

Website redevelopment

Mr. Goldsmith told members that an RFP had been published seeking a vendor to coordinate the website redevelopment project. Mr. Goldsmith said that responses were due on August 17th and that the target start date was September 1st.

Status of online training initiative

Mr. Sigurdson provided members with a memorandum on this topic that is attached to and made a part of these minutes. Mr. Sigurdson said that five online campaign finance training modules had been published on the Board's website as part of the redevelopment project. Three of the modules were designed for candidate committees; one module was for political committees, political funds, and party units; and the last module on recordkeeping and reporting was designed for all committees. Mr. Sigurdson said that staff also had received the training necessary to maintain and update the modules. Mr. Sigurdson told members that the training modules would help volunteer treasurers in Greater Minnesota who could not attend training in St. Paul. Mr. Sigurdson reported that over 100 people had already viewed the modules and that the comments received had been positive. Mr. Sigurdson stated that users would be surveyed for additional feedback about the modules closer to and shortly after the 2016 election.

Update on *Seaton v. Wiener* litigation

Mr. Goldsmith told members that because the plaintiffs in *Seaton v. Wiener* were the prevailing party, they were entitled to attorney's fees. Mr. Goldsmith stated that as requested, the plaintiffs had submitted a more detailed claim for attorney's fees. Mr. Goldsmith said that he would work with the Office of the Minnesota Attorney General to review the claim and prepare a proposal for the Board's October meeting.

Report and recommendations regarding reconciliation

Mr. Sigurdson presented members with a report on this topic that is attached to and made a part of these minutes. Mr. Sigurdson first reviewed the history of the reconciliation issue. Mr. Sigurdson then reported that the reconciliation rate for the years 2009 through 2014 was over 99.8%. Mr. Sigurdson stated that this high rate was due in part to new legislation that requires committees to cooperate with reconciliation efforts. Mr. Sigurdson said that additional legislation passed this year that requires treasurers to provide registration numbers with all transfers also should help with future reconciliation efforts.

Mr. Sigurdson said that staff did not attempt to resolve discrepancies of \$100 or less because \$100 was the itemization threshold when the reconciliation issue arose. Mr. Sigurdson said that neither raising the \$100 reconciliation threshold to the new \$200 itemization level nor reducing the \$100 reconciliation threshold to zero would significantly change the reconciliation rate. Mr. Sigurdson stated that staff therefore would continue to use the \$100 threshold unless the Board objected. Mr. Sigurdson finally asked the Board to consider ending the active reconciliation efforts for years prior to 2014.

After discussion, the following motion was made:

Member Rosen's motion: To approve the following proposal:

In light of the significant progress made on reconciling historical contributions, the Campaign Finance and Public Disclosure Board will end its active, ongoing look back at contributions for that purpose. Staff will continue to report to the Board on at least an annual basis the status of the reconciliation of contributions from the prior reporting year, and will inform the Board of opportunities to improve the reconciliation process.

Vote on motion: Passed unanimously.

Report on disclosure of independent expenditures for television advertising in 2014

Mr. Sigurdson presented members with a report on this topic that is attached to and made a part of these minutes. Mr. Sigurdson told members that, with the chair's approval, staff had purchased information on political advertisements run on network television in Minnesota in 2014. Mr. Sigurdson said that staff was using the data to determine whether the advertising expenditures were accurately reported.

Mr. Sigurdson stated that all of the advertisements in the purchased dataset were either for or against gubernatorial candidates. Mr. Sigurdson said that the dataset did not include advertisements related to legislative races because, for cost reasons, those ads typically are run on local cable networks instead of on network television.

Mr. Sigurdson reminded members that, in Minnesota, a communication must use one of the eight words of express advocacy to qualify as an independent expenditure. Mr. Sigurdson said that four entities had reported making independent expenditures for television advertisements in the 2014 gubernatorial race. Mr. Sigurdson then played one sample advertisement from each entity. Mr. Sigurdson said that because the ads paid for by two of these entities did not use words of express advocacy, these two entities arguably had over-disclosed on their reports by listing the ads as independent expenditures.

Mr. Sigurdson said that one other political committee had run a gubernatorial advertisement on network television in 2014 and played this ad for the Board. Mr. Sigurdson stated that the political committee correctly had reported the advertisement as a general expenditure because the ad did not use words of express advocacy. If Minnesota's definition of independent expenditure included the functional equivalent of express advocacy, however, the advertisement arguably would have qualified as an independent expenditure and would have had to have been reported under that category.

Report regarding recent campaign finance disclosure law changes in other states

Mr. Fisher and Ms. Pope presented members with a report on this topic that is attached to and made a part of these minutes. Mr. Fisher and Ms. Pope reviewed recent attempts in California,

Montana, Massachusetts, New York, Maryland, and Delaware to extend disclosure requirements to more individuals and associations that engage in communications to influence elections. Mr. Goldsmith then compared these new provisions to the provisions currently in Minnesota law and in the Board's pending legislative recommendations.

ENFORCEMENT REPORT

A. Discussion items

1. Request for one-time balance adjustment – Elementary Principals Action Committee

Mr. Fisher told members that although this political fund had reviewed its records for the past ten years and had provided Board staff with ten years of bank statements, the fund could not account for a balance discrepancy of \$1,303.83. Mr. Fisher said that a staff review of the fund's reports and bank statements back to the beginning of 2011 showed that at least \$1,229.85 of the balance discrepancy already existed at that time. A brief review of the bank statements from 2007 and 2008 showed two unreported expenditures that would largely account for the current balance discrepancy. Mr. Fisher said that because a fund is only required to keep records for four years, an amendment typically would not be requested. The fund registered with the Board on October 16, 1975, and its last reported cash balance was \$13,095.84 as of 12/31/14. Mr. Fisher said that the fund asked the Board to allow it to amend this value to \$11,792.01 as of 1/1/2015. Mr. Fisher stated that staff had confirmed that, with this adjustment, the reported ending cash balance would reconcile with the fund's 12/31/14 bank statement.

After discussion, the following motion was made:

Member Sande's motion: To approve the request for a one-time balance adjustment.

Vote on motion: Unanimously passed.

B. Waiver requests

<u>Name of Candidate or Committee</u>	<u>Late Fee Amount</u>	<u>Civil Penalty Amount</u>	<u>Reason for Fine</u>	<u>Factors for waiver</u>	<u>Board Member's Motion</u>	<u>Motion</u>	<u>Vote on Motion</u>
Committee to Elect Bobby Joe Champion	\$150	\$0	7/30/2012 Pre-Primary	Committee's treasurer had a number of issues in 2012. Committee replaced its treasurer in January 2014 and a conciliation agreement was entered into in March 2014 to resolve a number of the issues.	Rosen	To waive the late fee.	Unanimous
Boals (Justin) Campaign	\$1,000	\$1,000	2/2/2015 YE Report	Candidate stated that campaign staff went through several personnel changes. However, the committee's registered treasurer has remained consistent since committee's inception in 2012. Committee terminated with Board as of filing on July 14 and the candidate himself, rather than the treasurer, certified and filed each of the committee's reports.	Rosen	To waive the late fee.	Unanimous

Grassroots for Griffin (Michael)	\$875	\$0	1/31/2013 YE Report	Committee attempted to file report on time but erroneously sent it to cfb.reports@state.mn; Board's email address is cfb.reports@state.mn.us. The committee also has an outstanding \$25 LFF for the 2014 YE report for which no waiver has been requested. Notice of filing date was mailed by Board on December 28, 2012. Certified letter re: non-filing was sent by Board on February 15, 2013. Board records indicate that a voicemail was left for the candidate on February 4, 2013, and that voicemails were left for the treasurer on February 11, February 14, and March 13. The report was received on March 22, 2013.	Rosen	To waive the late fee.	Unanimous
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C. Staff request for Board referral to Attorney General's Office – Derrick Lehrke for House

Mr. Goldsmith presented members with a memorandum on this matter that is attached to and made a part of these minutes. Mr. Fisher said that this committee had reported an ending cash balance of nearly \$1,300 in 2013 but then had filed a no-change/termination report with an ending cash balance of \$0 in 2014. Mr. Fisher stated that staff repeatedly had notified Mr. Lehrke that he needed to amend the report to show the disbursement of the funds. Mr. Lehrke had responded only once and has not yet amended the report. Mr. Fisher asked that Mr. Goldsmith be authorized to refer this matter to the Attorney General to seek an order compelling the filing of the amended report and to obtain a judgement against the committee and Mr. Lehrke for a prior \$125 late filing fee and for a late filing fee for the amended report. Mr. Fisher said that the late filing fee for the amended report would reach \$1,000 on August 13, 2015.

After discussion, the following motion was made:

Member Leppik's motion: To authorize the Executive Director to refer this matter to the Attorney General to seek an order compelling the filing of the amended report and to obtain a judgement against the committee and the candidate for a prior \$125 late filing fee and for a late filing fee for the amended report.

