

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

.....  
**May 6, 2020**

**Meeting conducted remotely though WebEx due to COVID-19 pandemic**

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**MINUTES**

The meeting was called to order by Chair Moilanen.

Members present: Flynn, Haugen, Leppik, Moilanen, Rosen, Swanson

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

**MINUTES** (March 6, 2020)

After discussion, the following motion was made:

Member Haugen's motion:	To approve the March 6, 2020, minutes as drafted.
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Vote on motion:	A roll call vote was taken. All members voted in the affirmative.
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**CHAIR'S REPORT**

**A. 2020 meeting schedule**

The next Board meeting is scheduled for 10:30 a.m. on Wednesday, June 3, 2020.

**EXECUTIVE DIRECTOR REPORT**

Mr. Sigurdson told members that the legislature was very unlikely to take up any Board confirmations during the remainder of the current session. Consequently, the terms of Members Moilanen and Flynn would end on May 18, 2020, because their confirmations needed to occur before the legislature adjourned sine die. Mr. Sigurdson said that the Governor had not made appointments to fill the seats currently held by Members Leppik and Swanson. The appointments of Members Leppik and Swanson ended on January 1, 2020, but by statute they could continue to serve until July 1, 2020. Mr. Sigurdson stated that he had been in communication with the Governor's office to explain that the Board would not have a quorum if appointments were not made relatively soon after the session ended.

Mr. Sigurdson next addressed the effects of the COVID-19 situation on office operations. Mr. Sigurdson said that in-person training had been suspended but that staff had updated the online training resources and was exploring the idea of conducting training remotely. Mr. Sigurdson also stated that given the number of reports coming up and the difficulty of mailing and collecting those reports remotely, he had asked for, and had received, a waiver that would allow additional staff to work in the Board's office. Mr. Sigurdson said that the waiver required the Board to develop a plan

describing the social distancing and other safety measures that would be in place when the office reopened. Mr. Sigurdson said that most staff members would continue to work remotely.

### **REVIEW OF LOBBYING REGULATIONS FROM OTHER STATES**

Mr. Olson presented members with a memorandum regarding this matter that is attached to and made a part of these minutes. Chair Moilanen said that when the Board was considering its legislative proposals, the Minnesota Governmental Relations Council (MGRC) said that it was going to look into lobbying regulations in other states. Chair Moilanen stated that this was a good idea and that he had asked Mr. Olson to do a similar review. Mr. Olson then gave a high-level overview of the information in the memorandum, including the general registration thresholds and reporting requirements in other states. Mr. Olson said that unlike Minnesota, many states require lobbyists to report the topics or numbers of the bills on which they lobbied. When Mr. Olson finished the overview, Chair Moilanen said that the memo provided food for thought as the Board develops its 2021 legislative proposals.

### **REVIEW OF RELEVANT COURT DECISION – ELSTER V. CITY OF SEATTLE**

Mr. Olson provided members with a memorandum regarding this topic that is attached to and made a part of these minutes. Mr. Olson told members that Elster v. City of Seattle concerned public financing of city elections in Seattle through vouchers. Mr. Olson reviewed the structure of the public financing scheme and stated that it had been challenged on First Amendment grounds with the argument that the system compelled speech. Mr. Olson said that challenge had been rejected by the appellate court and that the Supreme Court had denied review. Mr. Sigurdson told members that he had been approached about a voucher system in Minnesota by legislators who did not think that the current public subsidy system was meeting the state's needs.

### **ENFORCEMENT REPORT**

#### **A. Consent items**

##### **1. Administrative termination of lobbyist Sarah Leistico (4566)**

Mr. Olson told members that Growth & Justice had requested that the lobbyist registration of Ms. Leistico be terminated effective November 1, 2019, as she no longer was employed by that principal. Ms. Leistico was asked to file a termination statement but had not done so. Mr. Olson said that Board staff had administratively terminated Ms. Leistico's lobbyist registration effective November 1, 2019. A reporting lobbyist for the same principal filed disbursement reports inclusive of Ms. Leistico for both reporting periods in 2019.

##### **2. Withdrawal of lobbyist registration of Erin Buie (3278) on behalf of three principals**

Mr. Olson told members that Ms. Buie had registered as a lobbyist on behalf of three principals including the National Basketball Association (3552), the PGA Tour, Inc. (7466), and Major League Baseball (7458), in January 2020. Mr. Olson said that Ms. Buie was unaware that those entities had

decided not to retain the services of her employer in 2020 and she was asking that her registration as a lobbyist for those three principals be withdrawn.

After discussion, the following motion was made:

Member Leppik's motion:	To approve the items on the consent agenda.
Vote on motion:	A roll call vote was taken. All members voted in the affirmative.

## **B. Discussion Items**

### **1. Request to terminate four lobbyists retroactive to end of 2018 and withdraw one lobbyist registration on behalf of the Minnesota Association of County Social Services Administrators (MACSSA) (4036), and register five lobbyists retroactive to early 2019 on behalf of the Association of Minnesota Counties (AMC) (61)**

Mr. Olson told members that MACSSA's designated/reporting lobbyist had explained that it is an affiliate of another principal, the AMC. The two principals decided that after 2018, the four lobbyists registered on behalf of MACSSA, all of whom are employed by Goff Public, should terminate their registrations for MACSSA and instead register as lobbyists for the AMC, which already had multiple registered lobbyists. Due to miscommunication between MACSSA and Goff Public, the required termination and registration forms were not filed with the Board until April 2020, and in the meantime a fifth lobbyist registered on behalf of MACSSA effective January 7, 2019. MACSSA's designated/reporting lobbyist timely filed lobbyist disbursement reports covering each reporting period in 2019 reflecting that no lobbyist disbursements were made by herself or any of the other four individuals registered as lobbyists for MACSSA. However, MACSSA did not file a 2019 lobbyist principal report. The AMC's annual report of lobbyist principal covering 2019 was inclusive of lobbying expenditures related to the lobbyists registered for MACSSA and AMC. Mr. Olson said that if approved, the requests outlined below would eliminate the requirement that MACSSA file a report of lobbyist principal covering 2019, as the lobbying expenditures in question had already been reported by the AMC. If approved, these requests would also require that MACSSA's reporting lobbyist file two lobbyist disbursement reports covering 2019 as a representative of the AMC, while the lobbyist disbursement reports covering 2019 filed as a representative of MACSSA would be withdrawn. Mr. Olson said that the requested retroactive terminations and registrations, and one withdrawal of registration, were as follows:

- Elizabeth Emerson (2088), Chris Georgacas (4002), Andrew Hasek (4447), and Pierre Willette (1093) – terminate MACSSA registration effective 12/31/2018 and register as lobbyist for AMC effective 1/1/2019.
- Kevion Ellis (4476) – Withdraw MACSSA registration and register as lobbyist for AMC effective 1/7/2019.

After discussion, the following motion was made:

Member Haugen’s motion: To approve the lobbyist terminations and registrations outlined in discussion item 1.

Vote on motion: A roll call vote was taken. All members voted in the affirmative.

**2. Request to refer matter to the Attorney General’s Office – Minnesota Gun Owners Political Action Committee (MNGOPAC) (41109)**

Mr. Olson told members that staff was withdrawing this item because the MNGOPAC had contacted him and said that it was sending a check to the Board for the outstanding amounts.

**C. Waiver requests**

Name of Candidate or Committee	Late Fee & Civil Penalty Amount	Reason for Fine	Factors for waiver and recommended action	Board Member’s Motion	Motion	Vote on Motion
Tim Peterson (Sunrise River WMO)	\$185 LFFs \$800 CP	Original & 2019 annual EIS	Official was appointed in 1/2019 but Board staff was not notified until 8/2019. Address provided to Board staff by WMO was incorrect so official never received mailed notices regarding EIS. After Board staff found a telephone number for official, corrected address, and mailed paper form, EIS was promptly filed. Original EIS was due 10/18/2019 and an EIS was filed 3/5/2020, satisfying the original and 2019 annual EIS requirements. RECOMMENDED ACTION: Waive	Member Leppik	To approve the staff recommendation.	A roll call vote was taken. All members voted in the affirmative.
Wei Huang (Investment Advisory Council)	\$100 LFF	2018 annual EIS	Official resigned from IAC and moved out of state in 11/2018. He didn’t receive notice regarding annual EIS at new address until 3/2019. The EIS was due 1/28/2019 and was filed 3/11/2019. RECOMMENDED ACTION: Waive	Member Leppik	To approve the staff recommendation.	A roll call vote was taken. All members voted in the affirmative.

