

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

.....
March 8, 2024
Blazing Star Room
Centennial Office Building
.....

MINUTES

The meeting was called to order by Chair Asp.

Members present: Asp, Flynn, Leppik, Rashid, Soule, Swanson

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

MINUTES (February 7, 2024)

The following motion was made:

Member Rashid's motion: To approve the February 7, 2024, minutes as drafted.

Vote on motion: Unanimously approved.

CHAIR'S REPORT

Mr. Sigurdson suggested changing the dates of the July and December Board meetings to July 10 and December 11. No Board members objected to those changes. Chair Asp stated he wouldn't be available on April 3, 2024, for the April board meeting. Board staff agreed to follow up with Chair Asp and other members of the Board to determine a suitable date for the April meeting.

EXECUTIVE DIRECTOR'S REPORT

Board Appointments

Mr. Sigurdson stated the Senate confirmed the appointments of Vice Chair Rashid and Member Flynn on February 19, 2024. Both appointments expire on January 4, 2027.

Mr. Sigurdson also stated the Governor has not made appointments for the positions currently held by Members Swanson and Leppik. Pending appointments for those positions, Members Swanson and Leppik may continue to serve until July 1, 2024.

Legislative Action

Mr. Sigurdson reviewed bills introduced this session that modify Chapter 10A or Chapter 211B.

SF 3499 (Boldon) and HF 3645 (Coulter, Virnig) This bill moves the regulation of all local committees and funds, other than local candidate committees, out of Chapter 211A and into Chapter 10A.

SF 3501 (Boldon) and HF 3644 (Coulter) This bill creates a work group to study whether local office candidates should register and report to the Board. The work group will also consider if Chapter 211A needs to be updated to better reflect the needs of local candidates, if local candidates can be supported by local filing officers, and the potential impact on the Board's budget, staff, and the ability of the Board to support local candidates.

SF 3457 (Westlin) Currently, a lobbyist principal may round the total amount spent on lobbying in Minnesota to the nearest \$9,000. This bill, as amended in committee, will change the rounding to the nearest \$5,000.

HF 4233 (Coulter, Freiberg) This bill would allow a home rule charter or statutory city, or county to establish a public finance program for local candidates funded with local tax dollars. The bill does not impact the Board, but it also shows interest in local elections, which appears to be a theme at this legislative session.

SF 4431 (Westlin, Koran) Mr. Sigurdson explained that the bill would eliminate the use of paper political contribution refund (PCR) receipts. Ms. Engelhardt mentioned that in addition to the use of physical PCR receipt booklets, committees may print PCR receipts using Campaign Finance Reporter Online (CFRO), as they could with the Campaign Finance Reporter software (CFR). Member Flynn asked if this bill would allow people to continue using paper receipt books, to which Mr. Sigurdson replied no, due to efficiency and security concerns. Member Flynn expressed her concerns about people who are not tech-savvy..

Mr. Sigurdson briefly discussed the two bills below which were not included in the original Board memo..

HF 4679 (Coulter) Mr. Sigurdson stated that the bill would address some of the concerns raised during the rulemaking process by adding two exclusions to the definition of the term lobbyist, and would require the Board to study whether distinctions should be made depending on whether a lobbyist is seeking to influence the state or a political subdivision.

SF 4729 (Carlson) Mr. Sigurdson said that the bill would allow the Board to dramatically increase the fines for repeatedly filing campaign finance reports late. Mr. Sigurdson said that the bill would also expand the definition of electioneering communications to include certain electronic communications other than radio and television advertisements.

Chair Asp wanted to clarify whether the Board intends to add their input regarding the legislation, but Mr. Sigurdson mentioned that it can be challenging to do so since the process of legislation happens quickly. In response to a question from Member Flynn about the cost of proposed legislation, Mr. Sigurdson said that he has conveyed the cost of proposed legislation when asked to provide a fiscal note, and in one case when he was provided a draft version of a bill.

Mr. Sigurdson stated that in February Board staff conducted a training session on reporting under the new lobbying statutes through Webex. The training involved a record number of participants. Additionally, Ms. Engelhardt gave a one-hour presentation on the new lobbying statutes at a Minnesota State Bar Association event in February.

ENFORCEMENT REPORT

A. Discussion Items

1. Request to waive address reporting requirement - Philip Moosbrugger

Mr. Moosbrugger appeared before the Board via Webex. He stated he has a second property and does not want to disclose the address due to concerns about potential vandalism. Mr. Moosbrugger said that it is not necessary to disclose the address because the property is outside the authority of the watershed district board he sits on. In his opinion, his position on the board could not have any impact on his property which is located hundreds of miles away. He feels that reporting this information intrudes on his privacy and does not provide meaningful disclosure.

Member Swanson said he shares Mr. Moosbrugger's concerns. However, he pointed out that the legislature requires disclosing this information, not the Board. Member Swanson said he is worried that if Mr. Moosbrugger's request is granted, it would have to apply to every other public official as well.

Member Leppik wondered if the Board has the authority to grant the waiver or if the legislature needs to approve it. She is inclined to support the waiver but is unsure if they have the authority. Mr. Olson referred to the statute granting the Board the power to waive the requirement. Mr. Sigurdson confirmed that they do have the authority and in the past, the Board has routinely granted waivers to judges for security reasons.

Member Soule asked Mr. Moosbrugger for a specific instance of a threat he has faced. Mr. Moosbrugger stated that there have not been any specific threats, but that high taxes have caused a lot of anger among people in his area and that anything that happens at town meetings could be a contentious issue, especially because there is an active political climate in West Lakeland. He believes that these reasons outweigh the reporting requirement.

Vice Chair Rashid stated that the Board usually looks for a specific example of danger, and he is not inclined to grant the waiver due to a lack of good cause. Member Leppik stated that she understands

the threat to local officials and stated they should protect them. Member Flynn agreed, but Member Soule stated that they should not grant it because then the Board would have to grant a waiver to everyone who requests a waiver similar to this request.

The following motion was made:

Member Leppik's motion: To approve the requested waiver.

Vote on motion: Members Asp, Flynn, and Leppik voted in the affirmative. Members Rashid, Soule, and Swanson voted in the negative. Because the vote was a tie, the request for the waiver is not approved.

2. Balance adjustment request – 39th Senate District RPM (Old) (20850)

Ms. Engelhardt stated that due to redistricting, the 39th Senate District RPM (Old) is required to terminate, and at the end of July 2022 their bank balance was zero, but the party unit's 2022 year-end report lists an ending balance of \$1,894.16. Ms. Engelhardt said that the party unit's treasurer worked extensively with Board staff and filed an amended 2022 year-end report with an ending balance of \$458.34 that cannot be accounted for. Ms. Engelhardt stated that the party unit requests a downward cash balance adjustment of \$458.40.

The following motion was made:

Member Soule's motion: To approve the requested balance adjustment.

Vote on motion: Unanimously approved.

B. Waiver Requests

Entity	Late Fee / Civil Penalty	Report Due	Factors and Recommended Action	Board Member's Motion	Motion	Vote on Motion
1. James (Jim) LaFave (Office of Administrative Hearings)	\$40 LFF	2023 EIS	Report due 1/29/24 and filed 2/23/24. LaFave stated he retired from his position at OAH in December 2023 and subsequently did not have access to his state e-mail. CFB sent an initial letter to his PO box on file on 12/29/23 and two reminder e-mails to his state e-mail address on 1/22/24 and 2/6/24. CFB called the agency and asked them to contact him to file. CFB also tried to contact the agency phone number on file for LaFave and it was disconnected. LaFave stated when he was notified by the agency to file, he promptly filed. It is important to note that his filing was delayed by two days because of an error on CFB's filing website. Board staff promptly helped him to resolve the issue. RECOMMENDED ACTION: Waive	Flynn	Approve staff recommendation	Unanimously passed
2. Senate District 50 Republicans (#20957)	\$50 LFF	2023 Year-End	Report due 1/31/24 and filed on 2/2/2024. The committee stated the delay was because several of their board members including their treasurer were expunged. The previous treasurer was asked to turn over his computer on 1/29/24, but was not received by the RPM board until 1/30/24. The previous treasurer had not entered any data into their system which made the transition to CFRO even more difficult. RECOMMENDED ACTION: Waive	Flynn	Approve staff recommendation	Unanimously passed

<p>3. Phillip Sterner Senate Committee (#17849)</p>	<p>\$1,000 LFF \$1,000 CP \$25 LFF</p>	<p>2022 Year- End 2020 Year- End</p>	<p>2022 report due 1/31/23 and filed 2/1/2024. 2020 report due 1/21/2020 and filed 2/3/2020. Since February 2023, CFB had sent Sterner multiple letters and emails reminding him to submit his 2022 report. In September 2023, CFB staff talked to Mr. Sterner on the phone and sent him an email reminding him to submit the report. Mr. Sterner explained that he had a difficult two years, including housing and medical issues, including major heart surgery. Rehabilitation has been difficult for him and asks for understanding. RECOMMENDED ACTION: No recommendation</p>	<p>Swanson</p>	<p>Waive</p>	<p>Unanimously passed</p>
<p>4. Paul Lenz House Committee (#18829)</p>	<p>\$300 LFF</p>	<p>2023 Year- End</p>	<p>Report due 1/31/24 and filed 2/19/24. Lenz explained the delay in filing was due to his contemplation regarding a potential reelection bid. Ultimately, he opted not to pursue reelection and terminated his campaign upon filing the report on 2/19/24. RECOMMENDED ACTION: No recommendation</p>	<p>Leppik</p>	<p>Reduce to \$100</p>	<p>Unanimously passed</p>

C. Informational Items

- 1. Payment of late filing fee for 2023 pre-primary report**
 Faegre Drinker State Political Fund - \$1,000
- 2. Payment of late filing fee for 2023 year-end report**
 Blain Johnson Campaign Committee - \$50
 Eric Leitzen for Bluff Country - \$375
- 3. Payment of late filing fee for 2022 pre-primary report**
 Pimento PAC - \$350
- 4. Payment of late filing fee for 2022 pre-general report**
 Pimento PAC - \$50

5. Payment of late filing fee for 2022 year-end report

Pimento PAC - \$100

6. Return of anonymous contribution

Volunteers for Rasmusson - \$100

7. Payment of late filing fee for 2022 EIS

Zaynab Mohamed - \$55

Daniel Karpowitz - \$100

ADMINISTRATIVE RULEMAKING UPDATE

Mr. Olson stated that the Rulemaking Committee met three times in February and recommended approval of the draft rule language presented to the Board, except for Part 4511.1200, suggested by Eric Heiberg on behalf of ACEC/MN. The committee received written comments and oral testimonies related to lobbying topics. Board staff initially drafted rule language on coordinated expenditures, but the committee recommended new language to be codified at Part 4525.0500 regarding factors to consider when imposing a civil penalty for any violation. The draft rule language regarding lobbying is largely intended to implement legislative changes made in 2023.

Chapters 4501 and 4503

The following motion was made:

Member Rashid's motion: To adopt draft rule language for chapters 4501 and 4503 as written.

Vote on motion: Unanimously approved.

Chapter 4511

Eric Heiberg, appearing on behalf of ACEC/MN, discussed how engineers work with city governments and expressed his concerns regarding the new language requiring engineers to register as lobbyists under certain circumstances. He highlighted the need for more inclusive language and explained three different versions of proposed rule language. After discussing HF 4679, Board members expressed the concern that adopting the proposed rule is not within the Board's authority, and that the matter should be taken up with the legislature, as has already occurred.

The following motion was made:

Member Swanson's motion: Not to proceed with any of the three versions of Part 4511.1200.

Vote on motion: Unanimously approved.

Mr. Sigurdson asked Board members if they wished to express their opinion on the proposed legislation, and some members expressed concerns about potential changes to what is considered lobbying if HF 4679 passes.

Member Swanson proposed deleting the text “advocating for an issue without requesting action by the public official” from the proposed rule language for part 4511.0100, subpart 3, paragraph D.

The following motion was made:

Member Swanson’s motion: To delete the text on line 32 of page 13 of the draft rule language.

Vote on motion: Member Swanson voted in the affirmative. Members Asp, Flynn, Leppik, Rashid, and Soule voted in the negative.

The following motion was made:

Member Rashid’s motion: To adopt draft rule language for chapter 4511 as amended by the deletion of Part 4511.1200.

Vote on motion: Unanimously approved.

Chapters 4512 and 4525

Vice Chair Rashid proposed amending the draft rule language for part 4525.0100, subpart 5, defining the phrase “preponderance of the evidence,” to replace the text “record as a whole” with “evidence obtained by or known to the board” and thereby be consistent with the language to be used in part 4525.0210, subpart 3.

The following motion was made:

Member Rashid’s motion: To replace the text “record as a whole” with “evidence obtained by or known to the board” on line 38 of page 23 of the draft rule language.

Vote on motion: Unanimously approved.

The following motion was made:

Member Rashid’s motion: To adopt the draft rule language for chapters 4512 and 4525 as amended.

Vote on motion: Unanimously approved.

ADVISORY OPINION REQUESTS

A. Advisory Opinion 459

Mr. Olson stated that the requester is an organization that may be affected by a recent change to the statutory definition of the term “expressly advocating.” The organization does not wish to make the request public. Therefore, the draft opinion that is provided to the public does not identify the requestor. The Board only discussed the public version of the draft opinion during the regular session.

Attorney Eric Wang spoke on behalf of the organization and expressed his disagreement with the draft advisory opinion. He argued that anyone subject to Chapter 10A has the right to request an advisory opinion, and that the organization believes that its request is valid. Mr. Wang said that the request presents real-life situations that the Board’s executive director cited during legislative committee hearings, and the Board’s determination regarding the questions posed would guide the organization’s conduct. Mr. Wang stated that the organization may request another advisory opinion based on substantially the same scenarios. Finally, he expressed concern that if the advisory opinion is adopted as drafted, free speech would be chilled by regulatory uncertainty. Members then discussed whether to revise the draft opinion to state, at least with respect to issue three, that the communication would not constitute express advocacy.

The following motion was made:

Member Swanson’s motion: To adopt the advisory opinion as written.

Vote on motion: Members Flynn, Leppik, Rashid, Soule, and Swanson voted in the affirmative. Member Asp voted in the negative.

PRIMA FACIE DETERMINATIONS

Ms. Engelhardt gave an informational update on the Chisago Lakes Education Minnesota complaint stating it was dismissed.

LEGAL REPORT

Mr. Hartshorn discussed the current legal matters. Ms. Engelhardt stated that Board staff has been in contact with Mr. Mariani and he has filed an outstanding statement of economic interest, but has not yet filed 2022 and 2023 year-end reports.

EXECUTIVE SESSION

Chair Asp recessed the regular session of the meeting and called to order the executive session. Upon recess of the executive session, Chair Asp reported into regular session the Findings, Conclusions, and

Order issued in the Matter of the Complaint of Matt Werden regarding Action 4 Liberty and the Dr. Neil Shah for Governor committee.

ADVISORY OPINION REQUESTS

Mr. Sigurdson said that the Board recently received a confidential request for an advisory opinion and the Board is generally required to issue an advisory opinion within 30 days after receiving the request, unless the time period is extended by the Board. Mr. Sigurdson explained that because the next Board meeting may occur more than 30 days after the date the request was received, the Board should lay over the matter.

The following motion was made:

Member Flynn's motion: To consider the advisory opinion request despite it not being included on the agenda for this meeting, and to lay the matter over.

Vote on motion: Unanimously approved.

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

Respectfully submitted,



Jeff Sigurdson
Executive Director

Attachments:

Executive director's report
Rulemaking update memo
Comments to rulemaking committee
All draft rulemaking language
Advisory Opinion 459 public memo
Advisory Opinion 459 public draft
Chisago Lakes Education Minnesota memo
Chisago Lakes Education Minnesota complaint
Chisago Lakes Education Minnesota prima facie determination
March legal report
Findings in the Matter of the Complaint of Matt Werden regarding Action 4 Liberty and the Dr. Neil Shah for Governor committee



MINNESOTA CAMPAIGN FINANCE BOARD

Date: March 1, 2024

To: Board Members

From: Jeff Sigurdson, Executive Director

Telephone: 651-539-1189

Re: Executive Director's Report – Board Operations

Board Appointments

The Senate confirmed the appointments of Members Rashid and Flynn on February 19th. The House confirmed both members last year, so the appointments are finalized. Both appointments expire on January 4, 2027.

As of the date of this memo the Governor has not made appointments for the positions currently held by Members Swanson and Leppik. Pending appointments for those positions, Members Swanson and Leppik may continue to serve until July 1st of this year.

Legislative Action

Relative to last year, there have been very few bills introduced that are related to Chapter 10A or Chapter 211B. However, there are members of the legislature who view the disclosure provided for local office candidates and ballot questions as problematic, and the Board is being considered as a possible solution.

SF 3499 (Boldon) – HF 3645 (Coulter, Virnig) This bill moves the regulation of all local committees and funds, other than local candidate committees, out of Chapter 211A and into Chapter 10A. Board members will recall that certain Hennepin County ballot question committees and political committees and funds were moved into Chapter 10A in 2023. This bill would eliminate the Hennepin County limitations, and apply the registration and reporting requirements statewide. It is important to note that under this bill local candidates will still report under the provisions of Chapter 211A, and would not be the Board's responsibility.

While preparing the fiscal note for this bill staff determined that in 2022 and 2023 there were a total of 213 local ballot questions on the ballot. It appears that at least 58 committees reported expenditures on those local ballot questions. Staff was not able to determine the number of committees that reported expenditures to elect or defeat local candidates. I would expect that the local ballot question committees have a short life span and most committees will terminate after the election they seek to influence. The fiscal note for this bill does not request additional staff for the Board, but requested funding for an online registration application for use by all committees and funds. Online registration should allow staff to focus on answering questions from new treasurers and frees up staff time currently used to process registration forms.

On February 15th, SF 3499 was heard in the Committee on Elections and laid over for possible inclusion in the Committee's omnibus election bill. On February 21st, HF 3645 was heard in the

Elections Finance and Policy Committee, and also laid over for possible inclusion in the Committee's omnibus bill.

[SF 3501 \(Boldon\)](#) – [HF 3644 \(Coulter\)](#) This bill creates a work group to study whether local office candidates should register and report with the Board. The work group will also consider if Chapter 211A needs to be updated to better reflect the needs of local candidates, if local candidates can be supported by local filing officers, and the potential impact on the Board's budget, staff, and the ability of the Board to support local candidates. The working group is required to submit a written report to the legislature, including any proposed legislation, by January 16, 2025. The working group will consist of two members of the Board (affiliated with different political parties) appointed by the Board chair, the executive director of the Board, a member appointed by the League of Minnesota Cities, a member appointed by the Association of Minnesota Counties, a member appointed by the Minnesota Association of Townships, a member appointed by the Minnesota School Boards Association, two senators (one appointed by each party) and two representatives (one appointed by each party). Appointments must be made within two weeks after the effective date of the legislation.

On February 15th, SF 3501 was heard in the Committee on Elections, recommended to pass, and referred to the Committee on State and Local Government and Veterans. HF 3644 has not been heard in the House.

[SF 3457 \(Westlin\)](#) – no companion Currently, a lobbyist principal may round the total amount spent on lobbying in Minnesota to the nearest \$9,000. This bill, as amended in committee, will change the rounding to the nearest \$5,000. The bill was heard February 20th, and laid over for possible inclusion in the Committee's omnibus bill.

[HF 4233 \(Coulter, Freiberg\)](#) – no companion This bill would allow a home rule charter or statutory city, or county to establish a public finance program for local candidates funded with local tax dollars. The bill does not impact the Board, but it also shows interest in local elections, which appears to be a theme at this legislative session. The bill has not been heard in committee.

[SF 4431 \(Westlin, Koran\)](#) – no companion This bill streamlines the process for submitting a political contribution refund. The process would be all electronic, and require a treasurer to enter a contribution into the Board's online reporting system in order to issue a political contribution refund receipt to the donor. The bill is scheduled to be heard in the Elections Committee on March 5th.

Training

On February 8th, staff offered a Webex-based training session on reporting under the new lobbying statutes. There were 221 participants for at least part of the training session, and 206 attended the training for at least 45 minutes. These numbers probably represent a record for the number of persons attending a Board online training session. The session was recorded and is now available on the website.

Also on February 8th, Megan Engelhardt presented at a Minnesota State Bar Association event on the new lobbying statutes. The presentation was one hour long via Zoom and was available for one continuing legal education credit.



MINNESOTA CAMPAIGN FINANCE BOARD

Date: March 1, 2024

To: Board members
Nathan Hartshorn, counsel

From: Andrew Olson, Legal/Management Analyst **Telephone:** 651-539-1190

Subject: Rulemaking update

The Rulemaking Committee has met three times, on January 29, February 9, and February 23, 2024. During its first meeting the committee considered all draft rule language prepared by Board staff, and recommended approval of language that would make a variety of changes that are largely technical or unlikely to be controversial. During its second meeting the committee considered revisions to draft language regarding a variety of topics, and recommended approval of all remaining language regarding topics concerning campaign finance and audits and investigations, with one exception noted below. During its third meeting the committee considered revisions to draft language regarding lobbying topics, and recommended approval of all remaining language regarding those topics, with one exception noted below. The committee meetings were well attended. Several individuals offered testimony and there were 10 submissions of written comments from seven different entities. All of the written comments and nearly all of the testimony focused exclusively on lobbying topics.

The Rulemaking Committee has recommended approval of the attached draft rule language, except for Part 4511.1200. That is a new rule, suggested by Eric Heiberg on behalf of the American Council of Engineering Companies of Minnesota (ACEC/MN), that would provide that individuals with certain professional licenses or particular expertise would not be considered to be lobbying when communicating with local officials. Within a written comment¹ Mr. Heiberg explained the concern that a consulting engineer, working on behalf of a developer or landowner, may be deemed to be engaged in lobbying when communicating with municipalities regarding a project to ensure that proposed designs comply with relevant ordinances, are compatible with the municipality's infrastructure, and will ultimately be approved. The attached draft rule language contains three versions of Part 4511.1200.

Version 1 of Part 4511.1200 would apply to licensed architects, engineers, surveyors, landscape architects, and geoscientists, as well as those acting under their direct supervision. Rulemaking committee members expressed concerns regarding an exemption applicable to certain types of professional licensees. Version 2 was drafted to address those concerns, and

¹ cfb.mn.gov/pdf/legal/rulemaking/2023/1_29_24_comments/ACEC_MN.pdf

would apply to anyone with “particular expertise through education, training, or experience” on the topic at hand.² Versions 1 and 2 were drafted by Mr. Heiberg on behalf of ACEC/MN, and are supported by the American Institute of Architects (AIA) Minnesota³. Version 3 is the same as version 2 except for minor changes by Board staff to make the language more compatible with the definition of lobbyist under Minnesota Statutes section 10A.01, subdivision 21. The Rulemaking Committee has not recommended approval of any of the three options, but decided to provide them to the full Board for consideration.

Board staff initially drafted rule language to specifically address violations resulting from coordinated expenditures, to be codified at Part 4501.1700. The Rulemaking Committee chose to instead recommend approval of new language to be codified at Part 4525.0500 that would describe factors to be considered by the Board when exercising discretion as to the imposition of a civil penalty for any violation under the Board’s jurisdiction.

The written comments submitted to the Rulemaking Committee are attached. Comments received during the comment period stated in the Board’s Request for Comments were provided to Board members in advance of the October 2023 Board meeting, and are available on the Board’s website.⁴ In general, the written comments received by the Rulemaking Committee appear in chronological order, except that the comments from ACEC/MN and AIA Minnesota are grouped together as they concern the same subject, and the two written comments submitted by the Minnesota Governmental Relations Council are grouped together as well.

The draft rule language includes comments with a brief description of the topic being addressed. Unless stated otherwise, all draft language within Chapter 4511 is intended to implement 2023 legislative changes. Note that strikethrough markup proposing to delete the numeral 4 is nearly impossible to discern, but exists within the underlying document where needed. The Board may discuss the recommendations of the Rulemaking Committee and then decide how to proceed. If and when the Board approves rule language, the next step will involve Board staff drafting a Statement of Need and Reasonableness (SONAR), which will include a detailed explanation of why each proposed rule is needed and reasonable.

Attachments:

ACEC/MN comment – Jan. 25, 2024

ACEC/MN comment – Feb. 7, 2024

AIA Minnesota comment – Feb. 8, 2024

ACEC/MN comment – Feb. 13, 2024

Minnesota State Bar Association comment – Jan. 25, 2024

Minnesota Regional Railroads Association comment – Jan. 25, 2024

Minnesota Governmental Relations Council comment – Jan. 29, 2024

Minnesota Governmental Relations Council comment – Feb. 7, 2024

St. Paul Area Chamber comment – Feb. 2, 2024

Maureen Shaver comment – Feb. 3, 2024

All draft rule language

² cfb.mn.gov/pdf/legal/rulemaking/2023/2_9_24_comments/ACEC_MN.pdf

³ cfb.mn.gov/pdf/legal/rulemaking/2023/2_9_24_comments/AIA_MN.pdf

⁴ cfb.mn.gov/pdf/legal/rulemaking/2023/All_public_comments.pdf

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Katherine M. Melander*	
Donald R. McNeil	

January 25, 2024

VIA EMAIL

Mr. Jeff Sigurdson
Executive Director
Minnesota State Campaign Finance and Public Disclosure Board
190 Centennial Building
658 Cedar Street
St. Paul, Mn 55155

Re: ACEC/MN Comments Regarding Proposed Regulations

Dear Jeff:

I'm an attorney licensed to practice in Minnesota, and I work with the American Council of Engineering Companies of Minnesota "ACEC/MN" on a volunteer basis to help them address various legal issues which may affect the membership. ACEC/MN's members are consulting engineering firms which provide professional services to the State, Counties, municipalities, other governmental entities, and private businesses.

As an association, ACEC/MN has reviewed the 2023 changes in the statute regarding lobbyist registration and reporting as well as the and the recent advisory opinions issued by this Board. Based upon these advisory opinions, we are concerned that work which consulting engineers perform on a daily basis will be considered "lobbying" under the statutory changes. There are three types of services which consulting engineers provide to their clients that we are concerned could be considered "lobbying" but that we believe should be exempted. This letter will address each of those instances along with our recommendations with regard to the proposed regulations.

I. Consulting Engineer Hired as a City Engineer.

The majority of municipalities throughout the state of Minnesota do not have a full-time, on-staff city engineer. Instead, those cities hire a consulting engineering firm and one of the employees of that consulting engineering firm acts as the city engineer for the municipality on an as-needed basis. As the city engineer, the individual is technically an employee of the consulting engineering firm, but he or she takes on the role that a typical city engineer would take on such as evaluating potential projects, master planning, providing information to the city council, and advocating on behalf of projects which he or she believes are in the city's best interest. I have attached to this letter for your reference a map which shows the number of municipalities who rely on consulting engineering firms to act as the City Engineer.

The statute as revised provides that only "employees" of the political subdivision are exempt from registering as a lobbyist if their work involves communication with the intent to influence the official action of the political subdivision. The City engineers in over 90% of the municipalities in the state are not "employees" in the traditional sense. As a result, we are in support of your regulations expanding the definition of "employee" to those hired by the municipality by contract. Our request is that it be clear from the regulation that those hired as a city engineer are considered an employee of the municipality even if their actual employer is a consulting engineering firm. In the alternative, this issue can be addressed by adopting the exemption of professional advice from the definition of influence the official action of the political subdivision outlined in Section 3 below.

II. Consulting Engineer Hired by the Municipality for Master Planning or in Connection with a Specific Project.

Consulting engineering firms are often hired by political subdivisions either for overall master planning to address anticipated growth or changes in the needs for infrastructure or with respect to a particular project. For example, a municipality which is expanding may hire a consulting engineer to provide advice and design with regard to sewers and drinking water lines needed to serve a new development. These consulting engineering firms are tasked with providing the municipality advice as to size, routing, use, and future expandability and make recommendations to the municipality's city engineer and elected council based upon their engineering analysis and opinion.

Under the statutory revisions, providing the City Staff or the Council directly could be considered an "attempt to influence the official action of the political subdivision". The consulting engineer hired by the City would then have to be registered as a lobbyist even though what they are doing is providing the engineering advice they were hired to provide.

ACEC/MN is in favor of the regulations as proposed as long as it's clear that the definition of "employee" under the statute includes those under contract with the political subdivision to provide advice and direction.

III. Consulting Engineering Firm Hired by a Property Owner and/or Developer in Connection with a Project.

The third way in which consulting engineers interact with political subdivisions is as a consultant hired by a developer or landowner pursuing a project under the jurisdiction of the particular political subdivision. For example, in many cases, a municipality will enter into a development agreement with the landowner with regard to a particular project such as a residential subdivision. Under that development agreement, the engineer, at the developer's expense, designs infrastructure for the project which meets the city's requirements. In connection with this work, the engineer often needs to provide information to the municipality with respect to the proposed designs to ensure that the designs meet the municipality's approval and the relevant ordinances. In addition, there needs to be discussion regarding making the municipality's existing infrastructure available to the new project.

