

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

.....  
**July 10, 2024**  
**Blazing Star Room**  
**Centennial Office Building**  
.....

**MINUTES**

The meeting was called to order by Chair Asp.

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

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

**MINUTES** (June 5, 2024)

The following motion was made:

Member Rashid's motion: To approve the June 5, 2024, minutes as drafted.

Vote on motion: Unanimously approved.

**EXECUTIVE DIRECTOR'S REPORT**

Mr. Sigurdson provided the Board with an update on the following:

Staffing - The Lobbying Program Analyst position has been posted, and promoted by email to the lobbying community. The application deadline is July 12.

June Report of Receipts and Expenditures - The second report of receipts and expenditures for 2024 for appellate court judicial candidates, political committees, political funds, state committees of political parties, and legislative party units was due on June 14, covering the period from January 1 to May 31, 2024. The Board received 425 reports, with four political committees yet to file.

Lobbyist Activity Report - The lobbyist activity report for January 1 – May 31, 2024, was due on June 17. The Board has received 2,643 of 2,683 expected reports. It's the first report to disclose specific lobbying subjects. Many lobbyists need to update their reports to meet new requirements, and additional checks will be added to the online reporting application.

Training - Two compliance training sessions were held in June. The first session, on June 25, was for candidate committees, with 45 attendees mainly from House candidate committees. The second, on June 27, focused on party units and political committees and funds, with 54 attendees, 66% of whom were from political party units. Both sessions were recorded and are available on the website. On May 31, Ms. Engelhardt conducted a training session for party unit treasurers at the DFL convention in Duluth.

## **ENFORCEMENT REPORT**

### **A. Consent Items**

#### **1. Lobbyist termination request – Jack Kegel (#9619) and Robert Jagusch (#2308)**

The Minnesota Municipal Utilities Association (MMUA) requests the administrative termination of the above-mentioned lobbyists due to their inaction in response to MMUA's request to terminate their lobbyist status. MMUA staff attempted to reach Kegel via phone and left a voicemail, asking Kegel to file a termination statement. As for efforts to reach Jagusch, MMUA staff stated that he did not leave MMUA with a forwarding email address or a phone number, making it impossible to contact him. Both lobbyists are retired and, according to MMUA, they have never lobbied for any other entity. If approved, Board staff will backdate their termination date to June 1, 2022, as requested by MMUA. There are no outstanding reports as each lobbyist has been included within the reports filed by MMUA's designated lobbyist.

#### **2. Lobbyist termination request – Andrew Pearson (#4558)**

MN350 Action requests the administrative termination of lobbyist Andrew Pearson. MN350 has not been able to reach Pearson to procure a lobbyist termination statement. Pearson last represented MN350 on May 17, 2024. If approved, Board staff will backdate their termination date to May 17, 2024, as requested by MN350. There are no outstanding reports as Pearson was included with the reports filed by MN350's designated lobbyist.

The following motion was made:

Member Soule's motion: To approve the lobbyist termination requests.

Vote on motion: Unanimously approved.

### **B. Discussion Items**

#### **1. Request to refer matter to the Attorney General's Office – Carlos Mariani and Neighbors for (Carlos) Mariani Committee (#12353)**

Mr. Mariani is a former member of the Minnesota House of Representatives. In November 2023 the Board referred Mr. Mariani and his principal campaign committee to the Attorney General's Office because Mr. Mariani failed to file his 2022 annual statement of economic interest (EIS), Mr. Mariani failed to file his committee's 2022 year-end report of receipts and expenditures, and Mr. Mariani and his committee owed a significant amount in late filing fees and civil penalties. Mr. Mariani has now filed his 2022 annual EIS, and his committee's 2022 year-end report, which lists an ending cash balance of \$372. After the matter was referred to the Attorney General's Office, the Mariani committee's 2023 year-end report of receipts and expenditures came due. Despite repeated attempts to encourage Mr. Mariani to file that report, it has not yet been filed. Board staff is asking that the Board's referral of this matter to the Attorney General's Office be updated to include the Mariani committee's failure to file the 2023 year-end report.

The following motion was made:

Member Rashid's motion: To approve the AG referral request.

Vote on motion: Unanimously approved.

**C. Waiver Requests**

<b>Essar Capital Americas (7571)</b>						
Report(s)	Due	Filed	Amount	Prior Waivers	Recommended Action	Board Action
2023 LPR	3/15/23	3/16/23	\$25 LFF	No.	Waive.	Member Swanson motioned to grant the waiver request, which was unanimously approved.
2024 LPR	3/14/24	4/5/24	\$375 LFF			
<p>Chinmay Ruparel, a finance intern with Essar, explained that the late filings were due to unforeseen circumstances. In the case of the 2024 report, there was a disruption in the office when two key employees had to leave simultaneously, one due to maternity leave and the other due to a medical emergency. This caused delays in completing various tasks, including filing the report. For the 2023 report, there were technical difficulties with the office internet servers, which resulted in missing the filing deadline by one day. The report was submitted as soon as the technical issue was resolved. Ruparel requests understanding and consideration in waiving the late filing fees, assuring that measures will be taken to prevent similar occurrences in the future.</p>						

<b>Unidos We Win PAC (41257)</b>						
Report(s)	Due	Filed	Amount	Prior Waivers	Recommended Action	Board Action
2022 year-end	1/31/23	6/10/24	\$2,000	No.	No recommendation.	Member Soule proposed reducing the total amount owed to \$2,000. Soule, Rashid, Swanson, and Asp voted in favor; Flynn voted no. The motion passed, and the amount owed was reduced to \$2,000.
2023 year-end	1/31/24	6/10/24	LFF/CP			
2024 April	4/15/24	6/10/24	\$2,000 LFF/CP \$1,000 LFF			
<p>Executive Director Emilia Gonzalez Avalos explained that the delay in filing was due to staff turnover, leading to a loss of staff capacity and institutional knowledge on CFB reporting. The departing staff failed to transfer the necessary login information and files. The organization also encountered challenges when transitioning from CFR software to CFR online. Unidos We Win PAC states that it has worked to stay in communication with CFB and has recently received compliance support to successfully file all outstanding reports and is currently developing staff procedures and training to ensure the timely filing of future reports. The organization expresses appreciation for CFB's support and cooperation throughout the process. In June the Board referred the issue to the AG's office due to the failure to file reports. Despite Gonzalez Avalos' assurance that she would file the 2022 and 2023 reports in September 2023, they remained outstanding as of June 5, 2024. Just before the June Board meeting, Gonzalez Avalos informed Board staff that all reports would be promptly filed. They were filed on June 10, 2024.</p>						

**D. Informational Items**

**1. Payment of late filing fee for lobbyist principal report due 3/15/24**

- Children's Dental Services, \$50
- Friends of the Boundary Waters Wilderness, \$200
- South Washington County Telecom Commission, \$50
- University of Minnesota Physicians, \$50
- School Referendum Inflation Coalition, \$325
- Innovative Power Systems, \$150

Merrick, Inc., \$50  
Newport Healthcare, \$50

**2. Payment of late filing fee for lobbyist principal report due 3/15/23**

Innovative Power Systems, \$300  
Move Minnesota Action, \$500

**3. Payment of late filing fee for lobbyist principal report due 3/15/21**

Innovative Power Systems, \$325

**4. Payment of late filing fee for 2023 year-end report due 1/31/24**

Hest for House, \$400  
Minneapolis United for Rent Control, \$100

**5. Payment of civil penalty for exceeding the special source limit**

Frentz (Nick Andrew) for MN Senate, \$975

**6. Payment of late filing fees for failing to timely register and file lobbyist reports**

Samuel Rockwell, \$1,000

**ADVISORY OPINION REQUESTS**

**A. Advisory Opinion 464**

Mr. Olson presented a memorandum that is attached to and made a part of the minutes. Members discussed the draft opinion and suggested changes to Board staff. Member Swanson expressed his view that an advisory opinion should not respond to a requester's legal arguments, and should not be cited as precedent. Vice-chair Rashid supported revising the draft opinion to avoid responding to the requester's legal arguments. Chair Asp stated that the opinion does not need to respond to the requester's legal arguments point-by-point, and emphasized that the Board's duty is to respond to facts, even if the requester cites law. After the discussion, it was recommended that Board staff implement the changes discussed by the Board and lay over the matter.

The following motion was made:

Member Asp's motion: To lay over the matter in order to implement the discussed changes.

Vote on motion: Four members voted in the affirmative. Member Flynn abstained.

**ADMINISTRATIVE RULEMAKING UPDATE**

Mr. Olson presented a memorandum that is attached to and made a part of the minutes. After the June board meeting, Minnesota Management and Budget and the Office of Governor Tim Walz and Lt. Governor Peggy Flanagan received copies of the administrative rule language approved by the Board. MMB assessed the

proposed rules for fiscal impact and determined they would not substantially affect local government expenses. The Governor's Office authorized the Board to proceed by publishing a notice in the State Register, indicating the intent to adopt the proposed rules. The proposed rule language was submitted for review and formatting to the Office of the Revisor of Statutes. A tentative hearing date will be scheduled in case at least 25 individuals request a hearing on the proposed rules.

### **LEGAL REPORT**

Mr. Hartshorn updated the Board on the Mariani matter.

### **EXECUTIVE SESSION**

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

Respectfully submitted,



Jeff Sigurdson  
Executive Director

Attachments:

Executive Director's report  
Advisory Opinion 464 public memo and draft  
Advisory Opinion 464 attachments  
Rulemaking update memo  
MMB letter certifying lack of substantial fiscal impacts on local governments  
Governor's Office Proposed Rule and SONAR Form



# MINNESOTA CAMPAIGN FINANCE BOARD

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**Date:** July 3, 2024

**To:** Board Members

**From:** Jeff Sigurdson, Executive Director

**Telephone:** 651-539-1189

**Re:** Executive Director's Report – Board Operations

## **Staffing**

The Lobbying Program Analyst position has been posted on the state's job portal and the Board's website, and promoted by email to the lobbying community. The application deadline is July 12.

## **June Report of Receipts and Expenditures**

The second report of receipts and expenditures for 2024 for appellate court judicial candidates, political committees, political funds, state committees of political parties, and legislative party units was due on June 14. The report covers the period from January 1, to May 31, 2024. The Board received 425 reports; as of the date of this memo, four political committees have not filed a report.

In total, the reports from party units, political committees, and political funds disclose \$19,795,325 in contributions received, \$76,640 in independent expenditures, \$222,011 in contributions to candidates, \$5,382,288 in general expenditures, \$23,922 in ballot question expenditures, \$3,327,199 in contributions to party units, and an ending cash balance of \$32,143,986. In total, the reports from appellate court judicial candidates disclose \$67,138 in contributions received, \$27,503 in campaign expenditures, and an ending cash balance of \$136,236.

## **Lobbyist Activity Report**

The lobbyist activity report covering the period January 1 – May 31, 2024, was due on June 17. As of the date of this memo the Board has received 2,643 of 2,683 expected reports. This was the first report filed in which the lobbyist report disclosed the specific subjects of interest, administrative rules, issues before the Public Utilities Commission, and metropolitan governmental units lobbied during the reporting period. There was some confusion in what information the report should contain, and a significant number of lobbyists will need to amend their reports to comply with the new reporting requirements. Staff will also be adding additional validation checks to the online reporting application to better catch incomplete reports.

## **Training**

On June 25, staff offered a Webex-based compliance training session designed for candidate committees. Forty-five individuals signed on to watch at least part of the training, most of whom were with House candidate committees, although there were a few judicial candidate

committees represented as well. On June 27, staff held another Webex-based training session which focused on compliance issues for party units and political committees and funds. Fifty-four individuals signed on to watch at least a part of the training, approximately 66% of whom were with political party units. The sessions were recorded and are now available on the website.

On May 31, Ms. Engelhardt conducted a training session for party unit treasurers at the DFL convention in Duluth.



