

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

**FINDINGS AND ORDER IN THE MATTER OF
A COMPLAINT REGARDING OUTFRONT MINNESOTA**

Summary of Allegations and Responses

By letter dated May 2, 2006, Jeffrey J. Davis, President, Minnesota Citizens in Defense of Marriage, filed a complaint with the Campaign Finance and Public Disclosure Board (the Board). The complaint alleges that OutFront Minnesota (OFM) violated the provisions of Minnesota Statutes Chapter 10A when the association failed to register a political committee for the purpose of supporting or opposing a ballot question.

OFM is the supporting nonprofit corporation for OutFront Minnesota Action (OFMA), a political committee registered with the Board. The complaint also alleges that if OFMA was responsible for ballot question expenditures it failed to disclose sufficient contributions or expenditures as required by Minnesota Statutes, section 10A.20.

In support of the allegation that OFM opposed the placement of a constitutional amendment on the ballot the complaint provided a copy of a postcard with the designation "OutFront Minnesota" which is designed to be sent to legislators. Additionally, the complaint includes a copy of a letter from OFM and the Faith, Family, Fairness Alliance that invites Senators to attend a March 23, 2006, rally at the Capitol Rotunda. The letter provides that at the rally various presenters will speak against a constitutional amendment defining marriage. The complaint also provides a copy of an article that appeared in the *St. Paul Pioneer Press* on April 25, 2006. The article provides information on the lobbying activities of OFM.

Explaining the complaint Mr. Davis states, "...OFM has engaged in activities related to qualifying the Marriage Amendment for the ballot, namely, exerting pressure on legislators and/or the general public to oppose placement of the Marriage Amendment on the November 2006 general election ballot (and, likely the November 2004 general election ballot). ...As such, these activities constitute "expenditures" under Minn. Stat. 10A.01, subd. 9, triggering political registration and reporting requirements under the Act".

Mr. Davis notes that OFM has lobbyists registered with the Board and is a lobbyist principal. Regarding the lobbying disbursements disclosed by OFM Mr. Davis states, "OFM lobbyist principal reports for 2004 and 2005 disclose a potential of up to \$240,000 in expenditures for lobbying activities, all of which were presumably related to opposing placement of the Marriage Amendment on the general election ballot. This amount does not include expenditures by OFM in calendar year 2006..."

Based on the amount reported as lobbyist disbursements, Mr. Davis states that expenditures made in opposition to the constitutional amendment could not have been reported by OFMA. Mr. Davis states, "OFMA's 2005 Report of Receipts and Expenditures identifies less than \$2,000 in total expenditures in 2005. Therefore, if ballot question qualification opposition activities were conducted by OFMA (and not OFM, for example) in 2005, the failure of OFMA to report such activities, if willful, constitutes a gross misdemeanor under Minn. Stat. 10A.025, subd. 2."

In summary of his complaint Mr. Davis states, "The failure of OFM...to register as a political committee as required by the Act and to disclose information required by the Act to be disclosed has caused great damage to the Minnesota public, which is unable to ascertain the identity of contributors to these ballot

question committees or the recipients of the funds spent by these ballot question committees on ballot question qualification opposition activities.”

By letter dated May 4, 2006, the Board notified OFM of the complaint and afforded the association an opportunity to respond.

By letter dated May 17, 2006, Ann Marie DeGroot, Executive Director of OFM, responded on behalf of the organization. In response to the complaints allegation that OFM must register as a political committee, Ms. DeGroot states “The statute defining “political committee” requires such an association’s “major purpose” to be promoting or defeating a ballot question. We conclude that OutFront Minnesota does not fit this definition. It is correct that in recent years, one of many public policy issues against which our organization has worked is a legislative proposal to place a constitutional amendment defining marriage on the November, 2006 ballot. Lobbying expenditures reported to the Board include lobbying expenditures to oppose legislation placing such a question on the ballot.”

In further explaining OFM actions Ms. DeGroot states, “Because the legislature has yet to pass this amendment for inclusion as a ballot question, all efforts by OutFront Minnesota have been to lobby against passing such legislation, and have been reported as such. The lobbying reports comprise the sum total of our expenditures, including any advocacy relating to ballot questions.”

