declaratory action seeking a determination that certain provisions of this proposal are constitutional, may not be effective in view of the position of the Wisconsin Supreme Court that, generally, the court will not permit a claim for declaratory relief to be asserted unless there is a justiciable controversy. Under this requirement, "...a controversy is not a proper subject for declaratory relief unless it: 1) involves a claim or right on the part of the plaintiff which is asserted against one who has an interest in contesting it; 2) is between two persons whose interests are adverse; 3) involves a legally protectable interest in the person seeking declaratory relief; and 4) is ripe for judicial determination. These prerequisites to the maintenance of a declaratory judgment action are designed to insure that a bona fide controversy exists and that the court, in resolving the questions raised, will not be acting in merely an advisory capacity. *Lister v. Board of Regents*, 72 Wis. 2d. 282, 306 (1976). The court has also stated that it generally will not entertain constitutional questions brought by a party who is not directly affected by the facts presented to the court in an actual case or controversy. *Schmidt v. Local Affairs and Development Dept.*, 38 Wis. 2d 46, 61-62 (1968). There are exceptions to this rule where issues are of great public importance; the constitutionality of a statute is involved; the situation is likely to recur and guidance to the trial courts is essential, the court should address the situation to avoid

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1 11.01 (16) (a) 3. A communication, other than a communication that is exempt
 2 from reporting under s. 11.29, that is made during the period beginning on the 60th
 3 day preceding a general, special, or spring election and ending on the date of that
 4 election and that includes a reference to or depiction of a clearly identified candidate
 5 whose name is certified under s. 7.08 (2) (a) or 8.50 (1) (d) to appear on the ballot ^{for election or nomination to an office to be filled} at
 6 that election.

7 **SECTION 13.** 11.01 (17g) and (17r) of the statutes are created to read:

8 11.01 (17g) "Public access channel" means a channel that is required under a
 9 franchise granted under s. 66.0419 (3) (b) by a city, village, or town to a cable operator,
 10 as defined in s. 66.0419 (2) (b), and that is used for public access purposes, but does
 11 not include a channel that is used for governmental or educational purposes.

12 (17r) "Public access channel operator" means a person designated by a city,
 13 village, or town as responsible for the operation of a public access channel.

14 **SECTION 14.** 11.05 (1) of the statutes is renumbered 11.05 (1) (a) and amended
 15 to read:

16 11.05 (1) (a) Except as provided in s. 9.10 (2) (d), every committee, other than
 17 a personal campaign committee, ~~and every political group subject to registration~~
 18 ~~under s. 11.23 which~~ that makes or accepts contributions, incurs obligations or
 19 makes disbursements in a calendar year in an aggregate amount in excess of \$25
 20 shall file a statement with the appropriate filing officer giving the information
 21 required by sub. (3). In the case of any committee other than a personal campaign
 22 committee, the statement shall be filed by the treasurer. A personal campaign
 23 committee shall register under sub. (2g) ~~or (2r)~~.

24 **SECTION 15.** 11.05 (1) (b) of the statutes is created to read:

No changes on this page

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included in the preprimary or preelection report submitted under s. 11.20 (3), the treasurer of the committee or the individual receiving the contribution shall within 24 hours of receipt inform the appropriate filing officer of the information required under s. 11.06 (1) in such manner as the board may prescribe. The information shall also be included in the treasurer's or individual's next regular report. For purposes of the reporting requirement under this subsection, only contributions received during the period beginning with the day after the last date covered on the preprimary or preelection report, and ending with the day before the primary or election need be reported. This subsection does not apply to a registrant who or which is required to file daily reports under s. 11.21 (16).

SECTION 48. 11.12 (6) of the statutes is renumbered 11.12 (6) (a) and amended to read:

11.12 (6) (a) If Except as otherwise provided in this paragraph, if any disbursement of more than \$20 individual or committee incurs one or more obligations or makes one or more disbursements in an amount exceeding \$250 cumulatively is made to advocate the election or defeat of a clearly identified candidate by an individual or committee later than 15 days prior to a primary or election in which the candidate's name appears on the ballot without cooperation or consultation with a candidate or agent or authorized committee of a candidate who is supported or opposed, and not in concert with or at the request or suggestion of such a candidate, agent or committee, the individual or treasurer of the committee shall, within 24 hours of after incurring the obligation or making the disbursement, inform the appropriate filing officer of. The report shall include the information required under s. 11.06 (1) and shall be made in such manner as the board may prescribe. The information shall also be included in the next regular report of the

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1 ~~"(2v) NONRESIDENT REGISTRANT REPORTING.~~ The treatment of sections 11.06 (1)
2 (intro.) and (3) (b) (intro.) and 11.12 (4) of the statutes first applies with respect to
3 reporting periods which begin on or after the effective date of this subsection.

4 (2w) COST-OF-LIVING ADJUSTMENTS. The treatment of sections 11.26 (10a) and
5 11.31 (9) of the statutes first applies to adjustments for the 2-year period beginning
6 on January 1, 2006."

7 **16.** Page 437, line 9: after that line insert:

8 "(2v) CAMPAIGN FUND TAX CREDIT. The treatment of sections 71.07 (6s), 71.08 (1)
9 (intro.), and 71.10 (3) (a), (ac), and (b) and (4) (gw) of the statutes first applies to
10 taxable years beginning on January 1, 2002."

11 **17.** Page 445, line 20: after that line insert:

12 ~~"(1zx) CAMPAIGN FINANCE AND RELATED CHANGES.~~ The repeal of sections 11.01
13 (12s), 11.05 (3) (o), 11.265, 11.50 (3), and 11.50 (10) of the statutes, the renumbering
14 of sections 11.05 (2r) (title), 11.24 (2), and 11.50 (1) (a) 1. of the statutes, the
15 renumbering and amendment of sections 11.05 (1), 11.05 (2), 11.05 (2r), 11.12 (6),
16 11.26 (9) (a), 11.31 (2m), 11.50 (1) (a) 2., 11.50 (5), 11.50 (9), 19.49 (5), and 19.59 (7)
17 and 71.10 (3) (a)
of the statutes, the amendment of sections 5.02 (13), 5.05 (2), 7.08 (2) (c), 7.08 (2) (cm),
18 8.30 (2), 8.35 (4) (a) 1. a. and b., 8.35 (4) (c) and (d), 11.05 (3) (c), 11.05 (5), 11.05 (9)
19 (b), 11.05 (12) (b), 11.05 (13), 11.06 (1) (intro.), 11.06 (1) (e), 11.06 (2), 11.06 (3) (b)
20 (intro.), 11.06 (4) (b), 11.06 (5), 11.06 (7m) (a), 11.06 (7m) (b), 11.06 (7m) (c), 11.07 (1),
21 11.07 (5), 11.09 (3), 11.10 (1), 11.12 (2), 11.12 (4), 11.12 (5), 11.14 (3), 11.16 (2), 11.16
22 (5), 11.19 (title), 11.19 (1), 11.20 (1), 11.20 (2), 11.20 (3) (a) and (b), 11.20 (7), 11.20 (8)
23 (intro.), 11.20 (8) (a), 11.20 (9), 11.20 (10) (a), 11.20 (12), 11.21 (2), 11.21 (15), 11.21
24 (16), 11.22 (3), 11.23 (1), 11.23 (2), 11.26 (1) (intro.), 11.26 (2) (intro.), 11.26 (2) (a),

