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October 28, 2011

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RE: Kurt Anderson Complaint
Our File No. 3842.801

Thank you for your October 10th letter. I hope that the following responses fully address the questions phrased in your letter.

1. **The first question you posed was raised by a Board member at the September 16th Board meeting, and was phrased as follows: Is it unusual for the Church to go beyond statements of the Church's view on an issue, and go to the extent of stating what the Church wants to have happen in the legislature?**

The Archdiocese[1] has historically used a variety of means to relay its messages to the faithful. For example, the Archdiocese has provided information to pastors to relay to their parishioners on its behalf and has communicated to the Catholic faithful through the Catholic Spirit newspaper; every issue of the Catholic Spirit newspaper includes a column by the Archbishop on a particular subject as a part of his teaching authority. The Archdiocese has also used, and intends to continue using, newer means of communication such as DVDs and its website in order to spread its message.

The Archdiocese does not track whether any of these communications have referred to legislative activity in Minnesota or elsewhere. But the Archdiocese does not devote itself to legislative or political matters. From time to time, however, the Archdiocese's religious mission compels it to take stands on matters concerning moral issues of the day

[1] The complaint in this matter refers to both the Archdiocese and the Archbishop. For purposes of simplicity, and because the same arguments apply to both, this letter may use the terms interchangeably.

and to relay the teachings of the Church to members of the Archdiocese. The Archdiocese has engaged in public discourse with its members that relate to Church teachings including, but not limited to, abortion, General Assistance Medical Care, anti-poverty legislation, and immigration reform. This discourse may, at times, have been concurrent with or closely pre-dated legislative activity. Whether the substance of this discourse is timely because of legislative activity in these areas, or vice versa, is most likely an academic question. But when matters are timely and relevant to Church teachings and philosophy, whether or not the Minnesota legislature or other legislatures have acted or will act on these matters, the Archdiocese considers it its duty to relate the Church's teachings on such matters to its members.

2. **The second question, also raised by a Board member at the September 16th meeting, was phrased as follows: Why were the communications in the mailing not distributed by the Minnesota Catholic Conference (MCC) rather than the Archdiocese?**

There are two reasons for which the Archdiocese, rather than the MCC, issued the mailing. First, it is the Archbishop's firm conviction that the mailing was a part of the Archdiocese's ministry and mission. It would be inappropriate for the Archdiocese to defer to the MCC in disseminating to the Catholic faithful a message pertaining to moral teachings of the church. Households within the Archdiocese look to the Archbishop for authority and guidance on matters of faith and morality. It would therefore only be proper for such a message to come from the Archdiocese and the Archbishop himself. Second, even if the MCC were a proper source of the message in the mailing, it does not have sufficient staff to process a mailing of the size involved in this case.

3. **You also addressed our argument that the Archbishop did not include a call to church members to take further action in the form of contacting their legislators, and asked why the Archbishop's communications, even without a call to action, would not result in the Archdiocese being a "principal" as defined in Minn. Stat. § 10A.01, subd. 33(2).**

A. The Archdiocese is not a principal because there was no lobbyist in the case.

The Archdiocese had previously demonstrated to the Board that neither it nor the Archbishop were lobbyists, based on the facts that (1) the mailing did not constitute direct communication with the legislature, and (2) no language in the mailing urged others to contact the legislature.

Minnesota law provides that, in order to be considered a "lobbyist," an individual must be engaged in particular conduct, i.e. attempting to influence legislative action by "communicating or urging others to communicate with public or local officials." Minn. Stat. § 10A.01, subd. 21(a)(1), (2). Similarly, Minn. R. 4511.0100 similarly defines lobbying as attempting to influence legislative action "by communicating with or urging others to communicate with public or local officials," or engaging in any activity that directly supports such communication. Minn. R. 4511.0100, subp. 3. By contrast, the statutory definition of "principal" does not describe particular types of activity, and requires merely spending $50,000 or more on "efforts to influence legislative action." Minn. Stat. § 10A.01, subd. 33(2). But it does not follow that a party can meet the definition of "principal" if there is no lobbyist and there has been no lobbying. Rather, as demonstrated below, because it has been established that the mailing in this case did not constitute "communicating or urging others to communicate with public or local officials," it follows that neither the Archbishop nor the Archdiocese can be considered a "principal."

i. The definition of lobbyist principal implicitly requires lobbying activities.

