

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2400/1dn
JTK:wlj&cjs:jf

April 10, 2007

Representative Pocan:

Proposed s. 11.51 (12) provides public grants to qualifying candidates to match certain disbursements made by opposing candidates who do not accept public grants. It could be asserted that this provision burdens the freedom of speech of opposing candidates in violation of the First Amendment. Although relevant case law has developed regarding this issue in the federal courts of appeal, there is no consensus among these courts on this issue. Compare, for example, *Day v. Holahan*, 34 F.3d 1356, 1360-62 (8th Cir., 1994) with *Daggett v. Commission on Governmental Ethics and Election Practices*, 205 F.3d 445, 463-65, 467-69 (1st Cir., 2000). Due to the unsettled nature of the law in this area, it is not possible to predict how a court would rule if proposed s. 11.51 (12) were challenged.

Jeffery T. Kuesel
Managing Attorney
Phone: (608) 266-6778