

HOUSE BILL REPORT

HB 2852

As Reported by House Committee On:
State Government & Tribal Affairs

Title: An act relating to false and defamatory statements about candidates for public office.

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

Sponsors: Representatives Miloscia and Haler.

Brief History:

Committee Activity:

State Government & Tribal Affairs: 2/4/08, 2/5/08 [DPS].

Brief Summary of Substitute Bill

- Clarifies that political advertising or electioneering communications that contain a false statement of material fact about a candidate for office must also be made with actual malice and be libelous or defamatory in nature to be a violation of the campaign laws in Chapter 42.17 RCW.

HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL AFFAIRS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Hunt, Chair; Appleton, Vice Chair; Liias, Miloscia and Ormsby.

Minority Report: Do not pass. Signed by 3 members: Representatives Chandler, Ranking Minority Member; Armstrong, Assistant Ranking Minority Member; Kretz.

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

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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 Supreme Court decision. In *Rickert v. The Public Disclosure Commission*, 161 Wn.2d 843 (2007) (*Rickert*), 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 defamatory nature of the statements, it prohibits its reach and 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 Substitute Bill:

An intent section is added to the bill which establishes that the Legislature is responding to *Rickert*. The Legislature finds that it is a violation of state law if a person sponsors a false statement about candidates in political advertising and electioneering communications when the statements are made with actual malice and are defamatory.

It is a violation of campaign law for a person to sponsor, with actual malice, a statement constituting libel or defamation per se under the criminal statute and: the false statement is about a candidate and is in political advertising or electioneering communications; a person falsely represents he or she is an incumbent for the office sought in political advertising or an electioneering communication; or a person directly or indirectly implies the support or endorsement of any person or organization in political advertising or an electioneering communication when in fact the candidate does not have such support or endorsement.

If a person makes a false statement, with actual malice, about himself or herself or falsely represents himself or herself as an incumbent, it is not libel or defamation and is not a violation of the campaign laws. It is also not a violation of campaign laws for a person or organization to falsely represent that the person or organization supports or endorses a candidate. This is because persons and organizations cannot defame themselves.

If a violation is proven, damages are presumed and need not be proven.

Substitute Bill Compared to Original Bill:

The substitute bill adds an intent section. The substitute bill also provides a statutory reference for libel and defamation per se to the criminal statute. In addition, the substitute bill

clarifies that a candidate, person or organization cannot defame themselves. Finally, the substitute bill provides that if a violation is found, damages are presumed.

Appropriation: None.

Fiscal Note: Not requested.

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

Staff Summary of Public Testimony:

(In support) Restoring the prohibition of false, defamatory statements about candidates benefits voters, candidates, and the integrity of the political process. To do otherwise would allow deliberate lies to subvert the free political process. In the recent five to four Court decision, the decisive concurring opinion invalidated the law finding it overbroad since it applied to non-defamatory speech. This bill is narrowly tailored to only address certain libelous and defamatory statements made in political advertising or an electioneering communication.

(Opposed) None.

Persons Testifying: Representative Miloscia, prime sponsor; Vicki Rippie, Public Disclosure Commission; and Tom Brandt.

Persons Signed In To Testify But Not Testifying: None.