Under the new definition of lobbying in the statute, these discussions with the City engineer, other staff, or the City council could also be considered for the "purpose of influencing the official action of the political subdivision" and therefore lobbying. Your proposed regulations do not address this situation which occurs thousands of times a year throughout the state of Minnesota. As a result, we seek an exception in the regulations for engineers and other licensed design professionals working on the behalf of their clients in such a scenario.

Our recommendation is for the regulations to make it clear that recommendations and opinions offered by professionals licensed under Minnesota Statutes § 326.02-326.15 are not "communications for the purpose of attempting to influence the official action of a political subdivision" when those individuals are making recommendations, offering opinions or providing information regarding matters within their licensed profession. This change to the regulation would insulate architects, engineers, land surveyors, landscape architects, geologists, and certified interior designers from being considered lobbyists while practicing their professions as defined by Minnesota Statutes § 326.

We believe that this clarification within the regulation is not only consistent with the intent of changes in the statute, but is also in the State's best interest. The municipalities benefit from having licensed professionals with experience in industry providing them information, opinions and recommendations related to issues within their profession. The result of having those engineers considered to be "lobbyists" will be the inability of the political subdivisions to obtain the information, opinions and recommendations directly from the source in connection with potential projects. As a result, projects will take longer to approve, will likely be more expensive, and the

January 24, 2024

Page 4

decisions will be made by the political subdivisions without the full picture often needed to make an informed and rational decision.

IV. Conclusion.

We appreciate the opportunity to comment on the proposed regulations and we are committed to working with the Board to develop regulations which accomplish the legislative goals while also protecting the engineering profession. If you have any questions about these proposals, please do not hesitate to contact me. I would be more than happy to discuss them with you. You can also reach Jonathan Curry, the executive director of ACEC/MN, at 952-593-5533.

Sincerely,

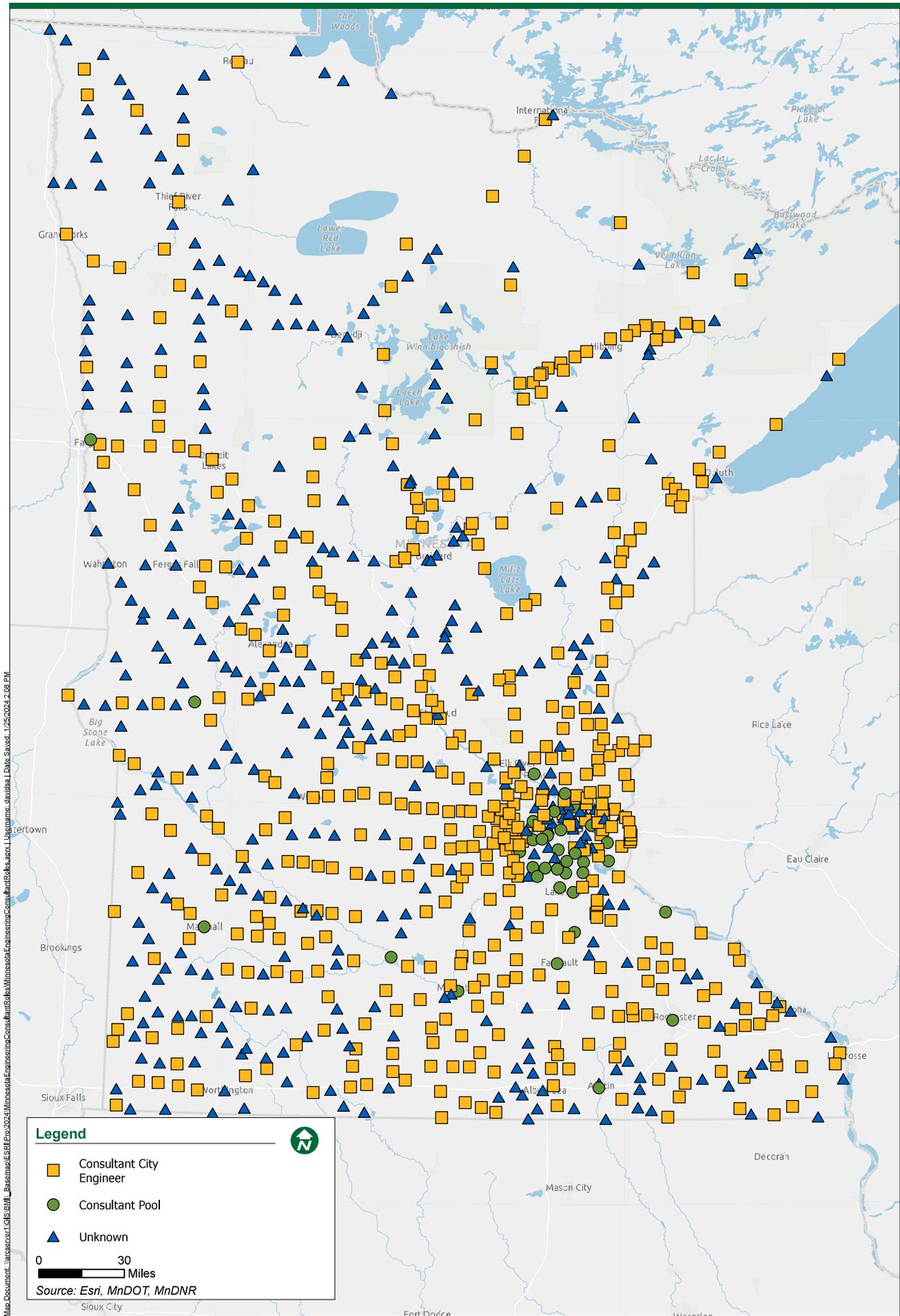
HELEY, DUNCAN & MELANDER, PLLP

s/ Eric R. Heiberg

Eric R. Heiberg

cc: Thomas Poul (via email)
Jonathan Curry (via email)
Megan Engelhardt (via email)

ERH/jb



Map Document: \\arsescon1\GIS\BIM_Base\map\ESRI\Pro_2024\MinnesotaEngineeringConsultantRoles.aprx | User: jay.davis | Date Saved: 1/25/2024, 2:08 PM

From: [Eric Heiberg](#)
To: [Engelhardt, Megan \(CFB\)](#); [Sigurdson, Jeff \(CFB\)](#)
Cc: [Tom Poul](#); [Jonathan Curry](#); [Jamie Baumgart](#)
Subject: RE: Regulatory Language Submission on behalf of ACEC Minnesota
Date: Wednesday, February 07, 2024 10:25:52 AM

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Megan and Jeff,

As you know at the last subcommittee hearing on the new regulations, the subcommittee invited me on behalf of ACEC/MN to propose language for the regulations relating to engineers hired by third parties interacting with a political subdivision as a part of the design process. Our goal is to allow engineers and other design professionals in the practice of their professions to interact with the required political subdivisions without having to register as a lobbyist. The subcommittee asked that our proposed language:

1. Incorporate our request that it apply to licensees and those working directly for licensees;
and
2. Be consistent with the statute.

Based upon that request, here are our requested additions to the regulatory language. They would be used either/or since we think they are each a reasonable approach to accomplish the same thing:

4511.1200 ATTEMPTING TO INFLUENCE AN ELECTED OR NONELECTED LOCAL OFFICIAL. An individual providing an elected or nonelected local official information, data, advice, opinions, variables, options or directions as professional licensee under Minnesota Statutes Section 326.02 through 326.15 or under the direct supervision of a licensee under Minnesota Statutes Section 326.02 through 326.15 shall not be considered attempting to influence that elected or nonelected local official.

or

Add the following sentence to the end of 4511.0100 Subp. 6:

“Providing an elected or nonelected local official information, data, advice, opinions, variables, options or directions as professional licensee under Minnesota Statutes Section 326.02 through 326.15 or under the direct supervision of a licensee under Minnesota Statutes Section 326.02 through 326.15 is not lobbying or an activity that directly supports lobbying.”

Please let me know what you think. If you and/or legal counsel want to discuss the proposals, we are more than willing to do that as well. Thank you for your continued work on this issue.

Eric R. Heiberg Esq.
Heley, Duncan & Melander PLLP
8500 Normandale Lake Boulevard, Suite 2110
Minneapolis, Minnesota 55437
(952) 841-0001
(952) 841-0207 (Direct)
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From: Eric Heiberg
Sent: Thursday, January 25, 2024 4:38 PM
To: 'Megan.engelhardt@state.mn.us' <Megan.engelhardt@state.mn.us>;
'jeff.sigurdson@state.mn.us' <jeff.sigurdson@state.mn.us>
Cc: Tom Poul <Tom.Poul@poulhaas.com>; Jonathan Curry <jcurry@acecmn.org>; Jamie Baumgart <jbaumgart@heleyduncan.com>
Subject: Letter submission on behalf of ACEC Minnesota

Megan and Jeff,

Attached please find a letter that I have drafted on behalf of ACEC/MN in anticipation of the hearing scheduled for Monday January 29, 2024 at 10:00 am. Please feel free to contact me with any questions.

Eric R. Heiberg Esq.
Heley, Duncan & Melander PLLP
8500 Normandale Lake Boulevard, Suite 2110
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February 8, 2024

Jeff Sigurdson, Executive Director
Andrew Olson, Management Analyst
Minnesota Campaign Finance and Public Disclosure Board
190 Centennial Office Building
658 Cedar Street
Saint Paul, MN 55155

Dear Mr. Sigurdson and Mr. Olson,

We are writing today to offer our support for the rule amendment proposed by ACEC/MN to clarify that specified activities by design professionals licensed under MN Statutes 326.02 through 326.25 do not require registration as a lobbyist. Architects, like engineers, work regularly with government entities at the state, county, and local levels, and want to ensure that design work engaging with political subdivisions in the general course of business is not considered lobbying.

We respectfully ask that the Rulemaking committee adopt one of the proposed options from ACEC/MN as part of your Chapter 4511 rule update.

We appreciate the efforts of the Campaign Finance Board to clarify regulations and provide advisory opinions to professionals who wish to remain in compliance with the new law and are happy to provide further insight on our specific interactions where that is useful.

Thank you for your time.

Sincerely,

A handwritten signature in black ink, appearing to read "Mary-Margaret Zindren". The signature is fluid and cursive, with a large initial "M" and "Z".

Mary-Margaret Zindren, CAE
Executive Vice President, AIA Minnesota

AIA Minnesota
105 5th Avenue South
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Minneapolis, MN
55401

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F (612) 338 7981

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From: [Eric Heiberg](#)
To: [Sigurdson, Jeff \(CFB\)](#); [Engelhardt, Megan \(CFB\)](#)
Cc: [Tom Poul](#); [Jonathan Curry](#); [Jamie Baumgart](#)
Subject: RE: Regulatory Language Submission on behalf of ACEC Minnesota
Date: Tuesday, February 13, 2024 2:53:48 PM

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Jeff,

Thank you again for your and your staff's hospitality at the subcommittee hearing on Friday. As discussed with the committee members, below is our attempt to split the difference between the 2 language proposals for Rule 4511.1200. In drafting this language we are trying to address the following concerns of the subcommittee:

1. Make the language more broad than just licensees under Minn. Stat. §326 so it could cover other professionals like railroad employees discussing railroad crossings;
2. Make the language narrow enough that it does not include any member of the public who is advocating for a project; and
3. Making sure there is not an exception that makes the rule moot.

Our proposed language is as follows:

4511.1200 ATTEMPTING TO INFLUENCE AN ELECTED OR NONELECTED LOCAL OFFICIAL. An individual providing an elected or nonelected local official information, data, advice, opinions, variables, options or direction in an area where the individual has a particular expertise through education, training, or experience shall not be considered attempting to influence that elected or nonelected local official.

We propose this as a compromise between the 2 proposals from Friday, and in our opinion is consistent with the exception to the definition of lobbyist intended by the legislature in Minn. Stat. §10A.01 Subd. 21(b)(8). Please call or email with thoughts or comments. As I discussed with the subcommittee, we are interested in finding a solution that works for everybody and still complies with the statutory language.

Eric R. Heiberg Esq.
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8500 Normandale Lake Boulevard, Suite 2110
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From: [Bryan Lake](#)
To: [Sigurdson, Jeff \(CFB\)](#)
Subject: Proposed amendments to draft rules re lobbyist registration
Date: Thursday, January 25, 2024 4:48:27 PM

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Mr. Sigurdson,

I am writing on behalf of the MN State Bar Association to request that the Campaign Finance Board consider two proposed modifications to the draft rules regarding lobbyist registration.

First, we suggest including language to clarify that communications concerning litigation and judicial proceedings are not lobbying. (For example, litigation with a city could involve settlement negotiations that involve elected officials or major expenditures.) We suggest that the following be considered exempt: "A party or a party's representative communicating with a public official or a local official concerning a legal dispute involving the political subdivision of the public official or local official."

Second, the draft rules exclude from the definition of "approval by an elected local official" the acts of "issuing a government license, permit, or variance that is routinely provided when the applicant has complied with the requirements of existing state code or local ordinances." [Page 23 lines 35 and 36]. We believe it would be appropriate to include the same exemption under the preceding subpart (i.e. "An action that requires a vote of the governing body").

We appreciate the Board's consideration of these requests. Feel free to contact me at any time if you have questions or need more information.

Thank you,

Bryan Lake
The Law Office of Bryan Lake, PLLC
612-227-9504



January 26, 2024

Campaign Finance and Public Disclosure Board
190 Centennial Office Building
658 Cedar Street
Saint Paul, MN 55155

RE: Proposed Rules for Lobbyists and Lobbyist Reporting, Revisor's ID Number 4809

Dear Members of the Campaign Finance Board,

On behalf of the Minnesota Regional Railroads Association (MRRA), we are reaching out with concerns about the broad expansion of the definition of lobbying to interactions with local units of governments and the additional tracking and reporting that will be required.

The MRRA is comprised of 18 railroad companies, 4 of which are large national carriers, 2 which operate regionally, and the balance are short lines, which on average run 79 miles. Collectively, our members own and operate 4,373 miles of track in Minnesota, crossing many counties and hundreds of cities. In their course of doing routine business, their interactions with locally-elected and appointed officials can be numerous:

- discussing rail-highway grade crossings with the municipality that serves as the local road authority;
- providing engineering and real estate reviews of municipal plans that abut or take place on railroad property;
- engaging in siting industrial parks, rail spurs, transload facilities, or other economic development opportunities, sometimes as the request of the municipality;
- monitoring drainage and negotiating municipal fees related to stormwater runoff; and
- advising on local response to incidents and providing training to first responders.

Beyond that, some of our short line members operate on track owned by a regional rail authority. As tenants of the line, they are in constant communication with the authority and often provide direction and discuss the finances of the line. Managing these conversations to determine when they crossover from information sharing to lobbying would be extremely cumbersome – as their daily operations are tied to the regional rail authority. Then figuring out when the \$3,000 compensation threshold is hit for each employee who engages in lobbying, would be another operational challenge. None of the employees of these railroads were hired to “lobby.” They are fulfilling other job duties – in sales, safety, operations. Because their business partner is a public entity, they would now be subject to a regulatory scheme that serves no helpful purpose. Since these regional rail authorities are public entities, they must follow open meeting laws and their agendas, attendees, and minutes are publicly available. What

more does the public gain by having the Campaign Finance Board require the railroad employees to register as lobbyists based on their daily duties? What is the benefit of this additional disclosure?

For the Class I railroads, their large employee base makes it less likely that individual employees will hit the compensation requirement triggering the lobbyist registration requirement. However, as lobbyist principles, any dollars spent reviewing technical plans or evaluating real estate impacts – often at the request of local governments - would now have to be tracked and reported to the CFB. Again, the railroads aren't trying to influence development of municipal policy, but attempting to be a good partner and do the due diligence requested of them and make recommendations that may impact an official decision. Having to create a system to track all of this seems completely unwieldy.

Lastly, Minnesota has seen a growing number of passenger and commuter rail lines that do or will operate on railroad property (Northstar, Southwest LRT, and NLX, to name a few.) The development of these projects again involves constant communication between the railroads and local officials. Some of these conversations can be extremely sensitive, for both the railroad and local authority. Monitoring and tracking of all the discussions adds a level of complexity to what can already be a tenuous partnership – and could, in fact, discourage important conversations on tough topics from even happening if the individuals involved are required to now register as lobbyists under the proposed rules. Adding more obstacles to these negotiations only slows project development and construction, adding costs to the system and taxpayers, which is in no one's best interest.

Furthermore, we'd ask how the CFB will enforce this rule if enacted as proposed. The fiscal note on the original bill (House File 1776) references that one new FTE will be hired "to help with registration, communication, and outreach related to the legislation" for the 567 new individuals expected to register as lobbyists "who are paid to influence the actions" of local governments. No mention is made of the extra work to enforce the new rule. And based on recent advisory opinions, the number of people who would be required to register are not just professional lobbyists, but any employee of a company that may interact with a local unit of government and recommend a course of action if they hit the \$3,000 threshold. If compliance is going to be complaint-based, we have more concerns. Our members have already been targets of unfounded complaints to the CFB that resulted in additional, unwarranted scrutiny, when there was absolutely no hint of wrongdoing. That's no way to run a railroad.

In closing, we ask that the proposed rule be scaled back and limited to individuals specifically hired to lobby local governments, as has been practice at the state level for almost 50 years.

Sincerely,



Amber L. Backhaus
Executive Director
Minnesota Regional Railroads Association



**10700 W Highway 55, Suite 275
Plymouth, MN 55441**

Phone 952-564-3074
Fax 952-252-8096
Email info@mngrc.org
www.mngrc.org

January 29, 2024

Campaign Finance and Public Disclosure Board
190 Centennial Office Building
658 Cedar Street
St. Paul, MN 55155

On behalf of the Board of Directors and membership of the Minnesota Governmental Relations Council (MGRC), we appreciate the opportunity to submit comments to the Minnesota Campaign Finance and Public Disclosure Board Rulemaking Committee regarding new lobbyist registration and reporting guidelines.

The Minnesota Government Relations Council (MGRC) is a Minnesota nonprofit organization serving government relations professionals by providing advocacy, professional development, networking, and an enhanced working experience inside and outside the Capitol. We are a network of more than 500 lobbyists and public relations professionals in Minnesota, whose common goal is to influence the public policy process through ethical representation.

For several years, MGRC board members have been meeting with legislators and representatives of the Minnesota Campaign Finance and Public Disclosure Board (CFB) to discuss legislation relating to lobbyist regulation and public disclosure. To date, MGRC has engaged our full membership at several points to compile feedback, which we have shared with Campaign Finance Board staff and members. We appreciate the collaboration with the CFB staff and commend their willingness to engage MGRC on matters that directly affect our membership.

MGRC members take compliance with lobbying regulations very seriously. Ethical representation and adherence to the laws governing our community are among our core principles.

However, the message we continue to hear from our members is: the new statutes and rules aimed at lobbyist regulation and disclosure are confusing and cumbersome. The professional lobbying community desires a set of regulations that are clear and do not pose an undue compliance burden.

Several members have suggested Minnesota adopt the federal definitions at 2 U.S. Code § 1602 related to lobbying, including lobbying activities, lobbying contact, and exceptions. Conformity with the federal definitions would provide the desired clarity requested by the professional lobbying community.

MGRC greatly values citizen engagement in the legislative process. Several of the changes made in statute and proposed in the rules have the potential to silence voices and restrict free speech. As a community, we are concerned about burdensome regulations impacting citizens from participating in local and state issues due to fear of inadvertently triggering the need to register as a lobbyist. It would be unfortunate if requirements aimed at the professional lobbying community had the unintended consequence of chilling speech for regular citizens.

Although the new statute and rules are confusing and cumbersome, MGRC's membership is actively tracking the work by the CFB and preparing our organizations to comply with the new measures. However, many of whom will be affected by the new rules are citizens or organizations that are not tuned into the work of the CFB or already members of the lobbying community. How will they be notified that their advocacy may now trigger a need to register as a lobbyist?

Additionally, we have been assured that the public will not be affected by the changes because CFB will not, or does not have the capacity to, investigate or enforce the new rules. This assurance does not lessen our members' duty to be compliant.

We are enclosing an Appendix which contains questions and comments recently received from our members. A similar previous submission was made to the Campaign Finance Board in September 2023.

The Minnesota Governmental Relations Council stands ready to continue our collaboration with the Campaign Finance Board staff and members.

Thank you again and we look forward to continuing this dialogue during the rule making process in the coming weeks.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Karbo". The signature is fluid and cursive, with the first name "Michael" written in a larger, more prominent script than the last name "Karbo".

Michael Karbo
MGRC President

APPENDIX: FEEDBACK RECEIVED (December 2023 – January 2024)

Are Advisory Opinions informing the rules or the rules informing the Advisory Opinions?

What happens if they are in conflict with each other?

How many new lobbyist registrations do they anticipate?

The definition in our state's campaign finance law is far broader than the FEC's definition of lobbying in federal law. Minn. Stat. 10A.01 includes "development of legislation, review, and modification" This seems to include subject matter experts simply providing the legislature with expertise on a bill that could inform a decision without what the federal government would consider as lobbying. Has the board looked at honing that definition more to ensure that the legislature continues to receive expert opinion? The fear is that this will have a chilling effect of expert participation in the process.

I am confused about the \$500 reporting. The way I read it: an association, who has members companies with dues over \$500, that lobbies at the Capitol or other government as part of their mission must have lobbyists report the individual names of the companies that have contributed to the association for lobbying purposes if it is over \$500.

What happens if an expert is appearing at the invitation of the committee or city council? How about if they show up on their own - it is lobbying?

Would this exclude a variance from zoning code from actions/approval of elected local officials?

As an advocacy organization, because the definition of Lobbying is more expansive than the federal definition (as another question referenced) and because there is some ambiguity, we have tried to err on the side of over-reporting, and registering most of our staff as lobbyists, even if they not doing direct lobbying but are doing community organizing, for example. Am curious if this is a recommended approach that others are taking.

What is "routine"? Many permits, licenses and variances can become very controversial and require advocacy.

Some state agencies are overseen by a governor-appointed board and are tasked with advocating for issues in their areas of focus. Some examples are the Board on Aging, Council on Disability,

Commission of the Deaf, DeafBlind & Hard of Hearing. As part of their mission they provide testimony to legislators and meet with them on the issues. Sometimes this is at the invitation of legislators, but not always. Do their government relations people need to register as lobbyists?

We have some local elected officials who are also engaged in lobbying. If a local elected official who is a registered lobbyist that appears before a county board or another city council, will they have to report that interaction if they exceed the \$3k threshold despite them being elected officials?

Is the \$3000 per individual, or \$3000 to a lobbyist employer who may employ multiple lobbyists?

Employers of contract lobbyists may, for internal and other reasons, not always disclose to that lobbyist contractor all relationships/expenses including some that fall into the MN definition of lobbying. Therefore it can, I believe it has, that a designated lobbyist has no way of knowing of certain items that should be reported - and yet is the party that could be held responsible for that lack of reporting. For this reason and for the benefit of direct reporting from the actual source of the funding wouldn't it make more sense to have all expense reported by the Principal vs the lobbyist?

Thank you for noting the complexities in reporting for in-house advocates at nonprofits!

I think the concern from larger state associations that represent governments is that our members/government professionals are constantly asked to provide input and advice on legislative proposals. There is concern that many local government professionals (assessors, zoning administrators, child protection workers) now have to register as lobbyists because they provide some input legislatively.

Most (if not all) of the attendees here are already registered lobbyists for at least one client. Does that mean that purely personal interactions with local elected officials (city council, county board) are now reportable? E.g., XXX needs to report to the state that she is working with the city council to amend her lot lines, even though she is not being paid for that action?

In your AO example, what about time the CEO spent prepping etc.

Nonprofits cannot go over a lobbying threshold in order to maintain their tax status. Is there any clarifying guidance for nonprofits?

E.g., if Nathan spends \$3k and is registered once, each subsequent interaction is a lobbying activity. Now he's jeopardized his nonprofit status.

I'm attempting to follow the changes to lobbying reporting rules, but not succeeding. One thing I think would be massively helpful would be for MN to match our definition of lobbying to the IRS. I worked with an attorney last year who advised that my org report only what the IRS would consider to be lobbying, but that doesn't sit well, since MN's definition is much more expansive.

Minnesota Campaign Finance Board – Local Lobbying Definition Clarifying Questions

- Presume the company owns property that impacts a public infrastructure project. Does providing engineering and real estate review of municipal plans, including feedback and required changes for activity on private property, constitute lobbying under the new regulations? Are these reviews or redrawn plans or designs expenses that need to be reported on the Lobbyist Principal Expenditure Report?
- Presume the company runs a private railroad and the political subdivision is looking for guidance on building an industrial park with access to the private rail infrastructure. Does informing the political subdivision of our design standards and operational requirements, or reviewing their plans for such a project, constitute lobbying under the new regulations? Are these reviews or plans expenses that need to be reported on the Lobbyist Principal Expenditure Report?
- If a company regularly pays a permit fee to a political subdivision and the political subdivision changes the policy by which the fee is determined, does providing feedback and/or legal arguments opposing those fee changes constitute lobbying under the new regulations?

MINNESOTA GOVERNMENTAL RELATIONS COUNCIL

COMMENTS TO MINNESOTA CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD (CFB)

FEBRUARY 6, 2024

1. DEFINITION OF “LEGISLATIVE ACTION”

- Minnesota’s definition of “legislative action” is broad and the proposed rules do not achieve much in the way of clarification.
- The proposed rules attempt to clarify “the development of prospective legislation” but in doing so, they do not solve the called-for clarity and, moreover, create more questions about how this will impact regular citizens.

4511.0100, Subp. 3. Development of prospective legislation. “Development of prospective legislation” means communications that:

A. explain the need for legislation that has not been introduced as a bill;

B. request support for legislation that has not been introduced as a bill;

C. provide language, or comments on language, used in draft legislation that has not been introduced as a bill; or

D. are intended to facilitate the drafting of language, or comments on language, used in draft legislation that has not been introduced as a bill.

- The effect of these proposed rules restricts speech even more than the underlying statute by expanding the definition of “prospective legislation” to conversations about issues that may – or may not – eventually become bills.
- Here are examples of potential unintended impact:

Jane attends a legislator’s constituent townhall meeting. Jane stands up during Q&A to talk about how important internships are for high school students. The legislator requests a follow-up conversation to learn more about the issue. Jane and the legislator and the legislator’s staff met for several hours to talk about the issue, following which, the legislator drafts a bill to mandate internships in high school. While Jane was not seeking a bill when she expressed her opinion, Jane happens to be a highly compensated individual, so does the time she has spent explaining the issue now compel her to register as a lobbyist?

John attends the same community church as his state representative. After services, they often talk about issues. John has opinions about a particular energy credit in place in other states that he believes would be great for the environment, and John has remarked from time to time that it would be great if the legislator could support a similar credit if it ever came before the state legislature. Because John’s company is a pass-through company, corporate revenue is attributed to his individual income taxes - so after a particularly good business year, his compensation is high and do the casual conversations about supporting an energy credit now become “legislative action” even though the energy credit never became a bill?

Mary is an expert on dyslexia education. Her state senator wants to learn more about how best to educate students with severe dyslexia. They have several conversations about best practices, following which the senator asks Mary for technical assistance developing potential language. Mary spends many hours of her own time researching other states' dyslexia statutes and rules, and she conducts numerous interviews with educators and parents to help with drafting language, which then is never introduced as a bill. Based on the amount of time she spent working on the project and research costs of \$3,000 to conduct interviews, Mary has reached the threshold of "legislative action" through "development of prospective legislation" does she need to register, even though her work never became a bill?

- The question inherent in these scenarios is: **what information is gained from requiring regular citizens register as lobbyists?** The U.S. Supreme Court has held that restrictions on free speech must be narrowly tailored to serve compelling governmental interests. We question whether requiring regular citizens engaging in political discourse to register as lobbyists meets a compelling government interest, and whether the proposed rules (not to mention the underlying statute) are sufficiently narrowly tailored.
- **We recommend that the section on "development of prospective legislation" be deleted or reworked** so that it does not unconstitutionally ensnare regular citizens and create additional confusion for the professional community.
- Further, **we propose that proposed rules conform with the federal definition of "legislative action" to the extent possible.** The Minnesota professional lobbying community is familiar with the federal definition, which provides more uniform direction on what does – or does not – constitute legislative activity. The nonprofit community in particular relies upon Internal Revenue Service guidance on "legislative action" and "lobbying" to ensure compliance with IRS regulations with regard to 501(c)(3) entities.

2. DEFINITION OF "LOBBYIST"

- Members of Minnesota's professional lobbying community have an inherent understanding of what professional lobbying means, and why we are different from citizens exercising their rights to petition the government. As the National Council on State Legislators (NCSL) states: **Lobbyists are not simply individuals who engage in lobbying.** Lobbyists are **professional advocates** who work to influence political decisions on behalf of individuals and organizations.
- Minnesota's new definition of "lobbyist" does not take into account the professional nature of lobbyists' work and instead expands it to individuals who are not professional advocates. In doing so, it forces ordinary citizens to monitor – and perhaps forego – their engagement with government officials.
- **We express concern with the draft rules at Part 4511.0200, which define registration parameters based on a compensation equation.** The proposed equation creates an unlevel playing field for advocates due to their compensation levels. For example, one advocate can trigger professional lobbying registration where her coworker who is spending the same time on the issue does not, solely based on compensation.