In response to the complaint’s allegation that OFMA may have failed to report contributions and expenditures related to promoting or defeating a constitutional amendment Ms. DeGroot states, “Because OFMA has not engaged in any “ballot question qualification opposition activities”, [the complainants] speculations are groundless and its complaint against OFMA should be dismissed. OFMA was organized in 2004 specifically to address candidate races for state legislative office in Minnesota.”

Board staff met with Ms. DeGroot, Eve Borenstein, and Ellen McVeigh on July 6, 2006, to answer questions concerning the complaint. Ms. Borenstein and Ms. McVeigh are legal counsel for OFM. On July 7, 2006, Ms. DeGroot requested an extension to July 28, 2006, to provide an additional response to the complaint.

By letter dated July 28, 2006, Ms. DeGroot supplemented the OFM response. Ms. DeGroot states, “Although OutFront Minnesota disagrees with the Board’s interpretation of the statute, it intends to comply with your assessment of the Board’s current position. By August 8, 2006 you will receive a registration form for OutFront Minnesota Marriage Equality (OFFME), a political action fund formed to make expenditures with respect to any “defense of marriage” constitutional amendment proposed to be placed on the ballot in Minnesota (“PAF”).”

Ms. DeGroot further states, “...OutFront Minnesota will provide the Board with reports showing expenditures attributable to the PAF for state law purposes for the years 2004 and 2005 (the question of a proposed constitutional amendment on same-sex marriage did not come before the Minnesota legislature in 2003). ...Expenditures attributable to the PAF for the year 2006 will be reported on or before August 28, 2006, the due date of the first of the 2006 reports required pursuant to Minnesota Statutes 10A.20.”

Ms. DeGroot also explained why the political fund would disclose an amount similar to the lobbying disbursements already disclosed by OFM, “It was impossible in the political climate prevailing in 2004-06 to discuss GLBT issues in the context of OutFront Minnesota’s lobbying agenda without addressing the “defense of marriage” constitutional amendment and its implication for GLBT human rights. ...Consequently, it is likely that all of its lobbying expenditures for 2004, 2005, and 2006 will need to be reported as expenditures made with respect to activities relating to “qualifying [a] question for placement

on the ballot,” given how intertwined discussion of the threat of the amendment has been with the lobbying agenda of OutFront Minnesota.”

On August 8, 2006, the Board received the political fund registration of OutFront Minnesota Marriage Equality. With the registration, OutFront Minnesota Marriage Equality retroactively filed Reports of Receipts and Expenditures for the periods January 1 through August 23, 2004, January 1 through October 18, 2004, January 1 through December 31, 2004, and January 1 through December 31, 2005. The reports disclose \$59,247 in cash and in-kind disbursements in 2004; and \$60,098 in cash and in-kind disbursements in 2005. The reports disclose that all contributions were from OutFront Minnesota.

The Board considered the matter in executive sessions on June 7, and August 15, 2006. The Board’s decision is based upon the complaint, Ms. DeGroot’s responses on behalf of OFM, the registration for OutFront Minnesota Marriage Equality, the Reports of Receipts and Expenditures submitted by OutFront Minnesota Marriage Equality for 2004 and 2005, and Board records.

Board Analysis

Chapter 10A applies to a “ballot question” if the issue is to be placed on the ballot statewide. (Minnesota Statutes, section 10A.01, subdivision 7). This statute also provides that the phrase “promoting or defeating a ballot question” includes activities related to qualifying the question for placement on the ballot. Therefore, a ballot question exists when the legislature considers placing an issue before the voters statewide in the form of a constitutional amendment.

