

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

.....  
**August 7, 2024**  
**Blazing Star Room**  
**Centennial Office Building**  
.....

**MINUTES**

The meeting was called to order by Vice Chair Rashid.

Members present: Asp (joined before, and left after, discussion about AO 464), Flynn, Kleis, Rashid, Soule, Swanson

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

Asp, Flynn, Rashid, Engelhardt, and Hartshorn appeared remotely.

**MINUTES** (July 10, 2024)

The following motion was made:

Member Rashid's motion: To approve the July 10, 2024, minutes as drafted.

Vote on motion: Flynn, Rashid, Soule, and Swanson voted yes, Kleis abstained.

Due to Chair Asp's early departure, the meeting agenda was adjusted to begin with the advisory opinion request.

**ADVISORY OPINION REQUESTS**

**A. Advisory Opinion 464**

Mr. Olson presented the Board with two versions of draft advisory opinions. The Board discussed the drafts and discussed changes to the drafted opinions. Chair Asp presented additional modifications to the opinion and Board members concluded that additional time was needed to review the suggested changes.

The following motion was made:

Member Soule's motion: To lay over the matter.

Vote on motion: Unanimously approved.

## **EXECUTIVE DIRECTOR'S REPORT**

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

- Staffing: Gary Bauer, who held the position of Database Program Analyst, resigned from state service effective July 30th. Gary was with the Board for almost thirteen years, and was very involved in supporting treasurers who used the Campaign Finance Reporter software developed by the Board.
- Pre-primary Report of Receipts and Expenditures: The deadline for the pre-primary report was July 29<sup>th</sup>. The Board has received reports from all judicial candidates required to file, and is missing reports for only three of the 268 House candidates who were required to file a report. Of the 298 registered party units, 293 have filed a report, as have 241 of 246 political committees and 171 of 198 political funds.
- Report to the Legislature – Lobbying of Political Subdivisions: At the 2024 legislative session, the Board was tasked with studying whether the laws regulating lobbying should distinguish between lobbying of public officials and lobbying of local officials in political subdivisions. In particular, the Board was directed to study the statutory definitions of "lobbyist," "local official," "public official," and "official action of a political subdivision" as 2 provided in Chapter 10A. The Board will report the study's results to the legislature in January of 2025, and may include legislative recommendations on distinctions between the lobbying of public and local officials that the Board believes are warranted and appropriate. The Board will hold a public meeting on these issues on Monday, August 19, at 9 AM in the Blazing Star Room of the Centennial Office Building. Members of the regulated community, organizations that represent political subdivision, and good governance groups have been invited to provide their views on lobbying of political subdivisions. There will be other opportunities for the public to provide comment as the drafting of the report goes forward.
- Operational Budget – Fiscal Year 2025: The Board's budget for fiscal year 2025 is \$1,981,000 which reflects a base budget of \$1,791,000 for operations, and a one-time increase of \$190,000 for IT development. The Board's budget for FY24 also contained a one-time increase for IT development. Money not spent in the first year of the biennium, FY24, is carried forward for use in FY25. Money not used in the second year of the biennium reverts to the state general fund. At the end of FY24 there was approximately \$382,000 in unobligated funds available to carryforward into FY25. However, the carryforward includes \$163,000 which will be used for the Azure Cloud service agreement with MNIT, which has been signed but not invoiced.

The following motion was made:

Member Soule's motion: To approve the budget as presented

Vote on motion: Unanimously passed.

## **RECONCILIATION OF 2023 CONTRIBUTIONS**

Mr. Sigurdson presented the Board with a memo that is attached to and made a part of these minutes. The Board reconciles contributions reported by registered committees to the contributions reported received by registered committees. The numbers should match, or an explanation found for a discrepancy. In 2023,

\$702,851 of \$8,488,540 in contributions from registered committees to other registered committees did not reconcile. After working through the reconciliation process and contacting committees for amendments the amount that still does not reconcile has been reduced to \$5,841. This means that 99.92% of the contributions between registered committees reconcile.

**ENFORCEMENT REPORT**

**A. Consent Items**

**1. Administrative termination of lobbyist Margaret Meyer (4636)**

Pro-Choice Minnesota (5837) stated Ms. Meyer left employment with them on May 24, 2024. Despite messages via telephone and email, Pro-Choice has been unable to contact her to request she terminate her lobbyist registration. It is worth noting that in the past, CFB staff has also had a hard time contacting Ms. Meyer. If the termination is approved, Pro-Choice requests the termination be backdated to May 24, 2024. Ms. Meyer has not filed the lobbyist report that was due June 17, 2024, and a late filing fee continues to accrue at a rate of \$25 per day. Meyer is the principal’s sole registered lobbyist.

The following motion was made:

Member Soule’s motion: To approve the termination.

Vote on motion: Flynn, Rashid, Swanson voted no.  
 Kleis and Soule voted yes. Motion did not pass.

**B. Waiver Requests**

1. Grassroots-Legalize Cannabis Party (20839)						Board Action
Report(s)	Due	Filed	Amount	Prior Waivers	Recommended Action	Member Soule moved to grant requests 1-5.  Unanimously passed.
2024 June	6/14/24	6/18/24	\$100	No.	Waive.	
The treasurer, Oliver Steinberg states he experienced a medical issue and was hospitalized from June 8 <sup>th</sup> until late June 15 <sup>th</sup> . He attempted to complete the report on June 16 <sup>th</sup> but was hospitalized again. He submitted the report electronically on June 18 <sup>th</sup> , two working days past the deadline.						

2. Andrea Lovoll (4862)						Board Action
Report(s)	Due	Filed	Amount	Prior Waivers	Recommended Action	Member Soule moved to grant requests 1-5.  Unanimously passed.
2024 LDR	6/17/24	6/25/24	\$125	No.	Waive.	
Ms. Lovoll states that she encountered difficulties with CFRO’s online system, which prevented her from submitting her report on time. Ms. Lovoll attempted to contact Board staff via email and phone, however she did not receive a response due to CFB staff changes. After several unsuccessful attempts to submit the report electronically, Ms. Lovoll physically delivered her report to the CFB office after the deadline.						

3. John Ongaro (7516)						Board Action
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Report(s)	Due	Filed	Amount	Prior Waivers	Recommended Action	Member Soule moved to grant requests 1-5.
2024 LDR	6/17/24	7/1/24	\$225	No.	Waive.	
Mr. Ongaro states his wife passed away on June 26 <sup>th</sup> . The past month has been extremely challenging for him. As a result, he was late in submitting his forms. Ongaro requests a waiver for the delay and hopes for understanding during this difficult time.						Unanimously passed.

