

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

**PRIMA FACIE
DETERMINATION**

IN THE MATTER OF THE COMPLAINT OF JON ERIK KINGSTAD REGARDING JIM SCHULTZ FOR MINNESOTA ATTORNEY GENERAL, KOCH INDUSTRIES, INC., FLINT HILLS RESOURCES PINE BEND, LLC, KOCH COMPANIES PUBLIC SECTOR, LLC, PINE BEND PAC, RON EIBENSTEINER, CENTER OF THE AMERICAN EXPERIMENT, AND UPPER MIDWEST LAW CENTER

On October 11, 2022, the Campaign Finance and Public Disclosure Board received a complaint submitted by Jon Erik Kingstad regarding James Schultz, a candidate for attorney general, and his principal campaign committee, Jim Schultz For Minnesota Attorney General, the Pine Bend PAC, a political committee assigned Board registration number 40821, Koch Industries, Inc., Flint Hills Resources Pine Bend, LLC, Koch Companies Public Sector, LLC, Ron Eibensteiner, the Center of the American Experiment, and the Upper Midwest Law Center. On October 13, 2022, the Board received a supplement to the complaint submitted by Mr. Kingstad. For purposes of this prima facie determination the supplement will be considered part of the original complaint.

Pine Bend PAC and Koch Industries, Inc. and its Subsidiaries and Affiliates

The complaint alleges, and campaign finance reports filed with the Board by the Schultz committee and the Pine Bend PAC reflect, that the Pine Bend PAC made a \$2,500 monetary contribution to the Schultz committee in September of 2022. The complaint asserts, and Board records reflect, that the Pine Bend PAC is a political committee and is not an independent expenditure political committee. The complaint alleges that the contribution made by the Pine Bend PAC was a corporate contribution prohibited by Minnesota Statutes section 211B.15. The complaint does not allege that the Pine Bend PAC is a corporation. Rather, the complaint asserts that:

Pine Bend PAC has been accepting and making contributions for over 20 years on behalf of Koch Industries, Inc., Flint Hills Resources Pine Bend, LLC, and other subsidiaries and affiliates of Koch Industries, Inc. and the owners and principal officers and directors of Koch Industries, Inc., including Charles G. Koch and the late David Koch.

The complaint alleges, and campaign finance reports filed with the Board by the Pine Bend PAC reflect, that David Koch made a \$20,000 contribution to the Pine Bend PAC in 2010 and Charles Koch made a \$25,000 contribution to the committee in 2011. The complaint asserts that those contributions were made using “the corporate or personal funds of the late David Koch and Charles G. Koch” and that the “Pine Bend PAC and its agents have commingled [those funds] with other contributions from members, employees, agents and officers of Koch Industries, Inc. and its subsidiaries and affiliates.” On that basis the complaint alleges that the Pine Bend PAC violated Minnesota Statutes section 10A.12, subdivision 2, which generally prohibits the commingling of the contents of an association’s political fund with other funds.

The complaint states that the Pine Bend PAC's treasurer, Matthew Lemke, is employed by Koch Companies Public Sector, LLC and Flint Hills Resources Pine Bend, LLC, which the complaint alleges are subsidiaries of Koch Industries, Inc. The complaint asserts that Charles Koch, as an officer of Koch Industries, Inc., manager of Koch Companies Public Sector, LLC, and principal owner of Flint Hills Resources Pine Bend, LLC, "knows who is contributing and how much and has the authority and right . . . to direct the expenditure of funds contributed to Pine Bend PAC."

The complaint alleges that Koch Industries, Inc. and Flint Hills Resources Pine Bend, LLC are defendants in a legal action, *State of Minnesota v. American Petroleum Institute, et al.*¹ The complaint references statements by Mr. Schultz quoted within an August 2022 Star Tribune article describing that action as "frivolous" and "fundamentally about business harassment." The complaint asserts that these and similar statements by Mr. Schultz:

were made by Schultz as a signal to communicate . . . that he and the Jim Schultz for Minnesota Attorney General Campaign would accept contributions directly or indirectly from any of the Defendants, including Koch Industries, Inc. and Flint Hills Resources Pine Bend, LLC, as *quid pro quo* for his commitment that, if elected as Minnesota Attorney General, he would fire the attorneys assigned to the case and corruptly delay, abate or discontinue, if not effect a voluntary dismissal of, the prosecution of *State of Minnesota v. American Petroleum Institute, et al.*,

Also, within a footnote the complaint raises the possibility that Mr. Schultz violated Minnesota Statutes section 609.42, which prohibits acts of bribery, when his campaign committee accepted a contribution from the Pine Bend PAC.

