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HOUSE BILL 2511

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State of Washington                      59th Legislature                      2006 Regular Session

By Representatives Nixon, Dunn, Condotta and Rodne

Read first time 01/10/2006.                      Referred to Committee on State  
Government Operations & Accountability.

1            AN ACT Relating to restricting when communications are considered  
2 campaign contributions; and amending RCW 42.17.020.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4            **Sec. 1.** RCW 42.17.020 and 2005 c 445 s 6 are each amended to read  
5 as follows:

6            The definitions in this section apply throughout this chapter  
7 unless the context clearly requires otherwise.

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

10           (2) "Agency" includes all state agencies and all local agencies.  
11 "State agency" includes every state office, department, division,  
12 bureau, board, commission, or other state agency. "Local agency"  
13 includes every county, city, town, municipal corporation, quasi-  
14 municipal corporation, or special purpose district, or any office,  
15 department, division, bureau, board, commission, or agency thereof, or  
16 other local public agency.

17           (3) "Authorized committee" means the political committee authorized  
18 by a candidate, or by the public official against whom recall charges

1 have been filed, to accept contributions or make expenditures on behalf  
2 of the candidate or public official.

3 (4) "Ballot proposition" means any "measure" as defined by RCW  
4 29A.04.091, or any initiative, recall, or referendum proposition  
5 proposed to be submitted to the voters of the state or any municipal  
6 corporation, political subdivision, or other voting constituency from  
7 and after the time when the proposition has been initially filed with  
8 the appropriate election officer of that constituency prior to its  
9 circulation for signatures.

10 (5) "Benefit" means a commercial, proprietary, financial, economic,  
11 or monetary advantage, or the avoidance of a commercial, proprietary,  
12 financial, economic, or monetary disadvantage.

13 (6) "Bona fide political party" means:

14 (a) An organization that has filed a valid certificate of  
15 nomination with the secretary of state under chapter 29A.20 RCW;

16 (b) The governing body of the state organization of a major  
17 political party, as defined in RCW 29A.04.086, that is the body  
18 authorized by the charter or bylaws of the party to exercise authority  
19 on behalf of the state party; or

20 (c) The county central committee or legislative district committee  
21 of a major political party. There may be only one legislative district  
22 committee for each party in each legislative district.

23 (7) "Depository" means a bank designated by a candidate or  
24 political committee pursuant to RCW 42.17.050.

25 (8) "Treasurer" and "deputy treasurer" mean the individuals  
26 appointed by a candidate or political committee, pursuant to RCW  
27 42.17.050, to perform the duties specified in that section.

28 (9) "Candidate" means any individual who seeks nomination for  
29 election or election to public office. An individual seeks nomination  
30 or election when he or she first:

31 (a) Receives contributions or makes expenditures or reserves space  
32 or facilities with intent to promote his or her candidacy for office;

33 (b) Announces publicly or files for office;

34 (c) Purchases commercial advertising space or broadcast time to  
35 promote his or her candidacy; or

36 (d) Gives his or her consent to another person to take on behalf of  
37 the individual any of the actions in (a) or (c) of this subsection.

1 (10) "Caucus political committee" means a political committee  
2 organized and maintained by the members of a major political party in  
3 the state senate or state house of representatives.

4 (11) "Commercial advertiser" means any person who sells the service  
5 of communicating messages or producing printed material for broadcast  
6 or distribution to the general public or segments of the general public  
7 whether through the use of newspapers, magazines, television and radio  
8 stations, billboard companies, direct mail advertising companies,  
9 printing companies, or otherwise.

10 (12) "Commission" means the agency established under RCW 42.17.350.

11 (13) "Compensation" unless the context requires a narrower meaning,  
12 includes payment in any form for real or personal property or services  
13 of any kind: PROVIDED, That for the purpose of compliance with RCW  
14 42.17.241, the term "compensation" shall not include per diem  
15 allowances or other payments made by a governmental entity to reimburse  
16 a public official for expenses incurred while the official is engaged  
17 in the official business of the governmental entity.

18 (14) "Continuing political committee" means a political committee  
19 that is an organization of continuing existence not established in  
20 anticipation of any particular election campaign.