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1 11.26 (3), 11.26 (4), 11.26 (5), 11.26 (6), 11.26 (8), 11.26 (9) (b), 11.26 (10), 11.26 (15),
2 11.26 (17) (a), 11.31 (1) (intro.), 11.31 (1) (a) to (d), 11.31 (1) (e) and (f), 11.31 (2), 11.31
3 (2m) (title), 11.31 (3), 11.38 (1) (a) 2., 11.38 (6), 11.38 (8) (b), 11.50 (2) (a), 11.50 (2) (b)
4 ^{3. and} 4., 11.50 (2) (b) 5., 11.50 (2) (c), 11.50 (2) (f), 11.50 (2) (g), 11.50 (2) (h), 11.50 (2) (i),
5 11.50 (6), 11.50 (7) (intro.), 11.50 (8), 11.50 (10m), 11.50 (11) (e), 11.60 (4), 11.61 (1)
6 (a) (by SECTION 2d), 19.53 (6), 19.59 (8) (c), 20.510 (1) (q), ^{71.08(1) (intro.)} and 25.42 of the statutes, ^{encl}
7 the repeal and recreation of sections 11.05 (9) (title) and 11.50 (4) of the statutes, the ^{71.10}
8 creation of sections 11.001 (2m), 11.01 (4m), 11.01 (12w), (13) and (14), 11.01 (16) (a)
9 3., ~~11.01 (17g) and (17m)~~ 11.05 (1) (b), 11.05 (2) (b), 11.05 (3) (m), 11.05 (3) (r), 11.06
10 (1) (cm) and (dm), 11.06 (2m) (b) to (d), 11.06 (11) (bm), 11.12 (6) (am), 11.12 (6) (c) and
11 (d), 11.12 (8) and (9), 11.20 (2s), 11.20 (2t), 11.20 (8) (am), ~~11.21 (1w)~~ 11.24 (1w), 11.24
12 (4), 11.26 (1m), 11.26 (1t), 11.26 (2) (ae), (am), (as) and (av), 11.26 (2m), 11.26 (2t),
13 11.26 (8n), 11.26 (8r), 11.26 (9) (a) 1. to 4., 11.26 (9) (am), 11.26 (9m), 11.26 (10a), 11.31
14 (1) (de), 11.31 (2m) (a), 11.31 (3p), 11.31 (9), 11.385, 11.50 (1) (a) 1. (intro.), 11.50 (1)
15 (a) 2m., 11.50 (1) (am), 11.50 (1) (bm) and (cm), 11.50 (2) (b) 6., 11.50 (2) (j), 11.50 (2m),
16 11.50 (2s), 11.50 (2w), 11.50 (9) (b), 11.50 (14), 11.60 (3r), 19.42 (3m), (4g) and (4r),
17 19.45 (13), 19.49 (1m), 19.49 (5) (b), 19.535, 19.59 (1) (br), 19.59 (7) (b), 19.59 (8) (cm)
18 and (cn), ^{71.07 (6s), 71.10 (3) (a), 71.10 (3) (d), 71.10 (4) (9w)} and 806.04 (11m) of the statutes ^{and} SECTIONS 9115 (2v), ~~9204~~ (2x), and (2y),
19 9132 (4v), ^{and 9315 (2v) and (2w)} ^{and 9344 (2v)} of this act take effect on July 1, 2002.

(END)

9215 (3v), 9244 (6v), and 9344 (2v)

1 ~~individual or committee under s. 11.20.~~ For purposes of this subsection, paragraph,
 2 obligations and disbursements cumulate beginning with the day after the last date
 3 covered on the preprimary or preelection report and ending with the day before the
 4 primary or election and disbursements made for the purpose of payment of
 5 obligations that were previously reported are not included in determining the
 6 cumulative amount of obligations and disbursements. Upon receipt of a report
 7 identifying any obligation or disbursement under this subsection ~~paragraph,~~ the
 8 filing officer shall, within 24 hours of receipt, mail a copy of the report to all
 9 candidates for any office in support of or opposition to one of whom an obligation is
 10 incurred or a disbursement identified in the report is made. This paragraph does not
 11 apply to disbursements ^{or obligations} required to be reported under par. (am) or to an individual
 12 or committee that is required to file daily reports under s. 11.21 (16).

13 SECTION 49. 11.12 (6) (am) of the statutes is created to read:

14 11.12 (6) (am). If any committee identified under s. 11.05 (3) (c) as a special
 15 interest committee, other than a conduit, incurs one or more obligations or makes one
 16 or more disbursements in an amount exceeding \$250 cumulatively for the purpose
 17 of making a communication ~~advocating the election or defeat of a clearly identified candidate for a state office~~
 18 specified in s. 11.31 (1) (a) to (de), (e), or (f) at a general, special, or spring election,
 19 the purpose of making a communication described in s. 11.01 (16) (a) 3., during the
 20 period beginning on the 60th day preceding the applicable general, special, or spring
 21 election and ending on the date of that election, without cooperation or consultation
 22 with a candidate or agent or authorized committee of a candidate who is supported
 23 or whose opponent is opposed, and not in concert with or at the request or suggestion
 24 of such a candidate, agent, or committee, the committee shall, within 24 hours after
 25 incurring the obligation or making the disbursement, file a report with the board,

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1 with each candidate whose name is certified to appear on the ballot for the office in
 2 connection with which the obligation is incurred or disbursement is made, and the
 3 political party under whose name each such candidate appears on the ballot, if any,
 4 on a form prescribed by the board for this purpose. The form shall provide a place
 5 for reporting obligations separately from disbursements. The report shall be filed
 6 by electronic mail or facsimile transmission. The report shall include the
 7 information required under s. 11.06 (1) and shall be made in such manner as the
 8 board may prescribe. For purposes of this paragraph, obligations and disbursements
 9 cumulate beginning with the 60th day preceding the applicable general, special, or
 10 spring election and ending with the day before that election and disbursements made
 11 for the purpose of payment of obligations that were previously reported are not
 12 included in determining the cumulative amount of disbursements. Within 24 hours
 13 after receiving a report under this paragraph, the board shall notify each candidate
 14 whose name is certified to appear on the ballot for the office in connection with which
 15 the reported disbursement is made. The board shall provide this notification by
 16 electronic mail, facsimile transmission, telephone, or posting on the Internet. ~~This~~
 17 ~~paragraph does not apply to a committee that is required to file daily reports under~~
 18 ~~§ 11.21 (16).~~

19 SECTION 50. 11.12 (6) (c) and (d) of the statutes are created to read:

20 11.12 (6) (c) No committee identified under s. 11.05 (3) (c) as a special interest
 21 committee, other than a conduit, may make any disbursement ^{or incur any} to which this
 22 paragraph applies ~~during the period beginning on the 30th day preceding a general,~~
 23 ~~special, or spring election and ending on the date of that general, special, or spring~~
 24 ~~election,~~ unless the committee has filed a report under this paragraph concerning
 25 that disbursement. ^{or obligation} This paragraph applies only to disbursements made ^{for the}
 26 ^{or obligations} ^{incurred}

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during the period beginning on the 30th day preceding a general, special, or spring election and ending on the date of that election

1 purpose of making a communication advocating the election or defeat of a clearly
 2 identified candidate for a state office specified in s. 11.31 (1) (a) to (de), (e), or (f) at
 3 ~~the~~ general, special, or spring election, or for the purpose of making a communication
 4 described in s. 11.01 (16) (a) 3., without cooperation or consultation with a candidate
 5 or agent or authorized committee of a candidate who is supported or whose opponent
 6 is opposed, and not in concert with or at the request or suggestion of such a candidate,
 7 agent, or committee. Each report required under this paragraph shall be filed with
 8 the board, with each candidate whose name is certified to appear on the ballot for the
 9 office in connection with which the ~~disbursement~~ communication is to be made, and the political
 10 party under whose name each such candidate appears on the ballot, if any, on a form
 11 prescribed by the board for this purpose. The report shall be filed by electronic mail
 12 or facsimile transmission no later than the 31st day preceding the general, special,
 13 or spring election to which the report relates. Each report shall indicate the name
 14 of each candidate who will be supported or whose opponent will be opposed and the
 15 total disbursements to be made for such a purpose ~~in support or opposition~~ ^{and obligations incurred} to that
 16 candidate during the period covered by the report. Within 24 hours after receiving
 17 a report, the board shall notify each candidate whose name is certified to appear on
 18 the ballot for the office in connection with which the ~~reported disbursement~~ ^{communication} is to be
 19 made of the report. The board shall provide this notification by electronic mail,
 20 facsimile transmission, telephone, or posting on the Internet.