Chapter 10A defines a group of two or more persons acting in concert (who are not all family members) as an “association” (Minnesota Statutes, section 10A.01, subdivision 6). Minnesota Statutes section 10A.14, subdivision 1, provides in part that an association must register with the Board no later than 14 days after the association has made a contribution, received contributions, or made expenditures in excess of \$100 for the purpose of promoting or defeating a ballot question. An “expenditure” is a purchase or payment of money made or incurred for the purpose of promoting or defeating a ballot question. (Minnesota Statutes, section 10A.01, subdivision 9)

Associations register with the Board as a “political committee” if the major purpose of the association is to promote or defeat a ballot question. Alternatively, associations register as a “political fund” if the association uses accumulated dues or voluntary contributions to promote or defeat a ballot question. (Minnesota Statutes section 10A.01, subdivisions 27 and 28.) An association that does not meet the definition of political committee and makes expenditures of over \$100 to promote or defeat a ballot question must make the expenditure from a political fund. (Minnesota Statutes section 10A.12)

Failure to register as a political committee or political fund after receiving notification from the Board of the need to register is subject to a late filing fee of up to \$100, and a civil penalty of up to \$1,000. Registering with the Board as a political committee or political fund obligates the committee or fund to file periodic Reports of Receipts and Expenditures that provide the disclosure required in Minnesota Statutes section 10A.20.

Lobbying is defined in Minnesota Rules, 4511.0100, Subpart 3, as attempting to influence legislative action or administrative action by communicating with or urging others to communicate with public officials. Any activity that directly supports this communication is considered a part of lobbying.

Efforts to support or oppose the placement of a constitutional amendment on the ballot by the legislature, either through direct communication with legislators or by urging the public to contact their legislator, is a lobbying activity.

An association becomes a lobbyist “principal” if it spends more than \$500 to employ a lobbyist during a calendar year or spends at least \$50,000 on efforts to influence legislative action, administrative action, or the action of metropolitan governmental units (Minnesota Statutes, section 10A.01, subdivision 33). An association that is a lobbyist principal is required to file an annual report of its lobbying disbursements with the Board.

Additionally, an individual must register as a lobbyist with the Board on behalf of an association if the individual is compensated over \$3,000 a year for attempting to influence legislative or administrative action, or the official action of a metropolitan governmental unit by communicating with, or urging others to communicate with public or local officials. An individual who fails to register as a lobbyist after receiving notification from the Board of the need to register is subject to a late filing fee of up to \$100, and a civil penalty of up to \$1,000.

Relevant Statutes and Administrative Rules

Minnesota Statutes, section 10A.01, subdivision 6. Association. "Association" means a group of two or more persons, who are not all members of an immediate family, acting in concert.

Minnesota Statutes, section 10A.01, subdivision 7. Ballot question. "Ballot question" means a question or proposition that is placed on the ballot and that may be voted on by all voters of the state. "Promoting or defeating a ballot question" includes activities related to qualifying the question for placement on the ballot.

Minnesota Statutes, section 10A.01, subdivision 9. Campaign expenditure. "Campaign expenditure" or "expenditure" means a purchase or payment of money or anything of value, or an advance of credit, made or incurred for the purpose of influencing the nomination or election of a candidate or for the purpose of promoting or defeating a ballot question.

Minnesota Statutes, section 10A.01, subdivision 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.

Minnesota Statutes, section 10A.01, subdivision 27. Political committee. "Political committee" means an association whose major purpose is to influence the nomination or election of a candidate or to promote or defeat a ballot question, other than a principal campaign committee or a political party unit.

Minnesota Statutes, section 10A.01, subdivision 28. Political fund. "Political fund" means an accumulation of dues or voluntary contributions by an association other than a political committee, principal campaign committee, or party unit, if the accumulation is collected or expended to influence the nomination or election of a candidate or to promote or defeat a ballot question.

Minnesota Statutes, section 10A.01, subdivision 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. 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.

Minnesota Statutes, section 10A.12. Political funds.

Subdivision 1. **When required.** An association other than a political committee or party unit may not contribute more than \$100 in aggregate in any one year to candidates, political committees, or party units or make any approved or independent expenditure or expenditure to promote or defeat a ballot question unless the contribution or expenditure is made from a political fund.

Subdivision 6. **Penalty.** A person who knowingly violates this section is subject to a civil penalty imposed by the board of up to \$1,000.

Minnesota Statutes, section 10A.14. Registration.