4. Automotive Service Political Action Committee (40683)						Board Action
Report(s)	Due	Filed	Amount	Prior Waivers	Recommended Action	Member Soule moved to grant requests 1-5.
2024 June	6/14/24	6/17/24	\$50	Yes. \$50 - 2022 1st Quarter Report, due to family medical emergency.	Waive.	Unanimously passed.
Jodi Pillsbury, Office Manager for AASP called CFB staff on June 14, 2024, for help due to technical errors with CFRO. She did not receive a response. She submitted her report on June 17, 2024, and notified Board staff via email that she submitted it, not knowing if it was done correctly, but wanting to ensure its submission.						

5. Kevin Cray (4735)						Board Action
Report(s)	Due	Filed	Amount	Prior Waivers	Recommended Action	Member Soule moved to grant requests 1-5.
2024 LDR	6/17/24	6/18/24	\$25	No.	Waive.	Unanimously passed.
McKenzie Bolduc, the Vice President of Coalition for Community Solar Access (the principal) states she tried to file the report multiple times but had technical issues with the Board's electronic reporting system. Because of those issues, they submitted the report via email to Board staff on 6/18/24.						

6. Free Employee and Agent PAC (41341)						Board Action
Report(s)	Due	Filed	Amount	Prior Waivers	Recommended Action	Member Soule moved to reduce the \$550 LFF to \$300 leaving a total owed of \$350.
2023 year-end 2024 June	1/31/24 6/14/24	2/2/24 7/2/24	\$50 \$550	No.		Flynn, Rashid, Soule, Swanson voted yes. Kleis voted no.
Treasurer Chris Merideth states the delay was due to an oversight exacerbated by a heavy workload caused by significant employee turnover. Merideth stressed their typical attentiveness to compliance matters and portrayed the incident as an isolated one. The committee registered with the Board in September 2023 and two of its three reports were filed late. The 2023 year-end report disclosed zero financial activity. The 2024 June report likewise disclosed zero new financial activity. Merideth mentioned that the committee has implemented measures to prevent a recurrence and asked the Board to consider waiving the fees. Merideth also pointed out that the organization is a small startup. Merideth expressed appreciation for the consideration and offered to provide more information if necessary.						

7. Larry Johnson (4808)						Board Action
Report(s)	Due	Filed	Amount	Prior Waivers	Recommended Action	

2024 LDR	6/17/24	6/18/24	\$25	No.	Do not waive.	Mr. LeBeau appeared on behalf of Mr. Johnson.  Member Soule moved to waive the fee.  Rashid, Soule, Swanson voted yes. Flynn and Kleis voted no.  Motion did not pass.
Reid LeBeau, designated lobbyist for CVS Health (the principal) states they didn't receive an email notice from CFB reminding them to file. Board records show that email reminders were sent to Johnson's email address 6/5/24 and 6/12/24. LeBeau acknowledges that the email notice is a courtesy. LeBeau states they haven't had issues in the past and hope the Board considers that in their decision.						

8. Minnesota Pork PAC (41282)						Board Action
Report(s)	Due	Filed	Amount	Prior Waivers	Recommended Action	No motion was made to waive the fee.
2024 June	6/14/24	6/21/24	\$200	No.	Do not waive.	
Pam Voelkel, deputy treasurer, states the organization has a history of filing reports on time and has made efforts to submit them ahead of schedule. The late filing was solely due to an oversight regarding the deadline. The individual responsible did not receive a notification about the overdue status until June 21st, at which point the report was promptly filed. However, Board staff sent an email to the chair and treasurer on June 12, 2024 reminding them to file. The report disclosed less than a dollar in new financial activity.						

**C. Informational Items**

**1. Payment of late filing fee for original EIS**

Scott Hesselgrave, \$20  
 Kathy Jorgenson-Hegstad, \$20

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

Unidos We Win PAC, \$1,000

**3. Payment of late filing fee for 2023 year-end report**

Unidos We Win PAC, \$1,000  
 Minn Realtors Political Action Committee, \$25

**4. Payment of late filing fee for 2024 1st Quarter report**

Minn Organization of Republican Veterans (MORVets), \$50

**5. Payment of late filing fee for 2023 lobbyist principal report**

Project Lead the Way, \$75  
 The Coca-Cola Company, \$50

**6. Payment of late filing fee for 2024 June report**

Working America Minn Political Committee, \$150  
Minn Realtors Political Action Committee, \$200

**7. Payment of late filing fee for 2023 June report**

AFSCME Council 5 People Fund, \$100

**ADMINISTRATIVE RULEMAKING UPDATE**

Mr. Olson presented the Board with an update on administrative rulemaking.

**PRIMA FACIE DETERMINATIONS**

**A. Complaint of Mark Bray regarding lobbyist John Kysylyczyn**

Mr. Olson presented the Board with an overview of the complaint, and prima facie determination dismissing the complaint, regarding Mr. Kysylyczyn.

**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  
Yearly Update on Reconciliation of Contributions between Registered Committees  
Advisory Opinion 464 memo  
AO 464 Public draft version 1  
AO 464 Public draft version 2  
Prima facie determinations memo  
Complaint against John M. Kysylyczyn  
Prima facie determination regarding John M. Kysylyczyn complaint  
Legal report



# MINNESOTA CAMPAIGN FINANCE BOARD

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**Date:** July 31, 2024

**To:** Board Members

**From:** Jeff Sigurdson, Executive Director

**Telephone:** 651-539-1189

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

## **Staffing**

There were 101 applicants for the Lobbying Program Analyst position. Staff has concluded the first round of interviews, and hopes to conclude second interviews during the week of August 5<sup>th</sup>.

Gary Bauer, who held the position of Database Program Analyst, resigned from state service effective July 30<sup>th</sup>. Gary was with the Board for almost thirteen years, and was very involved in supporting treasurers who used the Campaign Finance Reporter software developed by the Board. His resignation leaves the Board with only one IT staff member. I have requested that HR post this position, as well as the new IT position that was authorized by the legislature, as soon as possible.

## **Pre-primary Report of Receipts and Expenditures**

The deadline to file the pre-primary report was July 29, 2024. The pre-primary report covers the period from January 1 to July 22, 2024. This is the first election year report filed by House and District Court candidates who filed for office and formed a committee with the Board. Additionally, all political party units and political committees were required to file a report, as well as political funds that had activity after the close of the period covered by the June report.

As of the date of this memo, the Board has received reports from all judicial candidates required to file and is missing reports for only three of the 268 House candidates who were required to file a report. Of the 298 registered party units, 293 have filed a report, as have 241 of 246 political committees and 171 of 198 political funds.

