

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

.....  
**February 5, 2020**  
**St Croix Room**  
**Centennial Office Building**  
.....

**MINUTES**

The meeting was called to order by Acting Chair Leppik.

Members present: Flynn, Haugen (by telephone), Leppik, Moilanen (by telephone), Rosen (left after legislative recommendations), Swanson

Others present: Sigurdson, Engelhardt, Olson, Pope, staff; Hartshorn, counsel

**MINUTES** (January 3, 2020)

After discussion, the following motion was made:

Member Flynn's motion:	To approve the January 3, 2020, minutes as drafted.
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Vote on motion:	A roll call vote was taken. Five members voted in the affirmative (Rosen abstained).
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**CHAIR'S REPORT**

**A. 2020 meeting schedule**

Because some members had conflicts with the date of the March 4, 2020, meeting, it was agreed that Mr. Sigurdson would poll members and determine a new date for the March meeting. The new date will be posted on the Board's website.

**EXECUTIVE DIRECTOR REPORT**

Mr. Sigurdson presented members with a memorandum regarding this matter that is attached to and made a part of these minutes. Mr. Sigurdson told members that notices of the need to file campaign finance reports, lobbyist disbursement reports, and economic interest statements had been sent in December. Mr. Sigurdson said that the memorandum showed the number of reports expected and the number of reports actually filed on time. The memorandum also showed the percentage of reports that had been filed electronically. Mr. Sigurdson finally noted that public subsidy payments had been made for the special elections being held in house districts 30A and 60A.

## **REVIEW OF RELEVANT COURT DECISIONS**

### **A. Schickel v. Dilger (lobbyist contribution ban, sessional contributions, and gift ban)**

Mr. Olson presented members with a memorandum regarding this matter that is attached to and made a part of these minutes. Mr. Olson told members that this case involved the question of whether Kentucky's prohibitions on contributions and gifts from lobbyists and lobbyist employers to candidate committees violated the Constitution. Mr. Olson said that the district court had struck down all of the restrictions except the ban on contributions during a legislative session. The 6<sup>th</sup> Circuit Court of Appeals, however, reversed the district court. Mr. Olson said that the 6<sup>th</sup> Circuit had applied the intermediate level of review, closely drawn scrutiny, and had concluded that both the total ban on contributions from lobbyists to candidate committees and the ban on contributions from lobbyist employers and political committees to candidates during a legislative session were constitutional. The 6<sup>th</sup> Circuit discussed the history of corruption involving state legislators that had led to the ban and concluded that the ban was necessary to prevent actual corruption and the appearance of corruption. The 6<sup>th</sup> Circuit also found that the gift prohibition was constitutional. Mr. Olson said that the *Schickel* decision had no immediate implications for Chapter 10A except to provide support for the constitutionality of that chapter's gift prohibition and ban on contributions from certain sources during a regular legislative session. Mr. Olson said that *Schickel* also could provide support for a complete ban on contributions from lobbyists to candidates and for including the spouses of officials in the gift ban.

### **B. Citizens Union v. New York (disclosure of large donors by 501(c)s)**

Mr. Olson presented members with a memorandum regarding this matter that is attached to and made a part of these minutes. Mr. Olson told members that this case involved the constitutionality of a New York law requiring disclosure of large donors by 501(c)(4) organizations that spend more than \$10,000 a year on certain communications and 501(c)(3) organizations that make large donations to certain 501(c)(4)s. The law required the reports to be made available to the public unless the state attorney general determined that the disclosure would cause harm, threats, harassment, or reprisals to the donor. Mr. Olson said that the federal district court applied exacting scrutiny to both provisions and determined that they violated the First Amendment. Mr. Olson said that the *Citizens Union* decision did not have any direct implications for Chapter 10A. The decision, however, shed light on the First Amendment issues associated with trying to compel disclosure from those engaged in pure issue advocacy. Mr. Olson also contrasted the New York law with a similar law in California and noted that the California law did not make the donor reports available to the public.

## **ENFORCEMENT REPORT**

### **A. Consent item**

#### **1. Administrative termination of lobbyist Wayne Brandt (8018)**

Mr. Olson told members that two principals, Minnesota Forest Industries, Inc. and the Minnesota Timber Producers Association, had requested that the lobbyist registrations of Mr. Brandt be terminated due to Mr. Brandt's death on September 12, 2019. Board staff had administratively terminated Mr.

Brandt's lobbyist registrations as of that date. Mr. Olson said that each principal had filed a lobbyist disbursement report on Mr. Brandt's behalf covering the most recent reporting period.

After discussion, the following motion was made:

Member Flynn's motion: To approve the request for the retroactive administrative termination of lobbyist Wayne Brandt.

Vote on motion: A roll call vote was taken. All members voted in the affirmative.

## **B. Discussion items**

### **1. Retroactive administrative termination of lobbyist Richard Gephardt (2000)**

Mr. Olson told members that in March 2016, Mr. Gephardt had registered as a lobbyist for a single principal. A reporting lobbyist for the same principal included Mr. Gephardt on six lobbyist disbursement reports covering the years 2016-2018. Mr. Olson said that the reporting lobbyist had filed a termination statement for herself on January 8, 2019, listing a termination date of June 1, 2018. Mr. Olson said that Mr. Gephardt was asking that his lobbyist registration be terminated effective June 1, 2018, which was the date that Mr. Gephardt's firm had stopped lobbying on behalf of the principal. Mr. Olson said that if the retroactive termination was approved, no late filing fees would be assessed.

After discussion, the following motion was made:

Member Swanson's motion: To approve the request for the retroactive administrative termination of lobbyist Richard Gephardt.

Vote on motion: A roll call vote was taken. Five members voted in the affirmative (Moilanen recused).

### **2. Balance adjustment request of Norrie Thomas Campaign Fund (18038)**

Mr. Olson told members that this principal campaign committee had reported an ending cash balance for 2018 of \$607.78 but only had \$320.28 in its bank account at the end of 2018. The committee had reviewed its financial records but had been unable to ascertain the source of the discrepancy. Mr. Olson said that the committee was asking that its 2018 ending cash balance be adjusted downward by \$287.50 from \$607.78 to \$320.28. The committee had provided documentation showing that \$320.28 was the balance in its bank account at the end of 2018. Mr. Olson stated that the committee intended to give its funds to another committee or party unit and then file a termination report.

After discussion, the following motion was made:

Member Rosen's motion: To approve the request for the balance adjustment.

Vote on motion: A roll call vote was taken. All members voted in the affirmative.

**3. Balance adjustment request of Cindy (Yang) for House (18379)**

Mr. Olson told members that this principal campaign committee had reported an ending cash balance for 2018 of \$2,771.35 but actually had \$3,108.22 in its bank account at the end of 2018. The committee had reviewed its financial records and believed that \$255.25 of the discrepancy was due to contributions made via PayPal for which the committee was unable to identify the individual contributors. Mr. Olson said that the committee was asking that its 2018 ending cash balance be adjusted upward by \$336.87 from \$2,771.35 to \$3,108.22. The committee had provided documentation showing that \$3,108.22 was the balance in its bank account at the end of 2018. Mr. Olson stated that the committee had filed a termination report and closed its bank account.

After discussion, the following motion was made:

Member Rosen's motion: To approve the request for the balance adjustment.

Vote on motion: A roll call vote was taken. All members voted in the affirmative.

**4. Request to withdraw registration of Women for Political Change Political Action Fund (80033)**

Mr. Olson told members that the Women for Political Change Political Action Fund had registered as a political fund on April 4, 2019. Mr. Olson said that in January, the chair had contacted Board staff and had explained that Women for Political Change had met with its legal counsel to discuss the legal requirements of Chapter 10A. The organization had determined that it was not going to make political contributions or independent expenditures. Mr. Olson said that based on the legal advice it was given, the organization was formally requesting the withdrawal of its registration because it should not have registered with the Board.

After discussion, the following motion was made:

Member Flynn's motion: To approve the request to withdraw the registration.

Vote on motion: A roll call vote was taken. All members voted in the affirmative.

**C. Waiver requests**

Mr. Olson told members that in accordance with the direction at the January meeting, the waiver request grid had been changed to include staff's recommended action, if any, for each request.

