

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

**Findings and Order in the Matter of the Complaint of Common Cause Minnesota
regarding Minnesota Family Council**

On February 22, 2012, the Campaign Finance and Public Disclosure Board received a complaint from Common Cause Minnesota (CCM) signed by Mike Dean, its Executive Director, regarding Minnesota Family Council (MFC). The complaint alleges that MFC is a political committee and that it has failed to register with the Board and report as required by statute.

On May 21, 2011, the Minnesota legislature passed a bill placing a constitutional amendment on the 2012 general election ballot. The amendment would place a definition of marriage in the Minnesota Constitution, limiting marriage to a union of one man and one woman (referred to hereinafter as "the marriage definition ballot question"). The complaint alleges that during 2011, MFC's spending on the marriage definition ballot question far exceeded its annual total spending in any previous year. Primarily on the basis of this allegation, Common Cause concludes that, beginning in 2011, promoting the marriage definition ballot question was MFC's major purpose. An association whose major purpose is to promote or defeat a ballot question is, by definition, a political committee under Minnesota Statutes Chapter 10A.

Although the Board has delegated to its Executive Director the authority to accept complaints for investigation, the Executive Director elected to present the CCM complaint to the Board so that the Board could make its own determination as to whether the complaint met the threshold to require investigation. The matter was presented to the Board at its meeting of March 6, 2012, at which time the Board concluded that the complaint met the minimum standards to require an investigation and directed staff to initiate that investigation.

The Board offered CCM and MFC an opportunity to address questions of law relevant to this matter. Mr. Dean responded with an analysis on behalf of CCM by letter dated April 13, 2012. A response for MFC was provided by Clea Mitchell, of counsel with the Act Right Legal Foundation on April 24, 2012. The Board met to review the responses from CCM and MFC as well as the facts relevant to the complaint in a special executive session meeting on May 18, 2012. Based on the Board's discussion, staff completed its analysis and the matter was again considered by the Board at its meeting of June 5, 2012.

Legal Background

In Minnesota, an association whose major purpose is to promote or defeat a ballot question is, by definition, a political committee. Political committees are required to register with the Board and to periodically report all of their receipts and expenditures.

Associations whose major purpose is something other than to promote or defeat a ballot question (sometimes referred to as "non-major-purpose associations") may also engage in activities to promote or defeat a ballot question. However, since ballot question activities do not constitute the major purpose of these associations, they are not political committees.¹

¹ The Board recognizes that an association whose major purpose is to influence the nomination or election of candidates is also a political committee. Because these findings are limited to the topic of ballot question political committees or funds, the fact that an association may be a political committee based on its actions to influence the nomination or election of candidates will not be restated in the text.

The money raised or spent by a non-major-purpose association to promote or defeat a ballot question is called the association's political fund. If the association raises or spends more than \$5,000 to promote or defeat a ballot question it must register the political fund with the Board and report under the appropriate provisions of Chapter 10A.

Minnesota Statutes provide for different levels of disclosure for political committees and political funds. This distinction is based on United States Supreme Court holdings that have been incorporated into Minnesota law.

Because the major purpose of a ballot question political committee is to promote or defeat a ballot question, all of its contributions and expenditures are subject to disclosure. Contributions to a political committee of more than \$100 in aggregate from a donor must be itemized, which requires providing the name, address, and employment information for the donor. Expenditures of more than \$100 in aggregate to a payee must also be itemized by providing the payee name and address and the purpose of the expenditure.

A non-major-purpose association may engage in activities to promote or defeat a ballot question, but it primarily engages in activities that are not related to the promotion or defeat of a ballot question and these activities are not subject to disclosure under Chapter 10A. A non-major-purpose association also raises money that is not specifically for the purpose of promoting or defeating a ballot question.

Money that the association has received for some purpose other than specifically to promote or defeat a ballot question is sometimes referred to as the association's "general treasury money." At the time general treasury money is received by the association it is not subject to any disclosure under Chapter 10A.

