



COMPLAINT FOR VIOLATION OF THE CAMPAIGN FINANCE AND PUBLIC DISCLOSURE ACT

11 MAR 18 PM 1:41
CAMPAIGN FINANCE &
PUBLIC DISCLOSURE BOARD

All information on this form is private and confidential until a finding is issued by the Board.

Information about complaint filer

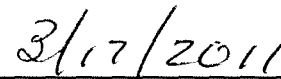
Name of complaint filer Kurt M Anderson	
Address PO Box 2434 (office address)	
City, state, zip Minneapolis MN 55402-0434	Daytime telephone no. 612-333-3185

Identify person/entity you are complaining about

Name of person/entity being complained about Archdiocese of St. Paul and Minneapolis and XYZ unknown entity (principals or political funds) and Jane or John Roe, unknown individual lobbyists
Address 226 Summit Avenue
City, state, zip St. Paul, Minnesota 55102-2197
Title of respondent (if applicable)
Board/Department/Agency/District # (if legislator)



Signature of person filing complaint



Date

Send completed form to: Campaign Finance & Public Disclosure Board
Suite 190, Centennial Building
658 Cedar Street
St. Paul, MN 55155

If you have questions call: 651/296-1721; 800/657-3889; or
for TTY/TDD communication contact us through the Minn. Relay Service at 800/627-3529
Board staff may also be reached by e-mail at: cf.board@state.mn.us.

This document is available in alternative formats to individuals with disabilities by calling 651/296-5148; 800/657-3889; or through the Minnesota Relay Service at 800/627-3529.

Give the statute cite of the portion of Chapter 10A, or Minn. Rules you believe has been violated.
10A.03, .04, .12

You will find the complete text of Minn. Stat. §10A and Minn. Rules Chapters 4501 - 4525 on the Board's website at www.cfboard.state.mn.us .

Nature of complaint

Explain in detail why you believe the respondent has violated Chapter 10A, the Campaign Finance and Public Disclosure Act. Attach an extra sheet of paper if necessary. Attach any documents, materials, minutes, resolutions or other evidence to support your allegations.

See Attachment to Complaint

Enclosure (9/20/2010 mailing package from Respondent)

THIS COMPLAINT WITHDRAWS AND REPLACES A COMPLAINT MAILED
APPROXIMATELY MARCH 1, 2011.

Minn. Stat. 10A.02, subd 11 - Violations; enforcement.

The board shall investigate any alleged violation filed in writing with the board. For an alleged violation of sections 10A.25 (expenditure limits) or 10A.27 (additional limits) the board shall either enter into a conciliation agreement or make a public finding of whether or not there is probable cause, within 60 days of the filing of the complaint. For alleged violations of all other sections, the board shall within 30 days after the filing of the complaint make a public finding of whether or not there is probable cause to believe a violation has occurred.

The deadline for action may be extended by a majority vote of the board. Within a reasonable time after beginning an investigation of an individual or association, the board shall notify that individual or association of the fact of the investigation. The board shall make no finding without notifying the individual or association of the nature of the allegations and affording an opportunity to answer those allegations.

Any hearing or action of the board concerning a complaint or investigation shall be confidential until the board makes a public finding concerning probable cause or enters into a conciliation agreement.

Except as provided in section 10A.28, after the board makes a public finding of probable cause the board shall report that finding to the appropriate law enforcement authorities.

ATTACHMENT TO COMPLAINT - BALLOT QUESTION AND/OR LOBBYING

Facts

1. On September 20, 2010, approximately six weeks before a general election involving both houses of the Minnesota Legislature, Archbishop John Nienstedt and the Archdiocese of Minneapolis and St. Paul sent a letter and enclosed DVD regarding a constitutional amendment banning the legal recognition of homosexual marriage¹ in Minnesota. The letter and an enclosed DVD made an argument in favor of placing such an amendment on a general election ballot.
2. According to media reports (e.g., Google search terms “Nienstedt DVD”) the mailing went to 400,000 Roman Catholic households throughout Minnesota. I was one of those recipients. The original mailing materials (envelope, letter, DVD and DVD sleeve) that I received are enclosed with this complaint. I am uncertain whether different versions of this mailing were sent to other recipients.
3. The Archbishop’s cover letter stated in part that, “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’s statement that “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.” *An Important Message from Archbishop John C. Nienstedt*, at 0:05:00. The remainder of the letter and DVD material supported this call for a constitutional amendment.
4. The Archbishop and I have exchanged informal correspondence in which he asserts, as he did in the original mailing, that the mailing was in furtherance of his pastoral functions. He did not address my inquiry as to how he would categorize the letter and DVD under Minn. Stat. Ch. 10A.
5. The Archdiocese is a Minnesota Nonprofit Corporation, Minn. Secy. of State filing no. CH-600, in existence since 1883. I am inferring from the return address that the expenditures for this mailing, under USPS St. Paul Nonprofit Permit No. 3923, were made by the Archdiocese rather than by the Archbishop himself. I assume there is no dispute that this permit is held by the Archdiocese.
6. In the Roman Catholic Church, Minnesota is divided into five dioceses (headquartered in Crookston, Duluth, St. Cloud, New Ulm, and Winona) and the Archdiocese, headquartered in St. Paul. The dioceses are headed by bishops and the Archdiocese by the Archbishop. All six have separate territorial jurisdictions, and the “metropolitan” Archbishop has limited oversight

