

COMPLAINT FOR VIOLATION OF THE CAMPAIGN FINANCE AND PUBLIC DISCLOSURE ACT SUBMITTED BY THE MINNESOTA JOBS COALITION

The Minnesota Jobs Coalition (“MJC”)¹ files this complaint against “Mark Dayton For A Better Minnesota,” the campaign committee for Governor Mark Dayton (the “Dayton Campaign”), for violating Minnesota Statute Section 10A.09, subdivision 3, by failing to disclose unpaid campaign travel expenses in its year-end Report of Receipts and Expenditures for 2012. Specifically, the Dayton Campaign failed to report a \$2,802 obligation it incurred when on October 24, 2012 Governor Dayton flew on a State of Minnesota airplane to Bemidji and then to International Falls to attend campaign events. Instead, it wrongly and misleadingly listed the 2012 expense as a January 3, 2013 travel reimbursement to the State on its 2013 quarterly report to the Minnesota State Campaign Finance and Public Disclosure Board (the “Board”). The Dayton Campaign also has failed to report additional obligations to reimburse the State of Minnesota for other campaign uses of the State’s aircraft in 2012.

I. RELEVANT DOCUMENTS ATTACHED TO THIS COMPLAINT

Attachment A – Rachel E. Stassen-Berger, *Dayton splits cost of state flight as he splits his time between governing and campaigning*, MINNEAPOLIS STAR TRIBUNE, Oct. 25, 2012.

Attachment B – Mark Dayton For A Better Minnesota, Report of Receipts and Expenditures for Principal Campaign Committee, Jan. 1, 2012 through Dec. 31, 2012, cfboard.state.mn.us, filed Jan. 30, 2013.

Attachment C – Amendments to Mark Dayton For A Better Minnesota, 2012 Year-End Report of Receipts and Expenditures: Amendment 1, cfboard.state.mn.us, filed January 31, 2013; Amendment 2, cfboard.state.mn.us, filed February 4, 2013; Amendment 3, cfboard.state.mn.us, filed March 11, 2013.

Attachment D – Mark Dayton For A Better Minnesota, Report of Receipts and Expenditures for Principal Campaign Committee, Jan. 1, 2013 through March 31, 2013,

¹ Minnesota Jobs Coalition is a nonprofit organization dedicated to policies that lead to job creation and a better economic future for Minnesotans.

cfboard.state.mn.us, filed April 16, 2013.

Attachment E – Rachel E. Stassen-Berger, *Hotdish Politics: Dayton campaign repays state for political use of resources*, MINNEAPOLIS STAR TRIBUNE, Apr. 21, 2013.

Attachment F – Flight Logs, flightaware.com.

Attachment G – David Little, *Governor hears from Willmar, Minn., leaders about promoting economic growth*, WEST CENTRAL TRIBUNE, September 29, 2012.

Attachment H – *Fly or Drive?*, Minnesota Department of Transportation, <http://dotapp7.dot.state.mn.us/flyordrive/about.vm>.

Attachment I – *Dayton to campaign Saturday in Nisswa*, BRAINERD DISPATCH, Oct. 18, 2012.

Attachment J – Rep. John Ward, https://www.facebook.com/permalink.php?story_fbid=10151187799197878&id=15522892877, Oct. 20, 2012.

II. FACTUAL BACKGROUND

“Mark Dayton For A Better Minnesota” was Governor Mark Dayton’s primary campaign committee during his candidacy for Governor in the 2010 election and has remained his primary campaign committee to the present. It is registered with the Minnesota State Campaign Finance and Public Disclosure Board as Governor Dayton’s Principal Campaign Committee for the 2014 elections.

During the 2012 legislative elections, Governor Dayton and the Dayton Campaign committee campaigned to elect DFL legislators. On October 24, 2012, Governor Dayton flew on the State’s aircraft to Bemidji, where, according to the *Minneapolis Star Tribune*, he conducted some unspecified “state-related business” but also attended a DFL rally.² He then flew on the State’s aircraft to International Falls for the sole purpose of attending a DFL fish-fry.³ The *Star Tribune* reported that Dayton Campaign spokesperson Katharine Tinucci initially stated that the

² Attachment A: Rachel E. Stassen-Berger, *Dayton splits cost of state flight as he splits his time between governing and campaigning*, MINNEAPOLIS STAR TRIBUNE, Oct. 25, 2012.