When a non-major-purpose association uses general treasury money to promote or defeat a ballot question those funds are reported through its political fund. However, the sources of that general treasury money are not subject to the more-than-\$100 itemization requirement. Rather, Minnesota statutes allow the association to allocate the amount of general treasury money used to promote or defeat a ballot question among donors to the association's general treasury. The association is required to itemize only those donors who, based on the allocation, contributed \$1,000 or more of the general treasury money used to promote or defeat a ballot question. The allocation and itemization threshold provisions used together provide a means by which an association may limit or, in some cases, entirely avoid itemized donor disclosure.

The primary effect of CCM's complaint, if it is sustained, will be to require MFC to itemize all donors who gave it more than \$100 in 2011, and any who pass that threshold in 2012. MFC would no longer be able to disclose only each \$1,000-or-more donor's allocation of funds from general treasury money because all money received by MFC would be viewed as being for the major purpose of promoting the ballot question and therefore reportable under Chapter 10A. A secondary effect would be that MFC would be required to itemize all expenditures of more than \$100 to a payee, even if the expenditure was not specifically to promote the ballot question.

MFC's Registration and Reporting

On August, 9, 2011, MFC registered a ballot question political fund, the Minnesota Family Council Family Protection Fund, with the Board thereby signifying that it would raise or spend more than \$5,000 to promote the ballot question that year and that it identified itself as a non-major-purpose association.

At the end of 2011, MFC filed a report under the ballot question political fund statutes. The report disclosed \$212,423.45 of MFC general treasury money was used to promote the ballot question.

MFC reported that based on the allocation and itemization statutes it was not required to itemize any donors to its general treasury. Additionally MFC reported using \$134,570.60 that it identified as business revenue to promote the ballot question. When business revenue is used to promote or defeat a ballot question, no allocation or itemization of the business activity that generated the revenue is required. In total, MFC reported \$346,994.05 through its political fund with no underlying itemization of funding sources.

MFC reported spending \$120,994.05 on activities to promote the ballot question and donating \$226,000 to Minnesota for Marriage, a political committee formed specifically to promote the ballot question.

MFC's Major Purpose

Common Cause asks the Board to conclude that during 2011 and, by implication, 2012, the major purpose of MFC was to promote the marriage definition ballot question.

Minnesota Statutes section 10A.01, subdivision 27, states that a political committee is "an association whose major purpose is to influence the nomination or election of a candidate or to promote or defeat a ballot question, other than a principal campaign committee or a political party unit."

For the purposes of this analysis, the relevant definition may be restated as follows: A political committee is an association whose major purpose is to promote or defeat a ballot question.

Minnesota statutes do not define "major purpose" or "purpose" and the Board has not undertaken to clarify the definition in advisory opinions. In Advisory Opinion 405 the Board did, however, conclude that under the Chapter 10A definition, an association has a single major purpose and that its other purposes will be subordinate to that major purpose. That conclusion will be applied in this matter as well.

As was the case in Advisory Opinion 405, an association's major purpose is usually examined either upon its formation or when it first engages in activities that might come under the purview of Chapter 10A. An examination of MFC from that point of view leads to the conclusion that at least prior to 2011, the major purpose of MFC was broader than to promote a Minnesota ballot question.

MFC was first incorporated in 1983 as the Berean League of Minnesota – A Coalition of Concerned Christians. By 1997, the Berean League had evolved into two corporations. One, Minnesota Family Institute, was a nonprofit charitable organization under Internal Revenue Code section 501(c)(3) and the other, Minnesota Family Council, was a 501(c)(4) nonprofit social welfare organization. The two corporations remain affiliated and have retained their 1997 names.²

According to MFC's most recent corporate articles, its purpose is as follows:

² Information obtained from the official records of the Office of the Minnesota Secretary of State.

To promote Judeo-Christian principles through education, research, media and advocacy of specific public policies that strengthen the social welfare of families and individuals.

Although the purpose of MFC has been stated differently over the years, the current statement sufficiently captures the association's own assessment of its purpose for this Board analysis. This statement of purpose, however, is too vague to identify what the association actually *does* and to determine whether its activities are subject to Minnesota's disclosure laws.

MFC has been an active advocate on various social issues since its beginning as the Berean League. In the early 1990's the association's efforts were directed against the spread of what it considered to be pornography. In the mid-1990's, it led efforts to pass legislation that defined marriage in Minnesota as being limited to the union of one man and one woman. That legislation passed and became law in 1996.