# MINNESOTA

## CAMPAIGN FINANCE BOARD

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**Date:** July 3, 2024

**To:** Interested Members of the Public

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

**Telephone:** 651-539-1190

**Re:** Advisory Opinion 464

This advisory opinion request was received on May 2, 2024. The request is a revised version of a prior request that resulted in Advisory Opinion 459. 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 464 – 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 464**

**SUMMARY**

A communication that does not use words or phrases of express advocacy and does not clearly include an electoral component, does not contain express advocacy. A communication that clearly identifies a candidate, clearly includes an electoral component, and could only be interpreted by a reasonable person as encouraging them to vote for a specific candidate contains express advocacy.

**Facts**

As a representative of an organization (the Organization), you ask the Campaign Finance and Public Disclosure Board for an advisory opinion regarding the application 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.<sup>1</sup> 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.”<sup>2</sup>

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.”<sup>3</sup>
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:

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

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<sup>1</sup> [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)).

<sup>2</sup> 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)).

<sup>3</sup> [FEC v. Wisconsin Right To Life, Inc.](#), 551 U.S. 449, 451 (2007).

(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.

Because the language added to Minnesota Statutes section 10A.01, subdivision 16a, is nearly identical to the text of paragraph (b) within 11 C.F.R. § 100.22, which contains the federal definition of “expressly advocating,” the Board will construe the new language in a manner that is consistent with how federal courts have applied the federal definition.<sup>4</sup> Advisory opinions and statements of reasons issued by the FEC regarding the federal definition may be persuasive. However, the Board is not bound to follow guidance issued by the FEC in applying Minnesota Statutes chapter 10A.

In 1986 the United States Supreme Court considered, in *Federal Election Commission v. Massachusetts Citizens for Life (MCFL)*, whether a flyer, referred to as a special edition of an organization’s newsletter, contained express advocacy.

The front page of the publication was headlined “EVERYTHING YOU NEED TO KNOW TO VOTE PRO–LIFE,” and readers were admonished that “[n]o pro-life candidate can win in November without your vote in September.” “VOTE PRO–LIFE” was printed in large bold-faced letters on the back page, and a coupon was provided to be clipped and taken to the polls to remind voters of the name of the “pro-life” candidates.

To aid the reader in selecting candidates, the flyer listed the candidates for each state and federal office in every voting district in Massachusetts, and identified each one as either supporting or opposing what MCFL regarded as the correct position on three issues. A “y” indicated that a candidate supported the MCFL view on a particular issue and an “n” indicated that the candidate opposed it.<sup>5</sup>

The Court concluded that:

The Edition cannot be regarded as a mere discussion of public issues that by their nature raise the names of certain politicians. Rather, it provides in effect an explicit directive: vote for these (named) candidates. The fact that this message is marginally less direct than “Vote for Smith” does not change its essential nature.<sup>6</sup>

The Court therefore held that the flyer “represents express advocacy of the election of particular candidates distributed to members of the general public.”<sup>7</sup>

The meaning of the phrase “expressly advocating” was reviewed in *Federal Election Commission v. Furgatch* in 1987. The Ninth Circuit Court of Appeals considered whether a

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<sup>4</sup> See [Minn. Stat. § 645.08](#), providing that “technical words and phrases and such others as have acquired a special meaning . . . are construed according to such special meaning. . . .”

<sup>5</sup> [FEC v. Massachusetts Citizens for Life, Inc., 479 U.S. 238, 243 \(1986\)](#) (internal citation omitted).

<sup>6</sup> *Id.* at 249.

<sup>7</sup> *Id.* at 250.

newspaper advertisement published a week prior to a presidential election, criticizing President Carter, contained express advocacy.<sup>8</sup> The advertisement accused President Carter of attempting to “buy entire cities, the steel industry, the auto industry, and others with public funds,” and of being divisive in “an attempt to hide his own record, or lack of it.”<sup>9</sup> The advertisement ended by stating:

If he succeeds the country will be burdened with four more years of incoherencies, ineptness and illusion, as he leaves a legacy of low-level campaigning.

DON'T LET HIM DO IT.<sup>10</sup>

The court reversed a district court, concluding that “[w]e have no doubt that the ad asks the public to vote against Carter.”<sup>11</sup> The court rejected the notion that the text “don’t let him do it” and specifically the word “it” could be “read to refer to Carter’s degradation of his office, and his manipulation of the campaign process.”<sup>12</sup> The court concluded that the phrase “don’t let him” is a command.<sup>13</sup> The court held that the advertisement contained “an express call to action, but no express indication of what action is appropriate.”<sup>14</sup> The court determined that a “failure to state with specificity the action required does not remove political speech from the coverage of the Campaign Act when it is clearly the kind of advocacy of the defeat of an identified candidate that Congress intended to regulate.”<sup>15</sup> The court further held that “[r]easonable minds could not dispute that Furgatch’s advertisement urged readers to vote against Jimmy Carter” because that “was the only action open to those who would not ‘let him do it.’”<sup>16</sup>

The opinions in *MCFL* and *Furgatch* were two of a small number of judicial opinions relied upon by the FEC in drafting the text of 11 C.F.R. § 100.22.<sup>17</sup> Since 1995 federal courts have repeatedly held that the FEC and states may, consistent with the First Amendment, regulate speech that is the functional equivalent of express advocacy, which is not limited to the magic words listed in footnote 52 of *Buckley*.<sup>18</sup>

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<sup>8</sup> [FEC v. Furgatch, 807 F.2d 857 \(9th Cir. 1987\).](#)

<sup>9</sup> *Id.* at 858.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 864.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 865.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> [Express Advocacy; Independent Expenditures; Corporate and Labor Organization Expenditures, 60 Fed. Reg. 35292, 35293-94 \(July 6, 1995\).](#)

<sup>18</sup> *See, e.g.,* [FEC v. Wisconsin Right To Life, Inc., 551 U.S. 449, 456-57 \(2007\);](#) [Citizens United v. FEC, 558 U.S. 310, 324-26 \(2010\).](#)

## Issue One

The Organization may sponsor a television advertisement with the following script:

[Female 1] Governor Walz and the Democrats completely control our state government, and look at what they're doing.

[Male 1] They're building a new luxury office building, for themselves.

[Female 2] A building that will cost taxpayers \$77 million.

[Male 2] And to pay for their new luxury office building, they passed a record-setting tax increase

[Female 3] And our property taxes went up.

[Male 3] Instead of wasting our tax dollars on their new luxury office building, why aren't Governor Walz and Democrats fixing our roads and potholes?

[Female 1] Minnesota, we deserve better.

The Organization asks the Board to assume that the facts stated in the advertisement are true, the visual and audio components of the advertisement will be materially indistinguishable from those used in a 2014 Freedom Club State PAC advertisement that the Board's executive director referenced in testimony to a legislative committee regarding H.F. 3, and Governor Walz will seek re-election in 2026. The advertisement may run statewide in Minnesota:

- (i) in February 2026, when the Legislature may be in session;
- (ii) alternatively, in June 2026, when the Legislature is presumed to be adjourned;
- (iii) alternatively, in August 2026;
- (iv) alternatively, from August 12 through September 3, 2026; and
- (v) alternatively, in October 2026.

Would this communication qualify as express advocacy under the amended definition of "expressly advocating"? If the Board concludes that the answer is yes, would it make a difference if the statement "Minnesota, we deserve better" was replaced with a call to action such as "Call Governor Walz at (651) 201-3400 [the telephone number for the Governor's office] and tell him to spend our tax dollars on fixing roads and potholes instead of luxury office buildings"?

## Opinion One

The Organization's hypothetical television advertisement clearly identifies a candidate. However, the advertisement does not use words or phrases of express advocacy, and it differs from the newspaper advertisement considered in *Furgatch* in at least one critical respect, in that it does not clearly refer to an election. While the advertisement considered in *Furgatch* stated

that President Carter’s success would result in “four more years,” the Organization’s hypothetical advertisement includes spoken words that, at best, make a vague reference to an upcoming election in stating “we deserve better.” The advertisement’s graphics likewise do not include clear electoral elements. Therefore, “the electoral portion of the communication is” not “unmistakable, unambiguous, and suggestive of only one meaning,” and the hypothetical advertisement does not contain express advocacy.

Whether the statement “Minnesota, we deserve better” is a call to action and could reasonably be perceived to encourage action other than action to defeat Governor Walz when coupled with a clear electoral component is a close call, and may depend on the timing of the advertisement. For example, it may be the case that a reasonable mind could not conclude that an advertisement airing shortly before the 2026 general election, criticizing Governor Walz regarding a construction project that began in 2023 and stating “we deserve better” while referring to the election, when Governor Walz is on the general election ballot, encourages action other than action to defeat Governor Walz in the 2026 general election. However, the Board need not decide that issue due to the advertisement’s lack of a clear electoral component.

## Issue Two

The Organization may sponsor a television advertisement with the following script:

[Narrator] Look across the land, on farms, and in factories, in classrooms, and construction sites. Minnesota is working.

Four years ago, Minnesota faced a \$5 billion deficit.

[On screen text] “state faces \$5 billion deficit” [Citation to news article]

[Narrator] But Governor Tim Walz showed strong leadership. He raised taxes on the wealthiest two percent, so we could invest in our schools and reduce middle-class taxes. Now Minnesota has over 150,000 new jobs and a budget surplus.

[On screen text] “Tim Walz Calls for Tax Overhaul, Higher Rates for Wealthy”  
[Quoting news article headline]

“Gov. Tim Walz  
All-Day Kindergarten”

“Gov. Tim Walz  
Reduced Middle-Class Taxes”

“Gov. Tim Walz  
150,000 New Jobs”

“Gov. Tim Walz  
\$1.2 Billion Surplus”

“Governor Tim Walz  
Working for us”

[Narrator] Governor Tim Walz is working for us.

The Organization asks the Board to assume that the facts stated in the advertisement are true, the visual components of the advertisement will be materially indistinguishable from those used in a 2014 Alliance for a Better Minnesota Action Fund advertisement that the Board’s executive director referenced in testimony to a legislative committee regarding H.F. 3, and Governor Walz will seek re-election in 2026. The advertisement may run statewide in Minnesota:

- (i) in February 2026, when the Legislature may be in session;
- (ii) alternatively, in June 2026, when the Legislature is presumed to be adjourned;
- (iii) alternatively, in August 2026;
- (iv) alternatively, from August 12 through September 3, 2026; and
- (v) alternatively, in October 2026.

Would this communication qualify as express advocacy under the amended definition of “expressly advocating”? If the Board concludes that the answer is yes, would it make a difference if the statement “Governor Tim Walz is working for us” was replaced with a call to action such as “Call Governor Walz at (651) 201-3400 [the telephone number for the Governor’s office] and tell him to keep focusing on the economy, cutting the deficit, and creating new jobs”?

## **Opinion Two**

The Organization’s hypothetical television advertisement clearly identifies a candidate. However, the advertisement does not use words or phrases of express advocacy, and like the advertisement discussed in Opinion One, it does not clearly refer to an election. The Organization’s hypothetical advertisement includes spoken words that, at best, make a vague reference to an upcoming election in stating that Minnesota faced a budget deficit “[f]our years ago.” The advertisement’s graphics likewise do not include clear electoral elements. Therefore, “the electoral portion of the communication is” not “unmistakable, unambiguous, and suggestive of only one meaning,” and the hypothetical advertisement does not contain express advocacy.

Whether the statement “Governor Tim Walz is working for us” could reasonably be perceived to encourage action other than action to elect Governor Walz when coupled with a clear electoral component is a close call, and may depend on the timing of the advertisement. For example, it may be the case that a reasonable mind could not conclude that an advertisement airing shortly before the 2026 general election, praising Governor Walz for actions taken over a four-year period and stating “Governor Tim Walz is working for us” while referring to the election, when Governor Walz is on the general election ballot, encourages action other than action to elect Governor Walz in the 2026 general election. However, the Board need not decide that issue due to the advertisement’s lack of a clear electoral component.

