Common Cause In Wisconsin

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MEMORANDUM

DATE: January 22, 2001

TO: Members of the Wisconsin State Senate Judiciary & Campaign Finance Reform Committee

FROM: Jay Heck, Executive Director of Common Cause In Wisconsin

SUBJECT: Senate Bill 2 – Closing the Phony Issue Advocacy Loophole

Extended uncertainty about who would be the nations's next President temporarily diverted attention from the scandalous Wisconsin elections of 2000, namely the record spending by special interest groups--much of it undisclosed and unrestricted--to influence the outcome of state legislative elections.

Candidate spending and independent expenditures--which are disclosed and regulated---broke all-time records in 2000, but it was the increase in the undisclosed, unregulated "phony issue advertisements" that should give Wisconsin citizens and legislators the most cause for concern. Untold hundreds of thousands of dollars were spent on these stealth campaign communications, paid for with funds from sources we will never know, in key State Senate and Assembly races during the Fall campaign. Sham issue advocacy has emerged as the single largest loophole in Wisconsin's once effective campaign finance law and it threatens to undermine any law, present or future, unless it is closed.

Ironically, this distressing phenomenon has created the dynamic for achieving early enactment of meaningful campaign finance reform in the upcoming 2001-2002 legislative session--the first such reform in almost a quarter of a century. Phony issue ads have been the main staple of Wisconsin Manufacturers & Commerce (WMC), the state's largest business group since 1996, primarily to benefit Republican candidates but this year new groups with names like "Americans for Job Security" (in support of Republicans), "People for Wisconsin's Future" (favoring Democrats) and others joined in the phony issue ad free-for-all to give this matter a truly bipartisan bent. As a consequence, there is a bipartisan consensus in favor of curbing this abuse.

Background:

Campaign ads masquerading as issue advocacy first gained notoriety in 1996 when WMC reportedly spent more than $400,000 (although we don't know for sure because it was not disclosed) in behalf of Republican legislative candidates, primarily to attack Democratic incumbents. WMC's aggressive utilization of a gaping loophole in Wisconsin's campaign

finance law permitted them to run campaign ads but, because they carefully avoided the use of certain so-called "magic" words (spelled out in the famous and much misinterpreted footnote number 52 of the 1976 *Buckley v. Valeo* Supreme Court decision), WMC claimed their ads were not subject to the disclosure and restriction laws that govern candidate campaign ads and campaign ads run by "outside" organizations which are called independent expenditures. In other words, WMC could run thinly veiled campaign attack ads, paid for by unlimited funds from corporations or wealthy individuals (candidate ads and independent expenditures have limits on the size of contributions that may be used to pay for them), and those sources of funding would not have to be disclosed (any contribution of $20 or more to a candidate or independent expenditure group must be disclosed). This was a deliberate end-run sweep around Wisconsin's nearly century old prohibition on corporate treasury money from being used to influence the outcome of state elections.

The State Elections Board enjoined WMC's ads right before the 1996 election for this very reason and the case wound its way through the courts until finally, in July of 1999, the Wisconsin Supreme Court ruled that state election law did not clearly spell out what differentiates express advocacy--or campaign-oriented speech, from issue advocacy--the discussion by individuals or groups about issues. Therefore, the Court said, WMC was not in violation of state election law in 1996. But the Court also said that the state had the right--and indeed the duty--to clearly define express advocacy so that there would be no ambiguity about this matter in the future. The Court challenged the State Elections Board or the Legislature to close this huge, gaping loophole in Wisconsin's campaign finance law and restore a measure of integrity to our system.

On September 29, 1999 the hopelessly dead-locked State Elections Board "punted" on the issue. For two years the Board had split 4 to 4 on whether or not to treat phony issue ads as campaign speech and after the Supreme Court's ruling they essentially left the decision to the Legislature. The Board issued a definition of express advocacy which was nothing more than a restatement of the infamous foot note number 52 of the 23-year old *Buckley* decision which meant that they would continue to split 4 to 4 on the matter of whether or not the WMC-type phony issue ads ought to be treated as campaign ads. The impotent rule then went to the Legislature's standing committees to consider. In February, 2000, the Republican-controlled Assembly Committee on Campaigns and Elections--at the strong urging of Common Cause In Wisconsin (CC/WI)--voted unanimously to reject the Elections Board's "do nothing" rule. The State Senate Committee on Government Operations, controlled by the Democrats, likewise voted without dissent to reject the rule. In both cases, a majority of legislators on each committee expressed the need to adopt a stronger measure to close the phony issue ad loophole.

Solution:

On April 12, 2000, the rule was considered by the Legislature's Joint Committee for Review of Administrative Rules (JCRAR), which is evenly split with five Republicans and Democrats each. The Committee, acting on the recommendations of the two legislative standing committees, voted to reject the ineffective rule unanimously. JCRAR then had thirty days to devise a new rule. JCRAR Co-Chair, Senator Judy Robson (D - Beloit), was at first inclined to push for the adoption

of a measure that would require disclosure only of any widely disseminated communication made thirty days prior to the general election which named or depicted a candidate. This approach had been suggested as a compromise by the three-year-old Governor's Blue Ribbon Commission on Campaign Finance Reform (Kettl Commission) Report that had virtually no support in the Legislature or among reform organizations including CC/WI, because it did so little to address Wisconsin's campaign finance problems. But CC/WI sprang into action to press for JCRAR to adopt a stronger, more effective measure to deal with the phony issue advocacy problem. CC/WI convinced Senator Robson to adopt a sixty day measure (rather than a thirty day) requiring not only disclosure but restriction as well on the funds that could be used to pay for such campaign communications. In other words, groups like WMC or "People for Wisconsin's Future" would no longer be able to solicit $50,000 or $100,000 or even larger contributions from corporate or union treasury funds or from wealthy individuals to pay for phony issue ads. They would have to abide by contribution limits that would be disclosed--just as groups running independent expenditures and candidates running their own ads are forced to do. CC/WI enlisted the support of Republican reform leaders Representative Stephen Freese of Dodgeville and Senator Mike Ellis of Neenah to help gain Republican support for its stronger JCRAR measure and secured the support of all five committee Democrats. The vote, on May 10, 2000, was a stunning, overwhelming and strongly bipartisan 8 to 2 vote in favor of the sixty day rule requiring restriction and disclosure of the funding for phony issue ads. Three JCRAR Republicans (Senator Dale Schultz of Richland Center and Representatives Lorraine Seratti of Florence and Scott Gunderson of Union Grove) joined all five committee Democrats (Senators Robson, Richard Grobschmidt of South Milwaukee, Kevin Shibilski of Stevens Point and Representatives Spencer Black of Madison and James Kreuser of Kenosha) in endorsing the strong and effective measure. At a Capitol press conference on October 19, 2000, Senator Robson, Rep. Freese and Republican Dan Finley, the Waukesha County Executive, joined CC/WI in reiterating strong, bipartisan support for the JCRAR phony issue ad measure and for its immediate consideration and enactment into law in early 2001.

Brightest Opportunity for Reform since the 1970's:

Under Wisconsin Statutes section 227.19(6)(b), JCRAR must introduce the phony issue ad measure in January as part of the regular session of the Legislature where it is immediately referred to each house's standing committee that considers that subject area. Each standing committee has 30 days to review the measure and within 40 days of referral to the standing committees, the measure must be placed on the calendar of both the Assembly and State Senate for consideration. This means that campaign finance reform–usually delayed and considered at the end of each biennium session, if at all--must be one of the first orders of business of the new 2001-2002 Wisconsin Legislature.

Further supporting efforts to enact the phony issue ad measure is the fact that an overwhelming nearly 90 percent of Wisconsin's voters, residing in 59 of Wisconsin's 72 counties with nearly 90 percent of the state's population, voted a resounding "YES" on the advisory referendum question on campaign finance reform which asked if Wisconsinites favored, among other things, full and prompt disclosure of election related activities. This ought to provide some much needed

backbone to legislators who otherwise would fear the wrath of special interest groups opposing disclosure of their campaign ads masquerading as issue advocacy.

Outgoing Governor Tommy G. Thompson said shortly after the November elections he would love to face in the courts those outside groups in who misleadingly claim that phony issue advocacy is a First Amendment right protected by the Constitution. Where Lt. Governor Scott McCallum stands on this matter is not yet clear.

Senate Majority Chuck Chvala (D-Madison) announced that the JCRAR phony issue ad measure would be the first, top reform priority in that chamber where there is bipartisan support for it. And indeed, it was introduced in early January in the 2001 session of the Wisconsin Legislature as Senate Bill 2 and may be considered on the floor of the State Senate as early as next week.

Republican Assembly Speaker Scott Jensen of Waukesha did not entirely foreclose the idea of acting on the measure, acknowledging the strong statement made by Wisconsin's voters in the advisory referendum vote. But it remains to be seen if Jensen is serious about supporting serious campaign finance reform in the new session. He has said that specific rather than comprehensive campaign finance reform legislation is the way to proceed and Senate Bill 2 certainly fits that description.

Enactment into law early in the 2001 legislative session of Senate Bill 2 would provide momentum for further, comprehensive campaign finance reform legislation earlier rather than later in the session. It would also close the single largest loophole in Wisconsin's campaign finance law. Opponents of reform would almost certainly take the measure to the courts in an attempt to have it struck down as unconstitutional. But a similar phony issue ad measure enacted into law in 1999 in Connecticut that stipulates that communications depicting a candidate's name or likeness 90 days prior to the general election are treated as campaign speech subject to disclosure and restriction, was in place and functional during the entire 2000 election cycle and the law still stands.