³ *Id.*

campaign would reimburse the State for half of the \$3,312 it cost the State for the Governor to use the aircraft. The next day, the Dayton Campaign told the *Star Tribune* that Governor Dayton's use of the State's plane was actually 80% campaign-related and that it would reimburse the State of Minnesota \$2,118 for the flights.⁴

However, the Dayton Campaign failed to report this State aircraft expense in its year-end Report of Receipts and Expenditures for 2012, filed January 3, 2013.⁵ The year-end report represented that Governor Dayton had no unpaid campaign expenditures whatsoever for the year 2012.⁶ The Dayton Campaign subsequently filed three amended reports for 2012 in the spring of 2013 – none listed the trip on the State's aircraft or any other unpaid obligations owed the State.⁷

In a 2013 first quarter report, filed with the Board on April 15, 2013, the Dayton Campaign reported the October 25, 2012 travel reimbursement expense for the first time. However, rather than amend their 2012 reports, the campaign listed the \$2,118 expense and another travel reimbursement to the State of \$684, totaling \$2,802, as January 3, 2013 expenditures.⁸ It fell to the *Star Tribune* to report that the \$2,802 payment was actually for the October 2012 campaign trip to Bemidji and International Falls that the Governor made on the

⁴ *Id.*

⁵ Attachment B: Mark Dayton For A Better Minnesota, Report of Receipts and Expenditures for Principal Campaign Committee, Jan. 1, 2012 through December 31, 2012, cfboard.state.mn.us, filed January 31, 2013, at 2.

⁶ *Id.*

⁷ Attachment C: Mark Dayton For A Better Minnesota, 2012 Year-End Report of Receipts and Expenditures, Amendment 1, cfboard.state.mn.us, filed January 31, 2013, at 2; Mark Dayton For A Better Minnesota, 2012 Year-End Report of Receipts and Expenditures, Amendment 2, cfboard.state.mn.us, filed February 4, 2013, at 2; Mark Dayton For A Better Minnesota, 2012 Year-End Report of Receipts and Expenditures, Amendment 3, cfboard.state.mn.us, filed March 11, 2013, at 1.

⁸ Attachment D: Mark Dayton For A Better Minnesota, Report of Receipts and Expenditures for Principal Campaign Committee, Jan. 1, 2013 through March 31, 2013, cfboard.state.mn.us, filed April 15, 2013, at 13. The Dayton Campaign has pointed out that this report is "Voluntary." Voluntary or not, the report contains false and misleading information.

State's plane.⁹ The Dayton Campaign's 2013 filing is troubling because it falsely reports that the expenses related to the 2012 trip occurred in January 2013. Moreover, the Dayton Campaign apparently paid the October 24, 2012 obligation to the State on January 3, 2013 and therefore clearly was aware of the expenditure when they filed their 2012 year-end report on January 31, 2013 but waiting to list the expense with little description on their 2013 report.

III. VIOLATIONS OF MINNESOTA LAW

1. Minnesota Statute, Section 10A.20, subdivision 3(g), mandates that the principal campaign committee of a candidate for elected office must report any campaign expenditure made by the committee and must itemize the expenditure if the aggregate total of the campaign's expenditures exceeds \$100 in the reporting year. Itemization includes the name of the vendor of the goods or service, the vendor's address, and the purpose of the expenditure. *Id.* Subdivision 3(i) of this statute further provides that a committee also must disclose any creditor or unpaid bill of the committee. Minnesota Rules 4503.1800, subpart 2, explains this requirement further, providing that the reporting requirement for unpaid bills includes the date on which the committee incurred the obligation. The Board has found that an expenditure occurs when the obligation is incurred, not when it is paid, and that Minnesota law requires that all unpaid obligations be included on periodic reports and reported as of the date it was incurred.¹⁰

2. The Dayton Campaign, through its spokesperson, stated on October 25, 2012, the day of the flights in question, that the campaign had incurred an expense and it intended to

⁹ Attachment E: Rachel E Rachel E. Stassen-Berger, *Hotdish Politics: Dayton campaign repays state for political use of resources*, MINNEAPOLIS STAR TRIBUNE, Apr. 21, 2013.

¹⁰ See *Findings in the Matter of the Complaint against the Phillip Sterner for House Election Committee*, at 1, (Mn.Cam.Fin.Pub.Disc.Bd., Jan. 8, 2009); *Revised Findings and Order in the Matter of the Complaint of Steven Timmer Regarding Representative Ernest Leidiger and Steven Nielsen*, at 3 (Mn.Cam.Fin.Pub.Disc.Bd., May 1, 2012); *Findings and Order in the Matter of the Complaint of Common Cause Minnesota regarding the Republican Party of Minnesota and others*, at 8, 13 (Mn.Cam.Fin.Pub.Disc.Bd., July 13, 2012).

reimburse the State of Minnesota for use of the State's aircraft for campaign purposes. The next day, the Dayton Campaign stated that Governor Dayton's use of the State's plane was 80% campaign related and that it would reimburse the State \$2,118 towards the cost of the flights.