Name of Candidate or Committee	Late Fee & Civil Penalty Amount	Reason for Fine	Factors for waiver and recommended action	Board Member's Motion	Motion	Vote on Motion
Benjamin Brutlag (Bois de Sioux WD)	\$100 LFF	Original EIS	Official was appointed in May 2019. He completed EIS online by due date and saved it but did not click submit button. After being contacted by Board staff in December 2019 he filed his EIS 1/7/2020. RECOMMENDED ACTION: Waive LFF.	Member Flynn	To approve the staff recommendation.	Roll call vote was taken. All members voted in affirmative.
Doug Dahlen (Bois de Sioux WD)	\$100 LFF	Original EIS	Official was reappointed in May 2019. Official is certain he completed and mailed EIS twice after being contacted by Board staff. Staff has no record of receiving mailed EIS but it was filed online 1/3/2020. RECOMMENDED ACTION: Waive LFF.	Member Flynn	To approve the staff recommendation.	Roll call vote was taken. All members voted in affirmative.
Michael Christensen (Wild Rice WD)	\$100 LFF	Original EIS	Official was reappointed in March 2019. Official states he completed and mailed EIS in a timely manner after being contacted a few months later by Board staff. Staff has no record of receiving mailed EIS but it was filed online 1/8/2020. RECOMMENDED ACTION: Waive LFF.	Member Flynn	To approve the staff recommendation.	Roll call vote was taken. All members voted in affirmative.
Chad Stuewe (Buffalo Creek WD)	\$100 LFF	Original EIS	Official was appointed in April 2019. He received letter notifying him of EIS requirement but did not think it applied to him because he was appointed rather than elected. EIS was filed 1/8/2020. RECOMMENDED ACTION: Reduce LFF to \$50.	Member Flynn	To approve the staff recommendation.	Roll call vote was taken. All members voted in affirmative.
Catherine Cesnik (Basset Creek WMO)	\$100 LFF \$100 CP	Original EIS	Official was appointed in April 2019 and was unfamiliar with EIS process. EIS was filed 1/16/2020. RECOMMENDED ACTION: Waive CP leaving balance of \$100 for LFF.	Member Flynn	To approve the staff recommendation.	Roll call vote was taken. All members voted in affirmative.
Meyer (Christopher John) for Minnesota (17992)	\$1,000 LFF \$1,000 CP	2016 year-end	Candidate didn't realize year-end report needed to be filed as he had dropped out of race without having filed for office. Certified letters were mailed to treasurer in February and March 2017, both of which were returned. Candidate did receive email sent to treasurer in March	Member Swanson	To reduce the total amount owed to \$500 on condition that this amount is paid by March 1, 2020.	Roll call vote was taken. All members voted in affirmative.

			<p>2017, but couldn't find financial records. Committee was referred to AGO in July 2017. Report was filed in October 2017. That report was a termination report that reflected ending cash balance of \$82, so committee was terminated retroactive to end of 2016. Candidate has limited income and needs payment plan unless balance owed is reduced to \$500 or less. RECOMMENDED ACTION: Waive CP leaving balance of \$1,000 for LFF and authorize payment plan of \$500 by March 1, then \$100 per month.</p>			
<p>Roxana Bruins for Senate (18044)</p>	<p>\$1,000 LFF          \$110.83 CP          (\$889.17 paid via revenue recapture)</p>	<p>2016 year-end</p>	<p>Treasurer quit just before 2016 general election and candidate had difficulty learning how to complete and file year-end report. Committee was referred to AGO in July 2017 and default judgment was entered in September 2018. During this time candidate was experiencing health issues and personal problems. Report was filed in March 2019. That report was a termination report that reflected an ending cash balance of \$93, so committee was terminated retroactive to end of 2016. Committee received \$8,523 in public subsidy funds in 2016. RECOMMENDED ACTION: Waive LFF leaving balance owed of \$110.83 for CP.</p>	<p>Member Rosen</p>	<p>To waive the late filing fee and all remaining civil penalties owed.</p>	<p>Roll call vote was taken. All members voted in affirmative</p>
<p>Kevin Leininger (Traverse County)</p>	<p>\$100 LFF          \$300 CP</p>	<p>Original and 2017 annual EIS</p>	<p>\$100 LFF was assessed due to late filing of original EIS in April 2017. \$100 LFF and \$1,000 CP were assessed due to late filing of 2017 annual EIS. Official didn't understand how to complete original EIS. Official also didn't realize EIS needed to be filed annually and thought he didn't need to file another EIS since he had filed original in 2017. CP for annual EIS was reduced to \$300 at October 2018 meeting, conditioned upon payment of remaining balance owed. \$100 was paid, leaving total balance of \$400. Letter was sent at end of 2019 seeking payment of \$400. Official is asking Board to reconsider waiving full amount. RECOMMENDED ACTION: None.</p>	<p>No motion.</p>		

**D. Informational Items**

**1. Forwarded anonymous contribution**

Minnesota Physical Therapy PAC, \$51.49  
Todd Lippert for State House Committee, \$20

**2. Payment of civil penalty for contribution from unregistered association without required disclosure**

13th Senate District DFL, \$55  
MN State College Faculty, \$105

**3. Payment of civil penalty for exceeding aggregate special source contribution limit**

Jasinski (John) for Senate Committee, \$165  
Erin (Koegel) for Minnesota, \$460

**4. Payment of civil penalty for exceeding individual contribution limit**

Erin (Koegel) for Minnesota, \$125

**5. Payment of late filing fees for 2018 pre-primary 24-hour notices**

Together Minnesota, \$360

**6. Payment of late filing fee for lobbyist disbursement report due 1/15/2019**

Scott Hedderich, \$250

**7. Payment of late filing fee for lobbyist disbursement report due 6/17/2019**

Scott Hedderich, \$200  
Martin McDonough, \$100

**8. Payment of late filing fee for lobbyist principal report due 3/15/2017**

Village Green Residential Properties LLC, \$150

**ADVISORY OPINION 452 – JOINT PURCHASES OF SERVICES**

Mr. Sigurdson presented members with a memorandum regarding this matter that is attached to and made a part of these minutes. Mr. Sigurdson told members that the draft advisory opinion was not public because the requester had not signed a release but that a public version of the opinion that did not identify the requester had been prepared. Mr. Sigurdson explained that the requester was a committee registered with the Board that was asking for clarification of the guidance provided in Advisory Opinion 436. Mr. Sigurdson said that Advisory Opinion 436 provided in part that committees could jointly purchase services from a commercial vendor, but that to avoid in-kind contributions, all

participating committees had to have a bona fide use for the item purchased and had to pay an equal or proportionate share of the cost of the purchased item. Mr. Sigurdson stated that the requester was asking primarily if the use of a third-party vendor was required to comply with the guidance provided in Advisory Opinion 436. Mr. Sigurdson said that the opinion as drafted provided that the use of a third-party vendor was not required, but that the committees making the joint purchase were responsible for complying with Chapter 10A. The draft opinion also recommended that the committees keep in their records documentation that they all had a bona fide use for the purchased item and the calculations used to determine the equal or proportionate share of the cost for each committee.

After discussion, the following motion was made:

Member Rosen's motion: To approve Advisory Opinion 452 as drafted and to authorize Member Leppik to sign the opinion as acting chair.

Vote on motion: A roll call vote was taken. All members voted in the affirmative.

### **REVIEW OF LEGISLATIVE RECOMMENDATIONS**

Mr. Sigurdson presented members with a memorandum regarding this issue that is attached to and made a part of these minutes. The memorandum discussed the direction given to Mr. Sigurdson at the January meeting to draft a letter to the legislature that was to be signed by all Board members. In the memorandum, Mr. Sigurdson said that he had been unable to devise language for the letter that was acceptable to all members and that he had been mindful of the open meeting implications of debating the letter's language outside of a public meeting. The memorandum stated that Mr. Sigurdson therefore would be bringing the letter back for discussion at the February meeting.

At the meeting, Mr. Sigurdson said that the Minnesota Governmental Relations Council (MGRC) had brought a letter to distribute to Board members. This letter is attached to and made a part of these minutes. Jeremy Estenson, the president of the MGRC, and Kathy Hahne, the MGRC's lobbyist, then addressed the Board. Mr. Estenson stated that MGRC and its members shared the goal of better disclosure but had concerns about the Board's lobbyist proposal. Mr. Estenson said that the letter laid out those concerns, specifically that the proposal would require more work without providing greater transparency and could have unforeseen consequences for non-profit members. Mr. Estenson said that the letter included the eight written comments that the MGRC had received from its members before the reporting threshold in the proposal had been raised to 25%. Mr. Estenson stated that the MGRC planned to form a task force to study the issues raised by the lobbyist proposal. Mr. Estenson and Ms. Hahne then answered questions from members.

Members next discussed whether the lobbying proposal should be forwarded to the legislature this session as approved at the January meeting or whether the recommendation should be withdrawn to allow further development of the proposal.