Enactment of Senate Bill 2 would be the most significant campaign finance reform in Wisconsin since 1977. Failure to pass it could lead to the usual stalemate, partisan wrangling and ultimately, failure to achieve any reform Wisconsin's campaign finance laws. It is an opportunity that must not and cannot be wasted. But state legislators must know that the public and the media is watching to see what they do on this first, all-important test for meaningful reform in Wisconsin.

* * *

Please feel free to contact me if you have questions or require further information about this or any other campaign finance reform matter. My phone number is 608/256-2686 and my e-mail address is ccwisjwh@itis.com. Thank you.

Substitute House Bill No. 6665

Public Act No. 99-275

An Act Concerning Candidate Related Advertisements.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Subsection (a) of section 9-333c of the general statutes is repealed and the following is substituted in lieu thereof:

(a) As used in this chapter, the term "expenditure" means:

(1) Any purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value, when made for the purpose of influencing the nomination for election, or election, of any person or for the purpose of aiding or promoting the success or defeat of any referendum question or on behalf of any political party;

(2) Any advertisement that (A) refers to one or more clearly identified candidates, (B) is broadcast by radio or television other than on a public access channel, or appears in a newspaper, magazine or on a billboard, and (C) is broadcast or appears during the ninety-day period preceding the date of an election, other than a commercial advertisement that refers to an owner, director or officer of a business entity who is also a candidate and that had previously been broadcast

or appeared when the owner, director or officer was not a candidate; or

[(2)] (3) The transfer of funds by a committee to another committee.

Sec. 2. This act shall take effect July 1, 1999.

Approved June 29, 1999

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MILWAUKEE JOURNAL SENTINEL
STATE EDITION ★ FRIDAY, OCTOBER 20, 2000 ★ WWW.ONWISCONSIN.COM

ELECTION 2000

Reformers take on issue ads loophole

Advocates of campaign finance change argue that Legislature needs to act

By DENNIS CHAPTMAN
of the Journal Sentinel staff

Madison — Campaign reform advocates Thursday called on the Legislature to close a major loophole in state election law by regulating what they call phony issue ads.

The ads — expected to be increasingly prominent on Wisconsin television and radio in the 18 days before the Nov. 7 election — are often run by groups whose identity and backing are hard to identify.

The commercials do not directly advocate for or against a candidate, but often include a call to action such as, "Call Senator Smith and tell her you're opposed to her high-spending ways."

"These groups often spring up overnight. By the time you find them, the election's over," said Rep. Stephen Freese (R-Dodgeville). "We've got to bring some sanity and balance back, or we'll have people in record numbers walk away and say, 'I'm not voting. They're all a bunch of crooks.' "

A key legislative panel in May urged the Legislature to pass a measure requiring groups that run ads with the name or image of a candidate within 60 days of the election to register with the Elections Board and list their contributors and expenses. Because the recommendation was made after the last legislative session, lawmakers have yet to consider it.

"Phony issue advocacy is the fastest-growing campaign finance abuse in Wisconsin, and it is getting worse with each passing day," said Jay Heck, executive director of Common Cause in Wisconsin.

One of the hot spots for issue ads has been in the 32nd Senate District in La Crosse, where former GOP Sen. Brian Rude resigned. Indications are that outside interests are spending heavily to influence the race, Heck said.

Advertising invoices provided by Common Cause showed Wisconsin Manufacturers & Commerce, the state's largest business group, has spent at least $24,121 on radio and TV ads, and a group called Americans for Job Security bought at least $20,575 in ads favoring Republican candidate Dan Kapanke.

Common Cause also cited a news release from the Committee to Elect a Republican Senate that contended that People for Wisconsin's Future would spend $33,000 and Independent Citizens for Democracy would spend an additional $87,000 on ads favoring Democrat Mark Meyer.

Exact figures are hard to come by, because the expenditures are not required to be disclosed to the state, and not all television and radio stations provide the invoices on request, Heck said.

> **"Phony issue advocacy is the fastest-growing campaign finance abuse in Wisconsin, and it is getting worse with each passing day."**
>
> Jay Heck, executive director of Common Cause in Wisconsin

Jim Pugh, spokesman for Wisconsin Manufacturers & Commerce, said the proposed legislation is an unconstitutional infringement on free speech rights of groups and individuals.

"These people want censorship. They want to take groups and individuals out of the process, and that's what's undemocratic," Pugh said. "The First Amendment is in effect 365 days a year, and any effort by the Wisconsin Legislature to take away rights is definitely wrong for democracy."

Pugh predicted the courts would overturn the proposed issue-ad regulations, if enacted.

Wisconsin's court already have tackled the issue once.

In a case involving WMC's 1996 issue ads, the state Elections Board ruled that the group should have complied with reporting requirements that apply to campaign ads.

But the state Supreme Court in 1998 ruled that WMC didn't violate the law because the state had not adopted adequate standards beforehand to regulate the ads. The state's high court did not address the free speech issue, and instead said the state was engaging in retroactive rule-making.

Fifty-nine of Wisconsin's 72 counties will have an advisory referendum on the Nov. 7 ballot asking voters whether they support campaign finance reform.

MILWAUKEE
JOURNAL SENTINEL
THURSDAY, MAY 11, 2000 — STATE EDITION — WWW.ONWISCONSIN.COM

Key committee backs regulation of issue ads within 60 days of election

By Richard P. Jones
of the Journal Sentinel staff

Madison — On a strong bipartisan vote Wednesday, a key legislative committee recommended closing a major loophole in Wisconsin's campaign finance laws and regulating what reform advocates have labeled phony issue ads.

But the measure has little chance of becoming law before the fall elections.

Under the proposal, any group that runs a TV ad with the name or image of a candidate within 60 days of an election would have to register with the state Elections Board and list its contributors, just as all candidates and campaign committees must do now.

Voting 8-2, the Joint Committee for Review of Administrative Rules urged the Legislature to pass the measure. Barring a special or extraordinary session, however, the earliest opportunity for the Legislature to consider the bill would not come until January.

Still, Jay Heck, executive director of Common Cause in Wisconsin, hailed the vote as a significant victory.

James Buchen, vice president of Wisconsin Manufacturers and Commerce, doubted the bill would win the Legislature's approval and predicted the courts would reject it if the Legislature didn't.

The committee vote was the Legislature's last attempt at campaign finance reform before the election season begins, and it resulted from the committee's decision last month to suspend an Elections Board rule that attempted to address issue ads run by WMC and other groups.

The board wanted to incorporate a 1976 U.S. Supreme Court ruling into Wisconsin law. The board proposed a so-called magic words test, derived from a footnote in the Supreme Court ruling. If a TV ad or mass mailing used such words as "vote for," "elect," "defeat," "reject" or their "functional equivalents," the sponsors would be subject to state regulation.

However, critics said the board's rule would not deal effectively with the political attack ads that have avoided regulation because they don't tell people how to vote.

"This is a victory for the voters of Wisconsin," Heck said. "This now will level the playing field. This will require that corporations, or unions, or wealthy individuals can no longer dump unlimited, unregulated money during a campaign under the guise of phony issue advocacy."

While the 60-day rule won't apply to the fall elections, Heck said the proposal might have a tempering effect.

"What it does demonstrate to groups is that members of the Wisconsin Legislature will have the will to try to do something to close the biggest loophole in the law," Heck said.

Buchen said, however, that the proposal went beyond merely requiring disclosure.

"It's a flat prohibition on using corporate money for issue advocacy 60 days in front of an election," he said. "It's also flatly unconstitutional. It'll never stand up in court, if it ever had to go there."

Buchen said the committee's actions wouldn't influence WMC this fall.

"It's another of dozens of proposals that float around the Legislature," he said. "It's sort of the worst example of trying to regulate free speech."

Sen. Judy Robson (D-Beloit), committee co-chairman, offered the proposal, which she said was a key recommendation of Gov. Tommy G. Thompson's Commission on Campaign Finance Reform, the so-called Kettl Commission.

Rep. Glenn Grothman (R-West Bend), the other committee co-chairman, had offered a version that copied the Supreme Court's magic words footnote. Only Grothman and Sen. Bob Welch (R-Redgranite) voted against Robson's proposal.

THE DAILY PRESS
Ashland, Wisconsin
NORTHERN WISCONSIN'S MORNING NEWSPAPER

State has chance to make campaign finance reform a reality

The Daily Press

With the start of its 2001 session, the Wisconsin Legislature has an opportunity to quickly take an important step in real campaign finance reform.

Last fall the bipartisan Joint Committee for Review of Administrative Rules developed new rules regulating issue advocacy ads -- ads that clearly advocate one candidate over another, but because they don't use the words "vote for" are exempt from state campaign finance regulations.

Since 1996, groups on both sides of the political aisle have increasingly used issue advocacy ads as a means of supporting candidates without having to disclose who paid for the advertisements.

"It's a bipartisan problem," said Jay Heck, the executive director of Common Cause In Wisconsin, a campaign finance reform advocacy organization.

Heck correctly notes that the spending on issue advocacy ads by "phantom groups" has contributed to spiraling campaign spending -- seen this past election in a $3 million state senate race.

The JCRAR is proposing that any issue advocacy ads running 60 days prior to an election must be regulated like any campaign advertising -- that means full disclosure of who is paying for the advertisement and those paying for the ads would be subject to campaign contribution limits.

Under Wisconsin statutes, the JCRAR must introduce its proposal in January as part of the regular legislative session. Each standing

committee then has 30 days to review the proposed rules, and within 40 days the measure must be placed on the calendar of both the Assembly and the Senate for consideration.

