HB

74

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 74

Revision Date: February 6, 1992 **Department Affected:** Department of Law

Title: "An Act requiring...material...in the election pamphlet be certified as true." **BRU:** Prosecution

Component: Criminal Justice Litigation

Sponsor: Representative Martin

Requestor: House State Affairs **COMPONENT SERIAL NO.** 8 9

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE FUND SOURCE:						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER FUND SOURCE:						
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.

Richard L. Pegues

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

Division: Administrative Services **Date:** February 6, 1992

Richard L. Pegues /for/

Approved by Commissioner: Charles E. Cole, Attorney General

Agency: Department of Law **Date:** February 6, 1992

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

Rev 10/7/91

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 74

This bill amends AS 15.58.030 by adding a new subsection that requires that a candidate, or a person on behalf of a candidate, submitting material under AS 15.58.030, for inclusion in the state's official election pamphlet, shall swear that factual statements contained in the material are true to the best of the candidate's knowledge. The bill further provides that a candidate or person who knowingly swears falsely is guilty of perjury under AS 11.56.200, which is a class B felony. Although there have been a few instances in the recent past where false information was submitted for inclusion in the election pamphlet, their number has been small and the Department of Law does not therefore expect that this bill will cause a fiscal impact.

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 74

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

Title: An Act requiring material inclusion in the elect. pamph.be cert.as true

BRU: Division of Elections

Component: _____

Sponsor: Representative Martin

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: Robert E. Sheldon

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

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

Rev 10/90

BIOGRAPHICAL INFORMATION
FOR
OFFICIAL ELECTION PAMPHLET

NAME: TERRY MARTIN

PARTY AFFILIATION: REPUBLICAN

RESIDENCE ADDRESS: 3960 Reka Dr.-B6
Anchorage, AK 99504

OFFICE FILED FOR: HOUSE OF REPRESENTATIVES

MAILING ADDRESS: Same as above

ELECTION DISTRICT: (LETTER OR NUMBER) 8F

THIS SECTION MUST BE TYPEWRITTEN AND MAY NOT CONTAIN MORE THAN 150 WORDS

DATE OF BIRTH: 1 / 17/ 36

PLACE OF BIRTH: BALTIMORE, MD.

NAME OF SPOUSE: N/A

CHILDREN: (NAMES AND AGES) N/A

OCCUPATION: MEDICAL SUPPLIES SALES MANAGER

LENGTH OF RESIDENCY IN ALASKA:

	COMMUNITY	DATES
	(EXAMPLE: CORDOVA	1954-1956)
1.	Mt. View/Muldoon	1965-1978
2.		
3.		
4.		
5.		

EDUCATION:

	NAME	LOCATION	DATES ATTENDED	DEGREES/ CERTIFICATES
--HIGH SCHOOL:	Baltimore Polytechnic			
--TECHNICAL/ VOCATIONAL:	Tuberculosis Control-USPHS Venereal Disease Control-USPHS			
--COLLEGE/ UNIVERSITY:	University of Oklahoma			B.A. - 6/63 Cert. Teacher-6/63
--POST GRADUATE:	U.S. Communicable Disease Center-Atlanta Ga. Physical Education - A.M.U. Imco Services - Blowout Simulator System			

State of Alaska
RECEIVED
JUL 17 1978
Lieutenant Governor

(SEE REVERSE)

CANDIDATE'S NAME Terry Martin ELECTION DISTRICT 8F

BIOGRAPHICAL INFORMATION (CONTINUED)

MILITARY SERVICE:

BRANCH	LENGTH OF SERVICE	RANK	AWARDS EARNED
U.S. Marines	4 yrs active; 4 yrs reserve.		

POLITICAL AND GOVERNMENT POSITIONS:

President, Young Republicans - University of Oklahoma
5 years - U.S. Public Health Service

BUSINESS AND PROFESSIONAL POSITIONS:

5 yrs. Public Health Advisor
8 yrs. Executive Director Boys' Clubs of Alaska
Member - American Surgical Trade Assoc.