After discussion, the following motion was made:

Member Leppik's motion: To change the recommendation for the lobbyist program to state that the Board believes that the current reporting requirements for lobbyists fail to provide meaningful disclosure to the public and that the Board is working with the public, including the lobbying community, to develop revised registration and reporting requirements for the lobbying program that will be provided to the legislature in October of this year.

Vote on motion: A roll call vote was taken. All members voted in the affirmative.

Members then discussed the content of the letter to the legislature.

After discussion, the following motion was made:

Member Leppik's motion: To approve the language in the letter to the legislature dated January 14, 2020, with the following amendments: 1) delete the last sentence of the second paragraph; 2) delete the phrase "express advocacy and" in the first sentence of the campaign finance paragraph; 3) amend the first clause of the second sentence in the campaign finance paragraph to read, "The Board adopted a policy recommendation on express advocacy, which is not supported by two members, but . . ."; and 4) replace the language in the lobbyist paragraph with the new recommendation for this program.

Vote on motion: A roll call vote was taken. Five members voted in the affirmative (Moilanen abstained).

### **PRIMA FACIE DETERMINATION FINDING NO VIOLATION**

Ms. Engelhardt presented members with a memorandum regarding this matter that is attached to and made a part of these minutes. Ms. Engelhardt told members that a complaint had been filed against candidate Logan Coplan alleging that Mr. Coplan had failed to register a principal campaign committee with the Board. Ms. Engelhardt said that the complaint provided no basis to conclude that Mr. Coplan had reached the contribution or spending threshold requiring registration. Chair Moilanen therefore had dismissed the complaint because it did not state a prima facie violation of Chapter 10A.

### **LEGAL COUNSEL'S REPORT**

Mr. Hartshorn presented members with a legal report that is attached to and made a part of these minutes. Mr. Hartshorn told members that the Meyer matter would be removed from the report before the March meeting. Mr. Hartshorn had nothing else to add to the legal report.

**OTHER BUSINESS**

There was no other business to report.

**EXECUTIVE SESSION**

The chair recessed the regular session of the meeting and called to order the executive session. Upon recess of the executive session, the chair had nothing to report into regular session.

There being no other business, the meeting was adjourned by the chair.

Respectfully submitted,



Jeff Sigurdson  
Executive Director

Attachments:

Executive director's report  
Memorandum regarding *Schickel v. Dilger*  
Memorandum regarding *Citizens Union v. New York*  
Memorandum regarding Advisory Opinion 452  
Draft public version of Advisory Opinion 452  
Memorandum regarding legislative recommendations  
Lobbyist recommendations  
Letter from Minnesota Governmental Relations Council  
Memorandum regarding prima facie determination finding no violation  
Legal report



# MINNESOTA

## CAMPAIGN FINANCE BOARD

**Date:** January 29, 2020

**To:** Board Members

**From:** Jeff Sigurdson, Executive Director

**Telephone:** 651-539-1189

**Re:** Executive Director's Report

### Status of Year-end Reports and Annual Certification

Notices of the need to file the 2019 year-end Report of Receipts and Expenditures, the June – July Lobbyist Disbursement Report, and the EIS Annual Certification were all mailed at the end of December. The table of reports expected and filed is as of January 29, 2020.

Program	Reports Expected	Due Date	Filed Electronically	Number of Reports Outstanding
Lobbyist	2,145	1/15/2020	2,013 (94%)	7
EIS	2,976	1/27/2020	2,594 (87%)	205
Campaign Finance	1,062	1/31/2020	609	Will be updated at Board meeting



# MINNESOTA CAMPAIGN FINANCE BOARD

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**Date:** January 29, 2020

**To:** Board members

**From:** Andrew Olson, Legal/Management Analyst

**Telephone:** 651-539-1190

**Re:** Schickel v. Dilger, [925 F.3d 858](#) (6th Cir. 2019) (ban on lobbyist contributions to legislators, ban on contributions from principals and PACs during session, and gift ban)

## **Kentucky's Restrictions on Lobbyists and Principals Regarding Contributions and Gifts to Legislators and Candidates**

Kentucky completely prohibits contributions from lobbyists to the campaign committees of state legislators and candidates for its state legislature,<sup>1</sup> and bars lobbyists from serving as treasurers for, or soliciting or delivering contributions to, those candidate committees.<sup>2</sup> Kentucky prohibits contributions to those committees from the employers of lobbyists and Kentucky's equivalent of political committees during a regular session of its state legislature.<sup>3</sup>

Kentucky also bars lobbyists and employers of lobbyists from giving "anything of value" to state legislators and candidates for its state legislature, as well as their spouses and children.<sup>4</sup> Kentucky's gift prohibition used to allow lobbyists and their employers to spend up to \$100 on food and beverages per year, per legislator, regardless of the type of occasion involved, but that exception was eliminated in 2014.<sup>5</sup> Like Chapter 10A, there are a number of exceptions to Kentucky's gift prohibition including an exception for events to which all members of either chamber of the state legislature, all members of a joint committee or task force, or an entire caucus of legislators, are invited.<sup>6</sup> These statutes are enforced by the Kentucky Legislative Ethics Commission (KLEC).

## **Federal District Court Decision**

An incumbent state legislator and a former legislative candidate filed a federal lawsuit in 2015 challenging a number of provisions including those listed above on vagueness, First Amendment, and equal protection grounds. In 2017 the district court, applying the most rigorous level of review, strict scrutiny, struck down the blanket prohibition on contributions from lobbyists. The court found that the law was not narrowly tailored to achieve the state's compelling interest of preventing quid pro quo corruption because it was not limited to the

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<sup>1</sup> Ky. Rev. Stat. § 6.767 (2); Ky. Rev. Stat. § 6.811 (6).

<sup>2</sup> Ky. Rev. Stat. § 6.811 (5).

<sup>3</sup> Ky. Rev. Stat. § 6.767 (3); Ky. Rev. Stat. § 6.811 (7).

<sup>4</sup> Ky. Rev. Stat. § 6.751 (2); Ky. Rev. Stat. § 6.811 (4).

<sup>5</sup> 2014 Ky. Acts 276.

<sup>6</sup> Ky. Rev. Stat. § 6.611 (2) (b).

legislative session.<sup>7</sup> The district court also struck down the ban on lobbyists serving as treasurers for, or soliciting or delivering contributions to, legislative candidates, noting that the state provided “no evidence of recent corruption in Kentucky that would show that the ban is narrowly tailored to address an important government interest.” The district court, applying a lower level of scrutiny, upheld the prohibition on contributions from employers of lobbyists and Kentucky’s equivalent of political committees during a regular legislative session.

The district court discussed the gift prohibition at length, decided to apply strict scrutiny, and noted that a violator of the gift prohibition is subject to criminal prosecution. The district court found the gift prohibition to be unconstitutionally vague, in part “because it does not give a person of ordinary intelligence the ability to know what conduct is prohibited.” The district court deemed the gift prohibition to be a content-based restriction on speech because it only applied to lobbyists and their employers. The district court concluded that the gift prohibition violated the Equal Protection Clause of the Fourteenth Amendment because it “treats lobbyists differently from other constituents.” Finally, the district court struck down the gift prohibition as overbroad on its face and therefore violative of the First Amendment, concluding that “the gift ban may include innocuous interactions between legislators and constituents that could cause a chilling effect on fundamental interactions in the furtherance of the democratic process.”

### **Sixth Circuit Court of Appeals Decision**

On appeal in 2019, a unanimous Sixth Circuit Court of Appeals panel reversed with respect to each statute that was invalidated by the district court.<sup>8</sup> The Sixth Circuit held that the plaintiffs lacked standing to challenge the provisions that only restrict the activities of lobbyists and their employers, but could challenge the corresponding provisions that prohibit legislators and candidates from accepting contributions and gifts from certain sources. The panel concluded that those provisions were subject to closely drawn scrutiny, not strict scrutiny, as they “are marginal restrictions that do not in any way hinder lobbyists’ or legislators’ ability to discuss candidates or issues.”<sup>9</sup> The Sixth Circuit described the evidence the state offered of endemic past corruption involving state legislators, including quid pro quo corruption, which led to the enactment of the challenged statutes.