Heck said Senate Majority Leader Chuck Chvala has promised to place measure on the Senate calendar. So far, he has received no such acknowledgement from House Speaker Scott Jensen.

It's clear the time is now to enact this critical piece of campaign finance reform legislation -- in a November advisory referendum, 90 percent of Wisconsin voters in 52 counties said they favored enacting campaign finance reform in the state.

Heck says Wisconsin has gone from being a leader in campaign finance to an "also-ran." This measure will go a long way to making Wisconsin a state where campaigns have no hint of underhandedness.

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Last updated on Tue Dec 12 16:20:40 CST 2000

Our view: It's time for real reform of campaign finance laws

Tribune editorial

What if airlines ran attack ads against each other - complete with pictures of plane crashes and accusations that their rivals are unsafe? Wouldn't you think twice about ever flying again?

What if banks broadcast commercials accusing their competitors of not being a safe place to deposit money? Wouldn't that undermine consumer confidence in banks?

Remember those awful ads from the last election? The worst were placed by independent groups that do not have to abide by state election laws. Their negative, misleading ads have the effect of turning people off to politics and government.

Those were examples used at a breakfast meeting Monday by state Sen.-elect Mark Meyer, a La Crosse Democrat.

Meyer knows what he's talking about. He estimates that a total of somewhere between $1.5 million and $2 million was spent in the election contest between Meyer and Republican Dan Kapanke.

And most of that money was spent by independent groups. Neither candidate wanted the independent help. They didn't want to go negative, and in their own ads they kept the discussion on the issues.

Not so the private groups. Because court rulings have equated the expenditure of money for election ads with free speech - and because of a loophole created by court cases - so-called independent groups don't have to reveal where they get their money, as politicians are required to do.

As long as the independent groups stop short of telling you to vote for or against someone (instead, they say something like, "Call Mark Meyer and tell him you want him to stop ...." doing whatever the ad accuses him of doing.)

It's a loophole that should be closed. Campaign finance reform is badly needed in Wisconsin. We need to do something about independent expenditures, and we need to have immediate disclosure online of all campaign expenditures.

Here's the bottom line: Citizens have a right to know who is paying for political campaigns.

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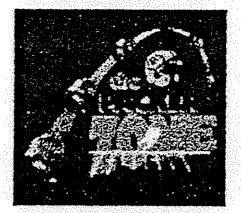
The Sheboygan Press
OPINION
Fri 21-Jul-2000

Elections Board fumbles chance to curb issue ads

Trying to get meaningful campaign finance reform OK'd is sometimes enough to make Pollyanna cynical.

The last hope for curbing the "phony issue ads" in this fall's campaign was dashed Wednesday when the state Elections Board on a 4-4 vote failed to approve a rule.



The rule would have required third parties to disclose that they paid for issue ads featuring the name or likeness of a candidate for state office within 60 days of an election. The rule also would have required the groups to pay for the ads through political action committees, which can accept contributions of no more than $10,000 from individuals under state law.

Phony issue ads are legal end-runs around election laws. A special-interest group can run ads that affect elections with few, if any, restrictions as long as they avoid phrases like "vote for," "vote against" "defeat," etc.

Wisconsin Manufacturers and Commerce, for example, targeted Sen. Chuck Chvala in a past election. It ran ads right before the election saying that Chvala had never seen a tax he didn't like, and called on people to let him know they didn't like this. This was ruled a legitimate issue ad by the state Supreme Court last summer.

Why is the board's failure to act important? It means we'll likely see more money spent on competitive races without the $10,000 limit. It means the ads we're likely to see will be more negative since the folks paying the bill for them can remain anonymous. It means special-interest groups, rather than the candidates, can shape the nature of the debate in a race by the issues they pick for their advertisements.

Jay Heck, executive director of Common Cause in Wisconsin, the nonpartisan citizens watchdog group, said Wisconsin has more phony issue ads than any other state.

Both Republicans and Democrats will have a good opportunity to do something about the campaign-finance mess for future elections early in the next legislative term.

But for this election, the orgy of money and unfettered mud-slinging can proceed with few limitations.

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MONDAY, MAY 22, 2000

EDITORIAL

Let's close this loophole

It didn't get much attention. Maybe that's because this Legislature, now in its final days, has done, and probably will do, nothing about campaign finance reform in Wisconsin.

Unless the governor orders a special session this month to consider reform, January is the Legislature's next chance. That's because on a strongly bipartisan vote, the Joint Committee on Administrative Rules recommended closing a loophole in existing law big enough for every special interest in the state to drive through.

Essentially, what the committee did was recommend curtailing so-called "issue ads," which profess to educate voters but actually are thinly disguised dodges around campaign disclosure laws.

It might be too late for the full Legislature. But the committee's action — and legislative protocol — does guarantee that reform will be high on the list for consideration early in the Legislature's next session.

Any political observer knows that issue ads are really fronts for groups that support a specific candidate for election. Because the ads refrain from using words such as "vote for" and "elect," even if they are clearly designed to elect or defeat someone, special interests are permitted to spend virtually unlimited amounts and still avoid disclosing the source of the money.

It's the kind of information voters might want. The fact that those special interests indulging in issue ads may not want their identities known is in itself disturbing.

So what the committee has recommended is quite simple: Groups that run television ads with the name or image of a candidate within 60 days of an election must register with the State Elections Board and list all their contributors, just as candidates and campaign committees do.

If the rule becomes law, no First Amendment guarantees will be broken. Rather, corporations, unions and the very wealthy will no longer be permitted to hide behind phony issue advocacy ads. The change would level the playing field all around.

Judith B. Robson
Wisconsin State Senator

Testimony of Senator Robson on Senate Bill 2
January 22, 2001

Senator George and Members of the Committee on Judiciary:

Thank you for the opportunity to present testimony on this important issue. Senate Bill 2 was authored by the Joint Committee for Review of Administrative Rules, of which I am the Senate co-chair. This bill will regulate so-called issue ads.

Issue ads are election advertisements that purport to avoid taking sides in an election. Their ostensible purpose is simply to present information to voters. Because the ads do not use phrases such as "vote for" or "defeat," they are not subject to the requirements of Wisconsin's campaign finance laws.

However, as we all know, the purpose of these ads is really to help elect or help defeat certain candidates. They are carefully scripted to portray a candidate in the best or worst possible light and are written to influence voters' views of the candidate. They only appear during election season. But because they do not use certain words, they are exempt from regulation.

The rationale for Senate Bill 2 is simple. Election related communications should be judged on their content and the circumstances in which they are made, not on the basis of specific words such as "vote for" or "elect." Political speech may advocate a specific vote even if certain "magic" words are not used. The dividing line between ads that are subject to Wisconsin's election laws and ads that are exempt should be the context and intent of the ad. The dividing line should not be an arbitrary one that ignores the purpose of an ad by focusing on whether certain words are used.

The reason why we need to regulate issue ads is equally simple. Issue ads deny voters the right to cast an informed vote because sponsors of these ads are not subject to disclosure. Voters simply do not know who is paying for an ad and therefore cannot judge the credibility of the ad.

This bill does not suppress speech, it merely gives voters the right to know who is speaking. Consider an analogy from a different context. Many states have "anti-mask" statutes. These statutes provide that anyone participating in a public demonstration cannot wear a mask. These laws were enacted to force the KKK to take off their hoods in public. The courts have upheld the constitutionality of these laws, saying that under the First

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Amendment the KKK has the right to speak, but does not have the right to speak anonymously. The same principle should guide our elections – let people advertise for and against the candidates they like and dislike, but let the public know who is paying for the ads.

Senate Bill 2 is based on a recommendation of the Governor's Blue Ribbon Commission on Campaign Finance Reform, the Kettl Commission. The Kettl Commission recommended that television and radio commercials, mass mailings and telephone banks that occur within 30 days of an election and that use the name or likeness of a candidate for office should be considered election-oriented activity and therefore subject to reporting and disclosure laws.

The Kettl Commission's report explains the rationale for this recommendation in the following way: "Everyone in electoral politics – candidates, political parties, PACs, and groups educating voters or exploring issues – ought all to be playing on a level field, in the clear light of day."

On a level playing field, in the clear light of day means that we must end the two-tier system that currently exists. Currently, candidates and political parties are subject to reporting and disclosure, but other groups are not. Because some groups are not subject to reporting and disclosure, voters have lost their right to make an informed choice since they do not know who is sponsoring many of the election communications that they see and hear. Subjecting everybody who advocates the election or defeat of a candidate to our reporting and disclosure requirements will give voters the information they need to make an informed choice.

Opponents of this bill will argue that it is unconstitutional. However, I have no doubt that the bill will pass constitutional muster. The United States Supreme Court has said that states have authority to regulate "express advocacy" – communications that advocate the election or defeat of a candidate. The legal question raised by this bill is how to define the term "express advocacy." Instead of relying on specific words, the bill takes the approach that "express advocacy" can be defined by the context in which a campaign ad appears.

This approach is consistent with the decision of the Wisconsin Supreme Court in the case *Elections Board v. Wisconsin Manufacturers and Commerce*. In that case, the Court said that no particular "magic words" are necessary for a communication to constitute express advocacy. The court declined to adopt a context-based definition of "express advocacy" but the members of the court did indicate that the Legislature could probably do so. Senate Bill 2 takes the court up on its invitation to define "express advocacy" based on the context in which an ad appears.

The JCRAR voted 8-2 to introduce SB 2. This vote shows bipartisan support for real change in the area of issue ads. Bipartisan support is not surprising – it is consistent with Wisconsin's proud tradition of open government.

