

2009 DRAFTING REQUEST

Bill

Received: **02/03/2009**

Received By: **jkuesel**

Wanted: **Soon**

Identical to LRB:

For: **Kristen Dexter (608) 266-9172**

By/Representing: **Ilsa Peterson**

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: **Rep.Dexter@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Scope of campaign finance regulation

Instructions:

Per LRB-1819/1, with permission of Julie Landrie, Sen. Erpenbach's office.

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 02/03/2009	wjackson 02/03/2009		_____			
/1			rschluet 02/03/2009	_____	lparisi 02/03/2009	lparisi 02/03/2009	

FE Sent For:

<END>

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NOTE

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1/1	jkuesel 2/3/09	1 bjk 2/3					

FE Sent For:

<END>

Kuesel, Jeffery

To: Laundrie, Julie
Subject: RE: please release lrb 1819 to Rep Dexter for Assembly draft per Sen Erpebach's request

Julie,
I will take care of it.

Jeffery Kuesel
Managing Attorney
Wisconsin Legislative Reference Bureau
P.O.Box 2037
Madison WI 53701-2037
(608) 266-6778
jeffery.kuesel@legis.state.wi.us

From: Laundrie, Julie
Sent: Thursday, January 29, 2009 12:09 PM
To: Kuesel, Jeffery
Subject: please release lrb 1819 to Rep Dexter for Assembly draft per Sen Erpebach's request

Thank you!!!!!!!

Julie Laundrie
Office of Senator Jon Erpenbach
608-266-6670 cell 608-772-0110

NOTE

-1930/1

wanted web 2/4

Lstay

2009 BILL

SA✓

regen.

1 AN ACT *to renumber and amend* 11.01 (16) (b); *to amend* 11.06 (2); and *to*
 2 *create* 11.01 (16) (a) 3., 11.01 (16) (b) 2. and 11.05 (3) (s) of the statutes; **relating**
 3 **to:** the scope of regulated activity under the campaign 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 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 who or organization that 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,

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cooperative's, or association's members, shareholders, or subscribers. In addition, the bill exempts from registration and reporting the cost of making a communication that 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, 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.

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.

Violators of registration and reporting requirements are subject to a forfeiture (civil penalty) of not more than \$500 for each violation. In addition, any person who is delinquent in filing a report is subject to a forfeiture of not more than \$50 or 1 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 registration requirements and persons who intentionally file false reports or statements 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 imprisoned for not more than three years and six months, or both, if the violation exceeds \$100 in amount or value.

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

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

BILL

1 SECTION 2. 11.01 (16) (b) of the statutes is renumbered 11.01 (16) (b) (intro.) and
2 amended to read:

3 11.01 (16) (b) (intro.) A “political purpose” does not include expenditures any
4 of the following:

5 1. An expenditure made for the purpose of supporting or defending a person
6 who is being investigated for, charged with or convicted of a criminal violation of state
7 or federal law, or an agent or dependent of such a person.

8 SECTION 3. 11.01 (16) (b) 2. of the statutes is created to read:

9 11.01 (16) (b) 2. A communication that does not mention an election, candidacy,
10 opposing candidate, political party, or voting by the general public, and does not take
11 a position on a candidate’s or officeholder’s character, qualifications, or fitness for
12 office, and either a) focuses on a legislative or executive matter or issue and urges
13 a candidate to take a particular position or action with respect to the matter or issue
14 or urges the public to contact a candidate with respect to the matter or issue or b)
15 proposes a commercial transaction, such as the purchase of a book, video, or other
16 product or service, unless the communication is susceptible of no reasonable
17 interpretation other than as an appeal to vote for or against a candidate for state or
18 local office whose name is certified to appear on the ballot at the election.

19 SECTION 4. 11.05 (3) (s) of the statutes is created to read:

20 11.05 (3) (s) In the case of a registrant that has made a communication
21 identified in s. 11.01 (16) (a) 3., a report containing the information specified in s.
22 11.06 (1) with respect to any obligation to make a disbursement incurred or any
23 disbursement made for the purpose of making such a communication prior to
24 registration.