Minnesota campaign finance law does not separately define "lobbying," but the Board has defined this term in Minn. R. 4511.0100, subp. 3. "Lobbying" is defined therein to mean "attempting to influence legislative action, administrative action, or the official action of a metropolitan governmental unit by communicating with or urging others to communicate with public officials or local officials in metropolitan governmental units," or any activity that "directly supports" such communication. Minn. R. 4511.0100, subp. 3. In other words, conduct such as the mailing in this case, which was not directed at public officials and did not urge others to contact their public officials, cannot constitute lobbying. Similarly, activities that directly supported the mailing also cannot constitute lobbying.

Without lobbying activities, there can be no lobbyist principal. For example, in a 2006 opinion, this Board observed that to be a lobbyist principle, an entity must spend $50,000 or more on "lobbying expenditures." *Findings and Order in the Matter of a Complaint Filed against the Immunization Action Coalition*, http://www.cfboard.state.mn.us/bdinfo/investigation/IAC_060607.pdf. In that decision, the Board relied on the entity's records of "lobbying expenditures" in concluding that the entity did not spend more than $50,000 in any calendar year on such expenditures. *Id.*

It follows that both lobbyists and principals, in order to implicate lobbyist or lobbyist principal disclosure requirements under Minnesota campaign finance laws, must be engaged in either lobbying, or activities that directly support lobbying. Therefore, while a principal need not be engaged in communicating with or urging others to communicate with public officials or local officials, it must *at least* be engaged in activity that directly supports such communication. Here, because the mailing did not constitute communicating with, or urging others to communicate with, the Minnesota legislature, the activities of the Archdiocese cannot be said to have involved, or to have directly supported, such communication. Because the mailing did not constitute lobbying, the Archdiocese and Archbishop cannot be rendered lobbyist principals through their efforts to disseminate the mailing.

ii. The exceptions to the statutory definition of "lobbyist" imply that not only must there be *lobbying activities* in order for a principal to exist, but there must be a *lobbyist*

The statutory definition of "lobbyist" includes numerous exceptions. Minn. Stat. 10A.01, subd. 21(b) (providing that a public official, a state employee, a news medium or its employees, a paid expert witness, etc. are exempt from the definition of "lobbyist."). While the statutory definition of "principal" contains no such exceptions, it extremely doubtful that the legislature intended to capture entities within the definition of "principal" if the entity or its agents were statutorily exempt from the definition of "lobbyist." For example, under Minn. Stat. 10A.01, subd. 21(b)(1) an employee of the state may engage in lobbying activities without meeting the definition of "lobbyist." If a state employee were to do so, however, it would be absurd for the state to be considered a

lobbyist principal based on either its payments to that employee, or its payments on activities in support of that employee's communications.
But the legislature did not extend the exceptions in the definition of "lobbyist" to the definition of "principal." Rather, it is most likely that the legislature simply did not intend for a principal to exist where there was no lobbyist.[2]

iii. The fact that lobbyist principals are not required to identify themselves, but are required to be identified by lobbyists, indicates that the existence of a principal requires the existence of a lobbyist

Additionally, the fact that Minnesota campaign finance law requires lobbyists to identify principals, but does not provide for the identification of lobbyist principals via other means, suggests that the law did not intend to render a party a principal where there was no lobbyist. Minnesota campaign finance law requires lobbyists to register with the Board, and requires lobbyists to designate their principals as well, but it does not require principals to register with the Board. Minn. Stat. § 10A.03, subd. 2; *see also* http://www.cfboard.state.mn.us/bdinfo/investigation/08_16_2011_National_Organization_for_Marriage.pdf (observing that only lobbyists are required to register with the Board, and that Principals are only identified through lobbyist identification); http://www.cfboard.state.mn.us/ao/AO392.pdf ("Lobbyist principals do not register with the Board. Lobbyist principals are identified through lobbyist registrations and reports.").

iv. Guidance from this Board indicates that a lobbyist is required in order for a principal to exist.