Vote on motion: Unanimously passed.

Informational Items

A. Payment of late filing fees for Lobbyist Disbursement Reports:

- Eric Hauge, HOME Line, \$25
- Amber Lee, MN Energy Resources Corp, \$25
- Dan McElroy, Hospitality MN, \$25
- Tim O'Hara, MN Forest Industries, \$25
- Erin Rupp, Pollinate Minnesota, \$25
- Sue Schettle, Twin Cities Medical Society, \$150

Robert M. Vanasek, I-35W Solutions, MN Academy of Audiology, MN Assn of Townships,
NextEra Energy Resources LLC, Solid Waste Mgmt Coord Board, SE Libraries Coop,
\$150
Dana Wheeler, MN Govt Engineering Council, \$25

- B. Payment of a late filing fee for an Original Statement of Economic Interest:**
Eunice Biel, Perpich Center for Arts, \$15
- C. Payment of a late filing fee for 2014 Annual Report of Lobbyist Principal due March 16, 2015:**
CTD Properties, \$225
Lyft Inc., \$175
Phoenix Myth LLC, \$25
- D. Payment of a civil penalty for misuse of committee funds:**
Tim Manthey, \$200 (June payment)
- E. Payment of a civil penalty for exceeding the special source aggregate contribution limit:**
Joe Radinovich for Minnesota, \$75
Laurie Warner for House 32B, \$55.48
- F. Payment of a civil penalty for failure to obtain authorization for an approved expenditure:**
Laborers' District Council of Minn/ND Political Fund, \$56.73
- G. Payment of a civil penalty for a contribution from an unregistered association without disclosure:**
14th Senate District RPM, \$318.62
Kandiyohi County RPM, \$93.64
- H. Deposit to the General Fund, State Elections Campaign Fund:**
Kandiyohi County RPM, \$374.56 forwarding contribution

LEGAL COUNSEL'S REPORT

Mr. Hartshorn had nothing to report to the Board.

EXECUTIVE SESSION

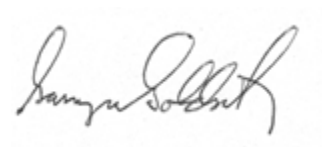
The Chair recessed the regular session of the meeting and called to order the executive session. Upon completion of the executive session, the Chair reported the following matters into regular session:

Findings of Fact, Conclusions of Law, and Order in the matter of the Evan Rapp Volunteer Committee

Final Audit Report and Findings of Fact, Conclusions of Law, and Order in the matter of the Friends of Jeremiah Ellis

OTHER BUSINESS

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

A handwritten signature in black ink, appearing to read "Gary Goldsmith", enclosed in a thin black rectangular border.

Gary Goldsmith
Executive Director

Attachments:

FY 2016 budget chart

Memorandum regarding status of online training initiative

Report and recommendations regarding reconciliation

Report on political spending and disclosure

Report regarding recent campaign finance disclosure law changes in other states

Memorandum regarding referral to Attorney General of Derrick Lehrke for House

Findings of Fact, Conclusions of Law, and Order in the matter of the Evan Rapp Volunteer Committee

Final Audit Report in the matter of the Friends of Jeremiah Ellis

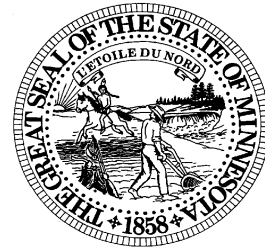
Findings of Fact, Conclusions of Law, and Order in the matter of the Friends of Jeremiah Ellis

**Campaign Finance and Public Disclosure Board
FY 2016 Budget (Spending Plan)**

Account	Description	FY 15 Actual	General Fund Budget	MnGEO FY 15 Money	FY 15 carry forward	Total available	Increase
41000	Full-time Salary/Fringe	700,462	727,526				27,064
41030	Part-time/Seasonal/Labor Service Salary/Fringe	47,936	66,812				18,876
41050	Overtime	348	0				
41070	Other Employee Cost (Workers comp admin, Board per diem)	4,724	4,400				
41100	Space Rental	39,491	40,000				
41110	Printing & Advertising (Letterhead, env., State Register)	1,371	3,500				
41130	Professional/Technical Services	34,355	8,400				
41145	IT Professional/Technical Services	120,086	50,000	23,400	150,000	223,400	
41150	Computer Systems and Services (Software, security, etc.)	38,577	5,000				
41155	Communications (Admin - Central Mail)	12,833	10,200				
41160	In-State Travel (Board and staff mileage)	2,173	3,000				
41170	Out-of-State Travel (COGEL Conference)	3,700	5,000				
41180	Employee Development (COGEL conference, staff training)	6,113	6,800				
41190	State Agency Provided P/T Svs - OAH Rules	545	4,000				
41196	Centralized IT Services (MN.IT - email, hosting, web access, telephone service)	8,565	9,350				
41300	Supplies	8,282	2,800				
41400	Equipment Rental (photocopier)	3,144	3,225				
41500	Repairs & Maintenance (Copier maintenance contract)	3,040	2,000				
43000	Other Operating Costs (anticipated carry forward)	5,910	2,000				
47060	Equipment -Capital (over \$5K) (Replace storage array)	0	25,000				
47160	Equipment - Non Capital (under \$5K)	12,142	10,000				
	Expenditure total	1,053,797	989,013				
	Carry forward	150,000	24,987				
	MnGEO project	22,400					
	Total	1,226,197	1,014,000				
	Appropriation	1,230,559	1,014,000				
	Return to state	4,362					

Minnesota

Campaign Finance and Public Disclosure Board



190 Centennial Building . 658 Cedar Street . St. Paul, MN 55155-1603

FAX: 651-296-1722 or 800-357-4114

DATE: July 27, 2015

TO: Board Members
Counsel Hartshorn

FROM: Jeff Sigurdson
Assistant Director

TELEPHONE: 651-539-1189

SUBJECT: Status of Online Training

An ongoing problem in providing compliance training to treasurers is the difficulty in reaching St. Paul from many locations in greater Minnesota. Staff does try to schedule some training classes in cities like St. Cloud and Duluth, but training sessions held outside of the metro area are always going to be limited in number and are still inconvenient to attend for many treasurers.

In order to make training available at any time and at any location with web access the Board contracted to develop an initial set of five online training videos for treasurers. The modules allow viewers to move at their own pace through the topics covered, provide both a visual script and a professional voice over of the training material, and incorporate quizzes during the training to make the modules more interactive.

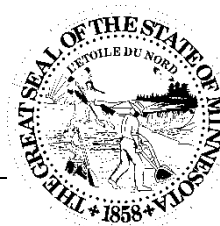
The five training modules produced include three modules covering the rules for contributions received by a candidate's committee, one module on the rules for contributions received by a political committee or fund or political party unit, and one module on recordkeeping and reporting requirements that apply to all committees. Each of the modules is between 20 and 30 minutes in length.

Under the contract staff received training on the software used to produce the modules. The software is relatively easy to use, and staff is confident that it can update the existing modules if changes are needed. Staff expects to provide additional modules on expenditures, public subsidy, and the special rules for independent expenditure committees and funds.

The modules have been deployed on the Board's website and an e-mail notification of their availability was sent to treasurers on July 13th. In the two weeks that the videos have been available the webpage containing the videos has been visited by 106 separate visitors. As the election year draws closer staff will continue to promote the online training and monitor the use of the modules.

The compliance training modules are available at www.cfboard.state.mn.us/training/training.htm. Also on this page are links to video tutorials on using the Campaign Finance Reporter software. The software tutorials are short, about three minutes in length, and are produced by staff in response to recurring questions about the software. These software tutorials have proved to be popular as they provide concise direction on using the software at any time that is convenient to the treasurer and are easy and cheap for staff to produce.

Campaign Finance and Public Disclosure Board



190 Centennial Building . 658 Cedar Street . St. Paul, MN 55155-1603

DATE: July 27, 2015

TO: Board Members

FROM: Jeff Sigurdson
Assistant Director

TELEPHONE: 651-539-1189

**SUBJECT: Status of Reconciliation of Contributions between Registered Committees,
Request for Board Direction**

Background

On November 10, 2013, the Star Tribune published an article describing problems found in the database of contributions to state candidates, political party units, and political committees and funds provided to the paper by the Campaign Finance and Public Disclosure Board. In particular the Star Tribune found that it could not reconcile over \$20 million dollars in contributions reported between registered committees during the years 2000 to 2012. A contribution was classified as reconciled if the contribution was reported by both the recipient and donor committees and if the amount of the contribution was either the same or within a variance of \$100.

Board staff had been notified by the Star Tribune of the reconciliation problem. Staff confirmed that the problems identified in the article existed, and provided statements used in the article. The database examined by the Star Tribune is also used for online searching of contributions on the Board's website. In initial response to the problem the Board pulled all contributions that did not reconcile off the online search application. Staff also started the evaluation of the problem, how it occurred, and what could be done to reconcile the data.

