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Alaska State Legislature

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WHILE IN SESSION
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JUNEAU ALASKA 99811
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CHAIR
LABOR and COMMERCE COMMITTEE
HOUSE ETHICS COMMITTEE

RESOURCES COMMITTEE
MILITARY AND VETERANS AFFAIRS
BUDGET SUBCOMMITTEE

Representative David Finkelstein

TO: House Judiciary Committee

FROM: Rep. David Finkelstein

DATE: March 9, 1992

SUBJECT: CSHB 183 (STA), relating to the Fair Campaign Practices Code.

CSHB 183 (STA) establishes a Fair Campaign Practices Code that all political candidates are asked to voluntarily sign when they register for office. The official election pamphlet will state whether or not candidates have signed the code.

The purpose of this legislation is to set a higher standard of conduct for candidates and help clean up political campaigns in Alaska. Although the bill contains no penalties for failing to sign or violating the code, when candidates sign the code they will be publicly committing themselves to conduct honest campaigns. Experience in other states indicates a Fair Campaign Practices Code may help reduce dishonest negative campaigning.

DISTRICT THIRTEEN

CREEKSIDE • ELMENDORF AIR FORCE BASE • ELMRICH • MOUNTAIN VIEW • NUNAKA VALLEY • PTARMIGAN • RUSSIAN JACK • WONDER PARK

NCSL Report

STATE LEGISLATIVE EFFORTS TO REGULATE NEGATIVE CAMPAIGN ADVERTISING

OVERVIEW. Negative campaign advertising attracted unprecedented attention in 1988 as President Bush's successful campaign ads attacked the credibility of opponent Michael Dukakis. Local and state politicians continued to stage controversial campaigns in 1989, spending millions of dollars on negative ads in races for governors' seats in Virginia and New Jersey and mayors' offices in New York and Cleveland. While negative campaign advertising is not a new phenomenon, the way political consultants assess negative ads has changed. Many candidates--previously cautioned that nasty ads could result in backlash votes against them--are now counseled that negative ads command more viewer attention and switch more votes than positive ads.

And while the true merits of negative campaign advertising are arguable, there is an inarguable political reality now faced by candidates for public office: negative ads are a fact of political life. Despite complaints from some voters and legislators that "attack" ads demean the electoral process and deter voters from participating, legal scholars warn that the constitutional issues raised when regulating the free speech of candidates are difficult, if not impossible, to overcome. Even so, state legislative efforts to regulate negative campaign ads continue.

SURVEY RESULTS. The following summary and table show the results of a 50-state telephone survey conducted by the National Conference of State Legislatures in December 1989. The individuals contacted in each state were those working in state departments, agencies or commissions charged with enforcing election and campaign laws. Contacts were asked the following with regard to their states: (1) is there a fair campaign practices code, voluntary or mandatory, that applies to candidates for state office?; (2) does this code provide sanctions for violations?; (3) are there other statutory provisions that affect negative ads (other than disclaimer or disclosure provisions)?; (4) have there been any court challenges to these provisions?; and (5) have there been any legislative proposals to regulate negative campaign ads since 1985 (responses to this question are not necessarily exhaustive). Names and telephone numbers of contacts providing information are listed on the table.

Fair Campaign Practices Codes: Seven state legislatures have endorsed or adopted a fair campaign practices code (CA, IL, MT, NY, WA, WV, WY). These codes are generally signed by candidates on a voluntary basis. Code provisions typically include a clause similar to that found in Washington's code, vowing to "not participate" in "personal vilification, defamation, and other attacks on any opposing candidate or party" (WAC Sec. 390-32). The Connecticut General Assembly enacted a voluntary code in 1974, but repealed the code in 1978.

Laws Prohibiting False Campaign Statements: Laws in twenty-one states (AK, CA, CO, FL, IN, LA, MA, MI, MN, MS, MT, NV, NC, ND, OH, OR, TN, UT, WA, WV, WI) prohibit false campaign statements. In Michigan and Nevada, these prohibitions apply specifically to false incumbency designations; in California, misrepresentation of party support is the type of false statement prohibited. Seven state prohibitions (in AK, CO, IN, MN, ND, OR, TN) apply only to *written* false statements. Most states punish violations as misdemeanors. Nebraska's campaign falsity statute, enacted in 1978, was repealed in 1986.

