

2007 DRAFTING REQUEST

Bill

Received: 01/18/2008

Received By: jkuesel

Wanted: As time permits

Identical to LRB:

For: Jon Erpenbach (608) 266-6670

By/Representing: Julie Laundrie

This file may be shown to any legislator: NO

Drafter: jkuesel

May Contact:

Addl. Drafters:

Subject: Elections - campaign finance

Extra Copies:

Submit via email: YES

Requester's email: Sen.Erpenbach@legis.wisconsin.gov

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Scope of campaign finance regulation

Instructions:

Per SB-77 with changes recommended by Brennan Center.

Drafting History:

| <u>Vers.</u> | <u>Drafted</u>        | <u>Reviewed</u>        | <u>Typed</u>           | <u>Proofed</u> | <u>Submitted</u>      | <u>Jacketed</u>       | <u>Required</u> |
|--------------|-----------------------|------------------------|------------------------|----------------|-----------------------|-----------------------|-----------------|
| /?           | jkuesel<br>01/24/2008 | csicilia<br>01/28/2008 |                        | _____          |                       |                       |                 |
| /1           |                       |                        | pgreensl<br>01/28/2008 | _____          | mbarman<br>01/28/2008 | cduerst<br>02/01/2008 |                 |
|              |                       |                        |                        | _____          | mbarman<br>02/01/2008 |                       |                 |
|              |                       |                        |                        | _____          |                       |                       |                 |

FE Sent For:

*none needed*

<END>

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Changed (see attached)

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| /?           | jkuesel<br>01/24/2008 | csicilia<br>01/28/2008 |                        | _____          |                       |                 |                 |
| /1           |                       |                        | pgreensl<br>01/28/2008 | _____          | mbarman<br>01/28/2008 |                 |                 |
|              |                       |                        |                        | _____          | mbarman<br>02/01/2008 |                 |                 |

re-submitted via e-mail

FE Sent For:

2007 DRAFTING REQUEST

Bill

Received: 01/18/2008

Received By: jkuesel

Wanted: As time permits

Identical to LRB:

For: Pat Kreitlow (608) 266-7511

By/Representing: Kathy Dags

This file may be shown to any legislator: NO

Drafter: jkuesel

May Contact:

Addl. Drafters:

Subject: Elections - campaign finance

Extra Copies:

Submit via email: YES

Requester's email: Sen.Kreitlow@legis.wisconsin.gov

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

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Per SB-77 with changes recommended by Brennan Center.

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|--------------|-----------------------|------------------------|------------------------|----------------|-----------------------|-----------------|-----------------|
| /?           | jkuesel<br>01/24/2008 | csicilia<br>01/28/2008 |                        | _____          |                       |                 |                 |
| /1           |                       |                        | pgreensl<br>01/28/2008 | _____          | mbarman<br>01/28/2008 |                 |                 |

FE Sent For:

<END>

(DNOTE)

**2007 DRAFTING REQUEST**

**Bill**

Received: 01/18/2008

Received By: jkuesel

Wanted: As time permits

Identical to LRB:

For: Pat Kreitlow (608) 266-7511

By/Representing: Kathy Daggs

This file may be shown to any legislator: NO

Drafter: jkuesel

May Contact:

Addl. Drafters:

Subject: Elections - campaign finance

Extra Copies:

Submit via email: YES

Requester's email: Sen.Kreitlow@legis.wisconsin.gov

Carbon copy (CC:) to:

---

**Pre Topic:**

No specific pre topic given

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**Topic:**

Scope of campaign finance regulation

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**Instructions:**

Per SB-77 with changes recommended by Brennan Center.

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| <u>Vers.</u> | <u>Drafted</u>     | <u>Reviewed</u>  | <u>Typed</u>  | <u>Proofed</u> | <u>Submitted</u> | <u>Jacketed</u> | <u>Required</u> |
|--------------|--------------------|------------------|---------------|----------------|------------------|-----------------|-----------------|
| 12/1         | jkuesel<br>1/24/08 | 1 cis<br>1/25/07 | Y<br>08<br>P8 | Y<br>08<br>P8  |                  |                 |                 |

FE Sent For:

<END>

## Kuesel, Jeffery

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**From:** Daggs, Kathy  
**Sent:** Friday, January 18, 2008 2:39 PM  
**To:** Kuesel, Jeffery  
**Subject:** Re-Draft of SB-77 (Issue Ad Disclosure)

**Attachments:** Brennan Center issue ad memo 12-05-07.doc

Jeff,

Attached is the Brennan Center Issue Ad memo, that includes suggested language to (hopefully) make SB-77 comply with the WRTL II Ruling. As I mentioned on the phone I would like to re-draft SB-77 to include this fix, as the bill has already been sent to the Assembly. Otherwise if you have another idea on how to draft the language, I would be open to your suggestions.

Thanks,

**Kathy Daggs**  
**Office of Senator Pat Kreitlow**  
**Wisconsin State Senate - 23rd District**  
*Room 10 South - State Capitol*  
*PO Box 7882*  
*Madison, WI 53703-7882*  
*Phone: 608-266-7511 or 888-437-9436*  
*kathy.daggs@legis.wisconsin.gov*



Brennan Center  
issue ad memo 1...