<p>Lisa Eder (Crime Victims Reparations Board)</p>	<p>\$155 LFFs \$1,000 CP</p>	<p>2018 and 2019 annual EIS</p>	<p>Official retired from her job in 11/2018 but remained a public official until mid-2019. Board staff only had work mailing and email address on file and she did not receive notifications regarding 2018 or 2019 annual. Board staff obtained home address and mailed letter in 2/2020. EISs were received 2/26/2020. EISs were due 1/27/2019 and 1/29/2020. RECOMMENDED ACTION: Waive</p>	<p>Member Leppik</p>	<p>To approve the staff recommendation.</p>	<p>A roll call vote was taken. All members voted in the affirmative.</p>
<p>Larry Scherger (Dodge SWCD)</p>	<p>\$100 LFF</p>	<p>2017 annual EIS</p>	<p>Official had difficulty logging into Board website to file EIS. EIS was due 1/29/2018 and was filed 3/19/2018. Official sent email explaining issue in 2018 and thought late fee had been waived. His 2018 and 2019 annual EISs were timely filed. Due to staff error, after 2017 EIS was filed a letter was not sent regarding balance owed until 3/2020. RECOMMENDED ACTION: Waive</p>	<p>Member Leppik</p>	<p>To approve the staff recommendation.</p>	<p>A roll call vote was taken. All members voted in the affirmative.</p>
<p>Mark McWalter (West Polk SWCD)</p>	<p>\$100 LFF \$1,000 CP</p>	<p>2017 annual EIS</p>	<p>EIS was due 1/29/2018 and was filed 9/13/2018. It is unclear why EIS was filed late, but 2018 and 2019 annual EISs were timely filed. Due to staff error, after 2017 EIS was filed a letter was not sent regarding balance owed until 3/2020. RECOMMENDED ACTION: Waive</p>	<p>Member Leppik</p>	<p>To approve the staff recommendation.</p>	<p>A roll call vote was taken. All members voted in the affirmative.</p>
<p>Alliant Energy Corporation (307)</p>	<p>\$25 LFF</p>	<p>2019 lobbyist principal</p>	<p>Principal's Public &amp; Community Affairs Coordinator was delayed in retrieving her work computer and then was unable to file report on due date, 3/16/2020, due to a variety of issues related to COVID-19 pandemic. Report was filed 3/17/2020. RECOMMENDED ACTION: Waive</p>	<p>Member Leppik</p>	<p>To approve the staff recommendation.</p>	<p>A roll call vote was taken. All members voted in the affirmative.</p>

eco Hair Braider Association LLC (7345)	\$475 LFF	2019 lobbyist principal	Principal's sole lobbyist mistakenly filed amended lobbyist disbursement report, rather than lobbyist principal report, on due date, 3/16/2020. After realizing error, lobbyist principal report was filed 4/11/2020, disclosing \$0 in lobbying expenditures in 2019. RECOMMENDED ACTION: Waive	Member Leppik	To approve the staff recommendation.	A roll call vote was taken. All members voted in the affirmative.
SEIU Healthcare Minnesota (5345)	\$575 LFF	2019 lobbyist principal	Principal's political director was away from office without access to mail due to COVID-19. He contacted Board staff 3/30/2020 to ask if he failed to file lobbying report but there was a miscommunication as the same organization has a political fund that had a campaign finance report coming due. Report was due 3/16/2020 and was filed 4/16/2020. RECOMMENDED ACTION: Waive	Member Leppik	To approve the staff recommendation.	A roll call vote was taken. All members voted in the affirmative.
Minnesota Nurses Association (552)	\$25 LFF	2019 lobbyist principal	Principal's political director was busy preparing to have all staff start working from home due to COVID-19 in days leading up to due date. Report was due 3/16/2020 and was filed 3/17/2020. RECOMMENDED ACTION: Waive	Member Leppik	To approve the staff recommendation.	A roll call vote was taken. All members voted in the affirmative.
Northwest Evaluation Association (6217)	\$525 LFF	2019 lobbyist principal	Principal's risk and safety manager was busy preparing to have staff start working remotely due to COVID-19 in days leading up to due date. Report was due 3/16/2020 and was filed 4/14/2020. RECOMMENDED ACTION: Waive	Member Leppik	To approve the staff recommendation.	A roll call vote was taken. All members voted in the affirmative.
Goodhue Pioneer Trail Association (7125)	\$25 LFF	2019 lobbyist principal	Principal's co-chair was busy trying to keep her small business alive when report came due. Principal disclosed \$0 in lobbying expenditures in 2019 and it no longer has a registered lobbyist. Report was due 3/16/2020 and was filed	Member Leppik	To approve the staff recommendation.	A roll call vote was taken. All members voted in the affirmative.

			3/17/2020. RECOMMENDED ACTION: Waive			
SMART-TD-MN PAC (30019)	\$25 LFF	2020 1st quarter	Treasurer attempted to email report to Board staff on due date but email was not sent. Treasurer was using remote access software to connect to his computer and realized email did not go through the following morning. Report was due 4/14/2020 and was filed 4/15/2020. RECOMMENDED ACTION: Waive	Member Leppik	To approve the staff recommendation.	A roll call vote was taken. All members voted in the affirmative.
Southeast Metro Business PAC (40746)	\$25 LFF	2020 1st quarter	Treasurer planned to go into office on due date on 4/14/2020 to scan and send paper no-change statement, but she was unable to do so until following day due to COVID-19 related issues. RECOMMENDED ACTION: Waive	Member Leppik	To approve the staff recommendation.	A roll call vote was taken. All members voted in the affirmative.
PROGRESSPPAC (40975)	\$600 LFF	2019 year-end	Treasurer died in September 2019 and notices regarding report were sent to him. Chair wasn't aware that committee remained active until contacted by Board staff, at which point he filed report. Report was due 1/31/2020 and was filed 3/6/2020. The committee's 2019 ending cash balance was \$7,708. RECOMMENDED ACTION: Waive	Member Leppik	To approve the staff recommendation.	A roll call vote was taken. All members voted in the affirmative.
Cohen (Richard) Volunteer Committee (11829)	\$475 LFF	2019 year-end	Treasurer didn't start working on report until late January due to illness. Candidate was out of town during parts of December and January and his brother passed away in early January, limiting candidate's ability to spend time working on report. Report was due 1/31/2020 and was filed 3/1/2020. Committee's 2019 ending cash balance was \$32,124. RECOMMENDED ACTION: Waive	Member Leppik	To approve the staff recommendation.	A roll call vote was taken. All members voted in the affirmative.
Pine County DFL (HD 11B) (20126)	\$525 LFF	2019 year-end	Treasurer was receiving medical treatment when report was due 1/31/2020.	Member Leppik	To approve the staff recommendation.	A roll call vote was taken. All

			Report was filed 3/1/2020. Party unit's 2019 ending cash balance was \$1,594. RECOMMENDED ACTION: Waive			members voted in the affirmative.
Pine County DFL (HD 11B) (20126)	\$1,000 LFF \$1,000 CP	2018 pre-general	New treasurer did not understand the difference between pre-primary and pre-general report and didn't realize that this report needed to be filed. Report was due 10/29/2018 and was filed 3/10/2020. The 2018 year-end report was filed on time. RECOMMENDED ACTION: Waive CP and reduce LFF to \$500	Member Flynn	To approve the staff recommendation.	A roll call vote was taken. All members voted in the affirmative.
Committee of Thirteen Legislative Fund (40045)	\$150 LFF	2020 1st quarter	Committee changed treasurers in 2019 and there were a multitude of issues with original 2019 year-end report. It took some time for new treasurer to sort out those issues with CFB staff and with members of committee itself, in part due to disruptions caused by COVID-19 pandemic. That delayed treasurer's efforts to complete and file the 2020 1st quarter report. The report was due 4/14/2020 and was received 4/22/2020. The committee reported a cash balance of \$23,365 as of 3/31/2020. RECOMMENDED ACTION: Reduce LFF to \$75.	Member Flynn	To approve the staff recommendation.	A roll call vote was taken. All members voted in the affirmative.
Minnesota Muskie & Pike Alliance Legislative Fund (80028)	\$1,000 LFF	2019 year-end	Treasurer mailed paper report prior to deadline but Board staff do not have a record of receiving it. Because filer is a fund that is not required to file a report in the absence of financial activity, Board staff did not know filer was required to file the report. Treasurer realized report due 1/31/2020 was never received and filed the report electronically 4/15/2020. The fund reported a cash balance of \$2,298 as of 3/31/2020. RECOMMENDED ACTION: Reduce LFF to \$250	Member Flynn	To approve the staff recommendation.	A roll call vote was taken. All members voted in the affirmative.



