STATE OF MINNESOTA
CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD

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December 4, 2024
Lady Slipper Room
Centennial Office Building

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MINUTES

The meeting was called to order by Chair Asp.

Members present: Asp, Flynn, Rashid (arrived following the Executive Director's report), Soule (remote and left during the enforcement report), Swanson (remote)

Members absent: Kleis

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

MINUTES (November 6, 2024)

The following motion was made:

Member Flynn's motion: To approve the November 4, 2024, minutes as drafted.

Vote on motion: Unanimously approved.

CHAIR'S REPORT

A. Meeting schedule for 2025
The Board tentatively scheduled monthly meetings for 2025. There was discussion about potentially changing the date of the Board's meeting in January 2025.

B. Report of the Nomination Committee
Member Asp stated that the committee recommends Member Rashid as Chair and Member Kleis as Vice Chair in 2025.

C. Vote on Board Chair and Vice Chair for 2025

The following motion was made:

Member Flynn's motion: To appoint Member Rashid and Member Kleis as Chair and Vice Chair.

Vote on motion: Unanimously approved.

EXECUTIVE DIRECTOR'S REPORT

Mr. Sigurdson provided a verbal update of Board operations to the Board, including completing the Azure Cloud migration. Mr. Sigurdson also provided the Board with information regarding the upcoming reports due in January.

DRAFT REPORT TO THE LEGISLATURE ON LOBBYING OF POLITICAL SUBDIVISIONS

Mr. Sigurdson presented members with a memorandum and draft report that are attached to and made part of these minutes. In the 2024 legislative session, the Board was assigned to study whether there should be a distinction between lobbying public officials and local officials in political subdivisions. Specifically, the Board will examine the definitions of "lobbyist," "local official," "public official," and "official action of a political subdivision" under Chapter 10A. The Board is required to report its findings to the legislature by January 15, 2025, which may include recommendations for changes in how lobbying laws apply to these officials. Mr. Sigurdson provided an overview of the draft report and explained that the final version will need to be approved by the Board in January after incorporating any feedback from Board members.

Brian Bell, an attorney who specializes in land use and municipal law, appeared before the Board with comments. Mr. Bell spoke in favor of excluding communications regarding quasi-judicial decisionmaking from what is defined as lobbying. Mr. Bell spoke in favor of excluding private communications with individuals who cannot vote on a quasi-judicial decision, such as communications with local government staff regarding an application for a conditional use permit or a similar request. Mr. Bell also said that time spent drafting comments or testimony that will be included in the public record should be encompassed within an exclusion for communications regarding quasi-judicial decisionmaking.

Board members discussed various aspects of the draft report.

ENFORCEMENT REPORT

A. Discussion Items

1. Balance adjustment request - Chamberlain (Roger) for SD 36 (17021)

The Chamberlain committee's reported 2022 ending cash balance was $11,404.85, while the actual balance in its bank account was $12,121.99, leaving a discrepancy of $717.14. The discrepancy initially was much larger but the committee's treasurer spent a significant amount of time reviewing financial records, working with Board staff, and filing amended 2022 year-end reports. The treasurer is unable to resolve the discrepancy that remains and is requesting an upward adjustment to the committee's 2022 ending cash balance in the amount of $717.14. The committee has been registered with the Board since 2010 and has no prior cash balance adjustments. If the adjustment is granted, the committee will be terminating.

The following motion was made:

Member Flynn's motion: To grant the balance adjustment request.

Vote on motion: Unanimously approved.

B. Waiver Requests

1. Lobbyist KaYing Yang (4407)						
Report(s)	Due	Filed	Amount	Prior Waivers	Recommended Action	Board Action
June 2024 LR	6/17/24	6/18/24	$25 LFF	No.	Waive.	Member Flynn moved to grant requests 1 – 4. Unanimously approved.
Lobbyist was registered on behalf of a different principal from 2018 to 2021. She registered on behalf of a new principal in 2024. A letter was mailed to her 6/5/24 with a username for the Board's online reporting system. She attempted to sign in after business hours the day the report was due, but was unable to reset her password in order to access the system because her login credentials were still linked to the email address she had when representing the previous principal. She then contacted Board staff and was able to file the report the following day. The email address linked to the username the lobbyist uses for reporting purposes should have been updated by Board staff when she registered in 2024.						

2. Minnesota State Patrol Troopers Association (30002)						
Report(s)	Due	Filed	Amount	Prior Waivers	Recommended Action	Board Action
2024 Pre-Primary Large Contribution Notices (3)	7/24/24 7/26/24 8/8/24	10/25/24	$3,000 LFFs (1,000 x 3)	No.	Waive.	Richard Orpen, the fund's treasurer, was present at the Board meeting. Member Flynn moved to grant requests 1 – 4. Unanimously approved.
Treasurer stated the contributions in question were timely entered in CFRO and CFRO did not prompt him to file large contribution notices. Treasurer stated he was aware of the notice requirement and called Board staff for assistance with filing a large contribution notice via CFRO, but did not receive a call back. The required notices were filed via CFRO when it prompted the treasurer to file them, shortly after the pre-general large contribution notice period began in October. Board staff was unable to identify a specific reason why the treasurer would not have been immediately prompted to file a large contribution notice, but it is possible that a glitch that has since been fixed caused the issue. The contributions in question were transfers of money from the supporting association to the political fund totaling $8,040. The fund has been registered since 1977 and has no recent history of late filings. Cash balance as of 10/21/24 was $19,902.						

3. DFL Veterans Caucus (41111)						
Report(s)	Due	Filed	Amount	Prior Waivers	Recommended Action	Board Action
2024 Pre-General	10/28/24	10/29/24	$50 LFF	No.	Waive.	Member Flynn moved to grant requests 1 – 4. Unanimously approved.
Treasurer was outside the country with unreliable internet access when the report was due, causing it to be filed one day late. The report was a no-change statement. The committee has been registered since 2013 and has no history of late filings. Cash balance as of 10/21/24 was $745.						

4. Gray Plant Mooty Mooty & Bennett Independent PAC (40725)						
Report(s)	Due	Filed	Amount	Prior Waivers	Recommended Action	Board Action
2024 Pre-General	10/28/24	10/29/24	$50 LFF	No.	Waive.	Member Flynn moved to grant requests 1 – 4. Unanimously approved.
Treasurer was out of the office when the report came due, causing it to be filed one day late. The report was a no-change statement. The committee has been registered since 1994 and has no history of late filings since 2010. Cash balance as of 10/21/24 was $475.						

5. Multi Housing Political Action Committee (30124)						
Report(s)	Due	Filed	Amount	Prior Waivers	Recommended Action	Board Action
2024 Pre-Primary Large Contribution Notice	8/1/24	9/23/24	$1,000 LFF	$150 LFF waived in Nov. 2010 due to software issue.	Reduce to $250.	Member Swanson moved to reduce the fees as recommended by Board staff for 5 and 6. Unanimously approved.
The notice concerns a $3,267 cash contribution from an individual. Treasurer stated that the notice was filed late due to an oversight. Other large contribution notices were timely filed during the 2024 pre-primary period. The fund has been registered since 1976 and has no history of late filings since 2010. Cash balance as of 10/21/24 was $73,115.						

6. Minnesota TruckPAC (40756)						
Report(s)	Due	Filed	Amount	Prior Waivers	Recommended Action	Board Action
2024 Pre-Primary Large Contribution Notice	8/1/24	9/21/24	$1,000 LFF	$25 LFF waived in June 2020 after report was one day late due to increased workload caused by COVID-19; $2,000 in LFFs for 24-hour notices for in-kind contributions reduced to $250 in Dec. 2012 due to software issue.	Reduce to $250.	Member Swanson moved to reduce the fees as recommended by Board staff for 5 and 6. Unanimously approved.
Employee of the Minnesota Trucking Association, which operates this committee, did not realize that the large contribution notice requirement applies to the value of an in-kind contribution given to the committee. The contributions in question consisted of two expensive bottles of wine that were subsequently sold at an auction. The committee has been registered since 1996 and all but one report have been filed on time since 2012. Cash balance as of 10/21/24 was $11,299.						

7. Lobbyist David Martin (5685)						
Report(s)	Due	Filed	Amount	Prior Waivers	Recommended Action	Board Action
June 2024 LR	6/17/24	6/26/24	$150 LFF	No.	No recommendation.	Member Swanson moved to waive. Unanimously approved.
Lobbyist registered in March 2024. The registration form was hand-written and the handwriting was difficult to read. As a result, the email address for the lobbyist was entered into the Board's database with the last name spelled Marten rather than Martin, causing the lobbyist not to receive email reminders regarding the report. A notice mailed June 5 was not seen by the lobbyist until June 26, at which point he immediately filed the report and contacted Board staff to correct his email address.						

8. 27th Senate District DFL (20949)						
Report(s)	Due	Filed	Amount	Prior Waivers	Recommended Action	Board Action
2024 Pre-General	10/28/24	11/19/24	$750 LFF	No.	Do not waive.	Cheryl Sill appeared before the Board on behalf of the party unit. Member Flynn moved to reduce the fee to $250. Unanimoulsy approved.
Treasurer stated the report was filed late due to an oversight on her part caused by inexperience. She has been the treasurer since 2023. Multiple reminders were sent to the treasurer regarding the need to file the report. Treasurer stated the party unit cannot afford the late fee. Ending cash balance as of 10/21/2024 was $9,130.						

9. Local 68 Political Action Fund (30652)						
Report(s)	Due	Filed	Amount	Prior Waivers	Recommended Action	Board Action
2024 Pre-General	10/28/24	11/1/24	$200 LFF	$100 LFF waived in Jan. 2017 as fund wasn't aware of 24-hour notice requirement; $200 LFF waived in July 2014 due to combination of new administrator, computer issue, and death in family near deadline.	Do not waive.	No action.
The report was filed late because the deputy treasurer, who uses CFRO and files reports for the fund, was on vacation when the report came due, and the treasurer didn't know how to use CFRO. While the waiver request states that the treasurer attempted to file the report using the old CFR software, it is impossible to access the 2024 calendar year or file any reports pertaining to 2024 within the old software. A letter was mailed to the treasurer in May 2023, explaining the transition to CFRO and that the old CFR software would not be supported after 11/1/2023. Ending cash balance as of 10/21/2024 was $13,352.						

10. MAIDA (Minnesota Asian-Indian Democratic Association) (40713)						
Report(s)	Due	Filed	Amount	Prior Waivers	Recommended Action	Board Action
2023 Year-End 2024 June 2024 Pre-Primary	1/31/24 6/14/24 7/29/24	2/9/24 6/17/24 7/30/24	$175 LFF $50 LFF $50 LFF	$350 LFF for 2022 pre-primary report waived when report was sent to wrong email address.	Do not waive.	No action.
The Board previously considered this request in November and the Board voted not to waive the amount owed. Treasurer asks that her request be reconsidered and that the amount owed be reduced to $100. Treasurer states the delay in submitting the 2023 year-end report was due to a transition from a paper-based system to CFRO. Additionally, the committee experienced a change in treasurer. The committee is now familiar with the system and plans to submit all reports by the due date. Treasurer states the June and pre-primary reports were each filed a day late due to a busy election season. Ending cash balance as of 10/21/2024 was $701.						

C. Informational Items

Payments

1. Civil penalty for exceeding individual contribution limit

Dale Lais HD 27A - $250

2. Late filing fee for 2024 pre-general large contribution notice

Van Holston for House Committee - $200

3. Late filing fee for 2024 Pre-General Report

Campaign Fund of Mike Christopherson - $100
8th Senate District RPM - $50

4. Late filing fee for 2024 September Report

SEIU Local 26 Political Fund - $100

5. Late filing fee for 2024 pre-primary large contribution notice

Prairie Island Indian Community PAC - $1,000
CAR, Committee of Automotive Retailers - $250

6. Late filing fee for 2024 Pre-Primary Report

Lake of the Woods DFL - $800
MN Action Network IE PAC - $650
Clay County RPM - $50

7. Late filing fee for 2024 June Lobbyist Report

Alex Kharam - $325
Joseph Halloran - $175
Richard Cohen - $50
Mary Hartnett - $25
Heidi Swank - $25
Megan Verdeja - $25
Mitchell Williamson - $25

8. Late filing fee for 2022 June Lobbyist Report

Mary Hartnett - $100

9. Late filing fee for 2020 Pre-General Report

MN Action Network IE PAC - $50

10. Late filing fee for 2020 1st Quarter Report

MN Action Network IE PAC - $25

11. Forwarded anonymous contribution

Neighbors for Jamie Long - $25

ADMINISTRATIVE RULEMAKING UPDATE

Mr. Olson presented members with a memorandum that is attached to and made a part of these minutes. The Board published a notice about its proposed administrative rules and comment period in the State Register on October 7, 2024, which ended on November 6, 2024. The Board received four comments and no requests for a public hearing, leading to the cancellation of a hearing scheduled for December 17, 2024. The Board now needs to vote on approving the final proposed rule language, which will then be reviewed by the Governor's

Office and the Revisor's Office. Once finalized, the rule and comments will be submitted to an administrative law judge for approval.

In response to the comments, staff have drafted four proposed modifications to the rules:

1. Clarifying the definition of "compensation" to exclude payments for FICA taxes, disability insurance or benefits, or life insurance.
2. Changing the term "gross compensation" to "compensation" in the definition of "pay or consideration for lobbying."
3. Changing the term "gross compensation" to "compensation" in a rule addressing the lobbyist registration threshold.
4. Adding tax abatement and tax increment financing related to private housing or business developments to the list of major decisions involving public money.

The Board considered redlined versions of the modified rule sections, the received comments, and draft responses to those comments.

Marie Ellis, Public Policy Director, appeared on behalf of the Minnesota Council of Nonprofits. Ms. Ellis spoke regarding the proposed text for part 4511.1100, which would address the meaning of the phrase "major decisions regarding the expenditure or investment of public money." Ms. Ellis stated that when a nonprofit is responding to a request for proposals from a local unit of government, that should not be considered lobbying. Ms. Ellis stated that if such efforts are defined as lobbying, that would be incongruent with what is defined as lobbying of state agencies, because responding to a request for proposals from a state agency is not defined as lobbying.

There was discussion comparing the exclusion suggested by Ms. Ellis to an existing statutory exclusion that excludes an individual "engaged in selling goods or services to be paid for by public funds" from what is defined as a lobbyist. There was also discussion about further changing the proposed rules so late in the rulemaking process.

The following motion was made:

Member Flynn's motion: To approve the proposed rule modifications and the resolution adopting the rules.

Vote on motion: Unanimously approved.

PRIMA FACIE DETERMINATIONS

Ms. Engelhardt presented members with a memorandum that is attached to and made a part of these minutes. Please note all four complaints were dismissed.

A. Complaint of Greg Laden regarding Shine Mahi

On October 30, 2024, the Board received a complaint submitted by Greg Laden regarding Shine Mahi, a candidate for Plymouth City Council. The complaint alleged that Mahi offered breakfast to voters with the intent to influence their votes, violating Minnesota Statutes section 211B.13, which prohibits offering food or

other incentives to induce voting. The complaint was dismissed on November 1, 2024, due to the Board's lack of jurisdiction over the statute involved.

B. Complaint of Jeanne Newstrom regarding Itascans for Liberty

On October 30, 2024, the Board received a complaint submitted by Jeanne Newstrom regarding Itascans for Liberty. The complaint alleged that Itascans for Liberty, not registered with the Board, violated Minnesota Statutes section 211B.04 by failing to include a complete disclaimer on a billboard. The complaint also claimed that the group should have registered with the Board after spending over $750. The complaint was dismissed on November 12, 2024, because the complaint did not contain evidence that Itascans for Liberty is a political committee or fund within the meaning of Minnesota Statutes Chapter 10A, and federal law preempts state law with respect to disclaimers displayed by a Super PAC required to register with the FEC and not with the Board.

C. Complaint of Luke Mielke regarding Great Governance For Kids

On October 30, 2024, the Board received a complaint from Luke Mielke regarding Great Governance For Kids, an independent expenditure political committee registered with the Board. The complaint alleged that the committee failed to file a required disclosure statement regarding a contribution from an association not registered with the Board. The complaint was dismissed on November 6, 2024, as the committee had filed the statement on time.

D. Complaint of Megan American Horse regarding Lakers4Change

On November 5, 2024, the Board received a complaint from Megan American Horse regarding Lakers4Change. The complaint alleged that this group, which terminated its registration with the Board in December 2022, was still promoting state-level candidates and thereby is required to be registered, and file reports with, the Board. The complaint was dismissed on November 14, 2024, due to a lack of evidence that the group exceeded the $750 registration threshold or violated any other relevant statutes.

LEGAL REPORT

Mr. Harthorn provided members with a legal report that is attached to and made a part of these minutes.

EXECUTIVE SESSION

Chair Asp recessed the regular session of the meeting and called to order the executive session. Upon adjournment of the executive session, Chair Asp reported findings were made regarding complaints against Safer Hennepin and Mpls Forward. There being no other business, the meeting was adjourned by Chair Asp.

Respectfully submitted,

Jeff Sigurdson
Executive Director

Attachments:
Memorandum and draft report to Legislature on lobbying of political subdivisions
Memorandum and attachments regarding rulemaking
Memorandum and attachments regarding prima facie determinations
Legal report

MINNESOTA CAMPAIGN FINANCE BOARD

Date: November 27, 2024

To: Board Members

From: Jeff Sigurdson, Executive Director **Telephone:** 651-539-1189

Re: **Report to the Legislature on Lobbying of Political Subdivisions**

At the 2024 legislative session, the Board was tasked with studying whether the laws regulating lobbying do or 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 by January 15, 2025, and may include legislative recommendations on distinctions between the lobbying of public and local officials that the Board believes are warranted and appropriate. Attached for member review is a draft of the required report.

I want to emphasize that the report is in draft form. The final version of the report will not be approved until the January meeting, so staff will have time to incorporate any changes or additional material requested by Board members at this meeting.

Attachments
Draft Report to the Legislature

MINNESOTA

CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD

Report to the Legislature

Lobbying of Political Subdivisions

Report pursuant to:
Laws of Minnesota, Chapter 112, Article 4, Section 27
January 15, 2025

MINNESOTA
CAMPAIGN FINANCE BOARD

Campaign Finance and Public Disclosure Board
Suite 190, Centennial Building
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This document is available in alternative formats to individuals with disabilities by calling the Minnesota Relay Service at 800-627-3529.

Background

Under Minnesota Statutes Chapter 10A, registration and reporting as a lobbyist is required when an individual is compensated more than $3,000 for attempting to influence legislative or administrative action, or the official action of a political subdivision, by communicating with public or local officials.[1] Prior to 2023, lobbyist registration and reporting requirements had applied only to attempts to influence state-level bodies and a defined group of "metropolitan governmental units" in the seven-county metropolitan area. For purposes of lobbying, metropolitan governmental units included counties in the metropolitan area, regional railroad commissions in the metropolitan area, the Metropolitan Council, the Metropolitan Airport Commission, the Metropolitan Parks and Open Space Commission, the Metropolitan Sports Facilities Commission, and cities within the metropolitan area with a population greater that 50,000. After the 2020 census there were 17 cities with a population of over 50,000 in the Metropolitan area.[2]

All other political subdivisions within the state were outside of the scope of lobbyist registration and reporting. Therefore, from the standpoint of Chapter 10A, lobbying of local government did not occur outside of the metropolitan area, or even within the metropolitan area if the city had a population of 50,000 or less or the local government was a different type of political subdivision, such as a school district or township. Of course, lobbying efforts to influence local government does occur throughout the state, but public disclosure on those efforts did not exist. To address this problem the legislature moved to expand lobbyist registration and reporting to include all political subdivisions in 2023. The effective date of the legislative change was January 1, 2024.[3]

Expanding lobbying to all political subdivisions created questions and uncertainty in the lobbying profession, among individuals who were not lobbyists but who regularly communicate with local government, and among elected and appointed local officials in political subdivisions. Questions as to how the Board would administer the expanded definition of lobbying were brought forward in a series of advisory opinion requests sent to the Board. Starting in December of 2023, through February of 2024, the Board issued five advisory opinions[4] that provided guidance regarding fifty scenarios involving various communications with local officials and addressed whether the communications would require registration and reporting as a lobbyist.

The legislature was also receiving comments and requests for clarification on the expansion of lobbying to include political subdivisions. A number of proposals to modify the statutory provisions regarding lobbying of political subdivisions were considered, but ultimately not acted upon as the legislature focused on other issues as the legislative session came to an end in 2024. However, the legislature did hear the concerns expressed on the issue, and directed the Board to study statutory provisions that expand lobbying registration, reporting, and related regulations, to all

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[1] An individual is also required to register as a lobbyist if they are compensated more that $3,000 from a business whose primary source of revenue is derived from facilitating government relations or government affairs services if the individual's job duties include offering direct or indirect consulting or advice that helps the business provide those services to clients; or if the individual spends more than $3,000 of the individual's personal funds, not including the individual's own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action, or the official action of a political subdivision, by communicating with public or local officials. Minnesota Statutes section 10A.01, subdivision 21.

[2] Apple Valley, Blaine, Bloomington, Brooklyn Park, Burnsville, Coon Rapids, Eagan, Eden Prairie, Edina, Lakeville, Maple Grove, Minneapolis, Minnetonka, Plymouth, St. Paul, St. Louis Park, Woodbury

[3] 2023 Minn. Laws ch. 62, art. 5.

[4] Advisory Opinions 456, 457, 458, 460, and 461.

political subdivisions, and report back to the legislature in January of 2025. The legislature also stayed the requirement to register and report as a lobbyist for individuals who attempt to influence the actions of political subdivisions until June 1, 2025. 2024 Minnesota Laws, chapter 112, article 4, section 27, provides:

> **STATE AND LOCAL LOBBYING ACTIVITY; STUDY REQUIRED; REGISTRATION REQUIREMENTS STAYED.**
>
> (a) The Campaign Finance and Public Disclosure Board must study and make recommendations to the legislature on the definitions of "lobbyist," "local official," "public official," and "official action of a political subdivision" for purposes of Minnesota Statutes, chapter 10A. The study and recommendations must focus on whether the law does or should distinguish between activities that constitute lobbying of a public official and activities that constitute lobbying of a local official. If the study determines that a distinction between these activities is appropriate and is not adequately articulated within current law, then the board must recommend options for the legislature to consider in adopting that distinction by law. The board must submit a report describing the study, its results, and any associated recommendations from the board to the chairs and ranking minority members of the legislative committees with jurisdiction over campaign finance and lobbyist registration policy no later than January 15, 2025.
>
> (b) Registration requirements under Minnesota Statutes section 10A.03, for an individual attempting to influence the official action of a political subdivision that is not a metropolitan governmental unit are stayed until June 1, 2025. An individual who attempts to influence the official action of a "metropolitan governmental unit," as defined in Minnesota Statutes, chapter 10A, must comply with the registration and reporting requirements in Minnesota Statutes sections 10A.03 and 10A.04. A lobbyist principal that is represented by a lobbyist who attempts to influence the official action of a metropolitan governmental unit must comply with the reporting requirement in Minnesota Statutes section 10A.04.

This report and legislative recommendations are the Board's fulfillment of this requirement.

The Board actively sought public participation in discussing the issues reviewed in the report. The Board held public hearings on lobbying of political subdivisions on August 19 and October 25, 2024.[5] The Board's review of the differences between lobbying at the state level and lobbying of political subdivisions relied on the public comments to frame the issues created by expanding lobbying requirements to political subdivisions, and considered the changes to statutes recommended in the comments. The issues raised in public comments are provided to the legislature in this report regardless of whether the Board recommends the proposed change suggested in the comment.

Written comments received in response to the Board's proposed administrative rules regarding lobbying of political subdivisions are also reviewed in this report. The Board started the process of promulgating administrative rules on lobbying prior to receiving the direction to draft this report. Some of the provisions in the proposed rules are in response to questions raised in the aforementioned advisory opinions on lobbying of political subdivisions. In some cases, comments

[5] Video recordings of both hearings and copies of all written comments received are available at cfb.mn.gov/citizen-resources/the-board/statutes-and-rules/report-to-the-legislature-on-lobbying.

made in response to the draft administrative rules raised concerns about lobbying of political subdivisions that are relevant to this report.

All written comments received by the Board are provided as an appendix to the report.

Board Review

The mission statement of the Board, adopted in 2009, is:

> To promote public confidence in state government decision-making through development, administration, and enforcement of disclosure and public financing programs which will ensure public access to and understanding of information filed with the Board.

It would be inconsistent with this mission statement for the Board to support providing less meaningful disclosure to the public on lobbying of political subdivisions. However, not all information represents meaningful disclosure. The disclosure obtained on lobbying supports public confidence in government decision making only if the information is relevant in explaining how and why a decision was made by a political subdivision. Collecting information that does not meet this criterion does not promote public confidence and understanding, and therefore is not needed for the Board to complete its mission.

Determining what information is relevant requires asking what does the public view as lobbying? Are there activities captured by the current statutes on lobbying of political subdivisions that the public does not consider to be lobbying or does not need to be informed about in order to understand government decision making? These questions and the Board's mission to promote public confidence through disclosure were used to evaluate the public comments and suggestions in this report.

Finally, the Board understands the scope of the report to be an examination of issues related to lobbying of political subdivisions. Public suggestions that go beyond that scope are provided in the report as informational to the legislature, but are not recommended by the Board for legislative action.

Definitions Reviewed

The legislature specifically directed the Board to study the following definitions in Chapter 10A: "lobbyist," "local official," "public official," and "official action of a political subdivision". Most of the public comments received relate to one or more of these definitions, and are reviewed with the definition.

General Definition of Lobbyist

The thresholds for determining when an individual needs to register as a lobbyist in Minnesota are based on either receiving at least $3,000 in compensation for lobbying or providing certain types of consulting or advice for lobbying, or spending at least $3,000 of personal funds to support a lobbying effort. Minnesota Statutes section 10A.01, subdivision 21 provides:

> (a) "Lobbyist" means an individual:

> (1) engaged for pay or other consideration of more than $3,000 from all sources in any year:
>
> (i) for the purpose of attempting to influence legislative or administrative action, or the official action of a political subdivision, by communicating with public or local officials; or
>
> (ii) from a business whose primary source of revenue is derived from facilitating government relations or government affairs services if the individual's job duties include offering direct or indirect consulting or advice that helps the business provide those services to clients; or
>
> (2) who spends more than $3,000 of the individual's personal funds, not including the individual's own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action, or the official action of a political subdivision, by communicating with public or local officials.

The Minnesota Governmental Relations Council (MGRC) and the Minnesota Council of Nonprofits (MCN) recommend modifying the basic thresholds of activity that require registration, although in different ways.

Th MGRC suggests that the lobbyist registration requirement should recognize the professional nature of lobbyists' work and better exclude ordinary citizens. To do this, the MGRC recommends including a time spent lobbying component to the definition:

> Other states have created registration parameters for "lobbying" that consider not just compensation, but the **time spent on lobbying activities** and whether lobbying is a key part of their work duties. An hourly threshold is a fair approach to marking the line between citizen advocate and professional advocate, rather than relying on a case-by-case determination of compensation and activities. Furthermore, Minnesota previously had an hourly threshold. We urge this study group to strongly consider reinstating an hourly threshold that, combined with the compensation threshold, more accurately delineates between professional lobbyists, professional advisors, and regular citizens.[6]

The MGRC also provided that a survey of its membership found support for the federal definition of lobbyist:

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

The MCN did not make a specific recommendation on the threshold for registration as a lobbyist, but did suggest that the Board consider aligning the definition of "lobbying" to match the definition used by the Internal Revenue Service (IRS). The MCN states that the differences in the definition of "lobbying" between the IRS and Minnesota causes nonprofits problems:

> One specific challenge nonprofits face in reporting compliance is that the IRS and

[6] Letter dated August 19, 2024.

Minnesota define lobbying differently and ask for different data. We must track lobbying time and expenses under both definitions, distinguishing between legislative, administrative, or local lobbying, and whether it is direct or grassroots.[7]

The Scott County Association for Leadership and Efficiency (SCALE) suggested a different approach, and recommends a separate definition for "local lobbyist":

> **Redefining "Local Lobbying"** The current broad definition of "lobbying" inherently assumes a relationship or transaction that is common at the Legislature and state agencies, and very *uncommon* at the local level. Merely expanding the existing definition to local officials will, without question, inadvertently capture routine interactions between citizens and their local governments, potentially stifling civic engagement and unnecessarily burdening local officials and citizens alike. *Recommendation*: We propose creating a definition of "local lobbying" that more closely aligns with what public expectations of who a "lobbyist" is:
>
> o A "local lobbyist" should be defined as a person or firm paid by a client specifically for the purpose of advocacy before a governmental agency.
> o The primary purpose of the lobbyist should be advocacy, not information-sharing or where discussion of an official action is ancillary to the regular business of the purported "lobbyist."
> o Exemptions should be clearly stated for:
>
> - Local business owners collaborating with local officials in the regular course of their business
> - Community relations representatives of large businesses require regular interactions with local officials (e.g., electric utilities, railroads, communications companies).
> - Residents leading specific efforts to change local laws, even where expenditures may be made to influence the outcome, if the expenditures are for a "one off" and not part of the resident holding themselves out as a "local lobbyist."
> - Professionals providing specific expertise (e.g., engineers, architects, lawyers)[8]

Board Recommendation

The legislature's direction to the Board for this report included a review of the definition of "lobbyist", so suggestions to change the basis for registration are within the scope of issues for the Board to review. Nonetheless, the Board declines to suggest changing the existing registration thresholds for the following reasons.

The MGRC provided examples of states that have a time spent lobbying component to the definition of lobbyist.[9] However the time components vary significantly by state, and are not always clear. California, for example, requires registration only if the individual's "principal duties" are lobbying. Kansas requires registration if the person is employed "to a considerable degree" for lobbying. Presumably, these terms equate to the majority of the individual's work time. If "principal activity" and "considerable degree" are determined in

[7] Written testimony provided at October 25, 2024, public hearing.
[8] Letter dated August 15, 2024.
[9] Written testimony dated February 6, 2024

some other way, then it is questionable if those standards provide a threshold that is easier to track than $3,000 in compensation for lobbying in a calendar year. Some states do set a specific hourly amount, but there does not seem to a consistent time threshold that states have landed on. For example, Hawaii does not require registration until the individual has lobbied for more than ten hours in a calendar year; Alaska requires registration if the individual lobbies for more than ten hours in a 30-day period.

The federal definition of lobbyist suggested by some MGRC members also contains a time element:

> The term "lobbyist" means any individual who is employed or retained by a client for financial or other compensation for services that include more than one lobbying contact, other than an individual whose lobbying activities constitute less than 20 percent of the time engaged in the services provided by such individual to that client over a 3-month period.[10]

Assuming a forty-hour work week, the federal definition of lobbyist allows an individual to lobby for up to 138 hours every three months for a client before registration as a lobbyist is required.

Moving to the IRS definition of "lobbying", as suggested by the MCN, would also require modification of Minnesota's definition of "lobbyist" because the IRS definition does not include attempting to influence actions by executive or administrative bodies[11], and appears to exclude non-policy actions by local government. This would require changing the scope of communications that define a lobbyist to excludes administrative rulemaking, application of administrative rules by the Minnesota Public Utilities Commission, and actions by non-elected local officials.

The SCALE proposal includes an exception for expert testimony, which is reviewed later in this report, and a host of other exceptions that do not exist for lobbying of public officials. The assertion by SCALE that business owners and "community relations representatives" of large corporations are engaging in "routine interactions" with local governments that should thereby not be defined as lobbying, is a conclusion that the Board declines to recommend.

Adding a time spent lobbying threshold to the definition of lobbyist as recommended by the MGRC, and the IRS definition raised by the MCN, or a new definition for local lobbyist as recommended by SCALE, would result in changes to the lobbying program that are broader than the Board's understanding of the scope of the report requested by the legislature.

Exclusion for Expert Testimony

The definition of "lobbyist" also provides a list of positions and activities that are excluded from the definition. Minnesota Statutes section 10A.01, subdivision 21, paragraph (b), clause (8) provides that a lobbyist does not include:

> (8) a paid expert witness whose testimony is requested by the body before which the witness is appearing, but only to the extent of preparing or delivering testimony;

[10] 2 U.S. Code § 1602 - Definitions.
[11] irs.gov/charities-non-profits/lobbying; irs.gov/charities-non-profits/charitable-organizations/definition-of-legislation.

Several comments received during the rulemaking hearings and hearings on this report argued for an expansion of this provision.