## **Report to the Legislature – Lobbying of Political Subdivisions**

At the 2024 legislative session, the Board was tasked with studying whether the laws regulating lobbying should distinguish between lobbying of public officials and lobbying of local officials in political subdivisions. In particular, the Board was directed to study the statutory definitions of "lobbyist," "local official," "public official," and "official action of a political subdivision" as

provided in Chapter 10A. The Board will report the study's results to the legislature in January of 2025, and may include legislative recommendations on distinctions between the lobbying of public and local officials that the Board believes are warranted and appropriate.

There are many opinions on this subject, and to better understand the issues and challenges that lobbying may bring to political subdivisions, the Board is requesting input and suggestions from the lobbyist community, organizations that represent political subdivisions, and organizations that are concerned about transparency and good governance. To start a conversation on these issues, there will be a public meeting on Monday, August 19, 2024, at 9:00 AM in the Blazing Star Room of the Centennial Office Building. Interested persons may attend in person, or via WebEx. Vice Chair Rashid has agreed to attend the meeting as a representative of the Board, but all Board members are welcome to attend. There will be other opportunities for the public to provide comment as the drafting of the report goes forward.

### **Operational Budget – Fiscal Year 2025**

At the start of each state fiscal year the Board ratifies the budget developed by the executive director using salary projections, rent, and MNIT costs provided by the Small Agency Resource Team (SmART). The state fiscal year runs from July 1 to June 30 of the following year. The Board's budget for fiscal year 2025 is \$1,981,000 which reflects a base budget of \$1,791,000 for operations, and a one-time increase of \$190,000 for IT development. The Board's budget for FY24 also contained a one-time increase for IT development. Money not spent in the first year of the biennium, FY24, is carried forward for use in FY25. Money not used in the second year of the biennium reverts to the state general fund. At the end of FY24 there was approximately \$382,000 in unobligated funds available to carryforward into FY25. However, the carryforward includes \$163,000 which will be used for the Azure Cloud service agreement with MNIT, which has been signed but not invoiced.

In addition, at the 2024 legislative session, the Board was appropriated on a one-time basis \$50,000 to develop online training capabilities for campaign treasurers, and \$20,000 to develop an online registration system for political committees. Both appropriations expire at the end of FY25.

The staff salaries used in the proposed budget include the 4.5% increase in salaries negotiated by the MAPE and AFSCME unions for FY25, and the estimated salary for open and new staff positions.

A motion and vote to ratify the budget is required.

### **Attachment**

Fiscal Year 2025 Budget

	<b>Fiscal Year 2025 Operating Budget Detail</b>			
<b>Account</b>			<b>Fiscal Year 2025 Expenditures</b>	
<b>41000</b>	<b>Full-time salaries - benefits</b>		<b>1,445,000</b>	
<b>41030</b>	<b>Part-time seasonal staff</b>		<b>18,000</b>	
<b>41050</b>	<b>Overtime</b>		<b>10,000</b>	
<b>41070</b>	<b>Other Benefits</b>		<b>5,000</b>	
<b>41100</b>	<b>Space Rental - Office Lease</b>		<b>55,000</b>	
<b>41110</b>	<b>Printing and advertising</b>		<b>6,000</b>	
<b>41130</b>	<b>Prof Technical Services</b>		<b>145,000</b>	
<b>41150</b>	<b>Computer systems and services</b>		<b>50,000</b>	
<b>41155</b>	<b>Communications - Central Mail</b>		<b>25,000</b>	
<b>41160</b>	<b>Travel - In state</b>		<b>4,000</b>	
<b>41170</b>	<b>Travel - Out of State</b>		<b>6,000</b>	
<b>41180</b>	<b>Employee development</b>		<b>25,000</b>	
<b>41190</b>	<b>State agency provided technical services</b>		<b>25,000</b>	

<b>41196</b>	<b>Centralized IT (MNIT)</b>		<b>52,000</b>	
<b>41300</b>	<b>Supplies</b>		<b>15,000</b>	
<b>41400</b>	<b>Equip. rental (copier)</b>		<b>9,000</b>	
<b>41500</b>	<b>Maintenance and repairs</b>		<b>2,000</b>	
<b>42020</b>	<b>Attorney General Court Costs</b>		<b>5,000</b>	
<b>43000</b>	<b>Other operating costs</b>		<b>15,000</b>	
<b>47160</b>	<b>Equipment</b>		<b>20,000</b>	
	<b>Expert Witness</b>		<b>29,250</b>	
	<b>Online Registration</b>		<b>20,000</b>	
	<b>Online Training</b>		<b>50,000</b>	
	<b>Azure Cloud Service Agreement</b>		<b>163,000</b>	
	<b>Operating exp total</b>		<b>2,194,250</b>	
	<b>FY 25 Appropriation</b>		<b>1,981,000</b>	
	<b>FY 24 Carryforward</b>		<b>382,000</b>	
	<b>Special Appropriations</b>		<b>70,000</b>	
	<b>Total Funds Available</b>		<b>2,433,000</b>	
	<b>Ending Balance</b>		<b>238,750</b>	



# MINNESOTA CAMPAIGN FINANCE BOARD

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**DATE:** July 31, 2024  
**TO:** Board Members  
**FROM:** Jeff Sigurdson  
Executive Director **TELEPHONE:** 651-539-1189  
**SUBJECT:** **Yearly Update on Reconciliation of Contributions between Registered Committees**

## **Background**

In the fall of 2013, the Star Tribune published an article describing problems found in the database of contributions to state candidates, political party units, and political committees and funds provided to the paper by the Campaign Finance and Public Disclosure Board. In particular, the Star Tribune found that it could not reconcile over \$20 million in contributions reported between registered committees from 2000 to 2012. Staff confirmed that the problems identified in the article existed, and during the remainder of 2013, all of 2014, and the first quarter of 2015, worked to reduce the number of contributions between registered entities that did not reconcile.

At the August 2015 Board meeting, staff reported to the Board on the progress made in reconciling contributions, and reported on nine steps implemented by the executive director to minimize unreconciled contributions in future reporting years. The Board directed staff to stop the active reconciliation of contributions made prior to 2014, and to report annually to the Board regarding the reconciliation of contributions for the prior reporting year. This memo provides the status of the reconciliation of contributions between registered entities reported in 2023.

## **Reconciliation of 2023**

The 2023 year-end reports of receipts and expenditures were due on January 31, 2024. The reports were processed using procedures designed to limit the number of unreconciled contributions caused by data entry errors. These procedures include double-checking the data entry of paper reports by staff and requiring treasurers to submit complete amended reports if warranted.

