

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

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June 1, 2022
Blazing Star Room
Centennial Office Building
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MINUTES

The meeting was called to order by Vice Chair Soule.

Members present: Asp (by Webex), Flynn (by Webex), Leppik, Soule, Swanson (by Webex)

Members absent: Rashid

Others present: Sigurdson, Engelhardt, Olson, staff; Hartshorn, counsel

MINUTES (May 4 and May 9, 2022)

The following motion was made:

Member Leppik's motion: To approve the May 4, 2022, and May 9, 2022, minutes as drafted.

Vote on motion: A roll call vote was taken. All members voted in the affirmative.

CHAIR'S REPORT

A. 2022 meeting schedule

The next Board meeting is scheduled for 10:30 a.m. on Wednesday, July 6, 2022.

EXECUTIVE DIRECTOR'S REPORT

Mr. Sigurdson presented members with a memorandum that is attached to and made a part of these minutes.

Board Operations - Reporting Periods

Mr. Sigurdson provided an overview of upcoming reporting deadlines for the campaign finance and lobbying programs, as well as the requirement of candidates to file statements of economic interest.

Update on Legislation

Mr. Sigurdson stated that HF 4293 was an omnibus bill that contained changes to Chapter 10A and other statutes under the jurisdiction of the state government and elections committees, as well as provisions addressing transportation and state pension issues. Mr. Sigurdson explained that the bill did not emerge from a conference committee but there is a possibility of a special legislative session.

Staffing Update

Mr. Sigurdson reported that the legal/management analyst position vacated by Jodi Pope has been filled with William Hager, who will assume that role starting June 15.

ENFORCEMENT REPORT

A. Consent Items

1. Administrative termination of lobbyist Cort Holten (2961)

Mr. Olson stated that Cort Holten died on April 8, 2022, and Board staff terminated his lobbyist registrations on behalf of 10 principals as of that date. Mr. Olson explained that another lobbyist is now the designated lobbyist for the principals for which Mr. Holten was previously the designated lobbyist, and is now the reporting lobbyist for Mr. Holten's disbursements made during early 2022.

2. Withdrawal of lobbyist registration of Jeremy Schroeder (2926)

Mr. Olson stated that Jeremy Schroeder registered as a lobbyist for 635 Van Buren LLC on May 12, 2022. Mr. Olson explained that after discussing his registration with Board staff, Mr. Schroeder realized that he will not reach the monetary threshold to be defined as a lobbyist in 2022 and he has requested that his lobbyist registration be withdrawn.

The following motion was made:

Member Flynn's motion: To approve consent items 1 and 2.

Vote on motion: A roll call vote was taken. All members voted in the affirmative.

B. Discussion Items

1. Request for retroactive termination of lobbyists Ani Backa (3085) and Nancy Ryan (4646)

Mr. Olson stated that Rick Evans, the designated lobbyist for Xcel Energy Services, Inc., has requested the retroactive administrative termination of Ani Backa and Nancy Ryan as lobbyists for that principal. Mr. Olson explained that Ms. Backa ceased being employed by the principal in 2017 while Ms. Ryan

was employed by a contractor and has not provided any services to the principal since 2020. Mr. Olson reported that the principal attempted to contact each lobbyist to ask them to file a termination statement but neither has done so. Mr. Olson explained that Mr. Evans has requested that Ms. Backa's lobbyist registration be terminated effective January 1, 2018, and that Ms. Ryan's lobbyist registration be terminated effective January 1, 2021.

The following motion was made:

Member Leppik's motion: To approve the administrative terminations as requested.

Vote on motion: A roll call vote was taken. All members voted in the affirmative.

C. Waiver Requests

Entity	Late Fee/ Civil Penalty	Report Due	Factors and Recommended Action	Board Member's Motion	Motion	Vote on Motion
1. Howe (John) Volunteer Committee (17726)	\$25 LFF	2022 1st Quarter	Report due 4/14/2022 was filed one day late. Candidate was out of town attending to a seriously ill family member the day the report was due and was unable to file the report until the following day. The report was a no-change statement listing a cash balance of \$17,061. RECOMMENDED ACTION: Waive	Leppik	Approve the staff recommendation for requests 1 through 5	A roll call vote was taken. All members voted in the affirmative.
2. Automotive Service Political Action Committee (40683)	\$50 LFF	2022 1st Quarter	Report due 4/14/2022 was filed 4/18/2022. Treasurer completed the report on time but the committee's office manager had a family medical emergency and was unable to scan and email the report until after the due date. RECOMMENDED ACTION: Waive	Leppik	Approve the staff recommendation for requests 1 through 5	A roll call vote was taken. All members voted in the affirmative.