With respect to the complete ban on contributions from lobbyists, the panel noted that the Fourth Circuit Court of Appeals recently had upheld a similar prohibition in North Carolina, stating that lobbyists “are especially susceptible to political corruption” and “a complete ban was necessary as a prophylactic to prevent not only actual corruption but also [its] appearance.”<sup>10</sup> The Sixth Circuit found “no merit to the legislators’ argument that only *recent* scandals justify a contribution ban” and concluded that “[w]hile this ban dispenses with one means a legislator has to gather funds, it leaves open others less susceptible to the same risk of corruption or its appearance, and thus survives closely drawn scrutiny.” For similar reasons, the panel affirmed the district court in upholding the ban on contributions from the employers of lobbyists and Kentucky’s equivalent of political committees during a regular legislative session.

The Sixth Circuit also found the gift prohibition to be constitutionally sound, stating that it “does not prevent lobbyists and legislators from meeting” and “does not forbid *any* interaction or the utterance of *any* word between the two. They may associate as often as they wish over a cup

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<sup>7</sup> [Shickel v. Dilger, No. 2:15-CV-00155, 2017 WL 2464998 \(E.D. Ky. June 6, 2017\)](#).

<sup>8</sup> [Schickel v. Dilger, 925 F.3d 858 \(6th Cir. 2019\)](#).

<sup>9</sup> Closely drawn scrutiny, first articulated by the United States Supreme Court in *Buckley v. Valeo* in 1976, is an intermediate level of review requiring “a sufficiently important interest” and “means closely drawn to avoid unnecessary abridgment of associational freedoms.”

<sup>10</sup> The Six Circuit panel was discussing [Preston v. Leake, 660 F.3d 726 \(4th Cir. 2011\)](#).

of coffee or dinner or baseball game. This law simply requires that, if they do, legislators pay their own way.” The panel held that the exception for events to which all members of a chamber, joint committee or task force, or caucus, are invited, does not make the gift prohibition impermissibly underinclusive, but rather “encourages interactions that are less likely to raise concerns about actual or apparent corruption.” The Sixth Circuit rejected the argument that the gift prohibition was overbroad, explaining that though the plaintiffs offered clever hypotheticals, there was no evidence showing that the KLEC enforced, or threatened to enforce, the gift prohibition in a manner that would sweep in the conduct referenced by the plaintiffs.

The panel concluded that the gift prohibition was not a content-based restriction, as it did not target the content of anyone’s speech. The Sixth Circuit held that when applying closely drawn scrutiny, the prohibition survived the plaintiffs’ equal protection argument. The panel also concluded that the gift prohibition was not unconstitutionally vague. The Sixth Circuit stated that although the phrase “anything of value” was broad and left room for ambiguity, it was clear what, as a whole, was prohibited by the statute. The panel specifically noted that Kentucky allows those potentially affected by the statute to request an advisory opinion in which the requester may remain confidential.

The plaintiffs in the case requested rehearing en banc by the Sixth Circuit Court of Appeals, which was denied in July 2019. Their request for review by the United States Supreme Court was denied in December 2019.

### **Potential Impact on Chapter 10A**

There does not appear to be any direct impact on Chapter 10A except to bolster the constitutionality of its gift prohibition and bar on contributions from certain sources during a regular legislative session. The decision of the Sixth Circuit Court of Appeals illuminates the possibility of amending Chapter 10A to entirely prohibit contributions from lobbyists to candidates or to include the spouses of officials within the gift prohibition.



# MINNESOTA CAMPAIGN FINANCE BOARD

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**Date:** January 29, 2020

**To:** Board members

**From:** Andrew Olson, Legal/Management Analyst

**Telephone:** 651-539-1190

**Re:** Citizens Union of the City of New York v. Attorney Gen. of New York, [408 F. Supp. 3d 478](#) (S.D.N.Y. 2019) (requirement imposed on some 501(c) organizations to publicly disclose large donors)

## **New York's Requirement that Certain 501(c) Groups Publicly Disclose Some Donors**

In 2016 New York enacted a law applying to any 501(c)(3) organization that gives a cash or in-kind donation in excess of \$2,500 to a 501(c)(4) organization that is engaged in lobbying in New York. The law requires the 501(c)(3) organization to file a report disclosing the identity of any donor to the 501(c)(3) organization that gave in excess of \$2,500 during a six-month reporting period.<sup>1</sup>

The same law requires any 501(c)(4) organization that spends more than \$10,000 in a calendar year on certain communications to file a report disclosing the name and address of any donor that gave the organization at least \$1,000 within a six-month reporting period.<sup>2</sup> A 501(c)(4) may avoid disclosing most of its donors by using a segregated bank account to pay for those communications, in which case the report only needs to include donations of \$1,000 or more per reporting period that are deposited into that account. The law encompasses any communication conveyed to at least 500 members of the public that "refers to and advocates for or against a clearly identified elected official or the position of any elected official or administrative or legislative body relating to the outcome of any vote or substance of any legislation, potential legislation, pending legislation, rule, regulation, hearing, or decision by any legislative, executive or administrative body." Expenditures that are covered by a separate state reporting requirement such as lobbyist and campaign finance disclosure laws are categorically excluded.

In each case, reports filed by 501(c) organizations would be made available to the public unless the New York Attorney General determines that disclosure would "cause harm, threats, harassment, or reprisals to the source of the donation or to individuals or property affiliated with the source of the donation." The decision of the Attorney General is appealable to a judicial hearing officer.

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<sup>1</sup> N.Y. Exec. Law § 172-e.

<sup>2</sup> N.Y. Exec. Law § 172-f.

## Federal District Court Decision

The provisions in question took effect in late 2016. However, New York agreed to delay enforcement pending the outcome of a federal lawsuit filed by a 501(c)(4) organization with an affiliated 501(c)(3) in December 2016 asserting that those provisions facially violated the First Amendment. A federal district court, applying exacting scrutiny,<sup>3</sup> struck down both provisions as violative of the First Amendment in September 2019.<sup>4</sup>

With respect to the provision applicable to 501(c)(3)s, the court noted that disclosures “are required whether or not the 501(c)(3) donor intended to support a 501(c)(4) or exercised any control over the 501(c)(3)'s donation to the 501(c)(4).” The court found the provision “places a significant burden on the First Amendment interest in freedom of association” of those who desire anonymity, whether “motivated by fear of economic or official retaliation, by concern about social ostracism, or merely by a desire to preserve as much of one's privacy as possible.” The court held that “[t]here is no substantial relation between the requirement that the identity of donors to 501(c)(3)s be publicly disclosed and any important government interest.” The court found that although New York referenced the interests of deterring corruption and aiding the detection of violations of law, it offered no fully developed argument linking the challenged provisions to those interests. The court further concluded that “[t]he link between a 501(c)(3) donor and the content of lobbying communications by the 501(c)(4) is too attenuated to effectively advance any informational interest.”

Addressing the possibility that any given report may be withheld from the public by the state, the court explained that “an after-the-fact exemption procedure does nothing to ameliorate the chilling effect on 501(c)(3) donors. The possibility that the Attorney General might in the future approve a disclosure exemption would provide cold comfort to a potential donor asked to run the risk of threats, harassment, or reprisals.”

With respect to the disclosure required of 501(c)(4)s, the court observed that the requirement “sweeps far more broadly than any disclosure law that has survived judicial scrutiny” because it was not limited to communications mentioning candidates, electioneering, and “direct lobbying of elected officials.” The court addressed the argument that the state’s “information interest relates broadly to any undue influence in politics (not just elections) arising from undisclosed contributions.” The court concluded that “[t]he cases upholding donor disclosure requirements have never recognized an informational interest of such breadth. Indeed, the narrowing constructions adopted in *Harriss*<sup>5</sup> and *Buckley*,<sup>6</sup> combined with the protections for anonymous speech articulated in *Talley*<sup>7</sup> and *McIntyre*,<sup>8</sup> strongly suggest that compelled identity disclosure is impermissible for issue-advocacy communications.” The court held that the option to only disclose donors whose donations were transferred to a segregated account used for covered communications “does nothing to remedy the central flaw,” which was that the statute “encompasses issue advocacy.” The State of New York has not filed a notice of appeal.

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<sup>3</sup> Exacting scrutiny is an intermediate level of scrutiny requiring a “substantial relation between the disclosure requirement and a sufficiently important governmental interest.”

<sup>4</sup> [Citizens Union of the City of New York v. Attorney Gen. of New York](#), 408 F. Supp. 3d 478 (S.D.N.Y. 2019).

<sup>5</sup> [United States v. Harriss](#), 347 U.S. 612 (1954).

<sup>6</sup> [Buckley v. Valeo](#), 424 U.S. 1 (1976).

<sup>7</sup> [Talley v. California](#), 362 U.S. 60 (1960).

<sup>8</sup> [McIntyre v. Ohio Elections Comm'n](#), 514 U.S. 334 (1995).