### Issue Three

The Organization may sponsor a mailer with the following language:

[Side 1] REP. DAVE LISLEGARD **BETRAYED** YOU!

BY VOTING TO **PROTECT** GOVERNOR TIM WALZ' EMERGENCY POWERS

[Photo of Rep. Lislegard with Gov. Walz in the background]

[Side 2] > Voted with Metro Democrats to protect Walz' Emergency Powers **indefinitely**

> Allowing the Governor to **shut down businesses** in the future.

MAKE DAVE LISLEGARD LISTEN. CALL HIM AT 651.296.0170  
rep.dave.lislegard@house.mn.gov

**DEMAND** he keeps his promise & votes **YES** on the End Walz' Emergency Powers Resolution

SIGN THE PETITION AT  
[https://www.action4liberty.com/never\\_again](https://www.action4liberty.com/never_again)

The Organization asks the Board to assume that the facts stated in the mailer are true, the visual components of the mailer will be materially indistinguishable from those used in a 2021 Action 4 Liberty mailer that the Board's executive director referenced in testimony to a legislative committee regarding H.F. 3,<sup>19</sup> and Representative Lislegard will seek election to the office of state representative for House District 7B in 2026. The mailer may be distributed to residents in House District 7B:

- (i) in February 2026, when the Legislature may be in session;
- (ii) alternatively, in June 2026, when the Legislature is presumed to be adjourned;
- (iii) alternatively, in August 2026;
- (iv) alternatively, from August 12 through September 3, 2026; and
- (v) alternatively, in October 2026.

Would this communication qualify as express advocacy under the amended definition of "expressly advocating"?

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<sup>19</sup> Each side of the mailer referenced in testimony regarding H.F. 3 contained a photograph of then-Representative Julie Sandstede. The question states that the mailer would include a photograph of Representative Lislegard with Governor Walz in the background. Therefore, the Board assumes that the photograph of Representative Sandstede would be replaced with a photograph of Representative Lislegard.



### Opinion Three

The Organization’s hypothetical mailer clearly identifies a candidate. However, it does not use words or phrases of express advocacy, and it does not clearly refer to an election. Moreover, it does not clearly encourage action to elect or defeat a candidate, and instead encourages two alternative actions, namely contacting Representative Lislegard and signing an online petition. Therefore, the hypothetical mailer does not contain express advocacy.

### Issue Four

The Organization may sponsor a printed voter guide with the following language:

2026 Voter Guide:	Tim Walz & Peggy Flanagan	Jeff Johnson & Donna Bergstrom
Governor		
What are your values and priorities?		
Making healthcare more affordable and accessible by giving every Minnesotan the option to get coverage through MinnesotaCare?	Yes	No
Fixing our roads, bridges and transportation infrastructure?	Yes	No
Combating climate change by investing in local, renewable energy jobs?	Yes	No
Promoting vocational schools and trade programs?	Yes	Yes
Fully and equitably funding our schools and supporting Universal Pre-K for Minnesota kids?	Yes	No

Join your friends & neighbors on Tuesday, November 3rd. Thank you for voting!

The Organization asks the Board to assume that the facts stated in the voter guide are true, the visual components of the mailer will be materially indistinguishable from those used in a 2018 LIUNA Minnesota voter guide that the Board's executive director referenced in testimony to a legislative committee regarding H.F. 3, Walz-Flanagan and Johnson-Bergstrom will be opposing governor-lieutenant governor candidate tickets in the 2026 general election, and the voter guide will be distributed statewide in October 2026.

Would this communication qualify as express advocacy under the amended definition of "expressly advocating"?

#### **Opinion Four**

The Organization's hypothetical voter guide clearly identifies four candidates. It does not use words or phrases of express advocacy such as "vote for," "vote against," "elect," or "defeat." However, in calling on readers to join their friends and neighbors on election day and thanking them in advance for voting, "the electoral portion of the communication is unmistakable, unambiguous, and suggestive of only one meaning." The voter guide also clearly encourages readers to vote for the Walz-Flanagan ticket, and clearly does not encourage another kind of action.

The voter guide is structured as a series of questions comprised of incomplete sentences with one-word responses supposedly provided by each slate of candidates. The attribution of the one-word responses to each slate of candidates is made clear by the statement, appearing atop the list of questions, which states "What are your values and priorities?" While the Board is generally willing to assume that the facts stated in the hypothetical voter guide are true for purposes of this opinion, the Board does not believe that the Organization intends to assert that Jeff Johnson, Donna Bergstrom, or any representative of the Johnson (Jeff) for Governor committee has ever or will ever respond to a question asking whether fixing roads, bridges, and transportation infrastructure is a priority with an unqualified "No."

If the precise questions listed within the voter guide are actually posed to the candidates and the voter guide will consist of the candidates' unedited responses, reasonable minds could differ as to whether the voter guide encourages actions to elect or defeat specific candidates. However, that is not the case with the hypothetical voter guide presented within the Organization's request. Instead, the voter guide appears to consist of questions that will never be posed and "responses" that will be falsely attributed to the Walz-Flanagan and Johnson-Bergstrom tickets. The nature of the questions and the false attribution of "responses" within the voter guide, while not as direct as the flyer considered in *MCFL*, clearly lead to the conclusion that the guide encourages the reader to vote for the Walz-Flanagan ticket. Whether the communication includes the phrase "voter guide" is immaterial, because regardless of how the communication is characterized on its face, reasonable minds could not differ as to whether it encourages readers to vote for the Walz-Flanagan ticket. The hypothetical voter guide contains express advocacy.

Within its request the Organization offers several arguments as to why the voter guide does not contain express advocacy. First, the Organization argues that 11 C.F.R. § 100.22 embodies a principle allegedly stated by a federal district court in *Faucher v. Federal Election Commission*, that in determining whether a voter guide contains express advocacy, the FEC may not consider whether the voter guide “suggests or favors any position on the issues covered” or “whether it expresses any editorial opinion concerning the issues presented.”<sup>20</sup> The relevant question in *Faucher* was not whether the FEC could consider whether a voter guide suggests or favors a position or expresses an editorial opinion in determining whether the voter guide contains express advocacy, but rather whether the FEC could prohibit corporations from publishing voter guides that, by the FEC’s own admission, contained issue advocacy but did not contain express advocacy. The district court held that the FEC exceeded its authority under the Federal Election Campaign Act when it promulgated a regulation that prohibited corporations from publishing voter guides unless those guides are nonpartisan presentations of questions posed and the candidates’ responses.

The FEC stated that the language to be codified at 11 C.F.R. § 100.22 was “reworded to provide further guidance on what types of communications constitute express advocacy of clearly identified candidates, in accordance with the judicial interpretations found in *Buckley*, *MCFL*, *Furgatch*, *NOW* and *Faucher*.”<sup>21</sup> However, the FEC stated that new language included within 11 C.F.R. § 100.22 “emphasizing the necessity for communications to be susceptible to no other reasonable interpretation but as encouraging actions to elect or defeat a specific candidate” was drawn from “the language in the *Buckley*, *MCFL* and *Furgatch* opinions,” rather than from *Faucher* or *Federal Election Commission v. National Organization of Women (NOW)*.<sup>22</sup> If the FEC had attempted to incorporate the understanding of express advocacy embodied within *Faucher* when drafting 11 C.F.R. § 100.22, it would have drafted a very different definition of the term “expressly advocating,” because both the district court and the First Circuit Court of Appeals appear to have understood express advocacy to be limited to communications containing words or phrases of express advocacy such as the magic words listed in footnote 52 of *Buckley*.<sup>23</sup>

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<sup>20</sup> See [Faucher v. FEC, 743 F. Supp. 64, 69 \(D. Me. 1990\)](#), aff’d, 928 F.2d 468 (1st Cir. 1991) (internal quotation marks, italics, and brackets omitted) (quoting 11 C.F.R. § 114.4(b)(5)(i)(C), (D)).

<sup>21</sup> [Express Advocacy; Independent Expenditures; Corporate and Labor Organization Expenditures, 60 Fed. Reg. 35292, 35293 \(July 6, 1995\)](#).

<sup>22</sup> *Id.* at 35294.

<sup>23</sup> See *Faucher*, 743 F. Supp. at 70 (stating that “*Buckley v. Valeo* focused on explicit wording such as ‘vote for’ and ‘elect.’”); [Faucher v. FEC, 928 F.2d 468, 470 \(1st Cir. 1991\)](#) (citing and quoting *Buckley*, 424 U.S. at 44 n.52, and stating that “[e]xpress advocacy is language which ‘in express terms advocate[s] the election or defeat of a clearly identified candidate’ through the use of such phrases as ‘vote for,’ ‘elect,’ ‘support,’ ‘cast your ballot for,’ ‘Smith for Congress,’ ‘vote against,’ ‘defeat,’ and ‘reject.’ (brackets in original)). See also *Faucher*, 928 F.2d at 472 (stating that “[i]n our view, trying to discern when issue advocacy in a voter guide crosses the threshold and becomes express advocacy invites just the sort of constitutional questions the Court sought to avoid in adopting the bright-line express advocacy test in *Buckley*.”).

Second, the Organization asserts that even if the hypothetical voter guide favors certain positions or contains editorial opinion, that does not mean that the voter guide contains express advocacy. The Organization supports that assertion by stating that “the ‘yes’ and ‘no’ responses that the voter guide attributes to the candidates on the issues are materially indistinguishable from the ‘yes’ responses attributed to the candidates on the Maine Right to Life Committee’s (‘MRLC’) voter guides that were at issue in *Faucher*.” It is true that favoring a policy position or including an editorial opinion within a publication styled as a voter guide does not necessarily mean that the publication contains express advocacy, because the publication must satisfy the other elements of Minnesota Statutes section 10A.01, subdivision 16a, in order to contain express advocacy. However, the holding in *Faucher* does not support the Organization’s argument that the hypothetical voter guide does not contain express advocacy for at least two reasons. First, in *Faucher*, both the district court and the First Circuit Court of Appeals appear to have understood express advocacy to be limited to communications containing words or phrases of express advocacy such as the magic words listed in footnote 52 of *Buckley*,<sup>24</sup> while Minnesota’s present definition of “expressly advocating” is intentionally broader in scope. Second, the question decided in *Faucher* was whether the FEC exceeded its statutory authority by prohibiting communications that the FEC itself agreed did not contain express advocacy, rather than First Amendment principles regarding what is and is not express advocacy. *Faucher* does not provide any guidance with respect to a standard that did not exist at the time it was decided, because unlike *MCFL* and *Furgatch*, *Faucher* was not one of the three cases relied upon by the FEC in drafting 11 C.F.R. § 100.22, paragraph (b), the analog of Minnesota Statutes section 10A.01, subdivision 16a, clause (2), which defines express advocacy in the absence of words or phrases of express advocacy.<sup>25</sup>

Third, the Organization contends that “urging the election or defeat of the candidates favored or disfavored by” the hypothetical voter guide is not the only reasonable interpretation of the voter guide, and that how readers will respond to the voter guide will depend upon their varied understandings. The Organization argues that “a voter who supports the positions stated on the hypothetical voter guide described above will have a very different reaction from a voter who is opposed,” and the voter guide does not “urge the reader to adopt the sponsoring organization’s preferred positions.” The Organization does not identify, and the Board does not perceive, a kind of action encouraged by the hypothetical voter guide other than voting for the Walz-Flanagan ticket. The hypothetical voter guide’s sole call to action consists of the text “Join your

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<sup>24</sup> See *Faucher*, 743 F. Supp. at 70 (stating that “*Buckley v. Valeo* focused on explicit wording such as ‘vote for’ and ‘elect.’”); [Faucher](#), 928 F.2d at 470 (citing and quoting *Buckley*, 424 U.S. at 44 n.52, and stating that “[e]xpress advocacy is language which ‘in express terms advocate[s] the election or defeat of a clearly identified candidate’ through the use of such phrases as ‘vote for,’ ‘elect,’ ‘support,’ ‘cast your ballot for,’ ‘Smith for Congress,’ ‘vote against,’ ‘defeat,’ and ‘reject.’ (brackets in original)). See also *Faucher*, 928 F.2d at 472 (stating that “[i]n our view, trying to discern when issue advocacy in a voter guide crosses the threshold and becomes express advocacy invites just the sort of constitutional questions the Court sought to avoid in adopting the bright-line express advocacy test in *Buckley*.”).