<p>Neighbors for Ruben (Vazquez) (17912)</p>	<p>\$1,575 LFFs \$1,000 CP</p>	<p>2018 &amp; 2019 year-end</p>	<p>Candidate experienced family/personal issues that he states made him unable to submit reports on time. 2018 year-end report was due 1/31/2019 and was filed 6/24/2019, resulting in maximum LFF and CP. 2019 year-end report was due 1/31/2020 and was filed 3/5/2020, resulting in LFF of \$575. The committee has a cash balance of \$1,095 and is proposing to pay that amount, have remainder waived, and then terminate. RECOMMENDED ACTION: Waive CP and reduce LFFs to total of \$1,095 conditioned on committee terminating within 30 days</p>	<p>Member Flynn</p>	<p>To approve the staff recommendation.</p>	<p>A roll call vote was taken. All members voted in the affirmative.</p>
<p>YWCA of Minneapolis (5052)</p>	<p>\$1,000 LFF \$1,000 CP</p>	<p>2018 lobbyist principal</p>	<p>Designated lobbyist experienced family/personal issues that he states made him unable to submit the report on time. Report was due 3/15/2019 and was filed 6/24/2019. Principal disclosed \$44,600 spent on lobbying in 2018. The 2019 report was timely filed. RECOMMENDED ACTION: Waive CP and reduce LFF to \$500</p>	<p>Member Flynn</p>	<p>To approve the staff recommendation.</p>	<p>A roll call vote was taken. All members voted in the affirmative.</p>
<p>Roque Diaz (Perpich Center for Arts Education)</p>	<p>\$100 LFF</p>	<p>Original EIS</p>	<p>Official was appointed in November 2018. The EIS was due 1/28/2019 and was filed 3/28/2019. Official states that payment of the fee would cause economic hardship. RECOMMENDED ACTION: Reduce LFF to \$50</p>	<p>Member Flynn</p>	<p>To approve the staff recommendation.</p>	<p>A roll call vote was taken. All members voted in the affirmative.</p>
<p>School Lunch Bunch (30341)</p>	<p>\$1,000 LFF</p>	<p>2018 year-end</p>	<p>Treasurer states failure to timely file report was honest mistake and LFF would cause financial hardship. Report disclosed \$2,044 in receipts and \$1,050 in outgoing contributions in 2018. The report was due 1/31/2019 and was filed 11/21/2019. The fund reported a cash balance of \$356 as of 3/31/2020. The</p>	<p>Member Flynn</p>	<p>To approve the staff recommendation.</p>	<p>A roll call vote was taken. All members voted in the affirmative.</p>

			2019 year-end report was timely filed. RECOMMENDED ACTION: Reduce LFF to \$500			
Mahlstedt (Dean) for Senate (16980)	\$25 LFF	2019 year-end	Treasurer states candidate "was going through some medical issues which ended up with a stroke." The report was due 1/31/2020 and a no-change statement was received via email 2/3/2020. According to videos posted by candidate to his Facebook page, the issues that were diagnosed as a stroke began weeks after report was due. Treasurer has not responded to two emails seeking clarification. The committee has filed a no-change statement each year since 2011 and reported a 2019 ending cash balance of \$457.	No motion.		

**D. Informational Items**

**1. Payment of late filing fee for 2019 year-end report of receipts and expenditures**

Anderson (Sarah) Volunteer Committee, \$175  
 New Moose, \$25

**2. Payment of late filing fee for lobbyist disbursement report due 1/15/2020**

Chris Conroy, \$125  
 Steve Peterson, \$25  
 Phillip Qualy, \$50  
 John-Paul Yates, \$350

**3. Payment of late filing fee for lobbyist principal report due 3/15/2017**

Woodbury Capital LLC, \$50

**4. Payment of late filing fee for 2019 annual EIS**

Scott Klein, \$10

**5. Payment of late filing fee for 2017 annual EIS**

Tony Wensloff, \$100

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

Catherine Cesnik, \$100  
Scott Klein, \$100

**7. Payment of late filing fee for special election pre-general 24-hour notice**

Friends of Chad Hobot, \$50

**8. Payment of civil penalty for disclaimer violation**

Funk (Thomas) for Senate, \$100

**9. Partial payment of civil penalty for spending limit violation**

Doug Wardlow for Attorney General, \$100

**ADVISORY OPINION REQUEST**

Mr. Sigurdson presented members with a memorandum regarding this matter that is attached to and made a part of these minutes. Mr. Sigurdson told members that on April 27, 2020, the Board had received a request for an advisory opinion regarding the development and reporting requirements for a podcast. Mr. Sigurdson said that the requestor intended to sign the release making the request a public document but had not done so as of the date of the meeting. Mr. Sigurdson stated that because the request was received two days before the Board mailing there was not enough time to prepare a draft advisory opinion for consideration at the May meeting. Mr. Sigurdson said that the matter would have to be formally laid over to the June 3, 2020, meeting because Minnesota Statutes section 10A.02, subdivision 12, requires advisory opinions to be issued within 30 days after receipt unless a majority of the Board agreed to extend this time limit.

After discussion, the following motion was made:

Member Leppik's motion: To lay the advisory opinion request over to the June meeting.

Vote on motion: A roll call vote was taken. All members voted in the affirmative.

**LEGAL COUNSEL'S REPORT**

Mr. Hartshorn presented members with a legal report that is attached to and made a part of these minutes. Mr. Hartshorn had nothing to add to the legal report.

**OTHER BUSINESS**

There was no other business to report.

**EXECUTIVE SESSION**

The chair recessed the regular session of the meeting and called to order the executive session. Upon recess of the executive session, the chair had the following to report into regular session:

Probable cause determination in the matter of Best Fair Foods

Probable cause determination in the matter of Jennings (Adam) for State Senate

Order extending audit deadline in the matter of the HRCC

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

Respectfully submitted,



Jeff Sigurdson  
Executive Director

Attachments:

Review of lobbying regulations from other states that differ from Chapter 10A

Review of relevant court decisions – Elster v. City of Seattle

Memorandum regarding Advisory Opinion 453

Legal report

Probable cause determination in the matter of Best Fair Foods

Probable cause determination in the matter of Jennings (Adam) for State Senate

Order extending audit deadline in the matter of the HRCC



# MINNESOTA CAMPAIGN FINANCE BOARD

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**Date:** April 29, 2020

**To:** Board members

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

**Telephone:** 651-539-1190

**Re:** How Regulation of Lobbying by Other States Differs from Chapter 10A

The paragraphs below describe how other states regulate lobbying in ways that differ from Chapter 10A. Most of the underlying data was compiled by the National Conference of State Legislatures and was last updated either in early 2020 or mid-2018. This information is not exhaustive and is subject to exceptions and limitations not addressed by this memorandum.

