

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

LRB-2665/1dn  
JTK:wlj:ph

September 14, 2011

Representative Weininger:

1. Proposed s. 11.30 (2) (j) of this draft directs circuit courts to hear certain suits within 24 hours after filing and to issue a decision in those suits within 24 hours after hearings are held. Given the prerogatives of a coequal branch of government, it is possible that the courts will determine for themselves the relative precedence that should be accorded to suits of this kind. However, as an expression of legislative sentiment, the provision is likely to be accorded respect by most courts and may therefore achieve the purpose of ensuring that these suits are resolved within a timeframe that will permit the resolution to be meaningful.

2. The treatment of s. 12.05, stats., by this draft and proposed s. 11.30 (2) (j) of this draft impose potential penalties upon persons who disseminate false information or who recklessly disregard the truth or falsity of information that they disseminate in political communications. The federal courts, beginning with *New York Times v. Sullivan*, 84 S. Ct. 710 (1964), and in other cases, have shown a reluctance to enforce restraints against speech and publication in situations involving public figures. The effect of this line of decisions upon this draft is likely to result in the courts construing the draft very strictly so that it may be difficult to reach some situations in which fair-minded persons would say that a communication steps over the line that separates truth and falsity. It is nevertheless possible that the draft may achieve at least some of its desired effect by setting forth public policy that may influence potential conduct and the way that conduct is viewed by electors.

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