- **We encourage the CFB to incorporate an HOURLY THRESHOLD or EMPLOYMENT FACTOR in the draft rules.** Other states have created parameters for “lobbying” that take into account not just compensation, but the time spent on lobbying activities and whether lobbying is a key part of their work duties. We think an hourly threshold or employment factor test is a better approach to marking the line between citizen advocate and professional advocate than a case-by-case determination of compensation and activities.

For example:

- Alaska: “Lobbyist” means a person who: (A) is employed and receives payments, or who contracts for economic consideration, including reimbursement for reasonable travel and living expenses, to communicate directly or through the person's agents with any public official for the purpose of influencing legislation or administrative action *for more than 10 hours in any 30-day period in one calendar year*; or (B) represents oneself as engaging in the influencing of legislative or administrative action as a business, occupation, or profession. Alaska Stat. § 24.45.171.
- California: “Lobbyist” means either of the following: (1) Any individual who receives \$2,000 or more in economic consideration in a calendar month, other than reimbursement for reasonable travel expenses, or *whose principal duties as an employee* are, to communicate directly or through his or her agents with any elective state official, agency official, or legislative official for the purpose of influencing legislative or administrative action. Cal. Gov. Code § 82039.
- Hawaii: “Lobbyist” means any individual who : (1) Receives or expects to receive \$1,000 or more in monetary or in-kind compensation in any calendar year for engaging in lobbying; or (2) For pay or other consideration, on behalf of another person:(A) Engages in *lobbying in excess of five hours in any month* of any reporting period; (B) Engages in *lobbying in excess of ten hours during any calendar year*; or (C) Makes expenditures of \$1,000 or more of the person's or any other person's money lobbying during any reporting period described in section 97-3. Haw. Rev. Stat. Ann. § 97-1.
- Kansas: “Lobbyist” means: (1) Any person *employed in considerable degree* for lobbying; (2) any person formally appointed as the primary representative of an organization or other person to lobby in person on state-owned or leased property; or (3) any person who makes expenditures in an aggregate amount of \$1,000 or more, exclusive of personal travel and subsistence expenses, in any calendar year for lobbying; (4) any person hired as an independent contractor and compensated by an executive agency for the purpose of evaluation, management, consulting or acting as a liaison for the executive agency and who engages in lobbying, except an attorney or law firm representing the executive agency in a legal matter. Kan. Stat. Ann. § 46-222.
- Louisiana: “Lobbyist” means either: (i) *Any person who is employed or engaged for compensation to act in a representative capacity for the purpose of lobbying if lobbying constitutes one of the principal duties of such employment or engagement.* (ii) Any person who acts in a representative capacity and makes an expenditure. La. Stat. Ann. § 24:51.

- Maine: “Lobbyist” means any person who is *specifically employed* by another person for the purpose of and who *engages in lobbying in excess of 8 hours in any calendar month*, or any individual who, as a regular employee of another person, expends an amount of time in excess of 8 hours in any calendar month in lobbying. Me. Rev. Stat. tit. 3, § 312-A.
- New Mexico: “Lobbyist” means any individual who is compensated for the specific purpose of lobbying; is designated by an interest group or organization to represent it on a substantial or regular basis for the purpose of lobbying; or in the *course of his employment is engaged in lobbying on a substantial or regular basis*. N.M. Stat. Ann. § 2-11-2.
- North Carolina: Lobbyist - An individual who engages in lobbying for payment and meets any of the following criteria: a. Represents another person or governmental unit, but is not directly employed by that person or governmental unit. b. Contracts for payment for lobbying. c. Is employed by a person and a *significant part of that employee's duties* include lobbying. Exceptions: an employee if in no 30-day period *less than 5% of employee's actual duties* include engaging in lobbying; individuals who are specifically exempted or registered as liaison personnel. N.C. Gen. Stat. Ann. § 163A-250.
- Wisconsin: “Lobbyist” means an individual who is employed by a principal, or contracts for or receives economic consideration, other than reimbursement for actual expenses, from a principal and *whose duties include lobbying* on behalf of the principal. *If an individual's duties on behalf of a principal are not limited exclusively to lobbying, the individual is a lobbyist only if he or she makes lobbying communications on each of at least 5 days within a reporting period*. Wis. Stat. Ann. § 13.62.

[Additional states’ definitions are available at: <https://www.ncsl.org/ethics/how-states-define-lobbying-and-lobbyist>]

- In hearing from our members, **we encourage the CFB to consider additional EXEMPTIONS from lobbying** for certain categories. Many other states (including Minnesota) have exemptions, and states like Rhode Island provide an expanded and well-considered list of exemptions from lobbying:

The following persons shall not be deemed “lobbyists” for purposes of this chapter: (from 42 R.I. Gen. Laws Ann. § 42-139.1-3)

(1) *Licensed attorneys* who: (i) Represent a client in a contested administrative proceeding, a licensing or permitting proceeding, or a disciplinary proceeding; and (ii) Engage in any communications with an executive branch official or office if those communications are incidental to the attorney's representation of their client rather than lobbying activities as defined in this section.

(2) A *qualified expert witness* testifying in an administrative proceeding or legislative hearing, either on behalf of an interested party or at the request of the agency or legislative body or committee;

(3) Any member of the general assembly, general officer of the state, municipal elected or appointed official, head of any executive department of state government, and/or head of any public corporation, or a duly appointed designee of one of the foregoing offices acting

in the official capacity of said office, and any judge of this state *acting in their official capacity*;

(4) Persons participating in a governmental *advisory committee or task force*;

(5) Persons appearing on behalf of a *business entity by which they are employed* or organization with which they are associated, *if that person's regular duties do not include lobbying or government relations*;

(6) Persons appearing solely on *their own behalf*;

(7) *Employees or agents of the news media* who write, publish, or broadcast news items or editorials which directly or indirectly promote or oppose any action or inaction by any member or office of the executive or legislative branch of state government;

(8) *Individuals participating in or attending a rally, protest, or other public assemblage* organized for the expression of political or social views, positions, or beliefs;

(9) Individuals participating in any proceeding pursuant to chapter 35 of this title;

(10) Individuals, other than employees or agents of the news media, involved in the *issuance and dissemination of any publication, including data, research, or analysis on public policy issues* that is available to the general public, including news media reports, editorials, commentary or advertisements; and

(11) *Individuals responding to a request for information* made by a state agency, department, legislative body, or public corporation.

- Finally, **we encourage the CFB ELIMINATE the reporting requirement at 4511.0500**, Subp. 2 (C) – underlying sources of money are more appropriate for the Principal Report than the Designated Lobbyist Report. Contract lobbyists are hired by organizations to advocate for their interests to policymakers, and they typically do not have direct access to the funding sources of those organizations. While we question in general why this information is necessary or if it is narrowly tailored, it is not suitable for the Designated Lobbyist report.

3. POLITICAL SUBDIVISIONS

The inclusion of all “political subdivisions” in the lobbyist registration and reporting regulatory schema is unwieldy and leads to significant confusion. While we question why the extensive regulation of advocacy matters at the political subdivision level is necessary – or constitutional – we appreciate the Campaign Finance Board’s attempts to provide better clarity on actions of elected local officials and who may be considered an employee of a political subdivision. Nonetheless, we think additional clarifications are needed, and we reiterate our comments above about narrow tailoring where free speech – particularly at the community level – is concerned.

From: [Amanda Duerr](#)
To: [Olson, Andrew \(CFB\)](#)
Subject: Comments on Proposed Lobbying Rules
Date: Friday, February 02, 2024 4:25:19 PM
Attachments: [Outlook-This is Am.png](#)

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Dear Andrew:

Although there are numerous concerns and sources of confusion with the new lobbyist reporting statutes/proposed rules, I will highlight a few that come top of mind to my organization and members:

- First and foremost, I am concerned about the proposed rulemaking surrounding the reporting of "original source of funding" for membership organizations. The St. Paul Area Chamber has roughly 1,700 members. Dues support the operation of the entire organization, not just government affairs. Is the CFB suggesting that principles will need to report the dues paid by every member (that pays over \$500)? Is the CFB planning to make the reporting form large enough for principles to literally enter thousands of individual members of their organization? Does that not seem administratively burdensome?
- As an organization that engages in advocacy at both the state and political subdivision level, members are concerned about interactions with government that will now trigger lobbyist registration. A few examples:
 - CEO's interacting with Governor/mayors now needing to calculate their time/salary and monitor if a specific ask is made to determine if a lobbying threshold is met.
 - Employees interacting with political subdivisions on normal course of business: the rules surrounding "routine" interactions do not provide much clarity, nor does the explanation of when interactions with appointed officials (especially unelected commissions/staff with decision-making authority) are lobbying.
 - Consider especially developers working on housing/business developments. Numerous decisions need to be made over the course of a project, many of which require approval by council or parks/planning commissions or require ongoing conversation with departmental staff. Most of these conversations are conducted by employees well outside the realm of a typical lobbyist (planning, design, finance, engineering, etc). Under the proposed rules, many aspects of finalizing a development agreement/project would be considered lobbying, which is burdensome.
- The distinction between a subject matter expert being "invited" to testify or choosing to testify in the CFB considering whether the testimony is lobbying activity is not practical from a free speech perspective.
- Representing several non-profit members, I'm also concerned about the differences between what the state and federal government consider lobbying as it pertains to an organization's

tax-exempt status. Significantly more guidance is needed in this area.

As the CFB works to provide clear guidance to the regulated lobbying community, please consider these outstanding questions and concerns.

 **Amanda Duerr**
Vice President of Government Affairs
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SAVE CONTACT

From: [Maureen Shaver](#)
To: [Olson, Andrew \(CFB\)](#)
Subject: Comments for the Campaign Finance Board - New Lobbying Law
Date: Saturday, February 03, 2024 5:12:22 PM
Attachments: [image001.png](#)

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I understand the Campaign Finance Board is interested in hearing directly from lobbyists about the new lobbying law. I have more than 30+ years of experience lobbying, working for elected officials, and as a campaign operative.

The MGRC has done a great job representing the interests of the lobbying and public affairs community and sharing specific questions and concerns. The comment and question I still have for the CFB is ... what problem is the CFB trying to solve?

The much-expanded definition of what is a lobbyist and who must register along with the tracking of what and how someone is lobbying on a bill is going to be hard to comply with, especially since there are not clear guidelines yet available from the CFB and the law has taken effect. The CFB may want to pursue legislation this year to delay the implementation of the law until clear guidelines and an understanding about how the new law will be enforced are available to those you regulate.

I don't understand what the new lobbying law is going to do to help citizens in Minnesota understand their government better. At minimum, I hope the CFB can closely track how often the public seeks out this information and what they do with it. There will be a lot of time, effort and financial resources expended to comply with this new law and there should be some "cost benefit" type analysis done to understand if it makes government more transparent and how often the information is sought by the public.

Thank you for the opportunity to comment.

Maureen Shaver

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DRAFT

1 **CHAPTER 4501, GENERAL PROVISIONS**

2
3 **4501.0100 DEFINITIONS.**

4
5 Subpart 1. **Scope.** The definitions in this part apply to this chapter and chapters 4503 to
6 4525 and Minnesota Statutes, chapter 10A. The definitions in Minnesota Statutes, chapter 10A,
7 also apply to chapters 4503 to 4525.

8
9 Subp. 2. **Address.** "Address" means the complete mailing address, including the zip code.
10 An individual may use either the person's business address or home address. An association's
11 address is the address from which the association conducts its business.

12
13 Subp. 32a. **Audit trail.** "Audit trail" means documentation of submission of an electronic file
14 or facsimile transmission to the board. The audit trail includes the date and time at which the
15 facsimile transmission or electronic file submission was made and a copy of any verification
16 report or message received from the board.

17
18 Subp. 43. **Business day.** A "business day" is from 8:00 a.m. to 4:30 p.m., Monday through
19 Friday, except for official state holidays.

20
21 Subp. 54. **Compensation.** "Compensation" means every kind of payment for labor or
22 personal services. Compensation does not include payments of Social Security, unemployment
23 compensation, workers' compensation, healthcare, retirement, or pension benefits.

24
25 Subp. 64a. **Electronic file.** "Electronic file" means a report or statement required by
26 Minnesota Statutes, chapter 10A, and submitted to the board using an electronic filing system.

27
28 Subp. 74b. **Electronic filing system.** "Electronic filing system" means the computer-based
29 systems developed by the board to transfer an electronic file of data that meets the filing and
30 reporting requirements of Minnesota Statutes, chapter 10A.

31
32 Subp. 84e. **Facsimile transmission.** "Facsimile transmission" means the use of a fax
33 machine or e-mail to submit an electronic image of a report or statement to the board.

34
35 Subp. 95. **Honorarium.** "Honorarium" means anything of value given or received for
36 services such as making speeches, writing articles, or making presentations when there is no
37 obligation on the part of the giver to make payment.

38
39 Subp. 106. **Money.** "Money" means cash and cash equivalents such as checks, money
40 orders, travelers checks, negotiable instruments, and other paper commonly accepted by a
41 bank as a deposit. A transfer of money includes an electronic transfer of funds.

42
43 Subp. 117. **Occupation.** "Occupation" means a person's usual trade, profession,
44 employment, or other similar endeavor, and includes categories for which there is no direct

1 financial compensation, such as homemaker.

2
3 **Subp. 12. Original signature.** "Original signature" means:

4
5 A. a signature in the signer's handwriting, or if the signer is unable to write, the signer's
6 mark or name written in the handwriting of another or applied by stamp at the request, and in
7 the presence, of the signer;

8
9 B. an electronic signature consisting of the letters of the signer's name, applied using a
10 cursive font or accompanied by text or symbols clearly indicating an intent to apply a signature,
11 including but not limited to the letter s with a forward slash mark on one or both sides of the
12 letter s or the placement of a forward slash mark before and after the signer's name; or

13
14 C. the signer's name on the signature line of an electronic file submitted using the filer's
15 personal identification code.

16
17 Subp. 137a. **Personal identification code.** "Personal identification code" is a confidential
18 user name and password provided by the board and required to use an electronic filing system.

19
20 Subp. 148. **Principal place of business.** "Principal place of business" means:

21
22 A. for an employed person, the name of the employer and the address from which the
23 employee conducts the employer's business;

24
25 B. for a self-employed person or a person not employed, the address from which the
26 person conducts business or personal matters; or

27
28 C. for an association, the name and business address of the association.

29
30 Subp. 159. **Promptly.** "Promptly" means within ten business days after the event that gave
31 rise to the requirement.

32
33 **4501.0500 FILINGS, SUBMISSIONS, AND DISCLOSURES.**

34
35 Subpart 1. **Format.** A report or statement required under Minnesota Statutes,
36 section 10A.20, must be filed electronically in a format specified by the board, to the extent
37 required by that section. Any other report or statement required under Minnesota Statutes,
38 chapter 10A, must be filed submitted electronically in a format specified by the board or on the
39 forms provided by the board for that purpose or by an electronic filing system. The board may
40 provide alternative methods for submitting information, including other means for the electronic
41 submission of data.

42
43 Subp. 1a. [Repealed, L 2018 c 119 s 34]

1 ~~Subp. 2. [Repealed, L 2017 1Sp4 art 3 s 18]~~

2

3 Subp. 23. **Filings on nonbusiness days.** If a scheduled filing date falls on a Saturday,
4 Sunday, or state holiday, the filing is due on the next business day.

5

6 ~~Subp. 4. [Repealed, L 2005 c 156 art 6 s 68]~~

DRAFT

1 **CHAPTER 4503, CAMPAIGN FINANCE ACTIVITIES**

2
3 **4503.0100 DEFINITIONS.**

4
5 Subpart 1. **Scope.** The definitions in this part apply to this chapter and Minnesota Statutes,
6 chapter 10A, except that the definition in subpart 7 applies to Minnesota Statutes,
7 section 211B.15. The definitions in chapter 4501 and Minnesota Statutes, chapter 10A, also
8 apply to this chapter.

9
10 Subp. 2. **Adjournment sine die.** "Adjournment sine die" means final adjournment by the
11 legislature in the second year of a biennium.

12
13 Subp. 3. **Anonymous contribution.** "Anonymous contribution" means a contribution for
14 which the name and address of the donor cannot be determined.

15
16 Subp. 4. **County office in Hennepin County.** "County office in Hennepin County" means
17 the offices of county commissioner, county attorney, and sheriff, in Hennepin County, and does
18 not include the office of Three Rivers Park District commissioner.

19
20 Subp. 53a. **Fair market value.** "Fair market value" means the amount that an individual
21 would pay to purchase the same or similar service or item on the open market.

22
23 Subp. 64. **Fundraising event.** "Fundraising event" means a meal, party, entertainment
24 event, rally, or similar gathering of three or more individuals where contributions are solicited or
25 received.

26
27 Subp. 7. **Headquarters.** For the purpose of Minnesota Statutes, section 211B.15,
28 subdivision 8, "headquarters" means a building or other structure that is used for all or part of
29 the year as the primary location where the party's business is conducted.

30
31 Subp. 8. **Legislative caucus.** "Legislative caucus" means an organization whose members
32 consist solely of legislators belonging to the same house of the legislature and the same political
33 party, and is not limited to a majority or minority caucus described in Minnesota Statutes,
34 Chapter 3, but does not include a legislative party unit.

35
36 Subp. 9. **Legislative caucus leader.** "Legislative caucus leader" means a legislator elected
37 or appointed by a legislative caucus to lead that caucus, and is not limited to leaders designated
38 pursuant to Minnesota Statutes, section 3.099.

39
40 Subp. 10. **Legislative party unit.** "Legislative party unit" means a political party unit
41 established by the party organization within a house of the legislature.

42
43 Subp. 11. **Nomination.** Except as used in Minnesota Statutes, sections 10A.09 and
44 10A.201, "nomination" means the placement of a candidate or a local candidate's name on a

1 general election or special general election ballot.

2
3 Subp. 125. **Receipted bill.** "Receipted bill" means an invoice marked paid by the vendor or
4 a canceled check with a corresponding invoice indicating the purpose of the expenditure.

5
6 Subp. 6. [Repealed, L 2018 c 119 s 34]

7
8 Subp. 137. **Statewide election.** "Statewide election" means an election for a statewide
9 constitutional office, appeals court, or supreme court office, or an election in which a question or
10 proposition on the ballot can be voted on by all voters of the state.

11
12 Subp. 148. **Unpaid bill.** "Unpaid bill" means an advance of credit for which payment has not
13 been made. An advance of credit is an unpaid bill from the time it is incurred, regardless of
14 when an actual invoice is received.

15
16 **4503.0200 ORGANIZATION OF POLITICAL COMMITTEES AND POLITICAL FUNDS.**

17
18 Subpart 1. **Organizational information to be provided by a political party.** The statement
19 of organization of a political party must include a list of the names of the party units organized in
20 each house of the legislature and in congressional districts, counties, legislative districts,
21 municipalities, and precincts, along with the name and address of the treasurer and chair of
22 each unit, and must be updated annually.

23
24 Subp. 2. **Officers of principal campaign committee.** A candidate may be chair, treasurer,
25 or both, of the candidate's own principal campaign committee. The candidate is ultimately
26 responsible for the principal campaign committee's compliance with Minnesota Statutes, chapter
27 10A.

28
29 Subp. 3. **When registration is not required.** When a person or group merely solicits
30 contributions with the approval of a candidate or the treasurer, deputy treasurer, or agent of a
31 political committee or political fund and when those contributions are made directly to the
32 reporting committee or fund, that person or group need not establish a separate political
33 committee or political fund.

34
35 Subp. 4. [Repealed, L 2005 c 156 art 6 s 68]

36
37 Subp. 45. **Termination of responsibility of former treasurer.** A former treasurer who
38 transfers political committee or political fund records and receipts to a new treasurer or to the
39 chair of the committee or fund is relieved of future responsibilities ~~when notice required under~~
40 ~~subpart 4 is filed~~ or when the former treasurer notifies the board in writing of the change.

41
42 Subp. 6. [Repealed, L 2017 1Sp4 art 3 s 18]

43

1 **4503.0400 JOINT PURCHASES.**
2

3 Subpart 1. [~~Repealed, L 2017 1Sp4 art 3 s 18~~] **General requirement.** Principal campaign
4 committees, political party units, and political committees and funds may jointly purchase goods
5 or services without making or receiving a donation in kind. If each purchaser pays the vendor for
6 their share of the fair market value of the purchase, each purchaser must report that amount to
7 the board as an expenditure or noncampaign disbursement as required by Minnesota Statutes,
8 section 10A.20. If a purchaser pays the vendor for the total amount of the purchase and obtains
9 payment from another purchaser for that purchaser's share of the fair market value of the
10 purchase, each purchaser must use the same reporting method under Minnesota Statutes,
11 section 10A.20, subdivision 13.
12

13 Subp. 2. [~~Repealed, L 2005 c 156 art 6 s 68~~] **Proportionate shares of joint purchase.** If a
14 purchaser pays a vendor for the total amount of a joint purchase and each joint purchaser
15 receives goods or services of equal value, each joint purchaser must pay the purchaser that
16 paid the vendor an amount equal to the total amount paid to the vendor divided by the number
17 of joint purchasers in order to prevent the occurrence of a donation in kind. If a purchaser pays
18 a vendor for the total amount of a joint purchase and joint purchasers receive goods or services
19 of differing value, each joint purchaser must pay the purchaser that paid the vendor in
20 proportion to the value of the goods or services received in order to prevent the occurrence of a
21 donation in kind. If a joint purchaser pays the purchaser that paid the vendor less than its
22 proportionate share of the fair market value of the joint purchase, the difference must be
23 reported as a donation in kind from the purchaser that paid the vendor to the joint purchaser as
24 required by Minnesota Statutes, section 10A.20.
25

26 Subp. 3. **No impact on prohibited contributions.** Nothing in this part permits an
27 independent expenditure or ballot question political committee or fund to make a contribution,
28 including an approved expenditure, that is prohibited by Minnesota Statutes, section 10A.121, or
29 alters what constitutes a coordinated expenditure.
30

31 **4503.0500 CONTRIBUTIONS.**
32

33 Subpart 1. **All receipts are contributions.** Any donation of money, goods, or services
34 received by a principal campaign committee, political party unit, political committee, or political
35 fund is considered a contribution at the time the item is received.
36

37 Subp. 2. [~~Repealed, L 2018 c 119 s 34~~] **Contribution processors and professional**
38 **fundraisers.** A vendor may solicit, process, collect, or otherwise facilitate the accumulation of
39 contributions made to a principal campaign committee, political party unit, political committee, or
40 political fund, and may temporarily retain or control any contributions collected, without thereby
41 making a contribution to the intended recipient of the contributions, if the vendor is paid the fair
42 market value of the services provided. Contributions collected must be transmitted to the
43 intended recipient, minus any fees withheld by the vendor. A vendor that is paid the fair market
44 value of any goods or services provided is not a political committee or a political fund by virtue

1 of providing those goods or services. A vendor that determines which principal campaign
2 committee, political party unit, political committee, or political fund receives the contributions
3 collected is a political committee or political fund as provided in Minnesota Statutes, section
4 10A.01, even if the recipient of the contributions pays the vendor the fair market value of the
5 services provided to collect the contributions.
6

7 Subp. 3. **Transmission of contributions.** Promptly after receipt of any contribution
8 intended for a principal campaign committee, political party unit, political committee, or political
9 fund, or on demand of the treasurer, any individual, association, or vendor retaining or
10 controlling the contribution must transmit the contribution together with any required record to
11 the treasurer.
12

13 Subp. 4. **Identification of contributor.** An individual or association that pays for or provides
14 goods or services, or makes goods or services available, with the knowledge that they will be
15 used for the benefit of a principal campaign committee, political party unit, political committee, or
16 a political fund, is the contributor of those goods or services.
17

18 Subp. 5. [~~Repealed, L 2017 1Sp4 art 3 s 18~~]
19

20 Subp. 56. **Contributions by joint check.** A contribution given by a check written on a joint
21 account is considered to be a contribution by the persons who signed the check in equal
22 proportions unless the candidate or treasurer of the committee or fund has personal knowledge
23 or affirmatively ascertains from any account holder who did not sign the check that the person is
24 a joint contributor. In such cases, a written notation of the basis for considering the contribution
25 to be a joint contribution must be made at the time the contribution is deposited and kept with
26 the committee's or fund's official records.
27

28 Subp. 67. **Forwarding anonymous contributions.** An anonymous contribution in excess of
29 \$20 must be forwarded to the board in its entirety within 14 days after its receipt by the treasurer
30 along with a statement of the amount of the contribution and the date on which it was received.
31

32 Subp. 78. [~~Repealed, L 2017 1Sp4 art 3 s 18~~]**Underlying sources of funding of**
33 **unregistered associations.** A principal campaign committee, party unit, or political committee
34 or fund that is not an independent expenditure or ballot question political committee or fund,
35 must consider an association's sources of funding in determining whether a contribution may be
36 accepted from an association that is not registered with the board as a principal campaign
37 committee, a party unit, a political committee, or the supporting association of a political fund. A
38 contribution from an unregistered association is prohibited if any of that association's sources of
39 funding would be prohibited from making the contribution directly under Minnesota Statutes,
40 section 211B.15, subdivision 2.
41

42 Subp. 9. [~~Repealed, L 2005 c 156 art 6 s 68~~]
43

1 **4503.0700 CONTRIBUTION LIMITS.**

2
3 Subpart 1. **Loans included in aggregation of contributions.** Contribution limits apply to
4 the aggregation of:

- 5
6 A. money;
7
8 B. donations in kind;
9
10 C. outstanding loans from the contributor; and
11
12 D. proceeds of outstanding loans endorsed by the contributor.

13
14 Subp. 2. ~~[Repealed, L 2017 1Sp4 art 3 s 18]~~ **Commercial vendors not subject to bundling**
15 **limitation.** A vendor retained by a principal campaign committee, political party unit, political
16 committee, or political fund for the accumulation of contributions, and is paid by that committee,
17 party unit, or fund the fair market value of the services provided, as described in part 4503.0500,
18 subpart 2, is not subject to the bundling limitation in Minnesota Statutes, section 10A.27,
19 subdivision 1.

20
21 Subp. 3. ~~[Repealed, L 2017 1Sp4 art 3 s 18]~~

22
23 **4503.0800 DONATIONS IN KIND AND APPROVED EXPENDITURES.**

24
25 Subpart 1. ~~[Repealed, L 2005 c 156 art 6 s 68]~~ **Contributor payment of processing fee.** If a
26 contributor pays a processing fee when making a contribution and the fee would otherwise have
27 been billed to the recipient of the contribution or withheld from the amount transmitted to the
28 recipient, the amount of the fee is a donation in kind to the recipient of the contribution. If the
29 donation in kind exceeds the amount specified in Minnesota Statutes, section 10A.13,
30 subdivision 1, the recipient's treasurer must keep an account of the contribution and must
31 include the contribution within campaign reports as required by Minnesota Statutes,
32 section 10A.20. If the donation in kind does not exceed the amount specified in Minnesota
33 Statutes, section 10A.13, subdivision 1, the recipient's treasurer is not required to keep an
34 account of the contribution or to include it within campaign reports filed under Minnesota
35 Statutes, section 10A.20.

36
37 Subp. 2. **Multicandidate materials.** An approved expenditure made on behalf of multiple
38 candidates or local candidates must be allocated between the candidates or the local
39 candidates on a reasonable basis if the cost exceeds \$20 per candidate or local candidate.

40
41 Subp. 3. **Multipurpose materials.** A reasonable portion of the fair market value of
42 preparation and distribution of association newsletters or similar materials which, in part,
43 advocate the nomination or election of a candidate or a local candidate is a donation in kind

1 which must be approved by the candidate or the local candidate if the value exceeds \$20,
2 unless an independent expenditure is being made.

3
4 Subp. 4. **Office facilities.** The fair market value of shared office space or services provided
5 to a candidate or a local candidate without reimbursement is a donation in kind.

6
7 Subp. 5. **Campaign expenditures for constituent services paid with personal funds.**
8 Costs of providing constituent services that are campaign expenditures and paid with the
9 personal funds of the candidate are a donation in kind to the principal campaign committee of
10 the candidate.

11
12 **4503.0900 NONCAMPAIGN DISBURSEMENTS.**

13
14 Subpart 1. **Additional definitions.** In addition to those listed in Minnesota Statutes, section
15 10A.01, subdivision 26, the following expenses are noncampaign disbursements:

16
17 A. transportation, meals, and lodging paid to attend a campaign school;

18
19 B. costs of campaigning incurred by a person with a disability, as defined in Minnesota
20 Statutes, section 363A.03, subdivision 12, and which are made necessary by the disability;

21
22 C. the cost to an incumbent or a winning candidate of providing services to residents in
23 the district after the general election in an election year for the office held;

24
25 D. payment of advances of credit in a year after the year in which the advance was
26 reported as an expenditure;

27
28 E. payment of fines assessed by the board; ~~and~~

29
30 F. costs of running a transition office for a winning gubernatorial candidate during the
31 first six months after election-; and

32
33 G. costs to maintain a bank account that is required by law, including service fees, the
34 cost of ordering checks, and check processing fees.

