

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

.....
**November 6, 2019
St Croix Room
Centennial Office Building**
.....

MINUTES

The meeting was called to order by Chair Leppik.

Members present: Flynn, Haugen, Leppik, Moilanen, Swanson

Members absent: Rosen

Others present: Sigurdson, Engelhardt, Olson, staff; Hartshorn, counsel

MINUTES

A. September 4, 2019

B. October 2, 2019

After discussion, the following motion was made:

Member Flynn's motion:	To approve the September 4, 2019, and October 2, 2019, minutes as drafted.
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Vote on motion:	Unanimously passed.
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CHAIR'S REPORT

A. 2019 Meeting schedule

The next Board meeting is scheduled for 10:30 a.m. on Wednesday, December 4, 2019.

B. 2020 Meeting schedule

Members reviewed the tentative meeting schedule for 2020. Staff was directed to poll members for an alternative meeting date for the January 2020 meeting.

EXECUTIVE DIRECTOR REPORT

Mr. Sigurdson presented members with a memorandum regarding this topic that is attached to and made a part of these minutes. Mr. Sigurdson told members that staff had completed the Fiscal Year 2019 Annual Report. Mr. Sigurdson said that this report summarized the Board's activities during the

fiscal year and was required by statute. Mr. Sigurdson stated that the Board would need to take formal action to approve the issuance of the report.

After discussion, the following motion was made:

Mr. Moilanen's motion:	To approve the issuance of the Fiscal Year 2019 Annual Report as amended by the executive director to include the fact that the Board made legislative recommendations in the economic interest and campaign finance programs in 2019.
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Vote on motion:	Unanimously passed.
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Mr. Sigurdson then told members that Member Leppik's term as chair and Member Moilanen's term as vice-chair would end on January 1, 2020. Mr. Sigurdson said that Chair Leppik therefore needed to form a nomination committee consisting of herself and one other Board member of a different political party. Chair Leppik reported that Member Flynn had agreed to serve on the nomination committee and that the committee would report its recommendations to the full Board in December.

Mr. Sigurdson finally stated that the terms of appointment for Member Leppik and Member Swanson would end in January 2020. Mr. Sigurdson said that both members would continue to serve, however, until either new appointees were named or the July 1, 2020, deadline for holdover appointments occurred. Mr. Sigurdson said that both positions had been posted on the open appointments website but that he did not know when appointments would occur.

ENFORCEMENT REPORT

A. Consent Item

1. Administrative termination of lobbyist Michael Mahoney (457)

Mr. Olson told members that Essentia Health had asked that Mr. Mahoney's registration be terminated due to Mr. Mahoney's death on August 22, 2019. Mr. Olson said that Board staff had administratively terminated Mr. Mahoney's lobbyist registration as of May 31, 2019, which was the end of the last reporting period. Mr. Olson said that Mr. Mahoney had no lobbyist disbursements during the current reporting period.

After discussion, the following motion was made:

Member Flynn's motion:	To confirm the administrative termination of lobbyist Michael Mahoney.
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Vote on motion:	Unanimously passed.
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B. Discussion Item

1. Balance adjustment request – Aitkin County DFL (20273)

Mr. Olson told members that starting in 2016, the Aitkin County DFL’s reported ending cash balance was \$803.94 higher than the balance in its bank account. The party unit had held a fundraising event in 2016 and its current treasurer suspected that some of the nonitemized contributions received at that event were entered incorrectly into the Campaign Finance Reporter (CFR) software. Mr. Olson said that the treasurer at the time those contributions were received was deceased, that neither the party unit nor its bank had made photocopies of the checks received, and that the current treasurer had been unable to obtain any other records that would allow him to ascertain what was causing the balance discrepancy. Mr. Olson said that the party unit was asking that its 2016 ending cash balance be adjusted downward by \$803.94 from \$4,014.99 to \$3,211.05. The party unit’s reported ending cash balances for 2017 and 2018 each matched the party unit’s bank statements aside from the \$803.94 discrepancy.

Mr. Olson said that the Aitkin County DFL had been granted two balance adjustments before the death of its former treasurer. The Board had granted a downward balance adjustment of \$540.89 to the party unit’s 2014 ending cash balance in August 2016 and the executive director had granted a downward balance adjustment of \$100 to the party unit’s 2015 ending cash balance in February 2016.

After discussion, the following motion was made:

Member Swanson’s motion: To grant Aitkin County DFL’s balance adjustment request.

Vote on motion: Unanimously passed.

C. Waiver requests

<u>Name of Candidate or Committee</u>	<u>Late Fee & 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>
Scott Moen (4082)	\$1,425 LFFs (\$475 x 3)	1st 2019 lobbyist report	Lobbyist was dealing with father's death which occurred shortly before reports were due. Lobbyist represents three principals.	Member Swanson	To waive the late filing fees.	Unanimously passed.
Dan Schoen (Senate)	\$100 LFF \$1,000 CP	2017 EIS	Public official didn't know he needed to file an EIS after leaving office and did not monitor personal email address he had provided. Public official had provided mailing address which was address of his campaign committee's treasurer. Letters regarding EIS were mailed to that address on 12/29/2017 and 3/14/2018, but treasurer no longer lived there. Board staff knew that public official had listed a different mailing address for himself on his campaign	Member Leppik	To reduce the late filing fee to \$25 and to reduce the civil penalty to \$250.	Unanimously passed.

		committee's registration, so letters regarding EIS were mailed to that address, which is public official's home, on 2/5/2018 and 6/26/2018. Because public official failed to respond to multiple attempts to contact him, the Board referred the matter to the attorney general on 12/5/2018. EIS was filed 5/17/2019.			
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D. Informational Items

1. Forwarded anonymous contribution

Wazlawik (Ami) Volunteer Committee, \$25

2. Payment of civil penalty for exceeding individual contribution limit

Cordelia Pierson for State House 60B, \$50
 Freedom Club State PAC, \$50

3. Payment of civil penalty for contribution from unregistered association without required disclosure

DFL Senate Caucus, \$50

4. Payment of late filing fee for lobbyist disbursement report due 1/15/2019

Joseph Lally, \$50

5. Payment of late filing fee for lobbyist disbursement report due 6/17/2019

Sarah Berns, \$50
 Steven (J.R.) Burke, \$25
 Benjamin Dorr, \$150
 William Huepenbecker, \$25
 John Kearney, \$25

6. Partial payment of civil penalty for spending limit violation

Doug Wardlow for Attorney General, \$100

7. Partial payment of civil penalty for 2016 year-end report of receipts and expenditures

Roxana Bruins for Senate, \$889.17

REVIEW OF LEGISLATIVE RECOMMENDATIONS

Mr. Sigurdson presented members with a memorandum regarding this issue that is attached to and made a part of these minutes. Mr. Sigurdson told members about two things that had occurred since the meeting materials were distributed. First, Kim Pettman, who had prompted the citizen lobbyist proposal through her statements to the Board, had expressed her support for that portion of the lobbyist proposal via email (a copy of the email was provided to Board members). Second, the Minnesota Governmental Relations Council (MGRC) had said that it was still soliciting input from its members and would not present its response until the December meeting.

Mr. Sigurdson then reviewed the history of the legislative proposals, including the new proposal to increase the amount of the political contribution refund (PCR) from \$50 to \$200 per person (\$100 to \$400 per married couple). Mr. Sigurdson said that the Board could ask the revisor to jacket the proposals as a bill at any time, but that the proposals would need authors to move forward. Mr. Sigurdson reiterated that to be successful, the proposals would need bipartisan support along with support, or at least no opposition, from the governor. Mr. Sigurdson said that he, Chair Leppik, and Vice-Chair Moilanen had met with the governor's staff to discuss the proposals but had not yet learned whether the governor supported those proposals. Mr. Sigurdson also noted that putting all the proposals into one bill might make that legislation too long for a short session. Mr. Sigurdson asked members to think about whether any of the proposals should be prioritized over others.

Mr. Sigurdson then reviewed the changes that staff had made to the lobbyist recommendations. Mr. Sigurdson said that these changes were highlighted in yellow on the language document. Some of these changes had been prompted by comments from Member Swanson, specifically the addition of statutory definitions of the terms "official action of metropolitan governmental units" and "legislative action." Mr. Sigurdson said that these changes would alleviate the concerns raised by lobbyist Marie Ellis at the October meeting regarding lobbying done before the introduction of any bills on a topic. Mr. Sigurdson also stated that the proposed legislation would repeal a rule provision stating that administration action does not begin until publication of the request for comments. Mr. Sigurdson said that this repeal would ensure that lobbying done before the formal start of a rulemaking would be reportable.

Members then discussed the proposals with most of the discussion focused on the proposal to increase the amount of the PCR. Mr. Sigurdson told members that staff would continue to work on the language for the proposals and would bring the matter back for discussion at the December meeting. Mr. Sigurdson stated that the Board should decide at the December meeting, or at the January meeting at the very latest, how it wanted to proceed. Members voiced no objections to Mr. Sigurdson's intention to contact the Department of Revenue, which administers the PCR program, to make the department aware of the potential PCR proposal.

LEGAL COUNSEL'S REPORT

Mr. Hartshorn presented members with a legal report that is attached to and made a part of these minutes. Mr. Hartshorn had nothing to add to the legal report.

OTHER BUSINESS

There was no other business to report.

EXECUTIVE SESSION

The chair recessed the regular session of the meeting and called to order the executive session. Upon recess of the executive session, the chair had the following to report into regular session:

Findings, conclusions, and order in the matter of People PAC (MN), The People PAC, and 15 Principal Campaign Committees

Findings, conclusions, and order in the matter of the Faith in Minnesota Fund

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

Respectfully submitted,



Jeff Sigurdson
Executive Director

Attachments:

Executive director report

Fiscal Year 2019 Annual Report

Memorandum regarding legislative recommendations

Legal report

Findings, conclusions, and order in the matter of People PAC (MN), The People PAC, and 15 Principal Campaign Committees

Findings, conclusions, and order in the matter of the Faith in Minnesota Fund



MINNESOTA

CAMPAIGN FINANCE BOARD

Date: October 29, 2019

To: Board Members

From: Jeff Sigurdson, Executive Director

Telephone: 651-539-1189

Re: Executive Director's Report

Fiscal Year 2019 Annual Report of Board Operations

Staff has completed for Board approval a report of the Board's operations during fiscal year 2019. This report is required by Minnesota Statutes section 10A.02, subdivision 8. The report is provided to the governor and legislative leadership and is made available to the public through the Board's website. The report is required to contain the fiscal operations of the Board, including the names, duties, and salaries of staff. The report also reviews the major programs administered by the Board. A copy of the report is attached for review. The Board will need to take a formal action to authorize the issuance of the report.

Nomination Committee for Board Officers in 2020

Ms. Leppik's term as Chair, and Mr. Moilanen's term as Vice-Chair end January 1st. Each year the outgoing chair forms a nomination committee consisting of the chair and one other Board member of a different political party. The nomination committee creates a slate of candidates for the positions of chair and vice chair; and then contacts the nominated members to verify that they would be willing to serve in the positions. The nomination committee reports back to the Board at the December meeting, and the full Board then votes on the nominations.

Board Positions

The term of appointment for Chair Leppik and Member Swanson ends in January of 2020. Chair Leppik's position requires a former Republican legislator, Member Swanson's position is unrestricted. Starting November 1, 2019, the Secretary of State website will accept applications for the two positions.

Attachment

Annual Report of Board Operations for Fiscal Year 2019

Report of the Minnesota Campaign Finance and Public Disclosure Board



Covering Fiscal Year 2019

July 1, 2018 - June 30, 2019

Issued: November 6, 2019

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This document is available in alternative formats to individuals with disabilities by calling 651-539-1180, 800-657-3889, or through the Minnesota Relay Service at 800-627-3529.



MINNESOTA CAMPAIGN FINANCE BOARD

DATE: November 6, 2019

TO: The Honorable Tim Walz, Governor
The Honorable, Paul Gazelka, Senate Majority Leader
The Honorable Melissa Hortman, Speaker of the House
The Honorable Thomas Bakk, Senate Minority Leader
The Honorable Kurt Daudt, House Minority Leader
The Honorable Mary Kiffmeyer, Chair State Government Finance and Policy and Elections
The Honorable Raymond Dehn, Chair Subcommittee on Elections

FROM: Margaret Leppik, Chair
Campaign Finance and Public Disclosure Board

SUBJECT: Report of Board activities during fiscal year 2019.

Pursuant to Minnesota Statutes section 10A.02, subdivision 8 (a), the Campaign Finance and Public Disclosure Board submits this report of the Board's activities during fiscal year 2019.

The Board, consistent with its objectives and administrative procedures, provided guidance to the thousands of individuals and associations whose disclosure of certain political, lobbying and economic interest activities is regulated by the Campaign Finance and Public Disclosure Act, Minnesota Statutes Chapter 10A.

Included in this report is information about campaign finance disclosure, the filing of lobbyist disbursement and lobbyist principal reports, and the filing of statements of economic interest by public officials.

Throughout its activities the Board strives to accomplish its mission; which is to promote public confidence in state government decision-making through development, administration, and enforcement of disclosure and public financing programs and ensure public access to and understanding of information filed with the Board.

We recognize the importance the State of Minnesota places on public disclosure laws and the regulation of campaign finance activity and appreciate the trust placed in the Board and its staff by the Legislature and the Office of the Governor.

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Executive Summary

The Campaign Finance and Public Disclosure Board is charged with the administration of the Campaign Finance and Public Disclosure Act, Chapter 10A of Minnesota Statutes. There are three major programs governed by Chapter 10A: 1) the regulation of campaign finance contributions and expenditures for state-level candidates, party units, and political committees; 2) the registration and reporting of lobbyists and the principals the lobbyists represent; and 3) the collection and disclosure of economic interest statements required of public officials. A brief overview of each program is provided here, with reference to the page in the annual report where detailed information about that program is located. Additionally, beginning on page 4, the annual report provides information on Board members who served during the fiscal year, and starting on page 22 the Board's staff, budget, and other financial activity during the fiscal year is reviewed.

Fiscal year 2019 included the majority of the activity related to the 2018 state election. Board staff focused on helping clients meet the compliance and reporting obligations of Chapter 10A by conducting class room training and by developing user guides and videos that were available on the Board's website. The Board also finished the deployment of a new, enhanced website during the fiscal year. The website provides powerful tools that allow the public to directly access and download disclosure information reported to the Board.

