

ALASKA
7236

LEGISLATURE
HOUSE STATE

COMMITTEE
AFFAIRS

FILES

1991-1992

8672



Alaska State Legislature

Please enter into the record my testimony to the House State Affairs
committee name

committee on House Bill 67, dated 3/6/91
bill/subject

Thank you for your work on House Bill 67. We do appreciate your support and enthusiasm. I am sorry we were not able to testify by teleconference, however I hope I can express my appreciation and concerns in writing.

I am afraid with the re-write, we are getting further and further away from the original intent of the bill, and may even be "throwing the baby away with the bath water." In the first place, we had hoped to have a bill to give impoundment powers to law enforcement officials on the advise of a veterinarian in cases of hooved animal abuse and neglect, and to provide for a speedy appeal process. Now the bill has evolved to exclude veterinarian advise and include all animals and the appeal process is still lengthy (60 plus days is a very long time to care for and feed horses or other large animals). With the inclusion of all vertebrate living creatures (not humans or fish) we will have the wrath of the dog mushers as well as trappers and hunters opposing this bill. We know how strong their lobby is, and what a fight they will put on.

Can we please come back to basis at this time... to write the bill to address cruelty/neglect and impoundment of Hooved Animals, ie: the traditional domesticated livestock animals such as horses, cows, sheep, goats, pigs and etc. Then at a later date and/or in another bill address other animals.

It is not that I am for cruelty to other animals. I love and own a dog, cat, rabbits chickens and so forth... but I think to include these other animals in a bill at this time would create a large battle on topics and situations not germane to horses and other hooved animals. I don't think the well being of hooved animals should be shot down in the battle.

One small step forward(addressing hooved animals first) would be much better than being pushed back a mile. Please reconsider your direction at this time.

Myself or our group (the Alasks Equine Rescue) are always available for information or comment if you have questions or need help. You can contact me at 488-2048 (home) or 451-2902 (work). We are more than willing to help in anyw y, at any time. We are all tired of seeing horses starved and worse yet die. Again thank you for your interest and your help.

Signed: _____

Testifier


Margaret Benson

Alaska Equine Rescue and Apple Horse Farm

Representing (Optional)

P.O.Box 1900

Address

488-2048 (home)

451-2902 (work)

Phone No.

HOUSE BILL NO. 67

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

A BILL

FOR AN ACT ENTITLED

"An Act relating to the impounding of mistreated animals."

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

*Section 1. AS 03.55 is amended by adding a new section to read:

ARTICLE 2. MISTREATED ANIMALS.

Sec. 03.55.110. IMPOUNDMENT

OF MISTREATED ANIMALS. (a)

Outside of municipalities and within municipalities that do not provide by ordinance for the impoundment of mistreated animals, the Department of Public Safety may impound a mistreated animal and remove the animal to a place where humane care and treatment

1 can be provided. The department
 2 may impound an animal only if
 3 a licensed veterinarian has
 4 issued a certificate of mis-
 5 treatment regarding the animal.

6 The department shall give a
 7 notice of impoundment to the
 8 owner, the owner's agent, or
 9 the person in possession of
 10 the animal at the time the

11 animal is impounded. If the
 12 department cannot notify the
 13 the owner of the animal or the
 14 owner's agent of the impound-
 15 ment at the time of impound-
 16 ment, the department shall post
 17 a conspicuous notice of im-
 18 poundment at the premises where
 19 the animal was impounded. If

20 the department cannot notify
 21 the owner of the animal or the
 22 owner's agent of the impoundment
 23 within ~~72~~ hours after the im-
 24 poundment, the department shall
 25 send a notice of impoundment
 26 by certified mail to the address
 27 if any, where the animal was
 28 impounded. The cost of impound-
 29 ing and caring for the animal

Replace with [48 hours]

Justification: If the Dept. cannot notify
 w/in 48 hours, then to
 send out inf. by certified
 mail before 72 hours it will
 expedite the procedure.

7

1 is a lien upon the animal.

Possibly ~~add~~ add: "stand/or ~~responsibility~~ responsibility of the owner"

2 (b) A certificate of mis-
3 treatment must state that in
4 the professional judgment of
5 the veterinarian and based on
6 the facts known to the veteri-
7 narian the animal that is sub-
8 ject of the certificate is being
9 mistreated. The certificate
10 shall be signed by the veter-
11 narian issuing the certificate.

12 (c) A notice of im-
13 poundment must contain a des-
14 cription of the animal im-
15 pounded, a statement that the
16 animal is the custody of the
17 state, a statement of the
18 reasons for impounding the
19 animal, ~~the location of the~~

- Delete

20 ~~animal~~, and a statement of the
21 rights of the owner to appeal
22 the impoundment or to recover
23 the animal and of the proced-
24 ures to appeal the impoundment
25 or to recover the animal.

- Justification: Aggrieved ~~person~~ person may try to take possession of impounded animal, and may also cause harm or injury to person(s) of housing facility.

26 (d) The department shall
27 provide an opportunity to the
28 owner of an animal impounded
29 under this section or the
30 owner's agent ~~for an expedited~~

- Delete

Justification: Explained below

1 ~~hearing~~ to appeal the impound-
 2 ment. An owner or owner's agent
 3 who prevails at an appeal
 4 hearing under this subsection
 5 is entitled to immediate
 5 is entitled to immediate
 6 recovery of the animal without
 7 liability for costs of impound-
 8 ment or costs or care while
 9 the animal is in state
 10 custody. A person who is ag-
 11 grieved by the decision of the
 12 department at the appeal hear-
 13 ing may appeal the decision
 14 to the superior court.

15 (e) Except as provided
 16 in (d) of this section, the
 17 department may not release an
 18 animal to its owner or the
 19 owner's agent unless the owner
 20 or the owner's agent pays the
 21 costs of impounding and caring
 22 for the animal and the depart-
 23 ment finds that the conditions
 24 leading to mistreatment will
 25 not recur.

26 (f) If an animal impounded
 27 under this section is not re-
 28 claimed by its owner or the
 29 owner's agent within ~~30~~ days

add: The owner or the owner's agent desiring a hearing shall contact the department within 7 days from the date of impoundment. The department will hold a hearing within 7 days after receiving a request to ~~for~~ appeal the impoundment

Justification: ① If a person (owner) or owner's agent cannot be contacted by phone, certified mail, etc... within 7 days after impoundment it is obvious that the animal(s) have been abandoned. Most animals cannot go w/out food or water for 7 days.

