

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

.....
June 5, 2012

**Room 225
Minnesota Judicial Center**

.....

MINUTES

The meeting was called to order by Chair McCullough.

Members present: Beck, Luger, McCullough, Peterson, Scanlon
Member Wiener arrived during the approval of the May 18, 2012, minutes.

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

MINUTES (May 1, 2012)

Member Peterson's motion: To approve the May 1, 2012, minutes as drafted.

Vote on motion: Unanimously passed.

MINUTES (May 18, 2012)

Member Beck's motion: To approve the May 18, 2012, minutes as drafted.

Vote on motion: Unanimously passed.

CHAIR'S REPORT

Board meeting schedule

The next Board meeting is scheduled for Tuesday, July 3, 2012.

EXECUTIVE DIRECTOR'S TOPICS

Executive Director Goldsmith reported on recent Board office operations.

The XML Schema for use by vendors in filing electronic Reports of Receipts and Expenditures was released on May 23, 2012. The standard is for use by all political committees and funds, a separate standard for candidate committees will be released later in the year. With the upcoming electronic filing requirement Mr. Goldsmith noted that the first pass of waivers of approximately 150 committees have been reviewed and granted.

Senate File 2334

Mr. Goldsmith presented the Board with a memorandum which is attached to and made a part of these minutes. Mr. Goldsmith reported on the 2012 legislative session.

The Board's bill did not advance during the 2012 session due to opposition to the provision in the bill related to ballot questions. Staff will bring the matter of legislative recommendations back to the Board later this year.

Senate File 2334, which is related to Chapter 10A did pass. The language of the bill is as follows, with underlines showing the additions:

Section 1. Minnesota Statutes 2010, section 10A.04, subdivision 6, is amended to read:

Subd. 6. Principal reports. (a) A principal must report to the board as required in this subdivision by March 15 for the preceding calendar year.

(b) Except as provided in paragraph (d), the principal must report the total amount, rounded to the nearest \$20,000, spent by the principal during the preceding calendar year to influence legislative action, administrative action, and the official action of metropolitan governmental units.

(c) Except as provided in paragraph (d), the principal must report under this subdivision a total amount that includes:

(1) all direct payments by the principal to lobbyists in this state;

(2) all expenditures for advertising, mailing, research, analysis, compilation and dissemination of information, and public relations campaigns related to legislative action, administrative action, or the official action of metropolitan governmental units in this state; and

(3) all salaries and administrative expenses attributable to activities of the principal relating to efforts to influence legislative action, administrative action, or the official action of metropolitan governmental units in this state.

(d) A principal that must report spending to influence administrative action in cases of rate setting, power plant and powerline siting, and granting of certificates of need under section 216B.243 must report those amounts as provided in this subdivision, except that they must be reported separately and not included in the totals required under paragraphs (b) and (c).

The statute will be effective for next year's principal reports and will require the separation out from the lump sum of those amounts related to the specified public utilities commission administrative actions.

Mr. Goldsmith explained that there were a number of amendments made in the House and that he and a lobbyist who supported the bill testified against the amendments in conference committee where they were removed from the final bill.

ENFORCEMENT REPORT

The Board considered the monthly enforcement report, presented by Assistant Executive Director Sigurdson. The Board took the following actions related to matters on the Enforcement Report:

Discussion Items

A. Authorization for a one-time adjustment to 2010 Report of Receipts and Expenditures non-itemized disbursements:

HRCC, Reid LeBeau II, counsel. In a letter dated May 2, 2012, Mr. LeBeau requests the HRCC (House Republican Campaign Committee) be allowed to report \$10,280.59 in non-itemized disbursements that occurred prior to 2010. The committee records were reviewed by a professional auditor and an amended report was submitted. A proposed amended 2010 report filed with the request shows corrections to the total contributions received and itemized expenditures. The review could not account for \$10,280.59 in expenditures, which the auditor believes are compounding smaller errors from previous years.

After discussion the following motion was made,

Member Wiener's motion: To approve the one-time adjustment of \$10,280.59 in non-itemized disbursements that occurred prior to 2010 for the HRCC.

Vote on motion: Unanimously passed.

B. Waiver Requests – 2011 Year-end Campaign Finance Reports

Supporters for Mick Spence, \$375. In his waiver request Mr. Spence states his committee has remained dormant since 2008. Mr. Spence filed the 2009 and 2010 reports. On the 2010 report he amended the registration to show himself as treasurer. The phone number provided on the 2010 reporting form to contact him was incorrect. Staff was not able to contact him when calls were made to committees that did not file on time. He states that he was transitioning to a new law office at the end of the reporting year.

After discussion no motion was made.