On December 10, 2013, the Senate Rules and Administration Subcommittee on Elections and the House Committee on Elections held a joint hearing on the problems identified in the article. Mr. Goldsmith testified about the origins of the problem and how staff would address the issue. At the December 17, 2013, Board meeting Mr. Goldsmith provided the Board with a report on the origins of the reconciliation problem and a list of nine administrative steps that staff would undertake to correct the database and to limit future problems. The effectiveness of the administrative steps would be evaluated and reported over time with direction sought from the Board as appropriate. A copy of that report is attached to this document.

This memo reviews the progress in resolving the unreconciled contributions for the years 2000 through 2012, examines the reconciliation of contributions reported in 2013 and 2014, asks the Board to approve the process that staff recommends be used for future reconciliations, and finally makes a recommendation on what priority and level of effort staff should commit to the reconciliation of prior reporting years.

Scope of Problem

The reconciliation process only applies to contributions, sometimes referred to as transfers, between registered committees. Only when both the giver and the recipient of a contribution file reports with the Board is a comparison of the amount reported as given and the amount reported as received possible. From 2000 through 2012 a total of \$136,854,065 in itemized transfers between registered committees were reported.

Although the Star Tribune reported a \$20 million dollar reconciliation problem the Board's own examination of the records, using a more rigorous criteria, found over \$26 million dollars in contributions that did not reconcile. This meant that for the years 2009 through 2012 about 81% of reported transfers reconciled.

2000 – 2012 Reconciliation Status

In Table 1, the original reconciliation problem as of November 2013 is broken down by year in the far left hand column. Initially staff concentrated on resolving the largest contributions that did not reconcile regardless of the year in which the contribution occurred. By April of 2014, approximately six months after the reconciliation project began, the unreconciled contributions had been reduced from over 26 million to about 12.6 million.

Table 1

	November 2013			April 2014			July 2015			
Year	Not Reconciled Difference Over \$100	Percentage Reconciled Of Total Transfers		Year	Not Reconciled Difference Over \$100		Year	Not Reconciled Difference Over \$100	Total Transfers Reported	Percentage Reconciled Of Total Transfers
2000	\$2,842,098	60.72%		2000	\$2,795,078		2000	\$2,794,210	\$7,236,994	61.39%
2001	\$470,640	77.57%		2001	\$373,140		2001	\$373,140	\$2,098,449	82.22%
2002	\$6,241,753	67.18%		2002	\$1,856,315		2002	\$1,855,815	\$19,019,603	90.24%
2003	\$372,648	74.69%		2003	\$351,598		2003	\$351,598	\$1,472,060	76.12%
2004	\$2,335,382	68.10%		2004	\$2,305,950		2004	\$2,303,107	\$7,320,368	68.54%
2005	\$248,193	90.53%		2005	\$185,817		2005	\$185,817	\$2,621,924	92.91%
2006	\$483,346	97.39%		2006	\$416,821		2006	\$417,121	\$18,527,074	97.75%
2007	\$615,574	75.93%		2007	\$512,529		2007	\$512,529	\$2,557,740	79.96%
2008	\$2,686,354	74.74%		2008	\$2,675,880		2008	\$2,675,135	\$10,633,611	74.84%
2009	\$351,235	87.92%		2009	\$284,354		2009	\$36,526	\$2,907,453	98.74%
2010	\$4,791,084	81.18%		2010	\$496,043		2010	\$40,812	\$25,459,972	99.84%
2011	\$500,960	87.75%		2011	\$374,026		2011	\$2,921	\$4,087,836	99.93%
2012	\$4,326,600	86.80%		2012	\$24,573		2012	\$5,200	\$32,772,360	99.98%
Total	\$26,265,867	80.79%			\$12,652,124			\$11,553,930	\$136,715,444	91.55%

However, by April 2014 most large contributions that did not reconcile had been resolved and future reductions in the total amount of unreconciled contributions were not as dramatic. The Board directed staff to concentrate on the years 2009 through 2012 as the most relevant information. Currently, the amount of unreconciled contributions for the years 2000 to 2012 has been reduced to a little more than 11.5 million. This represents a reduction of over 14.2 million dollars in the total amount of unreconciled contributions.

The years 2009 through 2012, highlighted in grey in the table, show the most improvement. The overall rate of reconciliation for those four years has been improved to 99.87%.

Reconciliation of 2013 and 2014

As staff focused on resolving problems for the reporting years 2009 through 2012 the year-end report for 2013 and the election year-reports for 2014 were filed. The reports for 2013 and 2014 were processed using procedures designed to limit the number of unreconciled contributions that result from the inaccurate entry of data. The procedures include double checking the data entry of paper reports and requiring the treasurers to submit complete amended reports if warranted. In Table 2 the initial unreconciled contributions reported for 2013 and 2014 are in the far left column, with the status as of the date of this memo listed next. The 2014 reconciliation is still ongoing, with a number of committees that have acknowledged reporting errors but have not yet submitted the required amendments.

Table 2

Year	Initial Amount Not Reconciled Difference Over \$100	Current Amount Not Reconciled Difference Over \$100	Total Transfers Reported	Percentage Reconciled Of Total Transfers
2013	\$417,657	\$4,667	\$4,506,703	99.90%
2014	\$1,955,927	\$42,169.00	\$24,647,813	99.83%

Although the percentage of transfers in 2013 and 2014 that reconcile is now in the high 99th percentile, the number of committees that needed to be contacted to achieve this outcome was significant. For example, in 2013 of the 743 political committees, political funds, and party units registered and reporting that year 269 (36%) reported at least one contribution to or from another registered committee that initially failed to reconcile. In 2013 of the 695 candidate committees 156 (22%) reported at least one contribution to or from another registered committee that failed to reconcile. The results for 2014 are similar, with 136 candidates (24%) and 329 (46%) political committees, political funds, and party units reporting at least one contribution that did not reconcile.

The process of getting committees to submit amendments or other information to resolve a reconciliation issue has been assisted by the 2014 legislative change to Minn. Stat. §10A.025. This statute now requires treasurers to respond to a Board request for information to reconcile discrepancies between their reports and reports filed by other individuals or associations. If the treasurer fails to provide the requested information within ten business days after the request was sent, the Board may impose a late filing fee of \$25 per day up to \$1,000. Although staff has not yet applied the late filing fee, the ability to reference a potential penalty has, in staff's opinion, helped to expedite the 2014 reconciliation.

Further reductions in the number of contributions that do not initially reconcile may occur due to the 2015 amendment to Minn. Stat. §10A.20 that requires reporting of the donating committee's registration number. Because many political committees and funds have similar names the recipient treasurer may easily write down, and end up reporting, the wrong committee as the contributor. By requiring a registration number treasurers should find it easier to track donations and then use the registration number to accurately report the source of the contribution.

Review of Administrative Steps and Request for Board Direction

In Mr. Goldsmith's report to the Board in December of 2013, nine administrative changes were outlined as the initial response to the reconciliation problem. Some of the administrative changes were reviewed by the Board at prior meetings and direction given to staff at that time. The following is a list of the nine changes with a brief status update.

Step 1. Immediately, written policies and procedures will be developed to ensure that amendments are entered into the Board's database when received and that they are scanned to the PDF report section for the filer. Controls will be put into place including review by a second staff person to verify that the required tasks have been accomplished. Tracking will be established so that processes can be measured and quantified.

Status: Complete. Written procedures are in place to insure that amendments and information provided in response to the reconciliation are processed in a consistent manner and made available as a part of the official record. The database now tracks who makes a change to a record and the nature of the change. New database reports for tracking the status of the reconciliation have been developed.

Step 2. For 2013 reports, data enter all data and data enter each contribution or expenditure separately.

Status: Complete. During the data entry of paper reports each reported contribution, transfer or expenditure is entered as a separate record, instead of the prior practice of entering contributions from the same contributor as a lump sum.

Step 3. The Executive Director will present to the Board analysis of the implications of setting a threshold below which reconciliation will not be undertaken and the Board will provide direction on this issue.

Status: Until 2013, the itemization threshold for contributions was over \$100. The database reconciliation program was set to allow a variation of up to \$100 in total contributions reported and received before a donor and recipient did not reconcile. In 2013, the itemization level increased to over \$200. The reconciliation program was not changed to allow for a greater variation; \$100 is still the allowed difference.

Increasing the allowed variance to the current \$200 itemization threshold would have a small effect on reducing the number of outstanding contributions that do not reconcile. For example, rerunning the reconciliation for 2014 using a \$200 threshold clears out only two additional contributions that do not currently reconcile. In 2011 it would clear out only one contribution that does not reconcile; in 2009 another two records. Rerunning the 2008 reconciliation using a \$200 variation clears out 22 contributions that do not reconcile, but the total value of those contributions is only \$3,261.

