

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

**Findings and Order in the matter of the Complaint of Richard V. Novack regarding  
Minnesota Majority**

**Summary of the Complaint and Responses**

On October 30, 2008, Richard V. Novack (“Complainant”) filed a complaint with the Campaign Finance and Public Disclosure Board (“the Board”) regarding Minnesota Majority, a Minnesota nonprofit corporation. The complaint alleges that Minnesota Majority produced and distributed materials costing more than \$100 that are governed by Minnesota Statutes Chapter 10A. Complainant argues that as the result of these expenditures Minnesota Majority must register a political fund with the Board and that fund must file periodical reports pursuant to statute.

When the Board investigates a complaint that alleges violations of Minnesota Statutes Chapter 10A, it will investigate all potential violations that may arise from the same facts, even if those violations are not specifically identified in the complaint. In this matter, the Board also investigated whether the actions of Minnesota Majority would require it to register with and report to the Board as a political committee.

The materials that are the subject of the complaint are a series of candidate comparisons based on a candidate survey and on votes of incumbent candidates in Minnesota House of Representatives districts. These comparisons were posted on Minnesota Majority’s web site and it is alleged that printed versions of some of them were distributed.

The Board investigation was expanded to include a “Heroes and Zeros” section of Minnesota Majority’s web site. This section mentions clearly identified candidates and purports to interpret those candidates’ percentages of votes in the legislature that are consistent with “traditional values”, with the “Heroes” receiving 100% ratings and the “Zeros” receiving zero percent ratings. In its response to the complaint, Minnesota Majority refers to this section as a “legislative scorecard” and that phrase is adopted for use in these findings.

Matthew W. Haapoja, attorney, responded on behalf of Minnesota Majority. Mr. Haapoja argued that the materials produced by Minnesota Majority were not the type of political communication that may be regulated under Minnesota Statutes Chapter 10A consistent with the First Amendment of the U.S. Constitution and relevant U.S. Supreme Court rulings.

The threshold question in this matter is whether the costs of production and distribution of the candidate comparisons and legislative scorecard produced by Minnesota Majority are the type of expenditures that may, depending on spending level, give rise to a registration and reporting requirement on the part of Minnesota Majority. This threshold question is one primarily of law.

Before addressing the question of law, two fact questions, which are not in substantial controversy, must be disposed of.

Associations making cash or in-kind contributions (including approved expenditures) of more than \$100 to a candidate’s principal campaign committee, a party unit, or a political committee or fund registered with the Board are required to register with and report to the Board regardless of the nature of the item being donated.

There is no allegation in the complaint and no evidence in Board records that Minnesota Majority made direct cash contributions to, or any approved expenditures on behalf of, any entity registered

with the Board. For the purposes of these findings, the Board assumes it to be a fact that Minnesota Majority made no direct cash contributions to, or approved expenditures on behalf of, other entities registered with the Board.

The complaint did not specifically allege that Minnesota Majority made in-kind contributions of materials to any entity registered with the Board. However the complaint does allege that materials which appear to be printed versions of the candidate comparisons produced by Minnesota Majority were distributed in various House districts. The complaint does not allege any specific facts on which to base a conclusion as to who produced or distributed these materials.

Complainant alleged that the principal campaign committee of a candidate who was named in one of the candidate comparisons provided a convention delegate list to Minnesota Majority. Such a transaction could lead to coordination that might result in the making of an approved expenditure. The Board investigated this allegation and found insufficient evidence to substantiate it.

In response to a specific inquiry from the Board, Mr. Haapoja conveyed a statement from Minnesota Majority president Jeff Davis that Minnesota Majority did not make any in-kind contributions to entities registered with the Board. Since neither the complaint nor Board records provide any facts to support a conclusion otherwise, the Board takes this statement to be one of fact for the purposes of these findings.

Having eliminated the question of cash or in-kind contributions, including approved expenditures, as a basis for a registration requirement, the issue is whether Minnesota Majority's expenditures for the materials under investigation, made independently of the candidates involved, may form the basis for a registration and reporting requirement.

This matter was considered by the Board at its meeting on December 2, 2008, based on the complaint and response, supplemental materials provided by the parties, Board records, and the appearance of Matthew W. Haapoja, attorney for Minnesota Majority and Jeff Davis, Minnesota Majority's president.