SERVICE ORGANIZATION(S) MEMBERSHIP:

Founder: Boys' Clubs of Alaska
10 years Kiwanis Club of Anchorage
5 years Race Marshall-Mayor's Marathon
3 years Board of Directors-Girls' Clubs of Alaska
American Legion Baseball Director

OTHER ORGANIZATION(S) MEMBERSHIP:

Pulsator's Running Club
Road Runners of Alaska
Coach-Snowshoe-Arctic Winter Games

CANDIDATE'S NAME Terry Martin ELECTION DISTRICT 8F

BIOGRAPHICAL INFORMATION (CONTINUED)

SPECIAL INTERESTS:

Winter sports, officiating at basketball and baseball.
Indoor sports arena for junior/senior high school track/field
football programs and community usage.

OTHER:

PLEASE COUNT AND TOTAL NUMBER OF WORDS USED: 147

INSTRUCTIONS:

No more than 150 words are permitted. (AS 15.57.020) Do not count printed headings such as "political and government positions". Each word that you type should be counted, including articles such as 'the", "an", "a".

A category (for example, military service) which is not completed will not be printed in the Election Pamphlet.

Please tally the number of words.

(SEE REVERSE)

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.

Virginia Jensen
(Notary Public or Postmaster)

(SEAL)

Commission expires: 8/4/1980

REMEMBER TO ENCLOSE A 4 x 5 PHOTOGRAPH!

Alaskans first. 8) Keep looking for gas and oil, continue the development of the fishing industry, encourage more mining. Resource development will improve the quality of life in Alaska. 9) Allow the people to keep laws that will insure Alaska as a State of decency where we will be proud of the heritage we leave for generations to come.

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

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[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.

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[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

Attachments

CA

Chapter 6. Fair Campaign Practices

Article 1. General Intent

12500. Intent of legislature.

The Legislature hereby declares that the purpose of this chapter is to encourage every candidate for public office in this state to subscribe to the Code of Fair Campaign Practices.

It is the ultimate intent of the Legislature that every candidate for public office in this state who subscribes to the Code of Fair Campaign Practices will follow the basic principles of decency, honesty, and fair play in order that, after vigorously contested, but fairly conducted campaigns, the citizens of this state may exercise their constitutional right to vote, free from dishonest and unethical practices which tend to prevent the full and free expression of the will of the voters.

The purpose in creating the Code of Fair Campaign Practices is to give voters guidelines in determining fair play and to encourage candidtes to discuss issues instead of untruths or distortions.

(Added by Stats. 1982, c. 855, §1.)

Article 2. Definitions

12510. Interpretation of chapter.

Unless otherwise indicated, the definitions set forth in this artichel shall govern the interpretation of this chapter.

(Added by Stats. 1982, c. 855, §1.)

12511. Definition of campaign advertising or communication.

"Campaign advertising or communication" means a communication authorized by a candidate or a candidate's controlled committee, as defined in Section 82016 of the Government Code, or by a committee making independent expenditures, as defined in Section 82031 of the Government Code, for the purpose of advocating the election or defeat of a qualified candidate through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, or any other type of general, public, political advertising.

(Added by Stats. 1982, c. 855, §1.)

12512. Definition of candidate for public office.

"Candidate for public office" means an individual who has qualified to have his or her name listed on the ballot of any election, or who has qualified to have written votes on his or her behalf counted by election officials, for nomination for, or election to, any state, regional, county, municipal, or district office which is filled at an election. The provisions of this chapter do not apply to candidates for federal office.

(Added by Stats. 1982, c. 855, §1.)

12513. Definition of code.

"Code" means the Code of Fair Campaign Practices.

(Added by Stats. 1982, c. 855, §1.)