21 (d) All information reported by a registrant under this subsection shall also be
 22 included in the next regular report of the registrant under s. 11.20.

23 SECTION 51. 11.12 (8) and (9) of the statutes are created to read:

24 11.12 (8) If a candidate for a state office specified in s. 11.31 (1) (a) to (de), (e),
 25 or (f) who does not accept a grant under s. 11.50 incurs any obligation or makes any

1 SECTION 94. 11.26 (9) (a) of the statutes is renumbered 11.26 (9) (a) (intro.) and
2 amended to read:

3 11.26 (9) (a) (intro.) ~~No~~ Except as provided under sub. (9m), no individual who
4 is a candidate for state or local office may receive and accept more than 65% of the
5 value of the total disbursement level determined under s. 11.31 (1), adjusted as
6 provided under s. 11.31 (9), for the office for which he or she is a candidate during any
7 primary and election campaign combined from all committees subject to a filing
8 requirement, including political party and ~~legislative campaign~~ committees, except
9 as follows:

10 SECTION 95. 11.26 (9) (a) 1. to 4. of the statutes are created to read:

11 11.26 (9) (a) 1. If a report filed under s. 11.12 (8) indicates that ~~disbursements~~
12 ~~have been made against~~ a candidate for legislative office, ~~or for such a candidate's~~
13 ~~opponent,~~ has made disbursements exceeding the amount specified under s. 11.31 (1) (e) or (f) for the office that
14 the candidate seeks, as adjusted under s. 11.31 (9), then ~~the~~ each opposing candidate may exceed
15 the limitation under this paragraph by receiving and accepting contributions from
16 a political party committee paid out of the applicable account established under sub.
17 (8n) (b) in an amount equivalent to the total amount by which the combined total of
18 all such disbursements exceeds the applicable amount specified under s. 11.31 (1) (e)
19 or (f), as adjusted under s. 11.31 (9). or in support of such a
candidate's opponent

20 2. If a report filed under s. 11.12 (6) (am) or (c) indicates that disbursements
21 have been made or are proposed to be made against a candidate for legislative office
22 and if the aggregate total of such disbursements, and obligations, or proposed disbursements less any exceeds
23 5% of the amount specified under s. 11.31 (1) (e) or (f) for the office that the candidate
24 seeks, as adjusted under s. 11.31 (9), then the candidate may exceed the limitation
25 provided under this paragraph by receiving and accepting contributions from a

or that obligations have
been incurred for such
a purpose,
or
to be made
disbursements
made for the
purpose of
the payment
of
obligations
that were
previously
reported,

SECTION 95

and obligations

1 political party committee paid out of the applicable account established under sub.
2 (8n) (b) in an amount equivalent to the total amount of the disbursements reported
3 under s. 11.12 (6) (am) during the period beginning with the 60th day preceding the
4 general, special, or spring election at which the candidate seeks office and ending
5 with the 31st day preceding that election, together with the total amount of the
6 proposed disbursements reported under s. 11.12 (6) (c)

or to be made

and obligations

less the amount of any disbursements made for the purpose of the payment of obligations that were previously reported

7 3. A candidate for a partisan state office other than district attorney may
8 exceed the limitation under this paragraph by receiving and accepting a contribution
9 from a political party committee made under s. 11.50 (2s) (f).

10 4. A candidate for a partisan state office other than district attorney may
11 exceed the limitation under this paragraph by receiving and accepting a grant under
12 s. 11.50 (4) (bg) or (br).

13 **SECTION 96.** 11.26 (9) (am) of the statutes is created to read:

14 11.26 (9) (am) Except as otherwise provided in this paragraph and sub. (9m),
15 no individual who is a candidate for a state office specified in s. 11.31 (1) (a) to (de),
16 (e), or (f) may receive and accept more than the amount specified below during any
17 primary and election campaign combined from all committees other than political
18 party committees subject to a filing requirement. The amounts are as follows:

19 1. Candidates for the office of governor, 35% of the value of the total
20 disbursement level determined under s. 11.31 (1) (a), adjusted as provided under s.
21 11.31 (9).

22 2. All other candidates subject to this paragraph, 40% of the total disbursement
23 level determined under s. 11.31 (1), adjusted under s. 11.31 (9), for the office that the
24 candidate seeks.

25 **SECTION 97.** 11.26 (9) (b) of the statutes is amended to read:

1 11.26 (9) (b) No individual who is a candidate for state office, other than a state
 2 office described in par. (am), or local office may receive and accept more than 45% of
 3 the value of the total disbursement level determined under s. 11.31 (1), adjusted as
 4 provided under s. 11.31 (9), for the office for which he or she is a candidate during any
 5 primary and election campaign combined from all committees other than political
 6 party and legislative campaign committees subject to a filing requirement.

7 SECTION 98. 11.26 (9m) of the statutes is created to read:

8 11.26 (9m) (a) If a report filed under s. 11.12 (8) indicates that ^{a candidate has made} disbursements
 9 ~~have been made in any campaign against a candidate, or in support of such a~~
 10 ~~candidate's opponent~~, exceeding the amount specified under s. 11.31 (1) (a) to (de),
 11 (e), or (f) for the office that the candidate seeks, as adjusted under s. 11.31 (9), then
 12 the limitations under subs. (1), (1m), (2), and (2m) applicable to contributions made
 13 to ^{each opposing} that candidate are doubled. In addition, s. 11.24 (1w) and sub. (9) do not apply to
 14 any contributions received by ^{each opposing} the candidate that ^{opposing} the candidate intends to use to
 15 make disbursements in response to the disbursements reported under s. 11.12 (8),
 16 as reported by the ^{opposing} candidate under s. 11.06 (1) (cm), to the extent that the
 17 contributions do not exceed the total amount by which the combined total of all such
 18 disbursements reported under s. 11.12 (8) exceeds the applicable amount specified
 19 under s. 11.31 (1) (a) to (de), (e), or (f), as adjusted under s. 11.31 (9). If the ^{opposing} candidate
 20 receives grant moneys under s. 11.50 (4) (bg), sub. (9) does not apply to those grant
 21 moneys.

