HB

40

(7)

HOUSE COMMITTEE REPORT

Date Referred: January 21, 1991 FURTHER REFERRALS: Judiciary

Date of Committee Action: 3-18-91

The STATE AFFAIRS Committee considered: HB 40

HOUSE BILL NO. 40 FALSE INFORMATION IN ELECTION PAMPHLET

"An Act relating to the providing of false information in an election pamphlet."

RECOMMENDATIONS:
be replaced with CSHB 40 [✓] 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 Dept. of Law Division of Elections [ ] zero fiscal note(s) ______

SIGNING DO PASS: SIGNING OTHER RECOMMENDATIONS:

	Check appropriate column:	Do Not Pass	No Rec	Amend
Gene Kubina				
Tom Moyer				
[illegible signature]	Doris [illegible]		✓	
E. Brucklen [illegible]	[illegible signature]		✓	

Gene Kubina
Chairman's Signature

HOUSE COMMITTEE REPORT

4/12/91 Rules

(7)

Date Referred: March 20, 1991

FURTHER REFERRALS:

Date of Committee Action: 4-11-91

The JUDICIARY Committee considered: HB 40

HOUSE BILL NO. 40 FALSE INFORMATION IN ELECTION PAMPHLET

"An Act relating to the providing of false information in an election pamphlet."

RECOMMENDATIONS:
be replaced with CSHB 40 (JUD)

[ ] the same title
[X] a new title

[ ] have attached amendments(s)
[X] do pass
[ ] do not pass
[ ] no recommendations
[ ] individual recommendations
[ ] additional referral to the ______ Committee

ADOPTS: ______ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

[ ] fiscal impact ______
[ ] zero fiscal note ______

APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal note(s) ______
2-[X] zero fiscal note(s) 077. 600: Elections Dept. of law 3-20-9

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
Dave Donley DONLEY	X	Terry Martin MARTIN		✓	
Mark Hanley HANLEY	X				
J. Ellis ELLIS	X				
Mike Miller MWMILLER	X				
Kevin Pat Parnell PARNELL	✓				

Dave Donley

CHAIRMAN'S SIGNATURE

CS FOR HOUSE BILL NO. 40 (JUDICIARY)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): **REPRESENTATIVE BRUCKMAN**

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the offense of campaign misconduct in the first degree."**

2 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

3 *** Section 1.** AS 15.56.010(a) is amended to read:

4 (a) A person commits the crime of campaign misconduct in the first degree if the person

5 (1) knowingly circulates or has written, printed, or circulated a letter, circular, or
6 publication relating to an election, to a candidate at an election, or an election proposition or
7 question without the name and address of the author appearing on its face;

8 (2) knowingly prints or publishes an advertisement, billboard, placard, poster,
9 handbill, paid-for television or radio announcement or other communication intended to influence
10 the election of a candidate or outcome of a ballot proposition or question without the words "paid
11 for by" followed by the name and address of the candidate, group, or individual paying for the
12 advertising or communication and, if a candidate or group, with the name of the campaign <u>**chair**</u>
13 [CHAIRMAN]; [OR]

14 (3) knowingly writes or prints and circulates, or has written, printed, and

1 circulated, a letter, circular, bill, placard, poster, or advertisement in a newspaper, on radio or
2 television <u>**or in the election pamphlet under AS 15.58 that**</u>
3 (A) <u>**contains information**</u> [CONTAINING FALSE FACTUAL
4 INFORMATION RELATING TO A CANDIDATE FOR AN ELECTION;
5 (B) WHICH] the person knows to be false; and
6 <u>**(B) relates to a candidate's reputation for honesty or integrity,**</u>
7 <u>**qualifications for office, or background or experience, including information about**</u>
8 <u>**the candidate writing, printing, or circulating the information**</u> [(C) WHICH WOULD
9 PROVOKE A REASONABLE PERSON UNDER THE CIRCUMSTANCES TO A
10 BREACH OF THE PEACE OR DAMAGES THE CANDIDATE'S REPUTATION FOR
11 HONESTY, INTEGRITY, OR THE CANDIDATE'S QUALIFICATIONS TO SERVE
12 IF ELECTED TO OFFICE].

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

[illegible]. 1
Bill Version: CSHB 40(STA)
(H) Publish Date: 3/20/91

Revision Date:
Title: "An Act relating to false information in an election pamphlet."
Sponsor: Representative Bruckman
Requestor: House State Affairs

Department Affected: Department of Law
BRU: Prosecution
Component: Criminal Justice Litigation

COMPONENT SERIAL NO. | | | 8 | 9 |

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

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

Estimate of current year impact:

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Prepared By: Richard I. Pegues, Director
Phone: 465-3672
Division: Administrative Services
Date: February 11, 1991
Approved by Commissioner: Charles E. Cole, Attorney General
Agency: Department of Law
Date: February 11, 1991

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Rev 10/90

COMMITTEE COPY

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 40

House Bill No. 40 amends AS 15.56.010(a) by adding a new offense to the crime of campaign misconduct in the first degree to include a person who submits, or causes to be submitted, factual information that the person knows is false for inclusion in the election pamphlet under AS 15.68. Campaign misconduct in the first degree is a class A misdemeanor. Although there have been past incidents of false information being submitted for inclusion in the state's official election pamphlet, the number of such incidents has not been great enough to warrant fiscal note costs.

COMMITTEE COPY

No. 2

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Bill Version: CSHB 40(STA)
(H) Publish Date: 3/20/91

Revision Date: ____________ Department Affected: Office of the Governor-Elections

Title: An Act relating to the providing of false info. in an election pamphlet

BRU: Division of Elections

Component: ____________

Sponsor: Representative Bruckman

Requestor: State Affairs

COMPONENT SERIAL NO.

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
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						

REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year Impact: -0-

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Elizabeth Ziegler, Deputy Director Phone: 465-4611

Division: Division of Elections Date: 2-8-91

Approved by Commissioner: [signature]

Agency: Division of Elections Date: 2-8-91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Rev 10/90

COMMITTEE COPY

Gaguine
04/05/91

AMENDMENT

OFFERED IN THE HOUSE — BY REPRESENTATIVE BRUCKMAN

TO: CSHB 40(STA)

Page 2, line 3, following "integrity,":

Delete "or"

Page 2, line 4, following "office":

Insert ", or background or experience"

#1

3111 C STREET
ANCHORAGE, ALASKA 99503
(907) 561-2034

WHILE IN SESSION
P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-4843

ALASKA STATE HOUSE

LABOR & COMMERCE

STATE AFFAIRS

REPRESENTATIVE BETTY BRUCKMAN

MEMORANDUM

TO: Judiciary Subcommittee HB 40

FROM: Rep. Betty Bruckman

DATE: April 9, 1991

SUBJECT: HB 40, " An Act relating to the offense of election misconduct in the first degree.

I felt a little background on HB 40 would be appropriate. It was my original intent to make it a crime to knowingly lie in the official election pamphlet printed and circulated by the State.

It was the decision of the State Affairs subcommittee to broaden the scope of the intent of my legislation to encompass all forms of intentional deceit during the course of a political campaign. The subcommittee decided to repeal the current statute and rewrite it entirely. During the course of the rewrite I became concerned that inadvertent misstatements would be prosecutable under the new language and asked the drafter to emphasize the *malicious intent* of the untruth, hence the "prepared".

I have been apprised by staff counsel that the legal standard *knowingly* would protect innocent misstatements from prosecution and I would be amenable to the revision of section 1,(a), Paragraph 3 - to **knowingly writes or prints or circulates, or has written, printed, and circulated, a letter, circular, bill, placard poster or advertisement in a newspaper on radio, television, or in an election pamphlet under AS 15.58.**

Regarding Section 1, (a) paragraph 1 & 2, the drafter did not substantively alter existing law. It apparently was the intent of the

subcommittee to retain the distinctions referred to in existing statue but to update the language.

3111 C STREET
ANCHORAGE, ALASKA 99503
(907) 561-2034

WHILE IN SESSION
P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-4843

ALASKA STATE HOUSE

LABOR & COMMERCE

STATE AFFAIRS

MEMORANDUM

REPRESENTATIVE BETTY BRUCKMAN

TO: Representative Dave Donley

FROM: Rep. Betty Bruckman

DATE: March 25, 1991

SUBJECT: Scheduling HB 40

I would appreciate your scheduling HB 40 before the House Judiciary Committee at your earliest convenience.

722C

Alaska State Legislature

HOUSE OF REPRESENTATIVES

Official Business

P.O. Box V
State Capitol
Juneau, Alaska 99811

SPONSOR STATEMENT
HB 40

AN ACT RELATING TO THE PROVIDING OF FALSE INFORMATION IN AN ELECTION PAMPHLET

The public relies on the information provided by the Division of Elections as "official" information and we have a responsibility to insure that the information provided by the candidates is as accurate as possible.

It was my intent when I filed this legislation to create a mechanism whereby candidates are notified that they are accountable for the information that they provide.

STATE OF ALASKA

ALASKA PUBLIC OFFICES COMMISSION

WALTER J. HICKEL, GOVERNOR

REPLY TO:

☑ 2221 E. Northern Lights, Room 128
Anchorage, AK 99508
(907) 276-4176

☐ Juneau Branch Office
Box CO
Juneau, AK 99811-0222
(907) 465-4864

February 11, 1991

Representative Betty Bruckman
P.O. Box V
Juneau, Ak 99811

Dear Representative Bruckman:

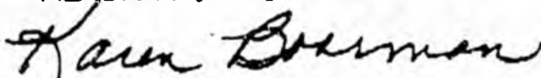
The Alaska Public Offices Commission discussed HB 40 "An act relating to the providing of false information in an election pamphlet" at your request during their meeting on February 8, 1991.

The Commission would like to convey its' appreciation for the opportunity to comment. However, they did not feel commenting on this bill would be appropriate since AS 15.56 is not within their jurisdiction.

If I can be of further assistance, please let me know.

Sincerely,

ALASKA PUBLIC OFFICES COMMISSION



Karen Boorman
Executive Director

cc: APOC Members
Barbara Prichart, Department of Administration

STATE OF ALASKA

OFFICE OF THE GOVERNOR

DIVISION OF ELECTIONS
P.O. BOX AF
JUNEAU, ALASKA 99811-0105
PHONE (907) 465-4611

February 8, 1991

To: The Honorable Gene Kubina
House State Affairs Committee

From: Elizabeth Ziegler, Deputy Director
Division of Elections

Re: HB 40, False Statement in Election Pamphlet

Position: The Division of Elections supports the intent of this bill. There are no fiscal impacts to the division.

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 40

Revision Date:

Department Affected: Office of the Governor-Election

Title: An Act relating to the providing of false info. in an election pamphlet

BRU: Division of Elections

Component:

Sponsor: Representative Bruckman

Requestor: State Affairs

COMPONENT SERIAL NO.

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
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						

REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: -0-

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Elizabeth Ziegler, Deputy Director

Phone: 465-4611

Division: Division of Elections

Date: 2-8-91

Approved by Commissioner: Charlot E. Thickstun

Agency: Division of Elections

Date: 2-8-91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Rev 10/90

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 40

Revision Date:

Department Affected: Department of Law

Title: "An Act relating to false information in an election pamphlet."

BRU: Prosecution

Component: Criminal Justice Litigation

Sponsor: Representative Bruckman

Requestor: House State Affairs

COMPONENT SERIAL NO. | | | 8 | 9 |

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

Estimate of current year impact:

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Prepared By: Richard I. Pegues, Director — Phone: 465-3672

Division: Administrative Services — Date: February 11, 1991

Approved by Commissioner: Charles E. Cole, Attorney General

Agency: Department of Law — Date: February 11, 1991

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Rev 10/90

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 40

House Bill No. 40 amends AS 15.56.010(a) by adding a new offense to the crime of campaign misconduct in the first degree to include a person who submits, or causes to be submitted, factual information that the person knows is false for inclusion in the election pamphlet under AS 15.68. Campaign misconduct in the first degree is a class A misdemeanor. Although there have been past incidents of false information being submitted for inclusion in the state's official election pamphlet, the number of such incidents has not been great enough to warrant fiscal note costs.

a California appeals court upheld the law, ruling that although compulsory blood tests are considered searches subject to Fourth Amendment protection, "the control of a communicable disease is a valid exercise of the state's police power." The state Supreme Court has ordered a stay of the law pending an appeal. None of the plaintiffs have been tested yet.

Georgia. After a verdict, guilty plea, or plea of no contest to any "AIDS transmitting crime," the court may require the defendant to take an HIV test within 45 days. If the defendant refuses, the court can order involuntary testing. Having HIV testing may be made a condition of a suspended sentence or probation for any part of a sentence for such a crime. The Department of Human Resources, which tests offenders, must give results to the victim or victim's parent or guardian if it believes the crime posed a significant risk.

> *A California appeals court upheld the California law, but that decision is being appealed.*

Illinois

Public Act 85-1399 (1988) amended the Unified Code of Corrections section on sentencing to require HIV testing of persons convicted of various sex and drug crimes. Results of the testing must be delivered to the judge of the court that entered the conviction for *in camera* inspection. The judge has discretion to decide who, if anyone, can be informed of the test results.

Indiana. The court must order a person convicted of a sex crime that created a demonstrated risk of transmission of HIV to have HIV testing. The state board of health, which does the test, must notify victims if tests confirm that the offender has antibodies to HIV. It must also provide counseling for the victim.

South Carolina. Within 15 days after conviction of a sex offense resulting in exposure of the victim to blood or body fluids of the offender, the offender must have HIV testing. The results are reported to the prosecutor, who in turn must notify the victim and offender. The offender must pay for the test unless poor.

Michigan. On conviction for certain crimes that can result in transmitting HIV, the court must order the offender to be tested for HIV. The court must also order the offender to have counseling. If the victim consents, the court must give the person administering the test the name, address, and telephone number of the victim, and immediately give the results to the victim and provide a referral for counseling.

Oregon. On conviction, the court must seek the offender's consent to an HIV test. If the offender refuses, the court may, at the request of the victim or the victim's parent or guardian, order the offender to take an HIV test after the victim has taken such a test. Results of the offender's test must be sent to a doctor designated by the victim. If test results are negative, the court may order the convicted person to take another HIV test 6 months after the first one. ■

Robert L. Bayless
Staff Scientist

This article including footnotes to sources is available to legislators as an LRU Research Response.

Courts Look Closely at Campaign-Statement Laws

Laws prohibiting false campaign statements must be carefully written under U.S. Supreme Court decisions on freedom of speech. Campaign statements can be punished only if made with knowledge that they are false, or reckless disregard for whether they are false. Courts since 1975 have struck down at least four state laws prohibiting false campaign statements.

An alternative to such laws may be voluntary codes of fair campaign practices, enacted in Illinois and four other states. By signing the codes, candidates promise to run honest campaigns.

First Amendment Issues

Political speech is protected by the First Amendment to the U.S. Constitution, guaranteeing the right of free expression. Several U.S. Supreme Court cases decided since 1963 have the effect of protecting speech in political campaigns. Major cases relevant to campaign statements are summarized below.

New York Times Co. v. Sullivan (1964)

A public official sued the *New York Times* for publishing a paid advertisement that falsely said he mistreated protesting students while performing his duties. He won in the trial court. But the U.S. Supreme Court said the First Amendment restricts a public official from getting damages for a defamatory falsehood relating to his official conduct. The Court said that neither factual errors—which are inevitable in free debate—nor defamatory content alone are enough to remove the constitutional protection of political statements. The crux of the Court's opinion said:

(continued on p. 6)

Campaign Statement Laws *(continued from p. 5)*

> The Constitutional guarantees require, we think, a federal rule that prohibits a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with "actual malice"—that is, with knowledge that it was false or with reckless disregard of whether it was false or not.

In later cases the Court extended this holding to persons who, although not public officials, are "public figures"—meaning they have become involved in matters of legitimate public concern. This specifically applies to candidates for public office, even if they are not yet public officials.

The courts set a higher standard of intent in defamation suits by public officials or candidates than by private persons.

Vanasco v. Schwartz (1976)
This case applied the "malice" standard of *New York Times* in striking down key provisions of a state law on false campaign statements. Two candidates sued the New York State Board of Elections, challenging the constitutionality of the New York Fair Campaign Code. One of the candidates had been accused of distributing campaign literature that misrepresented his party affiliation. The other was accused of misrepresenting his opponent's voting record. The Code prohibited misrepresentation of a candidate's qualifications, position, or party affiliation. The Code did not say that such misrepresentation must be deliberate or malicious.

A three-judge federal district court said the law's prohibitions on false statements "cast a substantial chill on the expression of protected speech and are unconstitutionally overbroad and vague." The court further said that the falsity of statements complained of must be proven by "clear and convincing" evidence. The U.S. Supreme Court affirmed the judgment without opinion, thus giving no indication whether it agreed with the district court's statement about clear and convincing evidence.

At least three other laws prohibiting false campaign statements have been struck down. Nebraska's law was held invalid by its Supreme Court in 1983. Louisiana's law was struck down by the Louisiana Supreme Court in 1989. Also, in 1987 the U.S. District Court for the Southern District of Ohio overturned that state's corrupt-practices law. The Ohio case was somewhat different from the others. Rather than finding fault with the law's false-statement provisions, the court said its *enforcement* provisions were overbroad. It held that the law's provisions requiring administrative adjudication by the state elections commission imposed a prior restraint on constitutionally protected free speech. The court struck down the commission's authority to assess liability based on evidence less than would be required by a court. A report that the Louisiana and Ohio cases are on appeal could not be confirmed.

Federal Law
The Federal Election Campaign Act does not prohibit publication or broadcast of false information in political campaigns. The Act *does* require that each political communication identify the person or group paying for it, and tell whether the candidate authorized it. This applies to political communications advocating the election or defeat of an identified candidate, or soliciting campaign contributions.

Illinois' Code of Fair Campaign Practices is not legally enforceable, but a candidate's signing of it becomes a public record.

Illinois Law
Illinois law similarly does not prohibit publication or broadcast of false information in campaigns. The Election Code simply requires that specific information appear on some forms of political material. The Code requires that the name and address of persons disseminating written political material about candidates or ballot propositions be printed on the material. This provision applies to pamphlets, circulars, handbills, advertisements, and any other separate campaign material, but not to articles published in recognized periodicals. Violation is punishable by up to 364 days in jail and/or a fine up to $1,000.