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 my 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 person who is found liable in a civil action for making libelous or slanderous statements against an opposing candidate during an election campaign shall retain the seat to which elected where it is 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. Contains other provisions. Summary of Legislative Analyst's estimate of net state and local government fiscal impact: Adoption of this measure would have no direct fiscal effect on the state or local governments. If, however, a successful candidate were disqualified from assuming or holding office as a result of the measure, local governments could incur additional costs if an election had to be held to fill the vacancy. These costs could be significant if the election did not coincide with a regularly scheduled election.

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

Assembly: Ayes 75	Senate: 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 elective office or a local elective office in California from holding that office, if

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

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

Fiscal Effect

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

If, however, a successful candidate were disqualified from assuming or holding office as a result of the measure, local governments could incur additional costs if an election had to be held to fill the vacancy. These costs could be significant if the election did not coincide with a regularly 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:

SECTION 1. Section 12520 of the Elections Code is amended to read:

12520. 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 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 clerk shall inform each candidate for public office that subscription to the code is voluntary. Any candidate who has not properly executed and delivered the code to the appropriate election official in the county of the candidate's residence within five days following the filing of nomination papers in the case of a primary election or within five days following the primary election in the case of the general election shall be deemed to have refused to sign the code.

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 e: their constitutional right to a free and untram choice and the will of the people may be fully and expressed on the issues.

THEREFORE:

(1) I SHALL CONDUCT my campaign open publicly, discussing the issues as I see them, pres my record and policies with sincerity and frankne criticizing without fear or favor the record and pol my opponents or political parties which meri criticism.

(2) I SHALL NOT USE OR PERMIT the character defamation, whispering campaigns, slander, or scurrilous attacks on any candidate or her personal or family life.

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

(4) I SHALL NOT USE OR PERMIT any dishoı unethical practice which tends to corrupt or unde our American system of free elections, or which ha or prevents the full and free expression of the will voters including acts intended to hinder or preve eligible person from registering to vote, enrolling t or voting.

(5) I SHALL provide to my opponents, addresses they specify on their Code of Fair Cam Practices form, and for public inspection t appropriate election official in the most populous c in the district in which I am seeking election or Secretary of State if I am a candidate for statewide 48 hours prior to dissemination by me or my com committee, the text of any campaign advertis communication which refers to my opponent by n innuendo.

(6) I SHALL NOT coerce election help or cam contributions for myself or for any other candidat my employees.

(7) I SHALL IMMEDIATELY AND PUBI REPUDIATE support deriving from any individ

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.

(8) 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

_____

Campaign address

SEC. 2. Section 12521 is added to the Elections Code, to read:

12521. (a) Provision 5 of the Code of Fair Campaign Practices shall only apply as follows:

(1) In primary elections if all candidates seeking the nomination of the political party for a particular office sign the Code.

(2) In General Elections if all candidates for a particular office, representing the political parties which comprise 10 percent or more of the registered voters in the state, sign the Code.

(3) In local and nonpartisan races or elections if all candidates for a particular office sign the Code.

(b) The election official responsible for preparation of the ballot shall cause to be printed, at each election in which candidates' names are printed on the ballot, ~~an asterisk (*)~~ *a check (–)* next to the name of each candidate who has signed the Code of Fair Campaign Practices on both the sample ballots and the official

ballots.

The instructions to the voters shall be revised to r an explanation of the use of the asterisk in those ele in which it is used. These instructions shall be print the sample ballots and on each page or card on the o ballots on which candidates' names are printed or o page of the votomatic device on which candidates' n appear.

(c) Any person, who after agreeing to sign the publicly distributes, either personally or through her controlled committee, any campaign-r advertisements or communication in violatic provision 5 of the code shall be liable in a civil brought by the district attorney in the county whe violation occurred for an amount up to five hu dollars ($500) or the full cost of the productio distribution of that communication, whichever is gr

SEC. 3. Notwithstanding Section 2231.5 o Revenue and Taxation Code, this act does not cor repealer, as required by that section; therefor provisions of this act shall remain in effect unle until they are amended or repealed by a later e act.

