

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

**Findings and Order in the Matter of the Complaint of Common Cause Minnesota
regarding Minnesota for Marriage**

The Complaint

On February 22, 2012, the Campaign Finance and Public Disclosure Board received a complaint from Common Cause Minnesota (CCM) signed by Mike Dean, its Executive Director, regarding Minnesota for Marriage (MFM). The complaint alleges that:

MFM filed a false report with the Campaign Finance and Public Disclosure Board by not itemizing and disclosing the names of all individuals who contributed more than \$100 to MFM's campaign in support of the Marriage Amendment.

In support of this claim, CCM provided evidence that MFM and another association, Minnesota Family Council, sent out various electronic mail messages and maintained websites between May, 2011, and December 31, 2011, encouraging donations to MFM.

CCM points out that on MFM's 2011 report, MFM reported total contributions of \$830,109.33 and that this total included only seven contributions of more than \$100 from individuals and only \$2,119 in unitemized contributions of \$100 or less. The remaining contributions came from three associations with political funds registered with the Board.

CCM also points out that an allegedly similar association raised much more money from individual donors than did MFM. CCM also cites a 2011 MFM statement indicating that it had 10,000 volunteers for its campaign.

Based on these assertions, CCM makes the following statement:

Although it is possible that one side's grassroots support is much stronger than the other's, it stretches all credibility that grassroots support for the Marriage Amendment is less than one percent of its opposition. Simply put, the MFM Report fails to pass the smell test.

After reviewing its assessment of MFM's fundraising efforts and recapping the low number of original donors, CCM says:

These numbers lead to one of two conclusions: (1) either MFM's support is startlingly weak, contrary to its claims of broad-based support; or (2) MFM violated the campaign finance laws by failing to report required contributor information or by redirecting contributors to an intermediary organization for the purpose of avoiding required disclosures.

The Board understands the second possible conclusion quoted above to be CCM's statement of the two alternative violations of which it complains: (1) that that MFM failed to report all contributions as required by Minnesota Statutes section 10A.20 or (2) that MFM violated

Minnesota Statutes section 10A.29, which provides that a committee may not circumvent Chapter 10A by redirecting contributions through others.

In support of its allegation that MFM circumvented Minnesota's disclosure statutes by directing contributions through other associations, CCM says:

If MFM's public support is as strong as it has claimed on its website and in public statements then the sheer absence of individual contributions begs another question: Has MFM circumvented Minnesota's disclosure laws by directing contributors to make donations to one of MFM's supporting organizations, which are unregistered associations under Minnesota law.

. . .

Again, the circumstances here are so suspicious it is imperative that the Board use its investigative authority to inquire further . . .

CCM also claims that the alleged omission of contributions from MFM's report was intentional, resulting in a violation of Minnesota Statutes section 10A.025, which relates to certifying reports as true.

Acceptance of the Complaint for Investigation

When a complaint is received by the Board, the Executive Director, acting under delegated authority, may accept or reject the complaint or bring the matter to the Board for decision. Complaints that state a clear violation of Minnesota Statutes Chapter 10A and that are supported by factual allegations that, if true, would result in a violation are accepted by the Executive Director. Complaints that are unsigned, are too vague, do not state a Chapter 10A violation, or are frivolous, may be rejected by the Executive Director. Complaints that do not clearly fall into either category are typically brought to the Board for acceptance or rejection.

CCM's complaint alleged violations of Chapter 10A and was signed and was clear, but it contained virtually no factual allegations to support the legal conclusion that MFM had violated Chapter 10A. As a result, the Executive Director brought the matter to the Board to consider whether the complaint was so devoid of factual allegations as to be frivolous and not sufficient to require an investigation.

At its meeting of March 6, 2012, the Board considered whether an investigation of the complaint was required. The Board noted that in the complaint, CCM asserted that associations that are as active and have as many supporters as MFM tend to raise more money from individuals than MFM did in 2011. In support of this assertion, CCM provided a specific example.

The Board recognizes that no two political committees are the same. Thus, a single, particular, example is of little or no relevance in proving that MFM was more successful in fundraising than disclosed on its report. However, Board records show that, in general, associations addressing major issues and having thousands of supporters usually receive more than seven contributions of more than \$100 and would likely raise more than \$2,000 in unitemized contributions.

After its review of the matter, the Board did not vote to reject the complaint. As a result, the Executive Director commenced the investigation under the mandate of Minnesota Statutes section 10A.02, subdivision 11.