## **Monetary Threshold for Being Defined as a Lobbyist**

Most states define the term lobbyist to only include individuals who receive compensation for, or spend money on, lobbying efforts. Many states, including Minnesota, set monetary thresholds at which point those engaged in lobbying are required to register and file periodic reports.<sup>1</sup> Chapter 10A sets the threshold at \$250 spent or \$3,000 received within a calendar year for lobbying, but the \$250 threshold excludes an individual's travel expenses and dues.<sup>2</sup>

Arkansas sets the threshold at \$400 spent or received within a quarter for lobbying, but excludes amounts spent on travel, lodging, meals, and dues. Connecticut sets the threshold at \$1,000 spent or received within a calendar year for lobbying. Georgia sets the threshold at \$250 received or \$1,000 spent within a calendar year for lobbying, but excludes from the \$1,000 threshold amounts spent on travel, food, lodging, and informational materials. Hawaii sets the threshold at \$1,000 received per calendar year or \$1,000 spent within a reporting period for lobbying. Indiana sets the threshold at \$500 spent or received within a registration year for lobbying. Maryland sets the threshold at \$500 spent or \$2,500 received within a reporting period for lobbying. Michigan sets the threshold at \$1,000 spent within a 12-month period for lobbying, or \$250 spent within that same period if the entire \$250 is spent lobbying a single official. Vermont sets the threshold at \$500 spent or received within a calendar year for lobbying. Wyoming sets the threshold at \$500 received within a reporting period for lobbying. New York sets the threshold at \$5,000 spent or received within a calendar year for lobbying.<sup>3</sup> Texas sets the threshold at \$500 spent or \$1,000 received within a quarter for lobbying, but the \$500 threshold excludes amounts spent on the individual's food, beverages, entertainment, transportation, and lodging, and the \$1,000 threshold excludes an individual who spent no more than 40 hours on compensated lobbying during the quarter.<sup>4</sup>

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<sup>1</sup> [ncsl.org/research/ethics/50-state-chart-lobby-definitions.aspx](https://www.ncsl.org/research/ethics/50-state-chart-lobby-definitions.aspx)

<sup>2</sup> Minn. Stat. § 10A.01, subd. 21 (a).

<sup>3</sup> [jcope.ny.gov/system/files/documents/2018/02/jcope-comprehensive-lobbying-reporting-manual2272018.pdf](https://www.jcope.ny.gov/system/files/documents/2018/02/jcope-comprehensive-lobbying-reporting-manual2272018.pdf)

<sup>4</sup> [ethics.state.tx.us/data/resources/guides/lobby\\_guide.pdf](https://ethics.state.tx.us/data/resources/guides/lobby_guide.pdf)

## Regulation of Lobbying of Regional and Local Governments

Chapter 10A defines the term lobbyist to include individuals who attempt to influence “the official action of a metropolitan governmental unit.”<sup>5</sup> Chapter 10A defines the term metropolitan governmental unit to include seven counties and the regional railroad authorities of those counties, cities with a population in excess of 50,000 within those seven counties, and the Metropolitan Council, the Metropolitan Parks and Open Space Commission, the Metropolitan Airports Commission, and the Metropolitan Sports Facilities Commission.<sup>6</sup> As a result, individuals who satisfy the monetary threshold and lobby large cities within the seven-county metro area or the counties themselves are required to register with the Board and file disbursement reports, while those who lobby cities or counties outside the seven-county metro area are not.

Only a few other states have statutes regulating lobbying of regional and local governments, including Georgia, Missouri, and New York. Georgia defines the term lobbyist to include individuals who satisfy a monetary threshold in their efforts “to promote or oppose the passage of any ordinance or resolution by a public officer ... or any committee of such public officers, or the approval or veto of any such ordinance or resolution.”<sup>7</sup> The term public officer is defined to include elected county, municipal, and school board officials.<sup>8</sup> Missouri defines the term lobbyist to include individuals “employed specifically for the purpose of attempting to influence any action by a local government official elected in a county, city, town, or village with an annual operating budget of over ten million dollars.”<sup>9</sup> New York defines the term lobbying to include attempts to influence the procurement decisions of municipal officials and employees, actions regarding a proposed municipal law, ordinance, resolution, regulation, or rule, actions regarding an executive order of the CEO of a municipality, or the outcome of municipal rate making proceedings.<sup>10</sup> Vermont does not regulate lobbying of its counties or municipalities, but does regulate lobbying of regional tourism associations,<sup>11</sup> development corporations, and planning commissions<sup>12</sup>.

Most states define lobbying in a manner that only includes lobbying of their legislatures and some executive branch agencies and officials.<sup>13</sup> Aside from Minnesota I am unable to find any state that regulates those who lobby regional and municipal governments differently depending on whether those governments are located within a specific region or metropolitan area. However, Missouri defines the term lobbyist to exclude those lobbying very small counties and municipalities with an annual operating budget of \$10 million or less. Many municipalities in other states enforce their own ordinances and rules regulating lobbying. For example, in Texas the cities of El Paso, Austin, Dallas, San Antonio, and Houston have varying ordinances requiring lobbyists to register and file periodic reports.<sup>14</sup> I am not aware of any county or municipality in Minnesota that requires lobbyists to register or file reports with that political subdivision.

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<sup>5</sup> Minn. Stat. § 10A.01, subd. 21.

<sup>6</sup> Minn. Stat. § 10A.01, subd. 24. See also Minn. Stat. § 473.121, subds. 2, 5.

<sup>7</sup> Ga. Code § 21-5-70 (5) (D)-(E).

<sup>8</sup> Ga. Code § 21-5-3 (22) (F)-(G).

<sup>9</sup> Mo. Rev. Stat. § 105.470 (1).

<sup>10</sup> N.Y. Legis Law § 1-C (c).

<sup>11</sup> Vt. Stat. tit. 10, § 669g (b).

<sup>12</sup> Vt. Stat. tit. 24, § 2786 (c).

<sup>13</sup> [ncsl.org/research/ethics/50-state-chart-lobby-definitions.aspx](http://ncsl.org/research/ethics/50-state-chart-lobby-definitions.aspx)

<sup>14</sup> Ross Fischer, Jack Gullahorn, The Advent of State and Local Lobby Regulations and the Legal and Ethical Considerations for Attorneys, 3 St. Mary's J. Legal Mal. & Ethics 32 (2013).

## **Disclosure of Relationships Between Lobbyists and Officials Beyond Compensation**

Chapter 10A requires officials to annually disclose their occupations, their principal places of business, and the names of businesses from which they receive compensation in excess of \$250 in any month or hold securities valued in excess of \$10,000.<sup>15</sup> Many states also require officials to disclose certain connections to lobbyists and principals.<sup>16</sup> Oregon requires officials to disclose the name of any lobbyist associated with a business with which the official or a family member is also associated. Indiana requires officials to disclose the name of any lobbyist associated with a business that employs the official, along with a description of the subject matter of that individual's lobbying efforts. Many states require officials to disclose the name of immediate family members who are lobbyists, including South Carolina, Tennessee, Washington, Kentucky, Missouri, New Mexico, and North Carolina. Kentucky goes further than other states, requiring officials to disclose the name of any lobbyist who is a member of the official's immediate family, a partner of the official or an immediate family member, an officer or director of the official's employer, an employer of the official or a family member of the official, or a business associate of the official or a family member of the official. Maryland requires officials to disclose income paid to a spouse by a principal if the spouse is a lobbyist.

### **Frequency of Reporting**

Chapter 10A requires lobbyists to file disbursement reports twice annually and requires principals to file a report stating their total lobbying expenditures once each year.<sup>17</sup> Like Chapter 10A, some states require principals to submit reports separate from those filed by lobbyists, however, Chapter 10A appears to be unique in allowing principals to round their lobbying expenditures to the nearest \$20,000 increment<sup>18</sup>.

Other states variously require lobbyists to file reports monthly, monthly while the legislature is in session and quarterly or annually otherwise, bimonthly, quarterly, twice annually, or annually. The most common requirements are to report quarterly or twice annually.<sup>19</sup> Georgia requires lobbyists to file reports twice per month while its General Assembly is in session. A few states only require lobbyists to disclose disbursements when filing an annual registration statement. Maine allows lobbyists who do not lobby outside of a legislative session to file a statement declaring they will not lobby when the legislature is not in session, rather than continuing to file monthly reports. Some states, such as Missouri, do not require periodic reports to be filed for the duration of a period in which the filer is not acting as a lobbyist. Other states, such as Wyoming, do not require a periodic report to be filed if only a minimal amount has been spent on lobbying since the previous reporting period. When applicable to a reporting period, Kansas allows lobbyists to file a statement declaring that \$100 or less was spent on lobbying, rather than filing a disbursement report.

