

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

**Findings and Order in the Matter of the Complaint
by Common Cause Minnesota regarding Dan McGrath and Minnesota Majority**

Review of the Complaint, Evidence Provided, and Response to Allegations

The Complaint

On July 11, 2012, the Campaign Finance and Public Disclosure Board (the Board) received a complaint from Mike Dean on behalf of Common Cause Minnesota (CCM) regarding Dan McGrath and Minnesota Majority, Inc. In the complaint Mr. Dean states:

This complaint alleges that Mr. McGrath failed to register as a lobbyist in Minnesota and Minnesota Majority failed to register as a principal lobbying group, thus requiring both to disclose the amount of money they spent in 2010 through 2012 on lobbying efforts to influence legislative action at the Minnesota legislature. Both parties are required to file a report because as an individual and as an organization they engaged in an effort to influence legislative action.

Evidence Regarding Minnesota Majority

In support of these allegations Mr. Dean references the Minnesota Majority website (www.minnesotamajority.org) and points out that the association's mission statement on the website includes "to promote traditional values in state and federal public policy through grassroots activism on the part of its members." The website also states that one of the purposes for which Minnesota Majority was founded is "influencing the legislative process."

Mr. Dean references a section of the website that encourages individuals to become members of Minnesota Majority because "Minnesota Majority keeps you informed of important public policy issues that affect you and your family, and equips you with tools that allow you to easily weigh-in on the issues with your elected officials. Our goal is to allow our members to get informed and take action in 5 minutes or less."

Individuals who sign up to be members of the association receive "Minnesota Majority Action Alerts" which are e-mails that encourage the recipient to contact elected officials and ask the official(s) to support or oppose a particular issue. The Action Alerts describe an issue before the legislature and then provide an automated way for an individual to email a state representative, state senator, or in one example, the Governor's office. In some cases the Action Alerts provide sample language to use in urging the elected official to take action on the issue. Mr. Dean provided website addresses for four Action Alerts on the Minnesota Majority website. In describing the Action Alerts Mr. Dean states:

...Minnesota Majority's website requests that supporters contact their legislators on key issues throughout the year. This website urged supporters to contact their legislators in support of the constitutional amendment on voter ID, support the Employee Freedom Amendment, petition lawmakers to oppose taxpayer funded abortions, and to support immigration enforcement. There is other content on the website that also urges supporters to contact legislators in support of legislation that was before the Minnesota legislature.

Evidence Regarding Dan McGrath

With his complaint Mr. Dean provided a copy of an affidavit submitted by Dan McGrath to the Minnesota Supreme Court regarding litigation on the voter identification constitutional amendment. The affidavit is used to support Mr. Dean's contention that Dan McGrath and Minnesota Majority engaged in lobbying activities. In particular, Mr. Dean points to the following two statements from the affidavit:

Minnesota Majority began working with Representative Mary Kiffmeyer to construct and promote the 21st Century Voter ID Bill (S.F. No. 509) in November 2010. Minnesota Majority representatives testified at the House Government Operations and Elections Committee hearing, the House State Government Finance Committee, the House Ways and Means Committee, the Senate Local Government and Elections Committee, the Senate Finance Committee, the Senate Rules Committee and other legislative committees in favor of the bill. It also met with legislators to provide expert advice and research for the legislation...

Soon after the Governor's veto, Minnesota Majority began working with Representative Kiffmeyer on a voter identification Constitutional Amendment, which provides for Voter ID requirements similar to the 21st Century Vote ID bill. In addition to meeting with senators and representatives to consult on the Amendment, Minnesota Majority testified at the Senate Finance Committee and the Senate Committee on State Government Innovation and Veterans hearings in favor of the Amendment.

In summary of these two portions of the affidavit Mr. Deans states, "Both of these statements show how Mr. McGrath and Minnesota Majority have engaged in lobbying activities in Minnesota over the past two years."

As evidence that Mr. McGrath was compensated for his lobbying efforts by Minnesota Majority Mr. Dean provided a copy of the IRS tax forms 990 and 4562 filed by Minnesota Majority for calendar year 2010. In reference to these documents Mr. Dean states:

Dan McGrath is the executive director of Minnesota Majority. According to IRS 990 tax records, Mr. McGrath is not listed as an employee... However, the organization does list \$48,972 in professional services/consultants on the organization's 2010 form 990.