35
36 Subp. 2. ~~[Repealed, 21 SR 1779]~~ **Expenses incurred by leaders of a legislative caucus.**
37 **Expenses incurred by a legislative caucus leader in carrying out their leadership responsibilities**
38 **may be paid by their principal campaign committee and classified as a noncampaign**
39 **disbursement for expenses incurred by leaders of a legislative caucus. These expenses must**
40 **be incurred for the operation of the caucus and include, but are not limited to, expenses related**
41 **to operating a website, social media accounts, a telephone system, similar means of**
42 **communication, travel expenses, and legal expenses.**

1 Subp. 3. **Signage and supplies for office holders.** Expenses incurred by an office holder
2 for signage outside their official office and for basic office supplies purchased to aid the office
3 holder in performing the tasks of their office may be paid by their principal campaign committee
4 and classified as a noncampaign disbursement for expenses for serving in public office. These
5 expenses may include signage, stationary, or other means of communication that identify the
6 office holder as a member of a legislative caucus.

7
8 Subp. 4. **Equipment purchases.** The cost of durable equipment purchased by a principal
9 campaign committee, including but not limited to computers, cell phones, and other electronic
10 devices, must be classified as a campaign expenditure unless the equipment is purchased to
11 replace equipment that was lost, stolen, or damaged to such a degree that it no longer serves
12 its intended purpose, or the equipment will be used solely:

13
14 A. by a member of the legislature or a constitutional officer in the executive branch to
15 provide services for constituents during the period from the beginning of the term of office to
16 adjournment sine die of the legislature in the election year for the office held;

17
18 B. by a winning candidate to provide services to residents in the district in accordance
19 with subpart 1;

20
21 C. for campaigning by a person with a disability in accordance with subpart 1;

22
23 D. for running a transition office in accordance with subpart 1; or

24
25 E. as home security hardware.

26
27 **Subp. 53. Reporting purpose of noncampaign disbursements.** Itemization of an expense
28 which is classified as a noncampaign disbursement must include sufficient information to justify
29 the classification.

30
31 **4503.1000 CAMPAIGN MATERIALS INCLUDING OTHER CANDIDATES.**

32
33 **Subpart 1. Inclusion of others without attempt to influence nomination or election.**
34 Campaign materials, including media advertisements, produced and distributed on behalf of one
35 candidate which contain images of, appearances by, or references to another candidate or local
36 candidate, but which do not mention the candidacy of the other candidate or local candidate or
37 make a direct or indirect appeal for support of the other candidate or local candidate, are not
38 contributions to, or expenditures on behalf of that candidate or local candidate.

39
40 **Subp. 2. Multicandidate materials prepared by a candidate.** A candidate who produces
41 and distributes campaign materials, including media advertisements, which include images of,
42 appearances by, or references to one or more other candidates or local candidates, and which
43 mention the candidacy of the other candidates or local candidates or include a direct or indirect
44 appeal for the support of the other candidates or local candidates must collect from each of the

1 other candidates or local candidates a reasonable proportion of the production and distribution
2 costs.

3
4 **4503.1600 AGGREGATED EXPENDITURES.**

5
6 [Repealed, L 2017 1Sp4 art 3 s 18] Expenditures and noncampaign disbursements may be
7 aggregated and reported as lump sums when itemized within a report filed under Minnesota
8 Statutes, section 10A.20, if:

9
10 A. each expenditure or noncampaign disbursement was made to the same vendor;

11
12 B. each expenditure or noncampaign disbursement was made for the same type of goods
13 or services;

14
15 C. each lump sum consists solely of aggregated expenditures or solely of aggregated
16 noncampaign disbursements;

17
18 D. each lump sum consists solely of aggregated expenditures or noncampaign
19 disbursements that are paid, are unpaid, or represent the dollar value of a donations in kind;

20
21 E. the expenditures and noncampaign disbursements are aggregated over a period of no
22 more than 31 days; and

23
24 F. all expenditures and noncampaign disbursements made prior to the end of a reporting
25 period are included within the report covering that period.

26
27 Lump sums must be dated based on the last date within the period over which the
28 expenditures or noncampaign disbursements are aggregated. This subpart does not alter
29 the date an expenditure is made for purposes of the registration requirements provided in
30 Minnesota Statutes, section 10A.14.

31
32 **4503.1700**

33
34 [Repealed, L 2017 1Sp4 art 3 s 18]

35
36 **4503.1800 DISCLAIMERS.**

37
38 [Repealed, L 2017 1Sp4 art 3 s 18] Subpart 1. **Additional definitions.** The following
39 definitions apply to this part and Minnesota Statutes, section 211B.04:

40
41 A. "Broadcast media" means a television station, radio station, cable television system,
42 or satellite system.

1 B. "Social media platform" means a website or application that allows multiple users to
2 create, share, and view user-generated content, excluding a website controlled primarily by the
3 association or individual that caused the communication to be prepared or disseminated.
4

5 Subp. 2. **Material linked to a disclaimer.** Minnesota Statutes, section 211B.04, does not
6 apply to the following communications that link directly to an online page that includes a
7 disclaimer in the form required by that section, if the communication is made by or on behalf of a
8 candidate, principal campaign committee, political committee, political fund, political party unit,
9 or person who has made an electioneering communication, as those terms are defined in
10 Minnesota Statutes, Chapter 10A:
11

12 A. text, images, video, or audio, disseminated via a social media platform;

13
14 B. a text or multimedia message disseminated only to telephone numbers;
15

16 C. text, images, video, or audio, disseminated using an application accessed primarily
17 via mobile phone, excluding email messages, telephone calls, and voicemail messages; and
18

19 D. paid electronic advertisements disseminated via the internet by a third-party,
20 including but not limited to online banner advertisements and advertisements appearing within
21 the electronic version of a newspaper, periodical, or magazine.
22

23 The link must be conspicuous and when selected must result in the display of an online
24 page that prominently includes the required disclaimer.

1 **CHAPTER 4511, LOBBYIST REGISTRATION AND REPORTING**

2
3 **4511.0100 DEFINITIONS.**

4
5 Subpart 1. **Scope.** The definitions in this part apply to this chapter and Minnesota Statutes,
6 chapter 10A. The definitions in chapter 4501 and in Minnesota Statutes, chapter 10A, also apply
7 to this chapter.

8
9 ~~Subp. 1a. [Repealed, L 2023 c 62 art 5 s 44]~~

10
11 Subp. 2. **Administrative overhead expenses.** “Administrative overhead expenses” means
12 costs incurred by the principal for office space, transportation costs, and website operations,
13 that are used to support lobbying in Minnesota.

14
15 Subp. 3. **Development of prospective legislation.** “Development of prospective
16 legislation” means communications that request support for legislation that has not been
17 introduced as a bill, communications that provide language, or comments on language, used in
18 draft legislation that has not been introduced as a bill, or communications that are intended to
19 facilitate the drafting of language, or comments on language, used in draft legislation that has
20 not been introduced as a bill.

21
22 The following actions do not constitute development of prospective legislation:

23
24 A. responding to a request for information by a public official;

25
26 B. requesting that a public official respond to a survey on the official’s support or
27 opposition for an issue;

28
29 C. providing information to public officials in order to raise awareness and educate on
30 an issue or topic; or

31
32 D. advocating for an issue without requesting action by the public official.

33
34 Subp. 4. **Employee of a political subdivision.** “Employee of a political subdivision”
35 includes an individual hired or appointed by the political subdivision. An individual is also an
36 employee of a political subdivision if the individual is:

37
38 A. hired to provide the political subdivision services as a consultant or independent
39 contractor; or

40
41 B. the individual is employed by a business that has contracted with the political
42 subdivision to provide legal counsel, professional services, or policy recommendations to the
43 political subdivision.

1 Subp. ~~52~~. **Gift.** "Gift" has the meaning given in chapter 4512 and Minnesota Statutes,
2 section 10A.071.

3
4 Subp. ~~63~~. **Lobbying.** "Lobbying" means attempting to influence legislative action,
5 administrative action, or the official action of a ~~metropolitan-governmental-unit~~political
6 subdivision by communicating with or urging others to communicate with public officials or local
7 officials ~~in metropolitan-governmental-units~~. Any activity that directly supports this
8 communication is considered a part of lobbying. Payment of an application fee, or processing
9 charge, for a government service, permit, or license is not lobbying or an activity that directly
10 supports lobbying.

11
12 Subp. ~~74~~. **Lobbyist's disbursements.** "Lobbyist's disbursements" include all disbursements
13 for ~~lobbying each gift given~~ made by the lobbyist, the lobbyist's employer or employee, or any
14 person or association represented by the lobbyist, ~~but do not include compensation paid to the~~
15 ~~lobbyist.~~

16
17 Subp. ~~85~~. **Original source of funds.** "Original source of funds" means a source of funds,
18 provided by an individual or association other than the entity for which a lobbyist is registered,
19 paid to the lobbyist, the lobbyist's employer, the entity represented by the lobbyist, or the
20 lobbyist's principal, for lobbying purposes.

21
22 Subp. ~~9~~. **Pay or consideration for lobbying.** "Pay or consideration for lobbying" means the
23 gross compensation paid to an individual for lobbying. An individual whose job responsibilities
24 do not include lobbying, and who has not been directed or requested to lobby on an issue by
25 their employer, does not receive pay or consideration for lobbying they undertake on their own
26 initiative.

27
28 Subp. ~~106~~. **Public higher education system.** "Public higher education system" includes the
29 University of Minnesota and the Minnesota State Colleges and Universities governed by
30 Minnesota Statutes, chapter 136F. The board may issue advisory opinions at the request of
31 other entities with respect to whether or not they are also included within this definition.

32
33 Subp. ~~117~~. **Reporting lobbyist.** "Reporting lobbyist" means a lobbyist responsible for
34 reporting lobbying ~~disbursements-activity~~ of two or more lobbyists representing the same entity.
35 Lobbying ~~disbursements-activity~~ made on behalf of an entity may be reported by each individual
36 lobbyist that represents an entity, or by one or more reporting lobbyists, or a combination of
37 individual reports and reports from a reporting lobbyist.

38
39 Subp. ~~12~~. **State agency.** "State agency" means any office, officer, department, division,
40 bureau, board, commission, authority, district, or agency of the State of Minnesota.

1 **4511.0200 REGISTRATION.**

2
3 Subpart 1. **Registration threshold.** An individual must register as a lobbyist with the board
4 upon the earlier of when:

5
6 A. the individual receives total pay or consideration from all sources that exceeds
7 \$3,000 in a calendar year, for the purpose of lobbying, or from a business whose primary source
8 of revenue is derived from facilitating government relations or government affairs services if the
9 individual's job duties include offering direct or indirect consulting or advice that helps the
10 business provide those services to clients. The pay or consideration for lobbying for an
11 individual whose job duties includes both lobbying and functions unrelated to lobbying is
12 determined by multiplying the gross compensation of the individual by the percentage of the
13 individual's work time spent lobbying in the calendar year; or

14
15 B. the individual spends more than \$3,000 of their own funds in a calendar year for the
16 purpose of lobbying. Membership dues paid by the individual, and expenses for transportation,
17 lodging, and meals used to support lobbying by the individual, are not costs that count towards
18 the \$3,000 expenditure threshold that requires registration.

19
20 Subp. 2. **Registration not required.** An individual is not required to register as a lobbyist
21 with the board:

22
23 A. to represent the lobbyist's own interests, if the lobbyist is already registered to
24 represent one or more principals, unless the lobbyist spends over \$3,000 in personal funds in a
25 calendar year for the purpose of lobbying; or

26
27 B. as a result of serving on the board or governing body of an association that is a
28 principal, unless the individual receives pay or other consideration to lobby on behalf of the
29 association, and the aggregate pay or consideration for lobbying from all sources exceeds
30 \$3,000 in a calendar year.

31
32 Subpart. 13. **Separate registration required for each entity.** A lobbyist who lobbies on
33 behalf of more than one individual, association, political subdivision, or public higher education
34 system shall register separately for each separate entity. Members or affiliates of an association
35 represented by a lobbyist are not separate entities for the purposes of this requirement.

36
37 Subp. 24. **Separate registration for each lobbyist.** Multiple lobbyists representing the
38 same individual, association, political subdivision, or higher education system must each
39 register separately. A lobbyist who ~~reports~~ provides lobbying activity disbursements to the board
40 through a reporting lobbyist must list the name and registration number of the reporting lobbyist
41 on a lobbyist registration. If the reporting lobbyist changes, or if the lobbyist ceases to report
42 through a reporting lobbyist, the lobbyist must amend the registration within ten days.

1 Subp. ~~35~~. **Registration of designated lobbyist.** A designated lobbyist must indicate on the
2 lobbyist registration form that the lobbyist will be reporting disbursements for the entity the
3 lobbyist represents. An entity that employs lobbyists may have only one designated lobbyist. A
4 designated lobbyist who ceases to be responsible for reporting the lobbying disbursements of
5 an entity must amend the lobbyist's registration with the board within ten days.
6

7 Subp. 46. **Registration of reporting lobbyist.** A reporting lobbyist must indicate on the
8 lobbyist registration form that the lobbyist will be reporting lobbying activity disbursements for
9 additional lobbyists representing the same entity. The registration must list the name and
10 registration number of each lobbyist that will be included in reports to the board of disbursements
11 made by the reporting lobbyist. Changes to the list of lobbyists represented by a reporting
12 lobbyist must be amended on the reporting lobbyist registration within ten days, or provided to
13 the board at the time of filing a report required by Minnesota Statutes, section 10A.04,
14 subdivision 2.
15

16 **4511.0300 PRINCIPALS.**

17
18 Individuals or associations represented by lobbyists are presumed to be principals until they
19 establish that they do not fall within the statutory definition of a principal. A political subdivision,
20 public higher education system, or any office, department, division, bureau, board, commission,
21 authority, district, or agency of the State of Minnesota, is not an association under Minnesota
22 Statutes, section 10A.01, and is not a principal.
23

24 **4511.0400 TERMINATION.**

25
26 Subpart 1. **Lobbyist termination.** A lobbyist who has ceased lobbying for a particular entity
27 may terminate registration by filing a lobbyist termination form and a lobbyist ~~disbursement~~
28 report covering the period from the last report filed through the date of termination. If the
29 lobbying ~~disbursements~~ activity of the lobbyist ~~is~~ are reported by a reporting lobbyist, the
30 nonreporting lobbyist may terminate by filing a lobbyist termination form and notifying the
31 reporting lobbyist of all ~~disbursements made~~ lobbying activity by the lobbyist during the period
32 from the last report filed through the date of termination.
33

34 Subp. 2. **Reporting lobbyist termination.** A reporting lobbyist who has ceased lobbying for
35 a particular entity may terminate registration by filing a lobbyist termination form and a lobbyist
36 ~~disbursement~~ report covering the period from the last report filed through the date of
37 termination. The termination of a reporting lobbyist reverts the reporting responsibility back to
38 each lobbyist listed on the registration of the reporting lobbyist.
39

40 Subp. 3. **Designated lobbyist termination.** A designated lobbyist who has ceased lobbying
41 for a particular entity may terminate their registration using the procedure provided in subpart 1.
42 When the designated lobbyist of a lobbying entity terminates, the entity is responsible to assign
43 the responsibility to report the entity's lobbying disbursements to another lobbyist.
44

1 **4511.0500 LOBBYIST REPORTING REQUIREMENTS.**

2
3 Subpart 1. **Separate reporting required for each entity.** A lobbyist must report separately
4 for each entity for which the lobbyist is registered, unless their activity disbursements are
5 reported in the manner provided in Minnesota Statutes, section 10A.04, subdivision 9subpart 2.

6
7 Subp. 2. [~~Repealed, L 2017 1Sp4 art 3 s 18~~]

8
9 Subp. ~~23~~. **Report of officers and directors information designated lobbyist.** With each
10 report of lobbyist activity disbursements, a designated lobbyist must report ~~any change in the~~
11 ~~name and address of:~~

12
13 A. the name and address of each person, if any, by whom the lobbyist is retained or
14 employed or on whose behalf the lobbyist appears;~~or~~

15
16 B. if the lobbyist represents an association, a current list of the names and addresses of
17 each officer and director of the association;

18
19 C. each original source of money in excess of \$500 provided to the individual or
20 association that the lobbyist represents; and

21
22 D. each gift to a public or local official given by or on behalf of a principal or a lobbyist
23 registered for the principal.

24
25 Subp. ~~34~~. **Limitation on reporting of loans.** A lobbyist is not required to report loans to a
26 public official or a local official if:

27
28 A. the lobbyist's employer, principal, or association represented which made the loan is
29 a financial institution; and

30
31 B. the loan was made in the ordinary course of business on substantially the same
32 terms as those prevailing for comparable transactions with other persons.

33
34 ~~Subp. 5. **Reporting gifts.** A gift to a public or local official from a principal for which a~~
35 ~~lobbyist is registered must be reported by the designated reporting lobbyist.~~

36
37 **4511.0600 REPORTING DISBURSEMENTS.**

38
39 Subpart 1. **Determination of actual costs required.** To the extent that actual costs of
40 lobbying activities, or administrative overhead expenses incurred by the principal to support
41 lobbying, can be obtained or calculated by reasonable means, those actual costs must be
42 determined, recorded, and used for reporting purposes.

1 Subp. 2. **Approximation of costs.** If the actual cost of a lobbying activity, or administrative
2 overhead expenses incurred by the principal to support lobbying, cannot be obtained or
3 calculated through reasonable means, those costs must be reasonably approximated.

4
5 Subp. 3. **Disbursements allocated between multiple entities.** A disbursement for
6 lobbying purposes that benefits more than one entity for which a lobbyist is separately
7 registered must be allocated between the entities benefited on a reasonable basis and reported
8 based on that allocation.

9
10 Subp. 4. **Disbursements which are only partially in support of lobbying.** A disbursement
11 that is partially in support of lobbying and partially for a nonlobbying purpose must be allocated
12 on a reasonable basis between the two purposes and the portion which is for lobbying activities
13 must be reported.

14
15 ~~Subp. 5. [Repealed, L 2023 c 62 art 5 s 44]~~

16
17 Subp. 56. **Effect of gift prohibition.** The reporting requirements in this part do not change
18 the scope of the statutory prohibition under Minnesota Statutes, section 10A.071, nor do they
19 create additional exceptions to that prohibition.

20 21 **4511.0700 REPORTING COMPENSATION PAID TO LOBBYIST.**

22
23 Subpart 1. **Reporting by lobbyist.** Compensation paid to a lobbyist for lobbying is not
24 reportable by the lobbyist ~~as a lobbyist disbursement.~~

25
26 Subp. 2. **Reporting by principal.** Compensation for lobbying paid by a lobbyist principal to
27 a lobbyist or to the employer of a lobbyist must be included when determining the spending level
28 categories for reporting by the lobbyist principal.

29 30 **4511.0900 LOBBYIST REPORTING FOR POLITICAL SUBDIVISION MEMBERSHIP** 31 **ORGANIZATIONS.**

32
33 Subpart 1. **Required reporting.** An association whose membership consists of political
34 subdivisions within Minnesota, and which is a principal that provides lobbyist representation on
35 issues as directed by its membership, must report:

36
37 A. attempts to influence administrative action on behalf of the organization's
38 membership;

39
40 B. attempts to influence legislative action on behalf of the organization's membership;
41 and

42
43 C. attempts to influence the official action of a political subdivision on behalf of the
44 organization's membership, unless the political subdivision is a member of the association.

1
2 Subp. 2. **Communication with membership.** A membership association described in
3 subpart 1 is not lobbying political subdivisions when the association communicates with its
4 membership regarding lobbying efforts made on the members' behalf, or when the association
5 recommends actions by its membership to support a lobbying effort.
6

7 **4511.1000 ACTIONS AND APPROVAL OF ELECTED LOCAL OFFICIALS.**
8

9 Subpart 1. **An action that requires a vote of the governing body.** Attempting to influence
10 the vote of an elected local official while acting in their official capacity is lobbying of that
11 official's political subdivision.
12

13 Subp. 2. **Approval by an elected local official.** Attempting to influence a decision of an
14 elected local official that does not require a vote by the elected local official is lobbying if the
15 elected local official has discretion in their official capacity to either approve or deny a
16 government service or action. Approval by an elected local official does not include:
17

18 A. issuing a government license, permit, or variance that is routinely provided when the
19 applicant has complied with the requirements of existing state code or local ordinances;
20

21 B. any action which is performed by the office of the elected local official and which
22 does not require personal approval by an elected local official;
23

24 C. prosecutorial discretion exercised by a county attorney; or
25

26 D. participating in discussions with a party or a party's representative regarding litigation
27 between the party and the political subdivision of the elected local official.
28

29 **4511.1100 MAJOR DECISION OF NONELECTED LOCAL OFFICIALS.**
30

31 Subpart 1. **Major decision regarding the expenditure of public money.** Attempting to
32 influence a nonelected local official is lobbying if the nonelected local official may make,
33 recommend, or vote on as a member of the political subdivision's governing body, a major
34 decision regarding an expenditure or investment of public money.
35

36 Subpart 2. **Actions that are a major decision regarding public funds.** A major decision
37 regarding the expenditure or investment of public money includes, but is not limited to, a
38 decision on:
39

40 A. the development and ratification of operating and capital budgets of a political
41 subdivision, including development of the budget request for an office or department within the
42 political subdivision;
43

44 B. whether to apply for, or accept, state or federal funding or private grant funding;

1
2 C. selecting recipients for government grants from the political subdivision; or

3
4 D. expenditures on public infrastructure used to support private housing or business
5 developments.

6
7 Subpart 3. **Actions that are not a major decision.** A major decision regarding the
8 expenditure of public money does not include:

9
10 A. the purchase of goods or services with public funds in the operating or capital budget
11 of a political subdivision;

12
13 B. collective bargaining of a labor contract on behalf of a political subdivision; or

14
15 C. participating in discussions with a party or a party's representative regarding litigation
16 between the party and the political subdivision of local official.

17
18 Subp. 2. **Major decision regarding the investment of public money.** Attempting to
19 influence a nonelected local official is lobbying if the nonelected local official is making a major
20 decision regarding the investment of public money. A major decision regarding the investment
21 of public money includes, but is not limited to, the authority to make, recommend, or vote on as
22 a member of the political subdivision's governing body, a decision regarding investment options
23 for government employee retirement plans, or investment options or depositories for funds of
24 the political subdivision.

25
26 The rules committee decided to bring the following three versions of 4511.1200 to the full Board
27 for discussion.

28
29 **4511.1200 ATTEMPTING TO INFLUENCE AN ELECTED OR NONELECTED LOCAL**
30 **OFFICIAL.**

31
32 An individual providing an elected or nonelected local official information, data, advice, opinions,
33 variables, options or directions as professional licensee under Minnesota Statutes Section
34 326.02 through 326.15 or under the direct supervision of a licensee under Minnesota Statutes
35 Section 326.02 through 326.15 shall not be considered attempting to influence that elected or
36 nonelected local official.

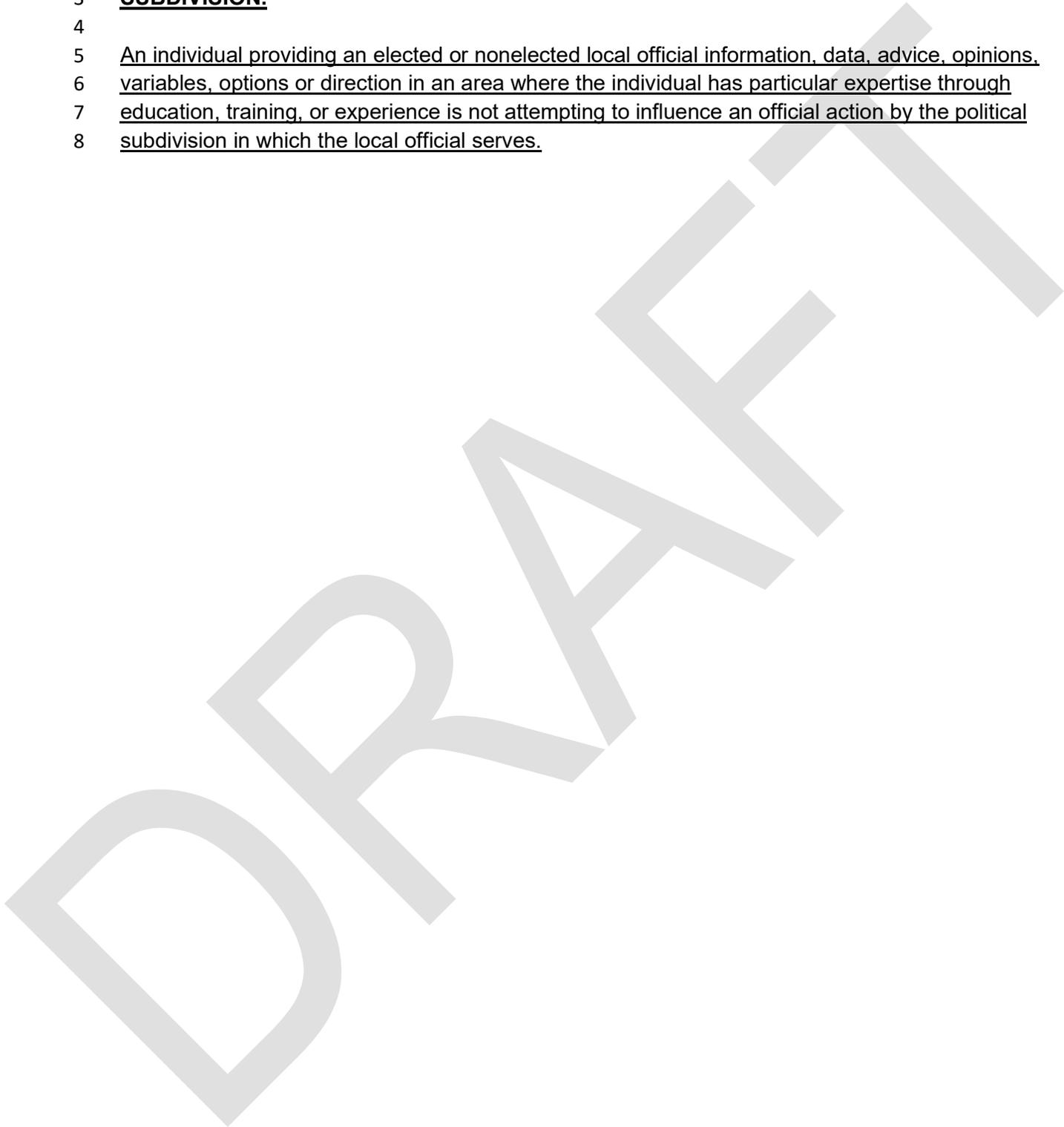
37
38 **4511.1200 ATTEMPTING TO INFLUENCE AN ELECTED OR NONELECTED LOCAL**
39 **OFFICIAL.**

40
41 An individual providing an elected or nonelected local official information, data, advice, opinions,
42 variables, options or direction in an area where the individual has a particular expertise through
43 education, training, or experience shall not be considered attempting to influence that elected or
44 nonelected local official.

1
2
3
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8

4511.1200 ATTEMPTING TO INFLUENCE AN OFFICAL ACTION OF A POLITICAL SUBDIVISION.

An individual providing an elected or nonelected local official information, data, advice, opinions, variables, options or direction in an area where the individual has particular expertise through education, training, or experience is not attempting to influence an official action by the political subdivision in which the local official serves.



1 **CHAPTER 4512, GIFT PROHIBITION**

2
3 **4512.0200 GIFTS WHICH MAY NOT BE ACCEPTED.**

4
5 Subpart 1. **Acceptance.** An official may not accept a gift given by a lobbyist or lobbyist
6 principal or given as the result of a request by a lobbyist or lobbyist principal unless the gift
7 satisfies an exception under this part or Minnesota Statutes, section 10A.071.

8
9 Subp. 2. **Use of gift to ~~metropolitan governmental unit~~ political subdivision.** An official
10 may not use a gift given by a lobbyist or lobbyist principal to a ~~metropolitan governmental~~
11 ~~unit~~ political subdivision until the gift has been formally accepted by an official action of the
12 governing body of the ~~metropolitan governmental unit~~ political subdivision.

13
14 Subp. 3. **Exception.** A gift is not prohibited if it consists of informational material given by a
15 lobbyist or principal to assist an official in the performance of official duties and the lobbyist or
16 principal had a significant role in the creation, development, or production of that material.

1 **CHAPTER 4525, HEARINGS, AUDITS, AND INVESTIGATIONS**

2
3 **4525.0100 DEFINITIONS.**

4
5 Subpart 1. **Scope.** The definitions in this part apply to this chapter and Minnesota Statutes,
6 chapter 10A. The definitions in chapter 4501 and in Minnesota Statutes, chapter 10A, apply to
7 this chapter.

8
9 ~~Subp. 1a. [Repealed, 20 SR 2504]~~

10
11 ~~Subp. 2. [Repealed, 20 SR 2504]~~

12
13 ~~Subp. 2a.~~ **Complaint.** "Complaint" means a written statement, including any attachments,
14 that:

15
16 A. alleges that the subject named in the complaint has violated Minnesota Statutes,
17 chapter 10A, or another law under the board's jurisdiction; and

18
19 B. complies with the requirements in part 4525.0200, subpart 2.