Ron Eibensteiner, the Center of the American Experiment, and the Upper Midwest Law Center

The complaint alleges, and Board records reflect, that Ron Eibensteiner was the chair of the Schultz committee when the committee registered with the Board in December of 2021. Board records reflect that Mr. Eibensteiner was replaced as chair on June 13, 2022. The complaint asserts that when Mr. Eibensteiner was appointed as chair of the committee, Mr. Schultz knew that he was the chair of the board of directors of the Center of the American Experiment (CAE) and was a member of the board of directors of the Upper Midwest Law Center (UMLC). The complaint alleges that the CAE and the UMLC are each nonprofit corporations that do not qualify for the nonprofit corporation exemption under Minnesota Statutes section 211B.15, subdivision 15.

The complaint alleges that the CAE and the UMLC conducted "lobbying campaigns against legislative action and administrative action in Minnesota to address climate change which are consistent and in concert with having received funding from business corporations who have been charged with conducting the false advertising campaign in" *State of Minnesota v. American Petroleum Institute, et al.* The complaint alleges that the CAE, which is a lobbyist principal, "has never reported the direct payments to its lobbyists in this state as required by" Minnesota Statutes section 10A.04, subdivision 6, paragraph (c), clause (1). The complaint further alleges that the CAE has failed to provide

¹ The Ramsey County District Court case number is 62-CV-20-3837.

information to its lobbyists pursuant to Minnesota Statutes section 10A.04, subdivision 3, regarding “each original source of money in excess of \$500 in any year used for the purpose of lobbying,” which lobbyists must include within reports required by that statute. The complaint alleges that this failure has allowed the CAE to conceal whether it receives significant contributions from business corporations.

The complaint alleges that Mr. Eibensteiner “agreed to provide free political consulting services and related information services not publicly available regarding campaign planning, strategy, needs planning, and messaging free of charge on behalf of and for the benefit of” the CAE and the UMLC, to the Schultz committee. The complaint asserts that in return for those services, Mr. Schultz “would make the action of *State of Minnesota v. American Petroleum Institute, et al*, an issue of his campaign and make it known publicly his intention that if elected Minnesota Attorney General, he would” discontinue or delay “the prosecution of the action and fire the attorneys working on the action. . . .” The complaint alleges that in exchange for those services, Mr. Schultz would also criticize climate change as a hoax or otherwise repeat the CAE’s messaging regarding climate change, the oil and fossil fuel industries, etc., and would coordinate with the CAE’s messaging “blaming elected Democratic Party officials, including Ellison, for being anti-police, responsible for rising crime and for the violence and damage which occurred after the murder of George Floyd by a policeman in May, 2020.” The complaint alleges that dismissal of *State of Minnesota v. American Petroleum Institute, et al*. would benefit Mr. Schultz, the CAE, and the UMLC, by avoiding “the possibility of having any significant funding or other contributions from business corporations being revealed and made public.”

The complaint refers to and includes copies of three magazine articles and three blog posts published by the CAE regarding special assistant attorneys general who were involved with *State of Minnesota v. American Petroleum Institute, et al.*, and describing a lawsuit brought by the UMLC on behalf of Energy Policy Advocates seeking data regarding those attorneys. The complaint asserts that those publications are evidence that “Schultz’s campaign is in cooperation and in concert with” the “public relations campaign” of the CAE and the UMLC. Mr. Eibensteiner authored one of the magazine articles, which was published in the Fall 2019 edition of the CAE’s magazine, *Thinking Minnesota*. The complaint does not allege that any of the publications contained express advocacy in support of Mr. Schultz or in opposition to any other candidate for attorney general.