### **Content of Periodic Reports**

Chapter 10A requires lobbyists to disclose on each disbursement report the amount spent during the reporting period on lobbying, broken down into categories including "the cost of publication and distribution of each publication used in lobbying; other printing; media, including the cost of production; postage; travel; fees, including allowances; entertainment; telephone and telegraph; and other expenses."<sup>20</sup> Each report must disclose any source of funds used for

<sup>15</sup> [Minn. Stat. § 10A.09, subd. 5.](#)

<sup>16</sup> [ncsl.org/research/ethics/personal-financial-disclosure-lobbyist-connection.aspx](https://ncsl.org/research/ethics/personal-financial-disclosure-lobbyist-connection.aspx)

<sup>17</sup> [Minn. Stat. § 10A.04.](#)

<sup>18</sup> [Minn. Stat. § 10A.04, subd. 6 \(b\).](#)

<sup>19</sup> [ncsl.org/research/ethics/50-state-chart-lobbyist-report-requirements.aspx](https://ncsl.org/research/ethics/50-state-chart-lobbyist-report-requirements.aspx)

<sup>20</sup> [Minn. Stat. § 10A.04, subd. 4.](#)

lobbying, in excess of \$500 per calendar year, provided by a source other than the lobbyist principal. The disbursement report covering the first reporting period of each year must also include “a general description of the subjects lobbied in the previous 12 months,” and each report must disclose any gifts valued at \$5 or more given to an official by a lobbyist or lobbyist principal.<sup>21</sup>

Other states generally require that lobbyists or principals disclose similar information, but there is variation particularly regarding categories of disbursements, itemization requirements, and the extent to which lobbyists and principals are required to identify the subjects of their lobbying efforts and specific legislation or administrative actions.<sup>22</sup> Like Chapter 10A, many states require itemization of gifts or other payments made to benefit an official, but do not require itemization of general lobbying disbursements. Similarly to Chapter 10A, Arkansas requires lobbyists to disclose the total disbursements made during each reporting period and to break down that total by category, “including food and refreshments, entertainment, living accommodations, advertising, printing, postage, travel, telephone, and other expenses or services.”<sup>23</sup> Arizona requires itemization of expenses for gifts, categorized as food or beverage, speaking engagement, travel and lodging, flowers, or other expenditure.<sup>24</sup> However, Arizona does not require any reporting of expenses “for the lobbyist’s personal sustenance, office expenses, filing fees, legal fees, employees’ compensation, [or] lodging and travel.”

California requires lobbyist principals to disclose the total amount paid to lobbyists and to provide “[a] description of the specific lobbying interests of the filer.”<sup>25</sup> Wisconsin requires that each principal provide a “reasonable estimate of the proportion of its time spent in lobbying associated with [a] legislative proposal, proposed administrative rule, budget bill subject or other topic,” that “accounts for 10 percent or more of the principal’s time spent in lobbying during the reporting period.”<sup>26</sup>

Texas and New York require the disclosure of much more granular information regarding the subjects of lobbying efforts. Texas requires lobbyists to disclose the total amount paid to communicate with officials, broken down by categories including transportation and lodging, food and beverages, entertainment, awards and mementos, other gifts, and attendance of officials at fundraisers or charity events.<sup>27</sup> Texas also requires that lobbyists report the amount spent on mass media communications. Lobbyists in Texas are required to disclose, on their annual registration form, “the subject matter of the legislation or of the administrative action that is the subject of the registrant’s direct communication with a member of the legislative or executive branch and, if applicable, the docket number or other administrative designation of the administrative action.”<sup>28</sup> To the extent that information is not provided on the annual registration form, it must be disclosed on the lobbyist’s periodic reports.<sup>29</sup>

New York requires principals to disclose the subjects of lobbying efforts, including a general description of each subject, the bill numbers of any bills, the number or subject matter of any executive orders, the number of any proposed or final rule, regulation, ratemaking proceeding, or municipal resolution or ordinance, and the title or identifying number of any procurement

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<sup>21</sup> [Minn. Stat. § 10A.04, subd. 4.](#)

<sup>22</sup> [ncsl.org/research/ethics/50-state-chart-lobbyist-report-requirements.aspx](https://ncsl.org/research/ethics/50-state-chart-lobbyist-report-requirements.aspx)

<sup>23</sup> [Ark. Code § 21-8-604.](#)

<sup>24</sup> [Ariz. Rev. Stat. § 41-1232.02.](#)

<sup>25</sup> [Cal. Gov’t Code § 86116.](#)

<sup>26</sup> [Wis. Stat. § 13.68 \(1\) \(bn\).](#)

<sup>27</sup> [Tex. Gov’t Code § 305.006 \(b\).](#)

<sup>28</sup> [Tex. Gov’t Code § 305.005 \(f\) \(4\).](#)

<sup>29</sup> [Tex. Gov’t Code § 305.006 \(d\).](#)



contracts or other materials.<sup>30</sup> New York also requires that lobbyists itemize all expenditures in excess of \$75, if the total compensation received and expenses paid during a calendar year exceed \$5,000.<sup>31</sup>

## Revolving Door Prohibitions

Chapter 10A does not require former state legislators or other officials to wait any period of time after leaving office before engaging in lobbying and it categorically excludes public officials, state employees, and most local officials and employees from the definition of the term lobbyist<sup>32</sup>. Bills were introduced in each chamber of the Minnesota Legislature this year that would prohibit former legislators from registering as a lobbyist for four years after leaving office.<sup>33</sup> Other states typically require certain officials and public employees to wait a period of time after leaving office or employment before engaging in lobbying and many of those states explicitly prohibit legislators and some other officials from engaging in lobbying while in office.<sup>34</sup> The duration of the lobbying prohibition after leaving office varies and is generally within the range of six months to two years. During those times periods, some states only prohibit former officials and employees from lobbying the specific agency they previously served. Alaska, Connecticut, Delaware, Georgia, Hawaii, Indiana, Maine, Maryland, New Jersey, Ohio, Rhode Island, South Carolina, Tennessee, Utah, Vermont, Virginia, and West Virginia each generally prohibit former state legislators from lobbying for a period of one year after leaving office. South Carolina is unique in also prohibiting the immediate family members of certain elected officials from lobbying for a period of one year after the official has left office.<sup>35</sup>

## Registration Fees

Lobbyists and principals in Minnesota are not required to pay a registration fee. Chapter 10A was amended in May 2003 to require lobbyists to pay an annual fee of \$50 per principal, and to require principals to pay an annual fee of \$50, but those provisions expired in June 2004.<sup>36</sup> Most states require lobbyists to pay a registration fee.<sup>37</sup> The amount of the fee varies but is generally within the range of \$50 to \$100. Some states require the registration fee to be paid only upon a lobbyist's initial registration and some require the fee to be paid annually. Some states require lobbyists to pay a separate fee for each principal represented and a few states require principals to pay a separate registration fee. Many states that charge registration fees waive the fee requirement for government employees.

## Gift Prohibitions Applicable to Family Members

Chapter 10A bars lobbyists and principals from giving gifts to officials, but does not prohibit gifts given to family members of officials.<sup>38</sup> Unlike many other states, Chapter 10A lacks an exception to its gift prohibition for gifts given to officials by personal friends. Several other states prohibit gifts from lobbyists and principals to at least some family members of legislators, other types of officials, or public employees.<sup>39</sup> Iowa, Connecticut, and New Mexico generally

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<sup>30</sup> N.Y. Legis. Law § 1-j (b) (3).

<sup>31</sup> N.Y. Legis. Law § 1-h (a); N.Y. Comp. Codes R. & Regs. tit. 19, § 943.9.

<sup>32</sup> Minn. Stat. § 10A.01, subd. 21 (b).

<sup>33</sup> S.F. 3216 (2020); H.F. 2964 (2020).

<sup>34</sup> [ncsl.org/research/ethics/50-state-table-revolving-door-prohibitions.aspx](https://www.ncsl.org/research/ethics/50-state-table-revolving-door-prohibitions.aspx)

<sup>35</sup> S.C. Code § 2-17-15.