3. Although Minn.Stat. §§ 10A.20, subd. 3(g) and (i), and Minn.R. 4503.1800, subp. 2, as well as a number of opinions from the Board interpreting the applicable law, require that an expense be accounted for when it occurs and listed as a paid or unpaid expense on the required campaign finance reports, the Dayton Campaign failed to list the unpaid expense on in its year-end report and in the three amended reports for 2012 that it filed in the spring of 2013. Rather than report the reimbursement expense as an unpaid obligation dated October 25, 2012 in its 2012 reports, it wrongly reported it as a January 3, 2013 expense on a Report of Receipts and Expenditures for 2013 – that is, as an expense incurred and paid *after* the 2012 legislative election.

IV. ADDITIONAL VIOLATIONS

1. On September 28, 2012, Governor Dayton traveled to Willmar on a state-owned aircraft. This trip included a 102-mile flight from St. Paul to Willmar¹¹ and a 114-mile flight back to St. Paul¹² for a total of 216 miles. The *West Central Tribune*, Willmar's daily newspaper, reported that Governor Dayton met with a dozen community members to discuss economic development and then later held a campaign event for Willmar-area DFL candidates¹³.

2. Using MNDOT's flight-cost calculator, which states that the cost of operating the

¹¹ Attachment F: <http://flightaware.com/live/flight/N70MN/history/20120928/1630Z/KSTP/KBDH>, accessed May 2, 2013.

¹² <http://flightaware.com/live/flight/N70MN/history/20120928/2100Z/KBDH/KSTP>, accessed May 2, 2013

¹³ Attachment G: David Little, *Governor hears from Willmar, Minn., leaders about promoting economic growth*, WEST CENTRAL TRIBUNE, September 29, 2012.

state aircraft is equal to \$6/mile,¹⁴ MJC estimates that the total cost to the State for the 216-mile flight to the State was \$1,284. Because only half of this trip constituted official state business, the Dayton Campaign owes the State half of the cost of flying on the State's aircraft, which MJC estimates to be at least \$642.00.

3. On October 20, 2012, Governor Dayton traveled to the Brainerd Lakes area on state-owned aircraft. This trip included a 140-mile flight from St. Paul to Brainerd¹⁵ and 116-mile flight back to St. Paul,¹⁶ a round-trip of 256 miles. According to the *Brainerd Dispatch*, Governor Dayton campaigned for Brainerd-area DFL candidates on that date at the Stone House Coffee Shop in Nisswa.¹⁷ On his Facebook page, Representative John Ward (DFL-Brainerd) posted that Governor Dayton also met with local leaders to discuss tourism.¹⁸

4. MJC, using MNDOT's flight-cost calculator, estimates the cost to the State of the 256-mile trip to be \$1,536. Because only half of this trip arguably constituted official state business, the Governor's campaign owes the State at least \$768.00.

5. The Dayton Campaign should have itemized and reported the paid or unpaid expenses of these two trips in its 2012 reports. *See* Minn.Stat. 10A.20, subd. 3(g), (i) (requiring itemization of expenses if the aggregate total of the expenditure exceeds \$100 in a calendar year); Minn.Reg. 4503.1800, subp. 2. It did not. MJC believes that the appropriate reimbursement to the State of Minnesota when the Governor uses state-owned aircraft to attend a campaign event while also arguably conducting state business in the same location should be half

¹⁴ Attachment H: *Fly or Drive?*, MNDOT, <http://dotapp7.dot.state.mn.us/flyordrive/about.vm>, accessed May 2, 2013.

¹⁵ <http://flightaware.com/live/flight/N70MN/history/20121020/1820Z/KSTP/KBRD>, accessed May 2, 2013.

¹⁶ <http://flightaware.com/live/flight/N70MN/history/20121020/2345Z/KBRD/KSTP>, accessed May 2, 2013.

¹⁷ Attachment I: *Dayton to campaign Saturday in Nisswa*, BRAINERD DISPATCH, Oct. 18, 2012.

¹⁸ Attachment J: Rep. John Ward, https://www.facebook.com/permalink.php?story_fbid=10151187799197878&id=15522892877, Oct. 20, 2012, accessed May 2, 2013.

the cost of the flight. The Dayton Campaign should have listed these expenses on his 2012 campaign finance reports.¹⁹


V. PENALTIES

~~MJC requests that the Board to find that the Dayton Campaign has violated Minn.Stat. 10A.20, subd. 3(g) and (i) and Minn.Reg. 4503.1800, subp. 2, with respect to the travel reimbursements to the State of Minnesota associated with Governor Dayton's October 24, 2012 flights to attend campaign events in Bemidji and International Falls. MJC further requests that the Board require the Dayton Campaign to amend and correct their 2012 campaign finance reports to accurately reflect the reimbursement obligations the Dayton Campaign incurred when Governor Dayton used the State's aircraft to attend additional campaign-related events in 2012.~~