Court Challenges: Key provisions of New York's Fair Campaign Code were struck down as unconstitutionally overbroad in *Vanasco v. Schwartz*, 401 F. Supp. 87, aff'd 423 U.S. 1041 (1975). The *Vanasco* ruling, which has become the leading opinion on campaign falsity statutes, held that any state regulation of campaign speech must be premised on the "actual malice" standard applicable to public figures according to *New York Times Co. v. Sullivan*, 376 U.S. 251 (1964). Similarly, Nebraska's campaign falsity statute (NRS Sec. 49-14,132) was ruled "constitutionally invalid as overbroad" by the Nebraska Supreme Court and was repealed in 1986. See *Fowler v. Nebraska Accountability Commission*, 330 N.W.2d 136 (1983). Ohio's current prohibition against false statements was ruled unconstitutional by a federal district court in 1987 (*Pestrak v. Ohio Elections Commission*, 670 F.Supp. 1368 (1987)); that ruling is now on appeal. A successful 1989 challenge to the constitutionality of Louisiana's false statement prohibition is also on appeal. See *State v. Burgess*, 543 S.2d 1332 (1989).

Legislative Proposals Since 1985: While some survey contacts report increasing, bipartisan legislative interest in regulating negative campaign ads, others say such efforts in their states would be met with solid opposition. States where recent legislative proposals in this area have received bipartisan support include Alaska, Connecticut, Florida, Iowa, Maine, Minnesota, New Jersey, New York and Pennsylvania. 1990 proposals in Florida and New Jersey would require that a candidate's own voice and/or photograph be used in campaign ads that make reference to an opposing candidate.

The State Election Commission and the Secretary of State invite you to subscribe and adhere to the Code of Fair Campaign Practices. If you desire to participate, please file this document with the county clerk if you are running for a county office or with the Secretary of State if you are running for legislative, statewide or federal office.



CODE OF FAIR
CAMPAIGN PRACTICES

Names of individuals signing this Code will be provided to the public.

STATE ELECTION COMMISSION

Dr. Allan S. Hammock, Chairman
Benjamin Bryant
Tarry D. Reed
Barbara M. Ruley
Ken Hechler, Ex Officio Member

There are basic principles of decency, honesty and fair play which every candidate for public office in the United States has a moral obligation to observe and uphold, in order that, after vigorously contested but fairly conducted campaigns, our citizens may exercise their constitutional right to a free choice and the will of the people may be fully and clearly expressed on the issues before the Country.

THEREFORE:

I SHALL CONDUCT this campaign openly and publicly, discussing the issues as I see them, presenting positions and policies with sincerity and frankness, and criticizing without fear or favor the record and policies of candidates or political parties which merit such criticism.

I SHALL NOT USE OR PERMIT the use of character defamation, whispering campaigns, libel, slander, or scurrilous attacks on any candidate or his or her personal or family life.

I SHALL CONDEMN the use of campaign advertising or communication of any sort which misrepresents, distorts, or otherwise falsifies the facts regarding any candidate or issue raised in any campaign.

I SHALL NOT USE OR PERMIT any appeal to negative prejudice based on race, sex, religion, national origin, physical health status, or age.

I SHALL NOT USE OR PERMIT any dishonest or unethical practice which tends to corrupt or undermine our American system of free elections, or which hampers or prevents the full and free expression of the will of the voters including acts intended to hinder or prevent any eligible person from registering to vote, or voting, or intended to affect voting through the buying of influence or votes.

I SHALL NOT COERCE election help or campaign contributions for myself or my committee or for any other candidate from my employees or from any person under my authority, influence or control.

I SHALL IMMEDIATELY AND PUBLICLY REPUDIATE support derived from any individual or group which resorts to the methods and tactics which I condemn on behalf of or in opposition to any candidacy. I shall accept responsibility to take firm action against any subordinate or associate who violates any provision of this code or the laws governing elections.

