

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

**Findings and Order in the Matter of the Complaint of Kurt M. Anderson regarding the  
Archdiocese of St. Paul and Minneapolis**

On March 18, 2011, the Campaign Finance and Public Disclosure Board (“the Board”) received a complaint from Kurt M. Anderson (“the Complainant”) regarding the Archdiocese of St. Paul and Minneapolis (“the Archdiocese” or “Respondent”) and other associations and individuals whose names were not specifically known. The Board initiated an investigation and the matter was laid over to allow that investigation to be completed. Conclusion of the matter was further delayed due to the Board staff’s workload and time lost due to the state government interruption of services.

**The allegations of the complaint**

The complaint included a statement of facts in which the Complainant mixed both allegations of fact and his own characterizations of the facts. In some instances, the characterization of those facts is at the center of the complaint and is, in fact, the determination that the Board is required to make. The description of the allegations of the complaint which follows separates the Complainant’s characterization of the alleged facts from the alleged facts themselves. With that restriction, the allegations may be stated as follows:

On September 20, 2010, which was approximately six weeks before a general election in which both bodies of the legislature would be on the ballot, Archbishop John Nienstedt (“the Archbishop”) and the Archdiocese mailed a letter and a Digital Video Disc (“DVD”) to 400,000 Roman Catholic households throughout Minnesota. The Complainant was among the recipients of the mailing.

The Archdiocese is a Minnesota nonprofit corporation registered with the Secretary of State and has been in existence since 1883.

In the Roman Catholic Church, Minnesota is divided into five dioceses, headquartered in Crookston, Duluth, St. Cloud, New Ulm, and Winona, as well as the Archdiocese, headquartered in St. Paul. All six church units have separate territorial jurisdictions and the “metropolitan” Archbishop has limited oversight responsibility over his “suffragan” bishops.

The return address and the postal permit on the mailing received by the Complainant indicate that the mailing was made by the Archdiocese rather than by the Archbishop himself.

A copy of the DVD and the accompanying letter were provided by the Complainant as part of the facts. The letter included the Archbishop’s statement: “I have called on the Legislature to allow voters to consider a constitutional amendment to preserve marriage as the union between one man and one woman.” The DVD included the Archbishop stating: “The Archdiocese believes that the time has come for voters to be presented directly with an amendment to the state constitution to preserve our historic understanding of Marriage.”

A transcript of Archbishop Nienstedt’s statement on the DVD is attached to and made a part of these findings.

The DVD also included a program titled "One Man, One Woman: Marriage and the Common Good," which will be discussed later in this document.

### **Complainant's contentions and arguments**

Complainant contends that the specific language quoted above from the letter and DVD calls for statewide political action and, when considered with the expenditures that must have been involved in distributing the materials, would result in expenditures above the monetary thresholds set forth in Chapter 10A.

Complainant argues that the Archdiocese is required to register a political fund with the Board as the result of its activities, which are intended to influence the vote on a ballot question. At the same time, Complainant argues that the mailing constitutes lobbying, triggering registration and reporting requirements under Minnesota's lobbying statutes. Complainant also cites the principal reporting requirements that trigger upon spending of \$50,000 to influence official action.

Regarding the definition of "lobbyist" in Minnesota Statutes § 10A.01, subd. 21, Complainant contends that if anyone spent more than \$250 to accomplish the mailing of the letter and DVD, that person became a lobbyist and was therefore required to register with and report to the Board.

### **Scope of the investigation**

When a complaint is accepted for investigation, it is the Board's practice to include in the scope of the investigation all potential Chapter 10A violations that might arise as a result of the alleged facts, regardless of whether the specific violation was raised in the complaint.

The complaint alleged spending by an association to influence legislative action. If financial thresholds are met, such spending may require the association to report as a principal under Chapter 10A. Although not specifically raised in the complaint, the investigation examined whether the Archdiocese or any other entity was required to file a principal's report under Minnesota Statutes §10A.04, subd. 6.

The complaint alleged that other individuals or associations than the Archdiocese may have been responsible for or participated in the subject mailings. During the investigation, the Board learned that the bishop of each of the five Minnesota dioceses created his own letter to be sent with a copy of the subject DVD to members of the Church in the diocese. However, in response to a Board inquiry, the Archdiocese acknowledged that it paid for the production and distribution of the packets to all church members, regardless of whether they were members of the Archdiocese or of one of the other dioceses. For that reason none of the individual dioceses would be subject to any requirement of Chapter 10A that is based on an expenditure threshold.

### **The response of the Archdiocese**

The Archdiocese provided an initial response to the Complaint on May 13, 2011, and further responded to subsequent staff requests for additional information.

The Archdiocese characterizes the DVD and letter packet ("the packet") as a message from the Archbishop to church members about an important matter of public concern in which the Archbishop explains the position he has taken with regard to that matter.

The Archdiocese emphasizes that although the packet was sent to numerous church members, it was not directed to legislators or to the general public, characterizing the message as "a private message to church members." The Archdiocese points out that the mailing pertained to a question that was not on any ballot and was not being considered by the legislature at the time. The Archdiocese further notes that "the mailing did not request or instruct church members to contact their legislators regarding this question."

The Archdiocese acknowledges that the Archbishop mailed out the subject packets to church members in the Archdiocese, but does not comment on the quantity of packets mailed. In a response to a subsequent inquiry, the Archdiocese indicates that the Bishops of the five dioceses that encompass the non-metropolitan area of Minnesota also sent out packets on the same day, each including the DVD and a letter from diocese's Bishop. The Archdiocese provided copies of each Bishop's letter. The letters are attached to these Findings and Order and made a part hereof.

The Archdiocese addresses the questions of whether the Archdiocese is required, as a result of the mailing, to register a political fund or as a political committee; whether the Archbishop is required to register as a lobbyist, and whether the Archdiocese is required to register as a principal. In each case, the Archdiocese argues for a conclusion in the negative. These questions will be discussed in the sections below.