② Due to the possible high cost of caring for this animal(s), it would benefit the state to take care of the matter as quickly as possible. By giving a 7 day period it may force offender to ~~take~~ appeal or give up ownership w/in a reasonable amount of time

~~Replace~~ Replace with: 14

Justification: Because of high cost

(cont.) animals, 14 days is more reasonable than 60 days. If ~~offense~~ is given 60 days, they may elect to not retake possession of animal(s) until after the animal(s) have been brought back to reasonable health through medical care. Again this may be costly and the state would end up paying the cost just to have the owner or owner's agent take back the animal(s) when in good shape at no cost to owner or owner's agent.

1 after the impoundment or the
2 dispatch of a notice of impound-
3 ment by certified mail, which-
4 is later, or is abandoned by
5 the owner, the department may
6 cause the animal to be offered
7 for adoption or otherwise re-
8 moved from state custody as
9 as provided by regulation
10 adopted by the department.

11 (g) An employee or agent
12 of the department or a veterina-
13 rian who takes an action in
14 good faith under this section
15 is immune from civil or crim-
16 inal liability for the act.

17 (h) The department shall adopt
18 regulations to implement this
19 section.

20 (i) In this section,

21 ~~(1) "animal" means dom-~~
22 ~~estic animal;~~

23 (1) ~~the~~ "department" means
24 the Department of Public Safety;
~~the Department of Public Safety;~~

25 (2) ~~"livestock"~~ means
26 a horse, mule, burro, cow, goat,
27 sheep, swine, ~~rodent,~~

28 ~~rabbit;~~
29 (4) "mistreatment" means,

7: Delete

Replace with: Animal

: Delete
Add: names

Justification: By deleting line 21, it can be restated in line 25. By defining Animal to mean...

(contd.)

1 except in ~~an emergency~~ cir-
 2 cumstances beyond reasonable
 3 control of the owner of the
 4 animal, the abandonment of an
 5 animal without providing for
 6 the continued health and well-
 7 being of the animal or the fail-
 8 ure to provide care sufficient
 9 to preserve the health and well-
 10 being of an animal including

11 the failure to provide

12 (A) food of suffi-
 13 cient quantity and quality to
 14 provide for normal growth or
 15 maintenance of body weight;

16 (B) access to potable
 17 water in sufficient quantity
 18 to satisfy the animal's needs;
 19 snow or ice is not an adequate
 20 water source;

21 ~~(C) in the case of~~
 22 ~~an animal other than livestock,~~

23 (1) access to ~~an~~ ^a
 24 ~~enclosed~~ structure that is
 25 sufficient to protect the animal
 26 from wind, rain, snow, or sun;
 27 ~~and that has adequate bedding~~
 28 ~~to protect against cold and~~
 29 dampness;

The amendment would key on specific large hooved animals. We feel ~~it~~ is important to not encompass all animals at this time. An amendment to enforce animal cruelty to other animals could be attached at a later date. We have deleted reindeer and rabbits because
 1) Reindeer industry is extremely large and reserved for native herders. If enforcement of all reindeer ranching practices was attempted, it would be an extremely large undertaking out of the scope of this amendment.
 2) Rabbits are not hooved animals.
 Addition of llamas because they are large hooved animals and the population of llamas is growing in Alaska.

Delete
 Justification: "Circumstances beyond reasonable control" qualifies as "an emergency"
 Add: "But Not Limiting to"
 Justification: ~~Does not~~ Allows for enforcement due to circumstances not mentioned.

Delete
 Justification: (refer to justification under definitions.)

add: "Man-made or natural"
 Justification: A grove of trees or a natural swell in the ground, etc... may provide adequate shelter without providing an enclosed structure.

Delete
 Justification:

1 (d.) ~~(d.)~~ adequate space
2 for exercise necessary for the
3 health of the animal;

4 (e.) ~~(d.)~~ a clean con-
5 finement area, free from excess
6 waste or other containment that
7 could affect the health of the
8 animal;

Replace with: Safe
Justification: "Clean" is too precise a word.
Area may be ~~clean~~ safe without
being spotlessly clean.

9 (f.) ~~(d.)~~ veterinary care
10 considered necessary by a rea-
11 sonably prudent person to
12 relieve distress from injury,
13 neglect, or disease.

Add: 'and welfare'

To: House State Affairs
HB 67

**HOT SPRINGS ROAD
VETERINARY SERVICE**
Dr. Edwin Cook Blittner, Jr., V.M.D.
P.O. Box 16058
TWO RIVERS, ALASKA 99716
(907) 488-7758

I basically support legislation such as house bill 67. In my experience, the need for such legislation is very evident by the existence of abuse and or mistreatment cases with which I have been involved that could not be satisfactorily managed because of ineffectual existing laws. Although the majority of cases, I feel, can be handled by working with and not against owners, there always arises cases where it seems the owner would rather do nothing and ignore the problem than to accept help and relieve animal suffering. These cases demand an instrument of the law to support efforts to alleviate the situation. We Alaskans hold our independence dearly, but being independent does not give one the right to be irresponsible. Those who use the argument that such a bill would allow false charges to be laid by one person on another to satisfy some kind of personal vendetta, must not, in my opinion, realize that this type of action can be used with almost any law or regulation. However, it seems to me, that any case of false accusation would be quickly dismissed by any competent investigator. I should mention here that by investigator, I mean the State Veterinarian.

I also feel that the portions of this bill regarding the definition of animals covered should be revised as well as the portion of the bill describing adequate shelter and exercise areas. I think that these areas should be determined as satisfactory or not at the discretion of the investigating officer.

There are many excuses to do nothing in a situation as controversial as this. However, I feel that a just bill can be formulated by all concerned parties working together for the common good.

Edwin C. Blittner Jr.
V.M.D.

~~TO:~~ ~~TO:~~ Ron Clark
C/o Rep. Koponen

From: Kieran E. Donahue
Pres. Alaska Equine Rescue, P.O. Box 75142
Fairbanks AK. 99707.
ph. 372-3359
Message 488-7667

Dear Ron,

Unfortunately we did not get a chance to testify today. However, we understand the time frames you folks work under and we do want to tell you how much we appreciate what has been done to date.

We are very unhappy w/ the new work draft: (CS for House Bill 67) -3-6-91. We feel there are several problems with it the biggest of all being its vagueness once again. I have enclosed a POM from Margaret Benson concerning some of the problem. I also included a rough draft of our justifications concerning the previous HB 67 work Draft what Rep. Koponen first came out with. Please take a hard look at our justifications and please pass them on to the House State Affairs Committee. Thanks

Kieran Donahue



Alaska State Legislature

Please enter into the record my testimony to the House State Affairs Committee
committee name
 committee on HB67, dated 2-27-91
bill/subject

I support strengthening state law with regard to cruelty to animals. I support also a provision for impounding animals which are being mistreated (for their own protection) while prosecution against their owners ensues.