<sup>25</sup> See [Express Advocacy; Independent Expenditures; Corporate and Labor Organization Expenditures](#), 60 Fed. Reg. 35292, 35294 (July 6, 1995) (stating that “[t]he definition of express advocacy included in new section 100.22 includes . . . the language in the *Buckley*, *MCFL* and *Furgatch* 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.”).

friends & neighbors on Tuesday, November 3rd. Thank you for voting!” When combined with the slanted nature of the questions and the false attribution of “responses,” that language cannot be interpreted by a reasonable person as encouraging action other than voting for the Walz-Flanagan ticket.

It is true that how readers will respond to the hypothetical voter guide will depend upon their varied understandings of a variety of things, such as their understanding of facts, their personal interests and convictions, and how to best act upon those interests and convictions. However, reasonable people will not have varied understandings of the action encouraged by the hypothetical voter guide for the reasons articulated above. More importantly, the relevant question is not how reasonable readers will respond to the hypothetical voter guide, but rather whether they will interpret the voter guide as encouraging action to elect the Walz-Flanagan ticket or to defeat the Johnson-Bergstrom ticket, or some other kind of action. As was the case with the flyer discussed in *MCFL*,<sup>26</sup> those opposed to the action encouraged by the hypothetical voter guide will undoubtedly not take that action. The fact that reasonable people will differ in how they respond or fail to respond to literature encouraging them to vote for one gubernatorial ticket or another says nothing about whether those same people will have varied interpretations of the action being encouraged.

The Organization asserts that the hypothetical voter guide does not urge readers to adopt its preferred positions. The Board cannot assess the accuracy of that assertion because within its request, the Organization does not appear to profess that it holds any positions beyond encouraging citizens to engage with government officials. More importantly, the relevant question is not whether the voter guide urges readers to adopt any particular position, but rather whether the voter guide “could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidates”<sup>27</sup> based on the criteria articulated within Minnesota Statutes section 10A.01, subdivision 16a. As explained more fully above, the answer to that question is yes.

In summary, the hypothetical voter guide contains express advocacy because it clearly identifies four candidates, clearly contains an electoral component, and could only be interpreted by a reasonable person as encouraging action, specifically voting, to elect the Walz-Flanagan ticket, rather than some other kind of action.

### **Board Note**

The Organization’s request is specific in asking whether the hypothetical communications contain express advocacy, which may impact whether the Organization is required to register with the Board, file campaign finance reports with the Board, and include the disclaimer required by Minnesota Statutes section 211B.04, subdivision 2, in preparing and disseminating campaign

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<sup>26</sup> See *Massachusetts Citizens for Life, Inc.*, 479 U.S. at 244 n.2 (explaining that a person submitted an affidavit stating that she obtained a copy of the flyer “at a statewide conference of the National Organization for Women, where a stack of about 200 copies were available to the general public”).

<sup>27</sup> [Minn. Stat. § 10A.01, subd. 16a.](#)

material. The opinions provided therefore do not address whether the Organization may be required to file statements of electioneering communications pursuant to Minnesota Statutes section 10A.202, and include the disclaimer required by Minnesota Statutes section 10A.202, subdivision 4, when making the hypothetical communications.

Issued July 10, 2024

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David Asp, Chair  
Campaign Finance and Public Disclosure Board

DRAFT

**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 464**

**SUMMARY**

A communication that does not use words or phrases of express advocacy and does not clearly include an electoral component, does not contain express advocacy. A communication that clearly identifies a candidate, clearly includes an electoral component, and could only be interpreted by a reasonable person as encouraging them to vote for a specific candidate contains express advocacy.

**Facts**

As a representative of an organization (the Organization), you ask the Campaign Finance and Public Disclosure Board for an advisory opinion regarding the application 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.<sup>1</sup> 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.”<sup>2</sup>

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.”<sup>3</sup>
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:

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

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<sup>1</sup> [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)).

<sup>2</sup> 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)).

<sup>3</sup> [FEC v. Wisconsin Right To Life, Inc.](#), 551 U.S. 449, 451 (2007).



(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.

Because the language added to Minnesota Statutes section 10A.01, subdivision 16a, is nearly identical to the text of paragraph (b) within 11 C.F.R. § 100.22, which contains the federal definition of “expressly advocating,” the Board will construe the new language in a manner that is consistent with how federal courts have applied the federal definition.<sup>4</sup> Advisory opinions and statements of reasons issued by the FEC regarding the federal definition may be persuasive. However, the Board is not bound to follow guidance issued by the FEC in applying Minnesota Statutes chapter 10A.

In 1986 the United States Supreme Court considered, in *Federal Election Commission v. Massachusetts Citizens for Life (MCFL)*, whether a flyer, referred to as a special edition of an organization’s newsletter, contained express advocacy.

The front page of the publication was headlined “EVERYTHING YOU NEED TO KNOW TO VOTE PRO–LIFE,” and readers were admonished that “[n]o pro-life candidate can win in November without your vote in September.” “VOTE PRO–LIFE” was printed in large bold-faced letters on the back page, and a coupon was provided to be clipped and taken to the polls to remind voters of the name of the “pro-life” candidates.

To aid the reader in selecting candidates, the flyer listed the candidates for each state and federal office in every voting district in Massachusetts, and identified each one as either supporting or opposing what MCFL regarded as the correct position on three issues. A “y” indicated that a candidate supported the MCFL view on a particular issue and an “n” indicated that the candidate opposed it.<sup>5</sup>

The Court concluded that:

The Edition cannot be regarded as a mere discussion of public issues that by their nature raise the names of certain politicians. Rather, it provides in effect an explicit directive: vote for these (named) candidates. The fact that this message is marginally less direct than “Vote for Smith” does not change its essential nature.<sup>6</sup>

The Court therefore held that the flyer “represents express advocacy of the election of particular candidates distributed to members of the general public.”<sup>7</sup>

The meaning of the phrase “expressly advocating” was reviewed in *Federal Election Commission v. Furgatch* in 1987. The Ninth Circuit Court of Appeals considered whether a

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<sup>4</sup> See [Minn. Stat. § 645.08](#), providing that “technical words and phrases and such others as have acquired a special meaning . . . are construed according to such special meaning. . . .”

<sup>5</sup> [FEC v. Massachusetts Citizens for Life, Inc., 479 U.S. 238, 243 \(1986\)](#) (internal citation omitted).

<sup>6</sup> *Id.* at 249.

<sup>7</sup> *Id.* at 250.

newspaper advertisement published a week prior to a presidential election, criticizing President Carter, contained express advocacy.<sup>8</sup> The advertisement accused President Carter of attempting to “buy entire cities, the steel industry, the auto industry, and others with public funds,” and of being divisive in “an attempt to hide his own record, or lack of it.”<sup>9</sup> The advertisement ended by stating:

If he succeeds the country will be burdened with four more years of incoherencies, ineptness and illusion, as he leaves a legacy of low-level campaigning.

DON'T LET HIM DO IT.<sup>10</sup>

The court reversed a district court, concluding that “[w]e have no doubt that the ad asks the public to vote against Carter.”<sup>11</sup> The court rejected the notion that the text “don’t let him do it” and specifically the word “it” could be “read to refer to Carter’s degradation of his office, and his manipulation of the campaign process.”<sup>12</sup> The court concluded that the phrase “don’t let him” is a command.<sup>13</sup> The court held that the advertisement contained “an express call to action, but no express indication of what action is appropriate.”<sup>14</sup> The court determined that a “failure to state with specificity the action required does not remove political speech from the coverage of the Campaign Act when it is clearly the kind of advocacy of the defeat of an identified candidate that Congress intended to regulate.”<sup>15</sup> The court further held that “[r]easonable minds could not dispute that Furgatch’s advertisement urged readers to vote against Jimmy Carter” because that “was the only action open to those who would not ‘let him do it.’”<sup>16</sup>

The opinions in *MCFL* and *Furgatch* were two of a small number of judicial opinions relied upon by the FEC in drafting the text of 11 C.F.R. § 100.22.<sup>17</sup> Since 1995 federal courts have repeatedly held that the FEC and states may, consistent with the First Amendment, regulate speech that is the functional equivalent of express advocacy, which is not limited to the magic words listed in footnote 52 of *Buckley*.<sup>18</sup>

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<sup>8</sup> [FEC v. Furgatch, 807 F.2d 857 \(9th Cir. 1987\)](#).

<sup>9</sup> *Id.* at 858.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 864.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 865.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> [Express Advocacy; Independent Expenditures; Corporate and Labor Organization Expenditures, 60 Fed. Reg. 35292, 35293-94 \(July 6, 1995\)](#).

<sup>18</sup> *See, e.g.,* [FEC v. Wisconsin Right To Life, Inc., 551 U.S. 449, 456-57 \(2007\)](#); [Citizens United v. FEC, 558 U.S. 310, 324-26 \(2010\)](#).

## Issue One

The Organization may sponsor a television advertisement with the following script:

[Female 1] Governor Walz and the Democrats completely control our state government, and look at what they're doing.

[Male 1] They're building a new luxury office building, for themselves.

[Female 2] A building that will cost taxpayers \$77 million.

[Male 2] And to pay for their new luxury office building, they passed a record-setting tax increase

[Female 3] And our property taxes went up.

[Male 3] Instead of wasting our tax dollars on their new luxury office building, why aren't Governor Walz and Democrats fixing our roads and potholes?

[Female 1] Minnesota, we deserve better.

The Organization asks the Board to assume that the facts stated in the advertisement are true, the visual and audio components of the advertisement will be materially indistinguishable from those used in a 2014 Freedom Club State PAC advertisement that the Board's executive director referenced in testimony to a legislative committee regarding H.F. 3, and Governor Walz will seek re-election in 2026. The advertisement may run statewide in Minnesota:

- (i) in February 2026, when the Legislature may be in session;
- (ii) alternatively, in June 2026, when the Legislature is presumed to be adjourned;
- (iii) alternatively, in August 2026;
- (iv) alternatively, from August 12 through September 3, 2026; and
- (v) alternatively, in October 2026.

Would this communication qualify as express advocacy under the amended definition of "expressly advocating"? If the Board concludes that the answer is yes, would it make a difference if the statement "Minnesota, we deserve better" was replaced with a call to action such as "Call Governor Walz at (651) 201-3400 [the telephone number for the Governor's office] and tell him to spend our tax dollars on fixing roads and potholes instead of luxury office buildings"?

## Opinion One

The Organization's hypothetical television advertisement clearly identifies a candidate. However, the advertisement does not use words or phrases of express advocacy, and it differs from the newspaper advertisement considered in *Furgatch* in at least one critical respect, in that it does not clearly refer to an election. While the advertisement considered in *Furgatch* stated

that President Carter’s success would result in “four more years,” the Organization’s hypothetical advertisement includes spoken words that, at best, make a vague reference to an upcoming election in stating “we deserve better.” The advertisement’s graphics likewise do not include clear electoral elements. Therefore, “the electoral portion of the communication is” not “unmistakable, unambiguous, and suggestive of only one meaning,” and the hypothetical advertisement does not contain express advocacy.

Whether the statement “Minnesota, we deserve better” is a call to action and could reasonably be perceived to encourage action other than action to defeat Governor Walz when coupled with a clear electoral component is a close call, and may depend on the timing of the advertisement. For example, it may be the case that a reasonable mind could not conclude that an advertisement airing shortly before the 2026 general election, criticizing Governor Walz regarding a construction project that began in 2023 and stating “we deserve better” while referring to the election, when Governor Walz is on the general election ballot, encourages action other than action to defeat Governor Walz in the 2026 general election. However, the Board need not decide that issue due to the advertisement’s lack of a clear electoral component.