On the filing date for the 2018 year-end report of campaign receipts and expenditures there were 665 state-level candidates, 317 political party units, and 418 political committees and funds registered with the Board. The Board issued public subsidy payments totaling \$2,249,376 to 245 qualified candidates during the 2018 election. Additional information regarding the campaign finance program begins on page 11.

About 1,450 lobbyists were registered with the Board at any one time throughout the fiscal year. The lobbyists represented 1,460 principals. The principals reported total lobbying expenditures of \$78,757,615 in calendar year 2018. Additional information on the lobbyist program is found on page 16.

The economic interest disclosure program requires public officials in approximately 2,900 positions to file economic interest statements with the Board. Depending on the position, these officials file their statements when they initially file their affidavits of candidacy for state-level office or when they take office. Additionally, public officials must review and update their statements in January of each year. Details on the economic interest disclosure program start on page 19.

During the fiscal year, the Board held thirteen scheduled meetings. At these meetings, the Board issued three advisory opinions, reviewed and approved twenty four conciliation agreements resolving violations of Chapter 10A, issued seven findings to conclude Board investigations, and dismissed eight complaints that alleged violations of Chapter 10A at either the prima facie or probable cause determination stage.

Introduction to the Board

The Campaign Finance and Public Disclosure Board was established by the state legislature in 1974 through enactment of Chapter 10A of the Minnesota Statutes. Throughout its history the Board has enforced the provisions of Chapter 10A, promulgated and enforced Minnesota Rules 4501 through 4525, and issued advisory opinions to guide clients in meeting the chapter's requirements.

New authority was given to the Board in 2013, which extended the Board's jurisdiction to three sections of Chapter 211B. Those sections are (1) 211B.04, which governs the "prepared and paid for" form of disclaimer, (2) 211B.12, which specifies the purposes for which campaign money legally may be used, and (3) 211B.15, which governs corporate contributions. The new authority is limited to those individuals and associations already subject to the Board's jurisdiction under Chapter 10A. The Board's new jurisdiction means that it may conduct investigations of possible violations of these statutes and may also issue advisory opinions on these provisions.

Mission Statement

To promote public confidence in state government decision-making through development, administration, and enforcement of disclosure and public financing programs which will ensure public access to and understanding of information filed with the Board.

Functions

Core functions of the Board include administration and management of the following:

- registration and public disclosure by state legislative, constitutional office, and judicial office candidates; political party units; political committees; and political funds;
- state public subsidy program that provides public funding to qualified state candidates and the state committees of political parties;
- registration and public disclosure by lobbyists and principals attempting to influence state legislative

action, administrative action, and the official action of metropolitan governmental units; and

- disclosure of economic interest, conflicts of interest, and representation of a client for a fee under certain circumstances for designated state and metropolitan governmental unit officials.

Goals and Objectives

- Create better compliance with the Campaign Finance and Public Disclosure Act by providing easy access to information and training.
- Provide fair and consistent enforcement of the Act.
- Help citizens become better informed about public issues related to the Act.

Board and Staff

The Board consists of six members, none of who may be an active lobbyist, a state elected official, or an active candidate for state office. The Board is not non-partisan; rather it is multi-partisan, with no more than three of the members of the Board supporting the same political party. The Board was able to maintain nine full-time positions during the fiscal year. Additional information about Board staff is found beginning on page 22.

Board Member Qualifications

The Board consists of six citizen members who are responsible for the administration of the Campaign Finance and Public Disclosure Act. Members of the Board are appointed by the Governor to staggered four-year terms. Their appointments must be confirmed by a three-fifths vote of the members of each body of the legislature. Two members must be former members of the legislature who support different political parties; two members must be persons who have not been public officials, held any political party office other than precinct delegate, or been elected to public office for which party designation is required by statute in the three years preceding the date of their appointment; and the other two members must support different political parties.

Board Members

July 1, 2018, through June 30, 2019



Margaret Leppik – Board Chair, 2019

Margaret (Peggy) Leppik was appointed to the Board in May of 2015 by Governor Dayton for a term ending in January of 2016. Governor Dayton re-appointed Ms. Leppik in January 2016 for a term ending in January of 2020. Because the Senate was not able to schedule a vote to confirm her appointment before adjourning sine die, her appointment ended in May of 2016. She was reappointed by Governor Dayton in July of 2016 to the same position, and was appointed again in June of 2017 for a term that expires in January of 2020. She fills a Board position requiring a former Republican legislator. Ms. Leppik served as a state representative from 1991-2003 where she chaired the Higher Education Finance Committee. She served on the Metropolitan Council from 2003-2011 where she was vice chair for three years and chaired the Environmental Committee. A graduate of Smith College, Ms. Leppik is an active volunteer for numerous nonprofit organizations.



Carol Flynn - Board Chair, 2018

Carol Flynn was appointed to the Board in February of 2015 by Governor Dayton for a term ending in January of 2019. In July of 2019, Governor Walz reappointed Ms. Flynn to a term ending in January of 2023. She fills a Board position requiring a former DFL legislator. Ms. Flynn served as a state senator from 1990-2000 where she was Majority Whip and chaired the Judiciary and Transportation Committees. Ms. Flynn worked and studied at the University of Minnesota. She served on the Metropolitan Waste Control Commission and Metropolitan Council where she chaired the Systems Committee. She currently volunteers on several union retiree organizations.



Robert Moilanen

Robert Moilanen was initially appointed by Governor Dayton to the Board in October of 2016. Mr. Moilanen was reappointed in June of 2017 for a term ending in January of 2019. In July of 2019, Governor Walz reappointed Mr. Moilanen to a term ending in January of 2023. He occupies a Board position for a member who has not been a public official, held any political party office other than precinct delegate, or been elected to public office for which party designation is required by statute in the three years preceding the member's appointment. Mr. Moilanen is a graduate of Gustavus Adolphus College and George Washington University Law School. Mr. Moilanen spent the early part of his legal career working in the public sector. Subsequently, he spent nearly thirty years in the private practice of law with the majority of that time spent as a partner at the law firm of Popham, Haik, Schnobrich, Kaufman and Doty. His private practice career primarily focused on securities fraud. Mr. Moilanen concluded his professional career working as the Director of Securities for the State of Minnesota from 2011-2014.



Daniel N. Rosen

Daniel N. Rosen was initially appointed in July of 2014, by Governor Dayton for a term ending in January of 2018. Governor Dayton re-appointed Mr. Rosen in January 2018 for a term ending in January of 2022. He fills a Board position requiring a member who has not been a public official, held any political party office other than precinct delegate, or been elected to public office for which party designation is required by statute in the three years preceding the member's appointment to the Board. A lawyer in Minneapolis, Mr. Rosen is a graduate of the University of Minnesota Law School and the lead Minnesota partner of the Kluger Kaplan law firm, where he practices in the field of business and real estate litigation. Prior to law school Mr. Rosen was as an officer in the United States Navy and served in Operations Desert Shield and Desert Storm.



Stephen Swanson

Stephen D. Swanson was appointed to the Board in July of 2017 by Governor Dayton for a term ending in January of 2020. He occupies an unrestricted Board position and supports the DFL party. Mr. Swanson is a graduate of the University of Cincinnati College of Law, and holds a Master of Laws degree from New York University. Following a career as an attorney with Mid-Minnesota Legal Assistance, Inc. Mr. Swanson served as a Hennepin County District Court Judge from July of 1989 to February of 2007 and as a Senior Judge from January of 2009 to April of 2014. Most recently, he served as a temporary administrative law judge with the Minnesota Office of Administrative Hearings from May 2014 to May 2017. Mr. Swanson has served as an international judge on the Court of Bosnia and Herzegovina, and worked in USAID-sponsored rule of law projects in Afghanistan, Kosovo, and Lebanon. Currently, Mr. Swanson is employed as a part-time housing attorney with the Volunteer Lawyers Network.



Gary Haugen

Gary J. Haugen was appointed to the Board in September of 2017 by Governor Dayton for a term ending in January of 2021. He fills a Board position that has no restrictions on previous political activities. Mr. Haugen is an attorney with Maslon LLP where he has handled complex litigation matters for more than 35 years. A central focus of his practice has been the litigation of product liability, mass tort, insurance-related disputes, and professional liability claims. Mr. Haugen has also been a member of the adjunct faculty at Vanderbilt University Law School and the University of Minnesota Law School, where he currently serves on the Board of Advisors. He is the former chair of the Federal Practice Committee for the U.S. District Court for the District of Minnesota. He is a graduate of St. Olaf College and the University of Minnesota Law School.

Summary of Board Activities

Meetings

The Board holds regular monthly meetings, which are open to the public, and executive session meetings, which are closed to the public.

The Campaign Finance and Public Disclosure Board held thirteen scheduled meetings during the fiscal year. Minutes of Board meetings are published on the Board's website.

Advisory Opinion Procedure

The Board is authorized to issue advisory opinions on the requirements of the Campaign Finance and Public Disclosure Act, Minnesota Statutes Chapter 10A; Minnesota Statutes sections 211B.04, 211B.12, and 211B.15 if the requestor is under the jurisdiction of Chapter 10A; and the Hennepin County Disclosure Law (Minn. Stat. §§ 383B.041 - 383B.058). Individuals or associations may ask for advisory opinions based on real or hypothetical situations to guide their compliance with these laws.

A request for an advisory opinion and the opinion itself are nonpublic data. The Board provides consent to release information forms to individuals requesting opinions as part of the procedures under this law. If the requestor does not consent to the publication of the requestor's identity, the Board generally publishes a public version of the opinion, which does not identify the requestor.

A written advisory opinion issued by the Board is binding on the Board in any subsequent Board proceeding concerning the person making or covered by the request and is a defense in a judicial proceeding that involves the subject matter of the opinion and is brought against the person making or covered by the request unless 1) the Board has amended or revoked the opinion before the initiation of the Board or judicial proceeding, has notified the person making or covered by the request of its action, and has allowed at least 30

days for the person to do anything that might be necessary to comply with the amended or revoked opinion; 2) the request has omitted or misstated material facts; or 3) the person making or covered by the request has not acted in good faith in reliance on the opinion.

Three advisory opinions, Advisory Opinions 448-450, were issued in fiscal year 2019. Summaries of these advisory opinions are provided in the review of the campaign finance program.

Education and Training

To accomplish the goal of educating clients and the interested public on the compliance and reporting requirements of Chapter 10A Board staff conducted the following training during the fiscal year:

- 4 compliance training sessions attended by 65 candidates and treasurers of principal campaign committees, political party units, and political committees and funds; and
- 7 computer lab training classes attended by 49 treasurers who use the Campaign Finance Reporter software.

An ongoing problem in providing compliance training to treasurers is the difficulty in reaching St. Paul from many locations in Minnesota. Board staff schedules training classes in greater Minnesota in state election years, and intends to expand non-election year training in greater Minnesota in fiscal year 2020.

As an effort to provide training available at any time and at any location with web access the Board contracted to develop five online training videos for treasurers. The modules allow viewers to move at their own pace through the topics covered and incorporate quizzes during the training to make the modules more interactive. The Board also maintains videos on specific topics related to using Campaign Finance Reporter. The videos are available on the Board's website. Based on favorable client feedback both of these training tools will be used extensively in the future.

Additionally Board staff participated in numerous panels, presented at many continuing legal education courses, and spoke to interested groups of the public on the requirements of Chapter 10A.

Use of Technology

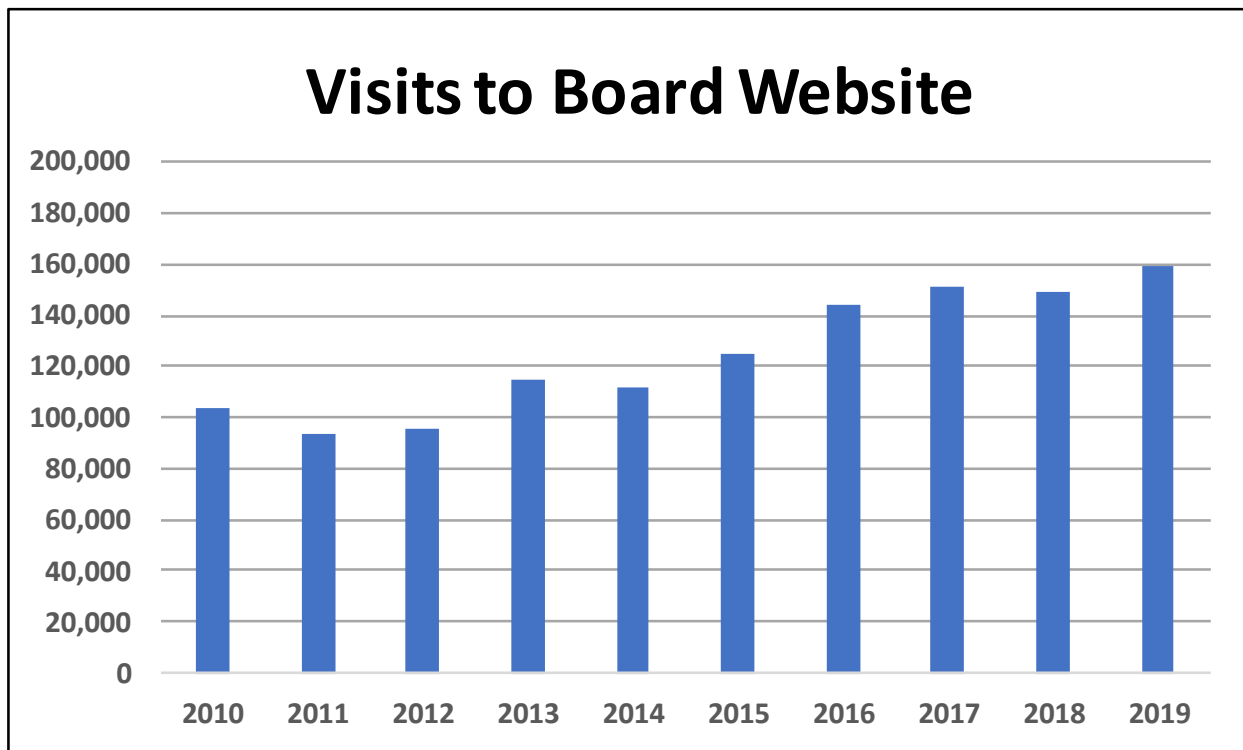
The Board has long recognized the value of receiving disclosure reports in electronic format. Electronic reports may be moved directly into Board databases where the records are analyzed for compliance issues and then exported to the Board's website for faster disclosure to the public. Electronic filing eliminates the cost and errors associated with data entry of paper reports.