### **Board analysis**

The Complainant raises three different potential registration and/or reporting requirements of Chapter 10A that he believes apply to the Archdiocese, urging (1) that the Archdiocese is required to register a political fund and report ballot question expenditures through that fund; (2) that someone must register as a lobbyist for the Archdiocese and report the costs of the subject mailing on the lobbyist's reports of disbursements; and (3) that the Archdiocese is a principal, subject to the reporting requirements of section 10A.04, subd. 6.

The Board examines each of these questions in the following sections.

#### **Section I. The requirement to register a political fund**

To be required to register a ballot question political fund, an association must engage in activities to encourage voters to promote or defeat the ballot question at the polls.

Thus, on the one hand legislative action is being influenced (which is lobbyist or principal activity) while on the other hand voter action is being influenced (which is political fund activity).

The distinction stated in the above sentence seems clear. However, in the past it was not always clear whether a particular expenditure should be treated as an activity to influence legislative action or as an activity to convince voters to pass or defeat a ballot question.

In 2006, the Board examined complaints related to two associations, OutFront Minnesota and Equality Minnesota. OutFront Minnesota had a registered lobbyist and engaged in activities to influence placing a constitutional amendment on the ballot; activities that were reported on its lobbyist and principal reports. The complaint claimed that these same activities constituted actions to promote or defeat a ballot question, which would require OutFront Minnesota to register a political fund and report these same expenditures as ballot question expenditures

under campaign finance disclosure statutes. The Board agreed and required OutFront Minnesota to register and report through a political fund.

In the matter of Equality Minnesota, the association prepared and distributed a survey which the Board concluded was to influence legislative action with regard to placing a constitutional amendment question on the ballot. The Board also agreed with the contention of the complaint that these same activities constituted activities to promote or defeat a ballot question and, as a result, required Equality Minnesota to register and report through a political fund. The Board recognized that Equality Minnesota did not have any individual who met the definition of a lobbyist and that its total expenditures to influence legislative action were less than \$50,000. Therefore, Equality Minnesota was not required to register a lobbyist or to report as a principal.

These matters led to specific legislative action to eliminate the dual reporting of expenditures under both the lobbyist/principal disclosure statutes and the campaign finance disclosure statutes. The affected statute was Minnesota Statutes Section 10A.01, subd. 7.

In 2006, the definition of ballot question was:

"Ballot question" means a question or proposition that is placed on the ballot and that may be voted on by all voters of the state. "Promoting or defeating a ballot question" includes activities related to qualifying the question for placement on the ballot.

After the 2008 session, the definition read:

"Ballot question" means a question or proposition that is placed on the ballot and that may be voted on by all voters of the state. "Promoting or defeating a ballot question" includes activities, *other than lobbying activities*, related to qualifying the question for placement on the ballot. (Emphasis added.)

The phrase "promoting or defeating a ballot question" is important, because activities that are for that purpose trigger political committee or fund registration requirements.

The history and circumstances of the legislative change make it clear that the purpose of the amendment was to prevent lobbying activities from triggering a political committee or fund registration requirement. Although the statutes that define a principal and require the principal to report do not use the word "lobbying," the Board interprets the legislative change quoted above to mean that no activity to influence legislative action with respect to a ballot question will trigger a political committee or fund registration requirement.

Since the 2008 legislative change, it has been the Board's consistent position that a political fund registration requirement for a constitutional amendment ballot question will not arise until the legislature has placed the question on the ballot. Prior to that legislative action, activities related to the ballot question issue may trigger lobbyist or principal requirements but will not be regulated under the campaign finance provisions of Chapter 10A.

An argument advanced by Complainant deserves further comment. Complainant postulates that if the *only* activities "related to qualifying the question for placement on the ballot" are lobbying, then excluding lobbying actually excludes everything related to qualifying the question for placement on the ballot. Thus, the sentence "Promoting or defeating a ballot question includes activities, other than lobbying activities, related to qualifying the question for placement on the ballot" would have no meaning, since once the exclusion is applied, nothing is left.

While Complainant's legal contention may be true in the case of constitutional amendment ballot questions, the Minnesota Constitution also provides for recall ballot questions, which require no legislative action to place on the ballot. Rather, such questions are placed on the ballot through a petition and judicial process. In this context, any activity to qualify the recall question for placement on the ballot could trigger a political fund registration requirement. Thus, Complainant's contention that the Board's interpretation of Section 10A.01, subd. 7, renders the exclusion meaningless is incorrect.

In summary, the Board restates its conclusions:

- (1) Attempts to influence legislators to place a constitutional amendment question on the general election ballot are regulated only under the lobbyist and principal sections of Chapter 10A;
- (2) Attempts to qualify a recall question for placement on the general election ballot are regulated under the campaign finance provisions of Chapter 10A; and
- (3) Once a constitutional amendment question has been adopted by the legislature for placement on the general election ballot or a recall question has been qualified to be on the ballot, activities to promote or defeat the question are regulated under the campaign finance provisions of Chapter 10A.

At the time of the activities under consideration in this matter, the legislature had not adopted the marriage definition constitutional question for placement on the ballot. Thus, there is no probable cause to believe that the Archdiocese or any diocese was required to register a political fund. If their actions are subject to regulation at all, they will be regulated under the Chapter 10A lobbyist and principal provisions.

## **Section II. The requirement to register as a lobbyist**

The Board assumes that neither Archbishop Nienstedt nor any of the other Bishops were paid more than \$3,000 for their activities which Complainant alleges were lobbying. Apparently complainant recognizes this likely fact as well, because the allegations that someone should register and report as a lobbyist are based on statutory thresholds for spending money rather than on those based on compensation paid to the lobbyist.