The complaint states, and a campaign finance report filed with the Board by the Schultz committee reflects, that Mr. Eibensteiner made a \$2,500 monetary contribution to the Schultz committee in December of 2021. The complaint alleges that the contribution was made on behalf of the CAE and the UMLC and was “was disguised as a personal ‘independent expenditure’ which was accepted by” the Schultz committee:

as *quid pro quo* for Eibensteiner’s free campaign advice and other services in exchange for the agreement from James Schultz that, if elected as Minnesota Attorney General, he would fire all of the attorneys assigned to *State of Minnesota v. American Petroleum Institute, et al* and discontinue, delay, abate, or dismiss that action.

The complaint asserts that “[t]here is reason to believe that other contributions received and accepted by” the Schultz committee “from members or former members of the CAE Board of

Directors have not been ‘independent expenditures’ but in reality, *quid pro quo* contributions coordinated by” Mr. Eibensteiner as an agent for the CAE and the UMLC, “for the reciprocal benefit and advantage of” those entities. Specifically, the complaint refers to two contributions totaling \$2,500 made to the Schultz committee in 2022 by Douglas Seaton, the president of the UMLC. The complaint asserts that “[t]hese were coordinated contributions by individuals which” the CAE and the UMLC, “as corporations, were prohibited from making . . . and were not ‘independent expenditures’” as defined by Minnesota Statutes section 10A.01, subdivision 18.

Circumvention and Other Allegations

The complaint asks the Board to investigate whether the foregoing alleged facts constituted circumvention of the contribution limits and reporting requirements of Chapter 10A, in violation of Minnesota Statutes section 10A.29. The complaint alleges a violation of Minnesota Statutes section 10A.121, without identifying any independent expenditure or ballot question political committee or fund that allegedly violated that statute and without clearly explaining what conduct occurred that constituted a violation. Lastly, the complaint alleges that one or more entities named in the complaint violated Minnesota Statutes sections 10A.175 through 10A.177, which establish the circumstances under which an expenditure that contains express advocacy is a coordinated expenditure and is not an independent expenditure.

The complaint includes copies of the complaint filed in State of Minnesota v. American Petroleum Institute, *et al.*, labeled Exhibit A; an August 2022 Star Tribune article containing statements by Mr. Schultz regarding that legal action, labeled Exhibit B; an August 2022 blog post published by the Independent Petroleum Association of America regarding that legal action and the Star Tribune’s new coverage, labeled Exhibit C; a portion of a fall 2019 magazine article authored by Mr. Eibensteiner and published by the CAE regarding climate change and the Green New Deal, labeled Exhibit D; a fall 2019 magazine article published by the CAE regarding a lawsuit brought by the UMLC on behalf of Energy Policy Advocates seeking data regarding special assistant attorneys general, labeled Exhibit E; an August 2019 blog post published by the CAE regarding those attorneys, labeled Exhibit F; a June 2021 blog post published by the CAE regarding those attorneys and a lawsuit brought by the UMLC on behalf of Energy Policy Advocates seeking data regarding those attorneys, labeled Exhibit G; a July 2021 blog post published by the CAE regarding the same topic, labeled Exhibit H; and a Spring 2022 magazine article published by the CAE regarding the same topic, labeled Exhibit I.

Determination

Corporate Contributions

Minnesota Statutes section 211B.15, subdivision 1, defines the term corporation to mean “(1) a corporation organized for profit that does business in this state; (2) a nonprofit corporation that carries out activities in this state; or (3) a limited liability company formed under chapter 322C, or under similar laws of another state, that does business in this state.” Minnesota Statutes section 211B.15, subdivision 2, provides that:

(a) A corporation may not make a contribution or offer or agree to make a contribution directly or indirectly, of any money, property, free service of its officers, employees, or members, or thing of monetary value to a political party, organization, committee, or individual to promote or defeat the candidacy of an individual for nomination, election, or appointment to a political office.

(b) A political party, organization, committee, or individual may not accept a contribution or an offer or agreement to make a contribution that a corporation is prohibited from making under paragraph (a).