20
21 ~~Subp. 3a.~~ **Complainant.** "Complainant" means the filer of a complaint.

22
23 ~~Subp. 3b.~~ **Contested case.** "Contested case" means a proceeding conducted under
24 Minnesota Statutes, chapter 14, in which the legal rights, duties, or privileges of specific parties
25 are required by law or constitutional right to be determined after a board hearing. "Contested
26 case" includes a proceeding pursuant to a request for exemption from campaign reporting
27 requirements under Minnesota Statutes, section 10A.20, subdivisions 8 and 10; a hearing
28 ordered by the board under part 4525.0900, subpart 2, concerning a complaint, investigation, or
29 audit; and any other hearing which may be ordered by the board under parts 4525.0100 to
30 4525.1000 or which may be required by law.

31
32 "Contested case" does not include a board investigation or audit conducted under
33 Minnesota Statutes, section 10A.022, subdivisions 1 and 2.

34
35 ~~Subp. 4. [Repealed, 20 SR 2504]~~

36
37 ~~Subp. 5. [Repealed, 39 SR 757]~~ **Preponderance of the evidence.** "Preponderance of the
38 evidence" means, in light of the record as a whole, the evidence leads the board to believe that
39 a fact is more likely to be true than not true.

40
41 ~~Subp. 6. [Repealed, 39 SR 757]~~

42
43 ~~Subp. 7. [Repealed, 20 SR 2504]~~

1 ~~Subp. 8. **Respondent.**~~ "Respondent" means the subject of a complaint, an investigation, or
2 an audit.

3
4 **4525.0200 COMPLAINTS OF VIOLATIONS.**

5
6 Subpart 1. **Who may complain.** A person who believes a violation of Minnesota Statutes,
7 chapter 10A, or another provision of law placed under the board's jurisdiction by Minnesota
8 Statutes, section 10A.022, subdivision 3, or rules of the board has occurred may submit a
9 written complaint to the board.

10
11 Subp. 2. **Form.** Complaints must be submitted in writing. The name and address of the
12 person making the complaint, or of the individual who has signed the complaint while acting on
13 the complainant's behalf, must be included on the complaint, ~~and it~~The complaint must be
14 signed by the complainant or an individual authorized to act on behalf of the complainant. A
15 complainant ~~must~~shall list the alleged violator and the alleged violator's address if known by the
16 complainant and describe the complainant's knowledge of the alleged violation. Any evidentiary
17 material should be submitted with the complaint. Complaints are not available for public
18 inspection or copying until after the complaint is dismissed or withdrawn or the board makes a
19 finding.

20
21 Subp. 3. ~~[Repealed, 30-SR-903]~~**Withdrawal.** Prior to a prima facie determination being
22 made, a complaint may be withdrawn upon the written request of the person making the
23 complaint or any individual authorized to act on that person's behalf. After a prima facie
24 determination is made, a complaint may not be withdrawn.

25
26 Subp. 4. **Oath.** Evidentiary testimony given in a meeting conducted by the board under this
27 chapter must be under oath. Arguments made to the board that do not themselves constitute
28 evidence are not required to be under oath.

29
30 Subp. 5. **Confidentiality.** Any portion of a meeting during which the board is hearing
31 testimony or taking action concerning any complaint, investigation, preparation of a conciliation
32 agreement, or a conciliation meeting must be closed to the public. The minutes and tape
33 recordings of a meeting closed to the public must be kept confidential.

34
35 Subp. 6. **Hearings.** At any time during an investigation of a complaint, the board may hold a
36 contested case hearing before making a finding on the complaint.

37
38 **4525.0210 DETERMINATIONS PRIOR TO AND DURING FORMAL INVESTIGATION.**

39
40 Subpart 1. ~~[Repealed, L 2017-1Sp4 art 3 s 18]~~

41
42 ~~Subp. 2. **Making the prima facie determination.**~~ In determining whether a complaint states
43 a prima facie violation, any evidence outside the complaint and its attachments may not be

1 considered. Arguments of the respondent, which are not themselves evidence, must be
2 considered.

3
4 If a finding is made that a complaint does not state a prima facie violation, the complaint
5 must be dismissed without prejudice. The dismissal must be ordered by the board member
6 making the determination or by the full board if the full board makes the determination. The
7 determination must be in writing and must indicate why the complaint does not state a prima
8 facie violation.

9
10 If a finding is made that a complaint states a prima facie violation, the board chair must
11 schedule the complaint for a probable cause determination.

12
13 Subp. 23. **Action after prima facie violation determination.** The executive director must
14 promptly notify the complainant and the respondent of the prima facie determination. The notice
15 must include a copy of the prima facie determination.

16
17 If a determination is made that a complaint states a prima facie violation, the notice also
18 must include the date of the meeting at which the board will make a probable cause
19 determination regarding the complaint and a statement that the complainant and the
20 respondent have the opportunity to be heard before the board makes the probable cause
21 determination.

22
23 Subp. 3. Making the probable cause determination. In determining whether there is
24 probable cause to believe a violation occurred, any evidence obtained by or known to the board
25 may be considered. Arguments of the respondent and complainant must be considered.
26 Probable cause exists if there are sufficient facts and reasonable inferences to be drawn
27 therefrom to believe that a violation of law has occurred.

28
29 Subp. 4. **Action after probable cause not found.** If the board finds that probable cause
30 does not exist to believe that a violation has occurred, the board must order that the complaint
31 be dismissed without prejudice. The order must be in writing and must indicate why probable
32 cause does not exist to believe that a violation has occurred.

33
34 The executive director must promptly notify the complainant and the respondent of the
35 board's determination. The notice must include a copy of the order dismissing the complaint
36 for lack of probable cause.

37
38 Subp. 5. **Action after probable cause found.** If the board finds that probable cause exists
39 to believe that a violation has occurred, the board then must determine whether the alleged
40 violation warrants a formal investigation.

41
42 When making this determination, the board must consider the type of possible violation;
43 the magnitude of the violation if it is a financial violation; the extent of knowledge or intent of
44 the violator; the benefit of formal findings, conclusions, and orders compared to informal

1 resolution of the matter; the availability of board resources; whether the violation has been
2 remedied; and any other similar factor necessary to decide whether the alleged violation
3 warrants a formal investigation.
4

5 If the board orders a formal investigation, the order must be in writing and must describe
6 the basis for the board's determination, the possible violations to be investigated, the scope
7 of the investigation, and the discovery methods available for use by the board in the
8 investigation.
9

10 The executive director must promptly notify the complainant and the respondent of the
11 board's determination.
12

13 The notice to the respondent also must:

14 A. include a copy of the probable cause order;

15 B. explain how the investigation is expected to proceed and what discovery methods
16 are expected to be used;

17 C. explain the respondent's rights at each stage of the investigation, including the right
18 to provide a written response and the right to counsel; and
19

20 D. state that the respondent will be given an opportunity to be heard by the board prior
21 to the board's determination as to whether any violation occurred.
22

23 At the conclusion of the investigation the board must determine whether a violation
24 occurred. The board's determination of any disputed facts must be based upon a
25 preponderance of the evidence.
26

27 **Subp. 6. Action if formal investigation not ordered.** If the board finds that probable cause
28 exists to believe that a violation has occurred, but does not order a formal investigation under
29 subpart 5, the board must either dismiss the matter without prejudice or order a staff review
30 under part 4525.0320.
31

32 In making the determination of whether to dismiss the complaint or order a staff review,
33 the board must consider the type of possible violation, the magnitude of the violation if it is a
34 financial violation, the extent of knowledge or intent of the violator, the availability of board
35 resources, whether the violation has been remedied, and any other similar factor necessary
36 to decide whether to proceed with a staff review.
37

38 An order dismissing a matter must be in writing and must indicate why the matter was
39 dismissed.
40
41
42
43

1 The executive director must promptly notify the complainant and the respondent of the
2 board's determination. The notice must include a copy of the order.

3 4 **4525.0220 SUMMARY PROCEEDINGS.**

5
6 Subpart 1. **Summary proceeding.** A summary proceeding is an action other than a
7 complete formal investigation that is undertaken to resolve a matter, or a part of a matter, that is
8 the subject of a complaint, an investigation, or an audit. A staff review under part 4525.0320 is
9 one form of summary proceeding.

10
11 Subp. 2. **Request by respondent.** At any time, a respondent may request that a matter or a
12 part of a matter be resolved using a summary proceeding. The request must be in writing and
13 must:

14
15 A. specify the issues the respondent is seeking to resolve through the summary
16 proceeding;

17
18 B. explain why those issues are suitable for the summary proceeding; and

19
20 C. explain how the proposed summary proceeding would be undertaken.

21
22 Subp. 3. **Consideration of request by board.** Upon receipt of a request for a summary
23 proceeding, the executive director must submit the request to the board. If the matter was
24 initiated by a complaint, the complaint has not been dismissed, and a probable cause
25 determination has not been made, the executive director must send a copy of the request to the
26 complainant no later than the time that the request is submitted to the board. Under any other
27 circumstances a complainant must not be notified, or provided a copy, of the request. The
28 request must be considered by the board at its next meeting that occurs at least ten days after
29 the request was received. If the executive director sends a copy of the request to the
30 complainant pursuant to this subpart, the complainant must be given an opportunity to be heard
31 by the board.

32
33 The board is not required to agree to a request for a summary proceeding. If the board
34 modifies the respondent's request for a summary proceeding, the board must obtain the
35 respondent's agreement to the modifications before undertaking the summary proceeding.

36 37 **4525.0500 INVESTIGATIONS AND AUDITS; GENERAL PROVISIONS.**

38
39 Subpart 1. **No complaint.** The board may undertake investigations or audits with respect to
40 statements and reports which are filed or should have been filed under Minnesota Statutes,
41 chapter 10A, although no complaint has been filed. Any decision as to whether an investigation
42 should be undertaken must be made at a closed meeting of the board.

1 Subp. 2. ~~[Repealed, 39 SR 757]~~ **Penalties.** In exercising discretion as to the imposition of a
2 civil penalty for violation of a statute within the board's jurisdiction, the board must consider the
3 factors identified in Minnesota Statutes, section 14.045. The board also may consider additional
4 factors such as whether a violator created and complied with appropriate internal controls or
5 policies before the violation occurred; whether the violator could have avoided the violation;
6 whether the violator voluntarily reported or corrected any violation; and whether the violator took
7 measures to remedy or mitigate any violation or avoid future violations.
8

9 Subp. 3. **Contested case hearing.** At any time during an investigation or audit, the board
10 may hold a contested case hearing before making a finding on any investigation or audit.
11

12 Subp. 4. ~~[Repealed, 20 SR 2504]~~
13

14 Subp. 45. **Board meetings.** Board meetings related to an investigation or audit must be
15 conducted in accordance with part 4525.0200, subparts 4 and 5. At every board meeting, the
16 executive director must report on the status of each active investigation and audit.
17

18 Subp. 56. **Subpoenas.** The board may issue subpoenas when necessary to advance an
19 investigation or audit. The board may not issue a subpoena for the production of documents or
20 witness testimony until a respondent has had at least 14 days to respond to a written request for
21 the documents or testimony. When deciding whether to issue a subpoena, the board must
22 consider the level of staff resources in taking witness testimony and conducting discovery.
23

24 Subp. 67. **Respondent submission.** In any investigation, audit, or staff review or other
25 summary proceeding, the respondent may supply additional information not requested by the
26 board, including sworn testimony. The executive director must provide the information submitted
27 by the respondent to the board in advance of the meeting at which the board will consider the
28 matter.
29

30 **4525.0550 FORMAL AUDITS.**

31

32 Subpart 1. **Formal audit.** The purpose of a formal audit is to ensure that all information
33 included in the report or statement being audited is accurately reported. The fact that the board
34 is conducting a formal audit does not imply that the subject of the audit has violated any law.
35 When conducting an audit, the board may require testimony under oath, permit written
36 statements to be given under oath, and issue subpoenas and cause them to be served. When
37 conducting an audit the board may require the production of any records required to be retained
38 under Minnesota Statutes, section 10A.025.
39

40 Subp. 2. **Respondent's rights.** The executive director must send to each respondent a draft
41 of any negative or adverse findings related to that respondent before the board considers
42 adoption of the final audit report. The respondent has the right to respond in writing to the draft
43 findings. The respondent must be given an opportunity to be heard by the board prior to the
44 board's decision regarding the draft audit report.

1
2 Subp. 3. **Final audit report.** At the conclusion of a formal audit, the board must issue a final
3 audit report. The final report must identify the subject of the audit and must include the following:

4
5 A. the name of the primary board employee responsible for conducting the audit;

6
7 B. a description of the scope of the audit;

8
9 C. any findings resulting from the audit;

10
11 D. a description of any responses to the findings that the subject of the audit provides;
12 and

13
14 E. a description of the manner in which any findings were resolved.

15
16 The final audit report may not include any information related to audits that is classified
17 as confidential under Minnesota Statutes, chapter 10A.

18
19 **Subp. 4. Audits of affidavits of contributions.** The board may audit the affidavit of
20 contributions filed by a candidate or the candidate's treasurer to determine whether the
21 candidate is eligible to receive a public subsidy payment. The executive director must contact
22 the principal campaign committee of a candidate and request the information necessary to audit
23 any affidavit of contributions that was not filed by electronic filing system, if the committee has
24 accepted contributions from individuals totaling less than twice the amount required to qualify for
25 a public subsidy payment.

26
27 **Subp. 5. Audits of other campaign finance filings.** The board may audit any campaign
28 finance report or statement that is filed or required to be filed with the Board under Minnesota
29 Statutes, Chapter 10A or Chapter 211B. The board may conduct a partial audit, including
30 auditing a campaign finance report to determine whether a beginning or ending balance
31 reconciles with the filer's financial records. In determining whether to undertake an audit, the
32 board must consider the availability of board resources, the possible benefit to the public, and
33 the magnitude of any reporting failures or violations that may be discovered as a result of the
34 audit. The board may conduct audits in which respondents are selected on a randomized basis
35 designed to capture a sample of respondents that meet certain criteria. The board may conduct
36 audits in which all respondents meet certain criteria. When undertaking an audit with
37 respondents selected on a randomized basis, the board must, to the extent possible, seek to
38 prevent selecting respondents based on their political party affiliation, or if the respondents are
39 candidates, based on their incumbency status.



MINNESOTA CAMPAIGN FINANCE BOARD

Date: March 1, 2024

To: Interested Members of the Public

From: Andrew Olson, Legal/Management Analyst

Telephone: 651-539-1190

Re: Advisory Opinion 459

This advisory opinion request was received on November 28, 2023, and has been discussed by the Board during subsequent Board meetings. The requester is an organization that may be affected by a recent change to the statutory definition of the term “expressly advocating.” That term impacts the scope of what is, and is not, an independent expenditure subject to reporting and other requirements imposed by statutes administered by the Board. The organization does not wish to make the request public. Therefore, the draft opinion that is provided to the public does not identify the requestor. The Board will only discuss the public version of the draft opinion during regular session.

Attachments:

Draft advisory opinion 459 – public version

**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 459

SUMMARY

The Board cannot provide opinions without specific factual information, either real or hypothetical, about the requestor's planned conduct. The Board declines to interpret the phrase "proximity to the election" to refer to a specific number of days prior to a primary or general election.

Facts

As a representative of an organization (the Organization), you ask the Campaign Finance and Public Disclosure Board for an advisory opinion regarding the definition of the term "expressly advocating" under Minnesota Statutes section 10A.01, subdivision 16a. The request is based on the following facts:

1. The Organization is a nonpartisan 501(c)(4) grassroots public policy advocacy organization that operates in multiple states, including Minnesota.
2. The Organization seeks to educate the public about legislative and executive branch measures that elected officials are considering, and to mobilize citizens to contact officials to support or oppose those measures.
3. The definition of the term "expressly advocating," codified at Minnesota Statutes section 10A.01, subdivision 16a, was amended in 2023. The revised definition became effective on August 1, 2023.
4. The language added to Minnesota Statutes section 10A.01, subdivision 16a, in 2023 is nearly identical to the text of paragraph (b) within 11 C.F.R. § 100.22, which contains the definition of "expressly advocating" applicable to entities under the jurisdiction of the Federal Election Commission (FEC).
5. The FEC's definitions of the terms "expressly advocating" and "clearly identified" were revised in 1995 "to provide further guidance on what types of communications constitute express advocacy of clearly identified candidates, in accordance with the judicial

interpretations found in” five separate judicial opinions.¹ The revised FEC definition of the term “expressly advocating” included elements from three judicial opinions “emphasizing the necessity for communications to be susceptible to no other reasonable interpretation but as encouraging actions to elect or defeat a specific candidate.”²

6. In 2007 the United States Supreme Court held that “a court should find that an ad is the functional equivalent of express advocacy only if the ad is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate.”³
7. During legislative committee hearings regarding H.F. 3, the bill that was enacted in 2023 and amended the definition of “expressly advocating” under Minnesota Statutes section 10A.01, subdivision 16a, the Board’s executive director testified and provided six examples of past communications.

INTRODUCTION

Prior to being amended in 2023, Minnesota Statutes section 10A.01, subdivision 16a defined “expressly advocating” as follows:

"Expressly advocating" means that a communication clearly identifies a candidate or a local candidate and uses words or phrases of express advocacy.

Minnesota Statutes section 10A.01, subdivision 16a presently defines “expressly advocating” as follows:

"Expressly advocating" means that a communication:

(1) clearly identifies a candidate or a local candidate and uses words or phrases of express advocacy; or

(2) when taken as a whole and with limited reference to external events, such as the proximity to the election, could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidates because:

¹ [Express Advocacy; Independent Expenditures; Corporate and Labor Organization Expenditures](#), 60 Fed. Reg. 35292, 35293 (July 6, 1995) (citing [Buckley v. Valeo](#), 424 U.S. 1 (1976), [FEC v. Massachusetts Citizens for Life, Inc.](#), 479 U.S. 238 (1986), [FEC v. Furgatch](#), 807 F.2d 857 (9th Cir. 1987), [FEC v. National Organization for Women](#), 713 F. Supp. 428, 429 (D.D.C. 1989), and [Faucher v. FEC](#), 743 F. Supp. 64 (D. Me. 1990)).

² Id. at 35294 (citing [Buckley v. Valeo](#), 424 U.S. 1 (1976), [FEC v. Massachusetts Citizens for Life, Inc.](#), 479 U.S. 238 (1986), and [FEC v. Furgatch](#), 807 F.2d 857 (9th Cir. 1987)).

³ [FEC v. Wisconsin Right To Life, Inc.](#), 551 U.S. 449 (2007).

(i) the electoral portion of the communication is unmistakable, unambiguous, and suggestive of only one meaning; and

(ii) reasonable minds could not differ as to whether the communication encourages actions to elect or defeat one or more clearly identified candidates or encourages some other kind of action.

Within its request the Organization stated that “the Board should clearly explain its reasoning for each conclusion so that the requester and all other similarly situated speakers in Minnesota can plan their public advocacy activities fully knowing whether they will trigger Minnesota’s independent expenditure reporting requirements.” The Organization also stated that it “seeks clarification . . . as to whether certain types of public communications like the examples . . . presented during legislative hearings on H.F. 3 would trigger the new ‘express advocacy’ standard.”

Within its request the Organization asserted that several of the examples referenced by the Board’s executive director in testimony regarding H.F. 3 “do not appear to qualify as express advocacy based upon how the federal judiciary and FEC have articulated the H.F. 3 standard.” The Organization made arguments as to why it believes that four of the examples would not constitute express advocacy under the revised definition of “expressly advocating” codified at Minnesota Statutes section 10A.01, subdivision 16a.

An advisory opinion represents the Board’s interpretation of the law with regard to particular factual situations. The Board may be unable to state a legal conclusion if the facts provided within a request for an advisory opinion are insufficient.⁴ Minnesota Statutes section 10A.02, subdivision 12, provides that the Board “may issue and publish advisory opinions on the requirements of this chapter and of those sections listed in section 10A.022, subdivision 3, based upon real or hypothetical situations. An application for an advisory opinion may be made only by a person who is subject to this chapter and who wishes to use the opinion to guide the person’s own conduct.” By design, advisory opinions are intended to be forward-looking and guide future conduct, rather than consider past conduct.

Within its request the Organization did not describe any real or hypothetical situations, or planned conduct, involving itself. The Organization’s request was largely limited to describing testimony given during legislative committee hearings and arguing why the communications cited as examples during that testimony should not qualify as express advocacy under a definition of the term “expressly advocating” that was not in effect at the time of the communications in question.

⁴ See, e.g., [Advisory Opinion 447 \(June 6, 2018\)](#); [Advisory Opinion 348 \(May 28, 2003\)](#); [Advisory Opinion 306 \(June 14, 1999\)](#).

Issue One

In 2014 the Freedom Club State PAC paid for a television advertisement that criticized “Governor Dayton and the Democrats” for enacting tax increases to pay for “a new luxury office building” and “wasting our tax dollars.” The advertisement asked why “Governor Dayton and the Democrats” are not “fixing our roads and potholes” rather than “wasting our tax dollars” and concluded with the statement “Minnesota, we deserve better.” Would this communication qualify as express advocacy under the amended definition of “expressly advocating”? Would it make a difference if the statement “Minnesota, we deserve better” was replaced with language such as “Call Governor Dayton at [official telephone number] and tell him to spend our tax dollars on fixing roads and potholes instead of luxury office buildings”?

Opinion One

The facts stated within the request are insufficient to determine whether the communication would constitute expressly advocating the election or defeat of a clearly identified candidate or local candidate under the amended definition of “expressly advocating” codified at Minnesota Statutes section 10A.01, subdivision 16a, if made in the future. Such a determination is highly fact-dependent and contextual. If the Organization desires an opinion to guide its own conduct, it may submit a revised request describing real or hypothetical communications it may produce and the context in which those communications may be disseminated. That description should include, at a minimum, any spoken or written language to be used, copies or detailed descriptions of any graphical or pictorial elements, the offices sought by any candidate or local candidate who will be identified within the communication, the approximate time frame in which the communication may be disseminated, and a description of any other factors that may impact a reasonable person’s interpretation of whether the communication advocates the election or defeat of one or more clearly identified candidates. The language used within a communication is important in determining whether the communication constitutes express advocacy, and the substitution of one phrase for another certainly may impact the Board’s determination.

Issue Two

In 2014 the Alliance for a Better Minnesota Action Fund paid for a television advertisement that praised Governor Dayton and contained the phrase “Minnesota is working.” The advertisement stated that four years prior there was a “\$5 billion deficit, but Governor Mark Dayton showed strong leadership . . . and now Minnesota has over 150,000 new jobs and a budget surplus.” The advertisement concluded with the statement “Governor Mark Dayton is working for us.” Would this communication qualify as express advocacy under the amended definition of “expressly advocating”? Would it make a difference if the statement “Governor Mark Dayton is working for us” was replaced with language such as “Call Governor Dayton at [official telephone number] and tell him to keep focusing on the economy, cutting the deficit, and creating new jobs”?

Opinion Two

The facts stated within the request are insufficient to determine whether the communication would constitute expressly advocating the election or defeat of a clearly identified candidate or local candidate under the amended definition of “expressly advocating” codified at Minnesota Statutes section 10A.01, subdivision 16a, if made in the future. Such a determination is highly fact-dependent and contextual. If the Organization desires an opinion to guide its own conduct, it may submit a revised request describing real or hypothetical communications it may produce and the context in which those communications may be disseminated. That description should include, at a minimum, any spoken or written language to be used, copies or detailed descriptions of any graphical or pictorial elements, the offices sought by any candidate or local candidate who will be identified within the communication, the approximate time frame in which the communication may be disseminated, and a description of any other factors that may impact a reasonable person’s interpretation of whether the communication advocates the election or defeat of one or more clearly identified candidates. The language used within a communication is important in determining whether the communication constitutes express advocacy, and the substitution of one phrase for another certainly may impact the Board’s determination.

Issue Three

In 2021 Action 4 Liberty disseminated printed literature with the following text, all in capital letters: “Rep. Julie Sandstede betrayed you! by voting to protect Governor Walz’ emergency powers.”⁵ The reverse side of the mailer contained text stating, all in capital letters, “make Julie Sandstede listen. Call her at [phone number].” Would this communication qualify as express advocacy under the amended definition of “expressly advocating”? Would it make a difference if a call to action were added, such as “Call Representative Sandstede at [official telephone number] and tell her to oppose any new emergency powers for the Governor”?

Opinion Three

The facts stated within the request are insufficient to determine whether the communication would constitute expressly advocating the election or defeat of a clearly identified candidate or local candidate under the amended definition of “expressly advocating” codified at Minnesota Statutes section 10A.01, subdivision 16a, if made in the future. Such a determination is highly fact-dependent and contextual. If the Organization desires an opinion to guide its own conduct, it may submit a revised request describing real or hypothetical communications it may produce and the context in which those communications may be disseminated. That description should include, at a minimum, any spoken or written language to be used, copies or detailed descriptions of any graphical or pictorial elements, the offices sought by any candidate or local

⁵ See [Probable Cause Determination in the Matter of Complaint of the Minnesota DFL regarding Action 4 Liberty and Action 4 Liberty PAC \(July 29, 2021\)](#).

candidate who will be identified within the communication, the approximate time frame in which the communication may be disseminated, and a description of any other factors that may impact a reasonable person's interpretation of whether the communication advocates the election or defeat of one or more clearly identified candidates. The language used within a communication is important in determining whether the communication constitutes express advocacy.

Issue Four

In 2018 printed literature was disseminated by LIUNA Minnesota with the names and photographs of two sets of governor and lieutenant governor candidates, who were running together. The literature contained the text "2018 Voter Guide: Governor" and "Join your friends & neighbors on Tuesday, November 6th. Thank you for voting!" The literature included a list of policy objectives below the heading "What are your values and priorities?" The literature contained the word "Yes" below a picture of Tim Walz and Peggy Flanagan, and the word "No" below a picture of Jeff Johnson and Donna Bergstrom, with respect to four of the listed policy objectives, implying that those objectives were a priority for one slate of candidates, but not the other. Would this communication qualify as express advocacy under the amended definition of "expressly advocating"?

Opinion Four

The facts stated within the request are insufficient to determine whether the communication would constitute expressly advocating the election or defeat of a clearly identified candidate or local candidate under the amended definition of "expressly advocating" codified at Minnesota Statutes section 10A.01, subdivision 16a, if made in the future. Such a determination is highly fact-dependent and contextual. If the Organization desires an opinion to guide its own conduct, it may submit a revised request describing real or hypothetical communications it may produce and the context in which those communications may be disseminated. That description should include, at a minimum, any spoken or written language to be used, copies or detailed descriptions of any graphical or pictorial elements, the offices sought by any candidate or local candidate who will be identified within the communication, the approximate time frame in which the communication may be disseminated, and a description of any other factors that may impact a reasonable person's interpretation of whether the communication advocates the election or defeat of one or more clearly identified candidates.

Issue Five

Within its request the Organization did not present any facts regarding issue five, except for stating that it seeks clarity regarding "what 'proximity to the election' means" within Minnesota Statutes section 10A.01, subdivision 16a. The organization also argued that "the Board should conclude that the 'proximity to the election' concept in Minnesota's new express advocacy standard is a reference to the 30-/60-day pre-election time windows that the Supreme Court addressed" in 2007 in *FEC v. Wisconsin Right to Life, Inc.*

Opinion Five

As used in Minnesota Statutes Chapter 10A, the word “election” means “a primary, special primary, general, or special election.”⁶ The word “proximity” is defined by Black’s Law Dictionary as “[t]he quality, state, or condition of being near in time, place, order, or relation,”⁷ and by the Oxford English Dictionary as “[t]he fact, condition, or position of being near or close by in space; nearness.”⁸ Non-technical words and phrases that have not acquired a special meaning “are construed according to rules of grammar and according to their common and approved usage.”⁹ When a statute is unambiguous, courts must apply its plain meaning.¹⁰ Courts cannot add words to a statute that the legislature “intentionally or inadvertently left out.”¹¹ Likewise, the Board cannot supply language that would substantially alter the meaning of a statute enacted by the legislature. Because the legislature has not limited the phrase “proximity to the election” to be applicable only during particular time periods, the Board declines the Organization’s invitation to do so.

Issued March 8, 2024

David Asp, Chair
Campaign Finance and Public Disclosure Board

⁶ [Minn. Stat. § 10A.01, subd. 15](#). Those terms are further defined within [Minn. Stat. § 200.02, subds. 2-5](#).

⁷ Proximity, Black’s Law Dictionary (11th ed. 2019).

⁸ Proximity, Oxford English Dictionary (3rd ed. 2023), oed.com/dictionary/proximity_n.

⁹ [Minn. Stat. § 645.08](#).

¹⁰ [Great River Energy v. Swedzinski, 860 N.W.2d 362, 364 \(Minn. 2015\)](#) (citing [Am. Tower, L.P. v. City of Grant, 636 N.W.2d 309, 312 \(Minn. 2001\)](#)).

¹¹ [Great River Energy v. Swedzinski, 860 N.W.2d 362, 364 \(Minn. 2015\)](#) (quoting [Genin v. 1996 Mercury Marquis, 622 N.W.2d 114, 117 \(Minn. 2001\)](#)).



