

2009 DRAFTING REQUEST

Bill

Received: **12/04/2008**

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: **mshovers**

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:

Public financing for supreme court justice elections

Instructions:

Per 07 SB-171.

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 01/06/2009 mshovers 01/06/2009	kfollett 01/11/2009		_____			State Crime
/1			phenry 01/12/2009	_____	sbasford 01/12/2009	lparisi 01/15/2009	

FE Sent For: "1" @ Intro, 2/4/09

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(DNOTE)

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/?	jkuesel	1/15f 1/11	1/12 ph	1/12 ph/mo			

FE Sent For:

<END>

Kuesel, Jeffery

From: Daggs, Kathy
Sent: Friday, December 19, 2008 5:01 PM
To: Kuesel, Jeffery
Subject: RE: LRB-1033/1 (Public financing for supreme court justice elections)

that sounds great. Just wanted to make sure!

Have a great holiday!

Kathy

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

From: Kuesel, Jeffery
Sent: Fri 12/19/2008 4:23 PM
To: Daggs, Kathy
Subject: RE: LRB-1033/1 (Public financing for supreme court justice elections)

Kathy,

This request came in on the 4th. I have now completed all of the requests in front of it except one. I will be out of the office for the next 3 business days, returning on Sunday the 28th. As of this point, it seems that I should be able to tackle it shortly after returning.

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: Daggs, Kathy
Sent: Friday, December 19, 2008 11:53 AM
To: Kuesel, Jeffery
Subject: Re-Draft of SB 171 Impartial Justice

Hey Jeff,

Do you know where the draft of SB 171 from last session is at?

Thanks,

Kathy

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

Kuesel, Jeffery

From: Daggs, Kathy
Sent: Monday, January 05, 2009 4:06 PM
To: Kuesel, Jeffery
Subject: RE: Redraft of 07 SB-171

Yeah, go ahead and incorporate it.

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

From: Kuesel, Jeffery
Sent: Monday, January 05, 2009 4:04 PM
To: Daggs, Kathy
Subject: Redraft of 07 SB-171

<< File: 07a1295/1 >>

Kathy,

Upon reviewing the files for the above draft, I notice we have the technical amendment (copy attached) that results from a thorough review of the draft by Paul Onsager of the Fiscal Bureau. I believe that I sent this amendment to you last session. I think we need to incorporate the amendment into the 09 draft.

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

D1075

-1033/1

2007 - 2008 LEGISLATURE

LRB-2146/2

JTK:kjf:awn

+MES

PWF

2009
wanted by Mon 1/12

2007 SENATE BILL 171

April 27, 2007 - Introduced by Senators KREITLOW, COGGS, ROBSON, SCHULTZ, ERPENBACH, MILLER, RISSER, LEHMAN, LASSA, JAUCH, SULLIVAN, HANSEN, VINEHOUT and WIRCH, cosponsored by Representatives HINTZ, MUSSER, POCAN, KREUSER, BOYLE, SHERIDAN, TRAVIS, MASON, HRAYCHUCK, CULLEN, SHILLING, BENEDICT, JORGENSEN, SCHNEIDER, SINICKI and BERCEAU. Referred to Committee on Campaign Finance Reform, Rural Issues and Information Technology.

Regen

1 AN ACT *to repeal* 11.50 (3) (a) 2.; *to amend* 8.35 (4) (b), 11.12 (2), 11.16 (2), 11.16

2 (3), 11.26 (1) (a), 11.26 (2) (a), 11.26 (9) (a), 11.26 (9) (b), 11.26 (13), 11.31 (1) (d),

3 11.50 (1) (a) 1., 11.50 (3) (b), 11.60 (4), 11.61 (2), 20.855 (4) (b) and 71.10 (3) (a);

4 and *to create* 11.01 (14m), 11.26 (1) (am), 11.26 (2) (an), 11.26 (9) (ba), 11.501

5 to 11.522, 20.511 (1) (r), 20.585 (1) (q), 20.585 (1) (r), 20.855 (4) (ba), 20.855 (4)

6 (bb), 25.17 (1) (cm) and 25.421 of the statutes; **relating to:** public financing of

7 campaigns for the office of justice of the supreme court, making appropriations,

8 and providing penalties.

Analysis by the Legislative Reference Bureau

currently

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 of the Wisconsin election campaign fund, under which eligible candidates for certain state offices (including justice of the supreme court) may receive public grants from state general purpose revenues derived from designations made by individuals filing state income tax returns, to state offices other than the office of justice. To finance elections for the office of justice of the supreme court, the bill creates a democracy trust fund under which eligible candidates for this office may receive public grants derived from general purpose revenues.

X

SENATE BILL 171

Under the bill, a candidate for the office of justice of the supreme court may qualify for public financing from the democracy trust fund to finance a campaign in a primary or election by receiving qualifying contributions of at least \$5 but not more than \$100 each made by an elector of this state in an aggregate amount of at least \$5,000 but not more than \$15,000. A candidate who accepts public financing may also accept "seed money" contributions in amounts of \$100 or less, subject to aggregate limitations, and may contribute personal funds in specified amounts during specified periods. In order to qualify for a public financing benefit for the primary, a candidate at the primary must have an opponent who qualifies to have his or her name appear on the ballot at the ~~spring~~ primary, and in order to qualify for a public financing benefit for the spring election, a candidate at the election must have an opponent who qualifies to have his or her name appear on the ballot at the election. A candidate who accepts a public financing benefit may not accept any contributions other than qualifying and seed money contributions and contributions from personal funds within the limitations permitted. Public financing benefits for eligible candidates are \$100,000 in the spring primary and \$300,000 in the spring election. The benefits are subject to a biennial cost of living adjustment. A candidate who accepts more than a specified amount of qualifying or seed money contributions has the excess deducted from his or her public financing benefit. In addition, if a candidate's opponent declines to accept a public financing benefit and makes expenditures in a total amount that exceeds by more than 5 percent the amount permitted for a candidate who accepts a public financing benefit, the candidate who accepts a public financing benefit receives additional funding equivalent to the excess expenditures made by his or her opponent, but not more than three times the amount of the public financing benefit for the office that the candidate seeks. A candidate also receives additional public financing equivalent to any independent expenditures made against the candidate or in support of his or her opponents if those expenditures exceed 20 percent of the amount of the public financing benefit for the office that the candidate seeks but not more than three times the amount of that benefit).