BRENNAN  
CENTER  
FOR JUSTICE

**MEMORANDUM**

**To:** Jay Heck, Common Cause Wisconsin  
Mike McCabe, Wisconsin Democracy Campaign

**From:** Brennan Center for Justice at NYU School of Law

**Date:** December 5, 2007

**Re:** Proposed Revisions to the Regulation of Certain Kinds of Electoral Advocacy  
in Wisconsin

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**Introduction**

You have asked us to consider whether the proposed revisions to Wisconsin's law regulating electoral advocacy raise significant constitutional concerns in light of the recent decision of the United States Supreme in *FEC v. Wisconsin Right to Life, Inc.*, 127 S. Ct. 2652 (2007) ("*WRTL II*"), and, if so, to recommend new statutory language. In *WRTL II*, the Supreme Court found that the ban on using corporate treasury funds for "electioneering communications," as defined in the federal Bipartisan Campaign Reform Act ("BCRA"), was unconstitutional as applied to the plaintiff, a corporation, because the plaintiffs' advertisements were not express advocacy or its functional equivalent. Technically, the holding applies only to the particular ads reviewed in *WRTL II*, but the ruling is widely recognized to have a broader impact. Indeed, the Federal Election Commission ("FEC") recently has approved a new rule carving out an exemption from BCRA's restriction on corporate electioneering communications, based on the *WRTL II* decision. It is important to note, however, that *WRTL II* did not consider, let alone invalidate, the application of reporting and disclosure requirements to such communications paid for with corporate funds, and the FEC rule did not change those requirements.

The revision proposed in Section 9 of SB 12 raises constitutional concerns under *WRTL II* because it includes a blanket prohibition on the use of corporate treasury funds to sponsor communications naming a candidate, an office to be filled, or political party within 60 days of an election. In light of the *WRTL II*, we suggest revisions to SB 12 that would maintain the prohibition on corporate sponsorship of some electoral advocacy but exempt communications that are not the "functional equivalent of express advocacy." 127 S. Ct at 2667. We offer proposed statutory language to implement that standard, based on a recent rulemaking by the Federal Election Commission. Because efforts to require disclosure of such communications

still have significant constitutional support, we recommend that all communications defined in Section 9 of SB 12 be subjected to disclosure requirements.

### **The Proposed Amendment of Wisconsin Law**

Under current Wisconsin law, corporations are prohibited from making “disbursements,” defined under section 11.01(7) as a “purchase, payment . . . made for political purposes.” Wis. Stat. § 11.38. 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 or local office . . .” § 11.01(16). Subsection (a) of that provision further defines such acts to include:

- (1) The making of a communication which expressly advocates the election, defeat, or recall or retention of a clearly identified candidate or a particular vote on a referendum[; and]
- (2) The conduct of or attempting to influence an endorsement or nomination . . .

*Id.* § 11.01(16)(a)(1), (2). Section 9 of SB 12 proposes amending subsection (a) to include “communications” made by means of “communications media . . . that [are] made during the period beginning on the 60<sup>th</sup> day preceding an election and ending on the date of that election, and that include[] a reference to a candidate whose name is certified under s. 7.08(2)(a) or 8.50(1)(d) to appear on the ballot at that election, a reference to an office to be filled at that election, or reference to a political party.”

### **Analysis of *WRTL II***

The proposed absolute prohibition on corporate sponsorship of communications that identify a candidate or political party in the 60 days before an election will raise constitutional concerns under the Supreme Court’s plurality opinion in *WRTL II*. Based on the following analysis of the Court’s opinion, we propose statutory language that will bring the amendments in section 9 of SB12 in line with decision.

On its face, the Supreme Court’s opinion holds *only* that BCRA cannot be applied to bar the Wisconsin Right to Life ads at issue in the case.<sup>1</sup> But, effectively, the decision held that corporations and unions, under federal law, cannot constitutionally be prohibited from using treasury funds to pay for advertisements simply because they meet BCRA’s definition of electioneering communications. *Id.* at 2667. Instead, the Court ruled, the funding restrictions

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<sup>1</sup> Because this decision arises from an as-applied challenge, it does not technically apply to other communications, and as such, corporations and unions are still prohibited from using treasury funds to pay for electioneering communications until they are told otherwise. As a practical matter, however, the FEC and courts are unlikely to apply BCRA’s prohibition to any future advertisements that do not include the “functional equivalent of express advocacy.”



could apply only to ads that were express advocacy or “the functional equivalent” of express advocacy.

The Court provided some guidance as to whether an ad is “the functional equivalent of express advocacy,” beginning with the statement that it must be “susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate.” *Id.* at 2667. The Court’s application of its “no reasonable interpretation test” to the Wisconsin Right to Life ads establishes a framework for determining whether an ad is subject to BCRA’s funding restrictions. Describing the ads at issue and why they are not covered, the Court wrote:

First, their content is consistent with that of a genuine issue ad: The ads focus on a legislative issue, take a position on the issue, exhort the public to adopt that position, and urge the public to contact public officials with respect to the matter. Second, their content lacks indicia of express advocacy. The ads do not mention an election, candidacy, political party, or challenger; and they do not take a position on a candidate’s character, qualifications, or fitness for office.

*Id.* at 2667. The plurality described its test as being “objective, focusing on the substance of the communication rather than the amorphous consideration of intent and effect.” *WRTL II*, 127 S. Ct. at 2666.<sup>2</sup>

The Court’s opinion suggested that ads that fall within BCRA’s definition of electioneering communications and include these “indicia of express advocacy” (mention an election, candidacy, political party, or challenger and take a position on a candidate’s character, qualifications, or fitness for office) may still be subject to funding restrictions. A corporation or union may run such ads only through a separate segregated fund, similar to a political committee (“PAC”), contributions to which are subject to limits on source and amount. *Id.* at 2667.

