Appeal Nos. 12-2915, 12-3046, and 12-3158

In the United States Court of Appeals for the Seventh Circuit

Wisconsin Right to Life, Inc., and
Wisconsin Right to Life State Political Action Committee,

Plaintiffs-Appellants

v.

David Deininger, in his official capacity as chair and member of the Wisconsin Government Accountability Board; Michael Brennan, in his official capacity as vice chair and member of the Wisconsin Government Accountability Board; Thomas Barland, Thomas Cane, Gerald Nichol, and Timothy Vocke, in their official capacities as members of the Wisconsin Government Accountability Board; and John Chisholm, in his official capacity as Milwaukee County district attorney,

Defendants-Appellees

Appeal from the United States District Court for the
Eastern District of Wisconsin
Civil Action No. 2:10-cv-00669-CNC (Clevert, C.J.)

Plaintiffs-Appellants WRTL and WRTL-SPAC's Principal Brief

Michael D. Dean,
Wis. No. 1019171
FIRST FREEDOMS
FOUNDATION, INC.
10735 West Wisconsin
Avenue, Suite 100
Brookfield, Wis. 53005
Telephone (262) 798-8046
Facsimile (262) 798-8045
mike@FirstFreedoms
Foundation.org

James Bopp, Jr., Ind. No. 2838-84
Randy Elf, New York No. 2863553
JAMES MADISON CENTER FOR
FREE SPEECH
1 South Sixth Street
Terre Haute, Ind. 47807
Telephone (812) 232-2434
Facsimile (812) 234-3685
mail@BoppLaw.com

October 1, 2012

CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 12-2915

Short Caption: Wisconsin Right to Life, Inc. v. Deininger

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party or amicus curiae, or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

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Neither WRTL nor WRTL-SPAC has a parent corporation.

ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

WRTL is a corporation that issues no stock. WRTL-SPAC is not a corporation.

Attorney's Signature: /s/ Randy Elf Date: August 21, 2012

Attorney's Printed Name: Randy Elf

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** X **No** ____

Address: James Madison Center for Free Speech; 1 South Sixth Street; Terre Haute, Ind. 47807

Phone Number: 812/232-2434 Fax Number: 812/235-3685

E-Mail Address: RElf@bopplaw.com

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Attorney's Signature: /s/ Michael D. Dean Date: September 26, 2012

Attorney's Printed Name: Michael D. Dean

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** _____ **No** X

Address: First Freedoms Foundation, Inc.; 10735 West Wisconsin Avenue, Suite 100; Brookfield, Wis. 53005

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E-Mail Address: mike@FirstFreedoms Foundation.org

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CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 12-3046

Short Caption: Wisconsin Right to Life, Inc. v. Deininger

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Attorney's Signature: /s/ Randy Elf Date: September 6, 2012

Attorney's Printed Name: Randy Elf

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** X **No** ____

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Attorney's Signature: /s/ Michael D. Dean Date: September 26, 2012

Attorney's Printed Name: Michael D. Dean

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** _____ **No** X

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E-Mail Address: mike@FirstFreedoms Foundation.org

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CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 12-3158

Short Caption: Wisconsin Right to Life, Inc. v. Deininger

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Attorney's Signature: /s/ Randy Elf Date: September 20, 2012

Attorney's Printed Name: Randy Elf

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** X **No** ____

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Attorney's Signature: /s/ Michael D. Dean Date: September 26, 2012

Attorney's Printed Name: Michael D. Dean

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** _____ **No** X

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Oral Argument Request

Plaintiffs-Appellants Wisconsin Right to Life, Inc. ("WRTL"), and Wisconsin Right to Life State Political Action Committee ("WRTL-SPAC") request oral argument. An opportunity to hear both sides and allow them to respond to questions the Court may have would further the cause of justice in this action. *Cf.* FED.R.APP.P.34.a.1 (2005); 7TH CIR.R.34.f (2011).

Table of Contents[1]

[1] For the readers' convenience, the actual page numbers match the .pdf page numbers. *Cf.* 2D CIR.R.32.1.a.3 (2012), *available at* http://www.ca2.uscourts.gov/clerk/Rules/LRs%20IOPs%20and%20appendices%20effective%2001032012.pdf (all Internet sites visited September 27, 2012).

Table of Authorities[2]

Cases

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[2] Asterisks before citations indicate those on which this brief primarily relies. *Cf.* 11TH CIR. R. 28-1.e (2011), *available at* http://www.ca11.uscourts.gov/documents/pdfs/BlueAUG11.pdf.

Statutes

Other Authorities

Rules

Regulations

I. Jurisdictional Statement

The district court has federal-question jurisdiction, because Plaintiffs-Appellants Wisconsin Right to Life, Inc. ("WRTL"), and Wisconsin Right to Life State Political Action Committee ("WRTL-SPAC") challenge the constitutionality of Wisconsin law under the First and Fourteenth Amendments. *See* 28 U.S.C. 1331 (1980), 1343.a (1979), 2201 (1993), 2202 (1948).

WRTL is incorporated, and has its principal place of business, in Wisconsin. *See* JOINT APPENDIX 517 ¶8 (A.517.¶8); A.250-52.

WRTL-SPAC is not a corporation and has no members.

Plaintiffs originally sought relief in *2010, Wisconsin Right to Life State Political Action Comm. v. Barland,* 664 F.3d 139, 143-44 (7th Cir.2011) ("*WRTL-SPAC*") (following the *first* notice of appeal), but the district court's stay prevented pursuing relief until March 19, 2012. *See* A.547-48.

Then, actions/inaction by the Wisconsin Government Accountability Board ("GAB") and Defendants-Appellees[3] in effect

[3] Under *Ex parte Young,* 209 U.S. 123, 155-58 (1908), GAB is not a Defendant.

delayed, until March 30, Plaintiffs' seeking leave to amend their complaint. The March 30 filings stated Plaintiffs' desire to engage in political speech in 2012 before the

- May 8 recall-primary,
- June 5 recall-general,
- August 14 regular-primary, and
- November 6 regular-general

elections in Wisconsin. *E.g.,* A.548-50; A.224-25; A.554-55.¶¶3-10; A.518-19.¶¶14-18; A.524.¶36; A.526.¶¶43-44, A.527-28.¶¶49-50; A.528.¶52; A.530.¶60; A.532.¶69.

Further actions/inaction by Defendants and the district court in effect delayed, until April 18, Plaintiffs' filing a temporary-restraining-order and second preliminary-injunction ("TRO-PI") motion regarding this speech. *See* A.548-51; FED.R.CIV.P.65 (2009). The TRO-PI hearing was not until May 4. A.603.

Plaintiffs appreciate the district court's sincere interest at the May 4 hearing, *see* SHORT APPENDIX 108-62 ("A.108-62"), and submit they have been generously patient in waiting for a ruling. Yet district courts must promptly rule on PI motions. *E.g., IDS Life Ins. Co. v.*

SunAmerica, Inc., 103 F.3d 524, 530 (7th Cir.1996); *Knaust v. City of Kingston,* 157 F.3d 86, 89 (2d Cir.1998), *cert. denied,* 526 U.S. 1131 (1999); *Davis v. Board of School Comm'rs of Mobile County,* 318 F.2d 63, 64 (5th Cir.1963); *United States v. Lynd,* 301 F.2d 818, 820 (5th Cir.1962), *cert. denied,* 371 U.S. 893 (1962). As of the *second* notice of appeal – on August 17, 2012, A.614-16, three elections and 15 weeks after the hearing – the district court had not ruled on the TRO-PI motion. The only additional information the district court had requested was Plaintiffs' proposed TRO-PI order, filed May 9. D.Ct. Doc.77 at 1 ("D.Ct.Doc.77.1").

A district-court *action* in effect denying a PI motion is appealable under 28 U.S.C. 1292.a.1 (1992) (injunctions). *WRTL-SPAC,* 664 F.3d at 146 (citations omitted).

The same is true of *inaction:* Either (1) an "inordinate and unjustified" delay or (2) an "unjustifiable delay coupled with irreparable injury if an immediate appeal is not allowed is enough to make a constructive denial appealable, if a formal denial would be." *IDS,* 103 F.3d at 526 (collecting authorities), *cited in United States v. Board of School Comm'rs of City of Indianapolis,* 128 F.3d 507, 509 (7th

Cir.1997) ("Postponement of a ruling on a request to dissolve an injunction is not treated as a denial for purposes of appealability – otherwise the movant could appeal before the judge had had a chance to consider his motion – unless *it is so protracted that it has the practical effect of a denial; in that event it is deemed a constructive denial, and immediate appeal is allowed*" (emphasis added)). "Otherwise the lower court … would have the judicial … equivalent of a pocket veto." *Id.* at 527. So this Court has jurisdiction under the *second* notice of appeal, *see* 28 U.S.C. 1292.a.1, because:

- The district court has constructively denied the PI part of the TRO-PI motion by not ruling on it.

- Formally denying a PI would be appealable. *Id.*

- The delay is protracted, inordinate, unjustified, and unjustifiable when Plaintiffs seek a PI regarding political speech. *Cf. Yamada v. Kuramoto,* 744 F.Supp.2d 1075, 1085-87 (D.Haw. 2010).

> ●With three elections having passed, and once other opportunities for political speech pass, Plaintiffs have lost/will lose their First Amendment rights *vis-à-vis* these elections and opportunities forever. The "loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns,* 427 U.S. 347, 373 (1976).

Therefore, Plaintiffs filed their *second* notice of appeal, this one regarding the PI part of the TRO-PI motion, on August 17, 2012. A.614-16. Unlike in *FEC v. Wisconsin Right to Life, Inc.,* 551 U.S. 449, 535 (2007) ("*WRTL-II*") (Souter, J., dissenting), Plaintiffs point to lack of a timely PI ruling.

One weekday later, the district court set this action for an August 31, 2012, hearing, during which the district court ruled from the bench on the TRO-PI motion. The decision partly grants and partly denies the motion. A.163-98. The district court amended its August 31 ruling on

September 18 and held WRTL's GAB-1.91 challenge is moot. A.199-203.

However, courts must always consider jurisdiction, *Capron v. Van Noorden*, 6 U.S. (2 Cranch) 126, 127 (1804), and a notice of appeal deprives a district court of jurisdiction over the matters appealed. *Griggs v. Provident Consumer Discount Co.,* 459 U.S. 56, 58 (1982) (citations omitted). Plaintiffs submit, *see Travelers Indem. Co. v. Bailey,* 557 U.S. 137, 152 (2009), that the August 31/September 18 TRO-PI rulings, including the mootness ruling, are void, because the district court entered them after the *second* notice of appeal, when the district court lacked jurisdiction over the motion. *See, e.g., Burnham v. Superior Court of Cal., County of Marin,* 495 U.S. 604, 608-09 (1990) ("the judgment of a court lacking jurisdiction is void"); *Hickey's Lessee v. Stewart,* 44 U.S. (3 How.) 750, 762-63 (1845); *Kusay v. United States,* 62 F.3d 192, 194 (7th Cir.1995). "For a court to pronounce upon the meaning or the constitutionality of a state or federal law when it has no jurisdiction to do so is, by very definition, for a court to act ultra vires." *Steel Co. v. Citizens for a Better Environment,* 523 U.S. 83, 101-02 (1998). Under this case law, not even the parts of the August

31/September 18 rulings going Plaintiffs' way protect them. *But see United States v. United Mine Workers of Am.,* 330 U.S. 258, 293-94 (1947) (quoting *Howat v. Kansas,* 258 U.S. 181, 189, 190 (1922)).

The district court asserts its continued jurisdiction over the PI part of the TRO-PI motion after the second notice of appeal. D.Ct.Doc.93.3 (citing *Wisconsin Mutual Ins. Co. v. United States,* 441 F.3d 502, 504 (7th Cir.2006)); A.201. However, *Wisconsin Mutual* holds that "an appeal taken from an interlocutory *decision* does not prevent the district court from finishing its work and rendering a *final decision*. This is so for appeals concerning preliminary injunctions[.]" 441 F.3d at 504 (emphasis added) (citations omitted). Plaintiffs filed their second notice of appeal not from a decision but from the lack of one. And the district court ruled on preliminary relief. It entered no "final decision." *Id.* Nor is the second appeal from an "order"; it is from the lack of one. FED.R.CIV.P.62.c (2009).

"Until the mandate issues, the case is 'in' the court of appeals, and any action by the district court is a nullity." *Kusay,* 62 F.3d at 194 (collecting authorities), *cited in Wisconsin Mutual,* 441 F.3d at 504.

> *Griggs* notes an important limit[] on the rule that just one court at a time possesses jurisdiction: the doctrine applies only to "those aspects of the case involved in the appeal." … The hearing the district court conducted cannot be described as an ancillary or unrelated matter – it was the nub of the case[.]

Id. (internal citations omitted).

Nevertheless, in case the *second* notice of appeal did *not* deprive the district court of jurisdiction, Plaintiffs, out of an abundance of caution, filed their:

> ●*Third* notice of appeal on September 6, 2012. A.654-56. This addresses the August 31, 2012, ruling and is timely. *See* FED.R.APP.P.4.a.1.A. This Court has jurisdiction under 28 U.S.C. 1292.a.1, and

●*Fourth* notice of appeal on September 19, 2012. A.657-59. This addresses the September 18, 2012, ruling and is timely. *See* FED.R.APP.P.4.a.1.A. This Court has jurisdiction under

> ●28 U.S.C. 1292.a.1, because the ruling amends an order denying a preliminary-injunction motion, and
>
> ●28 U.S.C. 1291 (1982), because the holding that WRTL's GAB-1.91 challenge is moot is in effect a final decision, although the district court does not call it one.

See A.199-202.

In short, this Court has jurisdiction either way: Either from (1) the constructive denial, or from (2) the actual denial, of preliminary-injunctive relief, as amended, and the mootness holding.

Plaintiffs bring all the claims to this Court. In that sense, none remain in the district court.

II. Statement of Issues

The issues on appeal, *see* A.539-42.¶¶102-09, include whether

- The district court had jurisdiction for the August 31, 2012, ruling, and if so, whether it erred in holding the challenge to GAB-1.91 is moot,

and whether the following are unconstitutional:

- Wisconsin's corporate-disbursement ban, WIS. STAT. 11.38.1.a.1 ("WS-11.38.1.a.1"), as applied to WRTL's speech and facially.

- Wisconsin's committee/political-committee and persons-other-than-political-committees definitions, WS-11.01.4; GAB-1.28.1.a; GAB-1.28.2 – or, in the less-preferable

alternative, the political-committee burdens themselves[4] – as applied to WRTL's speech and facially.

●Wisconsin's organization definition, GAB-1.91.1.g (2012) (same as GAB-1.91.1.f (2010)) – or, in the less-preferable alternative, the political-committee-like burdens themselves[5] – as applied to WRTL's speech and facially.

●Wisconsin's regulatory attribution and disclaimer requirements, GAB-1.42.5, *as applied* to WRTL-SPAC's *broadcast* speech.

●Wisconsin's 24 hour reporting requirements, WS-11.12.5-6, as applied to WRTL-SPAC's speech and facially.

[4] *Infra* at 76-78.

[5] *Infra* at 76-77.

- Wisconsin's oath-for-independent-disbursements requirement, WS-11.06.7; GAB-1.42.1, as applied to WRTL-SPAC's speech and facially, and

- Wisconsin's limit on what organizations spend to solicit contributions to their own political committees, WS-11.38.1.a.3; WS-11.38.1.b, *as applied* to WRTL's and WRTL-SPAC's speech.

III. Statement of the Case

Plaintiffs assert Wisconsin law violates the First and Fourteenth Amendments, A.516.¶3, and feel like they have fallen down the Rabbit Hole.

GAB calls the oath "voluntary" even though it is mandatory. GAB-1.42.1-4.

After almost two years of delay, *e.g., WRTL-SPAC,* 664 F.3d at 143-44, GAB-1.91 (2010) should have long since expired. But GAB was enforcing it anyway, so Plaintiffs' counsel asked GAB what was going on. When GAB refused to respond, WRTL re-asserted its challenge to

GAB-1.91.1.f (2010) and alternatively challenged other parts of GAB-1.91 (2010). A.523-25.¶¶31-39; A.312-17.

After further delay,[6] the district court held a TRO-PI hearing. When Defendants repeatedly insisted GAB-1.91 "doesn't exist"/"has expired[,]" A.121-28, the court ordered them to take A.312-13 off their website. A.128. But A.312-13 was still there 11 days later. D.Ct.Doc.80.3. Defendants never mentioned, *e.g.*, A.121-28, they had already finalized plans to re-enact GAB-1.91 effective July 1, 2012. D.Ct.Doc.80.2-3; A.607-11; *compare* A.190 (finding Defendants' "apparent lack of candor") *with* D.Ct.Doc.104.3 n.2 (Defendants' assuming Plaintiffs would say – at a "hearing" with no invitation to speak, A.197 – what Defendants should have said months beforehand). Nor did they mention re-lettering the organization definition from GAB-1.91.1.f (2010) to GAB-1.91.1.g (2012). *E.g.*, A.121-28.

[6] *Supra* Part I.

Then after more delay with no TRO-PI ruling, Plaintiffs filed a notice of appeal. Thereafter, the district court issued a bench ruling that is a "nullity."[7]

It partly granted and partly denied Plaintiffs' TRO-PI motion: It held for Plaintiffs on the corporate-disbursement ban and the regulatory attribution and disclaimer requirements. A.181-85; A.191-93. Otherwise, it held for Defendants. A.163-98.

It also held GAB-1.91 had expired, A.189-91, which was long since false. *See* A.607-11. In correcting this, the district court held the challenge to GAB-1.91.1.f (2010) was moot, because GAB had re-lettered part of the challenged law from GAB-1.91.1.f to GAB-1.91.1.g. *See* A.202.[8] Had Plaintiffs omitted the "f" in "GAB-1.91.1.f" in A.539.¶104, the district court could not have held as it did. *See* A.202.

Amending the complaint, as the district court implicitly suggests, *see* A.202, risks rendering this appeal "moot." *American Concrete Agr. Pipe Ass'n v. No-Joint Concrete Pipe Co.*, 331 F.2d 706, 708 (9th

[7] *Supra* Part I.

[8] *Supra* Part III.

Cir.1964). This would cause further "protracted, inordinate, unjustified, and unjustifiable" delay.[9]

After Plaintiffs were already in this Court, *Center for Individual Freedom v. Madigan* discussed political-committee(-like) status extensively. ____F.3d____, No.11-3693, manuscript op. at 40-50 (7th Cir. Sept. 10, 2012).[10] However, this subject so little concerns the *Madigan* parties that they devote only six pages *total* to it. *Id.*, 7th Cir.Doc.12.39-40, Doc.23.48-50, Doc.27.23-24. For the *Madigan* parties, this was only an afterthought. *See id.*

Plaintiffs neither criticize the *Madigan* plaintiff nor begrudge its apparent wealth. Some wealthy plaintiff-organizations do not especially (have to) care about expensive political-committee(-like) burdens. *Cf. WRTL-II,* 551 U.S. at 477 n.9 (citing *FEC v. Massachusetts Citizens for Life, Inc.,* 479 U.S. 238, 253-55 (1986) ("*MCFL*")).

Nevertheless, before extensively addressing this important circuit-splitting issue, *compare Minnesota Citizens Concerned for Life, Inc. v.*

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[9] *Supra* Part I.

[10] *Available at* http://www.ca7.uscourts.gov/fdocs/docs.fwx?caseno=11-3693&submit=showdkt.

Swanson, ____F.3d____, No.10-3126, manuscript op. at 9-21 (8th Cir. Sept. 5, 2012) ("*MCCL-III*") (*en-banc*),[11] *with National Org. for Marriage, Inc. v. McKee,* 649 F.3d 34, 56-59 (1st Cir.2011), *cert. denied,* 565 U.S.____, 132 S.Ct. 1635 (2012), any court needs sufficient briefing, *see Citizens United v. FEC,* 129 S.Ct. 2893 (2009), lest mistakes ensue. *See North Carolina Right to Life, Inc. v. Leake,* 525 F.3d 274, 288 n.5 (4th Cir.2008) ("*NCRL-III*").

Regardless of *Madigan's* result, the parties' afterthought provides insufficient basis for *Madigan's* extensive discussion. *See id.*

IV. Statement of Facts

WRTL, a non-profit corporation, is not connected with any political committee other than its own, any political candidate, or any political party. A.517.¶8.

WRTL seeks to engage in political speech, *e.g.,* A.517.¶9; A.518-19.¶¶16-18; A.554-55.¶¶5-9, none of which is express advocacy as defined in *Buckley v. Valeo*, 424 U.S. 1, 44&n.52, 80 (1976). A.618-19.¶¶9-15.

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[11] *Available at* http://www.ca8.uscourts.gov/opndir/12/09/103126P.pdf; Appeal No.12-2915, Doc.15-2.

WRTL is not a foreign national. A.519.¶19.

To pay for its speech, WRTL receives more than $25 in donations in each calendar year and spends more than $25 – and even more than $1000 and $2500 – in each calendar year. *Cf.* WS-11.05.1; WS-11.05.2r; WS-11.055.3; GAB-1.28.2 ("the applicable requirements of ch. 11., Stats."); GAB-1.91.3 (2012). A.519-20.¶21.

WRTL does not, however, make direct contributions to political committees, *cf. Buckley,* 424 U.S. at 24 n.23, or coordinate any of the speech at issue here with any candidate, candidate's agent, candidate's committee, *cf. id.* at 78, or political party. *Cf. McConnell v. FEC,* 540 U.S. 93, 219-23 (2003), *overruled on other grounds, Citizens United v. FEC,* 558 U.S. 310, ____, 130 S.Ct. 876, 896-914 (2010). A.520.¶22.

Nor is there at issue here a contribution WRTL receives that (1) is earmarked for a political committee, *i.e.,* an *indirect* contribution to a political committee, *cf. Buckley,* 424 U.S. at 23 n.24, 78, (2) "will be converted to an expenditure[,]" *FEC v. Survival Educ. Fund, Inc.,* 65 F.3d 285, 295 (2d Cir.1995), *i.e.,* is earmarked for express advocacy as defined in *Buckley,* 424 U.S. at 44 & n.52, 80, *vis-à-vis* any office, or (3) is earmarked for electioneering communications as defined in the

Federal Election Campaign Act ("FECA")[12] *vis-à-vis* any office. *Cf. McConnell,* 540 U.S. at 195-99. A.520.¶23.

Furthermore:

- WRTL is not under the control of any candidate(s).

- WRTL's organizational documents – *i.e.,* its articles of incorporation and by-laws – and public statements do not indicate it has the major purpose of nominating or electing any candidate(s), and

[12] FECA electioneering communications (1) are broadcast, 2 U.S.C. 434.f.3.A.i (2002), (2) run in the 30 days before a primary or 60 days before a general election, *id.* 434.f.3.A.i.II, (3) have a clearly identified candidate in the jurisdiction, *see id.* 434.f.3.A.i.I, (4) are targeted to the relevant electorate, *id.* 434.f.3.A.i.III, and (5) do not expressly advocate. *See id.* 434.f.3.B.ii; *see also id.* 434.f.3.B (additional exceptions not material here).

- WRTL does not devote the majority of its spending to contributions to, or independent expenditures[13] for, any candidate(s).

A.520-21.¶¶24-26.

Nevertheless, WRTL reasonably fears that engaging in its speech means it must be

- (1) a **committee/political committee** under the Wisconsin statute, *see* WS-11.01.4, and a **"person[] other than [a] political committee[]"** under GAB-1.28.1.a and GAB-1.28.2, or

- (2) a political-committee-like **organization** under GAB-1.91.1.g, as re-enacted after the TRO-PI hearing.

[13] Under the Constitution, "independent expenditure" means *Buckley* express advocacy that is not coordinated with a candidate, a candidate's committee, a candidate's agent, or a party. 424 U.S. at 46-47, 78; *McConnell,* 540 U.S. at 219-23.

Then WRTL must bear full-fledged political-committee(-like) burdens.[14] The weight of the burdens under (1) is such that the speech is "simply not worth it" for WRTL. *MCFL,* 479 U.S. at 255. As for (2), WRTL will engage in its speech and comply with Section 1.91 while asking the Court to declare Section 1.91 unconstitutional so compliance is no longer necessary. A.521-25.¶27-39; A.619.¶11.

Meanwhile, **WRTL-SPAC** is a Wisconsin political committee connected with WRTL that engages in only independent spending for political speech. *WRTL-SPAC,* 664 F.3d at 151-55. A.525-26.¶¶40-44; A.635-36.¶¶3-14.

WRTL-SPAC would comply with the *statutory* attribution and disclaimer requirement. *See* WS-11.30.2.b, d. But adding the ***regulatory*** **attribution and disclaimer,** GAB-1.42.5, to WRTL-SPAC's 30 second ads is a severe burden on WRTL-SPAC's speech: It takes up most of the 30 seconds and distracts the listeners from WRTL-SPAC's message. Cutting these ads to make room for the regulatory attribution and disclaimer leaves hardly any of WRTL-SPAC's message.

[14] *Infra* Part VI.F.

The ads have little more than attribution and disclaimer. A.526-27.¶¶45-48; A.318-25; A.637-40.

Meanwhile, WRTL-SPAC receives contributions of $500 or more in the 15 days before an election, *cf.* WS-11.12.5, and spends more than $20 on independent expenditures in the 15 days before a primary or general election. *Cf.* WS-11.12.6. Because WRTL-SPAC has limited staff, having to devote time to preparing and filing **24 hour reports,** WS-11.12.5-6, is a severe burden on WRTL-SPAC's resources, including its time to devote to its mission in critical weeks of the year, especially when the disbursement-reporting threshold is $20 or $100. A.527-28.¶¶49-53; A.585-87.¶¶3-19.

Wisconsin's **oath for independent disbursements,** WS-11.06.7; GAB-1.42.1, similarly and severely burdens WRTL-SPAC's resources, including its time in critical weeks of the year. The law requires every committee to file an oath that independent disbursements are independent when a committee desires to make independent disbursements exceeding $25 in a calendar year. Each committee, including WRTL-SPAC, must file the oath with its Section 11.05 registration statement before making any disbursement, refile the oath

for each calendar year by January 31, WS-11.06.7.a, b, and then amend "the oath whenever there is a change in the candidate or candidates to whom it applies." WS-11.06.7.b. In other words, committees, including WRTL-SPAC, must guess which candidates they will mention and then continually update their guesses. A.529-30.¶¶54-59; A.585.¶¶3-6; 587-89.¶¶20-40.

As for the **limit on what organizations spend to solicit contributions to their own political committees,** WRTL wishes to spend more than $500 annually to solicit contributions for WRTL-SPAC. *Cf.* WS-11.38.1.a.3; WS-11.38.1.b. A.530.¶¶60-62.

In materially similar future situations, Plaintiffs intend to engage in speech materially similar to all of their planned speech such that Wisconsin law will apply to them as it does now. *E.g.,* A.619.¶15; A.636.¶14; A.532.¶69 (same, *pre*-A.618-19.¶¶9-15).

V. Summary of Argument

Plaintiffs' claims are justiciable.

As applied to WRTL or WRTL-SPAC's speech and facially, multiple Wisconsin-law provisions are unconstitutional. No narrowing gloss resolves the law's vagueness. Believing *Citizens United* allows

"disclosure" in any form is Defendants' fundamental error on the overbreadth of this law.

Wisconsin's regulatory attribution and disclaimer requirements are overbroad as applied to WRTL-SPAC's broadcast speech.

Wisconsin's limit on what organizations spend to solicit contributions for their own political committees is unconstitutional as applied to Plaintiffs' speech.

VI. Argument

A. Plaintiffs' claims are justiciable.

1. Standing and Ripeness

As to WRTL's challenge to the corporate-disbursement ban, WRTL's challenge to political-committee status under the Wisconsin statute and GAB-1.28, WRTL-SPAC's challenge to the regulatory attribution and disclaimer requirements, and both Plaintiffs' challenge to the limit on what organizations spend to solicit contributions for their own political committees, Plaintiffs' injury is the chill to speech caused by Defendants' prospective enforcement of Wisconsin law or prosecution of Plaintiffs. A.532.¶67. The relief Plaintiffs seek will redress this chill, thereby allowing them to engage in their speech without fear of

enforcement/prosecution. Therefore, Plaintiffs have standing, and their claims are ripe. *See WRTL-SPAC,* 664 F.3d at 146-49.

As to WRTL's challenge regarding political-committee-like status under GAB-1.91, and WRTL-SPAC's challenge to 24 hour reporting requirements and the oath for independent disbursements, there is no chill. A.532.¶68; A.619.¶11. Plaintiffs will engage in their speech and comply with the law, while asking the Court to declare the law unconstitutional and enjoin enforcement/prosecution so compliance is no longer necessary. Therefore, Plaintiffs have standing, *see Davis v. FEC,* 554 U.S. 724, 734 (2008), and the claims are ripe. *See Peachlum v. City of York, Pa.,* 333 F.3d 429, 435 (3d Cir.2003) (citing *Presbytery of N.J. of Orthodox Presbyterian Church v. Florio,* 40 F.3d 1454, 1467 (3d Cir.1994)).

2. Mootness

This Court reviews mootness holdings *de novo. Higgason v. Farley,* 83 F.3d 807, 811 (7th Cir.1996).

Although the time for some of Plaintiffs' speech at issue in this action has passed,[15] their claims "fit comfortably within the established exception to mootness for disputes capable of repetition yet evading review." *WRTL-II,* 551 U.S. at 462 (citations omitted).

The mootness inquiry focuses not on whether the PI motion is moot. Instead, it focuses on whether each *claim* is moot. *Id.* (quoting *Wisconsin Right to Life, Inc. v. FEC,* 466 F.Supp.2d 195, 202 (D.D.C. 2006)), *quoted in Davis,* 554 U.S. at 735. Even if this Court addresses Plaintiffs' claims after time for some of Plaintiffs' speech has passed, the claims will not be moot. *See id.* at 463-64 ("particularly where WRTL sought a[] preliminary injunction … there exists a reasonable expectation that the same controversy involving the same party will recur").

These principles apply regardless of whether the district court reaches the merits of the PI motion, *North Carolina Right to Life Comm. Fund for Indep. Political Expenditures v. Leake,* 524 F.3d 427,

[15] Plaintiffs have lost forever the opportunity to engage in speech Wisconsin law chilled.

432, 435-36 (4th Cir.) ("*NCRL-FIPE*"), *cert. denied,* 555 U.S. 94 (2008), or does not. *WRTL-SPAC,* 664 F.3d at 149, 151-55.

In holding the GAB.1-91 challenge is moot, A.202, the district court erred. The complaint challenges the GAB-1.91 organization definition with sufficiently clarity. *See Bell Atlantic Corp. v. Twombly,* 550 U.S. 544, 555-64 (2007). The GAB-1.91.1.f (2010) and GAB-1.91.1.g (2012) organization definitions are identical. *See* A.14; A.104. Defendants agree GAB-1.91 (2012) is "materially similar" to GAB-1.91 (2010). D.Ct.Doc.104.3; A.201. Thus, the new GAB-1.91 does not solve the problem, and the claim is not moot. *See Panama Refining Co. v. Ryan,* 293 U.S. 388, 413-14 (1935) ("the amended regulations … present the same constitutional questions, and the cases as to these are not moot" (collecting authorities)).

B. Plaintiffs prevail on all four PI factors.

This Court reviews for abuse of discretion both constructive denials of PIs, *IDS,* 103 F.3d at 530, and PI rulings. *City of Kankakee v. American Water Supply Co.,* 199 F. 757, 757 (7th Cir.1912). This includes *de novo* review of the law. *See, e.g., Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal,* 546 U.S. 418, 428 (2006)

(addressing the granting of a PI (citing *McCreary County v. ACLU of Ky.,* 545 U.S. 844, 867 (2005))).

Plaintiffs "seeking a preliminary injunction must establish [(1)] that [they are] likely to succeed on the merits, [(2)] that [they are] likely to suffer irreparable harm in the absence of preliminary relief, [(3)] that the balance of equities tips in [their] favor, and [(4)] that an injunction is in the public interest." *Winter v. Natural Resources Def. Council, Inc.,* 555 U.S. 7, 20 (2008) (citations omitted).

For the reasons explained below,[16] Plaintiffs prevail on Factor 1. Once this occurs, Plaintiffs prevail on the other factors as well. *See, e.g., ACLU of Ill. v. Alvarez,* 679 F.3d 583, 589-90 (7th Cir.2012) (citing, *inter alia, WRTL-SPAC,* 664 F.3d at 151); *MCCL-III,* manuscript op. at 9 (citation omitted). In a challenge such as this one, Factors 2, 3, and 4 all fall like dominoes the same way that Factor 1 falls. A.133-36.

This is because, as to Factor 2, the "loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod,* 427 U.S. at 373. So unless Plaintiffs receive

[16] *Infra* Part VI.D-H.

the relief they request, they will suffer irreparable harm. There is no adequate remedy at law. *See id.*

As to Factors 3 and 4, "the potential harm to independent expression and certainty in public discussion of issues is great and the public interest favors protecting core First Amendment freedoms." *Iowa Right to Life Comm., Inc. v. Williams,* 187 F.3d 963, 970 (8th Cir.1999) ("*IRLC*").

C. First Principles: Freedom of speech is the norm, not the exception.

Freedom of speech is the norm, not the exception. *See, e.g., Citizens United,* 130 S.Ct. at 911 ("more speech, not less, is the governing rule"); *Buckley*, 424 U.S. at 14-15, *quoted in Arizona Free Enterprise Club's Freedom PAC v. Bennett,* 564 U.S.____, 131 S.Ct. 2806, 2828-29 (2011) ("*AFEC*").

Under the Fourteenth Amendment, law regulating political speech must not be vague. *See Buckley,* 424 U.S. at 41-43.

Even non-vague law regulating political speech must comply with the First Amendment, which guards against overbreadth. *Id.* at 80

("impermissibly broad").[17] To ensure law is not "impermissibly broad," *Buckley* establishes that government may, subject to further inquiry,[18] have the power to regulate donations received and spending for political speech only when they are "unambiguously related to the campaign of a particular … candidate" in the jurisdiction in question, 424 U.S. at 80, or "unambiguously campaign related" for short. *Id.* at 81; *NCRL-III,* 525 F.3d at 283, 287, 290. This principle, which continues after *Citizens United, see New Mexico Youth Organized v. Herrera,* 611 F.3d 669, 676&n.4 (10th Cir.2010) ("*NMYO*") (quoting *Buckley,* 424 U.S. at 79, *quoted in McConnell,* 540 U.S. at 170 n.64); *Center for Individual Freedom v. Tennant, Inc.,* 849 F.Supp.2d 659, 684-85&n.21 (S.D.W.Va. 2011), *notice of appeal filed,* (4th Cir. Sept. 1, 2011), is part of the larger principle that law regulating political speech must not be overbroad. *See Buckley,* 424 U.S. at 80 ("impermissibly broad").

[17] "Overbreadth" applies to both as-applied and facial claims. *E.g., Alaska Right to Life Comm. v. Miles,* 441 F.3d 773, 785 (9th Cir.) ("*ARLC*"), *cert. denied,* 549 U.S. 886 (2006).

[18] *E.g., infra* Parts VI.D-H.

D. Wisconsin law is unconstitutionally vague as applied to WRTL's speech.

When law burdens free speech, courts apply "a more stringent vagueness test" than they apply to other law. *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.,* 455 U.S. 489, 499 (1982).

Contrary to A.171-81, Wisconsin law is unconstitutionally vague. No narrowing gloss saves it. Contrary to A.178, the as-applied and facial vagueness challenges are largely parallel. In that sense, vagueness is a question of law. *See Boutilier v. INS,* 387 U.S. 118, 120 (1967). *Holder v. Humanitarian Law Project,* 561 U.S.____, 130 S.Ct. 2705, 2718-19 (2010), does not hold otherwise.

Three sets of Wisconsin-law phrases are unconstitutionally vague as applied to WRTL's speech. They do not "provide the kind of notice that will enable ordinary people to understand what conduct" they regulate; furthermore, they "may authorize and even encourage arbitrary and discriminatory enforcement." *City of Chicago v. Morales,* 527 U.S. 41, 56 (1999) (citing *Kolender v. Lawson,* 461 U.S. 352, 357 (1983)). The latter can occur when "laws lack explicit standards for

those who enforce them." *Grayned v. City of Rockford,* 408 U.S. 104, 108 (1972) (collecting authorities).

1. Influencing Elections

Wisconsin uses the phrases "for the purpose of influencing the election or nomination for election[,]" "attempting to influence an endorsement or nomination[,]" and "primarily to influence elections" in the political-purposes and political-committee definitions. WS-11.01.16; GAB-1.28.1. By extension, these phrases arise in the definitions of disbursement, WS-11.01.7 ("political purposes"), contribution, WS-11.01.6 (same), committee/political committee, WS-11.01.4 ("disbursements"; "contributions"), incurred obligation, WS-11.01.11 ("contribution or disbursement"), "persons other than political committees," GAB-1.28.2 ("contributions or disbursements for political purposes"; "contributions"), and organization, GAB-1.91.1.g ("committee"), plus in the corporate-disbursement ban. WS-11.38.1.a.1 ("contribution or disbursement").

This law is unconstitutionally vague. *Buckley,* 424 U.S. at 77; *Landell v. Sorrell,* 382 F.3d 91, 161-63&nn.6-7 (2d Cir.2004) (Winter, J., dissenting), *rev'd on other grounds, Randall v. Sorrell,* 548 U.S. 230,

240-62 (2006);[19] *see North Carolina Right to Life, Inc. v. Bartlett,* 168 F.3d 705, 712-13 (4th Cir.1999) (*"NCRL-I"*), *cert. denied,* 528 U.S. 1153 (2000); *cf. McKee,* 649 F.3d at 66-67 (unconstitutionally applying an express-advocacy/appeal-to-vote-test narrowing gloss), *followed in National Org. for Marriage, Inc. v. McKee,* 669 F.3d 34, 44-45 (1st Cir.2012). *McConnell* does not change this. *See Landell,* 382 F.3d at 162 n.7 (Winter, J., dissenting).

Keeping in mind that the functional equivalent of express advocacy is what the Supreme Court called the appeal-to-vote test, *Citizens United,* 130 S.Ct. at 895 (citing *WRTL-II,* 551 U.S. at 470), the district court's express-advocacy/appeal-to-vote-test narrowing gloss for this language, A.174, presents four problems.

●First, unlike in *Buckley,* 424 U.S. at 44&n.52, 80, no narrowing gloss is proper.

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[19] The *Landell* majority does not address this issue. 382 F.3d at 124 n.26. So the statement that the Supreme Court has "upheld" this language, *id.* – while citing part of *Buckley,* 424 U.S. at 145-47, that merely reproduces the federal statute – is *dictum*. It is also incorrect. *See id.* at 77. Language's having "been part of state and federal campaign[-]finance law for decades," *Landell,* 382 F.3d at 124 n.26, does not make it constitutional. *Cf. Brown v. Board of Educ.,* 347 U.S. 483 (1954).

WRTL (a) challenges state law (b) both as applied to its speech and facially.

As for (a), unlike in federal-court challenges to *federal* law, *e.g., Boumediene v. Bush,* 553 U.S. 723, 732, 787 (2008), narrowing glosses apply in federal-court challenges to *state* law only when they are "reasonable and readily apparent." *Stenberg v. Carhart,* 530 U.S. 914, 944 (2000) (quoting *Boos v. Barry,* 485 U.S. 312, 330 (1988)). A federal court does not "rewrite a state law to conform it to constitutional requirements." *Virginia v. American Booksellers Ass'n, Inc.,* 484 U.S. 383, 397 (1988), *quoted in Colorado Right to Life Comm., Inc. v. Coffman,* 498 F.3d 1137, 1154 (10th Cir.2007) ("*CRLC*"), *and Vermont Right to Life Comm., Inc. v. Sorrell,* 221 F.3d 376, 386 (2d Cir.2000) ("*VRLC-I*"); *ACLU of Nev. v. Heller,* 378 F.3d 978, 986 (9th Cir.2004) (quoting *Stenberg,* 530 U.S. at 944); *Florida Right to Life, Inc. v. Lamar,* 273 F.3d 1318, 1326 (11th Cir.2001) (quoting *Dimmitt v. City of Clearwater,* 985 F.2d 1565, 1572 (11th Cir.1993)). As in *VRLC-I,* 221 F.3d at 388-89, 390-91, there is no way to make Wisconsin law constitutional without rewriting it: There is nothing "reasonable and readily apparent" in Wisconsin's influencing-elections phrases that

leads to believing they mean only express advocacy or the appeal-to-vote test.

Regarding express advocacy: These phrases cannot mean only express advocacy, because they include issue advocacy. *Compare NCRL-I,* 168 F.3d at 713, *with FEC v. Central Long Island Tax Reform Immediately Comm.,* 616 F.2d 45, 53 (2d Cir.1980) (*en-banc*) (quoting *Buckley,* 424 U.S. at 42 n.50). Besides, Wisconsin adopted its current law after *Buckley,* so if Wisconsin had meant express advocacy, it would have said so. It is

> extremely unlikely that [Wisconsin], after reading *Buckley* and learning that the term "for the purpose of influencing" was unconstitutionally vague and required a narrowing construction to save it, would then decide to use that term, without explanation, in its statute[/rules]. If [Wisconsin] meant … "for express candidate advocacy" only, it presumably would have said so explicitly.

Virginia Soc'y for Human Life, Inc. v. Caldwell, 152 F.3d 268, 270 (4th Cir.1998) ("*VSHL-I*"). Wisconsin means more than express advocacy. *See, e.g.,* A.10-16; A.607-11; A.514.

Regarding the appeal-to-vote test: As a matter of *constitutional* law, which this action turns on, this *WRTL-II* test applied *only* to FECA electioneering communications. Speech passed this test *only* when it was a

- FECA electioneering communication

- whose only reasonable interpretation was as an appeal to vote for or against a clearly identified candidate.

551 U.S. at 469-70, 474 n.7; *NCRL-III,* 525 F.3d at 282; *Colorado Ethics Watch v. Senate Majority Fund, LLC,* 269 P.3d 1248, 1257-58 (Colo. 2012); *National Right to Work Legal Def. & Educ. Found., Inc. v. Herbert,* 581 F.Supp.2d 1132, 1150 (D.Utah 2008) ("*NRTW*"). It is not "reasonable and readily apparent" under *Stenberg* that Wisconsin's influencing-elections phrases mean either FECA electioneering

communications or speech whose only reasonable interpretation is as an appeal to vote for or against a clearly identified candidate. In the alternative, no appeal-to-vote-test narrowing gloss applied beyond FECA electioneering communications. *NRTW,* 581 F.Supp.2d at 1149-51.

As for (b), narrowing glosses generally apply only to facial challenges, not as-applied challenges. *CRLC,* 498 F.3d at 1154 (quoting *American Booksellers,* 484 U.S. at 397). But a narrowing gloss would not apply even to the facial challenges here, because it would not be "reasonable and readily apparent" under *Stenberg*. *Cf. id.* (rejecting a facial challenge and rejecting a narrowing gloss under an as-applied challenge (quoting *Stenberg,* 530 U.S. at 944)). Therefore, no narrowing gloss applies here.

●Second, a federal court's narrowing gloss would not bind a state court, so it ultimately would not protect speakers. *VSHL-I,* 152 F.3d at 270 (quoting *Kucharek v. Hanaway,* 902 F.2d 513, 517 (7th Cir.1990)).

●Third, when courts establish narrowing glosses, they must not be unconstitutionally vague, and they ordinarily must have some constitutional significance. *See, e.g., Buckley,* 424 U.S. at 41-44, 80.

While the express-advocacy part of the district court's narrowing gloss is *not* unconstitutionally vague, *see id.* at 44, the appeal-to-vote-test part is.

WRTL-II rejects a contention that the appeal-to-vote test is vague by noting it applied *only* to FECA electioneering communications. 551 U.S. at 474 n.7. This responds to the concurrence "on the imperative for clarity[.]" *Id.* The concurrence's point is that the appeal-to-vote test *is* vague. *Id.* at 492-94 (Scalia, J., concurring, joined by Kennedy and Thomas, JJ.). In response, the two-justice plurality/controlling[20] opinion holds "this test is triggered only" for FECA electioneering communications. *Id.* at 474 n.7 (plurality op.), *followed in NCRL-III,* 525 F.3d at 282, *Colorado Ethics,* 269 P.3d at 1258, *and NRTW,* 581 F.Supp.2d at 1050. This means that elsewhere the test *is* vague. *See id.* Elsewhere the test "might ... create an unwieldy standard that would be difficult to apply" and unconstitutionally chill political speech. *Colorado Ethics,* 269 P.3d at 1258 (citing *WRTL-II,* 551 U.S. at 468-69). As a "free-standing" or "stand-alone" test apart from FECA

[20] *See Marks v. United States,* 430 U.S. 188, 193 (1977).

electioneering communications, it is vague under *WRTL-II*. *Tennant,* 849 F.Supp.2d at 686-87.

The district court does not limit the appeal-to-vote-test narrowing gloss to FECA electioneering communications. Based on this alone, the narrowing gloss is unconstitutionally vague *vis-à-vis* WRTL's speech that is not a FECA electioneering communication. *See* 2 U.S.C. 434.f.3.A (broadcast; 30/60 days).

Moreover, *"Citizens United* eliminate[s] the context in which the appeal-to-vote test has … any significance." *McKee,* 649 F.3d at 69. In other words, after *Citizens United,* the appeal-to-vote test is no longer a constitutional limit on government power.[21] What remains from *WRTL-*

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[21] Whether FECA electioneering communications pass the appeal-to-vote test no longer affects whether government may regulate them. *Compare WRTL-II,* 551 U.S. at 469-70, 474 n.7, *with Citizens United,* 130 S.Ct. at 889-90, 915.

Here is why: *Citizens United* holds that regardless of whether FECA electioneering communications pass the test, government (1) may *not* ban them, 130 S.Ct. at 889-90, by persons other than foreign nationals, *see id.* at 911 (citing 2 U.S.C. 441e), and (2) *may,* subject to further inquiry, *see id.* at 915-16, have the power to regulate them by requiring *non-political-committee(-like)* disclosure. *Id.* at 915 (upholding *non-*political-committee(-like) reporting). Since the test applied *only* to FECA electioneering communications, *WRTL-II,* 551 U.S. at 474 n.7; *NCRL-III,* 525 F.3d at 282; *Colorado Ethics,* 269 P.3d at 1257-58;

II regarding the test is the conclusion that the test *is* unconstitutionally vague, even *vis-à-vis* FECA electioneering communications. 551 U.S. at 492-94 (Scalia, J., concurring). How is anyone – including a speaker or a law enforcer – to know whether speech passes this test when it is "impermissibly vague"? *Id.* at 492; A.156-60.[22]

NRTW, 581 F.Supp.2d at 1150, it no longer serves any constitutional purpose.

[22] A word of caution: As a matter of *constitutional* law – which this action turns on, in assessing independent expenditures, one looks to *Buckley* express advocacy, 424 U.S. at 44&n.52, 80, not the "functional equivalent" of express advocacy. The "functional equivalent" of express advocacy is speech that passes the appeal-to-vote test, *WRTL-II,* 551 U.S. at 469-70, which applied *only* to FECA electioneering communications, *id.* at 474 n.7, which by definition are *not* express advocacy.