The American Council of Engineering Companies of Minnesota (ACEC/MN) and the American Institute of Architects Minnesota (AIA Minnesota) commented on the subject of expert witness testimony at both the administrative rule hearings and in public testimony collected for this report. The associations' comments describe the problem from the perspective of their membership, and suggests two possible solutions:

> The remaining concern involves situations where a developer or land owner hires an architect or a consulting engineer while pursuing a project under the jurisdiction of the particular political subdivision. For example, in many cases, a municipality will enter into a development agreement with the landowner with regard to a particular project such as a residential subdivision. Under that development agreement, the engineer, at the developer's expense, designs infrastructure for the project which meets the city's requirements. In connection with this work, the engineer often needs to provide information to the municipality with respect to the proposed designs to ensure that the designs meet the municipality's approval and the relevant ordinances. In addition, there needs to be discussion regarding making the municipality's existing infrastructure available to the new project.
>
> Similarly, often times an architect hired by a developer will consult with and confer with a local code official or the political subdivision's planning commission regarding the elements and code compliance of the project. This may include using their expertise, skill and experience to make recommendations regarding how the project should be completed.
>
> Under the new definition of lobbying in the statute, all of these discussions could be considered for the "purpose of influencing the official action of the political subdivision" and therefore lobbying. We discussed addressing this by creating a rule which confirmed that such discussions were not lobbying, but the rules committee was concerned that the rule may conflict with the statutory mandate. As a result, when an amendment to the statute was introduced, we worked with the author to address the issue at the legislature. The revisions to the statutes were not adopted and as a result, architects and engineers are left in limbo regarding how to perform their jobs without being accused of lobbying.
>
> Our recommendation is for either a statutory amendment or a clarification of the regulations to make it clear that an Architect, Engineer or other design professional making recommendations and opinions based upon their education, training and experience are not "Lobbyists" under the statute. An example of such an exemption is the expert exemption located in Minn. Stat. Section 10A.01 Subd. 21 (b)(8). In the alternative, and as we discussed at length this spring, we could also add a section to the statute or regulations making it clear that a professional who offers his or her opinions based upon his or her education, training and experience is not engaged in "communications for the purpose of attempting to influence the official action of a political subdivision". Either of these changes would insulate architects, engineers, land surveyors, landscape architects, geologists, and certified interior designers from being considered

> lobbyists while practicing their professions as defined by Minnesota Statutes § 326.[12]

ACEC/MN provided two proposed solutions, the first would exempt from the definition of lobbyist any testimony provided by professionals regulated by Chapter 326; the second offers a broader exception that is not limited to Chapter 326:

> An individual providing an elected or nonelected local official information, data, advice, opinions, variables, options or directions as professional licensee under Minnesota Statutes Section 326.02 through 326.15 or under the direct supervision of a licensee under Minnesota Statutes Section 326.02 through 326.15 shall not be considered attempting to influence that elected or nonelected local official.[13]

Or

> An individual providing an elected or nonelected local official information, data, advice, opinions, variables, options or direction in an area where the individual has a particular expertise through education, training, or experience shall not be considered attempting to influence that elected or nonelected local official.[14]

The MGRC also commented that the issue of expert testimony needed to be addressed and reviewed its proposal:

> MGRC proposed legislation in 2024 to clarify this issue such that *an individual providing information, data, advice, professional opinions, variables, options, or direction on a topic on which the individual has particular expertise through education or professional or occupational training to a public or local official at a lobbyist's request* would not be required to register (other factors notwithstanding). This language was not adopted by the legislature, leaving professionals with disparate and confusing reporting requirements for subject matter experts working across various levels of government. We encourage the CFB to thoroughly research, consider, and recommend clarifications in this area.[15]

During hearings for the Board's proposed administrative rules the Minnesota Regional Railroads Association (MRRA) also stated that employees of its membership were often in contact with local officials on engineering and other technical issues, and that tracking when employees would meet the $3,000 compensation registration threshold for lobbying would be extremely burdensome.[16]

However, Clean Elections Minnesota (CEM) expressed concern that an exemption for expert testimony could negatively impact disclosure:

> We should be cautious about proposals to carve out specific professions from registration requirements. Exempting executives or professionals who engage with lawmakers can obscure the public's ability to know who is attempting to influence

[12] Letter dated January 24, 2024.
[13] Email dated February 7, 2024.
[14] Email dated February 13, 2024.
[15] Letter dated August 19, 2024.
[16] Letter dated January 26, 2024.

policy decisions. This could inappropriately allow significant interests to operate without transparency or accountability.[17]

Board Recommendation

From the information provided to the Board it appears that local officials receive information on specific projects and plans from experts on a routine basis, or at least more commonly than most public officials. The current exception for expert testimony was drafted with the legislature in mind, and does not reflect the importance of expert testimony to local officials when carrying out certain aspects of their job. These interactions highlight that local officials are trying to make an informed decision based on the best information available, and that expert testimony may be the only, or at least the most readily available, way to gather the needed information.

Limiting an exception for expert testimony to professionals regulated by Chapter 326 is hard to justify and would quickly lead to efforts to include testimony from experts in the fields of finance, the environment, health, law, and undoubtably many other fields as well. The Board also agrees with CEM that exempting expert testimony, if done in all situations, could provide a loophole that obscures disclosure on who is communicating with local officials. Further, while the expert may be providing information that is technical in nature, that doesn't change the fact that most expert testimony before a local government is made as part of a lobbying effort to influence an official action by a political subdivision.

Looking at the regulations for expert testimony in other states the Board found several examples where expert testimony was not lobbying as long as the testimony was either made at a public hearing, or written testimony was entered into the public record. For example:

> *Rhode Island* - Lobbying does not include: "A qualified expert witness testifying in an administrative proceeding or legislative hearing, either on behalf of an interested party or at the request of the agency or legislative body or committee."
>
> *District of Columbia* – Lobbying does not include "Testimony given before the Council or a committee of the Council, during which a public record is made of such proceedings or testimony submitted for inclusion in such a public record."
>
> *Michigan* - Lobbying does not include "providing of technical information when appearing before an officially convened legislative committee or executive department hearing panel. As used in this subsection, 'technical information' means empirically verifiable data provided by a person recognized as an expert in the subject area to which the information provided is related."

Limiting an exception for expert testimony to public meetings and the public record is consistent with the existing exception, and addresses the concern raised by the CEM that an exception for certain types of testimony provides a means to avoid public scrutiny of that testimony. The Board recommends that the exemption for expert testimony in Minnesota Statutes section 10A.01, subdivision 21, paragraph (b), clause (8) be modified to provide that the term "lobbyist" does not include:

> (8) a qualified expert witness who provides testimony, or enters written testimony into the official record, at a public meeting held by the legislature, a political

[17] Letter dated June 14, 2024.

subdivision, a metropolitan governmental unit, or a state agency that is adopting, modifying, or repealing administrative rules. If the expert witness provides testimony at the request of a principal the cost of preparing and providing the testimony is a lobbying disbursement.

The Board notes that it deliberately left out a hearing held by the Minnesota Public Utilities Commission (PUC) from this exception. The nature of the testimony provided to the PUC when it considers cases of rate setting, power plant and powerline siting, and granting of certificates of need under Minnesota Statutes section 216B.243, is unique. The PUC should be consulted before including a public hearing held by that agency within the exclusion.

Exclusion for a Nonelected Local Official or an Employee of a Political Subdivision

The definition of "lobbyist" also provides an exception for all elected local officials, and generally for nonelected local officials and employees of political subdivisions. However, the exception for nonelected local officials and employees of political subdivisions is limited. Minnesota Statutes section 10A.01, subdivision 21, paragraph (b), clause (4) provides that a lobbyist does not include:

> (4) a nonelected local official or an employee of a political subdivision acting in an official capacity, unless the nonelected official or employee of a political subdivision spends more than 50 hours in any month attempting to influence legislative or administrative action, or the official action of a political subdivision other than the political subdivision employing the official or employee, by communicating or urging others to communicate with public or local officials, including time spent monitoring legislative or administrative action, or the official action of a political subdivision, and related research, analysis, and compilation and dissemination of information relating to legislative or administrative policy in this state, or to the policies of political subdivisions;

Before reviewing comments received on this provision it is important to note that prior to 2024 this provision read (emphasis added):

> (4) a nonelected local official or an employee of a political subdivision acting in an official capacity, unless the nonelected official or employee of a political subdivision spends more than 50 hours in any month attempting to influence legislative or administrative action, or the official action of a ***metropolitan governmental unit*** other than the political subdivision employing the official or employee, by communicating or urging others to communicate with public or local officials, including time spent monitoring legislative or administrative action, or the official action of a ***metropolitan governmental unit***, and related research, analysis, and compilation and dissemination of information relating to legislative or administrative policy in this state, or to the policies of ***metropolitan governmental units***;

The definition of metropolitan governmental units includes, in part, the Metropolitan Airport Commission, the Metropolitan Parks and Open Space Commission, and the Metropolitan Sports Facilities Commission. Statements in the comments received regarding metropolitan governmental units reference this change.

The Coalition of Greater Minnesota Cities (CGMC) and the Greater Minnesota Partnership (GMNP) submitted comments asking that this exception be modified to exclude working to influence the actions of another political subdivision. The CGMC provided that:

> The expansion of the definition of lobbying newly brought more than 3,000 local government subdivisions under the purview of campaign finance laws. Undoubtedly, multiple appointed officials or employees at almost all these entities engage regularly in projects that involve "official action" by their respective bodies and other government entities, whether it be a construction project, a purchase or sale, contracting for services, or something else. Many employees may be engaged in multiple projects performing activities that meet the very broad definition of lobbying under Minn. Stat. 10A.01, Subd. 21(4), which could trigger lobbyist registration and reporting requirements based on activities that most people would not consider lobbying. This collaboration between governments is not isolated to larger, special projects. It happens every day.
>
> For example, a city's engineering department and public works staff engage daily with their counterparts in county or state government regarding the maintenance of basic public infrastructure, including roads, water and wastewater. This collaboration is expected by the public, which demands that basic infrastructure be safe and well-maintained regardless of which level of government is responsible for it.
>
> Cities and counties routinely collaborate, which arguably may include trying to influence one another—on projects in ways that have not traditionally been considered lobbying. For example, appointed officials or staff who engage with one another to iron out specific design elements, cost allocations between levels of government, or important decisions about the timing of project delivery have traditionally been understood to be simply doing their jobs.[18]

The CGMC noted the origins of the provision, and provided:

> We understand that attempting to include the official action of a different political subdivision other than the political subdivision at which one is employed was originally targeted toward communications involving the Metropolitan council and local governments that may be reporting to or seeking something from it. Narrowing the definition to such circumstances may be the best approach and would allow collaboration between local governments to continue.[19]

The CGMC also expressed concern that the 50-hour threshold included work on collecting information used to influence legislative or administrative action:

> We are concerned that the … language regarding research, analysis, and compilation of information relating to legislative or administrative policy could sweep up local government employees working on projects that result in legislation, such as a bonding request. Countless hours are spent on activities such as research or analysis that become part of the materials related to a legislative bonding request, such as engineering studies or financial analysis. Public employees would need to track all their hours when working on projects related to legislative action to determine whether they are exceeding

[18] Letter dated November 19, 2024.
[19] Letter dated August 21, 2024.

> the 50-hour threshold in any month. Identifying all public employees who exceed that threshold as lobbyists does not serve the public interest.[20]

The GMNP also encouraged the Board to consider the impact of the 50-hour threshold for public employees:

> Members have also expressed concern that the definition of lobbyist under Minn. Stat. 10A.01 Subd. 21 (2(b)(4) is overly broad. Under the current definition, it's easy for an employee of a political subdivision to spend more than 50 hours in any month in the normal course of business doing work that meets the definition in (4). To ensure compliance with this statute, employees will need to track all hours doing qualifying work so in any given month they can report those activities if they exceed 50 hours.[21]

Board Recommendation

This provision raises the question of what types of activities do the public view as lobbying to influence official actions by their county, city, or any other political subdivision? It's likely that the public views work between political subdivisions on shared responsibilities as something different than a lobbyist requesting funding or a policy decision from a political subdivision. The original language that required a public employee to register as a lobbyist for spending more than 50 hours attempting to influence the official action of a metropolitan governmental unit makes sense given the budget and regional authority of an entity like the Metropolitan Council. It seems to make less sense to require lobbyist registration for public employees of a political subdivision trying to share costs and responsibilities for a public service with another political subdivision.

The Board also questions why this exception includes "time spent monitoring legislative or administrative action, or the official action of a political subdivision, and related research, analysis, and compilation and dissemination of information". The definition of lobbyist generally requires direct communication between the lobbyist and a public or local official to occur before an activity is deemed lobbying. Here, time spent listening to a committee hearing, but not talking to anyone at the hearing, is counted towards a lobbyist registration requirement. The exception also counts time spent urging others to communicate with public officials, more commonly known as grass roots lobbying. The requirement to register for grass roots lobbying was removed from the general definition of lobbyist in 2024. It also appears that the 50-hour threshold counts activity that is arguably an administrative task that supports lobbying. Counting that type of activity is inconsistent with another exception in the definition of lobbyist found in Minnesota Statutes section 10A.01, subdivision 21, paragraph (d) which provides that a lobbyist does not include:

> (d) An individual who provides administrative support to a lobbyist and whose salary and administrative expenses attributable to lobbying activities are reported as lobbying expenses by the lobbyist, but who does not communicate or urge others to communicate with public or local officials, need not register as a lobbyist.

The Board suggests modifying Minnesota Statutes section 10A.01, subdivision 21, paragraph (b)(4), as follows to keep the requirement for public employee registration as a lobbyist when the 50 hour threshold is exceeded for attempting to influence a metropolitan governmental unit, but eliminate the broader registration requirement for attempting to influence another political

[20] Letter dated August 21, 2024.
[21] Letter dated August 19, 2024.

subdivision, or for preparing information that will be used by a lobbyist in attempting to influence an official action. The provision would provide that a lobbyist is not:

> (4) a nonelected local official or an employee of a political subdivision acting in an official capacity, unless the nonelected official or employee of a political subdivision spends more than 50 hours in any month attempting to influence legislative or administrative action, or the official action of a metropolitan governmental unit by communicating with public or local officials;

For purposes of clarity the definition of metropolitan governmental unit provided in Chapter 10A should also be amended to remove counties, cities with a population of over $50,000, and regional railroad authorities in the metropolitan area. If not modified the counties, cities and regional railroad authorities will be both a political subdivision and a metropolitan governmental unit, which at best will be confusing and inconsistent.

Minnesota Statutes section 10A.01, subdivision 24:

> "Metropolitan governmental unit" means the Metropolitan Council, the Metropolitan Parks and Open Space Commission, Metropolitan Airports Commission, and the Metropolitan Sports Facilities Commission.

Excluding Quasi-Judicial Decisions

Several comments were received on the issue of excluding “quasi-judicial decisions” from the definition of “official action of a political subdivision” found in Minnesota Statutes section 10A.01, subdivision 26b, which currently states:

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

The Minnesota State Bar Association (MSBA) supports an exception for quasi-judicial decisions, and provided an explanation on how a quasi-judicial decision differs from other types of official decisions by local officials:

> Most planning and zoning decisions are made by local zoning boards, commissions, and elected officials. Such actions fit in one of two categories:
>
> 1. **Legislative decisions** formulate broadly-applicable policies for future application and include such actions as passing budgets, adopting plans, and adopting ordinances or amendments to ordinances.
>
> **2. Quasi-judicial decisions** occur when an established policy (e.g., an ordinance or state statute) is applied to particular facts. Examples include decisions on variances, conditional use permits, site-plan review, zoning code violations, and many planning commission decisions.
>
> When making quasi-judicial decisions, the local government body applies preexisting law to a single parcel or a limited number of individuals. Typically,

> quasi-judicial decisions do not directly affect the entire political subdivision, so there is limited public interest. In addition, quasi-judicial proceedings function more like court actions than political proceedings. For example, stricter procedural requirements must be followed, and the body's decision is subject to review by the Minnesota Court of Appeals (in other words, the public body is essentially standing in the shoes of the district court). Conversely, when making legislative decisions, the public body has considerable discretion, fewer procedural requirements, and is generally subject to less strict judicial review.[22]

The MSBA also noted that something like an exception for quasi-judicial decisions already exists for state agencies:

> It is important to note that our proposed quasi-judicial exemption is not inconsistent with existing law. Specifically, Minn. Stat. §10A.01 subd. 2 provides that, with limited exceptions, the definition of administrative action does not include **"the application or administration"** of existing rules.
>
> We suggest that a similar quasi-judicial exemption be applied in the context of political subdivision decision-making. Perhaps something like: "**Official action of a political subdivision" does not include the application or administration of a statute, rule, or ordinance.** This would exempt individuals who are merely dealing with how existing standards are applied, but it would still cover those who are attempting to influence whether and how an ordinance is created or modified.[23]

Comments received from Housing First Minnesota (HFM) during the rule making hearings also recommend exempting from lobbyist registration individuals advocating for an application of an existing regulation or plan:

> We recommend that 4511.1000, subpart 1 (an administrative rule on lobbying) be amended to limit registration to advocating for an amendment to the local jurisdiction's comprehensive plan. The rationale is that no housing project can advance if the local comprehensive plan doesn't authorize it in the first instance. Any request for a zoning amendment or subdivision is statutorily predicated on being in compliance with an approved comprehensive plan. The comprehensive plan process will adequately identify the project applicants if that is deemed important. As noted above, the follow-on process is already very transparent.
>
> We also recommend that 4511.1000, subpart 1 be further amended to not require registration for any public proceeding in which a landowner or their hired representative is statutorily required to participate in order to preserve a legal objection, such as when a city advances a special assessment proceeding under Minn. Stat. 429.169 and proposes to assess project costs to affected landowners over their objection; failure to confirm an objection to a proposed assessment at the scheduled assessment hearing constitutes waiver of the objection and precludes any future challenge to it. It seems to us fundamentally unfair and burdensome to both compel participation in a statutory process in order to

[22] Letter dated August 16, 2024.
[23] Letter dated October 22, 2024.

> preserve a legal right and convert it into "lobbying" requiring registration and reporting.[24]

The Board also received comments from local officials who opposed creating a quasi-judicial decision exception. The objections were based on the experiences of elected and appointed local officials. Paige Rohman, a former planning commissioner in the City of Bloomington provided:

> There are many important decisions that are made that do not happen at the elected official level. In my experience as a planning commissioner, we have significant authority as a quasi-judicial body. And while we commissioners are often the closest to and reflect the sense of the people in the community, our role is sometimes less visible to and less scrutinized by most because we are appointed.
>
> Let me provide an example of why expanded standards are good. This past spring, toward the end of my term, we made recommendations to the council on additional areas that should be considered for final decision making at the commission level. We did this in the interest of making government more efficient, reducing administrative burden, and speeding up the bureaucratic process. These are the right things to do. But with expanded authority comes expanded opportunity for influence. When that influence happens, it needs to be done in a structured, transparent manner. Lobbying of decision makers like us should certainly fall within the scope of lobbying standards anywhere across the state.
>
> … I know some have suggested quasi-judicial bodies should not be subject to these standards, and I disagree. Anybody who can make a final decision on behalf of the people should be governed by these standards. Carve outs only invite suspicion and create potential division.[25]

Michael Wojcik, former member of the Rochester City Council, also expressed opposition to a quasi-judicial decision:

> I would urge the board not to carve out any exceptions for individual professions or individual parts of the governing processes. In local government the application of policies (quasi-judicial) by appointed bodies, elected bodies, and professional staff is as important as the creation of policy itself. Disclosure of lobbying activities is not a high bar and is a fair expectation for people paid even a de minimis amount for direct or indirect lobbying.[26]

Sean Hayford Oleary, former planning commissioner and current city council member for the City of Richfield, also provided examples of attempts to influence his actions while serving in both roles, that are not currently disclosed as lobbying, but which should be available to the public.[27]

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[24] Email dated March 1, 2024.
[25] Written testimony submitted October 25, 2024.
[26] Letter dated October 24, 2024.
[27] Letter dated October 23, 2024.

The Board reviewed the lobbyist regulations in other states, and found that some states do not view quasi-judicial decisions as lobbying. For example:

> *South Carolina* – Lobbyist does not include "a person who appears only before public sessions of committees or subcommittees of the General Assembly, public hearings of state agencies, public hearings before any public body of a quasi-judicial nature, or proceedings of any court of this State."
>
> *Arizona* – Lobbyist does not include "An attorney who represents clients before any court or before any quasi-judicial body."
>
> *Florida* – Lobbyist does not include "an attorney who represents a client in a judicial proceeding or in a formal administrative proceeding or any other formal hearing before an agency, board, commission, or authority of this state;"
>
> *Massachusetts* – Lobbying does not include "an act made in compliance with written agency procedures regarding an adjudicatory proceeding, as defined in section one of chapter thirty A, conducted by the agency, or similar adjudicatory or evidentiary proceedings conducted by any department, board, commission or official."

It appears that these states apply an exception to lobbying for the application of existing rules and regulations to all levels of government within the state.

Board Recommendation

The Board notes that the comments received on quasi-judicial decisions, both in favor and in opposition, all reference zoning, planning, and housing development decisions. There seems to be agreement on the importance of these decisions, but disagreement on the level of discretion that zoning and planning commissions have in making official decisions. The comments received from former and current local officials state that developers and their representatives lobby local officials on the decisions before the commissions. Whatever level of discretion the commissioners have, it appears to be significant to the regulated community in at least some situations.

On the other hand, the example brought by HFM where representing a client in a public statutory process in order to preserve a legal right could require registration as a lobbyist, does seem closer to litigation than lobbying. If the legislature decides to create an exception for quasi-judicial decisions, then the Board recommends that the exception applies only to participation in the public hearing of the decision-making body, and not extend to private meetings with local officials.

Definition of Political Subdivision

The definition of political subdivision for purposes of Chapter 10A is found in Minnesota Statutes section 10A.01, subdivision 31:

> "Political subdivision" means the Metropolitan Council, a metropolitan agency as defined in section 473.121, subdivision 5a, or a municipality as defined in section 471.345, subdivision 1.

This definition includes counties, cities, school districts, townships, soil and water conservations districts, and a host of other entities that do not have elected membership. The Minnesota Association of Townships (MAT) provided comment that the nature of township government made certain lobbying provisions unnecessary, and the application of the gift prohibition for lobbyists found in Chapter 10A a trap for township officials who do not know about the prohibition. The MAT provides a possible way to mitigate the problems it sees:

> The Township Association believes that this could be improved with a few tweaks. First, the board might consider mirroring the language of Minnesota Government Data Practices Act, which divides townships between those with enough administrative lift capacity to handle the requirement and those that do not. See Minn. Stat. 13.02 subd. 11. The change could be as simple as adding "excluding any town not exercising powers under chapter 368 and located in the metropolitan area, as defined in section 473.121, subdivision 2"[28]

The Board also received a recommendation that the application of lobbying regulations should continue to apply to all political subdivisions. SCALE provided:

> **Uniform Treatment of Local Governments** The current population-based distinction in lobbying requirements creates an arbitrary divide between similarly functioning local governments. We agree with Rep. Coulter that the distinction between (for example) Bloomington and Shakopee is arbitrary. Recommendation: Treat all local units of government the same, regardless of population size. This approach recognizes that while larger municipalities may experience more lobbying activity, the fundamental nature of local government operation remains similar across the state.[29]

Board Recommendation

The definition of political subdivision needs to be amended to exclude the Metropolitan Council and a metropolitan agency as defined in Minnesota Statutes section 473.121. Metropolitan agencies should be defined separately from political subdivision to avoid confusion and circular references in Chapter 10A. At this point the Board declines to recommend excluding any government body with an elected membership from the definition of political subdivision. However, the Board believes the legislature should consider if all of the entities defined in Minnesota Statutes section 471.345, subdivision 1, should be included in the definition of political subdivision. Attached as Appendix 2 is a Board staff memo that reviews the entities that appear to be included in the definition of political subdivision.

Lobbyist Register and Report with the Political Subdivision

Among its comments on how to improve the lobbying program for political subdivisions SCALE suggested that individuals who lobby political subdivisions registration and report locally:

> **Local Disclosure vs. State Reporting** Residents seeking information about "local lobbying" activities are far more likely to look to their local government than to a state agency for information about that activity. Recommendation: Consider a modified disclosure requirement that mandates local units of government maintain

[28] Email dated July 29, 2024.
[29] Letter dated August 15, 2024.

> and make available records of "local lobbying" activity to their residents upon request. This approach would be more accessible to the public and more manageable for those required to report. Local governments could comply in a way that best fits their communities. Minneapolis, for example, may have a volume of local lobbying activity that requires a searchable database with regular reporting. Northome may go years or decades without any such activity, and should it occur, may merely keep a record of who was retained, for what purpose, as a document available upon request to a resident.[30]

There are a number of states that allow counties and cities to regulate local lobbying. The state of Maryland requires all cities and counties to adopt local lobbying ordinances. To the Board's knowledge, other states do not allow regulation of local lobbying below the municipal level.

Board Recommendation

The Board has already developed an online reporting system for lobbyists that will accommodate individuals who lobby political subdivisions. The system also provides online access to the lobbyist reports. It does not seem cost effective to require political subdivisions to administer lobbyist registration and reporting when the Board already provides that function.

This report was adopted by resolution of the Campaign Finance and Public Disclosure Board at its regular meeting of January 8, 2025.

[30] Letter dated August 15, 2024.

TABLE OF CONTENTS

Appendix One

Written Comments to the Board on Lobbying Political Subdivisions

American Council of Engineering Companies of Minnesota and American Institute of Architects Minnesota – January 25, 2024

American Council of Engineering Companies of Minnesota – February 7, 2024

American Council of Engineering Companies of Minnesota – February 13, 2024

American Institute of Architects – February 8, 2024

Clean Elections Minnesota – June 14, 2024

Coalition of Greater Minnesota Cities – August 21, 2024

Coalition of Greater Minnesota Cities – November 19, 2024

Common Cause Minnesota – November 13, 2024

Greater Minnesota Partnership – August 19, 2024

Housing First Minnesota – March 1, 2024

Michael Wojcik, former Rochester City Council member – October 24, 2024

Minnesota Association of Townships – July 29, 2024

Minnesota Council of Nonprofits – October 25, 2024

Minnesota Governmental Relations Council – January 29, 2024

Minnesota Governmental Relations Council – February 6, 2024

Minnesota Governmental Relations Council – August 19, 2024

Minnesota Regional Railroads Association – January 26, 2024

Minnesota State Bar Association – August 16, 2024

Minnesota State Bar Association – October 22, 2024

Paige Rohman, former planning commissioner, City of Bloomington – October 25, 2024

Scott County Association for Leadership and Efficiency – August 15, 2024

Sean Hayford Oleary, Richfield City Council member – October 23, 2024

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January 25, 2024

VIA EMAIL

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

Re: ACEC/MN and AIA Minnesota Comments Regarding Proposed Regulations

Dear Jeff:

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

ACEC/MN and AIA Minnesota have reviewed the 2023 changes in the statute regarding lobbyist registration and reporting as well as the and the recent advisory opinions issued by this Board. As you know, I also attended most if not all of the rule making committee hearings to provide input on our concerns regarding the new Statutes. After the work we put in and the unsuccessful attempt to address the issues legislatively,

we are concerned that work which consulting engineers and architects perform on a daily basis will be considered "lobbying" under the statutory changes. As a result, we submit this letter in connection with the legislatively mandated study to express our concerns and to suggest a means to address the work of Architects and Professional Engineers which is not truly lobbying, but could be considered lobbying under the current language.

As you know, we addressed the situation where a consulting engineer is hired as a City Engineer in the rulemaking process. We also addressed the situation where the Architect or Consulting Engineer is hired by the municipality directly to perform the design work. The remaining concern involves situations where a developer or land owner hires an architect or a consulting engineer while pursuing a project under the jurisdiction of the particular political subdivision. For example, in many cases, a municipality will enter into a development agreement with the landowner with regard to a particular project such as a residential subdivision. Under that development agreement, the engineer, at the developer's expense, designs infrastructure for the project which meets the city's requirements. In connection with this work, the engineer often needs to provide information to the municipality with respect to the proposed designs to ensure that the designs meet the municipality's approval and the relevant ordinances. In addition, there needs to be discussion regarding making the municipality's existing infrastructure available to the new project.

Similarly, often times an architect hired by a developer will consult with and confer with a local code official or the political subdivision's planning commission regarding the elements and code compliance of the project. This may include using their expertise, skill and experience to make recommendations regarding how the project should be completed.

Under the new definition of lobbying in the statute, all of these discussions could be considered for the "purpose of influencing the official action of the political subdivision" and therefore lobbying. We discussed addressing this by creating a rule which confirmed that such discussions were not lobbying, but the rules committee was concerned that the rule may conflict with the statutory mandate. As a result, when an amendment to the statute was introduced, we worked with the author to address the issue at the legislature. The revisions to the statutes were not adopted and as a result, architects and engineers are left in limbo regarding how to perform their jobs without being accused of lobbying.

As a result, we seek an exception in the regulations for architects, engineers and other design professionals working on the behalf of their clients in such a scenario.

Our recommendation is for either a statutory amendment or a clarification of the regulations to make it clear that an Architect, Engineer or other design professional making recommendations and opinions based upon their education, training and experience are not "Lobbyists" under the statute. An example of such an exemption is

the expert exemption located in Minn. Stat. Section 10A.01 Subd. 21 (b)(8). In the alternative, and as we discussed at length this spring, we could also add a section to the statute or regulations making it clear that a professional who offers his or her opinions based upon his or her education, training and experience is not engaged in "communications for the purpose of attempting to influence the official action of a political subdivision". Either of these changes would insulate architects, engineers, land surveyors, landscape architects, geologists, and certified interior designers from being considered lobbyists while practicing their professions as defined by Minnesota Statutes § 326.

We believe that this clarification within the regulation is not only consistent with the intent of changes in the statute, but is also in the State's best interest. The municipalities benefit from having licensed professionals with experience in industry providing them information, opinions and recommendations related to issues within their profession. The result of having those professionals considered to be "lobbyists" will be the inability of the political subdivisions to obtain the information, opinions and recommendations directly from the source in connection with potential projects. As a result, projects will take longer to approve, will likely be more expensive, and the decisions will be made by the political subdivisions without the full picture often needed to make an informed and rational decision.

We appreciate the opportunity to participate in the study of the impacts of the statutory and regulatory changes. We are committed to working with the Board to develop a statute and regulations which accomplish the legislative goals while also protecting the architectural and engineering profession. If you have any questions about these proposals, please do not hesitate to contact me. I would be more than happy to discuss them with you.

Sincerely,

HELEY, DUNCAN & MELANDER, PLLP

s/ Eric R. Heiberg

Eric R. Heiberg

cc: Thomas Poul (via email)
Jonathan Curry (via email)
Megan Engelhardt (via email)
Sheri Hansen (via email)
Sarah Strong (via email)

ERH/jb

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

Megan and Jeff,

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

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

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

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

or

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

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

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

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

Jeff,

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

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

Our proposed language is as follows:

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

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

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AIA Minnesota

February 8, 2024

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

Dear Mr. Sigurdson and Mr. Olson,

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

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

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

Thank you for your time.

Sincerely,

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

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Clean Elections Minnesota
2533 Colfax Avenue South
Minneapolis, MN 55405

Members of the Campaign Finance Board
190 Centennial Office Building
638 Cedar St.
St. Paul, MN 55155

June 14, 2024

Dear Members of the Minnesota Campaign Finance Board. My name is Mary Hartnett and I'm Executive Director of the non-partisan, non-profit organization, Clean Elections Minnesota (CEM). We educate Minnesotans as well as advocate on issues such as expanded voter access, public transparency and campaign finance reform.

The Legislature has instructed the Campaign Finance Board to study and make recommendations on who should be required to register as a lobbyist when paid to influence state and local officials. This topic has gained attention due to recent legal changes aimed at ensuring that lobbyists at the local level also register and disclose their activities. However, following these changes, there has also been significant lobbying to narrow the scope of who must register, potentially limiting publicly available information about those trying to influence government decisions.

The essential democracy issue at stake is the public's ability to know who is being paid to lobby decision-makers. So far, the testimony received has chiefly been from corporate and private interests. There has been significantly less input from the general public or organizations advocating transparency and accountability. For that reason, we appreciate the Campaign Finance Board holding an additional hearing to receive a broader set of perspectives on this matter

CEM believes transparency and disclosure are fundamental to public trust in government. Minnesota's current lobbying laws, much like our campaign finance laws, are designed to provide visibility into who is influencing public policy decisions. Consequently, we must maintain a system that allows the public, journalists, and lawmakers themselves to see who is being paid to engage with government officials.

Today's threshold for registration, $3,000 for those directly influencing government officials, is an effective standard.Raising it would mean that unknown, possibly secretive, persons could influence government decisions without transparency for the public.

We should be cautious about proposals to carve out specific professions from registration requirements. Exempting executives or professionals who engage with lawmakers can obscure the public's ability to know who is attempting to influence policy decisions. This could inappropriately allow significant interests to operate without transparency or accountability.

Therefore, we urge you to recommend broader registration requirements that will serve the public interest. Registering as a lobbyist is not a punishment; it's simply a way to ensure the public is informed about who is advocating for specific interests and policies.

As the Campaign Finance Board continues its deliberations, we urge you to always prioritize public interests—those of residents, workers, communities, and voters--- in matters related to transparency in lobbying.

Thank you for your time and attention.

Mary Hartnett
Executive Director

Ken Peterson
Legislative Committee Chair

COALITION OF GREATER MN CITIES

DEDICATED TO A STRONG GREATER MINNESOTA

August 21, 2024

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

Re: Lobbying Definitions Study

Dear Members of the Campaign Finance Board,

On behalf of the Coalition of Greater Minnesota Cities (CGMC), I am writing to submit comments as you embark on studying and making recommendations regarding the lobbying laws as they pertain to the lobbying of public officials and local officials in political subdivisions.

The CGMC is a group of more than 100 cities throughout the state dedicated to developing viable progressive communities for families and businesses through good local government and strong economic growth. Our member cities and their employees may be impacted by changes to laws and regulations relating to the lobbying rules.

First, we want to acknowledge the changes that the Campaign Finance Board (CFB) and the Legislature have made in response to earlier concerns that we raised about the 2023 legislative changes. For example, Advisory Opinion 456 clarified that when a member organization comprised of political subdivisions reaches out to its members regarding legislation, that activity does not constitute lobbying. The Legislature also amended the definition of an employee of a political subdivision to include consultants, independent contractors, and others hired by local governments. These changes recognize that certain activities of local governments are part of the ordinary course of business and should not be considered lobbying. We thank the CFB for working on these changes and urge that these concepts remain in place when the CFB makes its final recommendations on further changes.

Challenges remain, however, with the recent legislative changes to the lobbying statute that may cause confusion and consternation for local governments. Our remaining comments focus on the need for better clarity for local government employees in certain scenarios.

As the CFB considers its recommendations for local government lobbying, we also urge it to be mindful of the many public disclosure requirements and other laws promoting transparency that political subdivisions already comply with. Most purchasing decisions are subject to competitive bidding statutes. City council decisions and discussions are subject to open meeting laws. The

availability of information with respect to what a city or similar subdivision is deciding and the information that goes into those decisions is much more readily available than at a state level.

Communications Between Local Governments Regarding Joint Activity Should Not Be Considered Lobbying

Local governments in Minnesota frequently collaborate on projects that involve decision-making by their respective bodies. A city and a county may work together on the construction of a building, a road, or a park. A watershed district and a township may collaborate on a wetland project. A city and a township may negotiate an orderly annexation agreement. A school board may purchase or sell land from a county. There are countless permutations of potential intergovernmental projects in which the employee of a local government may be having discussions with another governmental entity that could be construed as attempts to influence a decision by that other government entity. Requiring such employees to register as lobbyists when they spend more than fifty hours in any month on such work would be cumbersome and would not further the public interest in transparency. We urge the CFB to make clear that such cooperative work between governmental entities does not fall within the definition of lobbying.

We understand that attempting to include the official action of a different political subdivision other than the political subdivision at which one is employed was originally targeted toward communications involving the Metropolitan council and local governments that may be reporting to or seeking something from it. Narrowing the definition to such circumstances may be the best approach and would allow collaboration between local governments to continue.

The Definition of Local Government Employees as Lobbyists Should Be Narrowly Construed

We appreciate that the definition of lobbyists excludes elected local officials and some unelected local officials, but we are still concerned that the definition is still too broad and confusing, especially when combined with the more expanded definition of legislative action. Specifically, Minn. Stat. 10A.01 Subd. 21 (b)(4) excludes nonelected local officials or employees of a political subdivision unless:

> . . . [u]nless the nonelected official or employee of a political subdivision spends more than 50 hours in any month attempting to influence legislative or administrative action, or the official action of a political subdivision other than the political subdivision employing the official or employee, by communicating or urging others to communicate with public or local officials, including time spent monitoring legislative or administrative action, or the official action of a political subdivision, and related research, analysis, and compilation and dissemination of information relating to legislative or administrative policy in this state, or to the policies of political subdivisions.