Setting the allowed variation to zero does increase the number of records that are not reconciled, but does not significantly change the rate of reconciliation. Using 2012 as an example, if the reconciliation is rerun with a zero allowed variation an additional 313 records are no longer reconciled. The total value of the additional records reduces the overall reconciled rate from 99.98% to 97.60%. Using a zero allowed variation in 2013 flags an additional 57 records as not reconciled, and reduces the overall reconciled rate for that year from 99.9% to 98.72%

Staff recommends that the Board direct staff continue to use the \$100 allowed variation in the reconciliation process. Increasing the variation to \$200 has little effect, and while reducing the variation to zero does extend the reconciliation process to hundreds of additional records, it would also result in staff inquiring on very nominal amounts that in total have a marginal impact on the accuracy of the overall data.

Step 4. The Executive Director will present the Board with an analysis of the various means of handling transactions that require reconciliation, including the use of change letters, amendments, and resolving the matter without reconciliation. The Board will provide direction on this issue.

Status: In past reconciliations staff would correct obvious errors on reports (for example, reporting a contribution on the expenditure schedule) and send a change letter to the treasurer as notification of the change and an explanation as to why it was needed. This approach had many problems. It was time consuming and shifted the responsibility for correcting reporting errors to staff. If the treasurer did not change the record in the Campaign Finance Reporter software to match the change letter the correction

by staff would be overwritten when the next electronic report was filed. Perhaps most importantly, treasurers were not learning how to correctly report the information and the same type of reporting errors were occurring again and again.

Starting with the 2013 reconciliation the Board directed staff to cease using change letters and other informal resolutions of reconciliation problems and to instead require in almost all situations that a committee submit an amended report to accurately report contributions. Requiring treasurers to amend their reports in almost all cases has proven a successful approach.

Step 5. For reports filed for calendar year 2013, the Executive Director will implement a process by which data that is manually entered into the Board's data systems will be audited for accuracy by a second person.

Status: Complete. The data entry of all paper reports is checked for accuracy by a second staff member.

Step 6. The Executive Director will establish policies and procedures for completing the 2012 reconciliation so that the Board and the public know with certainty what has been done to eliminate reporting mistakes by treasurers.

Status: Complete. This report and eight other reports to the Board on the reconciliation project provide a record of the improvements to the quality of the data provided to the public and the ongoing process to keep new reporting years reconciled.

Step 7. The Executive Director will establish a process for identifying and addressing the most significant reconciliation items on each past year's reports and will inform the Board and seek input.

Status: Ongoing. Staff will continue to monitor reconciliation reports for trends that may require a statutory change or indicators that treasurer training in a particular area should be improved.

Step 8. The Executive Director will further research and develop recommendations to the Board regarding amendments that have not been entered into the databases.

Status: Ongoing. For the years prior to 2013, the majority of records reconciled were done on the basis of information already on file with the Board. Staff used amendments on file but not entered into the database to resolve many discrepancies. However, many contributions were reconciled in a way that did not change the contribution records and would not be obvious to individuals searching the databases.

For example, a contribution reported as given in December of 2011 may not be reported by the recipient as received until January of 2012. The giving of the contribution and the receipt of the contribution were both reported accurately, no amendment is needed. But because the contribution is reported as received in a different reporting year it will not reconcile. To resolve this type of unreconciled contribution the database was changed to add a flag indicating that the contribution reconciles, and a text box into which staff places a brief explanation of why the contribution reconciles. This approach has allowed staff to clear up unreconciled contributions without contacting treasurers for amendments to reports filed years ago.

Step 9. The Executive Director will provide the Board with detailed analysis and regular updates concerning its data quality and reconciliation programs and will make recommendations.

Status: Staff will provide annual reports on the reconciliation of the prior years' reported contributions. As a goal staff will try to have all contribution records reconcile, or if that is not possible, to understand and document why contributions do not reconcile.

Based on the successful reduction in unreconciled contributions reported in 2009 through 2012, and the status of the 2013 reconciliation, staff recommends that the Board end the active reconciliation of years prior to 2014. Amendments to reports for 2013 and earlier years will still be processed, but staff resources will be redirected from reconciliation to other tasks and the upcoming 2016 election year. If

additional resources become available staff will evaluate devoting additional hours of research to the years prior to 2009.

If the Board agrees with the staff recommendation the form of the motion may be:

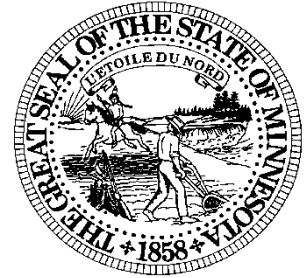
The Campaign Finance and Public Disclosure Board will cease the active reconciliation of contributions made prior to 2014. Staff will continue to report to the Board on at least an annual basis the status of the reconciliation of contributions from the prior reporting year, and will inform the Board of opportunities to improve the reconciliation process.

Attachments

December 10, 2013, Report to the Board

Minnesota

*Campaign Finance and
Public Disclosure Board*



Date: July 27, 2015

To: Board Members

From: Jeff Sigurdson, Assistant Director

Telephone: 651-539-1189

**Subject: Independent Expenditures for Television Advertisements during
the 2014 Election**

The Board has directed staff to explore what information might be available to better understand media buys that are reported to the Board and to determine if there are examples of campaign spending in Minnesota that are not subject to disclosure under the current provisions of Chapter 10A. Staff first reported on information available on television advertisements at the March 17, 2015, Board meeting. A copy of that memo is attached.

Subsequent to the March memo staff learned of a company that records and develops a cost estimate for every advertisement shown on network television or on a network affiliate nationwide. As a subset of that information the vendor provides access to recordings of all candidate and issue advertisements. After consulting with the Chair, the Executive Director obtained access to a dataset of all advertisements shown in Minnesota in 2014 for state-level candidates and issues. Staff is using the data to evaluate the reporting accuracy of television advertisements made by candidates, political committees and funds, and political party units registered with the Board. The results from that examination and other analysis will be presented at future Board meetings.

This memo will focus on television advertisements that were reported as independent expenditures, and on advertisements that were not reported as independent expenditures because of the absence of specific words expressly advocating for the election or defeat of a candidate.

Data Available

There are limitations to the data available for analysis. As stated above, the dataset includes advertisements that were shown on network television. Advertisements that were shown only on local cable networks are not included and are not available from any known source. This is a significant limitation. For example, the total amount reported in 2014 for independent expenditure television advertisements in support or opposition to state legislative candidates was \$2,395,016. However, it is staff's understanding that to be cost effective television

advertisements for legislative candidates are run on local cable access channels, not on network television, and are therefore not included in the dataset.

The dataset does contain all independent expenditure advertisements shown on network television with an estimated broadcast cost of \$2,992,580¹. In all cases the independent expenditures in the dataset were for or against gubernatorial candidates.

Independent Expenditures and Expressly Advocating

An independent expenditure is an expenditure “expressly advocating” for the election or defeat of a candidate that is made completely independent from a candidate or the candidate’s committee. Minn. Stat. § 10A.01, subd.18. The term “expressly advocating” means “that a communication clearly identifies a candidate and uses words or phrases of express advocacy.” Minn. Stat. § 10A.01, subd. 16a.

Minnesota Statutes do not define what "words or phrases of express advocacy" are and the Board has not adopted administrative rules to clarify the statutory language. Without legislative action or administrative rulemaking the Board has declined to go further in interpreting words or phrases of express advocacy than the U.S. Supreme Court case of *Buckley v. Valeo*, 424 U.S. 1 (1976). In the *Buckley* decision there is a footnote that provided eight words or phrases of express advocacy: "vote for," "elect," "support," "cast your ballot for," "Smith for Congress," "vote against," "defeat," and "reject."

Subsequent U.S. Supreme Court decisions to *Buckley* have clearly provided that even if words of express advocacy are not used, a communication may still be constitutionally subject to disclosure if the communication "is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate."² This type of communication is commonly referred to as the functional equivalent of express advocacy.

The Board has recognized that the current definition of expressly advocating in Chapter 10A does not reflect the U.S. Supreme Court determination that disclosure of communications may be required if the communication contains words of express advocacy or their functional equivalent. To bring the statute in line with the U.S. Supreme Court decisions, the Board has recommended at the last two legislative sessions that the definition of expressly advocating be amended to read as follows (suggested new language underlined):

Subd. 16a. **Expressly advocating.** "Expressly advocating" means:

¹ The dataset of network television advertisements includes an estimated cost for showing the advertisement that is based on industry standards for the length of the advertisement, the channel on which the advertisement was shown, and the time of day it was shown. Nonetheless, it should be remembered that the costs for showing the advertisements listed in this memo are estimates, and not documented costs.

² *FEC v. Wisconsin Right To Life (WRTL II)*, 551 U.S. 449 (2007). See also *McConnell v. FEC*, 540 U.S. 93 (2003) (also discussing functional equivalency); *Citizens United v. FEC*, 558 U.S. 310 (2010) (reaffirming the principle).