(c) For the purpose of this subdivision, "contribution" includes an expenditure to promote or defeat the election or nomination of a candidate to a political office that is made with the authorization or expressed or implied consent of, or in cooperation or in concert with, or at the request or suggestion of, a candidate or committee established to support or oppose a candidate but does not include an independent expenditure authorized by subdivision 3.

Minnesota Statutes section 211B.15, subdivision 13 prohibits any individual from aiding, abetting, or advising a violation of that section. Minnesota Statutes section 211B.15, subdivision 15, provides that the prohibition on corporate contributions does:

not apply to a nonprofit corporation that:

- (1) is not organized or operating for the principal purpose of conducting a business;
- (2) has no shareholders or other persons affiliated so as to have a claim on its assets or earnings; and
- (3) was not established by a business corporation or a labor union and has a policy not to accept significant contributions from those entities.

The complaint does not allege that the Pine Bend PAC is a corporation. A contribution made or offered by an entity that is not a corporation is generally not prohibited by Minnesota Statutes section 211B.15, subdivision 2, unless the contribution is made or offered on behalf of a corporation. The complaint alleges that Charles Koch has the authority to direct expenditures made by the Pine Bend PAC. The complaint notes that Charles Koch is an owner and director of Koch Industries, Inc., but does not explain why that status affords him the authority to direct the expenditures of the Pine Bend PAC. Moreover, the complaint does not allege, or include direct evidence indicating, that Charles Koch or any corporation actually directed the Pine Bend PAC to make a contribution to the Schultz committee. The complaint asserts that the "Pine Bend PAC has been accepting and making contributions for over 20 years on behalf of Koch Industries, Inc. . . . and other subsidiaries and affiliates," but does not include direct evidence that any corporation controls the activities of the Pine Bend PAC. The assertion that the treasurer of the Pine Bend PAC is employed by, and a lobbyist for, Koch Companies Public Sector, LLC, does not demonstrate that the treasurer acts on behalf of any corporation. Similarly, the asserted fact that a substantial portion of the contributions received by the Pine Bend PAC were made by employees or owners of Koch Industries, Inc. and its subsidiaries and affiliates, does not demonstrate that any corporation directed the individuals to make

donations on behalf of the corporation, or that the contributions represent circumvention of the provisions of Chapter 10A.

To the extent that the complaint alleges that any corporation directed Pine Bend PAC to make a contribution to the Schultz committee, the complaint does not state a prima facie violation of Minnesota Statutes section 211B.15 by the Pine Bend PAC, Koch Industries, Inc., Flint Hills Resources Pine Bend, LLC, Koch Companies Public Sector, LLC, the Schultz committee, or Mr. Schultz, because that allegation is based on speculation unsupported by evidence. To the extent that the complaint alleges that any individual aided, abetted, or advised a violation of Minnesota Statutes section 211B.15 with respect to the contribution made by the Pine Bend PAC to the Schultz committee, the complaint does not state a prima facie violation of Minnesota Statutes section 211B.15, subdivision 13, because that allegation is based on speculation unsupported by evidence. To the extent that the complaint alleges that David Koch or Charles Koch made a contribution to the Pine Bend PAC using corporate funds, the complaint does not state a prima facie violation of Minnesota Statutes section 211B.15 by the Pine Bend PAC or by any individual, because that allegation is based on speculation unsupported by evidence.

The complaint does not allege that Mr. Eibensteiner, Mr. Seaton, or any other individual, is a corporation. A contribution made or offered by an entity that is not a corporation is generally not prohibited by Minnesota Statutes section 211B.15, subdivision 2, unless the contribution is made or offered on behalf of a corporation. The complaint asserts that monetary contributions made to the Schultz committee by Mr. Eibensteiner, Mr. Seaton, and other “members or former members of the CAE Board of Directors” were made on behalf of the CAE and the UMLC. However, the complaint does not allege, or include evidence indicating, that funds used to make those contributions were provided by the CAE or the UMLC or that either of those organizations directed any individual to make a contribution to the Schultz committee. Therefore, the complaint does not state a prima facie violation of Minnesota Statutes section 211B.15 with respect to monetary contributions made to the Schultz committee by individuals.