## Potential Impact on Chapter 10A and Similar Litigation

There does not appear to be any direct impact on Chapter 10A. However, the decision illuminates First Amendment issues associated with attempting to compel disclosure from those engaged in pure issue advocacy, particularly issue advocacy that does not consist of professional, direct lobbying. Issues related to compelling disclosure of large donors to 501(c) organizations may be addressed relatively soon by the United States Supreme Court. In September 2018 the Ninth Circuit Court of Appeals upheld a California regulation<sup>9</sup> that requires 501(c) organizations to provide to the state unredacted copies of their Form 990s filed with the Internal Revenue Service, thereby disclosing donors who have given more than \$5,000 within a single year.<sup>10</sup> A petition for review<sup>11</sup> of that case is currently being considered by the United States Supreme Court. A petition for review<sup>12</sup> filed in a related case in which the Ninth Circuit rejected a challenge to the same regulation<sup>13</sup> is scheduled to be considered by the justices in mid-February. The regulation in question was also upheld by the Ninth Circuit in 2015<sup>14</sup> and in that instance the United States Supreme Court denied review. A major distinction between the New York law and California's regulation is that California solely seeks the disclosure to facilitate its regulation of nonprofit organizations and does not make the information available to the public.

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<sup>9</sup> Cal. Code Regs. tit. 11, § 301.

<sup>10</sup> *Americans for Prosperity Found. v. Becerra*, 903 F.3d 1000 (9th Cir. 2018).

<sup>11</sup> *Petition for Writ of Certiorari, Thomas More Law Center v. Becerra*, No. 19-255.

<sup>12</sup> *Petition for Writ of Certiorari, Inst. for Free Speech v. Becerra*, No. 19-793.

<sup>13</sup> *Inst. for Free Speech v. Becerra*, No. 17-17403 (9th Cir. 2019) (summary affirmance).

<sup>14</sup> *Ctr. for Competitive Politics v. Harris*, 784 F.3d 1307 (9th Cir. 2015).



# MINNESOTA

## CAMPAIGN FINANCE BOARD

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**Date:** January 29, 2020

**To:** Board Members

**From:** Jeff Sigurdson, Executive Director

**Telephone:** 651-539-1189

**Re:** Advisory Opinion 452 – Joint Purchase of Commercial Services

This advisory opinion was requested by a committee registered with the Board. The committee does not wish to make the request public. Therefore, both a public and a nonpublic draft version of the opinion are provided for the Board's review. The request is not available to the public and only the public version of the advisory opinion will be made available on the Board's website.

The request asks for clarification of the guidance provided in Advisory Opinion 436. Advisory Opinion 436 provides in part that committees may jointly purchase services from a commercial vendor, but in order to avoid in-kind contributions, all committees that participate in the joint purchase must have a bona fide use for the item purchased, and must pay an equal or proportionate share of the cost of the item purchased.

The requestor asks primarily if the use of a third-party vendor is needed to comply with the guidance provided in Advisory Opinion 436. The opinion as drafted provides that the use of a third-party vendor is not required, but that the committees making the joint purchase are responsible for complying with Chapter 10A. The draft opinion also recommends that the committees keep in their records documentation that all committees have a bona fide use for the purchase, and the calculations used to determine the equal or proportionate share of the cost for each committee.

Attachments:

Advisory opinion request

Nonpublic version of draft advisory opinion

Public version of draft advisory opinion

**State of Minnesota  
Campaign Finance & Public Disclosure Board  
Suite 190, Centennial Building. 658 Cedar Street. St. Paul, MN 55155-1603**

**THE FOLLOWING PUBLICATION DOES NOT IDENTIFY THE  
REQUESTER OF THE ADVISORY OPINION, WHICH IS NON PUBLIC DATA  
under Minn. Stat. § 10A.02, subd. 12(b)**

**ADVISORY OPINION 452**

**SUMMARY**

Committees may jointly purchase services and products from a commercial vendor without the use of a third-party intermediary.

**Facts**

As a representative of a committee registered with the Board, you ask the Campaign Finance and Public Disclosure Board for an advisory opinion to clarify the guidance found in Advisory Opinion 436.<sup>1</sup> In particular, the answer provided to question 2 of Advisory Opinion 436 gives direction on how political committees may jointly purchase services from a commercial vendor without making an inadvertent in-kind contribution, or a prohibited contribution, between the committees that are making the purchase. The facts from Advisory Opinion 436 that are relevant to question 2, and needed to understand the basis of this opinion, are as follows.

1. The vendor is a commercial corporation that operates a research and opinion polling service that provides its customers with information which helps their election related activities in Minnesota.
2. The vendor's customers include candidate committees, political party units, political committees and funds, and independent expenditure committees and funds registered with the Board.
3. The vendor has in place policies and procedures that prohibit its customers from discussing their election related plans, including how the customer will use polling and research information, with employees of the vendor.
4. The vendor sells discrete research and polling projects in response to specific requests received from customers. The vendor charges either an hourly rate or a flat fee for these services. Both the hourly rate and the flat fee will reflect a rate the vendor reasonably believes will exceed the cost to produce the work requested.
5. If two or more customers jointly ask the vendor to work on a discrete research or polling project, the vendor will charge the same hourly rate or flat fee as it would if only one customer were purchasing the product. The cost of the project will be divided between the customers so that each customer pays an equal and proportionate share of the total project cost.

In addition, for the purposes of this opinion, the Board provides this definition.

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<sup>1</sup> Advisory Opinion 436 (Nov. 5, 2013) [https://cfb.mn.gov/pdf/advisory\\_opinions/AO436.pdf](https://cfb.mn.gov/pdf/advisory_opinions/AO436.pdf)

6. "Bona fide use" means that each committee has an authentic, genuine, and real need for the services provided by the vendor that is autonomous of the needs of other committee(s) that jointly purchase the services.

### **Background**

Advisory opinions issued by the Board provide safe harbor to a requestor who follows the advice given in the opinion. Political committees often refer to advisory opinions that were not issued to them for guidance on their behavior and for an understanding of how the Board interprets a given statutory requirement. In this opinion, the requestor asks for clarification on Advisory Opinion 436, which it has used for guidance when making joint purchases of services with other registered political committees.

Advisory Opinion 436 was issued to a commercial vendor that provides issue and candidate related research and polling services for use in political campaigns. The vendor was willing to sell its products to two or more committees that jointly purchased the products at the same rate or flat fee that would be charged to a single committee purchasing their products. Question 2 and the opinion provided in Advisory Opinion 436 are as follows:

**Question 2:** If two or more registered committees or funds evenly share the cost of purchasing a specific set of research or polling services, will the registered committees or funds have made in-kind contributions to each other equal in value to the amount each committee or fund saved by not purchasing the services alone?

**Opinion:** No, as long as all parties that are a part of the joint purchase have a bone fide use for the services purchased and the share each party pays is equivalent to the proportionate benefit each party expects to receive from the service. Registered committees and funds, like any other consumer, try to derive the best value possible for their money. As long as all of the parties in a joint purchase of services have a legitimate use for the services, and the joint purchase is a way to buy needed services at a reduced cost, then the joint purchase is not an in-kind contribution.

If, however, a participant in a joint purchase has no need for the services acquired, then the purpose of the joint purchase changes. A party to a joint purchase of services that has no bona fide use for the services is partially subsidizing the services used by the other participants in the purchase. In this scenario the cost paid by the party that had no use for the service is an in-kind contribution to any registered committee that received the service through the joint purchase. An in-kind contribution is not necessarily prohibited, but as pointed out by Advisory Opinion 410, an in-kind contribution between an IEPC and any other type of registered committee, is a violation of Chapter 10A.

An in-kind contribution may also occur if the cost paid by a party to a joint purchase is significantly disproportionate to the parties' use of the service. In such a case, the parties must allocate the cost of the service in proportion to the benefit they received from it....

To this point in Advisory Opinion 436 the guidance is clear, a joint purchase by committees of research and polling services does not create an in-kind contribution between the committees as long as 1) each committee has a bona fide use for the services, and 2) each committee pays an equal or proportionate share of the cost of the services.

However, the vendor in Advisory Opinion 436 stated that it had policies prohibiting its employees from discussing with customers their use of purchased services and the customers' election related plans. The Board noted in the opinion that these policies would prevent the vendor from ensuring that each committee involved in a joint purchase had a bona fide use for the services, and also would prevent the vendor from knowing if each committee was paying an equal or equitable share of the cost of the services. In the opinion, the Board provided that it "... may investigate to determine if all parties to the purchase had a bona fide need for the information acquired and that the amount paid in a joint purchase was appropriate."