To facilitate electronic filing, the Board developed web based applications for filing lobbyist disbursement reports, lobbyist principal reports, and economic interest statements. Use of these web based applications is optional, clients may still file a paper report, but all three applications have participation rates of over 85%, which indicates that clients also prefer electronic filing.

The new Board website offers the following:

- Board meeting notices and minutes;
- Board enforcement actions, including findings and conciliation agreements;
- Advisory opinions;
- Lists of lobbyists and principals, candidate committees, political committees, political funds, party units, and public officials;
- Copies of all campaign finance and lobbyist reports;
- Electronic filing for lobbyists and lobbyist principals;
- Electronic filing of statements of economic interest for public officials;
- All Board publications and forms;
- Searchable databases of campaign finance contributions;
- Searchable database of independent expenditures;
- Campaign Finance Summaries;

- Lobbyist Disbursement Summaries;
- Annual Reports of Lobbyist Principal Expenditures; and
- Training videos on campaign finance compliance and the use of Campaign Finance Reporter.



Program Reviews

The Board administers three major and several minor programs as authorized by Minnesota Statutes Chapter 10A. The major programs are campaign finance, lobbying, and economic interest disclosure. The review of each major program includes a general description of the program, a review of legislation passed during the fiscal year that affects the program, a review of any Board advisory opinions issued during the time period for the program area, and an overview of administrative activity that occurred during the fiscal year.

Campaign Finance Program Overview

The Board administers the provisions of Chapter 10A of the Minnesota Statutes. These laws govern campaign finance for principal campaign committees, political committees, political funds, political party units, and independent expenditure committees and funds.

During calendar year 2018, an election year, these committees and funds filed periodic reports disclosing receipts and expenditures before the primary and general elections, as well as a year-end report. Information on the number of reports filed is found on pages 12 and 13.

Each filed report is reviewed by Board staff for compliance with the disclosure law requirements, including accurate accounting and reporting and adherence to applicable contribution and expenditure limits. Violations of contribution and expenditure limits are resolved through either a conciliation agreement, or in some cases, a Board order. Information on Board investigations and enforcement actions is found on page 15.

As a part of the campaign finance program the Board administers and regulates the distribution of payments for the state's public subsidy program, which provides public funding to qualified state candidates and the state committees of political parties. Payments are made following the state primary election to candidates and monthly to the state committees of political parties. Information on public subsidy payments made during fiscal year 2019 is found on pages 14 and 15.

Legislative Action and Rulemaking

In fiscal year 2019, the Board submitted legislative proposals that would have affected the campaign finance program. Suggested technical changes included simplified reporting for political party units that are registered with both the Board and the Federal Election Commission, and modifying the definition of multicandidate political party expenditures to include web based communications. Policy recommendations included redefining independent expenditures so that communications that use words that are the functional equivalent of express advocacy would be reportable to the Board. The legislature took no action on the recommendations.

Advisory Opinions Issued Related to Campaign Finance Program

The Board issued three advisory opinions in the campaign finance program in fiscal year 2019.

- Advisory Opinion 448 provided that a principal campaign committee is the vehicle for depositing and reporting any loans made to benefit a candidate's campaign. The opinion concluded that a personal loan made to the candidate to allow the candidate to campaign on a full-time basis would be made to benefit the candidate's campaign and therefore would be subject to the applicable reporting requirements and limits in Chapter 10A.
- Advisory Opinion 449 provided that an association's advertising policies for accepting political advertisements were not governed by Chapter 10A. The opinion cautioned, however, that associations should be aware of how their advertising policies could result in prohibited corporate contributions to candidate campaign committees.
- Advisory Opinion 550 provided that a principal campaign committee could pay for certain expenses related to the operation of a legislative caucus that qualified as noncampaign disbursements under Chapter 10A.

Campaign Finance Disclosure Reports Filed

Below are the number of reports of receipts and expenditures filed by candidates, political party units, and political committees and political funds during election year 2018, and the 2018 year-end report filed in January of 2019.

	Paper	Electronic	Total
Candidate Committees	203	1,243	1,446
Political Party Units	78	353	431
Political Committees or Funds	90	229	319

Electronic Filing of Reports

Principal campaign committees, political committees, political funds, and political party units have been using the Campaign Finance Reporter software since 1998. The Board provides the software to registered committees without charge. The maintenance, upgrade, training, and helpdesk support for the software is provided by Board staff. The software provides compliance checks and warnings as records are entered, generates electronic reports for filing that reduce the data entry demands on Board staff, and provides contact management tools for the committees that use the software.

Electronic filing of campaign finance reports became mandatory beginning with the 2012 election cycle. The Board may grant a waiver from the requirement to file electronically if the total financial activity of a committee is less than \$5,000, or if there are technical or other valid reasons why the electronic filing requirement would be an unreasonable burden to the committee.

The Board has developed and distributed a XML schema that is the standard for the electronic filing of campaign finance reports using a third party vendor's software. Thirty-one committees filed electronically using the XML standard. The table below shows the increase in electronic filing from 2006 to 2018.

Reporting Year	Candidate Campaign Committees	Political Committees, Political Funds, and Political Party Units
2018	576	582
2017	499	525
2016	557	548
2015	442	524
2014	516	543
2013	479	526
2012	581	594
2011	327	237
2010	376	174
2009	292	154
2008	278	135
2007	201	114
2006	228	126

Public Subsidy Payments

The Board administers the distribution of payments for the state’s public subsidy program, which provides public funding to qualified state candidates and the state committees of political parties. Payments to qualified candidates during the 2018 state general election were made in fiscal year 2019.

The Board distributed \$2,249,376 in public subsidy payments to 245 candidates who ran for governor, attorney general, secretary of state, state auditor, or the house of representatives in the 2018 state general election.

A report of the public subsidy payments made to each qualified candidate is available on the Board’s website. Total public subsidy payments for the 2018 election by party and office is shown in the following table.

	DFL	RPM
Governor	\$480,333	\$361,259
Attorney General	\$96,066	\$72,252
Secretary of State	\$54,895	\$41,287
State Auditor	\$54,895	\$41,287
House of Representatives	\$645,369	\$401,733
Total	\$1,331,558	\$917,818

Political Contribution Refund Program

State candidates who sign the public subsidy agreement and political parties are allowed to give political contribution refund receipts to individual contributors. In calendar year 2018 the Department of Revenue issued \$1,703,077 in refunds based on contributions to candidates, and another \$1,473,039 in refunds based on contributions to political parties.

Political Party Payments

The state central committees of political parties receive 10% of the tax check-offs to the party account of the State Elections Campaign Fund. Based on monthly certification from the Department of Revenue during fiscal year 2019 the payments to political parties were as follows:

Party	Payment
Democratic Farmer Labor	\$43,338
Republican	\$18,715
Independence	\$2,358
Green	\$1,217
Libertarian	\$964
Legal Marijuana Now	\$1,528
Grassroots-Legalize Cannabis	\$723

Campaign Finance Enforcement Actions

The Board conducts investigations of possible violations of the provisions of Chapter 10A or those sections of 211B under the Board's jurisdiction. An investigation is started in response to a complaint filed with the Board or may be initiated by staff based on information disclosed on documents filed with the Board.

Investigations of many types of violations are typically resolved by conciliation agreement. The conciliation agreement will set the terms under which the violation is to be remedied, provide for remedial measures to correct the offending behavior, and provide for a civil penalty to the committee. Violations not resolved by conciliation agreement are resolved through the issuance of a Board order. If warranted, the Board may also issue an order stating that no violation occurred.

During fiscal year 2019 the Board entered into twenty-four conciliation agreements to resolve violations of Chapter 10A or Chapter 211B. In fiscal year 2019 the Board also issued seven findings to conclude investigations, dismissed three complaints at the probable cause determination stage, dismissed five complaints at the prima facie determination stage, and issued one audit report.

To ensure compliance with disclosure deadlines Chapter 10A provides for late fees applied at the rate of \$50 a day for reports of receipts and expenditures due prior to primary and general elections, and \$25 a day for other reports. Reports that are filed more than 7 days after the Board has sent notice by certified mail of the failure to file a report also incur a \$1,000 civil penalty. Civil penalties and late fees collected by the Board are deposited in the state general fund. A breakdown of late fees and civil penalties collected through enforcement is provided on page 27.

Lobbying Program Overview

The Board administers the provisions of Chapter 10A that govern registration and public disclosure by lobbyists and principals attempting to influence state legislative action, state administrative action, and the official action of metropolitan governmental units.

Lobbyists are required to report disbursements for lobbying purposes to the Campaign Finance and Public Disclosure Board two times each year (January 15 and June 15). On the June 15th report the lobbyist must provide a general description of the subject(s) lobbied on during the previous 12 months.

Individuals or associations that hire lobbyists or spend \$50,000 or more to influence legislative action, administrative action, or the official action of metropolitan governmental units, are principals and are required to file an annual report disclosing total expenditures on these efforts. The report is due March 15th, and covers the prior calendar year.

Legislative Action and Rulemaking

In fiscal year 2019 there were no statutory or rule changes to the lobbying provisions.

Advisory Opinions Issued Related to Lobbyist Program

The Board did not issue any advisory opinions in the lobbying program in fiscal year 2019.

Lobbyist Disbursement Reports

The Board has developed a web-based reporting system for lobbyists. Use of the system is voluntary, but as shown below it is used by most lobbyists as the reporting method of choice. Lobbyist disbursement reports are available for review on the Board website.

Reporting year	Reports filed	Electronically filed
2018	4,201	97%
2017	4,231	95%
2016	4,174	98%
2015	4,076	97%
2014	4,041	96%
2013	3,998	97%
2012	3,823	93%
2011	3,959	94%
2010	3,950	98%
2009	4,028	93%
2008	4,022	92%
2007	3,798	90%

Principal Reporting

Chapter 10A requires principals to file an annual report disclosing expenditures made in Minnesota to influence legislative actions, administrative actions, or official actions by a metropolitan governmental unit. The disclosure is a single number which may be rounded to the nearest \$20,000. Starting in 2012 principals are required to break out the amount spent influencing administrative action of the Minnesota Public Utilities Commission from all other lobbying.

	All Other Lobbying in Minnesota	MN Public Utilities Commission	Total
2018	\$63,727,954	\$15,029,661	\$78,757,615
2017	\$66,029,622	\$9,641,044	\$75,670,666
2016	\$62,140,012	\$6,222,560	\$68,362,572
2015	\$63,947,699	\$5,177,020	\$69,124,719
2014	\$64,517,472	\$5,889,000	\$70,406,472
2013	\$69,185,283	\$5,568,210	\$74,753,493
2012	\$59,060,155	\$2,749,590	\$61,809,745
2011	\$65,241,174		\$65,241,174
2010	\$59,172,799		\$59,172,799

Lobbyist Program Enforcement Actions

In fiscal year 2019 the Board issued one conciliation agreement to resolve a violation of Minnesota Statutes section 10A.273, subdivision 1, paragraph (b), which prohibits lobbyists from making contributions to state candidate committees during a regular session of the legislature.

Economic Interest Statement Program Overview

The Board administers the provisions of Chapter 10A of the Minnesota Statutes that govern disclosure of economic interests by public officials and local officials in metropolitan governmental units. There were over 3,100 public officials who filed with the Board in fiscal year 2019. Local officials use forms developed by the Board, but file with the local governmental unit.

Filing of Statements

Original statements of economic interest must be filed at the time of appointment or, for candidates, when the candidate files for office. All incumbent office holders and appointed officials must annually review and recertify their statements. The annual recertification is due by the last Monday in January and covers all time served during the previous calendar year. The Board has developed a web based system for submitting economic interest statements.

During fiscal year 2019, there were 370 state offices, boards, agencies, or commissions with elected or appointed public officials. The Board processed 3,439 statements of economic interest during the fiscal year, 87% of which were submitted using the Board's electronic filing system, and 13% of which were submitted on paper forms.

During the annual recertification period in January of 2019, staff processed 2,777 statements. Of those statements, 92% were filed electronically.

Legislative Action and Rulemaking

In fiscal year 2019, the Board submitted legislative proposals that would have affected the economic interest statement program. Suggested technical changes included standardizing economic interest statement reporting periods. Policy recommendations included establishing a two-tiered disclosure system so that soil and water conservation district supervisors, and members of watershed districts, would disclose information appropriate for the office held. The Board also recommended that public officials disclose direct interest in government contracts and beneficial interest that may create a conflict of interest. The legislature took no action on the recommendations.

Advisory Opinions Issued Related to the Economic Interest Program

No advisory opinions were issued in the economic interest program in fiscal year 2019.

Other Board Programs

Potential Conflict of Interest

A public or local official who in the discharge of the official's duties would be required to take an action or make a decision that would substantially affect the official's financial interests or those of an associated business must under certain circumstances file a Potential Conflict of Interest Notice, or a written statement describing the potential conflict. If there is insufficient time to comply with the written requirements, oral notice must be given to the official's immediate supervisor of the possible conflict.

If the official is not permitted or is otherwise unable to abstain from action in connection with the matter, the public official must file the notice with the Board and a local official must file with the governing body of the official's political subdivision. The statement must be filed within one week of the action taken.

Public Employees Retirement Association Trustee Candidates

Candidates for election as PERA Trustees are required to file certain campaign finance disclosure reports with the Campaign Finance and Public Disclosure Board under Minnesota Statutes, section 353.03, subdivision 1. Under this statute, the Board prescribes and furnishes to trustee candidates the reporting form and instructions for completing the form.

Enterprise Minnesota, Inc.

The agency name was changed from Minnesota Technology, Inc. (MTI) to Enterprise Minnesota, Inc. in 2008. Minnesota Statutes, sections 116O.03 and 116O.04, require certain disclosure by the board of directors and the president of Enterprise Minnesota upon appointment and annually thereafter during their terms in office. Under these statutes, the Board prescribes and furnishes to the directors and president the reporting form and instructions for completing the form.

State Board of Investment

Minnesota Statutes section 11A.075, requires certain disclosure by SBI members upon appointment and SBI employees upon hire and by both annually until termination of appointment or employment. Under this statute, the Board prescribes and furnishes to the members and employees the reporting form and instructions for completing the form.

Representation Disclosure

A public official who represents a client for a fee before any individual board, commission, or agency that has rulemaking authority in a hearing conducted under Minnesota Statutes Chapter 14, and in the cases of rate setting, power plant and power line siting, and granting of certificates of need under Minnesota Statutes section 216B.243, must file a Representation Disclosure Statement within 14 days after the appearance has taken place, disclosing the official's part in the action.