from at least 1,000 separate contributors who are electors

of this state in amounts of not less than \$5 nor

from electors of this state

spring

may not receive

by more than

may not receive

The bill provides that if a candidate makes disbursements that exceed the total amount of the public financing benefit allocated to the candidate and the total qualifying and seed money contributions lawfully accepted by the candidate, the candidate is subject to a forfeiture (civil penalty) of not more than ten times the amount by which his or her disbursements exceed the allocation. In addition, the bill provides that a candidate who accepts contributions in excess of any limitation imposed under the bill is subject to a forfeiture of not more than ten times the amount by which the contributions exceed the applicable limitation. The bill also provides that if any candidate or agent of a candidate knowingly accepts more contributions than the candidate is entitled to receive, or makes disbursements exceeding the total amount of the public financing benefit received by the candidate and the qualifying and seed money contributions lawfully received by the candidate, the candidate or agent may be fined not more than \$25,000 or imprisoned for not more than ten years, or both. Under the bill, any person who, in connection with the receipt or disbursement of a public financing benefit, knowingly provides false information to

SENATE BILL 171

the Government Accountability Board, or knowingly conceals or withholds information from the board, is subject to the same penalty.

Currently, a candidate for the office of justice of the supreme court may qualify to receive a grant from the Wisconsin election campaign fund for use in an election campaign only (no funding is provided for primary campaigns). In order to qualify for a grant, a candidate must qualify to have his or her name appear on the spring election ballot and must have an opponent who qualifies to have his or her name appear on that ballot. The maximum amount of a grant that a candidate may receive is \$97,031. This amount is not subject to any cost of living adjustment. In addition, this amount is reduced by the total amount of contributions received by a candidate from special interest committees and this amount may not be fully funded in a particular year if there are not sufficient moneys in the Wisconsin election campaign fund to provide full financing for all qualifying candidates. A candidate must agree to abide by spending and self-contribution limits in order to receive a grant, but this agreement does not apply if the candidate has an opponent who could have qualified for a grant but declines to do so and declines to file an affidavit of voluntary compliance with spending and self-contribution limits.

Currently, individuals and committees making political contributions to candidates for the office of justice of the supreme court are subject to limitations on the amount or value of any contribution or contributions that may be made cumulatively to any candidate in a campaign. The limitations are \$10,000 in the case of an individual making a contribution to a candidate and \$8,625 in the case of a committee making a contribution to a candidate. This bill replaces these limitations with a contribution limitation of \$1,000 applicable to an individual or committee making any contribution or contributions cumulatively during a campaign period to any candidate for the office of justice of the supreme court who is eligible to qualify for a public financing benefit but who declines to accept one.

Under current law, the Wisconsin election campaign fund is financed through an individual income tax "checkoff." Every individual filing a state income tax return who has a tax liability or is entitled to a tax refund may direct that \$1 of general purpose revenue be transferred to the fund. Individuals filing a joint return may separately choose whether to direct that the \$1 transfer be made. The designation does not increase an individual's tax liability nor reduce an individual's refund. This bill increases the amount of the individual income tax checkoff for the Wisconsin election campaign fund from \$1 to \$3 ~~effective for tax returns filed for taxable years beginning on or after January 1 following the day on which the bill becomes law.~~ Under the bill, individuals filing a joint return may separately choose whether to make the \$3 checkoff. Under the bill, \$2 of each \$3 designation is deposited into the democracy trust fund, and the remaining \$1 is deposited into the Wisconsin election campaign fund, as currently provided. If the total designations do not generate sufficient general purpose revenues to fully fund the costs of public grants and administration of the democracy trust fund, the bill appropriates additional general purpose revenues to finance those costs.

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

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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.

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

1 **SECTION 1.** 8.35 (4) (b) of the statutes is amended to read:

2 8.35 (4) (b) Notwithstanding par. (a), any unspent and unencumbered moneys
3 received by a candidate from the Wisconsin election campaign fund shall be
4 immediately transferred to any candidate who is appointed to replace such
5 candidate, upon filing of a proper application therefor under s. 11.50 (2). If there is
6 no candidate appointed or if no proper application is filed within 7 days of the date
7 on which the vacancy occurs, such moneys shall revert to the state as provided in s.
8 11.50 (8). Notwithstanding par. (a), any unspent and unencumbered moneys
9 received by a candidate from the democracy trust fund shall be immediately
10 transferred to any candidate who is appointed to replace that candidate upon filing
11 of a proper application therefor under s. 11.502 (1). For purposes of qualification,
12 contributions received and disbursements made by the former candidate are
13 considered to have been received or made by the replacement candidate. If there is
14 no candidate appointed or if no proper application is filed within 7 days of the date
15 on which a vacancy occurs, the moneys shall revert to the state.

16 **SECTION 2.** 11.01 (14m) of the statutes is created to read:

17 11.01 (14m) "Partisan state office" means the office of governor, lieutenant
18 governor, secretary of state, state treasurer, attorney general, state senator, state
19 representative to the assembly, or district attorney.

20 **SECTION 3.** 11.12 (2) of the statutes is amended to read:

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1 11.12 (2) Any ~~No registrant, except~~ ^{other than} a candidate who receives a public financing
2 benefit from the democracy trust fund, may accept an anonymous contribution
3 exceeding \$10 ~~received by a campaign or committee treasurer or by an individual~~
4 ~~under s. 11.06 (7) may not be used or expended. The.~~ No candidate who receives a
5 public financing benefit from the democracy trust fund may accept an anonymous
6 contribution exceeding \$5. Any anonymous contribution that may not be accepted
7 under this subsection shall be donated to the common school fund or to any a
8 charitable organization at the option of the registrant's treasurer.

9 SECTION 4. 11.16 (2) [✓] of the statutes is amended to read:

10 11.16 (2) LIMITATION ON CASH CONTRIBUTIONS. ~~Every~~ Except as provided in s.
11 11.506 (6), every contribution of money exceeding \$50 shall be made by negotiable
12 instrument or evidenced by an itemized credit card receipt bearing on the face the
13 name of the remitter. No treasurer may accept a contribution made in violation of
14 this subsection. The treasurer shall promptly return the contribution, or donate it
15 to the common school fund or to a charitable organization in the event that the donor
16 cannot be identified.