### **The FEC Rulemaking**

On November 20, 2007, the Federal Election Commission adopted regulations implementing the Court’s decision.<sup>3</sup> In relevant part, the new regulations create a “safe harbor” for any corporate or union electioneering communication that:

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<sup>2</sup> The Court provided further guidance in distinguishing the Wisconsin Right to Life ads from the hypothetical attack ad discussed in *McConnell* that “condemned Jane Doe’s record on a particular issue before exhorting viewers to ‘call Jane Doe and tell her what you think[,]’” *McConnell*, 540 U.S. at 127, noting that the ads here did not condemn Senator Feingold’s position on the issue but articulated the group’s position and “exhort[ed] constituents to contact Senators Feingold and Kohl to advance that position.” *WRTL II*, 127 S. Ct. at 2667 n. 6.

<sup>3</sup> They are available at [http://www.fec.gov/pdf/nprm/electioneering\\_comm/2007/provisions\\_approved\\_nov-20-2007.pdf](http://www.fec.gov/pdf/nprm/electioneering_comm/2007/provisions_approved_nov-20-2007.pdf).

- (1) Does not mention any election, candidacy, political party, opposing candidate, or voting by the general public;
- (2) Does not take a position on any candidate's or officeholder's character, qualifications, or fitness for office; and
- (3) Either:
  - (i) Focuses on a legislative, executive or judicial matter or issue; and
    - (A) Urges a candidate to take a particular position or action with respect to the matter or issue, or
    - (B) Urges the public to adopt a particular position and to contact the candidate with respect to the matter or issue; or
  - (ii) Proposes a commercial transaction, such as purchase of a book, video, or other product or service, or such as attendance (for a fee) at a film exhibition or other event.

11 C.F.R. § 114.15(b). The new regulations also provide that the FEC will consider on a case-by-case basis whether, on balance, a communication that does not qualify for the safe harbor is susceptible of no reasonable interpretation other than as an appeal to vote for or against a clearly identified federal candidate, by considering whether the ad has "indicia of express advocacy" and is susceptible to interpretation other than as such an appeal. *Id.* The FEC explains:

- (1) A communication includes indicia of express advocacy if it:
  - (i) Mentions any election, candidacy, political party, opposing candidate, or voting by the general public; or
  - (ii) Takes a position on any candidate's or officeholder's character, qualifications, or fitness for office.
- (2) Content that would support a determination that a communication has an interpretation other than as an appeal to vote for or against a clearly identified Federal candidate includes content that:
  - (i) Focuses on a public policy issue and either urges a candidate to take a position on the issue or urges the public to contact the candidate about the issue; or
  - (ii) Proposes a commercial transaction, such as purchase of a book, video or other product or service, or such as attendance (for a fee) at a film exhibition or other event; or
  - (iii) Includes a call to action or other appeal that interpreted in conjunction with the rest of the communication urges an action other than voting for or against or contributing to a clearly identified Federal candidate or political party.
- (3) In interpreting a communication under paragraph (a), any doubt will be resolved in favor of permitting the communication.

*Id.* § 114.15(c).

## Recommendation

In accordance with our analysis of *WRTL II* and the FEC's new regulations, we propose that SB 12 include an exemption from the provisions of Wis. Stat. § 11.38 for certain corporate communications that lack the indicia of express advocacy. We suggest, however, that all such communications be subject to the state's standard disclosure requirements.

Specifically, we propose that SB 12 include the following amendment to section 11.38, "Contributions and disbursements by corporations and cooperatives":

(3)(a) Notwithstanding subd. 1, corporations may make disbursements for political purposes as defined in s. 11.01(16)(a)(3) [as amended by SB 12], unless the communication is susceptible of no reasonable interpretation other than as an appeal to vote for or against a candidate whose name is certified under s. 7.08(2)(a) or 8.50 (1)(d) to appear on the ballot at that election.

(b) A disbursement for political purposes is permissible under paragraph (a) if it:

(1) Does not mention any election, candidacy, political party, opposing candidate, or voting by the general public;

(2) Does not take a position on any candidate's or officeholder's character, qualifications, or fitness for office; and

(3) Either:

(i) Focuses on a legislative or executive matter or issue; and

(A) Urges a candidate to take a particular position or action with respect to the matter or issue, or

(B) Urges the public to adopt a particular position and to contact the candidate with respect to the matter or issue; or

(ii) Proposes a commercial transaction, such as purchase of a book, video, or other product or service.

(c) Corporations that make disbursements for political purposes under paragraph (a) are subject to disclosure and reporting requirements as defined in s. 11.06.

D NOTE

3893/1

2007 - 2008 LEGISLATURE

LRB 17734

JTK:cjs:jb

Stays

LPSes:  
Retain only  
the material  
shown in this  
draft. Material on  
pages that have not  
been included should  
be ~~included~~ left out.

wanted mon 1/2P - Am

2007 SENATE BILL 77

February 28, 2007 - Introduced by Senators ERPENBACH, ELLIS, LEHMAN, WIRCH, HARSDORF, CARPENTER, RISSER, COWLES and BRESKE, cosponsored by Representatives TRAVIS, HEBL, TURNER, SHERMAN, BLACK, DAVIS, BERCEAU, SHERIDAN, VAN AKKEREN, POCAN, ZEPNICK, CULLEN, SOLETSKI and KAUFERT. Referred to Committee on Campaign Finance Reform, Rural Issues and Information Technology.

st/ m/fw

(regenerate)

1 AN ACT to amend 11.06 (2); and to create 11.01 (16) (a) 3. and 11.05 (3) (s) of the  
2 statutes; **relating to:** the scope of regulated activity under the campaign  
3 finance law.

**Analysis by the Legislative Reference Bureau**

Currently, individuals who accept contributions, organizations that make or accept contributions, and individuals who or organizations that incur obligations or make disbursements for the purpose of influencing an election for state or local office are generally required to register with the appropriate filing officer and to file financial reports with that officer, regardless of whether they act in conjunction with or independently of any candidate who is supported or opposed.