¹ I could use the longer phrase “whether some homosexual [or gay] relationships should be granted legal recognition as marriages,” but I choose to use the above shorthand reference for purposes of brevity. Nothing in my complaint should be taken as expressing an opinion on the merits of the homosexual marriage issue.

responsibility over his “suffragan” bishops. The fundamental church rules are found in the Roman Catholic Canon Law, http://www.vatican.va/archive/ENG1104/_INDEX.HTM.

7. On August 15, 2006, this Board determined that expenditures for public communications related to homosexual marriage are actions related to “the placement of a proposed constitutional amendment on the ballot.” *In re Outfront Minnesota; In re Equality Minnesota*. In those cases, the Board invoked Minn. Stat. § 10A.12, *inter alia*, and required the associations to register and file reports of contributions and disbursements. Apparently because the Board had not previously considered the issue, it found that the violations involved were unintentional.

Subsequently, however, the definition of “Promoting or defeating a ballot question” (§ 10A.01 subd. 7, see italics under “Ballot questions” heading below) was amended to eliminate an apparent statutory overlap between the definitions of ballot question activities and lobbying activities, placing the overlap into the latter category. Laws 2008, c. 295, § 1. If an activity constitutes lobbying, it does not constitute actions related to a constitutional ballot question.

Law

Constitutional rights of free speech and free exercise of religion

At the outset, it is very important to acknowledge Archbishop Nienstedt’s right as an individual to speak out on political issues that pique his interest, and his ecclesiastical role in speaking to us Catholics in his Archdiocese on private matters of personal morality and family life. In this instance, however, the speech contains the Archbishop’s own call for statewide political action, connected with expenditures obviously above the monetary thresholds contained in Chapter 10A. In the political forum, all adult citizens are equal and all are bound by the same rules.

One must also note our current constitutional law allowing corporations such as the Archdiocese to engage in political speech. *Citizens United v. FEC*, 130 S. Ct. 876 (2010). However, “As the Court held in *Citizens United*, ‘disclosure requirements may burden the ability to speak, but they impose no ceiling on campaign-related activities and do not prevent anyone from speaking.’ *Citizens United*, 130 S. Ct. at 914” *Human Life of Washington, Inc v. Brumsickle*, 624 F.3d 990, 1003 (9th Cir. 2010) (additional internal quotes omitted). In the latter case, after applying “exacting scrutiny” to the Washington disclosure statute, the court upheld its constitutionality.

Associations, Political Committees, and Political Funds

Minn. Stat. § 10A.01 subd. 6 provides that:

Association. "Association" means a group of two or more persons, who are not all members of an immediate family, acting in concert.

A single entity by itself can constitute an “association” for purposes of Chapter 10A. *Shakopee Mdewakanton Sioux (Dakota) Community v. Minnesota Campaign Finance & Public Disclosure Bd.*, 586 N.W.2d 406 (Minn. App. 1998). The version of the statutory definition at that time provided listed examples of what is or is not an association, but contained key language, “group of two or more persons, which includes more than an immediate family, acting in concert,” *id.* at 411, that is substantially identical to the present § 10A.01 subd. 6.

The same section defines “Political committee” and Political fund” as two different types of entities:

Subd. 27. Political committee.

"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.

Subd. 28. Political fund.

"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.

