

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

**PROBABLE CAUSE
DETERMINATION**

IN THE MATTER OF THE COMPLAINT OF THE MINNESOTA DFL REGARDING ACTION 4 LIBERTY AND ACTION 4 LIBERTY PAC

On March 29, 2021, the Campaign Finance and Public Disclosure Board received a complaint submitted by the Minnesota DFL regarding Action 4 Liberty and the Action 4 Liberty PAC. Action 4 Liberty is a nonprofit 501(c)(4) association not registered with the Board. Action 4 Liberty PAC is a political committee registered with the Board. On an amendment to its registration, the Action 4 Liberty PAC listed www.action4liberty.com as its website.

The complaint alleges that Action 4 Liberty has accepted contributions and made expenditures that must be reported under Chapter 10A. The complaint states that it is unclear how Action 4 Liberty is related to the Action 4 Liberty PAC. The complaint maintains that either Action 4 Liberty failed to report the identified transactions through the registered committee Action 4 Liberty PAC or, alternatively, that Action 4 Liberty failed to register itself as a political committee with the Board to report those transactions. The complaint also alleges that the www.action4liberty.com website, an Action 4 Liberty Facebook page, and printed literature lack the disclaimers required by Minnesota Statutes section 211B.04. The complaint states that this lack of disclaimers “makes it impossible to determine whether Action 4 Liberty has complied with the registration and reporting requirements under Chapter 10A.”

The complaint includes screenshots of the www.action4liberty.com website and an Action 4 Liberty Facebook page. The screenshots show that the chair of the Action 4 Liberty PAC, Jake Duesenberg, also serves as president of Action 4 Liberty. The complaint quotes language on the website stating “we recruit pro-liberty candidates for the legislature and equip them to win their elections.” A 2019 Minnesota legislative scorecard is posted on the website along with articles opposing certain 2021 state legislative proposals and the continuation of the governor’s emergency powers. One article refers to three state legislators, then states, “They either get on board . . . or we’ll make sure they don’t get re-elected in 2022.” Other articles discuss costs incurred to print and distribute literature in northern Minnesota in February 2021. The complaint includes a picture of one side of that literature, which says, “Rep. Julie Sandstede betrayed you by voting to protect Governor Walz’ emergency powers.”

The screenshots of the Facebook page show posts that also oppose certain 2021 state legislative proposals and the continuation of the governor’s emergency powers. There are no disclaimers on the website, the Facebook page, or the side of the literature shown in the complaint. The Action 4 Liberty PAC’s 2019 year-end report of receipts and expenditures contains an expenditure for internet access and web hosting but does not contain an expenditure for the development of the legislative scorecard. The committee’s 2020 year-end report does not disclose any expenditures for the development or hosting of the committee’s

website nor any in-kind contributions from Action 4 Liberty accounting for the value of those services.¹

On April 8, 2021, the Board chair determined that the complaint stated prima facie violations of the registration and reporting requirements in Chapter 10A and the disclaimer requirements in Chapter 211B. The complaint and the prima facie determination were provided to the respondents on April 8, 2021.

On April 26, 2021, the respondents' attorney, Jeffrey O'Brien, submitted a response. On May 21, 2021, Mr. O'Brien submitted answers to five questions that Board staff had posed about the April response. In their response, respondents state that Action 4 Liberty is not affiliated with the Action 4 Liberty PAC. Instead, "[t]he Action 4 Liberty PAC operates as a separate entity with a separate office, separate bank account, and separate governance structure from Action 4 Liberty." The response acknowledges that Mr. Duesenberg is the chair of the Action 4 Liberty PAC and the president of Action 4 Liberty but states that Mr. Duesenberg is not on the board of directors of Action 4 Liberty and has no voting rights on board decisions.

The response provides that the Action 4 Liberty PAC has no website and that the inclusion of the Action 4 Liberty website address on the amendment to the Action 4 Liberty PAC's registration was an "unintentional administrative error" that will be addressed by the committee. The response explains that the Action 4 Liberty PAC initially was developing a new website called MNscorecard.com for the legislative scorecard and incurred the expenses reported in 2019 for that project. The response states that when it was decided that the legislative scorecard project was too challenging and too expensive for the Action 4 Liberty PAC, the committee abandoned the effort and redirected the MNscorecard.com website to the Action 4 Liberty website at no cost to the committee. The response provides that Mr. Duesenberg's posts on the Action 4 Liberty website are made in his capacity as president of the association and that he does not use any Action 4 Liberty PAC resources to make the posts.