The Election Code also requires that political committees include a statement on all materials and advertisements soliciting funds, saying that a copy of the committee's financial report is or will be available from the State Board of Elections or the county clerk. Violators can be assessed a civil penalty up to $1,000.

Other States' Laws
Half the states have laws prohibiting false campaign statements. Only five expressly prohibit false statements made maliciously. Montana, North Carolina, and Oregon specify that false statements must have been made knowingly and recklessly; Florida that they were made knowingly and maliciously; and Washington that they were made maliciously.

Laws of the other 20 states are not as rigorous in requiring malice, which may make them more vulnerable to a constitutional challenge. The laws of 14 states apply to false statements made "knowingly." Such laws in Louisiana and Ohio have been successfully challenged in the cases now reportedly on appeal. The laws of the other 6 states are even broader. They merely prohibit various kinds of false statements, making them most likely to fail the *New York Times* test.

The kinds of statements to which the laws apply also vary. Laws of 7 states (California, Hawaii, Michigan, Nevada, New Jersey, Texas, and Virginia) apply to only one or two kinds of false statements—usually false claims of incumbency, endorsement, or election code violations. Laws of 9 states apply to written statements only.

Enforcement
A recent survey shows that some states have so little confidence in the validity of their false-statement laws that they shrink from active enforcement. Some election administrators surveyed said stricter enforcement would result in lawsuits that could lead to repeal of laws.

Codes of Fair Campaign Practices

A voluntary code of fair campaign practices may be an alternative to attempts to prohibit false statements. Five states including Illinois have such codes. (The others are California, Montana, New York, and Washington.)

The codes generally include a pledge that candidates can sign voluntarily, promising to conduct an honest, open, ethical campaign. The added benefit this offers candidates is the right to include a statement on campaign literature saying they have subscribed to the code.

The Illinois code, enacted in 1989, says the candidate will conduct a campaign based on the principles of "decency, honesty, and fair play." It discourages use of defamatory or scurrilous attacks on opponents. Subscription to the code is voluntary, and adherence to it by a signer cannot be legally enforced. However, a copy of the code signed by a candidate and filed with the State Board of Elections becomes a public record.

Many of the laws in 25 states that prohibit false campaign statements seem vulnerable to challenge. Some are enforced little.

A portion of the code specifically addresses false campaign statements:

> (4) 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 personal integrity or patriotism of my opposition. ■

Karen A. Fahrion
Research Associate

This article, with footnotes and appendices, is available to legislators as an LRU Research Response.

Costs to Raise "Circuit Breaker" Grants

Illinois' "circuit breaker" program gives partial property-tax relief to people who are 65 or older, or disabled, and have annual household income under $14,000. The income limit has risen 40% since the program started in 1972, versus a 215% increase in the Consumer Price Index. In fiscal year 1988, property taxes took 3.8% of personal income in Illinois, compared to 3.5% nationwide.

The "circuit breaker" might be liberalized by at least two methods: (1) raising the $14,000 income limit, or (2) changing the grant formula to increase the maximum grant. Raising the income limit without changing the formula would cost the state only about $3 million per year because the present formula, even without the income limit, would give grants only to households with incomes under $15,556. The second method, changing the formula to increase the grant, might be done in various ways. The most liberal presumably would be making the grant pay the entire property-tax bill of qualifying households. Doing this, only for households with residents 65 or older that would be eligible for a grant under current law, would cost the state about $386 million more per year. A more modest possibility is simply indexing the grant formula to inflation since the program began.

Present Law

The Senior Citizens and Disabled Persons Property Tax Relief and Pharmaceutical Assistance Act (commonly called the "circuit breaker" law) took effect October 1, 1972. The purpose of the Act was to provide some relief

(continued on p. 8)

RECEIVED
AUG 21 1986
Public Disclosure Commission

A BACKGROUND REPORT ON FALSE POLITICAL ADVERTISING IN ELECTION CAMPAIGNS

Prepared by: Mac Rominger
Legal Intern

Office of the Attorney General
State of Washington

August 19, 1986

TABLE OF CONTENTS

INTRODUCTION

PART I — Elements for a Constitutionally Defensible Statute

PART II — Constitutional Concerns Related to False Political Advertising Statutes

PART III — Federal and State Statutory and Case Law Analysis

A. Federal Law

1. Federal legislation and statutory law
2. Federal case law

B. State Law

1. Introduction
2. State statutes
3. State case law

PART IV — Washington Case Law

PART V — Proposed Model Statute

INTRODUCTION

The Washington "false political advertising" statute, RCW 42.17.530, imposes civil liability on a person who sponsors political advertising which contains information that the person "should reasonably be expected to know, to be false." Because this standard would allow for the imposition of civil penalties on persons for the negligent sponsorship of false information in a political campaign it is probably unconstitutional as violative of the right to freedom of speech guaranteed by the First Amendment of the U.S. Constitution. Hence, the statute should be modified in order to be constitutionally defensible.

The intent of this brief is to define the necessary elements of a "false political advertising" statute so as to withstand attacks against its constitutionality.

Because the First Amendment offers its broadest protection of free speech during campaigns for political office, any statute that attempts to regulate political speech/political advertising will be subjected to strict judicial scrutiny if it is challenged. Therefore, any such statute must be narrowly drawn so as not to infringe upon this free speech right.

This brief attempts to identify, analyze, and discuss the various issues related to false representation in election campaigns. Therefore, the brief is divided into the following

five parts:

<u>Part I</u> briefly identifies the recommended elements to be included in the drafting of a constitutionally defensible statute.

<u>Part II</u> discusses the constitutional concerns associated with prohibitions directed at false representation in election campaigns.

<u>Part III</u> explores the existing federal and state statutory and case law pertaining to false political advertising statutes.

<u>Part IV</u> examines Washington case law which may have an impact on any future false political advertising statute which might be drafted and adopted.

<u>Part V</u> sets forth a proposed model statute that will be more readily defensible against challenges to its constitutional validity.

P A R T I

RECOMMENDED STATUTORY ELEMENTS

Briefly, the crucial elements of a constitutional statute are as follows:

(1) <u>"Actual Malice" Standard</u>: The statute must be narrowly drawn so that only those false statements made "<u>knowingly or with</u>

reckless disregard to their truth or falsity" will be proscribed.

(2) Burden of Proof: The statute must incorporate a "clear and convincing" burden of proof.

(3) Judicial Review: The statute must include a provision for judicial review of any administrative decision involving the statute.

(4) Operational Definition of Terms: To avoid charges of vague or ambiguous wording, and to ensure that the statute is sufficiently narrowly drawn, many of the terms of the statute should be operationally defined. For example, terms such as "sponsor", "political advertisement", "candidate", "knowingly", "reckless disregard", "false statement", etc. should be operationally defined in a definitions section immediately preceeding the text of the statute.

PART II

CONSTITUTIONAL CONCERNS--FREE SPEECH ISSUES

The major constitutional concern with false political advertising statutes is the fear that such statutes infringe upon the right to free speech guaranteed by the First Amendment of the U. S. Constitution. The leading United States Supreme Court case

regarding First Amendment concerns is New York Times v. Sullivan, 376 U.S. 254 (1963).

In New York Times, an elected official brought a libel suit against the Times for publishing an article which falsely represented the official's actions while performing his duties. The Court's discussion in New York Times has been extensively quoted in later cases dealing more directly with false representation in election campaigns.

The Supreme Court, in New York Times, stated that freedom of expression of public issues is a right secured by the First Amendment. Id. at 269. The Court further added that this right "was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes." Id. at 269. The Court recognized that such "unfettered interchange" required that "public debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials." Id. at 270. In light of this idea, the Court concluded that neither factual error, which is inevitable in free debate, nor defamatory content, which injures a person's reputation, are sufficient to remove the constitutional protections from such statements.

The Court further indicated that any regulation or statute which would compel the critics of official conduct to guarantee

the truth of their assertions amounts to self-censorship and could lead individuals to make only those statements which "steer far wider of the unlawful zone" than is necessary, thus dampening the vigor and limiting the variety of public debate. Id. at 279.

As a result, the Court concluded that the constitutional guarantees require:

> . . . a federal rule that prohibits a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with "actual malice"--that is, knowledge that it was false or with reckless disregard of whether it was false or not. Id. at 280.

The United States Supreme Court, in further analyzing the realm and extent of the free speech right in election campaigns, has held that in proceedings concerning the regulation of speech during campaigns for political office the constitutional guarantee of freedom of speech "has its fullest and most urgent application." Monitor Patriot v. Roy, 401 U.S. 265, 272 (1970). (See also: Buckley v. Valeo, 424 U.S. 1 (1976).)

However, the fact that speech, uttered or written, during a campaign for political office is given broad constitutional protections, does not mean that it cannot be regulated in a constitutionally defensible manner. The United States Supreme Court has stated that merely because speech is used in a political context for political ends does not automatically entitle that speech to the protection of the constitution.

Garrison v. La., 379 U.S. 64 (1964). The Court has also ruled that calculated falsehoods fall into a class of utterances which "are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefits that may be derived from them is clearly outweighed by the social interest in order and morality." Chaplinsky v. N.H., 315 U.S. 568, 572 (1942). (See also, Gertz v. Robert Welch, Inc., 418 U.S. 423 (1979)).

The Supreme Court, in relying on Chaplinsky, further ruled in Garrison that knowingly false statements and false statements made in reckless disregard of the truth, do not enjoy constitutional protection. Garrison, 379 U.S. at 75.

The basic premise posited in New York Times and its progeny can also be explained and perhaps more easily understood through a brief analysis of what is commonly referred to as the Overbreadth Doctrine.

Under this doctrine, which finds application when First Amendment interests are at stake, the courts may invalidate a statute that primarily regulates unprotected expression if the statute also reaches protected expression in the process. Thus, the doctrine recognizes that despite any legitimate state interest involved, the chilling effect on protected expression is too high a price to pay when the regulatory scheme has not been narrowly drawn. (See: Malchow, The Use of Adverse Publicity to

Regulate Compaign Speech, 12 Pac.L.J. 811 (1981); Note, The First Amendment Overbreadth Doctrine, 33 Harv.L.Rev. 844 (1970).

Therefore, any false political advertising statute that has a potential for improper application and which poses a significant likelihood of deterring important First Amendment speech may be declared unconstitutional on its face under the overbreadth doctrine. Thus, even though the statute may not be invalid as applied to the parties before the court, it may still be invalidated based entirely upon an analysis of its language and potential application.

In summation, the regulation of false statements in political advertising is constitutional, but any attempt to regulate speech in a political campaign must be narrowly drawn so as to prohibit only constitutionally unprotected speech. If the adopted statute can be seen to infringe in the slightest manner on constitutionally protected speech, the lesson of the overbreadth doctrine and the New York Times et. al. case law analysis, is that the statute will be ruled unconstitutional on its face as violative of the First Amendment.

PART III

Part III will discuss existing federal and state statutory and case law which generally supports the proposition that attempts to regulate the negligent publication of false

information in political campaigns is probably unconstitutional.

FEDERAL AND STATE LAW

1. Federal Legislation and Statutory Law.

In 1975, Congress passed legislation which prohibited falsely attributed campaign statements and other false representations in federal elections. 18 U.S.C.A. §617. However, a year later this same legislation was repealed.

A comprehensive Senate bill was also introduced in 1974, but not enacted, which would have outlawed the deliberate commission of certain acts including: placing misleading advertisements in the media, and making false statements of material fact about candidates. (See: S. 3261, 93d Cong., 2nd Sess. §20 (1974)). Apparently, the federal government has either misgivings as to the necessity or misgivings as to the constitutionality of such a regulatory scheme.

2. Federal Case Law

In the federal courts, the regulation of campaign speech has received scant attention. The United States Supreme Court itself has never directly addressed the validity of state statutes prohibiting false representations in campaign speech. However, there are three cases that are useful in this analysis.

In the first case, the United States Supreme Court, in affirming that the government has a legitimate interest in

regulating deceptive commercial advertising, was also quick to emphasize that when speech contains ideas, it may be protected "even if it contains inaccurate assertions of fact." Virginia St. Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc., 425 U.S. 748, 780 (1976) (Stewart, J., concurring).

The inference to be drawn is that if free speech concerns can override compelling state interests in the commercial advertising realm, then at least an equal level, and presumably a greater level, of "inaccurate assertions of fact" will be constitutionally protected in the political advertising realm. This is especially true in light of the holdings in the Monitor Patriot and Buckley cases which state that the First Amendment has its broadest application and fullest protection in the political arena.

The second case, Vanasco v. Schwartz, 401 F. Supp. 87 (S.D.N.Y. 1975), aff'd mem., 423 U.S. 1041 (1976), is the only federal case which directly discusses the false representation issue in a political campaign context. It is the definitive case on the issue of regulation of false representations in a political campaign. The case is also important because the New York statute and statutory purpose involved in the case are very similar to the provisions and purpose of the current Washington political advertising statute, RCW 42.17.530.

In Vanasco, a U. S. District Court decision, two candidates

for public office attempted to have sections of New York's Fair Campaign Code declared unconstitutional on grounds that the sections violated the First Amendment's right to freedom of speech. The challenged sections prohibited:

1. Attacks on a candidate based on race, sex, religion or ethnic background;

2. Misrepresentation of a candidate's qualifications, including personal vilification, character defamation, whispering campaigns, libel, slander, or scurrilous attacks on any candidate, his or her staff, or personal or family life, misuse of title or misuse of the phrase "re-elect."

3. Misrepresentation of any candidate's position, including misrepresentation of political issues or voting record, use of false or misleading quotations or attributing a particular position to a candidate solely by virtue of a candidate's membership in an organization; and

4. Misrepresentation of any candidate's party affiliation or party endorsement by persons or organizations, including use of doctored photographs or writing or fraudulent or untrue endorsements. [New York Fair Campaign Code, Sec. 6201.1(c)(d)(e)(f)].

Enforcement of this code was vested in the New York State Board of Elections. This administrative board could hear complaints, issue findings, levy fines, and initiate judicial

proceedings to enforce its orders.

In a decision affirmed without opinion by the United States Supreme Court, the three-judge panel held that the code did violate the First Amendment because the sections that dealt with misrepresentation were unconstitutionally overbroad and vague. The court found that the code created a "substantial chill" on protected First Amendment speech because the New York Times "actual malice" standard was not incorporated into the code. Id. at 95. The District Court found that the Election Board had penalized Vanasco merely because he "misrepresented" his party endorsement. Because there was no finding that the misrepresentation was deliberate or that it was made with knowledge of its falsity or with reckless disregard of the truth, the Court held that the code was unconstitutionally applied to Vanasco.

On the basis of the Vanasco and New York Times holdings, it is quite evident that the federal courts feel that "vigorous and open debate on public issues in political campaigns requires that innocent misstatement and negligent falsehood be protected." Malchow, The Use of Adverse Publicity to Regulate Campaign Speech, 12 Pac.L.J. 811, 842 (1981). (See also: J. Nowak, R., Rotunda & J. Young, Constitutional Law 781-782 (1978)). In other words, the Vanasco/New York Times holdings mandate, at a minimum, that only that speech uttered or printed with knowledge

of its falsity or with reckless disregard of its truthfulness is constitutionally unprotected speech. Therefore, any statute or regulation that attempts to prohibit speech that contains falsehoods which are negligently made during a political campaign would be unconstitutional on its face.

The Vanasco Court also made two other significant findings with respect to other constitutionally required elements of a false representation statute.

First, the Court expressed concern that the New York Code did not provide for judicial review of an Election Board's decision or the penalty it imposed.

Second, the Court expressed concern that the standard of proof used by the Board for any violations of the code needed only to be based upon a finding of "substantial evidence." Because of the "high degree of protection" afforded by the New York Times rule, the Court concluded that the falsity of the statements complained of should be proven by "clear and convincing" evidence. Vanasco, 401 F. Supp. at 99 (Emphasis supplied). In New York Times, the Court found that the plaintiff bears the burden of proving the violation with "convincing clarity." New York Times, 376 U.S. at 285-286.

The last federal case is St. Amant v. Thompson, 390 U.S. 727 (1968). In St. Amant, a candidate for political office falsely charged another public official with criminal conduct during a

television interview. The Court, relying in its opinion on the New York Times standard, ruled that "reckless disregard" cannot be shown by proof of mere negligence; in order to find reckless disregard "there must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication. Publishing with such doubts shows reckless disregard for. truth or falsity and demonstrates actual malice." Id. at 731.

Once again, the Court held that proof that a political candidate "negligently" made false statements does not meet the New York Times standard and that a statute which would impose liability for such negligent falsehoods is unconstitutional.

The court, in St. Amant, also made an important ruling with regard to the "subjective intent" of the defendant as a defense in a defamation case. The Court held that a defendant cannot "automatically insure a favorable verdict by testifying that he published with a belief that the statements were true. The finder of fact must determine whether the publication was indeed made in good faith." Id. at 732.

Thus, a political candidate is not entitled to a favorable ruling by merely stating that he "believed his statements were true." A candidate's subjective intent or subjective belief when uttering or publishing false statements is not conclusive. Rather, the trier of fact is entitled to decide whether, given

the surrounding facts and circumstances, the false statements were made "knowingly" or with "reckless disregard" of the truth.

In summation, the existing federal case law supports the conclusion in Part 1 that "actual malice", a clear and convincing standard of proof, and judicial review elements must be present in a constitutionally defensible statute.

B. State Law

1. Introduction

Although the vast majority of states have statutes which attempt to regulate campaign practices in one way or another, there are 19 states that have statutes which deal directly with false representation during an election campaign. Of these 19 states, some have a more comprehensive scheme than do others.

The remainder of the states which have statutes related to fair campaign practices generally have either a "voluntary code of conduct" or require only that any political advertisement or other campaign literature contain the name and address of the candidate and/or group sponsoring such materials. These latter statutes, which can be collectively entitled "Anonymous Political Advertising Prohibited", ostensibly provide that "knowingly" false statements pertaining to any candidate or any other election matter are constitutionally protected so long as the

sponsoring person or party is identified in the statement, advertisement, poster, etc.

It is not necessary to discuss the construction or validity of these "Anonymous Advertising" statutes. It is sufficient to point out that they exist and that any future political candidate in the State of Washington who might challenge Washington's more comprehensive statute would unquestionably argue that the more limited "Anonymous Advertising" statutes are in better consonance with established free speech rights.