MINNESOTA

CAMPAIGN FINANCE BOARD

Date: March 1, 2024

To: Board members

From: Megan Engelhardt, Assistant Executive Director

Telephone: 651-539-1182

Re: Prima facie determination—Complaint of Dianne Miller regarding Chisago Lakes Education Minnesota

Complaints filed with the Board are subject to a prima facie determination which is usually made by the Board chair in consultation with staff. If the Board chair determines that the 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 the determination finds that the complaint does not state a prima facie violation, the prima facie determination 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 Chair Asp and the prima facie determination is provided here as an informational item to Board members. No further Board action is required.

On January 22, 2024, the Board received the enclosed complaint from Diane Miller. The complaint alleged that Chisago Lakes Education Minnesota violated Minnesota Statutes sections 10A.20, subdivision 2, and 211B.04, subdivision 1. The complaint alleged that Chisago Lakes Education Minnesota violated Minnesota Statutes section 10A.20 when it failed to file campaign finance reports in a timely manner after endorsing a candidate for the school board of the Chisago Lakes School District in a special election held November 7, 2023. The complaint also alleged that Chisago Lakes Education Minnesota violated Minnesota Statutes section 211B.04 by including a disclaimer on mailings supporting a bond referendum question and a levy referendum question that identified "Our Schools, Our Responsibility" as the entity that paid for the mailings.

On February 12, 2024, the Board's chair determined that the complaint does not state a prima facie violation as the Board does not have jurisdiction over Chisago Lakes Education Minnesota as Chisago Lakes Education Minnesota is not required to register with the Board.

Attachments:

Complaint

Prima facie determination



MINNESOTA CAMPAIGN FINANCE BOARD

MN CAMPAIGN FINANCE BD
24 JAN 29 AM 9:35

Complaint for Violation of the Campaign Finance and Public Disclosure Act

All information on this form is confidential until a decision is issued by the Board.
A photocopy of the entire complaint, however, will be sent to the respondent.

Information about complaint filer

Name of complaint filer	Dianne S. Miller		
Address	7686 Hillside Ct	Email address	diannedmiller@protonmail.com
City, state, and zip	Wyoming MN 55092	Telephone (Daytime)	608-397-7735

Identify person/entity you are complaining about

Name of person/entity being complained about	Chisago Lakes Education Minnesota
Address	900 Long Lake Rd, Suite 110
City, state, zip	New Brighton, MN 55112
Title of respondent (If applicable)	
Board/Department/Agency/District # (If legislator)	

Dianne S. Miller

Signature of person filing complaint

1-23-24

Date

Send completed form to:

Campaign Finance & Public Disclosure Board
190 Centennial Office Building
658 Cedar Street
St. Paul, MN 55155

If you have questions call 651-539-1189, 800-657-3889, or for TTY/TDD communication contact us via the Minnesota Relay Service at 800-627-3529. Board staff may be reached by email at cf.board@state.mn.us.

This document is available in alternative formats to individuals with disabilities by calling 651-539-1180, 800-657-3889, or through the Minnesota Relay Service at 800-627-3529.

Give the statutory cite to the section of Chapter 10A, Chapter 211B, Ch 10A.20 Sub 2(b) and 211B.04 Sub 1(a) or Minnesota Rules you believe has been violated:

You will find links to the complete text of Chapter 10A, Chapter 211B, and Minnesota Rules chapters 4501 - 4525 on the Board's website at cfb.mn.gov.

Nature of complaint

Explain in detail why you believe the respondent has violated the campaign finance and public disclosure laws. Attach extra sheet(s) of paper if necessary. Attach any documents, photographs, or other evidence needed to support your allegations. Electronic files may be provided to the Board by email or via a file transfer service.

10A.20 Sub 2(b) states: In each year in which the name of a candidate for legislative or district court judicial office is on the ballot, the report of the principal campaign committee must be filed 15 days before a primary election and ten days before a general election, seven days before a special primary election and seven days before a special general election, and ten days after a special election cycle.

211B.04 Sub 1(a) A person who participates in the preparation or dissemination of campaign material other than as provided in section 211B.05, subdivision 1, that does not prominently include the name and address of the person or committee causing the material to be prepared or disseminated in a disclaimer substantially in the form provided in paragraph (b) or (c) is guilty of a misdemeanor.

Please see attached Exhibit A and copies of expenses and mailings.

Minnesota Statutes section 10A.022 and Minnesota Rules Chapter 4525 describe the procedures required for investigating complaints. A full description of the complaint process is available on the Board's website. Briefly, the Board will notify you when it has received your complaint. The Board must send a copy of the complaint to the respondent. Complaints and investigations are confidential. Board members and staff cannot talk about an investigation except as required to carry out the investigation or to take action in the matter. After the Board issues a decision, the record of the investigation is public.

The law requires a complaint to go through two stages before the Board can begin an investigation: a prima facie determination and a probable cause decision. If the complaint does not pass one of the stages, it must be dismissed. The Board chair or their designee has 10 business days after receiving your complaint to determine whether the complaint alleges a prima facie violation. If the complaint alleges a prima facie violation, the Board has 45 days to decide whether probable cause exists to believe a violation that warrants a formal investigation has occurred. Both you and the respondent have the right to be heard on the issue of probable cause before the Board makes this decision. The Board will notify you if the complaint moves to the probable cause stage.

If the Board determines that probable cause does not exist, the Board will dismiss the complaint. If the Board determines that probable cause exists, the Board may start an investigation. In some cases the Board will issue findings, conclusions, and an order as its decision. In other cases the Board will instead enter into a conciliation agreement with the respondent. The Board's final decision will be posted on the Board's website.

EXHIBIT A

Background: Chisago Lakes Education Minnesota (CLEM) endorsed a school board candidate (Sarah Aadland) for a special election held on Nov 7, 2023.

10A.20 Sub 2(b) states: *"In each year in which the name of a candidate for legislative or district court judicial office is on the ballot, the report of the principal campaign committee must be filed 15 days before a primary election and ten days before a general election, seven days before a special primary election and seven days before a special general election, and ten days after a special election cycle."*

CLEM failed to file their Campaign Financial Reports in a timely manner:

- CLEM's first Campaign Finance Report actually lists the candidate at the top instead of CLEM (EXHIBIT B).
- The first expense for \$612.00 was dated 10/8/23. The initial report should have been filed on or by 10/23/23 (EXHIBIT B).
- The other expenses totaling \$954.23 were dated 10/31/23. The filing for those expenses should have been filed immediately since that was within the seven days prior to the special election (EXHIBIT B).
- CLEM did not file a Campaign Finance Report until 11/6/23, and it was not posted to the Chisago Lakes School Board site until 11/7/23 (EXHIBIT B).
- The next Campaign Finance Report filed by CLEM is dated 11/20/23, a full thirteen days after the election (EXHIBIT C).
- The first expense on the 11/20/23 report was dated 10/6/23. That expense should have been reported on or before 10/20/23, and was submitted a full month late (EXHIBIT C).
- The remaining expenses should have been filed immediately since they were within the seven days prior to the special election on 11/7/23 (EXHIBIT C).

211B.04 Sub 1(a) states: *"A person who participates in the preparation or dissemination of campaign material other than as provided in section 211B.05, subdivision 1, that does not prominently include the name and address of the person or committee causing the material to be prepared or disseminated in a disclaimer substantially in the form provided in paragraph (b) or (c) is guilty of a misdemeanor."*

- CLEM failed to identify themselves on the disclaimer for Postcards #4062 (EXHIBIT D) and #3946 (EXHIBIT E). CLEM falsified the disclaimer on both mailings by stating: "Prepared and paid for by Our Schools, Our Responsibility, P.O. Box 70, Lindstrom, MN 55045."
- I have done a thorough search of the Secretary of State website and could not find the organization Our Schools, Our Responsibility, which led me to research where the money came from.

Implications:

- Voters in the school district did not know the amount of money donated by CLEM until after the election.
- I believe if voters in the school district knew the amount of money donated to Sarah Aadland by CLEM (a total of \$6,024.68), certainly could have disproportionately affected the outcome of the election in favor of Sarah Aadland, CLEM's endorsed candidate.
- Voters in the district were deceived by CLEM when they sent out two postcards with a false name in the disclaimer. This deception made it seem like there was an independent organization that supported the referendum.
- Falsifying records erodes the integrity of CLEM and the Chisago Lakes School District, which is harmful to the public trust.

Thank you for your consideration and investigation into these issues.



Dianne S. Miller



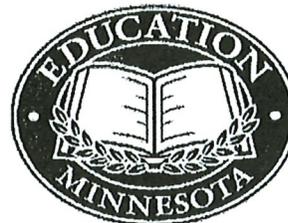
INVOICE

CHISAGO LAKES EDUCATION MINNESOTA
409 N MAIN ST
CENTER CITY, MN 55012-9672

PLEASE REMIT TO:
Education Minnesota
Attn: Finance
41 Sherburne Avenue
St. Paul, MN 55103-2196
651-227-9541
FAX 651-767-1220

INVOICE #	DATE	TERMS	DUE DATE
42987	10/31/2023	Net 30	11/30/2023

DESCRIPTION	AMOUNT
OCTOBER 2023 PRINTING ORDER #6909 -SB POSTCARD #2 MAILING - 4040	\$69.42
OCTOBER 2023 PRINTING ORDER #6909 SALES TAX MN State = 6.875% ; Chisago County Transit = 0.500%.	\$5.12
USPS MARKETING MAIL 10/24/2023 -SB POSTCARD #2 MAILING - 4040	\$304.95
XPRESS MAILING 10/28/2023 INV #32470 -SB POSTCARD #2 MAILING - 4040	\$75.00
TOTAL DUE	\$454.49



INVOICE

CHISAGO LAKES EDUCATION MINNESOTA
409 N MAIN ST
CENTER CITY, MN 55012-9672

PLEASE REMIT TO:
Education Minnesota
Attn: Finance
41 Sherburne Avenue
St. Paul, MN 55103-2196
651-227-9541
FAX 651-767-1220

INVOICE #	DATE	TERMS	DUE DATE
42990	10/31/2023	Net 30	11/30/2023

DESCRIPTION	AMOUNT
OCTOBER 2023 PRINTING ORDER #6910 -SB POSTCARD #3 - 4041 HNADWRITTEN	\$49.13
OCTOBER 2023 PRINTING ORDER #6910 SALES TAX MN State = 6.875% ; Chisago County Transit = 0.500%.	\$3.62
TOTAL DUE	\$52.75



INVOICE

PLEASE REMIT TO:
Education Minnesota
Attn: Finance

41 Sherburne Avenue
St. Paul, MN 55103-2196
651-227-9541
FAX 651-767-1220

CHISAGO LAKES EDUCATION MINNESOTA
409 N MAIN ST
CENTER CITY, MN 55012-9672

INVOICE #	DATE	TERMS	DUE DATE
42986	10/31/2023	Net 30	11/30/2023

DESCRIPTION	AMOUNT
OCTOBER 2023 PRINTING ORDER #6907 -SB POSTCARD #1 MAILING - 4039	\$69.42
OCTOBER 2023 PRINTING ORDER #6907 SALES TAX MN State = 6.875% ; Chisago County Transit = 0.500%.	\$5.12
USPS MARKETING MAIL 10/20/2023 -SB POSTCARD #1 MAILING - 4039	\$304.95
XPRESS MAILING 10/23/2023 INV #32383 -SB POSTCARD #1 MAILING - 4039	\$68.00
TOTAL DUE	\$447.49

Impact Printing LLC
 1067 Rice Street
 St Paul, MN 55117

INVOICE

Invoice Number: 57742
 Invoice Date: Sep 28, 2023
 Page: 1
Duplicate

Voice: 651.489.0803
 Fax:

Bill To:
Sarah Aadland

Ship to:
Sarah Aadland

Customer ID	Customer PO	Payment Terms	
Aadland, Sarah		Net 10 Days	
Sales Rep ID	Shipping Method	Ship Date	Due Date
	Best Way		10/8/23

Quantity	Item	Description	Amount
35.00		18 x 24 signs	280.00
35.00		stands	43.75
28.00		24 x 48	560.00
3.00		4 x 48	270.00

Subtotal	1,153.75
Sales Tax	90.86
Total Invoice Amount	1,244.61
Payment/Credit Applied	
TOTAL	1,244.61

Check/Credit Memo No:

CAMPAIGN FINANCIAL REPORT

(All of the information in this report is public information)

Name of candidate, committee or corporation Chisago Lakes Education Minnesota # 7050

Office sought or ballot question #1 Bldg Bond for \$23,825,000 District Chisago Lakes #2144
#2 Operating Levy of \$355/pupil

Type of report _____ Candidate report
 _____ **X** Campaign committee report
 _____ Association or corporation report
 _____ Final report

Period of time covered by report: from _____ to _____

CONTRIBUTIONS RECEIVED

Give the total for all contributions received during the period of time covered by this report. Contributions should be listed by type (money or in-kind) rather than contributor. See note on contribution limits on the back of this form. Use a separate sheet to itemize all contributions from a single source that exceeded \$100 during the calendar year. This itemization must include name, address, employer or occupation if self-employed, amount and date for these contributions.

CASH \$ _____ TOTAL CASH-ON-HAND \$ _____
 IN-KIND + \$ _____
 TOTAL AMOUNT RECEIVED = \$ _____

DISBURSEMENTS

Include the amount, date and purpose for all disbursements made during the period of time covered by report. Attach additional sheets if necessary.

Date	Purpose	Amount
10/6/23	Postcard Mailing #1	1536.47
10/30/23	Postcard mailing #2	1524.83
11/14/23	campaign coordinator stipends	800.00
10/30/23	mailing hand written postcards	108.90
	TOTAL	<i>see attached</i>

CORPORATE PROJECT EXPENDITURES

Corporations must list any media project or corporate message project for which contribution(s) or expenditure(s) total more than \$200. Submit a separate report for each project. Attach additional sheets if necessary.

Project title or description _____

Date	Purpose	Name and Address of Recipient	Expenditure or Contribution Amount
		TOTAL	

I certify that this is a full and true statement. *Sheryl L. Spray* 11/20/23
 Signature Date

Printed Name Sheryl L. Spray Telephone (612) 801-1989 Email (if available) sspray@

Address 4748 252nd St. Wyoming, MN 55092 isd2144.org

Report

Office

Name

For Office Use Only:

INVOICE



CHISAGO LAKES EDUCATION MINNESOTA
ATTN: SHEILA WIEHL & SHERYL SPRAY
533 SIMONSON RD
ST CROIX FALLS, WI 54024

PLEASE REMIT TO:
Education Minnesota
Attn: Finance
41 Sherburne Avenue
St. Paul, MN 55103-2196
651-227-9541
FAX 651-767-1220

INVOICE #	DATE	TERMS	DUE DATE
42757	10/06/2023	Net 30	11/05/2023

DESCRIPTION	AMOUNT
OCTOBER 2023 PRINTING ORDER #6787 -POSTCARD #1 MAILING - #3946	\$254.98
OCTOBER 2023 PRINTING ORDER #6787 SALES TAX MN State = 6.875% ; Chisago County Transit = 0.500%.	\$18.80
USPS MARKETING MAIL 9/25/2023 -POSTCARD #1 MAILING - #3946	\$1,124.69
XPRESS MAILING 10/4/2023 INV #32275 -POSTCARD #1 MAILING - #3946	\$138.00
TOTAL DUE	\$1,536.47

INVOICE



CHISAGO LAKES EDUCATION MINNESOTA
ATTN: SHEILA WIEHL & SHERYL SPRAY
533 SIMONSON RD
ST CROIX FALLS, WI 54024

PLEASE REMIT TO:
Education Minnesota
Attn: Finance
41 Sherburne Avenue
St. Paul, MN 55103-2196
651-227-9541
FAX 651-767-1220

INVOICE #	DATE	TERMS	DUE DATE
42898	10/30/2023	Net 30	11/29/2023

DESCRIPTION	AMOUNT
OCTOBER 2023 PRINTING ORDER #6942 -POSTCARD #2 MAILING - #4062	\$253.65
OCTOBER 2023 PRINTING ORDER #6942 SALES TAX MN State = 6.875% ; Chisago County Transit = 0.500%.	\$18.71
USPS MARKETING MAIL 10/15/2023 -POSTCARD #2 MAILING - #4062	\$1,117.47
XPRESS MAILING 10/28/2023 INV #32408 -POSTCARD #2 MAILING - #4062	\$135.00
TOTAL DUE	\$1,524.83

Education Minnesota Local Election Coordinators Application – Referendums

Starting in August 2022, the Education Minnesota Political Action Committee will be funding up to two Campaign Coordinators for each referendum or school board election in locals who qualify for financial resources (the local must have 90% or more of their members contributing to the Education Minnesota PAC). There is a stipend of \$400 for each of the Campaign Coordinator(s). See attached job descriptions for each position.

Locals are required to complete this form and email it to Jim Meyer at jim.meyer@edmn.org when you have selected your coordinator(s).

Local: Chicago Lakes Education Minnesota
Local President Name: Sheila Wiehl & Sheryl Spray
Email: sspray@isd2144.org Cellphone: 612-801-1989
Local Election (check one) Referendum School Board
Date of election: Nov. 7, 2023

Campaign Coordinator 1

Name: Sheila Wiehl
Email: swiehl@isd2144.org
Cellphone: 608-852-6809

Campaign Coordinator 2

Name: Sheryl Spray
Email: sspray@isd2144.org
Cellphone: 612-801-1989

As local president, I authorize these members to fill the above positions. Our local understands that we must pay these members the appropriate stipends listed above after the election and file for reimbursement after the election with other reimbursable expenses on our Education Minnesota Final Reimbursement Application.

Local President Signature: [Signature] Date: 9/15/23

Education Minnesota Staff Approval

This form MUST be approved and signed off on by Jim Meyer and returned to you to qualify for coordinator reimbursement. This signed form must be included with your reimbursement form after the election.

Education Minnesota Staff Signature: [Signature] Date: 9-19-23

Updated: June 27, 2023

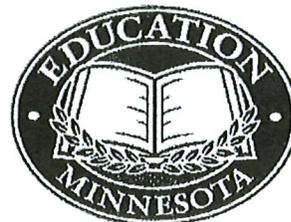
www.educationminnesota.org

Education Minnesota is an affiliate of the American Federation of Teachers,
the National Education Association and AFL-CIO. 6253 3723



POLITICAL ACTION
COMMITTEE

INVOICE



CHISAGO LAKES EDUCATION MINNESOTA
409 N MAIN ST
CENTER CITY, MN 55012-9672

PLEASE REMIT TO:
Education Minnesota
Attn: Finance
41 Sherburne Avenue
St. Paul, MN 55103-2196
651-227-9541
FAX 651-767-1220

INVOICE #	DATE	TERMS	DUE DATE
42990	10/31/2023	Net 30	11/30/2023

DESCRIPTION	AMOUNT
OCTOBER 2023 PRINTING ORDER #6910 -SB POSTCARD #3 - 4041 HADWRITTEN	\$49.13
OCTOBER 2023 PRINTING ORDER #6910 SALES TAX MN State = 6.875% ; Chisago County Transit = 0.500%.	\$3.62
TOTAL DUE	\$52.75

Vote YES on the Nov. 7 referendum!

For more information, www.isd2144.org.



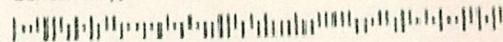
Support our kids, our community, our future.

Our schools, Our responsibility
P.O. Box 70
Lindstrom, MN 55045

PSRRT STD
U.S. POSTAGE
PAID
TWIN CITIES, MN
PERMIT NO. 582

*****SCH 5-DIGIT 55013

Ashley Hylla Olson and Aaron Olson
33853 Oasis Rd
Center City, MN 55012-9617



Vote YES on the Nov. 7 referendum!

What are we voting for?

Over the past 5 years, the district has made approximately \$5 million in budget cuts to balance the budget. With the additional operational levy, the dollars would help to support staffing, programs, and services that directly impact learning. At the same time, our facility needs are not going to go away, and construction costs are likely to increase the longer the district waits to address them. If voters approve the bond levy, students and staff will have safer and more secure schools with room to expand and keep class sizes reasonable. More importantly, addressing these facility needs now will keep costs low and address issues, depending upon the project, for the next 25 years. *This year's ask is 61% less than the 2022 referendum and almost 50% less tax impact.*

Voting YES on Question 1 allows the Chisago Lakes School District to:

Security

- ▶ Create secure classrooms on the third floor of Chisago Lakes Middle School. As well as update needed safety feature by installing fire suppression in the entry building
- ▶ Redesign secure entrances at Taylor Falls Elementary, Chisago Lakes Middle School, and Chisago Lakes High School.

Sustainability

- ▶ Roof replacements at the Primary School and Chisago Lakes High School
- ▶ Replace aged parking lots at Taylor Falls Elementary, Primary School, and Chisago Lakes High School
- ▶ Replace outdated concrete slabs and resolve outdated drainage issues at the District owned Bus Garage

Voting YES on Question 2 allows the Chisago Lakes School District to:

Stability

- ▶ Retaining and recruiting high quality staff
- ▶ Sustaining our current programs and services for students

Sustainability

- ▶ Establishing a full middle school model at the 6th grade level
- ▶ Adding one social studies teacher and two allied arts positions

Voting information

- ▶ **Early voting: Why wait until Nov. 7!** You may vote early in person Monday - Friday from 7 a.m. to 3:30 p.m. By going to Chisago Lakes School District Office located at 29679 Karmit Ave, Chisago City
- ▶ **Election Day:** Election Day in-person voting is Tuesday, Nov. 7 from 7 a.m. to 8 p.m. You can find your polling location at MNVOTES.ORG.

Vote YES on Nov. 7 for our children, our community, our schools!

Exhibit E

Larger version of back side of postcard

Vote YES on the Nov. 7 referendum!

What are we voting for?

Over the past 5 years, the district has made approximately \$5 million in budget cuts to balance the budget. With the additional operational levy, the dollars would help to support staffing, programs, and services that directly impact learning. At the same time, our facility needs are not going to go away, and construction costs are likely to increase the longer the district waits to address them. If voters approve the bond levy, students and staff will have safer and more secure schools with room to expand and keep class sizes reasonable. More importantly, addressing these facility needs now will keep costs low and address issues, depending upon the project, for the next 25 years. **This year's ask is 61% less than the 2022 referendum and almost 50% less tax impact.**

Voting YES on Question 1 allows the Chicago Lakes School District to:

Security

- ▶ Create secure classrooms on the third floor of Chicago Lakes Middle School. As well as update needed safety feature by installing fire suppression in the entire building
- ▶ Redesign secure entrances at Taylor's Falls Elementary, Chicago Lakes Middle School, and Chicago Lakes High School

Sustainability

- ▶ Roof replacements at the Primary School and Chicago Lakes High School
- ▶ Replace aged parking lots at Taylor's Falls Elementary, Primary School, and Chicago Lakes High School
- ▶ Replace outdated concrete slabs and resolve outdated drainage issues at the District-owned Bus Garage

Voting YES on Question 2 allows the Chicago Lakes School District to:

Stability

- ▶ Retaining and recruiting high quality staff
- ▶ Sustaining our current programs and services for students

Sustainability

- ▶ Establishing a full middle school model at the 6th grade level
- ▶ Adding one social studies teacher and two allied arts positions

Voting information

- ▶ **Early voting: Why wait until Nov. 7?** You may vote early in person Monday - Friday from 7 a.m. to 3:30 p.m. by going to Chicago Lakes School Districts office located at 29638 Karmel Ave., Chicago City.
- ▶ **Election Day:** Election Day in-person voting is Tuesday, Nov. 7 from 7 a.m. to 8 p.m. You can find your polling location at MINVOTES.ORG.

Vote YES on Nov. 7 for our children, our community, our schools!

Prepared and paid for by Our Schools, Our Responsibility, P.O. Box 711, Lindstrom, MN 55043 763-734-3449

Postcard 3946

Exhibit D (Inv. # 42898)

OUR SCHOOLS, OUR RESPONSIBILITY
P.O. BOX 70
LINDSTROM, MN 55045

PRSR STD
U.S. POSTAGE
PAID
TWIN CITIES, MN
PERMIT NO. 582



*****ALL FOR AADC 550
Jeanine and Theodore Hansen
25553 W Comfort Dr
Wyoming, MN 55092-9125



Prepared and paid for by Our schools, Our responsibility, P.O. Box 70, Lindstrom, MN 55045, 4062

ON NOV. 7,
MAKE YOUR VOTE COUNT!

VOTE YES

ON THE CHISAGO LAKES
SCHOOL REFERENDUM

FIND YOUR POLLING LOCATION
AT MNVOTES.ORG.

FOR MORE INFORMATION, GO TO
WWW.ISD2144.ORG.

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

**PRIMA FACIE
DETERMINATION**

IN THE MATTER OF THE COMPLAINT OF DIANNE MILLER REGARDING CHISAGO LAKES EDUCATION MINNESOTA

On January 29, 2024, the Campaign Finance and Public Disclosure Board received a complaint submitted by Dianne Miller regarding Chisago Lakes Education Minnesota. Chisago Lakes Education Minnesota is an entity not registered with the Board.

The complaint alleges that Chisago Lakes Education Minnesota violated Minnesota Statutes sections 10A.20, subdivision 2, and 211B.04, subdivision 1. The complaint alleges that Chisago Lakes Education Minnesota violated Minnesota Statutes section 10A.20 when it failed to file campaign finance reports in a timely manner after endorsing a candidate for the school board of the Chisago Lakes School District in a special election held November 7, 2023. The complaint also alleges that Chisago Lakes Education Minnesota violated Minnesota Statutes section 211B.04 by including a disclaimer on mailings supporting a bond referendum question and a levy referendum question that identified the entity that caused the material to be prepared or disseminated as “Our schools, Our responsibility,” rather than Chisago Lakes Education Minnesota. To support the allegations, the complainant provided copies of campaign financial reports filed with the Chisago Lakes School District, invoices for printing and mailing services, and pictures of campaign literature allegedly sent by Chisago Lakes Education Minnesota, and other documents related to the school district referendum.

Determination

Minnesota Statutes section 10A.14, subdivision 1 requires registration of a political committee or political fund with the Board in order to receive contributions or make expenditures to influence the election or defeat of a state level candidate, or specified local office candidates in Hennepin County. Minnesota Statutes section 10A.14, subdivision 1a, requires registration of a ballot question committee or ballot question fund in order to receive funds or make expenditures to influence the passage or defeat of a constitutional amendment or specified local referendums in Hennepin County. A committee that is formed to support local candidates, or local referendums outside of Hennepin county, do not register with, or make financial reports to, the Board.

In this matter the local referendums referenced in the complaint occurred in Chisago county, and the candidate referenced in the complaint ran for local office in Chisago county. The Board has no jurisdiction over the timing or completeness of reports submitted by Chisago Lakes Education Minnesota. The complaint therefore does not state a prima facie violation of the reporting requirements of Chapter 10A.

Minnesota Statutes section 211B.04 requires campaign material to include a disclaimer stating who is responsible for the preparation and distribution of the communication. The Board has jurisdiction over this provision only for political committees or political funds required to register with the Board. Because Chisago Lakes Education Minnesota is not required to register with the Board, the Board has no jurisdiction over the disclaimer requirement for their campaign material. The complaint therefore does not state a prima facie violation of the disclaimer requirement.

Pursuant to Minnesota Statutes section 10A.022, subdivision 3, this prima facie determination is made by a single Board member and not by any vote of the entire Board. Based on the above analysis, the Chair concludes that the complaint does not state a prima facie violation of Chapter 10A or those sections of Chapter 211B under the Board's jurisdiction. The complaint is dismissed without prejudice.



David Asp, Chair
Campaign Finance and Public Disclosure Board

Date: February 12, 2024

CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD
March 2024
ACTIVE FILES

Candidate/Treasurer/ Lobbyist	Committee/Agency	Report Missing/ Violation	Late Fee/ Civil Penalty	Referred to AGO	Date S&C Personally Served	Default Hearing Date	Date Judgment Entered	Case Status
Mariani, Carlos	Neighbors for Mariani	2022 year-end report	\$1,000 LFF \$1,000 CP	11/22/23				Draft Complaint Forwarded to the Board.
		Late filing of 2018 year-end report	\$525 LFF					
		Late filing of 2020 pre-primary report	\$1,000 LFF \$1,000 CP					
		Late filing of 2018 pre-primary report	\$1,000 LFF \$100 CP					
		2018 pre-general report	\$1,000 LFF \$1,000 CP					
		2020 pre-general 24-hour large contribution notice	\$1,000 LFF					
		2022 annual statement of economic interest	\$1,000 LFF \$100 CP					
		Late filing of 2018 annual statement of economic interest	\$1,000 LFF \$100 CP					
		Late filing of 2018 candidate statement of economic interest	\$95 LFF					

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

FINDINGS, CONCLUSIONS, AND ORDER

IN THE MATTER OF THE COMPLAINT OF MATT WERDEN REGARDING ACTION 4 LIBERTY AND THE DR. NEIL SHAH FOR GOVERNOR COMMITTEE

Background

Original Complaint and Prima Facie Determination

On May 4, 2022, the Campaign Finance and Public Disclosure Board received a complaint submitted by counsel for Matt Werden regarding Action 4 Liberty and the Dr. Neil Shah for Governor committee. Action 4 Liberty is a nonprofit 501(c)(4) association not registered with the Board. Action 4 Liberty PAC is a political committee registered with the Board. Dr. Neil Shah for Governor was the principal campaign committee of Dr. Neil Shah.