By definition, express advocacy and FECA electioneering communications *cannot* overlap. *Buckley* limits the FECA expenditure and independent-expenditure definitions to express advocacy – with express advocacy being a proper subset of "expenditure" and "independent expenditure." 424 U.S. at 44&n.52, 80. And under FECA, neither expenditures nor independent expenditures are electioneering communications. 2 U.S.C. 434.f.3.B.ii; *see NCRL-III,* 525 F.3d at 282 (stating electioneering communications are "beyond" express advocacy); *Colorado Ethics,* 269 P.3d at 1257-58; *NRTW,* 581 F.Supp.2d at 1150; *see also McConnell,* 540 U.S. at 189 (stating electioneering communications are not limited to express advocacy).

●Fourth, it is odd to use the appeal-to-vote test to solve vagueness when its purpose was to address overbreadth. *See WRTL-II,* 551 U.S. at 469-70.

Multiple responses would be incorrect.

●First, *Real Truth About Abortion, Inc. v. FEC,* 681 F.3d 544, 552-55 (4th Cir.2012), *pet. for cert. filed,* (U.S. Sept. 10, 2012), does not address the foregoing reasons that the appeal-to-vote test is vague.

●Second, like Defendants, A.152, *National Organization for Marriage, Inc. v. Roberts* calls the appeal-to-vote test "objective." 753 F.Supp.2d 1217, 1220, 1221 (N.D.Fla. 2010) (citing *Citizens United,* 130 S.Ct. at 889, 895). But "objective" is not the opposite of "vague." A standard can be both. *McKee,* 669 F.3d at 47; A.160. For example, a standard asking whether a reasonable person would conclude that speech "'advocat[es] the election or defeat' of a candidate" or is "for the purpose of influencing" an election would be both objective, *see WRTL-II,* 551 U.S. at 470 ("reasonable"), and vague. *Buckley,* 424 U.S. at 42-43, 77 (ellipsis omitted).

●Third, even if Defendants said whether WRTL's speech passes the appeal-to-vote test, *cf. Roberts,* 753 F.Supp.2d at 1220-21,[23] WRTL cannot know what future GAB members will say about other speech, including future materially similar speech. *See Virginia Soc'y for Human Life, Inc. v. FEC,* 263 F.3d 379, 388 (4th Cir.2001) ("*VSHL-II*") (citing *Chamber of Commerce v. FEC,* 69 F.3d 600, 603 (D.C. Cir.1995)). In any event, the test asked whether the only reasonable interpretation of FECA electioneering communications was as an appeal to vote for or against a clearly identified candidate or candidates. *WRTL-II,* 551 U.S. at 470. The test did not include the seven factors in *Roberts,* 753 F.Supp.2d at 1220-21.

These factors help prove the test is vague. How was anyone to know a court would conclude speech passes the appeal-to-vote test just because it (1) takes place just before an election, (2) has a clearly identified candidate, (3) is targeted to the relevant electorate, (4) "state[s] the candidate's view on the issue" at hand, (5) "laud[s] or condemn[s] the view," (6) "states[s] whether the candidate is 'good' or

[23] Although unclear due to vagueness, this is doubtful under *WRTL-II,* 551 U.S. at 470.

'bad' for Floridians," (7) "and then exhort[s] them to take action by telling them to call the candidate"? *Id.* Factors (1), (2), and (3) extend beyond the FECA electioneering-communication definition, *see* 2 U.S.C. 434.f.3, and therefore beyond where the test applied. *WRTL-II,* 551 U.S. at 474 n.7; *NCRL-III,* 525 F.3d at 282; *Colorado Ethics,* 269 P.3d at 1257-58; *NRTW,* 581 F.Supp.2d at 1150. Factors (4), (5), (6), and (7) – either individually or taken together – do not mean the only reasonable interpretation of speech is as an appeal to vote for or against the clearly identified candidate. *Cf. Citizens United,* 130 S.Ct. at 890; *WRTL-II,* 551 U.S. at 470.

●Fourth, saying that *Citizens United,* 130 S.Ct. at 889-90, applied the appeal-to-vote test would not acknowledge what *follows from Citizens United,* 130 S.Ct. at 889-90, 915.[24]

●Fifth, in applying a *WRTL-II* appeal-to-vote-test narrowing gloss to similar language, *McKee* replaces vague law with a vague narrowing gloss. *See* 649 F.3d at 66-67, *followed in* 669 F.3d at 44-45.

[24] *Supra* Part VI.D.1.

McKee misses the point. The point is not that the "basis for *Citizens United's* holding … had [any]thing to do with the appeal-to-vote test or the divide between express and issue advocacy." 649 F.3d at 69. The point is not the *Citizens United holding* itself. Instead, the point is what *follows from* the holding.

Contrary to *McKee,* the appeal-to-vote test never was a "divide between express advocacy and issue advocacy." *Id.*[25] *McKee* says the test was a way of "distinguishing between express and issue advocacy" and was *not* a "'constitutional limit on government power.'" *Id.* at 69 n.48. This misunderstands *WRTL-II,* 551 U.S. at 469-70, 474 n.7. *See NCRL-III,* 525 F.3d at 282.

Aside from that, how can *McKee* acknowledge that "*Citizens United* eliminated the context in which the appeal-to-vote test has had any significance[,]" 649 F.3d at 69, and then say the test was *not* a "'constitutional limit on government power'"? *Id.* at 69 n.48. The test was "significan[t,]" because it *was* a "'constitutional limit on government power." *See WRTL-II,* 551 U.S. at 457, 469-70, 474 n.7;

[25] *See supra* Part VI.D.1.

NCRL-III, 525 F.3d at 282. That government may "regulat[e]" some "issue advocacy" does not mean the test was something other than a "'constitutional limit on government power.'" 649 F.3d at 69 n.48.[26]

2. Supports or Condemns

Second, Wisconsin uses the phrase "[s]upports or condemns" in the political-purpose definition. GAB-1.28.3.b.2-3.

While *McConnell* did say – in an entirely facial challenge, *e.g.,* 540 U.S. at 134, 174, 181 – that promote-support-attack-oppose ("PASO") is not unconstitutionally vague *vis-à-vis* party committees and federal candidates, *compare id.* at 170 n.64 *with* 2 U.S.C. 434.e *and id.* 441i (2002) (each citing *id.* 431.20.A), Wisconsin law applies elsewhere.

Other courts have held parts of PASO and the form thereof at issue here are vague *vis-à-vis* other speech or other speakers. *See WRTL-II,* 551 U.S. at 492 (Scalia, J., concurring) (calling, *inter alia,*

[26] Instead, it means – *post-Citizens United* – that when it comes to spending for political speech by organizations government may *not* define as political committees – or whatever label a jurisdiction uses – the Supreme Court has established that government may regulate not only *Buckley* express advocacy but also FECA electioneering communications. The latter is the only form of such organizations' issue advocacy that the Supreme Court has established government may regulate. *See Citizens United,* 130 S.Ct. at 914-16.

PASO "impermissibly vague"); *id.* at 493 (calling PASO "inherently vague"):

> ●*NCRL-I* considers a state law defining "political committee" as any group "the primary or incidental purpose of which is to support or oppose any candidate or to influence or attempt to influence the result of an election." Such law "is unconstitutionally vague[.]" 168 F.3d at 712-13 (ellipsis omitted) (citing *Buckley,* 424 U.S. at 79-80).
>
> ●*Center for Individual Freedom v. Carmouche* considers a law requiring disclosure of payments "for the purpose of supporting, opposing, or otherwise influencing the nomination or election of a person to public office." 449 F.3d 655, 662-63 (5th Cir.2006), *cert. denied,* 549 U.S. 1112 (2007). *Carmouche's* holding is based on the premise that the law is vague. *See id.* at 665, and

- *Buckley* holds "advocating the election or defeat of a candidate" is vague. 424 U.S. at 42-43. Since that is more precise than PASO and the form thereof at issue here, they must also be vague. *Cf. WRTL-II,* 551 U.S. at 493 (Scalia, J., concurring) (calling the appeal-to-vote test vague and stating that it "seem[s] tighter" than, *inter alia,* PASO); *NCRL-III,* 525 F.3d at 289, 301 (approving "support or oppose" when – after *NCRL-III,* 525 F.3d at 281-86 – its definition included only *Buckley* express advocacy).

Besides, political parties and many federal candidates' campaigns are filled with political professionals accustomed to, though not necessarily content with, baroque election law. *Cf. McConnell,* 540 U.S. at 170 n.64 (holding PASO is clear for political parties). PASO and "supports or condemns" leave in a quandary those speakers, other than political parties and federal candidates, who want to engage in political speech. They cannot know how far they may go before they are "PASOing," "support[ing,] or condemn[ing.]" Therefore, they will "hedge and trim" their speech out of fear of violating a law that is hard for

those outside a party or federal-candidate-campaign apparatus to understand. *Buckley,* 424 U.S. at 42 n.50 (quoting *Thomas v. Collins,* 323 U.S. 516, 535 (1945)).[27]

Madigan is distinguishable, because it, like *McConnell,* is a facial challenge. Manuscript op. at 38.

3. Functional Equivalents

Wisconsin's political-purpose definition uses the phrase "functional equivalents[.]" GAB-1.28.3.a.1. This is the appeal-to-vote test. *WRTL-II,* 551 U.S. at 469-70. It is unconstitutionally vague.[28]

E. Even on a PI motion, Defendants must prove their law survives scrutiny.

Regardless of the scrutiny level:

●Government must prove law survives scrutiny. *WRTL-II,* 551 U.S. at 464 (strict scrutiny (citing *First Nat'l Bank of*

[27] *National Organization for Marriage v. Daluz* summarily rejects this. 654 F.3d 115, 120 (1st Cir.2011). *McKee,* decided by the same panel, disagrees with the distinction between *McConnell* and other law. 649 F.3d at 63-64.

[28] *Supra* Part VI.D.1.

Boston v. Bellotti, 435 U.S. 765, 786 (1978))), *quoted in Citizens United,* 130 S.Ct. at 898; *Nixon v. Shrink Mo. Gov't PAC,* 528 U.S. 377, 387 (2000) (intermediate scrutiny (quoting *Buckley,* 424 U.S. at 25)).

●The only interest that suffices to limit[29] "campaign finances" is the prevention of corruption of candidates or officeholders, or its appearance, *FEC v. National Conservative PAC,* 470 U.S. 480, 496-97 (1985) ("*NCPAC*") (citing *Citizens Against Rent Control v. City of Berkeley,* 454 U.S. 290 (1981)); *see Citizens Against Rent Control,* 454 U.S. at 297 (referring to candidates and officeholders), and

●Where "the First Amendment is implicated, the tie [(if there is one)] goes to the speaker, not the censor." *WRTL-II,* 551 U.S. at 474.

[29] As opposed to "regulate." *See, e.g., Buckley,* 424 U.S. at 66-68.

Given this – and given that freedom of speech is the norm, not the exception[30] – if government wants to regulate political speech in a way beyond what current case law allows, government must prove law survives scrutiny. It is not up to any speaker to prove the negative. *Cf. AFEC,* 131 S.Ct. at 2823 ("it is never easy to prove a negative" (quoting *Elkins v. United States,* 364 U.S. 206, 218 (1960))).

Corruption of candidates or officeholders or its appearance means only *quid-pro-quo* corruption or its appearance. *Citizens United,* 130 S.Ct. at 908-10, *followed in WRTL-SPAC,* 664 F.3d at 143, 153-54. As a matter of law, influence over, access to, favoritism by, or gratitude from candidates or officeholders, without *quid-pro-quo* corruption or its appearance, does not suffice. *Id.* at 910.

Thalheimer v. City of San Diego reconciles the "inherent tension[,]" 645 F.3d 1109, 1115 (9th Cir.2011), between Plaintiffs' burden of proving they prevail on their PI motion,[31] and Defendants'

[30] *Supra* Part VI.C.

[31] *Supra* Part VI.B.

burden of proving their law survives constitutional scrutiny and therefore is constitutional as applied to Plaintiffs' speech.

Upon moving for a PI, Plaintiffs must first make "a colorable claim" that Defendants infringe Plaintiffs' constitutional rights. Then "the burden shifts to the government to justify the restriction." *Id.* at 1116.

The burden shifts, because "the burdens at the preliminary[-]injunction stage track the burdens at trial." *Gonzales,* 546 U.S. at 429, *discussed in Thalheimer,* 645 F.3d at 1115-16.

At trial, Defendants have the burden of proving their law survives constitutional scrutiny and therefore is constitutional as applied to Plaintiffs' speech. It is not up to Plaintiffs to prove the negative. *Cf. AFEC,* 131 S.Ct. at 2823 (quoting *Elkins,* 364 U.S. at 218). Under *Gonzales* and *Thalheimer,* Defendants have the same burden on a PI motion that they have at trial.[32]

[32] This burden shift applies only to the *as-applied* part of constitutional challenges. For the facial part, plaintiffs must prove the challenged law is facially unconstitutional. *McConnell,* 540 U.S. at 207 (citing *Broadrick v. Oklahoma,* 413 U.S. 601, 613 (1973)).

F. Wisconsin's corporate-disbursement ban and its political-committee(-like) definitions fail constitutional scrutiny, and are unconstitutional as applied to WRTL's speech.

Wisconsin has repealed its corporate-disbursement ban, WS-11.38.1.a.1, only *via* GAB-1.91.2. So once the Court enjoins GAB-1.91, the corporate-disbursement ban is back. Since WRTL is not a foreign national, *cf. Citizens United,* 130 S.Ct. at 911 (citing 2 U.S.C. 441e); *Bluman v. FEC,* 800 F.Supp.2d 281, 288-89 (D.D.C. 2011), *aff'd without op.,* 565 U.S.____, 132 S.Ct. 1087 (2012), Wisconsin's corporate-disbursement ban fails strict scrutiny and is unconstitutional as applied to WRTL's speech. *See Citizens United,* 130 S.Ct. at 896-914.

Turning to political-committee(-like) burdens, most case law addresses such burdens by addressing political-committee definitions. But Wisconsin imposes such burdens *via* its committee/political-committee definitions, persons-other-than-political-committees definition, and organization definition. WS-11.01.4; GAB-1.28.1.a; GAB-1.28.2; GAB-1.91.1.g.

However, in a constitutional analysis – especially one regarding such burdens – it is not the "label" but the substance that matters.

MCCL-III, manuscript op. at 17. Government may not abrogate First Amendment rights through clever drafting or revision. It "cannot foreclose the exercise of constitutional rights by mere labels." *NAACP v. Button,* 371 U.S. 415, 429 (1963), *followed in FEC v. Colorado Republican Fed. Campaign Comm.,* 518 U.S. 604, 622 (1996) ("*Colorado Republican-I*").

Contrary to A.187-88, burdens that apply when Wisconsin defines an organization as a political committee under the Wisconsin statute or GAB-1.28, or a political-committee-like organization under GAB-1.91, namely

> (1)Registration (including treasurer-designation and bank-account) and termination requirements. WS-11.05 (registration); WS-11.055 (filing fee); WS-11.10.3 (treasurer); WS-11.12.1 (same); WS-11.14 (bank account); WS-11.16.1, 3 (treasurer and bank account); WS-11.19 (termination); GAB-1.91.3 (bank account, treasurer, and registration); GAB-1.91.4, 6 (registration); GAB-1.91.5 (filing fee); GAB-1.91.8 (citing WS-11.19 (termination)).

(2)Recordkeeping requirements. WS-11.12.3; GAB-1.91.8 (citing WS-11.12 (which includes recordkeeping requirements in Section 11.12.3)), and

(3)Extensive, periodic reporting requirements. WS-11.06; WS-11.12.4; WS-11.20; GAB-1.91.8 (citing full-fledged political-committee reporting requirements),

are the very burdens that are "onerous" as a matter of law under *Citizens United,* 130 S.Ct. at 898, and *WRTL-II,* 551 U.S. at 477 n.9 (citing *MCFL,* 479 U.S. at 253-55). *See also MCCL-III,* manuscript op. at 12. Never mind that Wisconsin political committees under the statute and GAB-1.28 must also comply with

(4)Limits on contributions that political committees receive, WS-11.16.2; WS-11.24, WS-11.25, WS-11.26.4, other than as to organizations such as WRTL that engage in only

independent spending, *see WRTL-SPAC,* 664 F.3d at 151-55, and

(5)Unlike in *Madigan,* manuscript op. at 43&n.24, source bans on contributions received. WS-11.24; WS-11.25; WS-11.38.1; 2 U.S.C. 441b.a, 441b.b.2 (national banks and national corporations), 441e (foreign nationals).

WRTL's assertion that Wisconsin law imposing political-committee(-like) burdens is overbroad is first and foremost an *as-applied* challenge. *See, e.g., CRLC,* 498 F.3d at 1156.[33] On these claims, *Madigan* is distinguishable, because unlike the *Madigan* plaintiff – which brings *only* a facial challenge – WRTL offers specific examples of its speech.[34] WRTL's speech is not "hypothetical"; the Court has more than "only a general idea of what" WRTL "would say." Manuscript op. at 15. WRTL has "laid the foundation for … as-applied

[33] *Infra* Parts VI.F.1-2.

[34] *Supra* Part IV.

challenge[s] here" and has more than just facial challenges. *Id.* *Madigan's* entirely-facial analysis, *id.,* does not foreclose WRTL's as-applied challenges. *See Wisconsin Right to Life, Inc. v. FEC,* 546 U.S. 410, 411-12 (2006) ("*WRTL-I*").

In addition/in the alternative: Although *Madigan* purports to address all *post-Citizens United* circuit case law on *facial* challenges to law imposing political-committee(-like) burdens, *e.g.,* manuscript op. at 2-3&n.1 (citing as-applied and facial challenges), it does not mention *MCCL-III,* manuscript op. at 9-21, whose analysis refutes *Madigan's* analysis, at least in the as-applied context.

To whatever extent the Court believes WRTL's political-committee(-like)-status challenges do not survive *Madigan,* WRTL requests reconsideration of *Madigan, see* 7TH CIR.R.40.e, not only in light of *MCCL-III* but also based on analysis[35] the *Madigan* panel neither received from the parties[36] nor undertook *sua sponte.*

[35] *Infra* Parts VI.F.1-2.

[36] *Supra* Part III.

1. Strict or Exacting Scrutiny

Pre- and *post-Citizens United,* law need not ban or otherwise limit political speech to be unconstitutional. *See, e.g., Snyder v. Phelps,* 562 U.S.____, 131 S.Ct. 1207, 1218-19 (2011); *Buckley,* 424 U.S. at 74-82; *MCCL-III,* manuscript op. at 9-21; *NMYO,* 611 F.3d at 676-79.

Strict scrutiny applies to government's defining an organization as a political committee – or whatever label a jurisdiction uses – and thereby imposing political-committee(-like) burdens. This is so both when government:

- Bans an organization itself from speaking and requires the organization to *form* a separate organization – a political committee – to speak. *Austin v. Michigan Chamber of Commerce,* 494 U.S. 652, 658 (1990) (holding a state requirement that an organization form a separate segregated fund "must be justified by a compelling state interest"), *overruled on other grounds, Citizens United*, 130 S.Ct. at 896-914; *see Citizens United,* 130 S.Ct. at 897-98 (applying strict scrutiny to a speech ban and noting the

burdens of forming a political committee to do the same speech); *MCFL,* 479 U.S. at 252 (considering whether a "compelling state interest" justifies an independent-expenditure ban and noting the burdens of forming a separate segregated fund to do the same speech), and

●Does not ban an organization itself from speaking, *Citizens United,* 130 S.Ct. at 897 (noting that allowing the organization to speak would "not alleviate the First Amendment problems"); *MCFL,* 479 U.S. at 263 (holding there was no "compelling justification" for the "burdens" of corporate independent expenditures, which then included either forming or being a political committee), yet requires it to *be* a political committee to speak. *CRLC,* 498 F.3d at 1146 (applying strict scrutiny to a state requirement that organizations themselves be political committees); *NCRL-III,* 525 F.3d at 290 (addressing "narrower means" than a state requirement that organizations themselves be political committees); *see MCCL-III,* manuscript op. at 16-17 (citing

MCFL, 479 U.S. at 262). In the less-preferable alternative, *see MCCL-III,* manuscript op. at 16-17, exacting scrutiny applies when government requires an organization to *be* a political committee to speak. *NMYO,* 611 F.3d at 676. Contrary to *Madigan's* implication, manuscript op. at 46, exacting scrutiny does not ask whether law is "reasonable[.]" *See, e.g., Davis,* 554 U.S. at 744.

Contrary to A.187-88, as a matter of *law,* not fact, political-committee(-like) status is "burdensome[,]" *Citizens United,* 130 S.Ct. at 897, and "onerous[,]" *id.* at 898; *WRTL-II,* 551 U.S. at 477 n.9 (citing *MCFL,* 479 U.S. at 253-55), because political committees/political-committee-like organizations "are expensive to administer and subject to extensive regulations." *Citizens United,* 130 S.Ct. at 897, *quoted in MCCL-III,* manuscript op. at 12. Government may impose far greater burdens on political committees/political-committee-like organizations than on other organizations. *See MCFL,* 479 U.S. at 251-56. *Pre-* and *post-Citizens United,* federal appellate courts strike down state laws that – like Wisconsin law – do not ban speech but instead require that

organizations themselves *be* political committees/political-committee-like organizations. *MCCL-III,* manuscript op. at 10-11; *NMYO,* 611 F.3d at 672-73; *NCRL-III,* 525 F.3d at 279; *CRLC,* 498 F.3d at 1140-41.[37,38]

Defendants' fundamental error is believing *Citizens United* allows "disclosure" in any form. *See* D.Ct.Doc.73.17. *Citizens United* pages 914-16 do not apply here, because they address *non*-political-committee(-like) reporting requirements. *MCCL-III,* manuscript op. at 16 n.9. Even when such requirements "do not prevent anyone from speaking," *Citizens United,* 130 S.Ct. at 914, full-fledged political-committee(-like) burdens are another matter, *see id.* at 897-98,

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[37] *McKee* misses this. *See* 649 F.3d at 56, *followed in* 669 F.3d at 39-40.

[38] Any WRTL political committee is "a separate legal entity" from WRTL, *California Med. Ass'n v. FEC,* 453 U.S. 182, 196 (1981), and "a separate association from" WRTL, *Citizens United,* 130 S.Ct. at 897, so any such political committee's activities are immaterial here.

The *McKee* district court says this part of *Citizens United* means *only* that when a jurisdiction *bans* speech, letting an organization *form* a political committee does not change the fact that there is a ban. 765 F.Supp.2d 38, 48 (D.Me. 2011). This understates *Citizens United* and is an extension of the same court's not recognizing that the "First Amendment problems" extend beyond bans. *Citizens United,* 130 S.Ct. at 897, *quoted in MCCL-III,* manuscript op. at 12.

especially when the organization reasonably concludes, as WRTL does, A.523.¶30, that the speech is "simply not worth it." *MCFL,* 479 U.S. at 255.

Political-committee(-like) requirements are burdensome and onerous even if they include "only" – so to speak – (1) registration, including treasurer-designation, (2) recordkeeping, or (3) extensive, periodic reporting requirements yet not (4) limits or (5) source bans on contributions received. *See Citizens United,* 130 S.Ct. at 897-98 (mentioning (1), (2), and (3), but not (4) or (5));[39] *MCFL,* 479 U.S. at 266 (O'Connor, J., concurring) (focusing on (1) "organizational restraints"); *MCCL-III,* manuscript op. at 12-13, 19-20 (focusing on (3)). State political-committee(-like) requirements are a "significant regulatory burden[,]" *NCRL-III,* 525 F.3d at 286 (citing *NCRL-I,* 168 F.3d at 712), even without (4)[40] or (5).[41] Wisconsin *via* its political-committee(-like) definitions, imposes not only (1), (2), and (3), but also (4) and (5).

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[39] This supersedes *ARLC,* 441 F.3d at 791.

[40] *See MCCL-III,* manuscript op. at 5-7; *NMYO,* 611 F.3d at 672-73; *CRLC,* 498 F.3d at 1141.

With such burdens in mind, *Buckley* establishes that government may impose political-committee(-like) burdens only when (a) an organization is "under the control of a candidate" or candidates, or (b) "the major purpose" of the organization is "the nomination or election of a candidate" or candidates, in the jurisdiction. 424 U.S. at 79, *followed in McConnell,* 540 U.S. at 170 n.64, *and MCFL,* 479 U.S. at 252 n.6, 262; *Brownsburg,* 137 F.3d at 505 n.5, *discussed in* A.138; *MCCL-III,* manuscript op. at 11-12 (collecting authorities); *CRLC,* 498 F.3d at 1153-54 (noting that *McConnell* did not change the test (citations omitted)); *NMYO,* 611 F.3d at 677-78; *NCRL-III,* 525 F.3d at 287-90.

These two tests address whether a *definition* through which government imposes political-committee(-like) burdens is constitutional. *Madigan,* manuscript op. at 40; *Brownsburg,* 137 F.3d at 505 n.5; *MCCL-III,* manuscript op. at 11; *NMYO,* 611 F.3d at 676 ("classified as political committees"); *Unity08 v. FEC,* 596 F.3d 861, 867 (D.C. Cir.2010) (quoting *FEC v. Machinists Non-Partisan Political League,*

Some contribution-source bans apply to all federal/state political committees. *See* 2 U.S.C. 441b.a, 441b.b.2, 441e.

[41] *See MCCL-III,* manuscript op. at 5-7.

655 F.2d 380, 392, 395-96 (D.C. Cir.), *cert. denied,* 454 U.S. 897 (1981)); *NCRL-III,* 525 F.3d at 288-89; *CRLC,* 498 F.3d at 1139, 1154-55; *FEC v. Florida for Kennedy Comm.,* 681 F.2d 1281, 1287 (11th Cir.1982).[42]

Even if a court converts a political-committee(-like)-*definition* challenge into a challenge to political-committee(-like) *burdens* themselves, *Human Life of Wash., Inc. v. Brumsickle,* 624 F.3d 990, 997-98, 1008-09, 1011-12 (9th Cir.2010) ("*HLW*") (creating a priority-incidentally test for political-committee status),[43] *cert. denied,* 562

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[42] Dismissing the propriety of the challenge to the political-committee(-like) definition – as opposed to the burdens themselves – by saying political-committee(-like) status has no significance apart from the burdens, *see McKee,* 649 F.3d at 56, 58, misses this point: A political-committee-status(-like) challenge is *not* a challenge to *particular* political-committee(-like) burdens one-by-one. *Cf. Buckley,* 424 U.S. at 74. Rather, it challenges law imposing a *package* of political-committee(-like) requirements, which together are burdensome and onerous as a matter of law under *Citizens United* and *WRTL-II*. *Supra* Part VI.F.1. The proper challenge is to the package.

McKee's fundamental disagreement is not over this point. Rather, *McKee* disagrees with the *Citizens United* and *WRTL-II* holdings that such requirements are onerous, and then rejects the major-purpose test for state law. 649 F.3d at 56, 58, 59.

[43] *HLW* incorrectly says HLW challenged the political-committee disclosure requirements. *See* No. 1:08-cv-00590-JCC, VERIFIED COMPL. 10-12 (Count 1) (W.D.Wash. April 16, 2008).

U.S.____, 131 S.Ct. 1477 (2011), the two tests still apply. *See MCCL-III,* manuscript op. at 11-12; *NMYO,* 611 F.3d at 677-78.

The major-purpose test is not a narrowing gloss, so it applies to state law, *see CRLC,* 498 F.3d at 1153-55, both when there are (4) limits or (5) source bans on contributions received, *e.g., NCRL-III,* 525 F.3d at 286, and when there are not. *E.g., MCCL-III,* manuscript op. at 5-7; *NMYO,* 611 F.3d at 672-73; *CRLC,* 498 F.3d at 1141. Even if the major-purpose test were a *Buckley* narrowing gloss, *Madigan,* manuscript op. at 42&n.23 (citing *McKee,* 649 F.3d at 59; *HLW,* 624 F.3d at 1009-10), it would still apply to state law. *MCCL-III,* manuscript op. at 11-12.

Although the major-purpose test does not apply when "law imposes only [*non*-political-committee(-like)] disclosure obligations[,]" *Madigan,* manuscript op. at 43, it *does* apply – even *post-Citizens United* – when "law imposes only [political-committee(-like)] disclosure obligations" – meaning "only" (1) registration, (2) recordkeeping, and (3) extensive, periodic reporting requirements, but not (4) limits or (5) sources bans on contributions received. *See MCCL-III,* manuscript op. at 11-12; *NMYO,* 611 F.3d at 677-78. Otherwise, it might *always* be constitutional to make organizations engaging in only independent

spending be political committees.[44] But that is not the law. *Id.* Not even under *HLW,* 624 F.3d at 1011-12.

While the Supreme Court has not applied the major-purpose test to state law, *Madigan,* manuscript op. at 42 (citing *McKee,* 649 F.3d at 59), it has not accepted such a case. Holding that the test does not even apply to state law, *McKee,* 649 F.3d at 59, cannot be right: If it were, state governments would have more power than the federal government to impose political-committee(-like) requirements. Since these requirements are burdensome and onerous as a matter of law under *Citizens United* and *WRTL-II, McKee* makes no sense. Political speech needs protection from both federal and state governments. *See Bellotti,* 435 U.S. at 778-79.

2. Applying Strict or Exacting Scrutiny

Although WRTL is not "under the control of a candidate" or candidates, and does not have "the major purpose" of nominating or electing a candidate or candidates, in *any* jurisdiction or combination of jurisdictions, *Buckley,* 424 U.S. at 79, that is unnecessary to consider,

[44] Because for them, (4) is unconstitutional, *WRTL-SPAC,* 664 F.3d at 151-55, and (5) should be too. *Cf. id.*

because Wisconsin's power to regulate speech does not extend beyond state or local political speech in Wisconsin. This jurisdictional limit is because of pre-emption of state law in federal matters, 2 U.S.C. 453.a, and states' power over their own, though not other states', elections. *See NCRL-III,* 525 F.3d at 281 (citing *Buckley,* 424 U.S. at 13).

Determining whether an organization is "under the control of a[ny] candidate[(s)]" for state or local office in Wisconsin is straightforward, and WRTL is under no such control. *Cf. NMYO,* 611 F.3d at 677; *Unity08,* 596 F.3d at 867; *Machinists,* 655 F.2d at 394-96; *Florida for Kennedy,* 681 F.2d at 1287.

Determining whether an organization passes the major-purpose test is also straightforward. *See CRLC,* 498 F.3d at 1152. The test asks what *the* major purpose of an organization is, not whether something is *a* major purpose. *MCFL,* 479 U.S. at 252 n.6, 262; *Buckley,* 424 U.S. at 79; *NCRL-III,* 525 F.3d at 287-89, 302-04. And "major" is the root of "majority," which means more than half. Thus, an organization can have only one major purpose. *See MCFL,* 479 U.S. at 252 n.6 (referring to "the major purpose" of an organization and "its organizational purpose," not purposes).

The law provides two methods to determine whether an organization passes the major-purpose test. Either suffices. The first method considers how the organization has *articulated* its mission in its organizational documents, *see MCFL,* 479 U.S. at 241-42, 252 n.6, or in public statements, *FEC v. GOPAC, Inc.,* 917 F.Supp. 851, 859 (D.D.C. 1996), and the second method considers whether, in *carrying out* its mission, the organization devotes the majority of its spending to either contributions to, or independent expenditures properly understood[45] for, candidates, *CRLC,* 498 F.3d at 1152, *followed in NMYO,* 611 F.3d at 678; *NCRL-III,* 525 F.3d at 289, in the jurisdiction.[46,47]

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[45] Noncoordinated *Buckley* express advocacy. *Supra* Part IV.

[46] Wisconsin defines an organization as a political committee in part based on contributions it receives. WS-11.01.4. However, the test for *constitutionality* does not consider contributions an organization *receives*. Makes, yes. Receives, no.

[47] Once it *is* constitutional to impose full-fledged political-committee(-like) burdens on an organization, government may, subject to further inquiry, *e.g., Buckley,* 424 U.S. at 74, require disclosure of all donations received and spending by the organization – not just, *e.g., Buckley* express advocacy or donations earmarked for it under *Survival Education Fund,* 65 F.3d at 294-95. *See Citizens United,* 130 S.Ct. at 897; *MCFL,* 479 U.S. at 254. However, in determining *constitutionality,* one applies the major-purpose test properly understood. *But see Real Truth,* 681 F.3d at 557-58 (creating a vague major-purpose test leading

Applying these two methods here reveals WRTL does not have the major purpose of nominating or electing any candidate(s) for state or local office in Wisconsin: (1) It has not indicated this in its organizational documents or in its public statements, and (2) it does not devote the majority of its spending to either contributions to, or independent expenditures for, such candidates.

Notwithstanding *Madigan's* concerns about (2), *see* manuscript op. at 44-45, *WRTL presents the easiest case:* Although WRTL's purpose is to engage in speech about government issues, *cf. HLW,* 624 F.3d at 1011 (referring to "political advocacy[,]" which is vague under *Buckley,* 424 U.S. at 42-43), it makes *neither* contributions to, *nor* independent expenditures for, candidates, and speaks only about issues *in Wisconsin*. Besides, WRTL is a small organization. *See MCCL-III,* manuscript op. at 15 ("smaller businesses and associations"); *Sampson v. Buescher,* 625 F.3d 1247, 1253 (10th Cir.2010).

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to burdensome discovery – contrary to *WRTL-II,* 551 U.S. at 468 n.5, 469 – by not following *NCRL-III* as circuit precedent).

And since it is material only under *Madigan,* manuscript op. at 44, WRTL notes Wisconsin law imposes political-committee(-like) burdens based on what is for the purpose of influencing elections.[48]

Thus, regardless of whether strict or exacting scrutiny applies, *see MCCL-III,* manuscript op. at 16-17, Wisconsin's political-committee(-like) definitions – or political-committee(-like) burdens themselves – fail scrutiny and are unconstitutional as applied to WRTL's speech.[49] In

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[48] *Supra* Part VI.D.1.

[49] *Sampson* applies exacting scrutiny when the plaintiffs challenge *only* political-committee disclosure requirements, not a political-committee definition. 625 F.3d at 1253.

As *MCCL-III,* manuscript op. at 17 n.10, notes, *SpeechNow.org v. FEC* applies exacting scrutiny to political-committee disclosure requirements and upholds them. 599 F.3d 686, 696-98 (D.C. Cir.) (*en-banc*), *cert. denied,* 562 U.S.____, 131 S.Ct. 553 (2010). However, under *MCFL,* 479 U.S. at 262, *quoted in CRLC,* 498 F.3d at 1152, the political-committee definition *is* constitutional as applied to SpeechNow's speech, because SpeechNow *passes* the major-purpose test. *See SpeechNow,* No. 1:08-cv-00248, COMPL.¶¶7, 47 (D.D.C. Feb. 14, 2008) (*available at* http://www.fec.gov/law/litigation/speechnow_complaint.pdf). Thus, *SpeechNow* properly reaches the disclosure requirements.

It then contradicts *MCFL, WRTL-II,* and *Citizens United, see supra* Part VI.F.1, by saying political-committee requirements are not that much more burdensome than *non*-political-committee reporting of independent expenditures properly understood. 599 F.3d at 697-98; *see id.* at 691-92 (listing political-committee burdens).

fact, an organization can be a Wisconsin political-committee(-like organization) by devoting less – far less – than half its spending to either contributions to, or independent expenditures for, candidates for state or local office in Wisconsin. An organization becomes a Wisconsin political-committee(-like organization) by receiving "contributions" or making "disbursements" beyond $25/$1000 in a year. WS-11.05.1, 2r; GAB-1.91.3. These insubstantial amounts are no major-purpose test. *See Buckley,* 424 U.S. at 79 & n.105 ($1000); *MCCL-III,* manuscript op. at 6-7, 10, 13-14, 16 n.9, 17 n.10, 19 ($100); *NMYO,* 611 F.3d at 678-79 ($500); *CRLC,* 498 F.3d at 1154 ($200).[50]

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[50] See also *Volle,* 69 F.Supp.2d at 174-77 ($50), in which the *McKee* district court implicitly understands there is nothing "perverse" or "pernicious" here. 649 F.3d at 59, *quoted in Madigan,* manuscript op. at 44; 666 F.Supp.2d 193, 210 n.96 (D.Me. 2009). Although the major-purpose test may allow an organization active in many jurisdictions not to be a political committee in any jurisdiction, *see id.,* this follows from the twin principles that (1) each jurisdiction may regulate its own elections, *see NCRL-III,* 525 F.3d at 282 (citing *Buckley,* 424 U.S. at 13), and (2) an organization may have only one major purpose. *Supra* Part VI.F.2.

Besides, as *Madigan* seems to understand, *see* manuscript op. at 45-48, the major-purpose test focuses on "the organization's major purpose" and thus on the nature of the organization. *MCFL,* 479 U.S. at 262.

If Wisconsin wanted to regulate, for example, spending for political speech by persons it may *not* define as political committees, then it could, subject to further inquiry, *see, e.g., Citizens United,* 130 S.Ct. at 915-16, use other means, *id.* at 915 (citing *MCFL,* 479 U.S. at 262), and require *non*-political-committee(-like), *non*-"onerous" disclosure, *id.* at 898; *WRTL-II,* 551 U.S. at 477 n.9 (citing *MCFL,* 479 U.S. at 253-55), of (1) *Buckley* express advocacy *vis-à-vis* state or local office in Wisconsin or (2) FECA electioneering communications having a clearly identified candidate for state or local office in Wisconsin. *See Citizens United,* 130 S.Ct. at 914-16 (FECA electioneering communications); *MCFL,* 479 U.S. at 262 (express advocacy); *Buckley,* 424 U.S. at 80-81 (same); *MCCL-III,* manuscript op. at 16-17 n.9; *NCRL-III,* 525 F.3d at 290.

Yet Wisconsin law is like Minnesota and New Mexico law that federal appellate courts have struck down *post-Citizens United*: *It has no* non-*political-committee(-like) disclosure requirements.* Wisconsin does not *have to* do this though. No jurisdiction *has to* regulate absolutely, positively everything it may regulate in every way it may. But whatever course Wisconsin chooses, it may impose political-

committee(-like) burdens *only* on organizations it may define as full-fledged political committees. *See MCCL-III,* manuscript op. at 9-21; *NMYO,* 611 F.3d at 676-79.

Contrary to Defendants' belief, D.Ct.Doc.73.30, the three *Buckley* interests in regulating speech do not allow Wisconsin to impose full-fledged political-committee(-like) burdens on WRTL:

- Government's interest in deterring *corruption and its appearance* by revealing large contributions and expenditures, 424 U.S. at 67 (*Buckley* Interest 2), does not apply when speech is independent. *Citizens United,* 130 S.Ct. at 908-10.

- Nor does government's interest in detecting violations of limits on contributions *received,* 424 U.S. at 68 (*Buckley* Interest 3), apply, because such limits are unconstitutional when speech is independent. *WRTL-SPAC,* 664 F.3d at 151-55.

This leaves *Buckley* Interest 1: Providing "information 'as to where political[-]campaign money comes from and how it is spent by the candidate' … to aid the voters in evaluating those who seek … office." This

> allows voters to place each candidate in the political spectrum more precisely than is often possible solely on the basis of party labels and campaign speeches. The sources of a candidate's financial support also alert the voter to the interests to which a candidate is most likely to be responsive and thus facilitate predictions of future performance in office.

424 U.S. at 66-67 (*Buckley* Interest 1).

Although this interest applies to organizations that government may define as political committees, *see id.,* this interest does not trump the major-purpose test.[51] *See MCFL,* 479 U.S. at 262 (holding *non-*

[51] *Supra* Part VI.F.1.

political-committee disclosure requirements for independent expenditures properly understood "provide precisely the information necessary to monitor MCFL's independent spending activity and its receipt of contributions"); *id.* at 266 (O'Connor., J., concurring) (holding full-fledged political-committee burdens "do not further the [g]overnment's informational interest in campaign disclosure, and, for the reasons given by the Court, cannot be justified").

Why? Because the *Buckley* interests go to the government-interest part of constitutional scrutiny, *see HLW,* 624 F.3d at 1005-08 (section entitled "Government Interest"), while the major-purpose test goes to the "tailoring" part of constitutional scrutiny. *See id.* at 1008-12 (section entitled "Tailoring Analysis" addressing the *HLW*-created priority-incidentally test, the *HLW* substitute for the major-purpose test). Law must survive both parts to survive scrutiny.

In short, *Buckley Interest 1 is not a wild card for government to play. It does not let government regulate whatever or however it likes. See MCCL-III,* manuscript order at 18-19; *Sampson,* 625 F.3d at 1256. After all, government's self-limiting enumerated power to regulate

elections, a power that other parts of the Constitution further limit,[52] provides *no* power to demand information for information's sake. *See id.*

G. Wisconsin disclosure requirements fail exacting scrutiny and are unconstitutional as applied to WRTL-SPAC's speech.

1. Exacting Scrutiny

Exacting scrutiny applies to disclosure requirements, including attribution, disclaimer, and reporting requirements, both for organizations government *may* define as political committees, *see Davis,* 554 U.S. at 744 (quoting *Buckley,* 424 U.S. at 64), and for those it may *not*. *See Citizens United,* 130 S.Ct. at 914 (quoting *Buckley,* 424 U.S. at 64, 66).[53]

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[52] *See Citizens Against Rent Control,* 454 U.S. at 296-97; *supra* Part VI.C.

[53] Government may impose greater disclosure burdens on political committees than on other organizations. *Supra* Part VI.F.1.

Therefore, it would be incorrect to lump – as *Madigan* almost does, *see* manuscript op. at 42-43, 45, 48-50 – (1) full-fledged political-committee(-like) disclosure requirements and (2) other disclosure requirements into one overbreadth analysis. *See, e.g., Citizens United,* 130 S.Ct. at 897-98, 914-16 (noting the burdens of being a full-fledged political committee, and later upholding *non*-political-committee

In applying scrutiny to disclosure requirements, the first inquiry is whether they survive scrutiny, not what impact they have on particular speakers or their speech. *See AFL-CIO v. FEC,* 333 F.3d 168, 176 (D.C. Cir.2003) (citing *Buckley,* 424 U.S. at 69-74). Government must base disclosure requirements – as opposed to political-committee(-like) definitions – solely on the nature of the speech, not the nature of the speaker. *See NCRL-III,* 525 F.3d at 290.

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reporting requirements for FECA electioneering communications by an organization that is *not* a political committee); *MCFL,* 479 U.S. at 254-55, 262 (noting the burdens of being a full-fledged political committee, and later upholding *non*-political-committee reporting requirements for *Buckley* express advocacy by an organization that is *not* a political committee); *Buckley,* 424 U.S. at 74-81 (establishing the tests for when government may define organizations as full-fledged political committees and later upholding *non*-political-committee reporting requirements for *Buckley* express advocacy by persons government may *not* define as political committees).

Not distinguishing (1) from (2) is among a Ninth Circuit panel's mistakes in *ARLC,* 441 F.3d at 786-94, which *WRTL-II* and *Citizens United* supersede. *See also California Pro-Life Council v. Randolph,* 507 F.3d 1172, 1180 n.11, 1187-89 (9th Cir.2007) ("*CPLC-II*") (rejecting full-fledged political-committee burdens but imprecisely saying government may impose disclosure requirements "irrespective of the major purpose of an organization").

HLW does not make this mistake. *See* 624 F.3d at 1011-12, 1016-18.

2. Regulatory Attribution and Disclaimer Requirements

Wisconsin's *regulatory* attribution and disclaimer requirements, GAB 1.42.5, fail exacting scrutiny, because the burden does not "reflect the seriousness of the actual burden on First Amendment rights." *Davis,* 544 U.S. at 744 (citing *Buckley,* 424 U.S. at 68).

Defendants' assurances that they would not enforce challenged law, *e.g.,* A.128-29 (regulatory attribution and disclaimer requirements); A.132 (corporate-disbursement ban), go to standing and do not deprive Plaintiffs of standing. A.192; A.133-36; *see Citizens for Responsible Gov't State PAC v. Davidson,* 236 F.3d 1174, 1192-93 (10th Cir.2000); *VRLC-I,* 221 F.3d at 383-84; *NCRL-I,* 168 F.3d at 711. Holding otherwise would place Plaintiffs' "First Amendment rights 'at the sufferance of"" Defendants. *VRLC-I,* 221 F.3d at 383 (quoting *NCRL-I,* 168 F.3d at 711). Even if Defendants adopted a policy not to enforce or prosecute anyone under any of the challenged law, Plaintiffs would still have standing, because such a policy would "not carry the binding force of law. Th[ose] who adopted the policy might be replaced with [others] who disagree with it, or some of th[ose who approved it]

might change their minds." *VSHL-II,* 263 F.3d at 388 (citing *Chamber of Commerce v. FEC,* 69 F.3d 600, 603 (D.C. Cir.1995)).

Nor do Defendants' "informal assurance[s]" otherwise deprive Plaintiffs of a holding that the district court should have granted preliminary-injunctive relief. *MCCL-III,* manuscript op. at 14 n.8. Government's promise to use unconstitutional law responsibly does not justify upholding it. *United States v. Stevens,* 559 U.S.____, 130 S.Ct. 1577, 1591 (2010) (citing *Whitman v. American Trucking Ass'ns, Inc.,* 531 U.S. 457, 473 (2001)); A.182.[54]

3. 24 Hour Reporting Requirements

Contrary to A.194-95, WRTL-SPAC explains why the 24 hour-reporting requirements, WS-11.12.5-6, are burdensome. A.527-28.¶¶49-53; A.585-87.¶¶3-19. They similarly fail exacting scrutiny. *See National Org. for Marriage v. McKee,* 723 F.Supp.2d 245, 266 (D.Me. 2010), *aff'd/rev'd on other grounds,* 649 F.3d 34, 45-46 (1st Cir.2011), *cert. denied,* 565 U.S.____, 132 S.Ct. 1635 (2012). The 24 hour-reporting requirements are so great that the government's interest does not

[54] *Stevens* supersedes *Ragsdale v. Turnock,* 841 F.2d 1358, 1364-66 (7th Cir.1988).

reflect the burden on speech. *See Davis,* 554 U.S. at 744 (citing *Buckley,* 424 U.S. at 68). This law is "patently unreasonable" and "severely burdens First Amendment rights[.]" *Citizens for Responsible Gov't State PAC,* 236 F.3d at 1197 (applying strict scrutiny).

NCRL-FIPE rejects a challenge to a 24 hour-reporting requirement by saying *McConnell* upheld one. 524 F.3d at 439 (citing *McConnell,* 540 U.S. at 195-96); A.129. However, while the *McConnell* plaintiffs challenged law with 24 hour reporting, they challenged it for other reasons. *See* 540 U.S. at 190, 195. The same is true of 24/48 hour-reporting for electioneering-communications contracts. The *McConnell* plaintiffs challenged the law for other reasons. *See id.* at 190, 195, 200.[55]

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[55] *Tennant,* which *NCRL-FIPE* binds, upholds 24/48 hour-reporting requirements. However, unlike Wisconsin's 24 hour-reporting requirement, the *Tennant* requirements:

> ●Have high-dollar thresholds more than two weeks before elections, and
>
> ●Have low-dollar thresholds in the two weeks before elections.

