

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

**PRIMA FACIE
DETERMINATION**

IN THE MATTER OF THE COMPLAINT OF MATTHEW SULLIVAN REGARDING TAKEACTION MINNESOTA,
THE TAKEACTION POLITICAL FUND, AND THE TAKE ACTION PAC

On December 26, 2022, the Campaign Finance and Public Disclosure Board received a complaint submitted by Matthew Sullivan regarding the TakeAction Political Fund and the Take Action PAC. On January 1, 2023, the Board received another complaint submitted by Mr. Sullivan regarding the TakeAction Political Fund and TakeAction Minnesota. The complaints involve similar alleged facts, both concern TakeAction Minnesota, and for purposes of this prima facie determination, they will be considered as a single complaint.

The TakeAction Political Fund is an independent expenditure political fund assigned Board registration number 30636 and its supporting association is TakeAction Minnesota, a 501(c)(4) nonprofit corporation. The Take Action PAC is a political committee assigned Board registration number 70026 and it receives administrative assistance from TakeAction Minnesota. Board records indicate that aside from providing administrative assistance, TakeAction Minnesota has not made a contribution to the Take Action PAC since 2007.

The complaint alleges that TakeAction Minnesota has “repeatedly and intentionally concealed the source of their funds from Minnesotans by listing all of their donations as ‘In-Kind’. . . .” The complaint includes what appears to be a screenshot of a Federal Election Commission (FEC) webpage showing contributions and other disbursements reportedly made to “TAKEACTION MINNESOTA,” “TAKE ACTION MINNESOTA,” “TAKEACTION MINNESOTA (TAMN),” and “TAKEACTION MINNESOTA EDUCATION FUND” totaling \$713,108.87 during the years 2019 through 2022.¹ The complaint states that those payments do not appear within the reports of the TakeAction Political Fund or the Take Action PAC, and “[i]nstead, all donations . . . are listed as ‘in-kind’ despite the fact that these expenses cannot, practically speaking, be ‘in-kind’.”² The complaint alleges that by failing to accurately disclose their contributors, the TakeAction Political Fund and the Take Action PAC each violated Minnesota Statutes section 10A.20, subdivision 3, paragraph (c). The complaint alleges that “this is clearly a meticulous effort to hide the source

¹ Disbursements reported to the FEC, including contributions made, may be searched at www.fec.gov/data/disbursements. Disbursements reportedly made to “TAKEACTION MN FEDERAL FUND” are not addressed by this determination, at the request of the complainant, because that committee is registered with the FEC.

² The Take Action PAC reported receiving \$61,000 in itemized monetary contributions in 2020, none of which was donated by TakeAction Minnesota. The TakeAction Political Fund reported receiving \$11,935.21 in in-kind contributions in 2021 from another political fund registered with the Board, rather than TakeAction Minnesota.

of funds” and asserts that variations on TakeAction Minnesota’s name were used in FEC filings “to try to make these donations harder to find.”³

The complaint notes that the TakeAction Political Fund “did list some of these donations in disclosure reports but they were not ever listed on their initial reports under the ‘unregistered association’ section and every receipt was instead listed as ‘in kind’. Additionally, these disclosures list Take Action as the unregistered organization, this is an attempt to move money through another organization with the same name at the same address to conceal the funds. This is an absolutely egregious attempt to hide the source of the funds.”

The complaint also alleges that the TakeAction Political Fund and its supporting association, TakeAction Minnesota, violated Minnesota Statutes section 211B.15, subdivision 17. The complaint states that the political fund and its supporting association’s use of “[t]he same name and address draw the clear fact it is a political committee ‘associated’ with a nonprofit as stated in the statute.” The complaint notes that under Minnesota Statutes section 211B.15, subdivision 17, the term “administrative assistance” is “limited to accounting, clerical or legal services, bank charges, utilities, office space, and supplies.” The complaint alleges that TakeAction Minnesota violated that provision because it provided “digital ads, mail, emails and other political expenditures for” its political fund. The complaint also notes that the provision of administrative assistance “is limited annually to the lesser of \$5,000 or 7-1/2 percent of the expenditures of the political committee or political fund.” The complaint asserts that TakeAction Minnesota exceeded that limit and includes a copy of the TakeAction Political Fund’s 2022 pre-general report of receipts and expenditures. The report includes \$377,287.29 in in-kind contributions received from TakeAction Minnesota, which constitutes 100% of the contributions that the political fund received from January 1 through October 24, 2022.