Board Analysis

CCM's complaint alleges three violations: (1) failure to report all contributions; (2) certifying a report as true with the knowledge that it omitted required information; and (3) circumvention of Chapter 10A. To find that the second alleged violation occurred, the Board would have to find probable cause to believe that MFM's 2011 filed report did, in fact, omit required information.

Failure to report all contributions

The Board's investigation of MFM's income and reporting included a request for MFM's 2011 bank records and a request that MFM analyze those records to show how they reconciled to its 2011 year-end report. In response, MFM provided all of its 2011 bank statements for review by Board staff. It also provided worksheets showing how those statements reconciled to its 2011 report. MFM also provided a sworn affidavit of John Helmberger, its treasurer, stating that the bank records provided by MFM included all of the contributions received by the political committee in 2011.

The review of MFM's records was conducted by two Board staff members and consisted of matching bank deposits to receipts disclosed on MFM's 2011 report. This inspection showed that all deposits into MFM's bank account were reflected on its 2011 year-end report.

There is no evidence that MFC maintained additional bank accounts or that it kept contributions on hand without depositing them. Consequently, there is no evidence to support a finding that MFM failed to report all contributions received in 2011 on its year-end report. This conclusion leads to the further result that with respect to reporting contributions, MFM did not certify its report as true with the knowledge that it omitted required information.

Circumvention of the disclosure requirements of Chapter 10A

The lack of evidence or factual allegations in support of CCM's claim of circumvention is even more problematic than it is with the claim that MFM omitted receipts from its 2011 report. The allegation of omitted contributions is generally supported by Board records suggesting that associations similar to MFM have more success in fundraising from individuals. In other words, large, active, associations tend to raise significant amounts from individual donors. However, there is no support in Board records for the presumption that when a ballot question political committee raises more money from other associations than it does from individuals, the reason is that the recipient is redirecting contributions through those other associations.

In a request dated August 22, 2012, MFM asks the Board to review the sufficiency of the circumvention claim and asks that the Board dismiss that claim based on lack of sufficient support in the complaint to justify proceeding. Because the Board accepted the complaint as a whole and, in doing so, did not separately review the sufficiency of the complaint with respect to each alleged violation, it undertakes that review now with respect to the circumvention claim.

With its complaint, CCM provided copies of the 2011 year-end reports of receipts and expenditures submitted by MFM and by three nonprofit corporations that made significant contributions to MFM through their political funds. These three associations are identified on MFM's website as supporting its efforts and have previously been identified as part of a coalition that formed MFM.

These reports prove only that MFM raised little from individuals and raised several hundred thousand dollars from three of its primary affiliated associations. Without more, these reports do not provide evidence that a plan of circumvention exists.

CCM also makes a number of statements about MFM, including the following:

MFM is the leading coalition of groups and individuals who support the proposed marriage amendment. MFM has registered [as] a political committee with the Board to receive contributions and make expenditures in support of the amendment.

MFM maintains a public website at www.minnesotaformarriage.com.

MFM claims to have the support of a broad range of organizations and individuals . . .

MFM . . . claims that in 2011 it generated incredible, broad-based citizen support by recruiting over 10,000 volunteers for its campaign.

MFM also makes material available on its website that is intended to generate financial and volunteer support for its campaign. For example, MFM's website includes instructions on how individuals should host house parties to support its campaign. These instructions advise the hosts of such parties not to accept cash donations, but to accept and collect donation checks from guests and send them to MFM.

MFM's website also makes volunteer cards available, which invite responders to indicate whether they can help the campaign by hosting a house party or by making a financial contribution to the campaign.

The contribution page of MFM's website invites individuals to contribute in increments of various amounts, including \$100, \$250, \$500 or \$1,000. The contribution page also informs contributors that aggregate contributions of \$100 or more must be reported to the state. (The Board notes that this is a misstatement of the law. Contributions of *more than* \$100 must be itemized on reports.)

None of these statements provides support for the allegation that a plan to circumvent the disclosure requirements of Chapter 10A is being implemented. In fact, these statements indicate that MFM has in place electronic contribution systems and house party procedures that will result in donors making contributions directly to MFM, ruling out the possibility of circumvention for those donors.

In addition to the statements quoted above, CCM provided a series of email communications sent by either Minnesota Family Council (MFC) or the MFC Protection Fund in 2011 soliciting financial contributions and volunteers for MFM's pro-amendment campaign. CCM acknowledges that the embedded links in the email communications direct interested persons to the donation page on the MFM website. The fact that MFC is soliciting money for MFM by linking directly to the MFM donation web page also rules out circumvention for those donors.