See 849 F.Supp.2d at 711-15.

4. Oath for Independent Disbursements

Contrary to A.195, Wisconsin's oath-for-independent-disbursements requirement also fails exacting scrutiny, because the burden does not "reflect the seriousness of the actual burden on First Amendment rights." *Davis,* 544 U.S. at 744 (citing *Buckley,* 424 U.S. at 68). This oath requirement is especially burdensome, given how quickly and frequently political-speech plans arise and change. *See Citizens United,* 130 S.Ct. at 895; *WRTL-II,* 551 U.S. at 462-63; *Shuttlesworth v. City of Birmingham,* 394 U.S. 147, 163 (1969) (Harlan, J., concurring) (ellipsis omitted). The burden is especially great on small committees such as WRTL-SPAC. *Cf. WRTL-II,* 551 U.S. at 477 n.9 (referring to political-committee burdens on small nonprofit corporations (citing *MCFL,* 479 U.S. at 253-55)).

No one who understands political committees should say this is a "minimal" or "simple" burden, as Defendants do. D.Ct.Doc.73.23-24. The complexity of the oaths WRTL-SPAC has submitted, A.491-513; A.641-53, shows that saying each "could take [only] several minutes to

complete" is – to put it politely – an understatement. D.Ct.Doc. 73.23-24; *see* A.529-30.¶¶54-59; A.585.¶¶3-6; 587-89.¶¶20-40.[56]

H. Wisconsin's limit on what organizations spend to solicit contributions for their own political committees fails constitutional scrutiny and is unconstitutional as applied to WRTL and WRTL-SPAC's speech.

Wisconsin's $500 annual limit on what organizations, such as WRTL, may spend to solicit contributions for their own political committees, such as WRTL-SPAC, WS-11.38.1.a.3; WS-11.38.1.b, is like a limit on contributions to them. *See Buckley,* 424 U.S. at 23 n.24. However, WRTL-SPAC engages in only independent spending for political speech, so limits on contributions to WRTL-SPAC are unconstitutional, regardless of the scrutiny level. *WRTL-SPAC,* 664 F.3d at 151-55.

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[56] In the alternative, prior restraints receive strict scrutiny, *e.g., David K. v. Lane,* 839 F.2d 1265, 1276 (7th Cir.1988) ("compelling governmental interest" (citation omitted)), and WRTL-SPAC acknowledges the oath is not a prior restraint under *Samuelson v. LaPorte Community School Corporation,* 528 F.3d 1046, 1051 (7th Cir.2008). Nevertheless, WRTL-SPAC preserves its position that the oath requirement is a prior restraint and is unconstitutional as applied to WRTL-SPAC's speech. *See, e.g., Arizona Right to Life PAC v. Bayless,* 320 F.3d 1002, 1008-09 (9th Cir.2003) ("*ARL*").

Defendants disagree by saying this is a spending limit, not a contribution limit. D.Ct.Doc.73.26. Defendants may have it their way: Spending limits are unconstitutional too, *e.g., Randall,* 548 U.S. at 240-46, other than for foreign nationals, *Bluman,* 800 F.Supp.2d at 288-89, and candidate committees accepting government money. *Buckley,* 424 U.S. at 57 n.65. WRTL is neither.

The district court says Plaintiffs do not explain "how this provision is like a contribution [limit] and why it [is] unconstitutional[.]" A.195. However, as a matter of law, it limits what one person gives to another person. That is what contribution limits do; no explanation is necessary. The limit is unconstitutional under *WRTL-SPAC,* 664 F.3d at 151-55.

The district court also says "[n]either party analyzed a state's ability to limit resources spent on solicitations[.] A.196. But the parties did this in tight page limits, *see* D.Ct.Docs.68-4.27; D.Ct.Doc.73.25-26; D.Ct.Doc.75.13-14, that the district court would not relax. A.220.

I. Much, though not all, of the challenged law is facially unconstitutional.

When a facial challenge is purely a Fifth or Fourteenth Amendment challenge, and thus has no First Amendment component, the challenging party must prove the law is unconstitutionally vague in all its applications. *See United States v. Salerno,* 481 U.S. 739, 745 (1987). However, when law burdens free speech, the challenging party need only meet a lower First Amendment standard for facial unconstitutionality, even when the party also challenges the law as unconstitutionally vague under the Fifth or Fourteenth Amendment. *Id.* (recognizing the substantial-overbreadth doctrine under the First Amendment (citing *Schall v. Martin,* 467 U.S. 253, 269 n.18 (1984))).

Contrary to Defendants' belief, D.Ct.Doc.73.4, in "a facial challenge to the overbreadth and vagueness of a law" burdening free speech, a court asks whether the law "reaches a substantial amount of constitutionally protected conduct." *City of Houston v. Hill,* 482 U.S. 451, 458-59 (1987) (quoting *Hoffman Estates,* 455 U.S. at 494, and citing *Kolender,* 461 U.S. at 358&n.8 (rejecting the dissent's *Salerno*-like burden)); *cf. Humanitarian Law,* 130 S.Ct. at 2718-19 (rejecting a

substantial-overbreadth vagueness analysis when the law clearly proscribes plaintiffs' conduct).[57,58]

In other words, law burdening free speech is facially unconstitutional when it reaches "a substantial amount of protected speech … not only in an absolute sense, but also relative to the [law's] plainly legitimate sweep." *United States v. Williams,* 553 U.S. 285, 292-93 (2008) (citing *Board of Trs. of State Univ. of N.Y. v. Fox,* 492 U.S. 469, 485 (1989); *Broadrick v. Oklahoma,* 413 U.S. 601, 615 (1973)).

Challenging parties must prove challenged law is facially unconstitutional. *McConnell,* 540 U.S. at 207 (citing *Broadrick,* 413 U.S. at 613).

All of the law that is unconstitutional as applied to Plaintiffs' speech – *except* the regulatory attribution and disclaimer requirements and the limit on what organizations spend to solicit contributions for

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[57] Besides, *Buckley* holds law facially vague. 424 U.S. at 41-43, 76-77. If "unconstitutionally vague in all its applications" were the standard when law burdens free speech, then *Buckley* would have come out differently, because the law is *not* unconstitutionally vague as applied to *Buckley* express advocacy. *Id.* at 44.

[58] This is so *pre-* and *post-Humanitarian Law. See Madigan,* manuscript op. at 23.

their own political committees – is also facially unconstitutional. *See, e.g., NCRL-III,* 525 F.3d at 285-86 ("support or oppose"), 289-90 (political-committee definition).

The Supreme Court has never upheld such sweeping regulation of political speech. Thus, Defendants may not simply cite *McConnell* or *Citizens United*, and claim their law is facially constitutional. *See, e.g., id.* at 286.

As in *NCRL-III, id.* at 285, Wisconsin law is full of constitutional flaws.[59] Under such circumstances, a court should embrace a facial holding. "Any other course of decision would prolong the substantial … chilling effect" Wisconsin law causes. *Citizens United,* 130 S.Ct. at 894. "It is not judicial restraint to accept a[] narrow argument just so the Court can avoid another argument with broader implications." *Id.* at 892.

Defendants may assert Plaintiffs have described only their own situation and not others', yet that was all that was in the *Citizens United* record. *See, e.g., id.* at 886-88. For the facial challenge, Citizens

[59] *Supra* Parts VI.D-G.

United offered not facts but a "theory" of facial unconstitutionality. *Citizens United v. FEC,* 530 F.Supp.2d 274, 278 (D.D.C. 2008). In other words, Citizens United offered the law, *see id.,* to meet its burden of proving the law was facially unconstitutional. That did not prevent a facial holding in *Citizens United,* 130 S.Ct. at 892, 894. So if the Supreme Court can enter a facial holding, *id.* at 896-914; *id.* at 919 (Roberts, C.J., concurring), this Court can as well.

VII. Conclusion

No one doubts Wisconsin has the power to regulate some political speech, yet multiple Wisconsin-law provisions are unconstitutionally vague, both as applied and facially. Multiple provisions are overbroad, either as applied, or both as applied and facially. For the foregoing reasons, this Court should hold that the district court should have granted Plaintiffs' PI motion. Under the circumstances,[60] this Court should assign this action to a different district-court judge.

Respectfully submitted,

/s/ Randy Elf

James Bopp, Jr., Ind. No. 2838-84
Randy Elf, New York No. 2863553
JAMES MADISON CENTER FOR FREE SPEECH
1 South Sixth Street
Terre Haute, Ind. 47807
Telephone (812) 232-2434
Facsimile (812) 234-3685
mail@BoppLaw.com

Michael D. Dean,
Wis. No. 1019171
FIRST FREEDOMS FOUNDATION, INC.
10735 West Wisconsin Avenue, Suite 100
Brookfield, Wis. 53005
Telephone (262) 798-8046
Facsimile (262) 798-8045
mike@FirstFreedomsFoundation.org

October 1, 2012

[60] *Supra* Parts I, III.

Form 6. Certificate of Compliance With Type-Volume Limitation, Typeface Requirements, and Type Style Requirements

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because:

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Signature /s/ Randy Elf

Attorney for Plaintiffs-Appellants

Date October 1, 2012

Certificate of Service

I certify that on October 1, 2012, I electronically filed the foregoing **Plaintiffs-Appellants WRTL and WRTL-SPAC's Principal Brief** with the clerk of court using the CM/ECF system, which will notify:

Christopher Blythe	BlytheCP@doj.state.wi.us
Clayton Kawski	KawskiCP@doj.state.wi.us

I also certify that the Lex Group will send the required number of copies to the clerk's office *via* commercial carrier for overnight delivery. *Cf.* FED.R.APP.P.25.a.1, 25.a.2.D, 25.b, 25.c.1.D, 25.c.2, 25.d.1.B (2009); FED.R.APP.P.31.b (2009); 7TH CIR.R.25.a, 31.b.[61]

/s/ Randy Elf
Randy Elf

October 1, 2012

[61] *Available at* http://www.ca7.uscourts.gov/Rules/rules.htm.

Certificate Regarding Short and Joint Appendices

I certify that the short and joint appendices have all the materials that Circuit Rule 30.a-b requires. *Cf.* 7TH CIR. R. 30.d.

/s/ Randy Elf
Randy Elf

October 1, 2012

Plaintiffs-Appellants WRTL and WRTL-SPAC's

Short Appendix – Volume 1 of 1:

Pages 1 (cover page) to 203

Table of Contents for Short and Joint Appendices

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[1] There were no witnesses or exhibits. *Cf.* 7TH CIR.R.30.f (citing 7TH CIR.R.10.e).

[2] There were no witnesses or exhibits. *Cf. id.*

United States Constitution, Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

United States Constitution, Amendment XIV, clause 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privilege or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

CERTIFICATE

State of Wisconsin)
)
Government Accountability Board)

I, Kevin J. Kennedy, Director and General Counsel of the Government Accountability Board and custodian of the official records of the agency, do hereby certify that the annexed rule, creating GAB 1.91, Wis. Adm. Code, relating to organizations making independent disbursements, was duly approved and adopted by this Board on May 10, 2010.

I further certify that this copy has been compared by me with the original on file in this board and that the same is a true copy thereof and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Government Accountability Board at 212 E. Washington Ave., in the City of Madison, on

May 10, 2010.

Kevin J. Kennedy
Director and General Counsel
Government Accountability Board

NOTICE OF ORDER OF THE GOVERNMENT ACCOUNTABILITY BOARD

The Wisconsin Government Accountability Board proposes an order to adopt an emergency rule to create s. GAB 1.91, Wis. Adm. Code, relating to organizations making independent disbursements.

STATEMENT OF EMERGENCY FINDING:

The Government Accountability Board creates s. GAB 1.91, Wis. Adm. Code, relating to organizations making independent disbursements. The rule enumerates registration, reporting, and disclaimer requirements of provisions of ch. 11, Stats., which apply to organizations receiving contributions for independent disbursements or making independent disbursements.

Pursuant to §227.24, Stats., the Government Accountability Board finds an emergency exists as a result of the United States Supreme Court decision *Citizens United v. FEC*, 558 U.S. ___, (No. 08-205)(January 21, 2010). Within the context of ch. 11, Stats, the rule provides direction to organizations receiving contributions for independent disbursements or making independent disbursements. Comporting with *Citizens United,* this emergency rule order does not treat persons making independent disbursements as full political action committees or individuals under s. 11.05, Stats., for the purposes of registration and reporting. With respect to contributions or in-kind contributions received, this emergency rule order requires organizations to disclose only donations "made for" political purposes, but not donations received for other purposes.

The Board adopts the legislature's policy findings of s. 11.001, Stats., emphasizing that one of the most important sources of information to voters about candidates is available through the campaign finance reporting system. The Board further finds that it is necessary to codify registration, reporting and disclaimer requirements for organizations receiving contributions for independent disbursements or making independent disbursements so that the campaign finance information is available to voters. The rule must be adopted immediately to ensure the public peace and welfare with respect to the administration of current and future elections.

ANALYSIS PREPARED BY GOVERNMENT ACCOUNTABILITY BOARD:

1. Statutes Interpreted: ss. 11.01(4) and (18m), 11.05, 11.055, 11.06, 11.09, 11.10, 11.12, 11.14, 11.16, 11.19, 11.20, 11.21(16), 11.30, 11.38, 11.513, Stats.

2. Statutory Authority: ss. 5.05(1)(f) and 227.11(2)(a), Stats.

3. Explanation of agency authority: Express rule-making authority to interpret the provisions of statutes the Board enforces or administers is conferred on it pursuant to s. 227.11(2)(a), Stats. In addition, s. 5.05(1)(f), Stats., provides that the Board may promulgate rules under ch. 227, Stats., for the purpose of interpreting or

implementing the laws regulating the conduct of elections or election campaigns or ensuring their proper administration.

In *Citizens United v. FEC*, 558 U.S. ___, (No. 08-205)(January 21, 2010), the United States Supreme Court greatly expanded the rights of organizations to engage in independent expenditures and strengthened the ability of the government to require disclosure and disclaimer of the independent expenditures. Pursuant to s. 5.05(1), the Board has the responsibility for the administration of campaign finance statutes in ch. 11, Stats. Rules promulgated by the Board will ensure the proper administration of the campaign finance statutes and properly address the application of *Citizens United v. FEC*.

4. Related statute(s) or rule(s): ch. 11, Stats., and ch. GAB 1, Wis. Adm. Code.

5. Plain language analysis: Within the context of ch. 11, Stats, the proposed order will provide direction to organizations receiving contributions for independent disbursements or making independent disbursements following the U.S. Supreme Court decision in *Citizens United v. FEC*, 558 U.S. ___, (No. 08-205)(January 21, 2010). The proposed rule enumerates registration, reporting, and disclaimer requirements of provisions of ch. 11, Stats., which apply to organizations receiving contributions or making independent disbursements. Comporting with *Citizens United,* the proposed rule does not treat persons making independent disbursements as full political action committees or individuals under s. 11.05, Stats., for the purposes of registration and reporting. With respect to contributions or in-kind contributions received, this proposed rule requires organizations to disclose only donations "made for" political purposes, but not donations received for other purposes.

6. Summary of, and comparison with, existing or proposed federal regulations: At the federal level, the FEC provides rules at 11 CFR 109.10, which regulate persons who are not a committee and make independent expenditures. An independent expenditure statement and reports quarterly are required for any person making independent expenditures in excess of an aggregate $250.00 in a calendar year. If a person makes an independent expenditure of $10,000.00 or more, an independent expenditure statement and report must be filed within 48 hours of the expenditure. Any person making an independent expenditure of $1,000.00 or more within 20 days of an election must file an independent statement and report within 24 hours of the expenditure. The independent expenditure statement must include the identity of the person making the expenditure, any contributions received in excess of $200.00, and the candidate benefitted by the expenditure. In addition, a disclaimer is required for any communication resulting from an independent expenditure.

7. Comparison with rules in adjacent states:

Section 5/9-1.5, Ill. Adm. Code, defines "expenditure" generally and to include an electioneering communication regardless of whether the communication is made in concert or cooperation with, or at the request, suggestion or knowledge of a candidate, a candidate's authorized local political committee, a State political committee, or any of their agents. Sections 5/9-1.7 and 1.8, Ill. Adm. Code, define local and State political committees to include a candidate, individual, trust, partnership, committee, association, corporation, or any other organization or group of persons which accept contributions or make expenditures on behalf of or in opposition to a candidate and exceeding an aggregate of $3,000.00 in any 12 month period. Persons making independent expenditures in Illinois are by definition committees and subject to substantially similar registration, reporting, and disclaimer requirements as committees in Wisconsin.

Chapter 351—4.27 of the Iowa Administrative Code sets forth requirements for registration and reporting of independent expenditures and it applies to any person, other than a candidate or registered committee, that makes one or more independent expenditures in excess of $100.00 in the aggregate. 351—4.27, Iowa Adm. Code. A person subject to filing an independent expenditure statement must identify the person making the expense and for whom it benefits. 351—4.27(2), Iowa Adm. Code. There is no requirement to file a statement of organization registering a committee or public disclosure reports. 351—4.27(7), Iowa Adm. Code. A disclaimer on communications is required. 351—4.27(6), Iowa Adm. Code.

Michigan statutes regulate independent expenditures, but the administrative rules do not specifically address them. Michigan Statutes s. 169.208 provides a definition for an "independent committee," which upon exceeding $500.00 in contributions or expenditures is subject to substantially similar registration, reporting, and disclaimer requirements as committees in Wisconsin.

Minnesota statutes regulate independent expenditures, but the administrative rules do not specifically address them.

8. Summary of factual data and analytical methodologies: Adoption of the rule was predicated on state statutes and federal case law.

9. Analysis and supporting documentation used to determine effect on small businesses: The rule may have a minimal effect on small businesses that will participate in receiving contributions or making independent disbursements. The economic impact of this effect is minor. Businesses may have a filing fee of $100.00, if the amount of aggregate independent disbursements made in any year exceeds $2,500.00.

10. Effect on small business: The creation of this rule may have a minimal effect on small businesses as explained above.

11. Agency contact person: Shane W. Falk, Staff Counsel, Government Accountability Board, 212 E. Washington Avenue, 3rd Floor, P.O. Box 7984, Madison, Wisconsin 53707-7984; Phone 266-2094; Shane.Falk@wisconsin.gov

FISCAL ESTIMATE: The creation of this rule has minimal fiscal effect. There may be additional registrants filing reports with the Board and potentially additional enforcement actions that may require staff action. The extent of this potential fiscal impact is undetermined.

INITIAL REGULATORY FLEXIBILITY ANALYSIS: The creation of this rule does not affect the normal operations of business.

TEXT OF PROPOSED RULE:

Pursuant to the authority vested in the State of Wisconsin Government Accountability Board by ss. 5.05(1)(f), 227.11(2)(a) and 227.24, Stats., the Government Accountability Board hereby adopts an emergency rule creating GAB 1.91, Wis. Adm. Code, interpreting ch. 11, Stats., as follows:

SECTION 1. GAB 1.91 is created to read:

1.91 Organizations Making Independent Disbursements

(1) In this section:

(a) "Contribution" has the meaning given in s. 11.01(6), Stats.

(b) "Disbursement" has the meaning given in s. 11.01(7), Stats.

(c) "Filing officer" has the meaning given in s. 11.01(8), Stats.

(d) "Incurred obligation" has the meaning given in s. 11.01(11), Stats.

(e) "Person" includes the meaning given in s. 990.01(26), Stats.

(f) "Organization" means any person other than an individual, committee, or political group subject to registration under s. 11.23, Stats.

(g) "Independent" means the absence of acting in cooperation or consultation with any candidate or authorized committee of a candidate who is supported or opposed, and is not made in concert with, or at the request or suggestion of, any candidate or any agent or authorized committee of a candidate who is supported or opposed.

(h) "Designated depository account" means a depository account specifically established by an organization to receive contributions and from which to make independent disbursements.

(2) A corporation, or association organized under ch. 185 or 193, Stats., is a person and qualifies as an organization that is not prohibited by s. 11.38(1)(a)1., Stats., from making independent disbursements until such time as a court having jurisdiction in the State of Wisconsin rules that a corporation, or association organized under ch. 185 or 193, Stats., may constitutionally be restricted from making an independent disbursement.

(3) Upon accepting contributions made for, incurring obligations for, or making an independent disbursement exceeding $25 in aggregate during a calendar year, an organization shall establish a designated depository account in the name of the organization. Any contributions to and all disbursements of the organization shall be deposited in and disbursed from this designated depository account. The organization shall select a treasurer for the designated depository account and no disbursement may be made or obligation incurred by or on behalf of an organization without the authorization of the treasurer or designated agents. The organization shall register with the board and comply with s. 11.09, Stats., when applicable.

(4) The organization shall file a registration statement with the appropriate filing officer and it shall include, where applicable:

(a) The name, street address, and mailing address of the organization.

(b) The name and mailing address of the treasurer for the designated depository account of the organization and any other custodian of books and accounts for the designated depository account.

(c) The name, mailing address, and position of other principal officers of the organization, including officers and members of the finance committee, if any.

(d) The name, street address, mailing address, and account number of the designated depository account.

(e) The registration statement shall be signed by the treasurer for the designated depository account of the organization and shall contain a certification that all information contained in the registration statement is true, correct and complete.

(5) The designated depository account for an organization required to register with the Board shall annually pay a filing fee of $100.00 to the Board as provided in s. 11.055, Stats.

(6) The organization shall comply with s. 11.05(5), Stats., and notify the appropriate filing officer within 10 days of any change in information previously submitted in a statement of registration.

(7) An organization making independent disbursements shall file the oath for independent disbursements required by s. 11.06(7), Stats.

(8) An organization receiving contributions for independent disbursements or making independent disbursements shall file periodic reports as provided ss. 11.06, 11.12, 11.19, 11.20 and 11.21(16), Stats., and include all contributions received for independent disbursements, incurred obligations for independent disbursements, and independent disbursements made. When applicable, an organization shall also file periodic reports as provided in s. 11.513, Stats.

(9) An organization making independent disbursements shall comply with the requirements of §11.30(1); (2)(a) and (d), Wis. Stats., and include an attribution identifying the organization paying for any communication, arising out of independent disbursements on behalf of or in opposition to candidates, with the following words: "Paid for by" followed by the name of the organization and the name of the treasurer or other authorized agent of the organization followed by "Not authorized by any candidate or candidate's agent or committee."

This rule shall take effect upon its publication in the official state newspaper, the Wisconsin State Journal, pursuant to s. 227.24, Stats.

Dated this 10th day of May, 2010.

Kevin J. Kennedy
Director and General Counsel
Government Accountability Board

West's Wisconsin Statutes Annotated
Elections (Ch. 5 to 12)
➡ Chapter 11. Campaign Financing

➡11.001. Declaration of policy

(1) The legislature finds and declares that our democratic system of government can be maintained only if the electorate is informed. It further finds that excessive spending on campaigns for public office jeopardizes the integrity of elections. It is desirable to encourage the broadest possible participation in financing campaigns by all citizens of the state, and to enable candidates to have an equal opportunity to present their programs to the voters. One of the most important sources of information to the voters is available through the campaign finance reporting system. Campaign reports provide information which aids the public in fully understanding the public positions taken by a candidate or political organization. When the true source of support or extent of support is not fully disclosed, or when a candidate becomes overly dependent upon large private contributors, the democratic process is subjected to a potential corrupting influence. The legislature therefore finds that the state has a compelling interest in designing a system for fully disclosing contributions and disbursements made on behalf of every candidate for public office, and in placing reasonable limitations on such activities. Such a system must make readily available to the voters complete information as to who is supporting or opposing which candidate or cause and to what extent, whether directly or indirectly. This chapter is intended to serve the public purpose of stimulating vigorous campaigns on a fair and equal basis and to provide for a better informed electorate.

(2) This chapter is also intended to ensure fair and impartial elections by precluding officeholders from utilizing the perquisites of office at public expense in order to gain an advantage over nonincumbent candidates who have no perquisites available to them.

(2m) Repealed by 2005 Act 177, § 7, eff. April 6, 2006.

(3) This chapter is declared to be enacted pursuant to the power of the state to protect the integrity of the elective process and to assure the maintenance of free government.

➡11.002. Construction

This chapter shall be construed to impose the least possible restraint on persons or organizations whose activities do not directly affect the elective process, consistent with the right of the public to have a full, complete and readily understandable accounting of those activities intended to influence elections.

➡11.01. Definitions

As used in this chapter:

(1) "Candidate" means every person for whom it is contemplated or desired that votes be cast at any election held within this state, other than an election for national office, whether or not the person is elected or nominated, and who either tacitly or expressly consents to be so considered. A person does not cease to be a candidate for purposes of compliance with this chapter or ch. 12 after the date of an election and no person is released from any requirement or liability otherwise imposed under this chapter or ch. 12 by virtue of the passing of the date of an election.

(2) "Charitable organization" means any organization described in section 170(c)(2) of the internal revenue code, [FN1] and also includes the United States, any state, territory or possession, the District of Columbia and any political subdivision thereof, when a gift is made exclusively for public purposes; but does not include any private organization conducting activities for political purposes.

(3) "Clearly identified", when used with reference to a communication in support of or in opposition to a candidate, means:

(a) The candidate's name appears;

(b) A photograph or drawing of the candidate appears; or

(c) The identity of the candidate is apparent by unambiguous reference.

(4) "Committee" or "political committee" means any person other than an individual and any combination of 2 or more persons, permanent or temporary, which makes or accepts contributions or makes disbursements, whether or not engaged in activities which are exclusively political, except that a "committee" does not include a political "group" under this chapter.

(5) "Communications media" means newspapers, periodicals, commercial billboards and radio and television stations, including community antenna television stations.

(5m) "Conduit" means an individual who or an organization which receives a contribution of money and transfers the contribution to another individual or organization without exercising discretion as to the amount which is transferred and the individual to whom or organization to which the transfer is made.

(6)(a) Except as provided in par. (b), "contribution" means any of the following:

1. A gift, subscription, loan, advance, or deposit of money or anything of value, except a loan of money by a commercial lending institution made by the institution in accordance with applicable laws and regulations in the ordinary course of business, made for political purposes. In this subdivision "anything of value" means a thing of merchantable value.

2. A transfer of personalty, including but not limited to campaign materials and supplies, valued at the replacement cost at the time of transfer.

3. A contract, promise or agreement, if legally enforceable, to make a gift, subscription, loan, advance, or deposit of money or anything of value, except a loan of money by a commercial lending institution in accordance with applicable laws and regulations in the ordinary course of business, for a political purpose.

4. A transfer of funds between candidates, committees, individuals or groups subject to a filing requirement under this chapter.

5. The purchase of a ticket for a meal, rally or other fund-raising event for a purpose under subd. 1., whether or not actually utilized.

6. The distribution of any publication or advertising matter for any purpose under subd. 1 other than by a registrant under s. 11.05, or as provided in s. 11.29.

7. A gift, subscription, loan, advance, or deposit of money or anything of value, except a loan of money by a commercial lending institution made by the institution in accordance with applicable laws and regulations in the ordinary course of business, or a contract, promise or agreement, if legally enforceable, to make the same, made by a committee for a purpose authorized under s. 11.25(2)(b), or by an individual for a purpose authorized under s. 11.25(2)(b) if deposited in a campaign depository account.

(b) "Contribution" does not include any of the following:

1. Services for a political purpose by an individual on behalf of a registrant under s. 11.05 who is not compensated specifically for the services.

2. The use of real or personal property and the cost of invitations, food, and beverages, voluntarily provided by an individual to a candidate in rendering voluntary personal services on the individual's residential premises for a purpose under par. (a)1. if no funds are raised with the knowledge of the host.

3. Any unreimbursed payment for travel expenses made by an individual who on his or her own behalf volunteers his or her personal services for political purposes.

4. The costs of preparation and transmission of personal correspondence, provided that the correspondence is not reproduced by machine for distribution.

5. Compensation or fringe benefits provided as a result of employment by an employer to regular employees or pensioners who are not compensated specifically for services performed for a political purpose, and not in excess of that provided to other regular employees or pensioners of like status.

6. The reuse of surplus materials or utilization of unused surplus materials not exceeding $400 in value at the time of original receipt, in the aggregate, acquired in connection with a previous campaign for or against the same candidate, candidates, party or referendum in connection with which the materials are utilized, if utilized by the same registrant previously acquiring the materials and previously reported by that registrant as a contribution under s. 11.06.

7. A gift, subscription, loan, advance, or deposit of anything of value received by a committee or group not organized exclusively for political purposes that the group or committee does not utilize it for political purposes.

(6L) "Corporation" includes a limited liability company.

(7)(a) Except as provided in par. (b), "disbursement" means any of the following:

1. A purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, except a loan of money by a commercial lending institution made by the institution in accordance with applicable laws and regulations in the ordinary course of business, made for political purposes. In this subdivision, "anything of value" means a thing of merchantable value.

2. A transfer of personalty, including but not limited to campaign materials and supplies, valued at the replacement cost at the time of transfer.

3. A contract, promise, or agreement, if legally enforceable, to make a purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value, except a loan of money by a commercial lending institution in accordance with applicable laws and regulations in the ordinary course of business, for a political purpose.

4. An expenditure authorized under s. 11.25(2)(b) made from a campaign depository account.

(b) "Disbursement" does not include any of the following:

1. The use of real or personal property and the cost of invitations, food, and beverages, voluntarily provided by an individual to a candidate in rendering voluntary personal services on the individual's residential premises for a purpose under par. (a)1. if no funds are raised with the knowledge of the host.

2. Any unreimbursed payment for travel expenses made by an individual who on his or her own behalf volunteers his or her personal services for political purposes.

3. The costs of preparation and transmission of personal correspondence, provided that the correspondence is not reproduced by machine for distribution.

4. Compensation or fringe benefits provided as a result of employment by an employer to regular employees or pensioners who are not compensated specifically for services performed for a political purpose, and not in excess of that provided to other regular employees or pensioners of like status.

5. The reuse of surplus materials or utilization of unused surplus materials not exceeding $400 in value at the time of original receipt, in the aggregate, acquired in connection with a previous campaign for or against the same candidate, candidates, party or referendum in connection with which the materials are utilized, if utilized by the same registrant previously acquiring the materials and previously reported by that registrant as a disbursement under s. 11.06.

(8) “Filing officer” means the official or agency determined in accordance with s. 11.02.

(9) “Filing requirement” means the continuing duty to file reports of contributions, disbursements or incurred obligations with the appropriate filing officer.

(10) “Group” or “political group” means any person other than an individual and any combination of 2 or more persons, permanent or temporary, which makes or accepts contributions or makes disbursements for the purpose of influencing the outcome of any referendum whether or not engaged in activities which are exclusively political.

(11) “Incurred obligation” means every express obligation to make any contribution or disbursement including every loan, guarantee of a loan or other obligation or payment for any goods, or for any services which have been performed or are to be performed in the future, incurred by a candidate, committee, individual or group for political purposes.

(12) “Intentionally” has the meaning given under s. 939.23.

(12s) “Legislative campaign committee” means a committee which does not file an

oath under s. 11.06(7) organized in either house of the legislature to support candidates of a political party for legislative office.

(15) "Personal campaign committee" means a committee which is formed or operating for the purpose of influencing the election or reelection of a candidate, which acts with the cooperation of or upon consultation with the candidate or the candidate's agent or which is operating in concert with or pursuant to the authorization, request or suggestion of the candidate or the candidate's agent.

(16) An act is for "political purposes" when it is done for the purpose of influencing the election or nomination for election of any individual to state or local office, for the purpose of influencing the recall from or retention in office of an individual holding a state or local office, for the purpose of payment of expenses incurred as a result of a recount at an election, or for the purpose of influencing a particular vote at a referendum. In the case of a candidate, or a committee or group which is organized primarily for the purpose of influencing the election or nomination for election of any individual to state or local office, for the purpose of influencing the recall from or retention in office of an individual holding a state or local office, or for the purpose of influencing a particular vote at a referendum, all administrative and overhead expenses for the maintenance of an office or staff which are used principally for any such purpose are deemed to be for a political purpose.

(a) Acts which are for "political purposes" include but are not limited to:

1. The making of a communication which expressly advocates the election, defeat, recall or retention of a clearly identified candidate or a particular vote at a referendum.

2. The conduct of or attempting to influence an endorsement or nomination to be made at a convention of political party members or supporters concerning, in whole or in part, any campaign for state or local office.

(b) A "political purpose" does not include expenditures made for the purpose of supporting or defending a person who is being investigated for, charged with or convicted of a criminal violation of state or federal law, or an agent or dependent of such a person.

(17g) "Public access channel" means a PEG channel , as defined in s. 66.0420(2)(s), that is used for public access purposes, but does not include a PEG channel that is used for governmental or educational purposes.

(17r) "Public access channel operator" means a person designated by a city, village, or town as responsible for the operation of a public access channel.

(18m) "Registrant" means an individual or organization registered under s. 11.05 with a filing officer.

(19) "Salary" means the highest salary to which any candidate for a particular office would, if elected, be entitled during the first year of incumbency.

[FN1] 26 U.S.C.A. § 170(c)(2).

➡11.02. Determination of filing officer

Except where the filing of duplicate reports or statements is specifically required by law, each person, committee or group subject to s. 11.05 shall have one filing officer. Such officer shall be determined as follows:

(1) The "filing officer" for each candidate for state office and for each committee which or individual who is acting in support of or in opposition to any candidate for state office is the board.

(2) The "filing officer" for each committee which or individual who is acting in support of or in opposition to any candidates for state and local offices is the board.

(3) Except as provided in sub. (3e), the "filing officer" for each candidate for local office and for each committee which or individual who is acting in support of or in opposition to any candidate for local office, but not any candidate for state office, is the clerk of the most populous jurisdiction for which any candidate who is supported or opposed seeks office.

(3e) The "filing officer" for each candidate for municipal judge elected under s. 755.01(4) and for each committee which or individual who is acting in support of or in opposition to such a candidate, but not any candidate for state office, is the county clerk or board of election commissioners of the county having the largest portion of the population in the jurisdiction served by the judge.

(3m) The "filing officer" for an individual who or committee which supports or opposes an effort to circulate and file a petition to recall an individual who holds an office is the filing officer for candidates for that office.

(4) The "filing officer" for each group which or individual who is acting in support of or in opposition to any statewide referendum is the board.

(5) The "filing officer" for each group which or individual who is acting in support of or in opposition to any statewide and local referenda is the board.

(6) The "filing officer" for each group which or individual who is acting in support of or in opposition to any local referendum, but not any statewide referendum, is the clerk of the most populous jurisdiction in which any referendum being supported or opposed is conducted.

(7) If the jurisdiction under sub. (3) or (6) is a school district, the appropriate clerk is the school district clerk.

➡11.03. Nonapplicability

(1) Elections for the positions of presidential elector and convention delegate are not subject to ss. 11.05 to 11.23 and 11.26 to 11.29.

(2) Except as otherwise expressly provided, this chapter does not apply to any candidate for national office acting exclusively in support of the candidate's own campaign, with respect to such activities only.

(3) Except as otherwise expressly provided, this chapter does not apply to any individual or committee acting exclusively in support of or in opposition to any of the following:

(a) Candidates for national office.

(b) Other individuals and committees exclusively supporting or opposing candidates for national office.

➡11.05. Registration of political committees, groups and individuals

(1) Committees and groups. Except as provided in s. 9.10(2)(d), every committee other than a personal campaign committee which makes or accepts contributions, incurs obligations, or makes disbursements in a calendar year in an aggregate amount in excess of $25, and every political group subject to registration under s. 11.23 shall file a statement with the appropriate filing officer giving the information required by sub. (3). In the case of any committee other than a personal campaign committee, the statement shall be filed by the treasurer. A personal campaign committee shall register under sub. (2g) or (2r).

(2) Individuals. Except as provided in s. 9.10(2)(d), every individual, other than a candidate or agent of a candidate, who accepts contributions, incurs obligations, or makes disbursements in a calendar year in an aggregate amount in excess of $25 to support or oppose the election or nomination of a candidate at an election and every individual subject to registration under s. 11.23 shall file a statement with the appropriate filing officer giving the information required by sub. (3). An individual who guarantees a loan on which an individual, committee or group

subject to a registration requirement defaults is not subject to registration under this subsection solely as a result of such default.

(2g) Candidates and personal campaign committees. Every candidate as defined in s. 11.01(1) shall file a registration statement with the appropriate filing officer giving the information required by sub. (3). If a candidate appoints another person as campaign treasurer the candidate's registration statement shall be cosigned by the candidate and the candidate's appointed treasurer. A candidate who receives no contributions and makes no disbursements shall file such statement as provided in s. 11.10(1) but need not appoint a campaign treasurer or designate a campaign depository account until the first contribution is received or disbursement made.

(2r) General reporting exemptions. Any committee , group, or individual, other than a committee or individual required to file an oath under s. 11.06(7), who or which does not anticipate accepting contributions, making disbursements or incurring obligations in an aggregate amount in excess of $1,000 in a calendar year and does not anticipate accepting any contribution or contributions from a single source, other than contributions made by a candidate to his or her own campaign, exceeding $100 in that year, or exceeding $750 in that year for a group or individual subject to registration under s. 11.23, may indicate on its registration statement that the committee , group, or individual will not accept contributions, incur obligations or make disbursements in the aggregate in excess of $1,000 in any calendar year and will not accept any contribution or contributions from a single source, other than contributions made by a candidate to his or her own campaign, exceeding $100 in that year, or exceeding $750 in that year for a group or individual subject to registration under s. 11.23. Any registrant making such an indication is not subject to any filing requirement if the statement is true. The registrant need not file a termination report. A registrant not making such an indication on a registration statement is subject to a filing requirement. The indication may be revoked and the registrant is then subject to a filing requirement as of the date of revocation, or the date that aggregate contributions, disbursements or obligations for the calendar year exceed $1,000, or the date on which the registrant accepts any contribution or contributions exceeding $100 from a single source, or exceeding $750 from a single source for a group or individual subject to registration under s. 11.23, other than contributions made by a candidate to his or her own campaign, during that year, whichever is earlier. If the revocation is not timely, the registrant violates s. 11.27(1).

(3) Required information. The statement of registration shall include, where applicable:

(a) The name and mailing address of the committee, group or individual.

(c) In the case of a committee, a statement as to whether the committee is a personal campaign committee, a political party committee, a legislative campaign committee, a support committee or a special interest committee.

(e) The name and mailing address of the campaign treasurer and any other custodian of books and accounts. Unless otherwise directed by the registrant on the registration form and except as otherwise provided in this chapter or any rule of the board, all mailings which are required by law or by rule of the board shall be sent to the treasurer at the treasurer's address indicated upon the form.

(f) The name, mailing address, and position of other principal officers, including officers and members of the finance committee, if any.

(h) The nature of any referendum which is supported or opposed.

(L) The name and address of the campaign depository account and of any other institution where funds are kept and the account number of the depository account and of each additional account and safety deposit box used.

(n) In the case of a labor organization, separate segregated fund under s. 11.38(1)(a)2 or conduit established by a labor organization, a statement as to whether the organization is incorporated, and if so, the date of incorporation and whether or not such incorporation is under ch. 181.

(o) In the case of a legislative campaign committee, a statement signed by the leader of the party in the house for which the committee is established attesting to the fact that the committee is the only authorized legislative campaign committee for that party in that house.

(p) In the case of a support committee, a statement signed by the individual on whose behalf the committee intends to operate affirming that the committee is the only committee authorized to operate on his or her behalf, unless the committee files a statement under s. 11.06(7).

(3m) Vacancies in nomination. Any personal campaign committee of an independent candidate for partisan office or a candidate for nonpartisan county or municipal office may file with its registration statement a list of the members of the committee, in addition to those specified in sub. (3)(e) and (f), who shall be recognized by the official or agency with whom the candidate's nomination papers are filed for the purpose of filling a vacancy in nomination in the event of the candidate's death. The board shall provide a place on the statement for such designations.

(4) Referendum registration. Every committee under this chapter which in

addition operates as a political group must register under this section as a group. Every group which in addition operates as a political committee must register under this section as a committee. Except in the case of a personal campaign committee, an organization which operates as both a committee and a group and which has the same filing officer for both operations may file a single registration statement under this section.

(5) Change of information. Any change in information previously submitted in a statement of registration shall be reported by the registrant to the appropriate filing officer within 10 days following the change. This period does not apply in case of change of an indication made under sub. (2r), which shall be reported no later than the date that a registrant is subject to a filing requirement under sub. (2r). Any such change may be reported only by the individual or by the officer who has succeeded to the position of an individual who signed the original statement; but in the case of a personal campaign committee, a candidate or campaign treasurer may report a change in the statement except as provided in s. 11.10(2), and in the case of any other committee or group, the chief executive officer or treasurer indicated on the statement may report a change. If a preexisting support committee is adopted by a candidate as his or her personal campaign committee, the candidate shall file an amendment to the committee's statement under this subsection indicating that all information contained in the statement is true, correct and complete.

(5m) Certification. Every statement and every change made in a statement filed under this section shall contain a certification signed by the individual filing the statement that all information contained in the statement is true, correct and complete.

(6) Contribution or disbursement prohibited. Except as provided in subs. (7) and (13), no person, committee or group subject to a registration requirement may make any contribution or disbursement from property or funds received prior to the date of registration under this section.

(7) Change in status of new registrant. Notwithstanding sub. (6), any individual or organization who or which has received property or funds which were not intended for political purposes in connection with an election for state or local office at the time of receipt may make contributions or disbursements from such property or funds in connection with an election for state or local office if the individual or organization complies with applicable provisions of sub. (1), (2) or (2g) as soon as such intent changes. For purposes of s. 11.06(1), all property or funds which are in a registrant's possession on the date of registration under this section shall be treated as received on the date that such intent changes so that the property or funds are to be used for political purposes in connection with an election for state or local office.

(8) Certain intra-registrant transfers exempt. If an organization which is not organized exclusively for political purposes makes a contribution from its own property or funds to a committee or group, affiliated with the organization, which is organized exclusively for political purposes, and the contributing organization receives no contribution from a single source in excess of $20 in the aggregate during any calendar year, and it makes no contributions or disbursements and incurs no obligations other than to make the transactions specified in this subsection, then no registration requirement applies to the contributing organization.

(9) Conduits. (a) For purposes of this chapter, every individual who and every committee or group which deposits a contribution in an account at a financial institution as defined in s. 705.01(3) is considered to receive and accept the contribution.

(b) An individual who or a committee or group which receives a contribution of money and transfers the contribution to another individual, committee or group while acting as a conduit is not subject to registration under this section unless the individual, committee or group transfers the contribution to a candidate or a personal campaign, legislative campaign, political party or support committee.

(10) Certain activity by spouses exempt. For purposes of compliance with the registration requirements of this section a husband and wife acting jointly for political purposes shall be considered an "individual" rather than a "committee".

(11) Exemption for indirect political activity. If any individual makes only those disbursements and incurs only those obligations which are exempted from reporting under s. 11.06(2), or if any committee or group makes no contributions, and makes only those disbursements and incurs only those obligations which are exempted from reporting under s. 11.06(2), then no registration requirement under this section applies to that individual, committee or group.

(12) Time of registration; acceptance of unlawful contributions. (a) Except as authorized under sub. (13), a candidate shall comply with sub. (2g) no later than the time that he or she becomes a candidate as defined in s. 11.01. Except as authorized in sub. (13), no candidate or agent of a candidate may accept any contribution or contributions at any time when the candidate is not registered under this section.

(b) Except as authorized under sub. (13), a committee, group or individual that becomes subject to a registration requirement under sub. (1) or (2), other than a candidate or agent of a candidate, shall comply with sub. (1) or (2) no later than the 5th business day commencing after receipt of the first contribution by the

committee, group or individual exceeding the amount specified under sub. (1) or (2) or s. 11.23(1), and before making any disbursement exceeding that amount. No committee or individual supporting or opposing the election or nomination of a candidate at an election, other than a candidate or agent of a candidate, may accept any contribution or contributions exceeding $25, and no group or individual subject to registration under s. 11.23 may accept any contribution or contributions exceeding $750, in the aggregate during a calendar year at any time when the committee, group or individual is not registered under this section except within the initial 5-day period authorized by this paragraph.

(13) Bank account and postal box; exemption. An individual, committee or group does not violate this section by accepting a contribution and making a disbursement in the amount required to rent a postal box, or in the minimum amount required by a bank or trust company to open a checking account, prior to the time of registration, if the disbursement is properly reported on the first report submitted under s. 11.20 after the date that the individual, committee or group is registered, whenever a reporting requirement applies to the registrant.

➡11.04. Registration and voting drives

Except as provided in s. 11.25(2)(b), ss. 11.05 to 11.23 and 11.26 do not apply to nonpartisan campaigns to increase voter registration or participation at any election that are not directed at supporting or opposing any specific candidate, political party, or referendum.

➡11.06. Financial report information; application; funding procedure

(1) Contents of report. Except as provided in subs. (2), (3) and (3m) and ss. 11.05(2r) and 11.19(2), each registrant under s. 11.05 shall make full reports, upon a form prescribed by the board and signed by the appropriate individual under sub. (5), of all contributions received, contributions or disbursements made, and obligations incurred. Each report shall contain the following information, covering the period since the last date covered on the previous report, unless otherwise provided:

(a) An itemized statement giving the date, full name and street address of each contributor who has made a contribution in excess of $20, or whose contribution if $20 or less aggregates more than $20 for the calendar year, together with the amount of the contribution and the cumulative total contributions made by that contributor for the calendar year.

(b) The occupation and name and address of the principal place of employment, if any, of each individual contributor whose cumulative contributions for the calendar year are in excess of $100.

(c) The name and address of each registrant from which a transfer of funds was received or to which a transfer of funds was made, together with the date and amount of such transfer, and the cumulative total for the calendar year.

(d) An itemized statement of other income in excess of $20, including interest, returns on investments, rebates and refunds received.

(e) An itemized statement of contributions over $20 from a single source donated to a charitable organization or to the common school fund, with the full name and mailing address of the donee.

(f) An itemized statement of each loan of money made to the registrant for a political purpose in an aggregate amount or value in excess of $20, together with the full name and mailing address of the lender; a statement of whether the lender is a commercial lending institution; the date and amount of the loan; the full name and mailing address of each guarantor, if any; the original amount guaranteed by each guarantor; and the balance of the amount guaranteed by each guarantor at the end of the reporting period.

(g) An itemized statement of every disbursement exceeding $20 in amount or value, together with the name and address of the person to whom the disbursement was made, and the date and specific purpose for which the disbursement was made.

(h) An itemized statement of every obligation exceeding $20 in amount or value, together with the name of the person or business with whom the obligation was incurred, and the date and the specific purpose for which each such obligation was incurred.

(i) A statement of totals during the reporting period of contributions received and disbursements made, including transfers made to and received from other registrants, other income, loans, and contributions donated as provided in par. (e).

(j) In the case of a committee or individual filing an oath under sub. (7), a separate schedule showing for each disbursement which is made independently of a candidate, other than a contribution made to that candidate, the name of the candidate or candidates on whose behalf or in opposition to whom the disbursement is made, indicating whether the purpose is support or opposition.

