

**STATE OF MINNESOTA
CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD**

.....
**January 6, 2015
Nokomis Room
Centennial Office Building**

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MINUTES

The meeting was called to order by Vice Chair Beck.

Members present: Beck, Oliver, Peterson, Rosen, Sande, Wiener (arrived during Chair's report)
Members absent: None

Others present: Goldsmith, Sigurdson, Pope, staff; Hartshorn, counsel

The meeting did not strictly follow the order of business set forth in the agenda.

MINUTES (November 18, 2014)

After discussion, the following motion was made:

Member Oliver's motion:	To approve the November 18, 2014, minutes.
Vote on motion:	Unanimously passed (Wiener absent, Rosen abstained).

CHAIR'S REPORT

Board meeting schedule

The next Board meeting is scheduled for February 3, 2015.

EXECUTIVE DIRECTOR TOPICS

Status of office operations

Executive Director Goldsmith reported that staff had been busy with several mailings and that year-end campaign finance reports were due on February 2, 2014.

Staff attendance at annual conference of the Council on Governmental Ethics Laws (COGEL)

Assistant Executive Director Sigurdson reported that he and Mr. Fisher had recently attended the COGEL conference. Mr. Sigurdson explained that COGEL is a national organization for

governmental entities that regulate lobbying, public official financial disclosure, campaign finance disclosure, and ethics. Mr. Sigurdson told members about three trends discussed at the conference. First, candidates across the country were putting pictures and video footage on their own websites and outside groups were taking that footage and using it for independent expenditure communications. Second, states have seen spending on electioneering communications decline sharply while spending on independent expenditures has increased after laws are enacted that require disclosure related to electioneering communications. Finally, other states are looking at ways to narrowly tailor lobbyist disclosure to better disclose the true source of influence on legislation.

CHAIR'S REPORT

Report of nominating committee for 2015 officers

Chair Wiener arrived at the meeting and reported that the nominating committee, consisting of her and Mr. Peterson, had met and nominated Mr. Beck to serve as chair and Mr. Sande to serve as Vice Chair during 2015.

Whereupon the following motion was made:

Member Wiener's motion:	That the report of the nominating committee be adopted and that Mr. Beck be elected to serve as Chair and Mr. Sande be elected to serve as Vice Chair during 2015.
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Vote on motion:	Unanimously passed.
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Mr. Beck assumed the position of Chair for the remainder of the meeting.

EXECUTIVE DIRECTOR TOPICS

Reconciliation of board data

Mr. Sigurdson presented members with a memorandum on this topic that is attached to and made a part of these minutes. Mr. Sigurdson reported that progress had been made on the reconciliation of past years but that staff attention now would turn to reconciling the 2014 reports.

Website redevelopment

Mr. Goldsmith told members that a contract developer had started the redesign of the Board's database structure that was necessary to support the upgraded search functions on the new website. At the end of January, a second developer would begin the software fine tuning required to maximize the operation of the Board's new hardware. Mr. Goldsmith also reported that the Board had received five responses to its request for proposals to develop online training

and soon would issue a second RFP for the development of the website queries and screens that MN.IT would not have the resources to develop.

Board policy – Waivers for disclosure of second residence addresses by judges

Mr. Goldsmith presented members with a memorandum on this topic that is attached to and made a part of these minutes.

After discussion, the following motion was made:

Member Wiener's motion: To approve the following resolution:

RESOLVED,

That the Executive Director is delegated the authority to grant waivers exempting district court judges, appellate court judges, and Supreme Court justices from the requirement that they disclose the address of a secondary residence on their statements of economic interest. The Executive Director shall presume that good cause exists for the granting of such a waiver based solely on the fact that the requester is a judge or justice and on the representation in the request itself.

FURTHER RESOLVED,

That when the requirement that a public official must disclose the address of the official's secondary address is waived, the official is not required to disclose any information about the second residence.

Vote on motion: Unanimously passed.

Discussion of issues related to economic interest statement disclosure

Mr. Goldsmith presented members with a memorandum on this topic that is attached to and made a part of these minutes. After discussion, Mr. Goldsmith told members that staff would refine the issues and bring the matter back at a future meeting.

ENFORCEMENT REPORT

Consent agenda

A. Request to administratively terminate lobbyist registration for David Olson (#6916), effective 12/1/2014, on behalf of the Minnesota Chamber of Commerce.

Mr. Goldsmith told members that Mr. Olson had passed away on July 16, 2014.

B. Request to administratively terminate lobbyist registration for Brent Urdahl (#1354), effective 12/31/2012, on behalf of MN Fish and Bait Farmers.

Mr. Goldsmith told members that Mr. Urdahl originally terminated on behalf of MN Fish and Bait Farmers as of 5/31/2014. Both Mr. Urdahl and the principal confirmed that Mr. Urdahl did not lobby on the principal's behalf beyond 2012. Staff has attempted numerous

times to seek Mr. Urdahl's amended termination statement so that the principal would not be required to file reports for years in which it did not employ a lobbyist. Although Mr. Urdahl informed staff that he would complete the required statement, he has not followed through with filing the amendment.

C. Request to administratively terminate lobbyist registration for David Hancox (#9596), effective 5/31/2014, on behalf of the Metropolitan Center for Independent Living.

Mr. Goldsmith reported that the principal had informed the Board that Mr. Hancox resigned from his position and accepted a new position as of 10/1/2014. The principal has since registered a new lobbyist. The principal confirmed that Mr. Hancox did no lobbying on its behalf after May 31, 2014. Because Mr. Hancox has not complied with the principal's request that he file a termination report, staff recommended a termination date of 5/31/2014, so as to remove the need for a second half report for 2014.

D. Request to withdraw lobbyist registration – Virginia Black (#9995).

Mr. Goldsmith reported that Ms. Black registered with the Board on March 19, 2014. She had not been paid by any organization for lobbying purposes and only spent incidental personal funds while lobbying. To date Ms. Black estimated that she might have spent roughly \$50. Ms. Black therefore did not meet any of the statutory criteria that would require her to register as a lobbyist.

After discussion, the following motion was made:

Member Peterson's motion:	To approve the four requests on the consent agenda.
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Vote on motion:	Unanimously passed.
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Discussion Items

E. Staff request to waive \$25 late filing fee for the following principals: A-1 Contractors, LLC; Four Seasons Maintenance; Wilbro Companies, Inc.; Alete Cleaning Services; Wellness Café

Mr. Goldsmith presented members with a memorandum on this topic that is attached to and made a part of these minutes. Mr. Goldsmith stated that these principals all had incurred late fees because they did not know that they were required to file principal reports due to their owners' personal relationships with a registered lobbyist who had volunteered to help them with a municipal issue at no charge.

After discussion, the following motion was made:

Member Wiener's motion:	To waive the late fees for these principals.
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Vote on motion:	Unanimously passed.
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F. Consideration of agreement to settle civil action seeking recovery of late filing fees and civil penalties from Greg Copeland.

Mr. Goldsmith presented members with a memorandum on this topic that is attached to and made a part of these minutes. Mr. Goldsmith also presented members with the proposed settlement agreement for this matter, which also is attached to and made a part of these minutes.

After discussion, the following motions were made:

Member Wiener's motion: To amend the proposed settlement agreement to require Mr. Copeland to pay \$500 in civil penalties over the next 12 months and to stay the remaining \$1,500 in civil penalties under the conditions described in the agreement.

Vote on motion: Motion failed (two ayes, four nays).

Member Peterson's motion: To adopt the proposed settlement agreement.

Vote on motion: Unanimously passed.