Local Pension Plans

Members of a governing board of a covered pension plan and the chief administrative officer of the plan are required to file certain statements of economic interest with the governing board under Minnesota Statutes section 356A.06, subdivision 4.

The Office of the State Auditor prescribes the statement and instructions for completing the statement. The chief administrative officer of each covered pension plan must submit to the Campaign Finance and Public Disclosure Board a certified list of all pension board members who filed statements with the pension board no later than January 15th. Approximately 755 pension plans are required to file with the Board under this law. The Board does not have jurisdiction over enforcement of this certification requirement.

Staff Duties

Executive Director

The executive director facilitates achievement of the Board's goals and objectives, sets the agenda and prepares materials for Board and committee meetings, and directs all agency and staff operations. The executive director also drafts advisory opinions for Board consideration, serves as the Board's representative to the Legislature and the Executive Branch. The executive director is responsible to insure that the information technology resources of the agency are best used to support the Board's missions and goals. The executive director is responsible for the calculation of public subsidy payments made to candidates and political party units. Lastly, the executive director administers the preparation of the biennial budget.

Assistant Executive Director

The assistant executive director serves as advisor to the executive director and assists in management of the operations for the agency. The assistant executive director conducts complex investigations and prepares drafts for Board consideration, reconciles and reports on the Board's financial systems, and supervises the agency's compliance programs. The assistant executive director prepares and conducts training classes for clients on campaign finance reporting requirements.

Legal Analyst—Management Analyst

Two staff members hold this position. The legal analysts – management analysts perform legal analysis, make recommendations, and assist in agency administrative rulemaking, the conduct of Board investigations, and drafting findings and orders for Board consideration. These positions also serve as internal management consultants providing support and analysis to the executive director and assistant executive director.

Compliance Officer

The compliance officer provides for distribution, collection, data entry, and filing of campaign finance reports required by Chapter 10A. The compliance officer reviews the reconciliation of reported contributions, performs compliance checks on campaign finance reports filed with the Board, assists in the conduct of Board audits, monitors cases for Revenue Recapture and Minnesota Department of Revenue Collections Division, and prepares and submits reports to the Department of Finance regarding civil penalties. The compliance officer also provides compliance advice and guidance to Board staff and clients.

Programs Administrator

The programs administrator provides for distribution, collection, data entry, and filing of lobbyist disclosure required by Chapter 10A. The programs administrator collects, stores, and retrieves data for the preparation and analysis of summaries of documents filed with the Board. The programs administrator also provides database advice and guidance to Board staff and clients.

Programs and Education Analyst

The programs and education analyst provides for distribution, collection, data entry, and filing of economic interest disclosure required by Chapter 10A. The programs and education analyst provides database advice and guidance to Board staff and clients and designs and maintains electronic training materials. The programs and education analyst also administers website content.

Information Technology Specialist III Database Management

This information technology specialist develops, maintains, and manages complex database applications to support administration of all Board programs and activities. The position provides technical service, LAN administration, and training to Board staff. The position also develops, administers, and provides technical support for the Board's website and provides client training and support in the use of the Campaign Finance Reporter software.

Information Technology Specialist III Application Development

This information technology specialist ensures that the technology resources of the Board support applicable business rules and statutory obligations. The position develops online applications for use by clients in reporting to the Board. The position also develops and administers applications for use by staff and in response to management requests. The position also supports multiple complex relational databases.

Staff Salaries FY 2019

Position	Staff Member	FY 2019
Executive Director	Jeffrey Sigurdson	\$115,258
Assistant Director	Megan Engelhardt	\$100,424
Legal - Management Analyst	Jodi Pope	\$76,259
Legal - Management Analyst (Started – 8/27/2018)	Andrew Olson	\$51,356
Investigator	Melissa Stevens	\$53,163
Information Technology Specialist 3	Jon Peterson	\$88,805
Information Technology Specialist 3	Gary Bauer	\$76,583
Office and Administrative Specialist	Marcia Waller	\$54,932
Program and Education Analyst	Kevin Lochner	\$44,035
Total Salaries		\$660,815

Board Financial Information FY 2019

The Campaign Finance and Public Disclosure Board is funded by a direct appropriation from the Minnesota Legislature. The Board's operational appropriation for fiscal 2019 was \$1,046,000. Funds not expended in the first year of a biennium roll forward into the next fiscal year. Almost the entire amount available for carryforward to fiscal year 2019 is a result of salary savings for positions that were not filled immediately after a vacancy occurred in fiscal year 2018.

Income Summary	FY 2019
Appropriation	\$1,046,000
Carry forward from fiscal year 2018	\$141,722
Total	\$1,187,722
Expenditure Summary	
Operating budget expenditures	(\$1,045,624)
Returned to state general fund	\$142,098

Board Operating Budget—FY 2019

Salary and Benefits	FY 2019
Full time staff (salary and fringe)	\$900,556
Full time staff overtime	\$3,854
Per diem for Board Members	\$4,184
SEGIP insurance	\$861
Workers compensation insurance	\$383
Salary and Benefits Sub Total of Expenditures	\$909,838
Operating Expenses	
Office rent	\$41,960
Copier lease	\$6,407
Postage	\$12,151
Printing	\$519
Travel	\$3,897
Staff development	\$4,617
Supplies	\$8,533
MNIT services	\$13,242
Court reporter, subpoena, and court filing costs	\$2,733
Equipment	\$28,561
Computer systems development - software	\$11,979
Other purchased services	\$1,187
Operating Expense Sub Total of Expenditures	\$135,787
Board Operating Total Expenditures	\$1,045,624

Penalties Paid for Late Filing Fees and Other Violations of Chapter 10A

The following is a listing of fees and fines paid during the fiscal year. Some fees and fines may have been assessed prior to fiscal year 2019.

Late Filing Fees	FY 2019 Dollars Paid	Number of Violations
Candidate Campaign Committees	\$7,675.45	49
24-Hour Notice	\$10,450.00	21
Political Committees and Funds	\$15,325.00	52
Political Party Units	\$3,965.00	22
Economic Interest Statements	\$1,855.94	26
Lobbyist Disbursement Reports	\$2,797.10	20
Lobbyist Principal Annual Reports	\$2,525.00	15
Total Late Fees	\$44,593.49	205
Civil Penalties	FY 2019 Dollars Paid	Number of Violations
Contribution from Unregistered Association		
Unregistered Association	\$315.00	2
Political Committees and Funds	\$225.00	1
Candidate	\$140.00	2
Contribution Limits Violations		
Candidates Accepted in Excess of Limit	\$115.00	1
Special Source Aggregate Limit	\$2,170.00	6
Candidate Exceeded Spending Limit	\$10,000.00	1
Prohibited Contributions During Session		
Political Committee and Funds	\$75.00	1
Candidate	\$75.00	1
Failure to File Disclosure Report		
Candidate Committees	\$1,650.00	6
Political Committees and Funds	\$2,350.00	6
Political Party Units	\$375.00	3
Lobbyist Principals	\$700.00	1
Economic Interest Statements	\$175.00	2
Candidate – Certified False Information	\$1,981.48	1
Disclaimer	\$950.00	4
Party Unit Failure to Keep Records	\$15,400.00	2
Total Civil Penalties	\$36,696.48	40
Total Late Fees and Civil Penalties Deposited in State General Fund	\$81,289.97	245



MINNESOTA CAMPAIGN FINANCE BOARD

Date: October 30, 2019

To: Board Members

From: Jeff Sigurdson, Executive Director

Telephone: 651-539-1189

Re: Review of Possible Legislative Recommendations

The Board is authorized in Minnesota Statutes section 10A.02, subdivision 8(a), to offer legislative recommendations. At the last two meetings the Board has discussed possible recommendations. In review, at the September and October meetings the Board considered the legislative recommendations that were provided to the legislature in 2019, and recent public comments received on those recommendations. At the October meeting the Board also reviewed a staff recommendation to change the registration and reporting requirements for lobbyists and principals, and heard initial comments from the Minnesota Governmental Relations Council and the public on the lobbying recommendations. In addition, at the October meeting Member Moilanen asked staff to develop for Board review a proposal that would raise the maximum refund amount available through the political contribution refund program. A brief review of the various recommendations is provided later in the memo.

As the Board considers whether it will propose any of these legislative recommendations this year there are, I believe, three factors needed for any recommendation to be seriously considered by the legislature.

- There must be bipartisan support for the recommendations. The Board can draft proposed legislation on its own authority, but finding members of the legislature willing to introduce and carry a bill is a different matter. If authors and co-authors from both parties in both the Senate and House will not sign on to the legislation prior to introduction, then it is very difficult to defend the recommendations as bipartisan. Proposed changes to Chapter 10A that do not have some level of bipartisan support have little chance to succeed.
- The Governor will need to agree with, or at least not be in active opposition to, the recommendations. During past legislative efforts I have been told by legislators of both parties that they would not be interested in working on a bill unless there was reason to believe that the Governor would ultimately sign the legislation. Chair Leppik, Vice Chair Moilanen and I met with a staff member from the Governor's office on October 25th, to review the recommendations under Board consideration. As of the date of this memo I have not received any feedback from the meeting.
- The Board may need to consider if in total the recommendations are too broad in scope. I do not mean that significant policy issues are to be avoided. However, there is only so much time and attention that the legislature has to dedicate to Chapter 10A in

any given year. Recommendations that propose multiple complex issues may flounder under their own weight.

Recommendations from 2019

The 2019 recommendations include both technical and policy changes to the economic interest statement program and the campaign finance program. Attached to this memo are the 2019 recommendations with accompanying draft statutory changes. The recommendations are grouped by program area, and then technical changes are listed separately from policy recommendations.

Recommendations for Lobbying Program

The attached recommendations have been modified from those reviewed in October to address concerns raised by Board members and the public. The modifications do not materially change the registration and reporting recommendations discussed in October, but do clarify reporting requirements. Changes from the draft statutory language reviewed in October are in yellow.

Recommendation for Political Contribution Program

The current limit to the political contribution refund program of \$50 per person, or \$100 per couple, is found in Minnesota Statutes section 290.06, subdivision 23. Draft statutory language is attached to this memo. The recommendation would increase the contribution limit to \$200 per individual, \$400 per couple.

The legislature is adjourned until February 11, 2020. I would ask the Board to decide what if any proposals it wishes to send to the legislature by the end of the December meeting.

Attachments

2019 legislative recommendations
Public comments on 2019 recommendations
Lobbyist recommendations
Political contribution refund recommendation

**CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD
November >2019**

ACTIVE FILES

Candidate/Treasurer/ Lobbyist	Committee/Agency	Report Missing/ Violation	Late Fee/ Civil Penalty	Referred to AGO	Date S&C Served by Mail	Default Hearing Date	Date Judgment Entered	Case Status
Chilah Brown Michele Berger	Brown (Chilah) for Senate	Unfiled 2016 Year- End Report of Receipts and Expenditures Unpaid late filing fee on 10/31/16 Pre- General Election Report	\$1,000 LF \$1,000 CP \$50 LF	3/6/18	8/10/18			Board is working on the matter. Placed on hold.
Brenden Ellingboe	Ellingboe (Brenden) for House	Unfiled 2015 Year- End Report of Receipts and Expenditures	\$1,000 LF \$1,000 CP	11/29/16	5/26/17			Personal Service Requested 9/18/19
Katy Humphrey, Kelli Latuska	Duluth DFL	Unfiled 2016 Year- End Report of Receipts and Expenditures	\$1,000 LF \$1,000 CP	3/6/18	8/10/18			Board is working on the matter. Placed on hold. 3/5/19
Christopher John Meyer	Meyer for Minnesota	Fees and Penalty for late filing of 2016 Year-End Report of Receipts and Expenditures	\$1,000 LF \$1,000 CP	7/28/17	9/6/17			Personal Service Requested 9/19/19

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

FINDINGS, CONCLUSIONS, AND ORDER

IN THE MATTER OF PEOPLE PAC (MN), THE PEOPLE PAC, AND 15 PRINCIPAL CAMPAIGN COMMITTEES

Background

The People PAC is a political action committee registered with the Federal Election Commission (FEC), ID number C00647784. A political committee named People PAC was registered with the Minnesota Campaign Finance and Public Disclosure Board on September 11, 2018, registration number 41208. For clarity, the federal committee will be referred to as The People PAC, and the committee registered with the Board will be referred to as People PAC (MN).

In 2018, The People PAC assisted state legislative candidates in multiple states with the production of campaign videos. Those candidates included 14 Minnesota House candidates, and a Minnesota Senate candidate who was running in a special election. Prior to the 2018 general election, The People PAC's website¹ featured campaign videos supporting several of those 15 Minnesota legislative candidates. Videos supporting all 15 candidates could be viewed on The People PAC's YouTube channel titled "The People PAC Statehouse Initiative."² After the 2018 general election, The People PAC's website stated that "[e]ven if our Minnesota House candidates won, helping Democrats flip the chamber blue."

The principal campaign committees of the 15 Minnesota legislative candidates who participated in the project are Robert Bierman for MN House, Huot for House, Volunteers for Kelly Moller, Kristin Bahner for State Representative, Friends for Karla (Scapanski), People for Gail Kulp, Heather Edelson for House, Ginny Klevorn for Representative, Brand (Jeff) for House, Neighbors for Dan (Wolgamott), Carlie (Kotzya-Witthuhn) for House, Friends for Aric (Putnam), the Wazlawik (Ami) Volunteer Committee, Erin (Koegel) for Minnesota, and Perske (Joe) for Senate. The production of the videos required the cooperation of the individual candidates, and the videos contained disclaimers stating they were paid for by the principal campaign committee of each candidate.

People PAC (MN) filed two no-change statements with the Board using a paper form in lieu of filing reports of receipts and expenditures, collectively covering the period from January 1 through October 22, 2018. The second no-change statement, filed in lieu of the 2018 pre-general report, was due October 29, 2018, but was not received by Board staff until November 23, 2018, resulting in a late filing fee of \$800. The second no-change statement was labeled as a termination report, indicating that the committee had dissolved, and was delivered via an email stating that the no-change statement had previously been mailed in a timely manner. The second no-change statement was dated November 21, 2018. Counsel for The People PAC later explained that after People PAC (MN)'s treasurer realized the mailed no-change statement due October 29, 2018, was not received by the Board, he completed the form a second time. People PAC (MN) requested that the Board waive the \$800 late filing fee.