(jm) A copy of any separate schedule prepared or received pursuant to an escrow agreement under s. 11.16(5). A candidate or personal campaign committee receiving contributions under such an agreement and attaching a separate schedule under this paragraph may indicate the percentage of the total

contributions received, disbursements made without itemization, except that amounts received from any contributor pursuant to the agreement who makes any separate contribution to the candidate or personal campaign committee during the calendar year of receipt as indicated in the schedule shall be aggregated and itemized if required under par. (a) or (b).

(k) A statement of the balance of obligations incurred as of the end of the reporting period.

(L) A statement of cumulative totals for the calendar year of contributions made, contributions received, and disbursements made, including transfers of funds made to or received from other registrants.

(m) A statement of the cash balance on hand at the beginning and end of the reporting period.

(1m) Surplus campaign materials. Notwithstanding sub. (1)(a) and (g), a registrant need not provide an itemized statement of a contribution or disbursement of surplus materials acquired in connection with a previous campaign of the registrant for or against the same candidate, candidates, party or referendum in connection with which the materials are utilized, if the materials were previously reported as a contribution or disbursement by that registrant.

(2) Disclosure of certain indirect disbursements. Notwithstanding sub. (1), if a disbursement is made or obligation incurred by an individual other than a candidate or by a committee or group which is not primarily organized for political purposes, and the disbursement does not constitute a contribution to any candidate or other individual, committee or group, the disbursement or obligation is required to be reported only if the purpose is to expressly advocate the election or defeat of a clearly identified candidate or the adoption or rejection of a referendum. The exemption provided by this subsection shall in no case be construed to apply to a political party, legislative campaign, personal campaign or support committee.

(3) Nonresident reporting. (a) In this subsection, "nonresident registrant" means a registrant who or which does not maintain an office or street address within this state.

(b) Notwithstanding sub. (1), a nonresident registrant shall report on a form prescribed by the board the applicable information under sub. (1) concerning:

1. Contributions, including transfers and loans, and other income received from sources in this state.

2. Disbursements made and obligations incurred with respect to an election for state or local office in this state.

(c) If a nonresident registrant is registered for campaign finance reporting purposes with the federal elections commission or with the filing officer or agency of another state, the registrant shall indicate on the report the name and address of each filing officer or agency with which a copy of its campaign finance reports is filed.

(3m) Federal candidate committee reporting. (a) In this subsection, "federal candidate committee" means an authorized committee of a candidate for the U.S. senate or house of representatives from this state designated by the candidate under 2 USC 432(e).

(b) As provided in s. 11.05(1) and (2g), a federal candidate committee shall file a registration statement with the appropriate filing officer if required by s. 11.05(1) or (2g).

(c) Notwithstanding sub. (1), a federal candidate committee need not file any reports with the appropriate filing officer under s. 11.20 for any period covered in a report filed with the federal election commission if the board receives a copy of that report.

(3r) State-federal political party reporting. (a) In this subsection, "federal account committee" means a committee of a state political party organization which makes contributions to candidates for national office and is registered with the federal election commission.

(b) As provided in s. 11.05(1), a federal account committee shall file a registration statement with the appropriate filing officer if required by s. 11.05(1).

(c) Notwithstanding sub. (1), a federal account committee which makes contributions to a state political party committee need not file reports with the appropriate filing officer under s. 11.20 for any period covered in a report filed with the federal election commission if the board receives a copy of that report and the federal account committee makes no contributions to any other committee which or individual who is required to register under s. 11.05(1), (2) or (2g).

(3w) National political party reporting. (a) In this subsection, "national political party committee" means a national committee as defined in 2 USC 431(14).

(b) As provided in s. 11.05(1), a national political party committee shall file a registration statement with the appropriate filing officer if required by s. 11.05(1).

(c) Notwithstanding sub. (1), a national political party committee need not file reports with the appropriate filing officer under s. 11.20 for any period covered in a report filed with the federal election commission.

(4) When transactions reportable. (a) A contribution is received by a candidate for purposes of this chapter when it is under the control of the candidate or campaign treasurer, or such person accepts the benefit thereof. A contribution is received by an individual, group or committee, other than a personal campaign committee, when it is under the control of the individual or the committee or group treasurer, or such person accepts the benefit thereof.

(b) Unless it is returned or donated within 15 days of receipt, a contribution must be reported as received and accepted on the date received. This subsection applies notwithstanding the fact that the contribution is not deposited in the campaign depository account by the closing date for the reporting period as provided in s. 11.20(8).

(c) All contributions received by any person acting as an agent of a candidate or treasurer shall be reported by such person to the candidate or treasurer within 15 days of receipt. In the case of a contribution of money, the agent shall transmit the contribution to the candidate or treasurer within 15 days of receipt.

(d) A contribution, disbursement or obligation made or incurred to or for the benefit of a candidate is reportable by the candidate or the candidate's personal campaign committee if it is made or incurred with the authorization, direction or control of or otherwise by prearrangement with the candidate or the candidate's agent.

(e) Notwithstanding pars. (a) to (e), receipt of contributions by registrants under s. 11.05(7) shall be treated as received in accordance with that subsection.

(5) Report must be complete. A registered individual or treasurer of a group or committee shall make a good faith effort to obtain all required information. The first report shall commence no later than the date that the first contribution is received and accepted or the first disbursement is made. Each report shall be filed with the appropriate filing officer on the dates designated in s. 11.20. The individual or the treasurer of the group or committee shall certify to the correctness of each report. In the case of a candidate, the candidate or treasurer shall certify to the correctness of each report. If a treasurer is unavailable, any person designated as a custodian under s. 11.05(3)(e) may certify to the correctness of a report.

(6) Purpose of disbursements. An individual, group or committee which is

registered under s. 11.05 may make disbursements for any lawful political purpose.

(7) Oath for independent disbursements. (a) Every committee, other than a personal campaign committee, which and every individual, other than a candidate who desires to make disbursements during any calendar year, which are to be used to advocate the election or defeat of any clearly identified candidate or candidates in any election shall before making any disbursement, except within the amount authorized under s. 11.05(1) or (2), file with the registration statement under s. 11.05 a statement under oath affirming that the committee or individual does not act in cooperation or consultation with any candidate or agent or authorized committee of a candidate who is supported, that the committee or individual does not act in concert with, or at the request or suggestion of, any candidate or any agent or authorized committee of a candidate who is supported, that the committee or individual does not act in cooperation or consultation with any candidate or agent or authorized committee of a candidate who benefits from a disbursement made in opposition to a candidate, and that the committee or individual does not act in concert with, or at the request or suggestion of, any candidate or agent or authorized committee of a candidate who benefits from a disbursement made in opposition to a candidate. A committee which or individual who acts independently of one or more candidates or agents or authorized committees of candidates and also in cooperation or upon consultation with, in concert with, or at the request or suggestion of one or more candidates or agents or authorized committees of candidates shall indicate in the oath the names of the candidate or candidates to which it applies.

(b) A committee or individual required to file an oath under this subsection shall file the oath at the time of registration under s. 11.05 or the time the committee or individual becomes subject to this subsection, whichever is later. The committee or individual shall file an amendment to the oath whenever there is a change in the candidate or candidates to whom it applies. A committee or individual shall refile the oath for each calendar year in which the committee or individual proposes to make disbursements specified in this subsection, no later than January 31 of that calendar year.

(c) Any individual who or committee which falsely makes an oath under par. (a), or any individual, committee or agent of an individual or committee who or which carries on any activities with intent to violate an oath under par. (a) is guilty of a violation of this chapter.

(7m) Independent disbursements; change in status. (a) If a committee which was registered under s. 11.05 as a political party committee or legislative campaign committee supporting candidates of a political party files an oath under sub. (7) affirming that it does not act in cooperation or consultation with any

candidate who is nominated to appear on the party ballot of the party at a general or special election, that the committee does not act in concert with, or at the request or suggestion of, such a candidate, that the committee does not act in cooperation or consultation with such a candidate or agent or authorized committee of such a candidate who benefits from a disbursement made in opposition to another candidate, and that the committee does not act in concert with, or at the request or suggestion of, such a candidate or agent or authorized committee of such a candidate who benefits from a disbursement made in opposition to another candidate, the committee filing the oath may not make any contributions in support of any candidate of the party at the general or special election or in opposition to any such candidate's opponents exceeding the amounts specified in s. 11.26(2), except as authorized in par. (c).

(b) If the committee has already made contributions in excess of the amounts specified in s. 11.26(2) at the time it files an oath under sub. (7), each candidate to whom contributions are made shall promptly return a sufficient amount of contributions to bring the committee in compliance with this subsection and the committee may not make any additional contributions in violation of this subsection.

(c) A committee filing an oath under sub. (7) which desires to change its status to a political party committee or legislative campaign committee may do so as of December 31 of any even-numbered year. Section 11. 26 does not apply to contributions received by such a committee prior to the date of the change. Such a committee may change its status at other times only by filing a termination statement under s. 11.19(1) and reregistering as a newly organized committee under s. 11.05.

(8) Return of contributions. A registrant may return a contribution at any time, before or after acceptance. If a contribution is accepted contrary to law, the subsequent return does not constitute a defense to a violation.

(9) Short form. The board shall prescribe a simplified, short form for compliance with this section by a registrant who has not engaged in any financial transaction since the last date included on the registrant's preceding financial report.

(10) Referendum reporting separated. If a committee which operates as a political group has filed a single registration statement, any report of that committee which concerns activities being carried on as a political group under this chapter shall contain separate itemization of such activities, whenever itemization is required.

(11) Reporting of conduit contributions. (a) A conduit transferring a contribution of money shall, in writing, identify itself to the transferee as a

conduit and report to the transferee of each contribution transferred by it the information about the original contributor required for reporting purposes under sub. (1)(a) and (b) at the time the contribution is transferred. The conduit shall include the information in its report under s. 11.12(5) or 11.20 for the date on which the contribution is received and transferred.

(b) Each filing officer shall place a copy of any report received under par. (a) in the file of the conduit and the file of the transferee.

(c) A contribution of money received from a conduit, accompanied by the information required under par. (a), is considered to be a contribution from the original contributor.

(12) Valuation of opinion poll or voter survey results. (a) In this subsection:

1. "Election period" means the period between December 1 and the date of the spring election, the period between May 1 and the day of the general election in any even-numbered year or the period between the first day for circulation of nomination papers and the day of a special election for any state office.

2. "Initial recipient" means the individual who or committee which commissions a public opinion poll or voter survey.

3. "Results" means computer output or a written or verbal analysis of polling or survey data.

4. "Voter survey" includes the acquisition of information which identifies voter attitudes concerning candidates or issues.

(b) If a candidate or committee receives a contribution consisting of the results of an opinion poll or voter survey during the first 15 days after the results are received by the initial recipient, or if a candidate or committee receives a contribution consisting of the results of an opinion poll or voter survey for which the initial recipient received the results during an election period, the contribution shall be valued for purposes of sub. (1) at the full share of the overall cost of the poll or survey which is allocable to each candidate, including a candidate for national office, receiving the results.

(c) If the results are received 16 to 60 days following receipt by the initial recipient, and if the initial recipient did not receive the results during an election period, the contribution shall be valued at 50% of the amount allocated to an initial recipient of the same results.

(d) If the results are received 61 to 180 days after receipt by the initial recipient,

and if the initial recipient did not receive the results during an election period, the contribution shall be valued at 5% of the amount allocated to an initial recipient of the same results.

(e) If the results are received more than 180 days after receipt by the initial recipient, and if the initial recipient did not receive the results during an election period, no amount need be allocated.

(f) If the results of an opinion poll or voter survey are contributed to more than one recipient, the value of the poll or survey, as adjusted under pars. (c) to (e), shall be apportioned to each recipient receiving the results by one of the methods specified in this paragraph selected by the contributor. Each recipient shall report one of the following, in accordance with instructions received from the contributor:

1. That share of the overall cost of the poll or survey which is allocable to the recipient, based upon the cost allocation formula of the polling or survey firm from which the results are purchased. Under this method the size of the sample, the population of the area in which the recipient conducts political activities, the number of computer column codes, the extent of computer tabulations, and the extent of written analysis and verbal consultation, if applicable, may be used to determine the shares.

2. An amount computed by dividing the overall cost of the poll or survey equally among recipients receiving the results.

3. A proportion of the overall cost of the poll or survey equal to the proportion that the number of question results received by the recipient bears to the total number of question results received by all recipients.

(g) If the contributor makes a subsequent contribution of the results of an opinion poll or voter survey after initial apportionment of the value under par. (f), the contributor shall report to the recipient a value for the contribution determined in good faith, considering the value to other recipients, as adjusted under pars. (c) to (e). In such case, the total value of the contributor's aggregate contributions may exceed the original cost of the poll or survey.

(h) A contributor of opinion poll or voter survey results shall maintain records sufficient to support the valuation of the contribution and shall inform the recipient of the value of the contribution.

➡11.055. Filing fees

(1) Except as provided in sub. (3), each individual who, or committee, group or corporation that, is required to register with the board under s. 11.05 or 11.38(1)

shall annually pay a filing fee of $100 to the board.

(2) Except as provided in s. 11.19(1), an individual who, or committee, group or corporation that, is subject to sub. (1) shall pay the fee specified in sub. (1) together with the continuing report filed under s. 11.20(4) in January of each year. If an individual, committee, group or corporation registers under s. 11.05 or changes status so that sub. (1) becomes applicable to the individual, committee, group or corporation during a calendar year, the individual, committee, group or corporation shall pay the fee for that year with the filing of the individual's, committee's, group's or corporation's registration statement under s. 11.05 or at any time before the change in status becomes effective.

(3) Subsection (1) does not apply to a candidate or personal campaign committee. Subsection (1) does not apply to any registrant under s. 11.05 for any year during which the registrant does not make disbursements exceeding a total of $2,500.

➡11.07. Designation of agent by nonresident individuals, committees and groups

(1) Every nonresident committee making contributions and every nonresident individual or committee making disbursements to support or oppose the election or nomination of a candidate at an election exceeding $25 cumulatively in a calendar year within this state, and every nonresident group making contributions and every nonresident group or individual making disbursements to support or oppose a particular vote at a referendum exceeding $750 cumulatively in a calendar year within this state, shall file name, mailing and street address and the name and the mailing and street address of a designated agent within the state with the office of the secretary of state. An agent may be any adult individual who is a resident of this state. After any change in the name or address of such agent the new address or name of the successor agent shall be filed within 30 days. Service of process in any proceeding under this chapter or ch. 12, or service of any other notice or demand may be made upon such agent.

(2) During any period within which any individual or organization under sub. (1) fails to appoint or maintain in this state a registered agent, or whenever any such registered agent cannot with reasonable diligence be found at the street address listed on the registration, the secretary of state shall be an agent and representative of such individual or organization upon whom any process, notice or demand may be served. Service on the secretary of state of any such process, notice or demand against any such individual or organization shall be made by delivering to and leaving with the secretary of state, or with any clerk having charge of the secretary's office, duplicate copies of such process, notice or demand. If any process, notice or demand is served on the secretary of state, he or she shall immediately cause one of such copies to be forwarded by registered mail,

addressed to such individual, committee or group at its mailing address as the same appears in the records of the secretary of state. The time within which the defendant may demur or answer does not start to run until 10 days after the date of such mailing.

(3) The secretary of state shall keep a record of all processes, notices, and demands served upon the secretary of state under this section that shows the date and hour of service and the date of mailing. The certificate of the secretary of state that a summons and complaint, notice of object of action, or any notice or demand required or permitted by law was served upon the secretary of state and that the same was mailed by the secretary of state as required by law, shall be evidence of service upon the secretary of state. If the address of the individual, committee, or group is not known or readily ascertainable, mailing is dispensed with, and a copy of the process shall be published as a class 1 notice, under ch. 985, in the county in which the last-known registered agent was located or, if unknown, in Dane County.

(4) Nothing in this section limits or affects the right to serve any process, notice or demand required or permitted by law to be served upon a nonresident individual or organization in any other manner permitted by law.

(5) Any campaign treasurer or individual who knowingly receives a contribution made by an unregistered nonresident in violation of this section may not use or expend such contribution but shall immediately return it to the source or at the option of the campaign treasurer or individual, donate the contribution to a charitable organization or to the common school fund.

(6) For purposes of this section, a nonresident individual or organization is one who or which does not maintain an office or street address within the state.

➡11.08. Reports by party committees

Every committee of a political party which is required to file statements and reports under this chapter shall file all statements and reports with the board. A state committee of a political party may be designated by a congressional, legislative, county or local party committee as its reporting agent for purposes of this chapter, but such designation does not permit combination of reports. If any committee is so designated, the treasurer of the state committee shall so inform the board.

➡11.09. Duplicate reports required in certain cases

(3) Each registrant whose filing officer is the board, who or which makes disbursements in connection with elections for offices which serve or referenda

which affect only one county or portion thereof, except a candidate, personal campaign committee, political party committee or other committee making disbursements in support of or in opposition to a candidate for state senator, representative to the assembly, court of appeals judge or circuit judge, shall file a duplicate original of each financial report filed with the board with the county clerk or board of election commissioners of the county in which the elections in which the registrant participates are held. Such reports shall be filed no later than the dates specified under s. 11.20(2) and (4) for the filing of each report with the board.

(4) In every case where a duplicate report is filed by the board or by any person under sub. (3), the board shall transmit a certified duplicate copy of the registration statement to each county clerk or board of election commissioners with whom a duplicate report is filed.

➡11.12. Campaign contributions and disbursements; reports

(1)(a) No contribution may be made or received and no disbursement may be made or obligation incurred by a person or committee, except within the amount authorized under s. 11.05(1) and (2), in support of or in opposition to any specific candidate or candidates in an election, other than through the campaign treasurer of the candidate or the candidate's opponent, or by or through an individual or committee registered under s. 11.05 and filing a statement under s. 11.06(7).

(b) The requirement of par. (a) may not be construed to apply to a contribution which is made to a continuing political party or ongoing committee, other than a personal campaign committee, provided that the contribution is not made in contravention of s. 11.16(4) or 11.24.

(c) Where a disbursement is made in support of more than one candidate, the disbursement shall be apportioned reasonably among the candidates.

(d) Paragraph (a) does not apply to disbursements and obligations which are exempted from reporting under s. 11.06(2).

(2) Any anonymous contribution exceeding $10 received by a campaign or committee treasurer or by an individual under s. 11.06(7) may not be used or expended. The contribution shall be donated to the common school fund or to any charitable organization at the option of the treasurer.

(3) All contributions, disbursements and incurred obligations exceeding $10 shall be recorded by the campaign or committee treasurer or the individual under s. 11.06(7). He or she shall maintain such records in an organized and legible manner, for not less than 3 years after the date of an election in which the

registrant participates. If a report is submitted under s. 11.19(1), the records may be transferred to a continuing committee or to the appropriate filing officer for retention. Records shall include the information required under s. 11.06(1).

(4) Each registrant shall report contributions, disbursements and incurred obligations in accordance with s. 11.20. Except as permitted under s. 11.06(2), (3) and (3m), each report shall contain the information which is required under s. 11.06(1).

(5) If any contribution or contributions of $500 or more cumulatively are received by a candidate for state office or by a committee or individual from a single contributor later than 15 days prior to a primary or election such that it is not included in the preprimary or preelection report submitted under s. 11.20(3), the treasurer of the committee or the individual receiving the contribution shall within 24 hours of receipt inform the appropriate filing officer of the information required under s. 11.06(1) in such manner as the board may prescribe. The information shall also be included in the treasurer's or individual's next regular report. For purposes of the reporting requirement under this subsection, only contributions received during the period beginning with the day after the last date covered on the preprimary or preelection report, and ending with the day before the primary or election need be reported.

(6) If any disbursement of more than $20 cumulatively is made to advocate the election or defeat of a clearly identified candidate by an individual or committee later than 15 days prior to a primary or election in which the candidate's name appears on the ballot without cooperation or consultation with a candidate or agent or authorized committee of a candidate who is supported or opposed, and not in concert with or at the request or suggestion of such a candidate, agent or committee, the individual or treasurer of the committee shall, within 24 hours of making the disbursement, inform the appropriate filing officer of the information required under s. 11.06(1) in such manner as the board may prescribe. The information shall also be included in the next regular report of the individual or committee under s. 11.20. For purposes of this subsection, disbursements cumulate beginning with the day after the last date covered on the preprimary or preelection report and ending with the day before the primary or election. Upon receipt of a report under this subsection, the filing officer shall, within 24 hours of receipt, mail a copy of the report to all candidates for any office in support of or opposition to one of whom a disbursement identified in the report is made.

➡11.10. Campaign treasurers and campaign depositories

(1) Each candidate in an election shall appoint one campaign treasurer. Except as provided in s. 11.14(3), each candidate shall designate one campaign depository account within 5 business days after the candidate receives his or her first

contribution and before the candidate makes or authorizes any disbursement in behalf of his or her candidacy. If a candidate adopts a preexisting support committee as his or her personal campaign committee, the candidate shall make such designation within 5 business days of adoption. The person designated as campaign treasurer shall be the treasurer of the candidate's personal campaign committee, if any. The candidate may appoint himself or herself or any other elector as campaign treasurer. A registration statement under s. 11.05(2g) or (2r) must be filed jointly by every candidate and his or her campaign treasurer. The candidate does not qualify for ballot placement until this requirement is met. Except as authorized under s. 11.06(5), the campaign treasurer or candidate shall certify as to the correctness of each report required to be filed, and the candidate bears the responsibility for the accuracy of each report for purposes of civil liability under this chapter, whether or not the candidate certifies it personally.

(2) A candidate may remove a campaign treasurer at any time. In the case of the death, resignation or removal of a campaign treasurer, the candidate shall designate a successor and shall file the successor's name and address with the appropriate filing officer as provided in s. 11.05(5). Until the successor's name and address is filed, the candidate shall be deemed his or her own campaign treasurer.

(3) Every committee shall appoint a treasurer. Every individual under s. 11.06(7) shall be deemed his or her own treasurer. No disbursement may be made or obligation incurred by or on behalf of a committee without the authorization of the treasurer or designated agents. No contribution may be accepted and no disbursement may be made or obligation incurred by any committee at a time when there is a vacancy in the office of treasurer.

(4) No candidate may establish more than one personal campaign committee. Such committee may have subcommittees provided that all subcommittees have the same treasurer, who shall be the candidate's campaign treasurer. The treasurer shall deposit all funds received in the campaign depository account. Any committee which is organized or acts with the cooperation of or upon consultation with a candidate or agent or authorized committee of a candidate, or which acts in concert with or at the request or suggestion of a candidate or agent or authorized committee of a candidate is deemed a subcommittee of the candidate's personal campaign committee.

(5) Candidates for governor and lieutenant governor of the same political party may receive contributions and make disbursements for both candidates from either depository.

➡11.11. [Blank]

➡11.16. Campaign contributions and disbursements; restrictions

(1) Authorization; liability. (a) No disbursement may be made or obligation incurred by a candidate, or by any other person or committee to advocate the election or defeat of a clearly identified candidate, other than an individual who, or a committee which, has registered under s. 11.05 and filed an oath under s. 11.06(7), except by the campaign treasurer of the candidate or other agent designated by the candidate and acting under his or her authority.

(b) The treasurer of each committee and each individual who proposes to make a disbursement to advocate the election or defeat of a clearly identified candidate shall notify the treasurer or other agent designated under par. (a) of the candidate who is supported or whose opponent is opposed and obtain the authorization of the treasurer prior to making the disbursement. This paragraph does not apply to an individual or committee filing an oath under s. 11.06(7) with respect to the candidate who is supported or opposed.

(c) In the event that an obligation is incurred or disbursement made by the campaign treasurer or other authorized agent of the candidate, the action is imputable to the candidate for purposes of civil liability under this chapter.

(d) This subsection does not apply to disbursements and obligations which are exempted from reporting under s. 11.06(2).

(2) Limitation on cash contributions. Every contribution of money exceeding $50 shall be made by negotiable instrument or evidenced by an itemized credit card receipt bearing on the face the name of the remitter. No treasurer may accept a contribution made in violation of this subsection. The treasurer shall promptly return the contribution, or donate it to the common school fund or to a charitable organization in the event that the donor cannot be identified.

(3) Form of disbursements. Every disbursement which is made by a registered individual or treasurer from the campaign depository account shall be made by negotiable instrument. Such instrument shall bear on the face the full name of the candidate, committee, individual or group as it appears on the registration statement filed under s. 11.05 and where necessary, such additional words as are sufficient to clearly indicate the political nature of the registrant or account of the registrant. The name of a political party shall include the word "party". The instrument of each committee registered with the board and designated under s. 11.05(3)(c) as a special interest committee shall bear the identification number assigned under s. 11. 21(12) on the face of the instrument.

(4) Earmarking. (a) The treasurer of a personal campaign committee may agree with a prospective contributor that a contribution is received to be utilized for a specific purpose not prohibited by law. Such purpose may not include a

disbursement in support of or in opposition to another candidate or the transfer to an individual or committee acting in support of or in opposition to another candidate, except as authorized in an escrow agreement under s. 11.16(5).

(b) When a contribution is made to a political party or to an individual or committee other than a candidate or the candidate's personal campaign committee, the purpose may not be specified, except that if a contribution is received pursuant to an escrow agreement for transfer to a candidate in accordance with sub. (5), the contributor may specify the recipient of the contribution and if a contribution is received by a support committee established for adoption by a candidate in accordance with ss. 11.10(1) and 11.18, the contributor may specify that the contribution shall be utilized for support of the candidate being supported by the committee.

(c) Except for transfers of membership-related moneys between committees of the same political party and transfers made pursuant to escrow agreements authorized under sub. (5), no committee may act as a conduit for the earmarked contributions of others. Transfers of membership-related moneys between political party committees shall be treated in the same manner as other transfers.

(5) Escrow agreements. Any personal campaign committee, political party committee or legislative campaign committee may, pursuant to a written escrow agreement with more than one candidate, solicit contributions for and conduct a joint fund raising effort or program on behalf of more than one named candidate. The agreement shall specify the percentage of the proceeds to be distributed to each candidate by the committee conducting the effort or program. The committee shall include this information in all solicitations for the effort or program. All contributions received and disbursements made by the committee in connection with the effort or program shall be received and disbursed through a separate depository account under s. 11.14(1) that is identified in the agreement. For purposes of s. 11.06(1), the committee conducting the effort or program shall prepare a schedule in the form prescribed by the board supplying all required information under s. 11.06(1) for the effort or program, and shall transmit a copy of the schedule to each candidate who receives any of the proceeds within the period prescribed in s. 11.06(4)(c).

➡11.13. Repealed by L.1979, c. 328, § 72, eff. July 1, 1980

➡11.14. Deposit of contributions

(1) Except as authorized in sub. (3) and as required by s. 11.16(5), all funds received by a campaign or committee treasurer, group treasurer, candidate or other individual shall be deposited in a single separate campaign depository account designated in accordance with s. 11.16(3). Except as authorized in sub. (3),

the depository account shall be established by every candidate no later than the time prescribed in s. 11.10(1), and by every other individual or treasurer no later than the 5th business day after becoming subject to a registration requirement under s. 11.05 and before making any disbursement. The depository account may be established with any financial institution as defined in s. 705.01(3) which is authorized to transact business in this state. The individual or treasurer shall deposit all funds received in the campaign depository account no later than the 5th business day commencing after receipt. This subsection does not apply to a contributor committee or group which is exempt from registration under s. 11.05(8).

(2) After deposit in the campaign depository account, funds may be transferred by the individual or treasurer to any other account which is identified under s. 11.05(3)(L). Funds deposited in other accounts may not be directly disbursed but shall be returned to the depository account for purposes of disbursement. Disbursements shall be made only in accordance with s. 11.16(3).

(3) Notwithstanding sub. (1), any candidate who serves as his or her own campaign treasurer and who is authorized to make and makes an indication on his or her registration statement under s. 11.05(2r) that he or she will not accept contributions, make disbursements or incur obligations in an aggregate amount exceeding $1,000 in a calendar year, and will not accept any contribution or contributions from a single source, other than contributions made by the candidate to his or her own campaign, exceeding $100 in a calendar year, may designate a single personal account as his or her campaign depository account, and may intermingle personal and other funds with campaign funds. If a separate depository account is later established by the candidate, the candidate shall transfer all campaign funds in the personal account to the new depository account. Disbursements made from such personal account need not be identified in accordance with s. 11.16(3).

➡11.15. [Blank]

➡11.17. Treatment of loan guarantees

(1) If any person guarantees a loan to a registrant made for a political purpose, the person makes a contribution to the registrant and the registrant incurs an obligation to the guarantor. If more than one person guarantees the same loan, the guarantors make contributions to the registrant and the registrant incurs obligations to the guarantors in equal shares, in the proportion that the number of guarantors bears to the total amount guaranteed, unless a different share is specified in the loan instrument.

(2) If a registrant reduces the unpaid balance of a loan to the registrant made for a

political purpose by making a repayment to the lender or reimburses a guarantor from whom the lender has collected upon a guarantee, the amount of the guarantor's contribution and the amount of the obligation incurred by the registrant are reduced by the amount of the repayment or reimbursement. If more than one guarantor guarantees the same loan, the amounts of the guarantors' contributions and the amounts of the obligations incurred by the registrant are reduced in equal shares, in the proportion that the number of guarantors bears to the amount repaid or reimbursed, unless a different share is specified in the loan instrument.

(3) If a registrant defaults on a loan that is guaranteed, and the lender collects the amount guaranteed from the guarantor, the guarantor makes a contribution to the registrant and the registrant incurs an obligation to the guarantor in an amount equal to the amount collected by the lender from the guarantor. If more than one guarantor guarantees the same loan, the guarantors make contributions to the registrant and the registrant incurs obligations to the guarantors in equal shares, in the proportion that the number of guarantors bears to the total amount of the unpaid balance, unless a different share is specified in the loan instrument. If a registrant reports a contribution or incurred obligation in the form of a guarantee under s. 11.06(1) at the time the guarantee is made, the registrant need not report the same contribution or incurred obligation at the time of a default and collection upon a guarantee.

(4) If a candidate secures a loan for both a political and a nonpolitical purpose, this chapter applies only to the portion of the loan made for a political purpose.

➡11.21. Duties of the government accountability board

The board shall:

(1) Prescribe forms for making the reports, statements and notices required by this chapter. The board shall furnish forms for making reports or statements without charge to all persons who are required to file reports or statements with the board, and shall distribute or arrange for the distribution of all forms for use by other filing officers.

(2) Furnish to each registrant prescribed forms for the making of reports and statements. Forms shall be sent by 1st class mail not earlier than 21 days and not later than 14 days prior to the applicable filing deadline under s. 11.20, and addressed to the attention of the treasurer or other person indicated on the registration statement. Forms need not be sent to a registrant who has made an indication that aggregate contributions, disbursements and obligations will not exceed the amount specified under s. 11.05(2r) or to a registrant who has been granted a suspension under s. 11.19(2). Forms for reports shall not be sent by the

board to a registrant if the registrant is required to file reports with the board in an electronic format. Whenever any notice of filing requirements under this chapter is sent to a candidate's campaign treasurer, the board shall also send a notice to the candidate if he or she has appointed a separate treasurer. Failure to receive any form or notice does not exempt a registrant from compliance with this chapter.

(3) Prepare and publish for the use of persons required to file reports and statements under this chapter a manual setting forth simply and concisely recommended uniform methods of bookkeeping and reporting.

(4) Develop a filing, coding, and cross-indexing system consonant with the purposes of this chapter.

(5) Make the reports and statements filed with it available for public inspection and copying, commencing as soon as practicable but not later than the end of the 2nd day following the day during which they are received, and permit copying of any report or statement by hand or by duplicating machine at cost, as requested by any person. No information copied from such reports and statements may be sold or utilized by any person for the purpose of soliciting contributions from individuals identified in the reports or statements or for any commercial purpose.

(6) Compile and maintain a current list of all reports and statements or parts thereof pertaining to each candidate, individual, committee or group.

(7) Include in its biennial report under s. 15.04(1)(d) compilations of any of the following in its discretion:

(a) Total reported contributions, disbursements and incurred obligations for all candidates, individuals, committees and groups during the biennium.

(b) Total amounts expended according to such categories as it may determine and separated according to candidate, political party, and nonparty disbursements.

(c) Total amounts expended for influencing nominations and elections stated separately whenever separate information is reported.

(d) Total amounts contributed according to such categories of amounts as it determines for candidates, individuals, committees and groups.

(e) Aggregate amounts contributed by any contributors shown to have contributed more than $100.

(8) Prepare and publish from time to time special reports comparing the various

totals and categories of contributions and disbursements made with respect to preceding elections.

(9) Maintain a duplicate record of any separate schedule under s. 11.06 (1) (j) received with the financial report of an individual or committee filing an oath under s. 11.06 (7) together with the record of each candidate to whom it relates.

(10) Make available a list of delinquents for public inspection.

(11) Receive and maintain in an orderly manner all reports and statements required to be filed with the state under the federal election campaign act [FN1], and in addition shall:

(a) Preserve such reports and statements for a period of 6 years from date of receipt.

(b) Notwithstanding sub. (5), make each report and statement transmitted to it under the federal election campaign act available for public inspection and copying during regular office hours, commencing as soon as practicable but not later than 48 hours from the time of receipt.

(c) Compile and maintain a current list of all reports and statements or parts thereof pertaining to each candidate who is required to file a report or statement under such act.

(d) Promptly compile and release for public inspection a list of all reports received from candidates for national office and from committees supporting or opposing such candidates which are required to be filed with the state under the federal election campaign act, as soon as possible after each deadline for receipt of such reports as provided by federal law.

(12) Assign an identification number to each registrant for whom the board acts as a filing officer under s. 11.02.

(13) Determine whether each financial report or statement required to be filed under this chapter has been filed in the form and by the time prescribed by law, and whether it conforms on its face to the requirements of this chapter. The board shall immediately send to any registrant who is delinquent in filing, or who has filed otherwise than in the proper form, a notice that the registrant has failed to comply with this chapter. Whenever a candidate has appointed another person as campaign treasurer, the board shall send the notice to both persons.

(14) Prepare, publish and periodically revise as necessary a manual simply and concisely describing the filing and registration requirements established in this

chapter in detail, as well as other major provisions of this chapter and ch. 12.

(16) Require each registrant for whom the board serves as filing officer and who or which accepts contributions in a total amount or value of $20,000 or more during a campaign period to file each campaign finance report that is required to be filed under this chapter in an electronic format, and accept from any other registrant for whom the board serves as a filing officer any campaign finance report that is required to be filed under this chapter in an electronic format. A registrant who or which becomes subject to a requirement to file reports in an electronic format under this subsection shall initially file the registrant's report in an electronic format for the period which includes the date on which the registrant becomes subject to the requirement. To facilitate implementation of this subsection, the board shall specify, by rule, a type of software that is suitable for compliance with the electronic filing requirement under this subsection. The board shall provide copies of the software to registrants at a price fixed by the board that may not exceed cost. Each registrant who or which files a report under this subsection in an electronic format shall also file a copy of the report with the board that is recorded on a medium specified by the board. The copy shall be signed by an authorized individual and filed with the board by each registrant no later than the time prescribed for filing of the report under this chapter. The board shall provide complete instructions to any registrant who or which files a report under this subsection. In this subsection, the "campaign period" of a candidate, personal campaign committee or support committee begins and ends with the "campaign" of the candidate whose candidacy is supported, as defined in s. 11.26(17), and the "campaign period" of any other registrant begins on January 1 of each odd-numbered year and ends on December 31 of the following year.

(17) Promulgate rules that require public access channel operators and licensees of public television stations in this state to provide a minimum amount of free time on public access channels and public television stations to individuals whose names are certified under s. 7.08(2)(a) or 8.50(1)(d) to appear as candidates for state office on the ballot at general, spring, or special elections. The rules promulgated under this subsection shall require public access channel operators and licensees of public television stations to offer the same amount of time to each candidate for a particular state office, but may require different amounts of time to be offered to candidates for different offices.

[FN1] 2 U.S.C.A. § 431 et seq.

➡11.18. Support committee

(1) A committee may be organized to support the prospective candidacy of an individual. No such committee authorized under s. 11.05(3)(p) may be organized during a period in which the individual on whose behalf the committee is

organized is registered as a candidate or has a personal campaign committee registered on his or her behalf.

(2) A committee organized under sub. (1) shall register under s. 11.05 as a support committee.

(3) A support committee authorized under s. 11.05(3)(p) may not act on behalf of more than one individual but may make a contribution to another committee. No more than one support committee authorized under s. 11.05(3)(p) may be organized on behalf of the same individual. Any subcommittee of a support committee authorized under s. 11.05(3)(p) shall be authorized by the individual on whose behalf the subcommittee acts. Any committee which is organized or acts with the cooperation of or upon consultation with a support committee or the individual on whose behalf a support committee is organized or which acts in concert with or at the request or suggestion of a support committee or the individual on whose behalf a support committee is organized is deemed a subcommittee of the support committee.

(4) Notwithstanding s. 11.12(1), a support committee may make direct disbursements from its campaign depository account to pay for the expenses incurred for a political purpose to support the prospective candidacy of an individual on whose behalf it is organized during a period in which the committee is permitted to operate under sub. (1).

(5) Except as provided in s. 11.25(2)(b), no support committee authorized under s. 11.05(3)(p) may utilize a contribution for a purpose not authorized under sub. (1).

(6) If an individual on whose behalf a support committee is authorized to operate under s. 11.05(3)(p) becomes a candidate, the committee shall be adopted by the candidate as his or her personal campaign committee. A support committee which files a statement under s. 11.06(7) may not be adopted by a candidate as a personal campaign committee.

➡11.19. Dissolution of registrants; termination reports

(1) Whenever any registrant disbands or determines that obligations will no longer be incurred, and contributions will no longer be received nor disbursements made during a calendar year, and the registrant has no outstanding incurred obligations, the registrant shall file a termination report with the appropriate filing officer. Such report shall indicate a cash balance on hand of zero at the end of the reporting period and shall indicate the disposition of residual funds. Residual funds may be used for any political purpose not prohibited by law, returned to the donors in an amount not exceeding the original contribution, or donated to a charitable organization or the common school fund. The report shall

be filed and certified as were previous reports, and shall contain the information required by s. 11.06(1). A registrant to which s. 11.055(1) applies shall pay the fee imposed under that subsection with a termination report filed under this subsection. If a termination report or suspension report under sub. (2) is not filed, the registrant shall continue to file periodic reports with the appropriate filing officer, no later than the dates specified in s. 11.20. This subsection does not apply to any registrant making an indication under s. 11.05(2r).

(2) Notwithstanding sub. (1), any registrant who or which determines that obligations will no longer be incurred, contributions will no longer be made or received or disbursements made during a calendar year in an aggregate amount of more than $1,000 may file a suspension report with the appropriate filing officer. The report shall be filed and certified as were previous reports and shall contain the information required under s. 11.06(1). Upon receipt of a properly executed report, the registrant shall be granted a suspension of the filing requirement under s. 11.20(9) by the appropriate filing officer. Such suspension is effective only for the calendar year in which it is granted, unless the registrant alters its status before the end of such year or files a termination report under sub. (1).

(3) In no case may a candidate or personal campaign committee file a termination or suspension report covering any period ending sooner than the date of the election in which the candidate or committee is participating.

(4) If a registrant files a termination report under sub. (1) or (2) and within 60 days thereafter receives and accepts unanticipated contributions, the registrant may file an amended termination report. An amended report supersedes the previous report. The individual who certifies to the accuracy of the report shall also certify to a statement that the amended report is filed on account of the receipt of unanticipated contributions and the failure to file a correct termination report was not intentional.

➡11.20. Filing requirements

(1) All reports required by s. 11.06 which relate to activities which promote or oppose candidates for state office or statewide referenda and all reports under s. 11.08 shall be filed with the board. All reports required by s. 11.06 which relate to activities which promote or oppose candidates for local office or local referenda shall be filed with the appropriate filing officer under s. 11.02, except reports filed under s. 11.08.

(2) Preprimary and preelection reports under s. 11.06(1) shall be received by the appropriate filing officer no earlier than 14 days and no later than 8 days preceding the primary and the election.

(2m) Election reports under s. 11.12 shall be received by the appropriate filing officer no earlier than 23 days and no later than 30 days after each special election, unless a continuing report is required to be filed under sub. (4) on or before the 30th day after the special election.

(3)(a) A candidate or personal campaign committee of a candidate at a primary shall file a preprimary and preelection report. If a candidate for a nonpartisan state office at an election is not required to participate in a primary, the candidate or personal campaign committee of the candidate shall file a preprimary report at the time prescribed in sub. (2) preceding the date specified in s. 5.02(20) or (22) for the holding of the primary, were it to be required.

(b) A candidate or personal campaign committee of a candidate at an election shall file a preelection report.

(bm) A candidate or personal campaign committee of a candidate at a special election shall file a postelection report whenever the report is required to be filed under sub. (2m).

(c) A registered committee or individual other than a candidate or personal campaign committee making or accepting contributions, making disbursements or incurring obligations in support of or in opposition to one or more candidates for office at a primary, or supporting or opposing other committees or individuals who are engaging in such activities, shall file a preprimary and preelection report.

(d) A registered committee or individual other than a candidate or personal campaign committee making or accepting contributions, making disbursements or incurring obligations in support of or in opposition to one or more candidates for office at an election, or supporting or opposing other committees or individuals who are engaging in such activities, shall file a preelection report.

(f) A contribution, disbursement or obligation in support of or in opposition to a candidate at a primary which is made, accepted or incurred during the period covered by the preprimary report is considered to be made, accepted or incurred in support of or in opposition to that candidate at the primary, regardless of whether the candidate is opposed at the primary.

(g) A contribution, disbursement or obligation in support of or in opposition to a candidate at an election which is made, accepted or incurred during the period covered by the preelection report is considered to be made, accepted or incurred in support of or in opposition to that candidate at the election, regardless of whether the candidate is opposed at the election.

(h) A registrant who or which makes, accepts or incurs a contribution,

disbursement or obligation in support of or in opposition to a candidate at a primary during the period covered by the preprimary report shall file both the preprimary and preelection reports, regardless of whether the registrant engages in such activity during the period covered by the preelection report.

(i) Notwithstanding pars. (c) and (d), a registrant other than a candidate, personal campaign committee or political party committee who or which makes, accepts or incurs a contribution, disbursement or obligation in support of or in opposition to a candidate at a primary during the period covered by the preelection report, but does not engage in such activity during the period covered by the preprimary report, is not required to file a preprimary report.

(j) Notwithstanding pars. (c) and (d), a registrant other than a candidate, personal campaign committee or political party committee who or which makes, accepts or incurs a contribution, disbursement or obligation in support of or in opposition to a candidate at an election during the period covered by the report which follows the preelection report, but does not engage in such activity during the period covered by the preelection report, is not required to file a preelection report.

(k) A registered group or individual making or accepting contributions, making disbursements or incurring obligations in support of or in opposition to a referendum appearing on a primary ballot shall file a preprimary and preelection report.

(L) A registered group or individual making or accepting contributions, making disbursements or incurring obligations in support of or in opposition to a referendum appearing on an election ballot shall file a preelection report.

(4) Continuing reports under s. 11.06(1) by committees or individuals supporting or opposing candidates for office, including committees of a political party, and by individuals, groups or corporations supporting or opposing a referendum shall be received by the appropriate filing officer no earlier than January 1 and no later than January 31; and no earlier than July 1 and no later than July 20. Individuals, committees, groups and corporations to which s. 11.055(1) applies shall pay the fee imposed under that subsection with their continuing reports filed in January of each year.

(4m) An individual who or committee which supports or opposes an effort to circulate and file a petition to recall an officer shall file a report with the appropriate filing officer no later than 30 days after registration of the petitioner for recall of the officer under s. 9.10(2)(d), if the petition has not been offered for filing within 5 days of that date, and no later than 5 days after a petition is offered for filing demanding the recall of the officer.

(5g) Notwithstanding sub. (3), a personal campaign committee which is not formed to support or oppose a candidate in a partisan primary or election need only comply with sub. (3) for purposes of a partisan primary and election if it makes a disbursement for the purpose of influencing the outcome of that primary or election in a form other than a contribution which is reported by the recipient.

(5r) Notwithstanding sub. (3), a personal campaign committee which is not formed to support or oppose a candidate in a nonpartisan primary or election need only comply with sub. (3) for the purposes of a nonpartisan primary or election if it makes a disbursement for the purpose of influencing the outcome of that primary or election in a form other than a contribution which is reported by the recipient.

(7) In the event that any report is required to be filed under this section on a nonbusiness day, it may be filed on the next business day thereafter.

(8) Reports filed under subs. (2), (4), and (4m) shall include all contributions received and transactions made as of the end of:

(a) The 15th day preceding the primary or election in the case of the preprimary and preelection report.

(b) December 31 in the case of the continuing report required by January 31.

(c) June 30 in the case of the continuing report required by July 20.

(d) Five days preceding the deadline for filing of the report in the case of the report required under sub. (4m).

(e) The 22nd day following the special election in the case of the postelection report required under sub. (2m).

(9) Except as provided in ss. 11.05(2r) and 11.19(2), the duty to file reports under this section continues until a termination report is filed in accordance with s. 11.19.

(10)(a) Where a requirement is imposed under this section for the filing of a financial report which is to be received by the appropriate filing officer no later than a certain date, the requirement may be satisfied either by actual receipt of the report by the prescribed time for filing at the office of the filing officer, or by filing a report with the U. S. postal service by first class mail with sufficient prepaid postage, addressed to the appropriate filing officer, no later than the date provided by law for receipt of such report.

(b) In any case where the postal service is employed by a person subject to a filing

requirement as the agent for transmittal of a report, the burden is upon such person to show that a report has been filed with the postal service.

(c) It is presumed until the contrary is established that the date shown by the postal service cancellation mark on the envelope containing the report is the date that it was deposited in the mail.

(11) All reports required by this chapter shall be open to public inspection.

(12) If a candidate is unopposed in a primary or election, the obligation to file the reports required by this chapter does not cease. Except as provided in ss. 11.05(2r) and 11.19(2), a registrant who makes or receives no contributions, makes no disbursements or incurs no obligations shall so report on the dates designated in subs. (2) and (4).

(13) In the event of failure of a candidate or treasurer to file a report or statement required by this chapter by the time prescribed by law, action may be commenced against the candidate, the campaign treasurer, or the candidate's personal campaign committee, if any, or any combination of them.

➡11.23. Political groups and individuals; referendum questions

(1) Any group or individual may promote or oppose a particular vote at any referendum in this state. Except as authorized in s. 11.05(12)(b) and (13), before a group makes or accepts contributions, makes disbursements, or incurs obligations in excess of $750 in the aggregate in a calendar year for such purposes, and before an individual accepts contributions, makes disbursements, or incurs obligations in excess of $750 in the aggregate in a calendar year for such purposes, the group or individual shall file a registration statement under s. 11.05(1), (2) or (2r). In the case of a group the name and mailing address of each of its officers shall be given in the statement. Every group and every individual under this section shall designate a campaign depository account under s. 11. 14. Every group shall appoint a treasurer, who may delegate authority but is jointly responsible for the actions of his or her authorized designee for purposes of civil liability under this chapter. The appropriate filing officer shall be notified by a group of any change in its treasurer within 10 days of the change under s. 11.05(5). The treasurer of a group shall certify the correctness of each statement or report submitted by it under this chapter.

(2) Any anonymous contribution exceeding $10 received by an individual or group treasurer may not be used or expended. The contribution shall be donated to the common school fund or to any charitable organization at the option of the treasurer.