Complainant assumes that the mailing was intended to "communicate with legislators and also to urge others to do so." He then concludes that because someone must have spent more than \$250 to achieve the mailing, that person is required to register as a lobbyist. Complainant's assertion is based on the part of a lobbyist definition in §10A.01 that includes anyone

who spends more than \$250, not including the individual's own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action, or the official action of a metropolitan governmental unit, by communicating or urging others to communicate with public or local officials.

Complainant urges that "[t]he \$250 lobbyist expenditure threshold in Minn. Stat. §10A.01, subd 21(a)(2) does not specify whose money is being spent. If the Archbishop or someone else spent more than \$250 of the Archdiocese's money on the mailing, the spender is a lobbyist. . . ."

This interpretation of the definition of "lobbyist" is not supported by an analysis of the history of this particular provision.

Prior to amendments in 2003, the lobbyist definition read:

Subd. 21. Lobbyist. (a) "Lobbyist" means an individual:

(1) engaged for pay or other consideration, or authorized to spend money by another individual, association, political subdivision, or public higher education system, who spends more than five hours in any month or more than \$250, not including the individual's own travel expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action, or the official action of a metropolitan governmental unit, by communicating or urging others to communicate with public or local officials; or

(2) who spends more than \$250, not including the individual's own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action, or the official action of a metropolitan governmental unit, by communicating or urging others to communicate with public or local officials.

As a result of 2003 amendments, the statute read:

Subd. 21. Lobbyist. (a) "Lobbyist" means an individual:

(1) engaged for pay or other consideration of more than \$3,000 from all sources in any year for the purpose of attempting to influence legislative or administrative action, or the official action of a metropolitan governmental unit, by communicating or urging others to communicate with public or local officials; or

(2) who spends more than \$250, not including the individual's own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action, or the official action of a metropolitan governmental unit, by communicating or urging others to communicate with public or local officials.

It is important to note that the original 2002 statute included a separate spending threshold of \$250 in both clauses (1) and (2) quoted above.

The spending threshold in clause (1) is triggered if an individual was "**authorized to spend money by another** individual, association, political subdivision, or public higher education system" and spent more than \$250 under that clause. The Clause (2) threshold applied to a person "**who spends more than \$250.**"

Under the 2002 law, if the threshold in clause (2) was triggered by being authorized to spend money by another, as Complainant argues, that interpretation would have rendered the authorized spending threshold of clause (1) redundant. To give meaning to each clause of the statute, the Board has always interpreted clause (2) as triggering a lobbyist registration requirement for a person who spends the person's *own* money. This interpretation gave meaning to each provision of the statute, as is required by the principles of statutory interpretation.

The legislative history of the 2003 amendment described above is that it was enacted as part of a package that required lobbyists to pay a registration fee. While the fee has since been repealed, the other changes remain in place, including the significant modification of the definition of "lobbyist" to base lobbyist status on being paid compensation of \$3,000 in a year.

The amendment to the lobbyist definition also included this narrowing provision:

"Lobbyist" does not include:

. . .

An individual who volunteers personal time to work without pay or other consideration on a lobbying campaign, and who does not spend more than the limit in paragraph (a), clause (2), need not register as a lobbyist.

This provision supports the Board's conclusion that the clause (2) threshold applies to a person spending his or her own money.

Before the 2003 amendment, clause (1) was triggered by spending someone else's money and clause (2) was triggered by spending one's own money. Deleting the spending threshold from clause (1) in favor of a compensation threshold does not alter the interpretation of clause (2).

Based on this analysis, there is no evidence on which to find probable cause that Archbishop Nienstedt or any other Bishop was required to register as a lobbyist.

### **Section III. The requirement to report as a principal**

The Complaint cites the statutes defining a "principal" and requiring principals to file reports. On the basis of those statutes, Complainant asserts that if the Archdiocese spent more than \$500 on the subject mailing, it is a principal and must report.

While principals are required to report, complainant's assertion is based on the wrong section of the statute. The \$500 threshold for principal reporting applies only to associations that have lobbyists. Associations that do not have lobbyists potentially become principals only after spending at least \$50,000. If an association becomes a "principal," it must file an annual principal's report in which it discloses a single monetary amount representing the total amount paid during the year to retain lobbyists and for communications defined in statute.

A "principal" is defined in Minnesota Statutes Section 10A.01, subd. 33 as an individual or association that:

(1) spends more than \$500 in the aggregate in any calendar year to engage a lobbyist, compensate a lobbyist, or authorize the expenditure of money by a lobbyist; or

(2) is not included in clause (1) and spends a total of at least \$50,000 in any calendar year on efforts to influence legislative action, administrative action, or the official action of metropolitan governmental units, as described in section 10A.04, subdivision 6.

**A. The statutory definition of efforts that are included when determining whether an association without a lobbyist becomes a principal.**

The Board now turns to the spending that may make an association a principal under clause (2). To define the spending that is to be included when determining if an association becomes a principal, clause (2) of the principal definition incorporates §10A.04, subd. 6.

The relevant parts of Section 10A.04, subd. 6, are as follows:

. . .

(b) The principal must report the total amount, rounded to the nearest \$20,000, spent by the principal during the preceding calendar year to influence legislative action, administrative action, and the official action of metropolitan governmental units.

(c) The principal must report under this subdivision a total amount that includes:

. . .

(2) all expenditures for advertising, mailing, research, analysis, compilation and dissemination of information, and public relations campaigns related to legislative action, administrative action, or the official action of metropolitan governmental units in this state. . .

Thus, the statute requires (1) spending on specified *types* of efforts; (2) spending exceeding a specified *amount*; and (3) that the spending be for a specified *purpose*.

Applying the common and ordinary meaning of the words of the statute, the mailing under review is included in the *types* of efforts that must be considered when determining if an association met the threshold to become a principal. The mailing, at a minimum, constituted the compilation and dissemination of information related to legislative action. Having reached this conclusion it is not necessary to consider whether it also constituted "advertising" or a "public relations campaign".

