
SUBSTITUTE HOUSE BILL 1286

State of Washington 61st Legislature 2009 Regular Session

By House State Government & Tribal Affairs (originally sponsored by Representatives Miloscia, Appleton, Armstrong, Hunt, Newhouse, White, Smith, Rolfes, Roberts, Nelson, Hinkle, and Ormsby; by request of Public Disclosure Commission)

READ FIRST TIME 01/30/09.

1 AN ACT Relating to false and defamatory statements about candidates
2 for public office; amending RCW 42.17.530 and 29A.32.090; and creating
3 a new section.

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

5 NEW SECTION. **Sec. 1.** (1) The concurring opinion of the Washington
6 state supreme court in *Rickert v. State, Public Disclosure Commission*,
7 161 Wn.2d 843, 168 P. 3d 826 (2007) found the statute that prohibits
8 persons from sponsoring, with actual malice, political advertising and
9 electioneering communications about a candidate containing false
10 statements of material fact to be invalid under the First Amendment to
11 the United States Constitution because it posed no requirement that the
12 prohibited statements be defamatory.

13 (2) It is the intent of the legislature to amend chapter 42.17 RCW
14 to find that a violation of state law occurs if a person sponsors false
15 statements about candidates in political advertising and electioneering
16 communications when the statements are made with actual malice and are
17 defamatory.

18 (3) The legislature finds that in such circumstances damages are
19 presumed and do not need to be established when such statements are

1 made with actual malice in political advertising and electioneering
2 communications and constitute libel or defamation per se. The
3 legislature finds that incumbents, challengers, voters, and the
4 political process will benefit from vigorous political debate that is
5 not made with actual malice and is not defamatory.

6 (4) The legislature finds that when such defamatory statements
7 contain a false statement of material fact about a candidate for public
8 office they expose the candidate to contempt, ridicule, or reproach and
9 can deprive the candidate of the benefit of public confidence, or
10 prejudice him or her in his or her profession, trade, or vocation. The
11 legislature finds that when such statements falsely represent that a
12 candidate is the incumbent for the office sought when in fact the
13 candidate is not the incumbent they deprive the actual incumbent and
14 the candidates of the benefit of public confidence and injure the
15 actual incumbent in the ability to effectively serve as an elected
16 official. The legislature further finds that defamatory statements
17 made by an incumbent regarding the incumbent's challenger may deter
18 individuals from seeking public office and harm the democratic process.
19 Further, the legislature finds that when such statements make, either
20 directly or indirectly, a false claim stating or implying the support
21 or endorsement of any person or organization when in fact the candidate
22 does not have such support or endorsement, they deprive the person or
23 organization of the benefit of public confidence and/or will expose the
24 person or organization to contempt, ridicule, or reproach, or injure
25 the person or organization in their business or occupation.

26 (5) The legislature finds that defamatory statements, made with
27 actual malice, damage the integrity of elections by distorting the
28 electoral process. Democracy is premised on an informed electorate.
29 To the extent such defamatory statements misinform the voters, they
30 interfere with the process upon which democracy is based. Such
31 defamatory statements also lower the quality of campaign discourse and
32 debate, and lead or add to voter alienation by fostering voter cynicism
33 and distrust of the political process.

34 **Sec. 2.** RCW 42.17.530 and 2005 c 445 s 10 are each amended to read
35 as follows:

36 (1) It is a violation of this chapter for a person to sponsor with

1 actual malice a statement constituting libel or defamation per se under
2 the following circumstances:

3 (a) Political advertising or an electioneering communication that
4 contains a false statement of material fact about a candidate for
5 public office(~~(. However, this subsection (1)(a) does not apply to~~
6 ~~statements made by a candidate or the candidate's agent about the~~
7 ~~candidate himself or herself));~~

8 (b) Political advertising or an electioneering communication that
9 falsely represents that a candidate is the incumbent for the office
10 sought when in fact the candidate is not the incumbent;

11 (c) Political advertising or an electioneering communication that
12 makes either directly or indirectly, a false claim stating or implying
13 the support or endorsement of any person or organization when in fact
14 the candidate does not have such support or endorsement.