## **Analysis**

### **The Facts**

The relevant facts of this matter are not in dispute and can be stated as follows:

Minnesota Majority, Inc is a nonprofit corporation registered in the State of Minnesota

Minnesota Majority operates an internet web site located at [www.minnesotamajority.org](http://www.minnesotamajority.org). For a time it also operated a subsidiary web site under the name [www.voteyourvaluesMN.org](http://www.voteyourvaluesMN.org). That subsidiary web site pointed primarily to a set of candidate comparison pages related to the 2008 Minnesota House of Representatives elections. A copy of the index page and samples of comparison pages are attached as Exhibit 1 and made a part hereof. All other comparison pages are substantially the same with the exception of the district and candidates involved and the specific "yes" or "no" indications assigned to each candidate.

Complainant provided a copy of a candidate comparison for House District 41A similar to the web site comparisons. This document was allegedly distributed in the district by Minnesota Majority. Since it is not included on Minnesota Majority's web site, presumably it was produced as a print document. The document varies from those posted on Minnesota Majority's web site in that for each values question posed it includes a statement of the percentage of GOP legislators who supported the position in the House.

According to its Web site, “Minnesota Majority is an organization seeking to empower private citizens who share the goal of promoting traditional values in public policy.” A Board review of the site discloses that it is devoted primarily to policy and position statements, including statements of principles, issues papers, and similar advocacy communications.

Minnesota Majority’s web site also includes (or included during the election) a legislative scorecard (“Heroes and Zeros”) section identifying legislators that had voted consistently with or consistently against the positions of Minnesota Majority. A copy of this section of Minnesota Majority’s web site is attached as Exhibit 2 and made a part hereof.

Other than the candidate comparisons and the legislative scorecard section, Minnesota Majority’s web site does not include information that relates to the election of clearly identified candidates.

There is no evidence that Minnesota Majority made any direct contribution to or approved expenditure on behalf of any candidate.

None of the materials under investigation include words of “express advocacy” such as “vote for”, “support”, “defeat”, or similar words.

## **Legal Analysis**

### **Definition of a Political Committee, §10A.01, subd 27**

“Political committee means 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.”

Statutory and common law rules for interpreting statutes require the Board to construe a statute so as to give meaning to each word and to use words with their ordinary and common sense.

The Board has previously recognized that an association may engage in activities to influence the nomination or election of a candidate without those activities constituting its “major purpose”. For example, see Advisory Opinions 301 and 306. In both of those opinions, the Board recognized that activities of the association to influence the nomination or election of a candidate were not the major purpose of the association. Therefore, the association could not be required to register as a political committee.

It is not necessary at this point to determine whether the expenditures under investigation were “to influence the nomination or election of a candidate”. Even if they were, the activities supported by these expenditures were not the major purpose of Minnesota Majority. Thus Minnesota Majority is not a political committee under Chapter 10A.

### **Political Fund**

In order to determine whether Minnesota Majority has a registration and reporting requirement, the Board must consider the varying language in Minnesota Statutes related to political funds. Different phrases are used in the provisions that define, regulate, and establish a registration deadline for political funds.

The relevant statutes are as follows:

### **Definition of political fund, 10A.01, Subd. 28**

“Political fund means an accumulation of dues or voluntary contributions by an association other than a political committee, principal campaign committee, or party unit, if the accumulation is collected or expended to influence the nomination or election of a candidate or to promote or defeat a ballot question.”

**When a political fund is required, §10A.12, Subd. 1**

“An association other than a political committee or party unit may not contribute more than \$100 in aggregate in any one year to candidates, political committees, or party units or make any approved or independent expenditure or expenditure to promote or defeat a ballot question unless the contribution or expenditure is made from a political fund.”

**Time within which to register, §10A.14, Subd. 1**

“The treasurer of a political committee, political fund, principal campaign committee, or party unit must register with the board by filing a statement of organization no later than 14 days after the committee, fund, or party unit has made a contribution, received contributions, or made expenditures in excess of \$100, or by the end of the next business day after it has received a loan or contribution that must be reported under section 10A.20, subdivision 5, whichever is earlier.”

**Approved expenditure, §10A.01, Subd. 4**

"Approved expenditure" means an expenditure made on behalf of a candidate by an entity other than the principal campaign committee of the candidate, if the expenditure is made with the authorization or expressed or implied consent of, or in cooperation or in concert with, or at the request or suggestion of the candidate, the candidate's principal campaign committee, or the candidate's agent. An approved expenditure is a contribution to that candidate.