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

(2) that a communication, when taken as a whole and with limited reference to external events, such as the proximity to the election, is susceptible of no interpretation by a reasonable person other than as advocating the election or defeat of one or more clearly identified candidates.

The legislature has not adopted the recommendation.

2014 Network Television Independent Expenditures

A review of the dataset shows that there were two political parties and two registered political funds that ran independent expenditure television advertisements on network television in 2014. The number of advertisements developed, the number of times the advertisements were shown, and the cost for running the advertisements are shown by party unit or political fund in Table 1. The amount spent on production to create the advertisement is not included in the “Cost” column.

Table 1

Responsible for Advertisement	Number of Advertisements	Number of Times Shown	Cost
DFL State Central Committee	1	1,532	\$494,230
Republican Party State Central Committee	2	96	\$94,110
Alliance for a Better MN Action Fund	5	4,134	\$2,394,910
Minnesota Jobs Coalition Legislative Fund	1	15	\$9,330
Totals	9	5,777	\$2,992,580

Interestingly, the script and graphics for the advertisements developed by the Alliance for a Better MN Action Fund and by the Minnesota Jobs Coalition Legislative Fund do not use the words of express advocacy listed in the *Buckley* decision, although the advertisements do contain words that are the functional equivalent of express advocacy.

Although the two funds reported the television advertisements to the Board as independent expenditures it could be argued that this was over disclosure given that the Minnesota definition of expressly advocating is limited to communications using words of express advocacy.

2014 Television Advertisement not Reported as an Independent Expenditure

The Freedom Club State PAC, which is registered with the Board as a political committee, also ran an advertisement on network television in 2014. The advertisement was played 885 times

at a cost of \$1,063,270. The advertisement does not use words of express advocacy. However, applying the Supreme Court standard, it could be concluded that the communication is the functional equivalent of express advocacy because there is no reasonable interpretation other than that the advertisement is advocating the election or defeat of one or more clearly identified candidates.

The advertisement is not reported on the schedule of independent expenditures made by the Freedom Club State PAC. Instead, the cost of broadcasting the advertisement appears to be listed in the schedule of general expenditures made by the committee. General expenditures, however, do not list the candidate who benefits from or is opposed by the disbursement of funds.

To be clear, the Freedom Club State PAC's reporting of the cost of airing these ads is consistent with the Minnesota definitions of independent expenditure and expressly advocating. Because the television advertisement omitted words of express advocacy, it was not required to be reported as an independent expenditure.

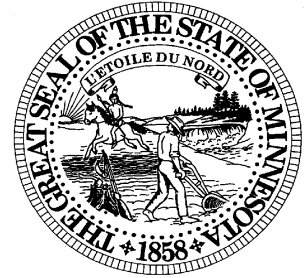
All of the advertisements referenced in this memo are fairly short in length and will be shown to the Board at the upcoming meeting.

Attached

Memo to the Board dated March 16, 2015, on campaign spending

Minnesota

Campaign Finance and Public Disclosure Board



Date: July 28, 2015

To: Board Members

From: Jodi Pope, Legal Analyst
Kyle Fisher, Legal Analyst

Telephone: 651-539-1183
651-539-1182

Re: Developments in state campaign finance disclosure laws

For the past three years, the Board's legislative recommendations have included proposals to extend disclosure requirements to more individuals and associations that engage in communications to influence the nomination or election of candidates or the adoption or rejection of ballot questions.

The Board's first recommendation involves expanding the definition of express advocacy. In Minnesota, a communication made by an individual or an association must use one of the words of express advocacy identified in *Buckley v. Valeo* to trigger the disclosure requirements in Chapter 10A. These words often are called the *Buckley* magic words and include phrases such as "vote for," "vote against," "elect," "support," "cast your ballot for," "Smith for Congress," "vote against," "defeat," and "reject." The Board has recommended expanding the current definition of express advocacy to include communications that are the functional equivalent of express advocacy. A communication is the functional equivalent of express advocacy if the communication is susceptible to no reasonable interpretation other than as an appeal to vote for or against a specific candidate.

The Board also has recommended adopting an electioneering communication disclosure requirement for individuals and associations that is modeled on the federal definition of this term. Electioneering communications generally are communications that do not use words of express advocacy but that mention a specific candidate or ballot question, that are made to a relevant electorate, and that are made within a specified timeframe before an election.

Finally, the Board has recommended tightening underlying source disclosure for contributions to independent expenditure and ballot question political committees and funds so that more meaningful disclosure of the actual sources of money used can be obtained. Specifically, the Board has recommended requiring unregistered associations that must provide underlying source disclosure with their contributions to pro-rate the cost of these expenditures across donors.

In response to Board interest in hearing how other states have approached these issues, staff researched recent developments in campaign finance disclosure laws and came up with relevant information on the following six states. Links to the new laws in these states are provided at the end of the document along with a link to a chart showing the states that had electioneering communications provisions in 2013.

California law and investigation

California law provides that no person shall make a contribution on behalf of another, or while acting as the intermediary or agent of another, without disclosing both the name of the intermediary and the contributor. In 2012, section 18412 of the California regulations also required certain reporting regarding the source of contributions to non-profits. The regulation provided that if a donor to a non-profit requests or knows that the payment will be used by the non-profit to make a contribution or an independent expenditure to support or oppose a candidate or ballot measure in California, the full amount of the donor's payment shall be disclosed by the non-profit as a contribution. A donor "knows" that a payment will be used to make a contribution or an independent expenditure if a donor makes a payment in response to a message or a solicitation indicating the organization's intent to make a contribution or independent expenditure. In Minnesota these concepts result in the non-profit registering a political fund, which itemizes such contributions if they are more than \$200.

Background

In 2013, the California Fair Political Practices Commission initiated an inquiry into certain out-of-state non-profit groups and state PACs. The investigation was triggered when a California PAC, the Small Business Action Committee, reported receiving \$11 million in October of 2012 from an out-of-state non-profit previously not known to be active in the state.

Two individuals sought to raise and spend millions of dollars on issue ads in two state ballot-initiative campaigns without reporting the donors. The individuals began fundraising and sent the contributions to a non-profit in Virginia, Americans for Job Security (AJS). AJS was originally meant to run the TV spots. However, because the fundraising took longer than planned, AJS was concerned that the proximity of the ads to the election would trigger electioneering communication provisions requiring the disclosure of donors. One of the fundraisers asked another individual, who ran the Center to Protect Patient Rights (CPPR: an Arizona non-profit), if he could send some money to fund their efforts, while at the same time the CPPR could find *other* money to send to California.

The two agreed to an arrangement: the AJS sent its money to the CPPR, in the hopes that the CPPR would get other organizations to send similar amounts back into California, masking the original donors – it was clear that the AJS money could not come back into California due to the concerns of donor disclosure. The funds were accompanied by letters from AJS noting that the use of the money was "at the sole discretion of [the CPPR]." CPPR then disbursed money to two nonprofits: one in Iowa, the American Future Fund (AFF), and one in Arizona, the Americans for Responsible Leadership (ARL), recommending that the non-profits use the funds to support the California initiatives. These two non-profits ultimately made the donations to two California PACs. However, the large sum (of \$11 million) from an out-of-state group (ARL) on the Small Business Action Committee's report caught the attention of Common Cause, and a complaint was filed with the Fair Political Practices Commission.

The California Supreme Court ordered ARL to reveal the source of its contribution. It named CPPR, which in turn indicated that the funds came from the AJS. The initial fundraiser said he was "shocked," saying he believed AJS' funds had been diverted elsewhere in CPPR's network.

Conclusion

After a year-long investigation, the commission and the attorney general's office absolved AJS of any wrongdoing but fined CPPR and ARL a combined \$1 million. It also ordered the two state political committees that spent the funds routed through the CPPR to pay the state \$15 million (equal to the amount of money they received). The ultimate violation was that the CPPR and ARL did not disclose that the CPPR was the entity making the contributions through the ARL and the AFF. The matter was

resolved through a stipulation that included a statement that the failure to disclose the original source of the funds “was inadvertent, or at worst negligent.”

Because the funds were initially raised from donors for issue advocacy, and because the CPPR’s donors did not know or have reason to know that their donations would be used to make contributions or expenditures in California, no entity was required to disclose donor names.

Section 18412 was later repealed in 2014 when a new statute was passed by the California legislature in response to this investigation. The new statute generally requires non-profits and out-of-state PACs that meet certain spending or fundraising thresholds to register and report their political expenditures and the sources of those funds. The sources of funds are reported in two ways. Donors who specifically gave to the organization for political purposes, or who reached a subsequent understanding regarding the use of their contribution, are itemized at a \$100 level. If these specific donors do not cover the entire amount of the expenditure, the report then itemizes donors at a \$1,000 threshold using typical “last in, first out” (LIFO) accounting methods. However, a donor that prohibits the use of his or her donations for political purposes will never be itemized on a report.