The Board's own guidance also suggests that the existence of a principal depends on the existence of a lobbyist. First, the Board generally refers to principals as lobbyist principals, implying that a lobbyist exist for a principal to exist. For example, on its web

[2] Understandably, the requirement that a lobbyist exist for a principal to exist raises the question of whether an entity could escape registration as a principal by simply ensuring that none of its agents received enough compensation, or spent enough money, to satisfy the spending thresholds for lobbyists in Minn. Stat. § 10A.01, subd. 22(a). This concern may be best addressed by Minn. Stat. § 10A.01, subd. 22(c), which provides that individuals who volunteer their time on lobbying activities need not register as lobbyists, although such individuals are not included in the exclusions to "lobbyist" provided in Minn. Stat. § 10A.01, subd. 22(b)

page entitled "Lobbyist Principal Issues," the Board repeatedly refers to principals as "lobbyist principals." See http://www.cfboard.state.mn.us/lobby/principalissues.html; see also, e.g., http://www.cfboard.state.mn.us/ao/AO268.pdf (referring repeatedly to lobbyist principals). The Board also states that lobbyist principals are required to "report the total amount, rounded to the nearest $20,000, spent on *lobbying* efforts." http://www.cfboard.state.mn.us/lobby/principalissues.htm (emphasis added). The Board has further observed that a lobbyist principal "must notify the designated lobbyist at least five days before a lobbyist reporting date about" its expenditures, *id.*, implying that for a principal to exist, the principal must have engaged a lobbyist. Additionally, the Board has observed that "[a] lobbyist principal *and their lobbyist* are prohibited from giving gifts to officials." *Id.* (emphasis added)

B. Even if the Archdiocese could be a principal without a lobbyist, the mailing still did not rise to the level of "efforts to influence legislative action."

The fact that the mailing did not constitute communicating with, or urging others to communicate with, the legislature is directly relevant to whether there were any efforts at all to influence legislative action. The mailing was sent out only to Catholic households in Minnesota, and addressed only them. To the extent that the mailing could have constituted an effort to influence legislative action, it could only have done so by urging others to contact the legislature. But as established in our previous communications with the Board, the mailing contained no language directing or even requesting recipients to contact their legislators, and contained no information about any individual legislators. In short, the mailing did not reach the threshold of "efforts to influence legislative action."

In conclusion, it is our understanding that the only remaining issue in this matter is whether either the Archdiocese can be considered a "principal" under Minnesota campaign finance laws by virtue of creating and disseminating a mailing. Because there was no lobbying or lobbyist involved in these activities, and because these activities did not attain the level of "efforts to influence legislative action," the Board must resolve this issue in the negative.

4. You also asked that we more fully explain our position on the constitutional aspects of our argument.

The essence of the Archdiocese's constitutional argument is that, in order to carry out its mission as an organization of the Roman Catholic Church, it is permitted by the Constitution to freely communicate in an uninhibited manner with members of the faithful on all matters of Catholic faith and doctrine, regardless of the extent to which those matters overlap with legislation being considered, or that could be considered, by the Minnesota legislature. The Archdiocese and the Archbishop are required to teach on the moral issues of the day and to encourage the lay Catholic faithful to act on the Church's teachings. The Archdiocese and the Archbishop cannot engage in the uninhibited expression to its members that the Catholic faith demands if required to tailor their message to avoid fines and burdensome administrative requirements, or if they must bear the expense and burden of state administrative oversight about the wording of individual communication every time it takes a stand on a matter of public concern. The effective result of the aforementioned burdens on communications from the Archdiocese and the Archbishop are to proscribe them from urging members of the faith to take action and voice their beliefs.

a. Requiring the Archdiocese or Archbishop to register as a lobbyist or a principal violates the federal constitutional protections afforded to the exercise of free speech and religious liberty.

i. The Free Exercise Clause

Requiring the Archdiocese or the Archbishop to register as either a lobbyist or a principal violates the Free Exercise Clause of the First Amendment to the United States Constitution. The First Amendment provides that "Congress shall make no law . . . prohibiting the free exercise [of religion]," and the provisions of the First Amendment have been held by the United States Supreme Court to apply to states through the Fourteenth Amendment. *Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 531 (1993). The Free Exercise Clause protects the "right to believe and profess whatever religious doctrine one desires" and "the performance of . . . physical acts . . . when they are engaged in for religious reasons." *Employment Div. v. Smith*, 494 U.S. 872, 877-79 (1990) (stating that laws burdening free exercise must be rationally related to a legitimate

government objective). As discussed below, the Free Exercise clause protects communications between the church and its members on matters pertaining to religious belief, even where such matters overlap with political matters.