E. Waiver requests

<u>Name of Candidate or Committee</u>	<u>Late Fee Amount</u>	<u>Civil Penalty Amount</u>	<u>Reason for Fine</u>	<u>Factors for waiver</u>	<u>Board Member's Motion</u>	<u>Motion</u>	<u>Vote on Motion</u>
64A House District RPM	\$1,000	\$200	10/27/2014 Pre-general	Treasurer had a heart attack on September 23 and open heart surgery on September 26. Post-surgery the treasurer experienced complications which lead to his inability to file the reports.	Rosen	To waive the late fee.	Unanimous
9th Senate District DFL	\$50	\$0	10/27/2014 Pre-general	Treasurer was out of the country for over a month on family business and around the filing period suffered a slight stroke with complications. Treasurer had trouble finding a location to fax the report, and the report was received at 12:02 a.m. on the morning after the deadline.	Rosen	To waive the late fee.	Unanimous
4th Congress. District GPM	\$250	\$0	10/27/2014 Pre-general	Treasurer attempted to upload the report prior to the deadline and the day after the deadline. Upload failed both times but computer informed treasurer that upload had been successful. After notification that report was outstanding, report successfully uploaded on Nov. 2.	Rosen	To waive the late fee.	Unanimous

MN African American Political Comm	\$50	\$0	24 hr. notice	Treasurer was on road when large contribution came in and did not have access to computer with CFR software or his username and password. Treasurer emailed a copy of the check to two staff members within 24 hours in an attempt to remedy his inability to file.	Wiener	To waive the late fee.	Unanimous
Watowwan County RPM	\$50	\$0	10/27/2014 Pre-general	Treasurer was out of state on vacation prior to the reporting period cut-off and through the reporting deadline.	No motion.		
Mahnomen County RPM	\$300	\$0	7/28/2014 Pre-primary	Treasurer attempted to file on time but the fax would not work. Treasurer was also busy remodeling her business. Report was 8 days late.	No motion.		
Travis Silvers for MN House Dist 7B	\$50	\$0	10/27/2014 Pre-general	Treasurer was busy with other matters around the filing deadline.	No motion.		

Informational Items

A. Payment of a late filing fee and civil penalty for 2012 Amended Year-end Report of Receipts and Expenditures

Craig Miller Volunteer Committee, \$450

B. Payment of a late filing fee for 2013 Year-end Report of Receipts and Expenditures:

Craig Miller Volunteer Committee, \$1,000

C. Payment of a civil penalty for 2013 Year-end Report of Receipts and Expenditures:

Craig Miller Volunteer Committee, \$1,000

D. Payment of a late filing fee for failure to file an amended 2013 Year-end Report of Receipts and Expenditures:

Joe Hoppe Volunteer Committee, \$1,000

E. Payment of a late filing fee June 16, 2014, Report of Receipts and Expenditures:

MPA Political Action Committee, \$450

Southeast Metro Business PAC, \$50

F. Payment of a late filing fee July 28, 2014, Report of Receipts and Expenditures:

Joe Hoppe Volunteer Committee, \$450
66th Senate District DFL, \$700

G. Payment of a late filing fee September 23, 2014, Report of Receipts and Expenditures:

IUPAT District Council 82, \$50

H. Payment of a late filing fee October 27, 2014, Report of Receipts and Expenditures:

1st Congressional District IPMN, \$50
IUPAT PAC - MN, \$50
MIFSC, \$50
Minn Electrical Industries Political Action Committee, \$50
Cornish (Tony) for State Representative, \$100
Ellingboe (Brenden) for House, \$200
Joe Hoppe Volunteer Committee, \$50
Lake of the Woods DFL, \$1,000

I. Payment of a late filing fee for pre-election 24-hour notice of a large contribution:

Everytown for Gun Safety, \$100
Freedom Club State PAC, \$50
Hospitality Jobs Fund, \$25
Minn Business Partnership PAC, \$150
Jon Applebaum for Representative, \$1,000
Ryan Rutzick for Representative, \$150

J. Payment of a late filing fee for June 16, 2014, lobbyist disbursement report:

Kelsey Johnson, Grocery Manufacturers Association, \$50
Sherry Munyon, \$225 (for nine lobbyist disbursement reports \$25 each)

K. Payment of a late filing fee for March 15, 2014, Annual Report of Lobbyist Principal:

Medical Advanced Pain Specialists, \$75
Your Exchange, \$100

L. Payment of a civil penalty for a contribution during the legislative session:

Vernae Hasbargen, \$50
Irene Quarshie, \$50 (no registration number)
Committee to Elect Gordon Wagner, \$50

M. Payment of a civil penalty for a contribution from an unregistered association without disclosure:

Tama Theis for Minnesota House, \$25

SCHA PAC, \$25

N. Payment of a civil penalty for a prohibited contribution from an unregistered association:

Broadband America Corporation, \$250
Liberty Minnesota PAC, \$200

O. Deposit to the General Fund, State Elections Campaign Fund:

Bruce Folken for House, \$60 (anonymous)
Craig Miller Volunteer Committee, \$86.65 (terminating gift to state)

LEGISLATIVE RECOMMENDATIONS

Mr. Goldsmith reported to members that Senator Jim Carlson would be the author of the Board's technical bill in the Senate. Mr. Goldsmith also said that the Board had recommended the adoption of a disclosure bill that included the language of Senate File 2083. Mr. Goldsmith told members that the Senate preferred the disclosure language in Senate File 1915 because that version had passed through the full committee structure to the floor in 2014. Mr. Goldsmith said that the two bills were virtually identical.

After discussion, the following motion was made:

Member Wiener's motion: To recommend the adoption of a disclosure bill that includes the language of Senate File 1915.

Vote on motion: Unanimously passed (Rosen abstaining).

LEGAL COUNSEL'S REPORT

Ms. Hartshorn had nothing to add to the provided report.

EXECUTIVE SESSION

The Chair recessed the regular session of the meeting and called to order the executive session. Upon completion of the executive session, the regular session of the meeting was called back to order and the Chair had the following items to report into regular session:

Probable cause determination in the complaint of Hoban regarding the Committee to Elect Steve Green

Probable cause determination in the complaint of Wojtalewicz regarding the Citizens for Tim Miller Committee

Probable cause determination in the complaint of the Republican Party of Minnesota regarding the Minnesota DFL Party and the Mark Dayton for a Better Minnesota Committee

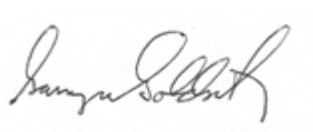
Probable cause determination in the complaint of Vick regarding Everytown for Gun Safety MN

Findings and order in the Board investigation of the Minnesota Family Council

These decisions are attached to and made a part of these minutes.

OTHER BUSINESS

There being no other business, the meeting was adjourned by the Chair.



Gary Goldsmith
Executive Director

Attachments:

Memorandum regarding data reconciliation issues

Memorandum regarding waivers of secondary residence disclosure for judges

Memorandum regarding issues related to economic interest statement disclosure

Memorandum regarding staff request to waive \$25 late fee for five principals

Memorandum regarding settlement agreement with Greg Copeland

Proposed Copeland settlement agreement

Legal report

Probable cause determination in the complaint of Hoban regarding the Committee to Elect Steve Green

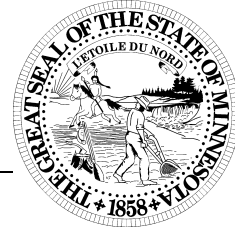
Probable cause determination in the complaint of Wojtalewicz regarding the Citizens for Tim Miller Committee

Probable cause determination in the complaint of the Republican Party of Minnesota regarding the Minnesota DFL Party and the Mark Dayton for a Better Minnesota Committee

Probable cause determination in the complaint of Vick regarding Everytown for Gun Safety MN

Findings and order in the Board investigation of the Minnesota Family Council

Campaign Finance and Public Disclosure Board



190 Centennial Building . 658 Cedar Street . St. Paul, MN 55155-1603

DATE: December 30, 2014

TO: Board Members

FROM: Jeff Sigurdson
Assistant Director

TELEPHONE: 651-539-1189

SUBJECT: Update on Reconciliation of Contributions between Registered Committees

The amount of unreconciled contributions remaining in the Board's production databases by year is shown in the table below. Note that the far left column represents the amounts of unreconciled contributions when the Board first focused on the issue in November 2013, the April 2014 column represents the progress made after about six months, and the December column represents the most recent information.

Over the last few months staff has focused primarily on 2009, 2010, 2011 and 2013. These four years contain almost all of the records that have been reconciled between April and December of this year, and are now all over 96% reconciled.