Subdivision 1. **First registration.** The treasurer of a political committee, political fund, principal campaign committee, or party unit must register with the board by filing a statement of organization no later than 14 days after the committee, fund, or party unit has made a contribution, received contributions, or made expenditures in excess of \$100.

Subd. 2. **Form.** The statement of organization must include:

- (1) the name and address of the committee, fund, or party unit;

- (2) the name and address of the chair of a political committee, principal campaign committee, or party unit;
- (3) the name and address of any supporting association of a political fund;
- (4) the name and address of the treasurer and any deputy treasurers;
- (5) a listing of all depositories or safety deposit boxes used; and
- (6) for the state committee of a political party only, a list of its party units.

Subd. 4. **Failure to file; penalty.** The board must send a notice by certified mail to any individual who fails to file a statement required by this section. If the individual fails to file a statement 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, commencing with the 11th day after the notice was sent.

Minnesota Rules, 4511.0100 Definitions, Subpart 3. Lobbying. "Lobbying" means attempting to influence legislative action, administrative action, or the official action of a metropolitan governmental unit by communicating with or urging others to communicate with public officials or local officials in metropolitan governmental units. Any activity that directly supports this communication is considered a part of lobbying.

Based on the above Summary of Allegations and Responses, Board Analysis, and Relevant Statutes, the Board makes the following:

Findings Of Probable Cause

1. There is evidence that members of OutFront Minnesota organized and acted in concert in order to take actions in opposition to the placement of a proposed constitutional amendment on the ballot. The Board finds that this activity qualifies OutFront Minnesota as an association for the purposes of Chapter 10A.
2. There is evidence that beginning in 2004 OutFront Minnesota made lobbying disbursements in opposition to the placement of a proposed constitutional amendment on the ballot. The Board finds that lobbying disbursements related to qualifying a question for placement on the ballot are campaign expenditures as defined in Minnesota Statutes, section 10A.01, subdivision 9. The Board further finds that these activities required OutFront Minnesota to register a political fund under the provisions of Minnesota Statutes, section 10A.14.
3. There is no evidence that the major purpose of OutFront Minnesota is to promote or defeat a ballot question. The Board finds that OutFront Minnesota is not a political committee as defined in Minnesota Statutes, section 10A.01, subdivision 27.
4. There is evidence that OutFront Minnesota made \$240,000 in lobbying disbursements in 2004 and 2005, and that a large portion of this amount was for the purpose of opposing the placement of a proposed constitutional amendment on the ballot. The Board finds that OutFront Minnesota unintentionally violated Minnesota Statutes section 10A.12, subdivision 1, when it failed to

establish a political fund for the purpose of making expenditures to promote or defeat a ballot question.

5. There is no evidence that OutFront Minnesota Action collected contributions or made expenditures to support or oppose a constitutional amendment. The Board finds that OutFront Minnesota Action did not fail to disclose on the 2005 Report of Receipts and Expenditures contributions or expenditures required by Minnesota Statutes, section 10A.20.

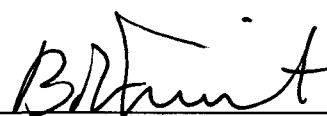
Based on the above Findings, the Board issues the following:

Order

1. Having registered a political fund for the purpose of disclosing receipts and expenditures related to the support or opposition of ballot questions OutFront Minnesota's violation of Minnesota Statutes, section 10A.14 no longer exists. Having retroactively filed Reports or Receipts and Expenditures for 2004 and 2005 OutFront Minnesota's failure to provide the disclosure required in Minnesota Statutes, section 10A.20 no longer exists. The registration and reporting violation alleged in the complaint having been resolved, this matter is concluded.
2. The allegation that OutFront Minnesota Action failed to report receipts and expenditures related to the placement of a constitutional amendment on the ballot is dismissed.
3. The record in this matter and all correspondence is hereby entered into the public record in accordance with Minnesota Statutes, section 10A.02, subd. 11.

Board staff shall provide copies of these Findings to Jeffrey J. Davis and Ann Marie DeGroot.

Dated: August 15, 2006



Bob Milbert, Chair
Campaign Finance and Public Disclosure Board