We are concerned that the highlighted language regarding research, analysis, and compilation of information relating to legislative or administrative policy could sweep up local government employees working on projects that result in legislation, such as a bonding request. Countless hours are spent on activities such as research or analysis that become part of the materials related

to a legislative bonding request, such as engineering studies or financial analysis. Public employees would need to track all their hours when working on projects related to legislative action to determine whether they are exceeding the 50-hour threshold in any month. Identifying all public employees who exceed that threshold as lobbyists does not serve the public interest. We urge the CFB to narrow and simplify the category of local government employees who are considered lobbyists to those who actively participate in advocacy communication with legislators.

Thank you very much for your time and consideration. If you have any questions or would like to discuss this issue further, please contact me or our attorney, Elizabeth Wefel, at eawefel@flaherty-hood.com.

Shelly Carlson, Mayor of Moorhead
President, Coalition of Greater Minnesota Cities

COALITION OF GREATER MN CITIES

DEDICATED TO A STRONG GREATER MINNESOTA

November 19, 2024

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

Re: Lobbying Definitions Study – Supplemental Comments

Dear Members of the Campaign Finance Board,

On behalf of the Coalition of Greater Minnesota Cities (CGMC), I am writing to supplement our earlier comments and testimony as you study and make recommendations regarding the lobbying laws as they pertain to the lobbying of public officials and local officials in political subdivisions. The purpose of this letter is to amplify and clarify a few comments that we raised in our August 12 letter and in testimony to the CFB.

Widespread Cooperation Between Governmental Entities Requires Narrow Definition of Lobbying

We would like to reiterate our concern about keeping the definition of lobbying as it pertains to activities between local government subdivisions as narrow as possible. These concerns were also outlined in our August submission, but we write again to emphasize just how fundamental intergovernmental collaboration is to many local government roles. Specifically, as the CFB continues to study this issue, we want to emphasize that a narrow definition of lobbying is necessary to avoid the sudden inclusion of hundreds or thousands of local government officials, without any additional public benefit. Collaboration between local government subdivisions should be considered a hallmark of good government, not a trigger for lobbying requirements.

The expansion of the definition of lobbying newly brought more than 3,000 local government subdivisions under the purview of campaign finance laws. Undoubtedly, multiple appointed officials or employees at almost all these entities engage regularly in projects that involve "official action" by their respective bodies and other government entities, whether it be a construction project, a purchase or sale, contracting for services, or something else. Many employees may be engaged in multiple projects performing activities that meet the very broad definition of lobbying under Minn. Stat. 10A.01, Subd. 21(4), which could trigger lobbyist registration and reporting requirements based on activities that most people would not consider lobbying. This collaboration between governments is not isolated to larger, special projects. It happens every day.

For example, a city's engineering department and public works staff engage daily with their counterparts in county or state government regarding the maintenance of basic public infrastructure, including roads, water and wastewater. This collaboration is expected by the public, which demands that basic infrastructure be safe and well-maintained regardless of which level of government is responsible for it.

Cities and counties routinely collaborate, which arguably may include trying to influence one another—on projects in ways that have not traditionally been considered lobbying. For example, appointed officials or staff who engage with one another to iron out specific design elements, cost allocations between levels of government, or important decisions about the timing of project delivery have traditionally been understood to be simply doing their jobs. Under too broad a definition, these activities might be considered lobbying other local governments. Therefore, we urge that the definition of lobbying be narrowed as it pertains to cooperation between local government subdivisions.

Requiring Lobbying Registration Could Impose Costly and Unnecessary Burdens on Local Government Officials

Throughout the discussions on lobbying laws, the question has been raised regarding whether requiring a host of local government officials to register imposes a burden that should cause concern. We believe that answer is yes for a variety of reasons:

- **Unnecessary and confusing record keeping.** To determine whether any given employee or unelected official must register and to prepare the information needed for reporting, many local government employees will need to closely track their time on any project or projects involving another government entity if that work involves communicating or asking someone else to communicate with someone at another local subdivision or performing research, analysis, or compilation of information relating to that project. The employee may find it challenging to determine whether their conduct fits within the definition of lobbying. The employee may not know whether they will reach the 50-hour threshold on a project or combination of projects until the end of the month, so there may be multiple instances where they track their time but ultimately do not need to register. Requiring this level of record keeping on collaborative projects will be costly, in terms of time and money, but it will not likely provide information of value to justify that cost.

- **Restrictions on the unwary could lead to fines.** Lobbyists are subject to restrictions not imposed on the general public. For example, lobbyists are prohibited from making campaign donations during the legislative session. One could easily envision a city engineer who now falls within the definition of lobbyist getting asked to make a campaign donation by his friend down at the local Rotary Club who has no idea that this person is a lobbyist, and neither thinks twice about the fact that it's the legislative session. That engineer could now be facing a fine. Failure to register or missing a reporting deadline by even a day can result in a fine. Even if fines are rare and/or complaint driven, it does not serve a public purpose to put those employees, or taxpayer money, in the position to face a potential fine.

Applying Broad Lobbying and Reporting Burdens to Local Officials Does Not Significantly Benefit the Public

Finally, we want to continue to be very clear that a narrow definition of lobbying for these purposes can be a win-win. It would avoid placing unnecessary burden and liability on local officials and do so without diminishing the information already available to the public on local government activities.

Local governments are already subject to extensive public data, disclosure, open meeting, and information retention laws. In fact, in nearly all cases, the activity, records, communications, and deliberations of local governments are *already* public to a much greater degree than at other levels of government—particularly when contrasted against the state legislature.

Other Considerations Regarding Local Government Lobbying

Finally, we wanted to distinguish some recent comments from current and former elected local officials. Some recent comments in this process have advocated for applying lobbying restrictions to local governments in order to add transparency to situations where attorneys or others are seeking to influence individual council members or staff to a specific end, for a specific client. It is important to note that those are different from the situations that we discussed above.

Moreover, while those comments are worth considering, cities also have existing tools at their disposal to address some of these issues. Cities that seek to shine a light on non-public communications often adopt rules or codes of ethics that include specific disclosure procedures and penalties for "ex parte" communications. Adding layers of lobbying reporting may not be necessary to achieve those commenters' goals.

Thank You

Thank you very much for your time and consideration. If you have any questions or would like to discuss this issue further, please contact me or our attorney, Elizabeth Wefel, at eawefel@flaherty-hood.com.

Shelly Carlson, Mayor of Moorhead
President, Coalition of Greater Minnesota Cities

COMMON CAUSE MINNESOTA
546 Rice Street
Saint Paul, MN 55103
612.605.7978
www.commoncause.org/mn

November 13, 2024

To the Honorable Members of the Campaign Finance Board,

Common Cause MN is a nonpartisan grassroots organization working to create open, honest, and accountable government, more information about our work at www.commoncause.org.

Minnesota is home to over 24,000 multipartisan members across the state and despite belonging to various MN party affiliations, or not being affiliated, the one thing they've come together to do is support our work ensuring our Republic's democracy is safeguarded.

We believe democracy is how a free society resolves its differences. To do that well, there must be an opportunity for all to give input into decisions made by elected and appointed leaders and transparency as to who is giving this input. This is how we ensure decisions are fair, produce equitable outcomes, and reflect our communities, our values, and our priorities.

The ensure greater parity among grassroots citizen lobby efforts and professional lobbyists, we urge the Campaign Finance Board to prioritize making lobbying requirements clearer and easier to digest for community stakeholders and other Minnesotans who are not professional lobbyists. We also formally request that the Board prioritizes transparency as it makes recommendations to the Legislature.

The exchange during Marie Ellis' testimony, Minnesota Council of Nonprofits, during the Lobbying Listening Session, highlights the significant confusion about which activities count as lobbying, and which do not. If the Minnesota Council of Nonprofits with multiple experienced staff focused on legislative advocacy is confused, this is an even greater issue for smaller grassroots organizations, especially those from BIPOC communities, who may have even less experience advocating at the state or local level.

Talking to decision makers is intimidating enough; being unsure what the rules are and how to ensure that you're in compliance has discouraged some organizations from engaging at all. Everyone loses when there are barriers to engagement. A healthy democracy is one that is transparent and open where decisions are made with insights from a broach section of impacted communities, especially those most directly impacted by these decisions.

We urge the Board to create practical guidance about the lobbying requirements in consultation with small organizations, especially those from impacted BIPOC communities, who are newer to this arena. The guidance should provide information in plain language as to which activities:

- constitute lobbying and count toward the threshold that requires registration,
- constitute "lobbying activity" and need to be reported by Principals, but don't count toward the threshold, and
- which don't count as either one.

A resource like this builds greater parity promoting civic engagement, empower grassroots communities, and remove barriers to participation.

In addition to prioritizing clarity, we urge the Board to prioritize transparency as it makes recommendations to the Legislature.

The public has a right to know who is trying to influence elected and appointed officials as they make decisions. For starters, Minnesota should maintain, not increase, the $3,000 threshold for when a person needs to register as a lobbyist. Additionally, we ask that information should be centralized within the Campaign Finance Board body, making access to pertinent information about lobbying at the state and local level easy for the public to find.

Furthermore, the lobbying threshold should include the time a person spends urging decisionmakers to act, including time spent testifying at a public hearing. Not having that detail compromises the intent in maximizing accountability and transparency because this information would not be captured. The person looking up the information would have to know which hearing(s) it was that a specific topic was discussed and go to a different website, if the information is online, to find the records or recordings from a specific meeting of a local political subdivision (or the Legislature if this was expanded to the state level) to see who testified. This is in effect a step backwards and would counteract added transparency that the Campaign Finance Board intends to provide with the recent changes to lobbyist reporting. The public deserves more access to information about who is being paid to influence decisions.

Other ways to protect the public's right to know who is being paid to influence decisions are to maintain the lobbying reporting requirements for all types of local decisions and for everyone urging action including "experts." Some groups are arguing that project-specific decisions should be exempt from the lobbying requirements. We strongly disagree. A neighborhood is impacted when a gas station asks for a zoning variance, so the public has a right to know if the gas station owner, the convenience store chain, or even Exxon Mobil is pushing the decision. Similarly, the public has a right to know about everyone who meets the threshold who is urging action, regardless of their credentials or position in a company. If the Board provided clear guidance about the activities that count as lobbying as we urge above, then there is no reason to exempt any category of experts. Transparency for the public certainly outweighs a little additional paperwork.

Thank you for your dedication to *all* Minnesotans as you develop your recommendations.

Annastacia Belladonna-Carrera
Annastacia Belladonna-Carrera
Executive Director

August 19, 2024

Minnesota Campaign Finance and Public Disclosure Board

190 Centennial Office Building
658 Cedar Street
St. Paul, MN 55155

Re: Lobbying Definitions Study

Dear Minnesota Campaign Finance Board:

On behalf of the Greater Minnesota Partnership ("GMNP"), an organization focused on expanding economic prosperity in Greater Minnesota, thank you for the opportunity to weigh-in on the state's campaign finance regulations. Members of the GMNP are nonprofits, Economic Development Associations, businesses, local chambers of commerce, and Greater Minnesota cities.

Should the laws regulating lobbying distinguish between lobbying public officials in state government and lobbying local officials in political subdivisions?

Yes, the laws regulating lobbying should distinguish between lobbying state officials versus lobbying local officials in political subdivisions.

Most of our members work regularly with local government to address community challenges and opportunities in a spirit of collaboration and for mutual benefit. The work our members do with local governments is different in nature than the advocacy and lobbying that they do at the state level. It would be unusual in Greater Minnesota communities to be advocating for changes to a city ordinance or around the allocation of resources, but most of our members regularly work with local governments on community issues in the normal course of business. These activities can include working with city staff and local government officials to address transportation issues with a development project or working with local government to develop a housing project as just two examples.

Members have expressed concerns that changing the requirements for this sort of activity to require reporting it to the Campaign Finance Board as lobbying would vastly expand the reporting requirements for these community groups in terms of the number of staff reporting and the breath of the activities they would need to report. This change could also potentially create issues for some members around their nonprofit status and would vastly expand the time and resources that organizations would be required to commit to reporting. MGNP members strongly encourage the Board to distinguish between activities lobbying public officials in state government and lobbying local officials in political subdivisions and to narrow those activities that constitute lobbying with respect to political subdivisions.

Feedback on the Definition of Local Government Employees as Lobbyists

Members have also expressed concern that the definition of lobbyist under Minn.Stat. 10A.01 Subd. 21 (2(b)(4) is overly broad. Under the current definition, it's easy for an employee of a political subdivision to spend more

than 50 hours in any month in the normal course of business doing work that meets the definition in (4). To ensure compliance with this statute, employees will need to track all hours doing qualifying work so in any given month they can report those activities if they exceed 50 hours. We urge you to narrowly construe the definition of local government employees as lobbyists.

Thank you again for giving us a chance to share our feedback. If you have questions, please contact me at darielle@gmnp.org.

Thank you,

Darielle Dannen
Executive Director
Greater Minnesota Partnership

From: Coyle, Peter J.
To: Sigurdson, Jeff (CFB); Olson, Andrew (CFB)
Cc: Mark Foster - Housing First Minnesota (mark@housingfirstmn.org); Coyle, Peter J.
Subject: Current Draft of CFB Rules
Date: Friday, March 01, 2024 2:26:49 PM

Good afternoon, our firm represents Housing First Minnesota, a homebuilder trade association representing thousands of Minnesota builders, developers and suppliers. I am submitting comments regarding the proposed expansion of the lobbyist registration and reporting requirements as reflected in proposed Minn. Rules Ch. 4511. Member company representatives routinely engage local governments both formally and informally to advocate for their proposed housing projects; while we appreciate the desire of the drafters to provide more transparency to that process, it is important to note that every application to plan and develop a new housing development is statutorily required to undergo a significant public process, replete with signed applications and public hearings at which the identity of the applicant companies and their hired representatives must be disclosed. The proposed rules add one more regulatory burden to an already extensive public process which, in our opinion, provides minimal or no new insight into the identity of project applicants or their hired representatives.

Having said that, we appreciate the positive changes made to the draft rules and urge your consideration of two additional changes:

1. We recommend that 4511.1000, subpart 1 be amended to limit registration to advocating for an amendment to the local jurisdiction's comprehensive plan. The rationale is that no housing project can advance if the local comprehensive plan doesn't authorize it in the first instance. Any request for a zoning amendment or subdivision is statutorily predicated on being in compliance with an approved comprehensive plan. The comprehensive plan process will adequately identify the project applicants if that is deemed important. As noted above, the follow-on process is already very transparent.
2. We also recommend that 4511.1000, subpart 1 be further amended to not require registration for any public proceeding in which a landowner or their hired representative is statutorily required to participate in order to preserve a legal objection, such as when a city advances a special assessment proceeding under Minn. Stat. 429.169 and proposes to assess project costs to affected landowners over their objection; failure to confirm an objection to a proposed assessment at the scheduled assessment hearing constitutes waiver of the objection and precludes any future challenge to it. It seems to us fundamentally unfair and burdensome to both compel participation in a statutory process in order to preserve a legal right and convert it into "lobbying" requiring registration and reporting.

Thank you for considering these comments.

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October 24, 2024

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

Re: Lobbying Definitions Study

Dear Members of the Campaign Finance Board,

Thank you for this opportunity to comment on proposed changes to add transparency to the process of lobbying of state & local officials. I currently serve as the Executive Director of the Bicycle Alliance of Minnesota, however these comments are my own. From 2009 - 2021; I served on the Rochester City Council. In that environment I saw pressure placed on myself and my peers by individuals paid to influence policy and decisions related to the billions of dollars spent by local governments in the state of Minnesota. Most of the contact I and my peers had with paid lobbyists or their surrogates were outside of public meetings. This is why strong disclosure standards are so important.

Based on my own experiences I would encourage the state to enact a broad definition of lobbying that includes all individuals who are paid entirely or in part to engage with individual elected officials, professional staff, advisory boards or full elected bodies. Further this definition should be extended to paid individuals who organize unpaid individuals to lobby on behalf of their cause.

In the case of the Rochester City Council, we were often lobbied by the Rochester Area Chamber of Commerce, Rochester Area Builders Association, Southeastern Minnesota Association of Realtors, and Sierra Club among others. In some cases I agreed with these groups, others I did not. But in all cases, the public deserves to know who was lobbying the City of Rochester.

I would urge the board not to carve out any exceptions for individual professions or individual parts of the governing processes. In local government the application of policies (quasi-judicial) by appointed bodies, elected bodies, and professional staff is as important as the creation of policy itself. Disclosure of lobbying activities is not a high bar and is a fair expectation for people paid even a de minimis amount for direct or indirect lobbying.

A lobbyist is not a bad person and many times their intentions may be noble. Irrespective of the person or the cause; no one should be allowed to lobby without the sunlight of disclosure. Disclosure is particularly important when lobbying happens in front of government bodies where little or no media may be present. This is certainly the case with most local governments.

In closing, I would ask the board to ensure all those paid to influence local and state governments can do so, but only with the sunlight of disclosure.

Michael Wojcik
984 Fox Knoll Dr. SW
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From: Graham Berg-Moberg
To: Sigurdson, Jeff (CFB)
Subject: Minnesota Association of Townships" Initial Comments on 10A issues
Date: Monday, July 29, 2024 2:48:06 PM

Hi Jeff,

Thank you for highlighting this issue for us. I will be present at the August 19 meeting; I'm looking forward to a productive conversation on these issues. In any event, let me dive right in to our comments.

Present law is structured in a way that is problematic for township officers in a variety of ways. First, a word about townships so that the Board understands what makes us distinct and unusual among local governments. Townships were the original form of local government in Minnesota, established in the late 1700s when Congress ordered a survey that divided the territory into 36 square mile tracts of land. Townships exist in every area of the state, including the metropolitan area. Some, with populations of more than 1,000 function in much the same way as a small city. Most are much smaller. A township board of supervisors, usually three members, are elected by their residents to staggered three-year terms, and make up the township governing body.

The annual meeting is what really sets townships apart from other forms of local government. At this meeting, the residents of the township have a direct voice in how the township will be run, can pass laws on certain subjects, and can set their own taxes. As a result, townships are not usually run by professionals. Instead, the board of supervisors is usually composed of individuals who have another primary job. As a result of Minnesota Law requiring the voters to approve their own taxes, the supervisors are subject to serious checks that other forms of government simply are not. Based on the most recent data for the state demographer's office, approximately 922,013 residents of Minnesota live in one of Minnesota's 1,780 townships. The largely non-professional nature of Township governance means that legal technicalities can be more significantly more burdensome for us

For example the inconsistencies between the gift-and-interested persons provisions in chapter 10A (which appears to include township officers) and Minn. Stat. 471.895 (which excludes them) appear to operate as a trap for the unwary. Diligent township officers looking to understand their obligations would likely look to Chapter 471 (governing municipalities generally) rather than the more specialized 10A, and would therefore likely be led to believe that certain conduct was legal when it is not. This issue is amplified by the whack-a-mole nature of the way 10A defines its terms. Minn. Stat. § 10A.071 subd. 1 provides that "official" means "a public official, an

employee of the legislature, or a local official." Local official is not defined in § 10A.071. Instead we must turn to §10A.01 subd. 22 which provides that "Local official" means a person who holds elective office in a political subdivision or who is appointed to or employed in a public position in a political subdivision in which the person has authority to make, to recommend, or to vote on as a member of the governing body, major decisions regarding the expenditure or investment of public money." Next, we must flip to subdivision 31 to find out that "political subdivision" means "a municipality as defined in section 471.345, subdivision 1." Finally, section 471.345 tells us that "municipality" means a town.

In addition, the extremely broad brush nature of the way that "lobbyist" and "principal" are defined creates particular difficulties for our members. Minn. Stat. § 10A.01 subd. 21 tells us that a "lobbyist" is an individual who is "(1) engaged for pay or other consideration of more than $3,000 from all sources in any year: (i) for the purpose of attempting to influence legislative or administrative action" and prohibitions often bind not just the lobbyist but the principal. To bring home how hard this can be to administer on the sharp end, picture a situation in which a supervisor sits down at the bar next to a neighbor who he has known for years. This neighbor happens to own a business that unequivocally lobbies the state legislature but is not located in the town and has no dealings with the town board. The neighbor buys the supervisor, his friend, a $6 beer. The town supervisor may not be aware that the neighbor counts as a principal, may not be aware that he even owns a business. There is no risk of the public being swindled by this transaction, yet it would appear to be in violation of 10A.071 subd. 2.

The Township Association believes that this could be improved with a few tweaks. First, the board might consider mirroring the language of Minnesota Government Data Practices Act, which divides townships between those with enough administrative lift capacity to handle the requirement and those that do not. See Minn. Stat. 13.02 subd. 11. The change could be as simple as adding "excluding any town not exercising powers under chapter 368 and located in the metropolitan area, as defined in section 473.121, subdivision 2" to Minn. Stat. 10A.01 subd. 33 or subd. 22. (cf. with Minn. Stat. 13.02 subd. 11. Gift-giving to all township officials with the intent to influence a decision would remain illegal. See e.g. Minn. Stat. § 609.42. Self-interested transactions would remain illegal. Minn. Stat. 365.37.

If the Board believes that this provides insufficient protection for the public, the board might consider leaving smaller townships bound, but requiring a higher degree of knowledge for the smaller townships.

Regardless, the Board can rest assured that Townships' voter-focused structure offers a strong barrier to the sort of back-scratching under-the-table skullduggery 10A aims to prevent. At the end of the day, town supervisors must submit their tax requests to the voters themselves, who may approve or deny it. Minn. Stat. § 365.431. As a result, the Township Association believes that a simpler structure for township officers is simply a better fit for the people of Minnesota.

Graham Berg-Moberg
In House Counsel
Minnesota Association of Townships

October 25, 2024

Testimony to the Minnesota Campaign Finance and Public Disclosure Board

Hello, my name is Marie Ellis and I am the public policy director at the Minnesota Council of Nonprofits (MCN). MCN is the largest statewide association of nonprofits in the country, representing over 2,000 member organizations across the state, most of which are 501(c)(3) nonprofits who also report their lobbying activity to the IRS. MCN's mission is to inform, promote, connect, and strengthen individual nonprofits and the nonprofit sector, and a large part of that work is done though our public policy advocacy and lobbying initiatives.

Thank you for this opportunity to provide testimony. While today's focus is on lobbying of local officials, my broader comments will be relevant to the conversation and hopefully helpful in guiding your decisions. MCN believes there can be a balance between ensuring transparency and simplifying the reporting obligations so that all nonprofits and individuals from historically marginalized communities can access their elected officials.

This balance must include clear practical guidance from the Campaign Finance Board as to what constitutes lobbying activity, and must offer support to nonprofits and others so that they can navigate compliance without the fear of unintended violations.

MCN appreciates the Campaign Finance Board's efforts to address significant challenges in lobbying reporting, and we urge you to consider innovative solutions to address these issues. Innovative thinking to find the right balance should include considering: higher thresholds for reporting for small organizations, aligning the state's definition of lobbying with the IRS's definition, removing some requirements for entities that already report lobbying activity to the IRS, and other ideas. To be clear, we are not advocating for any specific policies at this time, but rather for conversations that explore the ideas further.

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MINNESOTA COUNCIL OF NONPROFITS

Nonprofits support transparency and disclosure

The nonprofit sector strongly supports transparency of our own organizations, and the public's right to know who is being paid to lobby elected officials. In fact, 501(c)(3) charitable nonprofits, which make up the majority of nonprofits, already disclose information about our lobbying efforts to the IRS, and that information is free and easily accessible online. We support a strong democracy, which must include appropriate disclosures about who is being paid to lobby.

The challenges of Lobbying reporting deter some 501(c)(3) nonprofits from participating in the public debate

Reporting lobbying activity can genuinely be challenging for nonprofits, particularly small nonprofits, as well as individuals from communities that have historically been shut out of government decision-making spaces, which of course includes communities of color.

Complex and unclear lobby reporting rules can be a deterrent that keeps nonprofits from adding their valuable perspectives to the policy debate and keep them from participating in civic discourse.

One specific challenge nonprofits face in reporting compliance is that the IRS and Minnesota define lobbying differently and ask for different data. We must track lobbying time and expenses under both definitions, distinguishing between legislative, administrative, or local lobbying, and whether it is direct or grassroots.

There can be serious consequences for reporting incorrectly to the IRS, including loss of an organization's 501(c)(3) status, meaning they are no longer exempt from paying income tax, and donations to the organization would not be tax-deductible.

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Over 70% of nonprofits in Minnesota have annual revenue of under $1 million, relying on volunteers and limited staff who already juggle numerous responsibilities. These organizations do not have the resources to navigate lobbying reporting rules.

Given how high those stakes are, and the lack of practical guidance and support, it is no wonder many nonprofits steer clear of any kind of policy advocacy altogether.

Nonprofits provide critical information to decision-makers

Nonprofit organizations are vital advocates for policies that support a thriving state. We do not want the complexity of lobbying reporting to unintentionally discourage advocacy and silence the voices of those organizations.

This is not just a burden for nonprofits—it is a loss for the legislative process. These organizations provide valuable, on-the-ground insight into communities across Minnesota. Without their voices in the conversation, the policymaking process is less inclusive and critical perspectives are lost. This is particularly harmful to historically marginalized communities, whose perspectives are often misunderstood or overlooked in mainstream policy debates.

Practical guidance is missing

You might be wondering, “Is registering and reporting really that hard?” Yes, it is. The actual requirements are not the main barrier. The main barrier is the lack of practical guidance from the Campaign Finance Board or any other entity, which leads to confusion and misunderstanding.

A good example is what I’m doing right now. I’m sharing opinions with a government entity, which looks and feels like lobbying. But, I’m not discussing specific legislation or administrative rules. It’s not obvious whether this should be included in my lobbying time or not. Further, let’s say it is lobbying time. Do I

count only the 5 or 10 minutes I'm speaking with you? Or should I also count the time I spent preparing these remarks, and the time spent in conversations with many nonprofit advocates to ensure I was representing their concerns well?

Depending on what we count as lobbying, this testimony could be 10 minutes or 10 hours. I imagine there is specific guidance in a CFB Advisory Opinion, but we can't expect people to dive in that deep, especially if lobbying is not a main part of their job. We can't have a productive conversation about the $3,000 threshold if we don't have clear understanding of what activities are included in that time.

People should not need to be legal experts on the ins and outs of lobbying rules to feel comfortable talking with their elected officials.

Possible solutions

We urge the Campaign Finance Board to think big, and engage nonprofit advocates in considering reforms that would simplify compliance for nonprofits and their advocates while maintaining robust transparency measures. The Minnesota Council of Nonprofits can be a partner in this effort, in convening nonprofits to participate in these conversations, sharing our experiences, and our expertise on federal reporting requirements for 501(c)(3) nonprofits.

As noted above, we understand and appreciate the importance of transparency in lobbying. It is crucial for the public to have access to information about who is advocating for policy changes and who is being compensated for that work.

Our goal is to ensure that Minnesota's legislative process remains open and accessible to all, and that the rules do not inadvertently create or perpetuate structural barriers to participation for smaller organizations and the communities they represent — communities that are often already underrepresented in our state's policymaking. This accessibility is critical to a healthy democracy.

Thank you again for the opportunity to provide input. We look forward to working with you to find solutions that enhance both transparency and equity in Minnesota's legislative process.

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January 29, 2024

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

Michael Karbo
MGRC President

APPENDIX: FEEDBACK RECEIVED (December 2023 – January 2024)

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

What happens if they are in conflict with each other?

***

How many new lobbyist registrations do they anticipate?

***

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

***

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

***

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

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

****

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

***

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

***

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

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

***

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

***

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

***

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

***

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

***

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

***

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

***

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

***

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

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

***

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

****

Minnesota Campaign Finance Board – Local Lobbying Definition Clarifying Questions

- Presume the company owns property that impacts a public infrastructure project. Does providing engineering and real estate review of municipal plans, including feedback and required changes for activity on private property, constitute lobbying under the new regulations? Are these reviews or redrawn plans or designs expenses that need to be reported on the Lobbyist Principal Expenditure Report?

- Presume the company runs a private railroad and the political subdivision is looking for guidance on building an industrial park with access to the private rail infrastructure. Does informing the political subdivision of our design standards and operational requirements, or reviewing their plans for such a project, constitute lobbying under the new regulations? Are these reviews or plans expenses that need to be reported on the Lobbyist Principal Expenditure Report?

- If a company regularly pays a permit fee to a political subdivision and the political subdivision changes the policy by which the fee is determined, does providing feedback and/or legal arguments opposing those fee changes constitute lobbying under the new regulations?

MINNESOTA GOVERNMENTAL RELATIONS COUNCIL

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

FEBRUARY 6, 2024

1. DEFINITION OF "LEGISLATIVE ACTION"

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

> 4511.0100, Subp. 3. Development of prospective legislation. "Development of prospective legislation" means communications that:
>
> A. explain the need for legislation that has not been introduced as a bill;
>
> B. request support for legislation that has not been introduced as a bill;
>
> C. provide language, or comments on language, used in draft legislation that has not been introduced as a bill; or
>
> D. are intended to facilitate the drafting of language, or comments on language, used in draft legislation that has not been introduced as a bill.

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

> Jane attends a legislator's constituent townhall meeting. Jane stands up during Q&A to talk about how important internships are for high school students. The legislator requests a follow-up conversation to learn more about the issue. Jane and the legislator and the legislator's staff met for several hours to talk about the issue, following which, the legislator drafts a bill to mandate internships in high school. While Jane was not seeking a bill when she expressed her opinion, Jane happens to be a highly compensated individual, so does the time she has spent explaining the issue now compel her to register as a lobbyist?
>
> John attends the same community church as his state representative. After services, they often talk about issues. John has opinions about a particular energy credit in place in other states that be believes would be great for the environment, and John has remarked from time to time that it would be great if the legislator could support a similar credit if it ever came before the state legislature. Because John's company is a pass-through company, corporate revenue is attributed to his individual income taxes - so after a particularly good business year, his compensation is high and do the casual conversations about supporting an energy credit now become "legislative action" even though the energy credit never became a bill?

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

- The question inherent in these scenarios is: **what information is gained from requiring regular citizens register as lobbyists?** The U.S. Supreme Court has held that restrictions on free speech must be narrowly tailored to serve compelling governmental interests. We question whether requiring regular citizens engaging in political discourse to register as lobbyists meets a compelling government interest, and whether the proposed rules (not to mention the underlying statute) are sufficiently narrowly tailored.

- **We recommend that the section on "development of prospective legislation" be deleted or reworked** so that it does not unconstitutionally ensnare regular citizens and create additional confusion for the professional community.

- Further, **we propose that proposed rules conform with the federal definition of "legislative action" to the extent possible**. The Minnesota professional lobbying community is familiar with the federal definition, which provides more uniform direction on what does – or does not – constitute legislative activity. The nonprofit community in particular relies upon Internal Revenue Service guidance on "legislative action" and "lobbying" to ensure compliance with IRS regulations with regard to 501(c)(3) entities.

2. DEFINITION OF "LOBBYIST"

- Members of Minnesota's professional lobbying community have an inherent understanding of what professional lobbying means, and why we are different from citizens exercising their rights to petition the government. As the National Council on State Legislators (NCSL) states: **Lobbyists are not simply individuals who engage in lobbying**. Lobbyists are **professional advocates** who work to influence political decisions on behalf of individuals and organizations.

- Minnesota's new definition of "lobbyist" does not take into account the professional nature of lobbyists' work and instead expands it to individuals who are not professional advocates. In doing so, it forces ordinary citizens to monitor – and perhaps forego – their engagement with government officials.

- **We express concern with the draft rules at Part 4511.0200, which define registration parameters based on a compensation equation.** The proposed equation creates an unlevel playing field for advocates due to their compensation levels. For example, one advocate can trigger professional lobbying registration where her coworker who is spending the same time on the issue does not, solely based on compensation.

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

  For example:

  - Alaska: "Lobbyist" means a person who: (A) is employed and receives payments, or who contracts for economic consideration, including reimbursement for reasonable travel and living expenses, to communicate directly or through the person's agents with any public official for the purpose of influencing legislation or administrative action *for more than 10 hours in any 30-day period in one calendar year*; or (B) represents oneself as engaging in the influencing of legislative or administrative action as a business, occupation, or profession. Alaska Stat. § 24.45.171.

  - California: Lobbyist" means either of the following: (1) Any individual who receives $2,000 or more in economic consideration in a calendar month, other than reimbursement for reasonable travel expenses, or *whose principal duties as an employee* are, to communicate directly or through his or her agents with any elective state official, agency official, or legislative official for the purpose of influencing legislative or administrative action. Cal. Gov. Code § 82039.

  - Hawaii: "Lobbyist" means any individual who : (1) Receives or expects to receive $1,000 or more in monetary or in-kind compensation in any calendar year for engaging in lobbying; or (2) For pay or other consideration, on behalf of another person:(A) Engages in *lobbying in excess of five hours in any month* of any reporting period; (B) Engages in *lobbying in excess of ten hours during any calendar year*; or (C) Makes expenditures of $1,000 or more of the person's or any other person's money lobbying during any reporting period described in section 97-3. Haw. Rev. Stat. Ann. § 97-1.

  - Kansas: "Lobbyist" means: (1) Any person *employed in considerable degree* for lobbying; (2) any person formally appointed as the primary representative of an organization or other person to lobby in person on state-owned or leased property; or (3) any person who makes expenditures in an aggregate amount of $1,000 or more, exclusive of personal travel and subsistence expenses, in any calendar year for lobbying; (4) any person hired as an independent contractor and compensated by an executive agency for the purpose of evaluation, management, consulting or acting as a liaison for the executive agency and who engages in lobbying, except an attorney or law firm representing the executive agency in a legal matter. Kan. Stat. Ann. § 46-222.

  - Louisiana: "Lobbyist" means either: (i) *Any person who is employed or engaged for compensation to act in a representative capacity for the purpose of lobbying if lobbying constitutes one of the principal duties of such employment or engagement*. (ii) Any person who acts in a representative capacity and makes an expenditure. La. Stat. Ann. § 24:51.

- Maine: "Lobbyist" means any person who is *specifically employed* by another person for the purpose of and who *engages in lobbying in excess of 8 hours in any calendar month*, or any individual who, as a regular employee of another person, expends an amount of time in excess of 8 hours in any calendar month in lobbying. Me. Rev. Stat. tit. 3, § 312-A.

- New Mexico: "Lobbyist" means any individual who is compensated for the specific purpose of lobbying; is designated by an interest group or organization to represent it on a substantial or regular basis for the purpose of lobbying; or in the *course of his employment is engaged in lobbying on a substantial or regular basis*. N.M. Stat. Ann. § 2-11-2.