Mahnomen County DFL, Sue Kraft, chair \$575. Staff contacted the treasurer of record, Joan Lavoy, in mid-February. She stated she had the report and would send it to the Board, however, no report was received. On March 5 staff was contacted by the treasurer of a different party unit stating that Ms. Kraft was the new chair of Mahnomen County DFL. A report form was sent via email to Ms. Kraft and a no change report was filed on March 5 disclosing a balance of \$426.44. A bank statement was provided that

verifies the reported balance. Ms. Kraft explains that she took on the chair duties in the fall of 2011 when the previous chair stepped down. She repeatedly tried to contact Ms. LaVoy to discuss committee business and was unaware of the missed reporting requirement. A waiver was previously granted to Ms. LaVoy due to personal and health reasons for two pre-election reports in 2010. The committee has elected a new treasurer.

After discussion no motion was made.

Jeffrey Hayden for 61B, Terri Hayden, \$350. Board records Ms. Hayden became treasurer of the committee in August 2011. At that time the candidate was running in a special election for senate district 61 which he won. Staff notified Ms. Hayden by email on February 2 that the report was not filed and a late fee was accruing. The report was filed on February 21 with the termination box checked.

After discussion no motion was made.

C. Request for a motion to approve the withdrawal of registration.

NE VOTES NO, Angela Ronay, treasurer. In a letter dated May 31, 2012, Ms. Ronay states that she attended the Board's software training class and realized that the committee did not need to register. The committee is made up of volunteers who donate their services and does not expect to reach the threshold for registering in the future.

After discussion the following motion was made,

Member Luger's motion: To approve the withdrawal of registration for the NE VOTES NO committee.

Vote on motion: Unanimously passed.

Informational Items

A. Payment of a late filing fee for a Year-end 2011 Report of Receipts and Expenditures:

Neighbors for Sigrid Iversen, \$225
Committee to Elect Bill Kuisle, \$125
Canary Party of MN, \$100
Impact Minnesota, \$200

B. Payment of a late filing fee for March 15, 2012, Annual report of Lobbyist Principal:

Commonwealth Properties, \$30
Diversified Equities Corp, \$15
Fire Marshals Assn of MN, \$15
Franconia Minerals Corp., \$60

Johnson Controls, \$20
MN Early Autism Project, \$15
Mount Olivet Home, \$20
Opportunity Partners, \$20
Short Elliot Hendrickson, \$20
Ulti Med Inc, \$35

C. Payment of a civil penalty for certifying a false report:

Steven Nielsen, Citizens for Ernie Leidiger, \$300

D. Payment of a civil penalty for exceeding special source aggregate limit:

(Tim) Mahoney for House, \$465 – 9th installment

Mike Parry for Senate, \$400. During 2011, the Committee accepted \$3,000 in contributions from special sources. The total amount of these contributions exceeded by \$400 the applicable limit on aggregate contributions from special sources, which for a state senate candidate was \$2,600. Senator Parry entered into a conciliation agreement on March 30, 2012.

E. Payment of a civil penalty for excess contributions:

Tim Johnson for Senate, \$200. During 2011, the Committee reported that a married couple provided two joint contributions to the Committee; the first joint contribution was in the amount of \$100, the second joint contribution was in the amount of \$250. Therefore, each individual contributed \$175 to the Committee. The contributions both cumulatively and facially exceeded the \$100 limit. The second contribution was facially excessive by \$50. The combined total of both contributions was cumulatively excessive by \$150. Tim Johnson entered into a conciliation agreement on April 13, 2012.

Pam Wolf for Senate, \$132. During 2011, the Committee reported accepting a facially excessive contribution from an individual in the amount of \$166. The contribution exceeded the applicable contribution limit by \$66. Senator Wolf entered into a conciliation agreement on May 7, 2012.

Patrick Rosenstiel, \$300. In 2011 Patrick Rosenstiel, a registered lobbyist, made a \$250 contribution to the Citizens for (Linda) Runbeck Committee. The contribution exceeded by \$150 the applicable limit. Patrick Rosenstiel entered into a conciliation agreement on April 9, 2012.

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

8th Congressional District DFL, \$200

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

Minnesotans United for All Families, \$50 (anonymous)

H. The Executive Director authorized the following for referral to the Office of the Attorney General for failure to pay a late fee. A first class letter and one certified letter were sent. Staff attempted to contact the individual by phone and/or email:

Evan Rapp Volunteer Committee, \$350 late fee
Minnesotans for Benjamin Kruse, \$125 late fee
Timothy Nieminen for House, \$125 late fee
David Berglund, Cook County Watershed Dist, \$100 late fee, \$100 civil penalty Dale Hansen for MN House, \$325 late fee

ADVISORY OPINION REQUESTS

Advisory Opinion #427 – Application of Chapter 10A to an association that wishes to engage in an online fundraising to influence the nomination or election of Minnesota state candidates

The request that will result in Advisory Opinion 427 is non-public data and was received by the Board on May 18, 2012, from an association. Staff asks that the Board lay the matter over until the next meeting.