**Independent expenditure, §10A.01, Subd. 18**

"Independent expenditure means an expenditure expressly advocating the election or defeat of a clearly identified candidate, if the expenditure is made without the express or implied consent, authorization, or cooperation of, and not in concert with or at the request or suggestion of, any candidate or any candidate's principal campaign committee or agent. An independent expenditure is not a contribution to that candidate. “

To apply Chapter 10A as a whole, the Board must reconcile the following differences between the three provisions related to political funds:

- (1) The definition of a political fund is based on the use of the money “to influence the nomination or election of a candidate”;
- (2) The requirement that an association form a political fund is based on the association’s use of its money for (a) direct contributions, (b) approved expenditures, or (c) independent expenditures;
- (3) the time within which a fund must be registered with the Board is framed in terms of receiving contributions or making expenditures.

Taking each provision literally results in a definition of a political fund that is broader than the conduct in which an association may engage *without* forming a fund. Likewise, the statutes would require an association to register a fund even if it has *not* undertaken any of the prohibited activities of §10A.12, Subd. 1.

Some historical analysis helps explain the differences in statutory language and provides a basis for the Board to reconcile the requirements applicable to political funds.

Minnesota’s campaign finance laws first went into effect in 1974 at the same time that congress significantly amended the Federal Election Campaign Act of 1971. Minnesota’s statutes closely paralleled the federal laws in many respects. Litigation of the federal statutes quickly followed in the

wake of the new restrictions on speech imposed by the Act, reaching the U.S. Supreme Court in the landmark case of *Buckley v. Valeo*, 424 U.S. 1, decided in 1976.

Minnesota amended Chapter 10A significantly in 1978, two years after the *Buckley* decision. While there is no legislative history suggesting that the amendments were a specific response to *Buckley*, the substance of the amendments suggests that they were.

In key holdings, the *Buckley* Court resolved issues of statutory vagueness in order to make the federal statute constitutional. First, the court construed “political committee” to include an organization under the control of a candidate or “the major purpose of which is the nomination or election of a candidate”. The Court noted that under this construction, expenditures of political committees “can be assumed to fall within the core area sought to be addressed by congress.” The Court recognized other organizations (political funds) as a separate type of entity.

Second, the court construed the phrase expenditures “to influence” elections, as it related to entities other than political committees, narrowly to mean that the only expenditures of an association (other than a political committee or a candidate’s committee) that would trigger reporting requirements are expenditures “for communications that expressly advocate the election or defeat of a clearly identified candidate”.

Minnesota’s 1974 definitions of political committee and political fund were not significantly changed by the 1978 amendments to Chapter 10A. The definition of political committee already included the “major purpose” language, so it was consistent with the Supreme Court’s interpretation of the corresponding federal statute.

However, the 1978 legislature did make significant statutory changes affecting spending by associations. First, it added the definitions of independent expenditures and approved expenditures set forth above. Prior to 1978, those definitions did not exist. Second, it re-wrote the prohibitions on spending by an association other than a candidate committee or a political committee.

A comparison of the language of §10A.12, Subd. 1, is instructive:

**1974 version:**

“No association shall make a transfer of funds to a candidate or political committee or make an expenditure which has as its purpose the influencing of the nomination for election or election or defeat of a candidate unless it is a political committee or unless the funds for the contribution or expenditure come from a political fund.”

**1978 version:**

“No association other than a political committee shall transfer more than \$100 in aggregate in any one year to candidates or political committees or make any approved or independent expenditure unless the transfer or expenditure is made from a political fund.”

**Present version:**

“An association other than a political committee or party unit may not contribute more than \$100 in aggregate in any one year to candidates, political committees, or party units or make any approved or independent expenditure or expenditure to promote or defeat a ballot question unless the contribution or expenditure is made from a political fund.”

Viewing this comparison shows that in 1978, the prohibition on association spending was changed from the unconstitutionally vague standard of expenditures that have as their purpose the “influencing of the nomination for election or election or defeat of a candidate” to the clear standard of prohibiting direct contributions or the newly defined approved expenditures or independent expenditures.

The dramatic shift in the 1978 amendments appears to have cured the previous vagueness problems and brought the requirements into conformity with the holdings of *Buckley*. The amendments also signal a strong legislative intent to limit the types of spending that will trigger a registration and reporting requirement for a political fund. The substance of the 1978 amendments to §10A.12, Subd. 1, have been carried forward and are still in place in the current statute.