17 SECTION 5. 11.16 (3) [✓] of the statutes is amended to read:

18 11.16 (3) FORM OF DISBURSEMENTS. ~~Every~~ Except as authorized under s. 11.511
19 (1), every disbursement which is made by a registered individual or treasurer from
20 the campaign depository account shall be made by negotiable instrument. Such
21 instrument shall bear on the face the full name of the candidate, committee,
22 individual or group as it appears on the registration statement filed under s. 11.05
23 and where necessary, such additional words as are sufficient to clearly indicate the
24 political nature of the registrant or account of the registrant. The name of a political
25 party shall include the word "party". The instrument of each committee registered

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SECTION 5

1 with the board and designated under s. 11.05 (3) (c) as a special interest committee
2 shall bear the identification number assigned under s. 11.21 (12) on the face of the
3 instrument.

4 **SECTION 6.** 11.26 (1) (a) of the statutes is amended to read:

5 11.26 (1) (a) Candidates for governor, lieutenant governor, secretary of state,
6 state treasurer, attorney general, or state superintendent ~~or justice~~, \$10,000.

7 **SECTION 7.** 11.26 (1) (am) of the statutes is created to read:

8 11.26 (1) (am) Candidates for justice, \$1,000.

9 **SECTION 8.** 11.26 (2) (a) of the statutes is amended to read:

10 11.26 (2) (a) Candidates for governor, lieutenant governor, secretary of state,
11 state treasurer, attorney general, or state superintendent ~~or justice~~, 4 percent of the
12 value of the disbursement level specified in the schedule under s. 11.31 (1).

13 **SECTION 9.** 11.26 (2) (an) of the statutes is created to read:

14 11.26 (2) (an) Candidates for justice, \$1,000.

15 **SECTION 10.** 11.26 (9) (a) of the statutes is amended to read:

16 11.26 (9) (a) ~~No~~ Except as provided in par. (ba), no individual who is a candidate
17 for state or local office may receive and accept more than 65 percent of the value of
18 the total disbursement level determined under s. 11.31 for the office for which he or
19 she is a candidate during any primary and election campaign combined from all
20 committees subject to a filing requirement, including political party and legislative
21 campaign committees.

22 **SECTION 11.** 11.26 (9) (b) of the statutes is amended to read:

23 11.26 (9) (b) ~~No~~ Except as provided in par. (ba), no individual who is a candidate
24 for state or local office may receive and accept more than 45 percent of the value of
25 the total disbursement level determined under s. 11.31 for the office for which he or

SENATE BILL 171

1 she is a candidate during any primary and election campaign combined from all
2 committees other than political party and legislative campaign committees subject
3 to a filing requirement.

4 **SECTION 12.** 11.26 (9) (ba) of the statutes is created to read:

5 11.26 (9) (ba) Paragraphs (a) and (b) do not apply to a candidate who receives
6 a public financing benefit from the democracy trust fund.

7 **SECTION 13.** 11.26 (13) of the statutes is amended to read:

8 11.26 (13) Except as provided in sub. (9), contributions received from the
9 Wisconsin election campaign fund and public financing benefits received from the
10 democracy trust fund are not subject to limitation by this section.

11 **SECTION 14.** 11.31 (1) (d) of the statutes is amended to read:

12 11.31 (1) (d) Candidates for secretary of state, state treasurer, justice or state
13 superintendent, \$215,625.

14 **SECTION 15.** 11.50 (1) (a) 1. of the statutes is amended to read:

15 11.50 (1) (a) 1. With respect to a spring or general election, any individual who
16 is certified under s. 7.08 (2) (a) as a candidate in the spring election for justice or state
17 superintendent, or an individual who receives at least 6% of the vote cast for all
18 candidates on all ballots for any state office, except district attorney, for which the
19 individual is a candidate at the September primary and who is certified under s. 7.08
20 (2) (a) as a candidate for that office in the general election, or an individual who has
21 been lawfully appointed and certified to replace either such individual on the ballot
22 at the spring or general election; and who has qualified for a grant under sub. (2).

23 **SECTION 16.** 11.50 (3) (a) 2. of the statutes is repealed.

24 **SECTION 17.** 11.50 (3) (b) of the statutes is amended to read:

SENATE BILL 171

SECTION 17

1 11.50 (3) (b) If a vacancy occurs in the office of state superintendent ~~or justice~~[✓]
2 after August 15 in any year and an election is scheduled to fill the vacancy at the
3 spring election in the following year, the state treasurer shall transfer an amount not
4 exceeding 8 percent of the moneys transferred to the fund on the preceding August
5 15 to the superintendency account ~~for the office in which the vacancy occurs~~, such
6 moneys to be drawn from any account within the accounts created under sub. (4) in
7 the amount or amounts specified by the board.

8 **SECTION 18.** 11.501 to 11.522 of the statutes are created to read:

9 **11.501 Definitions.** In ss. 11.501 to 11.522:

10 (1) "Allowable contribution" means a qualifying contribution, seed money
11 contribution, or personal contribution authorized under ss. 11.502 to 11.522.

12 (2) "Campaign" has the meaning given in s. 11.26 (17).

13 (3) "Election campaign period" means the period beginning on the day after the
14 spring primary election or the day on which a primary election would be held, if
15 required, and ending on the day of the succeeding spring election.

16 (4) "Eligible candidate" means a candidate for the office of justice who has an
17 opponent who has qualified to have his or her name certified for placement on the
18 ballot at the spring primary or election and who qualifies for ^a public financing ^{benefit +} by
19 collecting the required number of qualifying contributions, making all required
20 reports and disclosures, and being certified by the board [✓] as being in compliance with
21 ss. 11.502 [✓] to 11.522 [✓].

22 (5) "Excess disbursement amount" means the amount of disbursements made
23 by a nonparticipating candidate in excess of the public financing ^{benefit} available to
24 an eligible candidate for the same office that the nonparticipating candidate seeks.

SENATE BILL 171

1 (6) "Excess qualifying contribution amount" means the amount of qualifying
2 contributions accepted by a candidate beyond the number or dollar amount of
3 contributions required to qualify a candidate for a public financing benefit.

4 (7) "Exploratory period" means the period that begins after the date of a spring
5 election and ends on the first day of the public financing qualifying period for the next
6 election for justice.

7 (9) "Immediate family," when used with reference to a candidate, includes the
8 candidate's spouse and children.

