

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

**AMENDED FINDINGS AND ORDER REGARDING THE
21st CENTURY DEMOCRATS (NATIONAL ASSOCIATION)**

Facts Used In These Findings

These Findings and Order vacate and replace the Findings and Order issued by the Campaign Finance and Public Disclosure Board (“the Board”) on December 17, 2004.

Board staff’s review of the 21st Century Democrats’ (Minnesota Committee) Amended Report of Receipts and Expenditures for the periods covering calendar years 2001 through 2004 disclosed 29 contributions from 21st Century Democrats (“National Association”), an association that is not registered with the Board.

Minn. Stat. §10A.27, subd. 13 (b), prohibits an unregistered association from making a contribution in excess of \$100 to a registered political committee, unless at the time the contribution was made, the unregistered association provides the political committee with the disclosure required by Minn. Stat. §10A.27, subd. 13.

Brian Svoboda, counsel, 21st Century Democrats, informed Board staff that the National Association did not provide the Minnesota Committee with the disclosure required by Minn. Stat. §10A.27, subd. 13, at the time the contributions were made.

In a letter received on December 14, 2004, Mr. Svoboda stated, “21st Century Democrats is a federal PAC that is active on a national basis. Its Minnesota activity has made up only a small part of its overall activity. Accordingly, its procedures were not designed specifically to conform to Minnesota procedures. This fact, combined with accounting and administrative lapses on the part of organization staff, resulted in the circumstances that prompted your office to seek additional information. These circumstances were wholly the product of inadvertent error.”

Mr. Svoboda also provided the Board with disclosure statements required by Minn. Stat. §10A.27, subd. 13, for calendar years 2001, 2002, 2003 and the period covering January 1, 2004, through October 18, 2004. However, these disclosure statements did not provide all the disclosure required by Minn. Stat. §10A.20. The Minnesota Committee’s Report of Receipts and Expenditures for calendar year 2004 disclosed four additional contributions from the National Association to the Minnesota Committee after October 18, 2004. Disclosure statements for these four contributions did not accompany the Minnesota Committee’s 2004 year-end Report of Receipts and Expenditures.

Prior to August 1, 2002, Minn. Stat. §10A.27, subd. 13, provided that the officer of an unregistered association that made a contribution in excess of \$100 without providing the required disclosure was guilty of a misdemeanor. Based on the Board’s Findings issued on December 17, 2004, the Executive Director referred this matter to the Ramsey County Attorney for a determination whether to charge the National Association’s officers with misdemeanors for contributions to the Minnesota Committee made prior to August 1, 2002.

The Board met and discussed this matter with Michael R. Drysdale and Michael Ahern, Dorsey & Whitney, legal counsel for 21st Century Democrats, at a special meeting for that purpose on January 14, 2005, and at the Board's meeting on February 22, 2005, and March 22, 2005. The Board also received letters and written information from Mr. Drysdale and Mr. Ahern relating to this matter.

Counsel argued that 21st Century Democrats should be treated as a national party unit with an affiliate in this state under Minn. Stat. § 10A.27, subd. 13(a); that 21st Century Democrats is not nor should not be treated as an association or unregistered association under Minn. Stat. § 10A.01, subd. 6, and 10A.27, subd. 13; that 21st Century Democrats (National Association) and the registered Minnesota committee might more appropriately be treated as related committees, parent and subsidiary organizations under Minn. Stat. § 10A.15, subd. 3c; that the Board should not impose penalties under Minn. Stat. § 10A.27, subd. 13 (c); and questioned whether 21st Century Democrats (Minnesota Committee) is a political committee under Minn. Stat. § 10A.01, subd. 27. Counsel also confirmed that four contributions totaling \$117,280.17 had been made by 21st Century Democrats (National Association) to 21st Century Democrats (Minnesota Committee) after October 18, 2004, without the disclosure required pursuant to Minn. Stat. § 10A.20.

On January 20, 2005, 21st Century Democrats filed a Petition for Writ of Certiorari with the Minnesota Court of Appeals, seeking judicial review of the Board's December 17, 2004, Findings, Conclusions and Orders in this matter. On February 10, 2005, a stipulated Motion for Stay was submitted to the Court of Appeals for its approval. The purpose of the stay was to temporarily freeze the appellate process until the Board had an opportunity to review contributions by 21st Century Democrats National Association since October 18, 2004, and to consider appropriate amendments to the December 17, 2004, Findings. On February 16, 2005, the Court of Appeals issued an Order dismissing the appeal without prejudice, pending final action by the Board.

On March 22, 2005, the Board released to Counsel for the 21st Century Democrats proposed Amended Findings imposing additional penalties for contributions made from the National Association to the Minnesota Committee after October 18, 2004. On March 25, 2005, the Board issued a Notice of Hearing setting a hearing date of April 22, 2005, before the Board. On April 1, 2005, the Board was served with a Petition to the Office of Administrative Hearings for an Order determining that the Board was attempting to enforce Board policy as though it were a rule, in contravention of existing Board rules and Minn. Stat. §14.50. Subsequent proceedings before the Office of Administrative Hearings resulted in a June 30, 2005, decision stating that the Board must provide a contested case hearing before an Administrative Law Judge appointed by the Office of Administrative Hearings.