21 (15)(a) "Contribution" includes:

22 (i) A loan, gift, deposit, subscription, forgiveness of  
23 indebtedness, donation, advance, pledge, payment, transfer of funds  
24 between political committees, or anything of value, including personal  
25 and professional services for less than full consideration;

26 (ii) An expenditure made by a person in cooperation, consultation,  
27 or concert with, or at the request or suggestion of, a candidate, a  
28 political committee, or their agents;

29 (iii) The financing by a person of the dissemination, distribution,  
30 or republication, in whole or in part, of broadcast, written, graphic,  
31 or other form of political advertising or electioneering communication  
32 prepared by a candidate, a political committee, or its authorized  
33 agent;

34 (iv) Sums paid for tickets to fund-raising events such as dinners  
35 and parties, except for the actual cost of the consumables furnished at  
36 the event.

37 (b) "Contribution" does not include:

1 (i) Standard interest on money deposited in a political committee's  
2 account;

3 (ii) Ordinary home hospitality;

4 (iii) A contribution received by a candidate or political committee  
5 that is returned to the contributor within five business days of the  
6 date on which it is received by the candidate or political committee;

7 (iv) A news item, feature, commentary, or editorial in a regularly  
8 scheduled news medium, including print and broadcast media, such as  
9 television and radio, that is of primary interest to the general  
10 public, that is in a news medium controlled by a person whose business  
11 is that news medium, including print and broadcast media, such as  
12 television and radio, and that is not controlled by a candidate or a  
13 political committee;

14 (v) A discussion, comment, remark, statement, observation,  
15 assertion, declaration, announcement, judgment, or other thought,  
16 sentiment, view, opinion, idea, or belief regarding a subject that is  
17 of primary interest to the general public, that is expressed as part of  
18 a television or radio talk show that is controlled by a person whose  
19 business is that television or radio talk show, and that is not  
20 controlled by a candidate or a political committee;

21 (vi) An internal political communication primarily limited to the  
22 members of or contributors to a political party organization or  
23 political committee, or to the officers, management staff, or  
24 stockholders of a corporation or similar enterprise, or to the members  
25 of a labor organization or other membership organization;

26 ~~((+vi))~~ (vii) The rendering of personal services of the sort  
27 commonly performed by volunteer campaign workers, or incidental  
28 expenses personally incurred by volunteer campaign workers not in  
29 excess of fifty dollars personally paid for by the worker. "Volunteer  
30 services," for the purposes of this section, means services or labor  
31 for which the individual is not compensated by any person;

32 ~~((+vii))~~ (viii) Messages in the form of reader boards, banners, or  
33 yard or window signs displayed on a person's own property or property  
34 occupied by a person. However, a facility used for such political  
35 advertising for which a rental charge is normally made must be reported  
36 as an in-kind contribution and counts towards any applicable  
37 contribution limit of the person providing the facility;

1       (~~(viii)~~) (ix) Legal or accounting services rendered to or on  
2 behalf of:

3       (A) A political party or caucus political committee if the person  
4 paying for the services is the regular employer of the person rendering  
5 such services; or

6       (B) A candidate or an authorized committee if the person paying for  
7 the services is the regular employer of the individual rendering the  
8 services and if the services are solely for the purpose of ensuring  
9 compliance with state election or public disclosure laws.

10       (c) Contributions other than money or its equivalent are deemed to  
11 have a monetary value equivalent to the fair market value of the  
12 contribution. Services or property or rights furnished at less than  
13 their fair market value for the purpose of assisting any candidate or  
14 political committee are deemed a contribution. Such a contribution  
15 must be reported as an in-kind contribution at its fair market value  
16 and counts towards any applicable contribution limit of the provider.

17       (16) "Elected official" means any person elected at a general or  
18 special election to any public office, and any person appointed to fill  
19 a vacancy in any such office.

20       (17) "Election" includes any primary, general, or special election  
21 for public office and any election in which a ballot proposition is  
22 submitted to the voters: PROVIDED, That an election in which the  
23 qualifications for voting include other than those requirements set  
24 forth in Article VI, section 1 (Amendment 63) of the Constitution of  
25 the state of Washington shall not be considered an election for  
26 purposes of this chapter.

27       (18) "Election campaign" means any campaign in support of or in  
28 opposition to a candidate for election to public office and any  
29 campaign in support of, or in opposition to, a ballot proposition.

30       (19) "Election cycle" means the period beginning on the first day  
31 of December after the date of the last previous general election for  
32 the office that the candidate seeks and ending on November 30th after  
33 the next election for the office. In the case of a special election to  
34 fill a vacancy in an office, "election cycle" means the period  
35 beginning on the day the vacancy occurs and ending on November 30th  
36 after the special election.