The *Outfront Minnesota* and *Equity Minnesota* decisions found that those respondents were lobbying organizations but not political committees. Both respondents had been involved in contacts with legislators and urging others to do so. The Board noted the following distinction: “Associations register with the Board as a ‘political committee’ if the major purpose of the association is to promote or defeat a ballot question. Alternatively, associations register as a ‘political fund’ if the association uses accumulated dues or voluntary contributions to promote or defeat a ballot question. ... An association that does not meet the definition of political committee and makes expenditures of over \$100 [now \$250] to promote or defeat a ballot question must make the expenditure from a political fund.” *E.g., Outfront Minnesota* at 3. The respondents were directed to register as political funds.

Under the present facts, the Archdiocese almost certainly is not a “political committee” but its activities require it to register a “political fund.”

Ballot questions

The Legislature has the sole power to propose constitutional amendments. Proposed amendments are submitted to the voters for their approval or rejection at a general statewide election. Minn. Const. Art. IX.

Minn. Stat. § 10A.01 subd. 7 provides that,

"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). As a matter of general statutory construction, the word "includes" indicates that what follows is not an exhaustive list, *i.e.*, it is interchangeable with the phrase "includes but is not limited to." *American Sur. Co. of New York v. Marotta*, 287 U.S. 513, 517 (1933); *Richardson v. National City Bank of Evansville*, 141 F.3d 1228, 1232 (7th Cir. 1998).

If subd. 7 were construed to mean that the only activities "related to qualifying the question" were lobbying activities, and then those activities were carved out from the subdivision, the exception would swallow the rule and the phrase would have no application to any activities. This would violate a fundamental rule of construction, that all words are to be given effect. *Knudson v. Anderson*, 199 Minn. 479, 483, 272 N.W. 376, 379 (1937); *Flaten v. City of Moorhead*, 51 Minn. 518, 521, 53 N.W. 807, 808 (1892); *Country Joe, Inc. v. City of Eagan*, 548 N.W.2d 281, 284 (Minn.App.,1996), *aff'd*, 560 N.W.2d 681 (Minn. 1997); *see generally* Minn. Stat. §§ 645.17(2) and .26 subd. 1.

Instead, "promot[e]" in this context should be given its ordinary, broad dictionary meaning:

further the progress of (something, especially a cause, venture, or aim); support or actively encourage ... [or] give publicity to (a product, organization, or venture) so as to increase sales or public awareness

Web, http://oxforddictionaries.com/view/entry/m_en_us1281095#m_en_us1281095 (first definition, examples and chemical definition omitted).

Section 10A.01 subd. 9 includes expenditures related to ballot questions as "campaign expenditures."

Under the Board's previous *Outfront Minnesota* and *Equality Minnesota* decisions, expenditures over the reporting threshold for advocacy regarding a constitutional amendment on the subject of homosexual marriage, fell within the "ballot question" registration and disclosure requirements of Minn. Stat. § 10A.12 and related sections of Chapter 10A. A subsequent statutory amendment, italicized in the above quotation, modifies those rulings only to the extent that if the activities constitute lobbying activities, they do not also constitute advocacy regarding a ballot question requiring two categories of registration and disclosure.

Lobbying

Minn. Stat. § 10A.01 provides the following definitions relevant to lobbying issues:

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

... (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.

(b) "Lobbyist" does not include:

[nine exceptions, none applicable to this complaint].

(c) 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.

(d) An individual who provides administrative support to a lobbyist and whose salary and administrative expenses attributable to lobbying activities are reported as lobbying expenses by the lobbyist, but who does not communicate or urge others to communicate with public or local officials, need not register as a lobbyist.

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

(1) spends more than \$500 in the aggregate in any calendar year to ... 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.

Minn. Stat. §§ 10A.03-.04 requires lobbyists to register and file reports with the Board. Section 10A.04 subd. 4(d) requires a lobbyist to disclose "each *original* source of money in excess of \$500 in any year used for the purpose of lobbying to influence legislative action" (emphasis added). Subd. 4(b) requires a total and categorical breakdown of lobbying disbursements for the reporting period. Subd. 6 requires a principal to file reports.

There is no reasonable way that a 400,000 piece mailing in the midst of a general election campaign, reporting the sender's own appeal to the Legislature on a matter within the Legislature's enumerated powers, is not intended to communicate to members of the Legislature, and also to urge others to do so. *Compare* § 10A.01 subd. 18, limiting the definition of "independent expenditures" to those "*expressly* advocating the election or defeat of a *clearly identified* candidate" (emphasis added). This limiting language is not contained in the definition of lobbying.

The \$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 and the one or more contributors to the Archdiocese are the "original source(s)" of the money. If the Archdiocese or another entity authorized more than \$500 on the mailing, it is a principal. *Id.* § 10A.01 subd. 33.