2. State statutes

Table A is a statute chart which attempts to list and briefly explain the statutes in the 19 states which proscribe "false representation." Some of these statutes are more comprehensive than others. The following is an attempt to categorize these false representation statutes:

(1) False Representations Statute: The most typical statute is one which broadly prohibits a person from knowingly publishing a false representation pertaining to any candidate or any election matter, which is intended to affect voting at an election.

There are three lesser or more limited classes of statutes which can be characterized as follows:

(a) Defamation Statute: This type of statute proscribes only the publication of false information which might defame or injure the other candidate.

(b) Fraudulent/False Endorsement Statute: This type of statute proscribes only those statements which falsely attribute an endorsement by someone or some group.

(c) False Representation of Incumbency: This type of statute proscribes only false claims of incumbency.

Because a Type 1 statute broadly prohibits a false representation of any kind pertaining to any candidate or election matter, it also includes the proscriptions in statute types (a), (b) and (c). Only 12 of the 19 states have the comprehensive-type statute. The type of statute each state has is reflected in the third column of Table A.

The remaining three columns listed in Table A are Mental Culpability, Burden of Proof, and Penalty Provision. The Mental Culpability column shows the statutory standard required to convict and/or find civil liability for a violation.

The Burden of Proof column shows the standard of proof required of the plaintiff or prosecutor in order to convict and/or find civil liability for a violation.

The Penalty Provision column lists the civil and/or criminal penalties which can be imposed for a violation of the statute.

The following examples are intended to assist the reader in

understanding the statute chart:

Mississippi: a type (a) statute, prohibits only the uttering or publication of false statements intended to defame an opposing candidate. However, the violation must be "wilfully and knowingly" in order to subject the candidate to a criminal misdemeanor charge.

Florida: a type (b) statute prohibits only the fraudulent or false representation that a candidate is endorsed by a particular person or group. However ,the violation must be "willfull" in order to subject the candidate to a civil penalty.

Michigan: a type (c) statute, prohibits only the false representation that a candidate is an incumbent when in fact he is not. Any violation of this statute is a misdemeanor. Note that there is no mental culpability element included in this statute; rather the statute simply states that any candidate who represents himself as an incumbent when in fact he is not, shall be guilty of a misdemeanor.

Oregon: a type (1) statute broadly prohibits a person from publishing any letter, advertisement, etc., which contains a false statement of material fact relating to any candidate. However, the violation must be made with "knowledge or with reckless disregard" that the publication contains a false statement, and in order for the plaintiff to prevail, he must show by "clear and convincing" evidence that the defendant

violated the statute.

Of special note with regard to the Oregon statute, is that it is the only statute which makes false political advertising a private action. In other words, the aggrieved candidate must file suit himself rather than in the other 18 states where either a prosecutor or a state election board acts as plaintiff.

Before turning to an analysis and discussion of state case law related to the false representation issue, three other significant factors regarding the statute chart should be pointed out.

First, the State of Washington, which has a comprehensive statute, is the <u>only</u> state which allows liability to be imposed for the "negligent" use of falsehoods.

Second, the statute table clearly reflects that only one state, Oregon, includes a burden of proof element within the statute itself. It is possible that some states which utilize Election Boards to enforce the statutes have incorporated a standard of proof within the admininistrative rules, etc., that the boards adhere to during violation proceedings. The following discussion on state case law (see the <u>Nebraska</u> District Court decision), and the later discussion in <u>Part IV</u> on Washington case law, discusses the necessity of actually drafting such a standard or burden of proof element into the statute itself. Third, because the existing statute provides for judicial review (see

T A B L E   A

STATE	(1) MENTAL CULPABILITY	BURDEN OF PROOF	ELEMENTS/ TYPE	PENALTY PROVISION
Alaska 15.56.010(3)	"knowingly"	None	(1)	Class A Misd.
Florida 106.143(3)	"willfully"	None	(B)	Civil
Louisiana 18:1463	None	None	(B)	Max Fine $2000 Max Prison 2yrs
Michigan 6.1944	None	None	(C)	Misdemeanor
Massachusetts 56 §92	"knowingly"	None	(1)	Max Fine $1000 Max Jail 6 mos
Minnesota 210A.02 210A.04	"knowingly" or "intentionally"	None	(1)	
Mississippi 23-3-33	"willfully" and "knowingly"	None	(A)	Misdemeanor
Montana 13-35-234	"knowingly" or with "reckless disregard"	None	(A)	Misdemeanor
New Hampshire 69:14	"knowingly"	None	(B)	Max Fine $1000 Max Jail lyear
North Carolina 163-274(8)	"knowingly" or with "reckless disregard"	None	(A)	Misdeameanor
North Dakota 16.1-10-04	"knowingly"	None	(1)	Class A Misd.
Nebraska 49-1474(2)	"knowingly"	None	(1)	Class III Misd.
Ohio 3599.091	"knowingly" or with "reckless disregard"	"Preponderance of evidence"-establ. by case law only	(1)	1st Degree Misd.
Oregon 260.532	"knowingly" or "reckless disregard"	"Clear and convincing" evidence	(1)	Private action
Tennessee 2-19-142	"knowingly"	None	(1)	Misdemeanor
Utah 20-17-530	"knowingly"	None	(1)	Class A Misd.
Washington 42.17.530	"knowingly or negligently"	None	(1)	Civil
West Virginia 3-8-11(e)	"knowingly"	None	(1)	Misdemeanor

RCW 42.17.395(5)), it is unnecessary to discuss this crucial element of a constitutially defensible statute.

3. State case law

As might be expected, there exists more case law at the state level than at the federal level. Therefore, the purpose of this section will be to analyze a cross-section of these cases, each of which represents a challenge to a particular type of "regulation of campaign conduct" statute. This case law discussion will be divided into subsections and basically is designed to analyze challenges to, or definitions of, specific elements or terms within a particular statute. For example, subsection (a) examines cases in which the element or term "false information" has been challenged or defined. Subsection (b) examines cases in which the element "knowingly" was challenged or defined. Subsection (c) examines cases which discuss the issue of the necessary "burden of proof." Finally, subsection (d) examines the case of Schmitt v. McLaughlin, 275 N.W.2d 587 (1979), which posits a three-part test to determine whether a statute that attempts to regulate free speech in a political campaign is constitutional.

(a) "False Information"

Minnesota and Oregon both have comprehensive statutes which purport to prohibit the "knowing" publication of a false statement of material fact or false information pertaining to a political candidate or any other election matter. (See M.S.A. §210A.04 and O.R.S. 260.532(1)).

In 1980 and 1983, actions in Oregon were initiated against political candidates for the alleged publication of "false statements of material fact" in the cases of Sumner v. Bennett, 45 Or. App. 275, 608 P.2d 566 (1980) and Committee of 1000 to Re-elect State Senator Walt Brown v. Eivers, 296 Or. 195, 679 P.2d 1159 (1983).

In both cases, the Oregon courts held that a statement is "not false, . . . if any reasonable inference can be drawn from the evidence that the statement is factually correct or that the statement is merely an expression of opinion." Brown, 674 P.2d at 1163. The Court in Sumner added that regardless of how "ill-founded or unreasonable" a defendant's opinions might be, they are not actionable as a "false statement of material fact" as long as a reasonable inference exists that such a statement is only an opinion. Sumner, 608 P.2d at 569.

The Minnesota Supreme Court came to a similar conclusion in Kennedy v. Voss, 304 N.W.2d 299 (1981). In interpreting "false information" as included as an element in M.S.A. §210A.04, the

Kennedy court held that an extreme and illogical inference in campaign literature, based upon an accurate statement of fact, does not constitute false information. Id. at 300.

The court also added that the statute was directed towards the making of a false statement of fact and "not against criticism of a candidate or unfavorable deductions derived from a candidate's conduct. " Id. at 300.

An example of a fact situation which highlights the problem would be: An incumbent County Council member, during the previous years budget hearings, votes against the adoption of the County budget as a whole because he disagrees with one particular budget item. During the next campaign, his opponent publishes an article claiming that the incumbent is against a "senior citizen's center, budget increases for local law enforcement, better salaries for tachers, and bike trails for children." At first glance such a publication appears to be false, misleading, and intended to injure the credibility of the incumbent and thus affect the election outcome.

However, such a statement, despite its "extreme and illogical inference" can be traced back to an accurate statement of fact; the incumbent did vote against the adoption of the budget. Moreover, the candidate could claim (and probably successfully so) that his statement represented no more than his "opinion" on the likely ramifications of the incumbent's voting

record.

The lesson to be learned is that if a questionable statement by a candidate can be either traced back to an accurate statement of fact, or be reasonably inferred as nothing more than an opinion, then no actionable claim exists under a statute which prohibits "false representations" or "false statements of material fact."

(b) "knowingly"

Two of the more important state cases dealing directly with the mental culpability element of a political advertising statute are Daugherty v. Hilary, 344 N.W.2d 826 (Minn. 1984) and Snortland v. Crawford, 306 N.W.2d 614 (N.D. 1981).

In Hilary, the defendant was charged with violating M.S.A. §210A.02 which prohibited a person from "knowingly" making any false claim, stating or implying, that a candidate has the support or endorsement of a major political party when in fact the candidate does not. The defendant candidate in Hilary mailed several thousand documents titled "Official Sample Ballot--Vote for these DFL'ers." (The DFL is the Democratic Farmer Labor Party; a political party of major influence in Minnesota). These documents were strikingly similar in wording and color to the traditional DFL sample ballot. Although the defendant

candidiate was affiliated with the DFL party, the party had endorsed another candidate. Id. at 830.

At the trial, the defendant candidate asserted that she and her campaign staff did not know that the sample ballots falsely implied implied party support or endorsement. Id. at 831. However, the Supreme Court ruled that because the defendant had modeled her "Official Sample Ballot" on past "Official DFL Sample Ballots", and because she was aware of the statute and interpreting case law, but chose to interpret it in a different way, the violation of the statute was "knowingly" despite her insistence that it was not. Id. at 831.

Thus, a candidate cannot merely hide behind a cloak of "subjective good faith," or "I believed my statements were true," or "I didn't know my statements falsely implied" . . . etc. as a complete defense to an election offense charge. Rather, the Hilary court held that the test for "knowingly" is to be left to the trier of fact and shall be determined by the evidence.

The Snortland case represented an effort by the Supreme Court of North Dakota to define what "knowingly" meant in the context of Sec. 16-20-173.3 N.D.C.C. (current sec. 16.1-10-04 N.D.C.C) which states in part:

> "No person shall knowingly sponsor any political advertisement containing false information. . . ."

The Court explicitly stated that the definition of

"knowingly" is not "whether a reasonably prudent person knew or should have known that the statement was false; rather, the sponsor must have had a firm belief, unaccompanied by substantial doubt, in the falsity of the statement." Snortland, 306 N.W.2d at 623. The Court went on to add that "it is clear that the false statement which is made negligently is protected speech." Id. at 623.

Because the North Dakota statute uses a strict "knowingly" standard rather than the New York Times "actual malice" standard, convictions would be more difficult to obtain. According to the Snortland court, if an actual malice standard is used, the plaintiff needs only to show that the "sponsor had a firm belief in the falsity of the statement" in order to obtain a conviction and/or finding of civil liability.

(c) "Burden of proof"

As noted above, only Oregon has statutorily included the burden of proof in its comprehensive statute. Given the fact that both New York Times and Vanasco allude to the constitutional necessity of a "clear and convincing" standard of proof, it is surprising that there are not more state statutes which include the element and more surprising yet that there have been few challenges mounted on this legal ground. However, a recent Nebraska District Court case may change this.

The existing Nebraska political advertising statute, N.R.S. §49-1474(2) states in part that:

> No person shall . . . publish . . . any advertisement . . . knowing such . . . advertisement to contain any false statement of material fact. . . .

This statute was recently, and successfully, challenged in the Lancaster County District Court in the case of DeCamp v. Nebraska Acountability and Disclosure Commission, (unpublished opinion), on the grounds that the statute did not require a guilty finding by the Commission to be based on "clear and convincing" evidence. The Court ruled that because the statute contained no standard of proof requirement and because the Disclosure Commission's rules of practice and procedure also set forth no standard of proof, the statute is unconstitutional. (It should be noted that under the Nebraska scheme, the Disclosure Commission is actually vested wtih the authority to apply criminal sanctions against those candidates or persons it finds in violation or N.R.S. §49-1474(2)).

The Commission argued that a policy manual which was regularly used by the Commission referred to a standard based upon "reliable, probative, and substantial evidence." It appears however, that the Court held that such a standard was either not stringent enough or was too ambiguous to allow for proper judicial review. The Court also added that because First Amendment rights were at stake, the constitutionally required

commission responsible for investigating unfair campaign practice complaints is also empowered to impose sanctions (criminal or civil) on violators, then the statute which authorizes such powers must include a "clear and convincing" evidence standard of proof element within the satute.

(d) Schmitt v. McLaughlin

Minnesota statute §210A.02 was challenged on constitutional grounds in Schmitt v. McLaughlin, 275 N.W.2d 587 (1979). The statute, which remains in effect today, provides:

> No person or candidate shall knowingly, either by himself or by any other person, while such candidate is seeking a nomination or election, make, directly or indirectly, a false claim stating or implying that the candidate has the support or endorsement of any political party, or unit thereof, or of any organization, when in fact the candidate does not have such support or endorsement.

The court, in holding that the statute did not violate the constitutional right to freedom of speech, gave three specific reasons for its ruling. Id. at 590. First, the Court stated that the statute only regulated "false statements." Id. at 590. Second, the Court stated that the statute is directed specifically at false claims of endorsement or support and thus is narrowly drawn to serve a governmental interest in protecting the political process. Id. at 591. Third, the Court stated that because the statute is narrowly drawn, it is not so vague or ambiguous that persons of common intelligence would be unable to

determine what conduct will violate it. Id. at 591.

These three reasons given by the Court for upholding the constitutional validity of M.S.A. §210A.02 ostensibly could be translated into a three-prong test to determine the validity of any political advertising statute. The three-prongs would be:

(1) Does the statute proscribe or regulate only constitutionally unprotected speech? (i.e., "false statements.")

(2) Is the statute narrowly drawn so it: (a) proscribes or regulates "specific behavior", and (b) legitimatley serves the compelling state interest of protecting the political process?

(3) Is the statute so narrowly drawn that it cannot be challenged as vague or ambiguous and thereby any person of common intelligence will be able to determine what conduct will violate it?

The draft statute set out in Part V meets this three-prong test and the other specified requirements previously mentioned.

P A R T I V

WASHINGTON CASE LAW

In Washington, there have been no appellate or supreme court decisions dealing directly with a constitutional challenge to any political advertising statute. However, there are three cases which impact the false political advertising issue.

The first case, Ford v. Hagel, 423 Wn.App. 675, 713 P.2d 736

(1986) clearly implies that Washington courts would be receptive to some form of a false political advertising statute. The Court, in ruling on a defamation action unequivocally stated that "false statements of fact . . . have no constitutional value."

The second Washington case with possible impact is In Re Donohoe, 90 Wn.2d 173, 580 P.2d 1093 (1978). In this case, the Court found that an attorney, as a judicial candidate, knowingly published false statements of fact which were damaging to her opponent, an incumbent judge. Id. at 179. The court upheld a State Bar Association reprimand based on a violation of a section of the Code of Professional Responsibility which provided that a lawyer should not knowingly make false statements of fact concerning the qualifications of a candidate for election or appointment to a judicial office. (CPR/DR 8-102(A)(B)). Id. at 180.

The court also stated that "we do not believe that the First Amendment protects one who utters a statement with knowledge of its falsity, even in the context of a judicial campaign." Id. at 181 (Emphasis supplied).

The final Washington case to be discussed is State v. Marchand, 104 Wn.2d 434, 706 P.2d 225 (1985). In Marchand the Washington Supreme Court stated that if a statute implicates constitutional rights, then all elements necessary to make the statute constitutional must be within the statute. Therefore, an

agency may not supply any missing elements when enforcing a statute which involves constitutional rights.

The inference to be drawn from this case with regard to the political advertising issue is that if the false advertising statute does not include a clear and convincing evidence burden of proof in the statute, the Commission responsible for investigating complaints and imposing sanctions cannot claim to validly supply the element by virtue of it being included in its administrative rules or procedures.

P A R T V

PROPOSED MODEL STATUTE

42.17.020 DEFINITIONS

(29) "Actual malice" means with knowledge or with reckless disregard as to its truth or falsity.

(30) "Sponsor" means the candidate, political committee, or other person paying for the advertisement. If a person acts as an agent for another or is reimbursed by another for the payment, the original source of the payment is the sponsor.

(31) "Incumbent" means a person who is in present possession of an elected office.

(23) "Political Advertising" should be changed to "Political Advertisement" to reflect the language of the modified statute. Definition to remain the same.

Note: Additional terms such as "candidate," "election," and "person," are currently defined in 42.17.020.

42.17.530 FALSE INFORMATION PROHIBITED.

(1) It shall be unlawful for a person to sponsor, with actual malice:

(a) a political advertisement which contains false statements of material fact;

(b) a political advertisement which falsely represents that a candidate is an incumbent for the office sought when in fact the candidate is not the incumbent.

(2) It shall also be unlawful for a person or candidate, while such candidate is seeking a nomination or election, to make, either directly or indirectly, with actual malice, a false

claim stating or implying the support or endorsement of any person or organization when in fact the candidate does not have such support or endorsement.

(3) Any violation of this statute, must be proved by clear and convincing evidence.

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029

Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

M E M O R A N D U M February 25, 1991

SUBJECT: Election misconduct bill (CSHB 40( ))

TO: Representative Max F. Gruenberg, Jr.
Attn: Michael Plunkett

FROM: John B. Gaguine JBG
Legislative Counsel

Enclosed is a redo of CSHB 40( ). As you requested, I have expanded the mental standard in paragraph (3) to include reckless disregard of falsity, and have eliminated the part of that paragraph that limited it to "fighting words" and character assassination. Paragraph (4), the new part of this bill, is now gone, as it is subsumed by expanded paragraph (3).