Determination

Reporting

A contribution consists of “money, a negotiable instrument, or a donation in kind that is given to a political committee, political fund, principal campaign committee, local candidate, or party unit. An allocation by an association of general treasury money to be used for activities that must be or are reported through the association's political fund is considered to be a contribution for the purposes of disclosure required by this chapter.” Minn. Stat. § 10A.01, subd. 11. General treasury money “means money that an association other than a principal campaign committee, party unit, or political committee accumulates through membership dues and fees, donations to the association for its general purposes, and income from the operation of a business. General treasury money does not include money collected to influence the nomination or election of candidates or local candidates or to promote or defeat a ballot question.”

³ The FEC webpage depicted in the screenshot included with the complaint appears to be a search results list containing disbursements reported to the FEC. Variations on TakeAction Minnesota’s name within that list appear to be the result of variations within the data provided to the FEC by those who made and reported the disbursements in question, rather than by TakeAction Minnesota.

A donation in kind is “anything of value that is given, other than money or negotiable instruments.” Minn. Stat. § 10A.01, subd. 13. Minn. Stat. § 10A.01, subd. 17c. “An individual or association that pays for or provides goods or services, or makes goods or services available, with the knowledge that they will be used for the benefit of a political committee or a political fund, is the contributor of those goods or services.” Minn. R. 4503.0500, subp. 4.

A political committee or fund generally is required to report all contributions received within its campaign finance reports and contributions received in excess of \$200 per contributor within a calendar year must be itemized, including the name and address of the contributor. Minn. Stat. § 10A.20, subd. 3 (c)-(d).

The complaint identifies the Take Action PAC as a respondent to the complaint. The only factual assertion made in the complaint that is specific to the Take Action PAC is that the disbursements referenced in the complaint that were reported to the FEC as having been made to “TAKEACTION MINNESOTA,” “TAKE ACTION MINNESOTA,” “TAKEACTION MINNESOTA (TAMN),” and “TAKEACTION MINNESOTA EDUCATION FUND,” were not reported to the Board as contributions received by the Take Action PAC. The complaint does not include additional evidence indicating that the Take Action PAC was the recipient of any payment in question. The reports of receipts and expenditures that the Take Action PAC has filed with the Board covering the years 2019 through 2022 state that the committee did not receive any contributions in 2019 or 2021 and did not receive any contributions in 2022 through October 24, 2022.⁴ The committee’s 2020 year-end report did not include any in-kind contributions received, did not include any contributions received from TakeAction Minnesota, and included \$61,398 in monetary contributions received, \$61,000 of which was from two individuals and a separate political committee that is registered with the Board. While there is evidence that some of the disbursements referenced in the complaint were made to TakeAction Minnesota or its independent expenditure political fund, that evidence does not support the conclusion that any of those disbursements were made to the Take Action PAC. The chair therefore concludes that the complaint does not state a prima facie violation of Minnesota Statutes section 10A.20, subdivision 3, by the Take Action PAC, because that allegation is based on speculation unsupported by evidence.

An independent expenditure political fund is required to obtain and file with the Board a disclosure statement for each contribution that it receives from an association that is not registered with the Board and has contributed more than \$5,000 in aggregate to independent expenditure or ballot question political committees or funds during the calendar year. The purpose of that requirement is to obtain disclosure of the major sources of funds used by an unregistered association to make a contribution to a committee or fund that is registered with the Board. The disclosure statement must include “the name, address, and amount attributable to each person that paid the association dues or fees, or made donations to the association

⁴ The committee’s 2022 year-end report, which will include the remainder of the calendar year, is due on January 31, 2023.

that, in total, aggregate more than \$5,000 of the contribution from the association to the independent expenditure or ballot question political committee or fund.” Minn. Stat. § 10A.27, subdivision 15.

As noted in the complaint, the TakeAction Political Fund has filed disclosure statements with the Board pursuant to Minnesota Statutes section 10A.27, subdivisions 15-16. Several of the statements covering contributions received during the latter months of 2022 include a single itemized source of funding, “People’s Action Power PAC.” The screenshot included with the complaint lists “People’s Action Power” as having given \$368,000 to “TAKEACTION MINNESOTA (TAMN)” on April 7, 2022.

Each of the disclosure statements filed by the TakeAction Political Fund for contributions received from 2019 through 2022 list the contributor as TakeAction Minnesota, the supporting association of the TakeAction Political Fund. If the in-kind contributions covered by those disclosure statements were goods or services paid for using TakeAction Minnesota’s general treasury money, then the disclosure statements properly list TakeAction Minnesota as the contributor because an association’s allocation of general treasury money for activities reported through that association’s political fund is a contribution from that association. Minn. Stat. § 10A.01, subd. 11 (a). General treasury money includes “donations to the association for its general purposes” but “does not include money collected to influence the nomination or election of candidates or local candidates or to promote or defeat a ballot question.” Minn. Stat. § 10A.01, subd. 17c.