In the event that the mailing is characterized as lobbying, the individual lobbyist is not identified in it and is unknown to me.

No implied exemption from Chapter 10A

The Board should reject the Archbishop's assertion of a pastoral or similar exemption from Minnesota campaign finance law. Such an exemption would create two unequal classes of political advocacy. The Legislature has enacted no such exemption and doing so might violate the establishment clause of the U.S. Constitution, First Amendment. Moreover, as in *Shakopee Mdewakanton Sioux, supra*, a strongly held tradition or belief does not imply an exemption from the campaign finance laws. The Mdewakanton Sioux in that case unsuccessfully claimed that their tribal sovereignty created an implied exemption from Chapter 10A requirements.

In the unlikely event that the Board entertains a pastoral exemption, the burden is on the Archdiocese to establish it in this case. The Archdiocese would have to indicate what precedent there may be, in its 128-year concurrent history with the state of Minnesota, for such a massive expenditure by the Archdiocese regarding a Minnesota political issue. Moreover, considering this question would involve the Board as a secular governmental body in complex questions of Roman Catholic Canon Law, particularly in regard to the relationship between the Archbishop and Catholics residing in the five suffragan dioceses. Canon Laws 381-402 and 436. The Board should avoid that thicket by holding the Archdiocese, as it would any other person or association, to the letter of Minnesota law.

Summary

Under the plain statutory language, the Archdiocese's activities fall within the general scope of ballot question activities. The only question is whether they satisfy the definitions of lobbying activities, in which case they come within the recently enacted lobbying carve-out and the lobbying provisions apply instead. One way or the other, they are regulated by Chapter 10A.

The 2008 amendment to Minn. Stat. § 10A.01 subd. 7 eliminated a statutory overlap between ballot question activities and lobbying activities, but it did not create a gap between them. The activities described in this complaint constituted one or the other.

My preference is to categorize them as ballot question activities, only because that would not require any individual to register as a lobbyist. Ultimately, however, I do not have an immutable position as to which of the two categories apply, as long as the required registrations and disclosures occur under one of them. I leave it to the Board to determine which of the two apply.

Requested Relief

1. *Registration and full disclosure.* I request that the Board require the Archdiocese retroactively to register as a principal or political fund. If the Archdiocese is a principal for lobbying purposes, the Board should require its cooperation in identifying the individual lobbyist who should then also register. All registrants should file full reports related to the September 20 mailing. I anticipate that the Archdiocese has not segregated these contributions and funds from other financial activities, but nevertheless the Board should require a review, audit if necessary, and fair characterization of the Archdiocesan financial activity related to the financing, production, and mailing of this letter and DVD, and that this activity be deemed the activity of the principal and lobbyist, or political fund.
2. *Disclosure of all versions of mailed materials.* I request that the Board require the Archdiocese to provide copies of all versions of the mailed materials, including any that may have been mailed by any of the dioceses (over any signature) or other entities with the Archdiocese's consent or cooperation. If these disclosures reveal other spenders above the threshold limits, the Board should consider this complaint as applying to those spenders as well as the Archdiocese, and apply the same remedies to those spenders.
3. *Waiver of fines and penalties.* If the Archdiocese, other spenders, and any identified lobbyist promptly and fully comply with the Board's orders in response to this complaint, I request that the Board waive all fines and penalties that it may be empowered to impose.

I am sending a courtesy copy of this complaint (without the enclosure) to the Archdiocese through its legal counsel.

Dated: March 17, 2011

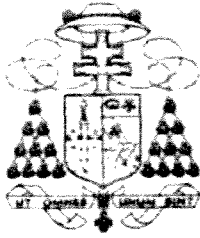
Respectfully submitted,



Kurt M. Anderson # 2148
Attorney at Law
P.O. Box 2434
Minneapolis, Minnesota 55402-0434
(612) 333-3185

Enclosure:
September 20, 2010, mailing package from Archdiocese and Archbishop

cc: Andrew Eisenzimmer, Attorney at Law



*Archdiocese of Saint Paul
and Minneapolis*

OFFICE OF THE ARCHBISHOP
MOST REVEREND JOHN C. NIENSTEDT

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.

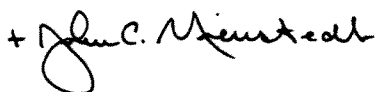
Fellow Catholic
September 20, 2010
Page 2

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,

A handwritten signature in black ink, reading "John C. Nienstedt". The signature is written in a cursive style with a small cross at the beginning.

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