I have also put paragraph (1) back into the bill. My understanding was that you did not want to delete the paragraph if it was not clearly unconstitutional. I do not believe that it is. Messerli v. State, 626 P.2d 81 (Alaska 1980), a copy of which is attached, seems to imply that anonymous political communications can be made illegal, even if they are not paid for. Id. at 87-88. (Messerli had paid for his newspaper ads.) The court did not find that Talley v. California, 362 U.S. 60, 4 L.Ed.2d 559 (1960) (copy also attached), was controlling, possibly because Talley did not deal with anonymous handbilling during a political campaign. Indeed, the Messerli majority did not cite Talley; the case was only cited by Justice Burke in his dissent.

If I may be of further assistance, please advise.

JBG:gc
91-095.glc

Enclosure

cc: Representative Betty Bruckman
Attn: Anne Ziesmer-Hays

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029

Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

FEB 22 1991

<u>**M E M O R A N D U M**</u> February 15, 1991

SUBJECT: Election misconduct bill (CSHB 40 ( ))

TO: Representative Max F. Gruenberg, Jr.
Attn: Michael Plunkett

FROM: John B. Gaguine JBG
Legislative Counsel

Enclosed is a bill that I hope addresses the constitutional infirmities in AS 15.56.010-(a) (election misconduct in the first degree). The bill repeals paragraph (1), prohibiting anonymous publications about an election. A similar Los Angeles ordinance was held unconstitutional in <u>Talley v. California</u>, 362 U.S. 60, 4 L.Ed.2d 559 (1960). Paragraph (2) (renumbered as (1)) is retained; even though it is virtually identical to AS 15.13.090, it was enacted by the same Act that amended 15.13.090, so I am assuming that there was a specific purpose for having parallel provisions (possibly to avoid the cumbersome enforcement process that APOC must use to enforce AS 15.13).

Paragraph (3) (renumbered as (2)) is also retained. I have concluded that my initial opinion about the constitutionality of this paragraph was wrong; after reviewing the extensive memorandum of the Washington attorney general's office (included in the materials compiled by the Legislative Research Agency) and the lead case cited therein (<u>Vanasco v. Schwartz</u>, 401 F.Supp. 87 (S.D.N.Y. 1975), <u>aff'd mem.</u>, 423 U.S. 1041 (1976)), I believe that the paragraph does comport with the First Amendment. "False factual information" appears clear, "which the person knows to be false" goes beyond the constitutionally required actual malice standard, and, because this is a criminal statute whose violation must be proven beyond a reasonable doubt, the standard of proof problem does not exist. (It is possible that the Alaska Supreme Court would rule that Article I, Section 5 of the Alaska constitution protects even knowing falsehoods in political speech, but that seems unlikely.)

Indeed, the paragraph could probably be expanded beyond "fighting words" and damage to reputation and still be constitutional. It is my understanding, though, that you do not desire to expand the paragraph beyond its present scope.

Paragraph (4) (renumbered as (3)), Representative Bruckman's amendment, is also retained. This too could probably be broadened beyond the election pamphlet, and I will be happy to broaden it if you or Representative Bruckman so desires.

If I may be of further assistance, please advise.

JBG:pl
91-089.plm

Enclosure

Alaska State Legislature

Legislative Research Agency

P.O. Box Y
Juneau, AK 99811-3100
Phone: (907) 465-3991
Fax: (907) 463-3351

MAR 26 1991

March 26, 1991

MEMORANDUM

TO: Representative Betty Bruckman

FROM: Linda J. Snow
Legislative Analyst

RE: **Truth in Campaign Advertising**

You asked if it is a crime in other states for political candidates to publish false personal information on a resume or brochure. You also asked if Alaska had ever required candidates to swear to the truthfulness of statements published in voter pamphlets.

Background

False statements about a political candidate's record is part of the larger issue of false campaign advertising. In most states, the greater concern is libelous and slanderous campaign statements about a candidate's opponent, and many state laws address both concerns together.

Political speech tends to have more constitutional protection than other forms of speech[1]. Many challenges to the constitutionality of truth in campaign speech laws have passed through the courts, and it is difficult to word a law such that it does not draw challenge. A decision in *New York Times vs. Sullivan* resulted in the "actual malice" standard for claims of false campaign statements.

"Actual malice" demands that the candidate deliberately spoke the falsehood with prior knowledge of its falseness. However, this standard of "actual malice" is difficult to prove. Interpretation and opinion of the speaker must be considered in determining the truth of a statement. Does the statement have some kernel of truth and is merely a distortion of that truth? We offer an anecdotal example of the difficulty. A government-oriented publication selected a certain state legislator (from another state) as the least ethical

---

[1] According to Alison Reed, project manager in election services, national office of the League of Women Voters, under most states' employment laws, an employee can be fired for falsifying a resume, yet an elected official cannot be impeached (equivalent of being fired) for the same reason.

legislator in that state. In a subsequent campaign brochure, the legislator stated that he had been chosen as a "legislator of note" by this publication.

Attachment A contains several articles and reports that address the broader issue of falsehood in campaign statements. Not every paper addresses candidates' statements about their background, but the theories discussed apply to that issue. The background report by the office of the Washington Attorney General is particularly helpful in formulating law, as it discusses particular wording, and presents a model statute.

Statutes in Other States

Attachment B contains a survey of the 50 states' campaign advertising laws performed by the National Conference of State Legislatures. Also included are current statutes from Massachusetts, Ohio, Oregon, Utah and Washington. The survey reports that 21 states have passed laws prohibiting false campaign statements. Seven states have adopted fair campaign practices codes. The candidate can take a voluntary oath to uphold that code. The statutes in seven states, including Alaska, pertain only to written statements. In most states, violation of this statute is a misdemeanor, although it is a felony in Indiana. Some states provide only civil penalties, which could include voiding an election.[2]

Alaska Statute (AS 15.56.010) addresses false statements in printed campaign advertising. However, because subsection (3)(B) includes the word "and," this statute pertains only to statements about other candidates. Alaska Statute 15.56.010 is included as Attachment C.

Other Regulation

The U. S. Fair Campaign Practices Commission dealt with this subject on the federal level; however, that agency is now defunct. According to a representative of the Federal Election Commission, if political advertisements include a disclaimer, the federal government doesn't care what they say.

Because of the difficulty in applying state laws to political campaigns, many representatives of state and national organizations we contacted during our research advocate a watch dog role for the press, the public and the opposing candidates. These representatives feel political statements should be questioned and investigated by interested or affected parties such as the public and opposing candidates.

---

[2] According to Graham Johnson, executive director of the Washington State Public Disclosure Commission, civil penalties can be used in Washington to void an election through the courts.

Past Requirements in Alaska

According to staff of the Alaska Division of Elections, candidates are not currently required to swear to the truthfulness of statements submitted for inclusion in the voter pamphlet. However, at one time candidates were required to swear to take such an oath, as evidenced by the signature page of the 1978 election pamphlet statement form attached. Alaska Statute 11.56.200 makes willful falsification of a sworn statement a class B felony. We have not been able to determine when and why the practice of requiring a sworn statement was discontinued. Seven former Division of Elections' employees with whom we spoke had no recollection of the existence of such a requirement.

We hope this information is useful to you. If you need further assistance, please feel free to contact this agency.

Attachments

Chapter 55. Election Offenses, Corrupt Practices and Penalties.

Section
10. Undue influence by force
20. Undue influence by offer
30. Publication without identification
40. Publication of false statement
50. Improper possession of ballot
60. Counterfeiting of ballot
70. Refusal to allow employees time off
80. Improper disclosure of vote
85. Divulging ballot count; penalty
90. Writing of false statement
100. Voting in false name
110. Undue influence of election official
120. Improper change of election returns
130. Improper delay in sending of election materials
140. Voting more than once
150. Improper subscription to petition
160. Improper distribution and printing of ballots
170. False swearing
180. Improper influence of election by election officials
190. False count by election officials
200. Concealment of returns by election officials
210. General penalty for misdemeanor
220. General penalty for felony
230. Penalty for corrupt practice
240. Time limitation
245. Voting after disqualification
250. Definition of "person" and "election"

Sec. 15.55.010. Undue influence by force. A person who directly or indirectly uses or threatens to use force, coercion, violence or restraint or who inflicts or threatens to inflict damage, harm, or loss upon or against any person to induce or compel the person to vote or refrain from voting for a candidate in an election or for any election proposition or question, is guilty of a corrupt practice and upon conviction is punishable as for a misdemeanor. (§ 11.02 ch 83 SLA 1960)

Am. Jur., ALR and C.J.S. references. — 18 Am. Jur., Elections, §§ 330 to 350.
Constitutionality of corrupt practices acts, 69 ALR 377.
29 C.J.S. Elections §§ 83 et seq., 323 et seq.

Sec. 15.55.020. Undue influence by offer. A person who gives or promises to give, or offers any money or valuable thing to a person with the intent to induce him to vote for or refrain from voting for a candidate at an election or for an election proposition or question, is guilty of a corrupt practice and upon conviction is punishable as for a misdemeanor. (§ 11.03 ch 83 SLA 1960)

Sec. 15.55.030. Publication without identification. A person who knowingly prints or circulates, or has written, printed, or circulated, a letter, circular, bill, placard, poster, or other publication relating to an election or to a candidate at an election or to an election proposition or question without the same bearing on its face, the name and address of the author, printer, and publisher, is guilty of a corrupt practice and upon conviction is punishable as for a misdemeanor. (§ 11.04 ch 83 SLA 1960)

AS 15.55.010-250 WAS REPEALED IN 1980 AND REPLACED BY AS 15.56.

CANDIDATE'S NAME Terry Martin ELECTION DISTRICT 8F

STATEMENT OF INFORMATION REGARDING ISSUES

THIS STATEMENT MUST BE TYPEWRITTEN (DOUBLE-SPACED) AND MAY NOT CONTAIN MORE THAN 200 WORDS. (PLEASE NOTE THAT EACH WORD WILL COUNT AND THAT NO MORE THAN 200 WORDS ARE PERMITTED ACCORDING TO AS 15.57.020.)

Let's build Alaska; make it a great State. With new positive thinking legislative leadership we can have business, union, education, and the State government working together so that all able bodied persons are off unemployment rolls and enjoying the fruits of their personal efforts. Terry Martin advocates: 1) Stop inflation every way possible, especially by decreasing government spending and allowing the working people more of their personal income for family needs. 2) Move the Capital as soon as possible. 3) As an elected official, to do what the voters want regardless of personal feelings. 4) Jobs, jobs, jobs, for Alaskans by encouraging business in Alaska. 5) Land for the citizens of Alaska to homestead as our did our forefathers. 6) Court system which protects the public interest, not the criminal. 7) D-2 land bill in congress should be changed to benefit

(IF ADDITIONAL SPACE IS NEEDED, PLEASE SUBMIT THE REMAINDER OF YOUR STATEMENT ON ANOTHER SHEET.)

PLEASE COUNT AND TOTAL NUMBER OF WORDS USED: 200

These are the biographical and information statements as I request them to be printed in the "Election Pamphlet"; however, I understand that these forms will be returned to me for final review prior to publication. To the best of my knowledge, these statements are true and correct. Enclosed is a check (or money order) made out to the State of Alaska in the amount of ____ for the cost of one page of space.

Terrence H Martin
(Signature of Candidate)

Subscribed and sworn before me this 13TH day of July, 1978.

[signature]
(Notary Public or Postmaster)

(SEAL)

Commission expires: 8/4/1980

REMEMBER TO ENCLOSE A 4 x 5 PHOTOGRAPH!

Campaigning Ad Nauseam

Nasty political advertising is making the electorate cynical and the political process trivial. Can states get it under control?

Susan Biemesderfer

"Campaigns should be to inform the public, not nauseate them."

Susan Biemesderfer specializes in election issues for NCSL.

This may be U.S. Senator John Danforth's opinion about campaigns, but strategists in 1990 are more likely to be worried about losing votes than sickening voters. Danforth has introduced a bill aimed at curbing political attack ads, but its passage appears less likely than the continued proliferation of negative campaign ads at the federal, state and local levels.

If 1989's nastiest races are any indication, the decade's first political season promises to bloom with more controversy. For example:

• New Jersey's gubernatorial race last year turned into a fierce match of television jabs thrown by Congressmen Jim Florio and Jim Courter. Now-Governor Florio's initial attack depicted Courter with a Pinocchio -like nose, alleging he had misrepresented his legislative record; Courter's response charged that Florio took money from corrupt unions and showed Florio's nose growing while Courter's nose simultaneously shrank;

• In Virginia, newly elected Governor Douglas Wilder held on to a diminishing lead over an opponent who ran television ads that showed a woman weeping as the announcer talked about a bill introduced by Wilder that allowed for the questioning of rape victims about their private lives;

• David Dinkins defeated Ed Koch for the New York City mayor's seat despite Koch's charges that Dinkins engaged in shady financial dealings; and

• In Cleveland, Senator Michael White won a tight mayor's race in which he was labeled a "slumlord" and called his opponent a "master of sleaze."

So far, this year's state primaries have sustained the negative ad trend. Texas gubernatorial candidate Ann Richards has already wrestled with allegations from other Democrats that she used illegal drugs; in California's Democratic primary, Dianne Feinstein emerged as the party's candidate for governor in a race where, as reported by *Newsweek*, "a single 30-second spot" could "move 10

recent New Jersey proposals designed to discourage negative campaigning have "eventually died." He traces the lack of legislative support to lawmakers' skepticism about the legality of such measures.

Some of that skepticism is rooted in legislators' knowledge of a 1975 ruling that struck down New York's prohibition against campaign misrepresentations. In *Vanasco vs. Schwartz*, a case that went all the way to the U.S. Supreme Court, sections of the New York election code were found to be "repugnant to the right of freedom of speech."

The *Vanasco* case stemmed from complaints filed against two candidates for the New York Assembly in 1974. Roy Vanasco, an unsuccessful Republican candidate, had distributed campaign literature that allegedly misrepresented his party affiliation as "Republican-Liberal" and falsely implied he was an incumbent. A successful Democratic-Liberal candidate in another Assembly district, Joe Ferris, was accused that same fall of misrepresenting his opponent's voting record. Under the authority of New York's statutory prohibition against distributing false campaign literature, the New York Board of Elections ordered both candidates to surrender their campaign literature. The two candidates joined forces to file suit against the Board. The court's decision in their favor held that any state regulation of campaign speech must be premised on the "actual malice" standard applicable to public figures since the U.S. Supreme Court's landmark libel ruling in *New York Times vs. Sullivan*.

"It is that standard – the requirement that false campaign information be of libelous, malicious nature – that makes our state law such a challenge to enforce," says Graham Johnson, executive director for the Washington State Public Disclosure Commission. The commission has been charged with the delicate task of discerning where "actual malice" may be the root of false statements made in the heat of campaign combat. Washington's prohibition against false campaign statements has been amended in light of the *Vanasco* ruling, making it, in Johnson's opinion, "all but impossible to prove a violation has occurred. It hasn't happened yet with a state legislative race. The circumstances of campaigns are unique and not well documented, and proving malicious intent on the part of a candidate is an almost insurmountable task."

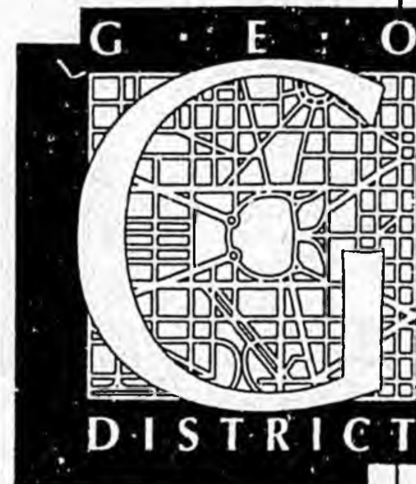
An alternative approach to dealing with negative ads is the use of "fair campaign practices" codes. These codes are on the books in seven states and are generally signed voluntarily by candidates. Typically, fair campaign codes include language similar to that found in Washington's provision, wherein candidates vow not to participate in "personal vilification, defamation and other attacks on any opposing candidate or party." And while such codes have at least occasionally raised the consciousness of candidates and voters, they are generally regarded as good-faith but meager attempts to temper negative ads.

"The options we're left with, then," says New Jersey Assemblyman Bob Franks, "are either ignoring the problem or doing our best to pass a law that will survive the courts' scrutiny." Franks has introduced a bill that would require a candidate to appear in any campaign ad that mentions the opposing candidate; in a print ad referencing another candidate, the attacking candidate's photograph would have to appear. Because the bill doesn't require that any judgment be made about the ad producer's intent and imposes an affirmative act on the part of the candidate – rather than restricting the content of the candidate's speech – proponents are optimistic about its chances to get around constitutional hurdles. A similar bill has been introduced in the Florida House of Representatives.

Both the Florida and New Jersey bills resemble the legislation proposed in Congress by Senators John Danforth and Ernest Hollings. "If a candidate wants to sling mud at his opponent," says Danforth, "the public should be able to see the candidate's dirty hands." Media consultant Roger Ailes counters Danforth with claims that the bill violates the First Amendment. "If we're going to start with censorship in this country," Ailes argues, "we ought to start with child pornography and political commercials ought to be far down the list."

These measures, if passed, are certain to face the scrutiny of judges with watchful eyes on constitutional freedoms. Still, some legislators persist in their efforts to tone down negative campaign ads. "The sentiment of the American people today when they look at politics," insists Danforth, "is nausea." ■

INTRODUCING...
A Powerful New Redistricting System For Ibm '386 Pcs!



APPLICATIONS

- Precinct plan creation
- Congressional and Legislative district plan creation
- Campaign targeting
- *... and more!*

FEATURES

- Diagnose multiple plans with full reports, plots and checks.
- Instantly change geographic levels, from county to block and every level in-between.
- Display alternate plans as boundary overlays or new assignment layers.
- Analyze and assign multiple districts at one time (up to 999 districts!).
- Display, analyze and modify a plan for a full state (or any part of a state) *at one time*.
- *... and much more!*

GEODISTRICT™
Get It Right The First Time.

Call 603/795-2183 now to order your copy of the GeoDistrict Demo!

GEOGRAPHIC DATA TECHNOLOGY INC.
13 Dartmouth College Highway, Lyme, NH 03768

Negative Campaigning Is Here to Stay

RECEIVED
SEP 24 1990
Public Disclosure Commission

By WILLIAM ENDICOTT

A thick little pocket guide to the various sessions at the National Conference of State Legislatures' annual meeting last month reflected the kinds of issues that are bedeviling lawmakers from coast to coast.