The complaint also alleges that services provided by Mr. Eibensteiner were contributions made to the Schultz committee on behalf of the CAE and the UMLC. Minnesota Statutes section 10A.01, subdivision 11, paragraph (c), provides that the term contribution “does not include services provided without compensation by an individual volunteering personal time on behalf of a candidate. . . .” The complaint alleges and includes evidence that Mr. Eibensteiner has served as the chairman of the CAE’s board of directors and as a member of the UMLC’s board of directors, but the complaint does not allege that Mr. Eibensteiner was compensated by those organizations for services that he allegedly provided to the Schultz committee.

The complaint asserts that Mr. Eibensteiner provided services to the Schultz committee on behalf of and for the benefit of the CAE and the UMLC. However, the evidence included in the complaint that appears to be offered in support of that assertion is limited to articles and blog posts indicating that Mr. Eibensteiner has served on the board of directors of each organization and that those organizations have espoused viewpoints on matters of public policy and law that in some cases align with viewpoints espoused by Mr. Schultz and the Schultz committee. The lone article included in the

complaint that was authored by Mr. Eibensteiner was published in 2019, approximately two years before the Schultz committee registered with the Board. The assertions that Mr. Eibensteiner was the chair of the Schultz committee and has also served on the boards of directors of the CAE and the UMLC are not, in themselves, a sufficient basis to investigate whether those organizations compensated Mr. Eibensteiner for services provided to the Schultz committee or in any way directed the provision of those services.

For the forgoing reasons the complaint does not state a prima facie violation of Minnesota Statutes section 211B.15 by Mr. Eibensteiner, the CAE, the UMLC, the Schultz committee, or Mr. Schultz, with respect to services allegedly provided by Mr. Eibensteiner, because that allegation is based on speculation unsupported by evidence.

Circumvention

The complaint asks the Board to investigate whether the foregoing allegations constituted circumvention in violation of Minnesota Statutes section 10A.29, which provides that an individual or association is prohibited from attempting “to circumvent this chapter by redirecting a contribution through, or making a contribution on behalf of, another individual or association. . . .” The complaint does not appear to affirmatively allege circumvention or explain what provision within Minnesota Statutes Chapter 10A may have been circumvented. Moreover, to the extent that the complaint alleges that any particular alleged contribution was redirected or made on behalf of another individual or association, those allegations are not accompanied by direct evidence indicating that the true source of the contribution was a corporation or other type of entity other than the individual or association that was recorded as having made the contribution in question. Therefore, the complaint does not state a prima facie violation of Minnesota Statutes section 10A.29.

Commingling

The complaint alleges that contributions made to the Pine Bend PAC by David Koch and Charles Koch in 2010 and 2011 have been “commingled with other contributions from members, employees, agents, and officers of Koch Industries, Inc. and its subsidiaries and affiliates,” in violation of Minnesota Statutes section 10A.12, subdivision 2. The statute cited in the complaint applies to political funds and does not apply to political committees such as the Pine Bend PAC. However, a very similar provision applies to political committees, Minnesota Statutes section 10A.11, subdivision 5. That statute provides that a political committee “may not commingle its funds with personal funds of officers, members, or associates of the committee.” The complaint does not explain how money given by individuals to the Pine Bend PAC over a decade ago remained the personal funds of those individuals after the money was used to make political contributions to the Pine Bend PAC, such that it would constitute commingling to deposit that money in the same account used for other contributions received by the committee. A political committee does not violate Minnesota Statutes section 10A.11, subdivision 5, if contributions made by some individuals are combined with contributions made by other individuals into the same account. The purpose of the statute is to prevent a committee’s funds from being combined with the personal funds of its officers, members, and associates. The purpose of the statute is not to prevent contributions from multiple sources from

being combined within a single account. For the forgoing reasons the complaint does not state a prima facie violation of Minnesota Statutes sections 10A.11, subdivision 5, or 10A.12, subdivision 2.