- North Carolina: Lobbyist - An individual who engages in lobbying for payment and meets any of the following criteria: a. Represents another person or governmental unit, but is not directly employed by that person or governmental unit. b. Contracts for payment for lobbying. c. Is employed by a person and a *significant part of that employee's duties* include lobbying. Exceptions: an employee if in no 30-day period *less than 5% of employee's actual duties* include engaging in lobbying; individuals who are specifically exempted or registered as liaison personnel. N.C. Gen. Stat. Ann. § 163A-250.

- Wisconsin: "Lobbyist" means an individual who is employed by a principal, or contracts for or receives economic consideration, other than reimbursement for actual expenses, from a principal and *whose duties include lobbying* on behalf of the principal*. If an individual's duties on behalf of a principal are not limited exclusively to lobbying, the individual is a lobbyist only if he or she makes lobbying communications on each of at least 5 days within a reporting period*. Wis. Stat. Ann. § 13.62.

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

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

  > The following persons shall not be deemed "lobbyists" for purposes of this chapter: (from 42 R.I. Gen. Laws Ann. § 42-139.1-3)
  >
  > (1) *Licensed attorneys* who: (i) Represent a client in a contested administrative proceeding, a licensing or permitting proceeding, or a disciplinary proceeding; and (ii) Engage in any communications with an executive branch official or office if those communications are incidental to the attorney's representation of their client rather than lobbying activities as defined in this section.
  >
  > (2) A *qualified expert witness* testifying in an administrative proceeding or legislative hearing, either on behalf of an interested party or at the request of the agency or legislative body or committee;
  >
  > (3) Any member of the general assembly, general officer of the state, municipal elected or appointed official, head of any executive department of state government, and/or head of any public corporation, or a duly appointed designee of one of the foregoing offices acting

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

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

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

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

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

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

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

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

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

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

3. POLITICAL SUBDIVISIONS

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

MGRC
Minnesota Governmental Relations Council

380 St. Peter Street, Suite 1050
Saint Paul, MN 55102
info@mngrc.org
(612) 682-7826

August 19, 2024

VIA EMAIL

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

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

On behalf of Minnesota's professional lobbying community, we are hopeful the Campaign Finance and Public Disclosure Board (CFB) will engage in a thorough dialog with MGRC and perform the research necessary to better understand the work and role of government relations professionals.

We have engaged our membership throughout the past several years to provide feedback on legislation and rulemaking related to registration and disclosure requirements for lobbyists. Our members universally support transparent, meaningful, and clear disclosure requirements. However, as the CFB embarks on this study group, we are currently hearing the following themes from our membership:

1. **We are concerned about the level of understanding and appreciation for the work professional lobbyists do and how it gets done.**

Professional lobbyists differ from citizens exercising their rights to petition the government. As the National Council on State Legislators (NCSL) states: *Lobbyists are not simply individuals who engage in lobbying. Lobbyists are* ***professional advocates*** *who work to influence political decisions on behalf of individuals and organizations*.

Minnesota's new definition of "lobbyist" does not consider the professional nature of lobbyists' work and instead expands it to individuals who are not professional advocates. In doing so, it forces ordinary citizens to monitor – and perhaps forego – their engagement with government officials.

We welcome the opportunity to provide critically important examples of this work that should be considered as additional clarity is sought on definitions and application to the work performed.

For example, appreciating the amount of time it could take to change one word in legislation could trigger certain reporting, as can merely assisting a legislator with improving their bill based on a client's expertise versus their advocacy. Currently there is no differentiation between these types of activities and the input we have received in the past from the legislature and Campaign Finance Board is there is a desire to in fact capture some of this activity but not others.

Several MGRC members have individually submitted advisory opinion requests and written comments to the CFB highlighting ambiguities in current statute and interpretation. Where much of the ambiguity lies is in the deficit of understanding what professional lobbyists do and how engagement by citizens, professional advisors and subject matter experts differ. We urge this committee to continue to engage in dialogue with our members so that the definition of "lobbying activity" is clear to all.

2. **We are concerned that the current statutory threshold to meet registration requirements does not effectively delineate between citizens and professional lobbyists.**

Minnesota requires registration for individuals who communicate with public or local officials or urge others to communicate with public or local officials after the individual is paid more than $3,000 in a year from all sources for lobbying.

Other states have created registration parameters for "lobbying" that consider not just compensation, but the **time spent on lobbying activities** and whether lobbying is a key part of their work duties. An hourly threshold is a fair approach to marking the line between citizen advocate and professional advocate, rather than relying on a case-by-case determination of compensation and activities. Furthermore, Minnesota previously had an hourly threshold. We urge this study group to strongly consider reinstating an hourly threshold that, combined with the compensation threshold, more accurately delineates between professional lobbyists, professional advisors, and regular citizens.

3. **We are concerned about the impact of new registration requirements on 1) professional experts; and 2) people serving as volunteers or on nonprofit boards.**

In 2023, the legislature adding a new definition of "legislative action" and expanded registration requirements to all "political subdivisions." This language was not well-vetted with the professional lobbying community, and it quickly became apparent there was significant confusion about WHO must register and WHAT activities constitute legislative action. The Campaign Finance Board has attempted to make clarifications through formal advisory opinion guidance and in rulemaking. However, the issue of "professional advisors" or "subject matter experts" has remained unsettled.

MGRC proposed legislation in 2024 to clarify this issue such that *an individual providing information, data, advice, professional opinions, variables, options, or direction on a topic on which the individual has particular expertise through education or professional or occupational training to a public or local official at a lobbyist's request* would not be required to register (other factors notwithstanding). This language was not adopted by the legislature, leaving professionals with disparate and confusing reporting requirements for subject matter experts working across various levels of government. We encourage the CFB to thoroughly research, consider, and recommend clarifications in this area.

Furthermore, we are concerned about a lack of clarity for individuals serving as volunteers, particularly those attending days at the Capitol and/or serving as directors on nonprofit boards. While some language has been drafted regarding volunteers in the proposed rules, MGRC membership and the nonprofit community remain confused about persons serving on nonprofit boards, persons attending days at the Capitol, and pro bono activities. We urge this committee to study these areas and engage in conversations with nonprofit leaders.

As this study group commences its work, we want to reiterate the commitment of the Minnesota Governmental Relations Council, its Board of Directors, and our 500+ members to engage with the Campaign Finance and Public Disclosure Board and the Minnesota Legislature to attain better understanding of the role professional lobbyists contribute to the legislative process as well as clarify definitions of professional advisors and volunteers, "legislative activity" relative to state and local public officials, and an updated threshold for lobbyist registration. We stand ready to work with you to achieve these objectives, with the underlying goal of transparent, meaningful, and clear lobbying disclosure requirements.

Sincerely,

Nancy Haas
President
Minnesota Governmental Relations Council

MINNESOTA REGIONAL RAILROADS ASSOCIATION

January 26, 2024

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

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

Dear Members of the Campaign Finance Board,

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

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

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

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

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

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

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

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

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

Sincerely,

Amber L. Backhaus
Executive Director
Minnesota Regional Railroads Association

MSBA

Minnesota
State Bar
Association

600 Nicollet Mall
Suite 380
Minneapolis, MN 55402

August 16, 2024

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

Board Members:

The Minnesota State Bar Association (MSBA) is a voluntary professional organization that represents over 12,000 lawyers throughout the state. As you begin your legislatively-mandated study of issues relevant to lobbyist regulations, the MSBA asks that you consider making an important distinction regarding the definition of "official action of a political subdivision." Specifically, we request that you recommend requiring lobbyist registration for anyone attempting to influence the policymaking functions of political subdivisions, but not the court-like proceedings of political subdivisions.

Most planning and zoning decisions are made by local zoning boards, commissions, and elected officials. Such actions fit in one of two categories:

1. **Legislative decisions** formulate broadly-applicable policies for future application and include such actions as passing budgets, adopting plans, and adopting ordinances or amendments to ordinances.

2. **Quasi-judicial decisions** occur when an established policy (e.g., an ordinance or state statute) is applied to particular facts. Examples include decisions on variances, conditional use permits, site-plan review, zoning code violations, and many planning commission decisions.

When making quasi-judicial decisions, the local government body applies preexisting law to a single parcel or a limited number of individuals. Typically, quasi-judicial decisions do not directly affect the entire political subdivision, so there is limited public interest. In addition, quasi-judicial proceedings function more like court actions than political proceedings. For example, stricter procedural requirements must be followed, and the body's decision is subject to review by the Minnesota Court of Appeals (in other words, the public body is essentially standing in the shoes of the district court). Conversely, when making legislative decisions, the public body has considerable discretion, fewer procedural requirements, and is generally subject to less strict judicial review.

Because of their essentially judicial nature, and because no attempt is being made to influence broad public policy, participation in a quasi-judicial process should not require lobbyist registration.

We appreciate the Board's consideration and we would be happy to answer questions or provide additional information.

Sincerely,

Bryan Lake

MSBA lobbyist
bryan@lakelawmn.com
612-227-9504

MSBA

Minnesota
State Bar
Association

600 Nicollet Mall
Suite 380
Minneapolis, MN 55402

October 22, 2024

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

Re: Comments for October 25, 2024 meeting

Board Members:

The Minnesota State Bar Association (MSBA) is a voluntary professional organization that represents over 12,000 lawyers throughout the state. As you continue studying laws regarding lobbying political subdivisions, we again urge you to recommend exempting from lobbyist registration requirements those individuals who are attempting to influence the quasi-judicial actions of political subdivisions.

As explained in our August 16, 2024 letter, when local government bodies make quasi-judicial decisions, they apply preexisting law to a limited number of people or a single parcel of property. When functioning in this capacity, local government bodies are not setting broad public policy.

It is important to note that our proposed quasi-judicial exemption is not inconsistent with existing law. Specifically, Minn. Stat. §10A.01 subd. 2 provides that, with limited exceptions, the definition of administrative action does not include "**the application or administration**" of existing rules.

We suggest that a similar quasi-judicial exemption be applied in the context of political subdivision decision-making. Perhaps something like: **"Official action of a political subdivision" does not include the application or administration of a statute, rule, or ordinance.** This would exempt individuals who are merely dealing with how existing standards are applied, but it would still cover those who are attempting to influence whether and how an ordinance is created or modified.

We appreciate the Board's consideration, and we would be happy to answer questions or provide additional information.

Sincerely,

Bryan Lake
MSBA lobbyist

My name is Paige Rohman, district 50B. Thank you for the opportunity to speak today. I recently completed two terms as planning commissioner in Bloomington, serving for six years including two years as chair. I also grew up in small town Minnesota with a parent who managed that city for almost 40 years, and so I have an appreciation for the issue of lobbying local officials in multiple types of Minnesota communities.

I am here today to express my support for expanded lobbying registration standards, especially standards that are common sense, are not onerous, and preserve our right to free speech. There are many important decisions that are made that do not happen at the elected official level. In my experience as a planning commissioner, we have significant authority as a quasi-judicial body. And while we commissioners are often the closest to and reflect the sense of the people in the community, our role is sometimes less visible to and less scrutinized by most because we are appointed.

Let me provide an example of why expanded standards are good. This past spring, toward the end of my term, we made recommendations to the council on additional areas that should be considered for final decision making at the commission level. We did this in the interest of making government more efficient, reducing administrative burden, and speeding up the bureaucratic process. These are the right things to do. But with expanded authority comes expanded opportunity for influence. When that influence happens, it needs to be done in a structured, transparent manner. Lobbying of decision makers like us should certainly fall within the scope of lobbying standards anywhere across the state. I mentioned that I grew up in small town Minnesota, and the same level of transparency is just as good of an idea there as it is in a city like Bloomington.

I find the standards being considered to be reasonable. They do not impede free speech, they do not impede the ability of lobbyists to do what they do. What they do, however, is provide good information to the public. If this is the right thing at the state level and a handful of metro-area cities, it's the right thing for government lobbying across the state. I know some have suggested quasi-judicial bodies should not be subject to these standards, and I disagree. Anybody who can make a final decision on behalf of the people should be governed by these standards. Carve outs only invite suspicion and create potential division. And I think everyone can agree that we don't need more of that in our society today.

Thank you for your consideration.

SCALE
Scott County Association for Leadership & Efficiency

Members

Cities:
Belle Plaine
Credit River
Elko New Market
Jordan
New Prague
Prior Lake
Savage
Shakopee

Townships:
Belle Plaine
Blakeley
Cedar Lake
Helena
Jackson
Louisville
New Market
St. Lawrence
Sand Creek
Spring Lake

School Districts:
Belle Plaine
Burnsville-Eagan-Savage
Jordan
New Prague
Prior Lake-Savage
Shakopee
Shakopee Area Catholic Schools
Southwest Metro Intermediate District

County Entities:
Scott County
Scott County Community Development Agency
Scott County Township Association

Tribal Community:
Shakopee Mdewakanton Sioux Community

Regional Entities:
Metro Cities (AMM)
Minnesota Valley Transit Authority
Prior Lake-Spring Lake Watershed District
Scott Soil & Water Conservation District
Three Rivers Park District

August 15, 2024

Minnesota Campaign Finance Board
658 Cedar Street,
Suite 190
St. Paul, MN 55155
Attn: Jeff Sigurdson, Executive Director

Re: SCALE Comments on Potential Changes to Minnesota's Law Regulating Lobbying Local Units of Governments

Dear Mr. Sigurdson and Members of the Minnesota Campaign Finance Board:

On behalf of the Scott County Association for Leadership and Efficiency (SCALE), I am writing in response to the Board's call for input regarding potential changes to Minnesota's law regulating lobbying of local units of government. We appreciate the opportunity to contribute to this important discussion and offer our perspective on the matter.

Introduction
SCALE is a unique organization designed to facilitate efficiency and conversation across county, tribal, city, township, school, and other governments in Scott County. Our mission aligns closely with the principles of transparency and good governance. We commend the Board's initiative to study and potentially refine the distinctions between lobbying public officials and local officials in political subdivisions.

SCALE members fully support full transparency in local governments to their constituents. But, we believe that the 2023 law, without substantial modifications, may have significant unintended consequences which will frustrate, rather than foster, transparency. We offer the following considerations and recommendations:

Key Considerations and Recommendations: Unlike the Minnesota Legislature or state agencies, local governments are already highly transparent entities, *especially* to the residents of our communities. For example, the Minnesota Open Meeting Law ensures that discussions of official business among a quorum of local officials occur only with proper public notice and opportunity for public attendance. The gift ban prohibits gifts from "interested persons" to local officials. This inherent transparency differs significantly from the more private nature of legislative lobbying at the state level. In crafting its revisions, we urge the Board to recognize these fundamental differences and tailor any new regulations to complement, rather than duplicate, existing transparency measures in local governments.

1. **Redefining "Local Lobbying"** The current broad definition of "lobbying" inherently assumes a relationship or transaction that is common at the Legislature and state agencies, and very *uncommon* at the local level. Merely expanding the existing definition to local officials will, without question, inadvertently capture routine interactions between citizens and their local governments, potentially stifling civic engagement and unnecessarily burdening local officials and citizens alike. *Recommendation:* We propose creating a definition of "local lobbying" that more closely aligns with what public expectations of who a "lobbyist" is:

- A "local lobbyist" should be defined as a person or firm paid by a client specifically for the purpose of advocacy before a governmental agency.
- The primary purpose of the lobbyist should be *advocacy*, not information-sharing or where discussion of an official action is ancillary to the regular business of the purported "lobbyist."
- Exemptions should be clearly stated for:
  - Local business owners collaborating with local officials in the regular course of their business
  - Community relations representatives of large businesses require regular interactions with local officials (e.g., electric utilities, railroads, communications companies).
  - Residents leading specific efforts to change local laws, even where expenditures may be made to influence the outcome, if the expenditures are for a "one off" and not part of the resident holding themselves out as a "local lobbyist."
  - Professionals providing specific expertise (e.g., engineers, architects, lawyers)

2. **Uniform Treatment of Local Governments** The current population-based distinction in lobbying requirements creates an arbitrary divide between similarly functioning local governments. We agree with Rep. Coulter that the distinction between (for example) Bloomington and Shakopee is arbitrary. *Recommendation:* Treat all local units of government the same, regardless of population size. This approach recognizes that while larger municipalities may experience more lobbying activity, the fundamental nature of local government operation remains similar across the state.

3. **Local Disclosure vs. State Reporting** Residents seeking information about "local lobbying" activities are far more likely to look to their local government than to a state agency for information about that activity. *Recommendation:* Consider a modified disclosure requirement that mandates local units of government maintain and make available records of "local lobbying" activity to their residents upon request. This approach would be more accessible to the public and more manageable for those required to report. Local governments could comply in a way that best fits their communities. Minneapolis, for example, may have a volume of local lobbying activity that requires a searchable database with regular reporting. Northome may go years or decades without any such activity, and should it occur, may merely keep a record of who was retained, for what purpose, as a document available upon request to a resident.

4. **Balancing Transparency and Administrative Burden** Any new regulations should strike a balance between providing meaningful transparency and avoiding undue administrative burdens on local governments and citizens engaging with their local officials. The board should clearly express its desire to avoid creation of a chilling effect between residents and their local officials. *Recommendation:* Consider a tiered approach to reporting requirements based on the nature and frequency of lobbying activities, rather than the size of the local government.

Conclusion

SCALE believes that with thoughtful modifications, the lobbying regulations can achieve their intended purpose of transparency while respecting the unique nature of local governance and citizen engagement. We stand ready to collaborate with the Board in refining these regulations to best serve Minnesota's communities.

We appreciate your consideration of our input and would welcome the opportunity to discuss these matters further.

Sincerely,

Commissioner Barbara Weckman Brekke
Chair
Scott County Association for Leadership and Efficiency (SCALE)

Sean Hayford Oleary
Richfield City Council, Ward 2
7229 2nd Ave S
Richfield MN 55423

October 23, 2024

Members of the committee:
As a local elected official, I am in favor of additional study of local lobbying and reasonable requirements for registration, when hired professionals work to influence city council members like me.

I have served as a Richfield City Council member for four years, and previously served six years as a member of the Richfield Planning Commission. Although this issue is not part of our city legislative platform, I have experienced the need for greater regulation here. Both as a Planning Commissioner and City Council member, I have had calls and meetings from hired contractors (attorneys, developer representatives) who were attempting to influence the process.

There is value in developers and their representatives sometimes meeting one-on-one with electeds, allowing an informal conversation and discussion of details that are difficult to manage in the formal approvals. However, there is also a need for transparency when this occurs.

Just this year, I received a call from a hired attorney, who described himself as trying to help a local business cut through red tape with our staff. In fact, this individual was attempting to avoid the required public process, by persuading electeds to pressure staff and look the other way on his client's applications. I was suspicious of his description of the situation, but I reached out to staff only because I recognized the attorney's name from a previous approval I considered when I was a member of the Planning Commission.

I shouldn't have had to recognize an attorney by name to understand the scope of his lobbying efforts. This information should be freely available to all local elected officials, and to the public at large. We need rules that will help bring needed transparency, and ensure that local officials like me can help make decisions that are fair to the Minnesotans we represent.

Thank you for your consideration.

Sean Hayford Oleary
Richfield City Council member, Ward 2

Appendix Two

Memo on Political Subdivisions

MINNESOTA CAMPAIGN FINANCE BOARD

Date: November 27, 2024

To: Board members
Nathan Hartshorn, counsel

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

Subject: Rulemaking update and draft resolution approving final proposed rule language

A notice regarding the Board's proposed administrative rules and the formal comment period was published in the State Register on October 7, 2024. The comment period ended on November 6, 2024. The Board received four comments and no requests for a public hearing.[1] As a result, the hearing before an administrative law judge, tentatively scheduled for December 17, 2024, has been canceled.

Now the Board needs to consider, and vote on a resolution approving, the final proposed rule language. After that occurs, the proposed rule language will be submitted to the Governor's Office for final review and the Revisor's Office will be asked to incorporate any modifications to the language. Then, the final language, the comments received during the 30-day comment period, the Board's responses to those comments, and other documents listed within Minnesota Rules 1400.2310 will be submitted to the administrative law judge overseeing the rulemaking process. Once that occurs, the administrative law judge will approve or disapprove the proposed rules within 14 days pursuant to Minnesota Statutes section 14.26, subdivision 3.

Board staff has drafted detailed responses to the comments received during the 30-day comment period, and has drafted four modifications to the proposed rule language based on those comments. The proposed modifications are as follows:

- Additional changes to the definition of "compensation" under Minnesota Rules 4501.0100, subpart 4, to clarify that the term does not include payments related to FICA taxes, disability insurance or benefits, or life insurance. This modification is based on a comment submitted by the Minnesota Council of Nonprofits.
- Changing the term "gross compensation" to "compensation" within the definition of the phrase "pay or consideration for lobbying" to be codified at Minnesota Rules 4511.0100, subpart 5a. This modification is based on a comment submitted by the Minnesota Council of Nonprofits.

[1] The comments are available at cfb.mn.gov/citizen-resources/the-board/statutes-and-rules/rulemaking-docket.

- Changing the term “gross compensation” to “compensation” within a rule regarding the lobbyist registration threshold to be codified at Minnesota Rules 4511.0200, subpart 2a. This modification is based on a comment submitted by the Minnesota Council of Nonprofits and is directly related to the proposed modification to the definition of the phrase “pay or consideration for lobbying.”
- Adding tax abatement and tax increment financing, used to support private housing or business developments, to the list of decisions that are categorically defined as major decisions regarding the expenditure or investment of public money within the proposed rule to be codified at Minnesota Rules 4511.1100, subpart 2. This modification is based on a comment submitted by Representative Nathan Coulter and was outlined during the November Board meeting.

Redlined versions of the four rule subparts to potentially be modified are attached.[2] Also attached are copies of the comments received by the Board during the 30-day comment period and a draft document responding to those comments, which explains the need for the proposed modifications. Lastly, a draft resolution approving the final proposed rule language is attached.

A motion is needed to approve the proposed modifications to the draft rules, and the draft resolution. If Board members have concerns regarding the draft responses to comments received during the 30-day comment period, those will need to be addressed during the December Board meeting.

Attachments:
Redlined rule language to potentially be modified
Comments received during 30-day comment period
Draft responses to comments received during 30-day comment period
Draft resolution approving final proposed rule language

[2] The complete proposed rule language approved by the Board in June 2024, with minor changes made by the Revisor’s Office, is available at cfb.mn.gov/pdf/legal/rulemaking/2023/Revisor_draft.pdf.

Redlined Rule Language to Potentially be Modified

Rule language to be added or struck based on the proposed language approved by the Board in June 2024 is in black, and underlined or marked with a ~~strike-through line~~, respectively. Rule language to be added or struck based on modifications to that language is in red, and underlined or marked with a ~~strike-through line~~, respectively

CHAPTER 4501, GENERAL PROVISIONS

4501.0100 DEFINITIONS.

. . .

Subp. 4. **Compensation.** "Compensation" means every kind of payment for labor or personal services, including any amount withheld by an employer for the payment of income tax. Compensation does not include payments ~~of Social Security~~ for Federal Insurance Contributions Act taxes, unemployment ~~compensation~~ taxes, insurance, or benefits, workers' compensation insurance or benefits, disability insurance or benefits, life insurance, health care insurance or benefits, retirement benefits, or pension benefits.

. . .

CHAPTER 4511, LOBBYIST REGISTRATION AND REPORTING

4511.0100 DEFINITIONS.

. . .

Subp. 5a. **Pay or consideration for lobbying.** "Pay or consideration for lobbying" means the ~~gross~~ compensation paid to an individual for lobbying. An individual whose job responsibilities do not include lobbying, and who has not been directed or requested to lobby on an issue by their employer, does not receive pay or consideration for lobbying they undertake on their own initiative.

. . .

4511.0200 REGISTRATION.

. . .

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

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

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

. . .

4511.1100 MAJOR DECISION OF NONELECTED LOCAL OFFICIALS.

. . .

Subp. 2. **Actions that are a major decision regarding public funds.** A major decision regarding the expenditure or investment of public money includes but is not limited to a decision on:

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

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

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

D. tax abatement, tax increment financing, or expenditures on public infrastructure, used to support private housing or business developments.

. . .

Comments Received During 30-Day Comment Period

Table of Contents

From: Rep. Nathan Coulter (house.mn.gov)
To: Sigurdson, Jeff (CFB)
Cc: beth.fraser@mnsenate.gov; John Boehler
Subject: Comment on Proposed Rule
Date: Tuesday, October 15, 2024 11:16:40 AM

Jeff,

A proposed CFB rule was brought to my attention by Beth Fraser and John Boehler, and I wanted to offer a thought. The rule I'm referring to is:

4511.1100 MAJOR DECISION OF NONELECTED LOCAL OFFICIALS.
Subpart 1. Major decision regarding the expenditure of public money. Attempting to influence a nonelected local official is lobbying if the nonelected local official may make, recommend, or vote on as a member of the political subdivision's governing body, a major decision regarding an expenditure or investment of public money.
Subp. 2. Actions that are a major decision regarding public funds. A major decision regarding the expenditure or investment of public money includes but is not limited to a decision on:
A. the development and ratification of operating and capital budgets of a political subdivision, including development of the budget request for an office or department within the political subdivision;
B. whether to apply for or accept state or federal funding or private grant funding;
C. selecting recipients for government grants from the political subdivision; or
D. expenditures on public infrastructure used to support private housing or business developments.
Subp. 3. Actions that are not a major decision. A major decision regarding the expenditure of public money does not include:
A. the purchase of goods or services with public funds in the operating or capital budget of a political subdivision;
B. collective bargaining of a labor contract on behalf of a political subdivision;
or
C. participating in discussions with a party or a party's representative regarding litigation between the party and the political subdivision of the local official.

My only comment is on Subpart 2, Section D, referring to "expenditures". My concern is that the term could be construed as only referring to direct expenditures, not more indirect forms of financing such as Tax Increment Financing, land value write-downs, etc. I think some clarification is warranted – perhaps something like "expenditures and/or financing"?

Thanks!

Nathan

Representative Nathan Coulter

HD 51B – Bloomington
rep.nathan.coulter@house.mn.gov
651-296-4218

For more information and updates, check out my Facebook page and sign up for Email Updates.

Strong School Boards … Strong Minnesota

Minnesota Campaign Finance Board
190 Centennial Office Building
658 Cedar Street
St. Paul, MN 55155-1603

November 1, 2024

Re: Proposed Permanent Rules Relating to Campaign Finance

On behalf of the Minnesota School Boards Association (MSBA), I submit comments to the Minnesota Campaign Finance and Public Disclosure Board (CFB) regarding the proposed administrative rules relating to campaign finance, lobbying, and audits and investigations.

MSBA is a private, nonprofit organization that supports, promotes, and strengthens the work of Minnesota school boards. Every Minnesota school district is an MSBA member. MSBA employs more than 20 staff members with over 150 years of combined experience in the areas of governance, management, finance, communications, policy, legal matters, elections, and advocacy. MSBA provides workshops, resources, services, and connections designed to help boards save time, reduce expenses, govern efficiently, and stay inspired.

MSBA greatly appreciates the discussions with CFB staff regarding lobbyist regulation.

Development of prospective legislation

Development of prospective legislation" means communications that request support for legislation that has not been introduced as a bill, communications that provide language, or comments on language, used in draft legislation that has not been introduced as a bill, or communications that are intended to facilitate the drafting of language, or comments on language, used in draft legislation that has not been introduced as a bill.

MSBA regularly receives requests for information regarding prospective legislation from state legislators, state agencies and departments (including the Minnesota Department of Education), and the executive branch. The scope of this definition may be too broad as it includes communications that serve to share MSBA's experience and expertise rather than to affect potential legislation.

An exception to "development of prospective legislation" is "responding to a request for information by a public official." The term "public official" is not defined in the existing or proposed rules. MSBA regularly receives requests for information from the Minnesota Department of Education and other state agencies. It is not clear whether these employees, including the Commissioners of these agencies, would constitute a "public official" for purposes of the proposed rule.
The line between "developing" and "responding" is uncertain. Similarly, the exception for "providing information to public officials in order to raise awareness and educate on an issue or topic" may be difficult to distinguish from development of prospective legislation.

MSBA holds an annual meeting, the Delegate Assembly, at which Minnesota's school board members gather to discuss resolutions and potential legislation. It is not clear whether this definition would apply to the Delegate Assembly and, if so, what the ramifications would be.

Finally, it is not clear where this proposed definition would apply in the Rules. The term "development of prospective legislation" appears only in the definition.

Registration threshold

An individual must register as a lobbyist with the board upon the earlier of when: A. the individual receives total pay or consideration from all sources that exceeds $3,000 in a calendar year for the purpose of lobbying or from a business whose primary source of revenue is derived from facilitating government relations or government affairs services if the individual's job duties include offering direct or indirect consulting or advice that helps the business provide those services to clients. The pay or consideration for lobbying for an individual whose job duties include both lobbying and functions unrelated to lobbying is determined by multiplying the gross compensation of the individual by the percentage of the individual's work time spent lobbying in the calendar year.

Currently, MSBA registers a number of employees as lobbyists. However, other MSBA staff who do not directly interact with public officials support the activities of MSBA's registered lobbyists by conducting research, reviewing language, discussing options and challenges, and other activities related to prospective legislation. Because the definition of "lobbyist" includes *direct or indirect consulting or advice*, it is possible that many more MSBA employees could come within the reporting threshold.

Registration not required

Subpart 2b(B) states that an association board member is not a lobbyist "unless the individual receives pay or other consideration to lobby on behalf of the association." MSBA board members receive a stipend for their service on the MSBA board, yet only a portion of a board member's time is devoted to lobbying. Some MSBA board members travel to Washington, D.C. to talk with federal legislators. The rules are not clear whether they encompass federal activity. The scope of the term "or other consideration" needs clarification. Would airfare, hotel room, food/beverage, and other expense reimbursements be considered "other consideration"?

Report of designated lobbyist

The proposed rules regarding the designated lobbyist report include, "*if the lobbyist represents an association, a current list of the names and addresses of each officer and director of the association*." MSBA hopes to confirm that MSBA's address may be provided rather than residential addresses.

The proposed rules would require a report of "*each original source of money in excess of $500 provided to the individual or association that the lobbyist represents*." For a membership organization that holds an annual conference and other meetings that include exhibitors and sponsorships, publishes the MSBA *Journal* and other materials that include advertisements, has over 2,000 school board members who typically attend one or more paid trainings or webinars, and collects other revenue, this reporting requirement may quickly become challenging to fulfill.

Lobbyist reporting for political subdivision membership organizations

New proposed rule 4511.0900 states:

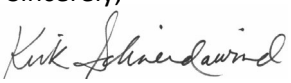
***Required reporting**. An association whose membership consists of political subdivisions within Minnesota and which is a principal that provides lobbyist representation on issues as directed by its membership must report:*
A. attempts to influence administrative action on behalf of the organization's membership;
B. attempts to influence legislative action on behalf of the organization's membership; and

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

MSBA hopes that the CFB will provide greater clarity on this expansive requirement. The meaning of "attempt" is uncertain. It could constitute every conversation, phone call, email, and more. If so, the reporting requirement would be tremendously time-consuming and costly, if not actually impossible to fulfill.

MSBA is grateful to the board for its attention to and consideration of these comments. It welcomes an opportunity to work with the board as the rulemaking process proceeds.

Sincerely,



Kirk Schneidawind
Executive Director
Minnesota School Boards Association.

November 6, 2024

Andrew Olson
Legal/Management Analyst
Campaign Finance and Public Disclosure Board
Andrew.d.olson@state.mn.us

Re: Comments on Rule Draft 4809

To the Minnesota Campaign Finance and Public Disclosure Board:

The Minnesota Council of Nonprofits (MCN) is the largest statewide association of nonprofits in the country, representing over 2,000 member organizations across the state, most of which are 501(c)(3) nonprofits who also report their lobbying activity to the IRS. MCN's mission is to inform, promote, connect, and strengthen individual nonprofits and the nonprofit sector, and a large part of that work is done though our public policy advocacy and lobbying initiatives.

We appreciate this opportunity to comment on your proposed rule changes. As noted in our comments to the Board at the October 25, 2024 hearing, MCN's focus is on lobbying rules and procedures being as clear as possible, so that a nonprofit staff person who engages in some lobbying can easily understand if they need to register, and if so, what they need to report as lobbying activities.

We are suggesting edits to the following sections:

4501.0100 DEFINITIONS

Subp. 4. **Compensation.**

We appreciate the clarification here in adding health care and retirement to the list of compensation included in the definition of compensation. However, we think the rules can go farther in this clarification.

It is a common practice for nonprofit employers to provide their employees with a personalized benefits statement that provides a comprehensive list of all types of compensation provided to the employee. These lists usually include: salary, stipends, medical insurance, dental insurance, HSA contributions, long- and short-term disability insurance, life insurance, 403(b) plan contributions, Social Security tax, Medicare tax, and paid leave benefits (the dollar amount that paid time off including vacation and sick time would be worth if it was paid out).

MCN recommends adding the following items to the current list of what is not included in the definition of compensation: insurance premiums for short- and long- term disability and life insurance, Medicare tax, and paid leave benefits. If the CFB disagrees and determines that any of these items should be included in the calculation of compensation, that must be clearly spelled out in this section.

We think it would also be very beneficial to add non-exhaustive list of what is included in compensation. That list would include: salary, stipends, and contributions to retirement accounts.

MCN's goal in recommending these changes is that when a nonprofit staff person engages in lobbying activity and reads in the lobbying handbook that they need to register if they have been paid more than $3,000 to lobby, that they can easily understand what number to use to determine their compensation under these rules.

4511.0100 DEFINITIONS

Subp 4. **Lobbyist's disbursements**
Given that the definition of "disbursement" has changed drastically, and is not a commonly used term, we recommend retitling this section "Lobbyist's gifts."

Further, we recommend changing "each" to "any." The word "each" could be construed to imply all lobbyists should be reporting something here. "Any" provides clarity that a lobbyist may have no gifts to report.

Lastly in this section, we recommend adding "to an official" after "gift given," in an effort to be exceedingly clear.

Subp. 5a. **Pay or consideration for lobbying.**
We ask the Board to remove the word "gross" before "compensation," because compensation is defined in section 4501.0100. Adding "gross" in this section signals that the calculation is different than the calculation for "compensation," which we do not think is the intent.

4511.1100 MAJOR DECISION OF NONELECTED LOCAL OFFICIALS

Subp. 1. **Major decision regarding the expenditure of public money.**
Subp. 2. **Actions that are a major decision regarding public funds.**

Subparts 1 and 2 in this section are clear that a major decision regarding the expenditure or investment of public money includes selecting recipients for government grants from the political subdivision, and that attempting to influence a nonelected official is lobbying if that

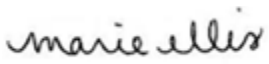
person may make, recommend, or vote on a major decision regarding an expenditure or investment of public money.