~~SEC. 4. The sum of three thousand dollars ($3,~~ ~~hereby appropriated from the General Fund~~ ~~Controller for allocation and disbursement in acc~~ ~~with Section 2231 of the Revenue and Taxation C~~ ~~local ageneies and school districts to reimburse th~~ ~~costs mandated by the state and incurred by~~ ~~pursuant to this act.~~

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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

greement to be eligible to receive public campaign

is bill would also provide that the state assures those iduals who elect to make payment for campaign ibutions on their tax returns that their contributions only be made or transferred to candidates who sign the ment.

is bill would specify civil penalties which would be ed on those candidates who sign the agreement and e specified provisions of the agreement.

e: majority. Appropriation: no. Fiscal committee: yes. mandated local program: no.

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

SECTION 1. Section 32001.5 is added to the Elections Code, to read:

32001.5. The Legislature further finds and declares hat this act also seeks to encourage public participation nd to encourage individuals to make small contributions nd thereby participate in political campaigns by romising and providing assurances that all funds ollected by the state for disbursements to political arties will, in turn, be contributed or transferred only to andidates who have agreed to conduct their campaigns n an ethical, fair, open, and honest fashion.

SEC. 2. Section 32002 of the Elections Code is mended to read:

32002. (a) Every individual, who is lawfully able to ake contributions to qualified political parties in alifornia, may designate the payment of one dollar ($1), ve dollars ($5), ten dollars ($10), or twenty-five dollars $25), in addition to his or her income tax liability to be aid over to the California Election Campaign Fund in ccordance with the provisions of this chapter. In the case f a joint return of individuals, each spouse may eparately designate that one dollar ($1), five dollars $5), ten dollars ($10), or twenty-five dollars ($25), shall e paid to that fund.

(b) For the purposes of subdivision (a), the California

income tax liability of an individual for any taxable year is the amount of his or her total income tax liability for that taxable year pursuant to the applicable provisions of the Revenue and Taxation Code.

(c) If an individual chooses to contribute an amount as provided for in subdivision (a) to the California Election Campaign Fund under subdivision (a), he or she shall designate on the applicable California tax return which of the qualified political parties of the State of California the contribution shall benefit. The Franchise Tax Board shall revise the forms for reporting California tax liability in accordance with this section.

(d) The state shall assure all persons making political contributions pursuant to this section that no such contribution shall be made or transferred by a political party to a candidate who has failed to sign the Fair Campaign Practices Agreement specified in subdivision (f) of Section 32004. The following statement shall appear in any instruction manual prepared by the Franchise Tax Board to explain the provisions of this section to the taxpayer:

"The state assures that no political contribution collected by the Franchise Tax Board for disbursement to official political parties will be contributed or transferred to any candidate who has failed to sign the Fair Campaign Practices Agreement."

SEC. 3. Section 32004 of the Elections Code is amended to read:

32004. On or before each calendar year, the Secretary of State shall forward to the Franchise Tax Board a list of qualified political parties. Qualification in the State of California shall be determined in accordance with Section 6430 of the Elections Code from the most recent election for which officially canvassed results are available. Any sums designated to a political party which are not qualified pursuant to this section shall be retained by the state for its General Fund.

(a) The Chair of the State Central Committee of each political party receiving payments pursuant to this division shall segregate those moneys and disburse them

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 who uses or permits the use of any campaign advertisement which falsifies the facts regarding my opponents.

II. Specific Agreements

I further agree to the following specific conditions:

(1) I will clearly identify myself (or my campaign committees) as the sender of all my campaign advertisements.

(2) During the campaign I agree to provide to my opponent and to ~~the newspapers of~~ *two newspapers of the widest* general circulation within the district ~~which newspapers were most recently used by the county clerk in publishing notices pursuant to Section 6588 of the Elections Code~~, the text of all campaign advertisements which name or make either direct or indirect reference to my opponent at least 24 hours before they are placed in the mail and 48 hours before they are broadcast or otherwise published.

