

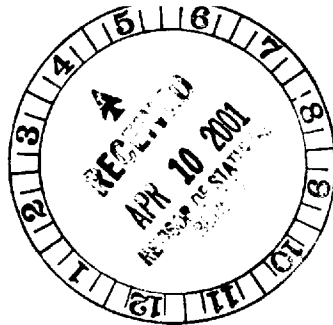
# Clearinghouse Rule 99-150

## CERTIFICATE

State of Wisconsin )  
                                  )  
Elections Board        )

I, Kevin J. Kennedy, Executive Director of the State Elections Board and custodian of the official records of the agency, do hereby certify that the annexed rule, amending EIBd 1.28(1)(intro.) and repealing and recreating EIBd. 1.28(2)(c), relating to defining the term "express advocacy" for campaign finance purposes under ch. 11 of the Wisconsin Statutes, was duly adopted by this board on September 29, 1999.

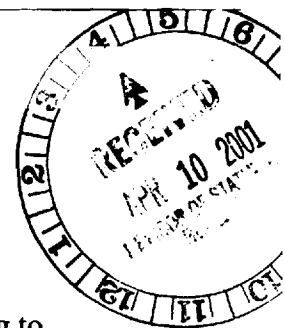
I further certify that this copy has been compared by me with the original on file in this board and that the same is a true copy thereof and of the whole of such original.



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the State Elections Board at 132 East Wilson Street, in the City of Madison, on April 11, 2001.

  
Kevin J. Kennedy  
Executive Director

## ORDER OF STATE ELECTIONS BOARD



To amend ElBd 1.28(1)(intro.) and repealing and recreating ElBd. 1.28(2)(c), relating to defining the term "express advocacy" for campaign finance purposes under ch. 11 of the Wisconsin Statutes.

### ANALYSIS:

Statutory authority: s.5.05(1)(f), s.5.93 and s.227.11(2)(a), Stats.

Statutes interpreted: ss. 11.01(3), (6), (7) and (16), and ss.11.05, 11.25, 11.29, 11.30, 11.36, and 11.38 Stats.

This amended rule interprets ss.11.01(3), (6), (7) and (16), and ss.11.05, 11.25, 11.29, 11.30, 11.36, and 11.38 Stats. The amendment attempts to define more specifically those communications that are considered to be express advocacy subject to regulation by ch.11 of the Wisconsin Statutes. The rule codifies the express advocacy test set forth by the U.S. Supreme Court in 1976, in Buckley v. Valeo, 424 U.S. 1, and reiterated in 1999 by the Wisconsin Supreme Court in WMC IMC, Inc. v. State Elections Board, (Case No.98-0596), by establishing a nonexclusive list of terms that are considered to expressly advocate. The rule also extends express advocacy to the functional equivalents of those terms.

Pursuant to the authority vested in the State of Wisconsin Elections Board by ss.5.05(1)(f), 5.93, and 227.(11)(2)(a), Stats., the Elections Board hereby amends ElBd 1.28(1)(intro.) and repeals and recreates ElBd. 1.28(2)(c), interpreting ss.11.01(3), (6), (7) and (16), and ss.11.05, 11.25, 11.29, 11.30, 11.36, and 11.38 Stats., as follows:

SECTION 1. ElBd 1.28(2)(c) is amended to read:

ElBd 1.28 Scope of regulated activities; election of candidates  
(1) Definitions. As used in this rule: ...

(2) Individuals other than candidates and committees other than political committees are subject to the applicable disclosure-related and record-keeping-related requirements of ch. 11, Stats., only when they:

(c) Make expenditures for the purpose a communication containing terms such as the following or their functional equivalents with reference to a clearly identified candidate that expressly advocating advocates the election or defeat of an

identified that candidate and that unambiguously relates to the campaign of that candidate:

1. "Vote for;"
2. "Elect;"
3. "Support;"
4. "Cast your ballot for;"
5. "Smith for Assembly;"
6. "Vote against;"
7. "Defeat;"
8. "Reject."

INITIAL REGULATORY FLEXIBILITY ANALYSIS:

The creation of this rule does not affect business.

FISCAL ESTIMATE:

The creation of this rule has no fiscal effect.

CONTACT PERSON:

George A. Dunst  
Legal Counsel, State Elections Board  
132 E. Wilson St., P. O. Box 2973  
Madison, WI 53701-2973; Phone 266-0136

The creation of this rule will take effect on the first day of the month following its publication in the Wisconsin Administrative Register pursuant to s.227.22(2), Stats.

Dated April 11, 2001

  
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KEVIN J. KENNEDY  
Executive Director

# State of Wisconsin \ Elections Board

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JOHN P. SAVAGE  
Chairperson

KEVIN J. KENNEDY  
Executive Director

April 11, 2001

Gary Poulson  
Deputy Revisor  
Revisor of Statutes Bureau  
131 West Wilson Street, Room 800  
Madison, Wisconsin 53703-3233



Re: Administrative Rules of the State Elections Board

Dear Mr. Poulson:

This letter is to inform you of the status of the promulgation of the Elections Board rules amending EIBd 1.28(1)(intro.), and repealing and recreating EIBd. 1.28(2)(c), relating to defining the term "express advocacy" for campaign finance purposes under ch. 11 of the Wisconsin Statutes, all contained in Clearinghouse Rule 99-150. Clearinghouse Rule 99-150 was promulgated pursuant to the 30-day notice procedure.

No petition under ch. 227, Stats., was filed with the Board within 30 days to request a public hearing on the proposed action regarding any of these rules. The legislative council reviewed and commented about each rule and those comments are reflected in the rules. Per our December 15, 1999 notice to you, these rules were submitted to the presiding officer of each house of the legislature on December 15, 1999. The Board's rule was objected to by the Joint Committee for the Review of Administrative Rules. Pursuant to the following March 8, 2001 notification from legislative staff member David Austin on behalf of the Joint Committee for the Review of Administrative Rules, the Board is authorized to complete promulgation:

*The Assembly has defeated both Senate Bill 2 and Assembly Bill 18, the bills authored by the Joint Committee for Review of Administrative Rules to sustain the committee's objection to CR 99-150.*

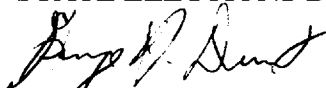
*Pursuant to section 227.19(5), stats., the Elections Board is now free to promulgate the rule.*

The Board, through its Executive Director, Kevin J. Kennedy, has ordered the appropriate action on these rules. The original and a copy of the Board's orders for each rule are enclosed.

Please publish these at your earliest convenience to become effective according to their terms.

Sincerely,

STATE ELECTIONS BOARD

  
George A. Dunst  
Legal Counsel