

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

**FINDINGS AND ORDER IN THE MATTER OF
A COMPLAINT REGARDING
NORTHFIELD PARENTS, FAMILY, AND FRIENDS OF LESBIANS AND GAYS**

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 alleged that Northfield Parents, Family, and Friends of Lesbians and Gays (Northfield PFLAG) violated the provisions of Minnesota Statutes Chapter 10A when the association failed to register and report as a political committee and failed to report lobbying expenditures either through a lobbyist or as a lobbyist principal.

In support of the allegation that Northfield PFLAG participated in activities that require registration and reporting with the Board, the complaint provided a copy of a newspaper advertisement that appeared in *The Northfield News* on March 4, 2006. Referencing the advertisement, Mr. Davis states that he is providing, "...a copy of a newspaper advertisement appearing in *The Northfield News* which clearly constitutes a communication in opposition to a ballot question (namely, the Marriage Amendment)."

The advertisement asks for support "In protecting the Minnesota Constitution... from any amendment that would mandate discrimination against one class of the citizenry" and further asks for help in "protecting the rights of the same-gender couples..." The advertisement contained the following disclaimer: "This advertisement organized by Northfield PFLAG. Paid for by donations by persons listed above." Mr. Davis states, "The advertisement identifies several hundred persons, likely citizens of Northfield, Minnesota, who, on information and belief, are members of the association named "Northfield PFLAG"."

Northfield PFLAG is not registered with the Board as a political committee or political fund.

Because the association has not registered with the Board, Mr. Davis states, "The failure of ...Northfield PFLAG...to register as a political committee as required ... and to disclose information required ... 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."

In addition to the failure to register and report as a political committee; the complaint alleges that Northfield PFLAG violated the provisions of the Chapter 10A by "Failure to file lobbyist principal reports and/or failure of any paid lobbyists to file lobbyist registration(s) and lobbyist report(s)..."

Board records disclose that there are no lobbyist(s) registered on behalf of Northfield PFLAG.

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

By letter dated May 16, 2006, Otto J. Reitz responded on behalf of Northfield PFLAG. In response to the allegation that the association failed to register as a political committee Mr. Reitz states, "Northfield PFLAG does not remotely fit within this definition. ... We are a wholly voluntary, not for profit

organization that meets monthly primarily to provide support and education for parents and families of individuals who come out as gay, lesbian, bisexual, or transgender.” Mr. Reitz further states, “Conspicuously absent from...allegations against Northfield PFLAG is any suggestion whatsoever that the “major purpose” of Northfield PFLAG is to promote or defeat this or any other ballot question. ...neither the placement of advertisements nor working to promote or defeat ballot questions remotely constitutes a “major purpose” of Northfield PFLAG.

By letter dated May 17, 2006, the Board asked Mr. Reitz for information on the cost of placing the March 4, 2006, newspaper advertisement in the *Northfield News*, and if any other advertisements were placed with any media outlet in reference to a constitutional amendment.

By letter dated May 27, 2006, Mr. Reitz provided that the advertisement referenced in the complaint appeared in the *Northfield News* on March 1 and March 4, 2006, at a combined cost of \$1,702. In explaining the advertisement Mr. Reitz stated, “Earlier this year, some members of Northfield PFLAG expressed an interest in going beyond the scope of the group’s usual activities by communicating their opposition to the proposed constitutional amendment to others in the Northfield community through ads in the local newspaper. They began an effort to solicit contributions toward that end, reaching well beyond Northfield PFLAG’s membership. In fact, of the roughly 670 people identified in the ads, only about 15 are actual members of Northfield PFLAG. Contributors made checks out to individual members, to Northfield PFLAG, or to the *Northfield News* itself. While Northfield PFLAG contributed none of its own funds to the cost of the ads, the group did write the final check to the newspaper...”

In response to the complaints allegation that Northfield PFLAG failed to disclose lobbying disbursements Mr. Reitz states, “It goes without saying that we do not have any lobbyists.”

The Board in executive sessions considered the matter on June 7, and August 15, 2006. The Board’s decision is based upon the complaint, Mr. Reitz’s responses on behalf of Northfield PFLAG, 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 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 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 Northfield PFLAG organized and acted in concert to collect contributions and place newspaper advertisements concerning a potential amendment to the Minnesota Constitution. The Board finds that this activity qualifies Northfield PFLAG as an association for the purposes of Chapter 10A.
2. There is evidence that Northfield PFLAG placed advertisements in the *Northfield News* on March 1 and 4, 2006, in opposition to a possible amendment to the Minnesota Constitution on the definition of marriage. The Board finds that the content of the advertisements were attempts

to influence legislative and administrative action and constitute "lobbying" as defined in Minnesota Rules, 4511.0100, Subpart 3. The Board further finds that the cost of the advertisements were campaign expenditures as defined in Minnesota Statutes, section 10A.01, subdivision 9.

3. There is no evidence that the major purpose of Northfield PFLAG is to promote or defeat a ballot question. The Board finds that Northfield PFLAG is not a political committee as defined in Minnesota Statutes, section 10A.01, subdivision 27.
4. There is evidence that Northfield PFLAG collected voluntary contributions that in aggregate exceeded \$100 to pay for the advertisements in the *Northfield News*. The Board finds that the collect of these contributions required Northfield PFLAG to register a political fund under the provisions of Minnesota Statutes, section 10A.14.
5. There is evidence that Northfield PFLAG paid \$1,702 to the *Northfield News* for the advertisements on March 1 and 4, 2006. The Board finds that Northfield PFLAG 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.
6. There is no evidence that Northfield PFLAG compensated a lobbyist or spent at least \$50,000 on lobbying efforts. The Board finds that Northfield PFLAG is not a lobbyist principal.


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

Order

1. Northfield PFLAG must register a political fund with the Board within ten days of the date of this finding. If Northfield PFLAG intends to terminate its registration upon submission of the disclosure required in Order 2 it may dispense with establishing a separate bank account for the political fund.
2. Northfield PFLAG must submit a Report of Receipts and Expenditures for the period of January 1 through August 21, 2006. The report must disclose all contributions received and expenditures made to support or oppose proposed constitutional amendments in Minnesota. The report must be filed within 30 days of the date of this finding. Northfield PFLAG may terminate its registration with the Board upon submission of the required disclosure.
3. The allegation that Northfield PFLAG engaged in lobbying activities that required the registration of a lobbyist is dismissed.
4. 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 Otto J. Reitz.

Dated: August 15, 2006



Bob Milbert, Chair
Campaign Finance and Public Disclosure Board