9 (10) "Independent disbursement" means a disbursement by a person expressly
10 advocating the election or defeat of a clearly identified candidate which is made
11 without cooperation or consultation with a candidate, or any authorized committee
12 or agent of a candidate, and which is not made in concert with, or at the request or
13 suggestion of, any candidate, or any authorized committee or agent of a candidate.

14 (11) "Nonparticipating candidate" means a candidate for the office of justice
15 who does not apply for a public financing benefit or who is otherwise ineligible or fails
16 to qualify for a public financing benefit under ss. 11.502 to 11.522.

17 (12) "Personal funds" means funds contributed by a candidate or a member of
18 a candidate's immediate family.

19 (13) "Primary election campaign period" means the period beginning on the
20 day after the last day prescribed by law for filing nomination papers for that office
21 and ending on the day of the spring primary election for that office or the day on
22 which the primary election would be held, if required.

23 (14) "Public financing qualifying period" means the period beginning on the
24 first day of July of any year and ending on the day before the beginning of the primary
25 election campaign period for that office.

(14) "Public financing benefit" means a benefit provided to an eligible candidate under this section.

SENATE BILL 171

SECTION 18

In an amount of not less than \$5 nor more than \$100

1 (15) "Qualifying contribution" means a contribution made to a candidate by an
2 elector of this state during the public financing qualifying period, which is
3 acknowledged by written receipt identifying the contributor.

4 (16) "Seed money contribution" means a contribution in an amount of not more
5 than \$100 made to a candidate by an elector of ^{this state} ~~the jurisdiction or district in which~~
6 ~~the candidate seeks office~~ during the exploratory period or the public financing
7 qualifying period, or a contribution made to a candidate consisting of personal funds
8 of that candidate in an amount not more than the amount authorized under s. 11.507
9 during the exploratory period or the public financing qualifying period.

10 **11.502 Qualification; certification. (1)** Before a candidate for justice in the
11 primary election may be certified as an eligible candidate to receive a public
12 financing benefit for the primary election campaign period, the candidate shall apply
13 to the board for a public financing benefit and file a sworn statement that the
14 candidate has complied and will comply with all requirements of this section and ss.
15 11.503 to 11.522 throughout the applicable campaign, which includes the primary
16 and election for that office. A candidate shall file the application and statement no
17 later than the beginning of the primary election campaign period for the office that
18 the candidate seeks.

19 (2) A candidate shall be certified by the board as an eligible candidate for
20 receipt of public financing for a primary election if the candidate complies with sub.

21 (1) and receives ^{benefit} at least 1,000 qualifying contributions in amounts equal to not less
22 than ~~\$5 nor more than \$100 and~~ ^{from at least 1,000 separate contributors} in an aggregate amount of not less than \$5,000 nor
23 more than \$15,000 before the close of the public financing qualifying period.

SENATE BILL 171

1 (3) The board shall verify a candidate's compliance with the requirements of
2 sub. (2) by such verification and sampling techniques as the board considers
3 appropriate.

4 (4) Each candidate shall:

5 (a) Acknowledge each qualifying contribution by a receipt to the contributor
6 which contains the contributor's name and home address.

7 (b) No later than the 15th or the last day of the month which immediately
8 follows the date of receipt of a qualifying contribution, whichever comes first, file a
9 copy of the receipt under par. (a) with the board, except that during July, August, and
10 September a copy need only be filed ^{by} on the last day of the month.

11 (5) A qualifying contribution may be utilized only for the purpose of making
12 a disbursement authorized by law.

13 **11.503 Time of application.** (1) Before a candidate may be certified as
14 eligible for receipt of public financing for a ^{benefit} spring election, the candidate shall apply
15 to the board and file a sworn statement that the candidate has fulfilled all the
16 requirements of ss. 11.502 to 11.522 during the primary election campaign period
17 and will comply with such requirements during the election campaign period.
18 Except as authorized in s. 8.35 (4) (b), the application shall be filed no later than the
19 7th day after the date of the spring primary election or the day on which the primary
20 election would be held if a primary were required.

21 (2) The board shall certify a candidate as an eligible candidate for receipt of
22 public financing for a ^{benefit} spring election if the candidate complies with sub. (1) and the
23 candidate was an eligible candidate during the primary election campaign period.

24 **11.505 Agreement by candidate.** An eligible candidate who accepts a public
25 financing benefit under ss. 11.502 to 11.522 during the primary election campaign

SENATE BILL 171

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1 period shall agree to comply with all requirements of ss. 11.502 to 11.522 throughout
2 the election campaign period during the same campaign as a precondition to receipt
3 of public financing. An eligible candidate who accepts a public financing benefit
4 during a primary election campaign period may not elect to accept private
5 contributions in violation of ss. 11.502 to 11.522 during the corresponding election
6 campaign period.

7 **11.506 Requirements imposed upon candidates.** (1) An eligible
8 candidate ^{shall} may not accept private contributions other than seed money contributions
9 and qualifying contributions that the candidate accepts during the exploratory
10 period and the public financing qualifying period.

11 (2) In addition to reports required to be filed under ss. 11.12 (5) and 11.20, a
12 candidate who receives a public financing benefit shall furnish complete financial
13 records, including records of seed money contributions, qualifying contributions, and
14 disbursements, to the board on the 15th or the last day of the month that
15 immediately follows the receipt of the contribution or the making of the
16 disbursement, whichever comes first, except that during July, August, and
17 September records need only be furnished ^{by} on the last day of the month. Each such
18 candidate shall cooperate with any audit or examination by the board.

19 (3) In addition to adhering to requirements imposed under ss. 11.06 (5) and
20 11.12 (3), a candidate who receives a public financing benefit shall maintain records
21 of all contributions received by the candidate of more than \$5 but less than \$50,
22 including seed money contributions and qualifying contributions, which shall
23 contain the full name of the contributor and the contributor's full home address. In
24 addition, if a contributor's aggregate contributions to any candidate exceed \$50 for
25 any campaign, the candidate shall also maintain a record of the contributor's

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1 principal occupation and the name and business address of the contributor's place
2 of employment.

3 (4) The failure to record or provide the information specified in sub. (3)
4 disqualifies a contribution from ^{being used by a candidate} counting as a qualifying contribution.

5 (5) No eligible candidate and no person acting on a candidate's behalf may
6 deposit any contribution that is not recorded in accordance with sub. (3) in a
7 candidate's campaign depository account.