Signed: Laura Hood, Manager
Testifier
Fairbanks N. Star Borough Division of Animal
Representing (Optional)
P.O. Box 71267 FAI HK 99707 Control
Address
452-4761 x 450
Phone No.

att. Mary Mc Burney
RE. Committee substitute for HB 67

1st pg.
line

- 6 leave off the last or. On end the sentence at 11-61-142.
- 7 Add - and state Vet after peace officer
- 8 Add - under quarantine condition until proven free of communicable diseases then may be released from quarantine.

2nd pg.

line

add

- 10 Charges not to exceed reasonable or customary for locality
- 14 add at end by state authority
- 15 Delete E totally
- 26 delete (growth or maintenance of body weight.)
add at the end of normal health.
- 28 delete B (access to)
- 30 delete C totally

Sec. 11.61.142 - The law AS 11.61.140 covers everything in 11.61.142 already.

3/8/91 Dixie A. Jennings



Alaska State Legislature

Please enter into the record my testimony to the HOUSE STATE OF AFFAIRS
committee name

committee on HR 69, dated 3/1/91
bill/subject

I DO NOT WANT THE DEFINITION OF ANIMAL
changed under STATE-AS 11.61.140 if you HAVE mistreated
Horses you ALSO HAVE mistreated CAT DOGS ETC

AS FOR 60 days if a person is on VACATION IN
THE SOLOMON ISL. NO PHONES EXT. THEY MAY NOT BE
able TO GET a hold OF THE OWNER, + THE OWNER
MAY HAVE entrusted THE CARE TO SOMEONE SO
60 DAYS IS NOT THAT LONG.

Signed: James E. [Signature]
Testifier

Representing (Optional)
422 NIRA LN. FAIRBANKS 99709
Address
474-6598
Phone No.



Alaska State Legislature

Please enter into the record my testimony to the _____

committee name

committee on HB 67 , dated 2/27/91
bill/subject

*please see attached written testimony -
thank you*

Signed: Teresa Lord

Testifier

Alaska Equine Rescue & self

Representing (Optional)

Elliott Hestberg

Address

452-0321

Phone No.

*mailing address not available
at this time but can be reached through
PO Box 10128
Fairbanks 99710*

PERTAINING TO HOUSE BILL 67

As a horse owner for over 25 yrs., I have seen + heard of more abuse and neglect cases than I care to admit. In another State, my family and I were involved in many other rescues and rehabilitations than I care to remember.

Four of the cases I have personally cared for here in Alaska, where presented to you already by Mr. Koperon^K ^{submitted to} Which in itself shows there is a problem here. Few though they may be. Other cases in Alaska have been more publicized, but you'll never hear from the small backyard day-to-day cases which ~~we~~ ^{am} concerned about.

In Alaska, if a dog, cat, or Bald Eagle is harmed in anyway, the perpetrator is severely punished or fined. There are many agencies + law offices to contact to take charge of this situation.

~~Down~~ We have horses in Alaska too. ~~stop~~ to any fairgrounds, arenas, or nice open trail and chances are you'll see one or two, or even a whole club. What happens and who do you turn to when you witness abuse or neglect of these animals? NO one. Alaska Animal Control and other law agencies have no laws to help them or back them up. The ones we do have are outdated, vague, and wide open to exceptions and speculation.

~~over~~

29 Water

Alaska will not stand alone when HB 67 is passed. Almost every other State in the Union has a protection law providing for ~~for~~ proper housing, care & feeding of the equine. Except Alaska.

These animals cost money and time to rehabilitate. Volunteerism is a great way to offset this cost to our already burdened government. Far and away, most cases can be handled by education or physical help. There is already an organization of horse people here in Alaska, to volunteer human and monetary efforts to offset those costs from our State.

✓ Strongly urge you to pass HB 67 so that a foundation will be set for the humane and basic care of the horse. HB 67 will be that foundation.

Thank-you-

Teresa Lord.



Alaska State Legislature

Please enter into the record my testimony to the _____

committee name

committee on HB 67 , dated 3/9/81
bill/subject

see attached

Signed: Laura McManus

Testifier

Alaska Equine Rescue

Representing (Optional)

PO Box 10128 - Fairbanks AK 99710

Address

457-7095

Phone No.

Thank you for opportunity to comment. I sent written testimony and a POM last Wednesday and have received replies. Thank you for your concern and effort to follow through on this issue. I can't reiterate enough that the wording in current animal control laws does need strengthening, especially with regard to livestock and large animals. It might cost a little more money in some state budget but it is minimum compared with the good that can be done. There are support groups organized and willing to give the time and facilities necessary to help rehabilitate those animals rescued from a life of negligent care. I am a charter member of Alaska Equine Rescue. Yes, we are new but we are enthusiastic statewide. Give us a chance to help those animals in need through better animal control legislation. I'm not good with legislative wording and any thoughts I have had are included already in the input from other Equine Rescue members. Again, thanks, and keep trying. There's a lot of support even though most people will not speak up.

Laura McManus

PO Box 10128

Fairbanks AK 99710



Alaska State Legislature

Please enter into the record my testimony to the _____ committee name

committee on HB 67 , dated 2/27/91

The state and all communities are definitely in need of more effective regulations dealing with neglect of hooved animals. I strongly support the intent of HB 67, with some revisions in wording, including those suggested by Alaska Equine Rescue. I realize there are already laws that deal with mistreatment of animals (dogs and cats are well provided for), but the agencies enforcing the laws need more support with impoundment and resulting responsibilities associated with the care of larger domestic animals, especially equines. In Fairbanks, the Borough Animal Control is cooperative and does what they can with limited resources. The Department of Public Safety has "volunteered" to be involved; as far as I know the Department of Agriculture is not interested.