<sup>36</sup> 2003 Minnesota Laws, 1st Special Session, Ch. 1, Art. 2, Sec. 24-27 (H.F. 1); 2003 Minnesota Laws, 1st Special Session, Ch. 23, Sec. 10 (H.F. 56).

<sup>37</sup> [ncsl.org/research/ethics/50-state-chart-lobbyist-registration-requirements.aspx](https://www.ncsl.org/research/ethics/50-state-chart-lobbyist-registration-requirements.aspx)

<sup>38</sup> Minn. Stat. § 10A.071.

<sup>39</sup> [ncsl.org/research/ethics/50-state-table-gift-laws.aspx](https://www.ncsl.org/research/ethics/50-state-table-gift-laws.aspx)

prohibit gifts from lobbyists and principals to officials, public employees, candidates, and their family members. Kentucky prohibits gifts from those sources to the spouses of officials. Alabama, Colorado, and Nebraska prohibit gifts from those sources to the family members of officials and public employees. South Dakota and Virginia prohibit gifts from those sources to family members of officials. Pennsylvania prohibits gifts to “associated persons.”

Some states attempt to differentiate between gifts that are given to influence action by the government and those given for other reasons. New York prohibits gifts from lobbyists and principals to family members of officials, unless it would be unreasonable to infer that the purpose was to influence the official. Rhode Island prohibits gifts to the spouses, dependent children, and business associates of officials, if the gift is an attempt to influence official action. Maine prohibits gifts to immediate family members of legislators if the purpose is to influence official action or to serve as a reward. New Hampshire and Tennessee prohibit gifts to officials and their family members, if the purpose is to influence official action. Hawaii requires legislators to disclose gifts to themselves, their spouses, and their dependent children, that in the aggregate exceed \$200 from any source within a calendar year. Alaska includes within its gift prohibition gifts given by the immediate family members of lobbyists to legislators and legislative employees. Several states exclude from their gift prohibition any gift given by a member of the same household as, or a personal friend of, the recipient.

### **Use of Public Funds for Lobbying**

Similarly to Indiana and Nebraska, Chapter 10A categorically excludes public officials, state employees, and most local officials and employees from the definition of the term lobbyist<sup>40</sup>. Minnesota generally does not prohibit political subdivisions or other entities that receive state funds from hiring lobbyists. However, Minnesota’s Public Employees Retirement Association is prohibited from entering into a contract for lobbying or legislative advocacy.<sup>41</sup> Also, Minnesota requires political subdivisions to report annually to the state auditor the amount paid to lobbyists.<sup>42</sup> Bills were introduced in each chamber of the Minnesota Legislature in 2017 that would have reduced the local government aid and county program aid paid to political subdivisions by the amount spent by those subdivisions on lobbying, but there was no committee hearing on the bill introduced in the Minnesota Senate and neither bill proceeded to a floor vote.<sup>43</sup>

Some states prohibit government agencies from using public funds to hire an external lobbyist.<sup>44</sup> Arizona, Connecticut, Florida, Illinois, Louisiana, Massachusetts, North Carolina, Utah, and Virginia each prohibit state agencies from paying outside lobbyists, but allow state employees to engage in lobbying. Several states prohibit organizations and political subdivisions that receive state funds from using those specific funds to pay for lobbying. Kansas does not have such a prohibition but does require lobbyists to report the amount of public funds received for their lobbying services.

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<sup>40</sup> [Minn. Stat. § 10A.01, subd. 21 \(b\)](#).

<sup>41</sup> [Minn. Stat. § 353.03, subd. 3a \(b\) \(6\)](#).

<sup>42</sup> [Minn. Stat. § 6.76](#).

<sup>43</sup> [S.F. 2155 \(2017\)](#); [H.F. 2187 \(2017\)](#).

<sup>44</sup> [ncsl.org/research/ethics/50-state-chart-limits-on-public-funds-to-lobby.aspx](https://www.ncsl.org/research/ethics/50-state-chart-limits-on-public-funds-to-lobby.aspx)



# MINNESOTA CAMPAIGN FINANCE BOARD

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**Date:** April 29, 2020

**To:** Board members

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

**Telephone:** 651-539-1190

**Re:** Elster v. City of Seattle, [444 P.3d 590](#) (Wash. 2019) (public financing via voucher system for municipal candidates)

## **Seattle's Democracy Voucher Program**

In 2015 voters in Seattle approved Initiative 122, a ballot referendum that made several changes to campaign finance regulations imposed on candidates for municipal office. The initiative included the creation of the Democracy Voucher Program, which requires the Seattle Ethics and Elections Commission (SEEC) to issue four vouchers of \$25 each to every registered voter and to others who opt into the program and have resided in Seattle for at least 30 days. Individuals may assign a voucher to a candidate by giving it to the candidate, returning it to the SEEC by mail, or by using an online portal. Individuals may give each of their four vouchers to the same candidate.

In order to receive voucher funds a candidate must sign a pledge agreeing to abide by a spending limit, refrain from accepting contributions in excess of \$300 from any contributor (\$550 for a mayoral candidate) excluding voucher funds, refrain from knowingly soliciting contributions to any organization that will make independent expenditures during the same election cycle, and attend multiple debates. A candidate must also receive a minimum number of contributions of at least \$10 each in order to qualify, namely 600 contributions for a mayoral candidate, 400 for a city attorney or at-large city council candidate, and 150 for any other city council candidate. A candidate participating in the program must be released from the spending limit if the SEEC finds that spending by an opponent plus the value of independent expenditures adverse to the candidate exceeds the spending limit imposed on the candidate by a significant amount.

The program was first used in 2017 and is funded by a dedicated property tax levy that provides \$3 million annually in funding and costs the average homeowner approximately \$8 per year. In 2017 the vouchers were issued in January and in 2019 they were issued in mid-February. The SEEC issued over \$47.6 million in vouchers in 2019 to Seattle residents, but the vast majority were never assigned to a candidate. Voucher funds are released on a first-come-first-serve basis until available funds are exhausted. In 2019 the total amount of voucher funds released totaled \$2.45 million. Of the 55 city council candidates that proceeded to the primary election in 2019, 44 sought to qualify for the program and 35 received voucher funds. Of the 14

candidates that proceeded to the general election, 12 participated in the program. Over 38,000 Seattle residents assigned their vouchers to candidates in 2019.

## Court Decisions

In June 2017 two individuals who own property in Seattle filed a lawsuit in Washington state court on First Amendment grounds alleging that the program amounts to compelled speech. The trial court dismissed the complaint, concluding that the program does not burden speech, does not compel taxpayers to associate with each other, and is viewpoint neutral “because candidates qualify for voucher support regardless of the views they espouse, and the City imposes no restrictions on voters’ choice as to whom they may assign their vouchers.”<sup>1</sup>

The Washington Supreme Court unanimously affirmed the trial court in July 2019.<sup>2</sup> The court noted that the United States Supreme Court upheld the tax checkoff system that funds the Presidential Election Campaign Fund in *Buckley v. Valeo*. In *Buckley* the Court held that “public financing as a means of eliminating the improper influence of large private contributions furthers a significant governmental interest”<sup>3</sup> and the fact that some taxpayers disagree is immaterial, because “every appropriation made by Congress uses public money in a manner to which some taxpayers object.”<sup>4</sup> The court differentiated Seattle’s voucher program from other public financing schemes that have been found to burden speech, such as the system previously used in Arizona whereby publicly financed candidates were provided matching funds based on the speech of their opponents and those making independent expenditures.<sup>5</sup> The court found that unlike schemes involving matching funds provided based on the conduct of opponents, Seattle’s voucher program “does not alter, abridge, restrict, censor, or burden speech.”

The court also held that the voucher program does not amount to compelled speech or burden the associational freedoms of the plaintiffs because, unlike the plaintiff in *Janus v. AFSCME, Council 31*,<sup>6</sup> they “cannot show the tax individually associated them with any message conveyed by the Democracy Voucher Program.” Because the court concluded that the voucher program does not burden fundamental rights, it applied rational basis review, the lowest level of scrutiny used in considering constitutional challenges.

The court went on to conclude that the voucher program is viewpoint neutral and survives rational basis review because “the decision of who receives vouchers is left to the individual municipal resident” and “the city imposes neutral criteria on who can receive vouchers and who can redeem them.” The court explained that the fact “[t]hat some candidates will receive more vouchers reflects the inherently majoritarian nature of democracy and elections, not the city’s intent to subvert minority views.”