There were panels covering everything from abortion to the savings and loan crisis.

But self-preservation never being far from the minds of most legislators, the session that drew one of the biggest crowds dealt with an issue that has never before shown up on the NCSL agenda.

It was standing-room-only for an hour-and-a-half discussion of negative political campaigning, which addressed the question, "How much is too much?"

Whatever constitutes "too much,"

it's obvious we haven't gotten there yet. All one has to do is look at some of the commercials from campaigns of the 1960s, when television came into its own as a campaign tool, to see that negative advertising is not a new phenomenon in U.S. politics.

But a subtle change has taken place in the way political consultants assess negative ads.

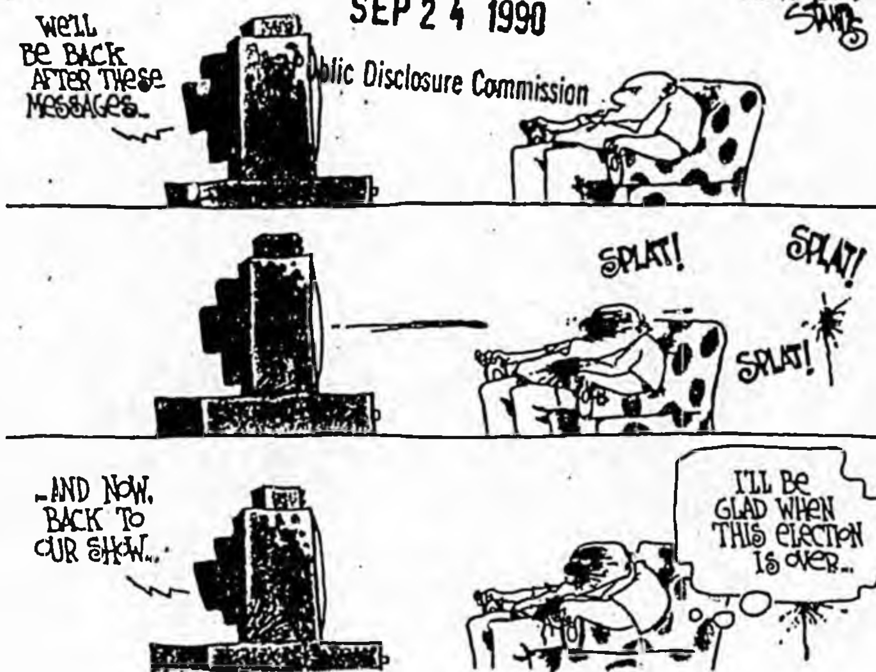
Once, consultants might have counseled their candidates that nasty ads could produce a backlash. Now, the candidates are being persuaded that negative ads grab more viewers and therefore work better than positive ads.

Why should legislators be dabbling in such an issue, which is fraught with all sorts of First Amendment implications?

"Because they are incumbents and more often than not, incumbents are on the receiving end of negative ads," said Graham Johnson, executive director of the Washington State Public Disclosure Commission. "They'd like to get a handle on it."

The fact that such a topic could find its way onto the agenda here suggests the problem not only is of growing concern but that legislators expect it to get much worse before it gets better.

That's too depressing to contemplate. As repugnant as negative ads are, however, most states have found that efforts to regulate them are difficult at best and can have a chilling effect on the free expression of political thought and ideas.



An NCSL survey of political reform efforts in all 50 states concluded that while the true merits of negative advertising are arguable, there is an inarguable political reality now faced by candidates for public office: Negative ads are here to stay.

Seven state legislatures, including California, have endorsed a fair campaign practices code which typically contains a clause that the candidate will not participate in "personal vilification, defamation and other attacks on any opposing candidate or party." But the codes generally are voluntary and not enforceable.

Twenty-one states have passed laws prohibiting false campaign statements. In most cases, however, they are so weak as to be meaningless or have been gutted by the courts.

Key provisions of a tough New York law, for instance, were struck down as unconstitutional in a ruling that has become the leading opinion on campaign falsity statutes. It held that any state regulation of campaign speech must be premised on the "actual-malice" standard applicable to public figures in libel cases.

Try proving actual malice. "What? My ad contains inaccuracies about my opponent? A careless mistake by my staff. I'm so sorry. No malice intended."

In short, the NCSL survey found that despite widespread criticism that negative ads demean the electoral process and deter voters from participating, the constitutional issues raised when trying to regulate the free speech of candidates are difficult, if not impossible, to overcome.

All this is quite pleasing to political consultants who make their living off crafting such ads, rationalizing their use and being contemptuous of those who would, as they put it, "sanitize" the political process.

"Negative media and the negative component of an argument are part of politics," Democratic consultant David Axelrod of Chicago told the audience here. "...Media consultants did not create the atmosphere of cynicism that exists in this country."

Maybe not. But consultants certainly play on that cynicism, as even Axelrod had to concede, and their negative spots resonate a lot more loudly because of it.

It's too bad some of that creativity is not channeled toward elevating political debate.

William Endicott is chief of the McClatchy News Service's capitol bureau.

Los Angeles Daily Journal
Sept 20, 1990

Ellensburg, WA
(Kittitas Co.)
Daily Record
(D. 6,000)

NOV - 5 1990

Allen's P. C. B Est. 1888

REPORT FROM OLYMPIA

The media's role

By ADELE FERGUSON

"You wrote something not long ago asking what role the media should play in election campaigns," said Graham Johnson, executive director of the state Public Disclosure Commission, "and I've been meaning to get back to you on that."

The thing that is plaguing the PDC more and more, he said, is complaints about false political advertising.

People don't seem to understand, said Johnson, that all the PDC is supposed to do is give visibility to sources of money in politics.

"The courts say there is virtually no role for government to play in controlling political rhetoric. There can be a law protecting citizens from blatant lies, but 99.9 percent of it is somebody's exaggerated, skewed, with only a grain of truth in it, but there is no way, by force of law, that we can do anything about that."

The media can, said Johnson.

"Where I think the media really has a role is doing the truth squad thing," he said. "Kind of like the way the Seattle Times has started doing it. You're not restrained like a government agency. You don't have to worry about length of time, due process and hearings, all that legal garbage.

"You can take a situation and look into it, and report on it in a matter of hours or days, while with government, and all its procedural motions and protections, it would take weeks or months."

"If newspapers, in particular, really wanted to do a service," said Johnson, "they should look into the claims made by candidates and proponents and opponents of issues. A 'this is what they say' and 'this is the real story' treatment."

Johnson said he'd been reading about the various issues on the ballot, "and statements and claims are being made that may be true and may not. My point is, I really do believe we could look to the media for some help."

I agreed with him some truly outrageous things have been said, but there are some real problems with rebuttal.

Every candidate proclaims his/her honesty, integrity, leadership, hard work, compassion, dedication, willingness to listen, love for the environment, concern for the poor, knowledge of government, accessibility, bla bla bla.

A lot of these claims are made in brochures by other than the candidate, i.e., the governor and other state officials, congressmen, etc. Each praises his own party's candidates, and it doesn't matter if it's baloney, the name of the game is getting or keeping the majority, getting or keeping courthouse power. If Diogenes were made a proof reader on some of this stuff, he'd have a stroke.

And is it our, the media's responsibility, to check out all the votes claimed by incumbents, or should the opponent do that? If we do it, we could be accused of bias against incumbents, because challengers usually have no such record.

As for issues, yes, we should be making both sides prove or explain their claims. I suspect there will be a lot more of that in future elections.

Letters welcome

The Daily Record welcomes letters to the editor from Kittitas County readers. Letters should be held to 300 words or less and, if possible, typed. Longer letters are subject to condensation. We encourage readers to make use of this "public forum" to voice opinions — pro or con — on any issue.

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

P.O. Box Y, State Capitol
Juneau, Alaska 99811-3100
Mail Stop 3100
(907) 465-3991

April 25, 1989

MEMORANDUM

TO: Representative David Finkelstein

ATTN: Ileen Self

FROM: Theresa Tanoury
Legislative Analyst

RE: Code of Fair Campaign Practices in Montana
Research Request 89.371

You requested information on the effectiveness of the 1979 Code of Fair Campaign Practices in Montana (Montana Statute 13-35-301--attached). The code protects Montana citizens' constitutional right to a "free and untrammeled choice" of elected officials.

The Montana Commission of Campaign Practices is responsible for providing the code to all local, county, and state candidates. (The commission also promulgates regulations and assesses civil penalties for violations by all candidates required to file disclosures claims.) Signing the code is voluntary, although Commissioner Delores Colberg states that no candidate has ever refused to sign the code.

Recent campaigns in Montana are considered much "cleaner" than campaigns prior to the 1979 adoption of the code.[1] During the 1988 election, the "dirtier" campaigns were over ballot issues (one committee versus another committee) and in the U.S. Senate race (candidates are not subject to the code).

---

[1]Personal Communication with Gregory J. Petesch, Code Commissioner & Director Legal Services, Montana Legislative Council, April 24, 1989.

MONTANA CODE ANNOTATED

Adopted by Chapter 1, Laws of 1979

Gregory J. Petesch
Code Commissioner
&
Director Legal Services

Staff Attorneys

John MacMaster
H. David Cogley
Lee Heiman
Jim Lear
Valencia Lane
Mary Kelly McCue
Eddye McClure, Legal Reseacher
Doug Sternberg, Paralegal

Indexers

Nadine E. Wallace
Karen Caplis

Director Legislative Services
Henry C. Trenk

Support Services

Operations Bureau Chief
Marilynn Novak

Copy Editors
Mary Ellen Randall, Chief Editor
Carol Ann Jacobsen, Senior Editor

Proofreaders
Phyllis Cote, Senior Proofreader
Marie Fuhrmann, Senior Proofreader
Sally Bush-Arrigo, Proofreader
Ann Sigouin, Proofreader/Data Entry Operator

Senior Data Entry Operators/Programmers
Connie Dixon
Kevin Hayes

Distribution
Kathy Thompson

Systems and Programming
Tom Mulvaney
Gregg Wheeler
Leo La Salle, Typesetting

Published by
Montana Legislative Council
Room 138, State Capitol
Helena, Montana 59620
Telephone (406)444-3064
1987

RECEIVED
SEP 1 8 1997
LEGISLATIVE AFFAIRS
Reference Library

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 election to public office.
13-36-102. Time for commencing contest.
13-36-103. Court having jurisdiction of proceedings.

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465 3991

December 13, 1984

MEMORANDUM

TO: Representative-Elect Katie Hurley

FROM: Heidi Borson Paine HBP
Legislative Analyst

RE: Fair Campaign Practices Legislation
Research Request 85-054

You requested information on state and federal legislation designed to prevent slanderous political campaigns. You also indicated specific interest in California fair campaign practices legislation. This memorandum presents an overview of federal and state statutes, as well as case laws which involve fair campaign practices. The conclusion of this memorandum discusses alternatives for Alaska.

To respond to this request, I contacted several national organizations including the National Conference of State Legislatures, Council of State Governments, Common Cause, and the American Bar Association. I also contacted the Federal Elections Commission and elections adminstrators in numerous states.

Federal Law

The Federal Election Campaign Act of 1971 (FECA) was the first major federal election reform law enacted since 1925. However, FECA regulation of campaign speech is limited and the law only addresses the issue of slander indirectly. Title 2, Section 441d of the United States Code requires anyone paying for a political statement in a newspaper, other publication or on any broadcasting station to state the name of the person, committee or organization paying for the communication and whether or not the candidate authorized the communication. According to Todd Johnson of the Federal Election Commission, there are no other federal laws concerning fair campaign practices.

Case Law

The First Amendment of the U.S. Constitution guarantees the right to free political expression. The Fourteenth Amendment protects this right

from abridgment by state law. Because of these constitutional guarantees, state laws regulating political campaigns, and especially campaign speech, are subject to close scrutiny by the courts. Over the past 20 years, much case law has been developed to protect First Amendment rights in state political campaigns. Two of the most important cases are New York Times v. Sullivan, 84 S.Ct. 710 (1964), and Vanasco v. Schwartz, 410 F. Supp. 87 (1975).

In New York Times v. Sullivan, the U.S. Supreme Court established the "malice standard" by which the constitutionality of state laws regulating political campaign practices is judged. In its ruling, the court stated that:

> The constitutional guarantee of freedom of speech and press prohibits a public official from recovering damages for a defamatory falsehood relating to his offical conduct unless he proves that the statement was made with "actual malice", that is, with knowledge that it was false or with reckless disregard of whether it was false or not...[1]

Furthermore, in explaining the New York Times' decision as it relates to campaign speech, the Supreme Court stated that the First Amendment "has its fullest and most urgent application in speech by candidates for public office."[2]

In Vanasco v. Schwartz, the U.S. Supreme Court ruled unconstitutional a mandatory New York Fair Campaign Code because of its "chilling effect" on free speech. The New York Fair Campaign Code prohibited the misrepresentation of a candidate's qualifications, position, or party affiliation and outlawed any attack on a candidate based on race, sex, religious affiliation, or ethnic background. The Supreme Court upheld a lower court ruling that state statutes concerning deceptive campaign speech must adhere to the malice standard established in New York Times v. Sullivan.

State Law

According to Robert Peck of the American Bar Association, few states have laws directly regulating the content of political speech because of the possibility of infringing upon First Amendment rights of free speech. He points out that political speech is the most well protected

---

[1]New York Times v. Sullivan, 84 S.Ct. at 710 (1964).

[2]Romig, Candice. "Fair Campaign Practices", State Legislative Report, Vol. 8, No. 4, April 1983.

type of speech under the First Amendment of the Constitution. Mr. Peck contends that candidates in most states rely on general statutes concerning libel and slander for protection.

However, according to the National Conference of State Legislatures (NCSL), twenty states have statutes which address the use of deceptive speech in campaigns. Over half of the laws prohibit false statements made knowingly which challenge a candidate's character. For example, according to Montana Statute 13.35.234, it is unlawful to make or publish false statements about a candidate's character or morality or to knowingly misrepresent a candidate's voting record or positions on public issues. According to Jack Lowe of the Montana Department of Elections, this is the first statute in Montana which addresses false statements. He contends that the statute is rarely used because of the constitutional questions involved.

Statutes in some states prohibit specific types of statements in campaign speech. For example, Minnesota statutes prohibit erroneous statements of party support. Ohio statutes also forbid false statements such as remarks about an opposing candidate's incumbency, voting record, education, criminal and mental confinement record, and education.

I found that most state statutes concerning campaign ethics focus on literature disclosure and campaign tactics. These statutes do not directly regulate the content of political speech, but may help to prevent slanderous or unfair campaigns. For example, twenty-three states have statutes which require all political advertisements to include the name of the sponsoring person or group. Seven other states, California, Florida, Maine, Michigan, Pennsylvania, Texas and West Virginia, require that an advertisement indicate whether it has been officially endorsed by a candidate.

Other state statutes which regulate campaign practices focus on political espionage, undue influence of voters, and campaign "dirty" tricks. For example, Montana bans all political advertisements on election day in an effort to prevent unfair tactics. New York law prohibits placing agents in campaign organizations, bribing an opponent's staff, and wiretapping. Other states prohibit theft of campaign materials.

Because of the protection given campaign practices under the First Amendment, enforcing statutes which regulate campaign practices is difficult. In most states, violations of campaign practices statutes are considered misdemeanors and are punished by a fine, imprisonment or both. Some states including Alabama, California, Kansas, Kentucky, Maryland, Minnesota, Montana, North Carolina, and Wisconsin also provide that a person convicted of a campaign violation is ineligible for public office for a specified period of time. In these states, a convicted elected official must resign.

Furthermore, California and Montana have included voluntary campaign ethics codes in their statutes. These codes address malicious campaign speech and other unfair political practices. Reportedly, when only one candidate in a race choses to sign the agreement, the opponent's refusal often becomes a major campaign issue in these states.

California Law

In June of 1984, the California electorate narrowly adopted Proposition 20. This constitutional amendment provides that a person making libelous or slanderous statements against an opposing candidate shall resign the seat to which elected where judicially found that: 1) the libel or slander was a major contributing cause in the defeat of an opposing candidate; and 2) the statement was made with knowledge that it was false or with reckless disregard of whether it was false or true.[3]

As you requested, I have attached copies of California's voluntary code of campaign ethics, Proposition 20, and the two bills proposed in the 1983-1984 session of the California Legislature. Assembly Bill 331 would have added a pledge to the code of ethics requiring the release of campaign-related advertisements to opponents 48 hours before dissemination. Assembly Bill 406 would have required candidates to sign a fair campaign practices agreement to be eligible to receive public campaign funds generated through tax returns. Neither bill passed.

Alternatives for Alaska

Currently, political candidates in Alaska are protected against libelous and slanderous campaigns under AS 15.56.010 (3). This statute specifically prohibits the circulation of false information in a campaign. Knowingly circulating false information which could damage a candidate's reputation is a class A misdemeanor. Under AS 15.56.110, the election of a candidate to the State legislature or municipal office who knowingly committed a corrupt campaign practice such as circulating false information is voidable. Alaska Statutes also require paid advertisements to be so marked and require the identification of the party responsible for any campaign literature. In addition, AS 15.56.020-.035 prohibits undue influence on elections and interference with voting.

---

[3]A similar measure was introduced during the 1983 session of the Illinois Legislature, but it did not get out of committee. Instead of removal from office, the penalty for libelous or slanderous statements would have been a 30-day jail term or a $500 fine or both.

These statutes are designed to help prevent unfair campaign practices. Alaska could consider additional measures for reducing the incidence of slanderous political campaigns. For example, Alaska could establish a commission or give authority to an existing agency to investigate complaints of libelous campaign literature and slanderous campaign speech. Robert Peck of the American Bar Association suggested assigning this duty to the agency which enforces the financial reporting requirements for political campaigns in Alaska, the Alaska Public Offices Commission. Alaska could also adopt a voluntary campaign ethics code. However, it appears that any proposed legislation which regulates political speech must be carefully scrutinized so as not to conflict with the constitutional rights of free speech and press.

* * * * *

I hope the information presented in this memorandum is helpful. Please contact me again if you have any additional questions.