With certain exceptions, this bill imposes registration and reporting requirements, in addition, upon any individual who and organization that, within 60 days of an election and by means of communications media, makes any communication which includes a reference to a candidate for state office at that election, a state office to be filled at that election, or a political party. The bill also requires an individual or organization who or which becomes subject to a registration requirement by making such a communication to report, upon registration, the information that would have been required to be reported if the individual or organization had been registered with respect to any obligation incurred or disbursement made for the purpose of making such a communication prior to registration. The bill, however, does not require registration and reporting if the communication is made by a corporation, cooperative, or nonpolitical voluntary

national office, as well as contributions to other state political party committees, need not file reports for any period covered by a report filed by the committee with the Federal Election Commission if the Government Accountability Board receives a copy of that report and the committee makes no contributions to any individual who or organization which is required to register with a filing officer under Wisconsin law. This bill deletes these exceptions to state reporting requirements.

***Reporting thresholds***

This bill provides that an individual who accepts contributions, makes disbursements, or incurs obligations or a group that makes or accepts contributions, makes disbursements, or incurs obligations in connection with one or more referenda is not subject to registration and reporting requirements until the individual or group engages in activity exceeding \$100 cumulatively within a calendar year.

The bill also permits an individual or committee to claim an exemption from reporting requirements if the individual or committee does not accept contributions, make disbursements, or incur obligations exceeding \$1,000 cumulatively within a calendar year with respect to an election for state office, and does not accept contributions, other than contributions made by a candidate to his or her own campaign, exceeding \$100 from a single source cumulatively within a calendar year. If an individual or committee does not accept contributions, make disbursements, or incur obligations with respect to an election for any state office but accepts contributions, makes disbursements, or incurs obligations independently of any candidate with respect to an election for local office, the bill permits the individual or committee to claim an exemption from reporting requirements if the individual or committee does not accept contributions, make disbursements, or incur obligations exceeding \$100 cumulatively within a calendar year.

***Mass media activities***

Currently, individuals who accept contributions, organizations that make or accept contributions, and individuals who or organizations that incur obligations or make disbursements for the purpose of influencing an election for state or local office are generally required to register with the appropriate filing officer and to file financial reports with that officer, regardless of whether they act in conjunction with or independently of any candidate who is supported or opposed. Currently, with limited exceptions, a corporation or cooperative association is prohibited from making any contribution or disbursement for the purpose of influencing an election for state or local office.

With certain exceptions, this bill imposes registration and reporting requirements, in addition, upon any individual who and organization that, within 60 days of an election and by means of communications media, makes any communication that includes a reference to a candidate at that election, an office to be filled at that election, or a political party. The bill also requires an individual or organization who or which becomes subject to a registration requirement by making such a communication to report, upon registration, the information that would have been required to be reported if the individual or organization had been registered with respect to any obligation incurred or disbursement made for the purpose of making such a communication prior to registration. The bill, however, does not

require registration and reporting if the communication is made by a corporation, cooperative, or nonpolitical voluntary association and is limited to the corporation's, cooperative's, or association's members, shareholders, or subscribers.

The bill also creates an exception to the current prohibition on disbursements by corporations and cooperatives which permits a corporation or cooperative to make a disbursement for the purpose of making a communication within 60 days of an election by means of communications media that includes a reference to a candidate at that election, an office to be filled at that election, or a political party unless the communication is susceptible of no reasonable interpretation other than as an appeal to vote for or against a candidate for state or local office whose name is certified to appear on the ballot at the election. Under the bill, a corporation or cooperative making any such communication is subject to applicable registration and reporting requirements. The exception applies only if the communication: 1) does not mention an election, candidacy, opposing candidate, political party, or voting by the general public; and 2) does not take a position on a candidate's or officeholder's character, qualifications, or fitness for office, and either a) focuses on a legislative or executive matter or issue and urges a candidate to take a particular position or action with respect to the matter or issue or urges the public to contact a candidate with respect to the matter or issue, or b) proposes a commercial transaction, such as the purchase of a book, video, or other product or service.

#### ***Special reporting by certain registrants***

Currently, a committee making contributions or a candidate or other individual or committee accepting contributions, making disbursements, or incurring obligations in support of or opposition to a candidate is generally required to file a report no later than the eighth day before a primary or election at which the candidate seeks nomination or election to office. The report must disclose contributions made or accepted, disbursements made, and obligations incurred through the 14th day prior to the primary or election. Currently, if a candidate for state office receives one or more contributions from a single contributor aggregating \$500 or more during the 14-day period preceding an election, the candidate must report to the Government Accountability Board the information currently required to be disclosed pertaining to contributions received by the candidate no later than 24 hours following receipt of any such contribution or contributions.

This bill requires each candidate at the general or a special election for a major state office (the office of governor, lieutenant governor, attorney general, secretary of state, state treasurer, superintendent of public instruction, justice of the supreme court, state senator, or representative to the assembly) who does not accept a public grant (see below) and who makes any disbursement after the candidate has accumulated cash in his or her campaign depository or has made disbursements in his or her campaign exceeding a combined total of 75 percent of the amount of the disbursement limitation for the office that the candidate seeks, to file daily reports, by electronic mail or facsimile transmission, with the Government Accountability Board and with each candidate whose name appears on the ballot for the office in connection with which the disbursement is made. The daily reports may be filed no later than 24 hours after each disbursement is made, and must include the

**SENATE BILL 77**

association and is limited to the corporation's, cooperative's, or association's members, shareholders, or subscribers.

The change in the scope of reportable activity under the bill also applies to contribution and disbursement (spending) limitations and restrictions by causing reportable "contributions," "obligations," and "disbursements" to include the cost of all reportable communications.