The complaint also alleges that Mr. McGrath was required to register as a lobbyist because of expenditures he made. Mr. Dean states:

During the past year and likely beyond that time frame, Mr. McGrath has spent more than \$250 for the purpose of attempting to influence legislative action. This expense occurred through the expenses associated with the development of a video that was presented to legislators in support of the Voter ID legislation and amendment. Common Cause Minnesota does not have the official invoice for this expense, but videos of this kind cost over \$250 to develop. In addition, Minnesota Majority paid over \$250 for the email communication system to urge members to support various pieces of legislation.

In summary of his complaint Mr. Dean states:

Mr. McGrath of Minnesota Majority has failed to register as a lobbyist with the Minnesota CFDB, which is a violation of Minn. Stat. §10A.01, subd. 21. As the Executive Director of the organization, Mr. McGrath has lobbied the legislature extensively as described in his affidavit to the Minnesota Supreme Court. In a review of the organization's website, this issue appears to be the top priority of the organization and it is clear that he spends a majority of his time advocating for voter ID at the legislature as described in the signed affidavit. Finally, Mr. McGrath was likely paid around \$50,000 as executive director and he spent a significant amount of time lobbying the legislature in support of the amendment, by his own admission. That amount exceeded the \$3,000 threshold that is required for an individual to register as a lobbyist.

The board notified Mr. McGrath of the complaint on August 1, 2012. Mr. McGrath was asked specific questions about the affidavit he submitted to the Minnesota Supreme Court and his duties for Minnesota Majority, and also provided an opportunity to respond to the complaint's allegations concerning his activities, or the activities of Minnesota Majority.

Response of Dan McGrath and Minnesota Majority

Compensation Paid to Dan McGrath

The initial response to the complaint was in a letter dated August 15, 2012, from Kaylan Phillips, attorney with the Act Right Legal Foundation, on behalf of both Dan McGrath and Minnesota Majority. Attached to Ms. Phillips' response was a lobbyist registration for Mr. McGrath representing Minnesota Majority. The registration was dated August 4, 2012. Ms. Phillips stated that the registration was submitted "in order to expedite resolution of this matter", and that she would contact the Board for information on how to submit the required lobbying reports.

Board staff contacted Ms. Phillips to determine if the lobbyist registration was intended to cover the years referenced in the complaint (2010, 2011, and 2012) or if the registration was effective from the date of signing. In a letter dated August 17, 2012, Mr. McGrath responded that he was evaluating his activities to determine the date on which the registration should have been filed. Mr. McGrath stated:

I was not aware that my activities constituted "lobbying" in Minnesota. Many of my activities, such as my testimony before the Legislature regarding voter identification, were provided at the express request of the Legislature because of my expertise in that area. I need additional time to consider what portion of my time was spent on activities that qualify me as a "lobbyist" in Minnesota in order to determine if or when I hit the \$3,000 threshold.

By letter dated August 21, 2012, Board staff informed Mr. McGrath and Ms. Phillips that the lobbyist registration would be held pending Mr. McGrath's determination regarding whether he actually was required to register as a lobbyist, and, if so, the date on which the registration was required. Mr. McGrath was asked to finish his determination of whether he was required to register as a lobbyist by August 31, 2012.

On August 31, 2012, the Board received a letter from Ms. Phillips that withdrew the lobbyist registration submitted by Mr. McGrath. Ms. Phillips states:

Mr. McGrath was not a lobbyist under Minnesota law in 2010 or 2011. Likewise, Mr. McGrath has not yet and does not believe he will reach the lobbyist threshold in 2012. Similarly, Minnesota Majority was not required to file an annual principal report for 2010, 2011, and likely will not have to for 2012.

Ms. Phillips explained the methodology used to determine that Mr. McGrath was not required to register as a lobbyist:

Consistent with the Board's analysis in prior cases... Mr. McGrath reduced his annual salary to an hourly rate of compensation. He then applied this rate to the hours he spent on lobbying activities in 2010, 2011, and 2012. ...Based on his calculations, Mr. McGrath's compensation for lobbying activities did not exceed \$3,000 in any year. Mr. McGrath also provided a breakdown of Minnesota Majority's expenditures for 2010, 2011, and 2012. Minnesota Majority has not met the \$50,000 threshold for a lobbyist principal in any year.

The response provided a list of meeting dates between Mr. McGrath and members of the legislature, and a list of dates on which Mr. McGrath testified before legislative committees. The list is used as documentation of the amount of time Mr. McGrath spent in communication with legislators attempting to influence legislative action. The response states that each meeting and each committee testimony lasted approximately one hour.

The meetings and testimony were on the issue of voter identification. Mr. McGrath states that neither he, nor any other personnel of Minnesota Majority, testified on the other issues described in the Action Alerts sent out by Minnesota Majority (Employee Freedom Amendment, taxpayer-funded abortions, and illegal immigration).