November 2, 2013		April 30, 2014		December 30, 2014		Total Transfers Reported	% Reconciled Of Total Transfers
Year	Not Reconciled Difference Over \$100	Year	Not Reconciled Difference Over \$100	Year	Not Reconciled Difference Over \$100		
2000	\$2,842,098	2000	\$2,795,078	2000	\$2,794,210	\$7,236,994	61.39%
2001	\$470,640	2001	\$373,140	2001	\$373,140	\$2,098,449	82.22%
2002	\$6,241,753	2002	\$1,856,315	2002	\$1,855,815	\$19,019,603	90.24%
2003	\$372,648	2003	\$351,598	2003	\$351,598	\$1,472,060	76.12%
2004	\$2,335,382	2004	\$2,305,950	2004	\$2,303,107	\$7,320,368	68.54%
2005	\$248,193	2005	\$185,817	2005	\$185,817	\$2,621,924	92.91%
2006	\$483,346	2006	\$416,821	2006	\$417,121	\$18,527,074	97.75%
2007	\$615,574	2007	\$512,529	2007	\$512,529	\$2,557,740	79.96%
2008	\$2,686,354	2008	\$2,675,880	2008	\$2,675,135	\$10,633,611	74.84%
2009	\$351,235	2009	\$284,354	2009	\$94,230	\$2,907,453	96.76%
2010	\$4,791,084	2010	\$496,043	2010	\$407,958	\$25,459,972	98.40%
2011	\$500,960	2011	\$374,026	2011	\$3,920	\$4,087,836	99.90%
2012	\$4,326,600	2012	\$24,573	2012	\$24,573	\$32,772,360	99.93%
		2013	\$417,657	2013	\$5,061	\$4,506,703	99.89%
Total	\$26,265,867	Total	\$13,069,781	Total	\$12,004,214	\$141,222,147	91.50%

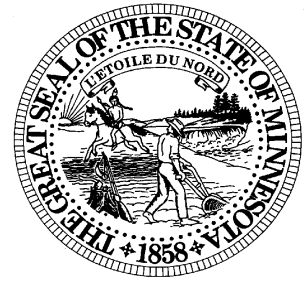
Shortly staff will be switching to the effort of reconciling the 2014 contributions from registered committees and funds. The year-end Report of Receipts and Contributions is due on February 2, 2015, and until that reporting period is over any attempt at reconciling 2014 contributions is premature. Nonetheless, a preliminary query finds that \$1,589,124 (8%) of the \$21,138,236 transfers reported through the pre-

general election report do not reconcile. Staff considers it an encouraging sign that over 90% of the transfers reported so far reconcile before the first staff outreach occurs.

Staff will be focused on the 2014 year-end reports, both reconciliation and identifying reporting errors and possible violations until sometime in April. Once the majority of the issues from 2014 are resolved staff will be returning to the reconciliation project and making a recommendation to the Board as to what further efforts would be most productive.

Minnesota

*Campaign Finance and
Public Disclosure Board*



Date: December 30, 2014

To: Board Members

From: Gary Goldsmith, Executive Director

Telephone: 651-539-1190

Re: Policy on waivers of secondary residence disclosure for judges

When filling an economic interest statement, public officials are not required to disclose their primary residence address. However, they are required to disclose the address of any secondary residence. When judges were added to the list of public officials, the District Judges Association had security concerns about this requirement. As a result, the statute includes the following provision:

10A.09 Statements of Economic Interest

Upon written request and for good cause shown, the board may waive the requirement that an official disclose the address of real property that constitutes a secondary residence of the official.

Staff anticipates that most judges and justices that have secondary residence will request this waiver. Rather than require the Board to act on each request, staff suggests that a policy be adopted by the Board delegating this authority to the Executive Director.

Staff also recommends that the Board clarify that when disclosure of the secondary residence address is waived, no disclosure at all about the residence is required. The only conceivable disclosure could be the county in which it is located, which is not particularly helpful in recognizing conflicts of interest. Additionally, requiring identification of the county would also have the effect of identifying the fact that the property is a secondary residence, because no other type of property is identified by listing only the county as its location.

The delegation of waiver authority and clarification of the disclosure requirement could be accomplished by the following motion:

RESOLVED,

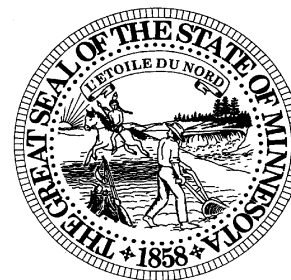
That the Executive Director is delegated the authority to grant waivers exempting district court judges, appellate court judges, and Supreme Court justices from the requirement that they disclose the address of a secondary residence on their statements of economic interest. The Executive Director shall presume that good cause exists for the granting of such a waiver based solely on the fact that the requester is a judge or justice and on the representation in the request itself.

FURTHER RESOLVED,

That when the requirement that a public official must disclose the address of the official's secondary address is waived, the official is not required to disclose any information about the second residence.

Minnesota

Campaign Finance and Public Disclosure Board



Date: December 30, 2014

To: Board members

From: Gary Goldsmith, Executive Director

Telephone: 651-539-1190

Re: Limitations and challenges in economic interest disclosure

This memorandum highlights some of the challenges that the Board faces with respect to the economic interest disclosure of public officials. Please note that with respect to securities disclosure, the current threshold is securities valued at more than \$2,500. When I cover those topics below it is with the recognition that securities valued at \$2,500 or less are not included.

- 1. Honoraria.** Not reported on original statement. Supplemental statement must include honoraria received since the previously filed statement. Issue: If honoraria are to be included on the original statement, the statute must include a look-back period. How long should that period be?
- 2. Initial reporting period.** The statutes do not specify the period covered in an original statement. By default it is a point-in-time report, representing the interests as of the date of the official's appointment. However, the disclosure of sources of compensation of more than \$50 received in a month is meaningless in a point-in-time approach. By rule, the Board has said that for compensation the original report includes the calendar month before the official's appointment.
- 3. Supplementary statement option.** The supplemental statement is not required unless the official's interests have changed since the last statement. This means that staff has no way of knowing whether a supplemental statement is required and, thus, no way to know if a non-filing official is in compliance with the statute. Note: The Board has made a recommendation to the 2015 legislature for language that would fix this problem.
- 4. No cutoff date for supplementary statement.** The statute requires that an official file a supplemental statement "on April 15" of the year if there have been changes in the official's interests. Neither statutes nor rules establish a cutoff date for what is included in the report. At some point the Board decided that the statement should include information through March 31 of the subject year. Note: The Board's 2015 legislative recommendations include a March 31 cutoff date for the annual statement.
- 5. Lack of clarity with respect to content of supplementary statement.** Section 10A.09 makes it clear that a supplementary statement must include honoraria received since the last statement was filed. By rules 4505.0100 and 4505.700 the Board has clarified that for compensation sources and real estate the supplementary statement the filer must include all interests since those reported on the last filed statement. Both statutes and rules are silent on what securities must be included on the supplementary statement. However, the instructions on the supplementary statement online form tell filers to include any security held during any month

since the previous reporting period. Nevertheless, staff believes that many filers take the point-in-time approach and list their securities as of March 31 of the supplementary statement year.

6. Better disclosure of securities requires a statute or rule to specify which securities are to be included on a supplementary statement. Although the instructions on the online supplementary economic interest statement form state that securities held at any time since the last report was filed must be included, the Board has no audit program to ensure compliance. Before it starts such a program, a binding requirement for securities disclosure should be provided by statute or rule.

7. Enforcement of a more rigorous securities disclosure requirement will likely meet resistance by filers who have active stock trading accounts. If a requirement to disclose securities held at any time since the last report was filed is enforced it will require active securities traders to list every security that they bought and sold during the period. Conversations I have had with filers in the past suggest that this requirement will likely meet with some resistance.

8. Online economic interest statement disclosure shows the official's most recent filing only and the online filing system is made available year around so that officials who want to file interim supplementary statements may do so. Each year a few officials ask to file a supplementary statement in the interim between the regular reporting periods. Staff assumes that this is either to eliminate an interest or to add a new interest. If it is to eliminate an interest, this means that the official is not following the statutes, rules, and instructions that state that the statement must include all interests held since the last statement was filed.

