

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

**FINDINGS AND ORDER IN THE MATTER OF
A COMPLAINT REGARDING EQUALITY 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 alleged that Equality Minnesota 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 Equality Minnesota participated in activities that require registration and reporting with the Board, the complaint provided three exhibits. The first exhibit is a copy of a newspaper article that appeared in the *St. Paul Pioneer Press* on March 26, 2006. The newspaper article states in part that, "Decision Resources Ltd., a Minneapolis polling firm, conducted the poll of 625 registered voters Jan. 11-19. It has a margin of error of 4 percentage points. It was commissioned by Equality Minnesota, a nonprofit organization supporting the rights of same-sex couples. ...Equality Minnesota decided to release the poll results now, two months after it was completed, because it took the group time to analyze the results. The group also didn't want to fuel the gay-marriage debate, said Ann Viitala, chairwoman of the organization's board of directors. As the debate became more prominent in recent weeks, "we thought the results could help inform the debate," she said."

The second exhibit provided with the complaint is a copy of an article that appeared in *Politics in Minnesota* on March 1, 2006. The article discusses groups organizing for and against a constitutional amendment on gay marriage. The article states in part that, "Another group that has been doing polling and organizing against the amendment as a more moderate and non-gay led group is Equality Minnesota. We hear that Equality has engaged Himle Horner to provide counsel and research, and raised over \$200K to fight the amendment in the legislature and if necessary, beyond."

The third exhibit is three printouts from personal Internet sites (blogs) that reference the public opinion survey sponsored by Equality Minnesota. The blogs reference the results of the public opinion survey sponsored by Equality Minnesota.

In reference to the exhibits and the poll sponsored by Equality Minnesota Mr. Davis states, "These uses of the Poll, as well as the statements of Equality Minnesota representatives in the Article and the descriptions of Equality Minnesota, leave little doubt that Equality Minnesota is an "association" engaged in efforts in opposition to placement of the Marriage Amendment on the November general election ballot. As such, these activities constitute "expenditures" under Minn. Stat §10A.01, subd. 9, triggering political committee registration and reporting requirements under the act."

Equality Minnesota 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 ...Equality Minnesota...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 Equality Minnesota 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 Equality Minnesota.

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

By letter dated May 17, 2006, John A. Knapp identified himself as legal counsel for Equality Minnesota requested an extension to May 24, 2006, to provide a formal response to the complaint.

Mr. Knapp provided the response for Equality Minnesota by letter dated May 24, 2006. Describing Equality Minnesota Mr. Knapp states that, “The organization was formed in August, 2005, with the mission of creating a more supportive environment in Minnesota for same-sex couples and preventing Minnesota from becoming a more hostile climate for same-sex couples. Equality Minnesota was not organized to support or oppose any legislation or ballot question or to support the election or defeat of any candidate.”

In reference to the public opinion survey sponsored by Equality Minnesota Mr. Knapp states, “In September 2005, Equality Minnesota retained a Minnesota-based research firm to conduct a public opinion survey on a number of issues including...constitutional amendments prohibiting same-sex marriage, and prohibiting its legal equivalent. The survey was administered in January of 2006. The findings in the survey were publicly released, reported in the newspapers, and provided to policy makers, including legislators and staff of the Governor, business leaders, and civic groups.”

In response to the *St. Paul Pioneer Press* article provided as evidence in the complaint Mr. Knapp states, “The article merely reports that Equality Minnesota has conducted a poll and released the poll results to the general public. Equality Minnesota concedes that it conducted a poll and released its results to the general public but denies that that action alone requires registration with the Board as a political committee.”

In response to the *Politics in Minnesota* article provided as evidence in the complaint Mr. Knapp states, "Equality Minnesota specifically denies that it has raised anything close to \$200,000 and further specifically denies that a purpose of any fundraising it conducted was to support or oppose any legislation, or for the purpose of supporting or opposing any constitutional amendment or other ballot question."

In response to the blogs referenced in the complaint Mr. Knapp provide that the blog sites have no affiliation with Equality Minnesota and that any statement on Equality Minnesota contained in the blogs were "...mere speculation, represents the opinion of the writers only, and, even if true, would not require registration."

Mr. Knapp states that Equality Minnesota does not need to register as a political committee because "Passage or defeat of legislation to place a question on the ballot is not even a minor purpose of Equality Minnesota, let alone a major purpose."