Minnesota law does not provide for LIFO disclosure but permits the entity to pick and choose donors to disclose. As long as the entity picks donors of less than \$5,000, there is no itemized disclosure. A LIFO disclosure approach along with allowing donors to prohibit use of their money for political purposes, and thus ensure that they will not be disclosed, is a concept that could be discussed as a Minnesota solution.

The California statutes also provide for multi-layer reporting regarding non-profits. If a non-profit identifies a contributor of more than \$50,000 by the LIFO accounting method that is itself a non-profit, the recipient shall send a “non-profit filer notice” to the contributor stating that it may be required to register and file as described, above. This is intended to allow the agency to peel back the layers on a contribution that is funneled through multiple associations.

Montana law

Montana’s laws prohibiting corporate election spending were adopted early in the 20th century after copper mining companies used corporate money to buy political offices and to ensure that Helena would be the state’s capitol. Montana argued that this unique history justified retention of its ban on corporate election spending after the decision in *Citizen’s United*. The Supreme Court disagreed and in 2012 summarily struck down Montana’s prohibition of corporate election spending.

A non-profit social welfare group called Western Tradition Partnership (now known as American Tradition Partnership) (ATP) was one of the plaintiffs that challenged Montana’s prohibition of corporate election spending. ATP spent significant amounts of money on the 2008, 2010, and 2012 elections, mainly in Republican primaries. In 2010, the Montana Commissioner of Political Practices determined that ATP should have registered as a political committee and disclosed its donors. ATP has not yet complied with this decision.

Partly in response to these developments, a version of a new Montana disclosure law was first introduced in 2013. In 2015, the Democratic governor made the bill a priority and it was carried in the state senate by a Republican. The bill passed with bipartisan support and is effective on October 1, 2015. In addition to the disclosure provisions, the law also puts unions on the same footing as corporations and prohibits them from contributing directly to candidates.

Although the law sweepingly states that campaign finance reports must be filed regardless of an entity's tax status, the law does not require all entities to report. Instead, the law creates the two standard types of political committees. An independent committee is a political committee "organized for the primary purpose of receiving contributions and making expenditures" An incidental committee is a political committee that is "not specifically organized or operating for the primary purpose of supporting or opposing candidates or ballot issues but that may incidentally become a political committee by receiving a contribution or making an expenditure." This concept is comparable to Minnesota's recognition of political committees and of political funds used by non-major-purpose associations that sometimes make independent expenditures, contributions, or campaign expenditures.

Independent committees must periodically report all contributions received over a \$35 threshold and all expenditures. Incidental committees must report 1) when they participate in election by making an expenditure; 2) when they receive a contribution over \$500 designated for a specified candidate or ballot issue or in response to an appeal for contributions to support election activity, including in-kind expenditures, independent expenditures, election communications, and electioneering communications; and 3) when they make expenditures of \$500 or more just before election.

Expenditures are payments made "to support or oppose a candidate or ballot issue or used or intended for use in making independent expenditure or in producing electioneering communications." "To support or oppose" means using the *Buckley* magic words or language that is susceptible of no reasonable interpretation other than as a call for the election or defeat of a candidate, political party, or ballot issue. This definition is broader than Minnesota's definition, which requires the *Buckley* magic words of express advocacy, but does not extend to language susceptible of no reasonable interpretation other than as a call for voting action.

When required to report, an incidental committee must report 1) contributions over a \$35 threshold designated for a specified candidate or ballot issue or made in response to an appeal for contributions to support election activity, including in-kind expenditures, independent expenditures, election communications, and electioneering communications; 2) all expenditures; and 3) all transfers. If the committee did not receive any earmarked contributions and did not solicit contributions for its election activity, it is required to report only its expenditures.

Proposed rules

The new legislation directs the Commissioner of Political Practices to adopt rules defining primary purpose organizations. The Commissioner's proposed rules define an independent committee as a committee "that has the primary purpose of supporting or opposing candidates or ballot issues." An incidental committee is defined as a committee "that does not have the primary purpose of supporting or opposing candidates or ballot issues."

Primary purpose means "a committee's major, principal, or important goal, function, or reason for existence." To determine an entity's primary purpose, the commissioner may look at the entity's budget, staff activity, statement of purpose, goals, articles of incorporation or bylaws, election activity, number and content of election and electioneering communications, receipt of earmarked contributions, coordination, ordinary business actually conducted, date of founding, maintenance of corporate structure; the number of people involved; and history.

In addition, any entity formed or created within the six months immediately preceding voting at an election that makes expenditures or takes contributions totaling \$250 or more to support or oppose any candidate or ballot issue may be classified as an independent committee.

Massachusetts rules

In late 2014, the Massachusetts Office of Campaign and Political Finance adopted rules as directed by statute. The summary states that the rules govern tax exempt organizations such as 501(c)-non-profits, as well as other organizations that are not Massachusetts political committees, and provide guidelines for ensuring that the origin of the funds used to make contributions, electioneering communications, or independent expenditures are disclosed by regulating transfers of funds made for the purposes of facilitating the eventual making of contributions, electioneering communications, or independent expenditures. The agency stated that it has yet to conduct any enforcement actions under the new regulatory scheme. The following provisions are designed to act in conjunction with each other, but it is not entirely clear how the provisions work together.

Under these rules, an organization that solicits contributions to either directly make contributions or independent expenditures, or for the purpose of allowing another individual or group to make such contributions or independent expenditures, is considered a political committee and must file reports disclosing all contributions received and expenditures made. The determination often depends on the timing and content of the solicitations. The rules also provide that donors who specifically give for political purposes are itemized at a \$250 level.

Further, if an organization makes a contribution, independent expenditure, or electioneering communication from its general treasury that is not fully paid for by general organizational income and donors that specifically gave for political purposes, the organization must use LIFO accounting methods to identify and report donors who are presumed to have had reason to know that all or part of their payments would be used for the contributions, independent expenditures, or electioneering communications based on the solicitation of the donation. The rules do not state how to distinguish between donors who specifically gave for political purposes and donors who are presumed to have had reason to know that all or part of their donations would be used for political purposes, and the state has not yet applied this provision to any organization. The rules, however, do provide that an organization need not report a donor as a contributor if the organization has evidence clearly establishing that the donor did not intend that a payment would be used for these purposes.

Finally, an organization that receives a contribution from another organization may be required by the agency to obtain a written statement from the donor verifying that the contribution was made solely from general treasury funds. If the statement is not provided, the agency may require the organization to return the contribution.

New York Rules

In 2013, the New York Attorney General adopted rules that apply to all non-profits that must register with the New York Charities Bureau, except for 501(c)(3) organizations. An entity is required to register with the Bureau if it raises funds from New York residents.

A registered entity's annual report must include the amount and the percentage of total expenses that the entity spent on election related expenditures. An election related expenditure is any expenditure made or contribution provided for express election advocacy or election targeted issue advocacy or any transfer to another entity for the purpose of supporting or engaging in express election advocacy or election targeted issue advocacy by the recipient or a third party.

Express election advocacy is the use of the *Buckley* magic words or language that is susceptible of no reasonable interpretation other than as a call for the election or defeat of a candidate, a political party, or a ballot issue.

Election targeted issue advocacy is New York's term for electioneering communications. Election targeted issue advocacy is any communication other than express election advocacy made within 45 days before any primary election or 90 days before any general election that 1) refers to a candidate in the election; 2) depicts the name, image, likeness or voice of a candidate in the election; or 3) refers to a political party or ballot issue in that election. It does not include a communication that is 1) distributed to members, contributors, or those who have the right to vote on the association's directors, officers, bylaws, disposition of all or substantially all of the covered organization's assets or the merger or dissolution of the covered organization; or 2) for neutral debates or forums.

If the entity made more than \$10,000 in New York election related expenditures during the reporting period, the entity must itemize every New York election related expenditure exceeding \$50 and every covered donation that exceeded \$1,000. A covered donation is any contribution made to the entity unless the contribution was deposited into an account that is not used for making New York election related expenditures.

If the entity is required to disclose the expenditure and contribution information to another agency and the entity is in compliance with the disclosure requirement, the entity does not have to disclose the information again on its report. If the entity has a segregated bank account containing funds used solely for New York related expenditures and it makes all of its New York related expenditures from this account, the entity is required to itemize only the donations into that account.

Maryland disclosure law

In 2010, the Maryland Attorney General formed an advisory committee to study campaign finance reform. The committee issued a report in 2011 and the Maryland legislature adopted a Campaign Finance Act in 2013. Most provisions in the Act were not effective until January 1, 2015. In addition to disclosure provisions, the new law also raised contribution limits that had not been changed in 20 years.