The complaint contains evidence that TakeAction Minnesota or its independent expenditure political fund received money from multiple associations that are registered with the FEC. These associations reported to the FEC that they made disbursements to TakeAction Minnesota, many of which were described as contributions or donations, including the \$368,000 given by “People’s Action Power.” Associations registered with the FEC are inherently interested in influencing elections and TakeAction Minnesota seeks to influence the nomination or election of candidates or local candidates in Minnesota. The complaint alleges and Board records reflect that the TakeAction Political Fund has not reported receiving the alleged contributions referenced in the complaint and has instead reported that nearly all of its contributions received from 2019 through 2022 have been in-kind contributions made by its own supporting association, TakeAction Minnesota. The chair therefore concludes that the complaint states a prima facie violation of Minnesota Statutes section 10A.20, subdivision 3, by the TakeAction Political Fund.

Nonprofit Corporation Political Activity

Minnesota Statutes section 211B.15 generally prohibits corporate political contributions, including contributions made to general purpose political funds. A nonprofit corporation is exempt from the prohibition if the conditions in Minnesota Statutes section 211B.15, subdivision 15, are satisfied, and if not, the nonprofit corporation may nonetheless provide

limited administrative assistance to a general purpose political committee or fund pursuant to subdivision 17, which provides that

It is not a violation of this section for a nonprofit corporation to provide administrative assistance to one political committee or political fund that is associated with the nonprofit corporation and registered with the Campaign Finance and Public Disclosure Board under section 10A.14. Such assistance must be limited to accounting, clerical or legal services, bank charges, utilities, office space, and supplies. The records of the political committee or political fund may be kept on the premises of the nonprofit corporation.

The administrative assistance provided by the nonprofit corporation to the political committee or political fund is limited annually to the lesser of \$5,000 or 7-1/2 percent of the expenditures of the political committee or political fund.

Minnesota Statutes section 211B.15, subdivision 17, is an exception to the general prohibition on corporate political contributions. If a nonprofit corporation that does not qualify for the exemption described in subdivision 15 provides money, goods, or services to a general purpose political committee or fund beyond the limited administrative assistance permitted by subdivision 17, that would constitute a contribution made in violation of Minnesota Statutes section 211B.15, subdivision 2. However, the TakeAction Political Fund is an independent expenditure political fund. Independent expenditures are excluded from the prohibition on corporate contributions under Minnesota Statutes section 211B.15, subdivisions 2 and 3. The exclusion of independent expenditures, as well as contributions made to independent expenditure political committees and funds, from the prohibition on corporate contributions, is constitutionally required.⁵ As a result, a corporation cannot violate Minnesota Statutes section 211B.15 by making a contribution to an independent expenditure political fund, and an independent expenditure political fund cannot violate the statute by accepting a corporate contribution. The chair therefore concludes that the complaint does not state a prima facie violation of Minnesota Statutes section 211B.15, by TakeAction Minnesota or the TakeAction Political Fund.

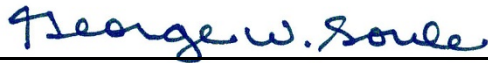
Pursuant to Minnesota Statutes section 10A.022, subdivision 3, this prima facie determination is made by a single Board member and not by any vote of the entire Board. This prima facie determination does not mean that the Board has commenced, or will commence, an investigation or has made any determination of a violation by any of the individuals or entities named in the complaint.

Pursuant to Minnesota Statutes section 10A.022, subdivision 3, within 45 days of the date of this determination, the Board will make findings and conclusions as to whether probable cause exists to believe that the violations of Minnesota Statutes section 10A.20 by the TakeAction Political Fund alleged in the complaint have occurred and warrant a formal investigation. The complainant

⁵ *Minnesota Chamber of Com. v. Gaertner*, 710 F. Supp. 2d 868, 872-73 (D. Minn. 2010); see generally *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 365 (2010).

and the respondent named in this prima facie determination will be given an opportunity to be heard by the Board prior to any decision on probable cause.

Until the Board makes a public finding or enters into a conciliation agreement, this matter is subject to the confidentiality requirements of Minnesota Statutes section 10A.022, subdivision 5.



George W. Soule, Chair
Campaign Finance and Public Disclosure Board

Date: January 9, 2023