¹ www.thepeoplepac.org

² www.youtube.com/channel/UCxNUpcmFUyAvLtljzp_9pXg/videos

Each no-change statement declared that People PAC (MN) had no cash balance, did not receive any contributions or income, and did not make any expenditures or give any contributions. Because no outgoing contributions or other disbursements were disclosed by People PAC (MN) despite the website's claim that The People PAC assisted several Minnesota legislative candidates, the Board's executive director opened a staff review in January 2019.

Fourteen of the 15 principal campaign committees eventually disclosed an in-kind contribution valued at \$982 from "Colleen Steward." Each principal campaign committee described the contribution as consisting of video production, digital ads, video ads, or something similar. Because none of the principal campaign committees disclosed The People PAC or People PAC (MN) as a contributor or vendor, the Board's executive director expanded the staff review to include the 15 principal campaign committees in late-February of 2019.

Colleen Needles Steward is the CEO of a media production company headquartered in Minnesota. In response to inquiries from Board staff, her legal counsel explained that in April 2018, a colleague of Ms. Needles Steward told her about the efforts of The People PAC to help elect state legislative candidates and asked if she would like to become involved. Ms. Needles Steward then communicated via email and telephone with Michael Hirschorn, who has served as The People PAC's treasurer since it registered with the FEC in June 2017.

In late summer of 2018, Ms. Needles Steward, Mr. Hirschorn, and The People PAC's political director, Christine Bachman, began discussing a plan to produce campaign videos for Minnesota legislative candidates. Mr. Hirschorn and Ms. Bachman contacted the DFL House Caucus to help identify candidates who would participate and thereby receive in-kind contributions in the form of video production services. Representative Jamie Long, who at the time was a first-time Minnesota House candidate, began contacting candidates on behalf of the DFL House Caucus, asking if they were interested in having campaign videos produced for them by The People PAC, free of charge. Mr. Long and Sarah Burt, a campaign director for the DFL House Caucus, served as liaisons between The People PAC and the candidates. Cassie Tommerdahl, a field director with the DFL Senate Caucus, served as a liaison between The People PAC and the Perske committee, and in some cases between the DFL House Caucus and the Perske committee.

Emails produced during the course of the staff review show that Mr. Long contacted the candidates on August 31, 2018, inviting them to participate in the project. The emails sent to candidates stated that Mr. Long was "helping coordinate free digital ad filming that is being offered by the group People PAC." The emails explained that each candidate "would have to have room left in your PAC limit, as the filming will count as a \$1K in kind contribution to your campaign." The limit referenced in Mr. Long's emails is the aggregate special source contribution limit, which applies to candidates and includes contributions from lobbyists, political committees and funds, and associations not registered with the Board.³ The aggregate special source limit for the 2017-2018 election cycle was \$13,100 for Minnesota House candidates. The aggregate special source limit applicable to the Perske committee's special election campaign for Senate District 13 was \$18,900.

Mr. Long's emails to the candidates reflected the belief of the DFL House Caucus, at that time, that the proportional cost of the video production services provided to each candidate would be reported by each

³ [Minn. Stat. § 10A.27, subd. 11.](#)

principal campaign committee as an in-kind contribution from a political committee or fund registered with the Board. That political committee or fund had yet to be registered with the Board when the candidates were initially contacted by Mr. Long in late-August. However, on September 11, 2018, Board staff received an email from Mr. Hirschorn's executive assistant containing the completed form required for People PAC (MN) to be registered as a political committee with the Board. Mr. Hirschorn was identified as both the treasurer and chair for the committee. The People PAC's executive director, Mara Gerstein, was copied on that email.

The week prior to filming, the candidates received an email from Mr. Long inviting them to participate in a 30-minute telephone call with Ms. Bachman, who would provide coaching regarding the videos. The candidates also received an email from a producer with SALTY Features LLC, asking the candidates to provide photographs to be incorporated into their campaign videos. Filming took place at the Minnesota office of Ms. Needles Steward's company from September 10 through September 12, 2018. Ms. Bachman traveled to Minnesota to attend the filming.

Counsel for Ms. Needles Steward has explained that employees of her company

volunteered to work on the filming and production of the videos outside of their work hours. A representative of The People PAC was involved throughout the process and provided direction regarding the filming, formatting, editing, and final production of the videos.

Counsel for Ms. Needles Steward stated that "with the exception of providing brief comments on a rough edit," Ms. Needles Steward "was not directly involved in either the filming or ... the production of the videos." Ms. Needles Steward paid her company \$6,078.14 for the costs associated with the videos, including "equipment rentals, production services, and the compensation paid to contractors who did not volunteer their time."

Emails produced during the course of the staff review show that after filming, there was renewed discussion as to how the services provided should be reported to the Board by each principal campaign committee. Ms. Gerstein emailed Mr. Long and Ms. Burt on September 17, 2018, suggesting that the cost of producing the videos be reported by each principal campaign committee as an in-kind contribution given directly by Ms. Needles Steward. Ms. Burt responded, stating that the DFL House Caucus believed that People PAC (MN) should be reported as the source of the in-kind contributions. The following day, Ms. Gerstein emailed Ms. Burt stating that legal counsel for The People PAC recommended that the cost of the videos be reported by each principal campaign as an in-kind contribution from Ms. Needles Steward. The email explained as follows:

The People PAC isn't paying for the ads and the producer can't give an in-kind to the PAC over \$5,000 (so we can't accept the in kind from the producer).⁴ Instead, the donation is coming direct from the person who put the ads together.

Ms. Burt then prepared a blank "In-Kind Contribution Form" that could be used to describe the source, nature, and value of the contributions, and provided that form to People PAC (MN). People PAC (MN)

⁴ Ms. Gerstein appears to have been paraphrasing an email from counsel for The People PAC, who in turn appears to have been referencing [52 U.S.C. § 30116 \(a\) \(1\) \(C\)](#) and [11 CFR 110.1 \(d\)](#), which generally limit contributions to a federal political action committee to \$5,000 per individual, per year.

and the DFL House Caucus later instructed the individual principal campaign committees to disclose Ms. Needles Steward as the source of the contributions, rather than People PAC (MN).

In mid-October of 2018, Ms. Bachman sent emails to the candidates containing hyperlinks to a file hosting service where they could download a copy of their completed campaign video. Both full-length and shorter versions of the videos were produced for at least 14 of the 15 candidates. One candidate used her video at a fundraising event held on October 14, 2018, and several candidates used their videos in Facebook advertisements, starting as early as October 17, 2018. Heather Edelson decided not to use the video and her principal campaign committee did not disclose an in-kind contribution related to her video.

The People PAC has stated that it did not pay for the distribution of the videos, and its efforts in uploading the videos to YouTube and displaying the videos on its website were designed to promote the work of The People PAC, not the candidacies of the individuals featured in the videos. Likewise, counsel for Ms. Needles Steward, the DFL House Caucus, and the DFL Senate Caucus has stated that neither Ms. Needles Steward nor the caucuses paid for the distribution of the videos.

On October 19, 2018, Ms. Gerstein completed the “In-Kind Contribution Form” and emailed it to Ms. Burt and one of the House candidates. Ms. Burt sent the form to the principal campaign committees of the remaining House candidates as well as Ms. Tommerdahl, who in turn provided it to the Perske committee. The completed form declared that the in-kind contributions consisted of “digital ads” valued at “\$982 per candidate,” given on October 19, 2018, by “Colleen Steward.” The document listed Ms. Needles Steward’s address, phone number, email address, employer, and occupation. Counsel for The People PAC has explained that “Ms. Gerstein prepared the in-kind contribution letters because Ms. Needles Steward was preoccupied with a family medical issue. Ms. Gerstein estimated the expenses that Ms. Needles Steward had incurred in creating and producing the videos. It was a good faith estimate based on The People PAC’s experience in other states, like North Carolina and Florida.”

A central question that the Board’s staff review sought to answer is whether the costs associated with the video production services should have been reported as in-kind contributions to the principal campaign committees from The People PAC or from People PAC (MN), either in whole or in part. In response to inquiries from Board staff, legal counsel for The People PAC has estimated the amounts that The People PAC paid its staff and vendors for services related to the videos produced for Minnesota legislative candidates in 2018. The People PAC paid \$855.17 for Ms. Bachman’s travel to Minnesota to attend the filming of the videos, an estimated \$6,300 to Ms. Bachman and \$172 to Ms. Gerstein in compensation related to the videos, and an estimated \$122 to Salty Features LLC for services related to the videos. When the total of \$7,449.17 is divided by 15 candidates, the prorated amount per candidate is \$496.61. If the amount of \$6,078.14 paid by Ms. Needles Steward is included in the total amount spent, the total is \$13,527.31 and the prorated amount per candidate is \$901.82.

In some other states where The People PAC helped produce campaign videos for state legislative candidates, those candidates reported receiving in-kind contributions directly from The People PAC. For example, several Florida legislative candidates reported receiving in-kind contributions from The People PAC valued at \$991 and several North Carolina legislative candidates reported receiving in-kind contributions from The People PAC valued at \$953. Counsel for The People PAC has explained that in

those states, The People PAC paid “third-party vendors to provide services to candidates,” whereas in Minnesota the services provided were paid for by Ms. Needles Steward.

Whether the costs associated with the videos for the Minnesota legislative candidates were a contribution from The People PAC or People PAC (MN), instead of directly from an individual (Ms. Needles Steward), is particularly important to five of the 15 Minnesota legislative candidates. Without including those costs, four of the candidates came close to reaching the aggregate special source limit, which includes contributions from lobbyists, political committees and funds, and associations not registered with the Board, and one candidate exceeded that limit.

Not including the value of the videos, the Edelson committee stayed below the aggregate special source limit by \$154.41, the Klevorn committee stayed below the limit by \$164.41, the Perske committee stayed below the limit by \$25, and the Brand committee stayed below the limit by \$850. According to its 2018 year-end report, the Koegel committee exceeded the aggregate special source limit by \$1,825.59. If each of the 15 principal campaign committees involved are required to report having received an in-kind contribution of \$901.82 from a special source contributor, the Edelson committee will have exceeded the limit by \$747.41, the Klevorn committee will have exceeded the limit by \$737.41, the Perske committee will have exceeded the limit by \$876.82, the Brand committee will have exceeded the limit by \$51.82, and the Koegel committee will have exceed the limit by a total of \$2,727.41.

Analysis

Circumvention

Minnesota Statutes section 10A.29 provides that an individual or association that tries to circumvent Chapter 10A “by redirecting a contribution through, or making a contribution on behalf of, another individual or association is guilty of a gross misdemeanor and subject to a civil penalty.”

Because of the change in the direction given to candidates regarding the source of the contributions and because several of the candidates came close to exceeding the aggregate special source contribution limit, Board staff was concerned that there may have been an attempt to circumvent the aggregate special source limit by directing the candidates to report the source of the contributions as being an individual rather than a political committee or an association not registered with the Board. However, the individuals involved have denied considering the aggregate special source limit in deciding how the in-kind contributions ought to be reported. Additionally, emails sent to Ms. Gerstein by The People PAC’s legal counsel, and to Ms. Burt by Ms. Gerstein, on September 18, 2018, provide an alternate explanation. Those emails appear to reference a \$5,000 limit on the amount Ms. Needles Steward could give to The People PAC under federal law.⁵ What appears to be missing from the analysis summarized in Ms. Gerstein’s email to Ms. Burt is the fact that the federal limit does not apply to an entity that only receives contributions and makes expenditures for the purpose of influencing Minnesota state elections.⁶ Ms. Needles Steward could have given a contribution in any amount to People PAC (MN), and there was

⁵ See [52 U.S.C. § 30116 \(a\) \(1\) \(C\)](#) and [11 CFR 110.1 \(d\)](#), which generally limit contributions to a federal political action committee to \$5,000 per individual, per year.

⁶ See the definitions of the terms “political committee,” “expenditure,” and “contribution,” at [52 U.S.C. § 30101](#) and [11 CFR Part 100](#), which apply to the \$5,000 contribution limit codified at [52 U.S.C. § 30116 \(a\) \(1\) \(C\)](#) and [11 CFR 110.1 \(d\)](#).

no need to route such a contribution through a political action committee registered with the FEC. Although based on an incorrect legal interpretation, the reason given in the emails for the change in direction supports the conclusion that there was no intent to circumvent the aggregate special source limit.

Registration and Reporting of the Contributions

Minnesota Statutes section 10A.14, subdivision 1, requires an association to register with the Board within 14 days of making contributions that exceed \$750 to Minnesota state candidates. There is an exception to the registration requirement for an association that makes contributions to three or less Minnesota candidates, committees, funds, or party units in a calendar year.⁷ If an association makes contributions to more than three Minnesota candidates, committees, funds, or party units in a calendar year, and the total value of the contributions exceeds \$750, the association must register with the Board within the 14-day period. Minnesota Statutes section 10A.20, subdivision 3, requires a political committee registered with the Board to report all contributions received and all expenditures made during the reporting period.

The videos in this matter were approved expenditures made on behalf of the candidate committees. An approved expenditure is an in-kind contribution to the candidate committee on whose behalf it was made. The issue here is which individual or entity made those approved expenditures and the corresponding in-kind contributions. Because there is nothing in the record to indicate that Ms. Needles Steward knew which specific candidates would benefit from her payment at the time the video production costs were incurred, she did not make an expenditure “on behalf of a candidate,” pursuant to Minnesota Statutes section 10A.01, subdivision 4, nor did she make coordinated expenditures pursuant to Minnesota Statutes sections 10A.175, subdivision 5, and 10A.176.

While the DFL House Caucus was involved in identifying potential candidates for the videos and in coordinating communications for the project, the videos were ultimately provided to the 15 principal campaign committees by The People PAC. Moreover, The People PAC played a direct role in pre-production and post-production work, and incurred significant costs related to the videos, while the DFL House Caucus did not. Thus, The People PAC was responsible for the approved expenditures and the corresponding in-kind contributions to the principal campaign committees.

Because The People PAC made in-kind contributions to more than three Minnesota candidates in a calendar year and the aggregate amount of those contributions exceeded \$750, The People PAC was required to register a political committee in Minnesota, which it did. People PAC (MN) registered with the Board on September 11, 2018.

People PAC (MN) filed pre-primary and pre-general reports of receipts and expenditures that disclosed no activity during the reporting periods. These filings were incorrect. Specifically during the two reporting periods, People PAC (MN) should have reported receiving both an in-kind contribution from Ms. Needles Steward of \$6,078.14 in the form of video production services, and in-kind contributions from The People PAC totaling \$7,449.17 in the form of the staff and travel costs it incurred related to the videos for Minnesota legislative candidates. People PAC (MN) should have also reported giving in-kind

⁷ [Minn. Stat. § 10A.27, subd. 13.](#)

contributions to the 15 principal campaign committees of \$901.82 each, consisting of the prorated total amount paid by Ms. Needles Steward and The People PAC related to the videos.