25 SECTION 5. 11.06 (2) of the statutes is amended to read:

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1819/1dn

JTK:wlj:ph

1930/1dn
Lstay

February 3, 2009

Date

Representative Dexter

Senator Erpenbach

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 (F.E.C.A.) 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 permissible reportable activity. The result of this conclusion is that if corporations are prohibited from making reportable contributions or disbursements, a corporation is not able to pay directly for a mass communication of this type. However, in *F.E.C. v. Wisconsin Right to Life, Inc.*, 127 S.Ct. 2652 (2007), the U.S. Supreme Court, at p. 2667, modified its decision in *McConnell* by holding that a corporation could not be prohibited from making a communication unless the communication was the functional equivalent of express advocacy. In that case the court found that a proposed communication, which involved a popular appeal to contact legislators regarding a legislative issue and that mentioned the name of a candidate at an election within 30 days of that election, was not, by itself, the functional equivalent of express advocacy. The U.S. Supreme Court did not, however, address F.E.C.A.'s disclosure requirements in that decision. In *Citizens United v. F.E.C.A.*, 530 F.Supp. 274 (U.S.D.C., D.C., 2008), however, at p. 281, the U.S. District Court reaffirmed those requirements. It is still possible that the U.S. Supreme Court may review the *Citizens United* decision. The proposed treatment of s. 11.01 (16) (b) by this draft attempts to address the publication issue by permitting certain communications that are not the functional equivalent of express advocacy, as defined in the draft, to be made by any person without reporting and without the communications being considered contributions and disbursements, notwithstanding this state's prohibition on corporate contributions and disbursements, while retaining the disclosure requirements for other purposes in proposed s. 11.01 (16) (a) 3. Whether this approach will be successful, and whether the precise language of this draft will accomplish the intended goal, remains to be decided once the U.S. Supreme Court gives us more guidance.

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

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1930/1dn
JTK:wlj:rs

February 3, 2009

Representative Dexter:

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 (F.E.C.A.) 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 permissible reportable activity. The result of this conclusion is that if corporations are prohibited from making reportable contributions or disbursements, a corporation is not able to pay directly for a mass communication of this type. However, in *F.E.C. v. Wisconsin Right to Life, Inc.*, 127 S.Ct. 2652 (2007), the U.S. Supreme Court, at p. 2667, modified its decision in *McConnell* by holding that a corporation could not be prohibited from making a communication unless the communication was the functional equivalent of express advocacy. In that case the court found that a proposed communication, which involved a popular appeal to contact legislators regarding a legislative issue and that mentioned the name of a candidate at an election within 30 days of that election, was not, by itself, the functional equivalent of express advocacy. The U.S. Supreme Court did not, however, address F.E.C.A.'s disclosure requirements in that decision. In *Citizens United v. F.E.C.A.*, 530 F.Supp. 274 (U.S.D.C., D.C., 2008), however, at p. 281, the U.S. District Court reaffirmed those requirements. It is still possible that the U.S. Supreme Court may review the *Citizens United* decision. The proposed treatment of s. 11.01 (16) (b) by this draft attempts to address the publication issue by permitting certain communications that are not the functional equivalent of express advocacy, as defined in the draft, to be made by any person without reporting and without the communications being considered contributions and disbursements, notwithstanding this state's prohibition on corporate contributions and disbursements, while retaining the disclosure requirements for other purposes in proposed s. 11.01 (16) (a) 3. Whether this approach will be successful, and whether the precise language of this draft will accomplish the intended goal, remains to be decided once the U.S. Supreme Court gives us more guidance.

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

Parisi, Lori

From: Peterson, Ilsa
Sent: Tuesday, February 03, 2009 5:19 PM
To: LRB.Legal
Subject: Draft Review: LRB 09-1930/1 Topic: Scope of campaign finance regulation

Please Jacket LRB 09-1930/1 for the ASSEMBLY. If possible we would like the jacket by Wednesday the 4th.

Thank you!