## Issue Two

The Organization may sponsor a television advertisement with the following script:

[Narrator] Look across the land, on farms, and in factories, in classrooms, and construction sites. Minnesota is working.

Four years ago, Minnesota faced a \$5 billion deficit.

[On screen text] “state faces \$5 billion deficit” [Citation to news article]

[Narrator] But Governor Tim Walz showed strong leadership. He raised taxes on the wealthiest two percent, so we could invest in our schools and reduce middle-class taxes. Now Minnesota has over 150,000 new jobs and a budget surplus.

[On screen text] “Tim Walz Calls for Tax Overhaul, Higher Rates for Wealthy”  
[Quoting news article headline]

“Gov. Tim Walz  
All-Day Kindergarten”

“Gov. Tim Walz  
Reduced Middle-Class Taxes”

“Gov. Tim Walz  
150,000 New Jobs”

“Gov. Tim Walz  
\$1.2 Billion Surplus”

“Governor Tim Walz  
Working for us”

[Narrator] Governor Tim Walz is working for us.

The Organization asks the Board to assume that the facts stated in the advertisement are true, the visual components of the advertisement will be materially indistinguishable from those used in a 2014 Alliance for a Better Minnesota Action Fund advertisement that the Board’s executive director referenced in testimony to a legislative committee regarding H.F. 3, and Governor Walz will seek re-election in 2026. The advertisement may run statewide in Minnesota:

- (i) in February 2026, when the Legislature may be in session;
- (ii) alternatively, in June 2026, when the Legislature is presumed to be adjourned;
- (iii) alternatively, in August 2026;
- (iv) alternatively, from August 12 through September 3, 2026; and
- (v) alternatively, in October 2026.

Would this communication qualify as express advocacy under the amended definition of “expressly advocating”? If the Board concludes that the answer is yes, would it make a difference if the statement “Governor Tim Walz is working for us” was replaced with a call to action such as “Call Governor Walz at (651) 201-3400 [the telephone number for the Governor’s office] and tell him to keep focusing on the economy, cutting the deficit, and creating new jobs”?

## **Opinion Two**

The Organization’s hypothetical television advertisement clearly identifies a candidate. However, the advertisement does not use words or phrases of express advocacy, and like the advertisement discussed in Opinion One, it does not clearly refer to an election. The Organization’s hypothetical advertisement includes spoken words that, at best, make a vague reference to an upcoming election in stating that Minnesota faced a budget deficit “[f]our years ago.” The advertisement’s graphics likewise do not include clear electoral elements. Therefore, “the electoral portion of the communication is” not “unmistakable, unambiguous, and suggestive of only one meaning,” and the hypothetical advertisement does not contain express advocacy.

Whether the statement “Governor Tim Walz is working for us” could reasonably be perceived to encourage action other than action to elect Governor Walz when coupled with a clear electoral component is a close call, and may depend on the timing of the advertisement. For example, it may be the case that a reasonable mind could not conclude that an advertisement airing shortly before the 2026 general election, praising Governor Walz for actions taken over a four-year period and stating “Governor Tim Walz is working for us” while referring to the election, when Governor Walz is on the general election ballot, encourages action other than action to elect Governor Walz in the 2026 general election. However, the Board need not decide that issue due to the advertisement’s lack of a clear electoral component.

### Issue Three

The Organization may sponsor a mailer with the following language:

[Side 1] REP. DAVE LISLEGARD **BETRAYED** YOU!

BY VOTING TO **PROTECT** GOVERNOR TIM WALZ' EMERGENCY POWERS

[Photo of Rep. Lislegard with Gov. Walz in the background]

[Side 2] > Voted with Metro Democrats to protect Walz' Emergency Powers **indefinitely**

> Allowing the Governor to **shut down businesses** in the future.

MAKE DAVE LISLEGARD LISTEN. CALL HIM AT 651.296.0170  
rep.dave.lislegard@house.mn.gov

**DEMAND** he keeps his promise & votes **YES** on the End Walz' Emergency Powers Resolution

SIGN THE PETITION AT  
[https://www.action4liberty.com/never\\_again](https://www.action4liberty.com/never_again)

The Organization asks the Board to assume that the facts stated in the mailer are true, the visual components of the mailer will be materially indistinguishable from those used in a 2021 Action 4 Liberty mailer that the Board's executive director referenced in testimony to a legislative committee regarding H.F. 3,<sup>19</sup> and Representative Lislegard will seek election to the office of state representative for House District 7B in 2026. The mailer may be distributed to residents in House District 7B:

- (i) in February 2026, when the Legislature may be in session;
- (ii) alternatively, in June 2026, when the Legislature is presumed to be adjourned;
- (iii) alternatively, in August 2026;
- (iv) alternatively, from August 12 through September 3, 2026; and
- (v) alternatively, in October 2026.

Would this communication qualify as express advocacy under the amended definition of "expressly advocating"?

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<sup>19</sup> Each side of the mailer referenced in testimony regarding H.F. 3 contained a photograph of then-Representative Julie Sandstede. The question states that the mailer would include a photograph of Representative Lislegard with Governor Walz in the background. Therefore, the Board assumes that the photograph of Representative Sandstede would be replaced with a photograph of Representative Lislegard.

### Opinion Three

The Organization’s hypothetical mailer clearly identifies a candidate. However, it does not use words or phrases of express advocacy, and it does not clearly refer to an election. Moreover, it does not clearly encourage action to elect or defeat a candidate, and instead encourages two alternative actions, namely contacting Representative Lislegard and signing an online petition. Therefore, the hypothetical mailer does not contain express advocacy.

### Issue Four

The Organization may sponsor a printed voter guide with the following language:

2026 Voter Guide:	Tim Walz & Peggy Flanagan	Jeff Johnson & Donna Bergstrom
Governor		
What are your values and priorities?		
Making healthcare more affordable and accessible by giving every Minnesotan the option to get coverage through MinnesotaCare?	Yes	No
Fixing our roads, bridges and transportation infrastructure?	Yes	No
Combating climate change by investing in local, renewable energy jobs?	Yes	No
Promoting vocational schools and trade programs?	Yes	Yes
Fully and equitably funding our schools and supporting Universal Pre-K for Minnesota kids?	Yes	No

Join your friends & neighbors on Tuesday, November 3rd. Thank you for voting!

The Organization asks the Board to assume that the facts stated in the voter guide are true, the visual components of the mailer will be materially indistinguishable from those used in a 2018 LIUNA Minnesota voter guide that the Board's executive director referenced in testimony to a legislative committee regarding H.F. 3, Walz-Flanagan and Johnson-Bergstrom will be opposing governor-lieutenant governor candidate tickets in the 2026 general election, and the voter guide will be distributed statewide in October 2026.

Would this communication qualify as express advocacy under the amended definition of "expressly advocating"?

#### **Opinion Four**

The Organization's hypothetical voter guide clearly identifies four candidates. It does not use words or phrases of express advocacy such as "vote for," "vote against," "elect," or "defeat." However, in calling on readers to join their friends and neighbors on election day and thanking them in advance for voting, "the electoral portion of the communication is unmistakable, unambiguous, and suggestive of only one meaning." The voter guide also clearly encourages readers to vote for the Walz-Flanagan ticket, and clearly does not encourage another kind of action.

The voter guide is structured as a series of questions comprised of incomplete sentences with one-word responses supposedly provided by each slate of candidates. The attribution of the one-word responses to each slate of candidates is made clear by the statement, appearing atop the list of questions, which states "What are your values and priorities?" While the Board is generally willing to assume that the facts stated in the hypothetical voter guide are true for purposes of this opinion, the Board does not believe that the Organization intends to assert that Jeff Johnson, Donna Bergstrom, or any representative of the Johnson (Jeff) for Governor committee has ever or will ever respond to a question asking whether fixing roads, bridges, and transportation infrastructure is a priority with an unqualified "No."

If the precise questions listed within the voter guide are actually posed to the candidates and the voter guide will consist of the candidates' unedited responses, reasonable minds could differ as to whether the voter guide encourages actions to elect or defeat specific candidates. However, that is not the case with the hypothetical voter guide presented within the Organization's request. Instead, the voter guide appears to consist of questions that will never be posed and "responses" that will be falsely attributed to the Walz-Flanagan and Johnson-Bergstrom tickets. The nature of the questions and the false attribution of "responses" within the voter guide, while not as direct as the flyer considered in *MCFL*, clearly lead to the conclusion that the guide encourages the reader to vote for the Walz-Flanagan ticket. Whether the communication includes the phrase "voter guide" is immaterial, because regardless of how the communication is characterized on its face, reasonable minds could not differ as to whether it encourages readers to vote for the Walz-Flanagan ticket. The hypothetical voter guide contains express advocacy.



Within its request the Organization offers several arguments as to why the voter guide does not contain express advocacy. First, the Organization argues that 11 C.F.R. § 100.22 embodies a principle allegedly stated by a federal district court in *Faucher v. Federal Election Commission*, that in determining whether a voter guide contains express advocacy, the FEC may not consider whether the voter guide “suggests or favors any position on the issues covered” or “whether it expresses any editorial opinion concerning the issues presented.”<sup>20</sup> The relevant question in *Faucher* was not whether the FEC could consider whether a voter guide suggests or favors a position or expresses an editorial opinion in determining whether the voter guide contains express advocacy, but rather whether the FEC could prohibit corporations from publishing voter guides that, by the FEC’s own admission, contained issue advocacy but did not contain express advocacy. The district court held that the FEC exceeded its authority under the Federal Election Campaign Act when it promulgated a regulation that prohibited corporations from publishing voter guides unless those guides are nonpartisan presentations of questions posed and the candidates’ responses.

The FEC stated that the language to be codified at 11 C.F.R. § 100.22 was “reworded to provide further guidance on what types of communications constitute express advocacy of clearly identified candidates, in accordance with the judicial interpretations found in *Buckley*, *MCFL*, *Furgatch*, *NOW* and *Faucher*.”<sup>21</sup> However, the FEC stated that new language included within 11 C.F.R. § 100.22 “emphasizing the necessity for communications to be susceptible to no other reasonable interpretation but as encouraging actions to elect or defeat a specific candidate” was drawn from “the language in the *Buckley*, *MCFL* and *Furgatch* opinions,” rather than from *Faucher* or *Federal Election Commission v. National Organization of Women (NOW)*.<sup>22</sup> If the FEC had attempted to incorporate the understanding of express advocacy embodied within *Faucher* when drafting 11 C.F.R. § 100.22, it would have drafted a very different definition of the term “expressly advocating,” because both the district court and the First Circuit Court of Appeals appear to have understood express advocacy to be limited to communications containing words or phrases of express advocacy such as the magic words listed in footnote 52 of *Buckley*.<sup>23</sup>

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<sup>20</sup> See [Faucher v. FEC, 743 F. Supp. 64, 69 \(D. Me. 1990\)](#), aff’d, 928 F.2d 468 (1st Cir. 1991) (internal quotation marks, italics, and brackets omitted) (quoting 11 C.F.R. § 114.4(b)(5)(i)(C), (D)).

<sup>21</sup> [Express Advocacy; Independent Expenditures; Corporate and Labor Organization Expenditures, 60 Fed. Reg. 35292, 35293 \(July 6, 1995\)](#).

<sup>22</sup> *Id.* at 35294.