<p>3. Tarryl Clark (Stearns County Commissioner)</p>	<p>\$5 LFF</p>	<p>2021 Annual EIS</p>	<p>EIS due 1/31/2022 was filed 2/15/2022, the day the late filing fee began to accrue. Official was unsure of how to complete a portion of her EIS but spoke with Board staff and thought she had filed her EIS a few days before the late fee began to accrue. It appears that she saved her information but did not click the submit button. RECOMMENDED ACTION: Waive</p>	<p>Leppik</p>	<p>Approve the staff recommendation for requests 1 through 5</p>	<p>A roll call vote was taken. All members voted in the affirmative.</p>
<p>4. MN Assn of Wheat Growers (3607)</p>	<p>\$25 LFF</p>	<p>2021 Lobbyist Principal</p>	<p>Report due 3/15/2022 was filed one day late. Principal's CFO, who used to complete the report each year, retired, and the contractor that is handling the principal's finances wasn't contacted by the principal until the afternoon the report was due. Principal's registration information has now been updated to list the contractor as the principal's contact. Principal has been registered with the Board since 1995 and has no recent history of late filings. RECOMMENDED ACTION: Waive</p>	<p>Leppik</p>	<p>Approve the staff recommendation for requests 1 through 5</p>	<p>A roll call vote was taken. All members voted in the affirmative.</p>

<p>5. NAPAC-MN (41276)</p>	<p>\$450 LFF</p>	<p>2022 1st Quarter</p>	<p>Report due 4/14/2022 was filed 5/10/2022. Treasurer was out of the country at the time the report came due and did not return until early May. The report is a no-change statement and lists a cash balance of \$211. Staff's recommendation to waive the LFF is based on the fact that the committee did not accept contributions or make expenditures in excess of \$750 prior to the end of the reporting period and therefore was not required to register with the Board. RECOMMENDED ACTION: Waive</p>	<p>Leppik</p>	<p>Approve the staff recommendation for requests 1 through 5</p>	<p>A roll call vote was taken. All members voted in the affirmative.</p>
<p>6. Revol Greens MN, LLC (7758)</p>	<p>\$525 LFF</p>	<p>2021 Lobbyist Principal</p>	<p>Report due 3/15/2022 was filed 4/13/2022. Principal's contact person was no longer employed by the principal when notices regarding the report were sent. Principal reported no spending on lobbying and principal's sole lobbyist reported that no disbursements were made and no compensation was received in excess of \$500. Principal's sole lobbyist was terminated as of the end of 2021 so the principal will not need to file reports in the future unless a new lobbyist is registered on its behalf. RECOMMENDED ACTION: Reduce to \$200</p>	<p>Swanson</p>	<p>Approve the staff recommendation for requests 6 through 8</p>	<p>A roll call vote was taken. All members voted in the affirmative.</p>

<p>7. Marti (Michael) for Minnesota (18693)</p>	<p>\$625 LFF</p>	<p>2022 1st Quarter</p>	<p>Report due 4/14/2022 was filed 5/19/2022. Candidate suspended his campaign in Dec. 2021 and informed Board staff that a termination report would soon be filed. Treasurer attempted to enter the committee's only 2022 disbursement within the CFR software but received an error message regarding the date of the transaction because he had not initialized the 2022 calendar year within the software. Treasurer misinterpreted that message to mean that he needed to wait and later file a 2022 year-end report. Board staff had difficulty contacting the committee because the only email address provided was not being monitored by the committee. The report filed 5/19/2022 is a termination report. RECOMMENDED ACTION: Reduce to \$200</p>	<p>Swanson</p>	<p>Approve the staff recommendation for requests 6 through 8</p>	<p>A roll call vote was taken. All members voted in the affirmative.</p>
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8. MN350 Action Fund (30699)	\$1,000 LFF	2021 Year-End	Report due 1/31/2022 was filed 5/2/2022. In late 2021 and early 2022, Board staff worked with the fund to amend its 2020 year-end report. The fund then completed a 2021 year-end report but forgot to file it due to an internal miscommunication within the supporting association's staff. Because this is a political fund, Board staff did not know that a 2021 year-end report needed to be filed until contacting the fund regarding a cash balance discrepancy in late April of 2022. The fund then promptly filed the missing report, which resolved the balance discrepancy. The fund reported a cash balance of \$8,073 as of 3/31/2022. RECOMMENDED ACTION: Reduce to \$500	Swanson	Approve the staff recommendation for requests 6 through 8	A roll call vote was taken. All members voted in the affirmative.
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FEC V. CRUZ

Mr. Olson presented members with a memorandum that is attached to and made a part of these minutes. Mr. Olson stated that in FEC v. Cruz the United States Supreme Court struck down a federal limit on the amount of money consisting of post-election contributions that may be used to repay loans issued by a federal candidate to their own committee. Mr. Olson explained that the Court deemed the restriction a prophylaxis-upon-prophylaxis approach that did not serve the purpose of preventing *quid pro quo* corruption or the appearance thereof. Mr. Olson said that the decision does not appear to have a direct impact on Chapter 10A because Chapter 10A does not include restrictions on the use of contributions received after election day and also does not include limitations on what funds may be used by a principal campaign committee to repay a loan made by the candidate. Mr. Olson stated that the decision does bolter previous opinions generally holding that restrictions on campaign speech may only target *quid pro quo* corruption and the appearance thereof.