15 (2) For the purposes of this section, "libel or defamation per se"
16 means statements that tend (a) to expose a living person to hatred,
17 contempt, ridicule, or obloquy, or to deprive him or her of the benefit
18 of public confidence or social intercourse, or to injure him or her in
19 his or her business or occupation, or (b) to injure any person,
20 corporation, or association in his, her, or its business or occupation.

21 (3) It is not a violation of this section for a candidate or his or
22 her agent to make statements described in subsection (1)(a) or (b) of
23 this section about the candidate himself or herself because a person
24 cannot defame himself or herself. It is not a violation of this
25 section for a person or organization referenced in subsection (1)(c) of
26 this section to make a statement about that person or organization
27 because such persons and organizations cannot defame themselves.

28 (4) Any violation of this section shall be proven by clear and
29 convincing evidence. If a violation is proven, damages are presumed
30 and do not need to be proven.

31 **Sec. 3.** RCW 29A.32.090 and 2003 c 111 s 809 are each amended to
32 read as follows:

33 (1) If in the opinion of the secretary of state any argument or
34 statement offered for inclusion in the voters' pamphlet in support of
35 or opposition to a measure or candidate contains obscene matter or
36 matter that is otherwise prohibited by law from distribution through
37 the mail, the secretary may petition the superior court of Thurston

1 County for a judicial determination that the argument or statement may
2 be rejected for publication or edited to delete the matter. The court
3 shall not enter such an order unless it concludes that the matter is
4 obscene or otherwise prohibited for distribution through the mail.

5 (2) A candidate's statement submitted for inclusion in the voters'
6 pamphlet shall not contain false or misleading statements about the
7 candidate's opponent. A false or misleading statement shall be
8 considered "libel or defamation per se" if the statement tends to
9 expose the candidate to hatred, contempt, ridicule, or obloquy, or to
10 deprive him or her of the benefit of public confidence or social
11 intercourse, or to injure him or her in his or her business or
12 occupation. If a candidate believes his or her opponent has libeled or
13 defamed him or her, the candidate may commence an action under
14 subsection (3) of this section.

15 (3)(a) A person who believes that he or she may be defamed by an
16 argument or statement offered for inclusion in the voters' pamphlet in
17 support of or opposition to a measure or candidate may petition the
18 superior court of Thurston County for a judicial determination that the
19 argument or statement may be rejected for publication or edited to
20 delete the defamatory statement.

21 (b) The court shall not enter such an order unless it concludes
22 that the statement is untrue and that the petitioner has a very
23 substantial likelihood of prevailing in a defamation action.

24 (c) An action under this subsection (~~((+2))~~) (3) must be filed and
25 served no later than the tenth day after the deadline for the
26 submission of the argument or statement to the secretary of state.

27 (d) If the secretary of state notifies a person named or identified
28 in an argument or statement of the contents of the argument or
29 statement within three days after the deadline for submission to the
30 secretary, then neither the state nor the secretary is liable for
31 damages resulting from publication of the argument or statement unless
32 the secretary publishes the argument or statement in violation of an
33 order entered under this section. Nothing in this section creates a
34 duty on the part of the secretary of state to identify, locate, or
35 notify the person.

36 (~~((+3))~~) (4) Parties to a dispute under this section may agree to
37 resolve the dispute by rephrasing the argument or statement, even if
38 the deadline for submission to the secretary has elapsed, unless the

1 secretary determines that the process of publication is too far
2 advanced to permit the change. The secretary shall promptly provide
3 any such revision to any committee entitled to submit a rebuttal
4 argument. If that committee has not yet submitted its rebuttal, its
5 deadline to submit a rebuttal is extended by five days. If it has
6 submitted a rebuttal, it may revise it to address the change within
7 five days of the filing of the revised argument with the secretary.

8 ~~((+4))~~ (5) In an action under this section the committee or
9 candidate must be named as a defendant, and may be served with process
10 by certified mail directed to the address contained in the secretary's
11 records for that party. The secretary of state shall be a nominal
12 party to an action brought under subsection ~~((+2))~~ (3) of this
13 section, solely for the purpose of determining the content of the
14 voters' pamphlet. The superior court shall give such an action
15 priority on its calendar.

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