In the early 2000's, MFC initiated a campaign to place on the ballot a constitutional amendment that would define marriage as being limited to the union of one man and one woman. During the following years, much of the association's effort was directed toward this effort and toward efforts to resist legislative initiatives that MFC believed were contrary to promoting its mission. More recently, MFC renewed its efforts to get a constitutional amendment defining marriage on the ballot . On May 21, 2011, they were successful in these efforts.³

MFC's president, Tom Prichard, elaborated on MFC's purpose in 2010, saying:

The Council's overarching mission is to support, lobby for, and preserve laws and policies that strengthen families because, as it says in our Statement of Principles, "[w]e believe that the family is the fundamental institution in a civil society, and government should promote and protect its formation and well being (sic)."

The Council's mission and one of its primary goals is to support, lobby for, and preserve laws defining marriage as the union of one man and one woman.

The Council's mission and one of its goals is to support, lobby for, and preserve laws and policies supporting the raising of children by a married mother and father; this would include, for example, laws defining marriage as the union of one man and one woman and laws preferring adoption by a married mother and father.

The Council's mission and one of its goals is to oppose laws and policies that promote acceptance of homosexual behavior or same-sex relationships in the public school system.

The Council's mission also includes additional goals and issues, such as protecting the sanctity of human life from conception to natural death, affirming religious freedom, supporting religious expression in the public arena, affirming the limited role of government, and creating an informed and politically active citizenry through the state.⁴

³ Interview with MFC CEO John Helmberger , available at <http://christianityinachangingculture.blogspot.com/2012/05/ccm-may-9-john-helmberger-mn-family.html>, last visited May 25, 2012.

⁴ Affidavit of Thomas W. Prichard filed in the Hennepin County District Court in the matter of *Benson v. Alverson*, a suit seeking to overturn Minnesota's statute limiting marriage to the union of one man and one woman. Court file

In view of MFC's emphasis on opposing gay marriage, it may appear that MFC's major purpose is, and for many years has been, to promote an anti-gay-marriage ballot question in Minnesota. However, an examination of Minnesota statutes explains why the majority of MFC activity is classified under Chapter 10A as lobbying, and not as an effort to promote a ballot question.

The political committee definition, as narrowed for the purposes of these findings states:

A political committee is an association whose major purpose is to promote or defeat a ballot question.

The definition is further limited, however, by Minnesota Statutes section 10A.01, subdivision 7, which defines ballot question.

Prior to 2007, the definition of ballot question included the following sentence:

"Promoting or defeating a ballot question" includes activities related to qualifying the question for placement on the ballot.

In 2006, the Board conducted two enforcement actions that involved the above definition. In each matter, an association engaged in communications with legislators to influence the placement of a constitutional amendment on the ballot. The associations complied with the lobbyist and principal reporting statutes, but did not register and report through political committees or funds. Based on the above definition, the Board concluded that communications with legislators to influence whether a question would be placed on the ballot constituted "activities related to qualifying the question for placement on the ballot." In addition to their lobbyist registrations, the Board required the subject associations to register political committees or funds and to report their legislative advocacy activities as part of the campaign finance disclosure program, which included itemized disclosure of donors.

Subsequent to the Board's 2006 actions, the legislature considered the Board's interpretation of the statute. This resulted in an amendment to Chapter 10A in 2008. After the amendment, the sentence relied on by the Board in its 2006 decisions to require political committee or fund registrations was modified by adding an exclusion for lobbying activities. After the amendment, the sentence read:

"Promoting or defeating a ballot question" includes activities, other than lobbying activities, related to qualifying the question for placement on the ballot.

Based on the clear language of the new definition and on its legislative history, the Board has concluded that activities to influence legislators in their decision regarding placing a question on the ballot must be reported through the lobbyist disclosure program, but do not constitute activities to promote or defeat a ballot question that would trigger a political committee or fund registration requirement.

Even if the Board was to conclude that MFC's major purpose is to define marriage as being limited to the union of one man and one woman, that conclusion would not be a sufficient basis on which to find that MFC is a political committee. MFC's efforts over the years have included

extensive lobbying to enact legislation that forwards its mission or to defeat legislation that it opposes. MFC also engages in public outreach on issues. None of these activities are included in the scope of actions that would make an association a political committee. Even its work in 2010 to convince the legislature to place the marriage definition ballot question on the ballot falls under the lobbying program and is excluded from activities that might trigger a political committee registration requirement.

