

2012 AM 9:21

CAMPAIGN FINANCE &
PUBLIC DISCLOSURE BOARD

**COMPLAINT FOR VIOLATION OF
CAMPAIGN FINANCE AND PUBLIC DISCLOSURE ACT
SUBMITTED BY COMMON CAUSE MINNESOTA**

Minnesota for Marriage

Common Cause Minnesota (“**Common Cause**”) is a nonprofit, nonpartisan organization dedicated to improving the way state government operates. Common Cause believes that complete and full disclosure as permitted under the Constitution is essential to ensure a fair, open, and transparent public debate on the proposed Constitutional Amendment to ban same-sex marriage in Minnesota (“**Marriage Amendment**”). On the critical importance of disclosure and transparency in any election, Common Cause, the United States Supreme Court, and Federal Courts interpreting Minnesota’s disclosure laws agree: “transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages.” *Minn. Citizens Concerned for Life, Inc. v. Swanson*, 741 F. Supp. 2d 1115, 1129 (D. Minn. 2010) (citing *Citizens United v. FEC*, 130 S. Ct. 876, 916 (2010)), *aff’d*, 640 F.3d 304 (8th Cir. 2011) (upholding Minnesota’s disclosure, reporting and recordkeeping laws applicable to corporate independent expenditures).

Common Cause files this complaint against Minnesota for Marriage (“**MFM**”) for violating Minn. Stat. §§ 10A.025, 10A.20, and 10A.29. Upon information and belief, MFM filed a false report with the Campaign Finance and Public Disclosure Board (“**Board**”) by not itemizing and disclosing the names of all individuals who contributed more than \$100 to MFM’s campaign in support of the Marriage Amendment.

For many months, MFM has expressed disagreement with Minnesota’s disclosure laws and the Board’s efforts to implement those laws in the context of ballot question campaigns. But disagreement is no excuse for noncompliance. The Legislature authorized the Board to investigate and hold MFM accountable for its failure to itemize and disclose its contributors, and the Board should do exactly that.

Relevant Documents Attached to This Complaint

1. Attachment A – *Report of Receipts and Expenditures* filed by MFM on January 31, 2012, which was obtained from the Board’s website.
2. Attachment B – *Report of Receipts and Expenditures* filed by the Minnesota Catholic Conference Marriage Defense Fund on January 31, 2012, which was obtained from the Board’s website. This report includes the 2011 *Disclosure Statement for Corporations and other Unregistered Associations Contributed to Independent Expenditure Committees and Funds* prepared by the Archdiocese of St. Paul and Minneapolis, the Diocese of Duluth, and the Diocese of New Ulm.
3. Attachment C – *Report of Receipts and Expenditures* filed by the Minnesota Family Council Protection Fund (“**MFC Political Fund**”) on January 31, 2012, as amended on February 1, 2012, which was obtained from the Board’s website. This report includes

the 2011 *Disclosure Statement for Corporations and other Unregistered Associations Contributed to Independent Expenditure Committees and Funds* prepared by the Minnesota Family Council (“MFC”).

4. Attachment D – *Report of Receipts and Expenditures* filed by the National Organization for Marriage Political Fund on January 31, 2012, which was obtained from the Board’s website. This report includes the 2011 *Disclosure Statement for Corporations and other Unregistered Associations Contributed to Independent Expenditure Committees and Funds* prepared by the National Organization for Marriage.
5. Attachment E – Excerpts from the *Report of Receipts and Expenditures* filed by Minnesotans United for All Families (“**Minnesotans United**”) on January 31, 2012, which was obtained from the Board’s website. The complete report, which is 348-pages long, is available at: www.cfbreport.state.mn.us/pdfStorage/2011/CampFin/YE/60054.pdf.
6. Attachment F – Emails sent by MFC or the MFC Political Fund from June 2011 through December of 2011 soliciting financial contributions and volunteers for the pro-Marriage Amendment campaign.
7. Attachment G – MFM website material, including its online donation page.
8. Attachment H – Minnesotans United website material, including its online donation page.
9. Attachment I – Star Tribune guest commentary from John Helmberger (Oct. 13, 2011), chairman and treasurer of MFM, and treasurer of both MFC and the MFC Political Fund.
10. Attachment J – MFC blog post (Oct. 26, 2011).