<sup>23</sup> See *Faucher*, 743 F. Supp. at 70 (stating that “*Buckley v. Valeo* focused on explicit wording such as ‘vote for’ and ‘elect.’”); [Faucher v. FEC, 928 F.2d 468, 470 \(1st Cir. 1991\)](#) (citing and quoting *Buckley*, 424 U.S. at 44 n.52, and stating that “[e]xpress advocacy is language which ‘in express terms advocate[s] the election or defeat of a clearly identified candidate’ through the use of such phrases as ‘vote for,’ ‘elect,’ ‘support,’ ‘cast your ballot for,’ ‘Smith for Congress,’ ‘vote against,’ ‘defeat,’ and ‘reject.’ (brackets in original)). See also *Faucher*, 928 F.2d at 472 (stating that “[i]n our view, trying to discern when issue advocacy in a voter guide crosses the threshold and becomes express advocacy invites just the sort of constitutional questions the Court sought to avoid in adopting the bright-line express advocacy test in *Buckley*.”).

Second, the Organization asserts that even if the hypothetical voter guide favors certain positions or contains editorial opinion, that does not mean that the voter guide contains express advocacy. The Organization supports that assertion by stating that “the ‘yes’ and ‘no’ responses that the voter guide attributes to the candidates on the issues are materially indistinguishable from the ‘yes’ responses attributed to the candidates on the Maine Right to Life Committee’s (‘MRLC’) voter guides that were at issue in *Faucher*.” It is true that favoring a policy position or including an editorial opinion within a publication styled as a voter guide does not necessarily mean that the publication contains express advocacy, because the publication must satisfy the other elements of Minnesota Statutes section 10A.01, subdivision 16a, in order to contain express advocacy. However, the holding in *Faucher* does not support the Organization’s argument that the hypothetical voter guide does not contain express advocacy for at least two reasons. First, in *Faucher*, both the district court and the First Circuit Court of Appeals appear to have understood express advocacy to be limited to communications containing words or phrases of express advocacy such as the magic words listed in footnote 52 of *Buckley*,<sup>24</sup> while Minnesota’s present definition of “expressly advocating” is intentionally broader in scope. Second, the question decided in *Faucher* was whether the FEC exceeded its statutory authority by prohibiting communications that the FEC itself agreed did not contain express advocacy, rather than First Amendment principles regarding what is and is not express advocacy. *Faucher* does not provide any guidance with respect to a standard that did not exist at the time it was decided, because unlike *MCFL* and *Furgatch*, *Faucher* was not one of the three cases relied upon by the FEC in drafting 11 C.F.R. § 100.22, paragraph (b), the analog of Minnesota Statutes section 10A.01, subdivision 16a, clause (2), which defines express advocacy in the absence of words or phrases of express advocacy.<sup>25</sup>

Third, the Organization contends that “urging the election or defeat of the candidates favored or disfavored by” the hypothetical voter guide is not the only reasonable interpretation of the voter guide, and that how readers will respond to the voter guide will depend upon their varied understandings. The Organization argues that “a voter who supports the positions stated on the hypothetical voter guide described above will have a very different reaction from a voter who is opposed,” and the voter guide does not “urge the reader to adopt the sponsoring organization’s preferred positions.” The Organization does not identify, and the Board does not perceive, a kind of action encouraged by the hypothetical voter guide other than voting for the Walz-Flanagan ticket. The hypothetical voter guide’s sole call to action consists of the text “Join your

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<sup>24</sup> See *Faucher*, 743 F. Supp. at 70 (stating that “*Buckley v. Valeo* focused on explicit wording such as ‘vote for’ and ‘elect.’”); [Faucher](#), 928 F.2d at 470 (citing and quoting *Buckley*, 424 U.S. at 44 n.52, and stating that “[e]xpress advocacy is language which ‘in express terms advocate[s] the election or defeat of a clearly identified candidate’ through the use of such phrases as ‘vote for,’ ‘elect,’ ‘support,’ ‘cast your ballot for,’ ‘Smith for Congress,’ ‘vote against,’ ‘defeat,’ and ‘reject.’ (brackets in original)). See also *Faucher*, 928 F.2d at 472 (stating that “[i]n our view, trying to discern when issue advocacy in a voter guide crosses the threshold and becomes express advocacy invites just the sort of constitutional questions the Court sought to avoid in adopting the bright-line express advocacy test in *Buckley*.”).

<sup>25</sup> See [Express Advocacy; Independent Expenditures; Corporate and Labor Organization Expenditures](#), 60 Fed. Reg. 35292, 35294 (July 6, 1995) (stating that “[t]he definition of express advocacy included in new section 100.22 includes . . . the language in the *Buckley*, *MCFL* and *Furgatch* 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.”).

friends & neighbors on Tuesday, November 3rd. Thank you for voting!” When combined with the slanted nature of the questions and the false attribution of “responses,” that language cannot be interpreted by a reasonable person as encouraging action other than voting for the Walz-Flanagan ticket.

It is true that how readers will respond to the hypothetical voter guide will depend upon their varied understandings of a variety of things, such as their understanding of facts, their personal interests and convictions, and how to best act upon those interests and convictions. However, reasonable people will not have varied understandings of the action encouraged by the hypothetical voter guide for the reasons articulated above. More importantly, the relevant question is not how reasonable readers will respond to the hypothetical voter guide, but rather whether they will interpret the voter guide as encouraging action to elect the Walz-Flanagan ticket or to defeat the Johnson-Bergstrom ticket, or some other kind of action. As was the case with the flyer discussed in *MCFL*,<sup>26</sup> those opposed to the action encouraged by the hypothetical voter guide will undoubtedly not take that action. The fact that reasonable people will differ in how they respond or fail to respond to literature encouraging them to vote for one gubernatorial ticket or another says nothing about whether those same people will have varied interpretations of the action being encouraged.

The Organization asserts that the hypothetical voter guide does not urge readers to adopt its preferred positions. The Board cannot assess the accuracy of that assertion because within its request, the Organization does not appear to profess that it holds any positions beyond encouraging citizens to engage with government officials. More importantly, the relevant question is not whether the voter guide urges readers to adopt any particular position, but rather whether the voter guide “could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidates”<sup>27</sup> based on the criteria articulated within Minnesota Statutes section 10A.01, subdivision 16a. As explained more fully above, the answer to that question is yes.

In summary, the hypothetical voter guide contains express advocacy because it clearly identifies four candidates, clearly contains an electoral component, and could only be interpreted by a reasonable person as encouraging action, specifically voting, to elect the Walz-Flanagan ticket, rather than some other kind of action.

### **Board Note**

The Organization’s request is specific in asking whether the hypothetical communications contain express advocacy, which may impact whether the Organization is required to register with the Board, file campaign finance reports with the Board, and include the disclaimer required by Minnesota Statutes section 211B.04, subdivision 2, in preparing and disseminating campaign

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<sup>26</sup> See *Massachusetts Citizens for Life, Inc.*, 479 U.S. at 244 n.2 (explaining that a person submitted an affidavit stating that she obtained a copy of the flyer “at a statewide conference of the National Organization for Women, where a stack of about 200 copies were available to the general public”).

<sup>27</sup> [Minn. Stat. § 10A.01, subd. 16a.](#)

material. The opinions provided therefore do not address whether the Organization may be required to file statements of electioneering communications pursuant to Minnesota Statutes section 10A.202, and include the disclaimer required by Minnesota Statutes section 10A.202, subdivision 4, when making the hypothetical communications.

Issued July 10, 2024

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David Asp, Chair  
Campaign Finance and Public Disclosure Board

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# MINNESOTA

## CAMPAIGN FINANCE BOARD

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**Date:** July 3, 2024

**To:** Board members  
Nathan Hartshorn, counsel

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

**Subject:** Rulemaking update

Following the June Board meeting, copies of the administrative rule language approved by the Board and the draft Statement of Need and Reasonableness (SONAR) were provided to Minnesota Management and Budget (MMB) and the Office of Governor Tim Walz and Lt. Governor Peggy Flanagan (Governor's Office). MMB evaluated the proposed rules to assess any fiscal impact the changes may have on local governments. MMB determined that the proposed changes will not have a substantial effect on local government expenses.

The Governor's Office reviewed a summary of comments received during the request for comments period, a summary of the SONAR, and a summary of supporters, opponents, and possible controversies regarding the proposed rules including information about the feedback the Board's rulemaking committee received during the rule drafting process. The Governor's Office authorized the Board to proceed by publishing a notice in the State Register notifying the public of its intent to adopt the proposed rules.

Following the reviews conducted by MMB and the Governor's Office, the proposed rule language was submitted to the Office of the Revisor of Statutes (Revisor's Office). The Revisor's Office will review the rule language to ensure that it is properly formatted. After that review is complete, Board staff will contact the Office of Administrative Hearings (OAH) to schedule a tentative hearing date, in case at least 25 people request a hearing. Once a tentative hearing date is set, Board staff intends to draft a dual notice, submit it to OAH for review, and then publish it within the State Register, which will prompt the start of a 30-day comment period. If at least 25 people request a hearing during the comment period, the tentatively scheduled hearing will be held before an administrative law judge. If not, the tentatively scheduled hearing will be canceled.

No Board action is required at this time.

Attachments:

MMB letter certifying lack of substantial fiscal impacts on local governments  
Governor's Office Proposed Rule and SONAR Form



**Date:** June 21, 2024

**To:** Andrew Olson  
Legal/Management Analyst  
Minnesota Campaign Finance and Public Disclosure Board

**From:** Brian Hornbecker  
Executive Budget Officer  
Minnesota Management & Budget

**Subject:** M.S. 14.131 Review of Proposed Revisions to Minnesota Rules Chapters 4501, 4503, 4511, 4512, 4525

## **Background**

The Minnesota Campaign Finance and Public Disclosure Board proposes to amend Minnesota Rules, Chapters 4501, 4503, 4511, 4512, 4525, governing campaign finance regulation and reporting, lobbyist registration and reporting, and audits and investigations. Pursuant to Minnesota Statutes 14.131, the Board has requested that Minnesota Management and Budget (MMB) evaluate the proposed amendments for fiscal impact and benefits on units of local government.

## **Evaluation**

On behalf of the Commissioner of MMB, I have reviewed the proposed changes and the draft of the Statement of Need and Reasonableness to help evaluate the fiscal impact these changes may have on local governments. There are no anticipated costs or savings to local governments. The proposed changes relate to government regulations for campaign organizations and lobbyists and have no substantial effect on local government expenses.

**Cc:** Travis Bunch, Budget Policy and Analysis Director, MMB  
Simone Frierson, Policy Advisor, Governor's Office

**Administrative Rule  
Proposed Rule and SONAR Form**

Revisor's ID Number: 04809

Submitting Agency: Campaign Finance and Public Disclosure Board Date: June 18, 2024

Rule Contact: Andrew Olson, Legal/Management Analyst

Email Address: andrew.d.olson@state.mn.us Phone #: 651-539-1190

Title: (Short descriptive title)	Proposed Rules Governing Campaign Finance Regulation and Reporting, Lobbyist Registration and Reporting, and Audits and Investigations
Chapter number(s):	4501, 4503, 4511, 4512, 4525
Comments received during Request for Comments:	<p>Conrad Zbikowski submitted a comment in support of a rule that would allow treasurers to group expenses together within campaign finance reports on a monthly basis if the expenses are for the same goods or services and from the same vendor. The text of proposed rule part 4503.1600 would accomplish that purpose.</p> <p>James Newberger submitted a comment supportive of generally applicable limits on the amount of money a candidate may lend or contribute to their own committee. Candidates who sign a public subsidy agreement are already limited by statute with respect to the amount that they may lend or contribute to their own committee. The Board cannot adopt a rule with a similar limit applicable to candidates who decline to sign a public subsidy agreement, both because that would conflict with the intent of existing statutes and because it would likely violate the First Amendment.</p> <p>Sue Rasmussen submitted a comment encouraging modification of the political contribution refund (PCR) receipt form to allow multiple small contributions from the same contributor to be grouped together within a single receipt. That is already possible when issuing PCR receipts using paper forms provided by the Board. Due to technological limitations that is currently not possible when generating PCR receipts electronically and adopting a rule would not impact those limitations.</p> <p>Ethel Cox submitted a comment suggesting that there be an official process for treasurers to resolve errors that occurred before their tenure that have resulted in a cash balance discrepancy. The Board already has a process for addressing cash balance discrepancies within campaign finance reports. Ethel Cox also suggested that the Board periodically audit filers to ensure their campaign finance reports are accurate. The Board has statutory authority to audit campaign finance filers and the text of proposed rule part 4525.0550 would guide the Board in conducting audits.</p>

