

**COMPLAINT FOR VIOLATION OF
CAMPAIGN FINANCE AND PUBLIC DISCLOSURE ACT
SUBMITTED BY COMMON CAUSE MINNESOTA**

12/23/22 AM 9:21
CAMPAIGN FINANCE &
PUBLIC DISCLOSURE BOARD

Minnesota Family Council

Common Cause Minnesota (“**Common Cause**”) is a nonprofit, nonpartisan organization dedicated to improving the way state government operates. Common Cause believes that complete and full disclosure as allowed under the Constitution is essential to ensure a fair, open, and transparent public debate on the proposed Constitutional Amendment to ban same-sex marriage in Minnesota (“**Marriage Amendment**”). On the critical importance of disclosure and transparency in any election, Common Cause, the United States Supreme Court, and Federal Courts interpreting Minnesota’s disclosure laws agree: “transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages.” *Minn. Citizens Concerned for Life, Inc. v. Swanson*, 741 F. Supp. 2d 1115, 1129 (D. Minn. 2010) (citing *Citizens United v. FEC*, 130 S. Ct. 876, 916 (2010)), *aff’d*, 640 F.3d 304 (8th Cir. 2011) (upholding Minnesota’s disclosure, reporting and recordkeeping laws applicable to corporate independent expenditures).

Common Cause files this complaint against the Minnesota Family Council (“**MFC**”) for violating Minn. Stat. §§ 10A.14 and 10A.20. Upon information and belief, MFC has a “major purpose” of promoting the Marriage Amendment and is therefore subject to reporting and disclosure requirements as a “political committee” under Chapter 10A. If MFC is a political committee — and publicly available facts demonstrate that it is — then MFC has violated Minnesota law by failing to register as a political committee, and by not complying with campaign reporting and disclosure requirement that apply to political committees.

For many months, MFC has expressed disagreement with Minnesota’s disclosure laws and the Board’s efforts to implement those laws in the context of ballot question campaigns. But disagreement is no excuse for noncompliance. The Legislature authorized the Board to investigate and hold MFC accountable for failing to register as a political committee and disclose information about its contributors. Good public policy requires the Board to do exactly that.

Relevant Documents Attached to This Complaint

1. Attachment A – MFC Form-990 filed for the 2009-2010 fiscal year.
2. Attachment B – Report of Receipts and Expenditures filed by the Minnesota Family Council Protection Fund (“**MFC Political Fund**”) on January 31, 2012, as amended on February 1, 2012, which was obtained from the Board’s website. This report includes

the 2011 Disclosure Statement for Corporations and other Unregistered Associations Contributed to Independent Expenditure Committees and Funds prepared by MFC.

3. Attachment C – Star Tribune guest commentary from John Helmberger (Oct. 13, 2011), chairman and treasurer of MFM, and treasurer of both MFC and the MFC Political Fund.
4. Attachment D – MFC blog post (Oct. 26, 2011).

Factual Background

1. **MFC’s 2011 expenditures in connection with the Marriage Amendment dwarf its total expenditures in all of the 2009-2010 fiscal year.**

MFC is a tax exempt, nonprofit corporation organized under section 501(c)(4) of the Internal Revenue Code. MFC registered the MFC Political Fund with the Board, but MFC itself is not registered as a political committee.

On May 15, 2011, MFC filed its Form-990 with the Internal Revenue Service, reporting its receipts and expenditures for the fiscal year beginning October 1, 2009 and ending September 30, 2010 (the “**MFC-990**”). See Attachment A.¹ The MFC-990 indicates that MFC had gross receipts of \$219,973 and total expenditures of \$126,523 during the 2009-2010 fiscal year. *Id.* at 1.²

On January 31 and February 2, 2011, the MFC Political Fund filed a Report and an Amended Report of Receipts and Expenditures for Ballot Question Committees and Funds for 2011 (collectively, the “**MFC Report**”). See Attachment B. Because the Marriage Amendment was not placed on the ballot until late May 2011, the MFC Report provides information on slightly more than seven months of activity during the 2011 calendar year. During those seven months, the MFC Report indicates that MFC:

- Loaned \$134,570.60 to the MFC Political Fund (Attachment B at 3); and
- Contributed \$212,423.45 to the MFC Political Fund (*Id.* at 9).
- TOTAL: \$346,994.05

Above all else, the MFC Report demonstrates that MFC’s expenditures skyrocketed in 2011. In fact, MFC’s total expenditures in connection with the Marriage Amendment during the last

¹ This is the most recently available Form-990 filed by MFC.

² MFC’s total expenditures during the 2009-2010 fiscal year (\$126,523) were approximately \$30,000 less than its total expenditures during the prior fiscal year (\$159,184). *Id.*

seven months of 2011 (\$346,994.05 in loans and contributions to MFM) are approximately 2.75 times its total expenditures in the 2009-2010 fiscal year (\$126,523), and more than 1.5 times its total receipts during that fiscal year (\$219,973).

2. MFC is well aware of the registration and reporting requirements that apply to political committees and funds and has opposed the Board's efforts to enforce disclosure laws.

MFC has been a vocal opponent of Minnesota's ballot question disclosure laws and the Board's recent guidance in this area. In connection with the Board's summer and fall meetings, for example, MFC or its representatives repeatedly objected and spoke out against Board efforts to enforce Minnesota laws that require individual contributor and original source disclosure. In an October 2011 guest commentary published in the Star Tribune, Mr. Helmberger, who acts as the treasurer of both MFC and the MFC Political Fund, expressed the continuing disdain he and pro-Marriage Amendment supporters have for Minnesota's disclosure rules. See Attachment C. Similarly, in a blog post available on its website, MFC has gone so far as to state that "[v]oters. . . have no more right to know who is financially backing speech about the [Marriage Amendment] than they have a right to know which way anyone will vote on it." Attachment D.