After discussion, the following motion was made:

Member Scanlon's motion: To lay Advisory Opinion #427 over until the next Board meeting.

Vote on motion: Unanimously passed.

LEGAL COUNSEL'S REPORT

Board members reviewed a memo from Counsel Hartshorn outlining the status of cases that have been turned over to the Attorney General's office. The Legal Counsel's Report is made a part of these minutes by reference.

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 following items were reported from the Executive Session:

Findings and Order in the Matter of the Complaint of Common Cause Minnesota regarding Minnesota Family Council

The Chair reported that in its executive session, the Board made findings and issued an order in the above matter. See Findings and Order which are attached to and made a part of these minutes.

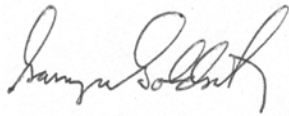
Findings and Order in the Matter of a Contribution to The Stonewall DFL Committee from the Mary Doran for Schools Committee

The Chair reported that in its executive session, the Board made findings and issued an order in the above matter. See Findings and Order which are attached to and made a part of these minutes.

OTHER BUSINESS

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

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gary Goldsmith", written in a cursive style.

Gary Goldsmith
Executive Director

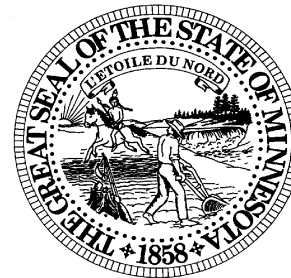
Attachments:

May 30, 2012, memorandum regarding recap of the 2012 Legislative Session
Findings in the matter of the complaint of Common Cause Minnesota regarding Minnesota
Family Council

Findings in the matter of a contribution to The Stonewall DFL Committee from the Mary Doran
for Schools Committee

Minnesota

Campaign Finance and Public Disclosure Board



Date: May 30, 2012

To: Board Members

From: Gary Goldsmith, Executive Director

Telephone: 651-539-1190

Re: 2012 Legislative Session recap

The Board's bill did not advance during the 2012 session due to opposition to the provisions in the bill related to ballot question. Staff will bring the matter of legislative recommendations back to the Board later this year. There may be a better chance of a bill passing in 2013 because it is not an election year.

One bill related to Chapter 10A did pass, Senate File 2334. The language of the bill is as follows, with underlines showing the additions:

Section 1. Minnesota Statutes 2010, section 10A.04, subdivision 6, is amended to read:

Subd. 6. **Principal reports.** (a) A principal must report to the board as required in this subdivision by March 15 for the preceding calendar year.

(b) Except as provided in paragraph (d), the principal must report the total amount, rounded to the nearest \$20,000, spent by the principal during the preceding calendar year to influence legislative action, administrative action, and the official action of metropolitan governmental units.

(c) Except as provided in paragraph (d), the principal must report under this subdivision a total amount that includes:

- (1) all direct payments by the principal to lobbyists in this state;
- (2) all expenditures for advertising, mailing, research, analysis, compilation and dissemination of information, and public relations campaigns related to legislative action, administrative action, or the official action of metropolitan governmental units in this state; and
- (3) all salaries and administrative expenses attributable to activities of the principal relating to efforts to influence legislative action, administrative action, or the official action of metropolitan governmental units in this state.

(d) A principal that must report spending to influence administrative action in cases of rate setting, power plant and powerline siting, and granting of certificates of need under section 216B.243 must report those amounts as provided in this subdivision, except that they must be reported separately and not included in the totals required under paragraphs

(b) and (c).

The statute will be effective for next year's principal reports and will require the separation out from the lump sum of those amounts related to the specified public utilities commission administrative actions.

This bill was supposed to go through both bodies without amendment. However, that didn't happen in the house, where three amendments passed.

1. In the lobbyist reporting statute, the language was changed as follows:

A lobbyist must report the lobbyist's total disbursements on lobbying, separately listing lobbying to influence legislative action, lobbying to influence administrative action, lobbying to influence recommendations or actions of a legislative council or commission, and lobbying to influence the official actions of a metropolitan governmental unit . . .

2. In the principal reporting section, the following was added:

(e) A principal must separately report expenses incurred to educate, inform, lobby, and otherwise influence a public official related to industry conventions, facility tours, travel arrangements, including but not limited to private company aircraft, and any other hospitality-related expenses shall be included in the totals required under paragraphs (b) and (c).

3. The following was also added to the principal reporting section:

f) A principal must separately report expenses incurred to promote or defeat a candidate for public office or to advocate approval or defeat of a ballot question and these expenses shall be included in the totals required under paragraphs (b) and (c).

I testified that the bill, as introduced, would not result in any administrative burden on the Board that could not be undertaken with existing resources. We will need to add a couple of fields to our database and modify our online principal reporting system, but these changes can be completed with our existing IT staff.

I testified against the three amendments.