We strongly encourage the CFB to clarify this language to include that responding to a grant program's request for proposals or otherwise applying for an existing grant program does not constitute lobbying. Additionally, answering any follow-up questions from the municipality regarding the content of grant application is not lobbying. And finally, that if a potential grantee communicates with a nonelected official about a grant opportunity outside of the normal grant process, and with the intent to influence the nonelected official to choose their proposal, that is lobbying.

We hope these suggestions are helpful in providing the clearest rules possible for lobbyists and potential lobbyists.

As we said in our October comments, MCN's goal is to ensure that Minnesota's legislative process remains open and accessible to all, and that the rules do not inadvertently create or perpetuate structural barriers to participation for smaller organizations and the communities they represent — communities that are often already underrepresented in our state's policymaking. This accessibility is critical to a healthy democracy.

Thank you again for the opportunity to provide input. We look forward to working with you to find solutions that enhance both transparency in and equitable access to Minnesota's legislative process.



Marie Ellis
Public Policy Director
Minnesota Council of Nonprofits
(651) 757-3060
mellis@minnesotanonprofits.org

November 6, 2024

Submitted electronically to andrew.d.olson@state.mn.us.

Campaign Finance and Public Disclosure Board
c/o Andrew Olson, Legal/Management Analyst
190 Centennial Office Building
658 Cedar Street
St. Paul, MN 55155-1603

Re: Comments regarding Proposed Permanent Rules Relating to Campaign Finance, Revisor's ID No. 4809, OAH Docket No. 24-9030-39382

Dear Chair Asp and Members of the Board,

Campaign Legal Center ("CLC") respectfully submits these written comments in response to the Minnesota Campaign Finance and Public Disclosure Board ("Board") regarding the Proposed Permanent Rules Relating to Campaign Finance (Revisor's ID No. 4809, OAH Docket No. 24-9030-39382) ("Proposed Rule").[1]

CLC is a nonpartisan, nonprofit organization dedicated to protecting and strengthening democracy through law at all levels of government. Since its founding in 2002, CLC has participated in every major campaign finance case before the U.S. Supreme Court and in numerous other federal and state court proceedings. Our work promotes every American's right to an accountable and transparent democratic system.

CLC appreciates the opportunity to share these comments with the Campaign Finance and Public Disclosure Board. As digital ads become ever more prominent in federal, state, and local campaigns, it is imperative that political transparency requirements—including on-ad disclaimers—are applied to digital political ads.[2]

[1] 49 Minn. Reg. 377-391 (Oct. 7, 2024) ("Proposed Rule").
[2] By one account, at least $1.6 billion was spent on digital advertising in federal, state, and local elections during the 2019-2020 cycle. See Howard Homonoff, *2020 Political Ad Spending Exploded: Did It Work?*, FORBES (Dec. 8, 2020), https://tinyurl.com/444rua6c. For the 2023-2024 election cycle, spending for political ads on digital platforms and connected

As drafted, however, the Proposed Rule greatly expands the on-ad disclaimer exception in Minn. Stat. § 211B.04(3) for certain types of digital ads, unnecessarily exempting a substantial amount of digital political ads from this transparency requirement. Our comments first discuss the importance of on-ad disclaimers in promoting First Amendment interests and then explain how the Proposed Rule's expansion of this exception undermines those interests. Finally, our comments provide recommendations for a final rule that is both consistent with the statute and ensures that voters have immediate, easy access to information about who is paying for digital political advertisements.

Discussion

I. On-ad disclaimers promote critical First Amendment interests.

"In a republic where the people are sovereign, the ability of the citizenry to make informed choices [in elections] is essential."[3] Disclosure laws, including on-ad disclaimers, help voters to know who is funding a campaign or trying to influence government decision-making,[4] directly serving the government's critical informational interest in "ensur[ing] that voters have the facts they need to evaluate the various messages competing for their attention."[5]

As the Supreme Court has repeatedly recognized in decades of decisions upholding campaign finance disclosure provisions:

> [D]isclosure provides the electorate with information as to where political campaign money comes from and how it is spent by the candidate in order to aid the voters in evaluating those who seek federal office. It allows voters to place each candidate in the political spectrum more precisely than is often possible solely on the basis of party labels and campaign speeches.[6]

TV—services like Hulu and Netflix—is projected to soar to over $2.6 billion. AdImpact, *Political Projections Report 2023-2024* (June 30, 2024), https://tinyurl.com/2n6536yb.

[3] *Buckley v. Valeo*, 424 U.S. 1, 14-15 (1976) (per curiam).

[4] *See No on E v. Chiu*, 85 F.4th 493, 505 (9th Cir. 2023), *cert. denied*, 2024 WL 4426534 (No. 23-926) (Oct. 7, 2024) ("Understanding what entity is funding a communication allows citizens to make informed choices in the political marketplace."); *Gaspee Project v. Mederos*, 13 F.4th 79, 91 (1st Cir. 2021) ("The donor disclosure alerts viewers that the speaker has donors and, thus, may elicit debate as to both the extent of donor influence on the message and the extent to which the top five donors are representative of the speaker's donor base . . . [in *Citizens United*] the Court recognized that the disclaimers at issue were intended to insure that the voters are fully informed . . ." (internal quotation marks and citation omitted)).

[5] *Human Life of Wash., Inc. v. Brumsickle*, 624 F.3d 990, 1005 (9th Cir. 2010).

[6] *Buckley*, 424 U.S. at 66-67 (internal quotation marks and footnote omitted). In *Buckley*, the Supreme Court articulated the constitutional standard for disclosure laws and upheld federal disclosure requirements, explaining that disclosure served three important purposes: "providing the electorate with information, deterring actual corruption and avoiding its

Disclaimers are not only an "efficient tool" for voter education, but also a means of "generating discourse" enabling informed voting—both functions that are "as vital to the survival of a democracy as air is to the survival of human life."[7] On-ad disclaimers are particularly effective at meeting these critical informational interests, facilitating voters' instantaneous appraisal of election advertising.

A robust body of empirical research confirms that knowing the source of election messaging is a "particularly credible" informational cue for voters seeking to make decisions about decisions consistent with their policy preferences.[8] As one legal scholar has observed, "[r]esearch from psychology and political science finds that people are skilled at crediting and discrediting the truth of a communication when they have knowledge about the source, but particularly when they have knowledge about the source at the time of the communication as opposed to subsequent acquisition."[9] Other recent studies also highlight how campaign finance disclosure also provides voters with additional signals regarding candidates' non-policy traits, or "valence" information, "such as competence, honesty, and related characteristics that are important for selecting elected representatives."[10] Avoiding transparency is particularly attractive to spenders with negative messages online, as negative ads are more likely to result in backlash from voters.[11] Together, this research establishes that transparency around and public disclosure of the sources behind campaign spending, including through contemporaneous on-ad disclaimers, equips voters with valuable informational shortcuts that facilitate knowledgeable choices on Election Day.

Minnesota's on-ad disclaimer statute, Minn. Stat. § 211B.04, serves these critical informational interests, while providing, as most disclaimer laws do, for certain

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appearance, and gathering data necessary to enforce more substantive electioneering restrictions." *McConnell v. FEC*, 540 U.S. 93, 196 (2003) (listing the "important state interests" identified in *Buckley*), *overruled in part on other grounds by Citizens United v. FEC*, 558 U.S. 310 (2010). The first of these, the public's informational interest, is "alone sufficient to justify" disclosure laws. *Citizens United*, 558 U.S. at 369; *see also No on E*, 85 F.4th at 504-06; *Gaspee Project*, 13 F.4th at 86.

[7] *Gaspee Project*, 13 F.4th at 91, 95.

[8] Elizabeth Garrett & Daniel A. Smith, *Veiled Political Actors and Campaign Finance Disclosure Laws in Direct Democracy*, 4 Election L.J. 295, 296 (2015); *see also* Abby K. Wood, *Learning from Campaign Finance Information*, 70 Emory L. J. 1091 (2021) ("Voters use heuristics, or informational shortcuts, to help them make the vote choice most aligned with their priorities without requiring encyclopedic knowledge . . . on every issue."); Keith E. Schnakenberg, Collin Schumock, and Ian R. Turner, *Dark Money and Voter Learning*, SSRN (May 28, 2023), *available at* https://ssrn.com/abstract=4461514 or http://dx.doi.org/10.2139/ssrn.4461514.

[9] Michael Kang, *Campaign Disclosure in Direct Democracy*, 97 Minn. L. Rev. 1700, 1718 (2013).

[10] Schnakenberg, et. al., *supra* note 8, 1-5; *see also* Wood, *supra* note 8, at 1116.

[11] Shomik Jain and Abby K. Wood, *Facebook Political Ads and Accountability: Outside Groups Are Most Negative, Especially When Hiding Donors*, 18 PROC. OF THE INT'L AAAI CONF. ON WEB AND SOCIAL MEDIA 717, 718 (2024), *available at* https://ojs.aaai.org/index.php/ICWSM/article/view/31346/33506.

limited exceptions where disclaimers are impracticable. However, the Proposed Rule—specifically § 4503.2000—would greatly expand one of these exceptions, relieving candidates, principal campaign committees, political committees, political funds, political parties, and electioneering spenders of their obligation to include an on-ad disclaimer and depriving Minnesota voters of one of the most efficient tools available for informed voting.

II. The Proposed Rule's exceptions are overbroad.

The Proposed Rule's on-ad disclaimer exemption for digital ads is overbroad, expanding the scope of the limited exception for banner ads and "similar electronic communications" in Minn. Stat. § 211B.04(3)(c)(3) to relieve political spenders of their obligation to include an on-ad disclaimer for the majority of political spending online, regardless of whether including such a disclaimer is technologically possible. Interpreting the exemption so expansively is both unnecessary and detrimental to Minnesota voters.

The overall statutory scheme for on-ad disclaimers is important for understanding the limited exception for banner ads and "similar electronic communications." Minn. Stat. § 211B.04 outlines disclaimer requirements for paid political material and electioneering communications, including by identifying materials that are exempt from political disclaimer requirements[12] The other materials specifically exempted from on-ad disclaimers are:

- "fundraising tickets, business cards, personal letters, or similar items that are clearly being distributed by the candidate;"[13]
- "bumper stickers, pins, buttons, pens, or similar small items on which the disclaimer cannot be conveniently printed;"[14] and
- "skywriting, wearing apparel, or other means of displaying an advertisement of such a nature that the inclusion of a disclaimer would be impracticable."[15]

Read in context, the exemption for "online banner ads and similar electronic communications that link directly to an online page that includes the disclaimer" in the statute reflects that some political ads—including small digital banner ads, but also pens or bumper stickers, shirts, and skywriting—are presented in a format or such limited size as to make an on-ad disclaimer impracticable or technologically impossible. In the case of such communications, the exception—in conjunction with the requirement to link to an online page including the full disclaimer—is an effective way to balance voters' right to know who is spending to influence their ballots and the restrictions of the communication's format.

However, the Proposed Rule expands on this reasonable exception to create a sweeping exemption from Minn. Stat. § 211B.04's disclaimer requirements for a much broader range of paid digital political communications, including any text,

[12] MINN. STAT. § 211B.04(3)(c)(3) (2023).
[13] *Id.* § 211B.04(3)(a).
[14] *Id.* § 211B.04(3)(c)(1).
[15] *Id.* § 211B.04(3)(c)(2).

images, video, or audio disseminated via a social media platform, on an application accessed primarily by mobile phone, or disseminated via the Internet by a third party (among other exceptions), so long as such communications link directly to an online page that includes a disclaimer in the correct format.[16]

While some digital ads included in this sweeping list are truly "similar" to "online banner advertisements"—i.e., communications where the format is so small, short, or otherwise limited that it would not be possible to include a disclaimer without obscuring the message—this is not true for many digital political ads, which may use video or audio formats that are practically identical to traditional broadcast ads.[17] This issue is particularly glaring in Subp. 2(A), (C), and (D), where the Proposed Rule exempts paid political communications distributed through social media platforms, mobile phone applications, and third-party ad brokers. As explained below, such communications should not be exempt from the on-ad disclaimer requirement based solely on these features.

A. Social Media Advertisements

Subp. 2(A) excludes "text, images, video, or audio disseminated via a social media platform" from the on-ad disclaimer requirement outlined in Minn. Stat. § 211B.04, where the communication links directly to an online page containing the disclaimer. Social media platforms, like Meta's Facebook and Instagram and Google's YouTube, are some of the most popular venues for political spending, providing campaigns and other political spenders with the ability to reach large swaths of the voting public with a few clicks.[18]

Social media platforms serve a broad range of content to users—including ads that are virtually indistinguishable from traditional broadcast ads. As a result, political spenders can promote their messages in a wide range of formats, depending on the social media platform, from still images to short-form video (similar to traditional 15-to-60 second broadcast ads) to long-form video of a few minutes and more.[19]

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[16] Proposed Rule § 4503.2000(2).

[17] David Wright, *If you've been seeing more pro-Harris ads online lately, here's why*, CNN, Oct. 30, 2024, https://www.cnn.com/2024/10/30/politics/democratic-digital-advertising-future-forward/index.html.

[18] *See* Brennan Ctr., *Online Political Spending in 2024* (Oct. 16, 2024), https://www.brennancenter.org/our-work/analysis-opinion/online-political-spending-2024 ("So far in the 2024 election cycle, candidates, parties, and other groups have spent more than $619,090,533 on digital advertising concerning the election and political issues on the nation's two largest online platforms, Google (which includes YouTube, Search, and third-party advertising) and Meta. Together they account for almost half of the total digital ad market in the United States, but there is not sufficient publicly available data to determine what percentage of the political ad market they have captured.").

[19] *See, e.g.*, *Facebook ads guide: Update to Meta Ads Manager objectives*, META (last visited Oct. 25, 2025),https://www.facebook.com/business/ads-guide/update *and Create an ad in Meta Ads Manager*, META (last visited Nov. 1, 2024), https://www.facebook.com/business/help/2829711350595695?id=649869995454285. Meta's ad manager page outlines the array of image, video, and carousel (multi-image) advertising

Under Subp. 2(A) of the Proposed Rule, such ads are exempt from including an on-ad disclaimer if they simply link to a page with the disclaimer, even if the ad would be required to include a disclaimer if it were run on broadcast television.

This would result in illogical and inconsistent application of disclaimer requirements to substantially similar (or the same) paid political content if it is distributed via both broadcast channels and social media. Regardless of the platform where an ad reaches a voter, the voter's interest in understanding the source of the advertisement as quickly and easily as possible does not change; excluding digital ads from the on-ad disclaimer requirement is both unnecessary and would harm voters by substantially diminishing the scope of information available about who is spending money to influence their votes.

B. Advertising via Applications and Mobile Devices

The Proposed Rule's effort to address political advertising on mobile applications (or "apps") implicates many of the same issues as social media advertising, and some novel concerns, including how regulators define and apply language around when an app is "accessed primarily via mobile phone."

As with social media, apps—including popular mobile games,[20] music streaming and podcast apps,[21] and major video streaming platforms (like Netflix, Hulu, and

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options available across Meta's platforms, including Facebook, Instagram, Reels, Messenger, WhatsApp, and Audience Network. While some formats are quite limited (e.g., traditional still image ads), others are similar to traditional broadcast television ads or programs (e.g., Meta allows video ads with a duration from one second to 241 minutes).

[20] Reaching potential voters through video games, including images, video, or "playable" ads in mobile apps, is not a new tactic for campaign spenders. In 2020, the Biden campaign developed a playable mobile ad called "Ridin' with Biden" in the eight weeks prior to the election. *See The Biden/Harris 2020 Presidential Campaign: How the Biden Campaign Gamified Democracy and Achieved a Record-Breaking CTR*, MOBILE MARKETING ASSOCIATION (MMA) https://www.mmaglobal.com/case-study-hub/case_studies/view/70842. Barack Obama's 2012 campaign made headlines for its efforts to reach voters via ads in popular video games. *See* Sami Yengun, *Presidential Campaigns Rock The Gamer Vote*, NPR (Oct. 1, 2012), https://www.npr.org/2012/10/01/162103528/presidential-campaigns-rock-the-gamer-vote. Generally, the overlap between gaming, mobile applications, and entertainment presents expanded opportunities for advertisers—including political spenders—to reach audiences and develop positive impressions. *See* Mercedes Cardona, *Level up your video advertising in mobile gaming*, BRAND INNOVATORS (Sept. 19, 2024), https://brand-innovators.com/news/level-up-your-video-advertising-in-mobile-gaming/.

[21] Spotify, a popular audio streaming platform, recently changed its advertising policy to allow political ads after suspending political ads in 2020 over concerns over the rapid online spread of misinformation. Evan Minsker, *Spotify Brings Back Political Ads After Suspending Them in 2020*, PITCHFORK (May 25, 2024), https://pitchfork.com/news/spotify-brings-back-political-ads-after-suspending-them-in-2020/ https://blog.podbean.com/the-new-frontier-for-political-campaigns-harnessing-the-power-of-podcasts/. Across the industry, podcast networks and streaming platforms vary greatly as to their policies regarding political advertising. Alyssa Meyers, *How podcast networks are making their own rules for political advertising—and how they differ from one another*, MARKETING BREW (Oct. 26, 2024),

Peacock)[22]—often offer not only banner-style image ads, but also regular video and still ad breaks, which can include paid political communications.[23] Such ads are often substantially similar in format and content to those distributed on traditional and broadcast media, including video and audio ads.[24] However, under Subp. 2(C) of the Proposed Rule, these digital political ads would be exempt from displaying on-ad disclaimers, provided they comply with the alternative requirement of providing a link.[25] Again, this broad application unnecessarily captures political ads that may be substantially or entirely identical to traditional broadcast ads that would require an on-ad disclaimer.

Subp. 2(C)'s exemption for communications disseminated via app is further complicated by the question of what "an application accessed primarily via mobile phone" means in an era of connected devices, where many popular apps are available on a broad range of devices, including tablets, smart watches, e-readers, smart TVs, and streaming boxes like Apple TV and Roku.[26] Little (if any) public information is available about the relative proportion of smart devices used to access a particular app, although advertisers do distinguish more broadly between ads on

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https://www.marketingbrew.com/stories/2022/10/26/how-podcast-networks-are-making-their-own-rules-for-political-advertising.

[22] *Ads on Netflix*, NETFLIX HELP CENTER (last visited Oct. 25, 2024) https://help.netflix.com/en/node/126831; *Ads on Hulu*, HULU HELP CENTER (last visited Oct. 25, 2024), https://help.hulu.com/article/hulu-ads-on-hulu; *When will I see advertisements during content on Peacock?*, PEACOCK (last visited Oct. 25, 2024), https://www.peacocktv.com/help/article/when-will-i-see-advertisements-during-content; *When will I see ads while watching Disney+?*, DISNEY+ HELP CENTER (last visited Oct. 25, 2024), https://help.disneyplus.com/article/disneyplus-ads.

[23] *See, e.g.*, *About mobile ads*, GOOGLE ADS HELP (last visited Oct. 28, 2024), https://support.google.com/google-ads/answer/2472719 (outlining the various formats mobile ads can take when an advertiser utilizes the Google Ads platform); *Political content*, ADVERTISING POLICIES HELP (last visited Oct. 25, 2024), https://support.google.com/adspolicy/answer/6014595?hl=en#zippy=%2Cunited-states-us-election-ads (discussing Google's policies around political content in advertising).

[24] *Id.* For example, political spenders may run ads on broadcast television and online featuring similar lines of attack on their opponents. *See, e.g.*, Jonathan Weisman, *In Wisconsin's Senate Race, the Republican Highlights Baldwin's Sexuality*, N.Y. TIMES (Oct. 25, 2024), https://www.nytimes.com/2024/10/25/us/politics/wisconsin-senate-race-tammy-baldwin-sexuality.html (discussing a 30-second television ad aired on local broadcast stations) and Eric Hovde, *Investigate Tammy Baldwin*, META AD ARCHIVE (Oct. 4. 2024), *available at* https://www.facebook.com/ads/library/?id=1568975273994700 (Meta Ad Archive record for digital ad with similar content served to Facebook and Instagram users).

[25] Proposed Rule § 4503.2000(2)(C).

[26] For example, Netflix is available on a broad range of devices, from mobile phones to tablets and e-readers to smart TVs and streaming devices. *Netflix Supported Devices | Watch Netflix on your TV, phone, or computer*, NETFLIX HELP CENTER (last visited Oct. 25, 2024), https://help.netflix.com/en/node/14361. Hulu presents a similar range of options. *Download the Hulu app on your device*, HULU HELP CENTER (last visited Oct. 25, 2024), https://help.hulu.com/article/hulu-download-hulu# . Spotify is available on speakers, smart watches, smart TVs, gaming consoles, automobiles, digital voice assistant devices like Alexa, and more. *Devices & troubleshooting*, SPOTIFY (last visited Oct. 25, 2024), https://support.spotify.com/us/category/device-help/.

streaming video content delivered OTT ("over-the-top" – streaming over the internet to devices like mobile phones, tablets, computers via app or website) and CTV ("connected TV" – TV sets connected to the Internet using apps to deliver streaming content, including smart TVs, TV sticks, and gaming consoles).[27]

Even for the subset of apps used for both CTV and OTT streaming, it is unclear under the Proposed Rule how the Board would determine whether an application is "accessed primarily via mobile phone" (as opposed to other mobile devices) for the purposes of this exception; it would seem to necessitate the Board either obtain such information from the multiplicity of apps serving ads or rely on the representation of the political spender. In any event, determining the precise device being used when an ad is seen by a voter is unnecessary because such an approach fails to account for the feature of digital ads that matters, which is whether it is technologically possible to provide a clear on-ad disclaimer.

C. Advertisements Disseminated Online by a Third Party

Perhaps the most problematic exception in the Proposed Rule is Subp. 2(D), which exempts digital political ads via the internet by a third party, "including but not limited to online banner advertisements."[28] Third-party distribution is common for online political ads in many formats, including small online banner ads, but also long-format video ads similar to (or exactly the same as) those aired on broadcast media.[29]

Google dominates the third-party ad market, with its Ad Manager holding "about [a] 90% share of the U.S. Market for ad-serving software."[30] While banner ads remain one of the most common ad formats, appearing in feeds, around articles, and around other online content, Google Ad Manager also presents in-stream ads for audio and video players, "interstitial ads" occurring between content "at natural breaks and transitions, such as level completion," and "rewarded ads" "where a user explicitly opts-into an ad experience to receive a reward from the publisher," as in mobile games.[31] As with ads on social media platforms and mobile apps, there is no reason

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[27] *Need to Know: What's the difference between OTT, CTV, and streaming?*, NIELSEN (Feb. 2024), https://www.nielsen.com/insights/2024/whats-the-difference-ott-vs-ctv/#:~:text=The%20difference%20has%20to%20do,than%20what%20the%20content%20is.&text=Connected%20TV%20(CTV)%20%E2%80%94%20The,internet%20on%20a%20television%20screen.

[28] Proposed Rule § 4503.2000(2)(D).

[29] *Political content*, GOOGLE HELP: ADVERTISING POLICIES HELP (last visited Oct. 25, 2024), https://support.google.com/adspolicy/answer/6014595?hl=en#zippy=%2Cunited-states-us-election-ads.

[30] Paresh Dave, *Google Ad Manager outage costs big websites ad sales*, REUTERS (Dec. 8, 2022), https://www.reuters.com/technology/google-ad-manager-outage-costs-big-websites-ad-sales-2022-12-09/#:~:text=Ad%20Manager%20has%20about%2090,Chmielewski;%20Editing%20by%20Lincoln%20Feast.&text=San%20Francisco%20Bay%20Area%2Dbased,on%20the%20local%20tech%20industry.

[31] *Inventory formats*, GOOGLE AD MANAGER HELP (last visited Oct. 25, 2024), https://support.google.com/admanager/answer/9796545?hl=en.

to categorically exempt such a broad range of advertising formats from on-ad disclaimer requirements in Minnesota.

III. The final rule should incorporate a technological impossibility requirement for determining whether a digital ad is a "similar electronic communication.

CLC recommends the Board narrow the Proposed Rule's language to reflect the statute's more limited exception for banner ads and ads that are truly substantially similar—i.e., ads where it is not technologically possible to display a clear, legible disclaimer statement and still convey the ad's message in the space available—and clarify that disclaimers should be included on digital political ads unless it is technologically impossible to do so.

To enforce this standard, we also propose that the final regulation require that the sponsor of a digital advertisement be able to establish, at the Board's request, why a disclosure statement could not be included on the face of an advertisement due to technological constraints. Where technological constraints prevent the inclusion of an on-ad disclaimer, the rule should continue to require the spender to include a click-through link leading to a page with the clear disclosure statement, as statutorily required.

Other states have similar set similar standards for allowing an alternative method of providing information that would otherwise be included in an on-ad disclaimer. Wisconsin, for example, allows sponsors of "small online ads and similar electronic communications" where disclaimers "could not conveniently be included" to link directly to a website with the required attribution, but "[s]ponsors of such small online ads or similar electronic communications must be able to establish, at the Commission's request, that including the attribution on the ad or communication was not possible due to size or technological constraints."[32] Similarly, California's Political Reform Act permits the sponsor of an "electronic media advertisement" to substitute a complete disclaimer statement on the face of an ad with a hyperlink to the required information when including a complete disclaimer would be "impracticable or would severely interfere with the [sponsor's] ability to convey the intended message due to the nature of the technology used to make the communication."[33] Like Wisconsin, California's Fair Political Practices Commission requires that a sponsor of an electronic media advertisement who claims inclusion of a full disclaimer on the ad is "impracticable" be able to show why it was not possible to include a complete disclaimer on the advertisement.[34]

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[32] WIS. ADMIN. CODE ETH. § 1.96(5)(h); WIS. STATS. § 11.1303(2)(f).
[33] CAL. GOV'T CODE §§ 84501(a)(2)(G), 84504.3(b).
[34] CAL. CODE REGS. tit. 2, § 18450.1(b); *see also* Cal. Fair Political Practices Comm'n, Advice Letter No. I-17-017 (Mar. 1, 2017), at 4 ("Where character limit constraints render it impracticable to include the full disclosure information specified, the committee may provide abbreviated advertisement disclosure on the social media page . . . . If abbreviated disclaimers are used a committee must be able to show why it was not possible to include the full disclaimer.").

At the federal level, the proposed Honest Ads Act would enact a similar standard, requiring qualified internet or digital communications to both "state the name of the person who paid for the communication " and "provide a means for the recipient of the communication to obtain the remainder of the information required under this section with minimal effort and without receiving or viewing any additional material other than such required information" where it is "not possible" to include all of the disclaimer information required on the ad itself.[35]

By adopting the technological impossibility standard, the Board would bring the Proposed Rule into line with the limited list of exceptions outlined in Minn. Stat. § 211B.04. Furthermore, this standard would ensure that Minnesota voters have access to complete information about the sources of digital political ads, provide clear guidance to political spenders, and protect against exploitation of the exemption.

Finally, CLC also recommends the Board specify additional guidelines for how a digital advertisement must provide the required linked disclosure statement for communications that meet the technological impossibility standard. Currently, the Proposed Rule merely requires a communication "link directly to an online page that includes a disclaimer in the form required by that section [of the statute]." We suggest that, in the final rule, the Board should make clear that clicking on a digital advertisement must immediately direct the recipients of the advertisement to a page displaying the disclaimer information required by Minn. Stat. § 211B.04 *without* requiring the recipient to navigate through or view any extraneous material beyond the disclosure statement, as the Honest Ads Act proposes.[36]

Spenders should not get a second bite at the apple in presenting their messages to voters by requiring voters to scroll through additional political or electioneering content to discover who is sponsoring the message. Other states—including

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[35] Honest Ads Act, S. 486, 118th Cong. § 7(b) (2023); *see also* 11 C.F.R. § 110.11(g) (FEC regulation that allows digital political ads covered by current federal disclaimer requirements to use an "adapted disclaimer" where "more than 25% of the communication" would be occupied by a standard disclaimer and requiring such adapted disclaimers to include both an abbreviated on-ad disclaimer (an "indicator") and a "mechanism," which "may take any form including, but not limited to, hover-over text, pop-up screens, scrolling text, rotating panels, and hyperlinks to a landing page," providing the full disclaimer information required); Isaac Baker, *Commission adopts final rule on internet communications disclaimers and the definition of public communication*, FED. ELECT. COMM'N (Dec. 19, 2022), https://www.fec.gov/updates/commission-adopts-final-rule-internet-communications-disclaimers-and-definition-public-communication/ (explaining the adapted disclaimer provision "makes clear that the time or space available for a disclaimer depends on the limitations of the medium or technology in a particular advertisement" and the use of a specific percentage "serves as a bright-line rule that provides sponsors of internet publication communications clear guidance as to when an adapted disclaimer may be used").

[36] Honest Ads Act, S. 486, 118th Cong. § 7(b) (2023).

Wisconsin,[37] Washington,[38] and New York[39]—have promulgated similar regulations for modified disclaimers on certain digital ads, which allow the public to readily obtain key information about the sources of online advertising in elections. This additional clarification would ensure Minnesota voters have one-step access to clear, complete disclosure information when they view digital advertisements that refer to state and local candidates running for office in Minnesota, even where it is not technically possible to include an on-ad disclaimer.

CONCLUSION

CLC thanks the Board for the opportunity to share comments regarding the Proposed Rule and for its consideration during this important rulemaking. We would be happy to answer questions or provide additional information to assist the Board in promulgating the final rule for § 4503.2000.

Respectfully submitted,

/s Elizabeth D. Shimek
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[37] WIS. ADMIN. CODE ETH. § 1.96(5)(h) (permitting "small online ads or similar electronic communications" on which disclaimers cannot be "conveniently printed" to include a link that "direct[s] the recipient of the small online ad or similar electronic communication to the attribution in a manner that is readable, legible, and readily accessible, with minimal effort and without viewing extraneous material.").
[38] WASH. ADMIN. CODE § 390-18-030(3) (specifying that "small online advertising" with limited character space may include, in lieu of full disclaimer, "automatic displays" with the required disclaimer information if such displays are "clear and conspicuous, unavoidable, immediately visible, remain visible for at least four seconds, and display a color contrast as to be legible.").
[39] N.Y. COMP. CODES R. & REGS. tit. 9, § 6200.10(f)(2)(ii) (requiring an "adapted attribution" included on a "paid internet or digital advertisement" to "allow a recipient of the communication to locate the full attribution by navigating no more than one step away from the adapted attribution and without receiving or viewing any additional material other than the full attribution required by this [rule].").

MINNESOTA
CAMPAIGN FINANCE BOARD

VIA EFILING
[DATE], 2024

The Honorable Judge Kristien R. E. Butler
Assistant Chief Administrative Law Judge
Office of Administrative Hearings

In the Matter of the Proposed Permanent Rules Relating to Campaign Finance; Lobbying; and Audits and Investigations; Revisor's ID Number 4809; OAH Docket No. 24-9030-39382

Dear Judge Butler:

This letter contains the Campaign Finance and Public Disclosure Board's responses to comments it received during the 30-day comment period that spanned the period from October 7, through November 6, 2024. Portions of the four comments received by the Board are quoted below, followed by the Board's responses. Comments are ordered sequentially by the rule chapter, part, and subpart to which they pertain. The Board received comments from State Representative Nathan Coulter, the Minnesota School Boards Association (MSBA), the Minnesota Council of Nonprofits (MCN), and the Campaign Legal Center (CLC).

TABLE OF CONTENTS

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Chapter 4501, General Provisions

Part 4501.0100, subpart 4. Compensation. - Comment of MCN

The MCN stated:

> We appreciate the clarification here in adding health care and retirement to the list of compensation included in the definition of compensation. However, we think the rules can go farther in this clarification.
>
> It is a common practice for nonprofit employers to provide their employees with a personalized benefits statement that provides a comprehensive list of all types of compensation provided to the employee. These lists usually include: salary, stipends, medical insurance, dental insurance, HSA contributions, long- and short-term disability insurance, life insurance, 403(b) plan contributions, Social Security tax, Medicare tax, and paid leave benefits (the dollar amount that paid time off including vacation and sick time would be worth if it was paid out).
>
> MCN recommends adding the following items to the current list of what is not included in the definition of compensation: insurance premiums for short- and long- term disability and life insurance, Medicare tax, and paid leave benefits. If the CFB disagrees and determines that any of these items should be included in the calculation of compensation, that must be clearly spelled out in this section.
>
> We think it would also be very beneficial to add non-exhaustive list of what is included in compensation. That list would include: salary, stipends, and contributions to retirement accounts.

> MCN's goal in recommending these changes is that when a nonprofit staff person engages in lobbying activity and reads in the lobbying handbook that they need to register if they have been paid more than $3,000 to lobby, that they can easily understand what number to use to determine their compensation under these rules.

Response: The word "compensation" is used throughout Minnesota Statutes, Chapter 10A, and how the term is defined impacts three of the Board's four major program areas, including economic interest disclosure by certain officials and candidates, lobbying, and campaign finance. For example, the word "compensation" is used within Minnesota Statutes, section 10A.09, subdivisions 5 and 5b, which impact the information required to be disclosed within statements of economic interest filed pursuant to Minnesota Statutes, section 10A.09. It is used within the definition of the term "associated business" codified at Minnesota Statutes, section 10A.01, subdivision 5, which impacts the information required to be disclosed within statements of economic interest, and the disclosure of potential conflicts of interest under Minnesota Statutes, section 10A.07. The word "compensate" is used within the definition of the term "principal" codified at Minnesota Statutes, section 10A.01, subdivision 33, and the word "compensation" is used within Minnesota Statutes, section 10A.04, subdivision 6, and Minnesota Rules, part 4511.0700, which impact who is defined as a principal, and what principals must report to the Board, respectively. The word "compensation" is used within the prohibition on contingent fees for lobbying, codified at Minnesota Statutes, section 10A.06. It is used within Minnesota Statutes, section 10A.08, which impacts whether a public official who represents a client before an agency with rulemaking authority must disclose that representation to the Board. It is used in describing exclusions from the definitions of the terms "campaign expenditure" and "contribution" under Minnesota Statutes, section 10A.01, subdivisions 9 and 11, which impact what must be reported to the Board within campaign finance reports filed pursuant to Minnesota Statutes, section 10A.20. Importantly, the word "compensation" is also used within the proposed definition of "pay or consideration for lobbying" to be codified at Minnesota Rules, part 4511.0100, subpart 5a.

The Board shares the MCN's concern regarding the need for clarity in how the word "compensation" is defined. As explained more fully on page 11 of the Board's Statement of Need and Reasonableness (SONAR), the definition of the term has remained the same since 1996, and needs to be updated. The MCN's comment illustrates the difficulty in defining the term "compensation" in a manner that is sufficiently inclusive while also being sufficiently easy to calculate. The Board believes that including a non-exhaustive list of examples of compensation may make the rule more prone to becoming outdated, and may also lead some to believe that types of compensation not clearly included within the list are not defined as compensation. Also, the Board does not believe that it is necessary to exclude the accrual of paid leave from the definition of "compensation." The accrual of paid leave is not a payment and therefore is not included within the definition of "compensation." When an individual is paid, either as a result of using accrued paid leave, or as a result of some type of payout of accrued

leave time, that payment will be defined as “compensation” because the leave time was afforded to the individual in exchange for their labor or personal services.