In Table 1 the 2023 reconciliation numbers are highlighted in grey. The years 2011 – 2022 are provided for comparison.

**Table 1**

<b>Year</b>	<b>Total Itemized Transfers Between Registered Committees</b>	<b>Amount Initially Not Reconciled</b>	<b>Percentage Initially Reconciled</b>	<b>Current Amount Not Reconciled</b>	<b>Percentage Currently Reconciled</b>
2011	\$4,087,836	\$500,960	87.75%	\$5,870	99.86%
2012	\$32,772,360	\$4,326,600	86.80%	\$19,614	99.94%
2013	\$4,506,703	\$417,657	90.73%	\$8,167	99.82%
2014	\$24,647,813	\$1,955,927	92.06%	\$30,561	99.88%
2015	\$5,125,778	\$530,272	89.65%	\$1,430	99.97%
2016	\$32,920,683	\$5,621,789	83.02%	\$20,858	99.94%
2017	\$5,548,494	\$180,393	96.69%	\$7,175	99.87%
2018	\$43,457,655	\$2,514,075	94.21%	\$10,500	99.98%
2019	\$8,015,000	\$363,378	95.47%	\$5,165	99.93%
2020	\$40,444,505	\$2,533,949	93.73%	\$3,065	99.98%
2021	\$7,792,135	\$645,533	91.71%	\$17,750	99.77%
2022	\$56,872,614	\$3,499,393	93.84%	\$86,717	99.84%
2023	\$8,488,540	\$702,851	91.74%	\$5,841	99.93%
<b>Totals</b>	<b>\$274,680,116</b>	<b>\$23,792,777</b>	<b>91.34%</b>	<b>\$222,713</b>	<b>99.92%</b>

The reconciliation process takes considerable staff time to complete. Staff initially reached out informally through email to treasurers with a reconciliation issue and asked them to review their records on specific contributions. A significant number of problems were resolved through emails and subsequent amendments. Formal letters requiring a response were mailed to 66 candidate committees and 167 political committees and funds and party units in March and May of this year. In almost all cases, amendments were secured from the donor, the recipient, or both to resolve the discrepancies. Staff is still working with five committees to resolve contributions that do not reconcile.



# MINNESOTA CAMPAIGN FINANCE BOARD

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**Date:** July 31, 2024

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

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

**Telephone:** 651-539-1190

**Re:** Request for advisory opinion 464

On May 2, 2024, the Board received an advisory opinion request regarding the recently amended statutory definition of the term “expressly advocating,” which impacts the scope of which communications are independent expenditures. The request is a revised version of the request that prompted Advisory Opinion 459.<sup>1</sup> The Board voted to lay the matter over in June, then discussed a draft advisory opinion and again voted to lay the matter over at its meeting on July 10, 2024. Because the requester has not consented to its identity being revealed, the request is not being made available to the public. During any Board discussion, it is important not to reveal details about the requester that could lead to identification.

Two versions of a draft advisory opinion are attached to this memorandum. Each version has been revised to include the following changes:

- Throughout the document, the phrase “electoral component” has been changed to “electoral portion” when referring to the part of the statutory definition of “expressly advocating” considering whether “the electoral portion of the communication is unmistakable, unambiguous, and suggestive of only one meaning;”
- Within the last paragraph before the heading Issue One, what was the last sentence has been shortened and a sentence has been added listing the ‘magic words’ from, and citing, *Buckley v. Valeo*;
- Within the second sentence after the heading Opinion Four, a quotation mark has been added prior to the word “defeat” and a footnote has been added citing *Buckley v. Valeo*;
- Within the third paragraph below the heading Opinion Four, the first three sentences have been deleted, primarily to avoid giving the impression that posing questions and publishing unedited responses is the only means to avoid express advocacy; and
- Within the third paragraph below the heading Opinion Four, what is now the first sentence has been modified to explain that the flyer considered in *MCFL* contained the

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<sup>1</sup> The public version of Advisory Opinion 459 is available at [cfb.mn.gov/pdf/advisory\\_opinions/AO459.pdf](https://cfb.mn.gov/pdf/advisory_opinions/AO459.pdf).

exhortation “VOTE PRO–LIFE” making it more direct than the hypothetical communication, and to cite *MCFL*. The content of the flyer discussed in *MCFL* is described in greater detail on page 3.

Within the first version of the draft advisory opinion, all but the first three paragraphs of Opinion Four have been deleted. During the July Board meeting there was discussion regarding the draft opinion’s point-by-point response to legal arguments made by the requester and at least some members appeared to favor removing that legal analysis entirely. Within the second version of the draft advisory opinion, the text of Opinion Four has been revised to be more concise, including by eliminating text regarding the FEC’s lack of reliance on *Faucher v. FEC* in drafting the language in question within 11 C.F.R. § 100.22. Aside from the text starting with the fourth paragraph in Opinion Four, each version of the revised draft advisory opinion is the same. None of the conclusions stated within the draft advisory opinion considered by the Board in July have changed.

During the July Board meeting Member Swanson suggested moving the text at the end of the draft opinion, below the heading Board Note, so that the text would appear within the body of the opinion. At the time the Board was primarily discussing Opinion Four, but the text within the Board Note section applies to all four questions posed by the requester. Board staff believes that it is more appropriate to include the text in question once at the end of the document under the heading Board Note, rather than repeating it four times within each separate opinion. Therefore, within the attached drafts that text remains at the end of the opinion under the heading Board Note.

Attachments:

Request for advisory opinion 464 (nonpublic)

Copies of Action 4 Liberty and LIUNA Minnesota literature referenced in questions 3 and 4

Draft advisory opinion 464 version 1 – public version

Draft advisory opinion 464 version 2 – public version

Draft advisory opinion 464 version 1 – not public version

Draft advisory opinion 464 version 2 – not 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 portion, does not contain express advocacy. A communication that clearly identifies a candidate, clearly includes an electoral portion, 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.<sup>18</sup> Express advocacy is not limited to the magic words listed in footnote 52 of *Buckley v. Valeo*, including “‘vote for,’ ‘elect,’ ‘support,’ ‘cast your ballot for,’ ‘Smith for Congress,’ ‘vote against,’ ‘defeat,’ ‘reject.’”<sup>19</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 \(2010\)](#).

<sup>19</sup> See *Buckley*, 424 U.S. at 44 n.52.

## 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 portion 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 portion.

## 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 portion 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 portion.