The allegation that more than 400,000 DVD/letter packets were mailed out is not disputed. The packet included a printed envelope, a two-color printed letter, and a custom-produced DVD with a color label that was inserted into a custom printed sleeve. In communication with Board staff on December 2, 2011, the Archdiocese stipulated that the cost of mailing the packets was more than \$50,000. Thus, the Archdiocese met the threshold for the *amount* of spending to trigger the reporting requirement.

**B. Applying the phrase "to influence legislative action."**

The remaining requirement of the definition of "principal" is that the effort was for the specified *purpose*, which under the "principal" definition, is "to influence legislative action." To determine whether this requirement is met, the Board is required to consider the meaning of the phrase "to influence legislative action."

At the outset, the Board recognizes that the determination of whether a communication is to influence legislative action does not change based on whether the speaker is one type of association or another. The initial determination is based on the communication itself.



The U.S. Supreme Court has considered the phrase "to influence" in the context of elections and concluded that it did not pose constitutional concerns when interpreted through a narrowing construction. In *Buckley v. Valeo*, 424 U.S. 96, (1976), the court considered the definition of "expenditure", which was money spent "for the purpose of influencing" elections. The Court concluded that to preserve the constitutionality of the provision, the requirement to disclose spending could be construed to apply only to expenditures for communications that advocate, in express terms, the election or defeat of a clearly identified candidate.

The question before the Board in this matter raises issues similar to those raised in *Buckley*. Because "to influence", used in Minnesota's definition of "principal" and "for the purpose of influencing", used in the federal definition of expenditure, mean the same thing, the *Buckley* holding provides guidance to the Board in this matter.

Subsequent to the *Buckley* decision, the Supreme Court further considered what efforts to influence elections may be subject to disclosure requirements. In *McConnell v. FEC*, 540 U.S. 93 (2003), the Court held that the *Buckley* express advocacy restriction was part of the process of statutory construction, employed to narrow the subject statute, but that it did not mean that *only* express advocacy for the election or defeat of a clearly identified candidate could be subject to disclosure requirements.

The *McConnell* Court recognized that communications that avoided the "magic words"<sup>1</sup> of express advocacy could nevertheless be clearly intended to influence an election. The Court concluded that ads that were the "functional equivalent of express advocacy" could be subject to regulation.

In *FEC v. Wisconsin Right To Life*, 127 S. Ct. 2652 (2007), referred to as *WRTL II*, the Supreme Court provided a definition of the "functional equivalent" of express advocacy, holding that:

[A] court should find that an ad is the functional equivalent of express advocacy only if the ad is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate.

Although this Supreme Court precedent is not controlling in the case of advocacy for legislative action, it is instructive and the Board adopts the approach of the Supreme Court in applying the phrase "to influence legislative action" as that phrase is used in defining a principal.<sup>2</sup>

Based on the Supreme Court's guidance, the Board concludes that under §10A.01, subd. 33(2), a communication that (1) expressly advocates for or against legislative action with respect to a clearly identified issue or (2) that is susceptible of no reasonable interpretation other than as an appeal for or against a specific legislative response to a clearly identified issue is presumed to be a communication to influence legislative action.

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<sup>1</sup> The "magic words" include words and phrases such as "vote for", "vote against", "elect" and "defeat."

<sup>2</sup> The same narrowing principles are not necessarily applicable to communications that may make a person a lobbyist under §10A.01, subd. 21 or to communications that may make an association a principal under §10A.01, subd. 33(1). The only question before the Board in this matter is the definition of principal under §10A.01, subd. 33, clause(2).

## Section IV.

### Was influencing legislative action the purpose of the Archdiocese's communication packet?

The Archdiocese urges the Board that "issue advocacy alone cannot be characterized as lobbying." The Board agrees with the principle that issue advocacy alone will not bring an individual under the definition of a "lobbyist" and will not bring an association under the definition of "principal." The packets that are the subject of this investigation clearly included what most would define as "issue advocacy." However, the Archbishop's letter and, arguably, his statement on the DVD go beyond issue advocacy; including an express call for legislative action. As a result, further examination of the materials is required to determine whether the packets, as a whole, are subject to no reasonable interpretation other than as a call for specific legislative action.

If the Archdiocese's packets involved only an express call on the legislature to take a specific action, the communication would be similar to a press release considered in the *Matter of the Complaint of Common Cause Minnesota Regarding the National Organization for Marriage*, decided by this Board on August 16, 2011. Like the Archbishop's letter, the press release reported that the organization called on legislators to take action. In that clear and simple context, the Board concluded that the press release constituted an effort to influence legislative action. However, because only minimal spending was involved, the publication did not make NOM a "principal."

In the present matter the Board encounters communication that is much more complex than the simple press release commented on in the NOM matter.<sup>3</sup>

The packets under consideration included three components: (1) a letter, (2) a video statement from the Archbishop on a DVD, and (3) a program titled "One Man, One Woman – Marriage and the Common Good."

The Board's investigation revealed that the packets sent by the Archdiocese were not identical. Although each contained a letter, only those sent to Church members in the Archdiocese itself included the letter from the Archbishop. Packets mailed to Church members in other dioceses each included a letter from the Bishop of the respective diocese. A copy of each letter is attached to these findings and made a part hereof.

The letters included in packets mailed to the church members in the various dioceses varied considerably in content. The letter from the Bishop of the Diocese of New Ulm, for example, appears to limit its content to teachings of the Church and does not mention a constitutional amendment, voting, or the legislature. Other letters voice support for the concept of a constitutional amendment, but do not include a call on the legislature to act.