Technically, for annual filers, it takes up to two years to get an interest off the official's report. The interest is reported on report 1, then liquidated sometime in the next year, but because it was held during part of the year following report 1, it must still be included on report 2. Only a year later, when report 3 is filed, may the interest be removed.

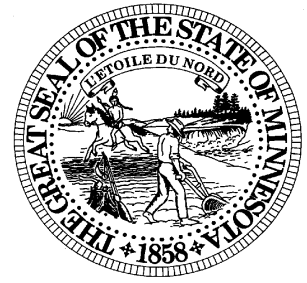
The always-available nature of the filing system means that a person who liquidates a security could file a supplementary statement the day after the liquidation – listing the security on the statement since it would have been held during the period following the prior statement. However, the official could file another supplementary statement the following day – a statement with a one-day reporting period – and could drop the liquidated security since it was not held during the period since the last report.

On the other hand, the annual nature of the current system means that it can be nearly a year before the public becomes aware of a financial interest of an official. This would be true for any interests obtained shortly after a reporting period, since the next report would be a year away.

9. Comprehensive disclosure of securities will require agency database and website modifications and will result in an additional burden for filers who have active stock trading accounts. To provide more timely and accurate disclosure the Board's economic interest database and online inquiry systems need to be modified. Filings for an official over a period of time must be made available.

Minnesota

*Campaign Finance and
Public Disclosure Board*



Date: December 30, 2014

To: Board Members

From: Gary Goldsmith, Executive Director

Telephone: 651-539-1190

Re: Staff request to waive late filing fees

During the process of obtaining reports of principals required to file under the lobbying program, staff encountered a number of late filings related to principals represented by the same lobbyist, Mr. Al Garcia. In its efforts to determine the reasons for the series of late filings, staff contacted each of the principals.

The five principals that are the subject of this staff request are all similarly situated. Each had the need for representation before a metropolitan governmental unit. Mr. Garcia knew each of the owners or operators of the businesses and volunteered to help them with their metropolitan governmental unit issues. He did not charge these associations for his services, which were typically limited to a single issue. Because he was already a registered lobbyist, Mr. Garcia was required to register for each of these new clients even though he would not be compensated for his work on their behalf.

The principals that are the subject of this memo are all small businesses with owners who are not experienced in the laws or concepts of metropolitan governmental unit lobbying. As a result, they did not fully understand their obligation to file the principal's report.

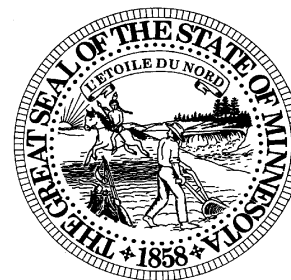
In each case, the principal's report was filed one day late and, in each case, the lobbyist registration has been terminated, effective December 31, 2013, so that no future principal report will be required.

On the basis of its informal inquiries, staff requests that the Board waive the late filing fees in the amount of \$25 each for the late filing of the 2013 principal's report for the following associations:

A-1 Contractors, LLC
Four Seasons Maintenance
Wilbro Companies, Inc.
Alete Cleaning Services
Wellness Café

Minnesota

*Campaign Finance and
Public Disclosure Board*



Date: December 30, 2014

To: Board Members

From: Gary Goldsmith, Executive Director

Telephone: 651-539-1190

Re: Greg Copeland settlement

Members will recall that staff spent considerable time attempting to get Greg Copeland to file amended reports to bring his principal campaign committees up to date. In the process, Mr. Copeland incurred \$200 in late filing fee (\$100 for each of two reports) and \$2,000 in civil penalties (\$1,000 for each of two reports).

In spite of multiple efforts, Mr. Copeland made no payments on the late filing fees or civil penalties and did not propose a payment schedule. As a result, the Board authorized Mr. Hartshorn to commence litigation to recover the fees and penalties on behalf of the state.

On the day of trial Mr. Copeland expressed interest in resolving the matter short of a full civil trial. The matter was continued until January 12 for that purpose.

Mr. Copeland and I have are working with Mr. Hartshorn to reach an agreement with Mr. Copeland that I can recommend. I believe we are close to that agreement, but a final version will not likely be available until shortly before the Board meeting.

I expect the terms to require that Mr. Copeland terminate his remaining registration and pay the \$200 in late filing fees, with \$94 coming from his committee and \$106 coming from him personally. These activities are to be completed by January 9.

Mr. Copeland does not know if he will register a new principal campaign committee in the future. He could do so the day after he terminates his current registration should he choose. For that reason, the I expect the agreement to include a stay of the \$2,000 civil penalties conditioned on the timely filing of reports by any future committee or party unit for which Mr. Copeland is the treasurer or candidate. This stay would last until February 1, 2019, which covers the next two election cycles for the House of Representatives and the next one cycle for Senate. Depending on legal counsel's advice, the preservation of the \$2,000 in civil penalties may take a form other than a stay since we will be dismissing the legal action and may be precluded from commencing another legal action for the same civil penalties.

I hope to have the proposed agreement to you at least the day prior to the meeting. The agreement will require Board approval to be effective. If you have questions or suggestions, please contact me.

**STATE OF MINNESOTA
CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD**

In the Matter of the Late Campaign Finance Report Filings by
the Greg Copeland for Senate committee and

State of Minnesota, Campaign Finance and Public Disclosure Board v.
Greg Copeland, Greg Copeland for Senate

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into between the Campaign Finance and Public Disclosure Board (the Board) and Greg Copeland, individually.

WHEREAS, this matter arises from the failure of Greg Copeland to file campaign finance reports and amendments in a timely fashion on behalf of his principal campaign committee, the Greg Copeland For Senate committee, and

WHEREAS, the Board commenced a civil action in Ramsey County District Court titled *State of Minnesota, Campaign Finance and Public Disclosure Board v. Greg Copeland, Greg Copeland for Senate* for the recovery of certain late filing fees and civil penalties due from Mr. Copeland, and

WHEREAS, the Board and Mr Copeland desire to resolve this matter without the delay and expense of continued litigation;

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein the parties agree as follows:

1. Greg Copeland acknowledges and agrees that as treasurer and candidate of the Greg Copeland for Senate principal campaign committee, he is personally liable for any late filing fees and civil penalties incurred due to late filings on behalf of the committee.
2. Greg Copeland acknowledges and agrees that the late filing fees in due to the State of Minnesota for the late filing of amended reports by the Committee total \$200.00 and that the civil penalties due to the State of Minnesota for the late filing of those reports total \$2,000.
3. Greg Copeland, with the assistance of Board staff, shall complete the report filings necessary to terminate the registration with the Board of the Greg Copeland for Senate committee. Completion of these filings shall not be later than January 9, 2015.
4. The Committee has \$94.00 remaining in its depository, which shall be paid to the State of Minnesota not later than January 9, 2015, in partial satisfaction of the late filing fees that are a subject of this matter.
5. Greg Copeland shall, not later than January 9, 2015, tender to the Board a cashier's check in the amount of \$106.00 made payable to the State of Minnesota in satisfaction or the remaining late filing fees in this matter.

6. The Board agrees that the remaining civil penalties in this matter, in the amount of \$2,000, are stayed until February 1, 2019, on the condition that each and every campaign finance report due under Chapter 10A for a committee, party unit, or other association of which Greg Copeland is the candidate or treasurer is filed on or before the date the report is due.
7. During the period of the continuance, the Board agrees that it will take no steps to collect the subject civil penalties, nor will it refer the matter to the Minnesota Department of Revenue collections division, or take any other action in regard to the civil penalties.
8. If the provisions of paragraphs 5 and 6 of this agreement are satisfied, the subject civil penalties are automatically, by virtue of this agreement, cancelled and forgiven.
9. If the provisions of paragraphs 5 and 6 are not complied with, the stay is automatically lifted and the \$2,000 in civil penalties is due and payable by Mr. Copeland, personally. Mr. Copeland shall have 30 days within which to make payment unless otherwise agreed by the Board.
10. As further consideration for this agreement, the Board agrees that it will stipulate to dismissal without prejudice of the district court action it commenced to recover the late filing fees and civil penalties and that this agreement shall be a bar to commencement of a subsequent civil action to recover the civil penalties that are the subject of paragraph 6 so long as the condition specified in paragraph 6 is met.