## **Reconciling statutory provisions related to political funds**

### **Definition of political fund, 10A.01, Subd. 28**

The definition of a political fund based on the use of the money “collected or expended to influence the nomination or election of a candidate or to promote or defeat a ballot question” was addressed by the Minnesota Supreme Court on the submission of a certified question from the U.S. Court of Appeals for the Eighth Circuit.

In the matter of *Minnesota Citizens Concerned for Life, Inc, v. Kelley et al*, plaintiff challenged the statute defining a “political fund” on the basis that the phrase “to influence” used in the definition was unconstitutionally vague and overbroad. The Eighth Circuit certified to the Minnesota Supreme Court the question of whether the Minnesota statute could be interpreted consistent with *Buckley* to eliminate the vagueness problem. The Minnesota Court restated the question as follows:

“whether the phrase ‘to influence the nomination or election of a candidate . . .’ . . . may be narrowly construed to limit application of [the statutes using that phrase] to groups that expressly advocate the nomination or election of a particular candidate . . .”

The Minnesota Supreme Court answered the question in the affirmative.

In order to make the definition consistent with the legislature’s 1978 amendments to §10A.12, Subd. 1, regarding association conduct that requires an association to register a political fund, and to avoid unconstitutional vagueness, the Board construes §10A.01, Subd 28, to limit its application to associations that expressly advocate the nomination or election of candidates.

### **Time within which to register, §10A.14, Subd. 1**

The provisions of §10A.14, Subd. 1, related to the time within which a political fund must register were not amended in 1978, leaving the registration timing based on the vague definition of contributions and expenditures.

Consistent with the 1978 amendments to §10A.12, Subd. 1, *MCCL v Kelley*, and *Buckley*, the Board interprets the registration timing requirement of §10A.14, Subd. 1, as applied to political funds to require a political fund to register within 14 days after making contributions, approved expenditures, or independent expenditures or expenditures to promote or defeat a ballot question, all as specified in §10A.12, Subd. 1.

### **Conclusion**

Minnesota Majority is not a political committee under Chapter 10A because its major purpose is not to influence the nomination or election of a candidate or to promote or defeat a ballot question.

Based on its review and reconciliation of the provisions of Chapter 10A related to associations and political funds, the Board concludes that an association other than a political committee may be required to register and report through a political fund only if the association makes direct contributions, approved expenditures, or independent expenditures to or on behalf of a candidate or expenditures to promote or defeat a ballot question.

Minnesota Majority did not make direct contributions or approved expenditures to or on behalf of any candidate or expenditures to promote or defeat a ballot question.

By statutory definition, an "independent expenditure" is "an expenditure expressly advocating the election or defeat of a clearly identified candidate . . .". Express advocacy requires use of specific words such as "vote for", "elect", "defeat" or similar words. None of the material produced by Minnesota Majority expressly advocates the election or defeat of a candidate so as to constitute an independent expenditure.

Minnesota does not have a statute that regulates spending by an association on what federal statutes refer to as "electioneering communications", which are communications identifying specific candidates, made during specified periods before an election, and targeted to the electorate, but which do not expressly advocate the candidate's election or defeat. In the absence of such a statute, the Board has no authority to regulate this type of communication.

Based on the foregoing, the Board concludes that there is no basis in Chapter 10A to require Minnesota Majority to register a political fund and report to the Board since all of its activities subject to these findings are outside the scope of existing statutes.

**Based on the complaint, the responses, filings with the Board, presentations to the Board at its December 2, 2008, meeting by representatives of Minnesota Majority, and the Board investigation, the Board makes the following:**

#### **Findings Concerning Probable Cause**

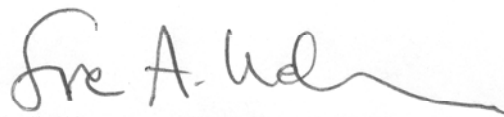
There is no probable cause to believe that Minnesota Majority, Inc. has engaged in any activity that requires it to register as a political committee or to create a political fund and register it with the Board.

#### **Order**

**Based on the foregoing findings concerning probable cause, it is hereby ordered:**

The complaint is dismissed. The Board's investigation of this matter is concluded and the records of the investigation are hereby made a part of the public records of the Board pursuant to Minnesota Statutes, Section 10A.02, subdivision 11.

Dated: December \_\_, 2008



Sven A. Wehrwein, Chair  
Campaign Finance and Public Disclosure Board

#### **Attachments:**

Exhibit 1: Index of candidate comparison pages and sample pages

Exhibit 2: Legislative scorecard page