The MCN’s comment regarding Medicare taxes and insurance premiums, the MCN’s comment regarding the proposed definition of the phrase “pay or consideration for lobbying” to be codified at Minnesota Rules, part 4511.0100, subpart 5a, and the MCN’s broader call for increased clarity, has prompted the Board to propose a revised definition of the term “compensation,” as follows.

Proposed modification to Part 4501.0100, subpart 4

> Subp. 4. **Compensation.** "Compensation" means every kind of payment for labor or personal services, including any amount withheld by an employer for the payment of income tax. Compensation does not include payments ~~of Social Security~~ for Federal Insurance Contributions Act taxes, unemployment ~~compensation~~ taxes, insurance, or benefits, workers' compensation insurance or benefits, disability insurance or benefits, life insurance, health care insurance or benefits, retirement benefits, or pension benefits.

As modified, the rule would provide clarity by excluding many similar types of payments made by employers for various benefits from the definition of compensation, which for some individuals may be difficult to calculate without those exclusions. The rule would continue to define core types of remuneration as compensation, including wages and salaries, payments made to contractors for services rendered, bonuses, commissions, deferred compensation, and payments of stock or other shares of ownership. The proposed modification would also eliminate the need to refer to “gross compensation” within the proposed rule to be codified at Minnesota Rules, part 4511.0100, subpart 5a.

The proposed modification would not make the rule substantially different from the rule text published with the Board’s Dual Notice:

> Subp. 4. **Compensation.** "Compensation" means every kind of payment for labor or personal services. Compensation does not include payments of Social Security, unemployment compensation, workers' compensation, health care, retirement, or pension benefits.

The proposed modification regarding amounts withheld for the payment of income tax, while adding clarity, would not change the substance of the rule because the word “payment” is already considered to include earnings prior to any withholding for payment of income tax. The differences between the rule text published with the Board’s Dual Notice and the proposed modified text are within the scope of the Board’s Dual Notice because they concern the definition of a single word. The differences are a logical outgrowth of the Board’s Dual Notice and MCN’s comment, which seeks additional clarity so that individuals may better understand

how to calculate their compensation for purposes of determining whether they need to register as a lobbyist. The Board's Dual Notice provided fair warning that the outcome could be the proposed rule, as modified, because the modification is a logical outgrowth of the Board's Dual Notice, the subject matter remains the same, and the effects of the proposed rule, as modified, are not substantially different from the effects of the proposed rule as published with the Board's Dual Notice.

In each case, the proposed rule would make adjustments regarding types of payments that are excluded from the definition of "compensation" in order to provide clarity and ensure that benefits similar to those already excluded from the definition of "compensation" will also be excluded under the amended rule. The proposed modification will have little impact on the totals reported to the Board by principals pursuant to Minnesota Statutes, section 10A.04, subdivision 6, for two reasons. First, paragraph (c), clause (1), of that subdivision requires principals to include "the portion of all direct payments for compensation *and benefits* paid by the principal to lobbyists in this state for that type of lobbying" (emphasis added). Second, the proposed modification will have only a slight impact on whether individuals are required to register with the Board as lobbyists under Minnesota Statutes, section 10A.03, because payments for disability insurance or benefits, or life insurance, are unlikely to be determinative as to whether an individual has exceeded the $3,000 threshold and is thereby defined as a lobbyist under Minnesota Statutes, section 10A.01, subdivision 21, paragraph (a), clause (1).

Chapter 4503, Campaign Finance Activities

Part 4503.2000, subpart 2. Material linked to a disclaimer. - Comment of CLC

The Campaign Legal Center (CLC) submitted a lengthy comment regarding the proposed rule to be codified at Minnesota Rules, part 4503.2000. The CLC does not appear to object to the definitions provided in subpart 1. The issues raised by the CLC that are specific to the proposed rule are listed below in the order they are listed within the CLC's comment. The Board declines to respond to other portions of the CLC's comment that are extraneous to the proposed rule.

The CLC stated:

> The Proposed Rule's on-ad disclaimer exemption for digital ads is overbroad, expanding the scope of the limited exception for banner ads and "similar electronic communications" in Minn. Stat. § 211B.04(3)(c)(3) to relieve political spenders of their obligation to include an on-ad disclaimer for the majority of political spending online, regardless of whether including such a disclaimer is technologically possible. Interpreting the exemption so expansively is both unnecessary and detrimental to Minnesota voters.

The overall statutory scheme for on-ad disclaimers is important for understanding the limited exception for banner ads and "similar electronic communications." Minn. Stat. § 211B.04 outlines disclaimer requirements for paid political material and electioneering communications, including by identifying materials that are exempt from political disclaimer requirements The other materials specifically exempted from on-ad disclaimers are:

> • "fundraising tickets, business cards, personal letters, or similar items that are clearly being distributed by the candidate;"
>
> • "bumper stickers, pins, buttons, pens, or similar small items on which the disclaimer cannot be conveniently printed;" and
>
> • "skywriting, wearing apparel, or other means of displaying an advertisement of such a nature that the inclusion of a disclaimer would be impracticable."

Read in context, the exemption for "online banner ads and similar electronic communications that link directly to an online page that includes the disclaimer" in the statute reflects that some political ads—including small digital banner ads, but also pens or bumper stickers, shirts, and skywriting—are presented in a format or such limited size as to make an on-ad disclaimer impracticable or technologically impossible. In the case of such communications, the exception—in conjunction with the requirement to link to an online page including the full disclaimer—is an effective way to balance voters' right to know who is spending to influence their ballots and the restrictions of the communication's format.

However, the Proposed Rule expands on this reasonable exception to create a sweeping exemption from Minn. Stat. § 211B.04's disclaimer requirements for a much broader range of paid digital political communications, including any text, images, video, or audio disseminated via a social media platform, on an application accessed primarily by mobile phone, or disseminated via the Internet by a third party (among other exceptions), so long as such communications link directly to an online page that includes a disclaimer in the correct format.

While some digital ads included in this sweeping list are truly "similar" to "online banner advertisements"—i.e., communications where the format is so small, short, or otherwise limited that it would not be possible to include a disclaimer without obscuring the message—this is not true for many digital political ads, which may use video or audio formats that are practically identical to traditional broadcast ads. This issue is particularly glaring in Subp. 2(A), (C), and (D), where the Proposed Rule exempts paid political communications distributed through social media platforms, mobile phone applications, and third-party ad

brokers. As explained below, such communications should not be exempt from the on-ad disclaimer requirement based solely on these features.

Response: The Board does not agree that the proposed rule is overbroad. The Board does not believe that the statutory exception to the disclaimer requirement for "online banner ads and similar electronic communications" under Minnesota Statutes, section 211B.04, subdivision 3, paragraph (c), clause (3), is limited to communications for which including a disclaimer on the face of the communication is impracticable or impossible. The CLC contends that the structure of section 211B.04, subdivision 3, indicates that the impracticability or impossibility of including a disclaimer should be considered when determining whether a disclaimer is required on the face of an online banner ad or similar electronic communication. However, the text of the statute leads to the opposite conclusion.

Minnesota Statutes, section 211B.04, subdivision 3, paragraph (c), contains three numbered exceptions to the disclaimer requirement. Exception (1) is "bumper stickers, pins, buttons, pens, or similar small items *on which the disclaimer cannot be conveniently printed*" (emphasis added). Exception (2) is "skywriting, wearing apparel, or other means of displaying an advertisement *of such a nature that the inclusion of a disclaimer would be impracticable*" (emphasis added). Exception (3) is "online banner ads and similar electronic communications that link directly to an online page that includes the disclaimer." Exception (3) is distinct from exceptions (1) and (2) in two critical respects. First, exception (3) is the only exception of the three that does not include text addressing whether the inclusion of a disclaimer would be inconvenient, impracticable, impossible, or otherwise difficult to accomplish. That distinction, alone, strongly indicates that the legislature did not intend to incorporate an impracticability requirement within exception (3). If the legislature had intended to include an impracticability or impossibility element within exception (3), it presumably would have included language similar to that included within the text of exceptions (1) and (2).

Second, exception (3) is the only exception of the three that nonetheless requires that a disclaimer be provided, albeit via a link to a webpage that contains the disclaimer, rather than via text or other means displayed on the face of the communication. That requirement suggests that communications covered by exception (3) do not require a disclaimer on their face because the inclusion of a link to a webpage with the required disclaimer is an effective means of conveying the same information that would be conveyed by a disclaimer on the face of the communication. It is notable that of the three enumerated exceptions within paragraph (c), exception (3) is the only exception for which the inclusion of a link to a webpage is technologically possible. The three exceptions enumerated within paragraph (c) were added to Minnesota Statutes, section 211B.04, in 2015,[1] which was two years after the Board was first

[1] 2015 Minn. Laws ch. 73, § 22.

afforded the power to enforce the disclaimer requirement with respect to entities under its jurisdiction.[2]

In summary, the structure and text of Minnesota Statutes, section 211B.04, subdivision 3, paragraph (c), lead to the opposite conclusion than that encouraged by the CLC. The Board cannot interpret exception (3) to mean something other than what the text of the statute says.[3]

The CLC stated:

> Subp. 2(A) excludes "text, images, video, or audio disseminated via a social media platform" from the on-ad disclaimer requirement outlined in Minn. Stat. § 211B.04, where the communication links directly to an online page containing the disclaimer. Social media platforms, like Meta's Facebook and Instagram and Google's YouTube, are some of the most popular venues for political spending, providing campaigns and other political spenders with the ability to reach large swaths of the voting public with a few clicks.
>
> Social media platforms serve a broad range of content to users—including ads that are virtually indistinguishable from traditional broadcast ads. As a result, political spenders can promote their messages in a wide range of formats, depending on the social media platform, from still images to short-form video (similar to traditional 15-to-60 second broadcast ads) to long-form video of a few minutes and more.
>
> Under Subp. 2(A) of the Proposed Rule, such ads are exempt from including an on-ad disclaimer if they simply link to a page with the disclaimer, even if the ad would be required to include a disclaimer if it were run on broadcast television.
>
> This would result in illogical and inconsistent application of disclaimer requirements to substantially similar (or the same) paid political content if it is distributed via both broadcast channels and social media. Regardless of the platform where an ad reaches a voter, the voter's interest in understanding the source of the advertisement as quickly and easily as possible does not change; excluding digital ads from the on-ad disclaimer requirement is both unnecessary

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[2] 2013 Minn. Laws ch. 138, art. 1, § 13.

[3] *See* Minn. Stat. § 645.16 (providing that "[w]hen the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit.").

> and would harm voters by substantially diminishing the scope of information available about who is spending money to influence their votes.

Response: The Board disagrees with the contention that it is illogical or inconsistent to treat "text, images, video, or audio disseminated via a social media platform" in the same manner as online banner ads. While it is true that social media communications and communications disseminated via broadcast media may be and often are very similar with respect to their content, and may reach large numbers of potential voters, the key distinction is that social media communications may be configured to include a link to a webpage that includes the required disclaimer, whereas that is not the case with broadcast communications. The legislature chose to exempt "online banner ads and similar electronic communications that link directly to an online page that includes the disclaimer" regardless of whether it would be practicable or convenient to include a disclaimer on the face of the communication. The Board's role in drafting the proposed rule is to provide clarity regarding the application of the phrase "similar electronic communications," and the Board's role is not to second-guess the decision of the legislature to exempt certain communications from the disclaimer requirement when those communications include a link to the required disclaimer.

The CLC stated:

> The Proposed Rule's effort to address political advertising on mobile applications (or "apps") implicates many of the same issues as social media advertising, and some novel concerns, including how regulators define and apply language around when an app is "accessed primarily via mobile phone."
>
> As with social media, apps—including popular mobile games, music streaming and podcast apps, and major video streaming platforms (like Netflix, Hulu, and Peacock)—often offer not only banner-style image ads, but also regular video and still ad breaks, which can include paid political communications. Such ads are often substantially similar in format and content to those distributed on traditional and broadcast media, including video and audio ads. However, under Subp. 2(C) of the Proposed Rule, these digital political ads would be exempt from displaying on-ad disclaimers, provided they comply with the alternative requirement of providing a link. Again, this broad application unnecessarily captures political ads that may be substantially or entirely identical to traditional broadcast ads that would require an on-ad disclaimer.

Response: The Board disagrees with the contention that the relevant question is whether communications disseminated via mobile applications are similar to broadcast advertisements in terms of their format and content. As explained in more detail above, the Board believes that the relevant question is whether communications disseminated via mobile applications are "similar electronic communications" within the meaning of Minnesota Statutes, section 211B.04, subdivision 3, paragraph (c), clause (3). The Board believes that the answer to that question is

yes, because communications disseminated via mobile applications, like banner ads, typically may be configured to include a link to a webpage that includes the required disclaimer, whereas that is not the case with broadcast communications.

The CLC stated:

> Subp. 2(C)'s exemption for communications disseminated via app is further complicated by the question of what "an application accessed primarily via mobile phone" means in an era of connected devices, where many popular apps are available on a broad range of devices, including tablets, smart watches, e-readers, smart TVs, and streaming boxes like Apple TV and Roku. Little (if any) public information is available about the relative proportion of smart devices used to access a particular app, although advertisers do distinguish more broadly between ads on streaming video content delivered OTT ("over-the-top" – streaming over the internet to devices like mobile phones, tablets, computers via app or website) and CTV ("connected TV" – TV sets connected to the Internet using apps to deliver streaming content, including smart TVs, TV sticks, and gaming consoles).
>
> Even for the subset of apps used for both CTV and OTT streaming, it is unclear under the Proposed Rule how the Board would determine whether an application is "accessed primarily via mobile phone" (as opposed to other mobile devices) for the purposes of this exception; it would seem to necessitate the Board either obtain such information from the multiplicity of apps serving ads or rely on the representation of the political spender. In any event, determining the precise device being used when an ad is seen by a voter is unnecessary because such an approach fails to account for the feature of digital ads that matters, which is whether it is technologically possible to provide a clear on-ad disclaimer.

Response: The Board disagrees with the contention that the relevant question is "whether it is technologically possible to provide a clear on-ad disclaimer." As explained in more detail above, the Board believes that the relevant question is whether communications disseminated via mobile applications are "similar electronic communications" within the meaning of Minnesota Statutes, section 211B.04, subdivision 3, paragraph (c), clause (3).

The CLC's point regarding the challenge in defining communications accessed primarily from mobile phones is well taken. It is difficult, in the midst of ever-evolving and growing means to communicate to draw distinctions between methods of communication that will not quickly become outdated or difficult to apply. The language within subpart 2, item C, including "text, images, video, or audio disseminated using an application accessed primarily via mobile phone, excluding email messages, telephone calls, and voicemail messages" is intended to encompass communications received via a mobile phone application, and buttress the potential argument that a mobile phone application user is not accessing the internet when receiving a

communication, such as if the user is connected to a cellular network rather than a wi-fi network. Based on how the proposed rule is drafted, it is highly unlikely that the Board will ever need to inquire into whether a communication was received via an application accessed primarily by mobile phone, because subpart 2, item D, includes "paid electronic advertisements disseminated via the internet by a third party, including but not limited to online banner advertisements and advertisements appearing within the electronic version of a newspaper, periodical, or magazine." That item may be considered a catch-all category for electronic communications disseminated via the internet that, like banner ads, may be configured to include a link to a webpage containing the required disclaimer. Advertisements accessed via tablets, smart watches, e-readers, smart TVs, and streaming devices will almost certainly be disseminated via the internet, and will thereby be encompassed by the proposed rule.

The CLC stated:

> Perhaps the most problematic exception in the Proposed Rule is Subp. 2(D), which exempts digital political ads via the internet by a third party, "including but not limited to online banner advertisements." Third-party distribution is common for online political ads in many formats, including small online banner ads, but also long-format video ads similar to (or exactly the same as) those aired on broadcast media.
>
> Google dominates the third-party ad market, with its Ad Manager holding "about [a] 90% share of the U.S. Market for ad-serving software." While banner ads remain one of the most common ad formats, appearing in feeds, around articles, and around other online content, Google Ad Manager also presents in-stream ads for audio and video players, "interstitial ads" occurring between content "at natural breaks and transitions, such as level completion," and "rewarded ads" "where a user explicitly opts-into an ad experience to receive a reward from the publisher," as in mobile games. As with ads on social media platforms and mobile apps, there is no reason to categorically exempt such a broad range of advertising formats from on-ad disclaimer requirements in Minnesota."

Response: The Board disagrees with the contention that there is no reason to apply the exception stated in Minnesota Statutes, section 211B.04, subdivision 3, paragraph (c), clause (3), to paid electronic advertisements disseminated via the internet. As explained in more detail above, the reason is that online electronic communications generally may be configured to include a link to a webpage with the required disclaimer. Moreover, the statutory exception explicitly applies to "online banner ads and similar electronic communications" without defining those terms. If the Board were to limit the exception to banner ads, it would effectively

ignore the intent of the legislature and read the phrase "and similar electronic communications" out of the statute.[4]

The CLC stated:

> CLC recommends the Board narrow the Proposed Rule's language to reflect the statute's more limited exception for banner ads and ads that are truly substantially similar—i.e., ads where it is not technologically possible to display a clear, legible disclaimer statement and still convey the ad's message in the space available—and clarify that disclaimers should be included on digital political ads unless it is technologically impossible to do so.
>
> To enforce this standard, we also propose that the final regulation require that the sponsor of a digital advertisement be able to establish, at the Board's request, why a disclosure statement could not be included on the face of an advertisement due to technological constraints. Where technological constraints prevent the inclusion of an on-ad disclaimer, the rule should continue to require the spender to include a click-through link leading to a page with the clear disclosure statement, as statutorily required.
>
> Other states have similar set similar standards for allowing an alternative method of providing information that would otherwise be included in an on-ad disclaimer. Wisconsin, for example, allows sponsors of "small online ads and similar electronic communications" where disclaimers "could not conveniently be included" to link directly to a website with the required attribution, but "[s]ponsors of such small online ads or similar electronic communications must be able to establish, at the Commission's request, that including the attribution on the ad or communication was not possible due to size or technological constraints." Similarly, California's Political Reform Act permits the sponsor of an "electronic media advertisement" to substitute a complete disclaimer statement on the face of an ad with a hyperlink to the required information when including a complete disclaimer would be "impracticable or would severely interfere with the [sponsor's] ability to convey the intended message due to the nature of the technology used to make the communication." Like Wisconsin, California's Fair Political Practices Commission requires that a sponsor of an electronic media advertisement who claims inclusion of a full disclaimer on the ad is

[4] *See* Minn. Stat. § 645.16 (providing that "[t]he object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature. Every law shall be construed, if possible, to give effect to all its provisions.").

"impracticable" be able to show why it was not possible to include a complete disclaimer on the advertisement.

At the federal level, the proposed Honest Ads Act would enact a similar standard, requiring qualified internet or digital communications to both "state the name of the person who paid for the communication " and "provide a means for the recipient of the communication to obtain the remainder of the information required under this section with minimal effort and without receiving or viewing any additional material other than such required information" where it is "not possible" to include all of the disclaimer information required on the ad itself.

By adopting the technological impossibility standard, the Board would bring the Proposed Rule into line with the limited list of exceptions outlined in Minn. Stat. § 211B.04. Furthermore, this standard would ensure that Minnesota voters have access to complete information about the sources of digital political ads, provide clear guidance to political spenders, and protect against exploitation of the exemption.

Finally, CLC also recommends the Board specify additional guidelines for how a digital advertisement must provide the required linked disclosure statement for communications that meet the technological impossibility standard. Currently, the Proposed Rule merely requires a communication "link directly to an online page that includes a disclaimer in the form required by that section [of the statute]." We suggest that, in the final rule, the Board should make clear that clicking on a digital advertisement must immediately direct the recipients of the advertisement to a page displaying the disclaimer information required by Minn. Stat. § 211B.04 without requiring the recipient to navigate through or view any extraneous material beyond the disclosure statement, as the Honest Ads Act proposes.

Spenders should not get a second bite at the apple in presenting their messages to voters by requiring voters to scroll through additional political or electioneering content to discover who is sponsoring the message. Other states—including Wisconsin, Washington, and New York—have promulgated similar regulations for modified disclaimers on certain digital ads, which allow the public to readily obtain key information about the sources of online advertising in elections. This additional clarification would ensure Minnesota voters have one-step access to clear, complete disclosure information when they view digital advertisements that refer to state and local candidates running for office in Minnesota, even where it is not technically possible to include an on-ad disclaimer.

Response: As explained in more detail above, the Board cannot read a technological impossibility standard into the exception provided at Minnesota Statutes, section 211B.04,

subdivision 3, paragraph (c), clause (3). The legislature chose to exempt "online banner ads and similar electronic communications that link directly to an online page that includes the disclaimer" regardless of whether it would be possible, practicable, or convenient to include a disclaimer on the face of the communication. The Board's role in drafting the proposed rule is to provide clarity regarding the application of the phrase "similar electronic communications," and the Board's role is not to second-guess the decision of the legislature to exempt certain communications from the disclaimer requirement when those communications include a link to the required disclaimer.

Wisconsin's disclaimer exception for "text messages, social media communications, and certain small advertisements on mobile phones" applies to communications on which the required disclaimer "cannot be conveniently printed," is statutory, and explicitly provides that the Wisconsin Ethics Commission "may, by rule, specify small items or other communications to which this subsection shall not apply."[5] California's disclaimer exception for communications for which the inclusion or the required disclaimer "is impracticable or would severely interfere with the committee's ability to convey the intended message due to the nature of the technology used to make the communication," is also statutory, and explicitly provides that the California Fair Political Practices Commission may promulgate regulations determining the scope of that exception.[6] Unlike in Wisconsin and California, the Board does not have statutory authority to promulgate a rule stating that disclaimers must be included on digital political ads unless it is technologically impossible to do so. The Board also lacks statutory authority to require those preparing and disseminating campaign material to certify that a disclaimer could not be included on the face of a communication. If the legislature had intended to authorize the Board to impose such a requirement, it presumably would have included language similar to that found in Minnesota Statutes, section 10A.38, which requires certain candidates who disseminate advertisements without closed captioning or without a published transcript to file with the Board "a statement setting forth the reasons for not doing so."

With respect to the suggestion that the Board modify the proposed rule to provide that clicking on a link "must immediately direct the recipients of the advertisement to a page displaying the disclaimer information required by Minn. Stat. § 211B.04 without requiring the recipient to navigate through or view any extraneous material beyond the disclosure statement," the Board has no information suggesting that such a rule is necessary in Minnesota. Minnesota Statutes, section 211B.04, subdivision 3, paragraph (c), clause (3), already provides that a communication covered by that exception must "link directly to an online page that includes the disclaimer," and the Board is capable of enforcing that requirement. Since the Board was first afforded the authority to enforce the disclaimer requirement in mid-2013, the Board has not

[5] Wis. Stat. § 11.1303 (2) (f).
[6] Cal. Gov't Code § 84501 (a) (2) (G).

received any complaints filed pursuant to Minnesota Statutes, section 10A.022, and Minnesota Rules, part 4525.0200, alleging that a link within an advertisement required the viewer navigate through extraneous material in order to view the required disclaimer.

The CLC appears to suggest that those clicking on a link should not be required to scroll through any content, after clicking a link, to view the required disclaimer. However, the statute requires the link to go "directly to an online page that includes the disclaimer," not to a page that includes only the disclaimer. Those disseminating campaign material via the internet often include a link within their campaign material to their website's home page, which often will display the required disclaimer at the bottom of the page. Modifying the proposed rule to prohibit linking to a page that requires a viewer to scroll down would thereby significantly alter the statutory requirement, and may exceed the Board's statutory authority. Moreover, such a provision would likely be difficult to administer. Users access the internet from a wide variety of devices that use a wide variety of software applications to display web pages in a wide variety of formats, particularly in terms of the amount of text and images that may be displayed on a user's screen without needing to scroll, either vertically or horizontally. Crafting a rule that would prohibit requiring viewers to scroll, that could account for that variability and the use of assistive software such as screen readers, would be very difficult.

The Board shares the CLC's desire to ensure that individuals are provided with the information necessary to ascertain the source of campaign material as quickly and easily as possible. Many of the CLC's suggestions are topics the legislature may wish to consider, should it decide to amend Minnesota Statutes, section 211B.04. However, implementing those suggestions would, in many cases, exceed the Board's statutory authority to promulgate administrative rules.

Chapter 4511, Lobbyist Registration and Reporting

Part 4511.0100, subpart 1c. Development of prospective legislation. - Comment of MSBA

The MSBA quoted from a portion of the proposed definition of the phrase "development of prospective legislation," then stated:

> MSBA regularly receives requests for information regarding prospective legislation from state legislators, state agencies and departments (including the Minnesota Department of Education), and the executive branch. The scope of this definition may be too broad as it includes communications that serve to share MSBA's experience and expertise rather than to affect potential legislation.
>
> An exception to "development of prospective legislation" is "responding to a request for information by a public official." The term "public official" is not defined in the existing or proposed rules. MSBA regularly receives requests for information from the Minnesota Department of Education and other state agencies. It is not clear whether these employees, including the Commissioners

> of these agencies, would constitute a "public official" for purposes of the proposed rule.

Response: The term "public official" is defined by Minnesota Statutes, section 10A.01, subdivision 35. A current list of public officials employed by the Department of Education is available on the Board's website at cfb.mn.gov/reports-and-data/officials-financial-disclosure/agency/71500000. Public officials may be searched for by name at cfb.mn.gov/reports-and-data/officials-financial-disclosure/official, or by agency at cfb.mn.gov/reports-and-data/officials-financial-disclosure/agency. Consulting the Board's website allows individuals and organizations to quickly determine which individuals have been identified as public officials.

With respect to the breadth of the definition, it is intended to distinguish between communications requesting support for prospective legislation or communications intended to facilitate the drafting of legislation, versus communications that merely provide information without seeking support for legislation and without intending to facilitate the drafting of legislation. Stated simply, the sharing of experience and expertise, and attempting to influence the development of prospective legislation, are not mutually exclusive activities. Principals such as the MSBA may share information without engaging in lobbying, but the Board believes that when the sharing of information is coupled with a request for support of legislation, or is intended to facilitate the drafting of legislation, that activity is properly defined as attempting to influence the development of prospective legislation within the meaning of Minnesota Statutes, section 10A.01, subdivision 19a.

The MSBA stated:

> The line between "developing" and "responding" is uncertain. Similarly, the exception for "providing information to public officials in order to raise awareness and educate on an issue or topic" may be difficult to distinguish from development of prospective legislation.

Response: The proposed rule would define the phrase "development of prospective legislation" in a manner that would expressly exclude "responding to a request for information by a public official." As long as there is a request for information by a public official and the communication in question is a response to that request, the communication would not constitute the development of prospective legislation. The term "public official" is defined by statute and the phrase "responding to a request for information" is clear in its meaning. Nonetheless, an individual who is uncertain may contact Board staff for guidance, treat the activity in question as though it is lobbying, or request an advisory opinion from the Board pursuant to Minnesota Statutes, section 10A.02, subdivision 12.

The MSBA stated:

> MSBA holds an annual meeting, the Delegate Assembly, at which Minnesota's school board members gather to discuss resolutions and potential legislation. It is not clear whether this definition would apply to the Delegate Assembly and, if so, what the ramifications would be.

Response: The phrase "development of prospective legislation" appears within the definition of the term "legislative action" that is codified at Minnesota Statutes, section 10A.01, subdivision 19a. The proposed rule defines the phrase "development of prospective legislation" for two purposes. First, so that there is clarity as to the type of communication that may trigger a requirement for an individual to register as a lobbyist. Second, so that there is clarity as to when a lobbyist is first attempting to influence legislative action, which must be reported as required by Minnesota Statutes, section 10A.04, subdivision 4, paragraph (e).

Minnesota Statutes, section 10A.01, subdivision 21, generally defines the term "lobbyist" in a manner that only includes those who communicate "for the purpose of attempting to influence legislative or administrative action, or the official action of a political subdivision, by communicating with public or local officials."[7] Minnesota Rules, part 4511.0100, subpart 3, similarly defines the term "lobbying" in a manner that only includes "communicating with or urging others to communicate with public officials or local officials" as well as "[a]ny activity that directly supports this communication." Therefore, an individual participating in the Delegate Assembly would not need to consider if they must register as a lobbyist for that activity unless there was also a public official at the event, and the individual was attempting to influence legislative action by communicating with the public official. Even if that scenario did play out the other registration thresholds in Minnesota Statutes, section 10A.01, subdivision 21 would apply, and generally would require registration under Minnesota Statutes, section 10A.03, only if the individual was compensated over $3,000 for lobbying.

The MSBA has a number of lobbyists registered with the Board. It is possible that the individuals who are registered to engage in lobbying for the MSBA could prepare future communications with public officials during the event that are intended to influence legislative action, such as by engaging in the development of prospective legislation. Whether activities occurring during the MSBA's annual meeting are defined as lobbying or not, and whether those activities would require a lobbyist to report that activity within a lobbyist report, would likely

[7] Minnesota Statutes, section 10A.01, subdivision 21, paragraph (a), clause (1), item (ii), also includes someone compensated by "a business whose primary source of revenue is derived from facilitating government relations or government affairs services if the individual's job duties include offering direct or indirect consulting or advice that helps the business provide those services to clients," but that provision is unlikely to apply under the circumstances described by the MSBA.

depend on specific facts regarding the individuals involved, who they are communicating with or intend to communicate with, and the subjects of those communications.

The MSBA stated:

> Finally, it is not clear where this proposed definition would apply in the Rules. The term "development of prospective legislation" appears only in the definition.

Response: The phrase "development of prospective legislation" appears within the definition of the term "legislative action" that is codified at Minnesota Statutes, section 10A.01, subdivision 19a. The definition of the term "legislative action" impacts the definitions of the terms "lobbyist" and "principal" defined at Minnesota Statutes, section 10A.01, subdivisions 21 and 33, the reporting requirements imposed by Minnesota Statutes, sections 10A.04, subdivisions 4 and 6, and 10A.05, the prohibition on contingent fees for lobbying codified at Minnesota Statutes, section 10A.06, and the definition of the term "lobbying" that appears at Minnesota Rules, part 4511.0100, subpart 3. As explained on pages 23-24 of the Board's SONAR, the term "legislative action" was not defined prior to Minnesota Statutes, section 10A.01, subdivision 19a, becoming effective in 2024, and the new definition of that term introduced the phrase "development of prospective legislation" to Minnesota Statutes, Chapter 10A. The proposed rule is needed to define that phrase, and in turn more clearly define the term "legislative action."

Part 4511.0100, subpart 4. Lobbyist's disbursements. - Comment of MCN

The MCN stated:

> Given that the definition of "disbursement" has changed drastically, and is not a commonly used term, we recommend retitling this section "Lobbyist's gifts."
>
> Further, we recommend changing "each" to "any." The word "each" could be construed to imply all lobbyists should be reporting something here. "Any" provides clarity that a lobbyist may have no gifts to report.
>
> Lastly in this section, we recommend adding "to an official" after "gift given," in an effort to be exceedingly clear.

Response: The rule defines the term "lobbyist's disbursements" because the term "lobbyist disbursements" is used within Minnesota Statutes, section 10A.04, subdivision 9, clause (1), in describing what a designated lobbyist must report to the Board. While the use of the term "lobbyist disbursements" has decreased considerably as a result of legislative changes, the term being defined needs to match the statute to which it pertains.

With respect to the use of the word "each" or "any," the Board believes that either word would be suitable and have the same meaning. However, the word "each" better matches the statute

to which the rule pertains. Specifically, Minnesota Statutes, section 10A.04, subdivision 4, paragraph (g), provides that "[a] lobbyist must report the amount and nature of each gift, item, or benefit, excluding contributions to a candidate, equal in value to $5 or more, given or paid to any official, as defined in section 10A.071, subdivision 1, by the lobbyist or an employer or employee of the lobbyist. The list must include the name and address of each official to whom the gift, item, or benefit was given or paid and the date it was given or paid."

With respect to adding "to an official" after the text "gift given," that addition is unnecessary because the reporting of gifts, pursuant to Minnesota Statutes, section 10A.04, subdivision 4, paragraph (g), is limited to gifts "given or paid to any official, as defined in section 10A.071, subdivision 1," and Minnesota Statutes, section 10A.071, subdivision 1, paragraph (c), defines the term "official" to mean "a public official, an employee of the legislature, or a local official." Moreover, Minnesota Rules, part 4511.0200, subpart 2, provides that the word "gift" "has the meaning given in chapter 4512 and Minnesota Statutes, section 10A.071. While the Board shares the MCN's desire for clarity, adding more words than are necessary make it more likely that the Board's rules will become outdated as the result of future legislative changes.

Part 4511.0100, subpart 5a. Pay or consideration for lobbying. - Comment of MCN

The MCN stated:

> We ask the Board to remove the word "gross" before "compensation," because compensation is defined in section 4501.0100. Adding "gross" in this section signals that the calculation is different than the calculation for "compensation," which we do not think is the intent.

Response: The Board's intent was to define "pay or consideration for lobbying" in a manner that includes total compensation, before income taxes. However, the term "gross compensation" may be construed to be inclusive of money withheld via a payroll deduction for things that are currently excluded from the definition of "compensation" under Minnesota Rules, part 4501.0100, subpart 4, such as Social Security taxes, as well as for additional things that the Board seeks to exclude from the definition of "compensation" via the proposed rules. The MCN's comment has prompted the Board to propose a revised definition of the phrase "pay or consideration for lobbying" that eliminates the use of the word "gross" as follows.

Proposed modification to Part 4511.0100, subpart 5a

> Subp. 5a. **Pay or consideration for lobbying.** "Pay or consideration for lobbying" means the compensation paid to an individual for lobbying. An individual whose job responsibilities do not include lobbying, and who has not been directed or requested to lobby on an issue by their employer, does not receive pay or consideration for lobbying they undertake on their own initiative.

As modified, the rule would provide clarity by defining a phrase that impacts whether an individual is defined as a lobbyist under Minnesota Statutes, section 10A.01, subdivision 21, paragraph (a), clause (1). The need for this rule is explained in more detail on page 24 of the Board's SONAR. The proposed modification would eliminate a single word, "gross," in order to avoid a potential conflict between this rule and the definition of "compensation" under Minnesota Rules, part 4501.0100, subpart 4. The proposed modification would not make the rule substantially different from the rule text published with the Board's Dual Notice:

> Subp. 5a. **Pay or consideration for lobbying.** "Pay or consideration for lobbying" means the gross compensation paid to an individual for lobbying. An individual whose job responsibilities do not include lobbying, and who has not been directed or requested to lobby on an issue by their employer, does not receive pay or consideration for lobbying they undertake on their own initiative.