Greg Copeland, individually

Date

Campaign Finance and Public Disclosure Board

George A. Beck

Date

**STATE OF MINNESOTA
CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD**

**PROBABLE CAUSE
DETERMINATION**

IN THE MATTER OF THE COMPLAINT OF ANNE-MARYE HOBAN REGARDING THE COMMITTEE TO ELECT STEVE GREEN:

The complaint alleges that the Committee to Elect Steve Green failed to post transcripts on the candidate's campaign website for all of the radio advertisements produced and paid for by the campaign committee.

Minnesota Statutes section 10A.38 states that "a campaign advertisement must not be disseminated as an advertisement by radio unless the candidate has posted on the candidate's Web site a transcript of the spoken content of the advertisement or the candidate has filed with the board before the advertisement is disseminated a statement setting forth the reasons for not doing so." Candidates who sign a public subsidy agreement are governed by Minnesota Statutes section 10A.38. Board records indicate that Steve Green signed a public subsidy agreement.

On November 6, 2014, the Board Chair made a determination that the complaint stated a prima facie violation of Chapter 10A or of those sections of Chapter 211B under the Board's jurisdiction.

Based on the Board's review no radio transcripts for campaign advertisements were available on the candidate's website at the time the complaint was filed. A further review of the candidate's website on December 15, 2014, revealed that radio transcripts for the campaign advertisements in the complaint were available, along with radio transcripts for other campaign advertisements not mentioned in the complaint.

Findings:

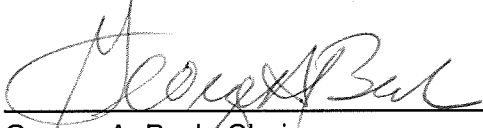
1. The Committee to Elect Steve Green disseminated campaign advertisements via radio broadcast during the 2014 election.
2. Steve Green, the candidate, signed a public subsidy agreement for the 2013-2014 election cycle and was therefore bound by Minn. Stat. § 10A.38.
3. The candidate's website, as of November 6, 2014, did not contain transcripts of campaign advertisements disseminated by radio.
4. The candidate's website, as of December 15, 2014, did contain transcripts of campaign advertisements disseminated by radio.
5. The candidate did not file a statement with the Board setting forth the reasons for not posting transcripts of campaign advertisements disseminated by radio on his campaign website prior to dissemination of the advertisements.

Conclusions:

1. Probable cause exists to believe that candidate Steve Green violated section 10A.38 of the Minnesota Statutes because the candidate disseminated campaign advertisements by radio prior to posting transcripts of those advertisements to his website or filing a statement with the Board setting for the reasons for not doing so before the advertisement was disseminated.
2. No penalty is provided for by statute for a violation of the radio transcript provision.
3. Because the candidate's website has been amended to include the transcripts of the campaign advertisements, further commitment of state resources to this matter would not serve a sufficient public purpose.

Order:

The complaint in the above matter is dismissed.



George A. Beck, Chair
Campaign Finance and Public Disclosure Board

Dated: 1/6/15

**STATE OF MINNESOTA
CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD**

**PROBABLE CAUSE
DETERMINATION**

IN THE MATTER OF THE COMPLAINT OF BRIAN WOJTALEWICZ REGARDING THE CITIZENS FOR TIM MILLER COMMITTEE:

The complaint alleges that the Citizens for Tim Miller committee failed to post transcripts on the candidate's campaign website for all of the radio advertisements produced and paid for by the campaign committee.

Minnesota Statutes section 10A.38 states that "a campaign advertisement must not be disseminated as an advertisement by radio unless the candidate has posted on the candidate's Web site a transcript of the spoken content of the advertisement or the candidate has filed with the board before the advertisement is disseminated a statement setting forth the reasons for not doing so." Candidates who sign a public subsidy agreement are governed by Minnesota Statutes section 10A.38. Board records indicate that Tim Miller signed a public subsidy agreement.

On November 6, 2014, the Board Chair made a determination that the complaint stated a prima facie violation of Chapter 10A or of those sections of Chapter 211B under the Board's jurisdiction.

Based on the Board's review no radio transcripts for campaign advertisements were available on the candidate's website as of October 19, 2014. A further review of the candidate's website on December 16, 2014, revealed that radio transcripts for all but one of the campaign advertisements in the complaint were available, along with radio transcripts for other campaign advertisements not mentioned in the complaint.

Findings:

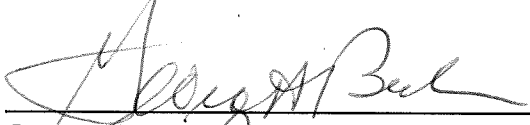
1. The Citizens to Elect Tim Miller committee disseminated campaign advertisements via radio broadcast during the 2014 election.
2. Tim Miller, the candidate, signed a public subsidy agreement for the 2013-2014 election cycle and was therefore bound by Minn. Stat. § 10A.38.
3. The candidate's website, as of November 6, 2014, did not contain transcripts of campaign advertisements disseminated by radio.
4. The candidate's website, as of December 16, 2014, did contain transcripts of campaign advertisements disseminated by radio.
5. The candidate did not file a statement with the Board setting forth the reasons for not posting transcripts of campaign advertisements disseminated by radio on his campaign website prior to dissemination of the advertisements.

Conclusions:

1. Probable cause exists to believe that candidate Tim Miller violated section 10A.38 of the Minnesota Statutes because the candidate disseminated campaign advertisements by radio prior to posting transcripts of those advertisements to his website or filing a statement with the Board setting for the reasons for not doing so before the advertisement was disseminated.
2. No penalty is provided for by statute for a violation of the radio transcript provision.
3. Because the candidate's website has been amended to include transcripts of the campaign advertisements, with the exception of one version of an education advertisement that is very similar to the posted version, further commitment of state resources to this matter would not serve a sufficient public purpose.

Order:

The complaint in the above matter is dismissed.



George A. Beck, Chair
Campaign Finance and Public Disclosure Board

Dated: 1/6/15

**STATE OF MINNESOTA
CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD**

**PROBABLE CAUSE
DETERMINATION**

IN THE MATTER OF THE COMPLAINT OF THE REPUBLICAN PARTY OF MINNESOTA REGARDING THE MINNESOTA DFL PARTY AND THE MARK DAYTON FOR A BETTER MINNESOTA COMMITTEE:

Background: Complaint's Allegations

On October 31, 2014, the Republican Party of Minnesota (RPM) filed a complaint with the Minnesota Campaign Finance and Public Disclosure Board regarding the Minnesota DFL Party (DFL) and the Mark Dayton for a Better Minnesota committee (Committee).

The complaint alleges that the Committee published a video promoting Mark Dayton's candidacy on the YouTube video sharing internet site and that, subsequently, the DFL used a three second clip from the video in broadcast advertisements, which it classified as independent expenditures in support of Mark Dayton. The complaint maintains that the video clip used by the DFL either originated from the Committee's source footage or that the DFL captured the footage from a broadcast or internet source. The complaint notes that after the DFL's use of the clip, the Committee published another video promoting Mark Dayton's candidacy to youtube.com incorporating the same clip.

The complaint further alleges that use of the video clip by the DFL was with the consent of and/or in coordination with the Committee and that the Committee "either provided the DFL Party with the footage or at the very least consented to its use." The complaint states that even if the video clip existed in the public domain, the Committee at least implied its consent to the DFL's expenditure because the Committee maintained proprietary ownership over the video clip and never objected to the DFL's use of the video clip.

The complaint claims that this consent and/or coordination made subsequent campaign advertisements by the DFL that used the video clip approved expenditures, as opposed to independent expenditures, and that the amount of the approved expenditures, which are considered a contribution to the candidate's committee, is hundreds of thousands of dollars.

