Glenn Moramarco Brennan Center

(212) 998-6153

thinks it is defensible but risky
to have it in than have it out
↓
"political party"

prevailing wisdom is to take a
more conservative approach
that is to limit to candidate name or likeness

concern about corruption raised in Buckley
entity mentioned—indebted to sponsor of ad
still presents possibility of corrupting influence

how often do people mention political
party w/out an electioneering

preventative measure
if you close up the candidate name
will people move to

EOPS

Ellis
Schultz
Darling
Marsdorf

Comments on SB 2

p. 2, l. 4 "telephone bank operator"
suggest add "50 or more substantially identical" define
fear is that it could apply to some individual, private person

p. 3, l. 4
concern about "name or likeliness of candidate certified

concern about lack of "dollar threshold
see def. at p. 2., l. 7

no penalties in bill
criminal penalties will be thrown out as unconstitutional

Wisconsin Citizen Action's

Family Farm Stewardship Campaign

Position Statement

Wisconsin is losing family farms at a rate equivalent to five per day – faster than any other state in the country. The cause is a labyrinth of arcane and confusing laws that gives corporate farming a big economic advantage over small farms, and has led to unprecedented consolidation in the livestock farming industry.

In place of the family farm, corporate agribusiness is rapidly installing a new breed of "factory farm" in Wisconsin. Factory farms are farms in name only and are actually more like livestock factories - where a thousand or more cattle are confined on small tracts of land under inhumane conditions to be fed and raised for milk production and/or eventual slaughter. Factory size livestock operations, which sometimes store millions of gallons of liquid manure on site, pose a serious threat to Wisconsin's waterways, including manure spills or overflows that destroy the aquatic habitat of nearby streams and lakes.

The ***Family Farm Stewardship Campaign*** brings together family farm, environmental, church and citizens groups, as well as individual farmers and activists to seek a solution. The Task Force has developed an omnibus bill – the Family Farm Protection Act – designed to level the playing field for family farms while ensuring adequate environmental protection (see details below).

The Family Farms Task Force is also active in promoting *Sustainable Agriculture, Community Sponsored Agriculture, Citizen Involvement in Local Decisions about New Factory Farms, Food Safety, Organic Farming, and Responsibility on Biotechnology.*

To become a member of the Family Farm Stewardship Campaign at no cost or obligation, please fill out the campaign form below.

Our next step is to wage a comprehensive grassroots organizing campaign around these reforms. **Please join us**. Make family farms Wisconsin's future, not a thing of the past.

(print out) ---

Organization:

_____

Contact Person:

_____

Address: _____

Phone Number:

_____

Fax Number:

_____

Email Address:

_____

Please return this form to:

Sam Gieryn, Wisconsin Citizen Action

122 State St., #308, Madison, WI 53703

Fax: (608)256-1177

Phone: (608)256-1250

sgieryn@wi-citizenaction.org

Family Farm Protection Act Summary

The proposed Family Farm Protection Act is designed to level the playing field for family farmers and ensure adequate environmental protections. It would:

- Make small farms more economically viable and promote healthy local rural economies

- Level the playing field and eliminate special treatment of large-scale livestock operations

- Ensure adequate environmental protection

The Act would substantially reform the current agricultural production system to eliminate market practices which unfairly benefit large-scale operations over small farms. The Act builds upon the existing environmental permitting system and uses the federal Clean Water Act threshold of 1,000 animal units to define a point source of pollution. It provides cost-sharing dollars to help small farms come into compliance with environmental standards. The Act specifically directs subsidies and other government assistance to small farms and away from large-scale operations.

For More Information, please contact:

Sam Gieryn, campaign coordinator

sgieryn@wi-citizenaction.org

Rossmiller, Dan

From: Jay Heck [ccwisjwh@itis.com]
Sent: Tuesday, January 09, 2001 4:36 PM
To: Dan.Rossmiller@legis.state.wi.us
Subject: Fw: Memo on Phony Issue Ads

Dan: It was nice to talk to you. Here is more background than you'll want on the JCRAR issue ad bill. Let me know when you want me to come in--with or without Sen. George--whichever he prefers.