Respectfully submitted,

Dated: May 6, 2013

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¹⁹ MJC sent a letter dated April 6, 2013 to the Legislative Auditor asking that the Auditor provide clear guidance as to the proper method of calculating the amount a campaign is required to reimburse the State for use of its aircraft when the purpose of the travel to one destination is both official and campaign business. Whether the methodology for calculating the appropriate reimbursement amount is to split the cost of the travel 50-50 or to determine the incremental cost incurred as a result of the campaign-related activity, the Dayton Campaign should have listed an estimated cost for Governor Dayton's use of the State's aircraft for campaign purposes. MNDOT's Fly or Drive? webpage lists a number of costs such as hourly wages and meals for the crew and other transportation workers that MNDOT uses to calculate the cost of flying on one of its aircraft. In most if not all situations, the cost of using a state plane will increase when Governor Dayton adds campaign events to a trip on which he also attends to state-related matters.

RELEVANT STATUTES AND RULES

Minnesota Statutes, Section 10A.20 CAMPAIGN REPORTS

Subd. 3. **Contents of report.** (a) The report must disclose the amount of liquid assets on hand at the beginning of the reporting period.

(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.

(c) The report must disclose the sum of contributions to the reporting entity during the reporting period.

(d) The report must disclose each loan made or received by the reporting entity within the year in aggregate in excess of \$100, continuously reported until repaid or forgiven, together with the name, address, occupation, and principal place of business, if any, of the lender and any endorser and the date and amount of the loan. If a loan made to the principal campaign committee of a candidate is forgiven or is repaid by an entity other than that principal campaign committee, it must be reported as a contribution for the year in which the loan was made.

(e) The report must disclose each receipt over \$100 during the reporting period not otherwise listed under paragraphs (b) to (d).

(f) The report must disclose the sum of all receipts of the reporting entity during the reporting period.

(g) The report must disclose the name and address of each individual or association to whom aggregate expenditures, including approved expenditures, have been made by or on behalf of the reporting entity within the year in excess of \$100, together with the amount, date, and purpose of each expenditure and the name and address of, and office sought by, each candidate on whose behalf the expenditure was made, identification of the ballot question that the expenditure was intended to promote or defeat, and in the case of independent expenditures made in opposition to a candidate, the candidate's name, address, and office sought. A reporting entity making an expenditure on behalf of more than one candidate for state or

legislative office must allocate the expenditure among the candidates on a reasonable cost basis and report the allocation for each candidate.

(h) The report must disclose the sum of all expenditures made by or on behalf of the reporting entity during the reporting period.

(i) The report must disclose the amount and nature of an advance of credit incurred by the reporting entity, continuously reported until paid or forgiven. If an advance of credit incurred by the principal campaign committee of a candidate is forgiven by the creditor or paid by an entity other than that principal campaign committee, it must be reported as a donation in-kind for the year in which the advance of credit was made.

(j) The report must disclose the name and address of each political committee, political fund, principal campaign committee, or party unit to which contributions have been made that aggregate in excess of \$100 within the year and the amount and date of each contribution.

(k) The report must disclose the sum of all contributions made by the reporting entity during the reporting period.

(l) The report must disclose the name and address of each individual or association to whom noncampaign disbursements have been made that aggregate in excess of \$100 within the year by or on behalf of the reporting entity and the amount, date, and purpose of each noncampaign disbursement.

(m) The report must disclose the sum of all noncampaign disbursements made within the year by or on behalf of the reporting entity.

(n) The report must disclose the name and address of a nonprofit corporation that provides administrative assistance to a political committee or political fund as authorized by section 211B.15, subdivision 17, the type of administrative assistance provided, and the aggregate fair market value of each type of assistance provided to the political committee or political fund during the reporting period.

4503.1800 REPORTING REQUIREMENTS.

Subp. 1. **Contributions.** Legislative, statewide, and judicial candidates, party units, political committees and funds, and committees and funds to promote or defeat a ballot question must itemize contributions that in aggregate exceed \$100 in a calendar year on reports submitted to the board. The itemization must include the date on which the contribution was received, the individual or association that provided the contribution, and the address of the contributor. Additionally, the itemization for a donation in-kind must provide a description of the item or service received. Contributions that are less than the itemization amount must be reported as an aggregate total.

Subp. 2. **Expenditures and noncampaign disbursements.** Legislative, statewide, and judicial candidates, party units, political committees and funds, and committees to promote or defeat a

ballot question must itemize expenditures and noncampaign disbursements that in aggregate exceed \$100 in a calendar year on reports submitted to the board. The itemization must include the date on which the committee made or became obligated to make the expenditure or disbursement, the name and address of the vendor that provided the service or item purchased, and a description of the service or item purchased. Expenditures and noncampaign disbursements must be listed on the report alphabetically by vendor.