Factual Background

1. **MFM, MFC, and the MFC Political Fund Have Been Soliciting Contributions for Many Months.**
 - A. **MFM Is the leading coalition of Marriage Amendment supporters, claims broad support from individuals, and solicits contributions from individuals in various ways.**

MFM is the leading coalition of groups and individuals who support the proposed Marriage Amendment. Board A.O. 420 at 1 (Dec. 8, 2011). MFM has registered a political committee with the Board to receive contributions and make expenditures in support of the Amendment. *Id.*

MFM maintains a public website at www.minnesotaformarriage.com. See Attachment G. The main page of the website describes MFM as “a broad coalition of leaders, both inter-faith and people outside the religious community, who support the . . . Marriage Amendment and asked the Legislature to place it on the ballot.” Attachment G at 1. MFM claims to have the support of “a broad range of organizations **and individuals**, including faith leaders from virtually every denomination in Minnesota.” *Id.* at 2 (emphasis added). In a recent press release, MFM

further claims that in 2011, it “generated **incredible, broad-based citizen support** by recruiting over 10,000 volunteers for [its] campaign.” *Id.* at 7 (emphasis added).

MFM expressly advocates passage of the Marriage Amendment on its website. *See generally* Attachment G. MFM also makes material available on its website that is intended to generate financial and volunteer support for its campaign. For example, MFM’s website includes instructions on how individuals should host house parties to support its campaign. Attachment G at 4. These instructions advise the hosts of such parties not to accept cash donations, but to accept and collect donation checks from guests and send them to MFM. *Id.* MFM’s website also makes volunteer cards available, which invite responders to indicate whether they can help the campaign by hosting a house party or by making a financial contribution to the campaign. *Id.* at 5.

The contribution page of MFM’s website invites individuals to contribute in increments of various amounts, including \$100, \$250, \$500, or \$1,000. Attachment G at 3. The contribution page also informs contributors that “[a]ggregate contributions of \$100 or more must be reported to the state.” *Id.*

B. MFC and the MFC Political Fund have been soliciting contributions on behalf of MFM for many months.

MFC is a tax exempt, not-for-profit corporation organized under section 501(c)(4) of the Internal Revenue Code that is actively engaged in supporting the Marriage Amendment. Board A.O. 421 at 1 (Dec. 8, 2011). MFC registered the MFC Political Fund with the Board for purposes of financially supporting the Amendment. (*Id.*) The chairman and treasurer of MFM — John Helmberger — also serves as the treasurer of MFC and the MFC Political Fund. As explained in more detail below, MFM and the MFC Political Fund contributed significant amounts to MFM in 2011. They also solicited contributions from individuals on MFM’s behalf.

For example, shortly after the Marriage Amendment was placed on the ballot in May 2011, MFC and the MFC Political Fund began soliciting financial contributions in support of the Marriage Amendment on behalf of MFM. Attachment F includes a selection of emails sent by either MFC or the MFC Fund, from June 2011 to December 2011, soliciting financial contributions and volunteers for MFM’s pro-Amendment campaign. Representative solicitation emails state, among other things:

Our legislature has given us a once-in-a-lifetime opportunity to protect marriage for our children and grandchildren. We must finish the job and pass the amendment in the 2012 election.

But we can’t do this without your generous financial support. Please [CLICK HERE](#) to make a secure on-line donation of \$25, \$50, \$100 or even more.

It is likely, that if we don’t pass the marriage amendment now, politicians like Sen. Marty will continue their attack on marriage in our legislature until they

succeed.

[CLICK HERE](#) to make a generous financial donation to pass the marriage amendment.

Attachment F at 2 (citing email dated June 28, 2011.)

The following message is from MFC's John Helmberger, who is also Chairman of Minnesota For Marriage, the coalition to pass the Minnesota Marriage Protection Amendment.

...

Please Make A Contribution!

Contrary to Illinois, the Minnesota Legislature wisely placed the Marriage Protection Amendment on the November 2012 ballot allowing the people of Minnesota to decide the question of marriage. But to get it passed we need your generous financial help. Won't you consider making a contribution of \$100, or whatever you can afford? If every one of our supporters gave \$100, we would be well on our way to raising the money we need to communicate with voters throughout the state of Minnesota. You can [make a secure online contribution here](#).

Spread the Word

Help us connect with other supporters. Please forward this email to all the people in your address book including friends, family, church members, neighbors and colleagues and ask them to sign up as a supporter of our campaign. It's the quickest and easiest way to spread the word about the Minnesota Marriage Protection Amendment and ask them to get involved.

Remember to Check out Our Website

Check out our website at www.MinnesotaForMarriage.com. You can find some great information to share with your friends and family about our campaign. While on the website, make sure to connect with us on Facebook, YouTube, follow us on Twitter, see our photo stream on Flickr, spread the word to your friends, and sign up to host a House Party to help recruit others to join the campaign.