37       (20) "Electioneering communication" means any broadcast, cable, or

1 satellite television or radio transmission, United States postal  
2 service mailing, billboard, newspaper, or periodical that:

3 (a) Clearly identifies a candidate for a state, local, or judicial  
4 office either by specifically naming the candidate, or identifying the  
5 candidate without using the candidate's name;

6 (b) Is broadcast, transmitted, mailed, erected, distributed, or  
7 otherwise published within sixty days before any election for that  
8 office in the jurisdiction in which the candidate is seeking election;  
9 and

10 (c) Either alone, or in combination with one or more communications  
11 identifying the candidate by the same sponsor during the sixty days  
12 before an election, has a fair market value of five thousand dollars or  
13 more.

14 (21) "Electioneering communication" does not include:

15 (a) Usual and customary advertising of a business owned by a  
16 candidate, even if the candidate is mentioned in the advertising when  
17 the candidate has been regularly mentioned in that advertising  
18 appearing at least twelve months preceding his or her becoming a  
19 candidate;

20 (b) Advertising for candidate debates or forums when the  
21 advertising is paid for by or on behalf of the debate or forum sponsor,  
22 so long as two or more candidates for the same position have been  
23 invited to participate in the debate or forum;

24 (c) A news item, feature, commentary, or editorial in a regularly  
25 scheduled news medium, including print and broadcast media, such as  
26 television and radio, that is:

27 (i) Of primary interest to the general public;

28 (ii) In a news medium controlled by a person whose business is that  
29 news medium, including print and broadcast media, such as television  
30 and radio; and

31 (iii) Not a medium controlled by a candidate or a political  
32 committee;

33 (d) A discussion, comment, remark, statement, observation,  
34 assertion, declaration, announcement, judgment, or other thought,  
35 sentiment, view, opinion, idea, or belief regarding a subject that is:

36 (i) Of primary interest to the general public;

37 (ii) Expressed as part of a television or radio talk show that is

1 controlled by a person whose business is that television or radio talk  
2 show; and

3 (iii) Not a television or talk radio show controlled by a candidate  
4 or a political committee;

5 (e) Slate cards and sample ballots;

6 ~~((e))~~ (f) Advertising for books, films, dissertations, or similar  
7 works (i) written by a candidate when the candidate entered into a  
8 contract for such publications or media at least twelve months before  
9 becoming a candidate, or (ii) written about a candidate;

10 ~~((f))~~ (g) Public service announcements;

11 ~~((g))~~ (h) A mailed internal political communication primarily  
12 limited to the members of or contributors to a political party  
13 organization or political committee, or to the officers, management  
14 staff, or stockholders of a corporation or similar enterprise, or to  
15 the members of a labor organization or other membership organization;

16 ~~((h))~~ (i) An expenditure by or contribution to the authorized  
17 committee of a candidate for state, local, or judicial office; or

18 ~~((i))~~ (j) Any other communication exempted by the commission  
19 through rule consistent with the intent of this chapter.

20 (22) "Expenditure" includes a payment, contribution, subscription,  
21 distribution, loan, advance, deposit, or gift of money or anything of  
22 value, and includes a contract, promise, or agreement, whether or not  
23 legally enforceable, to make an expenditure. The term "expenditure"  
24 also includes a promise to pay, a payment, or a transfer of anything of  
25 value in exchange for goods, services, property, facilities, or  
26 anything of value for the purpose of assisting, benefiting, or honoring  
27 any public official or candidate, or assisting in furthering or  
28 opposing any election campaign. For the purposes of this chapter,  
29 agreements to make expenditures, contracts, and promises to pay may be  
30 reported as estimated obligations until actual payment is made. The  
31 term "expenditure" shall not include the partial or complete repayment  
32 by a candidate or political committee of the principal of a loan, the  
33 receipt of which loan has been properly reported.

34 (23) "Final report" means the report described as a final report in  
35 RCW 42.17.080(2).

36 (24) "General election" for the purposes of RCW 42.17.640 means the  
37 election that results in the election of a person to a state office.  
38 It does not include a primary.

1 (25) "Gift," is as defined in RCW 42.52.010.