22 (b) If a report filed under s. 11.12 (6) (am) or (c) indicates that ~~a committee has~~
 23 ~~made or proposes to make~~ disbursements ^{have been made or are proposed to be made} in any campaign against a candidate, or
 24 in support of such a candidate's opponent, ^(or that obligations have been incurred for such a purpose) ~~exceeding~~ 5% of the amount specified
 25 under s. 11.31 (1) (a) to (de), (e), or (f), for the office that the candidate seeks, as

^{and} if the aggregate total of such disbursements, proposed disbursements, and
 obligations, less any disbursements made or proposed to be made, for the purpose of
 the payment of obligations previously reported, exceeds

1 adjusted under s. 11.31 (9), the limitations under subs. (1), (1m), (2), and (2m)
 2 applicable to contributions made to that candidate are doubled. In addition, s. 11.24
 3 (1w) and sub. (9) do not apply to any contributions received by the candidate that the
 4 candidate intends to use to make disbursements in response to the disbursements
 5 reported under s. 11.12 (6) (am) or (c), as reported by the candidate under s. 11.06 (1)
 6 (cm), to the extent that the contributions do not exceed the combined total of all such
 7 disbursements and obligations reported under s. 11.12 (6) (am) during the period beginning with the
 8 60th day preceding the general, special, or spring election at which the candidate
 9 seeks office and ends with the 31st day preceding that election, together with the
 10 total amount of proposed disbursements and obligations reported under s. 11.12 (6) (c). If the
 11 candidate receives grant moneys under s. 11.50 (4) (bg) or (br), sub. (9) does not apply
 12 to those grant moneys. less the amount of any disbursements made for
the purpose of the payment of obligations
previously reported

13 SECTION 99. 11.26 (10) of the statutes is amended to read:

14 11.26 (10) No candidate for state office who files ~~a sworn statement and an~~
 15 application to receive a grant from the Wisconsin election campaign fund and an
 16 affidavit under s. 11.31 (2m) (a) may make contributions of more than 200% of the
 17 amounts applicable amount specified in sub. (1) to the candidate's own campaign
 18 from the candidate's personal funds or property or the personal funds or property
 19 which are owned jointly or as marital property with the candidate's spouse, unless
 20 the board determines that the candidate is not eligible to receive a grant, the
 21 candidate withdraws his or her application under s. 11.50 (2) (h), or s. 11.31 (3p) or
 22 11.50 (2) (i) applies to the candidate. For purposes of this subsection, any
 23 contribution received by a candidate or his or her personal campaign committee from
 24 a committee which is registered with the federal elections commission as the
 25 authorized committee of the candidate under 2 USC 432 (e) shall be treated as a

1 ~~under par. (h), or par. (i) applies applicant shall provide, along with his or her~~
 2 ~~application, an affidavit under s. 11.31 (2m) (a). The application shall also contain~~
 3 ~~a sworn statement that, except as authorized in s. 11.26 (9m) and sub. (2s) (f), if the~~
 4 ~~candidate is able to receive the full amount of the grant, except any grant provided~~
 5 ~~under sub. (4) (bg) or (br), to which the candidate is entitled under sub. (9), the~~
 6 ~~candidate and his or her agents will not accept any contribution made by a committee~~
 7 ~~other than a political party committee during the campaign, and any contributions~~
 8 ~~accepted by the candidate from such a committee will not exceed the total amount~~
 9 ~~of any deficiency in the grant made to the candidate under sub. (9). In the statement,~~
 10 ~~the candidate shall also swear that if any unauthorized contribution has been~~
 11 ~~accepted, that the contribution has been or will be returned or donated as provided~~
 12 ~~in par. (j), and the candidate and his or her agents will not accept any unauthorized~~
 13 ~~contribution during the campaign.~~

14 SECTION ~~122~~ 11.50 (2) (b) 3. of the statutes is amended to read:

15 ^{Inm}
 16 11.50 (2) (b) 3. The In the case of a candidate at the general election, the
 17 candidate has an opponent ~~who~~ whose name is certified for placement on the election
 18 ballot as a candidate for the same office and who received at least 6% of the vote cast
 19 for all candidates on all ballots for that office at the September primary;

20 ~~SECTION 123.~~ 11.50 (2) (b) 4. of the statutes is amended to read:

21 11.50 (2) (b) 4. The financial reports filed by or on behalf of the candidate as
 22 of the date of the spring or September primary, or the date that the special primary
 23 is or would be held, if required, indicate that his or her statement affidavit filed with
 24 the application under par. (a) s. 11.31 (2m) (a) is true; and

SECTION 124. 11.50 (2) (b) 5. of the statutes is amended to read:

Insert

1 s. 11.31 (2), unless each such opponent files an affidavit of ~~voluntary compliance~~
2 under s. 11.31 (2m) (b) and s. 11.31 (3p) does not apply to the candidate.

3 SECTION 134. 11.50 (2) (j) of the statutes is created to read:

4 11.50 (2) (j) If a candidate who applies for a grant has accepted, or the
5 candidate's personal campaign committee has accepted, any contributions from
6 committees other than political party committees during the campaign for the office
7 that the candidate seeks, except as authorized in the candidate's statement under
8 par. (a), the candidate, before accepting a grant whenever the full amount of the
9 grant authorized under sub. (9) is available to the candidate, shall return the
10 contributions or their monetary equivalent to the contributor, or, at the contributor's
11 option, donate an amount equal to the contribution to the fund or to the common
12 school fund or, if the full amount of the grant authorized under sub. (9) is not
13 available to the candidate, shall return or donate sufficient contributions, if any, so
14 that the contributions accepted do not exceed the amount authorized under sub. (2)
15 (a).

16 SECTION 135. 11.50 (2m) of the statutes is created to read:

17 11.50 (2m) PUBLIC INFORMATION ACCOUNT. (a) Annually no later than September
18 1, the board may notify the state treasurer that an amount not exceeding 1% of the
19 amount transferred to the fund in that year shall be placed in a public information
20 account. The amount shall be drawn from the general account and from each
21 political party account in a ~~uniform percentage specified by the board.~~ *Proportion to each account's share of designations made under*
22 public information account shall be expended by the board for the purpose of *credited*
23 providing public information concerning the purpose and effect of this section and *71.10*
24 s. 71.10 (3). *(3) (a) b in that year*

3. Third, payment to candidates for other state offices.

(d) The board shall certify to the state treasurer that an eligible political party qualifies to receive a grant for an election under this subsection whenever at least one eligible candidate of that party qualifies to receive a grant under sub. (2) for that election.

(e) Each eligible political party that receives a grant under this section shall maintain all grant moneys received in a segregated account. All moneys in that account and any earnings on those moneys may be used by that party only to make contributions under par. (f) to candidates of that party who qualify for a grant under sub. (2). Within that account, the party shall establish 3 subaccounts. The party

shall deposit 45% of the ^{grant} moneys ^{received in each year} in a subaccount to be used to make contributions to candidates for the office of senator, 45% of the ^{grant} moneys ^{received in each year} in a subaccount to be used to make contributions to candidates for the office of representative to the assembly, and

10% of the ^{grant moneys received in each year} moneys in a subaccount to be used to make contributions to candidates for other state offices. The political party shall maintain documentation for a period and in a form that is satisfactory to the board for the purpose of verifying that all moneys in the account are used for a purpose authorized under this section. The political party shall promptly transfer to the board the full amount of any unencumbered moneys in the account if the political party ceases to be an eligible political party.

(f) 1. If a report filed under s. 11.12 (8) indicates that ~~disbursements have been made against an eligible candidate for a partisan state office, or for such a candidate's opponent,~~ ^{has made disbursements} exceeding the amount specified under s. 11.31 (1) (a) to (d), (e), or (f) for the office that the candidate seeks, as adjusted under s. 11.31 (9), then an eligible political party may make contributions to ^{each eligible opposing} the candidate from the applicable account

1 established under par. (e) in the amounts determined by the party, but the total of
2 such contributions to the candidate may not exceed the total amount by which the
3 combined total of such disbursements exceeds the applicable amount specified under
4 s. 11.31 (1) (a) to (d), (e), or (f), as adjusted under s. 11.31 (9), minus any contributions
5 accepted by the candidate under s. 11.26 (9m).