My family has owned horses in Fairbanks for 32 years. I believe owning horses carries the responsibility for assuming proper care. Horses are dependent on people for the basics of life such as adequate food, water, shelter, and safe surroundings. Society does not approve of child abuse and should not approve of animal neglect, starvation, or abuse. In some cases, owners would benefit from education about horse care (unwillful neglect). In other cases, owners have the attitude that it is their right to allow a horse to starve to death or otherwise suffer from poor care (willful neglect). More effective laws could help curtail that atrocity. The community in general supports the intent of HB67. Nearly 200 citizens in Fairbanks attended a seminar in December because of their concern about neglected horses. Many people have volunteered and will continue to volunteer their time and services to support attempts to alleviate the suffering of neglected animals. Those people include concerned horse owners, veterinarians, farriers, and other non-horse owners. Alaska Equine Rescue is a recently formed, statewide group started by caring people with their primary goal the education of horse owners in proper care and the assistance to rehabilitate impounded, neglected horses. They are not an animal rights group, although they believe that animals deserve the right to basic life needs. Let Alaska Equine Rescue help the authorities with their resources of knowledge, expertise, time, effort, and some money and facilities to rehabilitate animals in need. Also, not every animal can or should be saved after it has been allowed to suffer starvation; their bodily systems sometimes are beyond repair and humane euthansia is the only kind thing that can be done.

Soecific case report continued on next page.

Signed: Laura McManus
Testifier

Alaska Equine Rescue + self
Representing (Optional)
PO Box 10128 - Fairbanks 99710

Address
hm 457-7095 wk 456-5156
Phone No.

continued testimony of Laura McManus, February 27, 1991

Re HB 67, neglect of hooved animals - case history (without names and specifics)

There have been and will continue to be cases of animal neglect everywhere. One of the ones I'm involved in is in my neighborhood. The horse was "rescued" by concerned people just days before she would have died from starvation and neglect. She was placed in 3 different homes over 2 years and ended up back at the same place in the neighborhood and was on the road to starvation when she was again rescued. But her story has not ended because there is still no permanent home. The owner will not relinquish ownership nor accept the responsibility for care. Few people have the time, money, or facilities to maintain a horse that is in poor physical condition because of past neglect. If local authorities would have had the means to address this situation the first time the horse was in trouble it could have been impounded, rehabilitated, and placed in a caring home. The condition was allowed to continue and this horse suffered enough that she has permanent physical damage and can never be a useful horse again. She can't speak up for herself, but what can be done. For those horses not yet in this situation, something can and should be done to look out for their future; just because it might cost a few dollars does not mean that society should turn their back on the issue.

There is no acceptable excuse to not care for an animal once a person decides they "own" it. There is also no excuse to not have the means for effective intervention by authorities when starvation and neglect are occurring.

Note: I was signed up to testify in Fairbanks at 8:30 Wednesday morning. There was not enough time for testimony and I was told that my written statement would be accepted and as effective. I admittedly have elaborated a little more through the written word. Thank you for caring and taking this bill into consideration. It was a draft and needs some changes and/or stronger, clearer wording. Please don't cloud the issue by lumping it directly with cats, dogs, or even rabbits.

Deanna Jo Thornell Sanderson
P.O. Box 61263
Fairbanks, AK 99706
(907) 479-2800

March 12, 1991

To: The House State Affairs Committee

Subject: A Licensed Veterinarian's Response to:
Work Draft of HB 67 (State Affairs) - 3/6/91
Sponsor(s): Representatives Koponen, Moyer

In reference to Article 2, Mistreated Animals, Sec. 03.55.110. - *Impoundment of Mistreated Animals*, I wish to make the following statement concerning the "allowability" of *"the peace officer to remove the animal to a place where humane care and treatment can be provided."*

Making decisions about animals, i.e. life and death, has been put wisely in the 'care' of veterinarians in this state. I hold a current State of Alaska license to practice veterinarian medicine. However, before obtaining this license (even though I held two other licenses from other states), I was not allowed to give a rabies shot in Alaska without a license from this state. Now Peace Officers shall be given the power to remove animals from resident's homes without a license? Peace officers, who may not even own animals or care for animals themselves, are 'instant' professionals? Sounds like practicing without a veterinary license to me! As a professional in this area, I am particularly interested in your references in this bill.

I have formulated some ideas, and wish to share them with the committee.

A PROFESSIONAL PANEL

I recommend that a panel be formed, consisting of 3-5 veterinarians from various areas of the state, including 2-4 representatives from the University of Alaska Cooperative Extension Service. State and federal veterinarians should also serve on the panel. The professionals from the Cooperative Extension Service and state/federal veterinarians travel extensively around the state inspecting rural establishments, and are well versed in the federal laws in this area. This panel can determine 'professionally' what standards are acceptable for animal care by the public. The Cooperative Extension Service deals, on a daily basis, with Alaskan rural farmers and knows what common "mismanagement" areas are versus "abuse".

2) I would like to see several members of the community involved in the process of preparing a final bill. Following is a recommended list:

- *A representative from one of the dog-mushing associations.
- *A representative from the rodeo or quarter horse association - (these two groups travel around the state and are familiar with state-wide practices);
- *A representative from the Dairy Association;
- *A Member of each of the Animal Control facilities around the State;
- *An attorney to deal with legal matters;
- *A farrier from several areas of the state. These people travel all over and see many establishments.

CONCLUSIONS

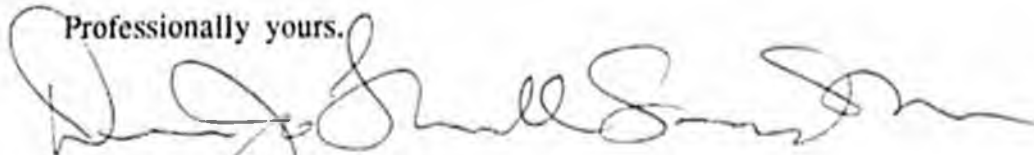
I have had first-hand knowledge of animals receiving inhumane treatment by peace officers. In one instance, an animal was returned back to the owner 75 pounds lighter than when it left its home. It had received several wounds around the face and legs. No professional investigations are done in most instances and the "peace officers" often let emotion rule their decisions. I have not been impressed with their intelligence either.

In reading this working draft, it is obvious that lawmakers are in need of professional guidance. My overall concern is that the animal be well treated without violating constitutional rights of the owner; that federal laws are not violated.

I respectfully offer my assistance in helping the committee, knowing well that it is not the intention of the committee to make "illegal" laws, understanding full well that the committee is concerned with the "well-being" of the animal.

Thank you for allowing me to express my views on this matter, and I hope that you will contact me for assistance soon.

Professionally yours,



Deanna Jo Thomell Sanderson
Doctor of Veterinarian Medicine
State of Alaska

TELECOPY COVER SHEET

Fairbanks Legislative Information Office

Office - (907) 452-4448

Fax - (907) 455-3348

TO: Juneau d10 FAX: _____ PHONE: _____

FROM: Merba PHONE: _____

INSTRUCTIONS: Please give to House State Affairs
for hearing tomorrow morning. Thanks!!

