Washington State
House of Representatives
Office of Program Research

BILL ANALYSIS

State Government Committee

HB 3004

Brief Description: Reforming campaign financing.

Sponsors: Representatives Miloscia and Rockefeller.

Brief Summary of Bill

- Limits candidate campaign contributions to $100
- Limits contribution sources to only individual people.
- Limits political committee contribution sources to only individual people.
- Prohibits candidate-coordinated spending.
- Prohibits solicitation, direction, receipt or spending of funds by candidates or party outside of the state campaign financing regulations.
- Regulates broadcast advertisements that relate to named candidates.

Hearing Date: 1/30/04

Staff: Matt Kuehn (786-7291).

Background:

The Washington state campaign finance restrictions enacted in 1994 were partially invalidated by *Washington State Republican Party v. Washington State Public Disclosure Commission*, a state supreme court case addressing soft money contributions and candidate advertising. Following *Republican Party* there may be no limitation on soft money and only broadcast advertisements explicitly naming the candidate or the candidate's opponent can be regulated.

The decision of the Washington state supreme court relies on Federal constitutional law that appears to have changed. That change may allow for additional campaign finance reform legislation.

Current Washington state Campaign Finance Law:

The current state system emphasizes disclosure to the Public Disclosure Commission and limitation of direct contribution to candidates. Limitations on soft money expenditures were also regulated until the state supreme court's decision in *Washington State Republican Party*.

Washington State Republican Party confirmed that contribution limitations and reporting requirements were constitutionally acceptable. Limitations on contributions and expenditures made for the purpose of issue advocacy were not acceptable, however. The court determined that advertisements, even those that directly reference a candidate for political office, may not be limited in any way unless those advertisements *specifically* instruct the voter to support or reject a candidate. Speech that raises issues or ideas in the context of an electoral race is considered core political speech by the Washington state supreme court. Core political speech has the highest level of protection under the First Amendment.

Ultimately, *Washington State Republican Party* allows an individual, corporation, union, political party or committee that spends or arranges to spend money on an advertisement that avoids the prohibited "magic" words of express advocacy, to do so without limitation.

Current Federal Campaign Finance Law:

In December of 2003 the United States Supreme Court issued its decision in *Federal Election Commission v. McConnell. McConnell* examined the Bipartisan Campaign Reform Act of 2002 (BCRA), commonly known as the McCain-Feingold law. The BCRA regulates soft money donations to candidates and the broadcasting of fraudulent issue advertisements.

McConnell upheld the BCRA's regulatory provisions. The U.S. Supreme Court distinguished the *Buckley* case for technical reasons. In doing so, the Supreme Court permitted soft money and fraudulent issue advertisements to be regulated.

The *McConnell* analysis also affected the decision of the Washington state Supreme Court in *Washington State Republican Party*. The Washington case had based its decision forbidding limitations on issue advertising on the *Buckley* decision. But *McConnell* permitted regulation of soft money, and permitted regulation of exactly the kind of borderline issue advocacy advertisements that were at issue in *Washington State Republican Party*.

That advertisement - which described a candidate's voting record critically, and directed viewers "tell" the candidate they disagreed with his views - scrupulously avoided any reference to voting, supporting or any other of the "magic words." The BCRA created regulation of such advertisements, and *McConnell* allowed those regulations.

In sum, the legal holding of *Washington State Republican Party* remains fundamentally sound: Where an advertisement, paid for with unregulated campaign money, asserts a viewpoint on an issue rather than a candidate, that advertisement cannot be regulated. *McConnell* redefines where the line between issue and candidate in advertising may be legislatively drawn.

Summary of Bill:

Soft Money

The bill limits campaign contributions beyond their current level. No contribution may exceed $100.

Additionally, the bill limits the source of contributions. Contributions may only be made by individual persons, as opposed to those who constructively fall within the "person" definition, like unions, corporations, or collective groups of any kind. Only an individual person may make a contribution and that contribution may not exceed $100 per election.

Contributions and expenditures may not be coordinated with candidates either. Coordination of contributions through a political committee are treated as though they were direct contributions. Contributions earmarked or directed through a conduit or intermediary are treated as though they were direct contributions.

State or local political parties and political committees are not allowed to solicit, receive, or direct or spend any funds that are not regulated by the state campaign finance laws. The party may not solicit funds for candidates, nor may they donate funds directly.

Candidates or their agents may not solicit, direct, receive or spend funds not regulated under the state campaign finance laws. All funds received by a candidate must be (1) from an individual person, and (2) reported and limited, otherwise the funds may not be used in any fashion in an election.

Political committees may still receive contributions, but those contributions must be from individual persons. In any event, unions, corporations and business entities are prohibited from making any contribution to candidates or political committees.

Electioneering Communications

The BCRA adopted the term "electioneering communication" for advertisements that advocated for a candidate but legalistically avoided the specific "magic words" that led to regulation of that advocacy. The bill use language similar to the BCRA.

The state may regulate any advertisement that is shown 60 days before the election and 30 days before the primary that is broadcast to a candidate's electorate and refers to a clearly identified candidate for office. The regulation of the electioneering communication is done by enforcing reporting requirements by all those who sponsor a communication with a value of $2000 dollars that falls within the electioneering communication definition. The names, addresses, and amount spent on the advertisement must be reported, along with the name of the candidate supported. The reporting must be made at the point that the advertisement is contracted to be made.

This same reporting program must be followed for mailings and print advertising. The print threshold for reporting is $500.

The prohibitions found in the soft money portion of the bill would also prevent coordinated electioneering broadcasts, meaning that there may be no nexus between a candidate and independently produced advertisements about that candidate.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.