With passage of SB 2, voters would once again regain their rightful place as the most important part of elections. Moreover, if this bill were passed, it would lay the groundwork for other bills. Success at the beginning of the session will make other campaign finance changes possible later in the session. Passage of this bill will set the tone and provide momentum for meaningful reform in other areas.

I urge you to give your approval to Senate Bill 2. Doing so will let voters know who is paying for election ads and will enable them to cast an informed vote.

Thank you.

MEMORANDUM

TO: Members of the Senate Committee on Judiciary, Consumer Affairs, and Campaign Finance Reform

FROM: Sandra George, for the Wisconsin Newspaper Association

RE: The "Issue Advocacy" Regulatory Scheme Contained in Senate Bill 2 Is Unconstitutional!

DATE: January 22, 2001

Senate Bill 2 would impose registration and reporting requirements upon individuals who and organizations which make a communication within 60 days of an election if the communication includes the name or likeness of a candidate who is running at that election. For the reasons outlined below, this provision will not withstand constitutional scrutiny and should be stricken from the bill.

The provision runs afoul of a long line of U.S. Supreme Court decisions which follow *Buckley v. Valeo*, 424 U.S. 1 (1976). *Buckley* is the landmark decision which established the principle that a government may only regulate communications which expressly advocate the election or defeat of a particular candidate. Under *Buckley*, speech which merely discusses public policy issues and which lacks the "express advocacy" described in the decision cannot be regulated.

Under Senate Bill 2, the mere mention of a candidate's name in a communication made with 60 days of an election invokes the heavy hammer of state regulation. The purpose of this portion of the bill is to lump a communication which merely uses a candidate's name into the same regulatory boat with a communication which implores those who read the words to vote in a particular manner. Under *Buckley*, it is clear that such a leap may not constitutionally be made.

It is important to note that, with very limited exceptions, a corporation may not engage in "express advocacy" under current Wisconsin law. (The exceptions cover such things as communicating exclusively with shareholders or members and with supporting or opposing a referendum.) Current law wisely places no restrictions of the discussion of public policy issues, so long as such communications do not advocate a vote for or against a particular candidate.

Finally, it should be pointed out that the current exception for the news media may be of little use here. When similar legislation was pending last session, the State Elections Board

informally opined that "Wisconsin law specifically exempts fair coverage of bona fide news stories, interviews with candidates, editorial comment and endorsements". One wonders what the words "fair" and "bona fide news stories" mean in this context. Such clarifications ('fair" and "bona fide") imply that a Wisconsin newspaper could not freely discuss public policy issues without interference from the "content police" if Senate Bill 2 is enacted in its current form!

WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

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

DATE: June 2, 2000

TO: SENATOR JUDY ROBSON

FROM: Ronald Sklansky, Senior Staff Attorney

SUBJECT: Regulation of Express Advocacy by the Elections Board

This memorandum, prepared at your request, responds to a question you have raised regarding the regulation of express advocacy by the Elections Board. Specifically, you have asked whether the Elections Board may promulgate a rule that regulates express advocacy in a manner similar to that proposed in a bill draft recommended by the Joint Committee for Review of Administrative Rules (JCRAR) for introduction into the Wisconsin Legislature.

A. BACKGROUND

Current law provides that a campaign disbursement or obligation that is not made or incurred by a candidate or an entity primarily organized for political purposes is required to be reported to the Elections Board if the purpose of the disbursement or obligation is to expressly advocate the election or defeat of a clearly identified candidate. [See s. 11.06 (2), Stats.]

On October 26, 1999, the Elections Board began a formal rule promulgation process by initiating Clearinghouse Rule 99-150, relating to express advocacy. Interpreting various provisions of ch. 11, Stats., the rule provides that an individual other than a candidate, and a committee other than a political committee, are subject to campaign disclosure and record keeping requirements if the person or committee makes a communication meeting all of the following conditions:

1. The communication makes a reference to a clearly identified candidate.

2. The communication expressly advocates the election or defeat of the candidate.

3. The communication unambiguously relates to the campaign of the candidate.

4. The communication contains the phrases or terms "vote for," "elect," "support," "cast your ballot for," "Smith for Assembly," "vote against," "defeat" or "reject" or the functional equivalents of these phrases or terms.

Clearinghouse Rule 99-150 was unanimously objected to by both the Assembly Committee on Campaigns and Elections and the Senate Committee on Economic Development, Housing and Government Operations. The JCRAR concurred in the standing committee objections by a vote of Ayes, 8; Noes, 2.

Following its objection to Clearinghouse Rule 99-150, JCRAR recommended for introduction into both houses of the Legislature companion bills relating to the scope of regulation and reporting of information by nonresident registrants under the campaign finance law. Briefly, each bill provides the following:

1. Campaign disclosure and reporting requirements under ch. 11, Stats., will be imposed on a person or entity that makes a communication by means of one or more communications media or a mass mailing, or through a telephone bank operator; that is made during the period beginning on the 60th day preceding an election and ending on the date of that election; and that includes a name or likeness of a candidate whose name is certified to appear on the ballot at that election, an office to be filled at that election or a political party.

2. Nonresident registrants under ch. 11, Stats., will be required to report the same information as all other registrants.

The JCRAR bills are drafted so that they will take effect on the day after its date of publication, although the treatment of nonresidents first applies with respect to reporting periods beginning on or after the effective date of the enactment. [See s. 991.11, Stats., and SECTION 7 of the bills.]

B. DISCUSSION

The Elections Board clearly has the statutory authority to promulgate a rule regarding the interpretation and meaning of the phrase "express advocacy." [See ss. 5.05 (1) (f) and 227.11 (2) (a), Stats.] The Elections Board has used this authority to promulgate its current rule on this subject, s. El Bd 1.28, and to propose Clearinghouse Rule 99-150.

In *Elections Board v. Wisconsin Manufacturers and Commerce*, 227 Wis. 2d 650, 597 N.W.2d 721 (1999), the Wisconsin Supreme Court held that an appropriate definition of the term "express advocacy" is not limited to the "magic words" set forth in the U.S. Supreme Court decision in *Buckley v. Valeo*, 424 U.S. 1 96 S. Ct. 612 (1976), and restated in Clearinghouse Rule 99-150. However, the Court refused to create a rule on this topic and stated that the task is better left to the Legislature or the Elections Board. In discussing the issue, the Court noted the difference between defining "express advocacy" in terms of specific words that advocate election or defeat of a candidate and defining "express advocacy" in terms of the context in which a campaign advertisement appears. The opinion is not entirely clear as to which approach the Court ultimately will favor. For example, the Court noted that one federal appeals court and the

Federal Elections Commission supports a context-based approach. Also, the Court made its holding in the case, "[r]egardless of whether it might be permissible to consider context in defining express advocacy." [*Id.*, 597 N.W.2d at p. 734.] On the other hand, the Court cited federal appeals court decisions opposed to a context-based approach and concluded the opinion with the following remarks:

> . . . Consistent with this opinion, we note that any definition of express advocacy must comport with the requirements of *Buckley* and *MCFL* and may encompass more than the specific list of "magic words" . . ., but must, however, be "limited to communications that include explicit words of advocacy of election or defeat of a candidate." [*Id.*, 597 N.W.2d at p. 737; footnote omitted.]

The concurring opinion of Justice Bablitch states "that the court will consider as an alternative [to the "magic words" test] a context-based approach." [*Id.*, 597 N.W.2d at p. 738.] In addition, Justice Prosser, dissenting in part, reads the majority opinion as an encouragement to rule-makers to craft a context-based rule. [*Id.*] Finally, the two dissenters to the majority opinion "agree that the contextual setting may assist in the consideration of whether an ad is express advocacy. [*Id.*, 597 N.W.2d at p. 739.]

It appears that the Elections Board could promulgate a valid administrative rule that:

1. Is similar to the draft legislation approved by JCRAR; and

2. Includes explicit words of advocacy of election or defeat of a candidate.

For example, an administrative rule could provide that campaign disclosure and reporting requirements will be imposed on a party or entity that makes a communication by means of one or more communication media or a mass mailing, or through a telephone bank operator, when it is made during a specified period preceding an election and includes explicit words of advocacy of election or defeat of a candidate. The nature of these "explicit words" can be determined in a rule promulgated by the Elections Board. From a reading of all four opinions in the *Wisconsin Manufacturers* case, it appears that whether the words in the advertisement are explicit in terms of express advocacy can depend upon the context in which they are used. Consequently, appropriate wording in connection with the name or likeness of a candidate, or possibly in connection with a political party, could be construed by an Elections Board administrative rule to constitute express advocacy. At the very least, it cannot be concluded from the nature of the opinions in the *Wisconsin Manufacturers* case that this issue has been finally settled; the Elections Board has room to propose a context-based administrative rule that imposes reporting and disclosure requirements on a person or entity that expressly advocates the election or defeat of a candidate.

If I can be of any further assistance in this matter, please feel free to contact me.

RS:tlu;wu

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JUDICIARY, CONSUMER AFFAIRS AND CAMPAIGN FINANCE REFORM
SENATOR GARY GEORGE, CHAIR
HEARING ON S.B.2, Issue Ad Regulation
State Capitol, Room 201 SE
January 22, 2001

Dear Senator George and committee members,

Thank you for accepting testimony on S.B. 2, legislation to regulate groups that fund issue ads. I am Rev. Sue Moline Larson, the legislative advocate for the six synods of the Evangelical Lutheran Church in America with 750 congregations in Wisconsin. I register in favor of S.B. 2.