Under the new law, an entity must report within 48 hours if it makes \$10,000 or more in independent expenditures or electioneering communications. On the report, the entity must itemize all expenditures and list the identity of each person who made cumulative donations in excess of \$6,000. The cumulative donations do not include money given with the written understanding that it would not be used for independent expenditures or electioneering communications or money that was deposited in an account that is not used for independent expenditures or electioneering communications.

The new law also requires a 501(c)(4), a 501(c)(6), or a 527 entity to register and report if it makes a contribution of \$6,000 or more to 1) a Maryland campaign finance entity for the express purpose of causing the entity to make a disbursement in Maryland; 2) a person for the express purpose of causing the person to make an independent expenditure or an electioneering communication in Maryland; or 3) an out-of-state political committee for the express purpose of causing the political committee to make a disbursement in Maryland.

The entity's report must include all disbursements and itemize the five donors who gave the largest amount of money to the entity to influence a Maryland election during the year that immediately preceded the report. If the entity was required to report under the independent expenditure or electioneering communication provision within six months of the date that the new report would be required, the entity can describe where to find the earlier report via the internet instead of submitting a new report.

Delaware 2012 law and lawsuit

Delaware passed a statute in 2012 that significantly expanded the scope of that state's disclosure by requiring persons, other than political candidates and parties, who engage in electioneering communications to file reports disclosing the sources of funding for such ads. Individuals who make contributions to such persons or associations are itemized at a \$100 level. The statute also required entities that contribute more than \$1,200 to PACs and party units to disclose the name and address of a "responsible party" of the entity.

This law was recently upheld in a suit challenging the constitutionality of the expanded electioneering communication provisions as applied to a voter guide published by a 501(c)(3) non-profit organization.

Attachments:

California law summary

Montana law

Montana proposed rules

Massachusetts rules

New York rules

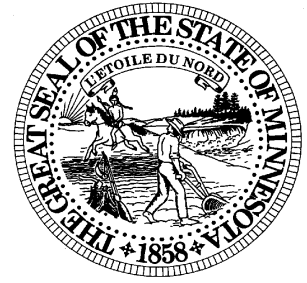
Maryland law

Delaware law

2013 electioneering communication laws chart

Minnesota

*Campaign Finance and
Public Disclosure Board*



Date: July 28, 2015

To: Board members

From: Gary Goldsmith, Executive Director

Telephone: 651-539-1190

Re: Referral to Attorney General – Derrick Lehrke for House

The committee's 2013 year-end report listed an ending cash balance of \$1,292.21 as of 12/31/2013. The committee then filed a 2014 year-end report as a no-change statement, listing a cash balance of \$0.00, and attempting to terminate.

A committee may not terminate until its cash balance is below \$100 and all of its funds have been accounted for. Therefore, the committee is still active at this time.

Mr. Lehrke was originally notified by email on February 2, 2015, of the need to amend the committee's 2014 year-end report to show the disbursement of the committee's remaining funds. Since that time, staff has left voicemails at the phone number Mr. Lehrke has registered with the Board and sent a number of emails and letters regarding the need for the committee to amend its report. The most recent letter, dated June 24, 2015, is attached. Mr. Lehrke has responded once via email on February 16, 2015, but has not responded to any staff contacts since that time.

Staff requests that the Board authorize the Executive Director to refer this matter to the Attorney General to seek an order compelling the filing of the amended report and to obtain a judgment against the committee and the candidate for a prior \$125 late filing fee and for a late filing fee for the amended report. The late filing fee for the amended report is accruing at the rate of \$25 per business day and will reach the statutory maximum of \$1,000 on August 13.

Attachments:

Letter dated June 24, 2015

Lehrke response February 16, 2015

STATE OF MINNESOTA
CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER

IN THE MATTER OF THE EVAN RAPP VOLUNTEER COMMITTEE (16838);

Background

The Evan Rapp Volunteer Committee's 2008 year-end Report of Receipts and Expenditures was the last report filed by the committee that detailed any transactions. The committee filed no change reports with the Board for 2009, 2010, 2011, and 2012. Based on the committee's failure to file a 2013 year-end report, failure to respond to Board correspondence, and the fact that the committee has filed no change reports over an extended period of time, the Board, at its meeting of November 18, 2014, initiated an audit and investigation of the committee to determine the accuracy of the committee's currently reported cash balance.

The committee last reported that, on December 31, 2012, it had a cash balance of \$1,278.50. The committee failed to file its required 2013 year-end report and accrued a late filing fee of \$1,000 and a civil penalty of \$1,000. The Board attempted numerous times to contact Mr. Rapp to seek compliance; Mr. Rapp was not responsive to these Board requests. In addition, the committee has outstanding late filing fees of \$350 and \$175, which accrued on the committee's 2011 and 2012 year-end reports, respectively.

After receiving the Board's letter of November 25, 2014, notifying the committee of the investigation, Mr. Rapp reached out to Gary Goldsmith, Executive Director to the Board. Mr. Rapp explained that the committee's bank account was closed and that he had paid himself the remaining committee funds as compensation for storage of committee signs and records. However, Mr. Rapp also acknowledged that he incurred no costs for the storage of the signs and records, as they were stored at his home.

Mr. Rapp has contributed \$250 to his committee, which he would be permitted to return to himself, and the committee would be permitted to terminate with \$100 of its cash balance unaccounted for. Subtracting those amounts leaves \$928.50 that should still be available for use by the committee.

Based on the investigation, the Board makes the following:

Findings of Fact

1. Mr. Rapp paid himself \$1,278.50 in committee funds to store the committee's signs and records. Neither Mr. Rapp nor the committee incurred any actual costs for storing the signs and records.

Conclusions of Law

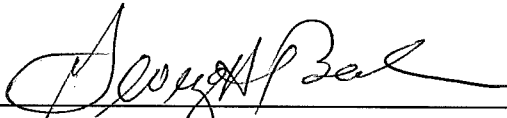
1. Mr. Rapp violated Minnesota Statutes section 211B.12 (7), which prohibits a committee from using money collected for political purposes for personal use, when he paid himself committee funds for the storage of campaign signs and records for which he incurred no costs.

Based on the above Findings of Fact and Conclusions of Law, the Board issues the following:

Order

1. Mr. Rapp is ordered to pay \$928.50 to the State of Minnesota in lieu of returning to the Committee the funds that were converted to personal use, as the Committee is terminating. Mr. Rapp is further ordered to pay a civil penalty of \$928.50 as a penalty for the conversion to personal use. The civil penalties must be paid by check or money order made payable to the State of Minnesota within 30 days of the date of this Order and must be sent to the Board at 658 Cedar St., St. Paul, MN 55155.
2. The Evan Rapp Volunteer Committee is terminated effective December 31, 2013.
3. The investigation of this matter is concluded.

Dated: August 4, 2015



George A. Beck, Chair
Campaign Finance and Public Disclosure Board

STATE OF MINNESOTA
CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD

FINAL AUDIT REPORT

AUDIT OF THE FRIENDS OF JEREMIAH ELLIS COMMITTEE (17017);

At its meeting of November 18, 2014, the Board authorized the Executive Director to begin an audit of the Friends of Jeremiah Ellis committee (the Committee) from 2010 to present to assess the accuracy of the Committee's reporting, the adequacy of the Committee's recordkeeping, and to examine whether any Committee money had been used for personal purposes.

Audit Procedure:

Staff requested that Jeremiah Ellis (the Candidate) provide bank records detailing the Committee's transactions during 2010 and subsequent years. Staff also requested the Committee's most recent bank statement. Board staff scheduled a meeting with the Candidate at the Board's offices on Wednesday, December 17, 2014. The Candidate met with staff and provided to the Board bank records beginning with the date of the account's inception.

The bank records provided to the Board included statements for 43 of the 59 months beginning January 31, 2010, and through November 30, 2014. In addition to the monthly statements, Mr. Ellis provided copies of incoming and outgoing checks or, where electronic copies of checks were not available, copies of deposit slips that listed individual checks by check number.

The Candidate met with Board staff again on Friday, July 10, 2015, at the Board's offices and participated in an interview under oath. The Candidate provided to the Board two additional bank statements and a spreadsheet containing additional records of expenditures.

In the July 10 interview, the Candidate stated that he did not use any of the Committee's money for personal purposes and that he has no evidence that any individuals involved with the Committee's finances improperly used campaign money. He stated that he believes that all of the Committee's money was used to influence the vote in his election. The Candidate also said that two cash withdrawals were used by the Committee like a petty cash fund.

The account is currently still open and had a cash balance of \$148.90 as of June 30, 2015. Account fees of \$9.00 per month are deducted, and therefore the Committee's cash balance will continue to be reduced as long as the account is open.

Kyle Fisher, Legal Analyst for the Board, was assigned to this audit and reviewed the Committee's bank records and previously filed reports.

Audit Results:

Based on the audit, the Board makes the following findings:

Findings

1. The Committee's 2010 pre-primary-election report filed with the Board on July 26, 2010, did not accurately reflect all contributions received by the Committee during the reporting period.