The closing of faith based foster care for children is just one of many negative consequences that could occur should marriage be redefined in Minnesota. But we can make sure it doesn't happen by passing the Marriage Protection Amendment and preserving marriage from future judicial or legislative activism.

Please, don't forget to spread the word about our efforts to your friends and make a donation to support our campaign!

May God richly bless you and your family.

Sincerely,

John Helmberger
Chairman

Attachment F at 19 (citing email dated Nov. 21. 2011.)

Although these solicitation emails apparently were sent either by MFC or the MFC Political Fund, the embedded links soliciting contributions in these emails — which do not refer to MFM — direct interested contributors to the donation page of MFM's website. As explained above, that page includes toggle buttons by which individuals are invited to contribute in increments of as much as \$100, \$250, \$500, or \$1,000 and acknowledges that “[a]ggregate contributions of \$100 or more must be reported to the state.” Attachment G at 3.

In sum, beginning at least as early as May 2011, and continuing through December 2011, MFM, MFC, and the MFC Political Fund have regularly sent solicitation emails: (1) soliciting contributions from individuals to help pass the Marriage Amendment; and (2) asking recipients of the emails to forward them on to others who may be interested in contributing to the campaign. These emails always include a link that directs interested contributors to the contribution page of MFM's website.

2. MFM Reported Receiving Contributions of More than \$100 From Only Seven (7) Individuals in 2011.

On January 31, 2012, MFM filed a Report of Receipts and Expenditures for Ballot Question Committees and Funds for the period covering the 2011 calendar year (the “MFM Report”). See Attachment A. The MFM Report consists of only eight (8) pages. *Id.* Mr. Helmberger signed it under penalty of perjury. *Id.*

According to the MFM Report, MFM raised a total of \$830,109.33 in 2011. Contributors to MFM identified in the Report include:

- Only seven (7) individuals for whom MFM provided a name and addresses, but for whom MFM provided no employment information, which is required under Minn. Stat. § 10A.01, subd. (3)(b) for any individual who contributed an aggregate of more than \$100 in the 2011 calendar year. Taken together, these seven individuals contributed a total of \$2,119 to MFM in 2011, representing 0.24% of MFM's total receipts during the year.
- An unknown number of unidentified individuals whose contributions MFM did not itemize, presumably because the aggregate amount each individual contributed in

connection with the Marriage Amendment in 2011 is less than \$100. Taken together, these unitemized contributions account for \$1,986.60 or 0.26% of MFM's total receipts in 2011.

- The Minnesota Catholic Conference Marriage Defense Fund (\$350,000 – 42% of MFM's total receipts);¹
- The MFC Political Fund (\$226,000 – 27% of MFM's total receipts);² and
- The National Organization for Marriage Political Fund (\$250,000 – 30% of MFM's total receipts).³

3. Minnesotans United Reported Receiving Contributions of More than \$100 From Seven Hundred Forty (740) Individuals in 2011.

Minnesotans United for All Families (“Minnesotans United”) is the leading coalition of groups and individuals who oppose the Marriage Amendment. Like MFM, Minnesotans United has registered a political committee with the Board to receive contributions and make expenditures in connection with the ballot question. And, like MFM, Minnesotans United maintains a public website at www.minnesotansunitedforallfamilies.com, through which it solicits contributions from individuals. See Attachment H.

On January 31, 2012, Minnesotans United filed a Report of Receipts and Expenditures for Ballot Question Committees and Funds for the period covering the 2011 calendar year (the “Minnesotans United Report”). See Attachment E. The report consists of nearly 350 pages (compared to MFM's eight page report), and it provides the name, address and employment information for 773 individual contributors of \$100 or more (compared to MFM's seven itemized contributors), accounting for \$609,116.33 of its total reported receipts.

Discussion

MFM and Minnesotans United are the leading advocacy organizations on opposite sides of the Marriage Amendment. MFM and Minnesotans United both claim to have broad public support from different groups and individuals. Both organizations have solicited contributions to their respective campaigns, and both maintain public websites through which individuals are encouraged to contribute to their campaigns. As a result of their fund raising efforts, Minnesotans United reported 773 individual contributors of \$100 or more in 2011, totaling

¹ Original source disclosure reports indicate only that the Archdiocese of Minneapolis and St. Paul, the Diocese of New Ulm, and the Estate of J. Scheuer were the original sources of this contribution. See Attachment B.

² Original source disclosure reports indicate only that the MFC was the original source of this contribution. See Attachment C.

³ Original source disclosure reports provide no indication of the original sources of this contribution. See Attachment D.