The ability of the Archdiocese to communicate with its members on moral issues, even if those issues are subject to pending legislation, is critical to its religious mission. Its religious mission also requires it to encourage parishioners take action to support or oppose legislation that bears on its religious teachings. To effectively carry out this mission, the Archdiocese uses numerous communicative tools, including its newspapers, religious services, and other media. Courts have held that attempts to regulate communications between the church and its members on religious and political matters violate the Free Exercise Clause and other First Amendment rights. For example, in *Rigdon v. Perry*, 962 F. Supp. 150 (D.D.C. 1997), the D.C. federal court held that the government could not prohibit a Catholic military chaplain from urging congregants to contact Congress about pending legislation. The *Rigdon* court noted that the chaplain's "desire to urge his Catholic parishioners to contact Congress on legislation that would limit what he and many other Catholics believe to be an immoral process . . . is no less religious in character than telling parishioners that it is their Catholic duty to protect every potential human life by not having abortions and by encouraging others to follow suit." *Id.* at 164. The court concluded that it was "not [its] role . . . to draw fine distinctions between degrees of religious speech and to hold that religious speech is protected but religious speech with so-called political overtones is not." *Id.* (citing *Widmar v. Vincent*, 454 U.S. 263, 270 n. 7 (1981)). The *Rigdon* court concluded that the prohibition "unlawfully . . . impinged upon [the chaplain's] free exercise and free speech rights. *Id.* at 165. Thus, *Rigdon* supports the proposition that regulations limiting communications between the Archdiocese and its members run afoul of the First Amendment's Free Exercise clause.

Although *Rigdon* involved communications from the pulpit, communications sent by mail to church members (whether in letter or video form) are protected from government regulation because they are equally central to the Archdiocese's exercise of its religious freedom. Moreover, although *Rigdon* involved an outright prohibition on protected speech, the Board's proposed action—requiring the Archdiocese to register as a lobbyist principal and expose itself to potential random audits for engaging in religious

communication—nonetheless infringes upon the Archdiocese's and Archbishops' protected Free Exercise rights.

ii. The Establishment Clause

The application of campaign finance laws to the Archdiocese and the Archbishop constitutes excessive entanglement in violation of the Establishment clause. In *Lemon v. Kurtzman*, the U.S. Supreme Court set forth the test for determining whether a law has the effect of establishing a religion.

> In the absence of precisely stated constitutional prohibitions, we must draw lines with reference to the three main evils against which the Establishment Clause was intended to afford protection: 'sponsorship, financial support, and active involvement of the sovereign in religious activity' Every analysis in this area must begin with consideration of the cumulative criteria developed by the Court over many years. Three such tests may be gleaned from our cases. First, the statute must have a secular legislative purpose ; second, its principal or primary effect must be one that neither advances nor inhibits religion; finally, the statute must not foster an excessive government entanglement with religion."

403 U.S. 602 at 612-13. The three prongs of the Lemon test are that the state action must have a secular purpose, must neither inhibit nor advance religion in its primary effect, and "must not foster excessive governmental entanglement with religion." *Odenthal v. Minn. Conference of Seventh Day Adventists*, 649 N.W.2d 426, 435 (Minn.2002). "State action violates the Establishment Clause if it fails to satisfy any of these prongs." *Edwards v. Aguillard*, 482 U.S. 578, 583 (1987).

a. Inhibition of religion

The Archdiocese does not assert that Minnesota campaign finance laws lack a secular purpose. However, as described above, the primary effect of a statute that would require any entity to register as a lobbyist or a lobbyist principal if its communications could be

interpreted as "efforts to influence legislative action" would indeed be to inhibit religion. Communication with the Catholic faithful on relevant issues pertaining to the faith is critical to the Archdiocese's religious mission. The Archbishop's and his Archdiocese's ability to fulfill this mission would be inhibited if it were required to censor its instructions to the faithful based upon whether legislative action is or could be undertaken.

b. Excessive Entanglement

The excessive entanglement prong of the *Lemon* test "considers whether the challenged government action fosters excessive state entanglement with religion." *Skoros v. City of N.Y.*, 437 F.3d 1, 29 (2d Cir. 2006). "The entanglement of [church and state] becomes constitutionally excessive only when it has the effect of inhibiting religion." *Id.* The factors relevant to determining excessive entanglement are similar to the factors used to determine the statute's effect under *Lemon's* second prong, which mandates that the "principal or primary effect" of the challenged government action "must neither advance nor inhibit religion." *Id.* at 29, 36. Once it is recognized that state action imposes some burden on religious practices, the state has the burden of showing that no excessive entanglement would result from the action. *Bangor Baptist Church v. State of Me., Dept. of Educational and Cultural Services*, 549 F. Supp. 1208, 1222 (D.C.Me. 1982)

Based on the same entanglement concerns present in this case, the Court of Appeals of Michigan held that the application of Michigan lobbying laws to religious entities violated the First Amendment principle of non-entanglement between church and state. *See Pletz v. Sec'y of State*, 125 Mich. App. 335 (1983). In *Pletz*, the court stated: "In our view, continuing observation and review of religious organizations' documents and records would be necessary for the government to review for evidence of possible lobbying activities. Additionally, determination of which records are for lobbying and which are for religious purposes would be a continuing difficult chore." *Id.* at 373-74. It concluded, therefore, that "as applied to churches and religious institutions, the act violates the First Amendment by creating excessive and enduring entanglements between state government and religious institutions. Consequently, in order to preserve the constitutionality of the act, we interpret it to except churches and religious institutions from its coverage and application." *Id.* at 374.