I PERSONALLY SUPPORT a limit on campaign expenditures that when reasonable, sufficient and fairly applied, does not limit or restrict the expression of ideas of the candidate or others on behalf of the candidate, but instead challenges individuals to engage in open dialogue on the issues rather than merely to purchase the excessive repetition of images and slogans.

ACCORDINGLY, I WILL ADHERE to the following limits on campaign expenditures:

	ARY	GENERAL
U.S. Senate	1,000,000	1,000,000
U.S. House of Representatives	250,000	250,000
Governor	1,000,000	1,000,000
Constitutional Officers	100,000	100,000
Supreme Court	125,000	125,000
State Senators	25,000	25,000
House of Delegates	12,500	12,500

I SHALL DEFEND AND UPHOLD the right of every qualified voter to full and equal participation in the electoral process.

AS A PUBLIC OFFICIAL, I PLEDGE to conduct my official duties in the public interest of all people without discrimination against any person, faction or group. Furthermore, as a public official I pledge not to utilize my office personnel or equipment on behalf of any ballot issue or candidate.

I, the undersigned, a candidate for election to public office in the State of West Virginia, or the chairperson of a political committee supporting one or more candidates for election, hereby voluntarily endorse, subscribe to, and solemnly pledge myself to conduct this campaign in accordance with the above principles and practices.

Date

Signature

It is suggested that you might want to publicize the fact that you have signed this Code, and challenge your opponent(s) to do likewise.

Montana

ELECTION AND CAMPAIGN PRACTICES AND CRIMINAL PROVISIONS

13-35-301

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37-128.

13-35-230. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. 23-47-137 by Sec. 37, Ch. 334, L. 1977; R.C.M. 1947, 23-47-137.

13-35-231. Unlawful for political party to endorse judicial candidate. A political party may not endorse, contribute to, or make an expenditure to support or oppose a judicial candidate.

History: En. 23-47-138 by Sec. 38, Ch. 334, L. 1977; R.C.M. 1947, 23-47-138; amd. Sec. 223, Ch. 571, L. 1979.

Cross-References

Election of Supreme Court Justices, 3-2-101,
3-2-102.

Election of District Court Judges, 3-5-201,
3-5-202.

Election of Justice of the Peace, 3-10-201.
Violation as misdemeanor, 13-35-103.

13-35-232. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. 23-47-139 by Sec. 39, Ch. 334, L. 1977; R.C.M. 1947, 23-47-139.

13-35-233. Solicitation of votes on election day. (1) It is unlawful for a person or a political committee to place an advertisement supporting or opposing a candidate or a ballot issue for use on election day. Failure to remove billboards, yard signs, or posters on election day is not considered a violation.

(2) A person convicted of solicitation of votes on election day is guilty of a misdemeanor and shall be imprisoned in the county jail for a term not to exceed 6 months or be fined not to exceed \$1,000, or both.

History: En. Sec. 1, Ch. 539, L. 1979.

13-35-234. Political criminal libel — misrepresenting voting records. (1) It is unlawful for any person to make or publish any false statement or charge reflecting on any candidate's character or morality or to knowingly misrepresent the voting record or position on public issues of any candidate. A person making such a statement or representation with knowledge of its falsity or with a reckless disregard as to whether it is true or not is guilty of a misdemeanor.

(2) In addition to the misdemeanor penalty of subsection (1), a successful candidate who is adjudicated guilty of violating this section may be removed from office as provided in 13-35-106 and 13-35-107.

History: En. Sec. 2, Ch. 539, L. 1979; amd. Sec. 1, Ch. 545, L. 1983.

Cross-References

When owner of radio station not held respon-
sible for defamatory broadcast, 27-1-811.

Misdemeanor penalty, 46-18-212.