6 2. If a report filed under s. 11.12 (6) (am) or (c) indicates that disbursements
7 have been made or are proposed to be made against an eligible candidate for a
8 partisan state office and if the aggregate total of such disbursements, or proposed
9 disbursements, exceeds 5% of the amount specified under s. 11.31 (1) (a) to (d), (e), or
10 (f) for the office that the candidate seeks, as adjusted under s. 11.31 (9), then an
11 eligible political party may make contributions to the candidate from the applicable
12 account established under par. (e) in the amounts determined by the party, but the
13 total of such contributions to the candidate may not exceed the total amount of the
14 disbursements reported under s. 11.12 (6) (am) during the period beginning with the
15 60th day preceding the general, special, or spring election at which the candidate
16 seeks office and ending with the 31st day preceding that election, together with the
17 total amount of the proposed disbursements reported under s. 11.12 (6) (c), minus
18 any contributions accepted by the candidate under s. 11.26 (9m).

19 (g) If a political party for which an account is established under this subsection
20 ceases to be an eligible political party, the board shall transfer the unencumbered
21 balance of that account to the general account.

22 SECTION 137. 11.50 (2w) of the statutes is created to read:

23 11.50 (2w) GENERAL ACCOUNT. There is established a general account within
24 the fund consisting of all moneys designated by individuals for deposit in that
25 account under s. 71.10 (3) (am), all moneys transferred to that account under sub.

or in support of such a candidate's opponent

or that obligations have been incurred for such a purpose,

, and obligations, less any disbursements made or proposed to be made for the purpose of the payment of

obligations that were previously reported,

previously

and obligations

and obligations

3 or 4 to be made

and the amount of any disbursements made for the purpose of the payment of obligations that were previously reported

of obligations that were previously reported

1 (2s) (g), and all moneys exceeding the disbursement limitation under s. 11.31 (2), as
2 adjusted under s. 11.31 (9), and all moneys deposited in the fund under subs. (2s) (e),
3 (8), and (10m) and ss. 8.35 (4) (a), 11.07 (5), 11.12 (2), 11.16 (2), 11.19 (1), 11.23 (2),
4 11.26 (1t) and (2t), and 11.38 (6).

5 SECTION 138. 11.50 (3) of the statutes is repealed.

6 SECTION 139. 11.50 (4) of the statutes is repealed and recreated to read:

7 11.50 (4) APPORTIONMENT OF MONEYS IN GENERAL ACCOUNT. (a) After transfer of
8 the amount specified by the board under sub. (2m), the board shall apportion the
9 remaining moneys in the general account in the manner specified in this subsection.

10 (b) Prior to payment of any grants at an election for a partisan state office, the
11 board shall reserve an amount equal to the amount of the disbursement limitation
12 under s. 11.31 (2), as adjusted under s. 11.31 (9) but without respect to any
13 adjustment under s. 11.31 (3p), for the office sought by each eligible candidate other
14 than a candidate who qualifies to receive a grant under sub. (2).

15 (bg) If a report filed under s. 11.12 (8) indicates that ~~disbursements have been~~
16 ~~made against an eligible~~ ^a candidate for a partisan state office, ~~other than a candidate~~

17 ~~who qualifies to receive a grant under sub. (2s) (c), or for such a candidate's opponent,~~

18 ~~exceeding the amount specified under s. 11.31 (1) (a) to (d), (e), or (f) for the office that~~

19 ~~the candidate seeks, as adjusted under s. 11.31 (9), then upon application to the board~~

20 ~~by the candidate,~~ ^{any eligible opposing} the board shall make a supplemental grant from the reserve under

21 par. (b) to ~~that~~ ^{the eligible opposing} candidate in an amount equal to the lesser of the following:

22 1. The amount of the disbursement limitation specified under s. 11.31 (1) (a)
23 to (d), (e), or (f) for the office that the candidate seeks, as adjusted under s. 11.31 (9),
24 minus any contributions accepted by the candidate under s. 11.26 (9m) (a).

1 2. The total amount by which the combined total of all such disbursements that
2 exceeds the applicable amount specified under s. 11.31 (1) (a) to (d), (e), or (f), as
3 adjusted under s. 11.31 (9), minus any contributions accepted by the candidate under
4 s. 11.26 (9m) (a).

5 (br) If a report filed under s. 11.12 (6) (am) or (c) indicates that disbursements
6 have been made or are proposed to be made against an eligible candidate for a
7 partisan state office, other than a candidate who qualifies to receive a grant under
8 sub. (2s) (c), ^{or in support of such a candidate's opponent,} and if the aggregate total of such disbursements, ^{or that obligations have been incurred for such a purpose,} or proposed
9 disbursements, ^{and obligations, less any disbursements made or proposed to be made, for the purpose of the payment of} exceeds 5% of the amount specified under s. 11.31 (1) (a) to (d), (e), or
10 (f) for the office that the candidate seeks, as adjusted under s. 11.31 (9), then upon
11 application to the board by the candidate, the board shall make a supplemental grant
12 from the reserve under par. (b) to that candidate in an amount equal to the lesser of
13 the following:

14 1. The amount of the disbursement limitation specified under s. 11.31 (1) (a)
15 to (d), (e), or (f) for the office that the candidate seeks, as adjusted under s. 11.31 (9),
16 minus any contributions accepted by the candidate under s. 11.26 (9m) (b).

17 2. The total amount ^{by which} ~~the~~ disbursements ^{(proposed disbursements, and obligations exceed} that exceeds the applicable amount
18 specified under s. 11.31 (1) (a) to (d), (e), or (f), as adjusted under s. 11.31 (9), minus
19 any contributions accepted by the candidate under s. 11.26 (9m) (b).

20 (c) The state treasurer shall make payment of grants to eligible candidates at
21 an election in the following sequence:

22 1. First, the state treasurer shall make payment of grants to candidates for the
23 office of justice in the amounts to which the candidates are entitled under sub. (9),
24 and shall prorate those payments if insufficient moneys are available to make full
25 payments to all candidates for the same office.

obligations that were previously reported

not to be made

and the amount of any disbursements made for the purpose of the payment of obligations that were previously reported

1 a grant under this subsection remains bound by the candidate's statement affidavit
2 filed under s. 11.31 (2m) (a) and the candidate's statement filed under sub. (2) (a).

3 **SECTION 148.** 11.50 (11) (e) of the statutes is amended to read:

4 11.50 (11) (e) No candidate may expend, authorize the expenditure of or incur
5 any obligation to expend any grant if he or she violates the pledge in the affidavit
6 required under sub. (2) (a) as a precondition to receipt of a grant, ~~except as authorized~~
7 ~~in sub. (2) (h) or (i).~~

8 **SECTION 149.** 11.50 (14) of the statutes is created to read:

9 11.50 (14) CERTIFICATIONS TO SECRETARY OF REVENUE. (a) No later than July 1
10 of each year, the board shall certify to the secretary of revenue:

11 1. The name of each political party that qualifies under sub. (1) (am) 2. as an
12 eligible political party as of the preceding June 1 and whose state chairperson has
13 filed a request to establish an account for the party under sub. (2s) (a).

14 2. The name of each political party that qualifies under sub. (1) (am) 1. as an
15 eligible political party as of the date of the preceding general election.

16 (b) In each certification under this subsection, the board shall specify the
17 expiration date of the certification.

18 **SECTION 150.** 11.60 (3r) of the statutes is created to read:

19 11.60 (3r) Notwithstanding sub. (1), any committee who violates s. 11.12 (6)
20 (am) or (c) may be required to forfeit not more than \$500 for each day of continued
21 violation. If an amount of a disbursement ^{or obligation} reported under s. 11.12 (6) (am) or (c)
22 varies from the actual amount of the disbursement by greater than 5%, the
23 committee filing the report shall also be required to forfeit the total amount of the
24 actual disbursement.