The statement of the Archbishop on the DVD with respect to the need for legislative action is significantly less direct than the statement made in his letter. In the statement he makes it clear that the time for a vote on a constitutional definition of marriage has come but he does not make

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<sup>3</sup> This is not to suggest that a communication that includes a call for legislative action can easily be removed from the class of communications that are "to influence legislative action" merely by adding other content or levels of complexity. However, when determining the purpose of a communication the Board will consider the entire communication rather than selective statements that favor one interpretation over another.

any express call on the legislature to take action to make that happen. In addition, the Archbishop's message on the DVD goes into more detail regarding the *issue* of same-sex marriage.

The DVD program, titled "One Man, One Woman – Marriage and the Common Good", by itself, does not constitute a communication to influence legislative action. It does not mention the legislature, legislative action, or the right to vote on the definition of marriage. If this program had been distributed by itself, it is unlikely that this matter would now be before the Board. While the program may support the idea that legislative action is needed, it does not provide support for a conclusion that the packet, as a whole, is subject to no reasonable interpretation other than that its purpose was to influence legislative action.

When considering whether an effort of an association is subject to some reasonable interpretation other than that it is for the purpose of influencing legislative action, the Board looks first and foremost to the communication itself, but also considers limited external factors that may have particular relevance to the determination.

The Board notes that the Archdiocese's communication was published when the legislature was not in session and approximately six weeks before a general election in which all members of the legislature were up for election.<sup>4</sup> The Board also notes that this is the same election in which NOM ran television ads linking the right to vote on a constitutional amendment to a particular party and particular candidates. The Board concluded that those advertisements were to influence voters in the election.

These observations lead to an alternate reasonable interpretation of the Archdiocese's communication: that its purpose was to remind Catholics of the importance the Archdiocese places on the need for a constitutional amendment so that voters would consider the Archdiocese's position on the issue of the legal definition of marriage when they decided for whom to vote. An equally viable alternate purpose is at least implied in the Archdiocese's responses and its attorney's comments to the Board: The communication's purpose was to assist the Archdiocese in maintaining and communicating to its members the Church's consistent and strong position and teachings on the issue of marriage.

When viewing the Archdiocese's communications as a whole, the Board concludes that they are subject to a reasonable interpretation other than to influence legislative action and, thus, did not bring the Archdiocese within the definition of "principal."

### **Conclusion**

In view of the analysis and conclusions reached above, it is not necessary for the Board to address the Archdiocese's remaining contentions: (1) that to be a principal an association must first have a lobbyist and (2) that even without a lobbyist, an association must engage in direct communication with legislators or urge others to do so before it will become a principal.

In resolving the matter on the basis of application of the principal communication definition, the Board does not reach the First Amendment Free Speech issues related to principal disclosure or issues arising under the clauses of the U. S. Constitution or Minnesota Constitution related to religion.

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<sup>4</sup> This observation is not to suggest that a communication to influence legislative action cannot be made at any time of the year. It is made to suggest an alternate reasonable conclusion with respect to the purpose of the particular communication under review.

**Based on the Complaint, the Responses of the Archdiocese, the appearance before the Board by the Archdiocese's attorney, Minnesota Statutes, and the analysis included in this document, the Board makes the following:**

**Findings Concerning Probable Cause**

1. There is no probable cause to believe that the Archdiocese was required to register a political fund as a result its efforts that gave rise to this matter.
2. There is no probable cause to believe that the Archbishop or any other person was required to register as a lobbyist as a result of the efforts of the Archdiocese that gave rise to this matter.
3. There is a sufficient basis on which to reasonably conclude that the Archdiocese's communications were for a purpose other than to influence legislative action. As a result, there is no probable cause to conclude that the Archdiocese became a "principal" as a result of the subject communications.

**Order**

**Based on the above Findings, the Board issues the following Order:**

The Complaint is dismissed. The investigation of this matter is made a part of the public record.

Dated: December 8, 2011

/s/ John Scanlon  
John Scanlon, Chair  
Campaign Finance and Public Disclosure Board

**Attachments:**

Transcript of Archbishop Nienstedt statement from DVD  
Archbishop Nienstedt's letter included with DVD  
Diocese of Crookston Bishop's letter included with DVD  
Diocese of Duluth Bishop's letter included with DVD  
Diocese of Winona Bishop's letter included with DVD  
Diocese of New Ulm Bishop's letter included with DVD  
Diocese of St. Cloud Bishop's letter included with DVD

## Relevant Statutes

### 10A.01 Definitions

. . .  
**Subd. 21. Lobbyist.** (a) "Lobbyist" means an individual:

(1) engaged for pay or other consideration of more than \$3,000 from all sources in any year for the purpose of attempting to influence legislative or administrative action, or the official action of a metropolitan governmental unit, by communicating or urging others to communicate with public or local officials; or

(2) who spends more than \$250, not including the individual's own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action, or the official action of a metropolitan governmental unit, by communicating or urging others to communicate with public or local officials.

. . .

**Subd. 33. Principal.** "Principal" means an individual or association that:

(1) spends more than \$500 in the aggregate in any calendar year to engage a lobbyist, compensate a lobbyist, or authorize the expenditure of money by a lobbyist; or

(2) is not included in clause (1) and spends a total of at least \$50,000 in any calendar year on efforts to influence legislative action, administrative action, or the official action of metropolitan governmental units, as described in section 10A.04, subdivision 6.

### 10A.04

. . .

Subd. 6. Principal reports. (a) A principal must report to the board as required in this subdivision by March 15 for the preceding calendar year.

(b) The principal must report the total amount, rounded to the nearest \$20,000, spent by the principal during the preceding calendar year to influence legislative action, administrative action, and the official action of metropolitan governmental units.

(c) The principal must report under this subdivision a total amount that includes:

(1) all direct payments by the principal to lobbyists in this state;

(2) all expenditures for advertising, mailing, research, analysis, compilation and dissemination of information, and public relations campaigns related to legislative action, administrative action, or the official action of metropolitan governmental units in this state; and

(3) all salaries and administrative expenses attributable to activities of the principal relating to efforts to influence legislative action, administrative action, or the official action of metropolitan governmental units in this state.