Costs Paid by Ms. Needles Steward

The People PAC offers two primary objections to the reporting method described above. The first objection concerns the costs paid by Ms. Needles Steward. The People PAC argues that Ms. Needles Steward was properly disclosed as having given contributions to the principal campaign committees because she paid her company directly for the production costs. The People PAC also argues that reporting a contribution from Ms. Needles Steward to People PAC (MN) would have resulted in a violation of the prohibition on earmarking of contributions under Minnesota Statutes section 10A.16.

However, the responses provided by counsel for Ms. Needles Steward demonstrate that while Ms. Needles Steward knew that the candidates that would benefit would be DFL legislative candidates, she did not play a role in selecting the particular candidates and did not know which candidates would participate in the project. Rather, the individual candidates were selected by the DFL House Caucus, at the request of The People PAC. Minnesota Statutes section 10A.16 prohibits accepting a contribution “with the express or implied condition that the contribution or any part of it be directed to a particular candidate.” Nothing in the record indicates that Ms. Needles Steward directed that her contribution benefit any particular candidate.

Likewise, Ms. Needles Steward did not give contributions to the individual principal campaign committees because there is nothing in the record indicating that Ms. Needles Steward was aware of which specific candidates would participate in the project at the time the video production costs were incurred. While Ms. Needles Steward was the source of the money and thereby should have been disclosed as a contributor to People PAC (MN), she could not have given contributions to the individual principal campaign committees without knowing which candidates she was supporting.

The People PAC argues that “Minnesota law explicitly requires the ‘spender’ associated with an ‘approved expenditure’ to report an in-kind contribution to the benefitting candidate,” citing Minnesota Statutes sections 10A.175, subdivision 6, and 10A.01, subdivision 4, in support of that proposition. “Spender” is a term, defined by Minnesota Statutes section 10A.175, subdivision 6, which is used within Chapter 10A solely in reference to coordinated expenditures.⁸ The term “spender” has no relevance to approved expenditures unless they are approved expenditures solely by virtue of the fact that they are coordinated expenditures pursuant to Minnesota Statutes section 10A.175, subdivision 5. Moreover, individuals are not required to file reports with the Board disclosing their contributions to committees registered with the Board. In this case, the individual who paid the production costs should have been disclosed by People PAC (MN) as an in-kind contributor, and People PAC (MN) in turn should have reported giving in-kind contributions to the principal campaign committees.

Costs Paid by The People PAC

The second objection lodged by The People PAC concerns the expenses incurred by The People PAC related to the videos. Those costs include the proportion of staff compensation attributable to the Minnesota videos and reimbursements to staff for expenses related to the videos. The People PAC

⁸ See Minn. Stat. §§ [10A.176](#), [10A.177](#).

argues that these expenses should neither be reported as campaign expenditures nor as in-kind contributions to the principal campaign committees.

The first argument offered by The People PAC is that “an organization is not required to treat employee salaries or monthly consultant fees as in-kind contributions in Minnesota, provided that such personnel remain under the organization’s direction and control and no expenses are incurred specifically to benefit any particular candidate.” The People PAC cites to Minnesota Rules 4503.0500, subpart 4, and 11 CFR sections 100.54 and 106.1, in support of that proposition. First, there is no need to consult federal regulations when applying the provisions of Chapter 10A because those regulations do not apply to Minnesota state elections. Second, Minnesota Rules 4503.0500, subpart 4, does not support the argument made by The People PAC. That rule says, in relevant part, that an “association that pays for or provides goods or services, or makes goods or services available, with the knowledge that they will be used for the benefit of a political committee or a political fund, is the contributor of those goods or services.” In this case, The People PAC provided services knowing those services would be used for the benefit of specific principal campaign committees. Also, Minnesota Rules 4503.0500, subpart 4, is not exhaustive and cannot supplant the definitions of “approved expenditure,” “contribution,” and “donation in kind” provided by Minnesota Statutes section 10A.01, subdivisions 4, 11, and 13, respectively.⁹

Whether an individual remains under the direction and control of an association or political committee is not determinative of whether a contribution has been made by that association or committee to a principal campaign committee in the form of the services provided by that individual.¹⁰ The People PAC paid for the services of its employees and a contractor, knowing that those services would benefit specific candidates. No relinquishment of control over those personnel is necessary to conclude that in-kind contributions were made to 15 Minnesota legislative candidates.

In this instance, what matters is whether the services performed or item produced by such personnel constituted an expenditure pursuant to Minnesota Statutes section 10A.01, subdivision 9, and if so, whether the expenditure was an approved expenditure, pursuant to Minnesota Statutes section 10A.01, subdivision 4. The People PAC appears to argue that its personnel expenses were not expenditures under Minnesota law because they were not “made or incurred for the purpose of influencing the nomination or election of a candidate.”¹¹ The People PAC argues that it did not expend funds specifically to influence Minnesota elections. This argument is belied by the fact that The People PAC directed its staff and a contractor to assist with the production of campaign videos for 15 Minnesota legislative candidates, then provided copies of those videos to the individual candidates. If taken to its logical extreme, the argument offered by The People PAC would allow it to provide unlimited staff support and services directly to Minnesota legislative candidates without disclosing that spending to the Board, simply

⁹ [Minnesota Rules 4503.0500, subpart 4](#), could be read hyper literally in conjunction with [Minnesota Statutes section 10A.01, subdivision 27](#), to exclude from the term “contributor” any individual or association that gives a contribution to a principal campaign committee or a political party unit, as opposed to a political committee or fund. The Board declines to adopt such an interpretation. In addition to the reasons cited above, such an interpretation would lead to absurd results and is contradictory to the Board’s longstanding interpretation of Chapter 10A. See, e.g., [Advisory Opinion 341](#) (June 6, 2002).

¹⁰ See, generally, [Advisory Opinion 365](#) (Feb. 22, 2005) and [Advisory Opinion 381](#) (May 16, 2006), which discuss services provided to candidates as in-kind contributions without reference to whether the individuals providing the services came under the direction or control of the candidates.

¹¹ [Minn. Stat. § 10A.01, subd. 9](#).

because its staff and contractors remained under the direction and control of The People PAC. Nothing in Chapter 10A dictates that result.

The People PAC also states that treating its prorated personnel expenses as an in-kind contribution would require a national organization, such as itself, to “register a PAC in Minnesota, separately compensate these employees or consultants from the Minnesota PAC, and report these prorated expenses as in-kind contributions.” The conclusion as to reporting expenses as in-kind contributions is correct. The conclusion concerning being required to register a political committee or fund with the Board is correct as well, to the extent that the organization in question gives contributions to more than three committees, funds, or party units, within a calendar year. An association that gives contributions to three or less committees, funds, or party units in a calendar year is not required to be registered with the Board, but must provide any financial disclosure required by Minnesota Statutes section 10A.27, subdivisions 13 and 15.

The third conclusion is incorrect. A political committee registered with the Board is not required to compensate employees and contractors separately from an affiliated national organization. Rather, the prorated amount of the national organization’s personnel expenses, which are attributable to efforts to influence the nomination or election of an “an individual who seeks nomination or election as a state constitutional officer, legislator, or judge,”¹² may be reported as in-kind contributions from the national organization to the political committee or fund registered with the Board. If a committee or fund registered with the Board makes approved expenditures or otherwise gives contributions to a candidate, political committee or fund, or party unit, those contributions must be reported accordingly. In the case of People PAC (MN), that calculation is straightforward. The committee needs to combine the amount spent by The People PAC (\$7,449.17) with the costs paid by Ms. Needles Steward (\$6,078.14), then divide the total (\$13,527.31) by 15. The approved expenditures made by People PAC (MN) per candidate were \$901.82.

In-Kind Contribution to Heather Edelson for House

Counsel for Rep. Edelson appeared before the Board in executive session on October 2, 2019. Counsel asserted that costs incurred to produce the campaign video were not an in-kind contribution to the Edelson committee, and to the extent those costs were an expenditure, they were an independent expenditure rather than an approved expenditure. Rep. Edelson’s counsel stated that Rep. Edelson “was disappointed with the final video which was not consistent with the messaging of her campaign,” and “[i]f Rep. Edelson had hired a vendor to prepare the video, she would have rejected the product and there would have been no reportable transaction. The fact that this video was prepared as a potential in-kind contribution should not eliminate the candidate’s ability to refuse to accept the contribution if she is not satisfied with the final result.” Counsel for Rep. Edelson stated that “[w]hatever ‘express or implied consent’ may have existed was revoked. If the People PAC chose to post the video online, it made that decision independently from the candidate.” Counsel for Representative Edelson also argued that “Rep. Edelson is being compelled to accept the in-kind contribution of the video even though she refused to accept or use the final product simply because The People PAC independently chose to make the video available to the public.” Rep. Edelson submitted a sworn declaration stating that shortly after receiving a

¹² [Minn. Stat. § 10A.01, subd. 10.](#)

link to her video, she informed Ms. Bachman via telephone that her committee would not use the video in the campaign.

In evaluating counsel's argument, the Board reviewed the definitions of campaign expenditure, approved expenditure, and independent expenditure, and the definition of coordinated in Minnesota Statutes section 10A.175 as applied in Minnesota Statutes section 10A.176. Minnesota Statutes section 10A.01, subdivision 9, states in relevant part:

"Campaign expenditure" or "expenditure" means 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 or for the purpose of promoting or defeating a ballot question.

...

Except as provided in clause (1), "expenditure" includes the dollar value of a donation in kind.

Minnesota Statutes section 10A.01, subdivision 4, defines "approved expenditure" to mean

an expenditure made on behalf of a candidate by an entity other than the principal campaign committee of the candidate, if the expenditure is 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. An approved expenditure is a contribution to that candidate.

Minnesota Statutes section 10A.01, subdivision 18, defines "independent expenditure" to mean

an expenditure expressly advocating the election or defeat of a clearly identified candidate, if the expenditure is made without the express or implied consent, authorization, or cooperation of, and not in concert with or at the request or suggestion of, any candidate or any candidate's principal campaign committee or agent.

Minnesota Statutes section 10A.175, subdivision 5, defines "coordinated" to mean

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. A coordinated expenditure is an approved expenditure under section 10A.01, subdivision 4.

Minnesota Statutes section 10A.176, subdivision 1, provides:

An expenditure described in this section that expressly advocates for the election of the candidate or the defeat of the candidate's opponent is a coordinated expenditure and is not independent under section 10A.01, subdivision 18.

Minnesota Statutes section 10A.176, subdivisions 6 and 7, provide that an expenditure is coordinated when any of these actions occur:

Subd. 6. Spender-provided information. An expenditure is a coordinated expenditure if the expenditure is made when:

(1) the spender provides information to the candidate regarding the expenditure's contents, intended audience, timing, location or mode, volume, or frequency; and

(2) the information is provided to the candidate before the expenditure is communicated to the public.

Subd. 7. Candidate's participation. An expenditure is a coordinated expenditure if the expenditure is made with the candidate's participation in the following:

(1) any of the processes required for the creation and development of the expenditure, including budgeting decisions, media design, acquisition of graphics and text, production, and distribution of the final product; or

(2) any decision regarding the content, timing, location, intended audience, volume of distribution, or frequency of the expenditure.

The People PAC incurred direct costs, and used a portion of the contribution from Ms. Needles Steward, to produce Ms. Edelson's video.¹³ Rep. Edelson agreed to the contribution of the video. That action made the video an approved expenditure as defined above. Further, The People PAC provided information to Rep. Edelson regarding the content of her video prior to the video becoming available to the public. Rep. Edelson also participated in the processes required for the creation of her video as well as decisions regarding the content of the video. Therefore, the costs paid to produce the video for Rep. Edelson were a coordinated expenditure, as provided in Minnesota Statutes section 10A.176, and cannot be classified as an independent expenditure.

Counsel for Rep. Edelson argues that a candidate is able to revoke consent, or otherwise negate the fact that the candidate agreed to and coordinated with an approved expenditure. If that option existed, a candidate could participate in the production of an advertisement, revoke consent, and the costs of the advertisement and its subsequent distribution would be independent expenditures despite the fact that the candidate directly participated in the production of the advertisement. The Board is not persuaded that Chapter 10A permits a candidate to change an approved expenditure into an independent expenditure.

The argument offered by counsel for Rep. Edelson asserts that no expenditure existed until the video was made available to the public. However, Chapter 10A defines "expenditure" in a manner that requires an expenditure to exist as soon as there is an in-kind contribution. Moreover, the definitions of "expenditure" and "approved expenditure" within Chapter 10A are not limited to communications. These findings do not compel the Edelson committee "to accept the in-kind contribution of the video even though she refused to accept or use the final product simply because The People PAC independently chose to make the video available to the public." The approved expenditure made by People PAC (MN) on behalf of the Edelson committee consisted of the percentage of costs incurred to produce the videos that were attributable to Rep. Edelson's video. Those costs were incurred when Rep. Edelson decided to participate in the production of the video, which occurred prior to the date The People PAC made Rep. Edelson's video available to the public on the internet through a YouTube channel.

The Board has no reason to doubt that Rep. Edelson was not satisfied with the finished video. However, when a campaign committee agrees to an offer of an approved expenditure the committee is in effect

¹³ The costs related to the video paid by The People PAC were in-kind contributions from The People PAC to People PAC (MN). By definition, the term "expenditure" includes the dollar value of a donation in kind," so the in-kind contributions received by People PAC (MN) resulted in in-kind expenditures in an equivalent amount.

delegating authority to a third party to make an expenditure for the committee. That loss of control is the reason why some committees accept only cash contributions.

Violations of the Aggregate Special Source Contribution Limit

Minnesota Statutes section 10A.27, subdivision 11, limits the total amount of contributions that a candidate may accept from lobbyists, political committees and funds, and associations not registered with the Board. For the 2017-2018 election cycle, the limit for a candidate for state representative was \$13,100. For the Senate District 13 special election, the aggregate special source limit was \$18,900.

When the \$901.82 in approved expenditures made by People PAC (MN) is included, four principal campaign committees exceeded the aggregate special source limit and one principal campaign committee exceeded the limit by more than it would have otherwise. The responses provided to Board staff make it clear that with the exception of the Edelson committee, the principal campaign committees relied upon the “In-Kind Contribution Form” in reporting the source of the in-kind contribution to be an individual, rather than a political committee or association not registered with the Board.