Religious and non-governmental groups play an important role in overseeing election policy by helping to identify and by opposing unfair electoral practices. We strongly support advocacy for needed reform. For that reason, I urge prompt and positive legislative action on the rule voted upon by the Joint Committee for Review of Administrative Rules, CR 99-150.

Regulation of campaign reporting procedures is a critical first step to reforming Wisconsin's broken campaign finance laws. Our democracy depends on a well informed citizenry with the ability and resources to discuss and debate candidates issues. Education, however, is not the motivation of issue advocacy that features a candidate but fails to specifically state, "vote for (or against)." Such an ad really is express advocacy and it has the purpose of electing or defeating a candidate.

Citizens have the right to receive accurate and complete information concerning the sponsors of issue ads and the source of their funding. It is only fair play for groups purchasing time in the media to provide that information. Knowing the source of money employed to air such ads enables the public to form a more educated response. Disclosure is critical to bringing a greater level of integrity to the process.

"Money is not speech, money is property". Court Justice John Paul Stevens opened a case last January upholding contribution limits. Reform of issue advocacy rules is an expression of the democratic ideal of equality. It seeks to preserve the meaning of the First Amendment for all citizens, and not just major political funders.

In 1995, the national Church Council of the Evangelical Lutheran Church in America endorsed campaign finance reform that adequately responds to the principles of increased disclosure and campaign reporting procedures. The principles included in this legislation support a framework that does not promote private gain but rather the common good.

Please approve the reform measures included in Senate Bill 2.

Thank you.

The League of Women Voters of Wisconsin, Inc.

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Statement to the Senate Committee on Judiciary, Consumer Affairs, and Campaign Finance Reform Regarding General Reform of Campaign Finance and Election Laws - LRB # 1551, *Impartial Justice*

January 22, 2001

The League of Women Voters of Wisconsin is pleased to have this opportunity to respond to the reintroduced draft legislation relating to campaign financing with respect to the office of justice of the supreme court.

In September 1999 we spoke to the Assembly Committee on Campaigns and Elections in support of AB377 - known as Impartial Justice - which would have provided close to full public financing for Supreme Court elections.

Today we testify that we continue to believe that substantial public financing of Supreme Court elections will enable Wisconsin citizens to have confidence that those holding the highest office in our justice system can serve with independence because they have been able to run campaigns which are adequately financed

We believe that any private funding in Supreme Court races should be controlled by individual contribution limits set much lower than current law provides. This will encourage candidates to accept the public grant and control their spending. They will not need to fill their campaign treasuries with their own funds - only possible for the wealthy - or contributions from those with professional interest in the administration of justice. Their impartiality will be unquestioned.

We ask that consideration be given to providing matching supplementary grants to candidates who are the victims of independent spending above specified levels. Provisions to do this for all races were included in bills introduced last session and will be again in the coming session. Supplementary grants may effectively discourage and eliminate independent spending.

We thank you for holding this hearing and seeking input from interested citizens and organizations.

The League of Women Voters of Wisconsin, Inc.

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Statement to the Senate Committee on Judiciary, Consumer Affairs, and Campaign Finance Reform Regarding General Reform of Campaign Finance and Election Laws - Senate Bill 2

January 22, 2001

We support the rule of the Joint Committee on Review of Administrative Rules (JCRAR). We believe that when ads mention candidate(s) within 60 days of an election they must be defined as campaign ads, and they must be regulated as independent expenditures are so that it is known who is spending for the ad, how much is spent, and the sources of the funds.

Thank you for this opportunity to respond.

Wisconsin Academy of Trial Lawyers

Keeping Wisconsin Families Safe

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Testimony

of

M. Angela Dentice

on behalf of the

Wisconsin Academy of Trial Lawyers

Before the

Senate Judiciary, Consumer Affairs & Campaign Finance Committee

On

LRB Draft — 1551/1

January 22, 2001

Senator George and member of the Committee, my name is M. Angela Dentice. I am a practicing attorney in Milwaukee, Wisconsin and the President of the Wisconsin Academy of Trial Lawyers (WATL). I will speak in favor of LRB Draft 1551/1, also referred to as "The Impartial Justice Bill." Thank you for this opportunity to testify.

The Wisconsin Academy of Trial Lawyers (WATL) is a voluntary, statewide bar association whose 1,000 members are attorneys who represent injured consumers in personal injury litigation. In July 1999, the WATL Board of Directors endorsed that portion of the Impartial Justice Bill, which provided full public financing for the office of justice of the Supreme Court.

WATL supports full public financing for the office of Supreme Court Justice. Like everyone here, WATL members are concerned about the escalating costs of running for Supreme Court Justice. We believe that fund raising inevitably raises questions of bias and partiality and judicial independence which tend to undermine public confidence in the integrity of judicial officers and the judicial process.

The independence of the judiciary is compromised when judicial candidates receive money from special interests and individual attorneys who appear before the court. The money appears tainted no matter the source of the contribution.

Last year the media have reported bruising multimillion-dollar contests for judicial races across the country, particularly in Michigan, Ohio and Mississippi. Attack advertising, independent expenditure campaigns, the use of aggressive political consultants and what are often only thinly veiled promises to sustain or overturn controversial decisions have become familiar parts of judicial campaigns. We desperately need an alternative scenario. That is why WATL supports full public financing for candidates running for the office of justice of the Supreme Court. We believe it can relieve the pressure to start an "arms race" for Supreme Court Justice.

If you have any questions, I would be happy to try and answer them.

Wisconsin Academy of Trial Lawyers

WISCONSIN RIGHT TO LIFE

State Affiliate of the National Right to Life Committee, Inc., Washington, DC 20004-1199

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January 19, 2001

TO: Members of the Senate Judiciary Committee

FROM: Susan Armacost, Legislative Director

RE: Senate Bill 2 and LRB-1551

Wisconsin Right to Life **strongly opposes** Senate Bill 2 and LRB-1551.

Senate Bill 2 would place unconstitutional and burdensome restrictions on the First Amendments rights of citizens' groups. The U. S. Supreme Court has repeatedly and emphatically ruled that the First Amendment provides and *absolute* constitutional shield for ***issue advocacy***, regardless of whether that commentary reflects favorably or unfavorably on particular office holders of office seekers or whether a citizens' group is motivated by the intention of influencing elections.

Yet, SB 2 would force citizens' groups to report all ***issue advocacy*** activities to the State Elections Board as if it were ***express advocacy***. Citizens' groups would be forced to provide donor information to the State where it would become a matter of public record. Our donors expect that their donor information will remain strictly confidential and would strongly object to their contributions being made public. But even beyond those important privacy concerns remains that fact that **it is none of the State's business who contributes to Wisconsin Right to Life, Inc. or any other citizens' group in the state.**

Senate Bill 2 would also chill the right of many ordinary citizens to engage in ***issue advocacy***. This would certainly be the case for our chapters who are located in communities throughout the state. Our chapters are not political action committees and they are made up of ordinary citizens. To comply with complicated election laws is not a practical option for individuals who distribute issues advocacy pieces from their homes. Rather than risk violating election laws, they will likely refrain from commenting on office holders and office seekers, which is precisely what campaign "reformers" want.

The speech of citizens' groups cannot be censored and their speech cannot be rationed in order to be "allowed" to participate in the political process. Citizens, and the organizations they join, do not need the "permission" of lawmakers to freely engage in issue advocacy. The Bill of Rights has already granted them that permission.

LRB 1551/1 would use monies derived from general revenue (taxpayer dollars) to fund the campaigns of candidates for State Supreme Court. **This would place taxpayers in the position of being forced to**

fund the campaigns of candidates with whom they may disagree and not want elected. The members and supporters of Wisconsin Right to Life would adamantly object to their tax dollars supporting candidates who support legalized abortion!

LRB 1551/1 would add insult to injury by awarding additional monies to tax-funded candidates if non-tax-funded candidates raise more money than the tax-funded candidate receives.

The very notion that the State of Wisconsin would award "benefits" to candidates who have done nothing to earn them is appalling. The non-funded candidate who works hard to raise campaign funds is penalized under this proposal and the opponent who does not have to life a finger to raise funds is rewarded! Something is very wrong with this picture!

Wisconsin Right to Life urges you to reject Senate Bill 2 and LRB 1551/1.

Thank you.

REPRESENTING WISCONSIN BUSINESS
Wisconsin Manufacturers & Commerce

Memo

TO: **Senate Judiciary Committee**

FROM: **James A. Buchen**
Vice President, Government Relations

DATE: **January 22, 2001**

RE: **Senate Bill 2 – Issue Advocacy**

Wisconsin Manufacturers & Commerce (WMC) is opposed to Senate Bill 2 which would ban corporate issue advocacy 60 days prior to an election. While the bill is described as creating a disclosure requirement, it actually functions as a ban on the use of corporate funds for any advertisement that contains the name or likeness of a candidate 60 days prior to an election. Such a ban is clearly unconstitutional.

SB 2 Bans Corporate Issue Advocacy

The bill modifies the definition of "political purpose" which causes other existing sections of Chapter 11 to work as a ban on corporate issue advocacy.

- Section 2 of the bill expands the definition of "political purpose" to include any mass communication that bears the name or likeness of a candidate 60 days out from an election.
- Under existing law, section 11.01(7) stats., defines disbursement as spending money for "a political purpose."
- Under existing law, section 11.38(1) stats., prohibits corporations from making "disbursements."