HBP

Attachments

Article 3. Code of Fair Campaign Practices

12520. Subscription to code; form.

At the time an individual files his or her declaration of candidacy, nomination papers, or any other paper evidencing an intention to be a candidate for public office, the county clerk, shall give the individual a blank form of the Code of Fair Campaign Practices and a copy of the provisions of this chapter. The county clerk shall inform each candidate for public office that subscription to the code is voluntary.

In the case of a committee making an independent expenditure within the meaning of Section 12511, the Secretary of State shall provide a blank form and a copy of the provisions of this chapter to the individual filing, in accordance with Title 9 (commencing with Section 81000) of the Government Code, an initial campaign statement on behalf of the committee.

The text of the code shall read, as follows:

CODE OF FAIR CAMPAIGN PRACTICES

There are basic principles of decency, honesty, and fair play which every candidate for public office in the State of California 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 untrammeled choice and the will of the people may be fully and clearly expressed on the issues.

THEREFORE:

(1) I SHALL CONDUCT my campaign openly and publicly, discussing the issues as I see them, presenting may record and polices with sincerity and frankness, and criticizing without fear or favor the record and policies of my opponents or political parties which merit such criticism.

(2) 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.

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

(4) 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, enrolling to vote, or voting.

(5) I SHALL NOT coerce election help or campaign contributions for myself or for any other candidate from my employees.

(6) I SHALL 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 which I condemn. I shall accept responsibility to take firm action against any subordinate who violates any provision of this code or the laws governing elections.

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

I, the undersigned, candidate for election to public office in the State of California or treasurer or chairman of a committee making any independent expenditures, hereby voluntarily endorse, subscribe to, and solemnly pledge myself to conduct my campaign in accordance with the above principles and practices.

______________________	______________________
Date	Signature

(Added by Stats. 1982, c. 855, §1.)

12522. Supply of forms.

The Secretary of State shall print or cause to be printed, blank forms of the code. The Secretary of State shall supply the forms to the county clerks in quantities and at times requested by the clerks.

(Added by Stats. 1982, c. 855, §1.)

12523. Retention of forms; public inspection.

The county clerk shall accept, at all times prior to the election, all completed forms which are properly subscribed to by a candidate for public office and shall retain them for public inspection until 30 days after the election.

(Added by Stats. 1982, c. 855, §1.)

12524. Public record.

Every code subscribed to by a candidate for public office pursuant to this chapter is a public record open for public inspection.

(Added by Stats. 1982, c. 855, §1.)

12525. Voluntary.

In no event shall a candidate for public office be required to subscribe to or endorse the code.

(Added by Stats. 1982, c. 855, §1.)

12526. Operative date of chapter.

This chapter shall be operative only until January 1, 1989, and as of that date is repealed.

(Added by Stats. 1982, c. 855, §1.)

20 Elected Officials. Disqualification for Libelous or Slanderous Campaign Statements

Official Title and Summary Prepared by the Attorney General

ELECTED OFFICIALS. DISQUALIFICATION FOR LIBELOUS OR SLANDEROUS CAMPAIGN STATEMENTS. LEGISLATIVE CONSTITUTIONAL AMENDMENT. Adds a section to the Constitution providing that no persor who is found liable in a civil action for making libelous or slanderous statements against an opposing candidate durin an election campaign shall retain the seat to which elected where it is judicially found that: (1) the libel or slande: was a major contributing cause in the defeat of an opposing candidate and (2) the statement was made with knowledg that it was false or with reckless disregard of whether it was false or true. Contains other provisions. Summary o Legislative Analyst's estimate of net state and local government fiscal impact: Adoption of this measure would hav no direct fiscal effect on the state or local governments. If, however, a successful candidate were disqualified fron assuming or holding office as a result of the measure, local governments could incur additional costs if an election ha to be held to fill the vacancy. These costs could be significant if the election did not coincide with a regularly schedule election.

Final Vote Cast by the Legislature on ACA 74 (Proposition 20)

Assembly:		Senate:	
Ayes	75	Ayes	29
Noes	0	Noes	5

Analysis by the Legislative Analyst

Background

The first amendment to the Federal Constitution guarantees the right of free speech. Article I of the State Constitution contains a similar provision. Neither Constitution, however, protects a person who makes libelous or slanderous statements. Libel and slander are broadly defined as untrue written or oral communications which have a natural tendency to injure a person's reputation, either generally or with respect to his or her occupation. Anyone so injured may file a lawsuit against the person alleged to have committed the libel or slander. Under certain circumstances, however, spoken and written communications are considered "privileged" and therefore exempt from civil liability. This is true of communications that occur in connection with legislative, judicial or other official proceedings.

Under current law, libel or slander actions are given "special precedence" (that is, priority consideration) by the court system over other civil actions. The penalty levied against a person found to have made a libelous or slanderous statement is a monetary award, payable to the injured party.

Proposal

This measure adds to the State Constitution a provision that would prevent any successful candidate for the U.S. Senate, the U.S. House of Representatives, a state electi office or a local elective office in California from holdir that office, if

- that person is found in a civil action to have made libelous or slanderous statement against an opposir candidate during the course of the election campaig
- the libelous or slanderous statement was a major co tributing cause in the defeat of the opposing canc date, and
- the statement was made with actual knowledge th it was false or with reckless disregard of whether was false or true.

The measure specifies that the vacancy in the pub office shall occur only after the trial court decision h become final. Vacancies created as a result of this measu would be filled in the manner provided by existing la

Fiscal Effect

Adoption of this measure would have no direct fis effect on the state or local governments.

If, however, a successful candidate were disqualif from assuming or holding office as a result of the measu local governments could incur additional costs if an el tion had to be held to fill the vacancy. These costs co be significant if the election did not coincide with a re larly scheduled election.

Text of Proposed Law

This amendment proposed by Assembly Constitutional Amendment 74 (Statutes of 1982, Resolution Chapter 181) expressly amends the Constitution by adding a section thereto; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED AMENDMENT TO ARTICLE VII

SEC. 10. (a) No person who is found liable in a civil action for making libelous or slanderous statements against an opposing candidate during the course of an election campaign for any federal, statewide, Board of Equalization, or legislative office or for any county, city and county, city, district, or any other local elective office shall retain the seat to which he or she is elected, where it is established that the libel or slander was a major contributing cause in the defeat of an opposing candidate.

A libelous or slanderous statement shall be deemed to have been made by a person within the meaning of this section if that person actually made the statement or if the person actually or constructively assented to, authorized, or ratified the statement.

"Federal office," as used in this section means the office of United States Senator and Member of the House of Representatives; and to the extent that the provisions of this section do not conflict with any provision of federal law, it is intended that candidates seeking the office of United States Senator or Member of the House of Representatives comply with this section.

(b) In order to determine whether libelous or slanderous statements were a major contributing cause in the defeat of an opposing candidate, the trier of fact shall make a separate, distinct finding on that issue. If the trier of fact finds that libel or slander was a major contributing cause in the defeat of an opposing candidate and that the libelous or slanderous statement was made with knowledge that it was false or with reckless disregard of whether it was false or true, the person holding office shall be disqualified from or shall forfeit that office as provided in subdivision (d). The findings required by this section shall be in writing and shall be incorporated as part of the judgment.

(c) In a case where a person is disqualified from holding office or is required to forfeit an office under subdivisions (a) and (b), that disqualification or forfeiture shall create a vacancy in office, which vacancy shall be filled in the manner provided by law for the filling of a vacancy in that particular office.

(d) Once the judgment of liability is entered by the trial court and the time for filing a notice of appeal has expired, or all possibility of direct attack in the courts of this state has been finally exhausted, the person shall be disqualified from or shall forfeit the office involved in that election and shall have no authority to exercise the powers or perform the duties of the office.

(e) This section shall apply to libelous or slanderous statements made on or after the effective date of this section.

AMENDED IN SENATE SEPTEMBER 6, 1983

AMENDED IN SENATE AUGUST 26, 1983

AMENDED IN ASSEMBLY MAY 4, 1983

AMENDED IN ASSEMBLY APRIL 21, 1983

CALIFORNIA LEGISLATURE—1983–84 REGULAR SESSION

ASSEMBLY BILL No. 311

Introduced by Assemblyman Connelly

January 19, 1983

An act to amend Section 12520 of, and to add Section 12521 to, the Elections Code, relating to elections ~~; and making an appropriation therefor~~.

LEGISLATIVE COUNSEL'S DIGEST

AB 311, as amended, Connelly. Elections: Code of Fair Campaign Practices.

Existing law provides for a voluntary subscription by candidates for state or local office to a Code of Fair Campaign Practices which contains specified pledges.

This bill would add a pledge to the code regarding the release of campaign-related advertisements to opponents 48 hours prior to dissemination, as specified.

This bill also specifies under which circumstances the code would apply and would require that the election official responsible for preparation of the ballot note on the sample and official ballots whether a candidate has signed the code, and would provide for penalties under specified circumstances.

This bill would impose a state-mandated local program by requiring local election officials to perform specified tasks.

~~The bill appropriates $3,000 to reimburse local agencies and school districts for their costs.~~

This bill would provide that notwithstanding Section 2231.5 of the Revenue and Taxation Code, this act does not contain a repealer, as required by that section; therefore, the provisions of the act would remain in effect unless and until they are amended or repealed by a later enacted act.

Vote: ⅔ *majority*. Appropriation: ~~yes~~ *no*. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 12520 of the Elections Code is
2 amended to read:
3 12520. At the time an individual files his or her
4 declaration of candidacy, nomination papers, or any
5 other paper evidencing an intention to be a candidate for
6 public office, the clerk, shall give the individual a blank
7 form of the Code of Fair Campaign Practices and a copy
8 of the provisions of this chapter. The clerk shall inform
9 each candidate for public office that subscription to the
10 code is voluntary. Any candidate who has not properly
11 executed and delivered the code to the appropriate
12 election official in the county of the candidate's residence
13 within five days following the filing of nomination papers
14 in the case of a primary election or within five days
15 following the primary election in the case of the general
16 election shall be deemed to have refused to sign the code.
17 In the case of a committee making an independent
18 expenditure within the meaning of Section 12511, the
19 Secretary of State shall provide a blank form and a copy
20 of the provisions of this chapter to the individual filing, in
21 accordance with Title 9 (commencing with Section
22 81000) of the Government Code, an initial campaign
23 statement on behalf of the committee.
24 The text of the code shall read, as follows:
25
26 CODE OF FAIR CAMPAIGN PRACTICES
27 There are basic principles of decency, honesty, and fair
28 play which every candidate for public office in the State
29 of California has a moral obligation to observe and
30 uphold, in order that, after vigorously contested, but

1 fairly conducted campaigns, our citizens may e
2 their constitutional right to a free and untram
3 choice and the will of the people may be fully and
4 expressed on the issues.
5 THEREFORE:
6 (1) I SHALL CONDUCT my campaign open
7 publicly, discussing the issues as I see them, pres
8 my record and policies with sincerity and frankne
9 criticizing without fear or favor the record and pol
10 my opponents or political parties which meri
11 criticism.
12 (2) I SHALL NOT USE OR PERMIT the
13 character defamation, whispering campaigns,
14 slander, or scurrilous attacks on any candidate or
15 her personal or family life.
16 (3) I SHALL NOT USE OR PERMIT any app
17 negative prejudice based on race, sex, religion, n
18 origin, physical health status, or age.
19 (4) I SHALL NOT USE OR PERMIT any disho
20 unethical practice which tends to corrupt or unde
21 our American system of free elections, or which ha
22 or prevents the full and free expression of the will
23 voters including acts intended to hinder or preve
24 eligible person from registering to vote, enrolling t
25 or voting.
26 (5) I SHALL provide to my opponents, a
27 addresses they specify on their Code of Fair Cam
28 Practices form, and for public inspection t
29 appropriate election official in the most populous c
30 in the district in which I am seeking election or
31 Secretary of State if I am a candidate for statewide
32 48 hours prior to dissemination by me or my con
33 committee, the text of any campaign advertis
34 communication which refers to my opponent by na
35 innuendo.
36 (6) I SHALL NOT coerce election help or cam
37 contributions for myself or for any other candidat
38 my employees.
39 (7) I SHALL IMMEDIATELY AND PUBI
40 REPUDIATE support deriving from any individ

AMENDED IN SENATE AUGUST 15, 1983

AMENDED IN SENATE JUNE 27, 1983

AMENDED IN ASSEMBLY MAY 11, 1983

AMENDED IN ASSEMBLY MAY 3, 1983

CALIFORNIA LEGISLATURE—1983–84 REGULAR SESSION

ASSEMBLY BILL No. 406

Introduced by Assemblymen Davis, Chacon, Elder, Farr, Harris, Hauser, Hayden, Katz, Klehs, Peace, and Vasconcellos
(Coauthors: Senators Dills, Garamendi, Leroy Greene, McCorquodale, Presley, Robbins, Torres, and Watson)

January 31, 1983

An act to amend Sections 32002 and 32004 of, and to add Sections 32001.5 and 32005 to, the Elections Code, relating to elections.

LEGISLATIVE COUNSEL'S DIGEST

AB 406, as amended, Davis. Elections: public campaign financing.

Under existing law, the California Election Campaign Fund Act permits individuals to designate on the applicable tax return the payment of specified various amounts, in addition to their tax liability, to the California Election Campaign Fund. The act provides for the disbursement of the moneys in that fund to qualified political parties, as specified, and prescribes the procedures and allocation of those funds by those parties to candidates for state office at statewide general elections.

This bill would create a Fair Campaign Practices Agreement, as specified, and would require candidates to sign

Corrected 8-16-83

only upon his or her determination that a majority of a committee composed as follows concurs in each such disbursement:

(1) Chair of that party.

(2) As to the majority party of the Assembly, its Speaker: or, as to each minority party of the Assembly, that party's Minority Leader.

(3) As to the majority party of the Senate, its President pro Tempore: or, as to each minority party of the Senate, that party's Minority Leader.

(b) As to any party unrepresented by both paragraphs (2) and (3) of subdivision (a), its chair shall be the sole member of the committee provided for in subdivision (a).

(c) As to any party unrepresented by one, but not both, of the categories specified in paragraphs (2) and (3) of subdivision (a), the two members of that committee provided for by subdivision (a) shall choose a third member to serve for each calendar year.

(d) Any funds received by a committee's political party which are disbursed by the committee to candidates shall be disbursed only to candidates for state office in connection with a statewide general election who have signed the Fair Campaign Practices Agreement specified in subdivision (e).

However, this provision shall not apply to a candidate who signs the Fair Campaign Practices Agreement but is opposed by a candidate who declines to sign the Fair Campaign Practices Agreement.

(e) The text of the Fair Campaign Practices Agreement shall read as follows:

FAIR CAMPAIGN PRACTICES AGREEMENT

I. Fair Campaign Pledge

I pledge to conduct my campaign for public office openly and fairly. I also will not use or permit the use of any campaign advertisement which falsifies the facts regarding my opponents. In addition I will publicly repudiate support deriving from any individual or group

1 who uses or permits the use of any campaign
2 advertisement which falsifies the facts regarding my
3 opponents.
4
5 II. Specific Agreements
6 I further agree to the following specific conditions:
7 (1) I will clearly identify myself (or my campaign
8 committees) as the sender of all my campaign
9 advertisements.
10 (2) During the campaign I agree to provide to my
11 opponent and to ~~the newspapers of~~ *two newspapers of*
12 *the widest* general circulation within the district ~~which~~
13 ~~newspapers were most recently used by the county clerk~~
14 ~~in publishing notices pursuant to Section 6588 of the~~
15 ~~Elections Code~~, the text of all campaign advertisements
16 which name or make either direct or indirect reference
17 to my opponent at least 24 hours before they are placed
18 in the mail and 48 hours before they are broadcast or
19 otherwise published.
20
21 III. Submission of Advertisements
22 I shall designate one individual and one delivery
23 address to receive campaign advertisements which name
24 or make either direct or indirect reference to my
25 candidacy within 24 hours following my certification as
26 the candidate of my party for the general election.
27 I agree to submit the text of any campaign
28 advertisement which names or makes either direct or
29 indirect reference to my opponent, to the individuals
30 designated by my opponent and to the newspapers
31 referred to above, at least 24 hours before the
32 advertisement is placed in the mail and 48 hours before
33 they are broadcast, or otherwise published.
34 In addition, I agree that the text of any campaign
35 advertisement which names or makes either direct or
36 indirect reference to my opponent, and which will be
37 received in the mail, broadcast, or otherwise delivered
38 during the last seven days of the campaign, will be
39 furnished to my opponent and to the newspapers
40 referred to above at least 48 hours before it is mailed

1 broadcast, or otherwise published.
2 I acknowledge that I am civilly liable for failure to
3 comply with the advance notice requirement of this
4 agreement.
5
6 Signature ______________ Signature ______________
7 Date ______________ Date ______________
8
9 (f) For purposes of the Fair Campaign Practices
10 Agreement "campaign advertisement" means a
11 communication authorized by a candidate or a
12 candidate's controlled committee, as defined in Section
13 82016 of the Government Code, for the purpose of
14 advocating the election or defeat of a qualified candidate
15 through any broadcasting station, newspaper, magazine,
16 outdoor advertising facility, direct mailing, or any other
17 type of general, public, political advertising, including,
18 but not limited to, recorded telephone messages and
19 printed materials which are publicly distributed.
20 SEC. 5. Section 32005 is added to the Elections Code,
21 to read:
22 32005. Any person who after signing the Fair
23 Campaign Practices Agreement fails to provide
24 campaign advertisements as required by the agreement
25 shall be liable in a civil action brought by the Attorney
26 General or by a person residing within the jurisdiction of
27 the candidate in question for an amount of ten thousand
28 dollars ($10,000) or three times the amount of the cost of
29 the campaign advertisement, whichever is greater.
30 SEC. 6. In the event that the Franchise Tax Board
31 redesigns the tax form so that space is available to print
32 the statement, "The state assures that no political
33 contribution collected by the Franchise Tax Board for
34 disbursement to official political parties will be
35 contributed or transferred to any candidate who has
36 failed to sign the Fair Campaign Practices Agreement"
37 on the tax form, the statement shall also be printed on the
38 tax form.

O

THE FOLLOWING PAGES MAY NOT FILM LEGIBLY BECAUSE OF THE POOR QUALITY OF THE ORIGINAL

ATTACHMENT B

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.