The difference between the rule text published with the Board's Dual Notice and the proposed modified text is within the scope of the Board's Dual Notice because it involves the deletion of a single word within the definition of a single phrase. The difference is a logical outgrowth of the Board's Dual Notice and MCN's comment, which seeks to avoid a conflict between this rule and the definition of "compensation" under Minnesota Rules, part 4501.0100, subpart 4. The Board's Dual Notice provided fair warning that the outcome could be the proposed rule, as modified, because the modification is a logical outgrowth of the Board's Dual Notice, the subject matter remains the same, and the effects of the proposed rule, as modified, are not substantially different from the effects of the proposed rule as published with the Board's Dual Notice.

In each case, the proposed rule would define a term that needs to be defined in order to provide clarity as to who is defined as a lobbyist under Minnesota Statutes, section 10A.01, subdivision 21, paragraph (a), clause (1). The proposed modification will only impact the totals reported to the Board by principals pursuant to Minnesota Statutes, section 10A.04, subdivision 6, to the extent that a relatively small number of individuals are not defined as lobbyists as a result of deleting the word "gross." The proposed modification will have only a slight impact on whether individuals are required to register with the Board as lobbyists under Minnesota Statutes, section 10A.03, because the distinction between "gross compensation" and "compensation," as defined by Minnesota Rules, part 4501.0100, subpart 4, is unlikely to be determinative as to whether an individual has exceeded the $3,000 threshold and is thereby defined as a lobbyist under Minnesota Statutes, section 10A.01, subdivision 21, paragraph (a), clause (1).

In order to clarify that compensation is calculated to include earnings before any payroll deduction for income tax, the Board has also proposed a revised amendment of the definition of the term "compensation" that is codified at Minnesota Rules, part 4501.0100, subpart 4.

Part 4511.0200, subpart 2a. Registration threshold. - Comment of MCN

With respect to the definition of the phrase “pay or consideration for lobbying” to be codified at part 4511.0100, subpart 5a, the MCN stated:

> We ask the Board to remove the word “gross” before “compensation,” because compensation is defined in section 4501.0100. Adding “gross” in this section signals that the calculation is different than the calculation for “compensation,” which we do not think is the intent.

Response: While the MCN did not specifically refer to the proposed rule to be codified at part 4511.0200, subpart 2a, the term “gross compensation” is used and the word “gross” should be removed for the same reasons the Board proposes removing it from the text of the proposed rule to be codified at part 4511.0100, subpart 5a.

Proposed modification to Part 4511.0200, subpart 2a

> Subp. 2a. **Registration threshold.** An individual must register as a lobbyist with the board upon the earlier of when:
>
> A. the individual receives total pay or consideration from all sources that exceeds $3,000 in a calendar year for the purpose of lobbying or from a business whose primary source of revenue is derived from facilitating government relations or government affairs services if the individual's job duties include offering direct or indirect consulting or advice that helps the business provide those services to clients. The pay or consideration for lobbying for an individual whose job duties include both lobbying and functions unrelated to lobbying is determined by multiplying the compensation of the individual by the percentage of the individual's work time spent lobbying in the calendar year; or
>
> B. the individual spends more than $3,000 of their own funds in a calendar year for the purpose of lobbying. Membership dues paid by the individual, and expenses for transportation, lodging, and meals used to support lobbying by the individual, are not costs that count toward the $3,000 expenditure threshold that requires registration.

As modified, the rule would provide clarity by addressing how the registration threshold applies when an individual is compensated both for lobbying and for functions unrelated to lobbying. The proposed modification would eliminate a single word, “gross,” in order to be consistent with the proposed modification to the proposed rule to be codified at part 4511.0100, subpart 5a, and avoid a potential conflict between this rule and the definition of “compensation” under Minnesota Rules, part 4501.0100, subpart 4. The proposed modification would not make the rule substantially different from the rule text published with the Board’s Dual Notice:

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

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

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

The difference between the rule text published with the Board's Dual Notice and the proposed modified text is within the scope of the Board's Dual Notice because it involves the deletion of a single word. The difference is a logical outgrowth of the Board's Dual Notice and MCN's comment, which seeks to avoid a conflict with the definition of "compensation" under Minnesota Rules, part 4501.0100, subpart 4. The Board's Dual Notice provided fair warning that the outcome could be the proposed rule, as modified, because the modification is a logical outgrowth of the Board's Dual Notice, the subject matter remains the same, and the effects of the proposed rule, as modified, are not substantially different from the effects of the proposed rule as published with the Board's Dual Notice.

In each case, the proposed rule would provide clarity as to how to apply Minnesota Statutes, sections 10A.01, subdivision 21, and 10A.03, when an individual is compensated both for lobbying and functions unrelated to lobbying. The proposed modification will only impact the totals reported to the Board by principals pursuant to Minnesota Statutes, section 10A.04, subdivision 6, to the extent that a relatively small number of individuals are not defined as lobbyists as a result of deleting the word "gross." The proposed modification will have only a slight impact on whether individuals are required to register with the Board as lobbyists under Minnesota Statutes, section 10A.03, because the distinction between "gross compensation" and "compensation," as defined by Minnesota Rules, part 4501.0100, subpart 4, is unlikely to be determinative as to whether an individual has exceeded the $3,000 threshold and is thereby defined as a lobbyist under Minnesota Statutes, section 10A.01, subdivision 21, paragraph (a), clause (1).

In order to clarify that compensation is calculated to include earnings before any payroll deduction for income tax, the Board has also proposed a revised amendment of the definition of the term "compensation" that is codified at Minnesota Rules, part 4501.0100, subpart 4.

Part 4511.0200, subpart 2a. Registration threshold. - Comment of MSBA

The MSBA quoted from a portion of the proposed rule, then stated:

> Currently, MSBA registers a number of employees as lobbyists. However, other MSBA staff who do not directly interact with public officials support the activities of MSBA's registered lobbyists by conducting research, reviewing language, discussing options and challenges, and other activities related to prospective legislation. Because the definition of "lobbyist" includes *direct or indirect consulting or advice*, it is possible that many more MSBA employees could come within the reporting threshold.

Response: The proposed rule explains when an individual is required to register as a lobbyist pursuant to Minnesota Statutes, section 10A.03. The proposed rule does not expand the scope of who is defined as a lobbyist. Whether an individual is defined as a lobbyist or not is dictated by Minnesota Statutes, section 10A.01, subdivision 21, which generally defines the term "lobbyist" in a manner that only includes those who communicate "with public or local officials." That statute was amended, effective January 3, 2023, to provide that an individual is a lobbyist if, within a calendar year, they are paid more than $3,000 "from a business whose primary source of revenue is derived from facilitating government relations or government affairs services between two third parties."[8] The newly added statutory language was amended, effective January 1, 2024, as follows:

> (ii) from a business whose primary source of revenue is derived from facilitating government relations or government affairs services ~~between two third parties~~ if the individual's job duties include offering direct or indirect consulting or advice that helps the business provide those services to clients; or[9]

Rather than expand the scope of who is defined as a lobbyist, the proposed rule includes text contained within the statutory definition of the term "lobbyist" in describing when a lobbyist is required to register with the Board. The "direct or indirect consulting or advice" language comes directly from the statute and the $3,000 threshold stated within Minnesota Statutes, section 10A.01, subdivision 21, paragraph (a), clause (1), has not changed. The Board does

[8] 2021 Minn. Laws 1st Spec. Sess. ch. 14, art. 11, § 6.
[9] 2023 Minn. Laws ch. 62, art. 5, § 5.

not believe that the language in question would apply to MSBA employees, because the Board does not believe that the MSBA is a business, or that its "primary source of revenue is derived from facilitating government relations or government affairs services." Regardless, if additional MSBA employees are now defined as lobbyists because they are compensated by such a business and their job duties include providing consulting or advice that helps the business provide government relations or government affairs services to clients, that is the direct result of a statutory change that is already in effect, rather than the proposed rule.

The MSBA stated that some of its staff, who do not directly interact with public officials, support the "MSBA's registered lobbyists by conducting research, reviewing language, discussing options and challenges, and other activities related to prospective legislation." The proposed rules would not impact whether those staff members are required to register as lobbyists for the reasons explained above. However, there is a distinction between the statutory definition of the term "lobbyist" under Minnesota Statutes, section 10A.01, subdivision 21, and the definition of "lobbying" that appears at Minnesota Rules, part 4511.0100, subpart 3. The term "lobbying" is defined to include both communication with public and local officials, and "[a]ny activity that directly supports this communication. . . ." As a result, a principal such as the MSBA is required to include compensation paid to non-lobbyist staff and other expenses directly related to the communications of its registered lobbyists when calculating the totals included within its annual principal report, filed pursuant to Minnesota Statutes, section 10A.04, subdivision 6.

Part 4511.0200, subpart 2b. Registration not required. - Comment of MSBA

The MSBA stated:

> Subpart 2b(B) states that an association board member is not a lobbyist "unless the individual receives pay or other consideration to lobby on behalf of the association." MSBA board members receive a stipend for their service on the MSBA board, yet only a portion of a board member's time is devoted to lobbying. Some MSBA board members travel to Washington, D.C. to talk with federal legislators. The rules are not clear whether they encompass federal activity. The scope of the term "or other consideration" needs clarification. Would airfare, hotel room, food/beverage, and other expense reimbursements be considered "other consideration"?

Response: The proposed rule does not encompass the MSBA's communication with members of the United States Congress because it pertains to whether an individual is required to register as a lobbyist, under Minnesota Statutes, Chapter 10A, as a result of serving on the board or governing body of an association that is a principal. The terms "lobbyist" and "principal" are defined by Minnesota Statutes, section 10A.01, subdivisions 21 and 33, respectively. The statutory definitions of those terms are reliant upon the definitions of other terms, namely "legislative action," which is defined by Minnesota Statutes, section 10A.01, subdivision 19a, "administrative action," which is defined by Minnesota Statutes, section 10A.01, subdivision 2,

"official action of a political subdivision," which is defined by Minnesota Statutes, section 10A.01, subdivision 26b, "political subdivision," which is defined by Minnesota Statutes, section 10A.01, subdivision 31, "public official," which is defined by Minnesota Statutes, section 10A.01, subdivision 35, "local official," which is defined by Minnesota Statutes, section 10A.01, subdivision 22, and "association," which is defined by Minnesota Statutes, section 10A.01, subdivision 6. With the limited exception of an individual who is defined as a lobbyist under Minnesota Statutes, section 10A.01, subdivision 21, paragraph (a), clause (1), item (ii), which as explained above almost certainly would not encompass MSBA staff, an individual is defined as a lobbyist only to the extent that they communicate with public or local officials, which do not include federal officials such as members of Congress.

The proposed rules would define the phrase "pay or consideration for lobbying" to mean "the compensation paid to an individual for lobbying." That definition would be codified at Minnesota Rules, part 4511.0100, subpart 5a. The word "compensation" is defined by Minnesota Rules, part 4501.0100, subpart 4. The proposed rules would modify the definition of "compensation" slightly to exclude health care and retirement benefits. If the proposed amendment of that rule is adopted, the word "compensation" will be defined to mean "every kind of payment for labor or personal services," excluding "payments of Social Security, unemployment compensation, workers' compensation, health care, retirement, or pension benefits." The reimbursement payments described by the MSBA are not compensation because they are made in order to reimburse individuals for expenses they have incurred, rather than to compensate them for labor or personal services.

The proposed rule would clarify that an individual, such as an MSBA board member, is not required to register as a lobbyist unless they receive "pay or other consideration to lobby on behalf of the association, and the aggregate pay or consideration for lobbying from all sources exceeds $3,000 in a calendar year." The proposed rule to be codified at Minnesota Rules, part 4511.0200, subpart 2a, would further provide that "pay or consideration for lobbying for an individual whose job duties include both lobbying and functions unrelated to lobbying is determined by multiplying the gross compensation of the individual by the percentage of the individual's work time spent lobbying in the calendar year. . . ." Therefore, if an MSBA board member is not compensated more than $3,000 within a calendar year, from all sources, specifically to engage in lobbying, then that individual will not be required to register with the Board as a lobbyist as a result of being paid a stipend to serve on the MSBA's board of directors.

Part 4511.0500, subpart 3. Report of designated lobbyist. - Comment of MSBA

The MSBA stated:

> The proposed rules regarding the designated lobbyist report include, "*if the lobbyist represents an association, a current list of the names and addresses of*

> *each officer and director of the association.*" MSBA hopes to confirm that MSBA's address may be provided rather than residential addresses.

Response: Minnesota Statutes, section 10A.04, subdivision 4, paragraph (a), requires that lobbyist reports "include information the board requires from the registration form," and Minnesota Statutes, section 10A.03, subdivision 2, clause (6), requires that the lobbyist registration form include, "if the lobbyist lobbies on behalf of an association, the name and address of the officers and directors of the association." Minnesota Rules, part 4501.0100, subpart 2, defines the word "address" to mean "the complete mailing address, including the zip code. An individual may use either the person's business address or home address. An association's address is the address from which the association conducts its business." Because the word "address" is defined to include a business or home address, Board staff have advised lobbyists that when listing the addresses of an association's officers and directors, the lobbyist may use the association's address if the association's officers and directors may receive mail at that address. The Board does not intend to deviate from that practice and the proposed rules do not have any impact on how the word "address" is defined. As explained more fully on page 28 of the Board's SONAR, the proposed changes to this rule are needed to accommodate legislative changes that took effect on January 1, 2024, regarding the content of lobbyist reports.

The MSBA stated:

> The proposed rules would require a report of "each original source of money in excess of $500 provided to the individual or association that the lobbyist represents." For a membership organization that holds an annual conference and other meetings that include exhibitors and sponsorships, publishes the MSBA Journal and other materials that include advertisements, has over 2,000 school board members who typically attend one or more paid trainings or webinars, and collects other revenue, this reporting requirement may quickly become challenging to fulfill.

Response: Minnesota Statutes, section 10A.04, subdivision 4, paragraph (h), requires that lobbyist reports include:

> each original source of money in excess of $500 in any year used for the purpose of lobbying to influence legislative action, administrative action, or the official action of a political subdivision. The list must include the name, address, and employer, or, if self-employed, the occupation and principal place of business, of each payer of money in excess of $500.

Minnesota Rules, part 4511.0100, subpart 5, defines the phrase "original source of funds" to mean "a source of funds, other than the entity for which a lobbyist is registered, paid to the lobbyist, the lobbyist's employer, the entity represented by the lobbyist, or the lobbyist's

principal, for lobbying purposes." The proposed rules would modify that definition slightly, by adding the text "provided by an individual or association" immediately preceding the text "other than the entity for which a lobbyist is registered. . . ." The proposed rules do not alter the scope of the information that must be reported to the Board. Instead, the requirement to report original sources of money used for lobbying is statutory, and has been in effect since the Ethics in Government Act was first enacted into law in 1974.[10]

Minnesota Statutes, section 10A.04, subdivision 4, paragraphs (g) and (h), do not explicitly state whether each lobbyist registered on behalf of an entity with multiple reporting lobbyists[11] is required to separately report gifts to officials and original sources of money used for lobbying. Each principal or other entity with registered lobbyists must have a single designated lobbyist who is responsible for reporting lobbying disbursements made by the entity, pursuant to Minnesota Statutes, section 10A.04, subdivision 9. Because there is no benefit to requiring multiple lobbyists to report duplicative information, and principals and other entities with registered lobbyists are already required to have a designated lobbyist who reports more information than other lobbyists, Board staff have advised lobbyists that only the designated lobbyist needs to report their association's gifts to officials and original sources of money used for lobbying. This practice benefits lobbyists registered on behalf of principals, such as the MSBA, that have multiple reporting lobbyists. The proposed rule would codify that practice by stating that the reporting of gifts to officials and original sources of money used for lobbying is the responsibility of the designated lobbyist.

Part 4511.0900. Lobbyist reporting for political subdivision membership organizations. - Comment of MSBA

The MSBA quoted the text of subpart 1 of the proposed rule, then stated:

> MSBA hopes that the CFB will provide greater clarity on this expansive requirement. The meaning of "attempt" is uncertain. It could constitute every conversation, phone call, email, and more. If so, the reporting requirement would be tremendously time-consuming and costly, if not actually impossible to fulfill.

Response: The proposed rule does not impose a new reporting requirement. The word "attempts" was used because Minnesota Rules, part 4511.0100, subpart 3, defines "lobbying" to mean "attempting to influence" one of three categories of government action. The three categories include legislative action, administrative action, and the official action of a political

[10] 1974 Minn. Laws 1156.

[11] *See* Minn. Stat. § 10A.04, subd. 9 (2). As used in this paragraph, the term "reporting lobbyist" includes a lobbyist who reports only their own lobbying activity, commonly referred to as a self-reporting lobbyist.

subdivision.[12] Principals such as the MSBA are required to file annual reports disclosing the total amount spent attempting to influence those three categories of government action, pursuant to Minnesota Statutes, section 10A.04, subdivision 6. The principal reporting requirement has been in effect since 1991.[13]

As explained more fully on pages 28-29 of the Board's SONAR, the legislature changed the scope of what is defined as lobbying, effective January 1, 2024, primarily by expanding it to include lobbying any political subdivision in Minnesota. That change prompted the request for Advisory Opinion 456. The question addressed by the advisory opinion is whether a membership organization whose members consist of political subdivisions is lobbying its own members when it communicates with them regarding the organization's lobbying efforts. The Board answered the question in the negative and intends to apply principles announced in the advisory opinion more broadly, necessitating the proposed rule.[14]

Subpart 1 of the proposed rule simply restates the statutory reporting requirement, except that it provides that an association whose members are political subdivisions does not need to report attempts to influence the actions of its own members. Subpart 2 of the proposed rule elaborates on that exception, stating that such an association "is not lobbying political subdivisions when the association communicates with its membership regarding lobbying efforts made on the members' behalf, or when the association recommends actions by its membership to support a lobbying effort." That exception directly benefits the MSBA and its lobbyists by largely, if not completely, eliminating one of the three categories of lobbying from their reports, namely attempts to influence the official action of a political subdivision.

As explained in more detail above with respect to the proposed rule to be codified at Minnesota Rules, part 4511.0100, subpart 1c, Minnesota Statutes, section 10A.01, subdivision 21, generally defines the term "lobbyist" in a manner that only includes those who communicate "with public or local officials."[15] Minnesota Statutes, section 10A.01, subdivision 33, defines the term principal to include those who pay lobbyists and those who engage in lobbying as described in Minnesota Statutes, section 10A.04, subdivision 6, which is limited to communications with public and local officials, urging others to communicate with public and local officials, and activities directly supporting those communications, pursuant to Minnesota

[12] *See* Minn. Stat. §§ 10A.04, subds. 4, 6, 10A.01, subds. 21, 33, 10A.05.
[13] 1991 Minn. Laws 2761-62.
[14] *See* Minn. Stat. § 10A.02, subd. 12a.
[15] Minnesota Statutes, section 10A.01, subdivision 21, paragraph (a), clause (1), item (ii), also includes someone compensated by "a business whose primary source of revenue is derived from facilitating government relations or government affairs services if the individual's job duties include offering direct or indirect consulting or advice that helps the business provide those services to clients," but that provision is unlikely to apply under the circumstances described by the MSBA.

Rules, part 4511.0100, subpart 3. To the extent that the MSBA is concerned that the word "attempts" is being used in a manner that encompasses efforts other than those described above, the concern is unwarranted because the proposed rule does not, and cannot, supplant the statutory definitions of "lobbyist" and "principal," nor does it alter the definition of "lobbying" under Minnesota Rules, part 4511.0100, subpart 3.[16] To the extent that the MSBA is concerned about being required to report the total that it spends on in-person conversations, phone calls, emails, and other communications involving public or local officials, in an attempt to influence legislative or administrative action, it should remember that direct communication with public and local officials is conducted through its registered lobbyists. The new statutory reporting requirements for lobbyists have eliminated the need to report disbursements made by the lobbyist in support of lobbying, including telephone, email, and other administrative costs. As a principal the MSBA's reporting obligation is to report the total amount spent in the preceding calendar year for lobbying in Minnesota, rounded to the nearest $5,000. The reporting obligations for lobbyists and principals are statutory, and are not expanded by this administrative rule.

Part 4511.1100. Major decision of nonelected local officials. - Comment of MCN

The MCN stated:

> Subparts 1 and 2 in this section are clear that a major decision regarding the expenditure or investment of public money includes selecting recipients for government grants from the political subdivision, and that attempting to influence a nonelected official is lobbying if that person may make, recommend, or vote on a major decision regarding an expenditure or investment of public money.
>
> We strongly encourage the CFB to clarify this language to include that responding to a grant program's request for proposals or otherwise applying for an existing grant program does not constitute lobbying. Additionally, answering any follow-up questions from the municipality regarding the content of grant application is not lobbying. And finally, that if a potential grantee communicates with a nonelected official about a grant opportunity outside of the normal grant process, and with the intent to influence the nonelected official to choose their proposal, that is lobbying.

Response: Minnesota Statutes, section 10A.01, subdivision 26b, defines the phrase "official action of a political subdivision" to mean "any action that requires a vote or approval by one or

[16] The definition of the term "lobbying" would be amended by the proposed rules, for other reasons, described on page 24 of the Board's SONAR.

more elected local officials while acting in their official capacity; or an action by an appointed or employed local official to make, to recommend, or to vote on as a member of the governing body, major decisions regarding the expenditure or investment of public money." As explained in more detail on pages 30-32 of the Board's SONAR, the phrase "major decisions" is not presently defined in Minnesota Statutes, Chapter 10A, or within the Board's rules, and it needs to be defined to provide clarity as to when the action of a local official constitutes the official action of a political subdivision. The statutory definition of the phrase "official action of a political subdivision" does not make a distinction between major decisions that are made, recommended, or voted upon via an existing or "normal" process, and those made, recommended, or voted upon using a new or abnormal process.

Subdivision 3 of the proposed rule would provide a non-exhaustive list of decisions by political subdivisions that do not qualify as major decisions regarding the expenditure or investment of public funds. The three exclusions within that list each have a unique and specific rationale. The first is "the purchase of goods or services with public funds in the operating or capital budget of a political subdivision." That exclusion parallels Minnesota Statutes, section 10A.01, subdivision 21, paragraph (b), clause (6), which provides that the word "lobbyist" does not include "an individual while engaged in selling goods or services to be paid for by public funds." The second is "collective bargaining of a labor contract on behalf of a political subdivision." That exclusion parallels Minnesota Statutes, section 10A.01, subdivision 21, paragraph (b), clause (10), which provides that the word "lobbyist" does not include "an individual providing information or advice to members of a collective bargaining unit when the unit is actively engaged in the collective bargaining process with a state agency or a political subdivision." The third is "participating in discussions with a party or a party's representative regarding litigation between the party and the political subdivision of the local official." That exclusion is the result of a comment submitted to the Board by the Minnesota State Bar Association in January 2024,[17] and is consistent with various statutes and rules protecting the confidentiality of settlement discussions and other communications protected by attorney-client privilege.[18]

There is no statutory basis for categorically excluding a local official's decision regarding a grant application, submitted in response to a request for proposals or as part of an existing grant program, from what is defined as a major decision regarding the expenditure or investment of

[17] The comment is available on the Board's website at cfb.mn.gov/pdf/legal/rulemaking/2023/1_29_24_comments/MSBA.pdf.

[18] *See, e.g.*, Rule 1.6, Minn. R. Prof. Conduct. (providing that generally, "a lawyer shall not knowingly reveal information relating to the representation of a client"); Minn. Stat. § 13D.05, subd. 3 (b) (providing that a meeting of a public body may be closed to the public as "permitted by the attorney-client privilege"); Minn. Stat. § 13.393 (providing that data collected by an attorney acting in a professional capacity for a government entity is "governed by statutes, rules, and professional standards concerning discovery, production of documents, introduction of evidence, and professional responsibility," notwithstanding the Minnesota Government Data Practices Act).

public money. Moreover, there is no statutory basis for categorially excluding grant applications, or subsequent communications regarding a grant application, from what is defined as lobbying. The text of subpart 2 of the proposed rule would provide that "selecting recipients for government grants from the political subdivision" constitutes a major decision regarding the expenditure or investment of public money. A grant application, and subsequent communications between the prospective grantee and a local official in a position to influence whether the grant is approved by a political subdivision, are almost certainly attempts to influence whether the grant is approved, and thereby are no different than any other communications with a local official seeking to influence the official action of a political subdivision.

Part 4511.1100, subpart 2. Actions that are a major decision regarding public funds. - Comment of Rep. Coulter

State Representative Nathan Coulter was a member of the House Elections Finance and Policy Committee during the 2023-2024 biennium. Representative Coulter quoted the text of the proposed rule, then stated:

> My only comment is on Subpart 2, Section D, referring to "expenditures". My concern is that the term could be construed as only referring to direct expenditures, not more indirect forms of financing such as Tax Increment Financing, land value write-downs, etc. I think some clarification is warranted – perhaps something like "expenditures and/or financing"?

Response: Subpart 2 will provide a non-exhaustive list of types of decisions by political subdivisions that are major decisions regarding the expenditure or investment of public money. As explained more fully on pages 30-32 of the Board's SONAR, the phrase "major decisions regarding the expenditure or investment of public money" is not defined within Minnesota Statutes, Chapter 10A, or the Board's rules, and how the phrase is defined impacts the statutory definitions of the terms "local official" and "official action of a political subdivision," codified at Minnesota Statutes, section 10A.01, subdivisions 22 and 26b, respectively.

One type of decision that would be classified as a major decision within subpart 2, item D, is a decision on "expenditures on public infrastructure used to support private housing or business developments." Unlike directly spending or investing public money, tax abatement[19] and tax increment financing[20] may involve reducing or deferring property tax payments, or using property tax payments to indirectly finance a portion of the costs related to a specific

[19] *See* Minn. Stat. §§ 469.1812 - 469.1815.
[20] *See* Minn. Stat. §§ 469.174 - 469.1799.

development. Representative Coulter's comment has prompted the Board to propose modifying subpart 2, item D, to include tax abatement and tax increment financing as follows.

Proposed modification to Part 4511.1100, subpart 2

> Subp. 2. **Actions that are a major decision regarding public funds.** A major decision regarding the expenditure or investment of public money includes but is not limited to a decision on:
>
> A. the development and ratification of operating and capital budgets of a political subdivision, including development of the budget request for an office or department within the political subdivision;
>
> B. whether to apply for or accept state or federal funding or private grant funding;
>
> C. selecting recipients for government grants from the political subdivision; or
>
> D. tax abatement, tax increment financing, or expenditures on public infrastructure, used to support private housing or business developments.

As modified, subpart 2, item D, would clarify that tax abatement and tax increment financing are treated the same as expenditures on public infrastructure, if used to support private housing or business developments. The proposed modification would add the text "tax abatement, tax increment financing, or" to item D and add a comma after the word "infrastructure" to accommodate that change. The need for the rule is explained in more detail on pages 30-32 of the Board's SONAR. The proposed modification would not make the rule substantially different from the rule text published with the Board's Dual Notice:

> Subp. 2. **Actions that are a major decision regarding public funds.** A major decision regarding the expenditure or investment of public money includes but is not limited to a decision on:
>
> A. the development and ratification of operating and capital budgets of a political subdivision, including development of the budget request for an office or department within the political subdivision;
>
> B. whether to apply for or accept state or federal funding or private grant funding;
>
> C. selecting recipients for government grants from the political subdivision; or
>
> D. expenditures on public infrastructure used to support private housing or business developments.

The difference between the rule text published with the Board's Dual Notice and the proposed modified text is within the scope of the Board's Dual Notice because it concerns the scope of a single phrase. The difference is a logical outgrowth of the Board's Dual Notice and Representative Coulter's comment, which seeks additional clarity so that the proposed rule will not be construed to exclude indirect forms of financing from what is considered a major decision. The Board's Dual Notice provided fair warning that the outcome could be the proposed rule, as modified, because the modification is a logical outgrowth of the Board's Dual Notice, the subject matter remains the same, and the effects of the proposed rule, as modified, are not substantially different from the effects of the proposed rule as published with the Board's Dual Notice.

In each case, subpart 2 would provide a non-exhaustive list of types of decisions by political subdivisions that are major decisions regarding the expenditure or investment of public money. The proposed modification would alter item D slightly to provide clarity and ensure the inclusion of two specific types of major decisions. The proposed modification would have little or no substantive impact for three reasons. First, subpart 2 consists of a non-exhaustive list. The Board believes that tax abatement and tax increment financing, used to support private housing or business developments, likely fall within the scope of "major decisions regarding the expenditure or investment of public money" as that phrase is used within Minnesota Statutes, section 10A.01, subdivisions 22 and 26b, regardless of the proposed rule.

Second, any impact on the definition of the term "local official" under Minnesota Statutes, section 10A.01, subdivision 22, will likely be minimal because there is likely little, if any, difference between the universe of individuals who have the "authority to make, to recommend, or to vote on as a member of the governing body, major decisions regarding the expenditure or investment of public money" and the universe of individuals who lack that authority but do have the authority to make, to recommend, or to vote on as a member of the governing body, major decisions regarding tax abatement or tax increment financing.

Third, any impact on the definition of the phrase "official action of a political subdivision" under Minnesota Statutes, section 10A.01, subdivision 26b, will likely be minimal as well. That phrase already encompasses "any action that requires a vote or approval by one or more elected local officials while acting in their official capacity," and the Board is not aware of a political subdivision with nonelected local officials who have the authority to approve tax abatement for economic development purposes or tax increment financing without that approval being subject to a vote or approval by one or more elected officials.[21]

[21] Minnesota Statutes section 469.1812, subdivision 4, which concerns tax abatement for economic development purposes, defines the term "political subdivision" to be limited to "a statutory or home rule charter city, town,

Therefore, the proposed modification is not expected to expand the scope of what is considered lobbying. The benefit of the proposed modification is added clarity and avoiding the appearance of a loophole regarding tax abatement for economic development purposes and tax increment financing.

Conclusion

The Board has addressed many concerns raised during the rulemaking process, including those raised during the formal comment period that followed publication of the Board's Dual Notice. The Board has proposed four modifications to the draft of the rules published with the Board's Dual Notice. The Board has shown that the rules are needed and reasonable. We respectfully submit that the Administrative Law Judge should recommend adoption of these rules, as modified.

Respectfully,

Andrew Olson
Legal/Management Analyst

school district, or county." Minnesota Statutes section 469.174, subdivisions 5-6, which concern tax increment financing, define the term "governing body" to mean "the elected council or board of a municipality" and the term "municipality" to mean a city, a county, or in rare instances, a township.

MINNESOTA
CAMPAIGN FINANCE BOARD

Resolution Adopting Rules

Minnesota Campaign Finance and Public Disclosure Board

Adoption of Rules Relating to Campaign Finance; Lobbying; and Audits and Investigations, Minnesota Rules, Chapters 4501, 4503, 4511, 4512, and 4525; Revisor's ID Number 4809; OAH Docket Number 24-9030-39382

I, David Asp, certify that I am a member and the Chair of the Campaign Finance and Public Disclosure Board, a board authorized under the laws of the state of Minnesota; that the following is a true, complete, and correct copy of a resolution that the Campaign Finance and Public Disclosure Board adopted at a properly convened meeting on December 4, 2024; that a quorum was present; and that a majority of those present voted for the resolution, which has not been rescinded or modified:

> "RESOLVED, that the Campaign Finance and Public Disclosure Board approved and adopted rules about campaign finance, lobbying, and audits and investigations in the Revisor of Statutes draft, file number AR4809, dated August 15, 2024, identified as Minnesota Rules, parts 4501.0100 to 4525.0550, as modified by the Board with respect to parts 4501.0100, subpart 4, 4511.0100, subpart 5a, 4511.0200, subpart 2a, and 4511.1100, subpart 2, pursuant to the Board's authority under Minnesota Statutes, sections 10A.02, subdivisions 13 and 12a, 10A.01, subdivision 26, paragraph (a), clause (22), 14.125, and 14.05, subdivision 5. Jeffrey Sigurdson, the Executive Director of the Campaign Finance and Public Disclosure Board, is authorized to sign the Order Adopting Rules, to modify the rules as needed to obtain the Revisor of Statutes or the Administrative Law Judge's approval of the rules, and to perform other necessary acts to give the rules the force and effect of law."

_____ Date

_____
David Asp, Chair
Campaign Finance and Public Disclosure Board

MINNESOTA
CAMPAIGN FINANCE BOARD

Date: November 27, 2024

To: Board members

From: Megan Engelhardt, Assistant Executive Director **Telephone:** 651-539-1182

Re: Prima Facie Determinations

Complaints filed with the Board are subject to a prima facie determination which is 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 complaints were dismissed by Chair Asp, and the prima facie determinations are provided here as an informational item to Board members. No further Board action is required.

Shine Mahi

On October 30, 2024, the Board received a complaint submitted by Greg Laden regarding Shine Mahi, a candidate for Plymouth City Council. The complaint alleged that Ms. Mahi offered voters breakfast at a local restaurant, and offered "More freebies with your 'I voted' sticker!!" The complaint included a copy of literature stating that the breakfast event would be held on Saturday, October 26, and that Ms. Mahi would be present. The literature included what appears to be the website address for Ms. Mahi's campaign.[1] The complaint cited Minnesota Statutes section 211B.13, subdivision 1, which generally prohibits willfully promising or giving food or any "other thing of monetary value . . . in order to induce a voter . . . to vote in a particular way" in an election. The complaint was dismissed by Chair Asp on November 1, 2024, due to the Board's lack of jurisdiction over the statute that might give rise to the violation alleged in the complaint.

Itascans for Liberty

On October 30, 2024, the Board received a complaint submitted by Jeanne Newstrom regarding Itascans for Liberty. The complaint included a printout of information from a statement of organization

[1] www.letplymouthshine.com

filed with the Federal Election Commission (FEC) in September 2024, which states that Itascans for Liberty "is an independent expenditure-only political committee (Super PAC)."[2] Itascans for Liberty is not registered with the Board.

The complaint alleged a violation of Minnesota Statutes section 211B.04, which regulates the use of disclaimers on campaign material. The complaint alleged that there was not a complete disclaimer on a billboard located on U.S. Highway 2 west of Grand Rapids, Minnesota. The complaint asserted that the disclaimer on the billboard is incomplete because it lacks contact information for Itascans for Liberty. The complaint also included a printout of information from the website of Pro Publica indicating that Itascans for Liberty has raised $7,125 and spent $6,210 during the 2024 election cycle.[3] The complaint asserted that Itascans for Liberty was required to register with the Board because it has spent more than $750.