The Committee reported \$13,117 in total cash receipts for the pre-primary-election reporting period ending July 19, 2010. The Committee's bank records indicate that the Committee received \$14,965 in cash or checks deposited and/or dated on or before July 19, 2010.

2. The Committee's 2010 pre-primary-election report filed with the Board on July 26, 2010, did not accurately reflect all expenditures made by the Committee during the reporting period.

The Committee reported \$10,008.34 in total cash expenditures for the pre-primary-election reporting period ending July 19, 2010. The Committee's bank records indicate that the Committee made \$9,456.10 in expenditures on or before July 19, 2010. One expenditure of \$650.00 listed on the Committee's report as having been paid on June 23, 2010, was not actually paid until August 2010, after the close of the reporting period. This expenditure should have been reported as an unpaid bill. Additionally, some expenditures in the bank records that were written on checks dated prior to July 19, 2010, and therefore should have been included in the report, were not included.

3. The Committee's 2010 pre-general-election report filed with the Board on November 8, 2010, as a no change report was inaccurate, as the Committee had both received contributions and made expenditures during the reporting period.

The Committee's bank records indicate that the Committee received \$5,626 in cash or checks deposited and dated after July 19, 2010, and before October 18, 2010, the close of the pre-general-election reporting period. The Committee's bank records also indicate that the Committee spent \$9,950.25 after July 19, 2010, and before October 18, 2010.

4. The Committee's reports did not accurately disclose expenditures made out of the Committee's petty cash funds.

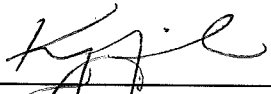
The Committee made two cash withdrawals from its account, one for \$1,500 on March 8, 2010, and one for \$600 on August 5, 2010. The Candidate stated that the Committee used these proceeds as a petty cash fund. The Candidate provided to the Board a spreadsheet that he indicated was created during the 2010 election and that he represented was an accurate record of \$1,624.27 in expenditures paid for out of the \$2,100 in cash withdrawals. However, no actual invoices, checks, or receipts were provided for these expenditures and no records whatsoever exist for the remaining balance of the cash proceeds. The Committee's pre-primary-election report and pre-general-election report did not contain any of the expenditures detailed in the spreadsheet provided to the Board, nor did they include the checks made payable to

cash.

5. After reconciling the Committee's reports and records to its bank records, the Committee is unable to account for \$475.73 of Committee funds.

This equals the amount of petty cash fund expenditures for which no records exist. The Board has found no evidence that the money was converted to personal use.

Responsible Staff Person:



Kyle Fisher, Legal Analyst
Campaign Finance and Public Disclosure Board

Dated: 8/4/15



George A. Beck, Chair
Campaign Finance and Public Disclosure Board

Dated: 8/4/15

STATE OF MINNESOTA
CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER

IN THE MATTER OF THE FRIENDS OF JEREMIAH ELLIS COMMITTEE (17017);

Background

The Friends of Jeremiah Ellis committee (the Committee) is the principal campaign committee of Jeremiah Ellis (the Candidate). The Committee registered with the Board on February 3, 2010.

The Committee filed a pre-primary-election report on July 26, 2010, detailing receipts and expenditures for the reporting period ending July 19, 2010, and stating an ending cash balance of \$3,108.66. The Committee then submitted a no change report on November 8, 2010, for the pre-general-election reporting period ending October 18, 2010. However, the report was not signed and certified as true. This report was 10 business days late, and the Committee therefore accrued a \$500 late filing fee.

Due to the fact that the Committee filed a no change report during an election year in which it was active, the Board questioned whether the report accurately represented the Committee's activities during the reporting period.

The no change report received in November 2010 was the last report that the Committee filed with the Board. Since that time, the Committee has failed to file its 2010, 2011, 2012, and 2013 year-end reports with the Board, in spite of ongoing efforts by Board staff to obtain the reports. In late 2013, Mr. Ellis met with Board staff regarding how to complete the Committee's outstanding 2010 year-end report. However, all of the aforementioned reports remain outstanding.

At its meeting of November 18, 2014, the Board authorized the Executive Director to begin an investigation of the Committee for the purpose of determining whether any campaign finance violations had occurred. A corresponding audit of the committee was also conducted, and the Board generated a Final Audit Report, which is incorporated into this document.

Based on the investigation and audit of the Committee's bank records in this matter, the Board makes the following:

Findings of Fact

1. The Committee made two cash withdrawals from its account, one for \$1,500 on March 8, 2010, and one for \$600 on August 5, 2010. The \$600 check was signed by the Candidate. The \$1,500 cash withdrawal was made on a check signed by another individual, who was identified by the candidate as an active committee member,

although she was not the treasurer or the deputy treasurer for the Committee. The Committee used the proceeds from these cash withdrawals as a petty cash fund. Pursuant to statute, which would have allowed the Committee to withdraw up to \$20 a week for petty cash, the maximum amount the Committee could have withdrawn for petty cash over the course of 2010 was \$1,040.

2. The Committee accepted total contributions of \$750 from one individual during 2010.
3. The Committee's 2010 pre-primary-election report did not accurately reflect all contributions received and expenditures made by the Committee or include complete employer and address information for all itemized contributors.
4. The Committee's 2010 pre-general-election report that was filed as a no change report was inaccurate, as the Committee had both received contributions and made expenditures during the reporting period.
5. The Committee has an outstanding late filing fee of \$500 on its 2010 pre-general-election Report of Receipts and Expenditures. The Committee also has an outstanding late filing fee of \$1,000 and civil penalty of \$1,000 on its 2010 year-end Report of Receipts and Expenditures.
6. Although the Committee has maintained inadequate records regarding certain transactions in 2010, and the Board, after conducting an audit, is currently unable to account for \$475.73 in Committee funds, the four-year time period has elapsed during which the Committee was required by statute to maintain records.
7. The Committee has been inactive for over four years and the Candidate desires to terminate the Committee.
8. No expenditures have been made from the Committee's bank account since December 31, 2010, other than one expenditure for a 2010 obligation that will be reported on the Committee's 2010 year-end report, bank charges to maintain the account, charges for obtaining account statements, and, upon conclusion of this Order, payment of a late filing fee. The current balance in the account is approximately \$139.90.

Conclusions of Law

1. The Committee violated Minnesota Statutes section 10A.17, subdivision 3 when checks of \$600 and \$1,500 were cashed for petty cash, which were in excess of the \$20 per week limit for petty cash withdrawals to be used for miscellaneous expenditures and when it permitted petty cash withdrawals to be made by an individual other than the Candidate or the treasurer.

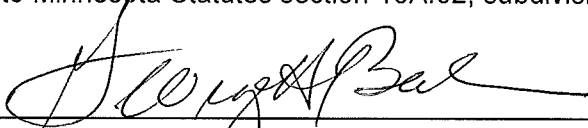
2. The Committee violated Minnesota Statutes section 10A.27, subdivision 1(a)(5) when it accepted \$750 in total contributions from one individual in 2010, which was in excess of the statutory limit of \$500.
3. The Committee violated Minnesota Statutes section 10A.20, subdivisions 3(c) and 3(h) when it did not accurately report receipts and expenditures or complete employer and address information for itemized contributors on its 2010 pre-primary-election report of receipts and expenditures.
4. The Committee violated Minnesota Statutes section 10A.20 when it did not include transactions that occurred during the reporting period on its 2010 pre-general-election report.
5. The Board has found no evidence that the Candidate or the Committee violated Minnesota Statutes section 211B.12 (7), which prohibits using money collected for political purposes for personal use.

Based on the above Findings of Fact and Conclusions of Law, the Board issues the following:

Order

1. The Board orders Jeremiah Ellis and the Committee to pay the \$500 late filing fee previously assessed by the Board on the Committee's 2010 pre-general election Report of Receipts and Expenditures by check or money order payable to the State of Minnesota within thirty days of the date of this Order. Upon receipt of the \$500 payment, the outstanding late filing fee of \$1,000 and civil penalty of \$1,000 assessed on the Committee's 2010 year-end Report of Receipts and Expenditures shall be waived.
2. Mr. Ellis is directed to file a final 2010 year-end Report of Receipts and Expenditures as a termination report for the Committee within thirty days of the date of this Order. Upon filing this report and making payment to the State of the remaining balance in the Committee's bank account, which must be verified by a bank statement closing the account, the termination is accepted.
3. If Mr. Ellis does not comply with the provisions of this Order, the Board's Executive Director may request that the Attorney General bring an action for the remedies available under the Minnesota Statutes.
4. The Board investigation of this matter is concluded and hereby made a part of the public records of the Board pursuant to Minnesota Statutes section 10A.02, subdivision 11.

Dated: August 4, 2015



George A. Beck, Chair
Campaign Finance and Public Disclosure Board