Several federal courts have struck down similar state efforts to intrude in church affairs under the Establishment Clause. In *Surinach v. Pesquera De Busquets*, 604 F.2d 73 (1st Cir. 1979), the First Circuit held that an investigation into the operating costs of Roman Catholic schools by the government of Puerto Rico violated the First Amendment because it created an impermissible entanglement of the affairs of church and state. Although there was no evidence of a purpose to inhibit religion, "the effect of the government's actions created a palpable threat of state interference with the internal policies and beliefs of these church-related schools." 604 F.2d at 78. The government had sought detailed information about the schools' expenditure of funds. The court found that government's authority to regulate and review the schools' tuition process constituted "a continuing involvement calling for official and continuing surveillance leading to an impermissible degree of entanglement. *Id.* at 78 (quoting *Waltz v. Tax Commission*, 387 U.S. 664, 675 (1970); *see also Word of Faith World Outreach Center Church, Inc. v. Morales*, 787 F. Supp. 689 (W.D. Tex. 1992) (holding that a statute enabling the state to demand documents from a church involved excessive entanglement with religion);

And in *Church of Scientology Flag Serv. V. City of Clearwater*, 2 F. 3d 1514 (11th Cir. 1993), the Eleventh Circuit struck down sections of a city ordinance regulating the solicitation of funds by charitable organizations because they violated the Establishment Clause. In particular, the ordinance imposed intrusive disclosure and recordkeeping obligations that allowed for detailed monitoring of church expenditures. In concluding that such requirements could not withstand constitutional scrutiny, the court noted that the "tendency toward establishing religion that inheres in laws requiring public disclosure and official surveillance of church finances and activities . . . " *Church of Scientology*, 2 F.3d at 1537.

Applying the mandatory record-keeping, reporting, and auditing provisions of Minnesota campaign finance laws to the Archdiocese entails a significant intrusion by the state into religious affairs. Under the laws, the Archdiocese must satisfy state registration requirements, including agreeing to expose itself to the possibility of intrusive audits of its financial records by the state. Such intrusive, random audits of the Archdioceses' records will involve a substantial entanglement of the state in religious affairs. Laws allowing an investigation into the financial affairs of religious institutions have been held unconstitutional as an impermissible entanglement of the affairs of church and state. *See*

Taylor v. City of Knoxville, 566 F. Supp. 925, 930 (D.C. Tenn.,1982); *Sylte v. Metropolitan Government of Nashville and Davidson County,* 493 F. Supp. 313, 319 (D.C. Tenn., 1980) (ruling that requiring a religious organization to disclose the manner of the allocation of its funds in terms of salary of employees, expenditure on buildings, religious propaganda, etc., was not only "direct interference with the furtherance of religious purposes," but "enmeshed [the municipality] into the financial and religious interworking of the . . . institution."

The Archdiocese does not keep separate financial records pertaining to its communications based on whether or not they are related to matters where legislation is or could be pending. It would be practically impossible for the Archdiocese to keep separate records considering the difficulties that would be involved in segregating the expenditures relating to regulated and the expenditures relating to non-regulated activities. The employees of the Archdiocese do not regularly engage in activities that would be deemed subject to Minnesota campaign finance laws. To keep separate records, the Archdiocese would have to compensate employees separately from their regular compensation each time they engaged in such activities, such as when Archdiocesan staff members are engaged in sending mailings to Archdiocesan households. Such a system is not workable for a religious organization like the Archdiocese. Because it would be practically impossible for the Archdiocese to keep separate records of regulated and unregulated activities, all of its "integrated" records would have to be preserved and made available to the Board during an audit. As a practical matter, the state would have the authority to audit all of the Archdiocese's expense records, including those pertaining to its general religious activities. The Establishment Clause prohibits such an extensive level of entanglement. Requiring the Archbishop and Archdiocese to register as lobbyists or lobbyist principals would therefore violate the Establishment Clause as well.

iii. Freedom of Speech

The First Amendment to the U.S. Constitution provides that "Congress shall make no law . . . abridging the freedom of speech," and applies to the states through the Fourteenth Amendment. *See, e.g., State v. Crawley*, 789 N.W.2d 899, 903 (Minn. App. 2010) "Discussion of public issues and debate on the qualifications of candidates are integral to the operation" of our system of government. *Buckley v. Valeo*, 424 U.S. 1, 14, (1976).