The requestor believes that committees have tried to comply with the guidance of Advisory Opinion 436 in part by using a third-party vendor to act as a conduit between the vendor providing the services and the committees that are purchasing the services. Presumably the third-party vendor determines that each committee that participates in the joint purchase has a bona fide use for the product, and that each committee is paying an equal or equitable share of the cost.

With this background in mind, the requestor asks the following questions.

#### **Issue One**

Is a third-party vendor required to properly execute a joint purchase of bona fide services from a commercial vendor?

#### **Opinion One**

No, the use of a third-party vendor is not required. The committees that jointly purchase the services are ultimately responsible for complying with the provisions of Chapter 10A. Committees that agree to make a joint purchase, and wish to avoid making an in-kind contribution, will need to determine beforehand that all committees have a bona fide use for the services and that each committee pays for an equal or proportionate share of the services. As documentation of their compliance the Board recommends that the participating committees keep as records the calculations and relevant communications used to determine that an in-kind contribution did not occur.

#### **Issue Two**

May committees directly contract with a vendor for services and split the costs, provided the other necessary conditions are met?

#### **Opinion Two**

Yes, both this opinion and Advisory Opinion 436 acknowledge that committees may jointly purchase services assuming that no unreported or impermissible in-kind contributions occur. The use of a third-party vendor to purchase the services is permissible, but not required.

#### **Issue Three**

If committees do contract directly with a vendor, does the administrative work of the committee acting as point of contact with the vendor constitute an in-kind contribution from that group to the other committees?

### Opinion Three

No, a committee acting as the point of contact for a joint purchase is not reducing the cost of the service provided by the vendor to the other committee. The communications between the committees making the joint purchase will offset any potential savings by a committee not directly communicating with the vendor.

Issued February 5, 2020

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Robert Moilanen, Chair  
Campaign Finance and Public Disclosure Board

DRAFT



# MINNESOTA CAMPAIGN FINANCE BOARD

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**Date:** January 29, 2020

**To:** Board Members

**From:** Jeff Sigurdson, Executive Director

**Telephone:** 651-539-1189

**Re: Legislative Recommendations**

At the January 3, 2020, Board meeting staff was directed to draft a cover letter to accompany the Board's legislative recommendations to the legislature. The letter was to be signed by all six members, and was to contain the content described in Chair Moilanen's motion. The full motion on the direction to staff is included in the minutes, all members voted for the motion.

Unfortunately, I was not able to devise language for a letter that all members were willing to sign. I was also mindful of the advice provided by Counsel Hartshorn that there are open meeting law implications if members significantly amend or debate the content of a letter outside of a public meeting. Therefore, I am bringing back the cover letter for Board action at the February meeting. The Board may be able to devise language for the letter at the meeting that all six members are willing to sign, or the Board may decide to change its direction to staff as to the content of the letter, or who will sign the letter.

Additionally, Member Swanson's motion to adopt the recommendation on the lobbying program included the provision that the Board may continue to review and modify the recommendations going forward. To that end I have attached the current version of the statutory changes for the lobbying recommendations.

## **Attachments**

Lobbyist program recommendations – statutory language

## 10A.01 DEFINITIONS

Minnesota Statutes 2018, section 10A.01, subdivision 21, is amended to read:

Subd. 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, (a) by communicating or urging others to communicate with public or local officials; or (b) by facilitating access to public or local officials;  
or

(2) who spends more than \$3,000 ~~250~~ of the individual's personal funds, 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 2018, section 10A.01, is amended by adding subdivisions to read:

**Designated lobbyist.** "Designated lobbyist" means the lobbyist responsible for reporting the lobbying disbursements and activity of the principal or employer. An employer or principal may have only one designated lobbyist at any given time.

**General lobbying category.** "General lobbying category" means a broad area of interest for lobbying specified by the board.

**Specific subject of interest.** "Specific subject of interest" means a topic of lobbying interest within a general lobbying category described with sufficient specificity to identify the expected areas of interest for the principal or employer.

**Official action of metropolitan governmental units.** "Official action of metropolitan governmental units" means any action that requires a vote or approval by one or more elected local officials while acting in their official capacity; or an action by an appointed or employed local official to make, to recommend, or to vote on as a member of the governing body, major decisions regarding the expenditure or investment of public money.

**Legislative action.** "Legislative action" means the discussion or development of prospective legislation; or the review, modification, adoption, or rejection of any bill, amendment, resolution, nomination, administrative rule, or report by a member of the legislature or employee of the legislature. "Legislative action" also means the discussion or development of prospective legislation, or a request for support or opposition to introduced legislation, with a constitutional officer. Legislative action includes the action of the governor in approving or vetoing any bill or portion of a bill.

## 10A.03 LOBBYIST REGISTRATION

Minnesota Statutes 2018, section 10A.03, subdivision 2, is amended to read:

Subd. 2. **Form.** The board must prescribe a registration form, which must include:



(1) the name, address, and e-mail address of the lobbyist;

(2) the principal place of business of the lobbyist;

(3) the name and address of each individual, association, political subdivision, or public higher education system, if any, by whom the lobbyist is retained or employed or on whose behalf the lobbyist appears;

(4) the website address of each association, political subdivision, or public higher education system identified under clause (3), if the entity maintains a website; ~~and~~

~~(5) a general lobbying category or categories, description of the subject or subjects and the specific subjects of interest within each general lobbying category, on which the lobbyist expects to lobby for the principal or employer; and~~

~~(6) if the lobbyist lobbies on behalf of an association, the registration form must include the name and address of the officers and directors of the association.~~

Minnesota Statutes 2018, section 10A.03, is amended by adding subdivision 6 to read:

Subd. 6. **General lobbying categories.** A list of general lobbying categories must be specified by the board and updated periodically based on public comment. The board must publish on its website the current list of general lobbying categories. Chapter 14 does not apply to the specification, publication, or periodic updates of the list of general lobbying categories.

#### **10A.04 LOBBYIST REPORTS**

Minnesota Statutes 2018, section 10A.04, subdivision 3, is amended to read:

~~Subd. 3. **Information to lobbyist.** A principal, An employer, or employee lobbyist about whose activities are reported to the Board by another a lobbyist is required to ~~report~~ must provide the information required by subdivision 4 to the lobbyist no later than five days before the prescribed filing date.~~

Minnesota Statutes 2018, section 10A.04, subdivision 4, is amended to read:

Subd. 4. **Content.** (a) A report under this section must include information the board requires from the registration form and the information required by this subdivision for the reporting period.

~~(b) A lobbyist must report the lobbyist's total disbursements on lobbying, separately listing lobbying disbursements to influence legislative action, lobbying to influence administrative action, and lobbying to influence the official actions of a metropolitan governmental units and a breakdown of disbursements for each of those kinds of lobbying into categories specified by the board, including but not limited to the cost of publication and distribution of each publication used in lobbying; other printing; media, including the cost of production; postage; travel; fees, including allowances; entertainment; telephone and telegraph; and other expenses.~~

~~(b) A lobbyist must report each state agency that had administrative action that the principal or employer sought to influence during the reporting period. ~~the lobbyist's total disbursements on lobbying, separately listing lobbying to influence legislative action, lobbying to~~~~

~~influence administrative action, and lobbying to influence the official actions of a metropolitan governmental unit, and a breakdown of disbursements for each of those kinds of lobbying into categories specified by the board, including but not limited to the cost of publication and distribution of each publication used in lobbying; other printing; media, including the cost of production; postage; travel; fees, including allowances; entertainment; telephone and telegraph; and other expenses.~~

(c) A lobbyist must report each metropolitan governmental unit that considered, or was asked to take, official action that the principal or employer sought to influence during the reporting period.

(d) A lobbyist must report each legislative action that accounted for 25% or more of that lobbyist's effort on behalf of the principal or employer during the reporting period. The legislative action must be identified by specific subject of interest for prospective legislation, by legislative bill number for introduced legislation, or, if the legislation has been included in an omnibus bill, by bill number and section containing the legislation action. The lobbyist must report a reasonable, good faith estimate of the total percentage of lobbying time spent on each of the actions listed in this paragraph.

(e) A lobbyist must report each administrative action that accounted for 25% or more of the lobbyist's effort on behalf of the principal or employer during the reporting period. The administrative action must be identified by the revisor number assigned to it or a description of the proposed administrative action if a revisor number has not been assigned. The lobbyist must report a reasonable, good faith estimate of the total percentage of lobbying time spent on each of the actions listed in this paragraph.