8 (6) No eligible candidate may accept more than \$25 in cash from any
9 contributor and ^{No eligible} no such candidate may accept cash from all sources in a total amount
10 greater than one-tenth of 1 percent of the public financing benefit for the office that
11 the candidate seeks or \$500, whichever is greater.

12 **11.507 Personal funds of candidates.** (1) The personal funds of a candidate
13 contributed as seed money contributions may not exceed an aggregate amount of
14 \$5,000.

15 (2) No eligible candidate may make any disbursement derived from personal
16 funds after the close of the public financing qualifying period.

17 **11.508 Seed money contributions.** (1) An eligible candidate may accept
18 seed money contributions from any individual or committee prior to the end of the
19 public financing qualifying period, provided the total contributions received from one
20 contributor, except personal funds and qualifying contributions otherwise permitted
21 under ss. 11.502 to 11.522, do not exceed \$100, and the aggregate contributions,
22 including personal funds, but not including qualifying contributions, do not exceed
23 \$5,000.

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1 (2) An eligible candidate may make disbursements derived from seed money
2 contributions only during the exploratory period and the public financing qualifying
3 period.

4 **11.509 Excess contributions.** If an eligible candidate receives excess seed
5 money contributions or qualifying contributions on an aggregate basis, the
6 candidate may retain the contributions and make disbursements derived from the
7 contributions, in an amount not exceeding \$15,000. An amount equivalent to the
8 excess contributions shall be deducted by the board from the candidate's public
9 financing benefit. *An eligible* A candidate shall *transfer to* return to the board all seed money and
10 qualifying contributions that exceed the limits prescribed in this section within 48
11 hours after the end of the exploratory period. The board shall deposit all
12 contributions *transferred* returned under this section in the democracy trust fund.

13 **11.51 Certification by candidate. (1)** To apply for a public financing benefit,
14 a candidate shall certify to the board that the candidate has complied and will
15 comply, throughout the applicable campaign, with all requirements of ss. 11.502 to
16 11.522 and that all disclosures required as of the time of application have been made,
17 and shall present evidence of the requisite number of qualifying contributions
18 received by the candidate. The candidate's request for certification shall be signed
19 by the candidate and the candidate's campaign treasurer.

20 (2) The board shall distribute to each eligible candidate at the spring primary
21 election a check for the amount of the public financing benefit payable to the
22 candidate promptly after the candidate demonstrates his or her eligibility and, in
23 any event, not later than 5 days after the end of the public financing qualifying
24 period; however, no candidate may utilize a check received under this subsection
25 until the beginning of the primary election campaign period.

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1 (3) The board shall distribute to each eligible candidate for justice at a spring
2 election a check for the amount of the public financing benefit payable to the
3 candidate not later than 48 hours after the date of the spring primary election for the
4 office of justice, or the date that the primary election would be held if a primary were
5 required. However, no candidate for a particular office shall receive a check until all
6 candidates for the office of justice who apply and qualify for a public financing benefit
7 have been certified as eligible candidates.

8 (4) If any candidate who receives a public financing benefit violates the
9 requirements of ss. 11.502 to 11.522, the board shall require the candidate to repay
10 all public funds received by the candidate to the board. The board shall deposit all
11 repayments received under this subsection in the democracy trust fund.

12 **11.511 Public financing benefits.** (1) The board shall provide to each
13 eligible candidate who qualifies to receive a public financing benefit for the primary
14 or election campaign period separate checks for the public financing benefits payable
15 to the candidate for the primary and election campaign periods in the amounts
16 specified in this section, subject to any required adjustment under s. 11.509, 11.512
17 (2) or 11.513 (2). An eligible candidate may use this public financing benefit to
18 finance any lawful disbursements during the primary and election campaign periods
19 to further the election of the candidate in that primary or election. An eligible
20 candidate may not use this public financing benefit to repay any loan, or in violation
21 of ss. 11.502 to 11.522 or any other applicable law.

22 (2) Except as provided in ss. 11.512 (2) and 11.513 (2), the public financing
23 benefit for a primary election campaign period is \$100,000.

24 (3) Except as provided in ss. 11.512 (2) and 11.513 (2), the public financing
25 benefit for an election campaign period is \$300,000.

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1 (4) If there is no spring primary ~~election~~ for the office of justice, no eligible
2 candidate may receive a public financing benefit for the primary election campaign
3 period.

4 (5g) An eligible candidate who receives a public financing benefit in the
5 primary election campaign period and whose name is certified to appear on the ballot
6 at the election following that primary may utilize any unencumbered balance of the
7 public financing benefit received by the candidate in the primary election campaign
8 period for the election campaign period.

9 (5r) Except as permitted in sub. (5g), an eligible candidate who receives a
10 public financing benefit and who does not encumber or expend some portion of the
11 benefit for a purpose described in sub. (1) shall return any unencumbered portion of
12 the benefit to the board within 30 days after the primary or election in which the
13 candidate participates.

14 (6) Notwithstanding subs. (2) and (3), beginning on July 1, ~~2010~~²⁰¹², and every 2
15 years thereafter, the board shall modify the public financing benefits provided for in
16 subs. (2) and (3) to adjust for the change in the consumer price index, all items, U.S.
17 city average, published by the U.S. department of labor for the preceding 2-year
18 period ending on December 31.

19 **11.512 Financial activity by nonparticipating candidates.** (1) In
20 addition to other reports required by law, a nonparticipating candidate for an office
21 at a primary or election who receives contributions or makes or obligates to make
22 disbursements in an amount ^{that is} more than 5 percent greater than the public financing
23 benefit applicable to an eligible candidate for the same office at the same primary or
24 election shall file a report with the board itemizing the total contributions received
25 and disbursements made or obligated to be made by the candidate as of the date of

SENATE BILL 171

1 the report. The board shall transmit copies of the report to all candidates for the
2 same office at the same election. A nonparticipating candidate shall file additional
3 reports after the candidate receives each additional \$1,000 of contributions, or the
4 candidate makes or obligates to make each additional \$1,000 of disbursements. If
5 such contributions are received or such disbursements are made or obligated to be
6 made more than 6 weeks prior to the date of the primary election at which the name
7 of the candidate appears on the ballot, or prior to the date that the primary election
8 would be held, if a primary were required, ^{the} such reports shall be made at the next
9 regular reporting interval under s. 11.506. If such contributions are received or such
10 disbursements made or obligated to be made within 6 weeks prior to the date of the
11 primary election at which the name of the candidate appears on the ballot, or within
12 6 weeks prior to the date that the primary election would be held, if a primary were
13 required, ^{the} such reports shall be made within 24 hours after each instance in which
14 such contributions are received, or such disbursements are made or obligated to be
15 made.