RECEIVED: Date _____ Time _____

SENT: Date _____ Time _____

DISPOSAL OF ORIGINAL: Discard Hold for Pickup

NUMBER OF PAGES: 1 (Not counting cover sheet)

SENT BY: MP



Alaska State Legislature

Please enter into the record my testimony to the House State Affairs
 committee name
 committee on House Bill No. 67 , dated 7 March 1991
 bill/subject

I believe there is a need for House Bill 67 (with suggested revisions).

Neglect and abuse of horses is not a recent development. I have had personal experience relating to this problem in Alaska since 1957. No help was available. I had to purchase the horse to protect it. I'm currently keeping a mare that should have been impounded and put in foster care.

The major goal of the recently formed ALASKA EQUINE RESCUE association is to be the voice for horses suffering from inadequate care from people upon whom they are dependent. AER would like to volunteer its assistance as needed.

This problem is not going away by itself. Concerned citizens need to Help A Horse Survive!

Thank you.

Signed: Dorothy M. Wilde
 Testifier
Self and Alaska Equine Rescue
 Representing (Optional)
PO Box 80005, Fairbanks, AK 99708-0005
 Address
479-2358
 Phone No.



House State Affairs Committee

Representative Gene Kubina, Chair

DATE: February 27, 1991

PLACE: Capitol, Room 102

SUBJECT OF MEETING:

- *HB 11 - Relating to Longevity Bonus, Nursing Home Residents
- *HB 20 - Relating to Longevity Bonus, Nursing Home Residents
- *HB 67 - Relating to Impoundment of Mistrusted Animals

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?	WHAT SUBJECT/ WHICH BILL?
GORDON G. LANDES <i>Landes</i>	Div. of MEDICAL ASSISTANCE	PO Box H-07 JUNEAU AK	99811		465-7355	<input checked="" type="radio"/> Y <input type="radio"/> N	HB 11, SSHB 20
CURTIS C. LOMAS <i>Lomas</i>	Div. of Agriculture	Box H JUNEAU AK	99811	334	3347	<input type="radio"/> Y <input checked="" type="radio"/> N	HB 11; HB 20
JAMES E. STEELE	Div. of Agriculture	PO Box H-07 JUNEAU AK	99811		465-3347	<input type="radio"/> Y <input checked="" type="radio"/> N	HB 11, SSHB 20
THOMAS T. SEARNS	Public Safety	Courts Office			465-4322	<input type="radio"/> Y <input type="radio"/> N	HB 67
Barbara Bathony	Dir. Pioneers & Heritage				465-4400	<input type="radio"/> Y <input type="radio"/> N	if necessary HB 11, SSHB 20
MARGARET KNUTH	Dept. Law	PO Box KC	99811		3428	<input checked="" type="radio"/> Y <input type="radio"/> N	HB 67
J. RON SURCLIFFE	Dept. Law	P.O. Box KA JUNEAU	99811		3620	<input checked="" type="radio"/> Y <input type="radio"/> N	HB 67
						<input type="radio"/> Y <input type="radio"/> N	
						<input type="radio"/> Y <input type="radio"/> N	
						<input type="radio"/> Y <input type="radio"/> N	
						<input type="radio"/> Y <input type="radio"/> N	



House State Affairs Committee

Representative Gene Kubina, Chair

DATE: March 8, 1991

PLACE: Capitol, Room 102

SUBJECT OF MEETING:

HB 4 - Relating to Legislative Ethics Act

HB 67 - Relating to Impoundment of
Mistreated Animals

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		WHAT SUBJECT/ WHICH BILL?
Margot Knuth	Law	PO Box KC	99811		3428	Y	N	HB 67
Kim Bischoff	DPS	PO Box N	99811		4385	Y	N	DPS Overview
Richard L. Smith	DPS	P.O. BOX N	99811	L	4322	Y	N	DPS Overview
JOHN GAGUINE	LAP	Box Y	99811	2450	2450	Y	N	HB 4
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	



House State Affairs Committee

Representative Gene Kubina, Chair

DATE: February 27, 1991

PLACE: Capitol, Room 102

SUBJECT OF MEETING:
 *HB 11 - Relating to Longevity Bonus, Nursing Home Residents
 *HB 20 - Relating to Longevity Bonus, Nursing Home Residents
 *HB 67 - Relating to Impoundment of Mistreated Animals

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?	WHAT SUBJECT/ WHICH BILL?
GORDON G. LANDES	Div. of MEDICAL ASSISTANCE	PO Box H-07 JUNEAU AK	99811		465-3355	(Y) N	HB 11, SSHB 20
CURTIS C. LOMAS	Div. Pub. Assn.	Box H JUNEAU AK	99811	3347	3347	Y (N)	HB 11; HB 20
JAMES E. STEELE	DIV. PUBLIC ASST.	PO BOX H-07 JUNEAU AK	99811		465-3347	Y (N)	HB 11, SSHB 20
THOMAS T. SEARNS	Public Safety	Comm. Office			465-4322	Y N	HB 67
Barbara Bathony	Dir. Pioneer's Benef.				465-4400	Y N	if necessary HB 11, SSHB 20
Margot Knuth	Dept. Law	PO Box KC	99811		3428	(Y) N	HB 67
J. RON SUTCLIFFE	Dept. Law	P.O. Box KA JUNO	99811		3620	(Y) N	HB 67
						Y N	
						Y N	
						Y N	
						Y N	



House State Affairs Committee

Representative Gene Kubina, Chair

SUBJECT OF MEETING:

DATE: Feb 27, 1992

PLACE: Capital Room 102

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		WHAT SUBJECT/ WHICH BILL?
Rose Palmquist	OPAG.	303 AND ST -	90501	467-3315		<input checked="" type="checkbox"/>	N	11 & 20
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	



House State Affairs Committee

Representative Gene Kubina, Chair

DATE: March 8, 1991

PLACE: Capitol, Room 102

SUBJECT OF MEETING:
 HB 4 - Relating to Legislative Ethics Act
 HB 67 - Relating to Impoundment of Mistreated Animals

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		WHAT SUBJECT/ WHICH BILL?
Margot Knuth	Law	PO Box KC	99511		3425	Y	N	HB 67
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	

HB

73

HOUSE COMMITTEE REPORT

(7) Date Referred: February 5, 1991

FURTHER REFERRALS:

Finance

Date of Committee Action: 2-10-91

The STATE AFFAIRS Committee considered:

HB 73

HOUSE BILL NO. 73

APPROP: SALMON FOR OPERATION DESERT STORM

"An Act making a special appropriation to the Department of Military and Veterans' Affairs for the purchase of canned Alaska pink salmon for support of Operation Desert Storm; and providing for an effective date."