2 (26) "Immediate family" includes the spouse, dependent children,  
3 and other dependent relatives, if living in the household. For the  
4 purposes of RCW 42.17.640 through 42.17.790, "immediate family" means  
5 an individual's spouse, and child, stepchild, grandchild, parent,  
6 stepparent, grandparent, brother, half brother, sister, or half sister  
7 of the individual and the spouse of any such person and a child,  
8 stepchild, grandchild, parent, stepparent, grandparent, brother, half  
9 brother, sister, or half sister of the individual's spouse and the  
10 spouse of any such person.

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

13 (28) "Independent expenditure" means an expenditure that has each  
14 of the following elements:

15 (a) It is made in support of or in opposition to a candidate for  
16 office by a person who is not (i) a candidate for that office, (ii) an  
17 authorized committee of that candidate for that office, (iii) a person  
18 who has received the candidate's encouragement or approval to make the  
19 expenditure, if the expenditure pays in whole or in part for political  
20 advertising supporting that candidate or promoting the defeat of any  
21 other candidate or candidates for that office, or (iv) a person with  
22 whom the candidate has collaborated for the purpose of making the  
23 expenditure, if the expenditure pays in whole or in part for political  
24 advertising supporting that candidate or promoting the defeat of any  
25 other candidate or candidates for that office;

26 (b) The expenditure pays in whole or in part for political  
27 advertising that either specifically names the candidate supported or  
28 opposed, or clearly and beyond any doubt identifies the candidate  
29 without using the candidate's name; and

30 (c) The expenditure, alone or in conjunction with another  
31 expenditure or other expenditures of the same person in support of or  
32 opposition to that candidate, has a value of five hundred dollars or  
33 more. A series of expenditures, each of which is under five hundred  
34 dollars, constitutes one independent expenditure if their cumulative  
35 value is five hundred dollars or more.

36 (29)(a) "Intermediary" means an individual who transmits a  
37 contribution to a candidate or committee from another person unless the



1 contribution is from the individual's employer, immediate family as  
2 defined for purposes of RCW 42.17.640 through 42.17.790, or an  
3 association to which the individual belongs.

4 (b) A treasurer or a candidate is not an intermediary for purposes  
5 of the committee that the treasurer or candidate serves.

6 (c) A professional fund-raiser is not an intermediary if the fund-  
7 raiser is compensated for fund-raising services at the usual and  
8 customary rate.

9 (d) A volunteer hosting a fund-raising event at the individual's  
10 home is not an intermediary for purposes of that event.

11 (30) "Legislation" means bills, resolutions, motions, amendments,  
12 nominations, and other matters pending or proposed in either house of  
13 the state legislature, and includes any other matter that may be the  
14 subject of action by either house or any committee of the legislature  
15 and all bills and resolutions that, having passed both houses, are  
16 pending approval by the governor.

17 (31) "Lobby" and "lobbying" each mean attempting to influence the  
18 passage or defeat of any legislation by the legislature of the state of  
19 Washington, or the adoption or rejection of any rule, standard, rate,  
20 or other legislative enactment of any state agency under the state  
21 Administrative Procedure Act, chapter 34.05 RCW. Neither "lobby" nor  
22 "lobbying" includes an association's or other organization's act of  
23 communicating with the members of that association or organization.

24 (32) "Lobbyist" includes any person who lobbies either in his or  
25 her own or another's behalf.

26 (33) "Lobbyist's employer" means the person or persons by whom a  
27 lobbyist is employed and all persons by whom he or she is compensated  
28 for acting as a lobbyist.

29 (34) "Participate" means that, with respect to a particular  
30 election, an entity:

31 (a) Makes either a monetary or in-kind contribution to a candidate;

32 (b) Makes an independent expenditure or electioneering  
33 communication in support of or opposition to a candidate;

34 (c) Endorses a candidate prior to contributions being made by a  
35 subsidiary corporation or local unit with respect to that candidate or  
36 that candidate's opponent;

37 (d) Makes a recommendation regarding whether a candidate should be

1 supported or opposed prior to a contribution being made by a subsidiary  
2 corporation or local unit with respect to that candidate or that  
3 candidate's opponent; or

4 (e) Directly or indirectly collaborates or consults with a  
5 subsidiary corporation or local unit on matters relating to the support  
6 of or opposition to a candidate, including, but not limited to, the  
7 amount of a contribution, when a contribution should be given, and what  
8 assistance, services or independent expenditures, or electioneering  
9 communications, if any, will be made or should be made in support of or  
10 opposition to a candidate.

