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February 9, 2012

TO: Members of the Assembly Committee on Election and Campaign Reform

FROM: Mike McCabe, Director, Wisconsin Democracy Campaign

SUBJECT: Anti-disclosure legislation (Assembly Bill 196)

As I made clear in my February 6 testimony, the Wisconsin Democracy Campaign strongly opposes **Assembly Bill 196** because it would take away what little disclosure there currently is of corporate election spending in Wisconsin. The bill also takes the highly unusual – and objectionable – step of prohibiting any future rulemaking on the subject.

The author of this legislation and Joint Committee for Review of Administrative Rules staff told your committee that attorneys they consulted had concluded that the state Government Accountability Board had exceeded its authority in crafting the rule (GAB 1.91) that AB 196 would permanently block. Representative Ott and the JCRAR staffer also claimed the GAB's rule expanded the term "organization" to include any individual and also established a \$25 spending threshold triggering the registration and reporting requirement under GAB 1.91.

As I said in my testimony, the GAB is not responsible for the \$25 spending threshold. This is a longstanding feature of state law. This fact was corroborated by the Legislative Council staff attorney at Monday's hearing. The GAB had no choice but to follow this law because the agency cannot rewrite state law when writing rules.

As for the claim that GAB exceeded its rulemaking authority, I do not know what attorneys Representative Ott and JCRAR staff consulted before reaching this conclusion. But they obviously did not seek out Attorney General J.B. Van Hollen's perspective. The attorney general issued a formal opinion (OAG 05-10) in August 2010 that made it clear the GAB had the authority to act as it did.

On the question of whether the rule expands the meaning of organization to include any individual, a review of the record of GAB 1.91's promulgation led me to the following passage: "Unfortunately, the basis for JCRAR's objection appears to arise from a misunderstanding of the definition of 'organization' found in the rule.... In fact, the definition of 'organization' used in Rule 1.91 specifically **excludes individuals** from compliance with the rule." The analysis goes on to say: "'Individuals' are required to register, not under Rule 1.91, but rather under Section 11.05(2), Wis. Stats., a statute on the books since at least 1973."

The committee also should be aware that Attorney Mike Wittenwyler testified in favor of GAB 1.91 during its development. Attorney Wittenwyler has represented just about every electioneering group operating in Wisconsin – including WMC, Wisconsin Right to Life, Wisconsin Realtors Association, WEAC, Wisconsin Club for Growth and many more – as well as numerous business corporations. During the rule's development, Attorney Wittenwyler suggested four changes to the language originally drafted by GAB staff, all of which were approved by the board and none of which had to do with any of the purported problems Representative Ott and JCRAR staff have used as justification for AB 196's passage.