RECOMMENDATIONS:

be replaced with CSHB 73 (State Affairs)

[x] the same title

[] a new title

[] have attached amendments(s)

[x] do pass

[] do not pass

[] no recommendations

[] individual recommendations

[] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

[] fiscal impact _____

[] zero fiscal note _____

APPROVES PREVIOUS: (Dept/Date)

[] fiscal note(s) _____

[] zero fiscal note(s) _____

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

	Check appropriate column:	Do Not Pass	No Rec	Amend
Mike Miller	Tom Lower		X	
Bob Kennedy	E. Brubaker		-	
Eugene Kluber				

Eugene Kluber
Chairman's Signature

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 73

Revision Date: _____ Department Affected: Military & Veterans Affairs
 Title: Special appropriation-canned sal- BRU: Alaska National Guard
mon for Desert Storm Component: Office of the Adjutant General
 Sponsor: Rep. Kubina
 Requestor: House DMVA COMPONENT SERIAL NO.

4	1	4
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 91	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	5,000.0					
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	5,000.0					

CAPITAL						
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REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	5,000.0					
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: Appropriation would take effect immediately in FY91

ANALYSIS: (Attach a separate page if necessary.)
 Funds would be spent for the purpose for which appropriated, considering any additional legislative intent made part of the public record. No effect on any fiscal years other than FY91.

Prepared By: Jeff Morrison, Director Phone: 465-4601
 Division: Administrative & Support Services Division Date: February 1, 1991
 Approved by Commissioner: HG John W. Schaeffer by J Morrison
 Agency: Military and Veterans Affairs Date: Feb. 1, 1991

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

Alaska is not alone in this effort to show support for our men and women serving in Operat'on Desert Storm. Lieutenant Colonel Jim Fagen of the Defense Personnel Support Center in Philadelphia recently stated that American legislators have been responsible for initiating donations to this end, amounting to over twenty-two million dollars.

Colonel Fagen also indicated that this contribution from the state of Alaska would be a welcome contribution to military procurement in the effort to supply food rations to the troops.

I believe this bill not only will demonstrate the solidarity we as Alaskans have with our men and women of the military involved in the conflict in the Persian Gulf, but set an example for other states to follow.

Salmon orders by military lessen glut

By IMRE NEMETH

TIMES BUSINESS WRITER

Sponsors of a bill in the Alaska Legislature proposing a \$5 million appropriation to buy Desert Storm troops canned salmon for their rations are now saying the move could open up lucrative military contracts for Alaska's embattled salmon processors.

Rep. Gene Kubina, D-Valdez and the bill's prime sponsor, said Alaska has been a big supplier of canned salmon in past military campaigns. He said the industry is facing a glut of enormous proportion and could use the new market to pull itself out of a predicted price slump in the 1991

fishery season.

However, the U.S. Department of Defense is already buying salmon for a test run on the palates of troops stationed in Saudi Arabia.

Still, processors are not convinced the military is a viable option.

Alec Brindle, president of Seattle-based Wards Cove Packing Company Inc., said he is not counting on an appropriation from the Alaska Legislature.

"It would be nice, but I'm not taking any bets on that \$5 million," he said. The processing boss said salmon prices are depressed, adding, "I'm sure

everybody's going to be looking at whatever markets they can find."

Lt. Col. Jim Fagan, director of the Defense Personnel Support Center in Philadelphia, said there is a big difference between a gift of salmon and any purchases by his department. He said his department will accept any gift.

"It's not a carrot by any means," he said of the policy. "We are, however, looking at salmon utilized in (food) rations."

Salmon would be the main course for one in 10 meals served

See Salmon, back page

Salmon

Continued from page C1

to select groups of desert-stationed troops in the coming weeks, Fagan said. He said the major requirement for future orders is the taste test.

"The basic issue is to try and see what the response is," he said. "Asking one of those guys in the field if he likes salmon doesn't help a whole lot. Many of these guys don't even know what a salmon is."

Fagan said the donation would provide part of the sample. His department is currently purchasing 250,000 cans of Alaska salmon every month. He said the initial reason for salmon in the diet is simply for variety in an environment to which it is difficult to ship food.

Kubina said \$5 million would buy 2.16 million 12-ounce cans

"Everything I've got, so far, is positive," the representative said of potential legislative support. He said the gesture is symbolic coming from an oil state but does have economic potential.

Ray Cesarini, president of Sea Hawk Seafoods Inc. of Valdez,

runs one of the few plants cleared for sale to the military. He said Defense Department approval can be attained only by having a special inspection.

"It's not a big deal," he said of the inspection.

Brindle said an added military inspection is a duplication of three other government inspections he already gives the canning process at his many Alaska plants. He said he would like to see one standardized inspection.

Fagan said canned salmon not meeting the rigid requirements of each military agency would not be purchased. This leaves stockpiled Alaska product ineligible, Brindle said.

Barring a summer of bad salmon runs, the Wards Cove executive said at least one group will benefit.

"I'm anticipating it will be a pretty good year for the consumer," he said.

Background

Is annual meeting

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be satisfied that U.S. managers of the fisheries of the North Pacific have taken adequate steps over the past year to protect halibut as bycatch in other fisheries.

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ssion will

In 1990, because of halibut bycatch problems, the Canadians balked at establishing quotas for the halibut fisheries, and finally the U.S. managed our fish following the regulations of 1989, the Canadians theirs.

Fisheries works on

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are being used to harvest salmon within a gillnet fishing area.

January 21
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Four proposals would ban the use of spotter planes for salmon in Prince William Sound.

January 21
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Proposals 237 through 242 all have to do with harvesting the enhanced salmon at various Prince William Sound hatcheries, addressing what the proposers call inequities in the present harvests.

January 21
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Proposal 237 would limit people from operating more than one set gill net in the Main Bay salmon hatchery fishery. Under

January 21
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Proposal 238, the Esther special harvest area would be closed to seining beginning

January 21
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August 25, with the exception of the sanctuary area, which would close to seining after September 3. Under Proposal

January 21
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239, in the Coghill district, the east side of Wells Arm, from Coghill River to the upper boundary of the Esther harvest area shall open to seining on July 15.