The response also provides that Action 4 Liberty is "formed as a 501(c)(4) tax exempt organization, which means that the major purpose of the association is something other than to influence the nomination or election of candidates in Minnesota." Action 4 Liberty states in the response that it "self-identifies as an issue-based advocacy association" and that any donations received are used to get the association's message out to the public. The response contains screenshots of the Action 4 Liberty website. The screenshots show that much of the website discusses legislative issues important to Action 4 Liberty, such as ending the governor's emergency powers and refunding state budget surpluses to taxpayers. The pages ask people to sign a petition to end the governor's emergency powers and to contact specific legislators to tell them not to support the continuation of those powers.

¹ Any expenditures made in 2021 would be disclosed on the 2021 year-end report, which is not due until January 31, 2022.

The response states that the use of the word “supported” on the scorecard is not a request to vote for or against a particular candidate but instead is intended to educate the public about which legislators support issues important to Action 4 Liberty. The response states that the complaint’s reference to recruiting and equipping candidates is taken out of context and that Action 4 Liberty has never worked with, funded, or campaigned on behalf of any candidates in an election. The response provides that Action 4 Liberty alone undertook the 2021 literature efforts in northern Minnesota and that those efforts were intended to educate “the public on the issue of the expansion of government power.” Action 4 Liberty provided a picture of the reverse side of the literature distributed in northern Minnesota, which asks readers to call Rep. Sandstede to urge her to vote against the continuation of the governor’s emergency powers.² The complaint does not identify any text on the literature piece, or posted on the Action 4 Liberty website or Facebook page, that includes the words “vote for,” “vote against,” “elect,” or “defeat,” or any similar language, with regard to a specific candidate in an election.

The Board considered this matter at its meeting on July 28, 2021. Charles Nauen and David Zoll, counsel for the complainant, appeared to address the Board. During his presentation to the Board, Mr. Zoll stated that the literature used by Action 4 Liberty in the door knocking campaigns referenced in the complaint were a call for action on an issue that would be before the legislature, and were not campaign material. However, Mr. Zoll maintained that language on the Action 4 Liberty website, stating “we recruit pro-liberty candidates for the legislature and equip them to win their elections,” is sufficient to justify a Board investigation to determine if Action 4 Liberty should be registered as a political committee.

Mr. O’Brien appeared before the Board to make a presentation on behalf of both respondents.

Analysis

When the Board chair makes a finding that a complaint raises a prima facie violation, the full Board then must determine whether probable cause exists to believe an alleged violation that warrants an investigation has occurred. Minn. Stat. § 10A.022, subd. 3 (d). A probable cause determination is not a complete examination of the evidence on both sides of the issue. Rather, it is a determination of whether, given the evidence available, there is sufficient justification to initiate a formal Board investigation of the allegations in the complaint. Minnesota Statutes section 10A.022, subdivision 3, paragraph (d), directs the Board to make the probable cause determination within 45 days of the prima facie determination. However, the Board did not have a quorum from April 23, 2021, through July 19, 2021.³ Notice of the Board meeting then had to be given under the open meeting requirements in Minnesota Statutes section 13D.04. Consequently, the Board could not act on the probable cause determination until the July 28, 2021, meeting.

² Exhibit 1 contains both sides of the Sandstede piece.

³ The Board did not have a quorum because the terms of three members ended on April 23, 2021, when the legislature did not confirm those members by the 45th legislative day after the effective date of their appointments. The Board had a quorum again on July 19, 2021, when members were appointed to fill the three vacant positions.

Registration

Generally, an association must register a political committee or a political fund within 14 days of receiving contributions, or making expenditures, that exceed \$750. Minn. Stat. § 10A.14, subd. 1.⁴ Minnesota Statutes section 10A.01, subdivision 27, provides that a political committee is “an association whose major purpose is to influence the nomination or election of one or more candidates or to promote or defeat a ballot question, other than a principal campaign committee or a political party unit.” Whether an association’s major purpose is to influence the nomination or election of candidates must be determined on a case-by-case basis and the association’s public statements about its purpose may be considered. Advisory Opinion 405 (June 2, 2009).⁵

Initially, the record here shows that Action 4 Liberty is separate from the Action 4 Liberty PAC. The entities maintain separate offices and have separate bank accounts. The two entities also have different governance structures. Jake Duesenberg holds positions with both entities, but he has no voting privileges on the board that governs Action 4 Liberty. Although the Action 4 Liberty PAC listed the Action 4 Liberty website on its amended registration form, that reference was a clerical error that will be rectified. These facts support the determination that Action 4 Liberty and the Action 4 Liberty PAC are separate entities.