(3) All contributions, disbursements and incurred obligations exceeding $10 shall be recorded by the group treasurer or the individual. He or she shall maintain such records in an organized and legible manner, for not less than 3 years after the date of a referendum in which the group or individual participates. If a report is submitted under s. 11.19(1), the records may be transferred to a continuing group or to the appropriate filing officer for retention. Records shall include the information required under s. 11.06(1).

(4) Each group or individual shall file periodic reports as provided in ss. 11.06, 11.19 and 11.20. Every individual acting for the purpose of influencing the outcome of a referendum shall be deemed his or her own treasurer. No disbursement may be made or obligation incurred by or on behalf of a group without the authorization of the treasurer or the treasurer's designated agents. No contribution may be accepted and no disbursement may be made or obligation incurred by any group at a time when there is a vacancy in the office of treasurer.

(5) If a group which operates as a political committee has filed a single registration statement, any report of that group which concerns activities being carried on as a political committee under this chapter shall contain a separate itemization of such activities, whenever itemization is required.

(6) If any contribution or contributions of $500 or more cumulatively are received by a group or individual supporting or opposing the adoption of a referendum question from a single contributor later than 15 days prior to an election such that it is not included in the preprimary or preelection report submitted under s. 11.20(3), the treasurer of the group or the individual receiving the contribution shall within 24 hours of receipt inform the appropriate filing officer of the information required under s. 11.06(1) in such manner as the board may prescribe. The information shall also be included in the treasurer's or individual's next regular report. For purposes of the reporting requirement under this subsection, only contributions received during the period beginning with the day after the last date covered on the preelection report, and ending with the day before the election need be reported.

➡11.215. Repealed by 1985 Act 303, § 41, eff. July 1, 1986

➡11.26. Limitation on contributions

(1) No individual may make any contribution or contributions to a candidate for election or nomination to any of the following offices and to any individual or committee under s. 11.06(7) acting solely in support of such a candidate or solely in opposition to the candidate's opponent to the extent of more than a total of the amounts specified per candidate:

(a) Candidates for governor, lieutenant governor, secretary of state, state treasurer, attorney general, state superintendent, or justice, $10,000.

(b) Candidates for state senator, $1,000.

(c) Candidates for representative to the assembly, $500.

(cc) Candidates for court of appeals judge in districts which contain a county having a population of more than 500,000, $3,000.

(cg) Candidates for court of appeals judge in other districts, $2,500.

(cn) Candidates for circuit judge in circuits having a population of more than 300,000, or candidates for district attorney in prosecutorial units having a population of more than 300,000, $3,000.

(cw) Candidates for circuit judge in other circuits or candidates for district attorney in other prosecutorial units, $1,000.

(d) Candidates for local offices, an amount equal to the greater of the following:

1. Two hundred fifty dollars.

2. One cent times the number of inhabitants of the jurisdiction or district, according to the latest federal census or the census information on which the district is based, as certified by the appropriate filing officer, but not more than $3,000.

(2) No committee other than a political party committee or legislative campaign committee may make any contribution or contributions to a candidate for election or nomination to any of the following offices and to any individual or committee under s. 11.06(7) acting solely in support of such a candidate or solely in opposition to the candidate's opponent to the extent of more than a total of the amounts specified per candidate:

(a) Candidates for governor, lieutenant governor, secretary of state, state treasurer, attorney general, state superintendent, or justice, 4 percent of the value of the disbursement level specified in the schedule under s. 11.31(1).

(b) Candidates for state senator, $1,000.

(c) Candidates for representative to the assembly, $500.

(cc) Candidates for court of appeals judge in districts which contain a county

having a population of more than 500,000, $3,000.

(cg) Candidates for court of appeals judge in other districts, $2,500.

(cn) Candidates for circuit judge in circuits having a population of more than 300,000, or candidates for district attorney in prosecutorial units having a population of more than 300,000, $3,000.

(cw) Candidates for circuit judge in other circuits or candidates for district attorney in other prosecutorial units, $1,000.

(e) Candidates for local offices, an amount equal to the greater of the following:

1. Two hundred dollars.

2. Three-fourths of one cent times the number of inhabitants of the jurisdiction or district, according to the latest federal census or the census information on which the district is based, as certified by the appropriate filing officer, but not more than $2,500.

(3) The contribution limitations of subs. (1) and (2) apply cumulatively to the entire primary and election campaign in which a candidate participates, whether or not there is a contested primary election. The total limitation may be apportioned in any manner desired between the primary and election. All moneys cumulate regardless of the time of contribution.

(4) No individual may make any contribution or contributions to all candidates for state and local offices and to any individuals who or committees which are subject to a registration requirement under s. 11.05, including legislative campaign committees and committees of a political party, to the extent of more than a total of $10,000 in any calendar year.

(5) The contribution limits provided in subs. (1) and (4) do not apply to a candidate who makes any contribution or contributions to his or her own campaign for office from the candidate's personal funds or property or the personal funds or property which are owned jointly or as marital property with the candidate's spouse, with respect to any contribution or contributions made to that candidate's campaign only. A candidate's personal contributions shall be deposited in his or her campaign depository account and reported in the normal manner.

(6) When a candidate adopts a preexisting support committee as his or her personal campaign committee, the support committee is deemed to have been the same committee as the candidate's personal campaign committee for purposes of the application of subs. (1), (2) and (9). The limitations prescribed in subs. (2) and

(9) do not apply to the transfer of contributions which is made at the time of such adoption, but do apply to the contributions which have been made by any other committee to the support committee at the time of adoption.

(8)(a) No political party as defined in s. 5.02(13) may receive more than a total of $150,000 in value of its contributions in any biennium from all other committees, excluding contributions from legislative campaign committees and transfers between party committees of the party. In this paragraph, a biennium commences with January 1 of each odd-numbered year and ends with December 31 of each even-numbered year.

(b) No such political party may receive more than a total of $6,000 in value of its contributions in any calendar year from any specific committee or its subunits or affiliates, excluding legislative campaign and political party committees.

(c) No committee, other than a political party or legislative campaign committee, may make any contribution or contributions, directly or indirectly, to a political party under s. 5.02(13) in a calendar year exceeding a total value of $6,000.

(9)(a) No individual who is a candidate for state or local office may receive and accept more than 65 percent of the value of the total disbursement level determined under s. 11.31 for the office for which he or she is a candidate during any primary and election campaign combined from all committees subject to a filing requirement, including political party and legislative campaign committees.

(b) No individual who is a candidate for state or local office may receive and accept more than 45 percent of the value of the total disbursement level determined under s. 11.31 for the office for which he or she is a candidate during any primary and election campaign combined from all committees other than political party and legislative campaign committees subject to a filing requirement.

(11) Excess contributions shall be returned to the donor or treated in accordance with s. 11.12(2) or 11.23(2), at the option of the treasurer.

(12) In computing the limitations under this section, any transfer of funds between the candidates for governor and lieutenant governor of the same political party in the general election may be excluded.

(12m) For purposes of this section, a contribution of money received from a conduit identified in the manner prescribed in s. 11.06(11)(a) shall be considered a contribution received from the original contributor.

(13m) Contributions utilized for the following purposes are not subject to limitation by this section:

(a) For the purpose of payment of legal fees and other expenses incurred as a result of a recount at an election.

(b) For the purpose of payment of legal fees and other expenses incurred in connection with the circulation, offer to file or filing, or with the response to the circulation, offer to file or filing, of a petition to recall an officer prior to the time a recall primary or election is ordered, or after that time if incurred in contesting or defending the order.

(14) No candidate or committee may receive and accept any contribution or contributions made in violation of this section.

(15) The fact that 2 or more committees, other than personal campaign committees, utilize common policies and practices concerning the endorsement of candidates or agree to make contributions only to such endorsed candidates does not affect the right of each committee independently to make contributions up to the amount specified under sub. (2).

(16) Contributions constituting surplus materials acquired in connection with a previous campaign of a candidate are not subject to limitation by this section, if the materials were previously reported as a contribution by that candidate.

(17)(a) For purposes of application of the limitations imposed in subs. (1), (2), and (9) , the "campaign" of a candidate begins and ends at the times specified in this subsection.

(b) In the case of a candidate who has not been a candidate in a previous election for which he or she continues to be registered under s. 11.05, the "campaign" of the candidate begins when the candidate or the candidate's personal campaign committee is required to file a registration statement with the appropriate filing officer.

(c) In the case of a candidate who has been a candidate in a previous election for which he or she continues to be registered under s. 11.05, the "campaign" of the candidate begins on the day after the closing date for the period covered by the first financial report filed by or on behalf of the candidate subsequent to the date of the previous election, or if the candidate has incurred obligations from a previous campaign, the date on which the candidate receives sufficient contributions to retire those obligations, whichever is later, except that the "campaign" of a candidate at a special election begins when the candidate or the candidate's personal campaign committee is required to file or change the information on a registration statement as a result of the candidacy.

(d) In the case of any candidate at the spring primary or election or the partisan primary or general election, the "campaign" of the candidate ends on June 30 or December 31 following the date on which the election or primary is held in which the candidate is elected or defeated, or the date on which the candidate receives sufficient contributions to retire any obligations incurred in connection with that contest, whichever is later. In the case of any candidate at a special primary or election, the "campaign" of the candidate ends on the last day of the month following the month in which the primary or election is held in which the candidate is elected or defeated, or the date on which the candidate receives sufficient contributions to retire any obligations incurred in connection with that contest, whichever is later.

(e) The campaign of a candidate in a future election who has incurred obligations from a previous campaign may begin before the candidate receives sufficient contributions to retire all obligations incurred in connection with the previous campaign, but may not begin before the day after the closing date for the period covered by the first financial report filed by or on behalf of the candidate subsequent to the date of the previous election except as provided for a special election under par. (c).

(f) Notwithstanding pars. (b) to (d), contributions for inaugural expenses paid by a candidate, personal campaign committee or support committee authorized under s. 11.05(3)(p) from a campaign depository account are subject to the limitations of this section, but the registrant paying the expenses may elect to charge the contributions to a present or possible future campaign of the individual in connection with whose inauguration the expenses are paid.

VALIDITY

<Section 11.26(4) was held unconstitutional in Wisconsin Right to Life State Political Action Committee v. Barland, C.A.7 (Wis.) 2011, 664 F.3d 139.>

➡11.265. Legislative campaign committees

(1) No more than one legislative campaign committee may be established by the members of one political party in each house of the legislature.

(2) A legislative campaign committee may accept no contributions and make no contributions or disbursements exceeding the amounts authorized for a political party under this chapter.

(3) Amounts contributed by a legislative campaign committee to a political party are not subject to limitation by this chapter.

➡11.22. Duties of local filing officer

Each filing officer, other than the board, shall:

(1) Obtain the forms and manuals prescribed by the board under s. 11.21(1), (3) and (14) and election laws provided by the board under s. 7.08(4). The officer shall furnish forms without charge to all persons who are required to file reports or statements with the officer, and shall furnish copies of manuals without charge, upon request, to all persons who are required to file reports or statements with the officer. The officer shall distribute copies of the election laws received from the board to election officials without charge. The officer shall furnish copies of manuals and election laws to other persons at cost.

(2) Develop a filing, coding and cross-indexing system consonant with the purposes of this chapter.

(3) Furnish to each registrant prescribed forms for the making of reports and statements. Forms shall be sent by 1st class mail not earlier than 21 days and not later than 14 days prior to the applicable filing deadline under s. 11.20 and addressed to the attention of the treasurer or other person indicated on the registration statement. Forms need not be sent to a registrant who has made an indication that aggregate contributions, disbursements and obligations will not exceed the amount specified under s. 11.05(2r) or to a registrant who has been granted a suspension under s. 11.19(2). Whenever any notice of the filing requirements under this chapter is sent to a candidate's campaign treasurer, the filing officer shall also send a notice to the candidate if he or she has appointed a separate treasurer. Failure to receive any form or notice does not exempt a registrant from compliance with this chapter.

(4) Notify the board and the district attorney, or the attorney general where appropriate under s. 5.05(2m)(i), in writing, of any facts within the filing officer's knowledge or evidence in the officer's possession, including errors or discrepancies in reports or statements and delinquencies in filing which may be grounds for civil action or criminal prosecution. The filing officer shall transmit a copy of such notification to the board. The board and the district attorney or the attorney general shall advise the filing officer in writing at the end of each 30-day period of the status of such matter until the time of disposition.

(5) Make available a list of delinquents for public inspection.

(6) Compile and maintain a current list of all reports and statements or parts thereof pertaining to each candidate, individual, committee or group.

(8) Make the reports and statements filed with the filing officer available for

public inspection and copying, commencing as soon as practicable but not later than the end of the 2nd day following the day during which they are received, and permit copying of any report or statement by hand or by duplicating machine at cost, as requested by any person. No information copied from such reports and statements may be sold or utilized by any person for the purpose of soliciting contributions from individuals identified in the reports or statements or for any commercial purpose.

(9) Determine whether each financial report or statement required to be filed under this chapter has been filed in the form and by the time prescribed by law, and whether it conforms on its face to the requirements of this chapter. The officer shall immediately send to any registrant who is delinquent in filing, or who has filed otherwise than in the proper form, a notice that the registrant has failed to comply with this chapter. Whenever a candidate has appointed another person as campaign treasurer, the filing officer shall send the notice to both persons.

(10) Place a copy of any separate schedule under s. 11.06(1)(j) received with the financial report of an individual or committee filing an oath under s. 11.06(7) in the file of each candidate to whom it relates.

➡11.30. Attribution of political contributions, disbursements and communications

(1) No disbursement may be made or obligation incurred anonymously, and no contribution or disbursement may be made or obligation incurred in a fictitious name or by one person or organization in the name of another for any political purpose.

(2)(a) The source of every printed advertisement, billboard, handbill, sample ballot, television or radio advertisement or other communication which is paid for by or through any contribution, disbursement or incurred obligation shall clearly appear thereon. This paragraph does not apply to communications for which reporting is not required under s. 11.06(2).

(b) Every such communication the cost of which is paid for or reimbursed by a committee or group, or for which a committee or group assumes responsibility, whether by the acceptance of a contribution or by the making of a disbursement, shall be identified by the words "Paid for by" followed by the name of the committee or group making the payment or reimbursement or assuming responsibility for the communication and the name of the treasurer or other authorized agent of such committee or group.

(c) Every such communication which is directly paid for or reimbursed by an individual, including a candidate without a personal campaign committee who is

serving as his or her own treasurer, or for which an individual assumes responsibility, whether by the acceptance of a contribution or by the making of a disbursement, shall be identified by the words "Paid for by" followed by the name of the candidate or other individual making the payment or reimbursement or assuming responsibility for the communication. No abbreviation may be used in identifying the name of a committee or group under this paragraph.

(d) In addition to the requirements of pars. (a) to (c), a committee or individual required to file an oath under s. 11.06(7) shall also in every communication in support of or in opposition to any clearly identified candidate or candidates include the words "Not authorized by any candidate or candidate's agent or committee".

(e) Communications under this section by a personal campaign committee may identify the committee or any bona fide subcommittee thereof.

(em) The source of each printed advertisement, billboard, handbill, paid television or radio advertisement or other communication made for the purpose of influencing the recall from or retention in office of an individual holding a state or local office shall clearly appear thereon in the manner prescribed in pars. (b) and (c).

(f) This subsection does not apply to the preparation and transmittal of personal correspondence or the production, wearing or display of a single personal item which is not reproduced or manufactured by machine or other equipment for sale or distribution to more than one individual.

(fm) This subsection does not apply to communications printed on pins, buttons, pens, balloons, nail files and similar small items on which the information required by this subsection cannot be conveniently printed. The board may, by rule, specify small items not mentioned in this paragraph to which this subsection shall not apply.

(g) This subsection does not apply to nonadvertising material contained in a regularly published newsletter by an organization which is expressing its political views with respect to elections which are of concern to its membership, provided that distribution of such newsletter is restricted to such membership.

(h) Notwithstanding par. (a), the attributions required by this subsection in written communications shall be readable, legible and readily accessible.

(hm) Notwithstanding pars. (a) to (c), any communication making a solicitation on behalf of more than one candidate for a joint fund raising effort or program pursuant to an escrow agreement under s. 11.16(5) may omit the names of the

candidates or personal campaign committees assuming responsibility for the communication if the communication discloses that a joint fund raising effort or program is being conducted on behalf of named candidates.

(i) No person may publish or disseminate, or cause to be published or disseminated any communication in violation of this subsection. A communications medium which in good faith relies on the representations of any person who places an advertisement with such medium as to the applicability of this subsection to such person does not violate this paragraph as a result of publication or dissemination of that advertisement based on such representations, provided that the representations are reasonable.

(3)(a) This subsection applies to the following persons who own any financial interest in a newspaper or periodical circulating in this state or in any radio or television station located in this state:

1. Every person occupying any office or position with an annual compensation over $300, under the constitution or laws of the United States or of this state or under an ordinance of any municipality of this state.

2. Every candidate or member of any committee or group under this chapter.

3. Every individual registered under s. 11.05.

(b) Any person named in par. (a) is guilty of a violation of this chapter unless, before using the communications medium for political purposes other than as provided for in sub. (2), there is filed with the board a verified declaration specifically stating the communications medium in which the person has financial interest or over which the person has control and the exact nature and extent of the interest or control.

(4) No owner or other person with a financial interest in a communications medium may utilize such medium in support of or in opposition to a candidate or referendum except as provided in this chapter. This chapter shall not be construed to restrict fair coverage of bona fide news stories, interviews with candidates and other politically active individuals, editorial comment or endorsement. Such activities need not be reported as a contribution or disbursement.

(5) Whenever any person receives payment from another person, in cash or in-kind, for the direct or indirect cost of conducting a poll concerning support or opposition to a candidate, political party or referendum, the person conducting the poll shall, upon request of any person who is polled, disclose the name and address of the person making payment for the poll and, in the case of a registrant under s. 11.05, the name of the treasurer of the person making payment.

➡11.24. Unlawful political contributions

(1) No person may, directly or indirectly, make any contribution other than from funds or property belonging to the contributor. No person may, directly or indirectly, furnish funds or property to another person for the purpose of making a contribution in other than the person's own name. No person may intentionally accept or receive any contribution made in violation of this subsection.

(1m) A conduit making a contribution of money in the manner prescribed in s. 11.06(11)(a) does not violate sub. (1).

(2) No person may intentionally accept or receive any contribution made in violation of this chapter.

➡11.31. Disbursement levels; calculation.

(1) Schedule. The following levels of disbursements are established with reference to the candidates listed below. The levels do not operate to restrict the total amount of disbursements which are made or authorized to be made by any candidate in any primary or other election.

(a) Candidates for governor, $1,078,200.

(b) Candidates for lieutenant governor, $323,475.

(c) Candidates for attorney general, $539,000.

(d) Candidates for secretary of state, state treasurer, , state superintendent, or justice, $215,625.

(dm) Candidates for court of appeals judge, $86,250.

(e) Candidates for state senator, $34,500 total in the primary and election, with disbursements not exceeding $21,575 for either the primary or the election.

(f) Candidates for representative to the assembly, $17,250 total in the primary and election, with disbursements not exceeding $10,775 for either the primary or the election.

(fm) Candidates for circuit judge, $86,250.

(fs) Candidates for district attorney in any prosecutorial unit with a population of 500,000 or less, $86,250.

(g) In any jurisdiction or district, other than a judicial district or circuit, with a population of 500,000 or more according to the most recent federal census covering the entire jurisdiction or district:

1. For the following countywide offices:

a. Candidates for county executive, $269,500.

b. Candidates for district attorney, $161,725.

c. Candidates for county supervisor, $17,250.

2. Candidates for any countywide elective office not specified in par. (dm) or (fm) or subd. 1, $107,825.

3. For the following offices in cities of the 1st class:

a. Candidates for mayor, $269,550.

b. Candidates for city attorney, $161,725.

c. Candidates for any other city-wide office, $107,825.

d. Candidates for alderperson, $17,250.

(h) Candidates for any local office, who are elected from a jurisdiction or district with less than 500,000 inhabitants according to the latest federal census or census information on which the district is based, as certified by the appropriate filing officer, an amount equal to the greater of the following:

1. $1,075.

2. 53.91% of the annual salary for the office sought, rounded to the nearest multiple of $25.

3. 32.35 cents per inhabitant of the jurisdiction or district, but in no event more than $43,125.

(5) Separation of periods. A disbursement is made for the purposes of the election under this section when a person or committee contracts for goods to be delivered or services to be performed after the date of the primary, regardless of the time at which the contract is entered into by the contracting person or committee.

(7) Campaign defined. (a) For purposes of this section, the "campaign" of a candidate extends from July 1 preceding the date on which the spring primary or election occurs or January 1 preceding the date on which the partisan primary or general election occurs for the office which the candidate seeks, or from the date of the candidate's public announcement, whichever is earlier, through the last day of the month following the month in which the election or primary is held.

(b) Disbursements which are made before a campaign period for goods to be delivered or services to be rendered in connection with the campaign are allocated to the disbursement level for that campaign.

(c) Disbursements which are made after a campaign to retire a debt incurred in relation to a campaign are allocated to the disbursement level for that campaign.

(d) Disbursements which are made outside a campaign period and to which par. (b) or (c) does not apply are not subject to any disbursement level. Such disbursements are subject to s. 11.25(2).

(8) Certain contributions excluded. The levels specified in this section do not apply to a gift of anything of value constituting a contribution made directly to a registrant by another, but the levels do apply to such a gift when it is received and accepted by the recipient or if received in the form of money, when disbursed.

➡11.25. Unlawful political disbursements and obligations

(1) No person, committee or group may intentionally receive or accept anything of value, or any promise or pledge thereof, constituting a disbursement made or obligation incurred for political purposes contrary to law.

(2)(a) No person, committee or group may make or authorize a disbursement or the incurrence of an obligation from moneys solicited for political purposes for a purpose which is other than political, except as specifically authorized by law.

(b) Notwithstanding par. (a), a registrant may accept contributions and make disbursements from a campaign depository account for the purpose of making expenditures in connection with a campaign for national office; for payment of civil penalties incurred by the registrant under this chapter but not under any other chapter; for the purpose of making a donation to a charitable organization or the common school fund; or for payment of the expenses of nonpartisan campaigns to increase voter registration or participation. Notwithstanding par. (a), a personal campaign committee or support committee may accept contributions and make disbursements from a campaign depository account for payment of inaugural expenses of an individual who is elected to state or local office. If such

expenses are paid from contributions made to the campaign depository account, they are reportable under s. 11.06(1) as disbursements. Otherwise, such expenses are not reportable under s. 11.06(1). If contributions from the campaign depository account are used for such expenses, they are subject to s. 11.26.

(3) No moneys solicited for political purposes and reported under this chapter may be invested for the purpose of producing income unless the investment is in direct obligations of the United States and of agencies and corporations wholly owned by the United States, commercial paper maturing within one year from the date of investment, preferred shares of a corporation, an interest-bearing account at any financial institution as defined in s. 705.01(3) or securities of an investment company registered under the federal investment company act of 1940 (15 USC 80a) and registered for public offer and sale in this state of the type commonly referred to as a "money market fund".

➡11.27. False reports and statements

(1) No person may prepare or submit a false report or statement to a filing officer under this chapter.

(2) In civil actions under this chapter, the acts of every member of a personal campaign committee are presumed to be with the knowledge and approval of the candidate, until it has been clearly proved that the candidate did not have knowledge of and approve the same.

➡11.29. Communications for political purposes

(1) Nothing in this chapter restricts any corporation, cooperative, unincorporated cooperative association, or voluntary association other than a political party or personal campaign committee from making disbursements for the purpose of communicating only with its members, shareholders or subscribers to the exclusion of all other persons, with respect to endorsements of candidates, positions on a referendum or explanation of its views or interests, without reporting such activity. No such corporation, cooperative, or association may solicit contributions from persons who are not members, shareholders or subscribers to be used for such purposes.

(2) Notwithstanding s. 11.12(1), a political party committee may make single communications to its members at periodic intervals with respect to an explanation of its views or interests, a position on a referendum to be submitted to the voters, or endorsement of an entire slate of candidates at any jurisdictional level or levels. Such activity shall be reported by the party committee.

(3) No communications medium may be utilized for communications authorized

under this section unless the medium is restricted solely to members, shareholders or subscribers.

(4) For purposes of this section, the members of a local or regional cooperative or unincorporated cooperative association are deemed to be members of a state cooperative or unincorporated cooperative association if the local or regional cooperative or unincorporated cooperative association is a member of the state cooperative or unincorporated cooperative association.

➡11.315. Repealed by 1987 Act 370, § 31, eff. May 3, 1988

➡11.32. Compensation for political advertisements

(1) No owner, agent or employee of any communications medium may solicit, receive or accept any payment, promise or compensation, nor may any person pay, promise to pay or compensate such person, for the purpose of influencing voting at any election through any broadcast or printed matter unless designated as a paid advertisement under s. 11.30.

(2) No person publishing a newspaper or periodical or operating a radio or television station may receive rates for publishing or broadcasting advertising for political purposes in excess of the rate regularly charged for commercial advertising of a similar character and classification. No person, committee or group placing such advertising may pay any rate or charge in excess of the regularly charged rate.

➡11.33. Use of government materials by candidates

(1)(a) No person elected to state or local office who becomes a candidate for national, state or local office may use public funds for the cost of materials or distribution for 50 or more pieces of substantially identical material distributed after:

1. In the case of a candidate who is nominated by nomination papers, the first day authorized by law for circulation of nomination papers as a candidate.

2. In the case of a candidate who is nominated at a primary election by write-in votes, the day the board of canvassers issues its determination that the person is nominated.

3. In the case of a candidate who is nominated at a caucus, the date of the caucus.

4. In the case of any other candidate who is nominated solely by filing a declaration of candidacy, the first day of the month preceding the month which

includes the last day for filing the declaration.

(b) This subsection applies until after the date of the election or after the date of the primary election if the person appears as a candidate on a primary election ballot and is not nominated at the primary election.

(2) This section does not apply to use of public funds for the costs of the following, when not done for a political purpose:

(a) Answers to communications of constituents.

(c) Actions taken by a state or local government administrative officer pursuant to a specific law, ordinance or resolution which authorizes or directs the actions to be taken.

(d) Communications not exceeding 500 pieces by members of the legislature relating solely to the subject matter of a special session or extraordinary session, made during the period between the date that the session is called or scheduled and 14 days after adjournment of the session.

(3) Except as provided in sub. (2), it is not a defense to a violation of sub. (1) that a person was not acting with a political purpose. This subsection applies irrespective of the distributor's intentions as to political office, the content of the materials, the manner of distribution, the pattern and frequency of distribution and the value of the distributed materials.

➡11.50 to 11.522. Repealed by 2011 Act 32, §§ 13vb to 16e, eff. July 1, 2011

➡11.34. Solicitation of contributions from candidates restricted

(1) No person may demand, solicit, take, invite or receive from a candidate any gift of anything of value for a religious, charitable or fraternal cause or for any organization other than a political committee or group. No candidate may make, intimate or promise such a gift.

(2) This section does not apply to payment of a regular subscription or contribution by a person to an organization of which the person is a member or to which the person may have been a regular contributor prior to the person's candidacy or to ordinary contributions at a regular church service.

➡11.50 to 11.522. Repealed by 2011 Act 32, §§ 13vb to 16e, eff. July 1, 2011

➡11.36. Political solicitation involving public officials and employees restricted

(1) No person may solicit or receive from any state officer or employee or from any officer or employee of the University of Wisconsin Hospitals and Clinics Authority any contribution or service for any political purpose while the officer or employee is engaged in his or her official duties, except that an elected state official may solicit and receive services not constituting a contribution from a state officer or employee or an officer or employee of the University of Wisconsin Hospitals and Clinics Authority with respect to a referendum only. Agreement to perform services authorized under this subsection may not be a condition of employment for any such officer or employee.

(2) No person may solicit or receive from any officer or employee of a political subdivision of this state any contribution or service for any political purpose during established hours of employment or while the officer or employee is engaged in his or her official duties.

(3) Every person who has charge or control in a building, office or room occupied for any purpose by this state, by any political subdivision thereof or by the University of Wisconsin Hospitals and Clinics Authority shall prohibit the entry of any person into that building, office or room for the purpose of making or receiving a contribution.

(4) No person may enter or remain in any building, office or room occupied for any purpose by the state, by any political subdivision thereof or by the University of Wisconsin Hospitals and Clinics Authority or send or direct a letter or other notice thereto for the purpose of requesting or collecting a contribution.

(5) In this section, "political purpose" includes an act done for the purpose of influencing the election or nomination for election of a person to national office, and "contribution" includes an act done for that purpose.

(6) This section does not apply to response by a legal custodian or subordinate of the custodian to a request to locate, reproduce or inspect a record under s. 19.35, if the request is processed in the same manner as the custodian or subordinate responds to other requests to locate, reproduce or inspect a record under s. 19.35.

➡11.37. Travel by public officers

(1) No person may use any vehicle or aircraft owned by the state or by any local governmental unit for any trip which is exclusively for the purposes of campaigning in support of or in opposition to any candidate for national, state or local office, unless use of the vehicle or aircraft is required for purposes of security protection provided by the state or local governmental unit.

(2) No person may use any vehicle or aircraft owned by the state or by any local governmental unit for purposes which include campaigning in support of or in opposition to any candidate for national, state or local office, unless the person pays to the state or local governmental unit a fee which is comparable to the commercial market rate for the use of a similar vehicle or aircraft and for any services provided by the state or local governmental unit to operate the vehicle or aircraft. If a trip is made in part for a public purpose and in part for the purpose of campaigning, the person shall pay for the portion of the trip attributable to campaigning, but in no case less than 50% of the cost of the trip. The portion of the trip attributable to campaigning shall be determined by dividing the number of appearances made for campaign purposes by the total number of appearances. Fees payable to the state shall be prescribed by the secretary of administration and shall be deposited in the account under s. 20.855(6)(h). Fees payable to a local governmental unit shall be prescribed by the governing body of the governmental unit.

➡11.50 to 11.522. Repealed by 2011 Act 32, §§ 13vb to 16e, eff. July 1, 2011

➡11.50 to 11.522. Repealed by 2011 Act 32, §§ 13vb to 16e, eff. July 1, 2011

➡11.50 to 11.522. Repealed by 2011 Act 32, §§ 13vb to 16e, eff. July 1, 2011

➡11.38. Contributions and disbursements by corporations and cooperatives

(1)(a)1. No foreign or domestic corporation, or association organized under ch. 185 or 193, may make any contribution or disbursement, directly or indirectly, either independently or through any political party, committee, group, candidate or individual for any purpose other than to promote or defeat a referendum.

2. Notwithstanding subd. 1., any such corporation or association may establish and administer a separate segregated fund and solicit contributions from individuals to the fund to be utilized by such corporation or association, for the purpose of supporting or opposing any candidate for state or local office but the corporation or association may not make any contribution to the fund. The fund shall appoint a treasurer and shall register as a political committee under s. 11.05. A parent corporation or association engaging solely in this activity is not subject to registration under s. 11.05, but shall register and file special reports on forms prescribed by the board disclosing its administrative and solicitation expenses on behalf of such fund. A corporation not domiciled in this state need report only its expenses for administration and solicitation of contributions in this state together with a statement indicating where information concerning other administration and solicitation expenses of its fund may be obtained. The reports shall be filed with the filing officer for the fund specified in s. 11.02 in the manner

in which continuing reports are filed under s. 11.20(4) and (8).

3. No corporation or association specified in subd. 1 may expend more than a combined total of $500 annually for solicitation of contributions to a fund established under subd. 2 or to a conduit.

(b) No political party, committee, group, candidate or individual may accept any contribution or disbursement made to or on behalf of such individual or entity which is prohibited by this section.

(2)(a) This section does not affect the right of any individual to support candidates and purposes of the individual's own choosing or the individual's right to subscribe to a regularly published organization newspaper.

(b) This section does not prohibit the publication of periodicals by a corporation , a cooperative, or an unincorporated cooperative association in the regular course of its affairs which advise the members, shareholders or subscribers of the disadvantages or advantages to their interests of the election to office of persons espousing certain measures, without reporting such activity.

(c) This section does not apply to any labor organization which is incorporated under ch. 181 prior to January 1, 1978.

(3) A violation of this section by an officer or employee of a corporation is prima facie evidence of a violation by the corporation.

(4) Any corporation which violates this section shall forfeit double the amount of any penalty assessed under s. 11.60(3).

(6) Any individual or campaign treasurer who receives funds in violation of this section shall promptly return such funds to the contributor or donate the funds to the common school fund or a charitable organization, at the treasurer's option.

(7) This section may not be construed to authorize any national bank or any corporation organized by authority of any law of congress to make a contribution or expenditure as defined by federal law in connection with any election to state or local office which is prohibited by federal law.

(8)(a) A corporation or association organized under ch. 185 or 193 which accepts contributions or makes disbursements for the purpose of influencing the outcome of a referendum is a political group and shall comply with s. 11.23 and other applicable provisions of this chapter.

(b) Except as authorized in s. 11.05(12)(b) and (13), prior to making any

disbursement exceeding the amount specified under s. 11.23(1) on behalf of a political group which is promoting or opposing a particular vote at a referendum and prior to accepting any contribution or making any disbursement exceeding that amount to promote or oppose a particular vote at a referendum, a corporation or association organized under ch. 185 or 193 that becomes subject to a registration requirement under s. 11.23(1) shall register with the appropriate filing officer specified in s. 11.02 and appoint a treasurer. The registration form of the corporation or association under s. 11.05 shall designate an account separate from all other corporation or association accounts as a campaign depository account, through which all moneys received or expended for the adoption or rejection of the referendum shall pass. The corporation or association shall file periodic reports under s. 11.20 providing the information required under s. 11.06(1).

(c) Expenditures by a corporation or association to establish and administer a campaign depository account of a political group need not be made through the depository account and need not be reported.

➡11.385. Repealed by 2005 Act 177, § 105, eff. April 6, 2006

➡11.50 to 11.522. Repealed by 2011 Act 32, §§ 13vb to 16e, eff. July 1, 2011

➡11.40. Special privileges from public utilities

(1) In this section:

(a) "Public utility" means any corporation, company, individual or association which furnishes products or services to the public, and which is regulated under ch. 195 or 196, including but not limited to, railroads, telecommunications or telegraph companies and any company furnishing or producing heat, light, power or water.

(b) "Special privilege" or "privilege" means anything of value not available to the general public. The term does not include compensation or fringe benefits provided as a result of employment by a public utility to regular employees or pensioners who are not compensated specifically for services performed for a political purpose, and not in excess of that provided to other regular employees or pensioners of like status.

(2) No public utility or anyone connected therewith may offer or give any special privilege to any candidate for public office or any committee or its members or employees, or any individual under s. 11.06(7), or to any 3rd party at the request of or for the advantage of any of them.

(3) No candidate for public office or any committee or member or employee thereof or any individual under s. 11.06(7) may ask for or accept any special privilege from any public utility.

(4) This section does not apply to notaries public or to regular public utility employees or pensioners who are candidates for or hold public offices for which the annual compensation is not more than $300 so long as the privilege does not exceed those extended to other regular employees or pensioners of the utility.

→11.50 to 11.522. Repealed by 2011 Act 32, §§ 13vb to 16e, eff. July 1, 2011

→11.50 to 11.522. Repealed by 2011 Act 32, §§ 13vb to 16e, eff. July 1, 2011

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→11.50 to 11.522. Repealed by 2011 Act 32, §§ 13vb to 16e, eff. July 1, 2011

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→11.50 to 11.522. Repealed by 2011 Act 32, §§ 13vb to 16e, eff. July 1, 2011

→11.54 to 11.59. [Blank]

➡11.605. [Blank]

➡11.60. Civil penalties

(1) Any person, including any committee or group, who violates this chapter may be required to forfeit not more than $500 for each violation.

(2) In addition to the penalty under sub. (1), any person, including any committee or group, who is delinquent in filing a report required by this chapter may be required to forfeit not more than $50 or one percent of the annual salary of the office for which the candidate is being supported or opposed, whichever is greater, for each day of delinquency.

(3) Notwithstanding sub. (1), any person, including any committee or group, who makes any contribution in violation of this chapter may be required to forfeit treble the amount of the contribution or portion thereof which is illegally contributed.

(3g) Notwithstanding sub. (1), any person, including any committee or group, who violates s. 11.21 (5) or 11.22 (8) shall forfeit $10 for each person who is solicited, but not more than $1,000 for each report from which persons are solicited, in violation of s. 11.21 (5) or 11.22 (8).

(3m) Notwithstanding sub. (1), any person, including any committee, group or corporation, who is subject to a requirement to pay a filing fee under s. 11.055 and who fails to pay that fee within the time prescribed in that section shall forfeit $500 plus treble the amount of the fee payable by that person.

(4) Except as otherwise provided in ss. 5.05(2m)(c)15. and 16. and (h), 5.08, and 5.081, actions under this section may be brought by the board or by the district attorney for the county where the defendant resides or, if the defendant is a nonresident, by the district attorney for the county where the violation is alleged to have occurred. For purposes of this subsection, a person other than a natural person resides within a county if the person's principal place of operation is located within that county.

(5) Any elector may file a verified petition with the board or the appropriate district attorney or with more than one of them where their authority is concurrent under sub. (4), requesting that civil action under this chapter be brought against any person, committee or group. The petition shall allege such facts as are within the knowledge of the petitioner to show probable cause that a violation of this chapter has occurred.

➡11.62, 11.63. [Blank]

➡11.62, 11.63. [Blank]

➡11.64. Defense fund authorized

(1) Any candidate or public official who is being investigated for, charged with or convicted of a criminal violation of this chapter or ch. 12, or whose agent is so investigated, charged or convicted, may establish a defense fund for expenditures supporting or defending the candidate or agent, or any dependent of the candidate or agent, while that person is being investigated for, or while the person is charged with or convicted of a criminal violation of this chapter or ch. 12.

(2) No person may utilize a contribution received from a contributor to a campaign fund for a purpose for which a defense fund is authorized under sub. (1) unless the authorization of the contributor is obtained. Notwithstanding s. 11.25(2)(a), any contributor may authorize the transfer of all or part of a contribution from a campaign fund to a defense fund.

➡11.61. Criminal penalties; prosecution

(1)(a) Whoever intentionally violates s. 11.05(1), (2), (2g) or (2r), 11.07(1) or (5), 11.10(1), 11.12(5), 11.23(6) or 11.24(1) is guilty of a Class I felony.

(b) Whoever intentionally violates s. 11.25, 11.26, 11.27(1), 11.30(1) or 11.38 is guilty of a Class I felony if the intentional violation does not involve a specific figure or if the intentional violation concerns a figure which exceeds $100 in amount or value.

(c) Whoever intentionally violates any provision of this chapter other than those provided in par. (a) and whoever intentionally violates any provision under par. (b) where the intentional violation concerns a specific figure which does not exceed $100 in amount or value may be fined not more than $1,000 or imprisoned not more than 6 months or both.

(2) Except as otherwise provided in ss. 5.05(2m)(c)15. and 16. and (i), 5.08, and 5.081, all prosecutions under this section shall be conducted by the district attorney for the county where the defendant resides or, if the defendant is a nonresident, by the district attorney for the county where the violation is alleged to have occurred. For purposes of this subsection, a person other than a natural person resides within a county if the person's principal place of operation is located within that county.

(3)(a) If a successful candidate for public office, other than a candidate for the

legislature, is adjudged guilty in a criminal action of any violation of this chapter under sub. (1)(a) or (b), or of any violation of ch. 12 under s. 12.60(1)(a) committed during his or her candidacy, the court shall after entering judgment enter a supplemental judgment declaring a forfeiture of the candidate's right to office. The supplemental judgment shall be transmitted to the officer or agency authorized to issue the certificate of nomination or election to the office for which the person convicted is a candidate. If the candidate's term has not yet begun, the candidate shall not thereafter succeed to office. If the candidate's term has begun, the office shall become vacant. The office shall then be filled in the manner provided by law.

(b) If a successful candidate for the legislature is adjudged guilty in a criminal action of any violation of this chapter under sub. (1)(a) or (b), or of any violation of ch. 12 under s. 12.60(1)(a) committed during his or her candidacy, the court shall after entering judgment certify its findings to the presiding officer of the house of the legislature to which the candidate was elected.

➡11.65. Donations to charitable organizations or school fund

Any registrant may make a donation to a charitable organization or the common school fund from the registrant's campaign treasury. No later than 5 days after a registrant makes a donation to a charitable organization or the common school fund from a campaign treasury, the registrant shall notify the registrant's filing officer in writing of the name of the donee and the date of the donation, and shall provide an explanation for not retaining the amount donated in the registrant's campaign treasury.

➡11.66. Elector may compel compliance

Any elector may sue for injunctive relief to compel compliance with this chapter. Before commencing any action concerning a state office or statewide referendum, an elector shall file a verified complaint with the board alleging such facts as are within his or her knowledge to show probable cause to believe that a violation has occurred or is proposed to occur. If the board fails to commence an action within 10 days of the filing of the complaint, the elector may commence an action. Separate from any other bond which may be required by the court, the elector may be required to post a surety bond in an amount determined by the court sufficient to cover the actual costs, including reasonable attorney fees, of both parties. If the elector's action is not successful, he or she shall pay the costs of the action.

➡11.67. Repealed by L.1979, c. 328, § 141, eff. July 1, 1980

➡11.68, 11.70. [Blank]

➡11.68, 11.70. [Blank]

Wisconsin Administrative Code
Government Accountability Board
➡ Chapter GAB 1. Campaign Financing

➡GAB 1.02 Multiple candidacies.

(1) Any candidate seeking election to an office other than that inicated on a registration statement or that of the candidate's personal campaign committee must file an amended registration statement with the appropriate filing officer or officers indicating such change. Financial disclosure reports filed subsequent to such change must be filed with the filing officer for the office designated on the amended registration statement.

(2) When a candidate is simultaneously seeking election to more than one office, the candidate shall file duplicate consolidated registration statements indicating all offices sought and duplicate consolidated financial disclosure reports with the appropriate filing officers. The personal campaign committee of such a candidate is responsible for ensuring compliance with the contribution limitation applicable to each office sought.

(3) Regardless of the number of offices sought, a candidate may not have more than one committee, treasurer and campaign depository account.

➡GAB 1.04 Debt retirement; treatment of contributions received and accepted after election.

(1) Contributions received and accepted for the purpose of retiring debts incurred in a prior campaign should be counted against the contributor's contribution limit for said campaign. Contributions received and accepted in excess of the amount needed to retire such debt shall be counted against the contributor's contribution limits applicable to the next campaign on a first-in first-out basis with the contributions received and accepted first applied to debt retirement.

(2) Notwithstanding the above, a contribution received and accepted between the period that begins on the day after the closing date for the pre-election campaign finance report period and ends on the day after the closing date for the period covered by the first financial report filed by or on behalf of the candidate subsequent to the date of the previous election, or if the candidate has incurred obligations from a previous campaign, the date on which the candidate receives sufficient contributions to retire those obligations shall be counted against the limits for the campaign in which the election took place, regardless of whether all campaign debts have been retired at the time the contribution is received.

➡GAB 1.05 Reporting of disbursements.

Every withdrawal of funds except for internal transfers for investment purposes from the campaign depository account must be reported in accordance with ss. 11.06 and 11.20, Stats.

➡GAB 1.06 Corporate registration and reporting.

(1) Every foreign or domestic corporation or association organized under ch. 185, Stats., which establishes a separate segregated fund pursuant to s. 11.38 (1) (a) 2., Stats., shall register with the appropriate filing officer on a form prescribed by the board.

(2) Every foreign or domestic corporation or association organized under ch. 185, Stats., which is required to register pursuant to sub. (1), shall file financial disclosure reports with the appropriate filing officer in accordance with s. 11.20 (4), Stats., on a form prescribed by the board.

➡GAB 1.10 Reporting by nonresident committees and groups.

Every nonresident committee or group as defined in s. 11.07 (6), Stats., acting in support of or in opposition to any candidate for state or local office, which makes or accepts contributions, incurs obligations or makes disbursements exceeding $25 cumulatively in a calendar year within this state shall register both with the appropriate filing officer under s. 11.05 (1), Stats., and with the secretary of state under s. 11.07 (1), Stats.

➡GAB 1.11 Reporting of joint fundraiser.

(1) Any personal campaign committee, political party committee, or legislative campaign committee which conducts a joint fundraiser under s. 11.16 (5), Stats., shall register with the appropriate filing officer by filing a supplemental schedule, Form EB-2JF, at the time of signing the escrow agreement with the candidate on whose behalf the joint fundraiser is conducted.

(2) The supplemental schedule, Form EB-2JF, shall identify the committees conducting the fundraiser, the candidates on whose behalf the joint fundraiser is conducted, the percentage of the net proceeds distributed to the candidate, and the escrow depository account. A copy of the escrow agreement shall be attached to form EB-2JF.

(3) The sponsors of the joint fundraiser shall prepare a regular campaign finance report, Form EB-2, or a public funding campaign finance report, Form EB-24, to report expenses qualifying for exclusion under s. 11.31 (6), Stats. The campaign finance report shall report all contributions and disbursements. The sponsors shall give a copy of the report to each candidate or committee receiving any share

of the net proceeds from the fundraiser within 25 days after the fundraiser is held. The sponsors shall file the campaign finance report with the filing officer when the next campaign finance report is due under s. 11.20 (3) and (4), Stats. If the sponsors have not received and paid all the bills for the joint fundraiser by the time the sponsors file the first campaign finance report, the sponsors shall continue to file a regular campaign finance report as required until termination.

(4) The candidates or committees receiving any of the net proceeds from the joint fundraiser shall report on their regular campaign finance report their share of the net proceeds as a single contribution from the joint fundraiser, attaching a copy of the campaign finance report received from the sponsors. If any contributor to the joint fundraiser also makes an individual contribution to the candidate's campaign during the calendar year of the joint fundraiser, and the contributor's total contributions exceed $20 in that period, the candidate who receives the additional contribution from the contributor shall report the additional contribution as an itemized contribution with the applicable information about the contributor under s. 11.06 (1) (a) and (b), Stats. The amount of any itemized contribution shall be subtracted from the reportable amount of the single contribution from the joint fundraiser.

➡**GAB 1.15 Filing reports of late campaign activity.**

(1) Any registrant required to file a special report of late campaign activity pursuant to ss. 11.12 (5), (6) and 11.23 (6), Stats.,shall comply with the provisions of this section.

(2) A registrant required to file a special report disclosing the receipt of contributions from a single source, totaling $500 or more cumulatively during the 15 day period immediately preceding a primary or an election, shall use Form EB-3 or use a format which is acceptable to the filing officer and which contains the information required by the board on Form EB-3.

(3) A registrant required to file a special report of late independent disbursement exceeding $20 during the 15 day period immediately preceding a primary or an election shall use Form EB-7 or shall use a format which is acceptable to the filing officer and which contains the information required by the board on form EB-7.

(4) A special report of late campaign activity is timely filed when it is in the physical possession of the filing officer within the time prescribed for filing. Except as provided in sub. (6), any special report of late campaign activity also shall be treated as timely filed when it is mailed with the U.S. postal service, by first class mail, with sufficient prepaid postage, addressed to the appropriate filing officer, and postmarked not later than the date prescribed by law for the filing of such report.