First, with regard to number 1 above, the Board has previously concluded that influencing legislative councils or commissions is usually included in the activities that could make a person a lobbyist. Legislative councils or commissions often include officials, so communicating with them is lobbying. Additionally, councils and commissions usually make recommendations to the legislature. In those cases, communicating with the council or commission to influence its recommendations constitutes urging others to communicate with legislators to influence legislative action, so that is lobbying as well. In my testimony I explained that this seemed to be redundant and that if it was intended to expand the scope of what might trigger a lobbyist registration requirement, it would be important to clarify its application.

With regard to number 2 above, I urge members to study it and try to determine exactly what reporting is required. Others who have done so were left with questions about the amendment's intent. I testified that it was so unclear that it would be difficult to administer and that it might be so vague as to pose a constitutional problem since statutes that regulate speech must be clear enough so that the speaker understands what the regulation contemplates.

With respect to number 3 above, I pointed out that if a principal spends more than \$100 to influence the nomination or election of candidates or to promote or defeat a ballot question, it must register a political fund and report its expenditures through its political fund. Adding this requirement to the principal reporting statute completely duplicates a disclosure system that is already in place.

Based in part on my testimony, the amendments were removed in conference committee and the bill passed in its original form and was signed into law by Governor Dayton.

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

**Findings and Order in the Matter of the Complaint of Common Cause Minnesota
regarding Minnesota Family Council**

On February 22, 2012, the Campaign Finance and Public Disclosure Board received a complaint from Common Cause Minnesota (CCM) signed by Mike Dean, its Executive Director, regarding Minnesota Family Council (MFC). The complaint alleges that MFC is a political committee and that it has failed to register with the Board and report as required by statute.

On May 21, 2011, the Minnesota legislature passed a bill placing a constitutional amendment on the 2012 general election ballot. The amendment would place a definition of marriage in the Minnesota Constitution, limiting marriage to a union of one man and one woman (referred to hereinafter as "the marriage definition ballot question"). The complaint alleges that during 2011, MFC's spending on the marriage definition ballot question far exceeded its annual total spending in any previous year. Primarily on the basis of this allegation, Common Cause concludes that, beginning in 2011, promoting the marriage definition ballot question was MFC's major purpose. An association whose major purpose is to promote or defeat a ballot question is, by definition, a political committee under Minnesota Statutes Chapter 10A.

Although the Board has delegated to its Executive Director the authority to accept complaints for investigation, the Executive Director elected to present the CCM complaint to the Board so that the Board could make its own determination as to whether the complaint met the threshold to require investigation. The matter was presented to the Board at its meeting of March 6, 2012, at which time the Board concluded that the complaint met the minimum standards to require an investigation and directed staff to initiate that investigation.

The Board offered CCM and MFC an opportunity to address questions of law relevant to this matter. Mr. Dean responded with an analysis on behalf of CCM by letter dated April 13, 2012. A response for MFC was provided by Clea Mitchell, of counsel with the Act Right Legal Foundation on April 24, 2012. The Board met to review the responses from CCM and MFC as well as the facts relevant to the complaint in a special executive session meeting on May 18, 2012. Based on the Board's discussion, staff completed its analysis and the matter was again considered by the Board at its meeting of June 5, 2012.

Legal Background

In Minnesota, an association whose major purpose is to promote or defeat a ballot question is, by definition, a political committee. Political committees are required to register with the Board and to periodically report all of their receipts and expenditures.

Associations whose major purpose is something other than to promote or defeat a ballot question (sometimes referred to as "non-major-purpose associations") may also engage in activities to promote or defeat a ballot question. However, since ballot question activities do not constitute the major purpose of these associations, they are not political committees.¹

¹ The Board recognizes that an association whose major purpose is to influence the nomination or election of candidates is also a political committee. Because these findings are limited to the topic of ballot question political committees or funds, the fact that an association may be a political committee based on its actions to influence the nomination or election of candidates will not be restated in the text.

The money raised or spent by a non-major-purpose association to promote or defeat a ballot question is called the association's political fund. If the association raises or spends more than \$5,000 to promote or defeat a ballot question it must register the political fund with the Board and report under the appropriate provisions of Chapter 10A.

Minnesota Statutes provide for different levels of disclosure for political committees and political funds. This distinction is based on United States Supreme Court holdings that have been incorporated into Minnesota law.

Because the major purpose of a ballot question political committee is to promote or defeat a ballot question, all of its contributions and expenditures are subject to disclosure. Contributions to a political committee of more than \$100 in aggregate from a donor must be itemized, which requires providing the name, address, and employment information for the donor. Expenditures of more than \$100 in aggregate to a payee must also be itemized by providing the payee name and address and the purpose of the expenditure.

A non-major-purpose association may engage in activities to promote or defeat a ballot question, but it primarily engages in activities that are not related to the promotion or defeat of a ballot question and these activities are not subject to disclosure under Chapter 10A. A non-major-purpose association also raises money that is not specifically for the purpose of promoting or defeating a ballot question.