## **APPENDIX B: TRANSCRIPT OF ARCHBISHOP NIENSTEDT'S COMMENTS**

An important issue is emerging here in Minnesota that many other states have already grappled with. That is the definition of marriage. During the 2010 legislative session, there have been 5 bills introduced to redefine marriage. One prominent state senator has pledged that next year the legislature will make an all-out effort to change the definition of marriage from being an institution of one man and one woman for the benefit of children and society, to an institution without gender roles, where the desires of individual adults are the primary focus. Naturally, many Catholics want to know the church's position on this critically important issue.

Marriage matters to every Minnesotan, whether or not we personally choose to marry. Intuitively, we realize that it is the natural way we bring together men and women to conceive and raise the next generation. The complementary nature of the sexes is not only at the heart of the human experience, it is one we can see throughout nature, and one that Christ speaks to in the gospel.

Nurturing a thriving natural culture of marriage is critical for society. High rates of fatherlessness, and family fragmentation impoverish children, and leave women with the unfair burden of parenting alone. Children suffer, but so does the whole of society, when marriage fails in its irreplaceable task of bringing together mothers and fathers with their children.

Defining marriage as simply a union of consenting parties will change the core meaning of marriage in the public square for every Minnesotan. At best, so-called same-sex marriage is an untested social experiment. And at worst, it poses a dangerous risk with potentially far-reaching consequences. An exercise of caution should be in order.

Back in the early 1970's, the experts told us that no-fault divorce would liberate women from bad marriages without affecting anyone else. As expected, the divorce rate skyrocketed. Perhaps unexpectedly, we know now that as a result of divorce, as many as one-third of women fall into poverty with their children. Social science was late to catch up with the common-sense wisdom that children need both a Mom and a Dad, working together to protect them.

Throughout history, virtually every society has recognized that marriage is a committed union between one man and one woman. What's more, it has long been acknowledged that marriage is not only about the happiness of adults, but also that is a concern about the well-being of all of society. Which is to say, the common good. Marriage is the way a man and woman bind their love into a lifelong commitment that is mutual, exclusive, and open to new life. Where they promise not only to love each other, but to love any children whom, through God's grace, they create together. Marriage exists in civil law

primarily in order to provide communal support for bringing mothers and fathers together to care for their children.

What will happen to children growing up in a world where the law teaches them that Moms and Dads are interchangeable, and that marriage has nothing intrinsically to do with the bearing and raising of children? We know from experience that in other states, children as young as first-graders are taught by the government that gay marriage and traditional marriage are both the same, and that the influence of the mother and the father on the development of a child somehow doesn't matter.

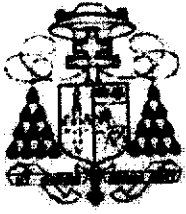
We also know that not all children live in the ideal situation. Many single parents work hard to raise children in less than ideal circumstances. But so-called same-sex marriage would certainly be a declaration by the government that we have officially abandoned the idea that children need both a Mom and a Dad.

There is no question about where the teaching of the Church lies. Marriage is the union of one man and one woman. The Church also teaches that all of us, including our brothers and sisters with same-sex attraction, are children of God with intrinsic human value. The Church's teaching on marriage is not a condemnation of homosexual persons as human beings. It is simply a reflection, not only of the Scriptures, but of the unique procreative nature of the male-female bond.

Whether one accepts the teaching of the Church on marriage or not, I hope we can all agree on this: if we are to change our societal understanding of marriage, it should be the people themselves, and not politicians or judges, who should make this decision. It is for this reason that the Archdiocese believes that the time has come for voters to be presented directly with an amendment to our state constitution to preserve our historic understanding of marriage.

In fact, this is the only way to put the one man-one woman definition of marriage beyond the reach of the courts and politicians. In years past, our elected officials told us that we did not need a marriage amendment because there was no realistic threat from the courts or the legislature. But that clearly is no longer the case.

Thirty-one states have passed marriage amendments, and it's time for Minnesotans to have their say. A question as important as the future of this great social institution should not be decided by a ruling elite, but by the people of Minnesota themselves. The church's position is simple. Marriage is the union of one man and one woman. And to protect this truth, it is time in Minnesota to let the people speak.



*Archdiocese of Saint Paul  
and Minneapolis*

OFFICE OF THE ARCHBISHOP  
MOST REVEREND JOHN C. NIENSTEDT

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CAMPAIGN FINANCE &  
PUBLIC DISCLOSURE BOARD

September 20, 2010

Dear Fellow Catholic,

As the Chief Pastor of the Archdiocese of St. Paul and Minneapolis, I am writing to let you know of an important development that, if successful, will profoundly impact families throughout Minnesota, that is, the organized effort to redefine marriage in our state.

During the 2010 legislative session, there have been five bills introduced to redefine marriage from being an institution of one man and one woman for the benefit of children and society, to an institution without gender roles where the desire of individual adults becomes the primary focus.

Throughout history, marriage has always been understood to be the union of a man and a woman. Intuitively, we realize it is the natural way we bring together men and women to conceive and raise the next generation. The complementary nature of the sexes is not only at the heart of the human experience, it is one we can see throughout nature and, more importantly, one that Christ speaks to us about in the Gospel.

Unfortunately, some politicians are attempting to turn marriage into a political issue. They want to legalize "gay marriage" without giving average Minnesotans a say in the debate.

Defining marriage as simply a union of consenting parties will change the core meaning of marriage in the public square for every Minnesotan. At best, so-called same-sex marriage is an untested social experiment and, at worst, it poses a dangerous risk with potentially far-reaching consequences. An exercise of caution should be in order.