The complaint alleged that Action 4 Liberty violated Minnesota Statutes section 211B.15, subdivision 2, by making prohibited corporate contributions to the Shah committee, and the Shah committee violated the same statute by accepting those contributions. The complaint asserted that during the time period of August 6 through November 3, 2021, at least eight emails were sent by or on behalf of the Shah committee from the email address neil@electneil.com (Shah emails). The complaint alleged and contained evidence that those emails each included five or more hyperlinks that routed internet traffic to or through the internet domain action4liberty.com. The complaint included copies of the Shah emails as well as lists of the URLs contained within the hyperlinks in each email. The URLs each began with https://www.action4liberty.com/, then contained additional characters, which the complaint alleged consisted of Urchin Tracking Module (UTM) parameters and identifiers. The complaint alleged and contained evidence that some of the hyperlinks contained within the Shah emails routed users through Action 4 Liberty’s internet domain, and then automatically redirected them to the Shah committee’s contribution webpage, hosted by Anedot.¹

The complaint further asserted that during the time period from July 27, 2021, through February 21, 2022, at least four emails mentioning Dr. Shah were sent by or on behalf of Action 4 Liberty using the email address jake@action4liberty.com (Action 4 Liberty emails). Each of those emails stated that it was sent by Jake Duesenberg, who is the president of Action 4 Liberty and the chair of the Action 4 Liberty PAC.

The complaint noted that both the Shah emails and the Action 4 Liberty emails each contained text at the bottom stating “Created with NationBuilder, software for leaders.” The complaint argued that the emails showed that Action 4 Liberty provided the Shah committee “with its

¹ secure.anedot.com/50abec70-246e-4f71-b4a2-c868366ab853/electshahjd

membership email lists and/or access to its membership.” The complaint asserted that Action 4 Liberty made campaign expenditures that “were not independent because its links are incorporated in Dr. Shah’s e-mails, and the links route users to Dr. Shah’s official website.”

On May 12, 2022, the Board chair determined that the complaint alleged prima facie violations of Minnesota Statutes section 211B.15, subdivision 2, as to Action 4 Liberty and the Dr. Neil Shah for Governor committee, and of Minnesota Statutes section 10A.20, subdivision 3, as to the Shah committee.

Supplemental Complaint and Prima Facie Determination

On May 25, 2022, the Board received a supplemental complaint submitted by counsel for Mr. Werden. The supplemental complaint relied on the factual assertions made in the original complaint and alleged that Action 4 Liberty violated Minnesota Statutes section 10A.27, subdivision 13, by making contributions to the Shah committee in excess of \$200 without providing a disclosure statement as required of an association not registered with the Board. The supplemental complaint alleged that the Shah committee violated the same statute by accepting those contributions without the required disclosure statement.

On May 26, 2022, the Board chair determined that the supplemental complaint alleged a prima facie violation of Minnesota Statutes section 10A.27, subdivision 13, as to Action 4 Liberty and the Shah committee.

Initial Responses

On May 26, 2022, the Shah committee provided a written response to the original complaint. The committee stated that it “did not receive any contributions including in-kind contributions from Action 4 Liberty.” The committee explained that it “hired and paid substantial sums to RPR Consulting, a third-party consulting firm, to perform a variety of consulting and campaign services.” The committee stated that “[t]hese services included, but were not limited to, acquiring email lists and drafting and sending email marketing. It is the Campaign’s understanding that RPR paid Action 4 Liberty to enter various list-sharing agreements to be used by RPR Consultants.”² The committee noted that it incurred over \$146,000 in campaign expenditures payable to RPR Consultants in 2021 and that those expenditures were included within the committee’s 2021 year-end report of receipts and expenditures. That report included 14 separate campaign expenditures payable to RPR Consultants, each of which were described as “Other Services.”³ All but one of the 14 expenditures was disclosed with text explaining that

² The original complaint and written responses to the complaint variously name the consulting business paid by the Shah committee as RPR Consulting or RPR Consultants. According to the [website](#) of the Arizona Corporation Commission, the legal name of the business referenced in the complaint appears to be RPR Consultants, Inc.

³ The Shah committee’s original 2021 year-end report may be viewed at the following address by selecting the Reports and Data tab: cfb.mn.gov/reports-and-data/viewers/campaign-finance/candidates/18697.

each expenditure was for “DIGITAL, STRATEGY, SOCIAL MEDIA AND COMMUNICATIONS.” The committee’s 2021 year-end report does not contain any references to Action 4 Liberty.

Within its response the Shah committee argued that because the committee’s

emails were not created by, paid for, or controlled by Action 4 Liberty, and because the Campaign has no knowledge of nor had knowledge of or control over disclaimers or practices included in any Action 4 Liberty emails created and sent independently from the Campaign, and because there was no coordination between the Campaign and Action 4 Liberty, the Werden Complaint makes no credible claims against the Campaign and should be dismissed.

With its written response the committee provided a copy of an invoice issued by Action 4 Liberty to Shawn Dow of “RPR Consulting, INC” that includes the cost “for use of email service” for the month of August 2021. According to the Arizona Corporation Commission, Shawn Dow is a director of, and shareholder in, RPR Consultants, Inc.

On June 10, 2022, Jeffrey O’Brien, counsel for Action 4 Liberty, provided a written response to the original and supplemental complaints. Mr. O’Brien stated that the Shah emails “were sent via Action 4 Liberty’s Nationbuilder account, but Action 4 Liberty was paid by RPR for the use of the account.” Mr. O’Brien said that “Action 4 Liberty engaged in an arms-length transaction with RPR and was paid for the use of” assets referred to as Action 4 Liberty’s “digital backbone” within the original complaint. Mr. O’Brien asserted that “Action 4 Liberty did not give anything to the Shah for Governor committee. Rather, Action 4 Liberty rented its NationBuilder account and other information to RPR Consulting, Inc., a private consulting firm, for a price negotiated between the parties.”

Within Action 4 Liberty’s response, Mr. O’Brien argued that no prohibited contribution occurred because Action 4 Liberty did not make a contribution to the Shah committee. Mr. O’Brien noted that the Board has “declared that the sale of any product or service for fair market value does not and will not constitute a contribution.” In support of that statement Mr. O’Brien referenced three advisory opinions issued by the Board, including Advisory Opinion 369,⁴ affirming that a political committee may sell internet-based services to candidates without making a contribution if the cost of those services reflects the fair market value of equivalent services available to candidates on the open market; Advisory Opinion 320,⁵ affirming that a corporation may provide goods or services to political entities registered with the Board and that the goods or services provided will not constitute an in-kind contribution if the corporation charges fair market value; and Advisory Opinion 270,⁶ stating that if an individual sells a product to a political party unit for less than the full retail value of that product, the difference is an in-kind contribution from the individual to the party unit.

⁴ cfb.mn.gov/pdf/advisory_opinions/AO369.pdf

⁵ cfb.mn.gov/pdf/advisory_opinions/AO320.pdf

⁶ cfb.mn.gov/pdf/advisory_opinions/AO270.pdf

Mr. O'Brien provided copies of the same invoices provided by the Shah committee. Each of the invoices provided by Mr. O'Brien were redacted to exclude the amounts billed and paid. With respect to the Action 4 Liberty emails Mr. O'Brien stated that the "emails all relate to the issue advocacy which Action 4 Liberty is known for" and that "Dr. Shah's presence within these emails is merely coincidental and nowhere is he 'endorsed.'"

On June 21, 2022, the Board sent a letter to the Shah committee seeking the total amount that RPR Consultants or Shawn Dow was paid by the committee for access to and use of Action 4 Liberty's NationBuilder account. That information was sought in order to verify Action 4 Liberty's statement that fair market value had been paid for the use of Action 4 Liberty's NationBuilder account and the data stored therein.

On June 28, 2022, Darrin Rosha, counsel for the Shah committee, provided a written response to the letter seeking additional information. The Shah committee included copies of two invoices showing that Action 4 Liberty was paid a total of \$2,191.10 by RPR Consultants for the use of components of its NationBuilder account. The committee stated that RPR Consultants was billed "for the use of Action 4 Liberty's NationBuilder account to send e-mails to Action 4 Liberty's lists that the Campaign rented but did not possess." Mr. Rosha explained to Board staff that the parties reached an agreement whereby payment of the two invoices would be considered payment in full for the services Action 4 Liberty provided over a period of approximately three months in 2021. Each invoice included a \$100 flat fee for the use of Action 4 Liberty's email list and a \$500 flat fee for use of Action 4 Liberty's phone list. Approximately 45% of the total amount invoiced was paid through a 10% commission on the amount of contributions the Shah committee received as a result of using Action 4 Liberty's email list.

Within its response the Shah committee explained that it had its own NationBuilder account and decided to use its own lists and cease using Action 4 Liberty's email list after the invoices were paid because it "determined it received a better return from doing so." The committee argued that this decision "demonstrates that the [Shah committee] not only paid fair market value for the services Action 4 Liberty provided including use of the email platform, it determined it was paying more than necessary based on its own growing lists and NationBuilder account."

Probable Cause Hearing

The Board considered this matter at its meeting on July 6, 2022. R. Reid LeBeau II, counsel for the complainant, appeared before the Board. Mr. O'Brien appeared before the Board on behalf of Action 4 Liberty.

Mr. LeBeau argued that the services provided by Action 4 Liberty to the Shah committee spanned a period of seven months and extended far beyond renting lists containing contact

information of potential supporters. Mr. LeBeau asserted that the value of those services was likely far greater than \$2,191, the amount the Shah committee has stated was paid to Action 4 Liberty.

With respect to the Action 4 Liberty emails, Mr. LeBeau argued that the similarity of the UTM parameters and identifiers embedded within the hyperlinks in the Shah emails and the Action 4 Liberty emails demonstrates that those emails came from the same source, which is evidence of coordination between the Shah committee and Action 4 Liberty. Mr. LeBeau also asserted that the fact that Action 4 Liberty served as a vendor of services provided to the Shah committee is evidence of coordination in the content and production of the Action 4 Liberty emails.

During the July 6, 2022, Board meeting Mr. O'Brien argued that RPR Consultants paid Action 4 Liberty fair market value for the use of its NationBuilder account, thus there was no prohibited contribution. Mr. O'Brien stated that RPR Consultants and Action 4 Liberty "figured out what percentage of the time for a particular month that the consultant was going to be using the program and prorated the monthly fee based on that." In response to a question from a Board member asking him to explain the use of the term prorated, Mr. O'Brien explained that Action 4 Liberty "pays a monthly fee to NationBuilder . . . to have this account." Mr. O'Brien further explained that "the parties determined how much of the time for that month that the consultant was going to be using the account under this rental and charged the consultant for that percentage of time for that month." Mr. O'Brien stated that "if the consultant was going to be using it - estimated to be using it 10% of the time, they paid 10% of the monthly fee."

With respect to the Action 4 Liberty emails, Mr. O'Brien characterized those emails as promotion of Action 4 Liberty and its issue advocacy, rather than an endorsement of or attempt to support Dr. Shah's candidacy for governor. Mr. O'Brien noted that the August 3, 2021, email attached to the original complaint as Exhibit E named other gubernatorial candidates in addition to Dr. Shah.

Unless otherwise noted, subsequent references to the complaint are inclusive of both the original complaint and the supplemental complaint.

Probable Cause Determination

The Board made a probable cause determination at its meeting on July 6, 2022, and initiated a formal investigation. The Board determined that there was probable cause to believe that the price paid by the Shah committee for access to the Action 4 Liberty NationBuilder account was less than fair market value, and therefore represented a corporate contribution from Action 4 Liberty, and that the Dr. Neil Shah for Governor committee accepted that contribution in violation of Minnesota Statutes section 211B.15, subdivision 2. The Board determined that there was probable cause to believe that Action 4 Liberty made a contribution in excess of \$200 and that the Dr. Neil Shah for Governor committee accepted that contribution without a disclosure statement in violation of Minnesota Statutes section 10A.27, subdivision 13. The Board determined that there was probable cause to believe that both the Dr. Neil Shah for Governor

committee, and either Action 4 Liberty or the Action 4 Liberty PAC, violated the reporting requirements in Minnesota Statutes section 10A.20. Lastly, the Board determined that there was not probable cause to believe that the Action 4 Liberty emails were coordinated with the Shah committee, and thereby dismissed that allegation without prejudice. A written determination was signed by the Board's chair and distributed to the respondents and complainant on July 12, 2022.

Formal Investigation

July 2022 Requests and Responses

On July 14, 2022, Board staff sent letters to Action 4 Liberty and the Shah committee seeking information needed to determine whether fair market value was paid for the use of Action 4 Liberty's email list and phone list. The information sought included the number of email addresses and phone numbers included within the lists used by the Shah committee, whether additional emails were sent on behalf of the Shah committee in addition to those referenced in the complaint, and whether Action 4 Liberty received any commission on contributions received by the Shah committee after the period covered by an invoice Action 4 Liberty issued on October 6, 2021. The letter sent to Action 4 Liberty also asked its counsel to confirm that his representations to the Board during the probable cause hearing were accurate in terms of stating that the amount of time RPR Consultants spent logged in to Action 4 Liberty's NationBuilder account was used to determine the amount billed.

Counsel for Action 4 Liberty provided a response on July 28, 2022, and counsel for the Shah committee provided a response on August 2, 2022. Contrary to what Action 4 Liberty's counsel said during the probable cause hearing, each respondent stated that RPR Consultants did not have direct access to Action 4 Liberty's NationBuilder account. Action 4 Liberty stated that

RPR did not have access or log in credentials to A4L's Nationbuilder account. The NationBuilder platform was only used to take an email script and click send. Texting, phone calls, voter information, etc. was not part of the service. The phone list usage was not done with access or within the A4L's NationBuilder platform.

In response to questions regarding the number of email addresses contained within the list used to send the Shah emails and whether additional emails were sent on behalf of the Shah committee in addition to those referenced in the complaint, Action 4 Liberty stated that RPR Consultants did not have access to its NationBuilder account, rather than addressing the substance of the questions posed. In response to a question regarding whether the 10% commission applied to contributions made by individuals contacted by phone and whether Action 4 Liberty received any commission on contributions received by the Shah committee after the period covered by the invoice issued on October 6, 2021, Action 4 Liberty failed to provide a direct answer and instead stated that "A4L's terms with RPR Consultants changed during the relationship, the parties had on-going negotiations and both parties agreed that the terms were satisfactorily met upon payment of the October 6th invoice."

Within its response Action 4 Liberty offered a number of objections to the questions posed and made a variety of legal arguments. Action 4 Liberty conceded that the Board has the “authority to determine whether a contribution occurred” but argued that “determining its own fair market value for a particular good or service . . . is outside of its purview and jurisdiction.” Action 4 Liberty stated that “[t]here is a distinct and significant line between determining whether a contribution has been made and conversely determining what fair market value is. CFB cannot and should not put itself in the shoes of determining the latter.” Action 4 Liberty stated that

A4L’s services are unique to its mission and the activities that it undertakes in the State of Minnesota which are related to Minnesota-specific issues, and more particularly, issues focused on protecting the liberties of individuals and businesses in the local community. To the best of A4L’s knowledge and belief, there simply is not an equivalent or similarly situated group in Minnesota for which a comparison could be properly made, as the services at issue here pertain to information which pertains to individuals who value and support A4L’s interests and goals. While there may be other groups that provide e-mail and/or phone list rentals or services, the rates for such companies are for services and/or members that are necessarily distinct from those of A4L, as they not only reach different groups of individuals but individuals that may hold wholly distinguishable values and beliefs such that the value of services rendered here would have little to no comparable effect with another entity or organization. An inextricable consideration in determining fair market value is the value that each buyer and seller places on the value of the good or service.

It is equally significant to clarify that the contracted services that A4L provided to RPR Consultants was the first time that it had ever provided such services or entered into such a Data Agreement. Consequently, there are no past transactions or rates upon which A4L could rely as precedent to provide the CFB with historical rates or service agreements in this matter. As often is the case in small business transactions, it is often a learning experience for a seller in initially offering a product for sale, and said cost often varies or is modified over time. It is also the case that parties in any transaction negotiate for a rate that they both believe to be appropriate given the product’s respective value and cost to each party. Given the nature of the services sold in this matter, there is no market equivalent that A4L could readily point to or upon which the CFB could rely to determine an existing market equivalent for such services. As such, the CFB should properly rely upon the agreement between the parties in this transaction and deem such as the proper fair market value for the transaction.

Within its response the Shah committee stated that it “does not know the number of e-mail addresses or corresponding information such as phone numbers that may have been maintained within the list.” The committee explained that “[e]-mails were created by the Campaign and provided to Action 4 Liberty to be sent by Action 4 Liberty to their NationBuilder list.” In response to the question “Did RPR Consultants use Action 4 Liberty’s NationBuilder account to send any emails on behalf of the Shah committee aside from the eight emails referenced in the original complaint?”, the committee failed to provide a substantive answer and instead asserted that the question was unclear due to the use of the word “use” in referring to

Action 4 Liberty's NationBuilder account, to which RPR Consultants did not have direct access. The Shah committee provided direct and substantive answers to several other questions.

Neither respondent provided the number of email addresses contained within the list used to send the Shah emails or the number of phone numbers contained within the list referenced in the invoices issued by Action 4 Liberty to RPR Consultants. Also, neither respondent stated whether additional emails were sent on behalf of the Shah committee, using Action 4 Liberty's email list, in addition to the eight Shah emails referenced in the complaint.

During its meeting on August 15, 2022, the Board granted the Board's executive director authority to issue administrative subpoenas in this matter.⁷

August 2022 Requests and Responses

On August 22, 2022, Board staff sent letters to Action 4 Liberty and the Shah committee seeking additional information, including copies of any "emails sent by Action 4 Liberty on behalf of the Shah committee and/or RPR Consultants that were in addition to the eight emails referenced in the original complaint," any "documentation of how many email addresses were included within the list used to send the eight emails referenced in the original complaint," and any "documentation of how many phone numbers were included within the phone list referenced in" the invoices issued by Action 4 Liberty to RPR Consultants. Board staff also asked that Mr. Duesenberg and a representative of the Shah committee be made available for a formal interview.

Counsel for Action 4 Liberty and counsel for the Shah committee provided separate responses on September 6, 2022. Action 4 Liberty restated the objections and legal arguments made previously, and in response to each of seven specific requests for information, stated that it "objects to this request on grounds that the information sought is not relevant to a determination of fair market value for the services rendered." In response to questions seeking documentation regarding the number of email addresses included within the list used to send the Shah emails, and documentation regarding how many phone numbers were included within the phone list referenced in the invoices issued to RPR Consultants, Action 4 Liberty also stated that it "objects to this request on grounds that A4L considers this information to be its proprietary information, the public disclosure of which would have a material adverse impact on A4L's business which outweighs the CFB's interest in obtaining this information." Action 4 Liberty declined to voluntarily make Mr. Duesenberg available for a formal interview.

The Shah committee issued a "general reply" stating that

⁷ [Minnesota Statutes section 10A.022, subdivision 2](#), provides that "[i]n all matters relating to its official duties, the board has the power to require testimony under oath, to permit written statements to be given under oath, and to issue subpoenas and cause them to be served. If a person does not comply with a subpoena, the board may apply to the District Court of Ramsey County for issuance of an order compelling obedience to the subpoena. A person failing to obey the order is punishable by the court as for contempt." [Minnesota Rules 4525.0600, subpart 6](#), provides that "[t]he board may issue subpoenas when necessary to advance an investigation or audit."

Due to the time that has passed since the end of the Campaign's operations, none of the requested campaign-related data is accessible beyond what has already been presented to the Board. The Campaign's accounts were closed and all relevant data in the Campaign's possession was previously provided to the Board. Any requests about the volume of phone numbers or other contact information cannot be provided by the Campaign as the Campaign never possessed that data. The remaining Board requests are obviated by the structure of the Campaign's agreement at issue.

Within its response the Shah committee did not specifically address the request that a representative of the committee be made available for a formal interview. Neither respondent provided the number of email addresses contained within the list used to send the Shah emails or the number of phone numbers contained within the list referenced in the invoices issued by Action 4 Liberty to RPR Consultants. Also, neither respondent stated whether additional emails were sent on behalf of the Shah committee, using Action 4 Liberty's email list, in addition to the eight Shah emails referenced in the complaint.

September 2022 Administrative Subpoenas

The Board's executive director issued administrative subpoenas to Mr. Duesenberg and Dr. Shah on September 16, 2022. Counsel for the Shah committee accepted service of the subpoena on behalf of the Shah committee and Dr. Shah. Counsel for Action 4 Liberty declined to accept service on behalf of Mr. Duesenberg and Action 4 Liberty. The subpoena directed to Mr. Duesenberg was personally served on September 22, 2022.

The administrative subpoenas demanded the same information sought within the letters sent to respondents' legal counsel on August 22, 2022.⁸ The administrative subpoenas demanded that Mr. Duesenberg appear for a deposition on October 10, 2022, and that Dr. Shah appear for a deposition on October 12, 2022.

In late September and early October of 2022, counsel for the Shah committee and Action 4 Liberty each asserted within emails and letters provided to Board staff that a complaint filed with the Board alleging a violation of Minnesota Statutes Chapter 211B must be submitted under oath.⁹ During this time period Action 4 Liberty was represented by Jennifer Crancer, a member of the same firm as Mr. O'Brien. The Shah committee argued that the complaint filed in this matter was invalid because while it contained the address of the complainant's legal counsel, it did not contain an address for the complainant, Mr. Werden.¹⁰ The Shah committee also

⁸ [Minnesota Rules 4525.0500, subpart 6](#), provides that "[t]he board may not issue a subpoena for the production of documents or witness testimony until a respondent has had at least 14 days to respond to a written request for the documents or testimony."

⁹ See [Minn. Stat. § 211B.32, subd. 3](#), which applies to complaints filed with the Office of Administrative Hearings, rather than complaints filed with the Board.

¹⁰ See [Minn. R. 4525.0200, subp. 2](#); see also [Minn. R. 4501.0100, subp. 2](#). The complaint was signed by Mr. Werden's attorney, Rondell Reid LeBeau II, and included Mr. LeBeau's business mailing address.

attacked the Board's probable cause determination, asserting that the burden of proof is on the complainant.¹¹

Counsel for Action 4 Liberty argued that the subpoena directed to Mr. Duesenberg was procedurally improper, exceeded the scope of the Board's authority and the issues presented in the complaint, sought privileged information, was unduly burdensome, and required disclosure of confidential and proprietary information. Counsel for Action 4 Liberty further argued that the timing of the subpoena was improper, the timing of the Board's probable cause determination was improper, and the Board's failure to resolve its investigation within 60 days after the probable cause determination required dismissal of the complaint. Counsel for Action 4 Liberty asked that the subpoena directed to Mr. Duesenberg be withdrawn, and the Board's executive director declined that request. Each respondent demanded that the complaint be dismissed.

Counsel for the Shah committee and Action 4 Liberty were each invited to appear before the Board at its meeting on October 5, 2022, to present their arguments as to why the subpoenas were improper or why the investigation should be closed. Mr. Rosha appeared before the Board on behalf of the Shah committee and Dr. Shah and argued that the complaint should be dismissed on the basis that it was required to be submitted under oath and that it did not include the complainant's personal address. Counsel for Action 4 Liberty declined to appear before the Board.

During its meeting on October 5, 2022, the Board denied the respondents' requests to dismiss the complaint, directed Board staff to ask the complainant's legal counsel to provide the complainant's address for inclusion within the record, and authorized legal action to compel compliance with the administrative subpoenas. Letters were sent to counsel for each respondent the same day seeking production of the information demanded within the administrative subpoenas and confirmation of whether Mr. Duesenberg and Dr. Shah would appear for the depositions scheduled for October 10 and 12, respectively. Counsel for Action 4 Liberty confirmed that Mr. Duesenberg would not appear for his scheduled deposition. Counsel for the Shah committee confirmed that Dr. Shah would not appear for his scheduled deposition. Neither respondent produced records responsive to the administrative subpoenas.

On October 10, 2022, counsel for the complainant provided the complainant's home address. That address was provided to counsel for each respondent the same day.

Legal Action by Action 4 Liberty and Mr. Duesenberg Seeking Declaratory Judgement

On October 14, 2022, the Board was served with a summons and complaint seeking a court order declaring that the Board's investigation and the administrative subpoena served on Mr. Duesenberg violated Minnesota Statutes Chapter 211B and section 10A.022, declaring that the Board's investigation violated Action 4 Liberty's freedom of association and freedom of

¹¹ See [Minn. Stat. § 211B.32, subd. 4](#), which applies to complaints filed with the Office of Administrative Hearings, rather than complaints filed with the Board.

speech and expression under the First Amendment and Article 1, Section 2, of the Minnesota Constitution, and terminating the investigation with respect to Action 4 Liberty. The Board was also served with a motion for a temporary restraining order that would quash the administrative subpoena served on Mr. Duesenberg and prevent the Board from continuing its investigation with respect to Action 4 Liberty. The complaint and motion for a temporary restraining order were filed with the Ramsey County District Court on the same day that they were served on the Board.¹²

On October 27, 2022, the Board filed a memorandum opposing the motion for a temporary restraining order. Within its memorandum the Board argued that the oath requirement stated in Minnesota Statutes section 211B.32, subdivision 3, applies to complaints filed with the Office of Administrative Hearings pursuant to that statute, rather than to complaints filed with the Board pursuant to Minnesota Statutes section 10A.022, subdivision 3. The Board explained that the original and supplemental complaint each contained the address of Mr. Werden's legal counsel, and while it is not clear whether inclusion of the complainant's attorney's address satisfied Minnesota Rules 4525.0200, subpart 2, the Board initially did not seek a separate address for Mr. Werden because the Board intended to contact Mr. Werden through his attorney. The Board noted that the respondents were subsequently provided Mr. Werden's home address, and argued that the complaint filed by Action 4 Liberty and Mr. Duesenberg with the court does not support the conclusion that the proper remedy for a defect in a complaint filed with the Board is permanent injunctive relief barring the Board from conducting an investigation.

The Board asserted that its chair acted properly in making prima facie determinations regarding both the original complaint and the supplemental complaint, because the requirement to have a different Board member make a prima facie determination applies only when the initial determination is "that the complaint does not allege a prima facie violation."¹³ The Board argued that contrary to the assertion of Action 4 Liberty, a type of investigation known as a staff review was never conducted in this matter, and the Board is not obligated to adopt recommendations made by its staff. The Board asserted that no statutory deadlines were violated in making the probable cause determination or in failing to resolve the investigation within 60 days after the probable cause determination, because the Board has statutory authority to, and did, extend those deadlines.¹⁴ Moreover, the Board noted that the deadline for making the probable cause determination was extended with the express consent of Action 4 Liberty.

The Board argued that it has the authority to determine the fair market value of the goods and services provided by Action 4 Liberty, in part because such a determination is essential in order to ascertain whether an in-kind contribution occurred. The Board asserted that Action 4

¹² The action was captioned Action 4 Liberty and Jake Duesenberg v. Minnesota Campaign Finance and Public Disclosure Board, file no. 62-CV-22-5562. Documents filed during the litigation were not available to the public due to the plaintiffs' unopposed request that the filings be non-public, pursuant to [General Rules of Practice Rule 11.04](#) and [Minnesota Statutes section 10A.022, subdivision 5](#).

¹³ See [Minn. Stat. § 10A.022, subd. 3 \(c\)](#).

¹⁴ See [Minn. Stat. § 10A.022, subd. 3 \(d\)-\(e\)](#). At the time the probable cause determination was made, the statutory deadline was 45 days after the prima facie determination, absent an extension.

Liberty's arguments regarding the subpoenas violating court rules were meritless because it cited no authority supporting the conclusion that court rules apply to administrative subpoenas. The Board contended that it complied with the timing requirements regarding issuance of an administrative subpoena and that Action 4 Liberty was provided ample time to voluntarily produce the records sought.¹⁵ The Board also defended the constitutionality of its investigation.

A hearing on the plaintiffs' motion for a temporary restraining order was held before Judge Timothy Mulrooney on November 3, 2022. On January 3, 2023, the Ramsey County District Court issued an order denying the motion. On January 5, 2023, Action 4 Liberty and Mr. Duesenberg voluntarily dismissed their lawsuit.

February 2023 Administrative Subpoenas

On January 10, 2023, Board staff sent a letter to counsel for Action 4 Liberty and Mr. Duesenberg asking whether they intended to now comply with the administrative subpoena served on Mr. Duesenberg in September 2022. No response was received.

The Board's executive director issued three new administrative subpoenas on February 24, 2023, with one directed to Mr. Duesenberg and two directed to Action 4 Liberty at two different addresses. The subpoenas each demanded production of the same records sought within the subpoena served on Mr. Duesenberg in September 2022. Each subpoena also demanded that Mr. Duesenberg appear for a deposition on March 23, 2023. The subpoena directed to Mr. Duesenberg was served on Mr. Duesenberg on March 8, 2023. One of the subpoenas directed to Action 4 Liberty was served on Action 4 Liberty on March 13, 2023.