Because federal law preempts state law concerning the registration of, and reporting by, committees supporting federal candidates, and the complaint did not contain evidence that Itascans for Liberty is a political committee or fund within the meaning of Minnesota Statutes Chapter 10A, rather than a Super PAC required to register with the FEC, the chair determined that the complaint does not state a prima facie violation of Minnesota Statutes sections 10A.14, 10A.12, or 10A.20. Minnesota Statutes section 211B.04 "does not apply to an individual or association that is not required to register or report under chapter 10A or 211A" and the facts alleged within the complaint did not support the conclusion that Itascans for Liberty is required to register or report under state law. The complaint was dismissed by Chair Asp on November 12, 2024, for the above reasons.

Great Governance For Kids

On October 30, 2024, the Board received a complaint from Luke Mielke regarding Great Governance For Kids, an independent expenditure political committee registered with the Board. The complaint alleged that Great Governance For Kids did not file a underlying source disclosure statement as required by Minnesota Statutes section 10A.27, subdivision 13. The complaint was dismissed by Chair Asp on November 6, 2024, due to the fact that Great Governance For Kids timely filed the underlying source disclosure statement.

Lakers4Change

On November 5, 2024, the Board received a complaint from Megan American Horse regarding Lakers4Change. The complaint asserted that Lakers4Change "has been conducting campaign activities at the state level and higher under a terminated registration." The complaint included a link to a webpage on the Board's website, which states that Lakers4Change was a political committee that registered with the Board in April of 2022, and terminated its registration with the Board effective on December 31, 2022. The complaint alleged that Lakers4Change was using its website to promote state-level candidates because there was a sign-up form that allowed people to request yard signs for school board and federal candidates, as well as for a single state-level candidate. The complaint cited various statutes in Minnesota Statutes Chapter 10A. The complaint was dismissed by Chair Asp on November 14, 2024, because the complaint did not include evidence indicating that Lakers4Change exceeded the $750 registration threshold while attempting to influence elections

[2] docquery.fec.gov/cgi-bin/forms/C00888891/1815331/
[3] projects.propublica.org/itemizer/committee/C00888891/2024

under the Board's jurisdiction, nor did it include evidence indicating that Lakers4Change violated any of the other statutes cited within the complaint.

Attachments:
Shine Mahi complaint
Shine Mahi prima facie determination
Itascans for Liberty complaint
Itascans for Liberty prima facie determination
Great Governance For Kids complaint
Great Governance For Kids prima facie determination
Lakers4Change complaint
Lakers4Change prima facie determination

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	Greg Laden		
Address	15300 37th Ave N Apt A124	Email address	laden.greg@gmail.com
City, state, and zip	Plymouth, MN, 55446	Telephone (Daytime)	612 306 6344

Identify person/entity you are complaining about

Name of person/entity being complained about	Shine Mahi
Address	5975 Vicksburg Ln N
City, state, zip	Plymouth MN, 55446
Title of respondent (If applicable)	
Board/Department/Agency/District # (If legislator)	

Signature of person filing complaint

10/26/24

Date

Send completed form to:

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

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

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

Give the statutory cite to the section of Chapter 10A, Chapter 211B, or Minnesota Rules you believe has been violated: 211B.13 Sub 1

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

Nature of complaint

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

The candidate for Plymouth City Council Ward 1 has offered voters Breakfast with Shine Mahi" at a local resturant, with the promise of "More Freebiers with your 'I Voted' sticker.

Photograph of literature advertizing event is attached.

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 60 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.

BREAKFAST

WITH

SHINE MAHI

EARLY VOTING

PLYMOUTH CITY COUNCIL

Hosted by Nala's Kitchen

05 County Rd 24 Suite 205, Plymouth, MN 55447

October 26th Saturday
9:00am - 11:00am

More freebies with your 'I Voted' sticker!!

Make your vote yummy.
#shinemahi

For more information

Call 612-978-4827
www.letplymouthshine.com

SHINE MAHI

Make Your Voice

STATE OF MINNESOTA
CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD

PRIMA FACIE
DETERMINATION

IN THE MATTER OF THE COMPLAINT OF GREG LADEN REGARDING SHINE MAHI

On October 30, 2024, the Campaign Finance and Public Disclosure Board received a complaint submitted by Greg Laden regarding Shine Mahi, a candidate for Plymouth City Council.

The complaint alleges that Ms. Mahi offered voters breakfast at a local restaurant, and offered "More freebies with your 'I voted' sticker!!" The complaint includes a copy of literature stating that the breakfast event would be held on Saturday, October 26, and that Ms. Mahi would be present. The literature includes what appears to be the website address for Ms. Mahi's campaign.[1] The complaint cites Minnesota Statutes section 211B.13, subdivision 1, which generally prohibits willfully promising or giving food or any "other thing of monetary value . . . in order to induce a voter . . . to vote in a particular way" in an election.

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 violation 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: November 1, 2024

[1] www.letplymouthshine.com

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	Jeanne Newstrom		
Address	24683 Trout Lake Road	Email address	dfltroutlake@gmail.com
City, state, and zip	Bovey MN 55709	Telephone (Daytime)	218-245-2057

Identify person/entity you are complaining about

Name of person/entity being complained about	Itascans for Liberty
Address	PO Box 54
City, state, zip	Grand Rapids MN 55744
Title of respondent (If applicable)	
Board/Department/Agency/District # (If legislator)	

Signature of person filing complaint

10/30/2024
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.

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: Chapter 10A, Chapter 211B.04

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

Nature of complaint

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

A billboard owned by Lamar signs on US HIghway 2 west of Grand Rapids, Minnesota, lacks the required disclaimer as defined in MN Chapter 10A, Chapter 211B.04. The billboard only states " Paid for by Itascans for Liberty" and no other contact information (see attached photo). Itascans for Liberty does not appear to be registered with MN Campaign Finance Board as required if expenditures are $750 and above. The October 2024 FEC quarterly report of Itascans for Liberty states that the super PAC spent $6210.00 (see attached documents). I am complaining that this organization is not being accountable for their actions, or abiding by campaign finance laws.

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 60 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.


Some of We The People
Are Tired Of The Lies
Vote REPUBLICAN
PAID FOR BY ITASCANS FOR LIBERTY
LAMAR

SUPER PAC

Itascans For Liberty - 2024 cycle

Treasurer: Hron, Kathleen

Total Receipts
$7,125

Total Spending
$6,210

Spending at Trump Properties
$0

Independent Expenditures
$0

Cash on Hand
$915

Debts Owed
$0

Totals Through Sept. 30

Contributions from PACs

Electronic Filings

TYPICALLY FILES REPORTS ON TIME

Report title	Date Filed	End Date	Form type	Receipts	Spending	Cash	Debts	Amendment
OCT QUARTERLY »	Oct. 15	Sept. 30	F3	$7,125.00	$6,210.00	$915.00		
STATEMENT OF ORGANIZATION »	Sept. 13		F1					

projects.propublica.org/itemizer/committee/C00888891/2024

FEC FORM 1

STATEMENT OF ORGANIZATION

FILING FEC-1815331

1. Itascans For Liberty

PO Box 54
Grand Rapids, MN 55744
Email: itascansforliberty@gmail.com;rightway@paulbunyan.net

2. Date: 09/03/2024

3. FEC Committee ID #: C00888891

This committee is an independent expenditure-only political committee (Super PAC).

Affiliated Committees/Organizations

NONE

Custodian of Records:

Kathleen Hron
23716 County Road 197
Deer River, MN 56636
Title: Treasurer
Phone # (218) 259-4880

Treasurer:

Kathleen Hron
23716 County Road 197
Deer River, Minnesota 56636
Phone # (218) 259-4880

Designated Agent(s):

Louis Tatter
19766 Sago 3
Warba, Minnesota 55793
Title: chair

Banks or Depositories

Woodland Bank
2610 S Pokegama Ave.
Grand Rapids, Minnesota 55744

Signed: Kathleen Hron
Date Signed: 09/13/2024

(End FEC FORM 1)

Generated Tue Oct 29 12:31:35 2024

docquery.fec.gov/cgi-bin/forms/C00888891/1815331

STATE OF MINNESOTA
CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD

PRIMA FACIE
DETERMINATION

IN THE MATTER OF THE COMPLAINT OF JEANNE NEWSTROM REGARDING ITASCANS FOR LIBERTY

On October 30, 2024, the Campaign Finance and Public Disclosure Board received a complaint submitted by Jeanne Newstrom regarding Itascans for Liberty. The complaint includes a printout of information from a statement of organization filed with the Federal Election Commission (FEC) in September 2024, which states that Itascans for Liberty "is an independent expenditure-only political committee (Super PAC)."[1] Itascans for Liberty is not registered with the Board.

The complaint alleges a violation of Minnesota Statutes section 211B.04, which regulates the use of disclaimers on campaign material. The complaint includes a photograph of a billboard with the following text:

> Some of
> ~~We~~ the People
> Are Tired Of The Lies
> Vote REPUBLICAN
> PAID FOR BY ITASCANS FOR LIBERTY

The complaint states that the billboard is located on U.S. Highway 2 west of Grand Rapids, Minnesota. The complaint asserts that the disclaimer on the billboard is incomplete because it lacks contact information for Itascans for Liberty.

The complaint also includes a printout of information from the website of Pro Publica indicating that Itascans for Liberty has raised $7,125 and spent $6,210 during the 2024 election cycle.[2] The complaint asserts that Itascans for Liberty was required to register with the Board because it has spent more than $750. The complaint refers to Itascans for Liberty as a "super PAC" but does not specify whether it was required to register with the Board as a political committee, a political fund, or some other type of entity.

Determination

Minnesota Statutes section 211B.04 generally requires political committees and funds to include a disclaimer on their campaign material. The required format for the disclaimer varies depending on whether the material is an independent expenditure. All non-broadcast campaign material that requires a disclaimer, including billboards, must include a disclaimer with the address of the entity that paid for the material. "The address must be either the entity's mailing address or the entity's website, if the website includes the entity's mailing address." Minn. Stat. § 211B.04, subd 2 (a). However, the disclaimer requirement "does not apply to an

[1] docquery.fec.gov/cgi-bin/forms/C00888891/1815331/
[2] projects.propublica.org/itemizer/committee/C00888891/2024

individual or association that is not required to register or report under chapter 10A or 211A." Minn. Stat. § 211B.04, subd. 3.

Minnesota Statutes section 10A.14 sets forth the thresholds at which political committees and funds must register with the Board. A general purpose political committee or fund must register with the Board shortly after raising or spending more than $750. An independent expenditure political committee or fund must register with the Board shortly after raising or spending more than $1,500. Minnesota Statutes section 10A.12 includes additional provisions requiring certain spending by associations that are not political committees to be conducted via a political fund. Minnesota Statutes section 10A.20 requires political committees and funds that are required to register with the Board to file periodic campaign finance reports.

Minnesota Statutes section 10A.022, subdivision 3, authorizes the Board to investigate alleged or potential violations of Minnesota Statutes Chapter 10A. The same statute authorizes the Board to investigate alleged or potential violations of Minnesota Statutes sections 211B.04, 211B.12, and 211B.15 "by or related to a candidate, treasurer, principal campaign committee, political committee, political fund, or party unit, as those terms are defined in" Chapter 10A.

Minnesota Statutes section 10A.01 defines the terms "expenditure," "candidate," "local candidate," "independent expenditure political committee," "independent expenditure political fund," "political committee," and "political fund," in relevant part, as follows:

> Subd. 9. Campaign expenditure. "Campaign expenditure" or "expenditure" means a purchase or payment of money or anything of value, or an advance of credit, made or incurred for the purpose of influencing the nomination or election of a candidate or a local candidate or for the purpose of promoting or defeating a ballot question.
>
> Subd. 10. Candidate. "Candidate" means an individual who seeks nomination or election as a state constitutional officer, legislator, or judge.
> . . .
> Subd. 10d. Local candidate. "Local candidate" means an individual who seeks nomination or election to:
> (1) any county office in Hennepin County;
> (2) any city office in any home rule charter city or statutory city located wholly within Hennepin County and having a population of 75,000 or more; or
> (3) the school board in Special School District No. 1.
> . . .
> Subd. 18a. Independent expenditure political committee. "Independent expenditure political committee" means a political committee that makes only independent expenditures and disbursements permitted under section 10A.121, subdivision 1.
>
> Subd. 18b. Independent expenditure political fund. "Independent expenditure political fund" means a political fund that makes only independent expenditures and disbursements permitted under section 10A.121, subdivision 1.
> . . .
> Subd. 27. Political committee. "Political committee" means an association whose major purpose is to influence the nomination or election of one or more

candidates or local candidates or to promote or defeat a ballot question, other than a principal campaign committee, local candidate, or a political party unit.

Subd. 28. Political fund. "Political fund" means an accumulation of dues or voluntary contributions by an association other than a political committee, principal campaign committee, or party unit, if the accumulation is collected or expended to influence the nomination or election of one or more candidates or local candidates or to promote or defeat a ballot question.

The Federal Election Campaign Act and regulations promulgated by the FEC "supersede and preempt any provision of State law with respect to election to Federal office." 52 U.S.C. § 30143. An FEC regulation regarding preemption provides, in relevant part, that:

(b) Federal law supersedes State law concerning the—
(1) Organization and registration of political committees supporting Federal candidates;
(2) Disclosure of receipts and expenditures by Federal candidates and political committees; and
(3) Limitation on contributions and expenditures regarding Federal candidates and political committees. 11 C.F.R. § 108.7 (b).

A Super PAC "is a PAC that makes only independent expenditures and cannot contribute to candidates." *McCutcheon v. FEC*, 572 U.S. 185, 193 n.2 (2014) (*citing SpeechNow.org v. FEC*, 599 F.3d 686, 695-96 (D.C. Cir. 2010). A Super PAC registered with the FEC is the federal equivalent of an independent expenditure political committee registered with the Board. When a Super PAC registers with the FEC its treasurer must file a statement of organization stating that the committee being registered is an independent expenditure-only political committee (Super PAC). Under federal law the term independent expenditure is defined, in relevant part, to mean an expenditure "expressly advocating the election or defeat of a clearly identified candidate." 52 U.S.C. § 30101 (17). Under federal law the term candidate is defined, in relevant part, to mean "an individual who seeks nomination for election, or election, to Federal office" and the term Federal office is defined to mean "the office of President or Vice President, or of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress." 52 U.S.C. § 30101 (17)-(18).

The complaint asserts and provides evidence that Itascans for Liberty is a Super PAC that is registered, and files campaign finance reports, with the FEC. The complaint does not allege or provide evidence that Itascans for Liberty has made a contribution to, or expenditure supporting or opposing, any particular candidate or local candidate, as those terms are defined by Minnesota Statutes Chapter 10A. The complaint instead supports the conclusion that Itascans for Liberty is a Super PAC that is registered with the FEC pursuant to federal law.

Because federal law preempts state law concerning the registration of, and reporting by, committees supporting federal candidates, and the complaint does not contain evidence that Itascans for Liberty is a political committee or fund within the meaning of Minnesota Statutes Chapter 10A, rather than a Super PAC required to register with the FEC, the complaint does not state a prima facie violation of Minnesota Statutes sections 10A.14, 10A.12, or 10A.20. Minnesota Statutes section 211B.04 "does not apply to an individual or association that is not

required to register or report under chapter 10A or 211A" and the facts alleged within the complaint do not support the conclusion that Itascans for Liberty is required to register or report under state law. Therefore, the complaint does not state a prima facie violation of Minnesota Statutes section 211B.04.

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.

Date: November 12, 2024

David Asp, Chair
Campaign Finance and Public Disclosure Board

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	
Address	Email address
City, state, and zip	Telephone (Daytime)

Identify person/entity you are complaining about

Name of person/entity being complained about
Address
City, state, zip
Title of respondent (If applicable)
Board/Department/Agency/District # (If legislator)

Signature of person filing complaint

Date

Send completed form to:

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

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

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

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

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

Nature of complaint

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

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 60 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.

STATE OF MINNESOTA
CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD

PRIMA FACIE
DETERMINATION

IN THE MATTER OF THE COMPLAINT OF LUKE MIELKE REGARDING GREAT GOVERNANCE FOR KIDS

On October 30, 2024, the Campaign Finance and Public Disclosure Board received a complaint submitted by Luke Mielke regarding Great Governance For Kids. Great Governance For Kids (41327) is an independent expenditure political committee registered with the Board.

The complaint alleges, and Board records confirm, that the 2024 Pre-General Report of Receipts and Expenditures of Great Governance For Kids included a $20,000 contribution from the Great Governance For Kids Action Fund on October 16, 2024. The Great Governance For Kids Action Fund is not registered with the Board. The complaint alleges that because the Great Governance For Kids Action Fund is not registered with the Board, and because the contribution was for more than $200, Great Governance For Kids could not accept the contribution without also receiving from the Great Governance For Kids Action Fund an underlying source disclosure statement for unregistered associations pursuant to Minnesota Statutes section 10A.27, subdivision 13, and then filing that statement with its report. The complaint alleges that Great Governance For Kids did not file the required underlying source disclosure statement.

Determination

Minnesota Statutes section 10A.27, subdivision 13, paragraph (a) provides that:

> The treasurer of a political committee . . . must not accept a contribution of more than $200 from an association not registered under this chapter unless the contribution is accompanied by a statement that meets the disclosure and reporting period requirements imposed by section 10A.20. The statement may be a written statement or a government website where the disclosure report for the unregistered association may be viewed. This statement must be certified as true and correct by an officer of the contributing association. The committee, fund, or party unit that accepts the contribution must include a copy of the written statement or website with the report that discloses the contribution to the board.

Minnesota Statutes section 10A.27, subdivision 15, provides that when an association uses general treasury money to make a contribution to an independent expenditure political committee or fund, rather than a general purpose political committee or fund, it may choose not to comply with subdivision 13, and instead provide a disclosure statement that complies with the requirements set forth in subdivision 15. That provision requires that an independent expenditure political committee obtain a disclosure statement from an unregistered association that has contributed more than $5,000 in aggregate within the calendar year to independent expenditure or ballot question political committees or funds. The statement must include:

> the name, address, and amount attributable to each person that paid the association dues or fees, or made donations to the association that, in total,

> aggregate more than $5,000 of the contribution from the association to the independent expenditure or ballot question political committee or fund. The statement must also include the total amount of the contribution attributable to persons not subject to itemization under this section. The statement must be certified as true by an officer of the donor association.

A recipient committee or fund must obtain the disclosure statement from the contributor and then file it with the Board no later than the due date of the report that discloses the contribution in question. Minn. Stat. § 10A.27, subd. 16.

The 2024 pre-general report was due on October 28, 2024. Board records show that Great Governance For Kids filed the pre-general report on October 28, 2024. That same day, the Board received the required underlying source disclosure statement for the contribution from the Great Governance For Kids Action Fund. It takes time for underlying source disclosure statements to be made available on the Board's website as Board staff needs to process the disclosure statements.

Minnesota Rules 4525.0210, subpart 2, states that when making a prima facie determination, "any evidence outside the complaint and its attachments may not be considered." However, Board staff reviews the Board's own records to ensure that the information provided in a complaint is accurate, particularly when a complaint contains factual assertions regarding whether a document was filed with the Board, or the content of a document filed with the Board. In this instance, Board staff reviewed when Great Governance For Kids submitted the required disclosure statement and determined that it was filed on time. Board staff processed the disclosure statement on October 30, 2024, and it was available on the Board's website by that afternoon. The complaint was filed the morning of October 30, 2024, which was before the statement was available on the Board's website. Board records show that Great Governance For Kids provided the required disclosure statement within the time frame required by statute. Therefore, the chair concludes that the complaint does not state a prima facie violation of Minnesota Statutes section 10A.27, subdivisions 13-16.

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.

Date: November 6, 2024

David Asp, Chair
Campaign Finance and Public Disclosure Board

From: Megan Americanhorse
To: CFBEmail
Subject: Report: Violation of MS 10A; PAC 41296
Date: Sunday, November 3, 2024 2:25:25 PM
Attachments: favicon.ico
cropped-cropped-173AAA84-5C8A-455B-A606-AAE6BC585714.png
ex_6JAS5rB2ar_XHFG5oMKF5vegByH_KTcVNmg3q9P8uPhDletkqnY5kuAHiWKmb4wj6NBkrwsg=w1200-h630-p.png
Video.MOV
preview.png

To Whom It May Concern,

It has come to my attention that the PAC, Lakers4Change, has been conducting campaign activities at the state level and higher under a terminated registration. This is a violation of M.S.10A.14, M.S.10A.20, M.S.10A.273, M.S.10A.27, and M.S. 10A.29.

Below is the link to your site confirming the Lakers4Change PAC expired 12/31/22.

Committees-funds
cfb.mn.gov

Below is a link to the Lakers4Change website's Volunteer Opportunities page.

Volunteer Opportunities
lakers4change.com

If you select the option "Yard Sign Request" via the provided link on their Volunteer page, you will be redirected to their Google Form (link below).

Candidate Yard Sign Request
docs.google.com

Please note on the Google Form via scrolling down, there are yard signs available for state-level to presidential-level candidates, funded and distributed by Lakers4Change. Below is a screen recording of the Lakers4Change site link redirecting you to their Google Form where state and national candidate signs are available for request from Lakers4Change, an expired PAC.

Below is the link to Lakers4Change's most recent Campaign Finance Report. As you can see below, contributions alone have exceeded $750. $750 was received in contributions by 8/5/24. $2,100 by 10/14/24. Marketing expenditures surpassed

$750 as of 9/30/24. The marketing funds and expenditures do not specify what funds were designated to school board campaign versus the marketing for Gabriela Kroetch, Trump Vance, Royce White, and Joe Teirab. It is my understanding, since this supersedes any local campaigning for local seats or local referendums, this sort of campaign financial activity legally requires an active PAC registration.

Lakers4Change_1
PDF Document · 385 KB

Thank you for your time and attention to this matter.

Best,

Megan American Horse

STATE OF MINNESOTA
CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD

PRIMA FACIE
DETERMINATION

IN THE MATTER OF THE COMPLAINT OF MEGAN AMERICAN HORSE REGARDING LAKERS4CHANGE

On November 5, 2024, the Campaign Finance and Public Disclosure Board received a complaint submitted by Megan American Horse regarding Lakers4Change. The complaint includes a link to a webpage on the Board's website, which states that Lakers4Change was a political committee that registered with the Board in April of 2022, and terminated its registration with the Board effective on December 31, 2022.[1] The committee's Board registration number was 41296. The complaint also includes a link to two campaign finance reports, covering portions of 2024, filed by Lakers4Change with the filing officer for Prior Lake - Savage Area Schools, ISD 719, pursuant to Minnesota Statutes section 211A.02.[2] Lakers4Change is not presently registered with the Board.

The complaint asserts that Lakers4Change "has been conducting campaign activities at the state level and higher under a terminated registration." In support of that assertion the complaint includes a link to a Lakers4Change webpage titled Volunteer Opportunities.[3] The page includes text stating "If you would like to request a sign for one or more of our endorsed candidates, please fill out this link to request." The word link is hyperlinked to a Google Forms page titled Candidate Yard Sign Request.[4] The form contains an image referring to Prior Lake - Savage Area Schools and its school board. The form contains text asking users to complete the "form if you would like a school board candidate's yard sign." The form appears to allow an individual to request yard signs for three school board candidates for the Prior Lake - Savage Area Schools, school district. The form appears to also allow an individual to request a yard sign for Gabriela Kroetch, "Trump Vance," Royce White, or Joe Teirab. Directly below those options, the form includes text asking "Would you like to be contacted to help with their campaign?" The complaint alleges that "there are yard signs available for state-level to presidential-level candidates, funded and distributed by Lakers4Change." The complaint also includes a 9-second video depicting the Volunteer Opportunities webpage and the Candidate Yard Sign Request form. Board records state that Gabriela Kroetch is a candidate for Minnesota House District 55A.

The 2024 campaign finance reports of Lakers4Change were filed with the Prior Lake - Savage Area School District. The first report covers the period from July 22 through August 26, and the second report covers the period from August 27 through October 25. The first of the two reports includes a single disbursement for $43.91, described as "CHECKS." The second of the two reports includes various disbursements totaling $2,949.43, each of which are described as "Marketing," "Postage," or "Fundraising Platform Fees." The reports collectively disclose the

[1] cfb.mn.gov/reports-and-data/viewers/campaign-finance/political-committee-fund/41296/
[2] plsas.org/uploaded/School_Board/Election/Lakers4Change_1.pdf
[3] lakers4change.com/volunteer-opportunities
[4] docs.google.com/forms/d/e/1FAIpQLSdHqP3wCfX1mxshJLWd-R8XdH8IgpcL927QC9aufHplJV2idQ/viewform

receipt of $3,590 in contributions. The complaint alleges and provides evidence that Lakers4Change raised over $750 as of August 5, 2024.

As is noted in the complaint, the reports filed by Lakers4Change with a local filing officer "do not specify what funds were designated to school board campaign versus the marketing for Gabriela Kroetch, Trump Vance, Royce White, and Joe Teirab." Neither of the reports appear to include the name of any candidate or ballot question. The complaint asserts that spending regarding state and federal candidates "supersedes any local campaigning for local seats or local referendums" and therefore, "this sort of campaign financial activity legally requires an active PAC registration."

The complaint alleges violations of Minnesota Statutes sections 10A.14 (requiring registration with the Board), 10A.20 (requiring filing reports with the Board), 10A.273 (prohibiting certain candidates and political party units from soliciting or accepting contributions from certain sources during a regular session of the legislature), 10A.27 (imposing contribution limits and requiring disclosure from unregistered associations that make contributions under certain circumstances), and 10A.29 (prohibiting circumvention of Minnesota Statutes Chapter 10A by redirecting a contribution through, or making a contribution on behalf of, another individual or association). The complaint refers to Lakers4Change as a "PAC" but does not specify whether it was required to register with the Board as a political committee or register a political fund. While the complaint cites Minnesota Statutes section 10A27, it does not explain which provision within that statute was allegedly violated.

Determination

Definitions

Minnesota Statutes section 10A.01, subdivision 1, provides that for purposes of Minnesota Statutes Chapter 10A, "the terms defined in this section have the meanings given them unless the context clearly indicates otherwise. Minnesota Statutes section 10A.01 defines the terms "expenditure," "candidate," "local candidate," "independent expenditure political committee," "independent expenditure political fund," "political committee," and "political fund," in relevant part, as follows:

> Subd. 9. Campaign expenditure. "Campaign expenditure" or "expenditure" means a purchase or payment of money or anything of value, or an advance of credit, made or incurred for the purpose of influencing the nomination or election of a candidate or a local candidate or for the purpose of promoting or defeating a ballot question.
> . . .
> "Expenditure" does not include:
> . . .
> (2) services provided without compensation by an individual volunteering personal time on behalf of a candidate or a local candidate, ballot question, political committee, political fund, principal campaign committee, or party unit;
> . . .

(4) an individual's unreimbursed personal use of an automobile owned by the individual and used by the individual while volunteering personal time.

. . .

Subd. 10. Candidate. "Candidate" means an individual who seeks nomination or election as a state constitutional officer, legislator, or judge.

. . .

Subd. 10d. Local candidate. "Local candidate" means an individual who seeks nomination or election to:

(1) any county office in Hennepin County;

(2) any city office in any home rule charter city or statutory city located wholly within Hennepin County and having a population of 75,000 or more; or

(3) the school board in Special School District No. 1.

. . .

Subd. 18a. Independent expenditure political committee. "Independent expenditure political committee" means a political committee that makes only independent expenditures and disbursements permitted under section 10A.121, subdivision 1.

Subd. 18b. Independent expenditure political fund. "Independent expenditure political fund" means a political fund that makes only independent expenditures and disbursements permitted under section 10A.121, subdivision 1.

. . .

Subd. 27. Political committee. "Political committee" means an association whose major purpose is to influence the nomination or election of one or more candidates or local candidates or to promote or defeat a ballot question, other than a principal campaign committee, local candidate, or a political party unit.

Subd. 28. Political fund. "Political fund" means an accumulation of dues or voluntary contributions by an association other than a political committee, principal campaign committee, or party unit, if the accumulation is collected or expended to influence the nomination or election of one or more candidates or local candidates or to promote or defeat a ballot question.

The complaint does not appear to allege, or contain evidence, that any of the three school board candidates, Royce White, Joe Teirab, Donald Trump, or J.D. Vance are defined as a candidate or local candidate for purposes of Minnesota Statutes Chapter 10A. The only individual identified within the complaint that appears to be a candidate or local candidate within the meaning of Chapter 10A is Gabriela Kroetch. The complaint also does not appear to allege, or contain evidence, that Lakers4Change has sought to promote or defeat any ballot question, as that term is defined within Chapter 10A.

In order to be defined as a political committee for purposes of Chapter 10A, an association's major purpose must be "to influence the nomination or election of one or more candidates or local candidates or to promote or defeat a ballot question" as those terms are defined by Minnesota Statutes section 10A.01. Minn. Stat. § 10A.01, subd. 27. The complaint does not support the conclusion that Lakers4Change is a political committee because the complaint includes strong evidence that the major purpose of Lakers4Change is to influence elections

involving Prior Lake - Savage Area Schools, which do not include candidates, local candidates, or ballot questions, as those terms are presently defined within Chapter 10A.[5]

In order to be defined as a political fund for purposes of Chapter 10A, "an accumulation of dues or voluntary contributions by an association" must be "collected or expended to influence the nomination or election of one or more candidates or local candidates or to promote or defeat a ballot question" as those terms are defined by Minnesota Statutes section 10A.01. Minn. Stat. § 10A.01, subd. 28. The only evidence included in the complaint directly supporting the assertion that Lakers4Change collected or spent money to influence the nomination or election of a candidate or local candidate, or to promote or defeat a ballot question, as those terms are defined within Chapter 10A, is the Candidate Yard Sign Request form allowing individuals to request a yard sign for Gabriela Kroetch. Although the complaint alleges that yard signs were "funded and distributed by Lakers4Change," the complaint does not include any evidence indicating that Lakers4Change paid for the production or distribution of any signs.

Registration and reporting

Minnesota Statutes section 10A.14 sets forth the thresholds at which political committees and funds must register with the Board. A general purpose political committee or fund must register with the Board shortly after raising or spending more than $750. Minn. Stat. § 10A.14, subd. 1. An independent expenditure political committee or fund must register with the Board shortly after raising or spending more than $1,500. Minn. Stat. § 10A.14, subd. 1a. Minnesota Statutes section 10A.20 requires political committees and funds that are required to register with the Board to file periodic campaign finance reports.

If Lakers4Change operates a general purpose political fund, it is not presently required to be registered with the Board unless more than $750 has been raised or spent in 2024 in an effort to influence an election involving a state-level candidate, such as Gabriela Kroetch, or a local candidate or ballot question, as those terms are presently defined within Chapter 10A. Speculation regarding the amount, if any, spent by Lakers4Change to support the candidacy of Gabriela Kroetch would be necessary to reach the conclusion that Lakers4Change was required to register a political fund based on the facts alleged in the complaint. The complaint does not state a prima facie violation of Minnesota Statutes sections 10A.14 or 10A.20, because those allegations are based on speculation unsupported by evidence.

Contributions during legislative session

Minnesota Statutes section 10A.273 prohibits certain state-level candidates and political party units from soliciting or accepting contributions from certain sources during a regular session of the legislature. The prohibition does not apply to contributions made to political committees,

[5] The definitions of the terms "local candidate" and "ballot question" have been amended, effective January 1, 2025, to include an individual seeking election to any county, city, school district, township, or special district office, and to include a question that may be voted on by all voters of any county, city, school district, township, or special district, respectively. 2024 Minn. Laws. ch. 112, art. 4, §§ 1-2. As a result, the scope of associations defined as a political committee or fund for purposes of Minnesota Statutes Chapter 10A will increase significantly beginning in 2025.

political funds, or local candidates. To the extent that the complaint alleges that Lakers4Change made a contribution to Gabriela Kroetch during a regular session of the legislature, that allegation is not supported by the evidence included in the complaint. The complaint does not include evidence that Lakers4Change enabled individuals to request a yard sign for Gabriela Kroetch during the 2024 legislative session, and instead includes campaign finance reports stating that the first disbursement Lakers4Change made in 2024 was on July 19, 2024. The legislature adjourned sine die on May 20, 2024.[6] Therefore, the complaint does not state a prima facie violation of Minnesota Statutes section 10A.273.

Contribution limits and disclosure by unregistered associations

Minnesota Statutes section 10A.27 imposes various contribution limits on candidates. The only contribution limit that Lakers4Change could have conceivably violated based on the facts alleged in the complaint is the $1,000 limit on contributions to any particular candidate for state representative during the 2023-2024 election cycle. *See* Minn. Stat. § 10A.27, subd. 1 (a) (5), (c). The complaint does not include direct evidence of the amount, if any, spent by Lakers4Change to support the candidacy of Gabriela Kroetch, and speculation would be necessary to reach the conclusion that Lakers4Change contributed more than $1,000 to Gabriela Kroetch during the 2023-2024 election cycle. Therefore, the complaint does not state a prima facie violation of Minnesota Statutes sections 10A.27, subdivision 1, paragraph (c).

Minnesota Statutes section 10A.27, subdivisions 13-16, require associations not registered with the Board to provide a disclosure statement when making a contribution in excess of a particular dollar amount to certain types of entities, including a political committee or fund. Those provisions also require the recipient of the contribution to provide the disclosure statement to the Board. The campaign finance reports included in the complaint do not itemize any contributions received by Lakers4Change from an association, rather than an individual, and the complaint does not otherwise include evidence that Lakers4Change received contributions from any association. To the extent that the complaint alleges that Lakers4Change made a contribution to Gabriela Kroetch in excess of $200 without providing a disclosure statement, speculation regarding the amount of the contribution would be necessary to reach that conclusion, and speculation would also be required to reach the conclusion that any required disclosure statement was not, in fact, provided to Gabriela Kroetch by Lakers4Change. The complaint does not state a prima facie violation of Minnesota Statutes section 10A.27, subdivisions 13-16, because that allegation is based on speculation unsupported by evidence.

Circumvention

Minnesota Statutes section 10A.29 prohibits an association from attempting "to circumvent this chapter by redirecting a contribution through, or making a contribution on behalf of, another individual or association. . . ." Despite citing the statute, the complaint does not identify any contribution that was redirected or made on behalf of another contributor, and does not explain what provision within Minnesota Statutes Chapter 10A may have been circumvented.

[6] *See* Minn. Const. art. IV, § 12.

Therefore, the complaint does not state a prima facie violation of Minnesota Statutes section 10A.29.

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.

Date: November 14, 2024

David Asp, Chair
Campaign Finance and Public Disclosure Board

CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD
December 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	11/22/23, 7/31/24	8/29/24	2/3/25		Default judgment motion filed Nov. 12