



## WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

**2009 Assembly Bill 63**

**Assembly Substitute  
Amendment 1**

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### **Assembly Bill 63**

Assembly Bill 63 provides that a communication is made for a political purpose when it is made by means of one or more communications media during the period beginning on the 60<sup>th</sup> day preceding an election and ending on the date of that election and that includes a reference to a candidate whose name is certified to appear on the election ballot, a reference to an office to be filled at that election, or a reference to a political party. Because the communication is an act done for a political purpose, the normal reporting requirements of ch. 11, Stats., apply to such a communication.

The bill also provides that a communication is not made for a political purpose, and therefore not subject to reporting requirements under ch. 11, Stats., if it does all of the following:

1. Does not mention an election, candidacy, opposing candidate, political party, or voting by the general public.
2. Does not take a position on a candidate's or officeholder's character, qualifications, or fitness for office.
3. Does either of the following:
  - a. Focuses on a legislative or executive matter or issue and urges a candidate to take a particular position or action with respect to the matter or issue or urges the public to contact a candidate with respect to the matter or issue.
  - b. Proposes a commercial transaction, such as the purchase of a book, video, or other product or service.

A communication that meets the conditions described above nevertheless will be considered to be made for a political purpose if the communication is susceptible of no reasonable interpretation other than as an appeal to vote for or against a candidate for state or local office whose name is certified to appear on the election ballot.

**Assembly Substitute Amendment 1**

Assembly Substitute Amendment 1 provides that a mass communication is made for a political purpose when it is made during the period beginning on the 60<sup>th</sup> day preceding an election and ending on the date of that election and that includes a reference to a candidate whose name is certified to appear on the election ballot, a reference to an office to be filled at that election, or a reference to a political party. Because the communication is an act done for a political purpose, the normal reporting requirements of ch. 11, Stats., apply to such a communication.

The substitute amendment defines “mass communication” as a message that is disseminated by means of one or more communications media, a mass electronic communication, a mass distribution, or a mass telephoning, but not including a bona fide poll conducted for the purpose of objectively identifying or collecting data concerning the attitudes or preferences of electors. “Mass distribution” is defined as the distribution of 50 or more pieces of substantially identical material. “Mass electronic communication” is defined as the transmission of 50 or more pieces of substantially identical material by means of electronic mail or facsimile transmission. “Mass telephoning” is defined as the making of 50 or more telephone calls conveying a substantially identical message.

The substitute amendment restates the specific type of communication that is considered not to be made for a political purpose. Generally, a mass communication is not made for a political purpose when it either focuses on and takes a position on a legislative or executive issue and urges the public to adopt the position and to contact one or more public officials about the issue or proposes a commercial transaction and does not do any of the following:

1. Support or oppose a candidate’s record on an issue.
2. Mentions an election, candidacy, opposing candidate, political party, or voting by the general public.
3. Takes a position on a candidate’s character, qualifications, or fitness for office.

The communication described above nevertheless will be considered to be made for a political purpose if it is susceptible of no reasonable interpretation other than as an appeal to vote for or against a candidate whose name is certified to appear on an election ballot.

The substitute amendment specifically treats mass communications made about judicial matters. The declaration of policy relating to ch. 11, Stats., is amended to state that the Legislature finds and declares that the function of judges and justices, who must independently apply the law, is fundamentally distinct from that of elective legislative and executive branch officials who take positions on issues that are influenced by, and represent the will of, their constituencies. The substitute amendment states that because it is improper for a mass communication to seek to persuade a judge or justice to take a position on an issue, any such communication should be deemed to have been made for

a political purpose. Consequently, the substitute amendment specifically provides that a mass communication is made for a political purpose when it refers to a judicial office and either focuses on and takes a position for or against a judicial candidate's position on an issue or takes a position on that judicial candidate's character, qualifications, or fitness for office. Because this communication is made for a political purpose, the normal reporting requirements of ch. 11, Stats., apply to such a communication.

**Legislative History**

Assembly Substitute Amendment 1 was offered by Representative Dexter. On June 16, 2009, the Assembly Committee on Elections and Campaign Reform recommended adoption of Assembly Substitute Amendment 1 on a vote of Ayes, 7; Noes, 0; and Absent, 1, and recommended passage of Assembly Bill 63, as amended, on a vote of Ayes, 6; Noes, 1; and Absent, 1.

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