As a result, the proposed statutory changes would prohibit a corporation from paying for any type of communication that bears the name or likeness of a candidate for public office 60 days prior to an election. The disclosure provisions of the bill are essentially irrelevant as corporate issue advocacy would be banned under the bill and PAC-sponsored independent expenditures already require disclosure.

SB 2 Is Unconstitutional

In the landmark decision, Buckley v. Valeo, 424 U.S. 1, 57 (1976), the court granted independent issue advocacy full freedom from government regulation. The court proclaimed that all regulations impinging political expression burden "core first amendment rights of political expression." Id.at 45-46. The court said that speech regulation could only apply to communications by individuals, groups or corporations that "in express terms advocate the election or defeat of clearly identified candidate." Id.at 44. The effect is to protect corporate issue advocacy from any regulation, especially an outright ban, so long as the advertisements contain no "explicit words of advocacy of election or defeat of a candidate." Id.at 43. Neither the State Legislature nor any state agency has the authority to alter or ignore the U.S. Supreme Court's interpretation of these first amendment rights.

The bill would ban corporate issue advocacy that contains the name or likeness of a candidate 60 days prior to an election. Proponents argue that this limitation is constitutional because it still allows corporations to discuss issues, so long as

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they avoid mention of candidates prior to an election. The Supreme Court has clearly established the principal that speech cannot be regulated by the government simply because a candidate's name is mentioned. "So long as persons and groups eschew expenditures that in express terms advocate the election or defeat of a clearly identified candidate, they are free to spend as much as they want to promote the candidate and his views." Id. at 45. Absent express advocacy, the Constitution does not permit the government to regulate independent political communications.

In addition, a number of federal courts have ruled that an advertisement's proximity to an election can not be used to justify regulation. "Indeed the right to speak out at election time is one of the most zealously protected under the Constitution." Federal Election Commission v. Central Long Island Tax Reform Immediately Committee, 616 F. 2d 45.53 (2nd Cir. 1980).

The Federal District Court in Right to Life of Michigan, Inc. v. Candice Miller, et al, 23 F. Supp. 2d 766; (1998), invalidated an administrative rule nearly identical to the Robson/Freese proposal. The rule prohibited corporations from paying for communications 45 days before an election that contained the name or likeness of a candidate. In their decision the court noted, "Public discussion of public issues readily and often unavoidably draws in candidates and their positions, their voting records and other official conduct." Id. at 767. In rejecting the regulation, the court said:

> The Court is satisfied that Rule 169.39b is broad enough to chill the exercise of free speech and expression. Because the rule not only prohibits expenditures in support of or in opposition to a candidate, but also prohibits the use of corporate treasury funds for communications containing the name or likeness of a candidate, without regard to whether the communication can be understood as supporting or opposing the candidate, there is a realistic danger that the Rule will significantly compromise the First Amendment protections of not only Plaintiff, but many other organizations which seek to have a voice in political issue advocacy.
>
> Accordingly, the Court declares that Rule 169.39b is unconstitutional on its face, and the Court enjoins the State from enforcing Rule 169.39b. Id. at 770.

The Wisconsin Supreme Court also addressed the question of regulating corporate issues advocacy in Elections Board v. Wisconsin Manufacturers & Commerce, 227 Wis. 2d 650 (1999). The court pointed out that the Legislature and the Elections Board are free to try and develop new issue advocacy regulations, but in doing so they must "comport with the requirements of Buckley and MCFL . . ." and must "be limited to communications that include explicit words of advocacy of election or defeat of candidate." Id. at 33. The court clearly stated that neither the Legislature nor the Elections Board may stretch the definition of expressed advocacy to regulate communication that does not clearly advocate the election or defeat of a candidate. The court said:

> In our view, Buckley stands for the proposition that it is unconstitutional to place reporting or disclosure requirements on communications which do not "expressly advocate the election or defeat of a clearly identified candidate." Buckley, 424 U.S. at 80. Any standard of express advocacy must be

> consistent with this principle in order to avoid invalidation on grounds of vagueness and/or overbreadth. See MCFL, 479 U.S. at 248-49; Buckley, 424 U.S. at 44, 80. We are satisfied that for a political communication or advertisement to constitute express advocacy under Buckley and MCFL, it must contain explicit language advocating the election or defeat of a candidate who is clearly identified. Id. at 19.

In conclusion, SB 2 would not merely regulate, but prohibit, corporate issue advocacy 60 days prior to an election if it contained the name or likeness of a candidate. The proposal clearly fails to meet the constitutional minimum standard articulated by both the U.S. Supreme Court and the Wisconsin Supreme Court which requires communications to contain not only the name or likeness of a candidate, but explicit words advocating the candidate's election or defeat in order to be subject to regulation of any kind. There can be no doubt that this proposed regulation is unconstitutional on its face.

We urge the Committee to reject this bill and uphold the right of groups and individuals to freely participate in the public discussion of issues and candidates which the Supreme Court has recognized as crucial in "assuring the unfettered interchange of ideas for the bringing about of political and social changes desired by the people." Buckley, 424 U.S. at 14.

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William Malkasian, CAE, Executive Vice President
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TO: Senate Judiciary Committee

FROM: Michael Theo and Joe Murray

DATE: January 22, 2001

RE: SB 2 – Prohibition of Issue Advocacy Expenditures

On behalf of the Wisconsin REALTORS Association (WRA) we strongly urge you to oppose Senate Bill 2, legislation that would prohibit constitutionally protected free speech. Instead, we encourage you to consider appropriate reforms that will help restore public confidence in the electoral and legislative process. In this effort, we stand ready to work with you to develop meaningful campaign finance reforms.

Provisions of SB 2

As drafted, SB 2 defines as express advocacy *all* political communication in the 60 days prior to an election that contains the name or likeness of a candidate or the name of a political party – even if the political communication does not expressly advocate the election or defeat of that candidate. Thus *any* corporate expenditure on political speech within 60 days of an election will be considered a "contribution" or "disbursement," both of which are flatly prohibited under Wisconsin law. The net effect would be to ban a substantial amount of corporate political speech in Wisconsin.

Unconstitutional on its face

SB 2 is unconstitutional on its face. Attached to this cover memo is a detailed memo discussing the jurisprudence addressing the distinction between issue and express advocacy since the seminal U.S. Supreme Court case of *Buckley v. Valeo* in 1976. Viewed individually or collectively, these cases present clear and compelling standards upon which to judge the constitutionality of regulations on political speech. The bottom line: government can only regulate political speech that employs clear terms calling for the election or defeat of a specific candidate – or express advocacy. Everything else, including a discussion of issues and candidates, is free speech protected by the First Amendment and cannot be regulated. Based on the case law, it is clear that by prohibiting certain corporate political speech occurring in the 60 days prior to an election, SB 2 is unconstitutional.

While unconstitutional, SB 2 is not altogether novel

SB 2 proposes to establish a regulation based on the timing or context, as opposed to the text, of a political communication. While unconstitutional, this concept is not novel. Similar efforts to regulate issue advocacy by other states and the Federal Elections Commission, all have failed. Without speech that expressly advocates the election or defeat of a clearly identified candidate, the courts have consistently held that the First Amendment prohibits *any* regulation.

However, what *is* novel is SB 2's proposed pre-election regulation of issue advocacy that contains "the name of a political party." This provision is not only unconstitutional, it is unprecedented. We are aware of no other legislative proposal or law that has attempted to regulate such issue advocacy. Nowhere in *Buckley* or in any of the judicial decisions following *Buckley* does express advocacy include a political communication that mentions a "political party." Finally, SB 2 is more restrictive than many of the failed attempts to regulate issue advocacy because it would apply not just to corporations but to individuals as well.

Context-based approach is wrong

SB 2 proposes that the "trigger" for regulation of political speech be proximity to an election. Any issue advocacy using the name or likeness of a candidate or political party is automatically deemed express advocacy solely because of its timing in relation to Election Day. The courts have repeatedly rejected the notion that timing should be the sole consideration in distinguishing express and issue advocacy. In SB 2, timing is not *a* factor; it is *the* factor, making it unquestionably unconstitutional.

Principles for Reform

The WRA supports real campaign finance reform legislation that:

- improves the quality and timeliness of public disclosures of political contributions given and received;
- restricts the solicitation of campaign contributions during session or in close proximity to it;
- provides an appropriate level of public financing in exchange for spending limits;
- is consistent with current U.S. Supreme Court as well as state and federal court decisions; and
- protects the constitutional rights of our association and its members to fully participate in the political process and exercise their constitutional rights of free speech and political association.

Conclusion

While we do not doubt the sincerity of those legislators and others who support SB 2 and other campaign finance reform initiatives, the First Amendment prohibits even this type of well-meaning regulation.

> ***The courts have held – forcefully, repeatedly, recently, and virtually unanimously – that unless speech expressly advocates the election or defeat of a clearly identified candidate, it cannot be regulated. That is the constitutional standard, and it is the only standard.***

We therefore respectfully urge you to reject SB 2.

Senator Gary R. George
State of Wisconsin
Sixth Senate District

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Facsimile Cover Sheet

To: Jamie Kroening
La Follette, Godfrey & Kahn

From: Office of State Senator Gary R. George

Recipient's Fax Number: (608) 257-0609

Number of pages: 3, including cover sheet.

Jamie Kroening
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Wis. Newspaper
Assn. reception
257-0609

If you have difficulty receiving thi 6-2500.

TO: Wisconsin Editorial Page Editors

FROM: Jim Pugh, WMC PR Director

DATE: February 7, 2001

RE: Unconstitutional Issue Ad Bill

The Wisconsin Assembly is slated to consider an unconstitutional bill that would ban issue ads run by businesses and other groups that mention candidates within 60 days of an election.