Traditional marriage has been the most pro-family, pro-child institution ever conceived. Marriage is the way a man and woman bind their love into a lifelong commitment that is mutual, exclusive, and open to new life—where they promise not only to love each other, but to love any children whom, through God's grace, they create together. Marriage exists in civil law primarily in order to provide communal support for bringing mothers and fathers together to care for their children.

What will happen to children growing up in a world where the law teaches them that moms and dads are interchangeable and that marriage has nothing intrinsically to do with the bearing and raising of children? We know from experience in other states that children as young as first-graders are taught by the government that gay marriage and traditional marriage are both the same, and that the influence of a mother and a father on the development of a child somehow doesn't matter.



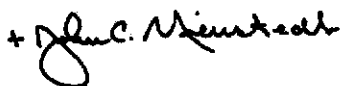
Fellow Catholic  
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Attached is a video that reviews the issues involved in this profound debate. Minnesota is not the first state to grapple with so-called same-sex marriage. Indeed, thirty-one other states have already voted on this important issue. All have voted to preserve traditional marriage.

Whether you agree with the Church's teaching on marriage or not, I hope you will agree that it is the people of Minnesota and not judges or politicians who should decide if we want to redefine marriage in our state. That is why I have called on the Legislature to allow voters to consider a constitutional amendment to preserve marriage as the union between one man and one woman.

I hope you find the attached video informative and helpful, and take the opportunity to discuss it among your family.

Cordially yours in Christ,

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The Most Reverend John C. Nienstedt  
Archbishop of St. Paul and Minneapolis



## The Diocese of Crookston

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*The Chancery*

September 20, 2010

My Dear Christ's Faithful of the Diocese of Crookston,

As you are undoubtedly aware, across our country there have been organized efforts to redefine marriage to include "same-sex unions." The efforts to legalize "gay marriage" have been resisted and fought in 31 of the 50 states. In every jurisdiction where the issue has been placed on the ballot, citizens have voted to uphold the understanding of marriage as a union of one man and one woman.

During the 2010 legislative session, five bills were introduced in the Minnesota Legislature with the intention of changing the legal definition of marriage to include "same-sex unions." It is likely that such bills will surface in the state's upcoming legislative session and so we must be prepared to speak out in defense of marriage and to take the necessary action so that the gift of marriage is respected and protected in our state.

The 2009 Pastoral Letter of the United States Conference of Catholic Bishops, "*Marriage: Love and Life in the Divine Plan*" notes that marriage is a union unlike all others. It is a unique relationship in which a bond is formed between one man and one woman and this two-in-one-flesh communion of persons is an indispensable good at the heart of every family and every society. Same-sex unions are incapable of realizing this specific communion of persons because intrinsic to it is male-female complementarity. Therefore, attempting to redefine marriage to include same-sex unions "empties the term (marriage) of its meaning, for it excludes the essential complementarity between man and woman, treating sexual difference as if it were irrelevant to what marriage is."

The Catholic bishops of Minnesota are supporting an amendment to the Minnesota Constitution to preserve the time-honored and true definition of marriage. We have produced a short DVD about marriage and the importance of preserving marriage in our society as a union of one man and one woman. The DVD is introduced by our metropolitan archbishop, Archbishop John C. Nienstedt. His introduction is followed by a 10 minute segment sponsored by the New Jersey Catholic Conference of Bishops entitled "One Man One Woman, Marriage and the Common Good." This DVD is being distributed to every Catholic household in the State of Minnesota.

I ask that you please take the time to review this DVD. We need to be well informed and, then, to engage in respectful dialogue with others, all doing our part in defense of marriage. And please pray that our efforts in defense of marriage will bear good fruit.

Sincerely, In the name of the Lord Jesus,

Most Rev. Michael J. Hoepfner  
Bishop of Crookston

enc.



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September 20, 2010

Dear Brothers and Sisters in Christ,

"Among the many blessings that God has showered upon us in Christ is the blessing of marriage, a gift bestowed by the Creator from the creation of the human race. His hand has inscribed the vocation to marriage in the very nature of man and woman (see Gn 1: 27-28, 2:21-24)." So the United States Conference of Catholic Bishops wrote in their document *Marriage Love and Life in the Divine Plan 2009*. As your new shepherd, I am writing to let you know of recent developments with respect to marriage and ask your support to share the Good News about marriage between one man and one woman.

During the 2010 legislative session, there have been five bills introduced to redefine marriage from being an institution of one man and one woman for the benefit of children and society, to an institution without gender roles where the desire of individual adults becomes the primary focus. Our culture has lost its way. As Catholics, we have been entrusted with the Good News regarding marriage, the complementarity of the sexes and human sexuality and are called to live and proclaim this truth in love.

Our Metropolitan Archbishop, the Most Reverend John C. Nienstedt, has asked all the Bishops of Minnesota to approach the good People of God and ask their prayers and support in defense of marriage. Attached is a video that reviews the issues involved in this profound debate. Minnesota is not the first state to grapple with so-called "same-sex marriage." Indeed, thirty-one other states have already voted on this important issue and passed amendments to protect the definition of marriage as between one man and one woman. It is the rightful duty of the Christian Faithful to engage this debate in the public forum.

I believe we have learned some important lessons over the years from our work in the Pro-Life Movement. Just as we have grown in positively making the case for the Gospel of Life in a culture of death, so too we are challenged to positively proclaim the traits of marriage—forever, faithful and fruitful—with the greatest love. As Catholics we are unabashedly "pro-life" and "pro-love." We have come to understand that conversion of hearts happens one at a time. Our brothers and sisters who struggle with same-sex attraction deserve our compassion and love and cannot be victims of violence, hatred or unjust discrimination. Like all of God's children we are images of God and are called to love and to be loved. But our society is in need of healing and stands to grow in its understanding and appreciation of the oldest institution in the human race—marriage between one man and one woman. I ask your help. Please watch the video and take the time to pray, to understand, and to act in defense of marriage.