Thus, based on the activities in which it has engaged over its existence, and in particular prior to the placement of the marriage definition ballot question on the ballot in May of 2011, the Board concludes that the major purpose of MFC is something other than to promote or defeat the marriage definition ballot question.

An Association Changing its Major Purpose

Having concluded that the major purpose of MFC when viewed over its entire existence is broader than promoting the marriage definition ballot question, the Board considers the more narrow question: Can an association, through its activities over a time period that is a subset of its total time in existence, change its major purpose and, thus, become a political committee during that period?

This question requires the Board to consider in more detail the definition of an association's "purpose" and the distinction between its purpose and the activities in which it engages to achieve that purpose.

Assuming for the purpose of this analysis that during 2011 and 2012 most of MFC's activities are to promote the ballot question, the question is whether during those years, MFC was and is a political committee.

In its response to the Board's request for legal analysis, MFC refers to the *Merriam Webster's Collegiate Dictionary* definition of "purpose" as "something set up as an object or end to be attained." Given that definition, one might conclude that during 2011 and 2012 MFC's purpose was and is, indeed, passage of the marriage definition ballot question, which is the objective or end that the association wants to attain.

However, the Board concludes that the meaning of "purpose" as it is used in the political committee definition is better illuminated by the definition found in the Oxford English dictionary, which defines purpose as "the reason for which something is done or made, or for which something exists."⁵

The definition of political committee is based on the purpose of the association; that is, the reason the association exists. Applying this definition, the purpose of an association is more synonymous with its mission than with some particular end result that it might achieve toward that broader mission. MFC's mission is well-stated by Mr. Prichard in his affidavit quoted above. MFC's activities have been consistent with that mission. During its existence, MFC has undertaken a variety of activities, including its current intensive efforts to ensure passage of the marriage definition ballot question. The Board concludes that MFC's 2011 and 2012 efforts to pass the ballot question are in furtherance of its purpose but do not narrow that purpose from its more broadly stated mission. Thus, MFC has not become a political committee as a result of these activities.

⁵ The New Shorter Oxford English Dictionary, 1993. See also, The Oxford English Dictionary, Second Ed., 1989.

The Board recognizes that CCM cited the U. S. Supreme Court opinion in *FEC v. Massachusetts Citizens for Life*, 479 U.S 238 (1986) (*MCFL*), for its suggestion that an association's spending on independent expenditures could become so extensive that the purpose of the organization could be regarded as campaign activity, thus making the association a political committee. The Board does not find reference to this opinion persuasive for several reasons. First, the Court's statement was addressing a hypothetical situation not before the Court. As a result, the Court did not provide any guidance or analysis as to how the concept would be applied in a real situation. Second, the statement relates to an association becoming a political committee based on making independent expenditures, not based on ballot question expenditures, as is the case with MFC. Thus, it has, at best, limited potential application to the present matter. Finally, Board staff was unable to find any example of a court in any jurisdiction subsequently applying the principle that a non-major-purpose association might change into a political committee or providing further guidance on how it might be applied. Additionally, CCM provided no legal authority on the question beyond the *MCFL* opinion itself.

While the Board is not saying in these findings that an association may never change its major purpose, it is saying that MFC has not done so based on its mission over its entire existence. If the Board is to evaluate an association's major purpose over a shorter period of time than its entire existence, that direction should come from the legislature.

Finding Concerning Probable Cause

Based on the record in this matter, the Board makes the following finding:

There is no probable cause to find that the major purpose of Minnesota Family Council is to promote the Minnesota marriage definition ballot question. Thus, there is no probable cause to find that Minnesota Family Council is a political committee under Minnesota Statutes Chapter 10A

Order

Based on the above finding, the Board issues the following order:

1. The investigation of this matter is concluded.
2. The complaint is dismissed.
3. The record in this matter is hereby entered into the public record in accordance with Minnesota Statutes section 10A.02, subdivision 11.

Dated: June 5, 2012

/s/ Greg McCullough
Greg McCullough, Chair
Campaign Finance and Public Disclosure Board