III. Submission of Advertisements

I shall designate one individual and one delivery address to receive campaign advertisements which name or make either direct or indirect reference to my candidacy within 24 hours following my certification as the candidate of my party for the general election.

I agree to submit the text of any campaign advertisement which names or makes either direct or indirect reference to my opponent, to the individuals designated by my opponent and to the newspapers referred to above, at least 24 hours before the advertisement is placed in the mail and 48 hours before they are broadcast, or otherwise published.

In addition, I agree that the text of any campaign advertisement which names or makes either direct or indirect reference to my opponent, and which will be received in the mail, broadcast, or otherwise delivered during the last seven days of the campaign, will be furnished to my opponent and to the newspapers referred to above at least 48 hours before it is mailed.

broadcast, or otherwise published.

I acknowledge that I am civilly liable for failure to comply with the advance notice requirement of this agreement.

Signature _____ Signature _____
Date _____ Date _____

(f) For purposes of the Fair Campaign Practices Agreement "campaign advertisement" means a communication authorized by a candidate or a candidate's controlled committee, as defined in Section 82016 of the Government Code, for the purpose of advocating the election or defeat of a qualified candidate through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, or any other type of general, public, political advertising, including, but not limited to, recorded telephone messages and printed materials which are publicly distributed.

SEC. 5. Section 32005 is added to the Elections Code, to read:

32005. Any person who after signing the Fair Campaign Practices Agreement fails to provide campaign advertisements as required by the agreement shall be liable in a civil action brought by the Attorney General or by a person residing within the jurisdiction of the candidate in question for an amount of ten thousand dollars ($10,000) or three times the amount of the cost of the campaign advertisement, whichever is greater.

SEC. 6. In the event that the Franchise Tax Board redesigns the tax form so that space is available to print the statement, "The state assures that no political contribution collected by the Franchise Tax Board for disbursement to official political parties will be contributed or transferred to any candidate who has failed to sign the Fair Campaign Practices Agreement" on the tax form, the statement shall also be printed on the tax form.

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ATTACHMENT A

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

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:

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

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

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

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

Part V 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) "Actual Malice" Standard: The statute must be narrowly drawn so that only those false statements made "knowingly or with

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.

P A R T I I

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.

P A R T I I I

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 I 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) <u>False Representations Statute</u>: The most typical statute is one which broadly prohibits a person from knowingly publishing a false representation pertaining to <u>any</u> candidate or <u>any</u> 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 only 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 Nebraska District Court decision), and the later discussion in Part IV 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

TABLE 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 1year
North Carolina 163-274(3)	"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
Wisconsin 12.05	"knowingly"	None	(1)	Max Fine $1000 Max Jail 3yrs

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 Accountability 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 pr of, 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

standard of proof, as required by New York Times and Vanasco, is a "clear and convincing" evidence standard.

The only other state which has a comprehensive statute and which has faced a challenge on burden of proof grounds, is Ohio in the case of DeWine v. Ohio Elections Commission, 61 Ohio App. 2d 25, 399 N.E.2d 99 (1978).

Under the Ohio statute, O.R.C. §3599.091, which is the most comprehensive political advertising statute in terms of proscribing particular campaign behaviors, the Ohio Elections Commission is empowered to investigate complaints of unfair campaign practices. The Commission, upon completing its investigation, may then recommend to the county prosecutor that certain charges be filed. The statute does not require the Commission to meet any particular burden of proof.

The defendant candidate in DeWine argued that the Commission was required to utilize a proof beyond a reasonable doubt standard. The DeWine court stated, however, that because the function of the Comission is very similar to a grand jury, the "proceedings before the Commission do not constitute a criminal proceeding." Id. at 105. The Court then reasoned that a "preponderance of evidence" standard provided sufficient protection to alleged violations under this type of regulatory scheme. Id. at 104.