\$609,116.33. During the same time period, MFM claims to have received contributions of \$100 or more from only seven individuals, totaling approximately \$2,000, and representing a mere 0.24% of its total receipts. Although it is possible that one side's grassroots support is much stronger than the other's, it stretches all credibility that grassroots support for the Marriage Amendment is less than one percent of its opposition. Simply put, the MFM Report fails to pass the smell test.

Minnesota's campaign finance laws define a "contribution" to include any "money . . . that is given to a political committee [or] political fund." Minn. Stat. § 10A.01, subd. 11(a). Political committees and funds must itemize all contributions from individual donors whose aggregate contributions in a calendar year exceed \$100. Minn. Stat. § 10A.20, subd. (3)(b); *see also* Board A.O. 419 at 2 (Jan. 3, 2012); Board A.O. 421 at 4. Itemization requires the reporting entity to disclose the name, address, and employer, or occupation if self-employed, of each donor who has made aggregate contributions to the reporting entity that exceed \$100 in the calendar year. Minn. Stat. § 10A.20, subd. (3)(b). When a contribution received from an individual in a calendar year is added to previously reported unitemized contributions from the same individual and the aggregate exceeds the \$100 disclosure threshold, the name, address, and employer, or occupation if self-employed, of the individual must then be disclosed by the political committee or fund. *Id.*

By contrast, an "unregistered association" (an organization that does not have a major purpose of influencing a ballot question election) must only disclose the names and addresses of individuals who make a donation specifically designated for the unregistered association's ballot question advocacy, or, in certain circumstances, individuals who made non-designated contributions and whose proportionate share of ballot question expenditures is \$1,000 or more. *See* Board Statement of Guidance, June 30, 2011; *see also* Board A.O. 419 at 6; Board A.O. 420 at 2-3. If an organization solicits contributions for the purpose of influencing a ballot question, any transfer of funds in response to such a solicitation is a "contribution" that must be reported. *See* Board Statement of Guidance, Oct. 4, 2011; *see also* Board A.O. 419 at 2-3; Board A.O. 421 at 8-9. The Board has stated that money given in response to a solicitation including an express request for money to support an organization's campaign to promote or defeat a ballot question, or that is the functional equivalent such a request, is a reportable contribution. *Id.*

These contribution and original source disclosure laws serve the public's interest in fair and transparent ballot question campaigns. Indeed, they are the mechanism that "enables the electorate to make informed decisions and give proper weight to different speakers and messages." *Minn. Citizens Concerned for Life*, 741 F. Supp. 2d at 1129 (citing *Citizens United*, 130 S. Ct. at 916 (2010), *aff'd*, 640 F.3d 304).

MFM and its representatives have been soliciting contributions to MFM's campaign in support of the Marriage Amendment for many months. Through their websites and solicitation emails and house parties and volunteer cards, MFM and its organizational partners have been soliciting contributions and creating lists of potential contributors. Despite these organized and concerted efforts to solicit contributions for so many months, MFM reports that only seven

people actually made a contribution to MFM of \$100 or more (amounting to slightly more than \$2,000), and an unknown number of people actually made a contribution of less than \$100 (amounting to slightly less than \$2,000). These numbers lead to one of two conclusions: (1) either MFM's support is startlingly weak, contrary to its claims of broad-based support; or (2) MFM violated the campaign finance laws by failing to report required contributor information or by redirecting contributors to an intermediary organization for the purpose of avoiding required disclosures.

As the agency charged with investigating suspected noncompliance with Minnesota's campaign finance laws, the Board cannot allow what appears to be a violation of the law to hide behind a veil of secrecy simply because MFM avoided making public statements revealing its noncompliance. The stark contrast between MFM's claims of broad public and active solicitation from individuals with its virtual lack of individual donor disclosure must cause the Board to investigate the underlying basis of the MFM Report.

The MFM Report is a manifestation of MFM's opposition to Minnesota's disclosure laws and the Board's recent guidance in this area. In fact, as the Board well knows, MFM and its supporters have taken every opportunity to speak out against these laws and the Board's guidance. In connection with the Board's summer and fall meetings, for example, MFM and its supporters repeatedly objected and spoke out against Board's efforts to enforce Minnesota laws that require individual contributor and original source disclosure. In an October 2011 guest commentary published in the Star Tribune, Mr. Helmberger expressed the continuing disdain MFM and its supporters have for Minnesota's disclosure rules. See Attachment I. In a more recent press release describing the MFM Report — in which MFM claims "substantial and broad-based support" for its campaign, notwithstanding the virtual lack of any individual contributor disclosure in its Report — MFM opines that it believes the Board's disclosure rules and guidance exceed the Board's authority. See Attachment G at 7. And, last but not least, MFM's supporters have gone so far as to suggest that "[v]oters. . . have no more right to know who is financially backing speech about the [Marriage Amendment] than they have a right to know which way anyone will vote on it." Attachment J.