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

**SECTION 1.** 11.01 (16) (a) 3. of the statutes is created to read:

11.01 **(16)** (a) 3. A communication that is made by means of one or more communications media, other than a communication that is exempt from reporting under s. 11.29, 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 reference to a candidate for state office whose name is certified under s. 7.08 (2) (a) or 8.50 (1) (d) to appear on the ballot at that election, a reference to a state office to be filled at that election, or a reference to a political party.

**SECTION 2.** 11.05 (3) (s) of the statutes is created to read:

11.05 **(3)** (s) In the case of a registrant that has made a communication identified in s. 11.01 (16) (a) 3., a report containing the information specified in s. 11.06 (1) with respect to any obligation to make a disbursement incurred or any disbursement made for the purpose of making such a communication prior to registration.

**SECTION 3.** 11.06 (2) of the statutes is amended to read:

11.06 **(2)** DISCLOSURE OF CERTAIN INDIRECT DISBURSEMENTS. Notwithstanding sub. (1), if a disbursement is made or obligation incurred by an individual other than a candidate or by a committee or group which is not primarily organized for political purposes, and the disbursement does not constitute a contribution to any candidate

authorized disbursement level for the office which the candidate seeks in order to qualify for a grant, but provides that the contributions of \$100 or less from individuals used by a candidate for any state office to determine eligibility for a grant from the Wisconsin election campaign fund must be made by individuals who reside in this state and, in the case of a candidate for legislative office, at least 50 percent of those contributions must be made by individuals who reside in the district in which the candidate seeks office, except that a candidate may substitute contributions received from political party committees for not more than 50 percent of the contributions required to be received from residents of the district.

2. It provides that the maximum grant that a candidate for state office may receive is that amount which, when added to all other contributions accepted by the candidate from committees other than political party committees, is equal to 35 percent of the disbursement limitation for the office that the candidate seeks, unless the candidate qualifies to receive a supplemental grant (see below).

3. It provides that a candidate who accepts a grant shall receive a supplemental grant in a maximum amount equal to: a) the total amount of disbursements exceeding the amount of the disbursement limitation for that office made by an opposing candidate who does not accept a grant; and b) the total amount of any independent disbursements in close proximity to the election that are made by special interest committees to oppose that candidate, or to support that candidate's opponent, if that total amount exceeds ten percent of the disbursement limitation for the office that the candidate seeks, except that the total supplemental grant received by a candidate may not exceed an amount equal to three times the disbursement limitation for the office that the candidate seeks.

4. It requires the state treasurer to electronically transmit supplemental grants to qualifying candidates who so request as soon as possible after the candidates qualify to receive the supplemental grants, but in no case later than the end of the third business day after the Government Accountability Board notifies the treasurer that a candidate has qualified to receive a grant.

#### **PENALTIES FOR VIOLATIONS**

Currently, ~~violators of the campaign finance law~~ <sup>of registration and reporting requirements</sup> are subject to a forfeiture (civil penalty) of not more than \$500 for each violation, ~~except that violators of contribution limitations are subject to a forfeiture of not more than treble the amount unlawfully contributed.~~ In addition, currently, any person who is delinquent in filing a report is subject to a forfeiture of not more than \$50 or one percent of the annual salary of the office for which a candidate is being supported or opposed, whichever is greater, for each day of delinquency. ~~Intentional violators of the~~ <sup>NOT</sup>

Currently, ~~whoever intentionally violates certain provisions of the campaign finance law, such as registration requirements, contribution limitations, the prohibition against making contributions in the name of another person, the prohibition against using contributions for most nonpolitical purposes, and the prohibition against filing false reports and statements,~~ <sup>and persons who intentionally file</sup> may be fined not more than \$1,000 or imprisoned for not more than six months, or both, if the violation does not exceed \$100 in amount or value, and may be fined not more than \$10,000 or

and persons who intentionally file

or



imprisoned for not more than three years and six months, or both, if the violation exceeds \$100 in amount or value.

~~This bill provides that if any person, including a candidate or committee other than a conduit, makes a disbursement to support or oppose a candidate for a major state office (governor, lieutenant governor, attorney general, secretary of state, state treasurer, or state superintendent of public instruction) without first reporting to the extent required under the bill, the offender is subject to a forfeiture (civil penalty) of not more than \$500 for each day of violation. The bill also provides that if any person, including any of these candidates or committees, makes one or more disbursements or other expenditures for such a purpose in an amount that is more or less than the amount reported by that person:~~

- ~~1. By more than five percent but not more than ten percent, the person must forfeit four times the amount of the difference.~~
- ~~2. By more than ten percent but not more than 15 percent, the person must forfeit six times the amount of the difference.~~
- ~~3. By more than 15 percent, the person must forfeit eight times the amount of the difference.~~

#### **PUBLIC BROADCASTING TELEVISION STATIONS AND PUBLIC ACCESS CHANNELS**

~~Current law requires that free time on public broadcasting television stations and public access channels be provided to candidates for state office. Under current law, the Federal Communications Commission grants licenses for the operation of public broadcasting television stations. Also under current law, a city, village, or town is authorized to grant a franchise to a person that allows that person to operate a cable television system in the city, village, or town. Under the franchise, the person may be required to provide cable television channels that the city, village, or town may use for public, educational, or governmental purposes. A channel that is used exclusively for public, rather than educational or governmental purposes, is commonly referred to as a public access channel. A city, village, or town may operate a public access channel, or a city, village, or town may allow another person to operate the channel. Current law requires the Government Accountability Board to promulgate rules that require licensees of public broadcasting stations and operators of public access channels to provide a minimum amount of free time to candidates for state office at general, spring, and special elections. The rules must require the same amount of time for each candidate for a particular state office, but may require different amounts of time for different offices.~~

