

HOUSE OF REPRESENTATIVES

Olympia, Washington

Bill Analysis

Bill No. HB 1673

Penalization of Political Advertising.

Brief Title

Hearing Date 2/19/99

Reps Lamber and O'Brien

Sponsor(s)

Staff Steve Lundin

State Government Committee

Phone 786-7127

BACKGROUND:

It is a violation of the state public disclosure laws for persons responsible for political advertising support for opposition candidates or campaign support for opposition ballot propositions,

- o The false political advertising is made with actual malice.
- o The violation is proven by clear and convincing evidence.

A person who is in violation of the public disclosure laws is subject to a civil penalty of not more than \$10,000 for each violation. In addition, a court may void a ballot measure if it finds a violation of the public disclosure laws by a candidate or political committee that affected the outcome of an election. If such a finding is made, a special election will be held within 60 days of the finding.

The state supreme court's previous decisions on this statute relating to false political advertising have been unconstitutional. Four separate decisions were issued, one of which had a majority of the court. Three justices on the statute are facially constitutional, two justices on the portion of the statute relating to false advertising on ballot propositions are facially unconstitutional, and at least one justice on the statute is unconstitutional. The legislature's intent in drafting the statute was to indicate whether the clear and convincing evidence requirement was a necessary element of the statute. Two justices indicated that the statute was constitutional as applied to both ballot measures and candidates, but emphasized the clear and convincing evidence requirement. Two justices on the statute be constitutional as applied to both ballot measures and candidates, but did not emphasize the clear and convincing evidence requirement.

SUMMARY:

The public disclosure statute taking a violation of a political advertising law and replacing it with three separate provisions. The three separate provisions apply to false political advertising about candidates and require the person to have knowingly sponsored the false advertising with actual intent, do not include a clear and convincing evidence requirement. A violation of these provisions with 30 or fewer days of a primary or general election is subject to a double maximum civil penalty otherwise provided in the public disclosure laws.

One provision makes a violation of a political advertising law by presenting a candidate as an incumbent for the office that is sought when in fact the candidate is not the incumbent.

A second provision makes a violation of a political advertising law by presenting a candidate as having the support or endorsement of a person or organization when in fact the candidate does not have this support or endorsement.

A third statute makes a violation of a political advertising law by containing a false statement of material fact calculated to benefit a candidate.

FISCAL NOTE: Not requested.

EFFECTIVE DATE: Ninety days after adjournment of the session in which it is passed.