16 (2) Upon receipt of such information, the state treasurer shall immediately
17 issue a check to an opposing eligible candidate in an additional amount equivalent
18 to the total excess disbursements made or obligated to be made, but not to exceed 3
19 times the public financing benefit for the applicable office.

20 **11.513 Independent disbursements.** (1) If any person makes, or becomes
21 obligated to make, by oral or written agreement, an independent disbursement in
22 excess of \$1,000 with respect to a candidate for the office of justice at a spring primary
23 or election, that person shall file with the board a notice of ^{the} such disbursement or
24 obligation to make ^{the} such a disbursement. Any such person shall file reports of such
25 disbursements or obligations to make such disbursements on the 15th or last day of

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1 the month that immediately follows the date of the disbursement or the obligation
2 to make the disbursement, whichever comes first, except that, within 6 weeks prior
3 to the date of the spring primary election, ^{if a primary is held, and within 6 weeks prior to the date of} the person shall file such reports within ^{the spring election,}
4 24 hours after each independent disbursement is made or obligated to be made. Any
5 such person shall file ^{an} additional ^{report} reports after each additional \$1,000 of
6 disbursements are made or obligated to be made.

7 (2) When the aggregate independent disbursements against an eligible
8 candidate for an office or for the opponents of that candidate exceed ²⁰20 percent of the
9 public financing benefit for that office in any campaign, the board shall immediately
10 credit that candidate's account with an additional line of credit equivalent to the total
11 disbursements made or obligated to be made, but not to exceed 3 times the public
12 financing benefit for the applicable office.

13 **11.515 Democracy trust fund.** The democracy trust fund shall be
14 administered by the state treasurer.

15 **11.516 Administration.** Except as otherwise specifically provided in ss.
16 11.501 to 11.522, the duties of and authority for administering and enforcing ss.
17 11.501 to 11.522 are vested in the board.

18 **11.517 Penalties; enforcement.** (1) Notwithstanding s. 11.60 (1), if an
19 eligible candidate makes disbursements that exceed the total amount of the public
20 financing benefit allocated to the candidate for any campaign and the total
21 qualifying and seed money contributions lawfully accepted by the candidate, the
22 candidate may be required to forfeit not more than 10 times the amount by which the
23 disbursements exceed the allocation.

24 (2) Notwithstanding s. 11.60 (1), any eligible candidate who accepts
25 contributions in excess of any limitation imposed under ss. 11.502 to 11.522 may be

SENATE BILL 171

1 required to forfeit not more than 10 times the amount by which the contributions
2 exceed the applicable limitation.

3 (3) If the board finds that there is probable cause to believe that a candidate
4 has made excess disbursements or has accepted excess contributions contrary to sub.
5 (1) or (2), the board shall attempt for a period of not more than 14 days after its
6 finding to correct the matter by informal methods of conference and conciliation and
7 to enter into a settlement and conciliation agreement under s. 5.05 (1) (c) with the
8 person involved. A settlement and conciliation agreement made pursuant to this
9 subsection shall be a matter of public record. Unless violated, a settlement and
10 conciliation agreement is a bar to any civil action under sub. (4).

11 (4) If the board has probable cause to believe that a candidate has made excess
12 disbursements or has accepted excess contributions and the board is unable to
13 correct the matter by informal methods within the time prescribed in sub. (3), the
14 board shall make a public finding of probable cause in the matter. After making a
15 public finding, the board may bring a civil action against the candidate as provided
16 in s. 5.05 (1) (c).

17 (5) If an elector believes that a candidate has violated ss. 11.502 to 11.522 and
18 the elector is entitled to vote for or against the candidate in the election in connection
19 with which the violation is alleged to occur, the elector may file a complaint with the
20 board requesting it to take remedial action. If the board refuses to take remedial
21 action or, within 30 days after the filing of such a complaint, fails to take remedial
22 action, the elector may commence a civil action requesting the court to impose a
23 forfeiture under sub. (1) or (2) in circuit court for the county where the board is
24 authorized to bring an action under s. 5.05 (1) (c).

SENATE BILL 171

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1 (6) The board and courts shall expedite all proceedings under ss. 11.502 to
2 11.522 so that all complaints brought prior to an election are resolved, to the extent
3 possible, before the election is held.

4 (7) If a complaint brought under ss. 11.502 to 11.522 is resolved against the
5 complainant and is found to have been brought in bad faith and without reasonable
6 basis therefor, the board or court may assess costs, including reasonable attorney
7 fees, against the complainant.

8 **11.518 Prohibited acts. (1)** Notwithstanding s. 11.61 (1) (c) if a candidate
9 or agent of a candidate knowingly accepts more contributions than the candidate is
10 entitled to receive, or makes disbursements exceeding the total amount of the public
11 financing benefit received by the candidate and the qualifying and seed money
12 contributions lawfully received by the candidate, the candidate or agent is guilty of
13 a Class G felony.

14 (2) Notwithstanding s. 11.61 (1) (c), if in connection with the receipt or
15 disbursement of a public financing benefit for an election campaign, any person
16 knowingly provides false information to the board, or knowingly conceals or
17 withholds information from the board, that person is guilty of a Class G felony.

18 **11.522 Contributions to nonparticipating candidates; attributions. (1)**
19 A nonparticipating candidate may accept contributions from private sources without
20 limitation, except that no person may make any contribution or contributions to a
21 nonparticipating candidate exceeding a total of \$1,000 during any campaign.

22 (2) In addition to the attribution required under s. 11.30 (2), any electronic or
23 print communication paid for or authorized by a nonparticipating candidate shall
24 contain the following sentence: "This communication is paid for with money raised

SENATE BILL 171

1 from private sources. This candidate has not agreed to abide by campaign
2 contribution and spending limits.”

3 **SECTION 19.** 11.60 (4) of the statutes, as affected by 2007 Wisconsin Act 1, is
4 amended to read:

5 11.60 (4) Except as otherwise provided in ss. 5.05 (2m) (c) 15. and 16. and (h),
6 5.08, and 5.081, actions under this section or 11.517 may be brought by the board or
7 by the district attorney for the county where the defendant resides or, if the
8 defendant is a nonresident, by the district attorney for the county where the violation
9 is alleged to have occurred. For purposes of this subsection, a person other than a
10 natural person resides within a county if the person's principal place of operation is
11 located within that county.