The major point to be taken from these cases is that if the

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.

ATTACHMENT B

Massachusetts

GENERAL LAWS ANNOTATED

M.
G.
L.
A.

Chapters 50 to 57

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, § 65.

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.

within said statement the name and residence or business address of the chairman, treasurer, or secretary of the organization issuing the same, or the person who issues, makes, or is responsible therefor. The disclaimer "paid political advertisement" is not sufficient to meet the requirements of this division. When such publication is issued by the regularly constituted central or executive committee of a political party, organized as provided in Chapter 3517. of the Revised Code, it shall be sufficiently identified if it bears the name of the committee and its chairman or treasurer. No person, firm, or corporation shall print or reproduce any notice, placard, dodger, advertisement, sample ballot, or any other form of publication in violation of this section. This section does not apply to the transmittal of personal correspondence that is not reproduced by machine for general distribution.

The secretary of state may, by rule, exempt, from the requirements of this division, printed matter and certain other kinds of printed communications such as campaign buttons, balloons, pencils, or like items, the size or nature of which makes it unreasonable to add an identification or disclaimer. The disclaimer or identification, when paid for by a campaign committee, shall be identified by the words "paid for by" followed by the name and address of the campaign committee and the appropriate officer of the committee, identified by name and title.

(B) No person shall utter or cause to be uttered, over the broadcasting facilities of any radio or television station within this state, any communication which is designed to promote the nomination or election or defeat of a candidate, or the adoption or defeat of any issue or to influence the voters in any election, unless the speaker identifies himself with his name and residence address or unless such communication identifies the chairman, treasurer, or secretary of the organization responsible for the same with the name and residence or business address of such officer, except that communications by radio need not broadcast the residence or business address of such officer. However, a radio station shall, for a period of at least six months, keep the residence or business address on file and divulge it to any person upon request.

No person operating a broadcast station or any organ of printed media shall broadcast or print any paid political communication that does not contain the identification required by this section.

Division (B) of this section does not apply to any communications made on behalf of a radio or television station or network by any employee of such radio or television station or network while acting in the course of his employment.

No person shall use or cause to be used a false, fictitious, or fraudulent name or address in the making or issuing of a publication or communication included within the provisions of this section.

(C) No prosecution under this section shall commence until the procedures prescribed in division (C) of section 3599.091 of the Revised Code have been followed. If the commission finds a violation of division (A) or (B) of this section, it shall do only one of the following:

(1) Impose a fine not to exceed the fine specified pursuant to section 3517.991 of the Revised Code;

(2) Report its findings to the appropriate prosecuting authority, which shall institute such civil or criminal proceedings as are appropriate;

(3) Enter a finding that good cause has been shown for the commission not to impose a fine or report its findings to the appropriate prosecuting authority.

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

HISTORY: 1986 H 555, eff. 2-26-86
1984 H 722; 1980 H 1062, S 254; 1976 H 804; 130 v H 351; 129 v 244; 127 v 203, 1953 H 1; GC 4785-198

PRACTICE AND STUDY AIDS

Schroeder-Katz, Ohio Criminal Law, Statutory Charges

CROSS REFERENCES

Secretary of state, political communications, no disclaimer needed for certain items, OAC 111:4-1-01

Equal protection of people a purpose of government, O Const Art I §2

Every citizen may freely speak, write, and publish his sentiments on all subjects; no law may restrain liberty of speech or the press, O Const Art I §11

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 256, 292, 296, 297; 39, Employment Relations § 39; 70, Names § 5

Am Jur 2d: 26, Elections § 379 et seq., 387

NOTES ON DECISIONS AND OPINIONS

OAG 75-068. RC Ch 3517 requires a candidate's campaign committee to report all contributions and expenditures, which are in excess of twenty-five dollars, regardless of who made the contributions or expenditures.