By letter dated June 9, 2006, the Board asked Mr. Knapp for information on the cost of conducting the public opinion survey and the cost of distributing the results of the public opinion survey to members of the legislature, the Governor's staff, business leaders, and civic groups. Mr. Knapp was also asked to provide the Board with a copy of the survey results and any press release or cover letter used to release the results of the public opinion survey.

By letter dated June 19, 2006, Tammera R. Diehm responded on behalf of Equality Minnesota. Ms. Diehm stated, "Equality Minnesota paid \$16,000 to Decision Resources Ltd. to conduct a public opinion survey on a number of issues..." Ms. Diehm also provided, "To date, Equality Minnesota has not incurred any costs or expended any funds related to the distribution of the survey results." With her response Ms. Diehm provided a copy of the news release and summary of the public survey results provided to members of the legislature, the Governor's staff, business leaders, and civic groups.

The press release provided by Ms. Diehm has the heading "New Statewide Survey Shows 53 Percent of Minnesotans Oppose Amendment Banning Recognition of Same-Sex Marriage". The subtitle of the press release is "An amendment that also makes civil unions or domestic partnerships for unmarried couples against the law is opposed by a 63 to 28 percent margin".

The summary of key findings about the public opinion survey contains five major findings from the public opinion survey with supporting poll numbers explained in the text of the summary. The five major finding are listed as: 1. "A majority of Minnesotans oppose a state constitutional amendment to prohibit same-sex marriage in the state." 2. "Minnesotans see the campaign as a distraction from key issues facing the State of Minnesota." 3. "Minnesotans are very uneasy about a constitutional amendment on this issue." 4. "Most residents think government should not discriminate or stigmatize gays or lesbians." 5. "Minnesota remains a state that welcomes and appreciates all people, in large part because many gays and lesbians are open about who they are."

The Board considered the matter in executive sessions on June 7, and August 15, 2006. The Board's decision is based upon the complaint, Mr. Knapp's and Ms. Diehm's responses on behalf of Equality Minnesota, 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 punishable with 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 Equality Minnesota organized and acted in concert to collect funds and pay for a public opinion survey. The Board finds that this activity qualifies Equality Minnesota as an association for the purposes of Chapter 10A.

2. There is evidence that Equality Minnesota provided a press release and summary of what the association determined to be the key findings of the public opinion survey to members of the Governor's staff and members of the State Legislature. The Board finds that providing the press release and summary of the public opinion survey to the legislature and the Governor's staff is communication that attempts to influence legislative and administrative action and constitute "lobbying" as defined in Minnesota Rules, 4511.0100, Subpart 3.
3. There is no evidence that Equality Minnesota employed or compensated a lobbyist. There is evidence that Equality Minnesota spent \$16,000 on the public opinion survey referenced in the complaint. The Board finds that Equality Minnesota is not a lobbyist principal because a lobbyist does not represent it and the association did not spend at least \$50,000 on lobbying activities.
4. There is no evidence that the major purpose of Equality Minnesota is to promote or defeat a ballot question. The Board finds that Equality Minnesota is not a political committee as defined in Minnesota Statutes, section 10A.01, subdivision 27.
5. There is evidence that Equality Minnesota collected voluntary contributions that in aggregate exceeded \$100 to pay for the public opinion survey. The Board finds that the collection of these contributions, and the use of the funds to sponsor a public opinion survey that was distributed to members of the legislature and the Governor's staff, were efforts to promote or defeat a ballot question as defined in Minnesota Statutes, section 10A.01, subdivision 7. The Board further finds that these activities required Equality Minnesota to register a political fund under the provisions of Minnesota Statutes, section 10A.14.
6. There is evidence that Equality Minnesota paid \$16,000 on the public opinion survey referenced in the complaint. The Board finds that Equality 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.

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

Order

1. Equality Minnesota must register a political fund with the Board within ten days of the date of this finding. If Equality Minnesota 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. Equality Minnesota 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. Equality Minnesota may terminate its registration with the Board upon submission of the required disclosure.
3. The allegation that Equality Minnesota engaged in lobbying activities that required the registration of a lobbyist is dismissed. The allegation that Equality Minnesota was required to file the annual Report of Lobbyist Principal 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 John A. Knapp.

Dated: August 15, 2006



Bob Milbert, Chair
Campaign Finance and Public Disclosure Board