As a result, the First Amendment "has its fullest and most urgent application" to speech pertaining, even indirectly, to political activity. *Eu v. San Francisco County Democratic Central Comm.*, 489 U.S. 214, 223, (1989) (quoting *Monitor Patriot Co. v. Roy*, 401 U.S. 265, 272 (1971)).

The Archdiocese and the Archbishop do not argue that the content of its speech is in danger of being directly controlled by Minnesota campaign finance laws. But the possibility of having to register as a lobbyist or principal and submit to financial audits as a result of its communications to the faithful will have a chilling effect on the Archdiocese's communications. Courts have recognized that government action that creates a chilling effect on a party's communications may burden its free speech rights under the First Amendment. *See, e.g., Day v. Holahan*, 34 F.3d 1356, 1360 (8th Cir.). In *Day*, for example, the Eighth Circuit observed that it was "clear" that a matching-funds provision in Minnesota campaign finance laws infringed on "protected speech because of the chilling effect" it had "on the political speech of the person or group making the [triggering] expenditure." *Id.* The Day court further observed that the self-censorship that arises from laws creating a chilling effect on speech is no less a burden on speech than is direct government censorship, and is no less susceptible constitutional challenge. *Id.*

Moreover, because the statute at issue in this case is content-based (in that it focuses on whether the speech at issue constitutes an effort to influence legislative activity), it must be narrowly tailored to a compelling state interest to survive a constitutional challenge. *Id.* at 1362. But assuming that requiring disclosure of sources and funding of political speech is a compelling state interest, the Board's interpretation of campaign finance laws to include the Archdiocese as a "principal" or "lobbyist" would target those communications of the Archdiocese that are religious, rather than political, in nature; i.e., those communications intended to convey the moral teachings of the church to the Catholic faithful, regardless of whether legislative activity is being (or could potentially be) undertaken on these issues. Accordingly, the Archdiocese asserts that the Board's suggested interpretations of Minnesota campaign finance laws burden its exercise of its free speech rights.

b. Requiring the Archdiocese or Archbishop to register as lobbyists or principals violates the protection of religious liberty established by the Minnesota Constitution.

In Minnesota, religious liberty is considered "a precious right." *State v. Hershberger*, 462 N.W.2d 393, 398 (Minn.1990). The Minnesota Supreme Court has noted the high importance of protecting this right as demonstrated by its treatment in the Minnesota Constitution, where it appears even before any reference to the formation of a government. *State by Cooper v. French*, 460 N.W.2d 2, 8-9 (Minn.1990). The Minnesota Supreme Court has consistently held that article I, section 16 of the Minnesota Constitution affords greater protection against governmental action affecting religious liberties than the First Amendment of the federal constitution. *Hill-Murray Fed'n of Teachers v. Hill-Murray High Sch.*, 487 N.W.2d 857, 864-65 (Minn.1992); Hershberger, 462 N.W.2d at 397. "Whereas the first amendment establishes a limit on government action at the point of prohibiting the exercise of religion, section 16 precludes even an infringement on or an interference with religious freedom." *Hershberger*, 462 N.W.2d at 397.

To determine whether government action violates the free exercise of religion with respect to the Minnesota Constitution, courts ask: (1) whether the objector's beliefs are sincerely held; (2) whether the state action burdens the exercise of religious beliefs; (3) whether the state interest is overriding or compelling; and (4) whether the state uses the least restrictive means. *Hill-Murray Fed'n of Teachers v. Hill-Murray High Sch.*, 487 N.W.2d 857, 865 (Minn. 1992); *State v. Hershberger*, 444 N.W.2d 282, 285, 289 (Minn. 1989). Once the burden of government action is shown, the burden shifts to the state to justify its interest as compelling and show that it has chosen the least restrictive means by which to achieve its goal. *Hill-Murray*, 487 N.W.2d at 866. Thus, government action that is permissible under the federal constitution because it does not prohibit religious practices but merely infringes on or interferes with religious liberty, may nonetheless violate the Minnesota Constitution. *Id.*

In this case, as a matter of longstanding church doctrine, it is the religious mission of the Archbishop and Archdiocesan leadership to disseminate the teachings of the Catholic Church to members of the Archdiocese, particularly as they relate to timely issues, whether or not there is legislative action on these issues in Minnesota. And, undoubtedly,

requiring the Archdiocese to register and open its accounting to the state for doing so would burden its exercise of this belief.