OAG 75-068. The changes to RC Ch 3517, effected by 1974 S 46, eff. 7-23-74, have no effect upon the identification requirements contained in RC 3599.09, which apply to published campaign materials whether they are designed to defeat or to promote a candidate or an issue.

1930 OAG 2032. This section as to a notice or placard designed to promote the nomination or election of a candidate requires only that the chairman or secretary of the organization issuing same or the name and address of some voter responsible therefor appear thereon. If such notice contains the name and address of the candidate, and has been issued by him, the requirements of this section have been met.

1930 OAG 2020. The circulation of a 3" x 6" card printed on blotting paper glazed on one side to further the candidacy of a candidate is not prohibited.

3599.091 Unfair political campaign activities

(A) No person, during the course of any campaign for nomination or election to public office or office of a political party, shall knowingly and with intent to affect the outcome of such campaign do any of the following:

(1) Serve, or place another person to serve, as an agent or employee in the election campaign organization of a candidate for the purpose of acting to impede the conduct of the candidate's campaign for nomination or election or of reporting information to the employee's employer or the agent's principal without the knowledge of the candidate or his organization;

(2) Promise, offer, or give any valuable thing or valuable benefit to any person who is employed by or is an agent of a candidate or his election campaign organization for the purpose of influencing the employee or agent with respect

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 5.01(A)

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.53 §27a; 1979 c.190 §372, 1979 c.519 §35a; 1983 c.71 §9; 1983 c.392 §1; 1985 c.565 §39; 1985 c.808 §62; 1987 c.716 §3]

260.440 [Amended by 1971 c.644 §8; repealed by 1971 c.749 §82]

260.442 [Formerly 260.250; 1973 c.744 §28; 1979 c.190 §383; renumbered 260.625]

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 §364; 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 260.532]

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.683 §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. 1945

20-14-20 to 20-14-23. Repealed. 1941, 1951

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. 1953

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 bonded of such corporation. 1941

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. 1953

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. 1953

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. 1953

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. 1953

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. 1953

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 employe 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. 1953

20-14-32. Repealed. 1953

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. 1953

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. 1953

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. 1953

20-14-36. Repealed. 1941

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

No person or persons shall incite, offer or effect the trade, transfer or exchange of any convention credential, or the vote or support of any delegate to 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. 1953

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. 1953

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 money has been paid or distributed. 1953

20-14-40. Proceedings by private elector.

If any elector of the state shall have within his possession information that any provision of this chapter has been violated by any candidate for whom such elector had the right to vote, or by any personal campaign committee of such candidate or any member thereof, he may, by verified petition, apply to a district judge of the district in which such violation has occurred, to the attorney general or to the governor for leave to bring a special proceeding to investigate and determine whether or not there has been such violation by such candidate, or by such committee or member thereof, and for appointment of special counsel to conduct such proceeding in behalf of the state.

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

If such leave is granted and such counsel is appointed, such elector may, by a special proceeding brought in the district court in the name of the state upon the relation of such elector, investigate and determine whether or not such candidate, or committee or member thereof, has violated any provision of this chapter, but nothing contained herein shall be construed as in any way limiting the effect or preventing the operation of other remedies existing in such cases. 1953

20-14-41. Pleadings — Procedure.

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

The answer to the complaint shall be served and filed within 10 days after the service of the summons and complaint. Any allegation of new matter in the answer shall be deemed controverted by the adverse party without reply, and thereupon the proceeding shall be at issue and stand ready for trial upon five days' notice of trial.

All such proceedings shall have precedence over any civil cause of a different nature pending. The court shall always be deemed open for the trial thereof and the same shall be tried and determined as a civil action, but the court shall, without a jury, determine all issues of fact as well as issues of law.

If more than one proceeding is pending or the election of more than one person is investigated and contested, the court may in its discretion order the proceedings consolidated and heard together, and may equitably apportion costs and disbursements.

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

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

WASHINGTON

(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.

ATTACHMENT C