Part 3

Code of Fair Campaign Practices

13-35-301. Adoption of code of fair campaign practices. The following code of fair campaign practices is adopted by Montana:

"There are basic principles of decency, honesty, and fair play that every candidate for public office in the United States has a moral obligation to observe and uphold, in order that, after vigorously contested but fairly conducted campaigns, our citizens may exercise their constitutional right to a free and untrammelled choice and the will of the people may be fully and clearly expressed on the issues before the country. Therefore:

I will conduct my campaign in the best American tradition, discussing the issues as I see them, presenting my record and policies with sincerity and frankness, and criticizing without fear or favor the record and policies of my opponent and his party which merit such criticism.

I will defend and uphold the right of every qualified American voter to full and equal participation in the electoral process.

I will conduct my campaign without the use of personal vilification, character defamation, whispering campaigns, libel, slander, or scurrilous attacks on my opposition or his personal or family life.

I will not use campaign material of any sort which misrepresents, distorts, or otherwise falsifies the facts, nor will I use malicious or unfounded accusations which aim at creating or exploiting doubts, without justification, as to the loyalty and patriotism of my opposition.

I will not make any appeal to prejudice based on race, sex, creed, or national origin.

I will not undertake or condone any dishonest or unethical practice which tends to corrupt or undermine our American system of free elections or which hampers or prevents the full and free expression of the will of the voters.

Insofar as is possible, I will immediately and publicly repudiate support deriving from any individual or group which resorts, on behalf of my candidacy or in opposition to that of my opponent, to the methods and tactics that I have pledged not to use or condone."

History: En. Sec. 1, Ch. 475, L. 1979.

13-35-302. Candidates to be given opportunity to subscribe to campaign practices code — publicity. (1) The commissioner of campaign practices shall prepare a form which contains the code of fair campaign practices provided for in 13-35-301 and a place for a candidate to sign the form and to indicate that the candidate endorses, subscribes to, and pledges to abide by the code.

(2) Each candidate required to file statements or reports with the commissioner shall be sent a copy of this form. Signing the form is voluntary, and a failure or refusal to sign is not a violation of the election laws. A form shall be sent for each election as soon as feasible. The signed form shall be returned to the commissioner.

(3) The commissioner shall supply the secretary of state, the county registrars, and the city and town clerks with forms. Any candidate not required to file with the commissioner but wishing to subscribe to the code may obtain the form from the commissioner, the secretary of state, a county registrar, or a city or town clerk and may sign the form and deliver it to the commissioner.

History: En. Sec. 2, Ch. 475, L. 1979.

CHAPTER 36

CONTESTS

Part 1 — General Provisions

- 13-36-101. Grounds for contest of nomination or selection to public office.
13-36-102. Time for commencing contest.
13-36-103. Court having jurisdiction of proceedings.

13-36-104. Nomination c

- 13-36-201. Contents of c
13-36-202. Reception of
13-36-203. Form of comp
13-36-204. Bond require
13-36-205. Recovery of c
13-36-206. Notice of filin
13-36-207. Hearing of co
13-36-208. Advancement
13-36-209. Forfeiture of
13-36-210. Punishment.
13-36-211. When nomina
13-36-212. Declaration of

Chapter Cross-Reference
Salaries withheld durin
2-18-202.

Role and duties of
Recorder, 7-4-2811.

Challenges to local gov
tione, 7-7-105.

Definitions applicabl
13-1-101.

**13-36-101. Gros
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History: En. Sec. 45, Int
R.C.M.: 1933; Sec. 94-1434,
59, Ch. 363, L. 1977; R.C.M

Cross-References
Definition of "elector" a
13-1-101.

13-36-102. Time
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League of Women Voters of Wyoming

FAIR CAMPAIGN PRACTICES STATEMENT

Every candidate for public office in the State of Wyoming has a moral obligation to observe and uphold principles of decency, honesty and fair play, in order that, after vigorously contested but fairly conducted campaigns, our citizens may exercise their constitutional right to a free and untrammelled choice and the will of the people may be fully and clearly expressed on the issues.

THEREFORE:

(1) CANDIDATES shall conduct their campaigns honestly, discussing the issues, as they see them, without misstatement, presenting their record and policies with sincerity and frankness, and may criticize the record and positions of their opponents or their political parties. Candidates or their campaigns shall refrain from knowing misrepresentation of an opponent's actions, positions or record for political advantage.