WMC opposes the bill, SB 2, which undermines free speech rights in Wisconsin. The bill passed the Senate in late January.

Please join the calls for defeat of this unconstitutional proposal, which rolls back First Amendment rights in Wisconsin.

Included here for background are:

- A Beloit Daily News editorial calling for defeat of SB 2.
- A column from Wisconsin State Journal Editorial Page Editor Tom Still opposing the free speech restrictions in SB 2.
- A summary of the cases in which similar restrictions have been held unconstitutional, which was excerpted from an analysis by First Amendment lawyer Brady Williamson.

The bill, as currently drafted, would limit the free speech rights of many groups that receive corporate contributions and publish voter guides, such as the League of Women Voters.

Please call me at (608) 258-3401, extension 3037 if you have questions. Or log into www.wmc.org.

Thanks.

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Beloit Daily News
Tuesday, February 6, 2001

EDITORIAL

Unconstitutional

The longing of the political class to limit speech should concern all Americans

QUESTION: WHY DO politicians so dislike the relatively free and unfettered way Americans can pool their money and buy election-year ads?

Answer: Because it works.

That's the best reason we can think of to avoid excessive government entanglement in the process.

And that's why we think Wisconsin Senate Bill 2 is a bad idea.

THAT PROPOSAL would regulate any ad that mentions a specific candidate within 60 days of an election. Such ads would be considered "express advocacy," a fancy legal term coined in 1976 by the U.S. Supreme Court.

In that ruling, the court held that political groups could avoid most spending and disclosure regulations if advertising focused on political concerns and issues without expressly advocating a vote for or against a particular candidate.

Obviously, such issue ads are surely intended to influence voter preferences in an election. Why else would any group buy the messages?

But by carefully crafting the language, so there's no overt call for a specific vote to be cast, such ads stay within the letter of the law laid down by the high court.

"SB2 should be dumped"

THE POLITICIANS, particularly incumbents, don't like that one bit. SB2 would address the situation, by setting a time limit restricting any ads that mention a specific candidate.

We think that's unconstitutional. When legislators act on the bill, they should reject it. If not, the courts may be expected to reject it later, at considerable expense to taxpayers.

These days, many in the political class are on a mission to clamp the heavy hand of regulation on the people's electoral speech. From McCain-Feingold at the federal level to bills such as this one pending in Wisconsin, politicians want to limit what can be said and when to say it.

That concept is flawed from the start. The U.S. Constitution protects freedom of speech, including political speech. It does not make an exception for speech that names a candidate within 60 days of an election.

WHEN IT COMES to free speech, this newspaper's views are absolutist. When the people start allowing politicians and government bureaucrats to regulate speech of any kind — particularly political speech — the danger ought to be clear to all.

Politicians wail about the influence of money in campaigns. But where does that money come from? It doesn't just drop from the sky. It comes from the people, who band together to promote their own political interests, on both sides of the liberal-conservative contest. To us, in this free country, that right should be protected.

It's understood that some scheming and scamming and trashing goes on with these ads. But clamping down on that at the expense of free speech guarantees just is not acceptable. SB2 should be dumped.

$1.75

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THOMAS W. STILL

Campaign laws cannot chill speech

It's easy to believe that meaningful campaign finance reform doesn't happen because shadowy special interests and money-addicted politicians stand in the way. Easy, but mostly wrong.

Sweeping changes in Wisconsin and federal campaign finance laws have proven elusive because the legal principles at stake are not easily compromised. Some reformers like to frame the issue in black and white terms, but the reality is that campaign finance law is swathed in shades of gray. Reform is so hard because the issues are so tough.

A case in point is Senate Bill 2, legislation that will come to a vote this week in the state Senate. The bill is designed to put limits on so-called "issue ads," which are typically run just before an election by groups that praise or condemn (mostly condemn) candidates for public office. These ads fly under the radar of Wisconsin's election law, which generally requires disclosure of who's paying for campaign activities and sets limits on how much can be spent.

How do "issue ads" escape such strictures? By adhering to the letter of a 1976 U.S. Supreme Court decision that said it's OK for politically motivated groups to voice their concerns so long as they don't "expressly advocate" a vote for or against a candidate.

For 25 years, that "bright line" test of express advocacy has withstood one court challenge after another. The courts have decided, quite simply, that protecting free speech principles outlined in the First Amendment to the U.S. Constitution is more important than cracking down on issue ads.

Make no mistake, most "issue advocacy" ads are phony. They allow groups on both ends of the political spectrum to conceal who pays. They make it harder for candidates to be heard in their own campaigns. They dramatically increase how much money is poured into elections.

So why not regulate or even ban them? Because the cure may be worse than the disease.

Senate Bill 2, in its current form, would regulate so-called issue ads within 60 days of an election. An ad broadcast 61 days before an election would be OK; the same ad broadcast the next day would violate the law. Similar time requirements have been struck down in all states except Connecticut, where a 90-day rule has yet to be challenged.

Supporters of SB 2 say the 60-day rule would be "defensible" in court. They note that the Wisconsin Supreme Court in 1999 invited the Legislature to construct a "context-based approach" to regulating issue ads, that the McCain-Feingold bill is proposing basically the same thing at the federal level, and that Wisconsin voters last fall overwhelmingly supported an advisory referendum urging "full and prompt disclosure of election-related activities."

Compelling arguments, except that the First Amendment doesn't set time limits on political speech. Reformers who dislike the "bright line" drawn by the U.S. Supreme Court's express advocacy rule aren't troubled by drawing a bright line at 60 days before an election. The notion that government can regulate the content of political speech by setting deadlines for when it's acceptable and when it's not should be troubling to all citizens.

Does that mean so-called issue ads should escape scrutiny? Of course, not. What's needed is better disclosure so voters know who's paying for the ads. Senate Bill 2 would be acceptable if it forced open reporting without chilling free speech or setting arbitrary time limits. But, like anything with campaign finance reform, getting there won't be easy.

Still is associate editor of the State Journal.

60-Day Issue Ad Regulations Unconstitutional Speech Restrictions

A proposal to limit political issue ads within 60 days of an election has been proposed for Wisconsin in 2001 SB 2. Similar plans have been rejected by federal courts and a state supreme courts as unconstitutional violations of the First Amendment.*

WEST VIRGINIA – In *West Virginians for Life, Inc. v. Smith*, a federal court enjoined the enforcement of a "60-day voter guide law" as an unconstitutional attempt by the legislature to regulate issue advocacy. The legislature had enacted a new campaign finance statute "on the unstable foundation of a presumption that any voter guide distribution within sixty days of an election is express advocacy and therefore subject to regulation under the principles of *Buckley v. Valeo*."

MICHIGAN – A federal court struck down a Michigan rule that imposed a prohibition on corporate communications employing a candidate's name or likeness within the 45 days prior to an election. Striking down the rule as facially unconstitutional, the court described the ban as "broad enough to chill the exercise of free speech and expression . . . without regard to whether the [political] communication can be understood as supporting or opposing the candidate." The state did *not* appeal the court's decision.

VERMONT – In 2000, the U.S. Court of Appeals rejected a state disclosure requirement that applied to anyone who makes an expenditure totaling $500 or more on "mass media activities" within 30 days of an election. *See Vermont Right to Life v. Sorrell*, 221 F.3d 376 (2nd Cir. 2000). The Vermont Right to Life Committee ("VRLC") had challenged the disclosure provision as an unconstitutional restriction on "issue advocacy."

WASHINGTON – Echoing the constitutional concerns addressed in *Vermont Right to Life*, the Washington State Supreme Court recently affirmed a lower court decision prohibiting the application of a state campaign finance law to issue advocacy. In a 6-3 decision, the Washington Supreme Court concluded that "soft money" state GOP ads were issue advocacy and, therefore, protected from *any* government regulation under the First Amendment.

NORTH CAROLINA – In North Carolina, the legislature had enacted a statute designed to regulate all political communications, at any time, that directly named a candidate and were not "[m]aterial that is solely informational and not intended to advocate the election or defeat of a candidate . . . ." A U.S. Appeals court ruled: "Because [the disclosure statute] would allow the regulation of issue advocacy wherein the speaker has manifested an intent to advocate the election or defeat of a candidate, it is unconstitutionally overbroad and the State is permanently enjoined from enforcing it.

*(Source: Memo from La Follette, Godfrey & Kahn to Wisconsin Realtors Association.)

REPRESENTATIVE SHIRLEY KRUG

WISCONSIN LEGISLATURE • ASSEMBLY DEMOCRATIC LEADER

For Immediate Release
January 10, 2001

Contact: Rep. Shirley Krug
Phone: (608) 264-8658

GOP Front Group Leveled with Huge Fine

Elections Board Cites Failure to Report Over $145,000 in Late Contributions

(Madison) – Project Vote Informed, a shadowy, Republican front group which orchestrated unprecedented negative smear campaigns against Democratic Assembly candidates in the November elections, was hit today with one of the largest fines in recent memory by the State Elections Board.

Among the charges against Project Vote Informed (PVI) and its treasurer, long-time GOP operative Todd Rongstad, was the failure to report more than $145,000 in late contributions from the Republican Party of Wisconsin and others.

Rongstad, who also organized the phony issue advocacy group Alliance for Working Wisconsin, spent hundreds of thousands of dollars raised by Republicans in an organized effort to defeat Assembly Democrats.

Assembly Democratic Leader Shirley Krug (D-Milwaukee) said she was hopeful the $5,500 fine would be a warning to Republicans about blatantly disregarding campaign finance laws.