The state may have a compelling interest in requiring entities who finance political lobbying to register and open their accounting to the state. But to the extent that the lobbyist principal registration requirements attempt to advance this interest, they are not sufficiently tailored to do so. To satisfy the "narrowly tailored" prong of this test, the state must "show that it has chosen the least restrictive means by which to achieve its goal." *Shagalow v. State, Dept. of Human Services*, 725 N.W.2d 380, 390 (Minn. App. 2006). As written, Minn. Stat. 10A.01, subd. 33 would require any entity that spends $50,000 or more on anything that might be construed as efforts to influence legislative activity, regardless of whether the conduct in question might be religious communications from church leadership to its faithful members on matters relevant to moral issues of religious importance.

As demonstrated by the importance given to religious liberty under the Minnesota Constitution and Minnesota law, religious organizations must be free to communicate with their members on matters relevant to their sincerely held beliefs. Whether legislative activity is being, or could be, undertaken on these matters, does not affect the sincerity of these beliefs or their importance to the teachings and mission of the church, and should not infringe upon a religious organization's efforts to disseminate its teachings on these issues to its faithful. But as the Board suggests it may interpret 10A.01, subd. 33, a religious organization who communicates with its members may incur the risk of opening itself to a random financial audit by the state.

If Minn. Stat. 10A.01 can be so interpreted by the Board, a properly narrowly-tailored version of the statute would include an exemption for religious communications to church members. Many other state statutes contain just such an exemption. *See, e.g.,* 29 Del.C. § 5831 (exempting, from laws pertaining to lobbyists, persons appearing on behalf of any religious organization with respect to subjects of legislation or regulation that directly relate to the religious beliefs and practices of that organization who do not otherwise act as lobbyists); I.C.A. § 68B.2 (excluding, from the definition of lobbyist, an individual who is a member, director, trustee, officer, or committee member of a religious organization who either is not paid compensation or is not specifically designated as a lobbyist); Miss. Code Ann. § 5-8-7 (exempting from regulation as a lobbyist an

individual who engages in lobbying activities exclusively on behalf of a religious organization which qualifies as a tax-exempt organization under the Internal Revenue Code); McKinney's Legislative Law of New York § 1-c (excluding from the definition of lobbying any attempt by a religious organization to influence passage or defeat of a local law, ordinance, resolution or regulation or any rule or regulation having the force and effect of a local law, ordinance or regulation); code 1976 § 2-17-10 (South Carolina) (excluding from lobbying laws a person who represents any established church solely for the purpose of protecting the rights of the membership of the church or for the purpose of protecting the doctrines of the church or on matters considered to have an adverse effect upon the moral welfare of the membership of the church); U.C.A. 1953 § 36-11-102 (Utah) (excluding from the definition of lobbyist an individual representing a bona fide church solely for the purpose of protecting the right to practice the religious doctrines of the church, unless the individual or church makes an expenditure that confers a benefit on a public official).

Moreover, statutes in other states that regulate lobbying but do not contain exemptions for religious organizations have not withstood constitutional challenges. *See Pletz*, 125 Mich. App. 335 (concluding that Michigan's lobbying-regulation statute, though otherwise valid, is invalid to the extent that it would regulate religious organizations). The Connecticut Attorney General reached a similar conclusion when considering whether Connecticut's campaign finance laws could be applied to religious organizations, stating that Diocese of Bridgeport's "free expression activities - communicating with its members on legislative issues of paramount importance and holding a rally at the seat of the legislature to protest government action - are clearly and unquestionably protected by the First Amendment," and concluding that applying Connecticut's lobbyist registration statute to the Diocese "raises a series of serious constitutional concerns." (See Exhibit A, Connecticut Attorney General Opinion No. 2009-006.) "As a general matter, courts have an obligation to construe and apply statutes wherever possible to avoid constitutional problems and to preserve protected First Amendment expression." (Id.) The fact that Minnesota and other states have not yet created exemptions for the activities of religious organizations in their statutes may merely indicate that constitutional challenges have not yet been brought in those states.