(5) If the date on which a special report of late campaign activity is due is a Saturday, Sunday, or legal holiday, the special report shall not be due until the next business day.

(6) If a special report of late campaign activity is required to be filed on the day of or the day immediately preceding a primary or an election, the report is not timely filed unless it is actually received at the office of the appropriate filing officer before the close of business on that day, unless that day is a Saturday, Sunday, or legal holiday.

(7) If the filing officer for a special report of late campaign activity is the government accountability board, a registrant filing the report on the day of or the day immediately preceding a primary or an election may file by sending a facsimile (FAX) copy by telecopier on the date, if the signed original of the report is received through the U.S. mail with a postmark not later than the date due.

➡**GAB 1.20 Treatment and reporting of in-kind contributions.**

(1) In this section:

(a) "Actual value" means the fair market value.

(b) "Authorized person" means a candidate, treasurer, agent, other person whom a candidate designates, or a person whom any other registrant designates to authorize a proposed in-kind contribution.

(c) "Contributor" means any individual or registrant who proposes to make an in-kind contribution.

(d) "Date of contribution" means the time as of which the benefit, of the thing of value given or of the service performed, is conferred upon the candidate's campaign or upon the registrant.

(e) "In-kind contribution" means a disbursement by a contributor to procure a thing of value or service for the benefit of a registrant who authorized the disbursement.

(f) "Registrant" has the same meaning as provided in s. 11.01 (18m), Stats.

(2) Before making an in-kind contribution to a candidate or other registrant, the prospective contributor shall notify an authorized person and obtain that person's oral or written consent to the contribution.

(3) When an individual other than a registrant receives authorization to make an in-kind contribution, the authorized person shall obtain from the contributor, in writing: the contributor's name and address and, where applicable, the contributor's occupation and the name and address of his or her principal place of employment; the nature of the contribution, its actual value and the date of the contribution.

(4) When a registrant receives authorization to make an in-kind contribution, the registrant shall provide to the authorized person, in writing, before the closing date of the next campaign finance report in which the contribution is required to be listed: the registrant's name and address; the nature of the contribution and its actual value; and the date of the contribution.

(5) If a contributor does not know the actual value of an in-kind contribution, the contributor shall give an authorized person a good-faith and reasonable estimate of the fair market value, before the closing date of the next campaign finance report in which the contribution is required to be listed. When the contributor receives bills or other statements reflecting the actual value of the in-kind contribution, the contributor shall immediately forward that information to an authorized person.

(6) An in-kind contribution shall be reported as received and accepted by the candidate or registrant on the date that the benefit, of the material supplied or the service performed, is conferred upon the candidate or other registrant.

(7) A candidate or registrant shall report the value of the in-kind contribution disclosed to him or her by the contributor. If a contributor estimates the fair market value, a candidate or registrant shall report the estimated value. After being informed of the actual value, by the contributor, a candidate or registrant shall report the actual value on the next campaign finance report.

(8) Without the proper authorization to make an in-kind contribution, a contributor may not make the proposed in-kind contribution unless the contribution qualifies as an independent expenditure under s. 11.06 (7), Stats., and under s. GAB 1.42.

(9) Any registrant who makes or receives an in-kind contribution shall report the contribution on Schedule 3-C of its campaign finance report.

➡**GAB 1.25 Loan treatment respecting limitations.**

A loan when made by any person, committee or group (except a loan of money by a commercial lending institution made by the institution in accordance with applicable banking laws and regulations in the ordinary course of business) shall

be reported as a contribution or disbursement, and also as an incurred obligation by the debtor. When such a loan is received by a registrant, it is counted within the contribution limitation of the creditor while outstanding, but is not counted within the limitation after repayment. The amount or value of any such outstanding loans and any other contributions or disbursements shall at no time exceed any limitation specified in ss. 11.26 and 11.31, Stats.

➡GAB 1.26 Return of contribution.

(1) This rule is promulgated to clarify the treatment and reporting of returned contributions.

(2) The return of a contribution is not a disbursement subject to the limitations on disbursements in s. 11.31, Stats., and it is not a contribution subject to the limitations on contributions in s. 11.26, Stats.

(3) A candidate who applies for a grant from the Wisconsin election campaign fund and who returns a contribution that was deposited into the campaign depository shall report the returned contribution on either the Wisconsin election campaign fund campaign finance report, Form EB-24, or the campaign finance report, Form EB-2. The candidate shall make the report on the form that is due for the period when the contribution was returned. When the candidate reports on Form EB-24, the candidate shall report the returned contributions on both Schedule 2-A, DISBURSEMENTS, Schedule 2-D, EXCLUSIONS FROM SPENDING LIMITS, and Schedule 3-A, ADDITIONAL DISCLOSURE as a returned contribution. When the candidate reports on Form 2-A, the candidate shall report the returned contribution on both Schedule 2-A, DISBURSEMENTS, and Schedule 3-A, ADDITIONAL DISCLOSURE, as returned contribution.

(4) Any registrant and candidate who does not apply for a grant from the Wisconsin election campaign fund who returns a contribution that was deposited into the campaign depository shall report the returned contribution on the campaign finance report, Form EB-2, that is due for the period when the contribution was returned. The candidate shall report the returned contribution on both Schedule 2-A, DISBURSEMENTS, and Schedule 3-A, ADDITIONAL DISCLOSURE, as a returned contribution.

(5) Any registrant and candidate who returns a contribution that is not deposited into the campaign depository within 10 days of receipt is not required to report the returned, unaccepted contribution on a campaign finance report.

(6) A registrant who receives a return of contribution shall report it on the campaign finance report, Form EB-2, on Schedule 1-C, OTHER INCOME, and shall designate this as “return of contribution.”

➡**GAB 1.28 Scope of regulated activity; election of candidates.**

(1) Definitions. As used in this rule:

(a) "Political committee" means every committee which is formed primarily to influence elections or which is under the control of a candidate.

(b) "Communication" means any printed advertisement, billboard, handbill, sample ballot, television or radio advertisement, telephone call, e-mail, internet posting, and any other form of communication that may be utilized for a political purpose.

(c) "Contributions for political purposes" means contributions made to 1) a candidate, or 2) a political committee or 3) an individual who makes contributions to a candidate or political committee or incurs obligations or makes disbursements for political purposes.

(2) Individuals other than candidates and persons other than political committees are subject to the applicable requirements of ch. 11, Stats., when they:

(a) Make contributions or disbursements for political purposes, or

(b) Make contributions to any person at the request or with the authorization of a candidate or political committee, or

(c) Make a communication for a political purpose.

(3) A communication is for a "political purpose" if either of the following applies:

(a) The communication contains terms such as the following or their functional equivalents with reference to a clearly identified candidate and unambiguously relates to the campaign of that candidate:

1. "Vote for;"

2. "Elect;"

3. "Support;"

4. "Cast your ballot for;"

5. "Smith for Assembly;"

6. “Vote against;”

7. “Defeat;” or

8. “Reject.”

(b) The communication is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate. A communication is susceptible of no other reasonable interpretation if it is made during the period beginning on the 60th day preceding a general, special, or spring election and ending on the date of that election or during the period beginning on the 30th day preceding a primary election and ending on the date of that election and that includes a reference to or depiction of a clearly identified candidate and:

1. Refers to the personal qualities, character, or fitness of that candidate;

2. Supports or condemns that candidate's position or stance on issues; or

3. Supports or condemns that candidate's public record.

(4) Consistent with s. 11.05 (2), Stats., nothing in sub. (1), (2), or (3) should be construed as requiring registration and reporting, under ss. 11.05 and 11.06, Stats., of an individual whose only activity is the making of contributions.

➡GAB 1.29 Scope of regulated activity; referenda.

The requirements of disclosure and recordkeeping of s. 11.23, Stats., are applicable to individuals and groups other than groups formed primarily to influence the outcome of a referendum as to contributions, disbursements and obligations which are directly related to express advocacy of a particular result in a referendum. Nothing contained herein should be construed to exempt groups formed primarily to influence the outcome of a referendum from the requirements of disclosure and recordkeeping of s. 11.23, Stats.

➡GAB 1.30 Revocation of exemption from filing campaign finance reports.

(1) When a person, committee or group other than a committee or individual required to file an oath under s. 11.06 (7), Stats., who or which claims an exemption from filing campaign finance reports because the registrant will not receive contributions, make disbursements, or incur obligations in an aggregate amount in excess of $1,000 in a calendar year and who or which does not anticipate accepting any contribution or contributions from a single source, other than contributions totaling no more than $1,000 made by the candidate to his or her own campaign, exceeding $100 in that year, the registrant shall lose the

exemption when the registrant exceeds the $1,000 and $100 limits, respectively. The registrant shall then inform the appropriate filing officer by filing either an amended campaign registration statement (Form EB-1) stating that the registrant is no longer eligible for exemption or by a letter filed with the filing officer or with the U.S. postal service by first class mail with sufficient prepaid postage, addressed to the appropriate filing officer, no later than the date on which the registrant exceeds the $1,000 and $100 limits. The registrant becomes subject to the applicable reporting requirements as of the date on which the registrant exceeds the $1,000 and $100 limits, including the requirement to report contributions received, disbursements made, and obligations incurred before the registrant exceeds the $1,000 and $100 limits.

(2) When any political party committee claims an exemption from filing campaign finance reports because the registrant has signed an indication on a registration statement that the committee will not accept contributions, make disbursements, or incur obligations in the aggregate in excess of $1,000 in any calendar year and will not accept any contribution or contributions from a single source exceeding $100 in that year, the registrant shall lose the exemption when the committee's financial activity exceeds the $1,000 and $100 limits, respectively. The committee shall then inform its filing officer by verified letter filed with the filing officer or with the U.S. postal service by first class mail with sufficient prepaid postage, addressed to the appropriate filing officer, no later than the date on which the registrant exceeds the $1,000 and $100 limits. The committee becomes subject to the applicable reporting requirements as of the date on which the registrant exceeds the $1,000 and $100 limits, including the requirement to report contributions received, disbursements made, and obligations incurred before the registrant exceeds the $1,000 and $100 limits.

(3) For purposes of qualifying for exempt status under s. 11.05 (2r), Stats., the transfer of party member dues from a state political party to a local party shall not be considered a contribution from a single source. A local political party shall not lose its exempt status because of transfers to it by the state party of party member dues in excess of $100.

➡**GAB 1.32 Contribution of partnership funds.**

(1) As used in this rule, “partnership” includes all associations organized for profit and all other partnerships.

(a) A contribution in the name of a partnership shall be treated as an individual contribution from each partner in relation to each partner's interest in the partnership profits or losses unless the partners agree to apportion the contribution otherwise.

(b) When a contribution is made in the name of a partnership, the registrant must obtain the information as to each partner's share thereof within 30 days after receiving the contribution or return the contribution.

➡GAB 1.33 Retirement of campaign debts incurred to business creditors.

(1) As used in this section "an obligation incurred by a registrant to a business creditor" means an obligation incurred by the registrant for goods or services.

(2) An obligation incurred by a registrant to a business creditor will be treated as a contribution of the creditor if any part of the obligation is outstanding for a period longer than that consistent with normal business or trade practice, or if the obligation is settled for less than the outstanding debt, unless a showing is made to the registrant's filing officer that the creditor has treated the obligation in a commercially reasonable manner. Such a showing must include at least the following:

(a) The initial extension of credit on which the obligation was incurred was made in the ordinary course of business with terms substantially similar to those granted to non-political debtors of similar credit risk; and

(b) The creditor has made all reasonable efforts to retire the debt, including pursuit of all remedies which would normally be employed by the creditor in pursuit of a non-political debtor. "Reasonable efforts to retire the debt" include lawsuits, if filed in similar circumstances.

➡GAB 1.34 Use of funds received from Wisconsin election campaign fund.

(1) The term "printing, graphic arts or advertising services"includes, but is not limited to, the ordinary and necessary direct costs of planning, preparing proof copy and paste up, and printing or other like production of copy that is used in the candidate's election campaign.

(2) The term "office supplies" includes expendable items normally utilized in office situations such as, but not limited to, envelopes, paper, cards, notebooks, pens, pencils, ribbons, tapes, paper clips, rubber bands, duplicating supplies, manuals and journals.

(3) Grant funds from the Wisconsin election campaign fund may not be used for the purchase or rental of office furniture and equipment; office rent; utilities; telephone, telegraph or teletype costs; or insurance costs.

➡GAB 1.36 Allocation of expenditures in nonpartisan elections.

(1) This rule is promulgated to clarify the allocation of expenditures between the primary and general election by candidates who receive public funding in a nonpartisan election.

(2) A candidate in a nonpartisan election who is subject to the limitations and disbursement levels specified in s. 11.31, Stats., may make expenditures for items used in the pre-primary period to be allocated toward the disbursement limitations for the primary until the date the candidate knows there is no primary.

(3) Any expenditures made after the date the candidate knows that there is no primary, shall be applied to the disbursement limitation for the general election.

(4) For purposes of this rule, a candidate shall be deemed to know that there will be no primary on the day following the last day that nomination papers must be filed with the appropriate officer.

➡GAB 1.38 Return of contributions to committees by candidates who receive public funding.

(1) A candidate may return any contribution received from a committee or a political party committee for purposes of receiving a larger grant from the Wisconsin election campaign fund within the time period specified in sub. (3).

(2) The candidate shall disclose the date, amount and source of the returned contribution on the applicable campaign finance report form.

(3) Any contribution returned no later than 7 days after the primary shall not be counted against the limits specified in s. 11.50 (9), Stats.

➡GAB 1.385 Return of contributions to contributors by candidates when candidates file nomination papers for offices that have lower contribution limits than the limits that applied at the time of the contributions.

A candidate shall be subject to the contribution limits that apply to the candidate at the time of the primary election at which the candidate's name appears on the ballot. If a candidate for any office has unspent contributions in his or her campaign depository at the time of filing nomination papers that were lawful at the time of receipt but exceeded the contribution limit that applies to the office for which the candidate is seeking nomination, the candidate shall dispose of the unspent contributions. The candidate shall either return the excess contribution to the contributor on a reasonable basis that the candidate determines or donate the excess contribution to either the common school fund or a charitable organization.

➡GAB 1.39 Conversion of federal campaign committee to state committee prohibited.

(1) As used in this rule,

(a) "Federal campaign committee" means the campaign committee of a candidate for federal office, which is not registered with a state or local filing officer, and

(b) "State campaign committee" means the personal campaign committee of a candidate for state or local office.

(2) (a) A candidate's federal campaign committee may not be converted to a state campaign committee.

(b) A candidate's federal campaign committee may contribute funds collected for federal purposes to the candidate's state or local campaign, not to exceed the maximum amount that may be contributed by a single committee to a candidate for the same office under s. 11.26 (2) and (10), Stats., by filing a campaign finance registration statement, pursuant to s. 11.05, Stats., with the appropriate filing officer.

➡GAB 1.41 Mailing registration forms.

(1) Where a requirement is imposed for the filing of a registration statement no later than a certain date, the requirement may be satisfied either by actual receipt of the statement by the prescribed time for filing at the office of the filing officer, or by filing a report with the U.S. postal service by first class mail with sufficient prepaid postage, addressed to the appropriate filing officer, no later than the date provided by law for receipt of such report.

(2) In any case where the postal service is employed by a person subject to a registration requirement as the agent for transmittal of a statement, the burden is upon such person to show that a statement has been filed with the postal service.

(3) It is presumed until the contrary is established that the date shown by the postal service cancellation mark on the envelope containing the statement is the date that it was deposited in the mail.

➡GAB 1.42 Voluntary committees; scope of voluntary oath; restrictions on voluntary committees.

(1) NECESSITY OF VOLUNTARY OATH FOR INDEPENDENT CANDIDATE-RELATED ACTIVITIES. No expenditure may be made or obligation incurred over

$25 in support of or opposition to a specific candidate unless such expenditure or obligation is treated and reported as a contribution to the candidate or the candidate's opponent, or is made or incurred by or through an individual or committee filing the voluntary oath specified in s. 11.06 (7), Stats.

(2) SCOPE OF VOLUNTARY OATH. A committee or individual filing the voluntary oath may make expenditures or incur obligations in support of or opposition to a candidate if the expenditures or obligations incurred are made in cooperation or consultation with any candidate or agent or authorized committee of a candidate who is supported or opposed, and in concert with, or at the request or suggestion of, any candidate or any agent or authorized committee of a candidate who is supported or opposed, so long as the expenditures or obligations are treated and reported as a contribution to such candidate. A committee or individual filing the voluntary oath is prohibited from making expenditures in support of or opposition to a candidate if the expenditures or incurred obligations are made in cooperation or consultation with any candidate or agent or authorized committee of a candidate who is supported or opposed, and in concert with, or at the request or suggestion of, any candidate or any agent or authorized committee of a candidate who is supported or opposed, and the expenditures or obligations are not reported as a contribution to such candidate.

(3) TREATMENT AND REPORTING OF INDEPENDENT ACTIVITY BY VOLUNTARY COMMITTEE. When a committee or individual filing the voluntary oath makes an expenditure or incurs an obligation in support of or in opposition to a candidate and the individual or committee does not act in cooperation or consultation with any candidate or agent or authorized committee of a candidate who is supported or opposed, and in concert with, or at the request or suggestion of, any candidate or any agent or authorized committee of a candidate who is supported or opposed, the expenditure or incurred obligation shall be treated and reported as an “independent disbursement” or “independent incurred obligation”. When such disbursements or obligations are reported, the candidate in whose support or opposition the disbursement is made or obligation incurred should be identified on a separate schedule (EB-9) giving the name and address of the candidate, the amount, the date, and the purpose of the disbursement and an indication whether the candidate is supported or opposed.

(4) AN INDIVIDUAL OR COMMITTEE MAY MAKE BOTH DIRECT CONTRIBUTIONS AND INDEPENDENT EXPENDITURES. An individual or the committee filing the voluntary oath may make both direct contributions, and independent expenditures on behalf of a candidate in support or opposition to a candidate as long as the direct contributions are within the contribution limits set out in s. 11.26, Stats., and the individual or committee making the independent expenditure does not act in cooperation or consultation with any candidate or agent or authorized committee of a candidate who is supported or opposed, and in

concert with, or at the request or suggestion of, any candidate or any agent or authorized committee of a candidate who is supported or opposed.

(5) SPECIAL DISCLAIMER REQUIREMENT. A political message in support of or opposition to a candidate by a committee or individual not acting in cooperation or consultation with any candidate or agent or authorized committee of a candidate who is supported or opposed, and in concert with, or at the request or suggestion of, any candidate or any agent or authorized committee of a candidate who is supported or opposed shall contain, in addition to the ordinary identification required by s. 11.30 (2), Stats., the words: "The committee (individual) is the sole source of this communication and the committee (individual) did not act in cooperation or consultation with, and in concert with, or at the request or suggestion of any candidate or any agent or authorized committee of a candidate who is supported or opposed by this communication".

(6) GUIDELINES. (a) Any expenditure made on behalf of a candidate will be presumed to be made in cooperation or consultation any candidate or agent or authorized committee of a candidate who is supported or opposed, and in concert with, or at the request or suggestion of, any candidate or any agent or authorized committee of a candidate who is supported or opposed and treated as an in-kind contribution if:

1. It is made as a result of a decision in which any of the following persons take part:

a. A person who is authorized to raise funds for, to spend the campaign funds of or to incur obligations for the candidate's personal campaign committee;

b. An officer of the candidate's personal campaign committee;

c. A campaign worker who is reimbursed for expenses or compensated for work by the candidate's personal campaign committee;

d. A volunteer who is operating in a position within a campaign organization that would make the person aware of campaign needs and useful expenditures; or

2. It is made to finance the distribution of any campaign materials prepared by the candidate's personal campaign committee or agents;

(b) The presumption in par. (a) may be rebutted by countervailing evidence that the expenditure is not made in cooperation or consultation with any candidate or agent or any authorized committee of a candidate who is supported or opposed, and in concert with, or at the request or suggestion of,

any candidate or any agent or authorized committee of a candidate who is supported or opposed.

➡GAB 1.43 Referendum-related activities by committees; candidate-related activities by groups.

(1) As used in this rule, "committee-group" means any committee which acts in support of or opposition to a referendum, and any group which acts in support of or opposition to a candidate.

(2) Any committee-group may consolidate referendum-related and candidate-related activity by:

(a) Filing a duplicate consolidated registration statement or amending a previously filed registration statement with the appropriate filing officer or officers, indicating all candidates and referenda supported or opposed, or

(b) Filing duplicate consolidated financial disclosure reports, which indicate the specific purpose of each expenditure so as to differentiate between expenditures intended to influence referenda and expenditures intended to influence the election or defeat of a candidate.

(3) A committee-group which consolidates activity pursuant to this rule is subject to those limits on the receipt of contributions to which it would be subject if it were operating solely as a committee.

(4) A committee-group which consolidates activity pursuant to this rule must have a single treasurer and a single depository.

(5) Notwithstanding the above, any committee-group may separate referendum-related and candidate-related activity by filing separate registration statements, separate financial disclosure reports, and by maintaining a separate depository for each type of activity.

➡GAB 1.44 Disbursement levels.

(1) Limitation imposed. Except as authorized in s. 11.50 (2) (i), Stats., applying to disbursement levels, no candidate for state office who files a sworn statement and application to receive a grant from the Wisconsin election campaign fund and who receives and accepts any such grant may make or authorize total disbursements from the campaign treasury in any campaign which exceed the amounts specified below.

(2) The following levels of disbursements are established with reference to the

candidates listed below until the disburse-ment levels are adjusted pursuant to s. 11.31, Stats. Except as provided in sub. (1), such levels do not operate to restrict the total amount of disbursements which are made or authorized to be made by any candidate in any primary or other election.

(a) Candidates for governor, $323,450 in the primary, and $754,750 in the election.

(b) Candidates for lieutenant governor, $215,650 in the primary, and $107,825 in the election.

(c) Candidates for attorney general, $269,500 in the primary, and $269,500 in the election.

(d) Candidates for secretary of state, state treasurer, justice of the supreme court and state superintendent of public instruction, $86,250 in the primary, and $129,375 in the election.

(e) Candidates for court of appeals judge, $32,350 in the primary, and $53,900 in the election.

(f) Candidates for state senator, $34,500 total in the primary and election, with disbursements not exceeding $21,575 for either the primary or the election.

(g) Candidates for representative to the assembly, $17,250 total in the primary and election, with disbursements not exceeding $10,775 for either the primary or the election.

(h) Candidates for circuit judge, $86,250 total in the primary and election.

(i) In any jurisdiction or district, other than a judicial district or circuit, with a population of 500,000 or more, according to the most recent federal census covering the entire jurisdiction or district:

1. For the following county offices:

a. Candidates for county executive, $269,550 total in the primary and election.

b. Candidates for district attorney, $161,725 total in the primary and election.

c. Candidates for county supervisor, $17,250 total in the primary and election.

d. Candidates for any other countywide elective office, not specified in counties of this size, $107,825 total in the primary and election.

2. For the following offices in cities of the 1st class:

a. Candidates for mayor, $269,550 total in the primary and election.

b. Candidates for city attorney, $161,725 total in the primary and election.

c. Candidates for alderperson, $17,250 total in the primary and election.

d. Candidates for any other citywide office, $107,825 total in the primary and election.

(j) Candidates for any local office who are elected from a jurisdiction or district with less than 500,000 inhabitants, according to the latest federal census or census information on which the district is based, as certified by the appropriate filing officer, an amount equal to the greater of:

1. $1,075, or

2. 53.91% of the annual salary for the office sought, rounded to the nearest $25, or

3. 32.35 cents per inhabitant of the jurisdiction or district, rounded to the nearest $25, but in no event more than $43,125 in the primary and election.

➡GAB 1.45 Return of excess grant funds from Wisconsin election campaign fund after campaign.

Pursuant to s. 11.50 (8), Stats., all grants from the Wisconsin election campaign fund which are unspent and unencumbered by any candidate on the day after the election shall be returned to the government accountability board no later than the date of filing the use of grant report which is filed with the next continuing campaign finance report due after the election.

➡GAB 1.455 Allocation of disbursements of Wisconsin election campaign fund grant and other campaign funds.

A candidate subject to the disbursement limitations under s. 11.31, Stats., and s. GAB 1.44 who disburses grant and other campaign funds:

(1) May prorate a disbursement between the primary election spending limit

and the general election spending limit if the proration accurately reflects the use of the purchased materials or services in the respective primary and general election campaigns.

(2) May use grant money from the Wisconsin election campaign fund to pay the amount allocated to the general election even if the disbursement was made before the primary election.

(3) May not allocate to a future campaign any disbursements for services or materials delivered during the current campaign.

(4) May not make any disbursements during the current campaign for a future campaign until on or after the first day after the day of the election and may only make such disbursements out of campaign funds which are not excess funds that must be returned to the Wisconsin election campaign fund.

(5) May not encumber any excess funds remaining on the first day after the day of the election with incurred obligations for a future campaign.

(6) May retire debts from previous campaigns by making disbursements during the current campaign.

➡GAB 1.46 Identification of individual contributors on campaign finance reports.

(1) The requirement contained in s. 11.06 (1) (a), Stats., to furnish the street address of a contributor who has made a contribution or contributions aggregating more than $20 in a calendar year includes the municipality and state as well as the street address. A complete postal address is sufficient to meet the disclosure requirement contained in the statute.

(2) The requirement contained in s. 11.06 (1) (b), Stats., to furnish the occupation and principal place of business, if any, of each individual contributor whose cumulative contributions for the calendar year are in excess of $100 refers to the contributor's occupation and the name of the employing entity of the contributor. The listing of a business address only does not comply with the disclosure requirement of the statute.

➡GAB 1.50 Non-candidate committees collecting on behalf of a specific candidate and the voluntary oath.

When a non-candidate committee accepts contributions on behalf of a specific candidate, it must file the voluntary oath in s. 11.06 (7), Stats., by which the committee's independence of the candidate is affirmed. A political action

committee whose campaign finance reports show support of only one candidate is presumed to be accepting contributions in support of that candidate and required to file the voluntary oath in s. 11.06 (7), Stats., by which the committee's independence of the candidate is affirmed. That presumption may be overcome by countervailing evidence.

➡GAB 1.55 Reimbursement for campaign use of government vehicles.

Whenever a state or local government vehicle is used primarily for the purposes of campaigning in support of or in opposition to a candidate for national, state, or local office, there must be paid to the state treasurer or governing body of the local government a fee which is comparable to the commercial market rate for a similar vehicle or aircraft. The obligation, if any, to reimburse the state or local government shall be included on the campaign finance report covering the period during which the obligation was incurred.

➡GAB 1.56 Commercial sales by political registrants.

(1) When a registrant receives donated items for resale the proceeds from the resale transaction shall be reported in the following manner:

(a) The receipt of the item shall be reported in the registrant's campaign finance report as an in-kind contribution and as an in-kind expenditure at the fair market value of the donated item;

(b) The resale of the item shall be reported in the registrant's campaign finance report as a contribution from the purchaser in the amount paid by the purchaser.

(c) The registrant must make a good faith effort to accurately reflect the fair market value of the item in its campaign finance report.

(2) When a registrant sells an item which it has purchased for resale to raise funds for political purposes, the entire amount of the proceeds of the sale shall be reported in the registrant's campaign finance report as a contribution from the purchaser.

(3) The proceeds from the sale of food and beverage at a fundraiser by a registrant shall be reported in the registrant's campaign finance report as a contribution from the purchaser.

(4) When items are sold, including food and beverage, at a cost that is less the $10.00, the registrant should report the proceeds of the sales as contributions, but they may be listed as “unitemized contributions” in the campaign finance reports.

A good faith effort does not require that records be kept of the identity of the purchaser of items where the cost is less than $10.00.

(5) When a registrant disposes of tangible assets of the campaign by sale in a regular commercial transaction for fair market value, the proceeds of the sale shall be reported as “other income” in the registrant's campaign finance reports.

➡GAB 1.60 Consulting services.

(1) (a) Expenditures for consulting services made by a candidate's committee, political action committee, or political party committee on behalf of more than one candidate shall be attributable to each candidate in proportion to, and shall be reported to reflect, the benefit reasonably derived, except as provided in par. (c). This rule shall not apply to independent expenditures made under s. 11.06 (7), Stats., and s. GAB 1.42.,

(b) An authorized expenditure for consulting services made by a candidate, candidate's committee, political action committee, or political party committee on behalf of another candidate shall be reported as an in-kind contribution to the candidate on whose behalf the expenditure was made, except that expenditures made by political party committees on behalf of that party's presidential candidates shall not be reportable and shall not count against that party's state or local candidates' applicable contribution limits under s. 11.26 (9) (a), Stats., and spending limits under s. 11.31 (2), Stats., and s. GAB 1.44, except as provided in par. (c).

(c) Exceptions to pars. (a) and (b). Expenditures for rent, personnel, overhead, general administrative, fund-raising, and other costs of political party committees, which costs are incurred in the ordinary course of its day-to-day operations, need not be attributed to individual candidates, unless these expenditures are made on behalf of a clearly identified candidate and the expenditure can be directly attributed to that candidate.

(2) If a candidate, candidate's committee, political action committee, or political party committee, for itself or another, hires a consultant to work during a campaign period as that term is defined in s. 11.26 (17), Stats., the amount paid or incurred shall be presumed to be an expenditure on behalf of a candidate or candidates who receive assistance from the consultant. This presumption may be rebutted.

(3) Any expenditures for consulting services shall be valued at the fair market value of the item or services at the time of the contribution.

➡GAB 1.65 Opinion poll results.

(1) The term "overall cost"as used in s. 11.06 (12) (b), Stats., means the value of the opinion poll or voter survey results, as defined in s. 11.06 (12) (a) 4., Stats., as determined by the individual or committee which commissions the poll or survey.

(2) The transfer to a candidate or committee of the results of a poll or survey, other than by a sale, is an in-kind contribution to such candidate or committee and reportable on the candidate's or campaign finance report due for the period during which the results are received.

(3) The value of the poll or survey equal to the applicable percentage of full value as provided in s. 11.06 (12) (b) through (f), Stats., is based on the reasonable costs incurred in conducting the poll or survey. These costs include the costs for staff salary or other compensation, rent, telephones, poll lists, telephone calls, and computer use and supplies, and other reasonable and necessary items associated with creating the opinion results as defined in s.11.06 (12) (a) 3., Stats.

➡GAB 1.655 Identification of the source of communications paid for with money raised for political purposes.

(1) Definitions: as used in this rule:

(a) "Bona fide poll" means a poll which is conducted for the purpose of identifying, or collecting data on, voter attitudes and preferences and not for the purpose of expressly advocating the election, defeat, recall or retention of a clearly identified candidate or a particular vote at a referendum.

(b) "Communication" means any printed advertisement, billboard, handbill, sample ballot, television or radio advertisement, telephone call, and any other form of communication that may be utilized by a registrant for the purpose of influencing the election or nomination of any individual to state or local office or for the purpose of influencing a particular vote at a referendum.

(bm) "Political party" has the meaning provided in s. 5.02 (13), Stats.

(c) "Political purpose" has the meaning provided in s. 11.01 (16), Stats.

(d) "Registrant" has the meaning provided in s. 11.01 (18m), Stats.

(e) "Source" means the individual who, or committee which, pays for, or the individual who takes responsibility for, a communication that is required, by s. 11.30, Stats., to be identified.

(2) Pursuant to s. 11.30 (2) (a), Stats., any communication paid for with money

that has been raised for political purposes must identify the source of that communication, subject to the following exceptions:

(a) The source identification requirements of s. 11.30, Stats., do not apply to communications paid for by an individual who, or a committee which, is not subject to the registration requirements of s. 11.05. Stats.,

(b) A bona fide poll or survey under s. 11.30 (5), Stats., concerning the support for or opposition to a candidate, political party, referendum or a position on issues, may be conducted without source identification unless the person being polled requests such information. If requested, the person conducting the poll shall disclose the name and address of the person making payment for the poll and, in the case of a registrant under s. 11.05, Stats., the name of the treasurer or the person making the payment.

(c) Incidental administrative communications need not identify their source if such communications are singular in nature and are not intended to communicate a political message.

(d) Communications for which reporting is not required under s. 11.06 (2), Stats., are not required to identify their source.

(3) When making communications requiring source identification, disclosure is not required to be made at any particular place within or time during the communication. In the case of telephone calls, or other audio communications, the required disclosure may be made at any time prior to the end of the call or other communication.

(4) A registrant who conducts a bona fide poll must report the expense of conducting the poll on its campaign finance reports, whether or not the registrant is required to identify the source of that poll under s. 11.30 (5), Stats., and this rule.

(5) If a political party makes a communication supporting the election of more than one candidate, the source identification for that communication shall be as follows:

"Paid for by the (name of party) Party as an in-kind contribution to the candidates named."

➡**GAB 1.70 Travel reimbursements.**

(1) A candidate for or a person elected to a state or local office does not make an in-kind contribution to another candidate for a state or local office in another

district when a candidate or election official travels to the district of the other candidate for political purposes. The candidate for or person elected to state or local office may be reimbursed from his or her personal campaign committee subject to the applicable spending limits of s. 11.31 (2), Stats., and s. GAB 1.44 and is deemed to provide nonreportable volunteer services to the candidate in the other district.

(2) If the candidate or elected official is reimbursed by another individual, personal campaign committee, political action committee, or legislative campaign committee for travel, the reimbursement is a reportable contribution to the candidate.

(3) If the candidate or elected official is an officer or employee of a legislative campaign committee who travels on committee business, the reimbursement is not a reportable contribution to the candidate or elected official, but is a reportable disbursement of the legislative campaign committee.

➡**GAB 1.75 Purchase of capital assets by campaign registrants.**

(1) In this section:

(a) "Capital asset" means any asset, purchased by, or contributed to, a campaign committee, which has a useful life greater than the campaign period in which the asset was purchased, received or otherwise acquired.

(b) "Non-political use" means any usage, by a registrant, for purposes other than those specified in s. 11.01 (16), Stats.

(c) "Political purposes" has the meaning provided in s. 11.01 (16), Stats.

(d) "Registrant" has the same meaning as provided in s. 11.01 (18m), Stats.

(2) No capital asset may be purchased with campaign funds by a registrant unless the asset will be used principally for political purposes.

(3) Any non-political use of a capital asset purchased with campaign funds shall be incidental.

(4) A capital asset purchased and owned by an individual for personal use may be leased by a campaign registrant for use for political purposes only.

(5) Any rent or reimbursement paid for the use of a capital asset, by a registrant, shall be comparable to the commercial rate paid for the lease or rent of a similar item.

(6) The cost of materials, supplies or other expenses incurred in the use of a capital asset for political purposes may be paid with campaign funds by a registrant.

(7) If campaign funds are used by a registrant to pay for the lease and service of a capital asset, the terms of the lease or other rental agreement, including those of a service or maintenance contract, shall be in writing.

➡GAB 1.85 Conduit registration and reporting requirements.

(1) A conduit, as defined in s. 11.01 (5m), Stats., is required to register no later than the date of the initial transfer of a contribution to a candidate, personal campaign committee, legislative campaign committee, or political party committee, or within 5 days of the receipt of a contribution from a conduit member, whichever event occurs first.

(2) A conduit shall register with the filing officer as defined in s. 11.02, Stats., on the conduit registration statement, form EB-9.

(3) A conduit shall send to each candidate or committee at the time funds are transferred a letter identifying itself as a conduit, the name and address of the transferee, and listing the name and address of each contributor and the date and amount of each contribution.

(4) A conduit shall report to the transferee the full name and address, the occupation and the name and address of the principal place of employment, if any, of the contributor if the contributor's cumulative contributions exceed $50 for the calendar year.

(5) A conduit shall file a campaign finance report, form EB-10, at the times specified in s. 11.20, Stats., except that the pre-primary or pre-election report is filed only when a contribution is made during that period. If the conduit has no reportable activity during the continuing report period, the conduit may report on the campaign finance report, short form, form EB-2a.

(6) A conduit shall file with its campaign finance report 2 copies of each letter of transmittal sent to each transferee during the reporting period.

(7) A conduit shall file with the filing officer a special report of late contribution, form EB-3, within 24 hours of making a transfer to a candidate or committee of more than $500 in a single amount or cumulatively received during the 15 day period before the primary or election.

➡**GAB 1.855 Contributions from conduit accounts.**

(1) No contribution may be made from a conduit member's account without the conduit member's authorization which is specific as to the amount of the contribution and as to the identity of the candidate who is to receive the contribution. The conduit member's authorization may be made in writing, or may be made orally if a contemporaneous written record of the oral authorization is made by the conduit administrator.

(2) A contribution from a conduit account shall be in the form of a check or other negotiable instrument made out to the named candidate or to the candidate's personal campaign committee, or to a legislative campaign committee, political party committee, or support committee under s. 11.18, Stats., A conduit may not make an in-kind contribution as defined in s. GAB 1.20 (1) (e).

(3) A contribution from a conduit account shall be transferred to a candidate, a personal campaign or legislative campaign committee, or a political party or support committee, within 15 days of the conduit administrator's receipt of the member's authorization.

➡**GAB 1.91 Organizations making independent disbursements.**

(1) In this section:

(a) “Contribution” has the meaning given in s. 11.01 (6), Stats.

(b) “Designated depository account” means a depository account specifically established by an organization to receive contributions and from which to make independent disbursements.

(c) “Disbursement” has the meaning given in s. 11.01 (7), Stats.

(d) “Filing officer” has the meaning given in s. 11.01 (8), Stats.

(e) “Incurred obligation” has the meaning given in s. 11.01 (11), Stats.

(f) “Independent” means the absence of acting in cooperation or consultation with any candidate or authorized committee of a candidate who is supported or opposed, and is not made in concert with, or at the request or suggestion of, any candidate or any agent or authorized committee of a candidate who is supported or opposed.

(g) “Organization” means any person other than an individual, committee, or political group subject to registration under s. 11.23, Stats.

(h) "Person" includes the meaning given in s. 990.01 (26), Stats.

(2) A corporation, or association organized under ch. 185 or 193, Stats., is a person and qualifies as an organization that is not prohibited by s. 11.38 (1) (a) 1., Stats., from making independent disbursements until such time as a court having jurisdiction in the State of Wisconsin rules that a corporation, or association organized under ch. 185 or 193, Stats., may constitutionally be restricted from making an independent disbursement.

(3) Upon accepting contributions made for, incurring obligations for, or making an independent disbursement exceeding $25 in aggregate during a calendar year, an organization shall establish a designated depository account in the name of the organization. Any contributions to and all disbursements of the organization shall be deposited in and disbursed from this designated depository account. The organization shall select a treasurer for the designated depository account and no disbursement may be made or obligation incurred by or on behalf of an organization without the authorization of the treasurer or designated agents. The organization shall register with the board and comply with s. 11.09, Stats., when applicable.

(4) The organization shall file a registration statement with the appropriate filing officer and it shall include, where applicable:

(a) The name, street address, and mailing address of the organization.

(b) The name and mailing address of the treasurer for the designated depository account of the organization and any other custodian of books and accounts for the designated depository account.

(c) The name, mailing address, and position of other principal officers of the organization, including officers and members of the finance committee, if any.

(d) The name, street address, mailing address, and account number of the designated depository account.

(e) A signature of the treasurer for the designated depository account of the organization and a certification that all information contained in the registration statement is true, correct and complete.

(5) The designated depository account for an organization required to register with the Board shall annually pay a filing fee of $100.00 to the Board as provided in s. 11.055, Stats.

(6) The organization shall comply with s. 11.05 (5), Stats., and notify the appropriate filing officer within 10 days of any change in information previously submitted in a statement of registration.

(7) An organization making independent disbursements shall file the oath for independent disbursements required by s. 11.06 (7), Stats.

(8) An organization receiving contributions for independent disbursements or making independent disbursements shall file periodic reports as provided ss. 11.06, 11.12, 11.19, 11.20 and 11.21 (16), Stats., and include all contributions received for independent disbursements, incurred obligations for independent disbursements, and independent disbursements made. When applicable, an organization shall also file periodic reports as provided in s. 11.513, Stats.

Note: Section 11.513, Stats., was repealed by 2011 Wisconsin Act 32, section 15. As a result, the last sentence of sub. (8) is without effect and the reports described therein are not required.

(9) An organization making independent disbursements shall comply with the requirements of s. 11.30 (1) and (2) (a) and (d),Stats., and include an attribution identifying the organization paying for any communication, arising out of independent disbursements on behalf of or in opposition to candidates, with the following words: "Paid for by" followed by the name of the organization and the name of the treasurer or other authorized agent of the organization followed by "Not authorized by any candidate or candidate's agent or committee."

➡GAB 1.95 Contributions of individuals under the age of 18.

For purposes of campaign finance regulation under ch. 11, Stats., the contribution to a candidate for election or nomination to any of the offices specified in s. 11.26, Stats., of any individual less than 18 years of age at the time of contribution, shall be treated as follows:

(1) The contribution of individual contributors less than 14 years of age at the time of the contribution shall be treated as the contribution of the contributor's parents or legal guardians. If the contributor has more than one parent or one legal guardian, the contribution shall be attributed to each parent or each guardian in equal shares or in such shares as the parents or the guardians determine by written agreement.

(2) The contribution of individual contributors who are 14 years of age or older at the time of the contribution shall be treated for all purposes of campaign finance regulation under ch. 11, Stats., as the contribution of the individual contributor.

(3) This section shall not affect the determination of an individual's right or authority to make contributions from a multi-party account at a financial institution.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION

WISCONSIN RIGHT TO LIFE COMMITTEE, INC., ET AL.,	**CASE NO: 2:10-CV-669-CNC**
Plaintiffs,	**CIVIL**
vs.	**Milwaukee, Wisconsin**
GORDON MYSE, ET AL.,	**Friday, May 4, 2012**
Defendants.	**(5:01 p.m. to 6:26 p.m.)**

HEARING ON PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION AND TRO

BEFORE THE HONORABLE CHARLES N. CLEVERT, JR.,
CHIEF UNITED STATES DISTRICT JUDGE

APPEARANCES:	**See page 2**
Court Reporter:	**Recorded; FTR**
Transcribed by:	**Exceptional Reporting Services, Inc.** **P.O. Box 18668** **Corpus Christi, TX 78480-8668** **361 949-2988**

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APPEARANCES:

For Plaintiffs:

MICHAEL D. DEAN, ESQ.
17035 W. Wisconsin Ave., Suite 100
P.O. Box 2545
Brookfield, WI 53008

RANDY ELF, ESQ.
Bopp Coleson & Bostrom
1 South 6th Street
Terre Haute, IN 47807

For Defendants:

CHRISTOPHER J. BLYTHE, ESQ.
CLAYTON P. KAWSKI, ESQ.
Wisconsin Department of Justice
Office of the Attorney General
17 W. Main St.
P.O. Box 7857
Madison, WI 53707

Milwaukee, Wisconsin; Friday, May 4, 2012; 5:01 p.m.

(Messrs. Kawski and Blythe Appearing Telephonically)

(Call to Order)

THE CLERK: Case Number 2010-C-669, *Wisconsin Right to Life et al versus Gordon Myse, et al*. This matter is before the Court for a motion for preliminary injunction and temporary restraining order. May we have the appearances, please?

MR. ELF: Randy Elf for the Plaintiffs, your Honor.

MR. KAWSKI: This is Clayton Kawski and Christopher Blythe for the Defendants.

MR. DEAN: And Mike Dean for Plaintiffs.

THE CLERK: Thank you.

THE COURT: Good evening.

MR. KAWSKI: Good evening.

THE COURT: The Plaintiffs in this action have filed request for a temporary restraining order and briefing has been submitted. They relate to an amended complaint which is now before the Court. Do the Plaintiffs wish to be heard at this time?

MR. ELF: I'm sorry. I didn't hear that, your Honor, over the air conditioning in here.

THE COURT: Yeah, it just came on loudly. Do the Plaintiffs wish to be heard at this time?

MR. ELF: Please.

THE CLERK: Is this not working?

THE COURT: Not as effectively as it should.

MR. ELF: Your Honor, good afternoon. Our presentation this afternoon is not long because we submit that the issues before us are questions of law and are not difficult. By way of background, it is no secret that Wisconsin Right to Life and the Wisconsin Right to Life State Political Action Committee are very active on the issues of life in many different ways and in many different forms.

This action, however, has nothing to do with those issues. Instead, it's about free speech and the way government may regulate free speech. The Plaintiffs here could be any organization, large or small. They could be any political committee, large or small. They could be any corporation, any union, any association of citizens that wish to speak about any particular issues. They just happen to be Wisconsin Right to Life and its State Political Action Committee.

As the Court is aware, the amended complaint has several counts. Count One addresses vagueness and has three parts. We are happy to stand on what we have submitted on vagueness and be responsive to whatever questions the Court may have.

Count Two addresses the corporate disbursement ban. This, we submit, is the easiest count of all. Under *Citizens United versus Federal Election Commission*, 130 Supreme Court at 896 to 914, bans on corporate spending for political speech

and, indeed, bans on any spending for political speech are unconstitutional unless the speaker is a foreign national. Wisconsin Right to Life is not a foreign national. Therefore, the ban is unconstitutional. That's that simple.

Counts Three -- Count Three, as the Court is aware, addresses Wisconsin's political committee definition and Wisconsin's persons other than political committee's definition. We submit that they are unconstitutional because they impose full-fledged political committee burdens on organizations that are neither under the control of a candidate nor have the major purpose of nominating or electing candidates.

Major purpose means -- or I should say the lack of major purpose means that the organizations don't say in their organizational documents or in public statements that they have the major purpose of nominating or electing a candidate or candidates. They don’t say this in public statements and they don’t devote the majority of their spending to contributions to or independent expenditures properly understood for candidates in Wisconsin.

Count Four addresses the definition of organization in Government Accountability Board Regulation 1.1. I should add that the -- Count Three addresses the political committee definitions and persons other than political committee definitions under the statute and under Government

Accountability Board Rule 1.2A.

Back to Count Four, that is unconstitutional for the same reasons that the law challenged under Count Three as unconstitutional. The Defendant's response is that Section 1.91 has expired. That's what we originally thought when we went to amend our complaint but then we noticed that the Government Accountability Board is publicly urging people to continue complying with Section 1.91.

So we called the Government Accountability Board and we emailed the Government Accountability Board and asked them to respond to a simple, legal question. The question was, "Does Section 1.91 still exist and if it does, may we please have a copy of the text?" The answer to our question was, "We will respond to your factual question when we are able." Well, we didn't ask a factual question. We asked a legal question and the answer to that question was either "Yes" or "No." "Yes, 1.91 does exist" or "No, 1.91 doesn't exist any longer" and we didn't get a response to that straightforward, legal question.

Here's what we thought might happen when we asked that question or at least when we filed the amended complaint or at the latest when we moved for a TRO and a preliminary injunction. We thought that the Government Accountability Board and the Defendants themselves, not the Defendants' lawyers but the Defendants themselves might say something like

this.

Look, we know that the urging of people to comply with Section 1.91 is still no our website. We know that's there. We thought they might say that's just a relic of when 1.91 existed. Here's what we'll do. We'll get that off our website right now so there is no more confusion about that in the public, no more confusion among the Plaintiffs, no more confusion among other people. We'll put something on our website right on the home page of our website, not buried eight clicks down into the website but right on the home page of the website that says clearly, ladies and gentlemen of the public, ladies and gentlemen of Wisconsin, Section 1.91 is gone. It expired 150 days after publication and that means you don't have to comply with this anymore.