Best, Jay

>>>>
>>>>->
>>>>> MEMORANDUM
>>>>>
>>>>>
>>>>> DATE: January 9, 2001
>>>>>
>>>>> TO: Sen. Gary George & Dan Rossmiller
>>>>>
>>>>> FROM: Jay Heck, Executive Director of Common Cause In Wisconsin
>>>>>
>>>>> SUBJECT: State Campaign Finance Reform in 2001-2002: The First Big Step
>>>>>
>>>>>Uncertainty about who would be the nations's next President and dimpled
>>>>chads
>>>>>in punch card ballots in South Florida have temporarily diverted our
>>>>>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 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)
>>and
>>>>>People for Wisconsin's Future (favoring Democrats) joined in the phony
>>>>issue
>>>>>ad free-for-all to give this matter a truly bipartisan bent. As a
>>>>>consequence, there is now a growing 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
>ruled
>>>>>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, 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 12th, 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
>>>>>
>>>>> -2-
>>>>>
>>>>>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 would no longer be able to solicit $50,000 or $100,000
>or
>>>>>even larger contributions from corporate 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 result, 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 19th, Senator Robson, Rep. Freese, 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 bolstering the chances for enactment of 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.
>>>>>
>>>>> -3-
>>>>>
>>>>>
>>>>>Perhaps most significantly, Governor Tommy G. Thompson said shortly
>after
>>>>>November 7th 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. He has also said he will sign any
>campaign
>>>>>finance reform measure that reaches his desk. Senate Majority Chuck
>>>Chvala
>>>>>(D-Madison) has announced that the JCRAR phony issue ad measure will be
>>>the
>>>>>first, top reform priority in that chamber where there is bipartisan
>>>>support
>>>>>for it. Republican Assembly Speaker Scott Jensen of Waukesha did not
>>>>>foreclose the idea of acting on the measure, acknowledging the strong
>>>>>statement made by Wisconsin's voters in the advisory referendum vote.
>>>>>
>>>>>Enactment into law early in the upcoming legislative session of the
>JCRAR
>>>>>measure 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
stipulated
>>>>>that communications depicting a candidate's name or likeness 90 days
>>prior
>>>>>to the general election are considered to be campaign speech subject to
>>>>>disclosure and restriction, was in place and functional during the
>entire
>>>>>2000 election cycle, despite attempts by reform opponents to have it
>>>struck
>>>>>down.
>>>>>
>>>>>Enactment of this measure 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 is
>>>>>watching to see what they do on this first, all-important test on
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.
>>>>>
>>>>>
>>>>
>>>
>>
>

From: **Jay Heck [ccwisjwh@itis.com]**
Sent: Wednesday, November 15, 2000 10:32 AM
To: douglas.burnett@legis.state.wi.us
Subject: Fw: Issue Ad Law

Doug:

I'm sending you Connecticut's issue ad measure—which is a 90-day rather than 60. Be sure to click on the state statute part below to see the final result—Public Act No. 99-275.

Let me know if you have questions.

Their language is much cleaner (and therefore more constitutionally friendly)

Jay

-----Original Message-----

From: **Karen Hobert Flynn <common.cause@snet.net>**
To: Jay Heck <ccwisjwh@itis.com>
Date: Wednesday, June 28, 2000 11:43 AM
Subject: Re: Issue Ad Law

Jay:
Our issue ad law is a 90 day rule (as opposed to our 5 month promotional ad bill) -- see text below. It is in effect for this election and we have not had it challenged yet. A Ct. Right to Life group has made inquiries about the bill—but nothing yet.

Jack (age 4), Peter (22 months) and Daniel (almost 4 months) are all doing great! They sure keep us busy! Thanks for asking—Karen
The text is below and a web site for more info can be found at:
http://www.cga.state.ct.us/ps99/cbs/h/hb-6665.htm

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 © 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
TOP

-----Original Message-----
From: Jay Heck <ccwisjwh@itis.com>
To: common.cause@snet.net <common.cause@snet.net>
Date: Wednesday, June 28, 2000 12:18 PM
Subject: Issue Ad Law

Karen:

Is your issue ad-law a 90-day rule and is it in place for the 2000 elections? Has it been challenged yet? Can you give me a website where I can get to it quickly?

How are you and all those boys?????

Hope great!

Best, Jay

Substitute House Bill No. 6665

Public Act No. 99-275

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(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

TOP

Rossmiller, Dan

From: Burnett, Douglas
Sent: Wednesday, January 10, 2001 2:06 PM
To: Sklansky, Ron; Rossmiller, Dan
Subject: FW: Issue Ad Law-Connecticut

Fyi....

-----Original Message-----

From: Jay Heck [mailto:ccwisjwh@itis.com] <mailto:[mailto:ccwisjwh@itis.com]>
Sent: Wednesday, January 10, 2001 2:14 PM
To: douglas.burnett@legis.state.wi.us
Subject: Fw: Issue Ad Law-Connecticut

Doug:

Connecticut's issue ad law is below.. Apparently no dollar threshold but I am double checking on that. The website for Ct. (below) gives more info on the bill which Ron may find useful.

I'm also working on the press conference and have talked to Dan Rosmiller.

More later.