Subsequent Submissions to the Board

On November 14, 2014, Charlie Nauen, attorney for respondents, submitted a response at the prima facie determination stage of this matter. Through Mr. Nauen, the respondents stated that "there was no coordination between the DFL Party and the Mark Dayton for a Better Minnesota campaign committee." The response further stated that the Committee posted the video material to its website and on YouTube "without restriction as to its subsequent use." Respondents asserted that "the subsequent use of publicly-available materials cannot be the

basis for finding that an expenditure was not independent”, citing the Board’s findings regarding the Minnesota DFL State Central Committee on April 22, 2014.

Regarding the complaint’s claims that the Committee did not object to the DFL’s use of the video clip, Mr. Nauen stated that “not only is this position inconsistent with the Board’s prior Orders, it would require candidates to object to each and every independent expenditure so that it would not be deemed to have been impliedly approved.” Finally, respondents asserted that “Minnesota law does not require candidates to interfere with the activities of independent organizations in order to avoid campaign finance violations.”

On November 26, 2014, the Board Chair made a determination that the complaint stated a prima facie violation of Chapter 10A.

On December 15, 2014, the RPM submitted a response in support of the Board finding that probable cause exists to believe a violation has occurred. The RPM’s response recapped many of its arguments contained in the original complaint. On December 17, 2014, the DFL and the Committee re-submitted their prima facie response in support of the Board finding that probable cause does not exist. The DFL and the Committee’s legal counsel, Mr. Nauen, appeared at the Board’s meeting on behalf of both respondents.

Potential Violations

The complaint alleges that the DFL reported certain costs as independent expenditures that should have been reported as approved expenditures.

An approved expenditure is a contribution to that candidate, and the 2013-2014 election cycle contribution limit from political party units to a governor’s principal campaign committee is \$40,000. The complaint alleges that the DFL made approved expenditures in the amount of hundreds of thousands of dollars. If the complaint’s allegations are true, violations of the statutory contribution limits by both the DFL and the Committee will result.

Chapter 10A also requires independent expenditures to contain a statement in conspicuous type that the activity is an independent expenditure and is not approved by the candidate nor is the candidate responsible for it. If the expenditure was not made independently and was falsely claimed to be independent this requirement would have been violated as well.

Analysis

In both the complaint and its submission in support of the Board finding probable cause, the RPM attempts to support its claims by comparing the matter at hand to a prior matter in which the Board considered the independence of party unit expenditures. See, FINDINGS IN THE MATTER OF A COMPLAINT REGARDING THE TIM PAWLENTY FOR GOVERNOR CAMPAIGN AND THE REPUBLICAN PARTY OF MINNESOTA, October 10, 2012 (the “Pawlenty Matter”). In the Pawlenty Matter, the Board found that certain expenditures made by the RPM in support of the Pawlenty

committee and classified by the RPM as independent expenditures were not, in fact, made independently and, instead, constituted approved expenditures.

In its complaint, the RPM references the findings in the Pawlenty Matter, stating that:

A probable cause finding that a candidate consented to an expenditure by or coordinated with an entity other than the primary campaign committee does not require an expressed agreement for the expenditure. Rather, the Board reviews the facts surrounding the expenditure and the actions of the candidate and independent group required to complete the expenditure. The Board further reviews the subsequent actions of the candidate, including whether the candidate requested the independent entity to cease an expenditure when discovering the use of coordinated material.

The RPM further states that “factors in the Board’s decision [in the Pawlenty Matter] included the actions required by the candidate in making the footage and the fact that neither the candidate nor his committee protested to the party or to the production company when the Republican Party began airing the footage, which was created by the Pawlenty campaign.”

The RPM’s emphasis on the lack of action by the Pawlenty committee after the expenditures were made is misplaced. In the Pawlenty Matter, the Board concluded that certain expenditures made by the RPM on behalf of candidate Tim Pawlenty were not, in fact, made independently. The basis for the Board’s conclusion was the fact that an agent of the Pawlenty committee cooperated with the RPM in producing the independent expenditures and consented to the RPM’s use of footage and creative ideas developed by or on behalf of the Pawlenty committee.

The independence of an expenditure may be defeated if a candidate, the candidate’s principal campaign committee, or an agent of the candidate or the committee expressly or impliedly consents, authorizes, cooperates with, acts in concert with the entity making the independent expenditure, or requests or suggests that the entity make the independent expenditure. Minn. Stat. § 10A.01, subd. 18. In the Pawlenty Matter, the Pawlenty committee’s agent’s cooperation and consent defeated the independence of the subject expenditure.

The Pawlenty Matter, therefore, is unlike the matter at hand. The present complaint provides no evidence that the Committee or an agent of the Committee consented to or cooperated with the DFL in the making of the subject independent expenditure and the nature and history of the publication of the clip do not provide a sufficient basis on which to find probable cause that a relationship between the Committee and the DFL existed that would defeat the independence of the expenditure.

In the Pawlenty Matter, the Board observed that the committee had not taken any recourse against its agent after the agent was found to have exceeded his authority and profited from his actions. While the Board also noted in its findings of fact that the Pawlenty Committee had not asked the RPM to cease running its advertisements in support of Pawlenty, this was not the basis for the Board’s conclusions concerning probable cause. To the extent that the findings in

the Pawlenty Matter may be read to suggest that there is some affirmative duty on a candidate to intervene to stop the publication of a communication that was independent at the time it was initiated, that premise is rejected.

The Board has recognized in the past that candidates publish high-resolution photographs on their campaign websites that are sometimes later used by independent expenditure committees. The Board has not raised the issue of the independence of these expenditures in the past. See Findings, Order, and Memorandum in the Matter of the Investigation of Expenditures Made by the Minnesota DFL State Central Committee, April 22, 2014.

The three second clip that is the subject of this matter is not so substantially different from a photograph that the Board is inclined to treat its use differently. However, the Board's decision in this matter is strictly limited to the facts before it and should not be read to extend beyond them.

Findings:

1. On November 26, 2014, the Board Chair made a determination that the complaint under consideration stated a prima facie violation of Chapter 10A.
2. The Mark Dayton for a Better Minnesota committee published a video to youtube.com titled "On the Campaign Trail" on July 18, 2014. From approximately 0:33 – 0:38 in the video, Mark Dayton is seen speaking to two young women while sitting on concrete steps. A playground can be seen in the background. For the purposes of this determination this clip will be referred to as the "Subject Clip."
3. The Minnesota DFL Party published a video to youtube.com titled "We Know" on September 15, 2014. From approximately 0:25 – 0:28 in the video, a portion of the Subject Clip is shown. The video contains a disclaimer indicating that the video is an independent expenditure made by the DFL.
4. The Committee published a video to youtube.com titled "Rising" on October 28, 2014. From approximately 0:20 – 0:22 in the video, a portion of the Subject Clip is shown.
5. No facts have been presented by the RPM that support a claim that there was actual cooperation between the Committee and the DFL. The DFL and the Committee deny that there was cooperation or coordination in regard to use of the video clip. The DFL's use of the publicly available clip, without more, does not defeat the independence of the subject expenditures.
6. The facts surrounding the publication and use of the Subject Clip, by themselves, do not provide evidence that suggests the type of candidate involvement in the DFL expenditure that would lead to an investigation.


Conclusions:

1. No evidence has been presented that suggests the Committee provided the DFL with the Subject Clip beyond posting its own video to youtube.com.
2. No evidence has been presented that suggests the DFL's independent expenditure was approved by the Committee or an agent of the Committee or was not, in fact, made independently.

3. A candidate's committee is not required to object to another entity's use of material that is in the public domain in order to preserve the independence of an otherwise independent use of publicly-available materials.
4. Probable cause does not exist to believe that the Minnesota DFL Party or the Mark Dayton for a Better Minnesota committee violated Chapter 10A, specifically the sections related to approved expenditures and independent expenditures.

Order:

The complaint in the above matter is dismissed.