(f) A lobbyist must report the Public Utilities Commission docket number for each rate setting, each power plant and powerline siting, and each granting of certificate of need that accounted for 25% or more of that lobbyist's effort on behalf of the principal or employer during the reporting period. The lobbyist must report a reasonable, good faith estimate of the total percentage of lobbying time spent on each of the actions listed in this paragraph.

(g) A lobbyist must report each official action of a metropolitan governmental unit that accounted for 25% or more of that lobbyist's effort on behalf of the principal or employer during the reporting period. The official action must be identified by the name of the specific metropolitan governmental unit and the ordinance number or name of the official action. The lobbyist must report a reasonable, good faith estimate of the total percentage of lobbying time spent on each of the actions listed in this paragraph.

(eh) A lobbyist must report the amount and nature of each gift, item, or benefit, excluding contributions to a candidate, equal in value to \$5 or more, given or paid to any official, as defined in section 10A.071, subdivision 1, by the lobbyist or an employer or employee of the lobbyist. The list must include the name and address of each official to whom the gift, item, or benefit was given or paid and the date it was given or paid.

(di) A lobbyist must report each original source of money in excess of \$500 in any year used for the purpose of lobbying to influence legislative action, administrative action, or the official action of a metropolitan governmental unit. The list must include the name, address, and employer, or, if self-employed, the occupation and principal place of business, of each payer of money in excess of \$500.

(j) The designated lobbyist must report disbursements made and obligations incurred that exceed \$2,000 for paid advertising used for the purpose of urging members of the public to contact public or local officials to influence official actions during the reporting period. Paid advertising includes the cost to boost the distribution of an advertisement on social media. If a disbursement made or obligation incurred for paid advertising exceeds \$2,000 the report must provide the date that the advertising was purchased, the name and address of the vendor, a description of the advertising purchased, and any specific subject of interest addressed by the advertisement.

(ek) On the report due June 15, the lobbyist must provide update or confirm a the general lobbying categories and specific description of the subjects of interest for the principal or employer that were lobbied on in the previous 12 months.

Minnesota Statutes 2018, section 10A.04, subdivision 6, is amended to read:

Subd. 6. **Principal reports.** (a) A principal must report to the board as required in this subdivision by March 15 for the preceding calendar year.

~~(b) Except as provided in paragraph (d),~~ The principal must report the total amount, rounded to the nearest \$2\_10,000, spent by the principal during the preceding calendar year to influence legislative action, administrative action, and the official action of metropolitan governmental units. on each type of lobbying listed below:

(1) lobbying to influence legislative action;

(2) lobbying to influence administrative action, other than lobbying described in clause (3);

(3) lobbying to influence administrative action in cases of rate setting, power plant and powerline siting, and granting of certificates of need under section 216B.243; and

(4) lobbying to influence official action of metropolitan governmental units.

~~(c) Except as provided in paragraph (d),~~ For each type of lobbying listed in paragraph (b), the principal must report under this subdivision a total amount that includes:

(1) the portion of all direct payments for compensation and benefits paid by the principal to lobbyists in this state;

(2) the portion of all expenditures for advertising, mailing, research, consulting, surveys, expert testimony, studies, reports, analysis, compilation and dissemination of information, social media and public relations campaigns, and legal counsel, used to support lobbying related to legislative action, administrative action, or the official action of metropolitan governmental units in this state; and

(3) a reasonable good faith estimate of the portion of all salaries and administrative overhead expenses attributable to activities of the principal relating to efforts to influence legislative action, administrative action, or the official action of metropolitan governmental units in this state; and

(4) the portion of all lobbying disbursements not listed in clause (2) that were made or incurred on behalf of the principal by all lobbyists for the principal in this state.

~~(d) A principal that must report spending to influence administrative action in cases of rate setting, power plant and powerline siting, and granting of certificates of need under section 216B.243 must report those amounts as provided in this subdivision, except that they must be reported separately and not included in the totals required under paragraphs (b) and (c).~~

Minnesota Statutes 2018, section 10A.04, is amended by adding subdivision 10 to read:

Subd. 10. **Specific subjects of interest.** The specific subjects of interest for the principal or employer is identified by the lobbyist at the time the lobbyist registers with the Board, or as provided on the report due on June 15<sup>th</sup>.

#### **4511.0600 REPORTING DISBURSEMENTS**

Minnesota Rules, part 4511.0600, subpart 5, is repealed.

#### **4511.0800 ADMINISTRATIVE ACTION**

Minnesota Rules part 4511.0800 is repealed.



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February 4, 2020

Mr. Jeff Sigurdson  
Minnesota Campaign Finance Board  
658 Cedar St.  
St. Paul, MN 55155

Dear Jeff -

Please find attached a summary of Minnesota Government Relations Council member written comments as of January 1. In addition to the written comments, we have also received oral comments from several of our members.

As you know, in January lobbyist reporting legislation proposed by the Campaign Finance Board (CFB) was revised in several significant ways after the MGRC Board sent a summary of the CFB proposal to our members in December. As a result, we have not briefed our members at any significant level about the new changes. The MGRC Board has recently appointed a working group to continue to solicit input from members, review lobbyist regulatory statutes in other states, contact colleagues in other states to query on the process and public benefits of their statutory requirements, and begin to define the outlines of our response to the CFB legislative proposal relating to lobbyists.

As we have stated previously, our membership is concerned that reporting of actions that constitute 25% of our time or more will not provide greater transparency or clarity to the public about our work, but instead may confuse the issues for the public and lead to incorrect conclusions about lobbyist activities. We must work together to find ways that increase transparency while also ensuring data can be interpreted to correctly reflect the work we do. This significant amount of additional work required by this new reporting should only come about if we can be assured it will provide dependable and correct information to the public.

Additionally, the CFB recently announced proposed language to define what "access" means in terms of lobbyist reporting. We understand the intent of this proposal. But our members have put forward many questions that seek greater discussion and clarification before we could support this proposal moving forward. For example, if an association asks one of their employees to call a legislator's office and request a meeting for their lobbyist, and that employee is paid more than \$3,000, will that employee then have to register as a lobbyist simply because their salary meets or exceeds a certain monetary threshold?

Further still, MGRC needs to continue our dialogue with the non-profit community who has also expressed valid concerns with these proposals. As we have testified, at least some C3 entities are



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concerned about the broad scope of the term "Legislative Action" in the CFB proposal, and the impact it may have on their C3 status.

We respectfully request the CFB not view the concerns of our membership as obstructionist or unresponsive to our mutual desire for transparency and access to information about the lobbying process. I can assure you we share these goals with the CFB. When we speak to our MGRC members, what we hear most often is the statement of their belief that Minnesota is one of the states that is regularly noted for its high standards and effective lobbyist regulation. MGRC is proud of Minnesota's lobbyist community and its high standards of ethical representation of its clients. We understand, though, that there is always room for improvement both in our profession, as well as the public's understanding of our profession.

We look forward to continuing to work with you, your staff, and Board to explore opportunities for the 2021-2022 biennial session. This issue is of great importance to our members because it is our profession, our reputation, and our livelihood.

Thank you for continuing to work with us as we move forward on this issue.

Sincerely,

Jeremy Estenson

President

Minnesota Government Relations Council

CC: MGRC Board of Directors

**11/26/2019**

Requiring more specificity as to the amount of time spent on a lobbying action is overly burdensome and does not help the public understand the issues. We also strongly object to having to put what bill numbers are being lobbied.

**11/26/2019**

Thank you for asking for input on the proposed changes. 10A.04 (d) which requires reporting time spent on specific bills is burdensome and problematic. The legislature introduces thousands of bills each legislative session; lobbyists track these bill introductions and monitor any hearings on them; may or may not advocate for or against them and then follows them through floor action, conference committees, etc. How do we account for the bill# when it gets rolled into an omnibus bill? How does this affect small shops, or individual lobbyists who do not have additional staff resources to track time spent on these bills? As drafted and conceived feels unmanageable, unenforceable and especially unfair to smaller organizations. It comes at a cost of time and resources for all lobbyists and organizations. I think the other changes make sense, but to keep track of time spent on individual bills? That is a reach. Thank you for your work on our behalf.