The committees that exceeded the limit must return to special source contributors the amount by which each committee exceeded the aggregate special source limit to bring the committees into compliance with Minnesota Statutes section 10A.27, subdivision 11. However, because those committees acted in good faith when they relied upon the “In-Kind Contribution Form” the Board will not impose civil penalties against them related to the excess special source contributions caused by People PAC (MN)’s approved expenditures.

Late Filing Fee for No-Change Statement Filed in Lieu of People PAC (MN)’s Pre-General Report

The Board “must waive that portion of a late filing fee or a civil penalty imposed for the late filing of a report or statement under this chapter for which the requester demonstrates good cause for the late filing or submission.”¹⁴ People PAC (MN) states that Mr. Hirschorn mailed the no-change statement filed in lieu of the 2018 pre-general report prior to the due date of October 29, 2018. People PAC (MN) has not provided documentation of when the no-change statement was mailed.

Based on the above background and analysis, the Board makes the following:

Findings of Fact

1. The People PAC is a political action committee registered with the FEC and not registered with the Minnesota Campaign Finance and Public Disclosure Board. The People PAC’s executive director is Mara Gerstein. The People PAC registered a separate political committee named People PAC with the Board on September 11, 2018. Michael Hirschorn serves as the treasurer of each of those committees.
2. Colleen Needles Steward is an individual who paid her company \$6,078.14 for costs associated with producing campaign videos for 15 Minnesota legislative candidates in 2018. At the time those costs

¹⁴ [Minn. Stat. § 10A.02, subd. 15.](#)

were incurred, Ms. Needles Steward was not aware of which specific candidates would participate in the project and she did not play a role in selecting which candidates would be invited to participate.

3. The DFL House Caucus and DFL Senate Caucus are political party units registered with the Board. The DFL House Caucus, at the request of The People PAC, invited specific candidates to participate in the project.
4. Fourteen Minnesota House candidates and one Minnesota Senate candidate participated in the project and The People PAC provided each with copies of their campaign video.
5. The People PAC incurred \$7,449.17 in costs related to producing campaign videos for 15 specific Minnesota legislative candidates.
6. Fourteen principal campaign committees disclosed, on reports of receipts and expenditures filed with the Board, an in-kind contribution from "Colleen Steward" related to the video production services received. The source of each contribution was reported to be an individual, rather than a special source contributor, due to guidance provided by The People PAC and forwarded to the principal campaign committees by the DFL House Caucus. That guidance was given by The People PAC in an attempt to ensure that it complied with federal law. The 14 principal campaign committees are Robert Bierman for MN House, Huot for House, Volunteers for Kelly Moller, Kristin Bahner for State Representative, Friends for Karla (Scapanski), People for Gail Kulp, Ginny Klevorn for Representative, Brand (Jeff) for House, Neighbors for Dan (Wolgammott), Charlie (Kotyza-Witthuhn) for House, Friends for Aric (Putnam), the Wazlawik (Ami) Volunteer Committee, Erin (Koegel) for Minnesota, and Perske (Joe) for Senate.
7. The Heather Edelson for House committee did not disclose a contribution related to the project because the candidate did not use the campaign video provided by The People PAC.
8. The aggregate special source contribution limit applicable to Minnesota House candidates during the 2017-2018 election cycle was \$13,100, pursuant to Minnesota Statutes section 10A.27, subdivision 11. The aggregate special source limit applicable to the Perske committee during its special election campaign was \$18,900.
9. The no-change statement filed in lieu of People PAC (MN)'s 2018 pre-general report of receipts and expenditures was due October 29, 2018, and was not received by the Board until November 23, 2018.

Based on the above analysis and findings of fact, the Board makes the following:

Conclusions of Law

1. Colleen Needles Steward's payment of \$6,078.14 to her company for the video production costs was an in-kind contribution of \$6,078.14 to People PAC (MN).
2. The People PAC's payment of \$7,449.17 for expenses related to the videos was an in-kind contribution totaling \$7,449.17 to People PAC (MN).

3. People PAC (MN) made approved expenditures of \$901.82 each on behalf of 15 principal campaign committees on or before October 19, 2018. Each \$901.82 approved expenditure was thereby an in-kind contribution from People PAC (MN) to one of those committees. The 15 principal campaign committees are Robert Bierman for MN House, Huot for House, Volunteers for Kelly Moller, Kristin Bahner for State Representative, Friends for Karla (Scapanski), People for Gail Kulp, Heather Edelson for House, Ginny Klevorn for Representative, Brand (Jeff) for House, Neighbors for Dan (Wolgamott), Carlie (Kotzya-Witthuhn) for House, Friends for Aric (Putnam), the Wazlawik (Ami) Volunteer Committee, Erin (Koegel) for Minnesota, and Perske (Joe) for Senate.
4. When the People PAC (MN) contribution is included, during the 2017-2018 election cycle the Edelson committee exceeded the aggregate special source contribution limit by \$747.41, the Klevorn committee exceeded the limit by \$737.41, the Brand committee exceeded the limit by \$51.82, and the Koegel committee exceed the limit by \$2,727.41. When the People PAC (MN) contribution is included, during the Senate District 13 special election cycle the Perske committee exceeded the aggregate special source limit by \$876.82.
5. There was no intent by The People PAC, People PAC (MN), the DFL House Caucus, the DFL Senate Caucus, or any of the principal campaign committees or individuals named herein to circumvent the aggregate special source contribution limit in violation of Minnesota Statutes section 10A.29.
6. People PAC (MN) has not demonstrated good cause for the late filing of the no-change statement that was due October 29, 2018, and the Board declines to waive the late filing fee.

Based on the above findings of fact and conclusions of law, the Board issues the following:

Order

1. Within 30 days of the date of this order, People PAC (MN) must file amended 2018 September and pre-general reports of receipts and expenditures disclosing receipt of in-kind contributions totaling \$6,078.14 from Colleen Needles Steward and \$7,449.17 from The People PAC. The pre-general report must disclose outgoing in-kind contributions on October 19, 2018, of \$901.82 each given to the 15 principal campaign committees listed in conclusion of law number 3, described as "video production services," or something similar.
2. Within 10 days of the date of this order, People PAC (MN) must obtain from The People PAC the disclosure statement required by Minnesota Statutes section 10A.27, subdivision 13. The disclosure statement may consist of the reports of receipts and disbursements filed by The People PAC with the FEC covering the period from January 1 through November 26, 2018. Within 30 days of the date of this order, People PAC (MN) must provide an electronic or printed copy of the disclosure statement to the Board.
3. Within 30 days of the date of this order, each of the 15 principal campaign committees listed in conclusion of law number 3 must file an amended 2018 year-end or election-cycle-end report of receipts and expenditures, removing any \$982 in-kind contribution reported to have been received from "Colleen Steward," and disclosing receipt of a \$901.82 in-kind contribution on October 19, 2018, from People PAC (MN), Board registration number 41208. On their reports, the committees must describe the contribution as "video production services," or something similar.

4. Within 30 days of the date of this order, the Heather Edelson for House committee must return at least \$747.41 to one or more special source contributors that gave a contribution to the committee during the 2017-2018 election cycle.
5. Within 30 days of the date of this order, the Ginny Klevorn for Representative committee must return at least \$737.41 to one or more special source contributors that gave a contribution to the committee during the 2017-2018 election cycle.
6. Within 30 days of the date of this order, the Brand (Jeff) for House committee must return at least \$51.82 to one or more special source contributors that gave a contribution to the committee during the 2017-2018 election cycle.
7. Within 30 days of the date of this order, the Perske (Joe) for Senate committee must return at least \$876.82 to one or more special source contributors that gave a contribution to the committee during the Senate District 13 special election cycle.
8. The violation of the aggregate special source contribution limit by the Erin (Koegel) for Minnesota committee will be addressed by the Board separately from this order.
9. People PAC (MN) is ordered to pay \$800 for the late filing fee owed for the committee's no-change statement that was due October 29, 2018. Payment must be made within 30 days of the date of this order by check or money order payable to the State of Minnesota. Payment may be made directly by The People PAC.

/s/ Margaret Leppik
Margaret Leppik, Chair
Campaign Finance and Public Disclosure Board

Date: November 6, 2019

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

FINDINGS, CONCLUSIONS, AND ORDER

IN THE MATTER OF THE FAITH IN MINNESOTA FUND

Background

In April 2019, Board staff became aware of a website and Facebook page each titled Greater Than Fear.¹ Publicly available data from Facebook indicated that over 150 independent expenditure advertisements were run via the Greater Than Fear Facebook page during a two-week period preceding the 2018 general election.² The advertisements each contained a disclaimer that stated “Paid for by Education Minnesota, Faith in Minnesota, and SEIU Minnesota.” The advertisements did not include an address or the independent expenditure language specified in Minnesota Statutes section 211B.04, subdivision 2. The advertisements each contained links to both the Greater Than Fear Facebook page and the Greater Than Fear website. The Facebook page did not include a disclaimer or any information that identified the association responsible for the page, but did include a link to the Greater Than Fear website. The website did not include a disclaimer in the statutory format or a mailing address, but did include barely visible text identifying the website as “A project of Education Minnesota, Faith in Minnesota, and SEIU Minnesota.”

The Faith in Minnesota Fund is an independent expenditure political fund that was registered with the Campaign Finance and Public Disclosure Board in July 2018. Its supporting association is Faith in Minnesota, a 501(c)(4) nonprofit organization. The 2018 year-end report of receipts and expenditures filed by the Faith in Minnesota Fund itemized independent expenditure advertisements supporting three candidates, two of whom were named in the advertisements ran via the Greater Than Fear Facebook page.

In June 2019, Board staff notified Faith in Minnesota that the Board would consider opening a formal investigation regarding the apparent lack of proper disclaimers on independent expenditures prepared and disseminated by Faith in Minnesota. The Board opened a formal investigation at its meeting on June 26, 2019. In response, counsel for Faith in Minnesota explained that the association

was aware of the disclaimer requirement for independent expenditures included in Minn. Stat. § 211B.04, and it attempted to comply with the requirement by instructing its vendor to include the statutorily required disclaimer in Facebook’s partially customizable disclaimer window. Unfortunately, the window did not permit the vendor to include the entire text of the disclaimer that is required by statute. Accordingly, the disclaimer was shortened to what the Fund, its coalition partners, and its vendor understood to be the most important substantive information in the disclaimer rule: “Paid for by Education Minnesota, Faith in Minnesota, and SEIU Minnesota.” Throughout the campaign, the Fund engaged what it believed to be an expert vendor in this area and worked with more experienced coalition partners in an effort to ensure that it was complying with the applicable rules.

¹ greaterthanfear.us; facebook.com/greaterthanfear

² facebook.com/ads/library/?view_all_page_id=528226220973181

When asked why the disclaimer on the independent expenditure advertisements disseminated via the Greater Than Fear Facebook page mentioned two organizations in addition to Faith in Minnesota, counsel for Faith in Minnesota stated that

Education Minnesota and SEIU Minnesota did not pay for any portion of the advertisements. Rather, Education Minnesota and SEIU Minnesota were named in the disclaimer because the Greater than Fear Video was part of a larger coalition effort (i.e. the Greater than Fear Campaign), and the Faith in Minnesota Fund wanted these organizations to get credit for their efforts. Education Minnesota and SEIU did make contributions to the 501(c)(4) organization Faith in Minnesota towards the larger Greater than Fear Campaign efforts, but none of those funds were earmarked for the Fund nor for any specific campaign advertisements.

During the course of the investigation, Board staff learned that Faith in Minnesota also prepared and disseminated over 80 independent expenditure advertisements via a separate Facebook page, titled Faith in Minnesota,³ during a 10-day period preceding the 2018 primary election.⁴ Although those advertisements each contained a disclaimer that stated “Paid for by Faith in Minnesota,” none of them contained an address or the statutory language identifying the communication as an independent expenditure. The advertisements each contained a link to the Faith in Minnesota Facebook page, which did not include a disclaimer in the form specified in statute or a mailing address, but did include a phone number and a link to Faith in Minnesota’s website.⁵

With respect to the independent expenditure advertisements that lacked a disclaimer in the statutory format, Faith in Minnesota paid \$9,024.51 to disseminate advertisements via the Faith in Minnesota Facebook page and paid \$8,074.74 to disseminate advertisements via the Greater Than Fear Facebook page. Facebook’s metric known as reach, which measures the number of unique users to whom an advertisement is presented, indicates that approximately 457,088 users viewed the independent expenditure advertisements disseminated via the Faith in Minnesota Facebook page and approximately 401,685 users viewed the independent expenditure advertisements disseminated via the Greater Than Fear Facebook page, for a total of 858,773.

The independent expenditure advertisements ran via the Greater Than Fear Facebook page utilized graphics and a video that were paid for by Faith in Minnesota. The cost to produce the video was \$14,000. The video was also used by Faith in Minnesota in Facebook advertisements that were not independent expenditures. Of the total of \$8,595.63 Faith in Minnesota paid for Facebook to run advertisements containing the video, \$2,484.30, or 29%, was for three independent expenditure advertisements that lacked a disclaimer in the statutory format. Counsel for Faith in Minnesota explained that

a broad coalition of 22 organizations throughout the state used and shared the Video in connection with a set of messages, talking points, and branded images. Before October 23—taking into consideration dissemination by just the Fund and one of its coalition members—the Video reached more than 387,000 people and was shared over 22,000 times on Facebook and Twitter. The Video was distributed far more widely by the other coalition members. None of these reaches or shares referred to the election or defeat of a specific candidate.

³ [facebook.com/FaithInMN](https://www.facebook.com/FaithInMN)

⁴ [facebook.com/ads/library/?view_all_page_id=1700040490027062](https://www.facebook.com/ads/library/?view_all_page_id=1700040490027062)

⁵ [faitinmn.org](https://www.faitinmn.org)

Faith in Minnesota paid \$1,500 for graphic design work that included graphics used both in independent expenditure advertisements and in other communications that were not independent expenditures. Of the five illustrations that were included in that price, four, including a logo, were utilized in independent expenditure communications, and one illustration was only used in communications that were not independent expenditures.⁶ Faith in Minnesota paid \$5,590.44 for Facebook to run 148 independent expenditure advertisements containing the graphics. Faith in Minnesota also spent \$9,006 on newspaper advertisements and \$2,300.47 on posters, signs, handouts, and banners containing the graphics, which were not independent expenditures. The amount Faith in Minnesota spent on independent expenditure advertisements on Facebook containing the graphics at issue in this investigation represents no more than 49% of the total spent by Faith in Minnesota on communications including those graphics. The graphics were also utilized by an organization allied with Faith in Minnesota to produce t-shirts that cost approximately \$12,400 and were not independent expenditures. Counsel for Faith in Minnesota stated that the graphics

were shared far and wide by the Fund and its allies, primarily in connection with nonpartisan education and issue advocacy. Like the Greater than Fear video, the Facebook graphics were used ubiquitously throughout the Greater than Fear campaign, such that their value was de minimis [sic] for any single use.