Thanks, Jay

>http://www.cga.state.ct.us/ps99/cbs/h/hb-6665.htm
>
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>
>

p. 2, l. 7

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Best, Jay

->

MEMORANDUM

DATE: January 9, 2001

TO: Sen. Gary George & Dan Rossmiller

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

SUBJECT: State Campaign Finance Reform in 2001-2002: The First Big Step

Uncertainty about who would be the nations's next President and dimpled chads in punch card ballots in South Florida have temporarily diverted our 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 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) and People for Wisconsin's Future (favoring Democrats) joined in the phony issue ad free-for-all to give this matter a truly bipartisan bent. As a consequence, there is now a growing 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 ruled 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, 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 12th, 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 would no longer be able to solicit $50,000 or $100,000 or even larger contributions from corporate 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 result, 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 19th, Senator Robson, Rep. Freese, 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 bolstering the chances for enactment of 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.

Perhaps most significantly, Governor Tommy G. Thompson said shortly after November 7th 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. He has also said he will sign any campaign finance reform measure that reaches his desk. Senate Majority Chuck Chvala (D-Madison) has announced that the JCRAR phony issue ad measure will be the first, top reform priority in that chamber where there is bipartisan support for it. Republican Assembly Speaker Scott Jensen of Waukesha did not foreclose the idea of acting on the measure, acknowledging the strong statement made by Wisconsin's voters in the advisory referendum vote.

Enactment into law early in the upcoming legislative session of the JCRAR measure 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 stipulated that communications depicting a candidate's name or likeness 90 days prior to the general election are considered to be campaign speech subject to disclosure and restriction, was in place and functional during the entire 2000 election cycle, despite attempts by reform opponents to have it struck down.

Enactment of this measure 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 in Wisconsin's campaign finance laws. It is an opportunity that must not and cannot be wasted. But state legislators must know that the public is watching to see what they do on this first, all-important test on 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.

MEMORANDUM

DATE: January 9, 2001
TO: Sen. Gary George & Dan Rossmiller
FROM: Jay Heck, Executive Director of Common Cause In Wisconsin
SUBJECT: State Campaign Finance Reform in 2001-2002: The First Big Step

Uncertainty about who would be the nations's next President and dimpled chads in punch card ballots in South Florida have temporarily diverted our 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 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) and People for Wisconsin's Future (favoring Democrats) joined in the phony issue ad free-for-all to give this matter a truly bipartisan bent. As a consequence, there is now a growing 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 ruled 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, 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 12th, 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 would no longer be able to solicit $50,000 or $100,000 or even larger contributions from corporate 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 result, 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 19th, Senator Robson, Rep. Freese, Republican Dan Finley, the Waukesha County Executive, joined

WISCONSIN LEGISLATIVE COUNCIL
STAFF MEMORANDUM

TO: SENATOR JOANNE HUELSMAN

FROM: Ronald Sklansky, Senior Staff Attorney

RE: The Impact of 2001 Senate Bill 2 on a Corporation

DATE: January 18, 2001

This memorandum, prepared at your request, responds to a question you have raised regarding the potential impact of 2001 Senate Bill 2 on a corporation. Specifically, you have asked whether the enactment of Senate Bill 2 would result in prohibiting a corporation from making certain election-related communications.

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 provided that an individual other than a candidate, and a committee other than a political committee, are subject to campaign registration and reporting 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.

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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 Joint Committee for Review of Administrative Rules (JCRAR) concurred in the standing committee objections.

Following the 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. One of these bills, Senate Bill 2, briefly provides the following:

1. Campaign registration 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 of 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.

Discussion

Senate Bill 2 imposes campaign registration and reporting requirements on a person or entity making the communications described above by adding to the current definition of the term "political purposes" in s. 11.01 (16), Stats. In other words, a person or entity that makes the defined communications during a period 60 days before an election, when the communication refers to a candidate, an office to be filled at that election or political party, is engaging in an activity for political purposes. When a person or entity accepts a contribution or makes a disbursement for political purposes, registration and reporting requirements of ch. 11, Stats., are triggered.

Senate Bill 2 has an additional impact. Section 11.38 (1) (a) 1., Stats., in part provides that no foreign or domestic corporation may make any contribution or disbursement for any purpose other than to promote or defeat a referendum. That is, a corporation may not, among other things, make any contribution or disbursement for political purposes. If a corporation may not make a contribution or disbursement for political purposes, then, if Senate Bill 2 is enacted, it will not be able to make a communication that has all of the following aspects:

1. Is made by means of one or more communications media or a mass mailing, or through a telephone bank operator.

2. Is made during the period beginning on the 60th day preceding an election and ending on the date of that election.

3. 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 the name of a political party.

[However, a corporation under current law may continue to create a political committee to receive contributions from individuals and make disbursements.]

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