Contribution by an Independent Expenditure Political Committee or Fund

The complaint alleges a violation of Minnesota Statutes section 10A.121, which prohibits independent expenditure political committees and funds from making a contribution to “a candidate, local candidate, party unit, political committee, or political fund other than an independent expenditure political committee or an independent expenditure political fund.” The only political committee or fund that is identified in the complaint is the Pine Bend PAC, which the complainant acknowledges is not an independent expenditure political committee or fund, but rather is a general purpose political committee. Also, the complaint does not explain the substance of the alleged violation. Therefore, the complaint does not state a prima facie violation of Minnesota Statutes section 10A.121.

Coordinated Expenditures

The complaint alleges a violation of Minnesota Statutes sections 10A.175 through 10A.177. Those provisions generally describe relationships, communication, and other connections between a candidate and a political committee, political fund, or political party unit, that would cause an expenditure made by one of those entities to be a coordinated expenditure made on behalf of the candidate. Coordination with a candidate is not prohibited by those statutes. Rather, those provisions are used to distinguish between a coordinated expenditure, which is defined as a contribution to the candidate on whose behalf the expenditure is made, and an independent expenditure. There is no means by which an individual or association may violate those provisions because the statutes do not prohibit any particular activity. The complaint therefore does not state a prima facie violation of Minnesota Statutes sections 10A.175 through 10A.177.

Lobbyist Reports

Minnesota Statutes section 10A.04, subdivision 6, requires each lobbyist principal, including the CAE, to file an annual report disclosing the total amounts spent on two categories of lobbying, rounded to the nearest \$20,000. Paragraph (c), clause (1) of that provision provides that those totals must include “all direct payments by the principal to lobbyists in this state.” The complaint alleges that the CAE “has never reported the direct payments to its lobbyists in this state. . . .” Board records reflect that the CAE has filed a report disclosing at least \$20,000 in lobbying disbursements for each of the past six years. To the extent that the complaint alleges that the principal reports filed by the CAE are not inclusive of compensation paid by the CAE to its own lobbyists, the complaint does not state a prima facie violation of Minnesota Statutes section 10A.04, subdivision 6, because that allegation is based on speculation unsupported by evidence.

The complaint alleges that the CAE has failed to provide its lobbyists with information needed to report original sources of funds paid to CAE by other individuals or associations specifically for lobbying in Minnesota. Minnesota Statutes section 10A.04, subdivision 3, provides that “[a]n employer or employee about whose activities a lobbyist is required to report must provide the

information required by subdivision 4 to the lobbyist no later than five days before the prescribed filing date.” Minnesota Statutes section 10A.04, subdivision 4, paragraph (d), provides that “[a] lobbyist must report each original source of money in excess of \$500 in any year used for the purpose of lobbying. . . .” Minnesota Rules 4511.0100, subpart 5, defines the term original source of funds to mean “a source of funds, other than the entity for which a lobbyist is registered, paid to the lobbyist, the lobbyist's employer, the entity represented by the lobbyist, or the lobbyist's principal, for lobbying purposes.”

The complaint alleges that the CAE failed to provide information to its lobbyists regarding each original source of money. The complaint does not identify any original source of money that paid more than \$500 within any year to the CAE or any of its lobbyists for the purpose of lobbying and was excluded from lobbyist reports filed for that year by the CAE’s lobbyists. The complaint does not include evidence that any such original source of money exists or that any failure to report that source was caused by the CAE’s failure to provide information to its lobbyists. Therefore, the complaint does not state a prima facie violation of Minnesota Statutes section 10A.04, subdivision 3, by the CAE, because that allegation is based on speculation unsupported by evidence.

Bribery

The Board does not have investigative authority with respect to Minnesota Statutes section 609.42.

Pursuant to Minnesota Statutes section 10A.022, subdivision 3, paragraph (c), this prima facie determination is made by a single Board member and not by any vote of the entire Board. Based on the above analysis, the Chair concludes that the complaint does not state a prima facie violation of Chapter 10A or of those sections of Chapter 211B under the Board’s jurisdiction. The complaint is dismissed without prejudice.



Faris Rashid, Chair
Campaign Finance and Public Disclosure Board

Date: October 24, 2022