The response provides that Mr. McGrath started to communicate with members of the legislature on a voter identification bill on November 18, 2010. During 2010, Mr. McGrath met with members of the legislature individually or in a legislative workshop on seven different occasions. In 2011, the response lists eighteen dates on which Mr. McGrath met with legislators or legislative staff, twelve dates on which he either testified on the voter identification legislation (both the legislation known as the "21st Century Voter ID bill" and later the proposed constitutional amendment on voter identification) or answered questions during a legislative committee meeting. In 2012, the response lists eleven dates on which Mr. McGrath met with members of the legislature on the voter identification constitutional amendment and four dates on which he testified before a legislative committee.

In addition to the listing of dates on which Mr. McGrath directly communicated with public officials the response provides that Mr. McGrath worked approximately 50 hours each year on Action Alerts asking members of Minnesota Majority to contact their legislators.

For all three years Mr. McGrath listed dates on which he prepared documents for use in testimony, or for submission to members of the legislature. These hours probably do not constitute time spent communicating with public officials or in asking others to communicate with public officials. However, to replicate the methodology used by Mr. McGrath, those hours

are included in the calculation of compensation paid to Mr. McGrath for lobbying communications.

Year	Hours of Lobbying Communication	Hourly Rate of Compensation	Compensation for Lobbying Communication
2010	58	\$18	\$1,044
2011	85	\$19	\$1,615
2012	74	\$20	\$1,480

Mr. McGrath also noted that beginning in 2012 a large portion of his time, and related compensation, is for a voter identification ballot question committee. Activities to promote or defeat a ballot question do not constitute lobbying and do not count towards the \$3,000 threshold for lobbyist registration.

The response from Ms. Phillips' included a response from Mr. McGrath addressing the complainant's allegation that he spent over \$250 on a video shown at legislative hearings. Mr. McGrath states, "The video in question was produced by Jeff Davis, who is an unpaid volunteer. The cost of production was \$0."

Expenditures by Minnesota Majority

The Board asked for information on the annual cost to Minnesota Majority for the Action Alert email feature used to notify Minnesota Majority members of legislative issues and to facilitate members contacting their legislators. Mr. McGrath provides that the feature was purchased from Capwiz Email Systems, and that the cost in 2010 was \$8,000; in 2011 the cost was \$12,000; and in 2012 the cost was \$15,000.

The Board asked if any other Minnesota Majority staff members testified at legislative committees or communicated with public officials on the issues raised in the complaint. Mr. McGrath provided that he was the only Minnesota Majority staff member to meet with legislators or to testify on the 21st Century Voter ID bill or the voter identification constitutional amendment.

By separate letter dated September 20, 2012, Ms. Phillips responded to a Board question on the annual cost of the Minnesota Majority website. The letter states that for the years 2010, 2011, and 2012 the cost of site hosting has been \$50 yearly, the domain name cost has been \$10 yearly, and that Jeff Davis provides website maintenance on a volunteer basis. In reference to the \$60 yearly cost for the website Ms. Phillips states, "The above totals reflect the total cost of the website without specifying the portion that may count towards the lobbying threshold under Minnesota law".

Board Analysis

The activities of Mr. McGrath described in the complaint, and by Mr. McGrath himself in his affidavit to the Minnesota Supreme Court, were clearly efforts to influence legislative actions on the 21st Century Voter ID legislation and the proposed constitutional amendment on voter identification. Therefore, Mr. McGrath's actions were lobbying activities. The statement by Mr. McGrath that he did not consider his actions as "lobbying" is apparently based on the belief that because he was asked to testify before legislative committees the purpose of his presentations or discussions with legislators was changed. It was not. The purpose remained the same, to influence legislators to support issues that are important to Minnesota Majority.

However, the lobbyist registration and reporting requirements in Chapter 10A are not triggered by participating in lobbying activities alone. Instead, the statute requires registration and reporting only after specific monetary thresholds for compensation, or for expenditures paid with

personal funds for lobbying activities are met. Minnesota Statutes section 10A.01, subdivision 21, provides in part that a “lobbyist” is an individual who is:

(1) engaged for pay or other consideration of more than \$3,000 from all sources in any year for the purpose of attempting to influence legislative or administrative action, or the official action of a metropolitan governmental unit, by communicating or urging others to communicate with public or local officials; or

(2) who spends more than \$250, not including the individual's own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action, or the official action of a metropolitan governmental unit, by communicating or urging others to communicate with public or local officials.

