
**State Government & Tribal
Affairs Committee**

HB 2852

Brief Description: Prohibiting false and defamatory statements about candidates for public office.

Sponsors: Representatives Miloscia and Haler.

Brief Summary of Bill

- Clarifies that political advertising or electioneering communications that contain a false statement of material fact about a candidate for office must also be defamatory in nature to be a violation of Chapter 42.17 RCW.

Hearing Date: 2/4/08

Staff: Tracey Taylor (786-7196).

Background:

Candidates for public office are subject to numerous laws regarding campaigning. For example, all written political advertising must include the sponsor's name and address and radio and television advertising must include the sponsor's name. In addition, at least one photograph of the candidate used in political advertising shall be taken in the last five years and it cannot be smaller than the largest photo of the same candidate in the same advertisement.

There are also certain prohibitions regarding political advertising and electioneering communications. For example, a candidate that falsely represents that the candidate is an incumbent for the office is a violation of Chapter 42.17 RCW. A prohibition against political advertising or electioneering communications that contain a false statement of material fact about a candidate for public office was the subject of a recent Washington State Supreme Court decision. In *Rickert v. The Public Disclosure Commission*, 161 Wn.2d 843 (2007), the Court invalidated this prohibition as a violation of the First Amendment to the U.S. Constitution. Applying strict scrutiny, the Court held that because the statute does not require proof of the

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defamatory nature of the statements it prohibits its reach is not limited to the very narrow category of unprotected speech identified in *New York Times v. Sullivan* and its progeny.

Defamation is defined as a statement that tends to cause harm to an individual's reputation as to lower him or her in the estimation of the community or to deter third persons from association or dealing with him or her.

Summary of Bill:

Political advertising or an electioneering communication that contains a false statement of material fact about a candidate for public office and is defamatory in nature is prohibited under Chapter 42.17 RCW.

Appropriation: None.

Fiscal Note: Not requested.

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