January 21
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Under Proposal 240, a provision would be added to the Esther Island Hatchery Management Plan providing that drift gillnet gear and purse seine gear may be

January 21
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operated only on alternating days during periods establish by emergency order on and after July 20. To assure maximum flexibility in adopting its own program of allocating fish it manages, Prince William Sound Aquaculture Corporation proposes in Proposal 241 that rather than imposing regulations affecting distribution of enhanced fish, the board give PWSAC a chance to fulfill its own directive: "to ethically and professionally maximize salmon stocks in Area E for the long-term well being of all user groups."

Proposal 242 advocates allocation of fish from state owned or financed salmon enhancement programs on the basis of recent, pre-enhanced historical utilization of salmon resources.

Following the meeting in Cordova,

Legislator proposes purchase of canned salmon for troops

by BOB TKACZ

You've heard of red, pink and silver salmon. How about red, white and blue?

U.S. troops stationed in Saudi Arabia could be dining on Alaskan pink salmon, and fishermen and processors here would get a helpful life out of their canned lumpy glut, if a bill proposed by Rep. Gene Kubina (D-Valdez) is approved.

Kubina's idea, introduced Jan. 24 as House Bill 73, is to buy \$5 million worth of canned pink salmon and donate it to the Defense Department to feed service men and women in Operation Desert Storm.

"I've been trying to think of some way the state could make a statement with the troops in the Persian Gulf, and we found out, actually, from a fisherman in Cordova, how the military used to buy, during World War II, a lot of fish," Kubina explained.

"It just sort of clicked that here's a situation where we certainly have an excess of Alaska salmon."

On top of existing stocks of canned pink from past seasons sitting in processors' warehouses, the Alaska Department of fish and Game is projecting a record pink salmon run approaching 100 million fish this summer.

An estimated 44 million of those fish will return to Prince William Sound if the department's guesstimates are correct, and fishermen there are already being told that processors will not be buying much pink salmon this year and that prices could be as low as 20 cents per pound.

The potential for financial disaster in the face of plenty is so bad that the Prince William Sound Aquaculture Corporation and Cordova District Fishermen United, in December asked Gov. Walter J. Hickel to initiate the investigation which could allow foreign processors to operate in Alaskan waters this summer.

Kubina concedes that his bill would help his constituents out of a jam, but says it could help expand Alaskan salmon sales as well.

He also suggested, in a House floor speech, that the state may owe the country something in light of the financial benefit the Iraq War as brought it.

"It is common knowledge that as one of the primary oil producing states in the union, the current global status has been fiscally a positive one for us, boosting revenues for the projected year by possibly as much as a billion dollars," he told his colleagues.

"Does this windfall call for us to make a tangible gesture?" he asked.

His proposal is making progress on both the legislative and military fronts.

HB 73 has been assigned to the House Military and Veterans Affairs, Finance, and State Affairs, and committees, the latter of which Kubina chairs.

"I have been told I'll get a very speedy hearing out of [Military and Veterans Affairs]. I'll give it an immediate bearing in my committee," he pledged. "The big issue will be Finance."

However, since the bills' introduction, House Finance cochairman Mike Navarre (D-Kenai), Finance committee-woman Kay Brown (D-Anchorage), and Rules chairman Johnny Ellis have all enlisted as cosponsors.

Kubina also says he's gotten a thumbs up from the Defense Department.

"We called the military to see if they would use Alaska salmon, and they said they would," he explained.

Besides the \$5 million, one other glitch remains to be ironed out.

Pentagon procurement regulations require all foodstuffs used by the military to be examined by federal inspectors, but most Alaskan processors operate under a state inspection system without federal involvement.

Kubina says the rule applies to all food purchases for the military but may not apply to donated items.

He plans to amend the bill to allow purchases from several processors, but will make sure the fish come from Alaskan rather than Outside canneries.

"Whatever it takes we're going to do the best we can to see that it's from Alaskan salmon and benefits Alaskan processors," Kubina said.

"We don't want to miss the point that we're doing it for (service men and women) too, so that when they get those boxes of salmon, they'll see the Alaska name on it."

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
 Sponsor: Representative Martin Component: Criminal Justice Litigation
 Requestor: House State Affairs COMPONENT SERIAL NO.

		8	9
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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						
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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.

Prepared By: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Date: February 6, 1992
 Approved by Commissioner: Richard I. Pegues / Charles E. Cole, Attorney General
 Agency: Department of Law Date: February 6, 1992

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.

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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						
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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: *Charles E. Hickman*
 Agency: Division of Elections Date: 2-8-91

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

BIOGRAPHICAL INFORMATION
FOR
OFFICIAL ELECTION PAMPHLET

NAME: TERRY MARTIN PARTY AFFILIATION: REPUBLICAN
RESIDENCE ADDRESS: 3960 Reka Dr.-B6 OFFICE FILED FOR: HOUSE OF REPRESENTATIVES
Anchorage, AK 99504
MAILING ADDRESS: Same as above ELECTION DISTRICT: 8F
(LETTER OR NUMBER)

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:

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

EDUCATION:	<u>NAME</u>	<u>LOCATION</u>	<u>DATES ATTENDED</u>	<u>DEGREES/ CERTIFICATES</u>
--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

(SEE REVERSE)

Lieutenant Governor

CANDIDATE'S NAME Terry Martin ELECTION DISTRICT 8F

BIOGRAPHICAL INFORMATION (CONTINUED)

MILITARY SERVICE:

<u>BRANCH</u>	<u>LENGTH OF SERVICE</u>	<u>RANK</u>	<u>AWARDS EARNED</u>
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.

Terrance 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 administrators 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 official conduct unless he proves that the statement was made with "actual malice", that is, with knowledge that it was false or with reckless disregard of whether it was false or not...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

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

²Romig, 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 wire-tapping. 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.

Representative-Elect Hurley
December 13, 1984
Page 4

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 chooses 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.

³A 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.

Representative-Elect Hurley
December 13, 1984
Page 5

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.

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

HBP

Attachments

CA

ELECTIONS CODE

ELECTIONS CODE

12513.

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 candidates 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 article 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.)

12520.

ELECTIONS CODE

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 untrammelled 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 policies 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.

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ELECTIONS CODE

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ELECTIONS CODE

12526.

1. 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
<i>(Added by Stats. 1982, c. 855, §1.)</i>	

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.)



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
Noes 0

Senate: Ayes 29
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 \$2,000 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: $\frac{2}{3}$ majority. Appropriation: yes no. Fiscal committee: yes. State-mandated local program: yes.