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<sup>1</sup> [Elster v. City of Seattle, No. 17-2-16501-8, 2017 WL 11407502 \(Wash. Super. Ct. Nov. 2, 2017\)](#).

<sup>2</sup> [Elster v. City of Seattle, 444 P.3d 590 \(Wash. 2019\)](#).

<sup>3</sup> [Buckley v. Valeo, 424 U.S. 1, 96 \(1976\)](#).

<sup>4</sup> *Id.* at 92.

<sup>5</sup> See [Arizona Free Enter. Club's Freedom Club PAC v. Bennett, 564 U.S. 721 \(2011\)](#).

<sup>6</sup> [Janus v. Am. Fed'n of State, Cty., & Mun. Employees, Council 31, 138 S. Ct. 2448 \(2018\)](#).

The plaintiffs sought review by the United States Supreme Court, arguing that the Washington Supreme Court applied the wrong level of scrutiny and that the voucher program compels the plaintiffs to fund private political speech with which they disagree in a manner barred by *Janus*. In March 2020 the United States Supreme Court denied the plaintiffs' petition for review.

### **Potential Impact on Chapter 10A**

The voucher system used by the City of Seattle is believed to be the only public financing mechanism within the United States whereby individual citizens directly control the extent to which specific candidates receive public financing without the individuals having to make a contribution. Nonetheless, the decision of the Washington Supreme Court illustrates that public financing mechanisms may incorporate features permitting individual citizens to decide how public subsidy funds are allocated. Chapter 10A affords Minnesota residents some measure of control over the extent to which candidates and party units receive public financing via the tax checkoff program and the political contribution refund program.

### **Matching Contribution Programs**

Several states and municipalities afford individuals control over which candidates receive public funds by matching small individual contributions to qualifying candidates, who generally must abide by a spending limit and other restrictions. For example, New Jersey and Michigan provide a 2-1 match for gubernatorial candidates, Maryland provides a 1-1 match for gubernatorial candidates, Florida and Rhode Island provide a match for statewide candidates on a 2-1 basis, up to a certain threshold, then on a 1-1 basis thereafter, Hawaii provides a 1-1 match for state candidates and various municipal candidates, and Massachusetts provides a 1-1 match for statewide candidates. Berkeley, CA and Portland, OR each provide a 6-1 match for municipal candidates, San Francisco, CA has provided a match that ranges from 1-1 to 2-1 depending on a number of factors including whether the candidate is an incumbent, and starting this year will increase those rates to a range of 4-1 to 6-1, and New York City currently provides a match of either 6-1 or 8-1 depending on which program the candidate opts into. Boulder, CO provides a 1-1 match for city council candidates and Washington, D.C. has begun administering a program whereby qualifying municipal candidates receive a base amount of public funding (e.g., \$40,000 for council candidates and \$160,000 for mayoral candidates), then receive a 5-1 match thereafter. Other counties and municipalities with matching contribution programs include Howard and Montgomery County, MD, Suffolk County, NY, Oakland, Los Angeles, Long Beach, and Richmond, CA, Tucson, AZ, and New Haven, CT.



# MINNESOTA CAMPAIGN FINANCE BOARD

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**Date:** April 29, 2020

**To:** Board Members

**From:** Jeff Sigurdson, Executive Director

**Telephone:** 651-539-1189

**Re:** Advisory Opinion 453 – Elected Official Use of Podcast

On April 27, 2020, the Campaign Finance and Public Disclosure Board received a request for an advisory opinion regarding the development and reporting requirements for a podcast. As of the date of this memo the requestor has not signed the release making the request a public document.

Because the request was received two days before the Board mailing there was not enough time to prepare a draft advisory opinion for consideration at the May meeting. The matter will have to be formally laid over to the June 3, 2020 meeting because Minnesota Statutes section 10A.02, subdivision 12, requires advisory opinions to be issued within 30 days after receipt unless a majority of the Board agrees to extend this time limit.

Attachments:

Advisory opinion request – Nonpublic data only provided to Board members



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

**PROBABLE CAUSE  
DETERMINATION**

IN THE MATTER OF THE COMPLAINT OF ANDREW SCHMITZ REGARDING BEST FAIR FOODS

On March 4, 2020, the Campaign Finance and Public Disclosure Board received a complaint submitted by Andrew Schmitz regarding Best Fair Foods. Best Fair Foods is a political fund registered with the Board. Best Fair Foods operates a mini donut stand at the Minnesota State Fair. Proceeds from the sale of donuts at the booth are contributions to the Best Fair Foods political fund.

The complaint states that the individuals purchasing mini donuts at the stand were not informed that their purchase was a political contribution. The complaint from Mr. Schmitz provided photos of the mini donut stand operated by Best Fair Foods during the 2019 Minnesota State Fair, and also included videos of four individuals who stated that they were not verbally informed that they were making a political contribution when they purchased their mini donuts. The photos provided show that there was a notice that stated “[p]ursuant to Minn. Stat. § 10A.271 proceeds from the purchase of these products are a political contribution to the Best Fair Foods Committee, which donates profits to better Ramsey County.” The notice was at the bottom of an approximately 8 1/2 by 11-inch piece of paper that also included the ingredient list of the mini donuts in larger font above the notice. The notice was posted by each of the payment windows of the booth. The complaint alleges that Best Fair Foods violated Minnesota Statutes section 10A.271 due to the failure to disclose to potential customers that the proceeds from the purchase were a political contribution and to whom the contribution was made.

On March 6, 2020, the Board chair determined that the complaint alleged a prima facie violation of the requirements in Minnesota Statutes section 10A.271. The Board intended to consider the probable cause determination in this matter at the April 1, 2020, Board meeting. On March 16, 2020, counsel for Best Fair Foods requested that the Board consider the probable cause determination at the May 6, 2020, meeting due to counsel needing more time to respond due to the COVID-19 pandemic. At the April 1, 2020, meeting the Board laid over the probable cause determination until the May 6, 2020, meeting.

Best Fair Foods responded to the complaint on April 17, 2020. In its response, Best Fair Foods stated that the “disclosure sign was printed in 16 point font on the same sign that notifies customers of the donut ingredients list” and “was placed immediately to the right of each register and was in the plain view of all potential purchasers of donuts.” The response also stated that Minnesota Statutes section 10A.271 was enacted only two years ago and that the Board had not provided any guidance on the meaning of the term “prominent” in the statute.

Best Fair Foods’ response also stated that the Board provided a summary of the 2018 legislative changes. However, the summary “noted the requirement to provide a notice, but failed to offer any commentary on what might be required to satisfy the ‘prominent’



requirement.” Best Fair Foods notes in its response that the Board took care to provide detail in the summary of 2018 legislative changes about the “disclaimer requirements contained in Section 211B.04, noting that the disclaimer requirements will generally be satisfied if the disclaimer is printed in 8 point font.” Best Fair Foods acknowledged that it could not rely on the requirements of a different statute, but noted that Best Fair Foods was aware of the 8 point font requirement and therefore, “intentionally printed its notice in a font that was two times the size as what is required by Chapter 211B.” Best Fair Foods stated that its notice complied with Minnesota Statutes section 10A.271 and requested that the complaint be dismissed.

## **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 a complaint raises sufficient questions of fact which, if true, would result in the finding of a violation.

In 2018, the legislature adopted Minnesota Statutes section 10A.271 to ensure that people purchasing items from political committees and funds realized that their purchases were political contributions. Minnesota Statutes section 10A.271, subdivision 1, specifically provides that “[a] . . . political fund . . . that raises funds through the sale of goods or services must disclose to potential customers that the proceeds from the purchase are a political contribution and to whom the contribution is made. The notice may be provided verbally at the time of purchase, or through the prominent display of a sign providing the notice in immediate proximity to the point of sale at the location where the goods or services are sold.” The statute includes exceptions for goods or services sold at fund-raising events that require the purchase of a ticket to attend or at events where the main purpose is fundraising. Minnesota Statutes section 10A.271, subdivision 3, states that “[a] . . . political fund . . . that knowingly violates this section is subject to a civil penalty imposed by the board of up to \$1,000.”