12 **SECTION 20.** 11.61 (2) of the statutes, as affected by 2007 Wisconsin Act 1, is
13 amended to read:

14 11.61 (2) Except as otherwise provided in ss. 5.05 (2m) (c) 15. and 16. and (i),
15 5.08, and 5.081, all prosecutions under this section or s. 11.518 shall be conducted
16 by the district attorney for the county where the defendant resides or, if the
17 defendant is a nonresident, by the district attorney for the county where the violation
18 is alleged to have occurred. For purposes of this subsection, a person other than a
19 natural person resides within a county if the person's principal place of operation is
20 located within that county.

21 **SECTION 21.** 20.005 (3) (schedule) of the statutes: at the appropriate place,
22 insert the following amounts for the purposes indicated:

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SECTION 21

2009-10
~~2007-08~~

2010-11
~~2008-09~~

1

2 **20.511 Government accountability**

3 (1) ADMINISTRATION OF ELECTION, ETHICS, AND
4 LOBBYING LAWS

5 (r) Democracy trust fund adminis-
6 tration

SEG A -0- -0-

7 **20.585 Treasurer, state**

8 (1) CUSTODIAN OF STATE FUNDS

9 (r) Democracy trust fund adminis-
10 tration

SEG A -0- -0-

11 **SECTION 22.** 20.511 (1) (r) of the statutes is created to read:

12 20.511 (1) (r) *Democracy trust fund administration.* From the democracy trust
13 fund, the amounts in the schedule for the administration of ss. 11.501 to 11.522.

14 **SECTION 23.** 20.585 (1) (q) of the statutes is created to read:

15 20.585 (1) (q) *Public financing benefits; candidates for justice.* From the
16 democracy trust fund, a sum sufficient to provide for payment of public financing
17 benefits to eligible candidates under ss. 11.501 to 11.522.

18 **SECTION 24.** 20.585 (1) (r) of the statutes is created to read:

19 20.585 (1) (r) *Democracy trust fund administration.* From the democracy trust
20 fund, the amounts in the schedule for the administration of ss. 11.501 to 11.522.

21 **SECTION 25.** 20.855 (4) (b) of the statutes is amended to read:

22 20.855 (4) (b) (title) *Election campaign fund payments.* A sum sufficient equal
23 to one-third of the amounts determined under s. 71.10 (3) to be paid into the
24 Wisconsin election campaign fund annually on August 15.

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1 SECTION 26. 20.855 (4) (ba) of the statutes is created to read:

2 20.855 (4) (ba) *Democracy trust fund payments.* A sum sufficient equal to
3 two-thirds of the amounts determined under s. 71.10 (3) to be paid into the
4 democracy trust fund annually on August 15.

5 SECTION 27. 20.855 (4) (bb) of the statutes is created to read:

6 20.855 (4) (bb) *Democracy trust fund transfer.* A sum sufficient equal to the
7 difference between the *unencumbered balance in the democracy trust fund*
8 amount appropriated under par. (ba) and the sum of the
9 amounts appropriated under ss. 20.511 (1) (r) and 20.585 (1) (r) and the amounts
10 required to provide public financing benefits that candidates qualify to receive from
11 the democracy trust fund, to be transferred from the general fund to the democracy
12 trust fund no later than the time required to make payments of grants under s. 11.51
(2) and (3).

13 SECTION 28. 25.17 (1) (cm) of the statutes is created to read:

14 25.17 (1) (cm) Democracy trust fund (s. 25.421);

15 SECTION 29. 25.421 of the statutes is created to read:

16 **25.421 Democracy trust fund.** All moneys appropriated under s. 20.855 (4)
17 (ba) and (bb) and all moneys deposited in the state treasury under ss. 11.509, 11.51
18 (4), and 11.511 (5r) constitute the democracy trust fund, to be expended for the
19 purposes of ss. 11.501 to 11.522.

20 SECTION 30. 71.10 (3) (a) of the statutes is amended to read:

21 71.10 (3) (a) Every individual filing an income tax return who has a tax liability
22 or is entitled to a tax refund may designate \$1 \$3 for the Wisconsin election campaign
23 fund and the democracy trust fund for the use of eligible candidates under s. ss. 11.50
24 and 11.51. If the individuals filing a joint return have a tax liability or are entitled

SENATE BILL 171

SECTION 30

1 to a tax refund, each individual may make a designation of \$1 \$3 under this
2 subsection.

3 **SECTION 31. Initial applicability.**

4 (1) The treatment of section 71.10 (3) (a) of the statutes first applies to taxable
5 years beginning on January 1 of the year in which this subsection takes effect, except
6 that if this subsection takes effect after July 31 the treatment first applies to taxable
7 years beginning on January 1 of the year following the year in which this subsection
8 takes effect.

change component

9 **SECTION 32. Effective dates.**

(1)

December 1 following

10 This act takes effect on ~~the day after publication,~~
the date of publication,
except as follows:

11 ~~(1) The treatment of sections 11.60 (4) and 11.61 (2) of the statutes takes effect~~
12 ~~on December 1 following the date of publication or on the initiation date specified in~~
13 ~~2007 Wisconsin Act 1, SECTION 209 (1), whichever is later.~~

14 (END)

D- Note

**SENATE AMENDMENT ,
TO 2007 SENATE BILL 171**

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 10, line 1: after “means a contribution” insert “in an amount of not less
3 than \$5 nor more than \$100”.

4 **2.** Page 10, line 21: delete “at least 1,000”.

5 **3.** Page 10, line 21: delete the material beginning with “in” and ending with
6 “and” on line 22 and substitute “from at least 1,000 separate contributors”.

7 **4.** Page 18, line 3: after “election,” insert “if a primary is held, and within 6
8 weeks prior to the date of the spring election,”.

9 **5.** Page 18, line 8: delete “20” and substitute “120”.

10 **6.** Page 23, line 7: delete “amount appropriated under par. (ba)” and substitute
11 “unencumbered balance in the democracy trust fund”.