<p>Comments received during Request for Comments (continued):</p>	<p>The Minnesota DFL Party submitted a comment regarding several aspects of the Board’s rulemaking topics. First, the DFL supported a rule providing that when goods or services are jointly purchased, the filers involved must report the actual costs incurred by each purchaser. The text of proposed rule part 4503.0400 would accomplish that purpose.</p> <p>Second, the DFL urged caution regarding the topic of a rule that would “establish criteria required in order for a candidate to be deemed not responsible for the actions of a vendor or subcontractors of a vendor hired by the candidate’s committee, such as when those actions unintentionally result in coordinated expenditures.” The Board’s rulemaking committee ultimately decided not to pursue a rule on that specific topic. Instead, the proposed text of rule part 4525.0500, subpart 2, would set forth general factors to be considered by the Board in exercising its discretion in imposing civil penalties.</p> <p>Third, the DFL noted that it is impractical for every social media post that constitutes campaign material to include the disclaimer generally required by Minnesota Statutes section 211B.04. The proposed text of rule part 4503.1800 would address that by allowing a social media post to contain a link to a page that includes the required disclaimer rather than the disclaimer text itself.</p> <p>Fourth, the DFL advocated in favor of a broad definition of the term headquarters as used in Minnesota Statutes section 211B.15, subdivision 8. The proposed text of rule part 4503.0100, subpart 7, would accomplish that purpose.</p> <p>Fifth, the DFL said that the Board should consider rules establishing a streamlined process for resolving cash balance discrepancies with respect to campaign finance reports and that the Board should establish a threshold amount or percentage at which a full accounting would not be required. The Board already has a process for addressing cash balance discrepancies within campaign finance reports and grants administrative cash balance adjustments to resolve discrepancies that cannot be resolved by filing amended reports on a case-by-case basis. Currently there are no statutes directing the Board to disregard reporting errors based on the amount involved.</p> <p>Sixth, the DFL advocated in favor of allowing a complainant “to continue to be involved in the Board’s processes following a probable cause determination,” including allowing the complainant to review any draft findings or conciliation agreement to be considered by the Board and to appear before the Board prior to any final action being taken. However, Minnesota Statutes, section 10A.022, subdivision 5, provides that the Board and its staff may not disclose information regarding an investigation “except as required to carry out the investigation or take action in the matter as authorized by” Chapter 10A. Furthermore, Chapter 10A does not</p>
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<p>Comments received during Request for Comments (continued):</p>	<p>provide for a complainant’s involvement in any investigation that follows a probable cause determination.</p> <p>The Democratic Governors Association (DGA) submitted a comment in support of a rule establishing how campaign finance filers may jointly purchase goods or services without making or receiving a donation in kind. The text of proposed rule part 4503.0400 would accomplish that purpose.</p> <p>Housing First Minnesota submitted a comment expressing concern about requiring more individuals to register as lobbyists, specifically individuals involved in the homebuilding industry who may have contact with municipalities while seeking approvals for building projects. The legislative changes in question were intended to require additional individuals to register as lobbyists and for some existing lobbyists to register on behalf of additional lobbyist principals. However, the Board addressed the specific concern raised by Housing First Minnesota regarding whether communications regarding the issuance of a permit constitute lobbying. The proposed text of rule part 4511.1000 would exclude certain ministerial actions by an elected local official or their office from what is defined as “approval by one or more elected local officials” and would thereby narrow the scope of what is defined as lobbying. Those ministerial actions include the routine issuance of a government license, permit, or variance, as well as any act that does not require the elected official’s personal approval.</p> <p>The Coalition of Greater Minnesota Cities (CGMC) submitted a comment regarding rules governing lobbying that would involve political subdivisions. The CGMC urged that any rules adopted by the Board interpret the 2023 legislative changes narrowly. The Board has addressed two specific concerns raised by the CGMC. First, the proposed text of rule part 4511.0900 would provide that a membership organization such as the CGMC is not lobbying political subdivisions when communicating with its own members that are political subdivisions. That proposed rule addresses a concern raised not only by the CGMC, but also by the League of Minnesota Cities, the Association of Metropolitan Municipalities, the Minnesota Association of Small Cities, and the Municipal Legislative Commission. Second, the proposed text of rule part 4511.1100, subpart 2, provides that “the purchase of goods or services with public funds in the operating or capital budget of a political subdivision” is not a major decision involving the expenditure of political money. That text helps to clarify what is defined as lobbying in light of the fact that Minnesota Statutes, section 10A.01, subdivision 21, provides that an individual is not a lobbyist based on the act of “selling goods or services to be paid for by public funds.”</p> <p>The Minnesota Governmental Relations Council (MGRC) submitted a comment referencing the legislative changes to the lobbying program and seeking “clear guidance on the new reporting requirements and ample time</p>
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<p>Comments received during Request for Comments (continued):</p>	<p>to adjust our reporting protocols.” The MGRC identified a number of scenarios in which it felt that it was unclear whether an individual would be required to register as a lobbyist or report certain activity as lobbying. During the rule-drafting process the MGRC provided more specific comments and testimony, and in several instances the rule language was drafted to address concerns raised by the MGRC and its members.</p>
<p>Statement of Need and Reasonableness (SONAR) Executive Summary:</p>	<p>Six statute sections within Minnesota Statutes, chapter 10A, that directly impact the regulation of lobbying were amended, and two rule subparts related to lobbying were repealed, effective January 1, 2024. The amendments altered the type of information lobbyists must report to the Board and the scope of who is defined as a lobbyist. A particularly consequential change to the scope of who is defined as a lobbyist involved classifying individuals as lobbyists if they lobby any Minnesota county, township, city, or school district, among other political subdivisions. Previously the scope of what was defined as lobbying of local government bodies was largely limited to lobbying of seven metropolitan area counties, and cities with a population in excess of 50,000 within those seven counties. That change increased the number of individuals required to register as lobbyists and file lobbyist reports, the number of lobbyist principals on whose behalf some existing lobbyists must be registered, thereby requiring the filing of additional lobbyist reports, and the number of principals required to file annual reports. The legislative changes effective January 1, 2024, introduced undefined terms to Minnesota Statutes, chapter 10A, generally replaced the term “metropolitan governmental unit” with the term “political subdivision” insofar as it applies to lobbying, and caused multiple organizations to seek an advisory opinion from the Board or otherwise raise questions as to whether they are engaged in lobbying of political subdivisions within the meaning of Minnesota Statutes, chapter 10A, and if so, how their lobbyists need to report that activity. The proposed changes to Minnesota Rules, chapter 4511, address those issues.</p> <p>Legislation enacted in 2024 stays enforcement of the lobbyist registration requirement for an individual who lobbies a political subdivision that is not a metropolitan governmental unit, through June 1, 2025. That legislation does not eliminate the need to adopt rules regarding lobbying for two reasons. First, the need is broader than addressing issues raised by generally replacing the term metropolitan governmental unit with the term political subdivision within Minnesota Statutes, chapter 10A. Second, the stay expires on June 1, 2025, at which point the proposed rules will be needed to address those issues.</p> <p>Minnesota Statutes, section 10A.02, subdivision 12a, provides that if the Board “intends to apply principles of law or policy announced in an advisory opinion . . . more broadly than to the individual or association to whom the opinion was issued,” rules must be adopted under the APA to implement those principles or policies. The Board has articulated legal principles and policies in multiple advisory opinions that are generally</p>

<p>Statement of Need and Reasonableness (SONAR) Executive Summary (continued):</p>	<p>applicable and have not yet been adopted as administrative rules. The proposed rules are intended to satisfy that requirement.</p> <p>Six statute sections within Minnesota Statutes, chapter 10A, that directly impact the regulation of campaign finance were amended effective January 1, 2022. Broadly speaking those changes involved repealing much of Minnesota Statutes, chapter 383B, and requiring associations other than candidate committees, seeking to influence certain local elections within Hennepin County, to register and file reports with the Board rather than Hennepin County. The amendments introduced the term “local candidate” to Minnesota Statutes, chapter 10A, and made multiple changes in order to be inclusive of contributions to and expenditures regarding local candidates, as well as expenditures regarding certain local ballot questions. Definitions of the terms “local candidate” and “ballot question” have been amended, effective January 1, 2025, to eliminate distinctions regarding Hennepin County and be inclusive of local elections in any Minnesota county, city, school district, township, or special district. The proposed rules include corresponding amendments to Minnesota Rules, chapter 4503.</p> <p>The proposed rules address existing rules that are partially obsolete or duplicative and need to be amended in accordance with Minnesota Statutes, section 14.05, subdivision 5. The proposed rules clarify the Board’s procedures regarding audits, investigations, and the handling of complaints within Minnesota Rules, chapter 4525. The proposed rules also address the need to more clearly define several terms used within Minnesota Statutes, chapter 10A.</p>
<p>Supporters, opponents, and possible controversies:</p>	<p>All written comments received after the request for comments period and nearly all of the oral testimony received by the Board’s rulemaking committee focused exclusively on existing and potential rules concerning lobbying within chapters 4511 and 4512. After the request for comments period the Board received 10 written comments from seven different entities. There is opposition to requiring those who lobby political subdivisions to register and file lobbyist reports with the Board. Many of the concerns raised primarily involve pre-existing or recently amended statutes rather than the Board’s proposed rules attempting to implement those statutes.</p> <p>Several comments and oral testimony on behalf of the American Council of Engineering Companies of Minnesota, and a comment submitted by the American Institute of Architects Minnesota, encouraged the Board to adopt a new rule creating an exception to what is defined as lobbying of a political subdivision. Specifically, the exception would provide that an individual with a professional license issued pursuant to Minnesota Statutes, chapter 326, or perhaps any individual with particular expertise on a subject, would be deemed to not be attempting to influence an official action by a political subdivision when communicating with that political subdivision’s local officials. The Board declined to propose such a rule and</p>