To determine whether a sign with the notice is prominently displayed, the Board cannot rely solely on the font size used for the notice. Instead, the Board must consider the totality of the display to make this determination, including factors such as whether the notice was printed by itself or with other information, the nature of any other information printed with the notice and the font size and style of that information relative to the font size and style of the notice, and the location of the notice relative to other signs in the vicinity.

In this matter, the complaint provided evidence, and Best Fair Foods confirmed, that verbal notice was not given to customers of the mini donut stand at the time of purchase. The complaint also included evidence that the written notice provided was printed at the bottom of the ingredient list for the mini donuts in a smaller font than the ingredient information. The notice, however, was printed in 16 point font. The pictures also show that the notice was posted next to each cash register at the booth and was readable by someone standing at that register to buy mini donuts. It

also is clear from the record that Best Fair Foods was aware of the requirements of Minnesota Statutes section 10A.271, and believed it was complying with the statute.

Some of the factors listed above show that the notice was not as prominent as the Board would have preferred under these specific circumstances. For example, the notice should have been printed by itself instead of at the bottom of the ingredient list and in a font size similar to the other information near the point of sale. However, a civil penalty cannot be assessed under Minnesota Statutes section 10A.271 unless the violation was knowing. Here, it is clear that Best Fair Foods attempted to comply with the statute and did not knowingly fail to provide the notice. Therefore, given all of the evidence, the record does not establish probable cause to believe a violation that warrants a formal investigation has occurred.

**Order:**

1. The allegation that Best Fair Foods failed to provide notice that the purchase of the mini donuts was a political contribution in violation of Minnesota Statutes section 10A.271, is dismissed because there is insufficient probable cause to believe a violation that warrants a formal investigation has occurred.

/s/ Robert Moilanen  
Robert Moilanen, Chair  
Campaign Finance and Public Disclosure Board

Date: May 6, 2020

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

**PROBABLE CAUSE  
DETERMINATION**

IN THE MATTER OF THE COMPLAINT OF RICK WEIBLE REGARDING THE JENNINGS (ADAM) FOR STATE SENATE COMMITTEE

On February 14, 2020, the Campaign Finance and Public Disclosure Board received a complaint submitted by Rick Weible regarding the Jennings (Adam) for State Senate committee. Jennings (Adam) for State Senate is the principal campaign committee of Adam Jennings, a candidate for Minnesota Senate District 33. The complaint also references the Adam Jennings for Congress committee, which is the candidate committee registered with the Federal Election Commission for Adam Jennings, a 2018 candidate for the U.S. House of Representatives in Minnesota's Third Congressional District.

The complaint stated that the 2019 year-end report of receipts and expenditures for the Jennings (Adam) for State Senate committee showed the committee purchased a list of donor contacts from the Adam Jennings for Congress committee on June 18, 2019, for \$400. The complaint stated that the filings with the FEC during that time period do not show any \$400 payments from the Jennings (Adam) for State Senate committee. The complaint further stated that the Adam Jennings for Congress committee's FEC filings show a receipt from the Jennings (Adam) for State Senate committee in the amount of \$4,840 on August 30, 2019, for photography and other items. The 2019 year-end report for the Jennings (Adam) for State Senate committee did not show an expenditure paid to the Adam Jennings for Congress committee in the amount of \$4,840. The complaint also provided screenshots of the Jennings (Adam) for State Senate website and the Adam Jennings for Congress website, which show similar photos of the candidate and others on both websites.

On February 21, 2020, the Board chair determined that the complaint alleged a prima facie violation of the reporting requirements in Minnesota Statutes section 10A.20. On February 22, 2020, Mr. Jennings responded to the complaint and on February 25, 2020, the Jennings (Adam) for State Senate committee filed an amended 2019 year-end report of receipts and expenditures.

### **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 a complaint raises sufficient questions of fact which, if true, would result in the finding of a violation.

Minnesota Statutes section 10A.20 requires principal campaign committees to file reports of receipts and expenditures. Pursuant to Minnesota Statutes section 10A.20, subdivision 3, those reports must contain itemized and summary information on contributions received and expenditures made during the reporting period.

The complaint alleged that the Jennings (Adam) for State Senate committee violated Minnesota Statutes section 10A.20, subdivision 3, by reporting a \$400 expenditure paid to the Adam Jennings for Congress committee that did not occur, and by not accurately disclosing a \$4,840 expenditure paid to the Adam Jennings for Congress committee. The Jennings (Adam) for State Senate committee's 2019 year-end report did not disclose a campaign expenditure paid to the Adam Jennings for Congress committee in the amount of \$4,840. In its response to the complaint, the Jennings (Adam) for State Senate committee stated that all of the expenditures in question were listed on the report, but not listed with the vendor being the Adam Jennings for Congress committee. Rather, the Jennings (Adam) for State Senate committee listed the vendors that the Adam Jennings for Congress committee paid for web hosting and design, content development, photography, and the other campaign assets at issue.

The Jennings (Adam) for State Senate committee listed six expenditures dated June 18, 2019, on its year-end report. Four expenditures totaling \$4,200 were to Forward Solutions Strategy Group. Another expenditure was to lifeandartphotography.com for \$240. The sixth expenditure was to Adam Jennings for Congress for \$400. The six expenditures totaled \$4,840. The Jennings (Adam) for State Senate committee explained that it thought that providing the breakdown of the vendors used by the Adam Jennings for Congress committee would provide more transparency in its year-end report. The Jennings (Adam) for State Senate committee stated that it would amend its year-end report to correctly list the vendor of the six expenditures as the Adam Jennings for Congress committee. This amended report was filed on February 25, 2020.

Based on the response from the Jennings (Adam) for State Senate committee there is probable cause to believe that a violation of the reporting requirements has occurred. Because the reporting violation has been cured by a timely amendment, however, it does not warrant further investigation. As required by Minnesota Rule 4525.0210, subpart. 5, after finding probable cause exists, the Board must determine whether investigation is warranted by considering several factors. The factors considered by the Board included the type of possible violation; the magnitude of the violation if it is a financial violation; the extent of knowledge or interest of the violator; the benefit of formal findings, conclusions, and orders compared to informal resolution of the matter; the availability of board resources; whether the violation has been remedied; and any other similar factor necessary to decide whether the alleged violation warrants a formal investigation.

**Order:**

1. The allegation that the Jennings (Adam) for State Senate committee violated the reporting requirements in Minnesota Statutes section 10A.20, subdivision 3, is dismissed without prejudice because although there is probable cause to believe that this violation occurred, no further investigation is warranted due to the committee's filing of an amended report.

/s/ Robert Moilanen  
Robert Moilanen, Chair  
Campaign Finance and Public Disclosure Board

Date: April 2, 2020



# MINNESOTA

## CAMPAIGN FINANCE BOARD

### **In the Matter of the Staff Review of the House Republican Campaign Committee (HRCC) - Deadline extension for 2019 audit**

In an order dated January 3, 2019, the Campaign Finance and Public Disclosure Board directed the House Republican Campaign Committee (HRCC) “in 2019, [to] retain an accounting firm to formally audit its books and procedures and make recommendations for corrective action.” The HRCC was ordered to provide the audit results to the Board by December 31, 2019.

The HRCC retained an accounting firm to conduct the audit in accordance with Generally Accepted Auditing Standards (GAAS) for the period from January 1, 2019, to December 31, 2019. When the accounting firm pointed out that an audit of 2019 could not be completed by December 31, 2019, because it was not possible to issue an audit report before the audit year was over, the Board extended the deadline for the audit to March 31, 2020.

On March 25, 2020, the accounting firm contacted the HRCC by letter to state that the firm would be unable to complete the audit by March 31, 2020, due to delays caused by COVID-19 issues. The firm stated that it was 75% done with the audit and believed that it would be able to complete the audit by April 30, 2020, using a remote process. Based on the information in the accounting firm’s letter, the Board hereby extends the deadline for the completion of this audit from March 31, 2020, to April 30, 2020.

/s/ Robert Moilanen  
Robert Moilanen, Chair  
Campaign Finance and Public Disclosure Board

April 1, 2020