None of that happened and so we wonder why. If it really is the Defendant's position that 1.91 is gone, why does the Government Accountability Board continue to say that the public should comply with what 1.91 requires and why does the Government Accountability Board continue to say that? Because the Government Accountability Board continues to say that, we submit that our challenge is not moot.

In the alternative, if the Court holds that Section 1.91 is gone and we understand that perspective, we ask that the Court please put that in writing so that it is clear to everyone that Section 1.91 is really gone. We also would

request that the Court ask the Defendants to do what they might have done before, clean up the website, make a public statement indicating that Section 1.91 is gone and otherwise announce to the public so that it is clear to everyone, especially now, that Section 1.91 is gone.

The Government Accountability Board has had time in recent days to say that it has set up a Facebook page and has had time to ask the public to say that they "like" the Government Accountability Board on Facebook. We have no problem with that. That's just fine with us but if they have time to do that, then they have time to do what really matters, that is, make it clear to the public what the law is and to the extent that they may have made a mistake in indicating that Section 1.91 still exists, they need to fix that mistake. That's Count Four.

Count Five, as the Court is aware, addresses Wisconsin's regulatory attribution and disclaimer requirements. In short, these regulatory attribution and disclaimer requirements take up 20 to 25 seconds of a 30-second radio ad. They take up -- obviously we can do the math -- about half of a 60-second radio ad. This is just silly. They don't need that.

THE COURT: Well, can't that language be stated much faster than that?

MR. ELF: This -- that is speaking fast. We've timed that. If we speak really fast, then it takes 20 seconds to get

through all of that and we encourage people to look at our exhibits to the complaint, read them through and time them and see how long it takes to talk fast and get through it as quickly as one can.

Count Six addresses the 24-hour reporting requirements. As we pointed out, that takes a lot of time in the 15 days before elections which is when they apply and which are the busiest time of year for an organization such as Wisconsin Right to Life State PAC.

Count Seven addresses the oath for independent disbursements, the burdensome nature of which we have described in what we have filed for the Court. I have had the privilege of doing this kind of law for ten years. I'm not aware of any other jurisdiction that has an oath like that, much less an oath that is that burdensome on speech. An organization like Wisconsin Right to Life has to, for example -- and the rest of it is all in what we filed -- file something by January 31st of every year indicating what candidates they might wish to speak about, indicate whether it's pro or con and then amend that list as the year goes on. How would anybody know by January 31st what speech they want to engage in? So to be on the safe side, Wisconsin Right to Life has to file something and include everybody they can think of and then amend it later if someone else comes up.

Count Eight addresses the limit on what Wisconsin

Right to Life may spend to solicit contributions for the Wisconsin Right to Life State Political Action Committee. We submit that is like a contribution limit. The Defendants have suggested that, no, that's not a contribution limit. That's a spending limit. Either way, we submit it's unconstitutional.

Count Nine, as the Court is aware, addresses our facial challenge and we submit that the law, with the two exceptions that we have indicated, is facially unconstitutional as well. And with that, we're happy to respond to whatever questions the Court may have or let the Defendants have their presentation.

THE COURT: I'd like to hear from the Defense at this time.

MR. KAWSKI: Your Honor, this is Attorney Kawski. Can you hear me all right?

THE COURT: I can hear you over the air that's blowing hard in the courtroom. I hope that's not a sign.

MR. KAWSKI: Well, you know, from our end, we can't hear the air conditioning. So, I don't know, I hope -- I just hope that you can hear us well enough and thank you again for allowing us to appear by phone today.

Your Honor, I'd like to -- we'd like to also mostly rely primarily on what is in our response brief as our argument today. I just want to add a few points in response to what Attorney Elf said and then also respond to some of the

statements that are in their reply brief and some of the authority stated in their reply brief that we haven't yet gotten a chance to respond to.

You know, starting off with Count One in Attorney Elf's argument regarding *Citizens United*, one point I'd like to add to that that the Court needs to recognize is that what that case dealt with was independent expenditure. Attorney Elf didn't talk about that element of *Citizens United*. So I want to draw that out in the pages that he cited, 896 to 914. We're talking about corporate expenditures that are independent.

THE COURT: One second, please.

(Pause)

THE COURT: Go ahead.

MR. KAWSKI: Okay. And, your Honor, so that would be one point with regard to *Citizens United*. I'd like to make a point with regard to Count Three of the complaint which is the count in which the Plaintiffs argue that there is a major purpose test that needs to be applied. Your Honor, our position is that there is no such thing as a major purpose test.

In the Plaintiff's reply brief, they reference that the Defendants' position is "contrary to binding case law including Seventh Circuit case law" and they cite to Page 20 of their opening brief and they claim that we don't cite that case law. There's a very good reason that we don't cite the case

law that they're talking about which is the Seventh Circuit *Brownsburg Area Patrons Affecting Change versus Baldwin* case. Just because this case doesn't --

THE COURT: Give the case -- the --

MR. KAWSKI: -- include any statements that there --

THE COURT: One second, please.

MR. KAWSKI: -- is a major-purpose test.

THE COURT: Can you stop for a moment and give me the point cites?

MR. KAWSKI: Yes, I can. In the *Brownsburg* case, the section that they rely upon for stating a major purpose test is 137 F.3d 503, Footnote 5 and in that footnote what the Seventh Circuit says is it quotes the portion of *Buckley* -- the *Buckley* decision in which there's a discussion of the language that talks about a major purpose of an entity. In this *Brownsburg* case, the Seventh Circuit never determined that the major purpose test constitutes a constitutional test and if you look at Footnote 5 of the *Brownsburg* case, it says -- and I'll quote it for you.

"We therefore decline to consider BAPAC's attack on the constitutionality of the statute based on a major purpose test as this case may yet be decided solely on that party's interpretation ground." And, in fact, the *Brownsburg* case that they claim stands for a major purpose test is nothing more than certifying the case back to

the Indiana Supreme Court to address a particular issue but there's nothing in this *Brownsburg* decision that they claim is Seventh Circuit precedent which stands for a major purpose test in the Seventh Circuit.

The Defendants filed with the Court a First Circuit case called "*McKee*" and this -- the *McKee* makes a very important observation about why the major purpose test wouldn't make any sense. I'm looking at -- in *McKee*, it's at 649 F.3d at Page 59 and the Court there points out that if the major purpose test was some kind of constitutional test that a small group with the major purpose of reelecting a state representative spends only $1,500 per ad could be required to register as a political action committee but a mega-group that spends $1.5 million to defeat the same candidate would not have to register because the defeat of that candidate could not be considered the corporation's major purpose.

If the Court were to adopt some kind of major purpose test, it would create an incredible inconsistency and there simply is no basis in Seventh Circuit or Supreme Court case law for finding that there is such a major purpose tax to apply to Count Three of Plaintiff's complaint.

Moving on to Count Four which is the count dealing with the administrative rule of GAB 1.91, Attorney Elf has made several statements that are not part of the record regarding the website of the GAB and I don't think there's anything in

the website that -- in the record before the Court that the Court could actually address those statements he's made. The point I'll make is that GAB 1.91 is not currently the law in Wisconsin. It's expired and it doesn't exist. Therefore, this claim -- the Court can't rule on this claim. It will be doing what would be an advisory opinion if it chose to rule on Count Four.

THE COURT: So are you now stating without equivocation that GAB is not enforcing 1.91 and is not urging people to follow -- to engage in practices consistent with what was 1.91?

MR. KAWSKI: Your Honor, there's no facts on the record regarding that issue.

THE COURT: I'm asking you whether or not you're taking the position that you are not urging people to adhere to practices that are consistent with what was 1.91.

MR. KAWSKI: Your Honor, I don't think that I can -- I don’t think I can speak for the board or what position the --

THE COURT: Well, if you are here representing the board --

MR. KAWSKI: Right.

THE COURT: -- that's what you're doing. You're speaking on behalf of the board and you have to take a position.

MR. KAWSKI: Right. And our position today, your

Honor, is that GAB 1.91 does not exist. Therefore, it could not be enforced.

THE COURT: Are you taking the position that you are not urging people to follow practices consistent with what was 1.91? Either yes or no.

MR. KAWSKI: I think the answer then is "Yes" because it doesn't exist as a law.

THE COURT: Yes, you are urging people to adhere to practices that are consistent with what used to be 1.91?

MR. KAWSKI: No, we are -- no, my position is that no, we are not doing that because GAB 1.91 does not exist.

THE COURT: And let me ask. Is there anything that you are -- have published which is inconsistent with the position that you are taking?

MR. KAWSKI: Not that I am aware of.

THE COURT: Are you saying there is nothing on your website indicating that you are urging people to follow practices consistent with 1.91?

MR. KAWSKI: Not that I am aware of, your Honor.

THE COURT: Do you have anything published to the effect that people might -- let me restate that. Is there any publication of the board that is inconsistent with the position you are taking regarding 1.91?

MR. KAWSKI: Not that I am aware of, your Honor.

THE COURT: All right. Well, do the Plaintiffs take

issue with that?

MR. ELF: Yes, your Honor, we do.

THE COURT: All right. What is it that you cite to?

MR. ELF: We attached, number one, as Exhibit 16 to our complaint a publication that is on the Government Accountability Board website called "Independent Disbursements of Corporations in Nonpolitical Organizations."

THE COURT: One second.

MR. ELF: In addition to that --

THE COURT: One second. Let me see if I can pull it up quickly. Sixteen?

MR. ELF: Yes, sir.

THE COURT: And is that -- okay.

MR. ELF: That's Docket Number 66-16.

THE COURT: Is it labeled, "Independent Disbursements of Corporations and Nonpolitical Organizations"?

MR. ELF: Yes, sir.

THE COURT: And what was the source of this?

MR. ELF: That's off the Government Accountability Board website.

THE COURT: When was it taken off the website?

MR. ELF: When we filed our amended complaint.

THE COURT: Does the Defense have access to Exhibit Number 16?

MR. KAWSKI: Yes, I do, your Honor.

THE COURT: Do you take issue with what was just represented as a document on your website?

MR. KAWSKI: I do not personally know if this is or is not on the website, your Honor.

THE COURT: So have you -- are you able to access your website at this moment?

MR. KAWSKI: I am not. I'm actually in a conference room and not near a computer.

THE COURT: And have you looked at the exhibits that were attached to the complaint?

MR. KAWSKI: Yes, I have.

THE COURT: After looking at the exhibits attached to the complaint, did you verify whether or not there is any truth to what was asserted in the complaint and included as an exhibit and, in particular, did you look at this particular exhibit?

MR. KAWSKI: I did look at this exhibit but one thing that I did not do since the complaint was filed on the 30th is look on the website to see if this link where this is found is still up. So I do not know if this is still on the website.

THE COURT: So it was on the website at some point?

MR. KAWSKI: Yes, your Honor.

THE COURT: And are you therefore saying that if it was on the website, it has now been removed from the website and that a check of the website would likely show that it has

been removed?

MR. KAWSKI: I do not know if it's still on.

THE COURT: Is there any reason why the Court should not have the website checked at this time?

MR. KAWSKI: No, your Honor. I think that sounds reasonable.

THE COURT: All right. Can the clerk -- can you see if you can go on this website? And that's httpgab.wi.gov.

THE CLERK: I'm sorry. Can you repeat it?

THE COURT: G -- http://gab.wi.gov. And this would be found at -- what page, 1284?

THE CLERK: I'm not sure what I'm looking for on this page.

THE COURT: It's "Independent Disbursements of Corporations and Nonpolitical Organizations."

How did the Plaintiffs retrieve this particular document?

MR. ELF: It's from the GAP website, your Honor, and our --

THE COURT: Does it go into any particular section of the website?

MR. ELF: -- our -- in case it's helpful, our complaint, Footnote 19 -- our amended complaint, Footnote 19, that's Paragraph 34 on Page 10 of the amended complaint has the hyperlink to that document that was active at the time we filed

our amended complaint. In our complaint, that's not an active hyperlink but it is a hyperlink.

(Pause)

THE CLERK: I pulled the document.

THE COURT: Counsel, the document has been pulled up from the website.

MR. KAWSKI: Okay, your Honor. We did get a chance to look at the website but if it is there, I guess one thing that I would wonder is whether it's actually linked from anywhere or whether it's sort of like a document that is on the Internet but whether it's actually linked from something that is saying this is guidance. If it is there --

THE COURT: One second.

MR. KAWSKI: -- and it is something that is linked as guidance, then that should be taken down but if it is just something that is --

THE COURT: It was just pulled up from your website.

MR. KAWSKI: Right, right. I'm -- well, my question though would be whether it was -- whether it's linked as something that they're saying that this is a guidance document that needs to be followed or it's just something that's latent and on the Internet --

THE COURT: If it's on your --

MR. KAWSKI: -- meaning that the public couldn't actually find it unless they knew what the address was.

THE COURT: Wait, one minute, please.

MR. KAWSKI: Yes.

THE COURT: If it's on your website, are you suggesting that someone is causing this document to be on your website?

MR. KAWSKI: No. No, your Honor. No, not at all. I think it's very clear that GAB caused it to be on the website. My question is whether -- unless someone knows the website address that was typed in, whether there's any other way to actually get through it through a link, meaning that -- my question would be whether GAB has suggested by linking it as a document that is a guidance document or whether it's now just a latent link that GAB is no longer suggesting that this should be followed.

THE CLERK: I was able to --

MR. KAWSKI: And my question, I guess, can you click on it to get to that document from --

THE COURT: Counsel, the document was just retrieved by going initially to your home page.

MR. KAWSKI: Okay. So there is -- your Honor, there is a link to it.

THE COURT: I'm curious, Counsel, whether or not before filing your briefs and answers in this matter you verified with your -- with the representatives of your client the facts that you're representing to the Court.

MR. KAWSKI: We did, your Honor, and, you know, our position has been that GAB 1.91 expired and therefore it is not the law. GAB couldn't -- even though the document is on their website, they couldn't enforce GAB 1.91 because it has expired.

THE COURT: And so you would agree that it should be removed, correct?

MR. KAWSKI: I would agree, your Honor.

THE COURT: All right. Then it will be so ordered.

MR. KAWSKI: Okay. Thank you, your Honor. If the Court has no further questions as to Count Four, I'd like to move on to the remaining counts.

THE COURT: All right, go ahead.

MR. KAWSKI: Okay. As to Count Five, the Defendant's position is that the Government Accountability Board would only enforce the statutory attribution and disclaimer requirements which are in Wisconsin Statute 11.30 and we've acknowledged in our brief the difficulty which Plaintiff pointed out that, yes, it's -- I think it's very clear that to read all that information would take time away from a 30- or 60-second ad. Therefore GAB has taken the position that they wish to enforce the statutory attribution requirements in 11.30 as opposed to GAB 1.42 Sub 5 which is -- has been challenged. And, again, our position is only as to the radio broadcast ads that have actually been submitted, examples of which have been submitted into the record. We're not taking a position broadly as to all

types of advertisements but just radio broadcast advertisements.

With regard to Count Six, which is the 24-hour reporting requirement, our position -- and what I'll add to it is that the *McConnell* Court -- the Supreme Court in *McConnell* upheld the 24-hour reporting requirement and that's 540 U.S. at Pages 195 and 96. The Fourth Circuit in the NCLR FITE decision which is 524 F.3d at 439 recognized how *McConnell* had upheld these requirements and, in fact, upheld similar requirements in North Carolina. Exacting the scrutiny is a standard that applies to this reporting requirement and we assert that the 24-hour reporting requirement passes exacting scrutiny.

With regard to Count Seven, which is the oath for independent disbursement, I'd like to refer the Court to the *Citizens United* decision and a quote from that case.

THE COURT: Where -- on what page?

MR. KAWSKI: It's Page 916 of the decision from 130 SPT at Page 916. And here is the statement that the Court made regarding providing information. The Court said, "With the advent of the Internet, constant exposure of expenditures can provide shareholders and citizens with the information needed to hold corporations and elected officials accountable for their positions in the court." We believe that this statement confirms that there is an informational interest in having this type of

oath for independent disbursement.

You know, the Court is likely aware that the counts of this case -- of Count Nine that went up to the Seventh Circuit and the Seventh Circuit held that unlimited contributions may be accepted for independent political speech know that that holding -- that the corollary to it is that if there's going to be truly independent speech, it would make sense for the organizations that are engaging in that independent speech to confirm in writing under oath that they are truly independent.

You know, the position that's being taken here that these are unduly burdensome and so forth to the world's path (phonetic) and the declaration that's been submitted, you know, I think that really, it's (indiscernible) time period is that information on interest. You know, the PAC is trying to argue that it's two versions, one, because they only have one person in their organization. Yet they're kind of going through some steps, if you look at their declaration, that may not be necessary. For example, they're submitting these oath statements by sending -- using certified mail which is not necessary under the law. Simply using U.S. mail and postmarking that day is sufficient. So they seem to be taking some extra steps that would actually make it more burdensome than the law requires.

I have nothing to add really on the Count Eight

regarding the 500-dollar limit on solicitation. I think that our position is what we would hold to in our response brief and I'll add only as to Count Nine on the facial challenges to remind the Court, as we stated in our brief, facial challenges are strongly disfavored and classified challenges should we addressed first and that's the position the Supreme Court has taken. You know, we have a very limited factual record here and to make a facial ruling, we have to look at more than just how this would be applied to these Plaintiffs. We have to look at how it would be applied in a broader sense to other entities and we have nothing in the record about how it would be applied more broadly and the Supreme Court has specifically cautioned against making facial rulings when you have such a slim record.

So our position is that it is not appropriate to make a facial ruling. It's also not appropriate to make a facial ruling on these laws because as we've considered in the third and fourth factors of the permanent injunction analysis, you know, the balance and equities and the harm to the public here to make a facial ruling would be quite extreme because the regulated community of entities that are engaging (indiscernible) would then be thrown into some disarray really.

Coming up on the election recall season during -- in May, we have a primary and then in June, we have the election and so to make a facial ruling now would really throw the community into a state of disarray and cause a great deal of

misunderstanding for any regulated parties. We believe that the Plaintiffs here have not met their burden of persuasion and that the Court should deny their preliminary injunction motion and I'd be happy to answer any questions that the Court would have.

THE COURT: Well, let's talk generally. At this stage, is the Defense maintaining that the Plaintiffs must, with regard to the upcoming primary, adhere to all of the requirements of the board except with regard to Count Five as -- which -- with regard to which you've indicated that you would only enforce 11.3?

MR. KAWSKI: And, your Honor, so -- yes. So I guess the counts that we need to call for specific treatment would be Count Two. We pointed out in our brief that as to Count Two that GAB has taken the position that they will enforce -- only enforce the corporate disbursement ban consistent with what's stated in the Attorney General opinion that we had filed with you. So as to Count Two, it's GAB's position that we can only enforce it to the extent that the Attorney General has taken a position that it could be enforceable.

With regard to Count Four, our position again is GAB 1.91 does not exist. The GAB has no right to enforce it. And then with regard to Count Five, which was the regulatory attribution and disclaimer requirement, GAB would only enforce it as to those requirements that are statutory requirements in

11.30. And I think that hits the different counts that require special treatment or that I think that claim GAB's position on.

THE COURT: Given what the Defense has said regarding those provisions, I turn to the Plaintiffs for comment.

(Pause)

Go ahead.

MR. ELF: Your Honor, I'll take the counts in the order that we presented them and the -- which is the same order in which the Defendants presented them.

Count Two, the Defendant said deals with the corporate disbursement ban, and the Defendants pointed out that *Citizens United* deals with independent expenditures; or to put it more broadly, independent spending for political speech. As we have stated in our Complaint, all of Wisconsin Right to Life's spending for political speech is independent and all of the speech at issue here is independent. Therefore, *Citizens United*'s principles apply here and the law is unconstitutional as applied to our speech. This isn't hard.

Count Three, the Defendant said that there's no such thing as --

THE COURT: Now, with regard -- again, going back to what the Defense said with regard to enforcement as discussed by the Attorney General, what is your comment?

MR. ELF: That presentation -- that argument, as we pointed out in our reply brief, goes to standing. What they're

essentially saying is that they won't enforce the law against us; therefore -- and they haven't put it in these words, but this is a standing argument. Therefore, they're saying we don't have standing. What they're essentially saying is trust us, we're nice people, or whatever it is the point is; we won't enforce the law against you. That's not the way constitutional law works. The law chills our speech and under the Circuit decisions we have provided that speak to political speech, including the --

THE COURT: But is under the circumstance a temporary restraining order necessary given what the GAB and the Attorney General have said?

MR. ELF: Yes.

THE COURT: Why?

MR. ELF: Because we don't have to trust them. We don't have to take their word that they will not enforce the law against --

THE COURT: They are on the record in this proceeding as indicating that they are not going to enforce this against you with regard to these matters at this time.

MR. ELF: That's correct.

THE COURT: During the pendency of -- at least during the pendency of, I would say at least for the next ten days, and until perhaps the issuance of a preliminary injunction or a permanent injunction on the merits in the case.

MR. ELF: That's correct, they have said that. Our position is that we don't have to trust them. Any -- as we pointed out in our reply brief.

THE COURT: But is there likely to be irreparable harm to you under the circumstance in this case?

MR. ELF: Yes, sir.

THE COURT: Why?

MR. ELF: Irreparable harm is the chill to our speech.

THE COURT: But if you know it's not going to be enforced during the pendency of this case, how is there going to be irreparable harm until the matter can be decided on the merits?

MR. ELF: We respectfully disagree with the premise. The premise is that we know that the law will not be enforced against us. Under constitutional law we don't have to take their word for that. And the reason is, that the Government Accountability Board can change its mind unless there is, for example, a binding advisory opinion. And under *Citizens United* we don't have to request an advisory opinion. Then the chill to our speech suffices to establish standing to challenge the independent expenditure --

THE COURT: Well, we're beyond -- I'm beyond standing.

MR. ELF: Uh-huh.

THE COURT: Where I'm going is the GAB and the Attorney General have taken the position that there will not be enforcement against the Plaintiffs at this time.

MR. ELF: Right.

THE COURT: Now, if that is true, one of the obligations of a party seeking a preliminary injunction or a temporary restraining order is to show that there is irreparable harm. And under the circumstance it doesn't appear that there would be irreparable harm because you would be able to proceed with your speech and would not be deterred from advertising or putting into the public airwaves any information consistent with your mission.

MR. ELF: The key phrase in what your Honor just said is "if that is true."

THE COURT: That's correct.

MR. ELF: If we had to trust them, if we could trust them, then there wouldn't be irreparable harm. But as a matter of law we don't have to take their word for it. And so our speech is chilled as a matter of law. Therefore, as a matter of law there is irreparable harm.

THE COURT: Well, inasmuch as you are stating that you are being chilled or would be chilled, I want to twist matters a bit and ask the Defense:

Is there any reason why you should not be enjoined consistent with your representation?

MR. KAWSKI Your Honor, they haven't found that there's any likely irreparable harm here. We have taken the position that we're going to enforce this consistent with the Attorney General opinion. So there is no likelihood of irreparable harm.

THE COURT: And tell me specifically how you would enforce this consistent with the Attorney General's opinion.

MR. KAWSKI The Attorney General opinion is actually -- it's somewhat complex but the basic holding of the opinion is that in light of *Citizens United*, the restriction on corporate independent expenditures cannot be constitutionally enforced. And that's basically a holding of that Attorney General opinion and that's how we would enforce it.

And I want to add to that, what Mr. Elf has said about Wisconsin Right to Life engaging only independent expenditures. Now, we have -- the record we have on that is based on the Verified Complaint and the materials that have been submitted, I'm not sure if any of the declarations go to that issue; I don't recall. But I know the Verified Complaint does talk about how Wisconsin Right to Life engages only in those independent expenditures.

So if the Court accepts that as true, enforcing consistent with what the Attorney General opinion would be, this would not be enforced as to Wisconsin Right to Life. But again, the Court would have to accept as true Wisconsin Right

to Life's statement that it engages only in independent expenditures.

THE COURT: All right. Go ahead, Mr. Elf.

MR. ELF: As to Count Three, the Defendants said that there is no such thing as a major purpose test and talked about the *Brownsburg* decision. We would invite the Court to look at Footnote 5 of the *Brownsburg* decision, which quotes *Buckley* and says that an organization may be defined as a political committee when it has the major purpose of nominating or electing candidates. Now, I have not quoted that directly from memory, but that is the sum and substance of what that says.

Now, it is true that *Brownsburg* then certified a question to the Indiana Supreme Court. And then the *Brownsburg* decision was resolved on other matters. Nevertheless, the *Brownsburg* decision recognizes the existence of the major purpose test.

The Defendants also pointed to the *McKee* decision from the First Circuit with which I am familiar. The *McKee* decision --

THE COURT: Hold on, please.

MR. ELF: -- is wrong for the reasons we have --

THE COURT: Hold on for a moment, please.

MR. ELF: Of course.

(Pause)

THE COURT: All right. I just read Footnote 5. Go

ahead.

MR. ELF: Okay. The *McKee* decision is wrong for the reasons we previously explained. One of the fundamental errors in the McKee decision is that it holds that the major purpose test does not apply to state law. That can't be right. And the reason that can't be right is that *Citizens United* and the Supreme Court's decision in *FEC v Wisconsin Right to Life* holds that political committee requirements are as a matter of law not only burdensome but also onerous.

If the *McKee* decision were right, then that would mean that the federal government would -- I'm sorry, I said that wrong. The state government would have more power than the federal government to impose full-fledged political committee burdens, because the federal government could do so only when an organization is under the control of a candidate or passes the major purpose test. And state governments could do that regardless of whether an organization is under the control of a candidate or passes the major purpose test.

Political speech is at the very core of what the First Amendment protects. It cannot be right that state governments have more power than the federal government to regulate political speech. Therefore, we submit that the *McKee* decision is not right.

And when it comes to applying the major purpose test to state law, the cases we cited: *North Carolina Right to Life*

Three, New Mexico Youth Organized where from the Tenth Circuit where our office had the privilege of crossing philosophical lines and supporting a group -- a young group of little community organizer liberals from New Mexico, in their efforts to prevent New Mexico from regulating them as full-fledged political committees. And we joined the Plaintiffs' attorneys there and said that's not right. And the Tenth Circuit agreed with the Plaintiffs there with whatever humble assistance we were able to provide.

As to Count Four, yes, there are facts in the record indicating that the Government Accountability Board is urging the public to abide by Section 1.91. We were just talking about Exhibit 16 to the First Amended Verified Complaint. That's document Number 66-16.

In addition to that, there are two documents that the Defendants have helpfully cited in their response brief. That's document Number 74-5 at PDF Pages 2 to 3 and Document Number 74-3 at PDF Pages 2 to 3. Both of those mention Section 1.91 and urge the public to comply with Section 1.91.

Now, the Defendants themselves have provided this information. It wasn't something that we dug out. They provided this in their own response brief.

THE COURT: I'm curious about something with regard to Count Three. Can the Defendants respond to this? Would you enforce the GAB codes against Plaintiffs if you find that the

Plaintiffs are not truly independent?

MR. KAWSKI: If we find that they are not independent?

THE COURT: If they are not truly independent, correct.

MR. KAWSKI: Well, I think, your Honor, we have to look at -- there's a lot of different things going on here. Which particular provision would you be talking about?

THE COURT: Well, any provision that would be covered by Count Three.

MR. KAWSKI: So the definitions of political committee and so forth?

THE COURT: Yes.

MR. KAWSKI: I guess, I think we would; I think we would. And so, you know, that's an issue that the Court has to resolve is whether it's accepting at face value that Wisconsin Right to Life is truly independent. Because I believe we would -- we would be enforcing those -- and again, it would depend on, for example, if the definition of "political committee" does apply to them; that's the question. It would be a factual question, and I'm not sure if there are enough facts to resolve that.

THE COURT: Well, obviously not at this stage. But it does have a bearing on standing.

MR. KAWSKI: Correct.

THE COURT: And whether or not they should be able to proceed on the merits and get a determination by the Court.

MR. KAWSKI: I agree, your Honor.

THE COURT: All right. Go ahead, Mr. Elf.

MR. ELF: To that point, the fact that an organization engages in speech other than independent spending for political speech does not mean that it is necessarily so that the organization may be defined as a political committee. The test for whether an organization may be defined as a political committee is:

One, is the organization under the control of a candidate or candidates in the jurisdiction?

Two, does the organization have the major purpose of nominating or electing candidates? And under two we asked these questions: Does the organization say in its organizational documents or in its public statements that it has the major purpose of nominating or electing candidates? Or does the organization devote the majority of its spending to contributions to or independent expenditures for candidates in the jurisdiction?

If the government doesn't clear those hurdles, it's not constitutional to define the organization as a political committee. So it is entirely possible for an organization to make contributions properly understood and still it could be so that it is not constitutional to define the organization as a

political committee.

So even if it turned out -- and we submit this is not the case -- but even if it turned out that Wisconsin Right to Life engages in something other than independent spending for political speech, that does not mean that it's constitutional to define Wisconsin Right to Life as a political committee.

As to Count Five, the regulatory attribution and disclaimer requirements, the response there was they won't enforce that against our broadcast speech. We've just had that conversation. It's the same point.

Count Six regarding 24-hour reporting, the Defendants said that *McConnell v FEC* upholds 24-hour reporting, 24-hour reporting. No, it doesn't. *McConnell v FEC*, as we pointed out in our opening brief as I recall, upholds a statute with 24-hour reporting. Twenty-four hour reporting was not at issue in *McConnell*.

What was at issue in that part of *McConnell* was this. The Plaintiffs said: Government, when it comes to organizations, the government may not define as political committees; may not define as political committee because they're not under the control of a candidate and don't have the major purpose. Government may regulate only express advocacy, period. That was the holding of *Buckley*, and that's what the Plaintiffs in *McConnell* tried to get the Supreme Court to say.

The Supreme Court said no. The Supreme Court said,

no, government may regulate when it comes to organizations that government may not define as political committees. Express advocacy and electioneering communications, as defined in the Federal Election Campaign Act. The Plaintiffs did not challenge 24-hour reporting requirements.

The problem with the *North Carolina Right to Life Fund for Independent Political Expenditures* case, which Mr. Kawski mentioned, is that it relies on *McConnell* for that -- and asserts that *McConnell* held that *McConnell* -- held that *McConnell* upheld 24-hour reporting. *McConnell* didn't do that.

THE COURT: I will have to look more closely at that, but one could certainly glean from the decision that the Court was saying that 24-hour reporting was acceptable.

MR. ELF: We submit that's not the case, because *McConnell* was not about 24-hour reporting.

THE COURT: I shouldn't say "acceptable." That it would not be invalid and --

MR. ELF: We would submit that's not right either.

THE COURT: Yeah.

MR. ELF: Because 24-hour reporting was not before the Court in *McConnell*. And there are other cases that we have cited that have struck down 24-hour reporting.

Count Seven, the oath for independent disbursements, the Defendant said that *Citizens United*, Page 916, supports

them; but *Citizens United*, Page 916 doesn't speak about this kind of disclosure. *Citizens United*, Pages 914 to 916 talks about and approves disclosure. That means reporting and attribution and disclaimer requirements for electioneering communications, as defined in the Federal Election Campaign Act, and does not talk about any kind of oath for independent disbursement, much less the enormous set of requirements that come with oaths for independent disbursements under Wisconsin law.

If the Defendants want to have -- if Wisconsin wants to have some kind of oath, there is a much simpler way to do that. And I can't use the phrase "less restrictive means here," because we're under exacting scrutiny, not strict scrutiny. So I can't utter the phrase "less restriction means."

But there is another way for them to get at this, and it's not hard. Just have a simple part of the independent expenditure disclosure form or whatever reporting requirement there is. Wisconsin doesn't have independent expenditure disclosure. Wisconsin only has full-fledged political committee burdens.

Wisconsin could have something simple at the end of the report where someone fills out something and declares, not an affidavit, but declares that the spending for political speech that it indicates is independent really is independent.

It doesn't have to be an affidavit. Because as the Court is aware, an affidavit has to be notarized. There's no reason to make Susan Armacost, the director of the Wisconsin Right to Life State Political Action Committee trot all the way to the bank to get it notarized every time. You have to fill out one of these forms, and this is silly.

And here's the irony of this. The Defendants are demanding all this information.

THE COURT: Wouldn't it also be -- are you saying it would not be acceptable to make a statement under penalty of perjury that does not require a notary seal or appearance before a notary public?

MR. ELF: We don't have to decide what would be constitutional under Wisconsin law. What we have to decide here is rather what exists cuts it and what exists doesn't cut it.

The irony is that they are demanding all of this information when the Government Accountability Board can't even get its website straight and can't even indicate on the website what the law is. But they want Ms. Armacost to file all this stuff however many times a year; and oh, they say, you're just making too big of a deal out of this if you send it by certified mail.

Well, we send this by certified mail for the reasons that all good lawyers send things by certified mail, to prove

that they sent it and to get a receipt back if we want to, to show that we really did send it so that if someone says we didn't that we can prove that, oh yes, we did.

As to Count Nine, the statement that we need additional facts, we submit that's counter to *Citizens United* for the reasons we have explained in the final part of our briefing.

As to the factors and granting a temporary restraining order or a preliminary injunction, there was the suggestion that law would be in disarray.

Well, I won a case like that in the District of Hawaii in 2010. The case was called *Urmada v Kermode* (phonetic), and the District Court enjoined Hawaii law that was unconstitutional shortly before the election and pointed out that the Defendants, if they wanted to, could seek an injunction pending appeal. And they did. And they lost. So there are ways to handle these kind of things.

And I also heard that we're just too close to an election here. And your Honor, this is the example I raise in every court, because it points out what is just so obvious when someone says we're just too close to the time that something is going to happen to enjoin something.

Suppose that the state of Wisconsin or someone in Wisconsin set up segregated schools in the middle of August. And suppose that we came in and said, "Sorry, you can't do

that." Would the answer then be: Oh, the school year is starting too soon; you can't throw this into disarray now. The answer to that would be: Of course, not.

And pardon me for pointing out the obvious. But sometimes we have to point out the obvious to indicate just how unpersuasive, to put it politely, some contentions are.

With that we'll be happy to respond to whatever questions the Court may have. And we thank the Court and the Court's law clerk and the Court's entire staff for its generous time late on a Friday afternoon.

THE COURT: Well, one of the things I'd like you to focus on just for a moment is the vagueness of the law. Count One, in particular.

(Pause)

Let me pull it up.

(Pause)

Use my hard copy instead.

MR. ELF: Aren't computers great?

THE COURT: When everything is going great.

I'd like to hear more about the unconstitutionality of the definitions. You assert that Wisconsin's ban on corporate disbursements plus Wisconsin's Committee -- Political Committee/Political Committee persons other than political committees and organization definitions are unconstitutionally vague as applied to the Plaintiffs.

MR. ELF: Uh-huh.

THE COURT: And then you go on to talk about the various provisions. And in particular, look to 11.01 sub 4; 1.28 sub 1; 1.28 sub 2; in discussing why the provisions are vague. Can you tell me more?

MR. ELF: Yes, sir. We challenge the vagueness of Wisconsin law that your Honor has pointed out on three grounds:

The first ground is that it uses the phrase influencing elections, purpose of influencing elections, and similar phrases. *Buckley versus Valeo*, Page 77, holds that that language is vague. That's point number one.

We also assert that the phrase "support or condemns" is unconstitutional. We just don't know what that means. And we don't know how anybody can look at that phrase and know whether his speech fits in those parameters.

Now, it is true that law does not have to have perfect pinpoint precision to be constitutional. But we're way beyond that here. We don't know what "supports or condemns" means. And we can't tell from the language. And when it comes to our issue advocacy, we don't know whether the speech supports or condemns. As a result of that, people like me have to tell clients like Wisconsin Right to Life that you better not mention candidates at all, or you better not even have a clearly identified candidate.

And "clearly identified candidate" means not just

saying Senator Smith or House member Jones or Governor Anderson or whoever it is. It means you can't even use the phrase "the Governor, the Chairman of the Senate Judiciary Committee, the Chairman of the House Budget Committee"; because those are clearly identified candidates as well.

And out of fear of coming under what someone might say supports or condemns, an organization like Wisconsin Right to Life is chilled from engaging in its speech. That's point number two.

Then point number three is the appeal to vote test. And we submit that the appeal to vote test under Wisconsin Right to Life, Page 574 -- pardon me -- Page 474, Footnote 7, holds that the appeal to vote test -- and the appeal to vote test, everyone will please recall, is the concept of the functional equivalent of express advocacy, which Wisconsin uses in its law, is vague as to speech other than electioneering communications, as defined in the Federal Election Campaign Act.

THE COURT: Now, if the Court agrees, how would you suggest it proceed at this time?

MR. ELF: Pardon?

THE COURT: If the Court agrees, how do you suggest it proceed?

MR. ELF: Grant our motion.

THE COURT: And have you prepared a proposed Order?

MR. ELF: We have not. We would be happy to do that if the Court would like one.

THE COURT: I'd like to hear from the Defense as to why the Court should not at least grant, in part, the Plaintiff's request for relief.

MR. KAWSKI: And your Honor, would you like me to --

THE COURT: Particularly as it relates to Count One.

MR. KAWSKI: Yes. I'm glad that Plaintiffs clarified what particular language they argue as vague. It was somewhat unclear to me whether they were arguing that the entire definitional sections were vague or just particular language. And now I think it's clear that we're talking about three kinds of language: The influencing language, the support or condemn language, and the functional equivalent language. So I'll address those three.

As the Defendants stated in their brief, our position is that the influencing language is subject to a limiting instruction that the *Buckley* court recognized. This is consistent with the position that the Attorney General has taken, as we indicated in our brief; and that's influencing language should be limited to express advocacy or its functional equivalent. That is the limiting instruction that *Buckley* suggested and that courts like *McKee* have determined is appropriate.

As to the support or condemn language, I'd like to

cite the Court to the *McConnell* case. It's Footnote 64 of that case and Page 5 -- excuse me -- 540 at Page 170, Note 64, where the Court says:

> "We likewise reject the argument that this language is unconstitutionally vague. The words 'promote,' 'oppose,' 'attack' and 'support' clearly set forth the confines within which potential party speakers must act in order to avoid triggering a provision."

We believe that the Court should simply apply this holding, and a statement in *McConnell* includes that the language supports or condemns, and Wisconsin law is not vague.

With regard to the functional equivalent language, which is at 1.28, we believe that Plaintiffs are off the mark in their analysis. Both the *Citizens United* case and the *Wisconsin Right to Life Two* talk about functional equivalent as being objective. *Citizens United* 130 FTC at 889 states, and I quote, "The functional equivalent test is objective."

And what Wisconsin law had done is to use 1.28 that list examples of words that constitute express advocacy. It then goes on to regulate the functional equivalent of that language. And this is consistent with what both *Citizens United* and *Wisconsin Right to Life Two* where the Court said that express advocacy or functional equivalent is what was regulated.

And, therefore, we believe that since the Supreme

Court found the language functional equivalent to be sufficiently descriptive enough, that it is not vague. And so that would be Defendants' position on those three types of language as the vagueness challenge that's stated in Count One.

THE COURT: You were quoting from Page 889 of *Citizens United*?

MR. KAWSKI: Correct. So I'm going to refer you to 889. And it is actually -- let me get to that page. There's actually several statements in *Citizens United* that talk about functional equivalent, and that's only one of them. Sorry, I'm just looking for the page.

All right. Page 889 it starts -- here's what it states:

"As explained by the Chief Justice's controlling opinion in *Wisconsin Right to Life*, the functional equivalent test is objective. The Court should find that a communication is a functional equivalent of expressed advocacy only if it is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate."

And then at Page 895 of *Citizens United*, it states:

"In fact, after this court in *Wisconsin Right to Life* adopted an objective appeal to vote test for determining whether a communication was the functional equivalent of express advocacy."

Then in *Wisconsin Right to Life* case 551 U.S. at 469 and 70, the Court stated:

"In light of these considerations, a court should find that an ad is the functional equivalent of express advocacy only if the ad is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate."

I'm not sure why the Supreme Court would use language like "functional equivalent" if it didn't believe that that language was not vague. Therefore, all the Wisconsin law does is it follows the hand that the Supreme Court has laid in choosing the functional equivalent language.

THE COURT: Is there anything else you'd like to offer at this time?

MR. KAWSKI: Your Honor, if I may briefly address Count Three and the major purpose test again.

THE COURT: Please.

MR. KAWSKI: I just want to again emphasize the *McKee* opinion and the example that it states in that decision with regard to why -- not only why a major purpose test doesn't exist but why adopting one wouldn't make any sense.

And specifically I want to refer the Court to *McKee* at 649 F.3d at Page 59. And it's the example that the Court talks about --

THE COURT: And which page, again; 649 F.3d at what?

MR. KAWSKI: 649 F.3d at Page 59.

THE COURT: Okay.

MR. KAWSKI: If you have the case I can show you exactly what I'm talking about. It's a statement in the opinion in which the Court is addressing something that the district court in that case observed -- absurdities in adopting this major purpose test.

Now, I'll read for you one piece what that statement is. In this case it's talking about, I believe, a National Organization for Marriage, and it states:

"Under NOM's interpretation, a small group with the major purpose of re-electing a Maine state representative that spends $1,500 for ads could be required to register as a PAC. But a mega group that spends 1.5 million to defeat the same candidate would not have to register because the defeat of that candidate could not be considered the corporation's a major purpose."

And so it points out the inconsistency in a major purpose test. And I put quotes around the word "test" because we don't believe it exists. But if you had such a test, a group that opposes a candidate could spend unlimited amounts of money, and a group that supports a candidate has a major purpose of supporting that candidate were he regulated.

This is not an inconsistency that the Supreme Court

created in *Buckley*, and we would argue that there is no major purpose test. In particular, there's never been any Seventh Circuit decision that's ever held that. And we believe that the *McKee* case has it right when it concludes that this language in Buckley does not establish any test.

THE COURT: All right. Just a second here.

Okay, go ahead.

(Pause)

Mr. Elf, do you contend that the functional equivalent language is valid only for electioneering?

MR. ELF: No. We contend that the phrase "functional equivalent of express advocacy," which is the appeal to vote test, is vague as a matter of law under *FEC v Wisconsin Right to Life*, Page 474, Footnote 7, as to speech other than electioneering communications, as defined in the Federal Election Campaign Act.

Wisconsin law and our speech extend beyond federal -- electioneering communications, as defined in the Federal Election Campaign Act. Therefore, under Wisconsin Right to Life -- and you don't have to get to *Citizens United* on this point -- under Wisconsin Right to Life, Wisconsin law is vague as to our speech other than electioneering communications, as defined in the Federal Election Campaign Act. That would be speech other than speech that is broadcast, runs into 30 days before a primary or 60 days before a general election, and has

a clearly identified candidate.

Then comes *Citizens United*. And if I may, it's easier to explain this by backing up.

THE COURT: All right.

MR. ELF: In the beginning there was the First Amendment, which says government shall make no law and the world was good. Then came *Buckley versus Valeo*.

THE COURT: You backed very far back.

MR. ELF: Yes. Then came *Buckley versus Valeo*, which held and established two tracks in which government may regulate spending for political speech:

One, government may define organizations as political committees and regulate them via full-fledged political committee burdens when they are under the control of a candidate or have the major purpose. That's track number one.

Track number two is that government may impose non-onerous disclosure requirements, simple kind of reports, the kind of things that Wisconsin law does not have. Wisconsin is free to make that choice. It's just fine if Wisconsin doesn't want to make that choice, but it can't then have unconstitutional law.

Under *Buckley* when it came to spending for political speech via organizations that government may not define as political committees, government could regulate only express advocacy. There the law stood until 2003 when the Supreme

Court said in *McConnell v FEC* that the government could also regulate any facial challenge -- this was a holding -- electioneering communications, as defined in the Federal Election Campaign Act.

Then came an as-applied challenge. *McConnell* was a facial challenge. Wisconsin Right to Life was an as-applied challenge. And my client, Wisconsin Right to Life, challenged the law and said that its speech was not the functional equivalent of express advocacy. That is, its speech was something else.

And the Supreme Court held that government may regulate express advocacy, number one, and it may regulate electioneering communications but only when they pass the appeal to vote test. That is when only -- when their only reasonable interpretation was as an appeal to vote for a clearly identified candidate.

There the law stood until *Citizens United*. *Citizens United*, in effect, crossed out the appeal to vote test and said that government may regulate electioneering communications, as defined in the Federal Election Campaign Act, regardless of whether they passed the appeal to vote test. That's Page 914 to 916 of *Citizens United*.

Government -- the Supreme Court also said that even if electioneering communications, as defined in the Federal Election Campaign Act, passed the appeal to vote test; that is,

even if their only reasonable interpretation is as an appeal to vote for or against a clearly identified candidate, government still cannot ban electioneering communications, as defined in the Federal Election Campaign Act.

So what's left of the appeal to vote test? It has no meaning any more. It's no longer a constitutional limit on government power. Even if speech passes the appeal to vote test, government can't ban it. And even if speech, particularly electioneering communications, as defined in the Federal Election Campaign Act, which are the only type of speech to which the appeal to vote test ever applied, even if they don't pass the appeal to vote test, government can regulate them anyway. All that's left of the appeal to vote test then is the point of Justice Scalia in Wisconsin Right to Life in his concurring opinion, Pages 492 to 494, that the appeal to vote test is vague. That's all that's left of it.

Now, we already know from Wisconsin Right to Life that the appeal to vote test was vague as to speech other than the electioneering communications. As a result of *Citizens United*, as a result of *Citizens United*, the appeal to vote test is vague even as to electioneering communications, as defined in FECA.

Is that the holding of *Citizens United*? No. But it follows from what *Citizens United* did. All that's left of it is the point of Justice Scalia, joined by Justices Kennedy and

Thomas in the concurrence, that the test is vague.

Now, the Defendants pointed out that the appeal to vote test is objective. Yes, that's right. As the second *McKee* decision from the First Circuit pointed out, objective and vague are two different things. A law can be objective and still be vague. So saying it's objective doesn't solve the problem here. It's true that *Citizens United* does use the appeal to vote test. But as a result of *Citizens United*, the appeal to vote test is gone. So that's the long way of saying, no, we don't think this appeal to vote test exists anymore and it can't exist anymore because it's vague.

THE COURT: Counsel, I'll take this matter under advisement; but I would, nonetheless, invite the Plaintiffs to submit a proposed Order.

MR. ELF: Yes, sir. May I ask when the Court would like that other than as soon as possible?

THE COURT: Well, as soon as possible.

MR. ELF: Very well.

THE COURT: All right. I will not be here Monday and Tuesday. I will be at the Seventh Circuit conference. So I will not be able to get this done before that.

MR. ELF: Very well.

THE COURT: So do not expect anything before that, all right?

Is there anything else at this time?

MR. KAWSKI: No. Thank you, your Honor. I'd just to thank you again for allowing us to appear by telephone today, and I apologize if there was any inconvenience caused by that.

THE COURT: Well, our system is not working as it should. But I also apologize to you because this matter had to be re-scheduled inasmuch as I have been for the last week engaged in a jury trial involving a shooting death. All right.

We stand in recess.

MR. KAWSKI: Thank you, your Honor.

THE MARSHAL: All rise.