25 **SECTION 151.** 11.60 (4) of the statutes is amended to read:

1 13. Whether and how provisional voting of challenged electors could be
2 facilitated after the list is established.

3 (b) The elections board shall study and prepare specific recommendations for
4 implementing the proposal submitted under paragraph (c) for creation of a statewide
5 voter registration list system. In conducting its study, the board shall address each
6 of the issues specified in paragraph (a). The board shall submit the results of its study
7 and recommendations to the legislature in the manner provided in section 13.172 (2)
8 of the statutes no later than the first day of the 10th month beginning after the
9 effective date of this paragraph.

10 (2y) NONSEVERABILITY.

11 (a) Notwithstanding section 990.001 (11) of the statutes, if a court finds that
12 all or any portion of sections 11.01 (17g) and (17r) and 11.21 (17) of the statutes, as
13 created by this act, or SECTION ^{9115 (2w)} ~~220 (2)~~ of this act are unconstitutional, then sections
14 11.01 (17g) and (17r) and 11.21 (17) of the statutes, as created by this act, and SECTION
15 ^{9115 (2w)} ~~220 (2)~~ of this act are void in their entirety.

16 (b) Notwithstanding section 990.001 (11) of the statutes, if a court finds that
17 any part of ^{INS. 82-17} ~~this act~~ (other than the parts specified in paragraph (a)) is
18 unconstitutional, this entire act is void.”

19 **12.** Page 359, line 1: after that line insert:

20 “(4v) DECLARATORY JUDGMENT. The legislature directs the attorney general to
21 promptly commence an action seeking a declaratory judgment that the treatment of
22 chapter 11 of the statutes by this act, including specifically the treatment of sections
23 11.01 (16) (a) 3., 11.06 (2), 11.12 (6) (am) and (c), 11.24 (1w), 11.26 (1) (intro.), (1m),
24 (2) (a), (ae), (am), (as), and (av), (2m), (8), (8n), (8r), (9) (a), and (9m), 11.31 (3p), 11.50

9115 (2w)
13
15

17

1 (2s) (f) and (4) (bg) and (br), and 11.60 (3r) of the statutes are constitutional. The
2 legislature directs the attorney general to petition for leave to commence the action
3 as an original action before the Wisconsin supreme court. If such a petition is denied,
4 the legislature directs the attorney general to commence the action in the circuit
5 court for Dane County. If the attorney general fails to commence an action under this
6 subsection by the 61st day following the effective date of this subsection, the joint
7 committee on legislative organization shall, within 30 days thereafter, retain counsel
8 for the purpose of commencing such an action.”.

9 **13.** Page 388, line 10: after that line insert:

10 (3v) ^{POSITION INCREASE.} In the schedule under section 20.005 (3) of the statutes for the
11 appropriation to the elections board under section 20.510 (1) (a) of the statutes, as
12 affected by the acts of 2001, the dollar amount is increased by \$85,100 for fiscal year
13 2002-03 to increase the authorized FTE positions for the elections board by 1.0 GPR
14 campaign finance investigator position and 1.0 GPR auditor position and to fund
15 supporting expenses for these positions.”.

16 **14.** Page 413, line 8: after that line insert:

17 (6v) ^{APPROPRIATION INCREASE.} In the schedule under section 20.005 (3) of the statutes for the
18 appropriation to the department of revenue under section 20.566 (1) (a) of the
19 statutes, as affected by the acts of 2001, the dollar amount is increased by \$96,500
20 for fiscal year 2002-03 to increase funding for the cost of changing income tax
21 forms.”.

22 **15.** Page 435, line 9: after that line insert:

1 11.26 (3), 11.26 (4), 11.26 (5), 11.26 (6), 11.26 (8), 11.26 (9) (b), 11.26 (10), 11.26 (15),
2 11.26 (17) (a), 11.31 (1) (intro.), 11.31 (1) (a) to (d), 11.31 (1) (e) and (f), 11.31 (2), 11.31
3 (2m) (title), 11.31 (3), 11.38 (1) (a) 2., 11.38 (6), 11.38 (8) (b), 11.50 (2) (a), 11.50 (2) (b)
4 4., 11.50 (2) (b) 5., 11.50 (2) (c), 11.50 (2) (f), 11.50 (2) (g), 11.50 (2) (h), 11.50 (2) (i),
5 11.50 (6), 11.50 (7) (intro.), 11.50 (8), 11.50 (10m), 11.50 (11) (e), 11.60 (4), 11.61 (1)
6 (a) (by SECTION 2d), 19.53 (6), 19.59 (8) (c), 20.510 (1) (q), and 25.42 of the statutes,
7 the repeal and recreation of sections 11.05 (9) (title) and 11.50 (4) of the statutes, the
8 creation of sections 11.001 (2m), 11.01 (4m), 11.01 (12w), (13) and (14), 11.01 (16) (a)
9 3., 11.01 (17g) and (17r), 11.05 (1) (b), 11.05 (2) (b), 11.05 (3) (m), 11.05 (3) (r), 11.06
10 (1) (cm) and (dm), 11.06 (2m) (b) to (d), 11.06 (11) (bm), 11.12 (6) (am), 11.12 (6) (c) and
11 (d), 11.12 (8) and (9), 11.20 (2s), 11.20 (2t), 11.20 (8) (am), 11.21 (17), 11.24 (1w), 11.24
12 (4), 11.26 (1m), 11.26 (1t), 11.26 (2) (ae), (am), (as) and (av), 11.26 (2m), 11.26 (2t),
13 11.26 (8n), 11.26 (8r), 11.26 (9) (a) 1. to 4., 11.26 (9) (am), 11.26 (9m), 11.26 (10a), 11.31
14 (1) (de), 11.31 (2m) (a), 11.31 (3p), 11.31 (9), 11.385, 11.50 (1) (a) 1. (intro.), 11.50 (1)
15 (a) 2m., 11.50 (1) (am), 11.50 (1) (bm) and (cm), 11.50 (2) (b) 6., 11.50 (2) (j), 11.50 (2m),
16 11.50 (2s), 11.50 (2w), 11.50 (9) (b), 11.50 (14), 11.60 (3r), 19.42 (3m), (4g) and (4r),
17 19.45 (13), 19.49 (1m), 19.49 (5) (b), 19.535, 19.59 (1) (br), 19.59 (7) (b), 19.59 (8) (cm)
18 and (cn), and 806.04 (11m) of the statutes and SECTIONS 9115 (2v) (2w) and (2x)

19 ~~9162 (4w) and 9315 (2v) and (2w)~~ of this act take effect on July 1, 2003.”

(END)

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1 (b) The elections board shall submit in proposed form the rules required under
2 section 11.21 (17) of the statutes, as created by this act, to the legislative council staff
3 under section 227.15 (1) of the statutes no later than the first day of the 10th month
4 beginning after the effective date of this paragraph.

5 (3) DECLARATORY JUDGMENT. The legislature directs the attorney general to
6 promptly commence an action seeking a declaratory judgment that the treatment of
7 chapter 11 of the statutes by this act, including specifically the treatment of sections
8 11.01 (16) (a) 3., 11.06 (2), 11.12 (6) (am) and (c), 11.24 (1w), 11.26 (1) (intro.), (1m),
9 (2) (a), (ae), (am), (as), and (av), (2m), (8), (8n), (8r), (9) (a), and (9m), 11.31 (3p), 11.50
10 (2s) (f) and (4) (bg) and (br), and 11.60 (3r) of the statutes are constitutional. The
11 legislature directs the attorney general to petition for leave to commence the action
12 as an original action before the Wisconsin supreme court. If such a petition is denied,
13 the legislature directs the attorney general to commence the action in the circuit
14 court for Dane County. If the attorney general fails to commence an action under this
15 subsection by the 61st day following the effective date of this subsection, the joint
16 committee on legislative organization shall, within 30 days thereafter, retain counsel
17 for the purpose of commencing such an action.