In conclusion, because Minnesota's campaign laws, as interpreted by the Board to require the Archbishop or Archdiocese to register as lobbyists or principals, infringe upon

religious conduct without being narrowly tailored to serve a compelling interest, they violate the Minnesota Constitution as well as the U.S. Constitution. Accordingly, the complaint against the Archbishop and Archdiocese must be dismissed on constitutional grounds if it cannot be dismissed on other grounds.

c. If interpreted to mean that a principal can exist when no lobbying activity exists, Minn. Stat. § 10A.01, subd. 33 is unconstitutionally overbroad and void for vagueness

i. Void for vagueness

Apart from the religion-based constitutional arguments made above, the Archbishop also raises a void-for-vagueness challenge to the Board's suggested interpretation of Minn. Stat. § 10A.01, subd. 33. If the Board were to interpret Minn. Stat. § 10A.01, subd. 33 as to allow an entity to qualify as a principal, but without any lobbyist or lobbying activity, such an interpretation would render the statute void for vagueness. A statute that "defines an act in a manner that encourages arbitrary and discriminatory enforcement" or "is so indefinite that people must guess at its meaning" is void for vagueness. *Hard Times Café, Inc. v. City of Minneapolis*, 625 N.W.2d 165, 171 (Minn.App.2001) (quotation omitted).

Here, Minn. Stat § 10A. 01, subd. 33 defines a principal as a party that spends $50,000 or more on "efforts to influence legislative activity." To the extent that a lobbyist is required for a principal to exist, the statute is not vague; any party who meets the spending threshold in support of a lobbyist is a principal. But to separate the definition of principal from the need for a lobbyist, and to therefore define a principal as one who meets the spending threshold in any "efforts to influence legislative activity" fails to define with sufficient clarity what kinds of "efforts" are covered. Any conduct or speech that has, among its purposes, an intent to influence legislative activity could be considered such an effort.

And in this case specifically, the lack of clarity in the Board's suggested interpretation has potentially dire consequences for the Archbishop and Archdiocese. As stated earlier, the Archbishop frequently engages in communications to the Catholic faithful that are relevant to the moral teachings of the church. For example, many of its communications

concern abortion, contraception, euthanasia, assistance for the poor, and other issues that bear relevance to legislative activity. Neither these communications nor the mailing at issue in this case have, as their primary purpose, the intent to influence legislation. But the Board's suggested interpretation of Minn. Stat § 10A. 01, subd. 33 would require the Archdiocese to register and to open its books as a result of these and other communications that are part of the Archdiocese's religious mission. As a result, it would not be possible for the Archdiocese to continue in its religious mission without incurring the disclosure and auditing requirements of a lobbyist principal. Indeed, if the activities of a lobbyist principal are to be defined by the vague phrase "efforts to influence legislative activity" alone, it would not be possible for the Archdiocese to have any certainty at all about whether its activities would incur the disclosure and auditing requirements of a lobbyist principal. Accordingly, if the Board were to interpret the statute defining "principal" based on this phrase (and the spending threshold) alone, the statute would be rendered unconstitutionally vague.

ii. Overbreadth

Under the overbreadth doctrine, a statute will be found unconstitutional, even strictly on its face, if it sweeps too broadly and reaches a substantial amount of constitutionally protected activity as well as unprotected activity. *NAACP v. Alabama ex rel. Flowers*, 377 U.S. 288, 307-08 (1964). Here, the Board has suggested that it may interpret Minn. Stat. § 10A.01, subd. 33 to require any entity that engages in "efforts to influence legislative action" (and also meets the $50,000 spending threshold) to register as a lobbyist principal. But this interpretation would apply to a substantial amount of constitutionally protected activity. Under this interpretation, any statement by a church with regard to church teachings which could implicate legislative action (or potential legislative action) could result in subjecting that church to the registration, disclosure, and auditing requirements of a political lobbyist or principal. Courts will avoid, whenever possible, an interpretation of a statute that renders that statute unconstitutional. *See State v. Orsello*, 554 N.W.2d 70, 73 (Minn. 1996). Accordingly, the Board should also avoid an interpretation of Minn. Stat. § 10A.01, subd. 33 that would render it unconstitutionally overbroad.

For all of the reasons described above, the complaint in this matter must be dismissed.

RE: Kurt Anderson Complaint
Our File No. 3842.801

Yours very truly,

MEIER, KENNEDY & QUINN, CHARTERED

Douglas C. Frazey

DCF:vmr

cc: Archdiocese of Saint Paul and Minneapolis

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