### 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>20</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>20</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: Governor	Tim Walz & Peggy Flanagan	Jeff Johnson & Donna Bergstrom
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.”<sup>21</sup> 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.”

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* that included the exhortation “VOTE PRO-LIFE”,<sup>22</sup> 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.

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<sup>21</sup> See *Buckley*, 424 U.S. at 44 n.52 (listing these, and other, words and phrases of express advocacy).

<sup>22</sup> See *Massachusetts Citizens for Life, Inc.*, 479 U.S. at 243.

## 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 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 August 7, 2024

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David Asp, Chair  
Campaign Finance and Public Disclosure Board

**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 portion, does not contain express advocacy. A communication that clearly identifies a candidate, clearly includes an electoral portion, 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>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)).

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(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.

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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>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.<sup>18</sup> Express advocacy is not limited to the magic words listed in footnote 52 of *Buckley v. Valeo*, including “‘vote for,’ ‘elect,’ ‘support,’ ‘cast your ballot for,’ ‘Smith for Congress,’ ‘vote against,’ ‘defeat,’ ‘reject.’”<sup>19</sup>

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

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

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<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 \(2010\).](#)

<sup>19</sup> See *Buckley*, 424 U.S. at 44 n.52.

## 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 portion 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 portion.

## 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 portion 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 portion.

### 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>20</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>20</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.”<sup>21</sup> 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.”

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* that included the exhortation “VOTE PRO-LIFE”,<sup>22</sup> 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. In doing so, the Organization relies heavily upon *Faucher v. Federal Election Commission* for the proposition that in determining whether a voter guide contains express advocacy, the FEC or a state 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>23</sup> However, 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

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<sup>21</sup> See *Buckley*, 424 U.S. at 44 n.52 (listing these, and other, words and phrases of express advocacy).

<sup>22</sup> See *Massachusetts Citizens for Life, Inc.*, 479 U.S. at 243.

<sup>23</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)).

that, by the FEC's own admission, contained issue advocacy but did not contain express advocacy.

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.

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 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>24</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

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<sup>24</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”).

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>25</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 portion, 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 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 August 7, 2024

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David Asp, Chair  
Campaign Finance and Public Disclosure Board

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<sup>25</sup> [Minn. Stat. § 10A.01, subd. 16a.](#)



# MINNESOTA

## CAMPAIGN FINANCE BOARD

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**Date:** July 31, 2024

**To:** Board members

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

**Telephone:** 651-539-1190

**Re:** Prima facie determinations

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

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

### **Lobbyist John Kysylyczyn**

On June 26, 2024, the Board received a complaint submitted by Mark Bray regarding lobbyist John M. Kysylyczyn. The complaint alleged that Mr. Kysylyczyn improperly used lists of Minnesota voters to identify the complainant's home address and to expose whether individuals voted or not. On July 3, 2024, the Board's chair determined that the complaint does not state a prima facie violation of the statutes or rules under the Board's jurisdiction. While the complaint alleged that Mr. Kysylyczyn violated Minnesota Statutes Chapters 200, 201, 203B, 204C, and 206, it did not cite, and did not appear to allege any conduct that would violate, Minnesota Statutes Chapters 10A or 211B.

### **Attachments:**

Complaint against John M. Kysylyczyn

Prima facie determination regarding John M. Kysylyczyn complaint



# MINNESOTA CAMPAIGN FINANCE BOARD

## Complaint for Violation of the Campaign Finance and Public Disclosure Act

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

### Information about complaint filer

Name of complaint filer	Mark Bray		
Address	2801 Hawk Ridge Road NW	Email address	markjbray@gmail.com
City, state, and zip	Prior Lake, MN 55372	Telephone (Daytime)	9729048206

### Identify person/entity you are complaining about

Name of person/entity being complained about	Kysylyczyn, John M		
Address	Reg num: 5813083 Victoria St		
City, state, zip	Roseville, MN 55113		
Title of respondent (If applicable)	Lobbyist		
Board/Department/Agency/District # (If legislator)	<a href="https://delaforestconsulting.weebly.com/about-john-kysylyczyn.html">https://delaforestconsulting.weebly.com/about-john-kysylyczyn.html</a>		

  
Signature of person filing complaint

6/26/2024

Date

Send completed form to:

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

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

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

Give the statutory cite to the section of Chapter 10A, Chapter 211B, or Minnesota Rules you believe has been violated:

Minnesota Statutes Chapters 200, 201, 203B, 204C and 206.

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

### Nature of complaint

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

John Kysylyczyn used Minnesota voter registration and voter lists to expose whether the person voted or not and then used them to state location that the person--me--lives in. He then urged people to block from a discussion on rights in a school board format discussion as he claimed that we were not real people and therefore not credible. He said there were three Mark Brays--Coon Rapids, Prior Lake and Rochesterr. He then said he didn't think that I wasn any of the three, and that I had not voted and therefore not credible. He is connected to MAGA as a Trump person and higher ranking Republican who is a lobbyist and purportedly helping the school board candidates and supporting their lack of contract renewal efforts as I argued against the actions and defended the process used by the Superintendent. He found it difficult to prevail, and then went to the smear tactic. He could easily give my address out to someone that could lead to violence. He did this to another person in the discussion room. This is not a campaign act as it is for a school board action with contracts for renewal. It is a human rights issue for the employees as they met all the performance metrics of the Superintendent and job reviews, and it is stated by some that of the 22 contracts, the three board members Krsylyczn is aligned with do not like the one person because of her religion. Regardless, it is inexplicable for their actions, and Kysylyczyn is from Roseville and runs his political consulting business. He is also a Republican Party official.

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

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

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

## Engelhardt, Megan (CFB)

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**From:** Mark Bray <markjbray@gmail.com>  
**Sent:** Wednesday, June 26, 2024 4:12 PM  
**To:** CFBEmail  
**Subject:** Complaint on lobbying/party official over misuse of voter list  
**Attachments:** PDFJKComplaint Form.pdf; Screenshot 2024-06-26 at 3.01.43 PM.png

You don't often get email from markjbray@gmail.com. [Learn why this is important](#)

**This message may be from an external email source.**

Do not select links or open attachments unless verified. Report all suspicious emails to Minnesota IT Services Security Operations Center.

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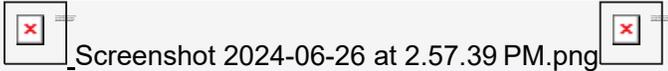
Hello,

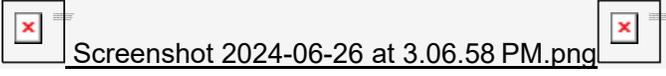
I am disabled and emailing is easier for me if that is permissible. I am attaching the complaint form along with some of the documentation. I have many screen shots from the online discussion that was public.

