
SENATE BILL 5211

State of Washington

61st Legislature

2009 Regular Session

By Senators Sheldon, Roach, Fairley, McDermott, Parlette, Haugen, Shin, and Benton; by request of Public Disclosure Commission

Read first time 01/16/09. Referred to Committee on Government Operations & Elections.

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

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

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

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

17 (3) The legislature finds that in such circumstances damages are
18 presumed and do not need to be established when such statements are
19 made with actual malice in political advertising and electioneering

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

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

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

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

35 (1) It is a violation of this chapter for a person to sponsor with
36 actual malice a statement constituting libel or defamation per se under
37 the following circumstances:

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

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

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

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

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

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

--- END ---