(This proceeding was adjourned at 6:26 p.m.)

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

August 21, 2012

Signed **Dated**

TONI HUDSON, TRANSCRIBER

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WISCONSIN

WISCONSIN RIGHT TO LIFE, INC.
and WISCONSIN RIGHT TO LIFE
STATE POLITICAL ACTION COMMITTEE,

Plaintiffs,

v. Case No. 10-C-0669

THOMAS BARLAND, MICHAEL BRENNAN,
THOMAS CANE, DAVID DEININGER,
GERALD NICHOL, JOHN CHISHOLM,
and TIMOTHY VOCKE,

Defendants.

DECISION AND ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFFS' SECOND MOTION FOR PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER (DOC. 68)

The court having stated its findings of fact and conclusions of law during a hearing on August 31, 2012,

IT IS ORDERED that the plaintiffs' second motion for preliminary injunction as to count two is granted.

IT IS FURTHER ORDERED that the plaintiffs' second motion for preliminary injunction as to count four is denied as moot, except to the extent that defendants made contrary representations to the public after October 16, 2010.

IT IS FURTHER ORDERED that the plaintiffs' second motion for preliminary injunction as to count five is granted with respect to ads that are less than 30 seconds in length, and denied with respect to the remaining aspects of count five.

IT IS FURTHER ORDERED that the plaintiffs' second motion for preliminary injunction as to count nine is granted with respect to the corporate disbursement ban, and

denied with respect to the remaining aspects of count nine.

IT IS FURTHER ORDERED that the plaintiffs' second motion for preliminary injunction as to counts one, three, six, seven, and eight is denied.

IT IS FURTHER ORDERED that defendants are hereby preliminarily enjoined from enforcing limitations on corporate expenditures under Wis. Stat. § 11.38(1)(a)(1) pending the final resolution of this case. In addition, defendants are hereby ordered to notify the public that GAB 1.91 has expired.

Dated at Milwaukee, Wisconsin, this 31st day of August, 2012.

BY THE COURT

/s/ C. N. Clevert, Jr.
C. N. CLEVERT, JR.
CHIEF U. S. DISTRICT JUDGE

United States District Court
EASTERN DISTRICT OF WISCONSIN

WISCONSIN RIGHT TO LIFE STATE POLITICAL ACTION COMMITTEE et al.,

Plaintiffs,

v. Case No: 10-CV-669

THOMAS BARLAND et al.,

Defendants.

COURT MINUTES
HONORABLE CHARLES N. CLEVERT, JR., PRESIDING

Date:	September 4, 2012		
Proceeding:	MOTION HEARING/ORAL DECISION		
Deputy Clerk:	Chrissy Stanton	Court Reporter:	FTR Gold and John Schindhelm
FTR Start Time:	11:43:59 a.m.	FTR End Time:	12:35:53 p.m.
Appearances:	Plaintiff: Attorney Randy Elf Defendant: Attorney Christopher Blythe and Attorney Clayton Kawski		
Disposition:	The court grants the plaintiff's preliminary injunction as to count 2 as well as to count 9 with respect to the cooperate disbursement ban. The court will also grant the preliminary injunction as to count 5 with respect to ads that are less than 30 seconds in length. However, the court will deny the injunction on the remaining aspects of counts 5 and 9 and counts 1,3,6,7, and 8. Count 4 appears moot based on the expiration of GAB 1.91 and the removal of the link from the GAB website. However the link was on the GAB website when the amended complaint was filed. Therefore the defendants must notify the public that GAB 1.91 has expired.		
Notes:	The court will place an entry on the docket reflecting that these findings have been made and the parties shall proceed accordingly and any further matters will be addressed at another time.		

United States District Court
EASTERN DISTRICT OF WISCONSIN

WISCONSIN RIGHT TO LIFE STATE POLITICAL ACTION COMMITTEE et al.,

Plaintiffs,

v. Case No: 10-CV-669

THOMAS BARLAND et al.,

Defendants.

AMENDED COURT MINUTES
HONORABLE CHARLES N. CLEVERT, JR., PRESIDING

Date:	August 31, 2012		
Proceeding:	MOTION HEARING/ORAL DECISION		
Deputy Clerk:	Chrissy Stanton	Court Reporter:	John Schindhelm
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UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF WISCONSIN

WISCONSIN RIGHT TO LIFE, INC., et al.,	)	
	)	
Plaintiffs,	)	Case No. CV 10-0669
	)	Milwaukee, Wisconsin
vs.	)	
	)	August 31, 2012
DAVID DEININGER, et al.,	)	11:44 a.m.
	)	
Defendants.	)	

TRANSCRIPT OF MOTION HEARING/ORAL DECISION
BEFORE THE HONORABLE CHARLES N. CLEVERT, JR.
UNITED STATES CHIEF DISTRICT JUDGE

APPEARANCES:

For the Plaintiffs:
Randy Elf
Bopp Coleson & Bostrom
1 S 6th St
Terre Haute, IN 47807-3510
812-232-2434
Fax: 812-235-3685
Email: RElf@bopplaw.com

For the Defendants:
Christopher J Blythe
Clayton P Kawski
Wisconsin Department of Justice
Office of the Attorney General
17 W Main St
PO Box 7857
Madison, WI 53707-7857
Ph: (CB) 608-266-0180
Ph: (CK) 608-266-7477
Fax: 608-267-2223
Email: blythecj@doj.state.wi.us
Email: kawskicp@doj.state.wi.us

U.S. Official Reporter:
JOHN T. SCHINDHELM, RMR, CRR,
johns54@sbcglobal.net

Proceedings recorded by computerized stenography, transcript produced by computer aided transcription.

P R O C E E D I N G S (11:44 a.m.)

THE CLERK: This is Wisconsin Right to Life State Political Action Committee, et al., vs. Thomas Barland, et al., Case No. 10-CV-669, here for a motion hearing/oral decision.

11:45 May I have the appearances?

MR. ELF: Randy Elf for the plaintiffs.

MR. KAWSKI: For the defendants Clay Kawski and Chris Blythe.

THE COURT: Good morning, Counsel.

11:45 MR. ELF: Good morning.

MR. KAWSKI: Good morning, Your Honor.

THE COURT: This action is about the way in which the State of Wisconsin may regulate speech.

The pending second motion for a preliminary injunction 11:45 and temporary restraining order requires the court to evaluate plaintiffs' likelihood of success on claims that Wisconsin's campaign finance laws are unconstitutional facially and as applied to plaintiffs. Based on a careful review of the record and controlling authority, this court will grant the preliminary 11:45 injunction as to Count 2, as well as to Count 9 with respect to the corporate disbursement ban.

The court will also grant the preliminary injunction as to Count 5 with respect to ads that are less than 30 seconds in length. However, the court will deny the injunction on the 11:46 remaining aspects of Counts 5 and 9 and Counts 1, 3, 6, 7, and

8.

Count 4 appears moot based on the expiration of GAB 1.91 and the removal of the link from the GAB website, but defendants must notify the public that GAB 1.91 has expired.

11:46 Plaintiff Wisconsin Right to Life, Inc., "WRTL," is a 501(c)(4) non-profit corporation that is not connected with any political candidate, political party, or any political committee other than its own. Plaintiff Wisconsin Right to Life State Political Action Committee, "WRTL-SPAC," is a Wisconsin

11:47 political committee connected with WRTL but a separate legal entity. WRTL-SPAC does not contribute to any candidates. Both plaintiffs would like to engage in several forms of speech -- who would like to engage in several forms of speech maintain that they have not done so, claiming that their speech has been

11:47 chilled or otherwise encumbered by Wisconsin law.

Now, to succeed on a motion for a temporary restraining order or preliminary injunction, a plaintiff must show that it has: (1) no adequate remedy at law and will suffer irreparable harm if a preliminary injunction is denied; and (2)

11:47 some likelihood of success on the merits, as stated in *ACLU of Illinois vs. Alvarez* at 679 F.3d 583 at 598, Seventh Circuit 2012.

The movant must also show that the balance of equities tips in its favor and that an injunction is in the public

11:48 interest. *Winter vs. Natural Resources Defense Council, Inc.*,

555 U.S. 7, at page 20, 2008.

Quote: "In First Amendment cases, 'the likelihood of success on the merits will often be the determinative factor.'" End of quotes. *Alvarez* at 679 F.3d, page 589.

11:48 The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable harm. *Joelner vs. Village of Washington Park, Illinois*, 378 F.3d, 613 to 620, Seventh Circuit 2004. Moreover, quote: "Injunctions projecting First Amendment freedoms are always in the public

11:49 interest." *Alvarez*, 679 F.3d at 589.

Count 1.

A major purpose of the First Amendment was to protect the discussion of governmental affairs, including discussion of candidates. *Wisconsin Right to Life State PAC vs. Barland*, 664

11:49 F.3d 139 at pages 151 to 152, Seventh Circuit 2011.

The free flow of political speech, quote, "is central to the meaning and purpose of the First Amendment," end of quote. *Citizens United vs. FEC*, 130 S. Ct. 876 at page 892, 2010. Most laws that burden political speech are subject to

11:49 rigorous judicial review. *Barland*, 664 F.3d at 151 to 152.

Count 1 of plaintiffs' first amended verified complaint asserts that "Wisconsin's corporate-disbursements ban, plus Wisconsin's committee/political action committee, quote, 'persons other than political committees' and, quote,

11:50 'organizational,' unquote, definitions, are unconstitutionally

vague as applied to Wisconsin Right to Life's speech."

The void for vagueness doctrine rests on the basic principle of due process that a law is unconstitutional if its prohibitions are not clearly defined. *Sherman vs. Koch*, 623 F.3d 501 at page 519, Seventh Circuit 2010.

11:50

A statute is only unconstitutionally vague, quote, "if it fails to define the offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and it fails to establish standards to permit enforcement in a nonarbitrary, nondiscriminatory manner," end of quote. *Fuller ex rel. Fuller vs. Decatur Public School Board of Education School District* 61, 651 F.3d 662 at page 666, Seventh Circuit 2001; also see *Grayned vs. City of Rockford*, 408 U.S. 104 at page 108, 1972. Quote: "Where First Amendment rights are involved, an even greater degree of specificity is required." *Buckley vs. Valeo*, 424 U.S. 1 at page 77, 1976, quoting *Smith vs. Goguen*, G-O-G-U-E-N, 415 U.S. at 573.

11:51

11:51

With that in mind, the court turns to the three particular phrases targeted by plaintiffs.

A. For the Purpose of Influencing.

11:51

Plaintiffs first assert that the phrase "for the purpose of influencing" an election is unconstitutionally vague. Wisconsin uses "for the purpose of influencing" and like phrases within its campaign financing statutes: (1) the phrases "for the purpose of influencing the election or nomination for

11:52

election" and "attempting to influence an endorsement or nomination" appear in the definition of political purpose; and (2) the phrase "primarily to influence elections" appears in the definition of political committee. This court will refer to these phrases collectively as the "influencing language." By extension, the purportedly vague "influencing language" appears in the corporate disbursement ban and the definitions of disbursement, contribution, committee or political committee, incurred obligation, persons other than political committees and organization.

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11:52

In *Buckley vs. Valeo*, "contributions" and "expenditures" are defined in terms of the use of money or other valuable assets "for the purpose of influencing" the nomination or election of candidates for federal office. *Buckley*, 424 U.S. at 77.

11:53

Referring to the influencing language, the court in *Buckley* decided that it is the ambiguity of that phrase that poses constitutional problems, because such influencing language had the "potential for encompassing both issue discussion and advocacy of a political result." *Id.* at 79. As opposed to invalidating the provision, *Buckley* narrowly construed the influencing language by interpreting it as limited to express advocacy to elect or defeat a clearly identified candidate. *Buckley*, 424 U.S. at 78.

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11:54

Buckley involved a federal court analyzing a federal

statute. The present case involves this federal district court's analysis of Wisconsin's state statutes. Federal courts are "without power to adopt a narrowing construction of a state statute unless such a construction is reasonable and readily
11:54 apparent." *Steinberg vs. Carhart*, 530 U.S. 914, 944, footnote 4, 2000.

Moreover, when "evaluating a facial challenge to a state law, a federal court must consider any limiting construction that a state court or enforcement agency has
11:54 proffered." *Ward vs. Rock Against Racism*, 491 U.S. 781, 795 to 796, 1989.

In 1976, Wisconsin's Attorney General, Bronson La Follette, published an opinion addressing a number of questions related to the impact of *Buckley* on Wisconsin's
11:55 campaign finance law. 65 Op. Att'y Gen. 145, 1976. He analyzed, among other things, the constitutionality of then-existing Wisconsin Statutes § 11.01(16) defining "political purpose" and 11.01(10) defining an act "in support of" or of "in opposition to" — which included the phrase "with the primary
11:55 purpose of influencing an election." 65 Op. Att'y Gen. 152.

Attorney General La Follette concluded that these provisions of Chapter 11 "should be narrowly construed to apply only to acts which are undertaken with the purpose of expressly advocating the election or defeat of an identified candidate."
11:56 The provisions at issue in the present case differ

from the provisions analyzed by the Attorney General in his 1976 opinion, but the logic is consistent and highly persuasive. This court will likely find that narrowing the construction of the influence language to apply only to express advocacy or the 11:56 functional equivalence of express advocacy is *reasonable and readily apparent*, and, as such, it is within this court's power to adopt such construction. Therefore, the court concludes that plaintiffs have not demonstrated some likelihood of success on the merits.

11:56 **B. Supports Or Condemns.**

WRTL also challenges as vague the phrase "supports or condemns" in two places in GAB 1.28. Context for the phrase "supports and condemns" is important, though not discussed by WRTL. Wisconsin Administrative Code § GAB 1.28 provides that 11:57 the requirements of Wis. Stat. Chapter 11 apply to individuals other than candidates and persons other than political committees when they "make a communication for a political purpose." GAB 1.28(2).

A communication is for a political purpose if, among 11:57 other things, it "is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate." GAB 1.28(3)(b). A communication is so susceptible if it is made within a certain timeframe before an election, includes a reference to or depiction of a clearly defined 11:58 candidate, AND, emphasis added, either "supports or condemns

that candidate's position or stance on issues," or "supports or condemns that candidate's public record."

In *McConnell vs. Federal Election Commission*, 540 U.S. 93 at 2000 — overruled on other grounds — the Supreme Court
11:58 rejected a vagueness challenge to similar words used in the definition of "public communications" in § 301(2)(A)(iii) of the Federal Election Campaign Act. The definition included public communication that "promotes or supports a candidate for that office, or attacks or opposes a candidate for that office." See
11:58 2 U.S. Code § 431(2)(A)(iii). According to the court, quote:

> the words "promote," "oppose," "attack," and "support" clearly set forth the confines within which potential party speakers must act in order to avoid triggering the
11:59 provision. These words "provide explicit standards for those who apply them" and "give the person of ordinary intelligence a reasonable opportunity to know what is prohibited.
>
> End of quote.
>
> 540 U.S. at 170, page 64.

Here, for purposes of the vagueness test, the word "condemns" is no different than the words "oppose" or "attack" approved by the Supreme Court. Like the words "oppose" or
11:59 "attack," "condemns" is easily understood by a person of

ordinary intelligence.

WRTL points to a concurrence in *Federal Election Commission vs. Wisconsin Right to Life, Inc.* 551 U.S. 449, at pages 492 to 493, 2007, in which Justice Scalia remarked that a 12:00 test including the words "promotes, attacks, supports, or opposes" a candidate or "promotes or supports a candidate for office" is impermissibly vague. But Justice Scalia's remarks in a concurrence did not overrule the holding in *McConnell*.

In rejecting a recent vagueness challenge a Maine 12:00 election laws -- to Main election laws containing the terms "promoting," "support," and "opposition," the First Circuit cited to *McConnell* and rejected any reliance on the Scalia concurrence or other authorities cited by the challenger, stating, quote: "None of the cited cases is a majority Supreme 12:01 Court opinion issued after *McConnell*, so *McConnell* remains the leading authority relevant to interpretation of the terms before us." End of quote. *National Organization for Marriage vs. McKee*, 649 F.3d at page 34 -- 34 at page 63, First Circuit 2011. The First Circuit found the terms used in Maine's law to be 12:01 sufficiently close to the terms in *McConnell* and thus not vague.

Also, a district court in the Southern District of West Virginia recently found the language in *McConnell* dispositive of a vagueness challenge to language in election law that used "support or oppose" to modify particular speech. 12:01 *Center for Individual Freedom, Inc. vs. Tennant*, 849 F. Supp.

2.d 659, Southern District of West Virginia 2011; see also *National Organization for Marriage vs. Daluz*, D-A-L-U-Z, 654 F.3d 115 at page 120, First Circuit 2011, paren, (rejecting a vagueness challenge to the words "to support or defeat a candidate," unquote, in Rhode Island law.)

12:02

Wisconsin Right to Life cites to a Fourth Circuit case for support, *North Carolina Right to Life vs. Bartlett*, 168 F.3d 705, Fourth Circuit 1999. But, the case is not on point. That court found an election law to be unconstitutionally vague in part because of its use of the word "incidental," *not* because of its use of the words "support or oppose any candidate." *Id.* at 712 through 713.

12:02

This court is satisfied that the *McConnell* language is dispositive of this vagueness challenge. Moreover, the First Circuit noted that the Maine statute's terms provided even more clarity than the terms found acceptable in *McConnell*, as the terms in *McConnell* involved promoting a *candidate*, while Maine's law involved promoting the *nomination* or *election* of a candidate. 649 F.3d at 64.

12:03

Wisconsin's administrative code provision is likewise even more clear than those approved of in *McConnell*, as they reference supporting or condemning a candidate's *position* or *stance* on *issues* or a candidate's *public record*, not just support or condemnation of a candidate. *Cf. Wisconsin Right to Life, Inc.*, 551 U.S. at 493, Scalia, Judge, concurring. Paren,

12:03

("Does attacking the king's position attack the king?") End of quote.

WRTL argues that the language approved in *McConnell* applies only to political parties or candidates' campaigns, because, quote -- because they "are filed with political professionals accustomed" -- correction -- "are filled with political professionals accustomed to, though not necessarily content with, baroque election law," end of quote. Plaintiff's brief in supplement at page 9.

But regardless of whether *McConnell* involved political parties, the Supreme Court found the terms understandable by the ordinary person. Similarly here, the terms "support" and "condemn" are not difficult words for an average person to understand in the context of supporting or condemning a candidate's position or record and appeal to vote for or against a specific candidate. A person of ordinary intelligence should have no problem discerning what the terms mean — expertise in election law is not required.

The court's finding on this point disposes of both a facial challenge as well as an applied challenge. But as to the latter, WRTL, in any event, has provided no analysis of why the language would be vague as applied to its speech.

C. Functional Equivalents.

Plaintiffs next argue that GAB 1.28(3)(a) is unconstitutionally vague because of its reference to "functional

equivalents." However, their challenge to this language similarly fails because they have not persuaded this court that they have some likelihood of success on the merits. Plaintiffs never applied the law regarding vagueness to GAB 1.28 or to their speech, but rather rely upon conclusory allegations in their first amended verified complaint and extremely narrow reading of the United States Supreme Court case law.

GAB 1.28 defines the scope of regulated activity. Specifically, communication is for a political purpose if, quote: "the communication contains terms such as the following or their functional equivalents with reference to a clearly identified candidate and unambiguously relate to the campaign of that candidate," end of quote. The list of magic words includes "vote for," "elect," "support," "cast your ballot for," "Smith for Assembly," "vote against," "defeat" or "reject," end of quote, or, quote, "their functional equivalents with reference to a clearly defined candidate and unambiguously relates to the campaign of that candidate," end of quote.

Section (b) includes communications susceptible of no reasonable interpretation other than as an applied (sic) to vote for or against a specific -- as an appeal to vote for or against a specific candidate.

In *Federal Election Commission vs. Wisconsin Right to Life, Inc.*, 551 U.S. 449, 2007, the United States Supreme Court found that an ad is the functional equivalent of express

advocacy only if the ad is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate. 551 U.S. at 470.

Plaintiffs focus on a discussion in footnote 7 of the opinion in which Chief Justice Roberts addressed Justice Scalia's concern that the appeal-to-vote test is impermissibly vague. Justice Roberts wrote that he agreed that it is impermissive for clarity in the area, which is why the test affords protection -- unless an ad is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate. The footnote explains that the test is "only triggered if the speech meets the bright-line requirements of BCRA § 203 in the first place." However, in the same footnote Chief Justice Roberts rejected the argument raised in Justice Scalia's concurring opinion that, quote, "if a permissible test short of the magic-words test existed, *Buckley* would surely have adopted it," end of quote. He reasoned that *Buckley* focused on how a particular statutory provision could be construed to avoid vagueness concerns, but that it did not dictate a constitutional test.

Citizens United also supports the use of a functional equivalent test inasmuch as it is relied on -- as it relied *on Wisconsin Right to Life's* language in finding that *Hillary: The Movie* qualified as the functional equivalent of express advocacy because it was, quote, "in essence a feature-length negative

advertisement that urges viewers to vote against Senator Clinton for President," end of quote. *Citizens United*, 130 S. Ct. at 890.

Notwithstanding plaintiffs' argument to the contrary, 12:09 *Citizens United* expressly overruled *Austin* and *McConnell* in part, but did not affect the holding of *Wisconsin Right to Life* or otherwise abolish the appeal-to-vote test. Indeed, the Supreme Court went on to reject Citizens United's contention that the disclosure requirements must be limited to speech that 12:09 is the functional equivalent of express advocacy. *Id.* at 915.

Because GAB 1.28 is consistent with the functional equivalence language adopted in *Wisconsin Right to Life* and the majority found it not impermissibly vague, this court does not find that plaintiffs have met their burden at this time.

12:09 **Count 2.**

Plaintiffs assert that Wisconsin Statute § 11.38(1)(a)(1), referred to as the corporate disbursement ban, is unconstitutional as applied to Wisconsin Right to Life's speech. Wisconsin's Attorney General, J.B. Van Hollen, has 12:10 opined that, in light of *Citizens United*, the limitation of corporate expenditures is barred. Attorney General's Opinion, OAG-05-10. Additionally, defendants submit that Wisconsin's Government Accountability Board suspended its enforcement of the corporate expenditure limitation under Wisconsin Statute 12:10 § 11.38(1)(a)(1), consistent with Attorney General -- the

Attorney General's opinion. During a May 4, 2012 preliminary injunction hearing before this court, defendants provided assurances that they would not enforce § 11.38(1)(a)(1) against plaintiffs.

12:11 In a recent First Amendment case, the Seventh Circuit stated that, quote, "the existence of a statute implies a threat to prosecute, so pre-enforcement challenges are proper under Article III because a probability of future injury counts as 'injury' for the purpose of standing." *Alvarez* 679 F.3d at page 12:11 590. Thus, despite the -- Wisconsin's purported willingness to refrain from enforcing § 11.38(1)(a)(1), plaintiffs' standing remains intact because the existence of the statute implies the threat of injury.

In *Citizens United*, the Supreme Court stated that, 12:11 quote, "the Government may not suppress political speech on the basis of the speaker's corporate identity," end of quote, while affirming that burdens on such political speech is subject to strict scrutiny. 130 S. Ct. at 898 and 913. This requires a showing that the law in question, quote, "furthers a compelling 12:12 interest and is narrowly tailored to achieve that interest," end of quote. *Id.* at 914. The court recognized that there exists a governmental interest in preventing quid pro quo corruption, but rejected the other various governmental interests offered in support of upholding the relevant statute in that case. *Id.* at 12:12 883.

The federal law analyzed in *Citizens United* prohibited corporations and unions from using general treasury funds to make direct *contributions* to candidates or *independent expenditures* that expressly advocate the election or defeat of a candidate, through any form of media, in connection with certain qualified federal elections. 2 U.S.C. § 441b, 2000 edition. The term "*expenditure*," as used in § 441b, includes:

> (i) any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office; and
> (ii) a written contract, promise, or agreement to make an expenditure.

Title 2 U.S.C. § 431(9)(a). *Citizens United* held that restrictions on corporate *independent expenditures* in Title 2 U.S.C. § 414b were invalid.

Here, § 11.01(7) of Wisconsin Statutes defines the word "disbursement" as a purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value for political purposes. Attorney General Van Hollen has acknowledged the meaning of "expenditure" in Title 2 U.S.C. § 441b and the meaning of "disbursement" in Wisconsin Statute § 11.38(1)(a)(1) is substantially similar and this court agrees.

In light of Wisconsin's definition of "disbursement"

and the text of Wisconsin Statute § 11.38(1)(a)(1), and the holding in *Citizens United* invalidating restrictions on corporate independent expenditures, this court is persuaded that plaintiffs demonstrate some likelihood of success on the merits
12:14 in finding that Wisconsin's prohibition on corporate *disbursements* under § 11.38(1)(a)(1) as an unconstitutional burden on political speech.

Having already decided that Wisconsin's corporate disbursement ban is unconstitutional, the court briefly
12:15 evaluates the constitutionality of Wisconsin's corporate *contribution* ban, as stated in § 11.38(1)(a)(1). Courts have long recognized the distinction between expenditures and contributions. In *Buckley*, the court found it sufficiently important to allow limits on contributions but did not extend
12:15 that reasoning to expenditure limits. 424 U.S. at 25.

Attorney General Van Hollen stated that although there are overlaps in the definitions of contributions and expenditures, quote, "the constitutional difference between a transfer of value that is an expenditure and a transfer of value
12:15 that is a contribution is determined by the identity of the recipient of that transfer," end of quote. OAG-05-10, paragraph 21.

At page 22, he observed that the statutory definition of "contribution" in Wisconsin does not include this distinction
12:16 because the definition does not identify the recipient. In some

instances, a contribution would also be an expenditure. Wisconsin's ban on corporate expenditures may have been severable from the contribution ban if the definitions of contribution and expenditure were distinguished by the recipient noted therein, but it is not. Therefore, this court invalidates Wisconsin's ban on corporate disbursements and contributions set forth in § 11.38(1)(a)(1) as applied to Wisconsin Right to Life speech.

Count 3.

12:17 Plaintiffs assert that Wisconsin's "committee or political committee," and persons other than political committees definitions fail constitutional scrutiny and are unconstitutional as applied to Wisconsin Right to Life speech. They ask the court to look beyond the label and to the 12:17 substance. Plaintiffs claim that, quote, "the burdens that apply when Wisconsin defines an organization not only as a political/ -- not only as a committee -- correction -- committee/political committee, but also as a, quote, "person other than a political committee are the very burdens that are 12:17 'onerous' under *Citizens United.*"

In *Citizens United*, 130 S. Ct. at 889 to 899, the court asserts that political action committees, which are otherwise known as PACs, are burdensome. The court states that PACs must, quote:

12:18 **appoint a treasurer, forward donations to**

the treasurer promptly, keep detailed records of the identities of the persons making donations, preserve receipts for three years, and file an organization statement and report changes to this information. And that is just the beginning. PACs must file detailed monthly reports with the FEC which are due at different times depending on the type of election that is about to occur.

End of quote.

Quoting *FEC vs. Mass. Citizens For Life, Inc.*, 479 U.S. 238, pages 253-254, U.S. 1986. The court provided additional details about the reports. Quote:

These reports must contain information regarding the amount of cash on hand; the total amount of receipts, detailed by 10 different categories; the identification of each political committee and candidate's authorized or affiliated committees making contributions, and any persons making loans, providing rebates, refunds, dividends, or interest or any other offset to operating expenditures in an aggregate amount of over $200; the total amount of all disbursements,

detailed by 12 different categories; the names of all authorized or affiliated committees to whom the expenditures aggregating over $200 have been made; persons to whom loan repayments or refunds have been made; the total sum of all contributions, operating expenses, outstanding debts and obligations, and the settlement of terms of the retirement of any debt or obligation.

End of quote.

Only after providing the aforementioned specific requirements, the *Citizens United* court then stated, quote: "Given the *onerous* restrictions, a corporation may not be able to establish a PAC in time to make its views known." *Citizens United*, 130 S. Ct. at 899.

In attacking Wisconsin laws, plaintiffs appear to rely on *Citizens United* because the court stated that requirements for PACs under federal law are onerous. Plaintiffs assert that, quote, "as a matter of law, not fact, political committee status — or whatever label a jurisdiction uses — is not only burdensome but also onerous, because they are expensive and subject to extensive regulations." This is document 68-4 at page 18.

This court disagrees. Whether the requirements placed upon political committees are burdensome or onerous depends not

on having such status; it depends upon the content of the relevant rules and regulations and, therefore, it is a matter of fact. *Citizens United* should not be interpreted to assert that political committees as defined in Wisconsin are per se unconstitutionally burdensome.

12:21

Plaintiffs state that they are required to 1) register; 2) keep records; and 3) conduct periodic reporting. These requirements are mentioned in *Citizens United.* However, the court is not persuaded that they are burdensome absent the other requirements listed in that case, or other circumstances that would persuade the court that these requirements are unnecessarily burdensome.

12:21

Plaintiffs appear to argue that because a "person other than a political committee" — as defined in Wisconsin law — is subjected to similar burdens as a political committee, the separate classifications are inconsequential. Pursuant to this logic, it appears that plaintiffs assert that Wisconsin, quote, "may impose full-fledged political/committee-like burdens only on organizations it may define as political committees," end of quote, and that, quote, "WRTL is not such an organization," end of quote. Accordingly, plaintiffs maintain that whether an organization may be a political committee is set forth in the precedent -- as set forth in the precedent established in *Buckley vs. Valeo*, 424 U.S. at page 79.

12:21

12:22

12:22

The court is not persuaded by this argument.

Wisconsin law requires registration, recordkeeping and periodic reporting. These are like disclosure requirements and are subject to exacting scrutiny. See *Citizens United*, 130 S. Ct. at 914.

12:22 Wisconsin Right to Life also mentions limitations on contributions received, which does not apply to them, as they engage in only independent spending for political speech.

Lastly, the source bans on contributions received will be addressed in Count 8. Therefore, plaintiffs fail to

12:23 demonstrate that definitions of committees, political committees, or, quote, 'a person other than a political committee,' end quote, would not pass constitutional scrutiny.

The court will find that plaintiffs have not demonstrated some likelihood of success on the merits in regard

12:23 to Count 3.

Count 4.

Moving to Count 4, the court notes that Wisconsin Administrative Code GAB 1.91 was promulgated as an emergency rule. Pursuant to Section § 227.24 of the Wisconsin Statutes,

12:23 as an agency promulgates a rule as an emergency rule -- I should say if an agency promulgates a rule as an emergency rule it, quote, "remains in effect only for 150 days," end of quote. GAB 1.91 was promulgated on May 20th, 2010, and as indicated by the Government Accountability Board in its public notice, it was

12:24 effective until October 16, 2010.

At the May 4 motion hearing, defendants stated that, quote, "GAB 1.91 is not currently the law in Wisconsin. It expired and it doesn't exist," end of quote. Because it has expired, the defendants assert that plaintiffs' claim is not
12:24 ripe and that any ruling on an administrative rule that does not exist would be speculative and hypothetical.

Plaintiffs respond that the defendants continued to enforce or claim that they are -- that they would enforce GAB 1.91 after it had expired, thereby confusing the public as to
12:24 whether the provision is enforceable. The plaintiffs directed to the court's attention to -- the plaintiffs's directed the court's attention to, and the court takes judicial notice of, a link from the defendant's home page to GAB 1.91.

At the May 4 motion hearing, the court ordered
12:25 defendants to remove the link to this document from their website. As of August 30th, 2012, the link the plaintiff identified in their complaint did not appear on defendants' website. The court takes judicial notice in this regard.

Notwithstanding the apparent lack of candor on behalf
12:25 of the State, the court finds that GAB 1.91 is expired. Therefore, plaintiffs failed to demonstrate some likelihood of success on the claims in Count 4 and, as such, the court is likely to deny the claims as moot.

However, because the court is persuaded that the
12:25 defendants' action may have misled or confused the public about

the enforcement of GAB 1.91, the court has ordered defendants to remove any link from its website, and further orders defendants to provide notice to the public clarifying that GAB 1.91 has expired.

12:26 **Count 5.**

The court now evaluates the plaintiffs' likelihood of success of establishing that disclosure of burdens in GAB 1.42(5) are unconstitutional as applied to Wisconsin Right to Life's State Political Action committee.

12:26 *Citizens United* and *Buckley* acknowledge that, quote, "disclaimer and disclosure requirements may burden the ability to speak, but they impose no ceiling on campaign-related activities and do not prevent anyone from speaking," end of quote. *Citizens United*, 130 S. Ct. at 914. Disclaimer and 12:26 disclosure requirements are subject to exacting scrutiny, which requires a substantial relation between the disclosure requirements and a sufficiently important governmental interest.

Section 11.30 of Wisconsin Statute require persons to disclose the source of their advertisement. In addition to the 12:26 requirement in Section 11.30, persons must also comply with GAB 1.42(5), which requires one's advertisement to, quote:

> The committee (individual) is the sole source of this communication and the committee (individual) did not act in 12:27 cooperation or consultation with, and in

> connection with, or at the request or suggestion of any candidate or any agent or authorized committee of a candidate who is supported or opposed by this communication.

12:27 End of quote.

Plaintiffs assert that Wisconsin regulatory attribution and disclaimer requires GAB 1.42(5) are so great that the government's interest does not reflect the seriousness of the actual burden on first amendment rights. Specifically, 12:27 plaintiffs claim that this would be particularly burdensome in a 30-second or a 60-second radio advertisement. In response, defendants do not concede that GAB 1.42(5) is unconstitutional as applied to WRTL-SPAC, but nevertheless agrees to only enforce Wis. Stat. 11.30 and impliedly agree not to enforce GAB 1.42(5) 12:28 as to the radio broadcast ads that were filed in this case. For the reasons already stated, the defendants' stipulation does not defeat plaintiffs' standing.

Applying the standards set forth, the court will find that plaintiffs have demonstrated some likelihood of success on 12:28 the merits related to the disclosure requirements of GAB 1.42(5) for radio advertisements that are less than 30 seconds in length as applied to WRTL-SPAC.

The court notes that this provision may be unduly burdensome on short radio advertisements, however, the burden 12:28 likely decreases for longer radio advertisements. Although the

precise time period for which GAB 1.42(5) would not be unduly burdensome is not clear, the plaintiffs have not demonstrated some likelihood of success related to the disclosure requirements of GAB 1.42(5) for radio advertisements that are
12:29 longer -- that are 30 seconds or longer. Thus, the court will grant in part plaintiffs' claims in Count 5 for ads less than 30 seconds in length, but it will deny in part plaintiffs' claims for ads longer than 30 seconds -- longer than 30 seconds or longer. I should say more than 30 seconds or longer.

12:29 **Count 6** questions the constitutionality of Wisconsin's 24-hour reporting requirements, Wis. Stat. § 11.25(5) through (6), as applied to Wisconsin Right to Life — SPAC.

To support the assertion that such provisions are patently unreasonable and severely burden their first amendment
12:30 rights, plaintiffs cite to two cases:

Citizens For Responsible Government State PAC vs. Davidson, 236 F.3d 1174 at page 1197, Tenth Circuit 2000, analyzing Colorado law and decided before *McConnell* and *Citizens United*; and

12:30 (2) *National Organization for Marriage vs. McKee*, 723 F.Supp.2d 245, at page 266, First Circuit 2011.

In *McKee*, the court held that one of two 24-hour reporting regulations was an unconstitutional burden on First Amendment speech. The first required that independent
12:30 expenditures of over $100 made within two weeks of an election

be reported to the Commission within 24 hours. This provision was upheld.

The second required the reporting within 24 hours of any independent expenditures aggregating over $250, regardless of when made. The court held that the second regulation, unlike the first, did not pass constitutional scrutiny.

Thus, by implication, *McKee* acknowledges that some 24-hour reporting requirements may promote the dissemination of information about those who deliver and finance political speech, thereby encouraging efficient operation of the marketplace of ideas, while other 24-hour reporting requirements may be unconstitutionally burdensome. Because a 24-hour reporting requirement is not per se unconstitutional, plaintiffs must explain how Wisconsin's 24-hour reporting requirements burden their speech and they fail to do so. Rather than setting forth a sufficient factual or legal basis for their conclusions, plaintiffs simply state, quote, "having to devote time to preparing and filing such reports is a severe burden on Wisconsin Right to Life-SPAC's resources, including its time to devote to its mission in critical weeks of the year, especially when the disbursement-reporting threshold is $20." End of quote.

The court is persuaded by defendants' assertion that the burden is minimal, particularly in light of the fact that electronic filing is available. Hence, this court finds that

plaintiffs have failed to demonstrate some likelihood of success on the merits and will deny this motion -- their motion in this regard.

Count 7.

12:32 As it pertains to Count 7, plaintiffs have asked the court to preliminarily enjoin defendants from enforcing Wis. Stat. 11.06(7) as applied to Wisconsin -- WRTL—SPAC. Wisconsin law requires committees and individuals making independent disbursements to affirm that they do not act in cooperation or

12:33 consultation with any candidate. Because the Oath of Independent Disbursements is not unduly burdensome, the court finds that plaintiffs have failed to demonstrate some likelihood of success on the merits.

Count 8.

12:33 Count 8 addresses the $500 annual limit placed on Wisconsin Right to Life to spend on solicitations for contributions for its Political Action Committee — under Wis. Stat. § 11.38(1)(a)(3). Citing *Buckley*, 424 U.S. at 23, plaintiffs claim that the limit on § 11.38(1)(a)(3) is *like* a

12:33 limit on contributions, and because WRTL-SPAC engages only in independent spending and because plaintiffs are not foreign nationals, such limitations are unconstitutional. Plaintiffs do not, however, state how the provision is like a contribution and why it should be held as unconstitutional pursuant to similar

12:34 logic.

Plaintiffs disagree and claim that it is a spending limit, and not a contribution limit. In response, defendants state that "Defendants may have it their way: spending limits are unconstitutional too, other than for foreign nationals, and
12:34 candidate committees accepting government money." End of quote.

Neither party analyzed a state's ability to limit resources spent on solicitations — which seems to be the central issue here. The court acknowledges that there may be some constitutional concerns here. Nevertheless, plaintiffs have
12:34 failed to establish some likelihood of success on the merits. Thus, the court will deny plaintiffs' motion for a preliminary injunction.

Count 9.

Plaintiffs are likely to succeed on the merits of
12:35 Count 9 with respect to the corporate disbursement ban and refers the parties to the court's discussion about Count 2 in this action. The plaintiffs have demonstrated some likelihood of success on the merits in their invalidation of Wis. Stat. § 11.38(1)(a)(1) as applied to WRTL's speech and facially. The
12:35 court grants the plaintiffs' motion for a preliminary injunction regarding this matter.

Nevertheless, the court finds that plaintiffs have not demonstrated a likelihood of success on the merits respecting other aspects of Count 9. The court will therefore deny their
12:35 motion for preliminary injunction regarding the other claims

therein.

It is therefore so ordered.

That concludes the court's determinations respecting these matters at this time which shall stand for the court's
12:35 findings of fact and conclusions of law.

Counsel? Counsel?

MR. ELF: Yes, Your Honor.

THE COURT: Were you able to hear all that was said?

MR. ELF: Yes, sir, we could. This is Randy Elf for
12:36 the plaintiffs.

MR. KAWSKI: Your Honor, this is Clay Kawski for the defendants. We heard it very well, sir. Thank you.

THE COURT: All right. The court will place an entry on the docket reflecting that these findings have been made and
12:36 we will proceed accordingly.

The court will address any further matters at another time. I wish you a good weekend.

MR. KAWSKI: Thank you.

MR. ELF: Thank you.

12:36 (Proceedings concluded at 12:36 p.m.)

* * *

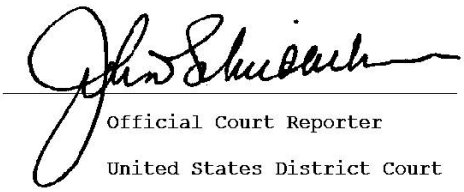
UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WISCONSIN

I, JOHN T. SCHINDHELM, RMR, CRR, Official Court Reporter for the United States District Court, Eastern District of Wisconsin, do hereby certify that I reported the foregoing proceedings, and that the same is true and correct in accordance with my original machine shorthand notes taken at said time and place.

Dated this 16th day of September, 2012

Milwaukee, Wisconsin.



Official Court Reporter

United States District Court

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

WISCONSIN RIGHT TO LIFE, INC.
and WISCONSIN RIGHT TO LIFE
STATE POLITICAL ACTION COMMITTEE,

Plaintiffs,

v. Case No. 10-C-0669

GORDON MYSE, THOMAS BARLAND,
MICHAEL BRENNAN, THOMAS CANE,
DAVID DEININGER, GERALD NICHOL,
and JOHN CHISHOLM,

Defendants.

DECISION AND ORDER DENYING PLAINTIFFS' RULE 7(h) EXPEDITED NON-DISPOSITIVE MOTIONS FOR INJUNCTION PENDING APPEAL (DOC. 94, 103)

On August 17, 2012, plaintiffs Wisconsin Right to Life, Inc., and Wisconsin Right to Life State Political Action Committee filed a second notice of appeal (Doc. 84) to the Seventh Circuit Court of Appeals claiming that this court constructively denied their second motion for a preliminary injunction (Doc. 68). A hearing was then scheduled for August 31, 2012. On August 23, plaintiffs moved to continue the August 31 hearing asserting that their notice of appeal deprived this court of jurisdiction over the matters appealed. (Doc. 91.) Defendants opposed the request. (Doc. 92.) The court denied plaintiffs' motion to continue, concluding with due regard for the circumstances, that the second notice of appeal did not deprive it of jurisdiction. (Doc. 93.)

During the August 31, 2012, hearing, the court set forth its findings of fact and conclusions of law and granted a preliminary injunction as to count two, as well as count nine with respect to enforcement of Wisconsin's corporate disbursement ban. The court also granted a preliminary injunction as to count five regarding ads that are less than 30 seconds in length. On the other hand, the court denied an injunction on the remaining aspects of

counts five and nine, and counts one, three, six, seven, and eight. The court declined relief on count four as moot, which will be discussed below.

Also on August 31, plaintiffs filed a (second) motion for injunctive relief pending appeal respecting all the claims in the first amended verified complaint. (Doc. 94.) Plaintiffs submitted that they should prevail for the reasons discussed in their motion for a temporary restraining order and second preliminary injunction. On September 4, the court asked plaintiffs to clarify the motion in light of the August 31 order.

On September 6, plaintiffs filed an additional notice of appeal and a third motion for injunctive relief pending appeal and responded to the court's request for clarification. (Doc. 103.) Plaintiffs maintained that the court lacked jurisdiction to enter the August 31 ruling and that the order was void. Thus, according to plaintiffs, they continued to need an injunction pending appeal, even as to claims respecting which they had been granted injunctive relief. Alternatively, plaintiffs moved for an injunction pending appeal regarding the claims on which they did not prevail, in the event that the court was not deprived of jurisdiction as a result of the second notice of appeal.

Defendants maintain that the court had jurisdiction to decide the matters addressed on August 31 and stated that the plaintiffs' request for injunctive relief is moot to the extent that the court granted preliminary injunctive relief on August 31. As for the remaining issues, defendants realleged and incorporated their arguments opposing entry of a preliminary injunction. However, in response to plaintiffs' request for relief for all counts, defendants realleged and incorporated their earlier arguments in opposition to a temporary restraining order and second preliminary injunction.

Plaintiffs' second motion for an order for injunctive relief pending appeal (Doc. 94) was premised on the assumption that the August 31order was void for lack of jurisdiction because this court has not entered a final judgment on all pending issues. Nevertheless, this court is satisfied that it had jurisdiction to issue the August 31 decision. Therefore, the aforementioned motion will be denied.

In regard to plaintiffs' alternative motion for an injunction pending appeal (Doc. 103), this court will deny the request for the reason expressed in its August 31 order and a recent Seventh Circuit decision that is relevant to counts one and three, *see Center for Individual Freedom v. Madigan,* No. 11-3693, (7th Cir. Sept. 10, 2012). Moreover, the plaintiffs have failed to demonstrate some likelihood of success on the merits. Specifically, this court will deny plaintiffs' motion for injunction pending appeal for the relevant parts of counts five and nine, and counts one, three, six, seven and eight.

In regard to count four, it is noted that GAB 1.91 was promulgated as an emergency rule. Pursuant to § 227.24 of the Wisconsin Statutes, if an agency promulgates a rule as an emergency rule, it "remains in effect only for 150 days." GAB 1.91 was promulgated on May 20, 2010, and as indicated by the Government Accountability Board in its public notice, it should have been effective until October 16, 2010. However, as a result of several extensions, the emergency rule expired on February 15, 2011.[1] (Doc. 80-1.) Simultaneously, the Government Accountability Board proposed GAB 1.91 as a permanent rule.

Plaintiffs and defendants submit that although the emergency rule and the permanent rule differ, the differences are not material. This court disagrees. The emergency rule was

[1]The court takes judicial notice of the Wisconsin Administrative Register, No. 662, at page 6 (Effective February 15, 2011), which states that the extension of GAB 1.91 was effective through February 13, 2011.

effective immediately. In contrast, the permanent rule became effective on July 1, 2012, after plaintiffs filed their first amended verified complaint; after plaintiffs' motion for temporary restraining order and second preliminary injunction was fully briefed; after the court held a motion hearing discussing, among other things, the emergency rule; and after plaintiffs notified the court that the Government Accountability Board intended to promulgate GAB 1.91 as a permanent rule. Unlike the emergency rule, the permanent rule was reviewed by several committees and, apparently, was subjected to a rigorous review. (Doc. 80-1.)

Notably, the text of the emergency rule differs from the text of the permanent rule. Moreover, the first amended and verified complaint asserts that "Wisconsin's 'organization' definition, GAB 1.91.1.f, fails constitutional scrutiny." (Doc. 70, ¶ 86). When the complaint was filed, section1.91.1.f of the emergency rule set forth the definition of "organization." However, section1.91.1.f of the permanent rule enacted on July 1 defines the term "independent," but not organization. Thus, the court cannot overlook the differences between the emergency rule and permanent rule. Nor may this court impliedly amend the pending complaint upon which plaintiffs are proceeding to address the permanent rule. Consequently, plaintiffs' claims with respect to count four of the first amended and verified complaint are moot. Now, therefore,

IT IS ORDERED that plaintiffs' motions for an injunction pending appeal are denied.

Dated at Milwaukee, Wisconsin, this 18th day of September, 2012.

BY THE COURT

/s/ C. N. Clevert, Jr.
C. N. CLEVERT, JR.
CHIEF U. S. DISTRICT JUDGE

Certificate of Service

I certify that on October 1, 2012, I electronically filed the foregoing **Appendix** with the clerk of court using the CM/ECF system, which will notify:

Christopher Blythe	BlytheCP@doj.state.wi.us
Clayton Kawski	KawskiCP@doj.state.wi.us

I also certify that the Lex Group will send the required number of copies to the clerk's office *via* commercial carrier for overnight delivery. *Cf.* FED.R.APP.P.25.a.1, 25.a.2.B.ii, 25.a.2.D, 25.b, 25.c.1.C, 25.c.1.D, 25.c.2, 25.d.1.B, 25.d.2, 25.d.3, 25.e (2009).

/s/ Randy Elf
Randy Elf

October 1, 2012