18 (4) STATEWIDE VOTER REGISTRATION LIST.

19 (a) Notwithstanding section 16.42 (1) of the statutes, the elections board shall
20 submit as a part of its budget request for the 2003-05 fiscal biennium under section
21 16.42 of the statutes a proposal to finance the creation of a statewide, centralized
22 voter registration list system, together with proposed legislation required to initially
23 implement the system *including a statewide voter registration requirement,* for the 2004 September primary election. In developing the
24 system, the elections board shall consider at least each of the following issues:

- 25 1. How the list should be created and maintained.

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1 connection with which the reported disbursement is made. The board shall provide
2 this notification by electronic mail, facsimile transmission, telephone, or posting on
3 the Internet. ~~This paragraph does not apply to a committee that is required to file~~
4 ~~daily reports under s. 11.21 (16)~~

5 SECTION 90. 11.12 (6) (c) and (d) of the statutes are created to read:

6 11.12 (6) (c) No committee identified under s. 11.05 (3) (c) as a special interest
7 committee, other than a conduit, may make any disbursement to which this
8 paragraph applies during the period beginning on the 30th day preceding a general,
9 special, or spring election, or a primary election for an office to be filled at such an
10 election and ending on the date of that general, special, spring, or primary election,
11 unless the committee has filed a report under this paragraph concerning that
12 disbursement. This paragraph applies only to disbursements made for the purpose
13 of making a communication advocating the election or defeat of a clearly identified
14 candidate for a state office specified in s. 11.31 (1) (a) to (de), (e), or (f) at a general,
15 special, or spring election, or any such candidate who seeks a nomination for such
16 an office at a primary election, or for a purpose described in s. 11.01 (16) (a) 3, without
17 cooperation or consultation with a candidate or agent or authorized committee of a
18 candidate who is supported or whose opponent is opposed, and not in concert with
19 or at the request or suggestion of such a candidate, agent, or committee. Each report
20 required under this paragraph shall be filed with the board, with each candidate
21 whose name is certified to appear on the ballot for the office in connection with which
22 the disbursement is to be made, and the political party under whose name each such
23 candidate appears on the ballot, if any, on a form prescribed by the board for this
24 purpose. The report shall be filed by electronic mail or facsimile transmission no
25 later than the 31st day preceding the general, special, spring, or primary election to

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~~or more disbursements in an amount exceeding \$250 cumulatively for the purpose of advocating the election or defeat of a clearly identified candidate for a state office specified in s. 11.31 (1) (a) to (de), (e), or (f) at a general, special, or spring election, or any such candidate who seeks a nomination for such an office at a primary election, or for a purpose described in s. 11.01 (16) (a) 3., during the period beginning on the 60th day preceding the applicable general, special, spring, or primary election and ending on the date of that election, without cooperation or consultation with a candidate or agent or authorized committee of a candidate who is supported or whose opponent is opposed, and not in concert with or at the request or suggestion of such a candidate, agent, or committee, the committee shall, within 24 hours after incurring the obligation or making the disbursement, file a report with the board, with each candidate whose name is certified to appear on the ballot for the office in connection with which the obligation is incurred or disbursement is made, and the political party under whose name each such candidate appears on the ballot, if any, on a form prescribed by the board for this purpose. The form shall provide a place for reporting obligations separately from disbursements. The report shall be filed by electronic mail or facsimile transmission. The report shall include the information required under s. 11.06 (1) and shall be made in such manner as the board may prescribe. For purposes of this paragraph, obligations and disbursements cumulate beginning with the 60th day preceding the applicable general, special, spring, or primary election and ending with the day before that election and disbursements made for the purpose of payment of obligations that were previously reported are not included in determining the cumulative amount of disbursements. Within 24 hours after receiving a report under this paragraph, the board shall notify each candidate whose name is certified to appear on the ballot for the office in~~

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or making a communication

(see ins)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

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July 3, 2002

This draft attempts to reflect the intent of your July 2, 2002, proposal. As you review the draft, please note the issues listed below.

1. Proposed s. 11.24 (4), which relates to a restriction upon contributions to incumbent partisan elective state officials during certain periods, and proposed s. 11.385, which relates to a restriction upon contributions made or received by incumbent legislators in conjunction with certain fund-raising social events during certain periods, are not drafted in cognizance of one another. In some cases, activity that would be permitted under one of the provisions is prohibited by the other provision. We do not see this as creating a conflict because the effect of one provision is not negated by the failure of the other provision to reflect its full breadth. However, you may wish to review whether the scope of these provisions is consistent with your intent. In addition, with respect to proposed s. 11.385:

a. The language does not prohibit making contributions in conjunction with nonsocial fund-raising events such as auctions.

b. In recent years, some special sessions have extended for more than a year, although meeting days have been infrequent. The effect of this practice may be to prohibit contributions from being made during interim periods when the legislature is not actually meeting in regular, special, or extraordinary session. If the legislature recesses a special or extraordinary session to a date on or after the date of the next floorperiod, you may wish to consider permitting contributions to be made.

c. In proposed s. 11.385 (3) and (4), you may wish to consider making the exemptions available to a member after any primary is held only if the member wins the primary.

d. There is some overlap between proposed s. 11.385 (3) and (4). Subsection (3) applies only if an event is held within the jurisdiction or district served by the office for which the member is a candidate, while sub. (4) does not contain this limitation but applies only if the member is a candidate for an office other than member of the house in which the member serves.

2. The instructions specified that only a candidate who has an opponent who received at least 6% of the vote cast for the office that the candidate seeks at the primary election should qualify for a grant. Because there is not necessarily any spring primary election or any primary in a special election unless the number of candidates who qualify for

ballot placement is sufficient to require that a primary be held, this draft, in s. 11.50 (2) (b) 3., stats., applies this qualification only to candidates at the general election.

3. Concerning the treatment of s. 11.50 (2) (h), stats., which specifies the deadline for withdrawing an application for a grant from the Wisconsin election campaign fund, you requested that we fix this date as the filing deadline for the preprimary report (the eighth day before the primary). In nonpartisan elections and partisan special elections, there is no primary unless the number of candidates who qualify to have their names appear on the ballot warrants that a primary be held. For nonpartisan elections, therefore, this draft provides that the deadline for withdrawal is *the day that the primary would be held, if a primary were required*, and for partisan special elections, because there is no window of time provided to hold the primary, this draft provides that the deadline for withdrawal is *the 35th day before the special election*. Please let us know if you would like to see this treated differently.

4. Under *Buckley v. Valeo, et al.*, 96 S. Ct. 612 (1976), we cannot require a candidate to accept self-contribution limits except by voluntary agreement. Currently, however, under s. 11.50 (2) (a), stats., a candidate who accepts a grant must agree to abide by *all* contribution limits. Currently, under s. 11.31 (2m), stats., a candidate who files an affidavit accepting disbursement and contribution limits agrees to abide by *all* contribution limits. Consistently with this policy, we recommend that the reference to s. 11.26 (10) in proposed s. 11.31 (2m) (b) (affidavit of adherence to limits) be made consistent with the corresponding reference in proposed s. 11.26 (2m) (a) by deleting the reference to sub. (10). In this regard, we would also correct the text of s. 11.50 (2) (i), stats., to substitute a reference to s. 11.26 (10) for the reference to s. 11.26, stats. Alternatively, we could change current law to require candidates who accept grants or who voluntarily accept limits only to agree to accept *self-contribution* limits. In any event, the draft needs to be made consistent on this point.