CCM apparently acknowledges that its claim of a circumvention violation is not supported by its allegations, as it frames its summary of the circumvention claim in terms of a qualifying condition and a question:

If MFM's public support is as strong as it has claimed on its website and in public statements then the sheer absence of individual contributions begs another question: Has MFM circumvented Minnesota's disclosure laws by directing contributors to make donations to one of MFM's supporting organizations, which are unregistered associations under Minnesota law.

CCM further acknowledges that it is possible that MFM was unsuccessful in fundraising in 2011 and that CCM's allegations are based primarily on speculation:

Although it is possible that one side's grassroots support is much stronger than the others, it stretches all credibility that grassroots support for the marriage amendment is less than one percent of its opposition. Simply put, the MFM report fails to pass the smell test.

To assert that an association's activities do not pass "the smell test" is to acknowledge that the complainant has no actual evidence but, rather, relies on suspicion as the basis for the complaint. Suspicion alone is insufficient to compel a Board investigation.

The Board has broad authority to inquire into the financial operations of associations that attempt to influence elections in Minnesota. Under Minnesota Statutes section 10A.02, subdivision 10, the Board may audit and investigate any statement or report filed with it. It may also investigate any alleged violation of Minnesota Statutes Chapter 10A, whether the allegation is in a written complaint or not. It must, with limited exceptions, investigate violations alleged in written complaints. The legislature has seen fit to augment the Board's investigative power by giving it the authority to issue subpoenas and to have those subpoenas enforced by the Ramsey County District Court.

It is in the public interest that the Board have the ability to ensure complete and accurate disclosure of money raised or spent to influence the nomination or election of candidates or to promote or defeat a ballot question. In some cases, the Board may not have direct evidence of a violation until after it begins an investigation. Therefore, it is necessary that the Board be able to conduct its investigations without first having to establish the very violation being investigated.

However, in the case of a complaint filed by a third party, Minnesota Rules Part 4500.0200 provides that the Board is not required to investigate a complaint that is frivolous. The threshold for not being frivolous is low, but something more than pure suspicion is required. The Board concludes that with respect to its circumvention claim, CCM has not met the threshold necessary to require a Board investigation.

Findings

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

1. There is no probable cause to find that Minnesota for Marriage failed to report any contributions on its 2011 report of receipts and expenditures.

2. Based on Finding 1, there is no probable cause to find that Minnesota for Marriage intentionally omitted required information from a filed report.
3. The complaint of CCM that MFM and others engaged in circumvention is not supported by sufficient factual allegations to require a Board investigation.

Order

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

1. The Board investigation of the complaint that MFM omitted contributions from its 2011 report and falsely certified that report is concluded.
2. The complaint that MFM and others engaged in circumvention of Minnesota Statutes Chapter 10A is not supported by factual allegations sufficient to require a Board investigation and is dismissed.
3. The record of this investigation is hereby made a part of the public records of the Board pursuant to Minnesota Statutes section 10A.02, subdivision 11.

Dated: October 2, 2012

/s/ Greg McCullough

Greg McCullough, Chair
Campaign Finance and Public Disclosure Board

Relevant statutes

Minn. Stat. § 10A.025, subd. 2. Penalty for false statements. A report or statement required to be filed under this chapter must be signed and certified as true by the individual required to file the report. The signature may be an electronic signature consisting of a password assigned by the board. An individual who signs and certifies to be true a report or statement knowing it contains false information or who knowingly omits required information is guilty of a gross misdemeanor and subject to a civil penalty imposed by the board of up to \$3,000.

Minn. Stat. § 10A.20, subd. 3. Contents of report. . . .

(b) The report must disclose the name, address, and employer, or occupation if self-employed, of each individual or association that has made one or more contributions to the reporting entity, including the purchase of tickets for a fund-raising effort, that in aggregate within the year exceed \$100 for legislative or statewide candidates or ballot questions, together with the amount and date of each contribution, and the aggregate amount of contributions within the year from each source so disclosed. A donation in kind must be disclosed at its fair market value. An approved expenditure must be listed as a donation in kind. A donation in kind is considered consumed in the reporting period in which it is received. The names of contributors must be listed in alphabetical order. Contributions from the same contributor must be listed under the same name. When a contribution received from a contributor in a reporting period is added to previously reported unitemized contributions from the same contributor and the aggregate exceeds the disclosure threshold of this paragraph, the name, address, and employer, or occupation if self-employed, of the contributor must then be listed on the report.

Minn. Stat. § 10A.29. Circumvention prohibited.

An individual or association that attempts to circumvent this chapter 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 imposed by the board of up to \$3,000.