Money that the association has received for some purpose other than specifically to promote or defeat a ballot question is sometimes referred to as the association's "general treasury money." At the time general treasury money is received by the association it is not subject to any disclosure under Chapter 10A.

When a non-major-purpose association uses general treasury money to promote or defeat a ballot question those funds are reported through its political fund. However, the sources of that general treasury money are not subject to the more-than-\$100 itemization requirement. Rather, Minnesota statutes allow the association to allocate the amount of general treasury money used to promote or defeat a ballot question among donors to the association's general treasury. The association is required to itemize only those donors who, based on the allocation, contributed \$1,000 or more of the general treasury money used to promote or defeat a ballot question. The allocation and itemization threshold provisions used together provide a means by which an association may limit or, in some cases, entirely avoid itemized donor disclosure.

The primary effect of CCM's complaint, if it is sustained, will be to require MFC to itemize all donors who gave it more than \$100 in 2011, and any who pass that threshold in 2012. MFC would no longer be able to disclose only each \$1,000-or-more donor's allocation of funds from general treasury money because all money received by MFC would be viewed as being for the major purpose of promoting the ballot question and therefore reportable under Chapter 10A. A secondary effect would be that MFC would be required to itemize all expenditures of more than \$100 to a payee, even if the expenditure was not specifically to promote the ballot question.

MFC's Registration and Reporting

On August, 9, 2011, MFC registered a ballot question political fund, the Minnesota Family Council Family Protection Fund, with the Board thereby signifying that it would raise or spend more than \$5,000 to promote the ballot question that year and that it identified itself as a non-major-purpose association.

At the end of 2011, MFC filed a report under the ballot question political fund statutes. The report disclosed \$212,423.45 of MFC general treasury money was used to promote the ballot question.

MFC reported that based on the allocation and itemization statutes it was not required to itemize any donors to its general treasury. Additionally MFC reported using \$134,570.60 that it identified as business revenue to promote the ballot question. When business revenue is used to promote or defeat a ballot question, no allocation or itemization of the business activity that generated the revenue is required. In total, MFC reported \$346,994.05 through its political fund with no underlying itemization of funding sources.

MFC reported spending \$120,994.05 on activities to promote the ballot question and donating \$226,000 to Minnesota for Marriage, a political committee formed specifically to promote the ballot question.

MFC's Major Purpose

Common Cause asks the Board to conclude that during 2011 and, by implication, 2012, the major purpose of MFC was to promote the marriage definition ballot question.

Minnesota Statutes section 10A.01, subdivision 27, states that a political committee is "an association whose major purpose is to influence the nomination or election of a candidate or to promote or defeat a ballot question, other than a principal campaign committee or a political party unit."

For the purposes of this analysis, the relevant definition may be restated as follows: A political committee is an association whose major purpose is to promote or defeat a ballot question.

Minnesota statutes do not define "major purpose" or "purpose" and the Board has not undertaken to clarify the definition in advisory opinions. In Advisory Opinion 405 the Board did, however, conclude that under the Chapter 10A definition, an association has a single major purpose and that its other purposes will be subordinate to that major purpose. That conclusion will be applied in this matter as well.

As was the case in Advisory Opinion 405, an association's major purpose is usually examined either upon its formation or when it first engages in activities that might come under the purview of Chapter 10A. An examination of MFC from that point of view leads to the conclusion that at least prior to 2011, the major purpose of MFC was broader than to promote a Minnesota ballot question.

MFC was first incorporated in 1983 as the Berean League of Minnesota – A Coalition of Concerned Christians. By 1997, the Berean League had evolved into two corporations. One, Minnesota Family Institute, was a nonprofit charitable organization under Internal Revenue Code section 501(c)(3) and the other, Minnesota Family Council, was a 501(c)(4) nonprofit social welfare organization. The two corporations remain affiliated and have retained their 1997 names.²

According to MFC's most recent corporate articles, its purpose is as follows:

² Information obtained from the official records of the Office of the Minnesota Secretary of State.

To promote Judeo-Christian principles through education, research, media and advocacy of specific public policies that strengthen the social welfare of families and individuals.

Although the purpose of MFC has been stated differently over the years, the current statement sufficiently captures the association's own assessment of its purpose for this Board analysis. This statement of purpose, however, is too vague to identify what the association actually *does* and to determine whether its activities are subject to Minnesota's disclosure laws.

MFC has been an active advocate on various social issues since its beginning as the Berean League. In the early 1990's the association's efforts were directed against the spread of what it considered to be pornography. In the mid-1990's, it led efforts to pass legislation that defined marriage in Minnesota as being limited to the union of one man and one woman. That legislation passed and became law in 1996.