12

(END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

-1033/1dn
LRB-2146/1dn

JTK:kjf:pg

~~March 15, 2007~~ Date

Kreitlow:
Senator Robson

1. Because it would be disruptive and confusing to implement this draft in the midst of an election campaign, the draft provides for an effective date of December 1 following the date of publication. Please let me know if you want to treat this issue differently.
2. This draft includes two appropriations for which I have specified "\$-0-" for expenditure in fiscal years ^{2009-10 and 2010-11} ~~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. FN S DNA
3. 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 at any election without identification of the name and address of the person who publishes or distributes the material. The court, however, indicated that a state's interest in preventing fraud might justify a more limited disclosure requirement (115 S. Ct. at 1522). Further, the court indicated that it still approved of requirements to disclose independent expenditures, which it upheld in *Buckley v. Valeo*, et. al., 96 S. Ct. 612, 661-662 (1976), (*McIntyre*, 115 S. Ct. at 1523). In view of this opinion, the constitutionality of disclosure statutes such as proposed s. 11.522, relating to labeling of certain political communications by candidates for the office of justice of the supreme court who fail to qualify for a public financing benefit is not clear at this point. We will have to await further decisions from the court before we know the exact limits of a state's ability to regulate in this field.
4. The lower federal courts have disagreed as to whether statutes such as proposed ss. 11.512 (2) and 11.513 (2), which increase the public financing benefit available to a candidate for the office of justice of the supreme court when independent disbursements are made against the candidate or for his or her opponents, or when the candidate's opponents make disbursements exceeding a specified level, may result in an abridgement of the First Amendment rights of the persons making the disbursements. See *Day v. Holahan*, 34 F. 3d 1356 (8th Cir., 1994), in which a Minnesota law that included provisions similar to proposed ss. 11.512 (2) and 11.513 (2) was voided. See also *Daggett v. Comm. on Governmental Ethics and Election*

Practices, 205 F. 3d 445, 463-65, 467-69 (1st Cir., 2000), in which a similar law in Maine was not found to abridge the First Amendment. The U.S. Supreme Court has not yet spoken on this issue.

5. Proposed s. 11.512 (1), which imposes additional reporting requirements upon candidates for the office of justice of the supreme court who fail to qualify for a public financing benefit, may raise an equal protection issue under the 14th Amendment to the U.S. Constitution. One lower federal court has held that such a provision does not contravene equal protection requirements. See *Assn. of American Physicians and Surgeons v. Brewer*, 363 F. supp. 2d 1197 (D.C., Ariz., 2005). Once again, the U.S. Supreme Court has not ruled on this issue.

Jeffery T. Kuesel
Managing Attorney
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will likely be found unenforceable as a result of a recent decision of the U.S. Supreme Court in *Davis v. F.E.C.*, 128 S.Ct. 2759 (2008), where the court held at p. 2767, that a symmetric disclosure requirements imposed by a statute upon two different candidates for the same office at the same election contravene the First Amendment because they impose a substantial burden upon the right to use personal funds that is not justified by any compelling state interest.

[or implicitly, nonpublic funds]

of candidates

INS DNA

~~2005~~
LRB-1151/1dn
JTK:jd:rs

NOA

Because the biennial budget act repeals and recreates the appropriation schedule under s. 20.005 (3), stats., if the bill resulting from this draft becomes law before enactment of the budget act and the budget act does not include the funding provided in this draft, the effect will be to eliminate the funding provided in this draft. To preserve the funding of these positions, you may wish to seek inclusion of the funding in the biennial budget bill.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1033/1dn

JTK:kjf:ph

January 12, 2009

Senator Kreitlow:

1. Because it would be disruptive and confusing to implement this draft in the midst of an election campaign, the draft provides for an effective date of December 1 following the date of publication. Please let me know if you want to treat this issue differently.
2. This draft includes two appropriations for which I have specified "\$-0-" for expenditure in fiscal years 2009-10 and 2010-11. 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. Because the biennial budget act repeals and recreates the appropriation schedule under s. 20.005 (3), stats., if the bill resulting from this draft becomes law before enactment of the budget act and the budget act does not include the funding provided in this draft, the effect will be to eliminate the funding provided in this draft. To preserve the funding of these positions, you may wish to seek inclusion of the funding in the biennial budget bill.
3. 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 at any election without identification of the name and address of the person who publishes or distributes the material. The court, however, indicated that a state's interest in preventing fraud might justify a more limited disclosure requirement (115 S. Ct. at 1522). Further, the court indicated that it still approved of requirements to disclose independent expenditures, which it upheld in *Buckley v. Valeo*, et. al., 96 S. Ct. 612, 661-662 (1976), (*McIntyre*, 115 S. Ct. at 1523). In view of this opinion, the constitutionality of disclosure statutes such as proposed s. 11.522, relating to labeling of certain political communications by candidates for the office of justice of the supreme court who fail to qualify for a public financing benefit is not clear at this point. We will have to await further decisions from the court before we know the exact limits of a state's ability to regulate in this field.
4. The lower federal courts have disagreed as to whether statutes such as proposed ss. 11.512 (2) and 11.513 (2), which increase the public financing benefit available to a candidate for the office of justice of the supreme court when independent disbursements are made against the candidate or for his or her opponents, or when the

candidate's opponents make disbursements exceeding a specified level, may result in an abridgement of the First Amendment rights of the persons making the disbursements. See *Day v. Holahan*, 34 F. 3d 1356 (8th Cir., 1994), in which a Minnesota law that included provisions similar to proposed ss. 11.512 (2) and 11.513 (2) was voided. See also *Daggett v. Comm. on Governmental Ethics and Election Practices*, 205 F. 3d 445, 463-65, 467-69 (1st Cir., 2000), in which a similar law in Maine was not found to abridge the First Amendment. The U.S. Supreme Court has not yet spoken on this issue.

5. Proposed s. 11.512 (1), which imposes additional reporting requirements upon candidates for the office of justice of the supreme court who fail to qualify for a public financing benefit, will likely be found unenforceable as a result of a recent decision of the U.S. Supreme Court in *Davis v. F.E.C.*, 128 S. Ct. 2759 (2008), where the court held at p. 2767, that asymmetric disclosure requirements imposed by a statute upon two different candidates for the same office at the same election contravene the First Amendment because they impose a substantial burden upon the right of candidates to use personal funds [or implicitly, nonpublic funds] that is not justified by any compelling state interest.

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Sent: Thursday, January 15, 2009 1:06 PM
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