George A. Beck, Chair
Campaign Finance and Public Disclosure Board

Dated: 1/6/15

**STATE OF MINNESOTA
CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD**

**PROBABLE CAUSE
DETERMINATION**

IN THE MATTER OF THE COMPLAINT OF KEVIN VICK REGARDING EVERYTOWN FOR GUN SAFETY MINNESOTA:

On November 4, 2014, Kevin Vick filed a complaint with the Minnesota Campaign Finance and Public Disclosure Board regarding Everytown for Gun Safety Minnesota. The complaint, directly or by implication, alleges that the respondent's actions included the following:

- Respondent registered as a political committee or a political fund with the Board on October 22, 2014.
- Beginning on October 21, 2014, and running through November 3, 2014, large campaign contributions exceeding \$1,000 were required by statute to be reported to the Board within 24 hours via the 24 hour notice reporting system.
- On October 24, 2014, another registered political committee, the Public Safety Matters Campaign, reported a \$25,000 contribution from respondent via the Board's 24 hour notice reporting system.
- Respondent received the \$25,000 after it registered on October 22, 2014, a time when the 24 hour notice requirement was in place.
- Respondent failed to file the proper 24 hour notice reports as to the source of the \$25,000 donation.

Minnesota Statutes section 10A.20, subd. 5 states that a contribution of more than \$1,000 received by a political committee between the last day covered in the last report before an election and the election must be reported to the Board within 24 hours after its receipt. The relevant period in this matter ran from October 21, 2014, through November 3, 2014.

On December 22, 2014, Everytown for Gun Safety Minnesota (EGSM) submitted a response in support of the Board finding that probable cause does not exist. The response stated that the \$25,000 contribution to the Public Safety Matters Campaign (PSMC), an independent expenditure political fund, was not from EGSM. The contribution was instead made by Everytown for Gun Safety Action Fund (EGSAF) as permitted by Minn. Stat. § 10A.27, subd. 15(a), which allows an association to contribute its general treasury money to an independent expenditure committee or fund. EGSM is EGSAF's Minnesota political fund. EGSM has a separate bank account, as evidenced by 24 hour notice reports filed by EGSM detailing transfers from the EGSAF account into the EGSM account.

EGSM explained that the complaint's allegations appear to have stemmed from a reporting error made by the recipient committee, PSMC, which reported the contribution as coming from EGSM as opposed to EGSAF on its 24 hour notice report filed with the Board. Bank statements were

provided to the Board to confirm that the contribution was wired from EGSAF's bank account, as opposed to EGSM's bank account.

Findings:

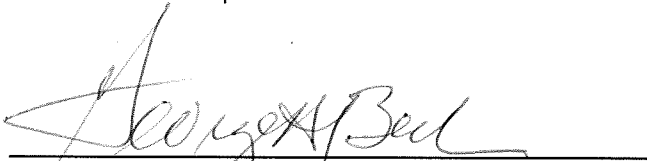
1. On December 5, 2014, the Board Chair made a determination that the complaint stated a prima facie violation of Chapter 10A or of those sections of Chapter 211B under the Board's jurisdiction.
2. The subject \$25,000 contribution was not, in fact, made by EGSM, but was instead made by EGSAF.
3. The PSMC mistakenly reported the contribution as being made by EGSM, as opposed to the association that made the contribution, EGSAF.
4. The PSMC's 24 hour notice report has been amended to clarify the matter and detail that EGSAF is the contributor.

Conclusions:

Probable cause does not exist to believe that the Everytown for Minnesota Gun Safety independent expenditure political fund violated Chapter 10A of the Minnesota Statutes.

Order:

The complaint in the above matter is dismissed.



George A. Beck, Chair
Campaign Finance and Public Disclosure Board

Dated: 1/6/15, 2015

**STATE OF MINNESOTA
CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD**

**IN THE MATTER OF THE INVESTIGATION
OF MINNESOTA FAMILY COUNCIL**

**FINDINGS, CONCLUSIONS,
AND ORDER**

Background

In early July 2014, the Campaign Finance and Public Disclosure Board became aware of two communications that were being disseminated with the attribution "Prepared and paid for by Minnesota Family Council" (MFC) and the statement: "Learn more at www.mfc.org." The communications each related to Sheila Kihne, known to the Board to be a candidate in the Republican primary election for House District 48B. Copies of the communications are attached to and made a part of this document as exhibits A and B.

The communications identified Kihne as a "Trusted Conservative" and stated:

Sheila will:

Restore fiscal discipline to
the state budget

Defend our second
amendment

Strengthen Minnesota's
schools

Protect life and family
values

Board records indicated that Ms. Kihne was not a member of the Minnesota Legislature when the communications were disseminated. Thus, unless elected, she had no ability different than that of any private citizen to accomplish the things MFC said she would do.

The communications also included a prominent notice: "Primary Election Aug. 12th!" The communications further informed recipients that "Early voting begins on Friday, June 27th at Eden Prairie City Hall." The early voting notice included the address of the city hall and the hours that it was open. In one case the communication expressly advised readers to "Vote early starting June 27th at Eden Prairie City Hall."

Based on the content of the communications, the Board directed its Executive Director to initiate an investigation into whether the communications and any similar communications by MFC were subject to the disclosure requirements of Minnesota Statutes Chapter 10A, the Campaign Finance and Public Disclosure Act.

Board staff asked MFC for information regarding the communications and any other communications disseminated by MFC related to the Kihne election. In response, MFC provided copies of seven mail piece communications, one newspaper ad, and a number of broadcast television and online communications. Most of the communications were similar to the two initially considered by the Board.

In its response, MFC argued that "only communications that 'expressly advocate' for or against a candidate can be regulated." (Citing §10A.01, subs. 16a and 18, the definitions of "expressly

advocating" and "independent expenditure.") MFC asserted that because the communications did not contain express advocacy, they were not subject to Chapter 10A.

Analysis

MFC is an association that has as its major purpose something other than to influence the nomination or election of candidates in Minnesota. This conclusion was reached in the context of a Board investigation in 2012 and the Board has found no new facts that would change the characterization of the association. As a result, MFC is not a political committee. If it is to report at all, it will be through a political fund, which is the campaign finance disclosure mechanism used for non-major-purpose associations.

A political fund is:

an accumulation of dues or voluntary contributions by an association other than a political committee, principal campaign committee, or party unit, if the accumulation is collected or expended to influence the nomination or election of one or more candidates or to promote or defeat a ballot question. Minnesota statutes section 10A.01, subdivision 28.

The definition of a political fund makes it clear that once an association expends money to influence the nomination or election of candidates, that money constitutes the association's political fund, which exists as a matter of law without the association doing anything other than the spending.

An association is required to register its political fund after it has "made expenditures" of more than \$750 or made "independent expenditures" of more than \$1,500.¹ Minnesota statutes section 10A.14. An "expenditure" is

a purchase or payment of money or anything of value, or an advance of credit, made or incurred for the purpose of influencing the nomination or election of a candidate . . . Minnesota statutes section 10A.01, subdivision 9.

The phrase "to influence the nomination or election of one or more candidates" used in the definition of a political fund and the phrase "for the purpose of influencing the nomination or election of a candidate" used in the definition of expenditure are interchangeable and are construed by the Board to mean the same thing. Thus, if MFC spent money to influence the nomination of Sheila Kihne in the primary election, the accumulation of money used for that purpose constitutes MFC's political fund and the spending transactions constitute "expenditures."

The controlling question is whether the money MFC spent on the Kihne literature was spent "to influence" (or "for the purpose of influencing") the nomination of Ms. Kihne through the primary election process or for some other purpose.²

¹ A political fund is not an entity separate from the association that did the spending. Rather, it is an accounting mechanism used to track spending that is subject to disclosure. Registration is simply notifying the Board that the accounting mechanism exists and informing the Board of the name of the contact person for the association.

² There is no evidence that the MFC expenditures were made with the authorization or expressed or implied consent of, or in cooperation or in concert with, or at the request or suggestion of the candidate, the candidate's principal campaign committee, or the candidate's agent. Money spent with the authorization or expressed or implied consent of, or in cooperation or in concert with, or at the request or suggestion of the candidate, the candidate's principal campaign committee, or the candidate's agent is presumed to be to influence the nomination or election of that

The Board first considered whether the communications constituted independent expenditures. An independent expenditure is an expenditure that is made completely independently from a candidate and that advocates for the election or defeat of the candidate using words or phrases of express advocacy. An independent expenditure is, by definition, an expenditure made for the purpose of influencing the nomination or election of a candidate. Minnesota statutes section 10A.01, subdivisions 18 and 16a.