Please let me know if there is anything I need to do more.

Thank you.

Mark Bray, MA  
972.904.8206





Screenshot 2024-06-26 at 3.06.58 PM.png



Screenshot 2024-06-26 at 3.08.26 PM.png



Screenshot 2024-06-26 at 3.08.59 PM.png



Screenshot 2024-06-26 at 3.09.28 PM.png



Screenshot 2024-06-26 at 3.10.52 PM.png



Screenshot 2024-06-26 at 3.11.05 PM.png



## K Solutions LLC

John M. Kysylyczyn, owner

3083 Victoria Street  
Roseville, MN 55113

john@ksolutionsllc.com  
Home office: (651) 484-1384

### Providing comprehensive political & media consulting services...

including strategic planning, web & computer services, print media, mailings, videography, photography, and citizen group organization

### Some of our campaigns...

- United States Congress
- Minnesota State Senate
- Minnesota House of Representatives
- Minnesota 10th Judicial District
- Anoka County Board of Commissioners
- Ramsey County Board of Commissioners
- Washington County Board of Commissioners
- Andover City Council
- Anoka City Council
- Brooklyn Park City Council
- Coon Rapids City Council
- Roseville City Council
- Lino Lakes City Council
- Maplewood City Council
- Independent School District #16
- Independent School District #623

### Resume of John Kysylyczyn...

- Lobbyist, Minnesota State Capitol
- DeLaForest Consulting*
- Executive Director
- Garbage Haulers for Citizen Choice*
- State Central Committee
- Legislative District Convention Chair
- Republican Party of Minnesota*
- Past Researcher, *Anoka County Watchdog & The Minnesota Watchdog*
- Past Owner, *Anoka County Record LLC*
- Anoka County newspaper publisher

\*\*\*PRESS RELEASE\*\*\*STATEMENT\*\*\* FOR IMMEDIATE RELEASE\*\*\*

Fellow Board Members, Interim Superintendent, District Staff, and all residents of the Sartell- St. Stephen ISD748 School District:

Since February, there have been one on one meetings with the Interim Superintendent, two closed meetings, and multiple requests from board members for the Sartell-St. Stephen School Board Chair and Interim Superintendent to separate twenty-one individual administrative contracts for independent consideration as opposed to blanket approval as a single action item. This procedure is reasonable, transparent, and practiced in other districts throughout the state of Minnesota. As of June 17<sup>th</sup>, 2024 the request to separate has failed four times. It is in the best interest of the district for these contracts to be settled with urgency through a process that allows for vested board oversight.

The Interim Superintendent made a statement to WJON on June 18<sup>th</sup>, 2024 in which he referenced a special board meeting to be held June 25, 2024. With no communication prior from School Board Chair Meling announcing an official call for a special meeting, or any inquiry on availability for such- it was evident there had been a stark departure from past practice. Previously, special meeting dates and times have been determined through internal board communication and collaboration. June 25, 2024 is not, and has never been, a date available for the entire board to meet. In addition, the Interim Superintendent does not have the authority to call a special meeting of the school board. When we read the Interim Superintendent's comments in the WJON article, scheduling conflicts were immediately raised and subsequently, alternative dates and times were suggested. There are emails which illustrate this communication. We encourage all who would like to inquire to submit data requests for these documents.

Additionally, the internal board communication regarding schedule conflicts was evidently leaked to a community member as the information was not known outside of the School Board Chair and the Interim Superintendent. In a social media post, the community member claimed to have knowledge that we were "planning to not attend the special board meeting on June 25". This inaccurate depiction of on-going board conversation has led to further breakdown of trust amongst the board and the Interim superintendent as we work through this urgent issue. It has made finding resolution to this impasse more challenging.

Minnesota State Statute confirms, "The board must have the general charge of the business of the district, the school houses, and of the interests of the schools thereof. The board's authority to govern, manage, and control the district; to carry out its duties and responsibilities; and to conduct the business of the district includes implied powers in addition to any specific powers granted by the legislature." (Minnesota Statute 123B.02, sub. 1). The role of the Superintendent or Interim Superintendent is to bring recommendations of day-to-day operations to the school board for approval, however, final authority is vested in the school board, which is elected by the residents of the district.

We call on School Board Chair Meling to cancel the June 25, 2024 meeting as it has been known to her and the Interim Superintendent since Tuesday, June 18, 2024 that not all board members would be available. We are requesting that Chair Meling promptly prioritize aligning schedules so an official call for a Special Meeting or an Emergency Meeting by the Chair can be made for a date next week when all board members are available to attend. Ensuring that all 6 members can be present when votes will be taken should be a paramount concern to anybody committed to upholding the integrity of a governing body.

We remain committed to bringing solutions to this impasse. We greatly appreciate the hard work of district staff and we are resolute in our commitment to settle these contracts promptly while assuring our district remains accountable through its elected School Board.

With Gratitude,

Emily Larson

Jen Smith

Scott Wenshau



Mark Bray  
John Kysylyczyn you  
abused your family ?

22h Like Reply

The comment Zach Hanke is replying to has been deleted.

Zach Hanke  
John Kysylyczyn

Since you're concerned with who people really are, is this you, John?  
<https://mn.gov/law.../archive/ctapun/0910/opac/090273-1020.pdf>

My favorite part: "We also reject appellant's assertion that the lack of criminal prosecution ... See more

1d Like Reply Edited

The comment Mark Bray is replying to has been deleted.

Mark Bray  
John Kysylyczyn Again stop insulting dogs; dogs are way better than you....ok bro--got that--and grow up and be better.

1d Like Reply

Brejay Bovee  
Mark Bray what happened to our brazen buddy John Kysylyczyn??? All his comments have been deleted!?!?

20h Like Reply

Mark Bray  
Brejay Bovee He ran away when he couldn't face the music;

Write a comment...



\*\*\*PRESS RELEASE\*\*\*STATEMENT\*\*\* FOR IMMEDIATE RELEASE\*\*\*

Fellow Board Members, Interim Superintendent, District Staff, and all residents of the Sartell- St. Stephen ISD748 School District:

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The Interim Superintendent made a statement to WJON on June 18th, 2024 in which he referenced a special board meeting to be held June 25, 2024. With no communication prior from School Board Chair Meling announcing an official call for a special meeting, or any inquiry on availability for such- it was evident there had been a stark departure from past practice. Previously, special meeting dates and times have been determined through internal board communication and collaboration. June 25, 2024 is not, and has never been, a date available for the entire board to meet. In addition, the Interim Superintendent does not have the authority to call a special meeting of the school board. When we read the Interim Superintendent's comments in the WJON article, scheduling conflicts were immediately raised and subsequently, alternative dates and times were suggested. There are emails which illustrate this communication. We encourage all who would like to inquire to submit data requests for these documents.