In the early 2000's, MFC initiated a campaign to place on the ballot a constitutional amendment that would define marriage as being limited to the union of one man and one woman. During the following years, much of the association's effort was directed toward this effort and toward efforts to resist legislative initiatives that MFC believed were contrary to promoting its mission. More recently, MFC renewed its efforts to get a constitutional amendment defining marriage on the ballot . On May 21, 2011, they were successful in these efforts.³

MFC's president, Tom Prichard, elaborated on MFC's purpose in 2010, saying:

The Council's overarching mission is to support, lobby for, and preserve laws and policies that strengthen families because, as it says in our Statement of Principles, "[w]e believe that the family is the fundamental institution in a civil society, and government should promote and protect its formation and well being (sic)."

The Council's mission and one of its primary goals is to support, lobby for, and preserve laws defining marriage as the union of one man and one woman.

The Council's mission and one of its goals is to support, lobby for, and preserve laws and policies supporting the raising of children by a married mother and father; this would include, for example, laws defining marriage as the union of one man and one woman and laws preferring adoption by a married mother and father.

The Council's mission and one of its goals is to oppose laws and policies that promote acceptance of homosexual behavior or same-sex relationships in the public school system.

The Council's mission also includes additional goals and issues, such as protecting the sanctity of human life from conception to natural death, affirming religious freedom, supporting religious expression in the public arena, affirming the limited role of government, and creating an informed and politically active citizenry through the state.⁴

³ Interview with MFC CEO John Helmberger , available at <http://christianityinachangingculture.blogspot.com/2012/05/ccm-may-9-john-helmberger-mn-family.html>, last visited May 25, 2012.

⁴ Affidavit of Thomas W. Prichard filed in the Hennepin County District Court in the matter of *Benson v. Alverson*, a suit seeking to overturn Minnesota's statute limiting marriage to the union of one man and one woman. Court file

In view of MFC's emphasis on opposing gay marriage, it may appear that MFC's major purpose is, and for many years has been, to promote an anti-gay-marriage ballot question in Minnesota. However, an examination of Minnesota statutes explains why the majority of MFC activity is classified under Chapter 10A as lobbying, and not as an effort to promote a ballot question.

The political committee definition, as narrowed for the purposes of these findings states:

A political committee is an association whose major purpose is to promote or defeat a ballot question.

The definition is further limited, however, by Minnesota Statutes section 10A.01, subdivision 7, which defines ballot question.

Prior to 2007, the definition of ballot question included the following sentence:

"Promoting or defeating a ballot question" includes activities related to qualifying the question for placement on the ballot.

In 2006, the Board conducted two enforcement actions that involved the above definition. In each matter, an association engaged in communications with legislators to influence the placement of a constitutional amendment on the ballot. The associations complied with the lobbyist and principal reporting statutes, but did not register and report through political committees or funds. Based on the above definition, the Board concluded that communications with legislators to influence whether a question would be placed on the ballot constituted "activities related to qualifying the question for placement on the ballot." In addition to their lobbyist registrations, the Board required the subject associations to register political committees or funds and to report their legislative advocacy activities as part of the campaign finance disclosure program, which included itemized disclosure of donors.

Subsequent to the Board's 2006 actions, the legislature considered the Board's interpretation of the statute. This resulted in an amendment to Chapter 10A in 2008. After the amendment, the sentence relied on by the Board in its 2006 decisions to require political committee or fund registrations was modified by adding an exclusion for lobbying activities. After the amendment, the sentence read:

"Promoting or defeating a ballot question" includes activities, other than lobbying activities, related to qualifying the question for placement on the ballot.

Based on the clear language of the new definition and on its legislative history, the Board has concluded that activities to influence legislators in their decision regarding placing a question on the ballot must be reported through the lobbyist disclosure program, but do not constitute activities to promote or defeat a ballot question that would trigger a political committee or fund registration requirement.

Even if the Board was to conclude that MFC's major purpose is to define marriage as being limited to the union of one man and one woman, that conclusion would not be a sufficient basis on which to find that MFC is a political committee. MFC's efforts over the years have included

extensive lobbying to enact legislation that forwards its mission or to defeat legislation that it opposes. MFC also engages in public outreach on issues. None of these activities are included in the scope of actions that would make an association a political committee. Even its work in 2010 to convince the legislature to place the marriage definition ballot question on the ballot falls under the lobbying program and is excluded from activities that might trigger a political committee registration requirement.

Thus, based on the activities in which it has engaged over its existence, and in particular prior to the placement of the marriage definition ballot question on the ballot in May of 2011, the Board concludes that the major purpose of MFC is something other than to promote or defeat the marriage definition ballot question.

An Association Changing its Major Purpose

Having concluded that the major purpose of MFC when viewed over its entire existence is broader than promoting the marriage definition ballot question, the Board considers the more narrow question: Can an association, through its activities over a time period that is a subset of its total time in existence, change its major purpose and, thus, become a political committee during that period?