STATE LEGISLATIVE EFFORTS TO REGULATE NEGATIVE CAMPAIGN ADVERTISING

	Fair Campaign Practices Code	Sanctions for Code Violation	Laws Prohibiting False Campaign Statements	Court Challenges	Legislative Proposals Since 1985	Contact	Notes	
AL	No	No	No			Vicki Balogh Secretary of State's Office 205/261-7210		AL
AK	No		Ak. Stat. Sec 15.56.010 prohibits false campaign statements/misd (a)(b)		'90 (Rep. Finkelstein, HB 318; pending) '89 (failed) '88 (failed)	Linda Edgeworth Division of Elections 907/465-4611	Finkelstein's bill would make voluntary oath available to candidates	AK
AZ	No		No			Secretary of State's Office 606/547-8083		AZ
AR	No		No			Ginger Bailey Secretary of State's Office 501/682-5070		AR
CA	Cal. Elec. Code Sec 12500 (c)	No	Cal. Elec. Code Sec. 11707 prohibits misrepresentation of party support			Jon Rothman Fair Pol. Practices Cmsn. 916/372-5660		CA
CO	No		CRS Sec. 1-13-109 prohibits false campaign statements/misd. (b)(d)			Vikki Lindsey Secretary of State's Office 303/894-2211		CO
CT	No (Vol. code in effect '74 to '78)		No		'89 (Rep. Kiner, HB 5580; failed) '87 (interim study)	Ron Gregory, State Elections Enforcement Cmsn. 203/566-7106	Code discontinued because of issues raised in Vanasco case (see NY)	CT
DE	No		No			Virginia Lane, State Elections Cmsner's Office 302/736-4277		DE
FL	No		Fl. Stat. Ch. 104.271 (1987) prohibits false campaign statements/civil penalty (d)		'90 (Reps. Rush, Ostrau, HB1165) '90 (Rep. Bronson, HB2109)	Wayne Malaney, House Cmsn. on Ethics & Elections 904/488-5116	HB 1165 would require use of "attacking candidate's" photo, voice in ads	FL
GA	No		No			Harriet Bell, State Ethics Commission 404/493-5795		GA
HI	No		No			State Ethics Commission 808/548-6401		HI
ID	No		No			Marilyn Johnson Secretary of State's Office 208/334-2300		ID
IL	P.A. 86-873 (c)	No	No			Mark Kloever, State Board of Elections 217/782-4141		IL

a) Applies to statements that are defamatory
b) Applies to written false statements (unless otherwise noted, false statement prohibitions apply to both oral and written statements)
c) Code is voluntary
d) Applies to false statements with design or effect of influencing votes on candidates or ballot questions

	Fair Campaign Practices Code	Sanctions for Code Violation	Laws Prohibiting False Campaign Statements	Court Challenges	Legislative Proposals Since 1985	Contact	Notes
N	No		Ind. Code Sec. 3-14-3-22 prohibits false campaign statements/felony (a)(b)(d)(e)			Laura Molloy State Election Board 317/232-3939	
A	No		No		'89 (Sen. Granstall, SF 523 prohibiting false campaign statements; failed)	Janet Wilson Leg. Service Bureau 515/281-6471	Interim study conducted in 1988
(S	No		No			Rebecca Bossemeyer Secretary of State's Office 913/296-3488	
(Y	No		No			Raymond Wallace Registry of Election Finance 502/564-2226	
.A	No		LRS Title 18, Sec. 1463 prohibits false campaign statements/misd. (d)	'89 challenge on const. grounds (on appeal)		Maria McCrory, Ethics Administration Program 504/765-2308	See, State v. Burgess, 543 S. 2d 1332 (1989)
ME	No		No		'90 (Rep. Mayo; pending)	Marilyn Canavan Cmsn. on Gvt Ethics & Elec. 207/289-4178	Ethics Cmsn reports increased interest in regulating negative ads
MD	No		No			Rebecca Babinac State Adm Bd of Elec Laws 301/974-3711	
MA	No		Mass. Gen.L. Ch. 56, Sec 42 prohibits false statements/misd. (d)			Diane Meibaum State Ethics Commission 617/727-0060	Ethics Cmsn has issued advisory on fair campaigning
MI	No		Mich. Comp Laws Sec. 168.944 prohibits false incumbency designations			Marcia Pack Bureau of Elections 517/373-8558	
MN	No		MN Ch. 311B.05 prohibits distribution of false campaign material/gross misd. (b)(d)		'88 (resulting in Ch. 311B.05)	Jeff Sigurdson Secretary of State's Office 612/296-2805	Ch. 311B.05 also prohibits defamatory letters to the editor/misd. (d)
MS	No		Miss. Code Ann. Sec. 23-15-875 prohibits false charges against "integrity" of candidate/misd.		-	Reese Partridge Secretary of State's Office 601/359-1350	
MO	No		No		'87 (Sen. McCarthy; failed)	Gayle Thomas Secretary of State's Office 314/751-3719	
MT	MCA Sec. 13-35-302 (c)	No	MCA Sec. 13-35-234 prohibits false campaign statements/misd. (e)(f)			Karen Crawford Secretary of State's Office 406/444-2942	

(a) Applies to statements that are defamatory
(b) Applies to written false statements (unless otherwise noted, false statement prohibitions apply to both oral and written statements)
(c) Code is voluntary
(d) Applies to false statements with design or effect of influencing votes on candidates or ballot questions
(e) All false statement prohibitions listed, with exception of LA, apply to persons making statements that they know to be false or should be reasonably expected to know are false
(f) Court can deprive accused candidate of nomination or election

	Fair Campaign Practices Code	Sanctions for Code Violation	Laws Prohibiting False Campaign Statements	Court Challenges	Legislative Proposals Since 1983	Contact	Notes	
E	No		Prohibition of false statements (NRS Sec. 49-14,132) repealed in 1986	1983 case ruled false statement law was unconstitutional		Frank Daley, Accountability & Disclosure Commission 402/471-2522	See, Fowler v. NE Accountability Cmsn., 330 N.W. 2d 136 (1983)	NE
V	No		NRS Sec. 294A.057, .058 prohibit false incumbency designations			Robert Eliot Secretary of State's Office 702/885-5203	Legislative proposals expected during '91 session	NV
H	No		No			William Gardner Secretary of State's Office 603/271-3242		NH
J	No		No		'90 (Assem. Franks, A-3098 pending) '90 (Sen. Russo; pending)	Fred Herrman Election Law Enforcement Cmsn. 609/292-8700	A-3098 would require use of candidate's photo, voice in ads referencing other candidates	NJ
M	No		No			Chris Boyle Secretary of State's Office 505/827-3600		NM
Y	Elec. 3-106, Code Sec. 6201.1, 6201.2	No	No	1975 ruling struck down code as unconstitutional (code revised accordingly)	'88 (failed) '90 (pending)	John Ciampoli Board of Elections 518/474-6367	See, Vanasco v. Schwartz 401 F.Supp. 87, aff'd 423 U.S. 1041 (1975)	NY
IC	No		N.C. Gen. Stat Sec 163-274(8) prohibits false statements/misd. (d)			Johnnie McLean State Board of Elections 919/733-7218		NC
ID	No		ND Cent. Code Sec. 16.1-10-04 prohibits false statements/misd. (b)			Ben Meier Secretary of State 702/224-2900	Sec. 16.1-10-04 applies only to political ads, news releases	ND
OH	No		ORC Sec. 3599.091 prohibits false statements/misd. (overturned by fed. ct. 1987) (d)	1987 court ruling now under appeal		David Clouston Ohio Elections Commission 614/466-2585	See, Pestrak v. Ohio Elections Cmsn, 670 F. Supp 1368 (1987)	OH
OK	No		No			Marilyn Hughes Council on Camp. Compliance & Ethical Stds. 405/521-2391		OK
OR	No		ORS Sec 260.532 prohibits false campaign statements/civil penalty (b)(c)(f)			Jack Graham Secretary of State's Office 503/378-4144		OR
PA	No		No		'88 (failed) '89 (failed) '90 (pending)	John Contino State Ethics Commission 717/783-1610		PA
RI	No		No			Jan Armstrong State Board of Elections 401/277-2345		RI

(a) Applies to statements that are defamatory

(b) Applies to written false statements (unless otherwise noted, false statement prohibitions apply to both oral and written statements)

(c) Code is voluntary

(d) Applies to false statements with design or effect of influencing votes on candidates or ballot questions

(e) All false statement prohibitions listed, with exception of LA, apply to persons making statements that they know to be false or should be reasonably expected to know are false

(f) Court can deprive accused candidate of nomination or election

Cross References

Nomination of candidates, generally, see c. 53, § 1 et seq.
Posters, cards or handbills, posting and distribution near entrance to polling place prohibited, penalty, see c. 54, § 35.

Library References

Elections ⇐317.
C.J.S. Elections §§ 329, 356.

§ 42. False statements relating to candidates or questions submitted to voters

No person shall make or publish, or cause to be made or published, any false statement in relation to any candidate for nomination or election to public office, which is designed or tends to aid or to injure or defeat such candidate.

No person shall publish or cause to be published in any letter, circular, advertisement, poster or in any other writing any false statement in relation to any question submitted to the voters, which statement is designed to affect the vote on said question.

Whoever knowingly violates any provision of this section shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than six months.

Added by St.1946, c. 537, § 11. Amended by St.1964, c. 147, § 2.

Historical Note

St.1964, c. 147, § 2, approved March 9, 1964, inserted the second paragraph.

Prior Laws:
St.1922, c. 269, §§ 1, 3.
St.1926, c. 101.
G.L.1932 (Ter.Ed.) c. 55, § 34A; c. 56, § 64A.

Cross References

Nomination of candidates, generally, see c. 53 § 1 et seq.

Law Review Commentaries

Avoidance of an election or referendum when the electorate has been misled. (1957) 70 Harvard L.Rev. 1077.

Law of the land; torts of the tongue. Wm. Arch. McLean (1900) 12 Green Bag 523.

Library References

Elections ⇐318, 332.
C.J.S. Elections §§ 331, 353.

to the improper discharge of his campaign duties or to obtain information about the candidate or his campaign organization.

(B) No person, during the course of any campaign for nomination or election to public office or office of a political party, by means of campaign materials, including sample ballots, an advertisement on radio or television or in a newspaper or periodical, a public speech, press release, or otherwise, shall knowingly and with intent to affect the outcome of such campaign do any of the following:

(1) Use the title of an office not currently held by a candidate in a manner that implies that the candidate does currently hold that office or use the term "re-elect" when the candidate has never been elected at a primary, general, or special election to the office for which he is a candidate;

(2) Make a false statement concerning the formal schooling or training completed or attempted by a candidate; a degree, diploma, certificate, scholarship, grant, award, prize, or honor received, earned, or held by a candidate; or the period of time during which a candidate attended any school, college, community technical school, or institution;

(3) Make a false statement concerning the professional, occupational, or vocational licenses held by a candidate, or concerning any position the candidate held for which he received a salary or wages;

(4) Make a false statement that a candidate or public official has been indicted or convicted of a theft offense, extortion, or other crime involving financial corruption or moral turpitude;

(5) Make a statement that a candidate has been indicted for any crime or has been the subject of a finding by the Ohio elections commission without disclosing the outcome of any legal proceedings resulting from the indictment or finding;

(6) Make a false statement that a candidate or official has a record of treatment or confinement for mental disorder;

(7) Make a false statement that a candidate or official has been subjected to military discipline for criminal misconduct or dishonorably discharged from the armed services;

(8) Falsely identify the source of a statement, issue statements under the name of another person without authorization, or falsely state the endorsement of or opposition to a candidate by a person or publication;

(9) Make a false statement concerning the voting record of a candidate or public official;

(10) Post, publish, circulate, distribute, or otherwise disseminate a false statement, either knowing the same to be false or with reckless disregard of whether it was false or not, concerning a candidate that is designed to promote the election, nomination, or defeat of the candidate.

As used in this section, "voting record" means the recorded "yes" or "no" vote on a bill, ordinance, resolution, motion, amendment, or confirmation.

(C) Before any prosecution may commence, a complaint shall be presented to the Ohio elections commission by an affidavit of any person, made on personal knowledge and subject to the penalties for perjury, setting forth any violation of division (A) or (B) of this section. The commission shall proceed to investigate the charges made in the affidavit, and shall, whenever possible, complete the investigation of all matters before an election. The commission or a member of the commission may administer oaths, and the commission may issue and enforce subpoenas with regard to an investigation under this section in the same manner as provided in division (C) of section 3517.15 of the Revised Code. The commission shall issue copies of its findings to the committees or persons involved in its investigation.

(D)(1) If the commission finds that division (A) or (B) of this section has been violated, it shall do only one of the following:

(a) Impose a fine not to exceed one thousand dollars;

(b) Forthwith transmit a copy of its findings and the evidence to the prosecuting attorney of the appropriate county.

(2) Notwithstanding any provision of Chapters 1901., 1905., 1907., and 2931. of the Revised Code, the common pleas court has exclusive original jurisdiction over prosecutions under this section.

(3) Any person adversely affected by the action of the commission under division (D)(1)(a) of this section may appeal from such action in accordance with section 119.12 of the Revised Code.

(E) If the commission finds upon the preponderance of the evidence that the violation is a continuing one, or if it has reason to believe that recurrence of the violation is imminent, it may issue an order to cease and desist. The commission or the person who filed the affidavit, or the treasurer of the campaign committee of any candidate who filed an affidavit may bring an action for an injunction against any person violating or attempting to violate the order. Any person adversely affected by a cease and desist order of the commission may appeal as provided in section 119.12 of the Revised Code. No appeal, however, shall stay enforcement of a cease and desist order. In an action for injunction to enforce any final order of the commission brought pursuant to this section, the findings of the commission, after hearing, are prima-facie evidence of the facts found.

(F) In any action before the commission, if the allegations of the person who filed the affidavit are not proved, and the commission seeks neither civil nor criminal relief in court, the commission may find that the complaint is frivolous and order the complainant to pay costs. If so, the person filing the complaint may be required to pay such costs of the commission as would be assessed for the same service in a civil action before the court of common pleas. Such costs paid to the commission shall be deposited in the general revenue fund of the state. The commission shall provide each person under investigation, by mail or in person, prior to each meeting of the commission at which the person's presence is requested, a notice for the hearing, and shall supply to each person under investigation, prior to the person's first appearance before the commission, a statement of the legal rights and obligations of those under investigation by the commission.

(G) Whoever violates division (A) or (B) of this section is guilty of unfair campaign practices, a misdemeanor of the first degree.

HISTORY: 1986 H 555, eff. 2-26-86
1984 H 722; 1980 S 251; 1977 H 1; 1976 H 804

PRACTICE AND STUDY AIDS

Schroeder-Katz, Ohio Criminal Law, Statutory Charges
Baldwin's Ohio School Law, Text 5.03(A)

OREGON

government, and any county, city, district or other municipal corporation or public corporation organized for a public purpose, including a cooperative body formed between municipal or public corporations. [Formerly 260.231; 1973 c.83 §27a; 1979 c.190 §372, 1979 c.518 §35a; 1983 c.71 §9, 1983 c.392 §1; 1985 c.565 §39, 1985 c.808 §62; 1987 c.718 §3]

260.440 [Amended by 1971 c.641 §8, repealed by 1971 c.749 §82]

260.442 [Formerly 260.250, 1973 c.744 §28; 1979 c.190 §383; renumbered 260.025]

260.450 [Repealed by 1957 c.644 §28]

260.452 [Formerly 260.420; 1973 c.744 §29; repealed by c.190 §431]

260.460 [Repealed by 1957 c.644 §28]

260.462 [Formerly 260.270; 1973 c.744 §30; 1979 c.190 §386; renumbered 260.655]

260.470 [Amended by 1957 c.644 §9; 1971 c.749 §34; renumbered 260.365]

260.472 [Formerly 260.280; 1973 c.744 §31; 1979 c.190 §370; renumbered 260.415]

260.480 [Amended by 1957 c.644 §11; repealed by 1971 c.749 §82]

260.482 [Formerly 260.310; 1973 c.744 §32; 1977 c.678 §3; 1979 c.190 §384; renumbered 260.635]

260.490 [Amended by 1959 c.644 §12; repealed by 1971 c.749 §82]

260.492 [Formerly 260.320; 1973 c.744 §33; repealed by 1979 c.190 §431]

260.500 [Amended by 1957 c.644 §13; 1971 c.749 §56; renumbered 260.552]

260.502 [Formerly 260.335; repealed by 1973 c.744 §48]

260.510 [Amended by 1957 c.644 §14; repealed by 1971 c.749 §82]

260.512 [Formerly 260.340; 1973 c.744 §34; 1979 c.190 §380; renumbered 260.605]

260.520 [Amended by 1957 c.644 §15; 1971 c.749 §35; renumbered 260.375]

260.522 Identification of source of political publication. (1) Except as provided in this section, no person shall cause to be printed, posted, broadcast, mailed, circulated or otherwise published, any written matter, photograph or broadcast relating to any election or to any candidate or measure at any election, unless it states the name and address of the person responsible for the publication, including a statement that the publication was authorized by the person.

(2) A radio broadcast which complies with the requirements of the Federal Communications Act and regulations under it is not required to state the address of the person responsible for the broadcast if the person responsible for the broadcast is a candidate or political committee.

(3) The prohibition under subsection (1) of this section does not apply to:

(a) Any sign relating to a candidate if the candidate or the principal campaign committee of the candidate is responsible for the sign and the sign displays the name of the candidate; or

(b) Any written matter relating to a measure at any election prepared under the direction of the governing body of the city, county or district that referred the measure if the written matter is impartial, neither supports nor opposes passage of the measure and contains the name and address of the city, county or district.

(4) Any written matter or broadcast which has been previously published shall have the publisher and date of publication clearly identified when it is referred to in a publication listed under subsection (1) of this section.

(5) "Address" for purposes of this section means the address of a residence, office, headquarters or similar location where the person may be conveniently located. If the person is a political committee, the address shall be the address of the political committee included in the statement of organization under ORS 260.042. [Formerly 260.360; 1973 c.483 §1; 1973 c.744 §35; 1975 c.683 §13; 1979 c.190 §373; 1981 c.234 §17; 1983 c.71 §11; 1985 c.808 §63; 1989 c.503 §28; 1989 c.1054 §13]

260.530 [Repealed by 1957 c.644 §28]

260.532 False publication relating to candidate or measure. (1) No person shall cause to be written, printed, published, posted, communicated or circulated, any letter, circular, bill, placard, poster, photograph or other publication, or cause any advertisement to be placed in a publication, or singly or with others pay for any advertisement, with knowledge or with reckless disregard that the letter, circular, bill, placard, poster, photograph, publication or advertisement contains a false statement of material fact relating to any candidate, political committee or measure.