None of the total amount that Faith in Minnesota paid to produce the video and graphics was disclosed on the periodic reports filed by the Faith in Minnesota Fund as those costs were not considered, by Faith in Minnesota, to be part of its independent expenditures.

During the investigation, Board staff also asked why Faith in Minnesota did not timely file a 2018 pre-primary report or 24-hour notices regarding large contributions received during the period immediately preceding the 2018 primary election. Faith in Minnesota explained that a registration form for the Faith in Minnesota Fund was provided to Board staff in early July of 2018, however, Board staff did not provide a Board registration number until September 20, 2018. Without a registration number, the Faith in Minnesota Fund was unable to file a 2018 pre-primary report or the 24-hour notices. Board staff acknowledges that the delay in processing the registration of the Faith in Minnesota Fund prevented the fund from filing the 2018 pre-primary report and 24-hour notices in a timely manner.

Analysis

Disclaimer Requirement

There is no disagreement that the advertisements in question were independent expenditures. Minnesota Statutes section 211B.04, subdivision 2, requires a written independent expenditure to include a disclaimer that states "This is an independent expenditure prepared and paid for by . . . (name of entity participating in the expenditure), . . . (address). It is not coordinated with or approved by any candidate nor is any candidate responsible for it." Minnesota Statutes section 10A.34, subdivision 4, provides that the Board may impose a civil penalty of up to \$3,000 for a violation of Minnesota Statutes section 211B.04. Minnesota Statutes section 10A.17, subdivision 4, likewise requires entities that make

⁶ The graphics and video can be viewed at shortyawards.com/11th/greater-than-fear-winning-progressive-change-in-minnesota.

independent expenditures to “publicly disclose that the expenditure is an independent expenditure” by including a disclaimer “statement in substantially the form provided in section 211B.04, subdivision 2.”⁷

Production Costs of Media Used in Independent Expenditures

Faith in Minnesota argues that none of the costs incurred to produce the video and graphics used in independent expenditure advertisements disseminated via the Greater Than Fear Facebook page should be included when calculating the amount spent on independent expenditures. The basis of that argument is that the video and graphics were widely used in communications that were not independent expenditures and the fractional value of the production costs was de minimis for any particular use. However, with the exception of in-kind expenditures that are the product of an in-kind contribution valued at \$20 or less,⁸ there is no de minimis exception or threshold with respect to calculating the amount spent on independent expenditures or any other type of disbursement under Chapter 10A. Regardless of the amount, the cost to produce materials used in independent expenditure communications must be included when calculating the amount spent on independent expenditures.⁹

Faith in Minnesota incurred the costs to produce the video and graphics. When the video and graphics were utilized in independent expenditure advertisements, that use constituted an in-kind contribution from Faith in Minnesota to the Faith in Minnesota Fund. An in-kind contribution’s value is its fair market value.¹⁰ The fair market value of the video and graphics paid for by Faith in Minnesota did not decrease as a result of being used in communications that were not independent expenditures. Moreover, Faith in Minnesota would have been billed the same amount for the video and graphics regardless of whether they were ultimately used in independent expenditure communications, used in advertisements that were not independent expenditures, or not used at all. When an in-kind contribution consists of an item or service purchased in an arms-length transaction and that item or service has not changed in value, the fair market value is the purchase price. Because one of the five illustrations for which Faith in Minnesota paid a total of \$1,500 was not utilized by Faith in Minnesota in independent expenditure communications, 20% of the total cost of the graphics is deducted for purposes of determining the value of the in-kind contribution that consisted of the graphics used in independent expenditure communications.

The three independent expenditure advertisements disseminated via the Greater Than Fear Facebook page that contained the video each expressly advocated for the election of only one candidate, Tim Walz. Therefore, the Faith in Minnesota Fund should have disclosed an in-kind independent expenditure of \$14,000 in support of Tim Walz for Governor consisting of the cost of the video. How the value of the graphics should have been allocated between candidates for purposes of reporting in-kind independent expenditures by the Faith in Minnesota Fund is complicated by the number of independent expenditure advertisements that contained the graphics and the number of candidates that were identified within those advertisements.

Each of the 148 independent expenditure advertisements disseminated via the Greater Than Fear Facebook page that contained the graphics supported Tim Walz and Keith Ellison, and 140 of them also

⁷ [Minn. Stat. § 10A.17, subd. 4](#), was amended effective June 1, 2018, by [2018 Minn. Laws Ch. 119 \(S.F. 3306\)](#), to explicitly reference [Minn. Stat. § 211B.04, subd. 2](#).

⁸ [Minn. Stat. § 10A.13, subd. 1](#).

⁹ See [Minn. Stat. § 10A.20, subd. 3 \(h\)-\(i\)](#).

¹⁰ [Minn. Stat. § 10A.20, subd. 3 \(c\)](#).

supported one of 18 candidates for state representative. In order to avoid needlessly complicating the amendments that will need to be made to its 2018 year-end report, the Board will instruct the Faith in Minnesota Fund to disclose in-kind independent expenditures supporting Tim Walz and Keith Ellison, each consisting of 1/3 of the amount spent on graphics that were utilized in independent expenditures. The Board will instruct the Faith in Minnesota Fund to allocate the remainder equally between the 18 candidates for state representative that were identified within those advertisements.

Amount of Civil Penalty

When determining the appropriate amount of a civil penalty to be imposed for a disclaimer violation, the Board considers several factors, including the willfulness and gravity of the violation and any history of past violations.¹¹ To ensure that civil penalties for violations of the disclaimer requirement are proportional, the Board also considers the amount of money spent to produce and disseminate the communications that lacked a proper disclaimer as well as the estimated audience of those communications.

Faith in Minnesota acknowledged that it was aware of the disclaimer requirement for independent expenditures under Minnesota Statutes section 211B.04 and that the disclaimer displayed on the advertisements in question excluded much of the language required by statute. Faith in Minnesota also acknowledged that the disclaimer displayed on the advertisements disseminated via the Greater Than Fear Facebook page stated that those advertisements were paid for by Education Minnesota and SEIU Minnesota, in addition to Faith in Minnesota, despite the fact that the advertisements were paid for solely by Faith in Minnesota. Faith in Minnesota spent a total of \$32,299.25 to produce and disseminate over 230 separate independent expenditure advertisements that lacked a disclaimer in the statutory format. Those advertisements reached an estimated audience of 858,773. While many of the Facebook advertisements prepared and disseminated by Faith in Minnesota utilized the same graphics or video as other advertisements, each advertisement individually constituted an independent expenditure that required a disclaimer under Minnesota Statutes section 211B.04

The independent expenditure advertisements in question were disseminated as part of two distinct efforts. The first included advertisements disseminated via the Faith in Minnesota Facebook page immediately prior to the 2018 primary election, all of which supported the same candidate. The second effort included advertisements disseminated via the Greater Than Fear Facebook page immediately prior to the 2018 general election, which supported a total of 20 separate candidates.

Faith in Minnesota's knowledge of the disclaimer requirement, the inaccuracy of the disclaimer that was provided, the amount of money spent on the communications in question, the size of the audience for those communications, and the number of violations of the disclaimer requirement were factors considered by the Board when imposing the civil penalty.

2018 Pre-Primary Report and 24-Hour Notices

Because Board staff did not timely process the registration of the Faith in Minnesota Fund and provide a Board registration number, the Board will not impose any late filing fees for the Faith in Minnesota Fund's

¹¹ See [Minn. Stat. § 14.045, subd. 3.](#)

2018 pre-primary report or 24-hour notices regarding large contributions received prior to the 2018 primary election.

Based on the above background and analysis, the Board makes the following:

Findings of Fact

1. Faith in Minnesota was formed in 2017 and began making independent expenditures subject to Chapter 10A in 2018 via the Faith in Minnesota Fund. Faith in Minnesota has no history of past violations of the disclaimer requirement.
2. Faith in Minnesota prepared and disseminated over 80 independent expenditure advertisements via a Facebook page titled Faith in Minnesota with a disclaimer that stated "Paid for by Faith in Minnesota." Those advertisements each included a link to the Faith in Minnesota Facebook page, which did not include a mailing address or the disclaimer language specified in statute, but did include a phone number and website address for Faith in Minnesota and provided a means to contact Faith in Minnesota through Facebook. It was clear from the disclaimer on those advertisements that the advertisements were paid for by Faith in Minnesota.
3. The independent expenditure advertisements in question, disseminated via the Faith in Minnesota Facebook page, collectively ran from August 5, 2018, through August 15, 2018.
4. The independent expenditure advertisements in question, disseminated via the Faith in Minnesota Facebook page, reached approximately 457,088 users.
5. Faith in Minnesota paid \$9,024.51 to disseminate the independent expenditure advertisements in question via the Faith in Minnesota Facebook page.
6. Faith in Minnesota prepared and disseminated 151 independent expenditure advertisements via a Facebook page titled Greater Than Fear with a disclaimer that stated "Paid for by Education Minnesota, Faith in Minnesota, and SEIU Minnesota." Those advertisements each included links to both that Facebook page and the Greater Than Fear website. Neither the Facebook page nor the website contained additional identifying information beyond what was included in the disclaimer, but did provide a means for individuals to contact the administrator of the Greater Than Fear social media accounts. The Greater Than Fear website included the text "A project of Education Minnesota, Faith in Minnesota, and SEIU Minnesota."
7. The disclaimer on the independent expenditure advertisements disseminated via the Greater Than Fear Facebook page stated that the advertisements were "Paid for by Education Minnesota, Faith in Minnesota, and SEIU Minnesota." Although Faith in Minnesota received donations from those organizations to support the Greater Than Fear campaign, the donations were not designated for the Faith in Minnesota Fund or for communications containing express advocacy. The advertisements were paid for solely by Faith in Minnesota.
8. The independent expenditure advertisements disseminated via the Greater Than Fear Facebook page collectively ran from October 23, 2018, through November 6, 2018.

9. The independent expenditure advertisements disseminated via the Greater Than Fear Facebook page reached approximately 401,685 users.
10. Faith in Minnesota paid \$8,074.74 to disseminate independent expenditure advertisements via the Greater Than Fear Facebook page.
11. Faith in Minnesota paid \$14,000 to produce a video that was utilized in three independent expenditure advertisements disseminated via the Greater Than Fear Facebook page.
12. Faith in Minnesota paid \$1,200 to produce graphics that were utilized in 148 independent expenditure advertisements disseminated via the Greater Than Fear Facebook page.
13. The total amount spent by Faith in Minnesota for the video, graphics, and dissemination of the independent expenditure advertisements in question was \$32,299.25, and the total estimated audience of those advertisements was 858,773.
14. The independent expenditure advertisements in question were disseminated as part of two distinct efforts. The first included advertisements disseminated via the Faith in Minnesota Facebook page immediately prior to the 2018 primary election, all of which supported the same candidate. The second effort included advertisements disseminated via the Greater Than Fear Facebook page immediately prior to the 2018 general election, which supported a total of 20 separate candidates.
15. None of the advertisements in question included a link to a web page that contained a disclaimer with the language specified in Minnesota Statutes section 211B.04, subdivision 2.
16. Faith in Minnesota was aware of the disclaimer requirement for independent expenditures and knew that the disclaimers that appeared within the advertisements in question did not include the language specified in Minnesota Statutes section 211B.04, subdivision 2. Specifically, the disclaimers did not include the correct participants in some cases, did not include an address, and did not include the independent expenditure language.

Based on the above analysis and findings of fact, the Board makes the following:

Conclusions of Law

1. Faith in Minnesota violated Minnesota Statutes section 211B.04, subdivision 2, when the association prepared and disseminated multiple independent expenditure advertisements via Facebook that did not include a disclaimer substantially in the form required by that provision.
2. The Faith in Minnesota Fund received an in-kind contribution with a fair market value of \$15,200 from Faith in Minnesota, consisting of the costs to produce the video and graphics that were used in independent expenditure advertisements disseminated via the Greater Than Fear Facebook page. The Faith in Minnesota Fund made in-kind independent expenditures totaling the same amount, which should have been disclosed on the Faith in Minnesota Fund's 2018 year-end report of receipts and expenditures pursuant to Minnesota Statutes section 10A.20, subdivision 3.

Based on the above findings of fact and conclusions of law, the Board issues the following:

Order

1. A civil penalty of \$6,000 is imposed against Faith in Minnesota pursuant to Minnesota Statutes section 10A.34, subdivision 4, for its violations of the disclaimer requirement in Minnesota Statutes section 211B.04, subdivision 2.
2. Faith in Minnesota is directed to forward payment of the civil penalty to the Board, by check or money order payable to the State of Minnesota, within 30 days of the date of this order.
3. The Faith in Minnesota Fund must file, within ten days of the date of this order, an amended 2018 year-end report of receipts and expenditures that includes an in-kind contribution of \$15,200 from Faith in Minnesota consisting of the value of the video and graphics, as well as additional in-kind independent expenditures totaling \$15,200 to account for the use of the video and graphics in independent expenditure advertisements. The \$14,000 spent on the video must be reported as a single in-kind independent expenditure supporting Tim Walz for Governor. Of the \$1,200 paid for the graphics utilized in independent expenditure communications, the Faith in Minnesota Fund must report two in-kind independent expenditures of \$400 each supporting Tim Walz for Governor and Keith Ellison for Attorney General, and should divide the remaining \$400 equally between the 18 candidates for state representative identified in those advertisements. If the Faith in Minnesota Fund exceeded the \$200 itemization threshold with respect to independent expenditures made in support of any candidate, the independent expenditures supporting that candidate must be itemized.
4. If Faith in Minnesota does not comply with this order, the Board's executive director may request that the attorney general bring an action on behalf of the Board for the remedies available under Minnesota Statutes section 10A.34.
5. The investigation of this matter is concluded and hereby made a part of the public records of the Board pursuant to Minnesota Statutes section 10A.022, subdivision 5.

/s/ Margaret Leppik
Margaret Leppik, Chair
Campaign Finance and Public Disclosure Board

Date: November 6, 2019