This question requires the Board to consider in more detail the definition of an association's "purpose" and the distinction between its purpose and the activities in which it engages to achieve that purpose.

Assuming for the purpose of this analysis that during 2011 and 2012 most of MFC's activities are to promote the ballot question, the question is whether during those years, MFC was and is a political committee.

In its response to the Board's request for legal analysis, MFC refers to the *Merriam Webster's Collegiate Dictionary* definition of "purpose" as "something set up as an object or end to be attained." Given that definition, one might conclude that during 2011 and 2012 MFC's purpose was and is, indeed, passage of the marriage definition ballot question, which is the objective or end that the association wants to attain.

However, the Board concludes that the meaning of "purpose" as it is used in the political committee definition is better illuminated by the definition found in the Oxford English dictionary, which defines purpose as "the reason for which something is done or made, or for which something exists."⁵

The definition of political committee is based on the purpose of the association; that is, the reason the association exists. Applying this definition, the purpose of an association is more synonymous with its mission than with some particular end result that it might achieve toward that broader mission. MFC's mission is well-stated by Mr. Prichard in his affidavit quoted above. MFC's activities have been consistent with that mission. During its existence, MFC has undertaken a variety of activities, including its current intensive efforts to ensure passage of the marriage definition ballot question. The Board concludes that MFC's 2011 and 2012 efforts to pass the ballot question are in furtherance of its purpose but do not narrow that purpose from its more broadly stated mission. Thus, MFC has not become a political committee as a result of these activities.

⁵ The New Shorter Oxford English Dictionary, 1993. See also, The Oxford English Dictionary, Second Ed., 1989.

The Board recognizes that CCM cited the U. S. Supreme Court opinion in *FEC v. Massachusetts Citizens for Life*, 479 U.S 238 (1986) (*MCFL*), for its suggestion that an association's spending on independent expenditures could become so extensive that the purpose of the organization could be regarded as campaign activity, thus making the association a political committee. The Board does not find reference to this opinion persuasive for several reasons. First, the Court's statement was addressing a hypothetical situation not before the Court. As a result, the Court did not provide any guidance or analysis as to how the concept would be applied in a real situation. Second, the statement relates to an association becoming a political committee based on making independent expenditures, not based on ballot question expenditures, as is the case with MFC. Thus, it has, at best, limited potential application to the present matter. Finally, Board staff was unable to find any example of a court in any jurisdiction subsequently applying the principle that a non-major-purpose association might change into a political committee or providing further guidance on how it might be applied. Additionally, CCM provided no legal authority on the question beyond the *MCFL* opinion itself.

While the Board is not saying in these findings that an association may never change its major purpose, it is saying that MFC has not done so based on its mission over its entire existence. If the Board is to evaluate an association's major purpose over a shorter period of time than its entire existence, that direction should come from the legislature.

Finding Concerning Probable Cause

Based on the record in this matter, the Board makes the following finding:

There is no probable cause to find that the major purpose of Minnesota Family Council is to promote the Minnesota marriage definition ballot question. Thus, there is no probable cause to find that Minnesota Family Council is a political committee under Minnesota Statutes Chapter 10A

Order

Based on the above finding, the Board issues the following order:

1. The investigation of this matter is concluded.
2. The complaint is dismissed.
3. The record in this matter is hereby entered into the public record in accordance with Minnesota Statutes section 10A.02, subdivision 11.

Dated: June 5, 2012

/s/ Greg McCullough
Greg McCullough, Chair
Campaign Finance and Public Disclosure Board

Based on the above finding, the Board issues the following order:

1. The investigation of this matter is concluded.
2. The complaint is dismissed.
3. The record in this matter is hereby entered into the public record in accordance with Minnesota Statutes section 10A.02, subdivision 11.

Dated: June 5, 2012

Greg McCullough, Chair
Campaign Finance and Public Disclosure Board

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

**Findings and Order in the Matter of a Contribution to The Stonewall DFL Committee
from the Mary Doran for Schools Committee**

Summary of the Facts

Pursuant to Minnesota Statutes section 10A.27, subdivision 13, candidates, political party units, and political committees registered with the Campaign Finance and Public Disclosure Board (the Board) may not accept a contribution in excess of \$100 from an association that is not registered with the Board unless the contribution is accompanied by financial disclosure of the donating association's receipts and expenditures in the form specified by statute. Acceptance of a contribution in excess of \$100 without the required disclosure may result in a civil penalty of up to four times the amount of the contribution over \$100.

An unregistered association that makes a contribution of more than \$100 without the required disclosure is in violation of Minnesota Statutes section 10A.27, subdivision 13(b). Failure to provide the appropriate disclosure with a contribution of more than \$100 subjects the donor to a civil penalty of up to \$1,000.