**11/26/2019**

Requiring separate tracking of each bill/action that a lobbyist works on may be prohibitively burdensome for part-time lobbyists, small shop lobbyists, or lobbyists that work as employees of smaller principals. Even for larger lobbyist firms or lobbyists with significant support staff, reporting separate tracking for each bill/action may not be overly burdensome and narrowly tailored to state interests. Although a lobbyist only need report the bill/action that they eventually spend 10% of their time on, that percentage won't necessarily be known or anticipated before session begins. Thus, lobbyists may need to track all of their time for every bill they work on, which can easily number in the dozens (and for some, possibly over a hundred or hundreds), just to calculate whether they have spent 10% of their time on those bills. It also would be difficult to allocate time spent working on more than one bill. Sometimes multiple bills concerning the same issue are introduced and a lobbyist spends time talking with legislators about multiple bills. The conversation might go along the lines of "Oppose HF100 and HF105, but support HF123. Also we'd like an amendment to HF123 to include language from companion bill SF678". It would be difficult to track how much time for each bill. It also should be noted that due to the regular use of large omnibus bills and duplicate bills, this tracking may be effectively meaningless to the public, defeating the state interest and purpose of the law.

**12/3/2019**

As a non-profit organization, we lobby on only a few issues and introduced bills, so I'm not overly concerned about the proposal requiring us to report bill numbers. However, it looks like "legislative action" will be newly defined as the "discussion or development of prospective legislation" - and we have typically considered any interaction with legislators that is not tied to a specific bill number or requesting their position on introduced legislation to be within the bounds of our educational purpose as a non-profit organization. It's hard to say when discussion about an issue will cross the line into "prospective legislation" - so it would be challenging for us to reasonably quantify our time on those efforts, and we'd be concerned about potentially going over the threshold that is allowed us as a 501c3.

**12/19/2019**

These sections give me some pause in terms of the time and tracking systems required (I'd love for the CFB to provide an electronic and consistently updatable means of doing so in order to have guidance and stay on track), but on the other hand I think they are a good step for process transparency. A lobbyist must report each metropolitan governmental unit that considered, or was asked to take, official action that the principal or employer sought to influence during the reporting period.(d) A lobbyist must report each legislative action, including legislative bill numbers for introduced legislation, administrative rule revisor number or description of proposed administrative action, Public Utilities Commission docket number, or name or number sufficient to identify an official action of a metropolitan government unit, that accounted for 10% or more of that lobbyist's effort on behalf of the principal or employer during the reporting period. The lobbyist must report a reasonable, good faith estimate of the total percentage of lobbying time spent on each of the actions listed in this paragraph.

**12/19/2019**

The following addition regarding the percentage of lobbying time spent on individual pieces of legislation, puc, municipal action, etc. is largely subjective and not reasonably calculated for a wide variety of lobbyists within their function or otherwise. For example, a contract lobbyist with 30 clients would be required to submit volumes of bill lists. Additionally, municipal lobbyists may have to submit a substantial report of ordinance lists if they are assigned to cover hundreds of municipalities. It's not practical and serves the Campaign Finance Board no purpose. (d) A lobbyist must report each legislative action, including legislative bill numbers for introduced legislation, administrative rule revisor number or description of proposed administrative action, Public Utilities Commission docket number, or name or number sufficient to identify an official action of a metropolitan government unit, that accounted for 10% or more of that lobbyist's effort on behalf of the principal or employer during the reporting period. The lobbyist must report a reasonable, good faith estimate of the total percentage of lobbying time spent on each of the actions listed in this paragraph.

**12/20/2019**

The proposed language for the changes seems overly broad and/or difficult to ascertain as to how it would be applied. The impetus and purposes served with respect to the proposed changes seems unclear. Further study, and an opportunity for additional structured feedback from the lobbyist community would be appropriate.

**12/31/2019**

As lobbyists who work primarily with cities, counties, and organizations of local governments, we have significant concerns regarding several aspects of the proposed legislation regarding changes to lobbyist reporting. Specifically, the broad proposed definition of legislative action is so broad that it does not make sense when read together with the new reporting requirement. Moreover, we are concerned that the new requirement in 10A.04, subdivision 4, creates an undue burden without little added benefit. Looking at the definition of Legislative Action, this phrase would encompass a broad array of activities with respect to a host of legislative items including but not limited to bills, amendments and reports. The new reporting directive would require the reporting of each legislative action that accounted for 10% or more of the lobbyist's efforts on behalf of a principal. This definition does not reflect the reality



of the legislative process works. How would each be defined? Most bills start off with two numbers, that may morph into different numbers as the session moves forward. What would the 10% refer to? Each file, senate and house? And what if a bill is rolled into a different bill? Would the 10% count start over again? Equally confusing is the last sentence of Subd 2.d, which would require the lobbyist to report a good faith estimate of the lobbying time spent on each of the actions listed in that paragraph. Would this mean a lobbyist must provide an estimate of the time spent on each bill, or only those on which they spend 10% or more time? Regardless of how one interprets the new definition of legislative action and the new reporting requirements, it is apparent this new requirement would create an expensive and undue burden. Many lobbyists, particularly those working with multiple clients or on multiple topics for a single client may conduct work on ten, twenty or more bills, amendments, in a single day and dozens, potentially hundreds throughout the session. To track which bills one spent 10% of one's time on or worse, estimating the time spent on each legislative bill number, would require tracking systems that don't exist. What value would this additional information provide to the public? The burden would be particularly jarring for local governments and local government organizations. Local governments already face a host of state reporting requirements on top of the campaign finance reports, including the state auditor's reports on lobbyist spending and multiple other reports. Rather than piling on more reporting requirements, we ask that the CFB step back, and work with those who are doing this work to come up with reporting that accomplishes the CFB goals while not unduly burdening those involved in the legislative process. Elizabeth Wefel Flaherty & Hood, PA



# MINNESOTA CAMPAIGN FINANCE BOARD

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**DATE:** January 29, 2020  
**TO:** Board Members  
**FROM:** Megan Engelhardt, Assistant Executive Director **TELEPHONE:** (651) 539-1182  
**RE:** Prima facie determination finding no violation

Complaints filed with the Board are subject to a prima facie determination made by the Board chair in consultation with staff. If the Board chair determines that a complaint states a violation of Chapter 10A or the provisions of Chapter 211B under the Board's jurisdiction, the complaint moves forward to a probable cause determination by the full Board.

If, however, the chair determines that a complaint does not state a prima facie violation, the chair must dismiss the complaint without prejudice. When a complaint is dismissed, the complaint and the prima facie determination become public data. The following complaint was dismissed by the chair and the prima facie determination is provided here as an informational item to the other board members. No further action of the Board is required.

## **Complaint regarding Logan Coplan**

On January 10, 2020, the Board received a complaint submitted by Brandon Haugrud regarding Logan Coplan. Mr. Coplan is campaigning for election as a state representative in district 61A. The complaint stated that Mr. Coplan has a website supporting his campaign, and has been solicitating contributions for several months. The complaint alleged that Mr. Coplan should have registered a principal campaign committee with the Board.

Minnesota Statutes section 10A.14 requires "[t]he treasurer of a . . . principal campaign committee . . . to register with the board by filing a registration statement." Registration with the Board is required "no later than 14 days after the committee . . . has made a contribution, received contributions, or made expenditures in excess of \$750." However, there was no indication from the complaint that Mr. Coplan had received contributions in excess of \$750 or made expenditures in excess of \$750. Thus, there was no basis to conclude that Mr. Coplan was required to register with the Board. On January 17, 2020, the chair concluded that the complaint did not state a prima facie violation of Minnesota Statutes section 10A.14.

### Attachments:

Complaint  
Prima facie determination

**CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD  
February 2019**

**ACTIVE FILES**

Candidate/Treasurer/ Lobbyist	Committee/Agency	Report Missing/ Violation	Late Fee/ Civil Penalty	Referred to AGO	Date S&C Served by Mail	Default Hearing Date	Date Judgment Entered	Case Status
Chilah Brown Michele Berger	Brown (Chilah) for Senate	Unfiled 2016 Year- End Report of Receipts and Expenditures  Unpaid late filing fee on 10/31/16 Pre- General Election Report	\$1,000 LF \$1,000 CP  \$50 LF	3/6/18	8/10/18			Board is working on the matter. Placed on hold.
Katy Humphrey, Kelli Latuska	Duluth DFL	Unfiled 2016 Year- End Report of Receipts and Expenditures	\$1,000 LF \$1,000 CP	3/6/18	8/10/18			Board is working on the matter. Placed on hold. 3/5/19
Christopher John Meyer	Meyer for Minnesota	Fees and Penalty for late filing of 2016 Year-End Report of Receipts and Expenditures	\$1,000 LF \$1,000 CP	7/28/17	9/6/17	1/24/2020		Personal service was obtained 9/30/19
Dan Schoen		2017 Annual Statement of Economic Interest	\$100 LF \$1,000 CP	1/28/19	3/27/19			Placed on hold by Board.