VIOLATIONS OF MINNESOTA LAW

The Board is the agency responsible for enforcing Chapter 10A and for investigating instances of suspected noncompliance. The determination of whether an association is a political committee requires a case-by-case analysis that can be made through the Board's investigatory process. Board A.O. 405 at 5 (June 2, 2009). Because MFC's financial reports and disclosures establish a prima facie case that MFC's "major purpose" is to promote the Marriage Amendment, the Board should investigate MFC and determine whether MFC is legally obligated to register and report as a political committee. To the extent MFC denies political committee status, its denials are not controlling, particularly given the objective evidence of its financial support for the Marriage Amendment during the last seven months of 2011.

Indeed, as noted above, MFC recently reported to the Board that it spent \$346,994.05 in support of the Marriage Amendment during the last seven months of 2011, through loans and donations to MFM. This amount—spent in just seven months—is nearly 2.75 times MFM's total spending in the 2009-2010 fiscal year. Surely, an organization that spends an amount to influence a ballot question in seven months that nearly triples the total amount spent on all of its activities in the prior year has a "major purpose" of promoting the ballot question. In other words, MFC's own filings demonstrate that it now has a major purpose of influencing the Marriage Amendment election, which makes MFC a ballot question committee and subjects MFC to registration under Minn. Stat. § 10A.14 and reporting requirements under Minn. Stat. §

10A.20. Board A.O. 405 at 6-7.

At the very least, MFC's dramatic increase in spending in connection with a singular issue suggests that MFC is explicitly soliciting contributions in support of the Marriage Amendment. It is difficult to believe that MFC could have raised sufficient funds to support a near three-fold increase in spending in any other way. MFC's lack of donor disclosure suggests it has not appropriately disclosed the identity of its contributors, and the only way to find out the original source(s) of its newfound support is through a Board investigation.

The particular violations of law the Board should investigate are as follows:

1. Failing to Register as a Political Committee.

Upon information and belief, MFC is a political committee and has failed to file register with the Board as required under Minnesota law.

A political committee is any association whose "major purpose is to . . . promote or defeat a ballot question." Minn. Stat. § 10A.01, subd. 27. Minnesota law requires the treasurer of a political committee to:

register with the [B]oard by filing a statement of organization no later than 14 days after the committee . . . has made a contribution, received contributions, or made expenditures in excess of \$100, or by the end of the next business day after it has received a loan or contribution that must be reported under [Minn. Stat. §] 10A.20. subdivision 5, whichever is earlier.

Minn. Stat. § 10A.14, subd. 1. In its Statement of Guidance issued on January 19, 2012, the Board stated that it will only take enforcement action against ballot question committees that have received contributions or made expenditures in excess of \$5,000 instead of the statutory \$100. Clearly, MFC's expenditures exceed this threshold.

If a person fails to register a political committee as required within 10 business days of the required registration date, the Board must notify the individual that he or she may be subject to a civil penalty for failure to register. Minn. Stat. § 10A.20, subd. 4. An individual who fails to register within seven days after the certified mail notice was sent by the Board is subject to a civil penalty of up to \$1,000. *Id.* The Board also may impose a late filing fee of \$5 per day, not to exceed \$100, commencing with the 11th day after the statement was due. *Id.*

2. Failing to File Campaign Reports as a Political Committee

Upon information and belief, MFC is a political committee and has failed to file campaign reports that are required of political committees under Minnesota law.

The treasurer of a political committee must begin filing the campaign reports required by Minn. Stat. §10A.20 in the first year the committee receives contributions or makes expenditures in excess of \$100 and must continue to file until the committee is terminated. Minn. Stat. §10A.20, subd. 1. If an individual fails to file a report required by Minn. Stat. §10A.20 that is due January 31 within ten business days after the report was due—as is the case here—the Board may impose a late filing fee of \$25 per day, not to exceed \$1,000, commencing the day after the report was due. *Id.*, subd. 12. The Board must send notice by certified mail to an individual who fails to file a report within ten business days after the report was due that the individual may be subject to a civil penalty for failure to file the report. *Id.* An individual who fails to file the report within seven days after the certified mail notice was sent by the board is subject to a civil penalty imposed by the board of up to \$1,000.

Requested Actions

1. Expedited Consideration

Because the issues raised in this complaint involve interpretation of laws that could have widespread application and a material impact on the conduct of the upcoming election by independent organizations, the Board should consider this complaint on an expedited basis.

2. Penalties

In sum, Common Cause calls on the Board to exercise its investigative authority over this important matter. If it finds that MFC has violated Sections 10A.14 and 10A.20 of the Minnesota Statutes, considering the nature of the violations and MFC's knowledge of and brazen violation of the registration and reporting laws, Common Cause encourages the Board to send a clear message by imposing the maximum penalty. At a minimum, the Board should:

- Order MFC to register as a political committee;
- Assess the maximum civil penalty against MFC for failing to register as a political committee and file the January 31 campaign report required of political committees; and
- Order MFC to report its receipts and expenditures as required under Minn. Stat. § 10A.20.

Common Cause Minnesota

A handwritten signature in black ink, appearing to read "Mike Dean", written over a horizontal line.

by Mike Dean

2323 E Franklin Ave

Minneapolis, MN 55406

Phone - 612-605-7978

mdean@commoncause.org

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