The record also establishes that the Internal Revenue Service has designated Action 4 Liberty as a tax-exempt entity under section 501(c)(4) of the Internal Revenue Code, which is reserved for entities whose primary activity is something other than political activities. Action 4 Liberty describes itself as an issue-based advocacy association. The majority of the posts on Action 4 Liberty’s website and Facebook pages discuss legislative issues important to the association and urge people to contact the governor and legislators about those issues. These facts show that Action 4 Liberty’s major purpose is something other than influencing elections. Action 4 Liberty’s website states that “we recruit pro-liberty candidates for the legislature and equip them to win their elections.” However, that language alone is insufficient to establish probable cause to believe that that Action 4 Liberty’s major purpose is to influence the nomination or election of candidates. Consequently, there is not probable cause to believe that the association violated the registration requirements in Chapter 10A by failing to register as a political committee.

Board records show that the Action 4 Liberty PAC registered as a political committee on February 8, 2017. Because the Action 4 Liberty PAC is registered with the Board, there is not probable cause to believe that the committee violated the registration requirements in Minnesota Statutes section 10A.

⁴ An association also must register with the Board if it makes more than three contributions in excess of \$200 each in a calendar year to candidates, political committees and funds, or party units. Minn. Stat. § 10A.27, subd. 13 (b). In this case, the complaint does not allege, and the record does not establish, that Action 4 Liberty made any direct contributions, or contributions in the form of approved expenditures, that would require it to register under this section.

⁵ cfb.mn.gov/pdf/advisory_opinions/AO405.pdf

The Board next must determine whether there is probable cause to believe that Action 4 Liberty was required to register a political fund with the Board. Minnesota Statutes section 10A.01, subdivision 28, defines a political fund as follows:

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 to promote or defeat a ballot question.

When determining whether an association whose major purpose is something other than influencing elections must register a political fund, the phrase “to influence” must be narrowly construed “to be limited to communications that expressly advocate to influence the nomination or election of candidates.” Advisory Opinion 428 (August 7, 2012)⁶ (citing *Buckley v. Valeo*, 424 U.S. 1 (1976); *Minnesota Citizens Concerned for Life v. Kelley*, 698 N.W.2d 424 (Minn. 2005)). A communication expressly advocates the nomination or election of a candidate only when it uses the specific words that were recognized in *Buckley v. Valeo*, such as “vote for,” “vote against,” “elect,” or “defeat,” or similar words. See Minn. Stat. § 10A.01, subd. 16a (defining expressly advocating); *In the matter of the complaint of Richard V. Novack regarding Minnesota Majority (Novack)* (December 3, 2008)⁷ (recognizing that express advocacy is limited to communications that use the *Buckley* magic words or similar words); Advisory Opinion 428 (same).

Here, neither the Sandstede literature piece nor the communications posted by Action 4 Liberty on its website and Facebook page use words of express advocacy. As Action 4 Liberty argues, the language in the legislative scorecard discusses which legislators support the association’s policy positions and which legislators therefore are supported by Action 4 Liberty. No words of express advocacy are used in the legislative scorecard. See *Novack* (preparing and distributing legislative scorecard that did not include words of express advocacy did not require association whose major purpose was something other than influencing elections to register a political fund with Board). Absent any words of express advocacy in its communications, Action 4 Liberty was not required to register a political fund with the Board. Consequently, there is not probable cause to believe that Action 4 Liberty violated the registration requirements in Chapter 10A by failing to register a political fund.