~~This bill repeals these provisions.~~

#### **INDIVIDUAL INCOME TAX CREDIT**

~~This bill creates a nonrefundable individual income tax credit for contributions to the Public Integrity Endowment. Under the bill, an individual may claim as an income tax credit, up to the amount of the individual's income tax liability, any amount that he or she contributes to the Public Integrity Endowment. If a married couple files a joint return, each spouse may claim the credit.~~

#### **PUBLIC FINANCING OF CAMPAIGNS FOR JUSTICE**

~~This bill makes numerous changes in the campaign finance law affecting campaigns for the office of justice of the supreme court. The bill limits the application~~

**INITIAL APPLICABILITY**

All campaign finance changes under the bill apply to elections held on or after January 1, 2008, except that the directive to incorporate a Public Integrity Endowment takes effect on the day on which the bill becomes law. Under the bill, changes to the income tax checkoff and the creation of an individual income tax credit for contributions to the endowment apply to taxable years beginning on January 1 of the year in which the bill becomes law, if the bill becomes law by July 31, in any year, or otherwise to taxable years beginning on January 1 of the following year.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

**SECTION 1.** 5.02 (13) of the statutes is amended to read:

5.02 (13) "Political party" or "party" means a state committee registered under s. 11.05 and organized exclusively for political purposes under whose name candidates appear on a ballot at any election, and all county, congressional, legislative, local and other affiliated committees authorized to operate under the same name. For purposes of ch. 11, the term does not include ~~a legislative campaign committee or a committee filing an oath under s. 11.06 (7).~~

**SECTION 2.** 7.08 (2) (c) and (cm) of the statutes are amended to read:

7.08 (2) (c) As soon as possible after the canvass of the spring and September primary votes, but no later than the first Tuesday in March and the 4th Tuesday in September, transmit to the state treasurer a certified list of all eligible candidates for state office who have filed applications under s. 11.50 (2) and whom the board determines ~~to be~~ are eligible to receive payments grants from the Wisconsin election campaign fund. The board shall also electronically transmit a similar list containing

1 11.01 ~~(14m)~~ "Partisan state office" means the office of governor, lieutenant  
2 governor, secretary of state, state treasurer, attorney general, state senator, state  
3 representative to the assembly, or district attorney.

4 ~~SECTION 11.~~ 11.01 (16) (a) 3. of the statutes is created to read: LA x x

5 11.01 ~~(14m)~~ (16) (a) 3. A communication that is made by means of one or more  
6 communications media, other than a communication that is exempt from reporting  
7 under s. 11.29, that is made during the period beginning on the 60th day preceding  
8 an election and ending on the date of that election, and that includes a reference to  
9 a candidate whose name is certified under s. 7.08 (2) (a) or 8.50 (1) (d) to appear on  
10 the ballot at that election, a reference to an office to be filled at that election, or a  
11 reference to a political party.

12 ~~SECTION 12.~~ 11.01 (17g) and (17r) of the statutes are repealed.

13 ~~SECTION 13.~~ 11.05 (1) of the statutes is renumbered 11.05 (1) (a) and amended  
14 to read:

15 11.05 (1) (a) Except as provided in s. 9.10 (2) (d), every committee, other than  
16 a personal campaign committee, and every political group subject to a registration  
17 requirement under s. 11.23 which that makes or accepts contributions, incurs  
18 obligations, or makes disbursements in a calendar year in an aggregate amount in  
19 excess of \$25 shall file a statement with the appropriate filing officer giving the  
20 information required by sub. (3). In the case of any committee other than a personal  
21 campaign committee, the The statement shall be filed by the treasurer. A personal  
22 campaign committee shall register under sub. (2g) or (2r).

23 ~~SECTION 14.~~ 11.05 (1) (b) of the statutes is created to read:

24 11.05 (1) (b) Every political group subject to registration under s. 11.23 that  
25 makes or accepts contributions, incurs obligations, or makes disbursements in a

1       **SECTION 21.** 11.05 (3) (r) of the statutes is created to read:

2           11.05 (3) (r) In the case of a candidate or personal campaign committee of a  
3 candidate, the telephone number or numbers and a facsimile transmission number  
4 or electronic mail address, if any, at which the candidate may be contacted.

5       **SECTION 22.** 11.05 (3) (s) of the statutes is created to read:

6           11.05 (3) (s) In the case of a registrant that has made a communication  
7 identified in s. 11.01 (16) (a) 3., a report containing the information specified in s.  
8 11.06 (1) with respect to any obligation to make a disbursement incurred or any  
9 disbursement made for the purpose of making such a communication prior to  
10 registration.

11       ~~**SECTION 23.** 11.05 (5) of the statutes is amended to read:~~

12           11.05 (5) ~~CHANGE OF INFORMATION.~~ Any change in information previously  
13 submitted in a statement of registration shall be reported by the registrant to the  
14 appropriate filing officer within 10 days following the change. This period does not  
15 apply in case of change of an indication made under sub. (2r) s. 11.06 (2m), which  
16 shall be reported no later than the date that a registrant is subject to a filing  
17 requirement under sub. (2r) s. 11.06 (2m). Any such change may be reported only by  
18 the individual or by the officer who has succeeded to the position of an individual who  
19 signed the original statement; but in the case of a personal campaign committee, a  
20 candidate or campaign treasurer may report a change in the statement except as  
21 provided in s. 11.10 (2), and in the case of any other committee or group, the chief  
22 executive officer or treasurer indicated on the statement may report a change. If a  
23 preexisting support committee is adopted by a candidate as his or her personal  
24 campaign committee, the candidate shall file an amendment to the committee's

1 full name and mailing address of the donee, and a statement of contributions over  
2 \$20 transferred to the board for deposit in the Wisconsin election campaign fund.