(2) A candidate who knows of and consents to a publication or advertisement prohibited by this section with knowledge or with reckless disregard that it contains a false statement of material fact, violates this section regardless of whether the candidate has participated directly in the publication or advertisement.

(3) There is a rebuttable presumption that a candidate knows of and consents to any publication or advertisement prohibited by this section caused by a political committee over which the candidate exercises any direction and control.

(4) Any candidate or political committee aggrieved by a violation of this section shall have a right of action against the person alleged to have committed the violation. The aggrieved party may file the action in the circuit court for any county in this state in

which a defendant resides or can be found or, if the defendant is a nonresident of this state, in the circuit court for any county in which the publication occurred. To prevail in such an action, the plaintiff must show by clear and convincing evidence that the defendant violated subsection (1) of this section.

(5) A plaintiff who prevails in an action provided by subsection (4) of this section may recover compensatory damages for all injury suffered by the plaintiff by reason of the false statement of material fact. Proof of entitlement to compensatory damages must be by a preponderance of evidence. Any prevailing party is entitled to recover reasonable attorney fees at trial and on appeal.

(6) A political committee has standing to bring an action provided by subsection (4) of this section as plaintiff in its own name, if its purpose as evidenced by its preelection activities, solicitations and publications has been injured by the violation and if it has fully complied with the provisions of this chapter. In an action brought by a political committee as provided by subsection (4) of this section, the plaintiff may recover compensatory damages for all injury to the purpose of the committee by reason of the false statement of material fact. A political committee may not be sued as defendant in such an action. A recovery made by a political committee which prevails in an action under this section shall be distributed pro rata among the persons making contributions to the committee.

(7) If a judgment is rendered in an action under this section against a defendant who has been nominated to public office or elected to a public office other than state Senator or state Representative, and it is established by clear and convincing evidence that the false statement was deliberately made or caused to be made by the defendant, the finder of fact shall determine whether the false statement reversed the outcome of the election. If the finder of fact finds by clear and convincing evidence that the false statement reversed the outcome of the election, the defendant shall be deprived of the nomination or election and the nomination or office shall be declared vacant.

(8) An action under this section must be filed not later than the 30th day after the election relating to which a publication or advertisement in violation of this section was made. Proceedings on a complaint filed under this section shall have precedence over all other business on the docket. The courts shall proceed in a manner which will insure that:

(a) Final judgment on a complaint which relates to a primary or nominating election is rendered before the 30th day before the general election; and

(b) Final judgment on a complaint which relates to an election to an office is rendered before the term of that office begins.

(9) The remedy provided by this section is the exclusive remedy for a violation of this section. [Formerly 260.380; 1973 c.744 §36; 1975 c.643 §14; 1979 c.190 §374; 1979 c.667 §2; 1981 c.897 §45; 1983 c.756 §1; 1985 c.808 §63a]

260.540 [1957 c.644 §10; 1971 c.749 §27; renumbered 260.325]

260.542 Use of term "reelect." No person shall use the term "reelect" in any material, statement or publication supporting the election of a candidate unless the candidate:

(1) Was elected to the identical office with the same position number, if any, in the most recent election to fill that office;

(2) Was elected from the same district from which the candidate is seeking election or, if district boundaries have been changed since the previous election, if the majority of the population in the district from which the candidate is seeking election was in the district from which the candidate was previously elected; and

(3) Is serving and has served continuously in that office from the beginning of the term to which the candidate was elected. [Formerly 260.405; 1973 c.744 §37; 1979 c.190 §375]

260.545 Use of candidate name in way implying candidate is incumbent. No person shall use the name of a candidate in a way that implies that the candidate is the incumbent in office in any material, statement or publication supporting the election of a candidate unless the candidate is qualified to use the term "reelect" under ORS 260.542 or the candidate:

(1) Was appointed to the identical office with the same position number, if any, after the most recent election to fill that office;

(2) Was appointed from the same district from which the candidate is seeking election, or if district boundaries have changed since the previous election, if the majority of the population in the district from which the candidate is seeking election was in the district from which the candidate was appointed; and

(3) Is serving and has served continuously in that office since the date of appointment. [1987 c.826 §2]

260.552 [Formerly 260.500; 1973 c.744 §38; repealed by 1979 c.190 §431]

260.555 Prohibitions relating to circulation, filing or certification of initiative, referendum or recall petition. (1) No person attempting to obtain signatures on, or

20-14-18 is guilty of a class B misdemeanor. Each violation of this act is a separate offense. Where a person or persons violates this act, the violation shall be that of the person who directed the violation. 1983

20-14-20 to 20-14-23. Repealed. 1981, 1971

20-14-24. Prohibitions as to publishers, newspapers and other periodicals.

No publisher of a newspaper or other periodical circulating in this state shall insert, either in its advertising or reading columns, any paid matter which is designated or tends to aid, injure or defeat any candidate, or any political party or organization, or any measure before the people, unless it is stated therein that it is a paid advertisement and the name of the chairman or secretary or other officers of the political or other organizations inserting the same, or the name and address of some voter who is responsible therefor, shall appear in such advertisement in the nature of a signature. No person shall pay the owner, editor, publisher or agent of any newspaper or other periodical to induce him to advocate or oppose editorially any candidate for nomination or election, and no such owner, editor, publisher or agent shall accept such payment. 1983

20-14-25. Statement of ownership of publication.

No publisher of any newspaper or other periodical published within this state shall insert, either in its advertising or reading columns, any matter whatsoever of a political nature, or any political editorial relative to a candidate for any public office, unless the publisher thereof shall file in the office of the lieutenant governor, within three months before the holding of any nominating convention or primary or general election, or within 10 days after the calling of and before the holding of any special election, a sworn statement which shall contain the names of the owners of such paper, and, if such publisher is a corporation, such statement shall be executed by some responsible officer thereof who is in a position to know the facts, and shall contain the names and addresses of the owners of the shares of stock and the bonds of such corporation. 1983

20-14-26. Declaration of interest in publication.

Every candidate, and every member of any personal campaign or party committee, who, either in his own name or in the name of any other person, owns any financial interest in any newspaper or other periodical circulating in this state, before such newspaper or periodical shall print any matter, otherwise than as is provided in Section 20-14-24, which is intended or tends to influence, directly or indirectly, any voting at any primary or election in this state, shall file in the office of the county clerk of the county in which he resides a verified declaration stating definitely the newspaper or periodical in which or over which he has such financial interest or control, and the exact nature and extent of such interest or control. The editor, manager or other person controlling the publication of any such newspaper or periodical who prints or causes to be printed any such matter prior to the filing of such verified declaration is guilty of a misdemeanor. 1983

20-14-27. Paid advertisements permitted.

No owner, publisher, editor, reporter, agent or employee of any newspaper or other periodical shall, directly or indirectly, solicit, receive or accept any payment, promise or compensation, nor shall any person pay or promise to pay or in any manner compensate any such owner, publisher, editor, reporter, agent or employee, directly or indirectly, for influencing or attempting to influence by means of any printed matter in such newspaper any voting at any election or primary through any means whatsoever, except through the matter inserted in such newspaper or periodical as "paid advertisement" and so designated as provided by law, and the compensation for inserting any such paid advertisement shall in no case exceed the regular rate charged by such newspaper or periodical for such service. 1983

20-14-28. False statements in relation to candidates forbidden.

No person shall knowingly make or publish, or cause to be made or published, any false statement in relation to any candidate, proposed constitutional amendment or other measure, which is intended or tends to affect any voting at any primary, convention or election. 1983

20-14-29. False impersonation — Double voting.

Every person is guilty of a felony who at any primary or election applies for a ballot in the name of some other person, whether it is that of a person living or dead, or of a fictitious person, or who, having voted once at a primary or election, applies at the same election for a ballot in his own name or any other name, and shall be punished by imprisonment in the state prison at hard labor for not less than one nor more than three years. Any person who aids, abets, counsels or procures the commission of such felony shall be subject to the same penalty. 1983

20-14-30. Wagering on elections forbidden.

Any candidate who before or during any primary or election campaign makes any bet or wager of anything of pecuniary value, or in any manner becomes a party to any such bet or wager, on the result of the primary or election, or on any event or contingency relating to any pending primary or election, or who provides money or other valuable thing to be used by any other person in betting or wagering upon the results of any impending primary or election, is guilty of a felony. Any person who makes any bet or wager of anything of pecuniary value on the result of any primary or election, or on any event or contingency relating thereto, is guilty of a misdemeanor, and, in addition thereto, any such act shall be a ground of challenge against his right to vote. Any person who, directly or indirectly, makes a bet or wager with any voter, depending upon the result of any impending primary or election, with the intent thereby to procure the challenge of such voter, or to prevent him from voting at such primary or election, is guilty of a misdemeanor. 1983

20-14-31. Inducing attendance at polls — Payment of workers.

It shall be unlawful for any person to pay another for any loss due to attendance at the polls or to registering; provided, that this shall not be construed to permit an employer to make any deduction from the usual salary or wages of any employee while in attendance at the polls for the purpose of voting. No person shall pay for personal service performed or to be performed on the day of a caucus, primary, convention or election, or for any purpose connected therewith tending in any way, directly or indirectly, to affect the result thereof, except for the hiring of persons

whose sole duty it is to act as challengers and watch the count of official ballots. 1983

20-14-32. Repealed. 1976

20-14-33. Promises of appointment to office forbidden.

No person shall, in order to aid or promote his nomination or election, directly or indirectly, appoint or promise to appoint any person, or secure or promise to secure, or aid in securing the appointment, nomination or election of any person, to any public or private position or employment, or to any position of honor, trust or emolument. Nothing herein contained, however, shall prevent a candidate from stating publicly his preference for, or support of, any other candidate for any office to be voted for at the same primary or election; or prevent a candidate for any office in which the person elected will be charged with the duty of participating in the election or nomination of any person as a candidate for any office from publicly stating or pledging his preference for, or support of, any person for such office or nomination. 1983

20-14-34. Inducements not to become candidate.

No person shall pay or reward, or promise to pay or reward, another in any manner or form for the purpose of inducing him to be, or to refrain from or cease being, a candidate, and no person shall solicit any payment, promise or reward from another for such purpose. 1983

20-14-35. Eleemosynary institutions may not solicit candidates.

No person shall demand, solicit, ask for or invite any payment or contribution for any religious, charitable or other cause or organization supposed to be primarily or principally for the public good from a person who seeks to be or has been nominated to any office; and no candidate shall make any such payment or contribution, if it shall be demanded or asked, during the time he is a candidate for nomination or election to any office. No payment or contribution for any purpose shall be made a condition precedent to the putting of a name on any caucus or convention ballot, or nomination paper or petition, or to the performance of any duty imposed by law on a political committee. 1983

20-14-36. Repealed. 1983

20-14-37. Exchange of convention credentials and support forbidden.

No person or persons shall invite, offer or effect the trade, transfer or exchange of any convention credential, or the vote or support of any delegate in any political convention, in exchange for any money or thing of value, or in exchange for any credential, or for the support or vote of any delegate for any person or candidate for any political office or nomination. 1983

20-14-38. Abetting violation of chapter — Penalty.

Any person who shall aid, abet or advise a violation of any provision of this chapter, except as otherwise provided, shall be guilty of a misdemeanor. 1983

20-14-39. Prosecutions — Venue.

Violations of the provisions of this chapter respecting the payment of money or making contributions or rendering services may be prosecuted in the county where such payment or contribution is made, or services rendered, or in any county wherein such mon has been paid or distributed.

20-14-40. Proceedings by private elector.

If any elector of the state shall have within possession information that any provision of th chapter has been violated by any candidate for wh such elector had the right to vote, or by any person campaign committee of such candidate or any me ber thereof, he may, by verified petition, apply to district judge of the district in which such violati has occurred, to the attorney general or to the gov nor for leave to bring a special proceeding to inve gate and determine whether or not there has be such violation by such candidate, or by such comm tee or member thereof, and for appointment of spec counsel to conduct such proceeding in behalf of th state.

If it shall appear from such petition or otherw that such candidate, or committee or member there has violated any provision of this chapter and th sufficient evidence is obtainable to show that there probable cause to believe that such proceeding m be successfully maintained, then such judge, the a torney general or the governor shall grant leave bring such proceeding, and shall appoint spec counsel to conduct the same.

If such leave is granted and such counsel is a pointed, such elector may, by a special proceedi brought in the district court in the name of the sta upon the relation of such elector, investigate and d termine whether or not such candidate, or committ or member thereof, has violated any provision of th chapter; but nothing contained herein shall be cons ered as in any way limiting the effect or preventi the operation of other remedies existing in su cases.

20-14-41. Pleadings — Procedure.

In such proceeding the complaint shall be serv with the summons and shall set forth the name of t person whose election is contested and the grounds the contest in detail, and shall not thereafter amended except by leave of the court. The summon and complaint in the proceeding shall be filed withi five days after service thereof.

The answer to the complaint shall be served an filed within 10 days after the service of the summon and complaint. Any allegation of new matter in t answer shall be deemed controverted by the adver party without reply, and thereupon the proceedir shall be at issue and stand ready for trial upon fi days' notice of trial.

All such proceedings shall have precedence ov any civil cause of a different nature pending. Th court shall always be deemed open for the tri thereof and the same shall be tried and determined a civil action, but the court shall, without a jury, d termine all issues of fact as well as issues of la

If more than one proceeding is pending or the el tion of more than one person is investigated and co tested, the court may in its discretion order the pr ceedings consolidated and heard together, and m equitably apportion costs and disbursements.

In all such proceedings either party shall have t right of change of venue as provided by law in civ actions, but application for such change must made within five days after service of summons an complaint, and the order for such change, if mad shall be made within three days after the making such application and the papers shall be transmitt forthwith. Any neglect of the moving party to procu

Historical and Statutory Notes

Sunset Act application: See Reviser's Note following § 42.17.350.

42.17.430. Certification of reports

Every report and statement required to be filed under this chapter shall identify the person preparing it, and shall be certified as complete and correct, both by the person preparing it and by the person on whose behalf it is filed.

Enacted by Laws 1973, ch. 1, § 43, eff. Jan. 1, 1973 (Initiative Measure No. 276, § 43).

Historical and Statutory Notes

Sunset Act application: See Reviser's Note following § 42.17.350.

42.17.440. Statements and reports public records

All statements and reports filed under this chapter shall be public records of the agency where they are filed, and shall be available for public inspection and copying during normal business hours at the expense of the person requesting copies, provided that the charge for such copies shall not exceed actual cost to the agency.

Enacted by Laws 1973, ch. 1, § 44, eff. Jan. 1, 1973 (Initiative Measure No. 276, § 44).

Library References

Records ⟹14.
C.J.S. Records § 35 et seq.

42.17.450. Duty to preserve statements and reports

Persons with whom statements or reports or copies of statements or reports are required to be filed under this chapter shall preserve them for not less than six years. The commission, however, shall preserve such statements or reports for not less than ten years.

Enacted by Laws 1973, ch. 1, § 45, eff. Jan. 1, 1973 (Initiative Measure No. 276, § 45).

Historical and Statutory Notes

Sunset Act application: See Reviser's Note following § 42.17.350.

Library References

Records ⟹13.
C.J.S. Records §§ 34, 40.

POLITICAL ADVERTISING

42.17.505. Definitions

The definitions set forth in this section apply throughout RCW 42.17.510 through 42.17.540.

(1) "Actual malice" means to act with knowledge of falsity or with reckless disregard as to truth or falsity.

(2) "Sponsor" means the candidate, political committee, or person paying for the advertisement. If a person acts as an agent for another or is reimbursed by another for the payment, the original source of the payment is the sponsor.

(3) "Incumbent" means a person who is in present possession of an elected office.

Enacted by Laws 1988, ch. 199, § 1.

42.17.510. Identification of sponsor—Exemptions

(1) All written political advertising, whether relating to candidates or ballot propositions, shall include the sponsor's name and address. All radio and television political advertising, whether relating to candidates or ballot propositions, shall include the sponsor's name. The use of an assumed name shall be unlawful. The party with which a candidate files shall be clearly identified in political advertising for partisan office.

(2) Political yard signs are exempt from the requirement of subsection (1) of this section that the name and address of the sponsor of political advertising be listed on the advertising. In addition, the public disclosure commission shall, by rule, exempt from the identification requirements of subsection (1) of this section forms of political advertising such as campaign buttons, balloons, pens, pencils, sky-writing, inscriptions, and other forms of advertising where identification is impractical.

(3) For the purposes of this section, "yard sign" means any outdoor sign with dimensions no greater than eight feet by four feet.

Enacted by Laws 1984, ch. 216, § 1.

Cross References

Advertising rates for political candidates, see § 65.16.095.

United States Supreme Court

Freedom of speech and association, ban on political party primary endorsements, see Eu v. San Francisco County Democratic Central Committee, 1989, 109 S.Ct. 1013, 103 L.Ed.2d 271.

42.17.520. Picture of candidate

At least one picture of the candidate used in any political advertising shall have been taken within the last five years and shall be no smaller than the largest picture of the same candidate used in the same advertisement.

Enacted by Laws 1984, ch. 216, § 2.

42.17.530. False political advertising

(1) It is a violation of this chapter for a person to sponsor with actual malice:

(a) Political advertising that contains a false statement of material fact;

(b) Political advertising that falsely represents that a candidate is the incumbent for the office sought when in fact the candidate is not the incumbent;

(c) Political advertising that makes either directly or indirectly, a false claim stating or implying the support or endorsement of any person or organization when in fact the candidate does not have such support or endorsement.

(2) Any violation of this section shall be proven by clear and convincing evidence.

Enacted by Laws 1984, ch. 216, § 3. Amended by Laws 1988, ch. 199, § 2.

42.17.540. Responsibility for compliance

(1) Except as provided in subsection (2) of this section, the responsibility for compliance with RCW 42.17.510 through 42.17.530 shall rest with the sponsor of the political advertising and not with the broadcasting station or other medium.