

**RCW 42.17A.335 Political advertising or electioneering**

**communication—Libel or defamation per se.** (1) It is a violation of this chapter for a person to sponsor with actual malice a statement constituting libel or defamation per se under the following circumstances:

(a) Political advertising or an electioneering communication that contains a false statement of material fact about a candidate for public office;

(b) Political advertising or an electioneering communication that falsely represents that a candidate is the incumbent for the office sought when in fact the candidate is not the incumbent;

(c) Political advertising or an electioneering communication that makes either directly or indirectly, a false claim stating or implying the support or endorsement of any person or organization when in fact the candidate does not have such support or endorsement.

(2) For the purposes of this section, "libel or defamation per se" means statements that tend (a) to expose a living person to hatred, contempt, ridicule, or obloquy, or to deprive him or her of the benefit of public confidence or social intercourse, or to injure him or her in his or her business or occupation, or (b) to injure any person, corporation, or association in his, her, or its business or occupation.

(3) It is not a violation of this section for a candidate or his or her agent to make statements described in subsection (1)(a) or (b) of this section about the candidate himself or herself because a person cannot defame himself or herself. It is not a violation of this section for a person or organization referenced in subsection (1)(c) of this section to make a statement about that person or organization because such persons and organizations cannot defame themselves.

(4) Any violation of this section shall be proven by clear and convincing evidence. If a violation is proven, damages are presumed and do not need to be proven. [2009 c 222 § 2; 2005 c 445 § 10; 1999 c 304 § 2; 1988 c 199 § 2; 1984 c 216 § 3. Formerly RCW 42.17.530.]

**Intent—Findings—2009 c 222:** "(1) The concurring opinion of the Washington state supreme court in *Rickert v. State, Public Disclosure Commission*, 161 Wn.2d 843, 168 P. 3d 826 (2007) found the statute that prohibits persons from sponsoring, with actual malice, political advertising and electioneering communications about a candidate containing false statements of material fact to be invalid under the First Amendment to the United States Constitution because it posed no requirement that the prohibited statements be defamatory.

(2) It is the intent of the legislature to amend \*chapter 42.17 RCW to find that a violation of state law occurs if a person sponsors false statements about candidates in political advertising and electioneering communications when the statements are made with actual malice and are defamatory.

(3) The legislature finds that in such circumstances damages are presumed and do not need to be established when such statements are made with actual malice in political advertising and electioneering communications and constitute libel or defamation per se. The legislature finds that incumbents, challengers, voters, and the political process will benefit from vigorous political debate that is not made with actual malice and is not defamatory.

(4) The legislature finds that when such defamatory statements contain a false statement of material fact about a candidate for

public office they expose the candidate to contempt, ridicule, or reproach and can deprive the candidate of the benefit of public confidence, or prejudice him or her in his or her profession, trade, or vocation. The legislature finds that when such statements falsely represent that a candidate is the incumbent for the office sought when in fact the candidate is not the incumbent they deprive the actual incumbent and the candidates of the benefit of public confidence and injure the actual incumbent in the ability to effectively serve as an elected official. The legislature further finds that defamatory statements made by an incumbent regarding the incumbent's challenger may deter individuals from seeking public office and harm the democratic process. Further, the legislature finds that when such statements make, either directly or indirectly, a false claim stating or implying the support or endorsement of any person or organization when in fact the candidate does not have such support or endorsement, they deprive the person or organization of the benefit of public confidence and/or will expose the person or organization to contempt, ridicule, or reproach, or injure the person or organization in their business or occupation.

(5) The legislature finds that defamatory statements, made with actual malice, damage the integrity of elections by distorting the electoral process. Democracy is premised on an informed electorate. To the extent such defamatory statements misinform the voters, they interfere with the process upon which democracy is based. Such defamatory statements also lower the quality of campaign discourse and debate, and lead or add to voter alienation by fostering voter cynicism and distrust of the political process." [2009 c 222 § 1.]

**\*Reviser's note:** Provisions in chapter 42.17 RCW relating to campaign finance were recodified in chapter 42.17A RCW by 2010 c 204, effective January 1, 2012.

**Finding—Intent—1999 c 304:** "(1) The Washington supreme court in a case involving a ballot measure, *State v. 119 Vote No! Committee*, 135 Wn.2d 618 (1998), found the statute that prohibits persons from sponsoring, with actual malice, political advertising containing false statements of material fact to be invalid under the First Amendment to the United States Constitution.

(2) The legislature finds that a review of the opinions indicates that a majority of the supreme court may find valid a statute that limited such a prohibition on sponsoring with actual malice false statements of material fact in a political campaign to statements about a candidate in an election for public office.

(3) It is the intent of the legislature to amend the current law to provide protection for candidates for public office against false statements of material fact sponsored with actual malice." [1999 c 304 § 1.]