

## **NOTICE OF PROPOSED GUIDANCE DOCUMENT**

### **ETHICS GUIDELINE ETH-1251**

Pursuant to s. 227.112, Wis. Stats., the Wisconsin Ethics Commission is hereby seeking comment on ETH-1251, a proposed guidance document. This guideline replaces the earlier guideline of the same number.

#### **PUBLIC COMMENTS AND DEADLINE FOR SUBMISSION**

Comments may be submitted to the Wisconsin Ethics Commission until June 3, 2019, by:

1. Emailing [ethics@wi.gov](mailto:ethics@wi.gov), or
2. Mailing written comments to:  
P.O. Box 7125  
Madison, WI 53707-7125

#### **WEBSITE LOCATION OF FINAL GUIDANCE DOCUMENT**

The final version of this guidance document will be posted at <https://ethics.wi.gov/Pages/Resources/ResourcesOverview.aspx> to allow for ongoing comment.

#### **AGENCY CONTACT PERSON**

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(608) 267-0951

# Wisconsin Ethics Commission

For persons elected to state or local office who become a candidate for national, state, or local office

## 50 Piece Rule

### THE 50-PIECE RULE

Wisconsin's campaign finance law prohibits a person elected to state or local office who becomes a candidate for any office from using public funds for the cost of materials or distribution for 50 or more pieces of substantially identical material during the campaign season. [WIS. STAT. § 11.1205](#) This rule is also sometimes referred to as the 49-piece rule, because it allows for the distribution of up to 49 pieces of substantially identical materials, with the 50<sup>th</sup> piece being a violation of the law. While the official's intent is not an express element of the rule, the rule has historically only been applied to communications with a political purpose.<sup>1</sup>

### COVERED TIME PERIOD - [WIS. STAT. § 11.1205\(1\)](#)

This prohibition begins after:

- The first day to circulate nomination papers, if nominated by nomination papers;
- The day the board of canvassers issues a determination that the person is nominated if nominated at a primary election by write-in votes;
- The date of the caucus, if nominated at a caucus; or
- The first day of the month preceding the month which includes the last day for filing a declaration of candidacy, if nominated solely by filing the declaration.

This prohibition ends:

- The day after the date of the primary election, if the candidate is unsuccessful in being nominated at the primary election, and is not running as a write-in candidate in the election; or
- The day after the date of the election.

### EXCEPTIONS TO THE 50-PIECE RULE - [WIS. STAT. § 11.1205\(2\)](#)

The 50-piece rule does not apply to the following:

- Answers to communications from constituents;
- Actions taken by a state or local government administrative officer pursuant to a specific law, ordinance or resolution which authorizes or directs the actions to be taken;
- Communications between members of the legislature regarding the legislative or deliberative process while the legislature is in session; or
- Communications not exceeding 500 pieces by members of the legislature relating solely to the subject matter of a special session or extraordinary session, made during the period between the date that the session is called or scheduled and 14 days after adjournment of the session.

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<sup>1</sup> See [69 Atty. Gen. 259](#); [1978 Op El Bd 12](#) (withdrawn December 6, 2016).

## **SUBSTANTIALLY IDENTICAL**

“Substantially identical” is not defined by statute, but a common dictionary definition indicates that the prohibition would apply to material that is largely, if not wholly the same.<sup>2</sup> For example, pieces that contain the same message and simply address different recipients or have a different salutation would still be substantially identical pieces.

## **ADDITIONAL RESOURCES**

For additional information, please visit the Ethics Commission website: <https://ethics.wi.gov>. If you have additional questions, please contact the Wisconsin Ethics Commission staff by email at [CampaignFinance@wi.gov](mailto:CampaignFinance@wi.gov), or by phone at (608) 266-8123. Advice sought from the Ethics Commission is confidential. For authoritative information, refer to Wisconsin Statutes. You may also wish to consult with an attorney.

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<sup>2</sup> <https://www.merriam-webster.com/dictionary/substantial>  
<https://www.merriam-webster.com/dictionary/identical>



# Wisconsin Ethics Commission

Campaign Finance | Lobbying | Ethics  
101 East Wilson Street | Suite 127 | P.O. Box 7125 | Madison, WI 53703-7125  
(608) 266-8123 | [ethics@wi.gov](mailto:ethics@wi.gov) | <https://ethics.wi.gov>

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## CERTIFICATION OF AGENCY HEAD

I have reviewed this guidance document or proposed guidance document and I certify that it complies with sections 227.10 and 227.11 of the Wisconsin Statutes. I further certify that the guidance document or proposed guidance document contains no standard, requirement, or threshold that is not explicitly required or explicitly permitted by a statute or a rule that has been lawfully promulgated. I further certify that the guidance document or proposed guidance document contains no standard, requirement, or threshold that is more restrictive than a standard, requirement, or threshold contained in the Wisconsin Statutes.

A handwritten signature in black ink, appearing to read 'D. Carlton, Jr.' with a stylized flourish at the end.

Daniel Carlton, Jr.  
Commission Administrator  
Wisconsin Ethics Commission

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*Wisconsin Ethics Commissioners*

Mac Davis | David R. Halbrooks | Katie McCallum | Tamara Packard | Pat Strachota | Timothy Van Akkeren

*Administrator*

Daniel A. Carlton, Jr.