

Washington State to Regulate Electioneering Communications

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The state of Washington recently updated its election laws to regulate electioneering communications starting in 2006. The law, which was requested by the state's Public Disclosure Commission, follows in the wake of the U.S. Supreme Court's 2003 ruling in *McConnell v. Federal Election Commission*, which opened the door to state regulation of certain types of issue ads. The legislation was passed by the legislature in April 2005, and signed into law by Governor Gregoire on May 13, 2005.

Washington's new statute defines "electioneering communication" as any broadcast, mailing, billboard, newspaper or periodical that does the following:

- Clearly identifies a candidate for a state, local or judicial office either by specifically naming the candidate, or identifying the candidate without using the candidate's name;
- Appears within 60 days before any election for that office in the jurisdiction in which the candidate is seeking election; and
- Either alone, or in combination with more than one communication, costs \$5,000 or more.

To further delineate the term, the law also defines what electioneering communication is not, which, among other things, includes the following:

- Usual advertising of a business owned by a candidate;
- Advertising for candidate debates where such advertising is paid for by the sponsor;

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- A news item, feature, commentary or editorial in a regularly scheduled news medium;
- Mailed internal political communication limited to the members of a political party, or to the officers, management staff or stockholders of a corporation, or to the members of a labor organization or other membership organization; and
- Expenditures by, or contributions to, the authorized committee of a candidate for state, local or judicial office.

Activity that falls within the definition of electioneering communication must be electronically reported within 24 hours (or the next working day) of when the communication is broadcast by anyone making the communication. Nevertheless, corporations are not prohibited from making electioneering communications in Washington state.

Other relevant provisions of the new law include:

- Electioneering communications done in coordination with a candidate or party will be considered a contribution to that candidate or party.
- All electioneering ads must include the following statement: "Notice to Voters (required by law): This advertisement is not authorized or approved by any candidate. It is paid for by (name, address, city and state)."
- If the ad is paid for by a non-individual other than a political party, then a listing of the top five contributors must be provided.
- The required statement must meet certain size requirements for various communication media, including pictures.

The new electioneering communication reporting regulations do not take effect until January 1, 2006.