The Board notes that some of the language used in the Action 4 Liberty communications could constitute words of express advocacy under the “functional equivalent” definition of that term recognized by the United States Supreme Court in *McConnell v. FEC*, 540 U.S. 93 (2003) and *FEC v. Wisconsin Right to Life (WRTL)*, 551 U.S. 449 (2007). The functional equivalent definition of express advocacy includes the *Buckley* magic words as well as words that are “susceptible of no reasonable interpretation other than as an appeal to vote for or against a

⁶ cfb.mn.gov/pdf/advisory_opinions/AO428.pdf

⁷ cfb.mn.gov/pdf/bdactions/1052_Findings.pdf

specific candidate.” *WRTL*, 551 U.S. at 469-470. The Board concluded in Advisory Opinion 428 that “an expanded interpretation of express advocacy should be promulgated through the rulemaking or legislative process” In the absence of legislation or administrative rulemaking expanding the definition of express advocacy, the Board declines to apply the functional equivalent definition of express advocacy in this matter.

Reporting

Minnesota Statutes section 10A.20, subdivision 3, requires political committees and funds to file periodic reports of receipts and expenditures with the Board that disclose all financial transactions during the period covered. In-kind contributions, and in-kind expenditures, worth less than \$20, however, do not need to be recorded or reported. Minn. Stat. § 10A.13, subd. 1.

Because Action 4 Liberty is not required to register as a political committee or a political fund, the association is not required to file periodic reports with the Board. Consequently, there is not probable cause to believe that Action 4 Liberty violated the reporting requirements in Chapter 10A.

As a registered political committee, the Action 4 Liberty PAC is required to file reports with the Board that disclose all required transactions. Initially it appeared that the Action 4 Liberty PAC had omitted website expenses from its 2020 year-end report. The record shows, however, that the website expenses reported by the Action 4 Liberty PAC in 2019 were for the legislative scorecard project and that the committee abandoned this effort before 2020. The MNscorecard.com website then was redirected to the Action 4 Liberty website at no cost to the Action 4 Liberty PAC. The record also shows that the Action 4 Liberty PAC does not own or control the www.action4liberty website. The Action 4 Liberty PAC therefore had no website expenses to report in 2020 and there is not probable cause to believe that the Action 4 Liberty PAC violated the reporting requirements in Chapter 10A.⁸

Disclaimers

Minnesota Statutes section 211B.04 generally requires anyone preparing or disseminating campaign material to include a disclaimer on the material in the form specified in the statute. The disclaimer requirement, however, does not apply to an association that is not required to register or report under Chapter 10A. Minn. Stat. § 211B.04, subd. 3 (b).

As determined above, Action 4 Liberty is an association that is not required to register or report under Chapter 10A. The Action 4 Liberty PAC states that it did not participate in the preparation or dissemination of any of the communications identified in the complaint and there is no evidence in the record contradicting that statement. Consequently, there is not probable cause

⁸ As discussed above, any expenses related to the distribution of literature in northern Minnesota in 2021 would be reportable on the 2021 year-end report, which is not due until January 31, 2022. The record, however, shows that the Action 4 Liberty PAC was not involved in the literature distribution effort and therefore will not have any related expenses to disclose on its 2021 year-end report.

to believe that the disclaimer requirements in Minnesota Statutes section 211B.04 were violated by either Action 4 Liberty or the Action 4 Liberty PAC.

Order:

1. The allegation that Action 4 Liberty or the Action 4 Liberty PAC violated the registration requirements in Minnesota Statutes section 10A.14, subdivision 1, is dismissed without prejudice because there is not probable cause to believe that this violation occurred.
2. The allegation that Action 4 Liberty or the Action 4 Liberty PAC violated the reporting requirements in Minnesota Statutes section 10A.20, subdivision 3, is dismissed without prejudice because there is not probable cause to believe that this violation occurred.
3. The allegation that Action 4 Liberty or the Action 4 Liberty PAC violated the disclaimer requirements in Minnesota Statutes section 211B.04, subdivision 1, is dismissed without prejudice because there is not probable cause to believe that this violation occurred.

/s/ Stephen Swanson
Stephen Swanson, Chair
Campaign Finance and Public Disclosure Board

Date: July 29, 2021



REP. JULIE
SANDSTEDE

BETRAYED

YOU!

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

➤ Voted with Metro Democrats to protect Walz' Emergency Powers indefinitely

➤ Allowing the Governor to shut down businesses in the future

MAKE JULIE SANDSTEDTE LISTEN. CALL HER AT 651.296.0172

rep.julie.sandstede@house.mn _____

DEMAND she keeps her promise & votes YES on the End Walz' Emergency Powers Resolution



SCAN ME



SIGN THE PETITION AT

ACTION4LIBERTY.COM

PREPARED AND PAID FOR
BY ACTION 4 LIBERTY