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With Gratitude,

Emily Larson

Jen Smith

Scott Wenshau



this is an action that your favorite "Alpha News" would like. You are the worst as you take certain facts, add invention, and then conjectu... See more

1d Like Reply

The comment Mark Bray is replying to has been deleted.

Mark Bray

John Kysylczyn Hold your horses cowboy-- credit should not be given to these three. They are clearly shrills for the far right who want to bring only their ideology into schools. And you like to use a lot of smoke screens to obfuscate issues. In t... See more

1d Like Reply Edited

Reply to Mark Bray...

Jerry Horgen

The administration manages staff and makes recommendations to the board. Emily, Jen and Scott, follow your MSBA training. You're in error in your judgment.

19h Like Reply

John Kysylczyn

Jerry Horgen The elected officials approve contracts if a majority choose to do so. Follow the law. Staff needs to stay in their own lane.

18h Like Reply

Reply to Jerry Horgen...

View more comments

6 of 24

Write a comment...



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Emily Larson

Jen Smith

Scott Wenshau

*Emily Larson*      *Jen Smith*      *Scott Wenshau*

- John Kysylczyn**  
**Katie Garrity Smieja** Why would any elected official vote to approve a contract they don't support? It completely violates common sense. Guy shows up at your house in the spring looking for you to approve the contract for the years \$1000 lawn treatment plan. You think, oh, they are here, I better sign the contract and fork over the money, and then maybe later I can rethink for next year? Seriously?
- 21h Haha Reply
- Katie Garrity Smieja**  
If there was justifiable action to be taken, an effective board member would have done so by now. It doesn't matter what their opinions are on the individual employees. The good of the district should be the priority, so yes, it makes complete sense th... See more
- 21h Like Reply
- John Kysylczyn**  
**Katie Garrity Smieja** Again, I don't think you understand employment contracts. If there is justifiable action to take, there are two choices. Option one is to spend thousands of dollars worth of time and

Write a comment...

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With Gratitude,

Emily Larson

Jen Smith

Scott Wenshau



21h Like Reply

John Kyslyczyn  
Katie Garrity Smieja  
Again, I don't think you understand employment contracts. If there is justifiable action to take, there are two choices. Option one is to spend thousands of dollars worth of time and resources to get embroiled in a process. Option two is to not renew the contract. Any competent attorney would shout option two from the mountain tops.

When you say good of the district, you mean what you think is good. It appears that these three elected officials believe something else is good for the district. If you disagree, vote for someone different in the next election.

The good of the district in a representative democracy, is what the majority think. In this case a majority of 4 is needed to renew contracts, any contracts, and until 4 believe it is for the good of the district, then the contracts simply don't get renewed, regardless of what they are for.

Write a comment...

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With Gratitude,

Emily Larson

Jen Smith

Scott Wenshau

Reply to Katie Garrity Smieja...

**Nate Dahl**  
Let me get this straight. Three board members are on board with the superintendent's recommendation for contracts and continuing with practice THIS District has used for decades. Those board members and the superintendent have heard and considered personal concerns from other board members and determined that the personal concerns don't rise to level of terminating a contract. Now, three board members are still holding up the contracts. That change is going to result in interrupting services for our students and our community. Now some of these folks are claiming scheduling difficulties and their supporters are disparaging Meling suggesting some sort of nefarious scheduling coup. Tricia has always been a straight shooter in my dealings with her - even when we disagree. And while I don't know Matt personally, I have every reason to think he is looking out for the children without an agenda. Meanwhile, Ms. Smith and the other folks are backed by political organization and turning this issue into a PR push even doing interviews. This is insane and needs to stop. If the three objecting members were serious about changes, they would have a new plan for employee reviews to propose, not hold the district hostage.

1d Like Reply

Mark Brav replied · 5 Replies

Write a comment...

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Emily Larson

Jen Smith

Scott Wenshau

1d Like Reply 10

**John Kysylyczyn**  
**Nate Dahl** This is the same argument people would use when defending police department abuses. "We have done this for decades." Hats off for elected officials getting out of that drone mentality and saying we are charting a new course.  
My recommendation is that the board simply call the vote on each and every single contract separately and then see where the votes fall. If the other three vote each one of them down, then so be it. Issue done, meeting adjourned. Wait for the new superintendent to start the job.  
I don't fault any elected official for granting interviews. Have you seen the quality of local journalism? Zero research on the part of newspapers anymore.

1d Haha Reply

**Nate Dahl**  
That's a complete non-sequitur. I'm all for new perspectives and approaches, but this process has worked for decades. If these folks were serious, they'd have a plan or proposal for changing the approach in future approvals - not holding the district h...  
**See more**

23h Like Reply 4

Write a comment...  
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Facebook comment thread:

- 23h Like Reply 4  
John Kysylyczyn Nate Dahl I don't like my taxpayer dollars being spend on lawsuit payouts when people try to goad elected officials into discussing personnel issues at public meetings, which is what I am seeing is going on here. Constant attacks and name calling in order to drive big payouts for administrators. Shameful conduct.
- 21h Haha Reply  
Mark Bray John Kysylyczyn running away
- 21h Like Reply  
John Kysylyczyn Nate Dahl You seem to be pretty knowledgeable on contract history. How many decades has the administration been packaging together all the non-union highly compensated employee contracts into one vote?
- 15h Like Reply  
Reply to Nate Dahl...
- Reply to Nate Dahl...
- Guy Sartell From Al Dahlgren. St. Cloud School Board Member.
- Write a comment...

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Zach Hanke  
John Kysylyczyn The Board works for us (the people who actually live in the area, unlike you and the rest of the right wing loonies who've come out of the woodwork). They see they have a little over 2 years to do as much damage as possible to the school before they peace out.