"The failure of Todd Rongstad and the Republicans to successfully skirt the campaign laws of the State of Wisconsin is a victory for the people of Wisconsin," said Krug. "The message to Republicans should be clear that no one is above the law."

Among the tactics employed by Rongstad and the GOP were an attack on the minor child of then-Rep. Sarah Waukau, who was defeated in her re-election bid.

Rongstad has a long portfolio of negative campaigns under his belt, including those orchestrated by the Teddy Roosevelt Fund in 1998.

# # #

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Background on Senate Bill 2 (Issue Ads)

Current law

Current law provides that a campaign disbursement or obligation that is not made or incurred by a candidate or an entity primarily organized for political purposes (in other words, an independent expenditure) is required to be reported to the Elections Board if the purpose of the disbursement or obligation is to expressly advocate the election or defeat of a clearly identified candidate. [See s. 11.06 (2), Stats.]

Thus, independent expenditures are subject to regulation, including the disclosure of the source and amount of the funds used. So-called "issue ads", including those that most people clearly regard as having "electioneering" or influencing the outcome of a particular election contest are not currently subject to this regulation.

These "campaign" ads, masquerading as issue advocacy, are being run with increasing frequency with the effect that an increasing proportion of campaign ads seen by voters are funded by unregulated and unreported contributions from special interests. Wisconsin voters are losing their ability to know who is attempting to influence the outcome of our elections.

The Elections Board's Attempt to Regulate Issue Ads Through Rulemaking

It is well settled that "express advocacy" can be regulated. The Elections Board has the statutory authority to promulgate a rule interpreting the phrase "express advocacy."

The questions are: 1) how to define "express advocacy" and 2) what are the appropriate bounds for regulating political speech that might be characterized as "express advocacy."

The Wisconsin Supreme Court, held in *Elections Board v. Wisconsin Manufacturers and Commerce* that an appropriate definition of the term "express advocacy" is not limited to the "magic words" set forth in the U.S. Supreme Court's *Buckley v Valeo* case; however, it refused to create a rule on this topic and stated that the task is better left to the Legislature or the Elections Board. The Court noted that there is a difference between defining "express advocacy" in terms of specific words that explicitly advocate the election or defeat of a candidate and defining "express advocacy" in terms of the context in which a campaign advertisement appears. The court did not clearly indicate which approach it will ultimately favor. Under the latter approach, appropriate wording in connection with the name or likeness of a candidate might be construed to constitute express advocacy.

On October 26, 1999, the Elections Board began formal rule-making through Clearinghouse Rule 99-150, relating to express advocacy.

The rule provided that an individual other than a candidate, and a committee other than a political committee, are subject to campaign disclosure and record-keeping requirements if the person or committee makes a communication meeting all of the following conditions:

- The communication refers to a clearly identified candidate.

- The communication expressly advocates the election or defeat of the candidate.

- The communication unambiguously relates to the campaign of the candidate.

- The communication contains the phrases or terms "vote for," "elect," "support," "cast your ballot for," "Smith for Assembly," "vote against," "defeat," or "reject" or the functional equivalents of the phrases or terms.

The Elections Board's attempt at rule-making was unanimously objected to by both the standing committees in both houses. (The Assembly Committee on Campaigns and Elections and the Senate Committee on Economic Development, Housing and Government Operations each voted unanimously to object to Clearinghouse Rule 99-150.)

The JCRAR concurred in the standing committee objections by a vote of 8 Ayes, 2 Noes.

The bill before the Senate today is the product of the JCRAR's response to the objection. Critics of the bill should keep this in mind. Senate Bill 2 was not intended to be a comprehensive campaign finance reform bill but an attempt to address the problem of special interest groups using "issue ads" to speak anonymously and spend unaccountably.

What the Bill Provides

The bill attempts to devise a new "bright-line" rule for disclosure of "issue ads" that are of the type used to influence the outcome of an election based primarily on the time period in which the ad is aired and the use of a candidate's name or likeness. The bill attempts to impose pre-existing restrictions upon expenditures that meet the new bright line test. The bill imposes campaign disclosure and reporting requirements under ch. 11, Stats., on persons or entities that make certain communications defined in the bill.

Senate Bill 2

SB 2, as amended by Senate Amendments 1, 2 and 3, provides in part that the campaign registration and reporting requirements of ch. 11, Stats., will be imposed on certain communications that are defined to be made for "political purposes." A communication must be made by means of one or more communications media or mass mailing, or through a telephone bank operator, must be made within 60 days preceding an election and must include the name or likeness of a candidate or the name of an office to be filled at that election to be regulated under the bill.

Section 11.01 (5), Stats., currently defines the term "communications media" to mean newspapers, periodicals, commercial billboards, radio and television stations, including community antenna television stations.

Senate Amendment 1

The bill defines the term "mass mailing" to mean the distribution of 50 or more pieces of substantially identical material. Senate Amendment 1 brings the definition of the term "telephone bank operator" into conformity with the definition of "mass mailing" by defining "telephone bank operator" to mean any person who places or directs the placement of 50 or more substantially identical telephone calls to individuals.

Senate Amendment 2

(Under the bill as originally introduced, campaign registration and reporting requirements of ch. 11, Stats., are imposed on a communication that is made by means of one or more communications media or mass mailing, or through a telephone bank operator, that is made within 60 days preceding an election and that includes a name or likeness of a candidate or the name of an office to be filled at that election or the name of a political party are subject to reporting. Senate Amendment 2 removes these requirements from such communications that merely include the name of a political party.

Senate Amendment 3

Provides that a person who makes such a communication and fails to comply with ch. 11, Stats., will be subject to a civil forfeiture of not more than three times the amount or value of the cost of the communication. (Under the bill as originally introduced, the penalties for failing to comply with campaign reporting requirements was a felony punishable by imprisonment for up to 4 years and 6 months in prison.)

Talking Points

Real issue is : Should attempts to influence the outcome of an election of a particular identified candidate be regulated and should the source and amounts of the funds used be disclosed so that the public and the candidates can know?

Should some political speech that expressly describes a candidate on the eve of an election be unlimited, unregulated, and undisclosed, while speech made directly by candidates is limited (because contributions to candidates are limited), regulated and disclosed, which, in effect, allows special interests to "hijack" a candidate's own campaign?

Some will try to characterize the debate as "express advocacy" which may be regulated and "issue advocacy" which is protected speech.

What is at issue is really "campaign-based" speech (i.e., advocacy aimed at electioneering or attempting to influence the outcome of the election of a particular candidate) vs. "issue based" speech.

Some will refer to this distinction as "phony" issue ads vs. real" issue ads. While it is hard to define, the public knows the difference. The situation is reminiscent of the distinction that Justice Thurgood Marshall made when asked to define pornography. He said, " I know it when I see it."

Wisconsin law regulates acts done for political purpose. Among other things, an act is for political purposes when it is done for the purpose of influencing the election or nomination for election of any individual to state of local office. This was settled law prior to the Buckley v. Valeo decision. That decision introduced the concept of express advocacy. Express advocacy is a subset of those acts done for political purposes.

Under current law, the making of a communication which expressly advocates the election, defeat, recall or retention of a clearly identified candidate is an act for political purposes. (This is a <u>text-based</u> definition.)

The bill adds a new definition of activities that are acts for political purposes. It uses a <u>context-based</u> definition.

The Buckley decision was naïve. It showed a naïve understanding of political advertising. It suggested that certain "magic words" were needed to trigger the ability of a state or federal government to regulate electioneering.

Consider the following famous political slogans, none of which use the magic words.

- Tippecanoe and Tyler, too.
- All the Way with LBJ
- Nixon's The One
- Nobody's Senator But Yours
- In Your Heart, You Know He's Right
- He knows Wisconsin Like the Back of His Hand
- Thompson for Wisconsin
- "W" Stands for Women

Clearly the message of each of these famous slogans is clear and understood by the voters. It is advocating a particular action in favor of these candidates. The public understands this. In fact, the bulk of political ads do not use the so-called "magic words". (From the examples cited, perhaps they never have used them.)

Corporate Contribution Ban

The issue of a ban on corporate issue ads is somewhat of a "red herring." Since the era of "Fighting Bob LaFollette" (starting with the 1906 elections), Wisconsin has banned the direct expenditure of corporate funds to candidates, PACs or parties. (Corporations can register and spent corporate funds to support or defeat referendum questions.) Until the advent of so-called "issue advocacy in 1996, this ban was intact and honored.

The issue ad loophole has allowed corporate treasury money to flow in unlimited and undisclosed amounts (i.e. anonymously) into political campaigns. This bill closes that loophole.

Corporations may still organize PACs. Their PACs can make independent expenditures. They can use all the mechanisms that were at their disposal before the concept of "issue advertising" was introduced to Wisconsin politics. They simply must register their activity, disclose the source and amount of the funds spent on the independent expenditures.

Difference between issue ads and independent expenditures:

Independent Expenditure	Issue Ad
Must register beforehand	No registration
Must file oath that expenditures are not made in cooperation or consultation with a candidate or candidate's agent	No reporting of expenditures
Must report the source of the funds used	No reporting of source of funds (Can spend anonymously)
Must report expenditures	Can be done by corporation
Must be done by an individual or committee	

Section 11.38 (1) (a) 1. Stats., provides that "no foreign or domestic corporation or association organized under ch. 185, may make any contribution or disbursement, directly or indirectly, either independently or through any political party, committee, group, candidate or individual for any purpose other than to promote or defeat a referendum.

However, sect. 11.38 (1) (a) 2, Stats., allows corporations or associations to establish PACs.