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

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

3 12520. At the time an individual files his or her
4 declaration of candidacy, nomination papers, or any
5 other paper evidencing an intention to be a candidate for
6 public office, the clerk, shall give the individual a blank
7 form of the Code of Fair Campaign Practices and a copy
8 of the provisions of this chapter. The clerk shall inform
9 each candidate for public office that subscription to the
10 code is voluntary. Any candidate who has not properly
11 executed and delivered the code to the appropriate
12 election official in the county of the candidate's residence
13 within five days following the filing of nomination papers
14 in the case of a primary election or within five days
15 following the primary election in the case of the general
16 election shall be deemed to have refused to sign the code.

17 In the case of a committee making an independent
18 expenditure within the meaning of Section 12511, the
19 Secretary of State shall provide a blank form and a copy
20 of the provisions of this chapter to the individual filing, in
21 accordance with Title 9 (commencing with Section
22 81000) of the Government Code, an initial campaign
23 statement on behalf of the committee.

24 The text of the code shall read, as follows:

25 CODE OF FAIR CAMPAIGN PRACTICES

26 There are basic principles of decency, honesty, and fair
27 play which every candidate for public office in the State
28 of California has a moral obligation to observe and
29 uphold, in order that, after vigorously contested, but
30

1 fairly conducted campaigns, our citizens may exercise
2 their constitutional right to a free and untrammelled
3 choice and the will of the people may be fully and
4 expressed on the issues.

5 THEREFORE:

6 (1) I SHALL CONDUCT my campaign open
7 publicly, discussing the issues as I see them, present
8 my record and policies with sincerity and frankness,
9 criticizing without fear or favor the record and policies
10 my opponents or political parties which merit
11 criticism.

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

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

19 (4) I SHALL NOT USE OR PERMIT any dishonest
20 unethical practice which tends to corrupt or undermine
21 our American system of free elections, or which hinders
22 or prevents the full and free expression of the will of
23 voters including acts intended to hinder or prevent an
24 eligible person from registering to vote, enrolling to
25 or voting.

26 (5) I SHALL provide to my opponents, at their
27 addresses they specify on their Code of Fair Campaign
28 Practices form, and for public inspection to the
29 appropriate election official in the most populous county
30 in the district in which I am seeking election or to the
31 Secretary of State if I am a candidate for statewide
32 48 hours prior to dissemination by me or my committee,
33 the text of any campaign advertisement or other
34 communication which refers to my opponent by name or
35 innuendo.

36 (6) I SHALL NOT coerce election help or campaign
37 contributions for myself or for any other candidate or
38 my employees.

39 (7) I SHALL IMMEDIATELY AND PUBLICLY
40 REPUDIATE support deriving from any individual

1 group which resorts, on behalf of my candidacy or in
2 opposition to that of my opponent, to the methods and
3 tactics which I condemn. I shall accept responsibility to
4 take firm action against any subordinate who violates any
5 provision of this code or the laws governing elections.

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

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

15 _____
 16 _____
 17 Date Signature
 18 _____
 19 _____
 20 Campaign address
 21 _____

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

24 12521. (a) Provision 5 of the Code of Fair Campaign
25 Practices shall only apply as follows:

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

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

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

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

1 ballots.

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

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

18 SEC. 3. Notwithstanding Section 2231.5 o
19 Revenue and Taxation Code, this act does not con
20 repealer, as required by that section; therefor
21 provisions of this act shall remain in effect unle
22 until they are amended or repealed by a later et
23 act.

24 SEC. 4: The sum of three thousand dollars (~~\$3,~~
25 hereby appropriated from the General Fund
26 Controller for allocation and disbursement in accor
27 with Section 2231 of the Revenue and Taxation C
28 local agencies and school districts to reimburse the
29 costs mandated by the state and incurred by
30 pursuant to this act.

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

agreement to be eligible to receive public campaign

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

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

Vote: 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 that this act also seeks to encourage public participation and to encourage individuals to make small contributions and thereby participate in political campaigns by promising and providing assurances that all funds collected by the state for disbursements to political parties will, in turn, be contributed or transferred only to candidates who have agreed to conduct their campaigns in an ethical, fair, open, and honest fashion.

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

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

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

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

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

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

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

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

29 32004. On or before each calendar year, the Secretary
30 of State shall forward to the Franchise Tax Board a list of
31 qualified political parties. Qualification in the State of
32 California shall be determined in accordance with
33 Section 6430 of the Elections Code from the most recent
34 election for which officially canvassed results are
35 available. Any sums designated to a political party which
36 are not qualified pursuant to this section shall be retained
37 by the state for its General Fund.

38 (a) The Chair of the State Central Committee of each
39 political party receiving payments pursuant to this
40 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

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

II. Specific Agreements

6 I further agree to the following specific conditions:

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

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

III. Submission of Advertisements

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

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

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

1 broadcast, or otherwise published.

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

5
6 Signature _____ Signature _____
7 Date _____ Date _____

8
9 (f) For purposes of the Fair Campaign Practices
10 Agreement "campaign advertisement" means a
11 communication authorized by a candidate or a
12 candidate's controlled committee, as defined in Section
13 82016 of the Government Code, for the purpose of
14 advocating the election or defeat of a qualified candidate
15 through any broadcasting station, newspaper, magazine,
16 outdoor advertising facility, direct mailing, or any other
17 type of general, public, political advertising, including,
18 but not limited to, recorded telephone messages and
19 printed materials which are publicly distributed.

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

22 32005. Any person who after signing the Fair
23 Campaign Practices Agreement fails to provide
24 campaign advertisements as required by the agreement
25 shall be liable in a civil action brought by the Attorney
26 General or by a person residing within the jurisdiction of
27 the candidate in question for an amount of ten thousand
28 dollars (\$10,000) or three times the amount of the cost of
29 the campaign advertisement, whichever is greater.

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

ATTACHMENT A

T A B L E O F C O N T E N T S

INTRODUCTION

PART I	Elements for a Constitutionally Defensible Statute
PART II	Constitutional Concerns Related to False Political Advertising Statutes
PART III	Federal and State Statutory and Case Law Analysis
	A. Federal Law
	1. Federal legislation and statutory law
	2. Federal case law
	B. State Law
	1. Introduction
	2. State statutes
	3. State case law
PART IV	Washington Case Law
PART V	Proposed Model Statute

INTRODUCTION

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

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

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

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

five parts:

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

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

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

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

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

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

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

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

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

The following examples are intended to assist the reader in