An individual whose job duties include both lobbying activities and activities unrelated to lobbying must determine if the compensation they receive for lobbying activities exceeds the \$3,000 threshold for registration. Minnesota Rules 4511.0600, subpart 4, provides that:

A disbursement that is partially in support of lobbying and partially for a nonlobbying purpose must be allocated on a reasonable basis between the two purposes and reported based on that allocation.

Reducing a yearly salary to an hourly rate and then applying that rate to time spent lobbying is one way to determine a reasonable allocation of the salary paid to Mr. McGrath for lobbying compensation. The response from Mr. McGrath shows that the hourly allocation of his yearly salary as compensation for lobbying activities did not exceed the \$3,000 threshold that would have required registration with the Board in 2010, 2011, or 2012. Therefore, Mr. McGrath was not required to register as a lobbyist for Minnesota Majority under clause 1 of Minnesota Statutes section 10A.01, subdivision 21.

The allegation that Mr. McGrath spent over \$250 on the production of a video used for lobbying is not supported by the evidence. Further, the allegation that Minnesota Majority spent over \$250 on the Action Alert emails, while true, is unrelated to whether Mr. McGrath was required to register as a lobbyist under clause 2 of Minnesota Statutes section 10A.01, subdivision 21, which is based on an individual’s use of his or her own money.

The complaint states that Minnesota Majority failed to register and report with the Board as a principal. Actually a principal, commonly referred to as a “lobbyist principal”, does not register with the Board. A principal is usually identified by the lobbyist who registers on the principal’s behalf. After being identified on a lobbyist registration the principal is required to file an annual report of its expenditures in support of lobbying in Minnesota.

It is possible for an association to become a principal without being represented by a lobbyist. Minnesota Statutes section 10A.01, subdivision 33, provides that an association is a principal if it:

- (1) spends more than \$500 in the aggregate in any calendar year to engage a lobbyist, compensate a lobbyist, or authorize the expenditure of money by a lobbyist; or
- (2) is not included in clause (1) and spends a total of at least \$50,000 in any calendar year on efforts to influence legislative action, administrative action, or the official action of metropolitan governmental units, as described in section 10A.04, subdivision 6.

As provided earlier in these findings because Mr. McGrath's compensation for lobbying activities did not reach the threshold required for registration, he was not a lobbyist. Therefore, Minnesota Majority did not become a principal under clause 1 by engaging or compensating a lobbyist.

The evidence shows that Minnesota Majority did make expenditures to influence legislative action on the 21st Century Voter ID legislation, the voter identification constitutional amendment, and the other issues highlighted in the Action Alerts sent to Minnesota Majority members. However, the combination of expenditures for the email service used for the Action Alerts, the cost of hosting the association's website, and the compensation paid to Mr. McGrath when he was attempting to influence legislative action, did not meet or exceed \$50,000 in any calendar year. Therefore, Minnesota Majority did not become a principal under clause 2 of Minnesota Statutes section 10A.01, subdivision 33. Because Minnesota Majority did not meet the definition of principal, it was not required to report as a principal to the Board.

Based on the above Review and Analysis and the Relevant Statutes, the Board makes the following:

Findings Concerning Probable Cause

1. There is probable cause to believe that Dan McGrath was lobbying on behalf of Minnesota Majority when he communicated with legislators and legislative staff on the 21st Century Voter ID legislation and the voter identification constitutional amendment, and when he urged others to communicate with public officials in an attempt to influence actions on issues described in Minnesota Majority Action Alerts.
2. There is no probable cause to believe that Dan McGrath received compensation of over \$3,000 in any year for his lobbying activities. Therefore, there is no probable cause to believe that Dan McGrath was required to register as a lobbyist for Minnesota Majority under the provisions of Minnesota Statutes section 10A.03.
3. There is no probable cause to believe that Minnesota Majority spent more than \$500 to engage or compensate a lobbyist or spent \$50,000 or more in any calendar year to influence legislative action. Therefore there is no probable cause to believe that Minnesota Majority is a lobbyist principal as defined in Minnesota Statutes section 10A.01, subdivision 33.

Based on the above Findings, the Board issues the following:

Order

The record in this matter and all correspondence is hereby entered into the public record in accordance with Minnesota Statutes, section 10A.02, subdivision 11. This matter is closed.

Dated: October 2, 2012

/s/ Greg McCullough

Greg McCullough, Chair
Campaign Finance and Public Disclosure Board

Relevant Statutes

Minnesota Statutes, 10A.01, Subd. 2. Administrative action. "Administrative action" means an action by any official, board, commission or agency of the executive branch to adopt, amend, or repeal a rule under chapter 14. "Administrative action" does not include the application or administration of an adopted rule, except in cases of rate setting, power plant and powerline siting, and granting of certificates of need under section 216B.243.