(2) CANDIDATES shall refrain from the use of character defamation, whispering campaigns, libel, slander, or baseless attacks on any candidate or his or her personal or family life.

(3) CANDIDATES shall not use or permit any appeal to negative prejudice based on race, sex, religion, national origin, physical health status or age.

(4) CANDIDATES shall refrain from corrupting or undermining our American system of free elections, or that which hampers or prevents the full and free expression of the will of the voters including acts intended to hinder or prevent any eligible person from registering to vote, enrolling to vote, or voting.

(5) CANDIDATES shall not coerce election help or campaign contributions for themselves or for any other candidate from their own or public employees.

(6) CANDIDATES shall immediately and publicly repudiate support deriving from any individual or group which resorts, on behalf of their candidacy or in opposition to that of their opponents, to the methods and tactics which violate this statement. CANDIDATES shall accept responsibility for any subordinate who violates any provision of this statement or the laws governing elections.

JSG - 02/19/80

Joseph S. Golden, President
O. Box 2882
Cheyenne, WY 82003

HOUSE COMMITTEE REPORT

(7)

Date Referred: March 1, 1991

FURTHER REFERRALS:

Judiciary
Finance

Date of Committee Action: 2/14/92

The STATE AFFAIRS Committee considered:

HB 183

HOUSE BILL NO. 183

FAIR CAMPAIGN PRACTICES CODE

"An Act relating to the Fair Campaign Practices Code."

RECOMMENDATIONS:

be replaced with CS HB 183 (STA)

the same title

a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____

APPROVES PREVIOUS: (Dept/Date) _____

fiscal impact _____

fiscal note(s) _____

zero fiscal note Div of ELECTIONS

zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Eugene G. Kubisa</i>	<input checked="" type="checkbox"/>				
<i>Mr. Stuenkel</i>	<input checked="" type="checkbox"/>				
<i>Mike Miller</i>	<input checked="" type="checkbox"/>				
<i>Jan ...</i>	<input checked="" type="checkbox"/>				
<i>...</i>	<input checked="" type="checkbox"/>				

Eugene G. Kubisa
CHAIRMAN'S SIGNATURE

HOUSE COMMITTEE REPORT

(7)

Date Referred: February 18, 1992

FURTHER REFERRALS:

Finance

Date of Committee Action: 3/11/92

The JUDICIARY Committee considered:

HB 183

HOUSE BILL NO. 183

FAIR CAMPAIGN PRACTICES CODE

"An Act relating to the Fair Campaign Practices Code."

RECOMMENDATIONS:

be replaced with CSHB 183 (JUD)

the same title
 a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal impact _____

fiscal note(s) _____

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zero fiscal note(s) Elections 1/16/92

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<u>Dave Donley</u>	<input checked="" type="checkbox"/>	<u>Terry Martin</u>		<input checked="" type="checkbox"/>	
<u>John Ellis</u>	<input checked="" type="checkbox"/>				
<u>Bob Gurnea</u>	<input checked="" type="checkbox"/>				
<u>Kevin Padgett</u>	<input checked="" type="checkbox"/>				
<u>Mike Miller</u>	<input checked="" type="checkbox"/>				
<u>Mark Hensley</u>	<input checked="" type="checkbox"/>				

Dave Donley
 CHAIRMAN'S SIGNATURE

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 183

Revision Date: _____
Title: Fair Campaign Practices Code
Sponsor: Representative Finklestein
Requestor: House State Affairs

Department Affected: Office of the Governor-Elections
BRU: Division of Elections
Component: 11-Primary and General Elections

COMPONENT SERIAL NO.

0	0	2	2
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER FUND SOURCE:	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact: 0

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Elizabeth Ziegler, Deputy Director
Division: Elections

Phone: 465-4611
Date: 01/16/92

Approved by Commissioner: *Barrett L. Finklestein*
Agency: Office of the Governor

Date: 01/16/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).