Sincerely yours in Christ,

The Most Reverend Paul D. Siro  
Bishop of Duluth



Office of The Bishop

DIOCESE OF WINONA  
PASTORAL CENTER

September 20, 2010

Dear brothers and sisters in Christ,

I write to you today as your bishop to tell you about a challenge to the teachings of our church and to ask for your help.

Earlier this year, five bills were introduced in the Minnesota Legislature to change the legal definition of marriage to include what has come to be known as "same sex marriage" or "gay marriage." I think that is a frightening situation. Since the beginning of recorded history, societies have discovered that the only life giving and stable definition of marriage is a relationship between one man and one woman. All past experiments, for example polygamy, have failed. Now, we face another social experiment that weakens the most basic foundation of human society.

The six Catholic bishops of Minnesota have decided to support an amendment to the Minnesota Constitution to preserve the time honored definition that marriage is a relationship between one man and one woman. We have produced a short video that explains why the Catholic Church opposes same sex marriage and supports a constitutional amendment. Your copy is enclosed. Please take a few minutes to watch the video so that you will know what the Sacred Scriptures and the Church teaches on the subject of same sex marriage.

Marriage has two purposes. First, it is a stable relationship within which two people live interdependently and support each other through the joys and the challenges of life. Second, marriage is the way in which children are brought into the world and also are raised to be responsible members of society. Marriage is not to be used to create social change. Other generations have resisted giving into cultural agendas to change marriage as established by God. Today, we are responsible for protecting marriage as God created it.

As your bishop and shepherd, I make two requests. First, please watch the video and deepen your understanding about the Church's teaching. Second, please pray for the success of our cause. Pray that marriage between one man and one woman remains the fundamental building block of society.

Sincerely yours in Christ,

Most Rev. John M. Quinn  
Bishop of Winona

**D I O C E S E**  
**of NEW ULM**

Office of the Bishop

September 20, 2010

Dear Fellow Catholic,

As you know, there continues to be much in the news about same-sex marriage. There is a movement in legislatures and the judiciary to change laws so that same-sex marriage is legitimized. What does the Catholic Church teach on marriage?

Going to the *Catechism of the Catholic Church*, we find: "The marriage covenant, by which a man and a woman form with each other an intimate communion of life and love, has been founded and endowed with its own special laws by the Creator. By its very nature it is ordered to the good of the couple, as well as to the generation and education of children" (CCC, no. 1660). So, marriage is founded by God as a union between a man and a woman. As such, marriage, through the sexual union, includes the possibility of the generation of children.

What does the Church teach about same-sex acts? Again, going to the *Catechism*, we find: "They are contrary to the natural law. They close the sexual act to the gift of life. They do not proceed from a genuine affective and sexual complementarity. Under no circumstances can they be approved" (CCC, no. 2357).

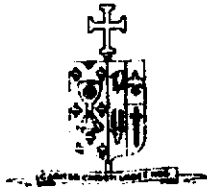
Does this mean that persons with same-sex attractions, who are denied marriage, are discriminated against? Such persons are not discriminated against because God created marriage as the union of a man and a woman, not the union of two persons of the same-sex. Only persons of the opposite sex have a God given right to marriage.

How are persons with same-sex attraction to be treated? The *Catechism* teaches: "They must be accepted with respect, compassion, and sensitivity. Every sign of unjust discrimination in their regard should be avoided" (CCC, no. 2358).

With these teachings of the Church in mind, I am sending each household in the diocese a DVD which explains the importance of preserving marriage in our legal system as the union of one man and one woman. The DVD is introduced by Archbishop John C. Nienstedt. His introduction is followed by a 10 minute segment sponsored by the New Jersey Catholic Conference. It is entitled: "One Man One Woman, Marriage and the Common Good." I ask that you prayerfully and thoughtfully view this DVD. May God bless you.

In Christ,

  
The Most Reverend John M. LeVoir  
The Bishop of New Ulm



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September 20, 2010

Dear Brothers and Sisters in Christ,

I am writing to let you know of an important development that, if successful, will profoundly impact families throughout Minnesota. There is an effort to redefine marriage in our state.

Marriage, between one man and one woman, is important for the common good especially for the benefit of children, which affects the well-being of society and our future generations. Unfortunately, some politicians are attempting to turn marriage into a political issue. Let me be clear that while this has become a political issue, it is not a partisan issue. We are simply affirming what God defines as marriage, and what virtually every culture has understood and lived for countless generations.

To clearly outline the Catholic Church's teachings and the potential consequences if marriage is redefined, the enclosed DVD was produced and is being sent to all Catholic families in the state of Minnesota. We are undertaking this effort to bring to you our concerns regarding the redefinition of marriage and because much of what you will see in the DVD is not commonly discussed in the secular media.

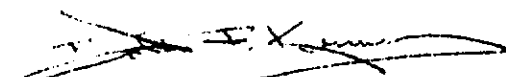
As part of this DVD, Archbishop John C. Nienstedt, from the Archdiocese of St. Paul and Minneapolis, has added a message on behalf of the Minnesota Bishops calling for an amendment to the state constitution which clearly defines, once and for all, that marriage is between one man and one woman. Similar amendments have been brought to the people in thirty-one other states and all have overwhelmingly voted to preserve traditional marriage. We wish Minnesota to join those ranks.

Whether you agree with the Church's teaching on marriage or not, I hope you will agree that it is the people of Minnesota and not judges or politicians who should decide if we want to redefine marriage. That is why the Minnesota Bishops have called on the Legislature to allow voters to consider a constitutional amendment to preserve marriage as the union between one man and one woman.

It is because we care so deeply for the human family and our future generations that we are sending you this message. I hope you find the attached DVD informative and helpful. Please take the opportunity to discuss it among your family.

With kind personal regard, I remain,

Sincerely yours in Christ,

  
+John F. Kinney  
Bishop of Saint Cloud