Minnesota Statutes, 10A.01, Subd. 21. Lobbyist. (a) "Lobbyist" means an individual:

(1) engaged for pay or other consideration of more than \$3,000 from all sources in any year for the purpose of attempting to influence legislative or administrative action, or the official action of a metropolitan governmental unit, by communicating or urging others to communicate with public or local officials; or

(2) who spends more than \$250, not including the individual's own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action, or the official action of a metropolitan governmental unit, by communicating or urging others to communicate with public or local officials.

(b) "Lobbyist" does not include:

(1) a public official;

(2) an employee of the state, including an employee of any of the public higher education systems;

(3) an elected local official;

(4) a nonelected local official or an employee of a political subdivision acting in an official capacity, unless the nonelected official or employee of a political subdivision spends more than 50 hours in any month attempting to influence legislative or administrative action, or the official action of a metropolitan governmental unit other than the political subdivision employing the official or employee, by communicating or urging others to communicate with public or local officials, including time spent monitoring legislative or administrative action, or the official action of a metropolitan governmental unit, and related research, analysis, and compilation and dissemination of information relating to legislative or administrative policy in this state, or to the policies of metropolitan governmental units;

(5) a party or the party's representative appearing in a proceeding before a state board, commission, or agency of the executive branch unless the board, commission, or agency is taking administrative action;

(6) an individual while engaged in selling goods or services to be paid for by public funds;

(7) a news medium or its employees or agents while engaged in the publishing or broadcasting of news items, editorial comments, or paid advertisements which directly or indirectly urge official action;

(8) a paid expert witness whose testimony is requested by the body before which the witness is appearing, but only to the extent of preparing or delivering testimony; or

(9) a party or the party's representative appearing to present a claim to the legislature and communicating to legislators only by the filing of a claim form and supporting documents and by appearing at public hearings on the claim.

(c) An individual who volunteers personal time to work without pay or other consideration on a lobbying campaign, and who does not spend more than the limit in paragraph (a), clause (2), need not register as a lobbyist.

(d) An individual who provides administrative support to a lobbyist and whose salary and administrative expenses attributable to lobbying activities are reported as lobbying expenses by the lobbyist, but who does not communicate or urge others to communicate with public or local officials, need not register as a lobbyist.

Minnesota Statutes, 10A.01, Subd. 33. Principal. "Principal" means an individual or association that:

(1) spends more than \$500 in the aggregate in any calendar year to engage a lobbyist, compensate a lobbyist, or authorize the expenditure of money by a lobbyist; or

(2) is not included in clause (1) and spends a total of at least \$50,000 in any calendar year on efforts to influence legislative action, administrative action, or the official action of metropolitan governmental units, as described in section 10A.04, subdivision 6.

Minnesota Statutes, 10A.03 Lobbyist Registration

Subdivision 1. **First registration.** A lobbyist must file a registration form with the board within five days after becoming a lobbyist or being engaged by a new individual, association, political subdivision, or public higher education system.

Subd. 2. **Form.** The board must prescribe a registration form, which must include:

(1) the name, address, and e-mail address of the lobbyist;

(2) the principal place of business of the lobbyist;

(3) the name and address of each individual, association, political subdivision, or public higher education system, if any, by whom the lobbyist is retained or employed or on whose behalf the lobbyist appears;

(4) the Web site address of each association, political subdivision, or public higher education system identified under clause (3), if the entity maintains a Web site; and

(5) a general description of the subject or subjects on which the lobbyist expects to lobby.

If the lobbyist lobbies on behalf of an association, the registration form must include the name and address of the officers and directors of the association.

Subd. 3. **Failure to file.** The board must send a notice by certified mail to any lobbyist who fails to file a registration form within five days after becoming a lobbyist. If a lobbyist fails to file a form within ten business days after the notice was sent, the board may impose a late filing fee of

\$5 per day, not to exceed \$100, starting on the 11th day after the notice was sent. The board must send an additional notice by certified mail to a lobbyist who fails to file a form within 14 days after the first notice was sent by the board that the lobbyist may be subject to a civil penalty for failure to file the form. A lobbyist who fails to file a form within seven days after the second notice was sent by the board is subject to a civil penalty imposed by the board of up to \$1,000.

Subd 4. **Publication.** The restrictions of section 10.60 notwithstanding, the board may publish the information required in subdivision 2 on its Web site.

Subd 5. **Exemptions.** For good cause shown, the board must grant exemptions to the requirement that e-mail addresses be provided.