On October 25, 2005, the Board issued a Notice and Order for Hearing before an Administrative Law Judge (ALJ) appointed by the Office of Administrative Hearings. A prehearing conference was held on December 20, 2005. On December 23, 2005, the ALJ issued a prehearing order establishing discovery completion deadline of March 24, 2006, and providing for any dispositive motions to be fully submitted and briefed by June 22, 2006. Discussions between counsel for the Board and 21st Century Democrats ensued, leading to the final resolution of this matter by the issuance of these Findings, Conclusions and Order. As stated above, 21st Century Democrats contends that the transfer of funds from the National Organization to the Minnesota PAC complied with Chapter 10A, and did not trigger separate reporting requirements for the National

Organization. To settle this matter, 21st Century Democrats will not further contest the findings stated herein and will comply with the Board's interpretation, as stated below.

This matter was considered by the Board in executive sessions at each of its meetings from November 17, 2004, through May 16, 2006. The Board's decision was based upon Board staff's conversations with Mr. Svoboda, correspondence from Mr. Svoboda, amendments filed by Mr. Svoboda, information, discussions, statements and arguments of Mr. Drysdale and Mr. Ahern, and Board records.

Based on the record before it, the Board issues the following:

Evidentiary Findings

1. There is evidence that the National Association made 29 contributions in excess of \$100 to the Minnesota Committee in calendar years 2001 through 2004.
2. There is evidence that these contributions were not returned within 60 days. Minn. Stat. §10A.27, subd. 13 (b), provides that an unregistered association that makes a contribution to a registered political committee without the required disclosure is subject to a civil penalty of up to \$1,000.
3. Prior to August 1, 2002, Minn. Stat. §10A.27, subd. 13, provided that the officer of an unregistered association that made a contribution in excess of \$100 without providing the required disclosure was guilty of a misdemeanor. The National Association made seven contributions prior to August 1, 2002, without providing the required disclosure.
4. There is evidence that the Minnesota Committee has now obtained disclosure statements from the National Association and provided these statements to the Board for calendar years 2001, 2002, 2003 and the period from January 1, 2004, through October 26, 2004, and that these statements partially conform to the requirements of Minn. Stat. § 10A.20. as required by Minn. Stat. §10A.27, subd. 13, (a).
5. There is evidence that the National Association accepted contributions from corporations. Minn. Stat. §211B.15, which prohibits corporations from contributing to political campaigns, is not within the Board's jurisdiction. The Board is not authorized to make findings of probable cause regarding matters that are not within the Board's jurisdiction.
6. The 21st Century Democrats (National Association), 21st Century Democrats (Minnesota Committee) and the Board have agreed that:
 - a. the Board is charged with administering Minn. Stat. Ch. 10A, and pursuant to that authority, the Board has formed an interpretation of those provisions in this matter;
 - b. in order to settle this matter, 21st Century Democrats (National Association) and 21st Century Democrats (Minnesota Committee) will not further contest the Board's interpretation; and

- c. 21st Century Democrats (National Association) and 21st Century Democrats (Minnesota Committee) will conduct themselves in accordance with the Board's interpretation of the applicable law on a going-forward basis.

7. The Board has imposed and the 21st Century Democrats have agreed to a civil penalty of \$190,000 on the Minnesota Committee in connection with its acceptance of 29 contributions from the National Association in excess of \$100 without the disclosures required by Minn. Stat. §10A.27, subd. 13.

Based on the above Statement of the Evidence, the Board makes the following:

Findings Concerning Probable Cause

There is probable cause to believe that the National Association violated Minn. Stat. §10A.27, subd. 13, when it made 29 contributions in excess of \$100 to the Minnesota Committee without providing the disclosure required by Minn. Stat. §10A.20.

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

Order

1. In light of the civil penalty imposed by the Board on the Minnesota Committee under separate Findings and Order issued contemporaneously with these Findings and Order, the Board will not impose additional civil penalties on the National Association.
2. The Board directs the National Association to provide the Minnesota Committee with the additional disclosure statement required by Minn. Stat. §10A.27, subd. 13, for the period October 27, 2004 through December 31, 2004.
3. The Board directs the National Association to ensure that any future contributions to the Minnesota Committee are accompanied by disclosure statements that meet all the disclosure requirements of Minn. Stat. §10A.20.
4. If the National Association does not comply with the provisions of this order, the Board shall seek an injunction to enforce the provisions of this Finding pursuant to Minn. Stat. §10A.34, subd. 2.
5. The Board investigation of this matter is hereby made a part of the public records of the Board pursuant to Minn. Stat. §10A.02, subd. 11.
6. The Board's Findings and Order in this matter dated December 17, 2004, are hereby vacated in their entirety.

Dated: May 16, 2006



Bob Milbert, Chair
Campaign Finance and Public Disclosure Board