3 **SECTION 32.** 11.06 (2) of the statutes is amended to read: X

4 11.06 (2) DISCLOSURE OF CERTAIN INDIRECT DISBURSEMENTS. Notwithstanding  
5 sub. (1), if a disbursement is made or obligation incurred by an individual other than  
6 a candidate or by a committee or group which is not primarily organized for political  
7 purposes, and the disbursement does not constitute a contribution to any candidate  
8 or other individual, committee, or group, and the disbursement is not made or the  
9 obligation is not incurred for the purpose of making a communication specified in s.  
10 11.01 (16) (a) 3., the disbursement or obligation is required to be reported only if the  
11 purpose is to expressly advocate the election or defeat of a clearly identified  
12 candidate or the adoption or rejection of a referendum. The exemption provided by  
13 this subsection shall in no case be construed to apply to a political party, legislative  
14 campaign, personal campaign or support committee.

15 **SECTION 33.** 11.06 (2m) (title) of the statutes is created to read:

16 11.06 (2m) (title) GENERAL REPORTING EXEMPTIONS.

17 **SECTION 34.** 11.06 (2m) (b) to (d) of the statutes are created to read:

18 11.06 (2m) (b) Any individual or committee who or which is required to file an  
19 oath under sub. (7) and who or which accepts contributions, makes disbursements,  
20 or incurs obligations for the purpose of supporting or opposing one or more  
21 candidates for state office and who or which does not anticipate accepting  
22 contributions, making disbursements, or incurring obligations in an aggregate  
23 amount in excess of \$1,000 in a calendar year and does not anticipate accepting any  
24 contribution or contributions from a single source exceeding \$100 in any calendar  
25 year may indicate on its registration statement that the individual or committee will

1 filing officer for the fund specified in s. 11.02 in the manner in which continuing  
2 reports are filed under s. 11.20 (4) and (8), and s. 11.21 (16), if applicable.

3 **SECTION 108.** 11.38 (2m) of the statutes is created to read:

4 11.38 (2m) (a) Notwithstanding subd. 1., a corporation or association specified  
5 in subd. 1. may make a disbursement that is authorized under par. (b) for the purpose  
6 of making a communication specified in s. 11.01 (16) (a) 3. unless the communication  
7 is susceptible of no reasonable interpretation other than as an appeal to vote for or  
8 against a candidate whose name is certified under s. 7.08 (2) (a) or 8.50 (1) (d) to  
9 appear on the ballot at an election. sub. (1)(a)

10 (b) A disbursement is permitted under par. (a) if the communication:

11 1. Does not mention an election, candidacy, opposing candidate, political party,  
12 or voting by the general public; and

13 2. Does not take a position on a candidate's or officeholder's character,  
14 qualifications, or fitness for office; and either:

15 a. Focuses on a legislative or executive matter or issue and urges a candidate  
16 to take a particular position or action with respect to the matter or issue or urges the  
17 public to contact a candidate with respect to the matter or issue; or

18 b. Proposes a commercial transaction, such as the purchase of a book, video, or  
19 other product or service. ed

20 (b) A corporation that makes a disbursement under par. (a) is subject to  
21 applicable registration requirements under s. 11.05 (1) and reporting requirements  
22 under s. 11.06 (1) and 11.12 (6) (c).

23 **SECTION 109.** 11.38 (6) of the statutes is amended to read:

24 11.38 (6) Any individual or campaign treasurer who receives funds in violation  
25 of this section shall promptly return such funds to the contributor or, donate the

**SENATE BILL 77**

1 or other individual, committee, or group, and the disbursement is not made or the  
2 obligation is not incurred for the purpose of making a communication specified in s.  
3 11.01 (16) (a) 3. the disbursement or obligation is required to be reported only if the  
4 purpose is to expressly advocate the election or defeat of a clearly identified  
5 candidate or the adoption or rejection of a referendum. The exemption provided by  
6 this subsection shall in no case be construed to apply to a political party, legislative  
7 campaign, personal campaign or support committee.

8 **SECTION 4. Initial applicability.** ✓

9 (1) The treatment of section 11.01 (16) (a) 3. of the statutes first applies with  
10 respect to reporting periods which begin on or after the effective date of this  
11 subsection.

12

(END)

DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

-3893/1dn  
LRB-3623/1dn  
JTK:lnk:nwn

December 10, 2007

ys

Senator Kreithow:  
~~Nate Zollik~~

1. Proposed s. 11.01 (16) (a) 3. of this draft would extend this state's campaign finance reporting system to include reporting of certain mass communications occurring within a specified proximity to an election regardless of whether they would be reportable currently. In *McConnell v. F.E.C.*, 124 S.Ct. 619 (2003), at pp. 696-697, the U.S. Supreme Court sanctioned analogous provisions in the Federal Election Campaign Act in the face of a First Amendment challenge because the reporting was considered to be the functional equivalent of express advocacy, which, since *Buckley v. Valeo, et al.* 96 S.Ct. 612 (1976), has been judicially sanctioned as reportable activity. However, in *F.E.C. v. Wisconsin Right to Life, Inc.*, 127 S.Ct. 2652 (2007), the U.S. Supreme Court, at p. 2667, adopted such a narrow view of the functional equivalent of express advocacy as to in effect overrule the *McConnell* decision in all but the narrowest of circumstances. Both the *McConnell* and the *Wisconsin Right to Life* decisions were 5 to 4 decisions. The *Wisconsin Right to Life* case specifically relates to a publication issue rather than a reporting issue. Proposed s. 11.38 (2m) of this draft attempts to address the publication issue by permitting corporations and cooperatives to make expenditures for certain election-related communications if they are reported. How the ~~The~~ *Wisconsin Right to Life* case will be applied to the disclosure issue and how it will be applied to the noncorporate context remains to be decided.