<p>Supporters, opponents, and possible controversies (continued):</p>	<p>in 2024 the 93rd Legislature failed to act on bills that would have created a similar exception, including H.F. 4679 and S.F. 4700.</p> <p>The Minnesota State Bar Association suggested that communication with political subdivision officials concerning legal disputes be excluded from what is defined as lobbying. The text of proposed rule parts 4511.1000 and 4511.1100 would accomplish that objective.</p> <p>The Minnesota Regional Railroads Association submitted a comment asking “that the proposed rule be scaled back and limited to individuals specifically hired to lobby local governments. . . .” That request was not heeded as doing so would undermine the intent of statutory changes enacted as 2023 Minnesota Laws, Chapter 62, Article 5, as well as the statutes applicable to lobbying of metropolitan governmental units that preceded those changes.</p> <p>The St. Paul Area Chamber (SPAC) submitted a comment raising several concerns. First, it articulated concern regarding the reporting of an “original source of money . . . used for the purpose of lobbying,” particularly as that applies to membership organizations. The 2023 legislative changes did not alter that requirement except to replace the phrase “metropolitan governmental unit” with the term “political subdivision.” Within the proposed rules, the definition of the term “original source of funds” would be modified only to make it clear that an original source may be an individual or an association.</p> <p>Second, the SPAC raised concerns regarding a CEO who interacts with the Governor’s office and political subdivisions needing to consider whether those interactions require them to register as a lobbyist. The text of proposed rule 4511.0100, subpart 3, provides guidance to individuals attempting to determine if their communication with public officials constitutes lobbying. The 2023 legislative changes did not fundamentally alter the requirement that an individual paid more than \$3,000 within a year to engage in lobbying must register as a lobbyist, except that the definition of lobbyist now includes those who lobby any political subdivision, as opposed to being limited to metropolitan governmental units. An individual who is compensated, in part, to attempt to influence legislative action and the official action of a political subdivision, will need to consider whether they are defined as a lobbyist, which is the direct result of Minnesota Statutes, chapter 10A, rather than the Board’s proposed rules. The SPAC also raised a concern similar to that raised by Housing First Minnesota regarding property developers potentially needing to register as lobbyists based on seeking approvals from political subdivisions. The proposed text of rule part 4511.1000 would exclude certain ministerial actions by an elected local official or their office from what is defined as “approval by one or more elected local officials” and would thereby narrow the scope of what is defined as lobbying. Those ministerial actions include the routine issuance of a government license, permit, or variance,</p>
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<p>Supporters, opponents, and possible controversies (continued):</p>	<p>as well as any act that does not require the elected official’s personal approval.</p> <p>Third, the SPAC stated that “[t]he distinction between a subject matter expert being ‘invited’ to testify or choosing to testify in [<i>sic</i>] the CFB considering whether the testimony is lobbying activity is not practical from a free speech perspective.” Neither the Board nor its rulemaking committee considered draft rule language that would have created a distinction based on an individual providing testimony at a body’s or official’s invitation. The Board’s rulemaking committee considered draft language regarding an expert’s communication with a local official, but the Board ultimately declined to propose a rule based on that language. Minnesota Statutes, section 10A.01, subdivision 21, excludes from the definition of lobbyist “a paid expert witness whose testimony is requested by the body before which the witness is appearing, but only to the extent of preparing or delivering testimony.” None of the proposed rule language addresses that exclusion.</p> <p>Fourth, the SPAC expressed concern “about the differences between what the state and federal government consider lobbying as it pertains to an organization’s tax-exempt status.” The Board lacks the statutory authority to adopt rules pertaining to tax exemptions or federal law.</p> <p>Maureen Shaver submitted a comment objecting to the scope of who is defined as a lobbyist pursuant to the legislative changes that became effective on January 1, 2024, and questioning the value of those changes. Ms. Shaver suggested that the implementation of those changes be delayed. Legislation enacted in 2024 stays enforcement of the lobbyist registration requirement for an individual who lobbies a political subdivision that is not a metropolitan governmental unit, through June 1, 2025.</p> <p>The Minnesota Governmental Relations Council (MGRC) submitted two written comments and provided oral testimony to the Board’s rulemaking committee. The MGRC suggested conformity with the federal definition of lobbying. However, what constitutes lobbying under Minnesota law is primarily a consequence of Minnesota Statutes, chapter 10A, and not the Board’s existing or proposed rules. The Board does not have the statutory authority to wholly redefine what constitutes lobbying through administrative rulemaking and any such effort would undermine the intent of the legislature.</p> <p>The MGRC said that “[s]everal of the changes made in statute and proposed in the rules have the potential to silence voices and restrict free speech.” The MGRC said that “[i]t would be unfortunate if requirements aimed at the professional lobbying community had the unintended consequence of chilling speech for regular citizens.” The Board’s proposed rules do not define the speech of “regular citizens” as lobbying. The distinction between who is a lobbyist and who is not is almost entirely statutory and an individual cannot be a lobbyist under Minnesota Statutes,</p>
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<p>Supporters, opponents, and possible controversies (continued):</p>	<p>chapter 10A, unless they are compensated at least \$3,000 within a calendar year for efforts related to lobbying, or they spend more than \$3,000 within a calendar year on lobbying.</p> <p>The MGRC said that draft rule language defining the phrase “development of prospective legislation” was unclear, and offered hypotheticals suggesting that individuals who are neither compensated for lobbying, nor spend more than \$3,000 on lobbying, may need to register as lobbyists. The proposed rules define the phrase “development of prospective legislation” because that phrase appears within the statutory definition of “legislative action,” which in turn plays a role in the statutory definitions of the terms “lobbyist” and “principal” as well as the content of lobbyist reports. The proposed rules do not alter the monetary thresholds stated within the statutory definition of the term “lobbyist.” Concerns regarding “regular citizens” potentially being defined as lobbyists appear to be based on a lack of understanding regarding that statutory definition. Regardless of who they communicate with, what they communicate about, where that communication occurs, and what results from that communication, an individual cannot possibly be defined as a lobbyist unless that individual is either compensated at least \$3,000 within a calendar year for efforts related to lobbying, or spends more than \$3,000 within a calendar year on lobbying. The MGRC also proposed that the Board’s rule conform with federal law in terms of how the phrase “legislative action” is defined, because nonprofit organizations rely on IRS guidance regarding what is defined as legislative action in order to comply with IRS regulations. However, “legislative action” is a term defined by Minnesota Statutes, section 10A.01, subdivision 19a, rather than the Board’s existing or proposed rules. The Board does not have the statutory authority to wholly redefine what constitutes legislative action through administrative rulemaking and any such effort would undermine the intent of the legislature.</p> <p>Proposed rule part 4511.0200, subpart 1, would provide that for purposes of calculating whether an individual has reached the \$3,000 compensation threshold, “[t]he pay or consideration for lobbying for an individual whose job duties includes both lobbying and functions unrelated to lobbying is determined by multiplying the gross compensation of the individual by the percentage of the individual’s work time spent lobbying in the calendar year.” The MGRC stated that the formula “creates an unlevel playing field” because “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.” The distinction between who is a professional lobbyist and who is not, based on compensation, is inherent to the statutory definition of the term “lobbyist” within Minnesota Statutes, chapter 10A. The Board’s proposed rules do not, and cannot, alter that distinction. The MGRC encouraged the Board to adopt a rule that limits the scope of who is defined as a lobbyist to those who spend a threshold amount of time on lobbying or those for whom lobbying is a key part of</p>
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Supporters, opponents, and possible controversies (continued):

their job duties. However, the statutory definition of the term “lobbyist” within Minnesota Statutes, chapter 10A, is inherently based on compensation or an individual’s own spending on lobbying. The only instance in which the statutes administered by the Board address the amount of time spent on lobbying is in stating that a nonelected local official or an employee of a political subdivision is not a lobbyist when acting in their official capacity, unless they spend more than 50 hours in a month on lobbying. That indicates that the legislature is aware of the possibility of defining the term lobbyist based on the amount of time spent on lobbying, and that the legislature intentionally chose to instead define the term lobbyist based on compensation or the amount spent. The only instance in which the statutes administered by the Board address an individual’s job duties related to lobbying is in stating that an individual is a lobbyist based on being compensated by a business that provides government relations or government affairs services only if their job duties involve consulting or advice related to providing those services to clients. That indicates that the legislature is aware of the possibility of defining the term lobbyist based on an individual’s job duties, and that the legislature generally has chosen to instead define the term lobbyist based on compensation or the amount spent. Proposed rule part 4511.0200, subpart 1, considers the time spent on lobbying only insofar as that is necessary to narrow the scope of who is defined as a lobbyist to those compensated more than \$3,000 related to lobbying, rather than including any individual compensated more than \$3,000 who engages in any amount of lobbying for which they are compensated. The Board’s proposed rules do not, and cannot, redefine the term “lobbyist” to introduce new thresholds or other types of exclusions that are not based on statute and would undermine the intent of the legislature.

The MGRC suggested multiple new exclusions from who is defined as a lobbyist. Minnesota Statutes, section 10A.01, subdivision 21, includes 11 enumerated exclusions from the term “lobbyist.” Many of the activities that the MGRC suggested be excluded from the definition of “lobbyist” do not need to be excluded because they are not defined as lobbying under Minnesota law. Others cannot be excluded by administrative rule because there is no statutory basis for such an exclusion. Some of the proposed rules seek to clarify terms within Minnesota Statutes, chapter 10A, and in doing so, at least partially address concerns raised by the MGRC and others. For example, rule part 4511.1100 would provide that communication with a nonelected local official does not constitute lobbying if the communication consists of collective bargaining regarding a political subdivision’s labor contract or participating in discussions with a party or their representative regarding litigation between that party and the political subdivision of the local official. Also, rule part 4511.1000 would provide that attempting to influence an elected local official is not lobbying if the decision to be influenced involves the routine issuance of a government license, permit, or variance, any act that does not require the elected official’s personal approval, or prosecutorial discretion exercised

<p>Supporters, opponents, and possible controversies (continued):</p>	<p>by a county attorney, or if the communication involves discussions with a party or their representative regarding litigation between the party and the political subdivision of the elected official. Those exclusions are intended to ensure that actions the legislature did not intend to define as lobbying are not inadvertently swept into the Board’s lobbyist registration and reporting program, while being careful not to create exceptions that undermine the disclosure regime crafted by the legislature.</p> <p>Proposed rule part 4511.0500 would require each designated lobbyist, who is the individual responsible for reporting a principal’s direct lobbying activity, to disclose each “original source of money” provided to the lobbyist or the association they represent that is used for lobbying. The MGRC sought the elimination of that rule and stated that underlying sources should be disclosed within lobbyist principal reports instead. However, Minnesota Statutes, section 10A.04, subdivision 4, which concerns lobbyist reports, provides that “[a] lobbyist must report each original source of money in excess of \$500 in any year used for the purpose of lobbying” and Minnesota Statutes, section 10A.04, subdivision 6, which concerns principal reports, does not reference original sources. While the statutory text could be interpreted to require every lobbyist to disclose each original source, it cannot be interpreted to require principals, rather than lobbyists, to disclose that information. The Board opted for the less burdensome option of requiring those lobbyists already tasked with reporting the direct lobbying activity of the associations they represent to report the original sources of funding used for lobbying, rather than requiring every registered lobbyist to do so.</p> <p>The MGRC also generally objected to the 93rd Legislature’s decision to expand the definition of lobbyist to include those attempting to influence the official action of any political subdivision, rather than limiting the scope to metropolitan governmental units.</p> <p>Aside from its written comments, the MGRC provided testimony and a substantial amount of informal feedback regarding the proposed rules. Many of the specific concerns raised by the MGRC during the rule-drafting process were addressed and resulted in changes to the language initially drafted by Board staff. The Board’s executive director has engaged in a multi-year process of consultation with the MGRC regarding possible legislative changes, and the drafting of rules to implement the changes the legislature ultimately enacted. Both the 2023 legislative changes and the proposed rules have benefited from that engagement.</p> <p>The Minnesota DFL Party appears to disagree with the Board’s interpretation of Minnesota Statutes, chapter 10A, regarding whether a complainant has a role to play in an investigation that follows a probable cause determination. Aside from that disagreement, what little feedback the Board has received regarding the proposed rules concerning campaign finance and audits and investigations has been positive.</p>
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List significant changes from preliminary proposal:	The Board's rulemaking committee considered draft rule language that would "establish criteria required in order for a candidate to be deemed not responsible for the actions of a vendor or subcontractors of a vendor hired by the candidate's committee, such as when those actions unintentionally result in coordinated expenditures." The Board's rulemaking committee ultimately decided not to pursue a rule on that specific topic. Instead, the proposed text of rule part 4525.0500, subpart 2, would set forth general factors to be considered by the Board in exercising its discretion in imposing civil penalties.
Other:	The preliminary proposal form stated that the fiscal impact was undetermined, primarily because the full scope of the lobbying rules had yet to be determined. The Board has determined that the proposed rules are unlikely to have a fiscal impact.

**Fiscal Impact:**

Yes

No

\*If the Fiscal Impact determination has changed, please explain above.\*

**AGENCY: Attach draft rules and SONAR.**

  
Executive Director's Signature

  
Date

\*\*\*THIS SECTION TO BE COMPLETED BY THE GOVERNOR'S OFFICE\*\*\*

I have reviewed the above information and have approved this administrative rule. The respective Agency may formally publish a Notice of Intent to Adopt Proposed Rules.

*Simone A. Frierson*

*6/27/24*

\_\_\_\_\_  
Governor's Policy Advisor

\_\_\_\_\_  
Date