I see you're a campaign consultant. Would you have approved campaign materials indicating that these 3 school board members wanted to out gay kids to their parents, too?  
1d Love Reply

Charles Killmer  
John Kysylyczyn even if that is the case, now is not the time to change the established process. People's livelihoods hang in the balance and the well being of the students in this community will be affected. If they want to change the established proc... See more  
1d Like Reply

John Kysylyczyn  
Zach Hanke All local governments in Minnesota are representative democracies. That

Write a comment...  
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With Gratitude,

Emily Larson

Jen Smith

Scott Wenshau

Facebook comment thread:

- John Kysylyczyn Charles Killmer I read the article in the Star Tribune and it didn't pass the smell test. Clearly a lot of missing information. I chose to look on line to find out what the rest of the story was. Then I saw all these crazy comments from people who want elected officials to discuss personnel issues at a public venue and draw the district in to an expensive lawsuit. Guess who funds public schools in Minnesota? I do, along with all the taxpayers of the State of Minnesota. 1d Haha Reply
- Zach Hanke John Kysylyczyn You don't fund them. The legislature does. The legislature doesn't work for you. You just explained it to me, remember?!?! 1d Like Reply
- John Kysylyczyn Zach Hanke Yes, through income and sales taxes, which we both pay. 1d Haha Reply
- Zach Hanke John Kysylyczyn

Write a comment...

\*\*\*PRESS RELEASE\*\*\*STATEMENT\*\*\* FOR IMMEDIATE RELEASE\*\*\*

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With Gratitude,

Emily Larson

Jen Smith

Scott Wenshau



1d Haha Reply

Charles Killmer  
John Kysylyczyn and you are certainly exercising your freedom to conceal who is paying you to defend these three board members.

1d Like Reply

Mark Bray  
John Kysylyczyn We know school law is complex and many layered and their backgrounds do not speak to an iota of legal expertise--hence why boards hire superintendents. You on the other hand with your personal anecdote are a person desperate to employ... See more

1d Like Reply

Mark Bray  
John Kysylyczyn On a pedestal? LOL. That's exactly what you are doing with your pedestal worship of these three board lackeys. Again, anecdotes without data are meaningless, and I hope your clients are not taken in by your cotton candy arguments wi... See more

1d Like Reply

Mark Bray  
John Kysylyczyn

Write a comment...

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With Gratitude,

Emily Larson

Jen Smith

Scott Wenshau



Reply to Josh Brown...

John Kysylyczyn  
Zach Hanke If the chair calls a meeting, other members cannot "cancel" it. The meeting is called to order, if there is not a quorum, discussions can be held but no votes taken. If a majority chooses to adjourn the meeting the second the chair calls l... See more

1d Haha Reply 🤔 2

Zach Hanke  
John Kysylyczyn Got me good, John. Can the vote happen if they don't show? No? Correct.  
Most of us use human language when we speak, bud.

1d Like Reply 🙌

John Kysylyczyn  
Zach Hanke Legal issues are being raised whether people realize it or not which is why I provide a legal answer.

1d Haha Reply 🤔

Zach Hanke  
John Kysylyczyn Cool. Are board members who collude to avoid attending a scheduled school board meeting where the 3 day notice was provided committing a potential act of nonfeasance if it was confirmed that the scheduling issues only

Write a comment...  
👤 🗨️ 📷 📄 📌 ➔

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Scott Wenshau

more

1d Like Reply

**Mark Bray**  
**John Kysylyczyn**  
Makes more sense that a Republican Lobbyist from North St. Paul burbs is speaking for three reactionary school board members in Sartell-St. Stephen. It's about all children and their safety, not the ones that you believe are American.... See more

1d Like Reply Edited

**Mark Bray**  
**John Kysylyczyn**  
you like to deflect a lot and you are skewing the process. Sorry that you can't own what you do and you are. Your partisanship is showing

1d Like Reply Edited

**Mark Bray**  
**John Kysylyczyn**



1d Like Reply

**John Kysylyczyn**  
**Zach Hanke Collude?**

Write a comment...



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

**PRIMA FACIE  
DETERMINATION**

IN THE MATTER OF THE COMPLAINT OF MARK BRAY REGARDING JOHN M. KYSYLYCZYN

On June 26, 2024, the Campaign Finance and Public Disclosure Board received a complaint submitted by Mark Bray regarding lobbyist John M. Kysylyczyn. The complaint alleges that Mr. Kysylyczyn improperly used lists of Minnesota voters to identify the complainant's home address and to expose whether individuals voted or not. The complaint appears to describe a recent, contentious interaction between Mr. Kysylyczyn, the complainant, and others on Facebook. The complaint states that Mr. Kysylyczyn "could easily give my address out to someone that could lead to violence. He did this to another person in the discussion room. This is not a campaign act as it is for a school board action with contracts for renewal."<sup>1</sup> The complaint includes copies of screenshots that appear to depict the website of Mr. Kysylyczyn's business<sup>2</sup>, a press release issued by three members of the ISD 748 School Board,<sup>3</sup> and various comments on a Facebook post related to that press release. The complaint alleges that Mr. Kysylyczyn violated Minnesota Statutes Chapters 200, 201, 203B, 204C, and 206. The complaint does not cite, and does not appear to allege any conduct that would violate, Minnesota Statutes Chapters 10A or 211B.

**Determination**

Minnesota Statutes section 10A.022, subdivision 3, authorizes the Board to investigate alleged or potential violations of Minnesota Statutes chapter 10A in addition to Minnesota Statutes sections 211B.04, 211B.12, and 211B.15. Because the Board does not have jurisdiction over the statutes that might give rise to the violations alleged in the complaint, the chair concludes that the complaint does not state a prima facie violation of Chapter 10A or of those sections of Chapter 211B under the Board's jurisdiction. Pursuant to Minnesota Statutes section 10A.022, subdivision 3, this prima facie determination is made by the Board chair and not by any vote of the entire Board. The complaint is dismissed without prejudice.

  
\_\_\_\_\_  
David Asp, Chair  
Campaign Finance and Public Disclosure Board

Date: July 3, 2024

<sup>1</sup> See [Minn. Stat. § 201.091, subd. 4](#), providing that "No individual who inspects the public information list or who acquires a list of registered voters prepared from the public information list may use any information contained in the list for purposes unrelated to elections, political activities, or law enforcement."

<sup>2</sup> [ksolutionsllc.weebly.com](https://ksolutionsllc.weebly.com)

<sup>3</sup> [facebook.com/photo/?fbid=427812253488004](https://facebook.com/photo/?fbid=427812253488004)

**CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD**  
**August 2024**  
**ACTIVE FILES**

Candidate/Treasurer/ Lobbyist	Committee/Agency	Report Missing/ Violation	Late Fee/ Civil Penalty	Referred to AGO	Date S&C Personally Served	Default Hearing Date	Date Judgment Entered	Case Status
Mariani, Carlos	Neighbors for Mariani	Previously filed reports and statements  Late filing of 2023 year-end report	\$7,620 LFFs \$3,300 CPs  \$1,000 LFF \$1,000 CP	11/22/23				