2. You may wish to reflect on proposed s. 11.05 (3) (s) of the draft, which requires a new registrant to disclose any mass communication, as defined in proposed s. 11.01 (16) (a) 3. of the draft, that the registrant made prior to registration at the time that the registrant registers and how this provision should apply to a corporation or cooperative that registers after the day that the act resulting from this draft becomes law.

~~3. This draft includes two appropriations for which I have specified "\$-0-" for expenditure in fiscal years 2007-08 and 2008-09. When you know the dollar amounts that you need to include in the proposal, contact me and I will either redraft the proposal or draft an amendment, whichever is appropriate.~~

4. In *McIntyre v. Ohio Elections Commission*, 115 S. Ct. 1151 (1995), the U.S. Supreme Court found unconstitutional, under the First Amendment, a statute that prohibited publication or distribution of any material designed to promote the nomination or election of a candidate or the adoption or defeat of any issue or to influence the voters

JTK  
→



**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-3893/1dn  
JTK:cjs:pg

January 28, 2008

Senator Kreitlow:

1. Proposed s. 11.01 (16) (a) 3. of this draft would extend this state's campaign finance reporting system to include reporting of certain mass communications occurring within a specified proximity to an election regardless of whether they would be reportable currently. In *McConnell v. F.E.C.*, 124 S.Ct. 619 (2003), at pp. 696-697, the U.S. Supreme Court sanctioned analogous provisions in the Federal Election Campaign Act in the face of a First Amendment challenge because the reporting was considered to be the functional equivalent of express advocacy, which, since *Buckley v. Valeo, et al.* 96 S.Ct. 612 (1976), has been judicially sanctioned as reportable activity. However, in *F.E.C. v. Wisconsin Right to Life, Inc.*, 127 S.Ct. 2652 (2007), the U.S. Supreme Court, at p. 2667, adopted such a narrow view of the functional equivalent of express advocacy as to in effect overrule the *McConnell* decision in all but the narrowest of circumstances. Both the *McConnell* and the *Wisconsin Right to Life* decisions were 5 to 4 decisions. The *Wisconsin Right to Life* case specifically relates to a publication issue rather than a reporting issue. Proposed s. 11.38 (2m) of this draft attempts to address the publication issue by permitting corporations and cooperatives to make expenditures for certain election-related communications if they are reported. How the *Wisconsin Right to Life* case will be applied to the disclosure issue and how it will be applied to the noncorporate context remains to be decided.

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

## Barman, Mike

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**From:** Barman, Mike  
**Sent:** Friday, February 01, 2008 11:58 AM  
**To:** Laundrie, Julie; Sen.Erpenbach  
**Subject:** FW: FW: Draft review: LRB 07-3893/1 Topic: Scope of campaign finance regulation

**Attachments:** 07-38931.pdf; 07-38931dn.pdf

This draft is now in Senator Erpenbach's name. I am also going to resubmit the draft (via e-mail) to "Sen.Erpenbach" so you have the "jacket buttons" and a PDF of the draft.

**Mike Barman (Senior Program Assistant)**  
State of Wisconsin - Legislative Reference Bureau  
Legal Section - Front Office  
1 East Main Street, Suite 200, Madison, WI 53703  
(608) 266-3561 / [mike.barman@legis.wisconsin.gov](mailto:mike.barman@legis.wisconsin.gov)

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**From:** Kuesel, Jeffery  
**Sent:** Friday, February 01, 2008 11:48 AM  
**To:** Barman, Mike  
**Subject:** FW: FW: Draft review: LRB 07-3893/1 Topic: Scope of campaign finance regulation

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**From:** Daggs, Kathy  
**Sent:** Friday, February 01, 2008 11:06 AM  
**To:** Kuesel, Jeffery  
**Cc:** Laundrie, Julie  
**Subject:** FW: FW: Draft review: LRB 07-3893/1 Topic: Scope of campaign finance regulation

Jeffery,

Senator Erpenbach is going to sponsor this legislation now, so you can release these drafts to their office. If you have any other questions you can call me at 266-7511 or Julie Laundrie in Sen. Erpenbach's office at 266-6670.

Thanks,

**Kathy Daggs**  
Office of Senator Pat Kreitlow  
Wisconsin State Senate - 23rd District  
Room 10 South - State Capitol  
PO Box 7882  
Madison, WI 53703-7882  
Phone: 608-266-7511 or 888-437-9436  
[kathy.daggs@legis.wisconsin.gov](mailto:kathy.daggs@legis.wisconsin.gov)

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**From:** Saxler, Charles  
**Sent:** Monday, January 28, 2008 10:41 AM  
**To:** Daggs, Kathy  
**Subject:** FW: Draft review: LRB 07-3893/1 Topic: Scope of campaign finance regulation



07-38931.pdf (21 KB)



07-38931dn.pdf (13 KB)

Let me know if you want to get this jacketed, I think this is the Govs thing?

**Charles Saxler**

**Office of Senator Pat Kreitlow**

**Wisconsin State Senate - 23rd District**

*Room 10 South - State Capitol*

*PO Box 7882*

*Madison, WI 53703-7882*

*Phone: 608-266-7511 or 888-437-9436*

*[charles.saxler@legis.wisconsin.gov](mailto:charles.saxler@legis.wisconsin.gov)*

**Duerst, Christina**

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**From:** Laundrie, Julie  
**Sent:** Friday, February 01, 2008 1:23 PM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB 07-3893/1 Topic: Scope of campaign finance regulation

Please Jacket LRB 07-3893/1 for the SENATE.