5. Concerning proposed SECTION 9132 (4v), which directs the attorney general (or, if he fails to do so within 60 days after the bill resulting from this draft becomes law, the joint committee on legislative organization) to commence a declaratory action seeking a determination that certain provisions of this proposal are constitutional, may not be effective in view of the position of the Wisconsin Supreme Court that, generally, the court will not permit a claim for declaratory relief to be asserted unless there is a justiciable controversy. Under this requirement, "...a controversy is not a proper subject for declaratory relief unless it: (1) involves a claim or right on the part of the plaintiff which is asserted against one who has an interest in contesting it; (2) is between two persons whose interests are adverse; (3) involves a legally protectable interest in the person seeking declaratory relief; and (4) is ripe for judicial determination. These prerequisites to the maintenance of a declaratory judgment action are designed to insure that a bona fide controversy exists and that the court, in resolving the questions raised, will not be acting in merely an advisory capacity. *Lister v. Board of Regents*, 72 Wis. 2d. 282, 306 (1976). The court has also stated that it generally will not entertain constitutional questions brought by a party who is not directly affected by the facts presented to the court in an actual case or controversy. *Schmidt v. Local Affairs and Development Dept.*, 38 Wis. 2d 46, 61-62 (1968). There are exceptions to this rule where issues are of great public importance; the

constitutionality of a statute is involved; the situation is likely to recur and guidance to the trial courts is essential, the court should address the situation to avoid uncertainty, or the question evades review because it cannot be decided in time to have a practical effect upon the parties. *In the Matter of G.S.*, 118 Wis. 2d 803, 805 (1984). Nevertheless, when the court has made an exception, there have generally been an actual set of facts with interested parties before the court, even though the particular case may have been moot. This might not be the situation in this instance.

In addition, this type of provision may not be effective because: 1) the attorney general and the legislators who constitute JCLO enjoy certain constitutional prerogatives, and there is some doubt as to whether these officers may be forced to file suit if they are not willing to do so; 2) someone else may file suit first, perhaps in federal court, and the state could be a defendant in that suit; and 3) a favorable ruling by the Wisconsin Supreme Court might not settle the matter if federal constitutional issues are involved. In any event, you may want to provide an exception from the requirement to file suit if a private party has already filed a suit raising all of the relevant issues and the state is a party to that suit.

On the last occasion that the legislature requested the attorney general to file a declaratory judgement action, the attorney general declined to do so and issued a statement explaining his reasons. You may wish to provide that, if the attorney general fails to file the action within 60 days of the effective date *or declines to do so before that time*, JCLO shall retain counsel to file the suit. This will avoid having to await the expiration of the 60-day period if it is apparent that the attorney general will not proceed.

6. Per your instructions, this draft directs the Elections Board to include a proposal for implementation of a statewide voter registration system, based upon a study that must include at least 13 specified components, in its 2003-05 biennial budget request. Under s. 16.42 (1), stats., this request is due on *September 15, 2002*. The study is to be completed by the first day of the 10th month after publication of the act resulting from this draft. That date is likely to be *May 1, 2003*. In recent years, the biennial budget act has not generally become law before August of the odd-numbered year. Because the system must be operational by September of 2004, this time schedule would give the Elections Board and local governments about one year to implement the system. This timing may be challenging. You may wish to seek input from the board and local government organizations regarding this time schedule.

7. Currently, ch. 11, stats., generally requires disclosure of financial activity by individuals and committees seeking to influence the election or defeat of candidates for state or local office [see ss. 11.01 (6), (7), (11), and (16), 11.05, and 11.06, stats.], unless a disbursement is made or obligation incurred by an individual other than a candidate or by a committee which is not organized primarily for political purposes, the disbursement is not a contribution as defined in the law and the disbursement is not made to expressly advocate the election or defeat of a clearly identified candidate [see s. 11.06 (2), stats.]. This language pretty closely tracks the holding of the U.S. Supreme Court in *Buckley v. Valeo, et al.*, 96 S. Ct. 612, 656-664 (1976), which prescribes the boundaries of disclosure that may be constitutionally enforced (except as those

requirements affect certain minor parties and independent candidates). Proposed ss. 11.01 (4m), (11m), and (16) (a) 3. and the treatment of s. 11.06 (2), stats., which together require registration and reporting by individuals or committees that make certain mass communications within specified periods preceding an election containing a reference to or depiction of a candidate at that election and proposed s. 11.12 (6) (c), which requires pre-reporting of certain independent disbursements and mass communications, appear to extend beyond the boundaries which the court permitted in 1976 and, as a result, their enforceability appears to rest upon a shift by the court in its stance on this issue. In this connection, see also *North Carolina Right to Life, Inc. v. Bartlett*, 168 F. 3d 705 (4th Cir. 1999), *cert. den.*, 120 S. Ct. 1156 (2000). Proposed s. 11.12 (6) (c) also may constitute an unconstitutional prior restraint on the exercise of protected free speech rights. To support these provisions, it would be necessary for the state to demonstrate a compelling state interest.

8. We also want to note briefly that a few of the provisions of this draft are innovative, and we do not yet have, to our knowledge, specific guidance from the U.S. Supreme Court concerning the enforceability of provisions of these types. It is well possible that a court may find a rational basis for these provisions that would permit them to be upheld. However, because of the concerns expressed by the U.S. Supreme Court in *Buckley*, and certain other cases, that attempts to regulate campaign financing activities may, in some instances, impermissibly intrude upon freedom of speech or association or upon equal protection guarantees, it is possible that enforceability problems with these provisions may occur.

a. Proposed s. 11.26 (1), (1m), (2), and (2m), which allow individuals and committees to make double the amount of contributions to candidates who participate in the Wisconsin Election Campaign Fund. There is a possibility that this 2-1 contribution cap gap, in combination with the other incentives under the bill for participating in the Wisconsin Election Campaign Fund, may be challenged as unconstitutionally coercing candidates to accept public financing and, thereby, be bound by contribution and disbursement limits. The First Circuit U.S. Court of Appeals has held that a 2-1 cap gap is constitutional. See *Vote Choice, Inc. v. DiStefano*, 4 F. 3d 26, 38-39 (1st Cir. 1993). This case provides some support for the proposition that the 2-1 cap gap established by this bill is constitutional. However, because neither the U.S. Supreme Court nor the U.S. Court of Appeals with jurisdiction over Wisconsin has ruled on this issue, and because the 2-1 cap gap must be viewed in combination with the other incentives established in the bill, it is possible that the 2-1 cap gap could still be held unconstitutionally coercive.

b. Proposed s. 11.26 (8r), which prohibits committees from making contributions to certain other committees. Although the U.S. Supreme Court has not ruled on the enforceability of a provision of this type, the court has indicated some willingness to permit limits on contributions beyond those specifically approved in *Buckley v. Valeo*, 424 U.S. 1. See *California Med. Assn. v. FEC*, 453 U.S. 182, 193-99 (1981) (\$5,000 limitation on individual-to-PAC contributions is a reasonable method of preventing individuals from evading limits on direct campaign contributions).

c. Proposed ss. 11.26 (9) (a) 1., 2., and 3. and 11.31 (3p), which, among other things, allow candidates to raise and spend additional funds in order to permit them to respond to certain independent disbursements.

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