MFM's policy objections to Minnesota's disclosure laws and the Board's guidance in this area are no excuse for noncompliance. Given MFM's efforts to solicit individual contributions and its claim of broad based support from individuals and organizations, it is inconceivable that MFM's well organized and coordinated efforts to solicit financial contributions resulted in only seven individuals contributing more than \$100 in 2011. Accordingly, the Board must investigate the underlying basis of the MFM Report, and in particular MFM's failure to disclose the names, addresses, and employment information of individuals who contributed \$100 or more in the aggregate.

VIOLATIONS OF MINNESOTA LAW

The Board is the agency responsible for enforcing Chapter 10A and for investigating instances of suspected noncompliance. The incredible lack of disclosure in MFM's report, in light of its own statements about the strength of its public support and its intent to not report contributor

information, is sufficiently suspicious that the Board must exercise its authority to investigate MFM's practices. The particular violations of law the Board should investigate are as follows:

1. Filing a False Campaign Report.

Upon information and belief, MFM filed a false statement with the Board by failing to itemize its individual contributors, as required under Minn. Stat. § 10A.20. An individual who signs and certifies to be true a report or statement submitted to the Board knowing it contains false information, or who knowingly omits required information from a report, is guilty of a gross misdemeanor and is subject to a civil penalty of up to \$3,000. Minn. Stat. § 10A.025, subd. 2.

If the Board finds, as appears to be the case, that the MFM Report is a false statement, it also must conclude that MFM knowingly filed the false Report, given the Board's clear guidance and advisory opinions in this area, which have been issued to MFM itself. *See* Board A.O. 420. A knowing violation is a gross misdemeanor, with a maximum civil penalty of \$3,000.

Finally, and perhaps most importantly, the Board must order MFM to itemize its individual contributions as required under Minnesota law.

2. Conspiring to Circumvent Minnesota's Disclosure Laws.

If MFM's public support is as strong as it has claimed on its website and in public statements, then the sheer absence of individual contributors begs another question: Has MFM circumvented Minnesota's disclosure laws by directing contributors to make donations to one of MFM's supporting organizations, which are unregistered associations under Minnesota law. Although unregistered associations have fewer disclosure obligations than registered ballot question committees or funds, even unregistered associations must report contributions that are specifically designated for ballot question advocacy. Redirecting contributions to an intermediary organization for the purpose of avoiding disclosure is circumvention prohibited by Minn. Stat. § 10A.29.

In 2010, the Board defined circumvention in the case of Margaret (Kelliher) for Governor Committee. In that case, the Board stated: "In considering the matter of circumvention, it is important to recognize that if the act of redirection and the purpose of avoiding limits or disclosure requirements both exist, a violation has occurred. It is not necessary that the participants knew that what they were doing was prohibited. A violation of Section 10A.29 may occur even if the participants believed that their course of conduct was permitted under Chapter 10A." Board Findings in the Matter of the Complaint Against Margaret (Kelliher) for Governor Committee and the Minnesota Democratic Farmer Labor Party State Central Committee (Jan. 10, 2010).

Again, the circumstances here are so suspicious it is imperative that the Board use its investigative authority to inquire further. If circumvention is found, the Board should impose the maximum penalty of \$3,000.

Requested Actions

1. Expedited Consideration

Because the issues raised in this complaint involve interpretation of laws that could have widespread application and a material impact on the conduct of the upcoming election by independent organizations, the Board should consider this complaint on an expedited basis.

2. Penalties

In sum, Common Cause calls on the Board to exercise its investigative authority over this important matter. If it finds that MFM has violated Sections 10A.025, 10A.20, and 10A.29 of the Minnesota Statutes, considering the nature of the violations and MFM's knowledge of and brazen violation of the disclosure laws, Common Cause encourages the Board to send a clear message by imposing the maximum penalty. At a minimum, the Board should:

- Assess a civil penalty against MFM of \$3,000 for filing a false campaign report.
- Charge Mr. Helmberger with a gross misdemeanor for signing a false campaign report.
- Assess a civil penalty against MFM for circumvention.

Common Cause Minnesota



by Mike Dean

2323 E Franklin Ave

Minneapolis, MN 55406

Phone - 612-605-7978

mdean@commoncause.org