On March 17, 2023, Mr. Duesenberg emailed Board staff stating that Action 4 Liberty had retained new legal counsel, Erick Kaardal. On March 22, 2023, Mr. Kaardal stated in a letter that "Mr. Duesenberg respectfully declines your invitation to appear or produce the documents requested." Within the letter Action 4 Liberty asserted that even if it made a contribution to the Shah committee, the contribution was legal because Minnesota's prohibition on corporate contributions under Minnesota Statutes section 211B.15, subdivision 2, is facially unconstitutional under the First Amendment.¹⁶ On that basis Action 4 Liberty asserted that the subpoena was "overly burdensome because the subpoena is not tailored to any *illegal* acts of Action 4 Liberty. Simply stated, § 211B.15 is not applicable to Action 4 Liberty."

¹⁵ See [Minn. R. 4525.0500, subp. 6](#).

¹⁶ The basis for this assertion was a 2010 federal district court decision concluding, in the wake of the United States Supreme Court's decision in *Citizens United v. FEC*, that Minnesota Statutes section 211B.15, subdivision 2, was unconstitutional "insofar as it prohibits or otherwise purports to restrict or limit [a corporation's] acceptance of contributions for the purpose of making independent expenditures or otherwise making corporate independent expenditures from its general treasury funds on behalf of or in opposition to candidates for political office. . . ." [Minnesota Chamber of Com. v. Gaertner, 710 F. Supp. 2d 868, 874 \(D. Minn. 2010\)](#). Minnesota Statutes section 211B.15 was amended three weeks thereafter to address its constitutional infirmities. See [2010 Minn. Laws. ch. 397, §§ 16-18, 20](#).

Deposition of Dr. Shah

In late March of 2023, Board staff contacted counsel for the Shah committee and explained that the Board would likely pursue legal action to enforce the subpoena issued in September 2022 unless Dr. Shah agreed to appear for a deposition. Dr. Shah then agreed to appear for a deposition, which was conducted on April 21, 2023. Dr. Shah testified that his campaign initially sought data regarding potential voters from the Republican Party of Minnesota, and while the party agreed to provide a list of party officers such as the chairs of local party units, it refused to provide access to its data regarding individual voters and contributors.

Dr. Shah testified that Shawn Dow of RPR Consultants or another consultant, Chasen Bullock, suggested reaching out to Action 4 Liberty to help with fundraising at the beginning of the Shah campaign. Dr. Shah said that “Action 4 Liberty is probably the largest group in the state” that attracts individuals who are libertarians or constitutional conservatives, “[s]o it made sense that they would have the highest proportion of people that we would want to contact.” Dr. Shah said that he met Mr. Duesenberg in the spring of 2021 and ran into him at various political events.

Dr. Shah testified that he believed the original idea was that eight emails would be sent on behalf of the Shah committee, which is the total number that he believed were sent.¹⁷ Dr. Shah explained that his campaign could not see how many names were included on the email list because the emails were being sent on the campaign’s behalf by Action 4 Liberty, and the Shah campaign did not have access to Action 4 Liberty’s email system. Dr. Shah also explained that one downside to the arrangement was that the Shah campaign had no way of knowing which individuals clicked which links within the emails, and therefore was not able to build a targeted list of potential supporters based on their interactions with the emails. With respect to the Shah committee’s perspective on the value of the email list, Dr. Shah testified that the committee’s consultants felt that Action 4 Liberty’s terms were reasonable but “the value of this list was unknown to us when we started.”

Dr. Shah explained that the value of the list was limited because the campaign didn’t receive any data regarding who opened the emails or who clicked on which links within the emails, except for when someone clicked on a link and then made a contribution to the Shah committee. Dr. Shah stated that within a month his committee concluded that it had “grossly overpaid” for the value provided and engaged in a series of conversations with Action 4 Liberty. Dr. Shah explained that Action 4 Liberty agreed to stop taking its 10% commission on contributions made by individuals who clicked a link within one of the “last couple of emails” sent on behalf of the Shah committee. Dr. Shah said his “recollection is that the raise on those last emails was even less impressive than” the amount raised as a result of the previous emails.

Dr. Shah explained that the Shah committee’s valuation of the arrangement was based on the assessment of its “consultants who have worked on a number of national campaigns and what they had seen for kind of these list agreements.” Dr. Shah said that

¹⁷ The Board later learned that a total of 18 emails were sent, rather than eight.

This one was odd in that we never got to see any of the list. So it was a much lower value proposition than sometimes -- so, for example, the 10 percent number they were -- some people were reticent on that because they felt that it was too high for getting almost no data, access to data. We just basically had an email forwarding service. Send an email and money may or may not come back. But no other data comes back. Or very little that you can trace. So some people thought that should be lower, but we thought it was a reasonable number to start with. If everything went great, we could have adjusted it as the relationship progressed.

Dr. Shah also asserted that the data received by Action 4 Liberty as a result of recipients clicking on links within the emails was likely valuable to Action 4 Liberty.

When asked whether RPR Consultants knew how many individuals were on the email list, Dr. Shah stated "I don't think that they did. I don't think anyone knew." With respect to the phone list Dr. Shah testified that the list was used to place phone calls and while his committee did not have direct access to the list, he believed that the list "was roughly a couple hundred names." Dr. Shah stated that the emails and phone calls were each intended to solicit both contributions and volunteers. Dr. Shah said he was not sure whether the phone list was used to send text or multimedia messages. Dr. Shah stated that Action 4 Liberty did not receive any commission for contributions made by individuals contacted by phone.

April 2023 Request for Limited Information from Action 4 Liberty and Response

On April 28, 2023, Board staff sent a letter to Action 4 Liberty seeking three pieces of information. Specifically, Action 4 Liberty was asked to provide the number of email addresses included within the list used to send the Shah emails, the number of phone numbers included within the list provided to RPR Consultants, and the total amount of contributions that the Shah committee received from contributors who used a link contained within one of the Shah emails.

On May 22, 2023, Action 4 Liberty provided a letter in response, refusing to provide the limited information sought. Action 4 Liberty referenced Dr. Shah's deposition testimony and stated that

In light of the admissions of the Shah campaign through the testimony of Dr. Neil Shah, Action 4 Liberty will decline to provide the requested information regarding the number of emails and phone numbers provided to the Dr. Neil Shah for Governor committee. Furthermore, it is a burdensome request.

As for the request regarding the total number of contributions the Dr. Neil Shah for Governor committee received from contributors who utilized a hyperlink, please see the Shah committee. Any use of the hyperlink is not a contribution from Action 4 Liberty as defined under Minnesota law. Therefore, no response is necessary.

Legal Action by Board to Enforce Subpoenas Directed to Action 4 Liberty and Mr. Duesenberg

On June 22, 2023, the Board filed with the Ramsey County District Court an application seeking an order compelling compliance with the administrative subpoenas served on Action 4 Liberty and Mr. Duesenberg.¹⁸ The application and accompanying filings were mailed to counsel for Action 4 Liberty and Mr. Duesenberg on June 22, and were personally served on Mr. Duesenberg on June 28, 2023. The Ramsey County District Court issued an order on June 28, 2023, granting the application and ordering Action 4 Liberty and Mr. Duesenberg to comply with the administrative subpoenas within 10 days. Action 4 Liberty and Mr. Duesenberg requested a hearing before the court and asked that the deadline to comply with the court order be extended. During the course of this litigation, Action 4 Liberty and Mr. Duesenberg were represented by William Mohrman, a member of the same firm as Mr. Kaardal.

A hearing was held before Judge Patrick Diamond on August 7, 2023. During the hearing Action 4 Liberty represented that it would comply with the subpoenas if any materials or testimony provided was subject to a permanent protective order preventing public disclosure of that information. On August 21, 2023, Action 4 Liberty filed a brief seeking a protective order from the court. Within its brief Action 4 Liberty argued that it is entitled to a protective order under the First Amendment because its “reputation in the community as a trusted organization is paramount,” the “disclosure of data and documents can cause irreparable harm to Action 4 Liberty as a non-profit that relies on generous donations of individuals or other organizations to survive as an organization at the cutting edge of many disputed issues in the country today,” and its “information could be used to [sic] by organizations opposed to Action 4 Liberty’s viewpoints to argue that Action 4 Liberty is a goliath organization exercising outsized influence in Minnesota politics or a paper tiger with no influence.” Action 4 Liberty’s brief cited a 2007 Minnesota Supreme Court opinion holding that a court has inherent authority to issue a protective order after applying a two-part test.¹⁹

On August 28, 2023, the Board filed a supplemental memorandum in support of its application for an order compelling compliance with the subpoenas. The Board argued that a court’s inherent authority to issue a protective order “is limited to managing the judicial process and may only be extended beyond the judicial process to remedy constitutional violations or abuses of agency discretion.” The Board noted that Action 4 Liberty failed to support its request for a protective order with evidence of potential harm and asserted that the type of harm that would justify a protective order could not occur as a result of the information sought by the Board. The Board asserted that none of its “inquiries seek the names, addresses, or contact information of Action 4 Liberty’s members,” and “[b]ecause the identities of Action 4 Liberty’s members will remain secure, these individuals cannot reasonably fear threats, harassment, or reprisal.” The Board also explained that if the protective order sought by Action 4 Liberty was granted, “the

¹⁸ The action was captioned Minnesota Campaign Finance and Public Disclosure Board v. Action 4 Liberty and Jake Duesenberg, file no. 62-CV-23-3399. Many documents filed during the litigation were not available to the public due to the Board’s unopposed request that the filings be confidential, pursuant to [General Rules of Practice Rule 11.04](#) and [Minnesota Statutes section 10A.022, subdivision 5](#).

¹⁹ See [In re GlaxoSmithKline PLC](#), 732 N.W.2d 257 (Minn. 2007).

Board will be unable to publicly disclose *why* it concluded that fair market value was or was not paid for the goods and services purchased from Action 4 Liberty,” which would “fly in the face of clear legislative policy preferences and the public interest, while it would only prevent harms that lie somewhere between nominal and nonexistent.”

On November 27, 2023, the Ramsey County District Court issued an order granting the Board’s application for an order compelling compliance with the administrative subpoenas and denying the motion of Action 4 Liberty and Mr. Duesenberg for a protective order. Within its order the court stated that Action 4 Liberty’s assertion of a chill on its associational interest was weak, at best, and was “backed by no evidence.” The court noted that the state’s interest in disclosure is substantial, and held that Action 4 Liberty “must comply with the administrative subpoena the CFB has issued.” With respect to the motion for a protective order, the court stated that the motion was premature because the information in question had yet to be produced. The court also said that “[i]t is one thing to exercise inherent authority and discretion in an area in which statutes are silent and provide no guidance. It is quite another to prohibit public disclosure in a situation in which the very purpose of the existing statutory scheme is to require disclosure.”

On December 8, 2023, Board staff again sent a letter to counsel for Action 4 Liberty and Mr. Duesenberg demanding that records responsive to the Board’s administrative subpoenas be produced. On December 22, 2023, Action 4 Liberty provided 76 pages of documents responsive to the subpoenas. On February 2, 2024, Board staff spoke with Mr. Mohrman by phone and clarified three questions regarding the information contained within the documents.

The documents produced by Action 4 Liberty show that the list used to send the Shah emails contained approximately 44,494 email addresses and the phone list purchased from Action 4 Liberty contained phone numbers for approximately 262 individuals. Although Dr. Shah stated during his deposition that eight emails were sent on behalf of the Shah committee using Action 4 Liberty’s email list, the actual number of emails was 18.²⁰ Contrary to what the Shah committee stated in June 2022, it did not cease using Action 4 Liberty’s email list after the second invoice was paid by RPR Consultants in 2021. Rather, three emails were sent on behalf of the Shah committee using that list in January and February of 2022. Neither respondent provided the total amount of contributions that the Shah committee received from individuals who clicked a link within one of the Shah emails. However, based on the invoices provided by the Shah committee, the total was \$9,911, plus any contributions received after the period covered by the second invoice, dated October 6, 2021. Action 4 Liberty was paid a total of \$2,191.10, including commissions, for use of its email list and phone list.

²⁰ The emails were sent August 3, 6, 12, 20, and 24, September 1, 2, 9, 15, and 28, October 6, 10, 14, and 19, and November 3, 2021, and January 13 and 20, and February 1, 2022.

Analysis

Corporate Contributions

Minnesota Statutes section 211B.15, subdivision 1, defines the term corporation to mean “(1) a corporation organized for profit that does business in this state; (2) a nonprofit corporation that carries out activities in this state; or (3) a limited liability company formed under chapter 322C, or under similar laws of another state, that does business in this state.” Minnesota Statutes section 211B.15, subdivision 2, provides that:

- (a) A corporation may not make a contribution or offer or agree to make a contribution directly or indirectly, of any money, property, free service of its officers, employees, or members, or thing of monetary value to a political party, organization, committee, or individual to promote or defeat the candidacy of an individual for nomination, election, or appointment to a political office.
- (b) A political party, organization, committee, or individual may not accept a contribution or an offer or agreement to make a contribution that a corporation is prohibited from making under paragraph (a).
- (c) For the purpose of this subdivision, "contribution" includes an expenditure to promote or defeat the election or nomination of a candidate to a political office that is made with the authorization or expressed or implied consent of, or in cooperation or in concert with, or at the request or suggestion of, a candidate or committee established to support or oppose a candidate but does not include an independent expenditure authorized by subdivision 3.

Contributions Made by an Unregistered Association Without Required Disclosure Statement

Minnesota Statutes section 10A.27, subdivision 13, clause (a), provides that a principal campaign committee “must not accept a contribution of more than \$200 from an association not registered under this chapter unless the contribution is accompanied by a statement that meets the disclosure and reporting period requirements imposed by section 10A.20,” and the committee “that accepts the contribution must include a copy of the written statement or website with the report that discloses the contribution to the board.”

The Board’s analysis of the prohibitions on corporate contributions and contributions in excess of \$200 from an unregistered association without a disclosure statement hinges on whether a contribution occurred. Therefore, the allegations as to each statute are considered together.

Fair Market Value

Minnesota Statutes section 10A.01, subdivision 9, defines the term contribution, in relevant part, to mean “money, a negotiable instrument, or a donation in kind that is given to a political committee, political fund, principal campaign committee, local candidate, or party unit.” Minnesota Statutes section 10A.01, subdivision 13, defines the term donation in kind to mean

“anything of value that is given, other than money or negotiable instruments.” Pursuant to Minnesota Statutes section 10A.20, subdivision 3, paragraph (c), a “donation in kind must be disclosed at its fair market value.” Minnesota Rules 4503.0100, subpart 3a, defines the phrase fair market value to mean “the amount that an individual would pay to purchase the same or similar service or item on the open market.”

If a vendor receives compensation that is less than the fair market value of goods or services provided to a candidate or principal campaign committee, the difference is likely an in-kind contribution.²¹ A committee is not required to always pay the full advertised price or to refrain from negotiating the price of goods or services in order to prevent accepting an in-kind contribution.²² If comparable goods or services are available on the open market at the same or lower cost, there is reason to believe that a price constitutes the fair market value.²³ In determining the value of goods or services a committee must use a reasonable method that considers any market rates and other relevant factors, and the committee must be able to explain that method to the Board.²⁴

As noted by both Action 4 Liberty and the Shah committee, it may be difficult to ascertain the fair market value of a list containing contact information when the list is highly unique to the organization to which it belongs and the list has not previously been sold or rented to others. That difficulty may be heightened when the buyer and seller are ideologically aligned, such as is the case with political parties that only provide contact lists to members of their own party.

Whether a reasonable method was used to value the goods and services provided by Action 4 Liberty may be assessed by considering the following questions. First, were the goods or services purchased in an arms-length transaction on the open market? Second, are there comparable examples that may be referenced to help determine the fair market value of the goods or services provided? Third, if the goods or services were not purchased in an arms-length transaction on the open market, did the sale price reflect a commercially reasonable basis for the value of the item purchased?

In December 2023 the Board learned, for the first time, the number of email addresses included within the list used to send the Shah emails and the number of individuals included within the phone list purchased from Action 4 Liberty. The quantity of information included within a contact list directly impacts the value of the list. In this instance, if the total amount paid to Action 4 Liberty (\$2,191.10) is divided by the sum of the number of email addresses (44,494) plus the number of individuals included within the phone list (262) (resulting in a total of 44,756 records), the result is a price of approximately 4.9 cents per record.

²¹ There may be exceptions to this general rule, such as personal gifts given to an individual who is a candidate. See [Advisory Opinion 404 \(Apr. 7, 2009\)](#).

²² [Findings and Order in the Matter of a Complaint regarding the Carla Nelson Volunteer Committee \(Sept. 15, 2006\)](#).

²³ *Ibid.*

²⁴ See [Advisory Opinion 408 \(May 4, 2010\)](#).

Action 4 Liberty and the Shah committee each provided information supporting the conclusion that their interaction involved an arms-length transaction. Despite their ideological alignment, the terms of the arrangement were negotiated before and during the course of the arrangement, Dr. Shah testified that his committee's consultants initially felt that the terms of the arrangement were reasonable, and Dr. Shah testified that his committee ultimately terminated the arrangement because his committee did not feel that it was receiving sufficient value from the goods and services provided. However, the transaction appears to have occurred within a closed market rather than the open market. Action 4 Liberty stated that it had never before sold or rented its contact information to another organization, and the evidence in the record supports the conclusion that the transaction likely occurred due to the ideological alignment and familiarity between Action 4 Liberty and Dr. Shah.

Transactions that occur within a closed market are not uncommon within political campaigns because some vendors, including political parties, only provide goods and services to a limited audience that aligns with their ideology and interests. The Board addressed the issue of whether fair market value was paid within closed market transactions in late 2022 after Dr. Shah filed a complaint against the Minnesota Democratic-Farmer-Labor Party (Minnesota DFL) alleging that fair market value was not paid by principal campaign committees for access to the Minnesota DFL's Voter Action Network database (VAN).²⁵ The Board concluded that there was not probable cause to believe that fair market value was not paid for that access because the Minnesota DFL charged principal campaign committees using a formula that allowed the party to recover its costs in building and maintaining the VAN database. During the 2021-2022 election cycle segment, application of that formula yielded a base price of 1.5 cents per voter record within the VAN database.

There are notable differences between the VAN database and Action 4 Liberty's email and phone lists. For example, the Minnesota DFL's VAN database consists largely of data that may be purchased from the Minnesota Secretary of State by any registered voter for \$46.²⁶ The VAN database primarily consists of the names, addresses, and voting history of registered voters, while the lists provided by Action 4 Liberty consisted of email addresses and names with phone numbers. Also, Action 4 Liberty's email list was used to send a limited number of emails on behalf of the Shah committee during a limited period of time, and the Shah committee was not able to obtain a copy of the list. Despite those differences, the data received is at least somewhat comparable, and Action 4 Liberty was paid substantially more, per record, by RPR Consultants, than the Minnesota DFL was paid by principal campaign committees for access to its VAN database.

In this matter, the Board concludes that payments made by the Shah committee to Action 4 Liberty via RPR Consultants represented at least the fair market value for access to Action 4 Liberty's email and phone lists. Several facts support this conclusion, but two are most

²⁵ [Probable Cause Determination in the Matter of the Complaint of Neil A. Shah, M.D., regarding the Minnesota Democratic-Farmer-Labor Party \(Dec. 15, 2022\).](#)

²⁶ [See Minn. Stat. § 201.091, subd. 5 and sos.state.mn.us/election-administration-campaigns/data-maps/registered-voter-list-requests.](#)

significant. First, the Shah committee has produced evidence showing an arm's length transaction occurred. Although there was no written contract, the Shah committee initially relied on industry consultants to conclude that the price was commercially reasonable. The committee eventually determined that the cost exceeded the list's value to the campaign, which further demonstrates the committee's independent assessment of market value. Second, even though there is not a directly analogous situation involving Action 4 Liberty's lists—Action 4 Liberty represents that it has not sold or rented the lists to any other entity—the Board concluded during the same election cycle in *The Matter of the Complaint of Neil A. Shah, M.D., regarding the Minnesota DFL* (Dec. 15, 2022) that a reasonable fair market value for access to voter lists created largely from public sources was approximately 1.5 cents per voter record. So the fact that Action 4 Liberty independently developed the email lists through its own work—not publicly available information—supports a finding that the lists have a higher fair market value. Because the Shah committee paid at least fair market value for access to the email and phone lists, Action 4 Liberty did not make a prohibited in-kind contribution to the committee, and the Shah committee did not violate statutory rules relating to receipt and reporting of contributions from an unregistered association.

Reporting

Minnesota Statutes section 10A.20, subdivision 3, requires a principal campaign committee to itemize expenditures “in excess of \$200, together with the amount, date, and purpose of each expenditure, including an explanation of how the expenditure was used.” Minnesota Statutes section 10A.025, subdivision 4, provides that “corrections to a report or statement must be reported in writing to the board within ten days following . . . the date upon which the person filing became aware of the inaccuracy.”

The Shah committee's 2021 year-end report does not explain that expenditures were made for services provided by Action 4 Liberty. Instead, the report includes 14 itemized expenditures totaling \$146,554.78 paid or payable to RPR Consultants, described using the classification “Other Services.” Of those expenditures, 13 include the explanation “DIGITAL, STRATEGY, SOCIAL MEDIA AND COMMUNICATIONS,” with no further explanation provided. Similarly, the Shah committee's 2022 year-end report (amendment 6) includes 10 itemized expenditures totaling \$79,935.75 paid to RPR Consultants, described using the classification “Public Relations/ Fundraising Service.” Of those expenditures, nine include the explanation “Strategy Consultation,” “Strategy Consulting,” “Strat Consulting,” or “GENERAL STRAT CONSULTING,” with no further explanation provided.

The explanations provided for the expenditures paid or payable to RPR Consultants are so broad and generalized that it is impossible to discern from the Shah committee's reports what specific goods and services were provided by RPR Consultants and how those goods and services were used. While a committee may hire a consultant or other vendor to purchase a large proportion of its goods and services, that practice does not relieve a committee of the duty to accurately describe what was purchased and how each purchase was used. In addition to depriving the public of information to which it is entitled, overgeneralized and vague descriptions

of expenditures may cause complaints to be filed with the Board, even when the suspected violation has not occurred, because the complainant is unable to determine from the descriptions provided what was purchased, how the purchase was used, or who provided the goods or services purchased. The Board concludes that the Shah committee failed to accurately disclose the purpose of each expenditure and how each expenditure was used, with respect to expenditures made to RPR Consultants in 2021 and 2022.

Minnesota Statutes section 10A.025 provides for the imposition of a civil penalty when a treasurer certifies a report to be true while “knowing it omits required information” and provides for the imposition of a late filing fee, and in some cases a civil penalty, when a treasurer fails to timely correct an error or omission within a report. However, Chapter 10A does not provide for the imposition of a civil penalty solely for failing to provide the level of detail required by Minnesota Statutes section 10A.20, subdivision 3, within a campaign finance report filed with the Board. When the Board has previously concluded that a report failed to include all of the information required to be disclosed, it has provided the filer with an opportunity to supply any information that was omitted, and has considered the amended report to remedy the violation of the reporting requirements.

Data Privacy

Within its order issued November 27, 2023, granting the Board’s application for an order compelling compliance with the administrative subpoenas, the Ramsey County District Court noted that the Board may refrain from making certain portions of the record of an investigation public if it “determines that the record of the investigation contains statements, documents, or other matter that, if disclosed, would unfairly injure the reputation of an innocent individual.”²⁷ The record of this investigation includes very little identifying information about individuals other than those directly involved in the matter investigated. Neither respondent, nor the complainant, have asserted that material within the record would unfairly injure the reputation of any specific individual if made available to the public. Therefore, the Board has no basis to conclude that any portion of the record of this investigation should be withheld from public view pursuant to Minnesota Statutes section 10A.022, subdivision 5, paragraph (b).

Based on the above background and analysis, the Board makes the following:

Findings of Fact

1. Dr. Neil Shah for Governor was the principal campaign committee of Dr. Neil Shah. The committee terminated its registration with the Board, retroactive to the end of 2022, by filing a termination report on November 7, 2023.
2. Action 4 Liberty is a nonprofit 501(c)(4) association not registered with the Board.

²⁷ See [Minn. Stat. § 10A.022, subd. 5 \(b\)](#).

3. In 2021 the Shah committee used a vendor, RPR Consultants, Inc., to purchase the use of Action 4 Liberty's email list and phone list. RPR Consultants paid Action 4 Liberty a total of \$2,191.10. Of that amount, \$991.10 was for a 10% commission on most of the contributions received by the Shah committee as a result of using Action 4 Liberty's email list.
4. Action 4 Liberty's email list was used to send a total of 18 emails on behalf of the Shah committee. Those emails were sent August 3, 6, 12, 20, and 24, September 1, 2, 9, 15, and 28, October 6, 10, 14, and 19, and November 3, 2021, and January 13 and 20, and February 1, 2022. The emails included several hyperlinks including a link that redirected individuals to a webpage hosted by Anedot where they could make contributions to the Shah committee.
5. The Shah committee received at least \$9,911 in contributions from individuals who clicked on a link within one of the 18 emails.
6. Action 4 Liberty's email list contained approximately 44,494 email addresses.
7. Action 4 Liberty's phone list contained phone numbers for approximately 262 individuals.
8. RPR Consultants paid Action 4 Liberty based on two invoices, dated September 4 and October 6, 2021. The Shah committee was dissatisfied with the value it had received and following negotiation, Action 4 Liberty and the Shah committee agreed to consider the amount paid for those two invoices to be payment in full for the goods and services provided by Action 4 Liberty.
9. Action 4 Liberty was paid approximately 4.9 cents per record by RPR Consultants. That price was calculated by the Board by dividing the total amount paid by the sum of the number of email addresses within the email list and the number of individuals included within the phone list.
10. Action 4 Liberty had not previously sold or rented out its email list or phone list, and unlike commercial databases or lists, the composition of those lists is highly unique to Action 4 Liberty.
11. The arrangement involving the Shah committee, RPR Consultants, and Action 4 Liberty, was an arms-length transaction, but appears to have been conducted within a closed market.
12. The amount paid to Action 4 Liberty, per record, was substantially more than has been paid by principal campaign committees when purchasing access to at least somewhat comparable contact information for individuals that is stored within databases managed by political parties.

13. Within its 2021 year-end report of receipts and expenditures, the Shah committee included 14 itemized expenditures totaling \$146,554.78 paid or payable to RPR Consultants, described using the classification "Other Services." Of those expenditures, 13 included the explanation "DIGITAL, STRATEGY, SOCIAL MEDIA AND COMMUNICATIONS," with no further explanation provided.
14. Within its 2022 year-end report of receipts and expenditures (amendment 6), the Shah committee included 10 itemized expenditures totaling \$79,935.75 paid to RPR Consultants, described using the classification "Public Relations/ Fundraising Service." Of those expenditures, nine included the explanation "Strategy Consultation," "Strategy Consulting," "Strat Consulting," or "GENERAL STRAT CONSULTING," with no further explanation provided.
15. The Board has no reason to believe that public disclosure of the complete record of this investigation will unfairly injure the reputation of an innocent individual.

Based on the above analysis and findings of fact, the Board makes the following:

Conclusions of Law

1. Action 4 Liberty was paid fair market value for use of its email list and phone list. As a result, no in-kind contribution was made by Action 4 Liberty consisting of the value of those lists.
2. Action 4 Liberty and the Dr. Neil Shah for Governor committee did not violate Minnesota Statutes sections 211B.15, subdivision 2, or 10A.27, subdivision 13, as alleged in the complaint.
3. Action 4 Liberty and the Shah committee did not violate the reporting requirements within Minnesota Statutes section 10A.20, subdivision 3, regarding contributions, because the contribution alleged in the complaint did not occur.
4. The Shah committee violated Minnesota Statutes section 10A.20, subdivision 3, paragraph (h), when it failed to include within its 2021 and 2022 year-end reports of receipts and expenditures a sufficient description of the purpose of each expenditure paid or payable to RPR Consultants, Inc., including a description of how each expenditure was used.
5. No portion of the record of this investigation needs to be withheld from public view under Minnesota Statutes section 10A.022, subdivision 5, paragraph (b).

Based on the above findings of fact and conclusions of law, the Board issues the following:

Order

1. Within 30 days of the date of this order, the Dr. Neil Shah for Governor committee must file amended 2021 and 2022 year-end reports of receipts and expenditures that include descriptions, of the expenditures paid or payable to RPR Consultants, Inc., that are sufficient for members of the public to understand what was purchased, how the purchase was used, and who provided the goods or services purchased. The amended reports may be letter amendments that are limited to the RPR Consultants expenditures itemized within Schedule B1-CE of each report.
2. If the Shah committee does not comply with this order, the Board's executive director may request that the attorney general bring an action on behalf of the Board for the remedies available under Minnesota Statutes section 10A.34.
3. The investigation of this matter is concluded and hereby made a part of the public records of the Board pursuant to Minnesota Statutes section 10A.022, subdivision 5.



David Asp, Chair
Campaign Finance and Public Disclosure Board

Date: March 8, 2024