11 (35) "Person" includes an individual, partnership, joint venture,  
12 public or private corporation, association, federal, state, or local  
13 governmental entity or agency however constituted, candidate,  
14 committee, political committee, political party, executive committee  
15 thereof, or any other organization or group of persons, however  
16 organized.

17 (36) "Person in interest" means the person who is the subject of a  
18 record or any representative designated by that person, except that if  
19 that person is under a legal disability, the term "person in interest"  
20 means and includes the parent or duly appointed legal representative.

21 (37) "Political advertising" includes any advertising displays,  
22 newspaper ads, billboards, signs, brochures, articles, tabloids,  
23 flyers, letters, radio or television presentations, or other means of  
24 mass communication, used for the purpose of appealing, directly or  
25 indirectly, for votes or for financial or other support or opposition  
26 in any election campaign.

27 (38) "Political committee" means any person (except a candidate or  
28 an individual dealing with his or her own funds or property) having the  
29 expectation of receiving contributions or making expenditures in  
30 support of, or opposition to, any candidate or any ballot proposition.

31 (39) "Primary" for the purposes of RCW 42.17.640 means the  
32 procedure for nominating a candidate to state office under chapter  
33 29A.52 RCW or any other primary for an election that uses, in large  
34 measure, the procedures established in chapter 29A.52 RCW.

35 (40) "Public office" means any federal, state, judicial, county,  
36 city, town, school district, port district, special district, or other  
37 state political subdivision elective office.

1 (41) "Public record" includes any writing containing information  
2 relating to the conduct of government or the performance of any  
3 governmental or proprietary function prepared, owned, used, or retained  
4 by any state or local agency regardless of physical form or  
5 characteristics. For the office of the secretary of the senate and the  
6 office of the chief clerk of the house of representatives, public  
7 records means legislative records as defined in RCW 40.14.100 and also  
8 means the following: All budget and financial records; personnel  
9 leave, travel, and payroll records; records of legislative sessions;  
10 reports submitted to the legislature; and any other record designated  
11 a public record by any official action of the senate or the house of  
12 representatives.

13 (42) "Recall campaign" means the period of time beginning on the  
14 date of the filing of recall charges under RCW 29A.56.120 and ending  
15 thirty days after the recall election.

16 (43) "Sponsor of an electioneering communications, independent  
17 expenditures, or political advertising" means the person paying for the  
18 electioneering communication, independent expenditure, or political  
19 advertising. If a person acts as an agent for another or is reimbursed  
20 by another for the payment, the original source of the payment is the  
21 sponsor.

22 (44) "State legislative office" means the office of a member of the  
23 state house of representatives or the office of a member of the state  
24 senate.

25 (45) "State office" means state legislative office or the office of  
26 governor, lieutenant governor, secretary of state, attorney general,  
27 commissioner of public lands, insurance commissioner, superintendent of  
28 public instruction, state auditor, or state treasurer.

29 (46) "State official" means a person who holds a state office.

30 (47) "Surplus funds" mean, in the case of a political committee or  
31 candidate, the balance of contributions that remain in the possession  
32 or control of that committee or candidate subsequent to the election  
33 for which the contributions were received, and that are in excess of  
34 the amount necessary to pay remaining debts incurred by the committee  
35 or candidate prior to that election. In the case of a continuing  
36 political committee, "surplus funds" mean those contributions remaining  
37 in the possession or control of the committee that are in excess of the

1 amount necessary to pay all remaining debts when it makes its final  
2 report under RCW 42.17.065.

3 (48) "Television or radio talk show" means a television or radio  
4 format that features discussion of topical issues, either by a person  
5 or persons within a television or radio studio or with viewers or  
6 listeners outside the television or radio studio.

7 (49) "Writing" means handwriting, typewriting, printing,  
8 photostating, photographing, and every other means of recording any  
9 form of communication or representation, including, but not limited to,  
10 letters, words, pictures, sounds, or symbols, or combination thereof,  
11 and all papers, maps, magnetic or paper tapes, photographic films and  
12 prints, motion picture, film and video recordings, magnetic or punched  
13 cards, discs, drums, diskettes, sound recordings, and other documents  
14 including existing data compilations from which information may be  
15 obtained or translated.

16 As used in this chapter, the singular shall take the plural and any  
17 gender, the other, as the context requires.

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