In the 2011 year-end Report of Receipts and Expenditures filed with the Board, The Stonewall DFL Committee disclosed receipt of a contribution on June 1, 2011, in the amount of \$200 from the Mary Doran for Schools Committee. The Mary Doran for Schools Committee is registered with Ramsey County as the campaign committee of a St. Paul School District candidate. However, the Doran committee is not registered with the Board. Therefore, the Doran committee is an unregistered association that is required to provide the appropriate disclosure with any contribution in excess of \$100 to an association registered with the Board. No financial disclosure was provided with the \$200 contribution to The Stonewall DFL Committee. The contribution was not returned within sixty days, and is therefore considered accepted under the provisions of Minnesota Statutes section 10A.15, subdivision 3.

In response to a Board inquiry, Andrew Hauer, treasurer of The Stonewall DFL Committee, states, "I accept the fact that The Stonewall DFL did violate [the statute] by accepting a \$200.00 payment for the resale of two chairs of our purchase of ten chairs for the Minnesota State DFL Humphrey Day Annual Dinner by the Mary Doran for Schools Campaign...on June 1, 2011. The Mary Doran for Schools did file...with Ramsey County on January 4, 2011..."

On April 17, 2012, the Board received a response from Mary Doran. Ms. Doran acknowledged purchasing two tickets to the Humphrey Day Annual Dinner from The Stonewall DFL Committee.

This matter was considered by the Board in executive session on June 5, 2012. The Board's decision is based on the correspondence received from Andrew Hauer and Mary Doran and on Board records.

Based on the information outlined in the above Summary of the Facts and Relevant Statutes, the Board makes the following:

Findings Concerning Probable Cause

1. There is probable cause to believe that The Stonewall DFL Committee violated Minnesota Statutes section 10A.27, subdivision 13, when it accepted a contribution in excess of \$100 from an unregistered association without receiving the appropriate disclosure with the contribution.
2. There is probable cause to believe that Mary Doran for Schools Committee violated Minnesota Statutes section 10A.27, subdivision 13 (b), when it made a contribution in excess of \$100 without providing the required disclosure.
3. There is no probable cause to believe that the violations by The Stonewall DFL Committee or the Mary Doran for Schools Committee were intentional, or were done with the intent to circumvent the provisions of Chapter 10A.

Based on the above Findings Concerning Probable Cause, the Board issues the following:

ORDER

1. The Stonewall DFL Committee is directed to refund \$100 to the Mary Doran for Schools Committee and forward to the Board a copy of the check used to return the excess contribution within thirty days of receipt of this order.
2. The Stonewall DFL Committee is directed to pay a civil penalty of \$100, which is one times the amount that the contribution exceeded the limit from unregistered associations without the required disclosure. Payment should be made to the Board within thirty days of receipt of this order by check or money order made payable to the State of Minnesota.
3. The Mary Doran for Schools Committee is directed to pay a civil penalty of \$100, which is one times the amount that the contribution exceeded the limit from unregistered associations without the required disclosure. Payment should be made to the Board within thirty days of receipt of this order by check or money order made payable to the State of Minnesota.
4. If The Stonewall DFL Committee or the Mary Doran for Schools Committee does not comply with the provisions of this order, the Board's Executive Director may request that the Attorney General bring an action for the remedies available under Minnesota Statutes section 10A.34.
5. The Board investigation of this matter is hereby made a part of the public records of the Board pursuant to Minnesota Statutes section 10A.02, subdivision 11, and upon payment of the civil penalties imposed herein, this matter is concluded.

Dated: June 5, 2012

Greg McCullough, Chair
Campaign Finance and Public Disclosure Board

Relevant Statutes

Minn. Stat. § 10A.27, subd. 13. Unregistered association limit; statement; penalty. (a) The treasurer of a political committee, political fund, principal campaign committee, or party unit must not accept a contribution of more than \$100 from an association not registered under this chapter unless the contribution is accompanied by a written statement that meets the disclosure and reporting period requirements imposed by section 10A.20. This statement must be certified as true and correct by an officer of the contributing association. The committee, fund, or party unit that accepts the contribution must include a copy of the statement with the report that discloses the contribution to the board. This subdivision does not apply when a national political party contributes money to its affiliate in this state.

(b) An unregistered association may provide the written statement required by this subdivision to no more than three committees, funds, or party units in a calendar year. Each statement must cover at least the 30 days immediately preceding and including the date on which the contribution was made. An unregistered association or an officer of it is subject to a civil penalty imposed by the board of up to \$1,000, if the association or its officer:

- (1) fails to provide a written statement as required by this subdivision; or
- (2) fails to register after giving the written statement required by this subdivision to more than three committees, funds, or party units in a calendar year.

(c) The treasurer of a political committee, political fund, principal campaign committee, or party unit who accepts a contribution in excess of \$100 from an unregistered association without the required written disclosure statement is subject to a civil penalty up to four times the amount in excess of \$100.