Minnesota Statutes do not define what "words or phrases of express advocacy" are and the Board has not adopted administrative rules to clarify the statutory language. However, the U.S. Supreme Court in a brief footnote in the case of *Buckley v. Valeo*, 424 U.S. 1 (1976), suggested that words of express advocacy included words and phrases such as "vote for," "elect," "vote against." For the purposes of this investigation, the Board adopts the *Buckley* definition.

There is no evidence to suggest that the communications were not made completely independently of the candidate. Thus, the factor on which their characterization as independent expenditures depends is whether or not they expressly advocated for Ms. Kihne's nomination in the primary election. A copy of the MFC communication that has the strongest potential for being express advocacy is attached to and made a part of this document as exhibit C. The communication states on the front: "Sheila Kihne is fighting the liberal special interests." On the reverse the piece includes the following statements:

Liberals like Obama and Franken don't want Sheila.
Don't let them win. Plan ahead, and vote early.
VOTE EARLY IN PERSON
Eden Prairie City Center
8080 Mitchell Road, Eden Prairie Minnesota
Monday through Friday 8 a.m.- 4:30 pm [sic]

VOTE BY MAIL
Request your absentee ballot quickly and easily online.
www.sos.state.mn.us

Primary Election Aug. 12th!

Sheila Kihne
Trusted Conservative

A careful examination of this communication leads the Board to conclude that the piece is not an independent expenditure because MFC has avoided using specific words or phrases of express advocacy such as those described in the *Buckley* footnote. None of the other MFC communications comes closer to express advocacy than the example above. Thus, the MFC communications are not independent expenditures.

Having concluded that the MFC spending does not constitute approved expenditures or independent expenditures, the question on which this matter hinges is whether an expenditure that is made independently of the candidate, yet does not meet the narrow criteria defining an independent expenditure, can be for the purpose of influencing the candidate's nomination or

candidate and constitutes an approved expenditure. Since there is no evidence that the expenditures were approved expenditures, that topic is not discussed further in this document.

election and, thus, subject to disclosure. MFC asserts that it cannot, but Supreme Court First Amendment jurisprudence suggests that the answer is not so clear.

In *Buckley v. Valeo*, the Supreme Court determined that when applied to a non-major-purpose association acting completely independently of a candidate, the phrase "for the purpose of influencing" would be constitutional if it was construed narrowly to include only expenditures for communications that expressly advocate the election or defeat of a clearly identified candidate.

In *MCCL v. Kelley*, 698 N.W.2d 424 (Minn. 2005), the Minnesota Supreme Court considered the definition of "to influence" elections in the context of political funds. The Minnesota Court stated that the *Buckley* decision requiring a narrowing construction of the phrase "for the purpose of influencing" was controlling with respect to interpretation of the phrase "to influence" in Chapter 10A.

Thus, after *Buckley* and *MCCL*, it was clear that money spent by a Minnesota non-major-purpose association independently of candidates could constitutionally be subject to disclosure only if the phrases "to influence" and "for the purpose of influencing" were narrowly construed. The construction suggested in *Buckley* and adopted in *MCCL* was to limit application of the disclosure requirement for non-major-purpose associations to only those expenditures that expressly advocated for the election or defeat of a candidate. Minnesota's independent expenditure statutes capture this concept.

However, analysis of First Amendment protections as applied to non-major-purpose associations did not stop with *Buckley* and *MCCL*. Subsequent U.S. Supreme Court decisions made it clear that the phrases "to influence" or "for the purpose of influencing" need not be construed as narrowly as suggested by the *Buckley* court in order to preserve their constitutionality when applied to non-major-purpose associations. Through two key cases further examining what communications by a non-major-purpose association may constitutionally be subject to disclosure, the Supreme Court has concluded that disclosure is also constitutional if the communication "is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate."³ This type of communication is referred to as the functional equivalent of express advocacy.

Prior to 2014 both the definition of "expenditure" and of "independent expenditure", when applied to a non-major-purpose association, required the purpose of influencing an election. Thus, both could include communications that were either express advocacy or the functional equivalent of express advocacy.⁴ In 2014, however, Chapter 10A was amended to restrict the definition of independent expenditure to those communications that used words or phrases of express advocacy, precluding the use of the functional equivalent test to conclude that an expenditure made independently of a candidate was an "independent expenditure". However, the definition of "expenditure" itself was not changed.

The 2014 amendment results in a distinction between two communications, both made independently of the candidate. The first, which advocates for the election of the candidate using words or phrases of express advocacy, is an independent expenditure, which will trigger the disclosure requirements of Chapter 10A. The second, a communication that does not use words or phrases of express advocacy, but is susceptible of no reasonable interpretation other than as an

³ See *McConnell v. FEC*, 540 U.S. 93 (2003); *FEC v. Wisconsin Right To Life (WRTL II)*, 551 U.S. 449 (2007) (Quoted). See also, *Citizens United v. FEC*, 558 U.S. 310 (2010), reaffirming the principle.

⁴ The Board has previously noted that the definition of expenditure could be defined based on either the magic words or the functional equivalent of express advocacy, but it has not adopted that principle for Minnesota. See Advisory Opinion 428.

appeal to vote for or against a specific candidate, could also constitutionally be subject to disclosure requirements under the functional equivalent approach of *WRTL II*.

The Board has expressed in various contexts that its interpretation of Chapter 10A as a body of law is intended to provide the highest level of disclosure permitted by its language and constitutional principles. Consistent with that interpretation, the Board concludes that it would be permissible, both from a statutory interpretation and a constitutional law standpoint, to conclude that the definition of expenditure in §10A.01, subd. 9, and in the political fund registration requirement of §10A.14, subd. 1, apply to a non-major-purpose association, acting independently of a candidate, that makes a communication that is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate.

The constitutional law now seems clear that the statutes subjecting non-major-purpose associations to disclosure requirements when they make expenditures "to influence" and "for the purpose of influencing" elections are constitutional as long as those phrases are construed to limit the disclosure requirement to expenditures that constitute express advocacy or its functional equivalent. However, the Board has been cautious in considering how this established constitutional concept should be recognized in Minnesota.

In Advisory Opinion 428 the Board declined to recognize the concept because of ongoing litigation at the federal level and because it considered the administrative rulemaking process to be better suited for statutory interpretations of general applicability. Although the federal litigation has ended, removing the legal questions surrounding the functional equivalent concept, the Board still concludes that administrative rulemaking is the preferred approach for statutory construction. As a result, the Board declines to conclude that the money spent by MFC for the communications that are the subject of this matter are "expenditures" under Chapter 10A.⁵

Findings of Fact

1. The MFC published a number of communications naming candidate Sheila Kihne during the 2014 primary election.
2. The communications were made completely independently of candidate Kihne.
3. The communications did not include words or phrases of express advocacy as interpreted by the Board for the purposes of this investigation.
4. Some of the communications, including those that are included as exhibits A, B, and C to this document, are susceptible of no reasonable interpretation other than as an appeal to vote for candidate Kihne in the primary election.

Conclusions of Law

1. The expenditures for the MFC communications were not independent expenditures or approved expenditures.

⁵ The Board notes that the adjudication process is an appropriate posture for the construction of statutes. The fact that the Board does not use this matter to adopt the functional equivalent approach to defining "to influence" should not be taken to suggest that it has relinquished its authority to do so in the context of a future investigation or through administrative rulemaking.

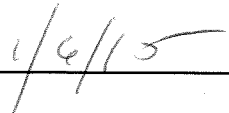
2. Under the current interpretation of Minnesota statutes, an expenditure by MFC will not be considered to be for the purpose of influencing the nomination or election of a candidate unless the resulting communication uses words or phrases of express advocacy.
3. The current interpretation of Minnesota statutes, which takes a more restrictive approach to defining "to influence" and "for the purpose of influencing" is not constitutionally mandated but will not be modified by the Board in this matter.
4. Based on the current interpretation of statute, the MFC communications are not subject to disclosure and MFC is not in violation of Chapter 10A.

Order

This matter is dismissed.



George A. Beck, Chair



Date