LEGAL COUNSEL’S REPORT

Mr. Hartshorn presented members with a legal report that is attached to and made a part of these minutes. Mr. Hartshorn told members that the Board’s default judgment motion has not yet been granted in the Rhoades matter. Mr. Swanson asked if there has been any communication regarding

the Shim matter. Mr. Olson explained that Mx. Shim has not contacted Board staff or made any payment.

EXECUTIVE SESSION

Vice Chair Soule recessed the regular session of the meeting and called to order the executive session. Upon recess of the executive session, the vice chair reported the following matter into regular session:

Conciliation agreement in the matter of the Dr. Scott Jensen for Governor committee

There being no other business, the meeting was adjourned by the vice chair.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jeff Sigurdson". The signature is written in a cursive, flowing style.

Jeff Sigurdson
Executive Director

Attachments:
Executive Director's Report – Board Operations
Memorandum regarding FEC v. Cruz
Legal report



MINNESOTA CAMPAIGN FINANCE BOARD

Date: May 25, 2022

To: Board Members

From: Jeff Sigurdson, Executive Director

Telephone: 651-539-1189

Re: Executive Director's Report – Board Operations

Board Operations - Reporting Periods

Campaign Finance Program: Notices of the need to file the second report of receipts and expenditures were sent to 486 constitutional office candidates, political committees, political funds, and political party state central committees and legislative caucuses. The second report covers the period from January 1 to May 31, 2022. The report is due on June 14, 2022. Legislative candidates and local party units do not file this report.

Lobbying Program: The lobbyist disbursement report covering the period of January 1 through May 31, 2022, is due on June 15, 2022. Disbursement reports are expected from 779 lobbyists, many of whom report for multiple principals.

Economic Interest Statement Program: The candidate filing period for 2022 opened on May 17, and closes on May 31, 2022. Candidates who file for state level office are provided a filing packet from the Board with information and forms needed to register a committee, sign the public subsidy agreement, and file an Economic Interest Statement (EIS). Staff provided over 1,300 packets to filing officers throughout the state. An EIS statement must be filed by all constitutional and legislative candidates, both incumbents and challengers, within 14 days of filing an affidavit of candidacy. Information disclosed within EIS statements filed by candidates is available for review on the Board's website.

Update on Legislation

The state government omnibus bill that contains modifications to Chapter 10A is HF 4293. In addition to serving as the bill for all issues under the jurisdiction of the state government and elections committees, the bill also became the vehicle for all issues related to transportation and state pensions. A conference committee did not resolve all differences between the Senate and House positions before the end of session.

If there is a special session, and assuming a final agreement can be reached, HF 4293 would impact Chapter 10A in two areas. It would prohibit the type of meeting location for legislators and lobbyists described in Advisory Opinion 454; and it would lower the threshold amount of financial activity that requires registration of a candidate committee, party unit, political committee, or political fund, from \$750 to \$200.



MINNESOTA CAMPAIGN FINANCE BOARD

Date: May 25, 2022

To: Board members

From: Andrew Olson, Legal/Management Analyst

Telephone: 651-539-1190

Re: FEC v. Cruz, [No. 21-12](#), 2022 WL 1528348 (May 16, 2022)

Federal Limit on Loan Repayment using Funds Contributed After an Election

Under federal law the committee of a federal candidate could repay a maximum of \$250,000 in personal loans from the candidate for a given election using contributions received after that election.¹ A federal committee using funds received on or before election day to repay loans from the candidate was required to do so within 20 days of the election.² Any personal loan balance that exceeded \$250,000 as of 20 days after the election was treated as a contribution from the candidate, meaning that it could not be repaid.³

Federal District Court Decision

One day before the 2018 general election, U.S. Senator Ted Cruz made two loans to his federal Senate committee totaling \$260,000. The committee did not repay any of that balance within 20 days after the election, so \$10,000 was converted into a contribution. The committee later repaid the remaining \$250,000 in four payments concluding in December 2018.

In 2019 the Cruz committee brought a declaratory judgment action against the Federal Election Commission (FEC) alleging that the \$250,000 limit violates the First Amendment and that the FEC's implementing regulation is arbitrary and capricious. In June 2021 a three-judge district court panel unanimously granted summary judgment in favor of the Cruz committee.⁴ Because the action sought declaratory and injunctive relief on the grounds that a portion of the Bipartisan Campaign Reform Act of 2002 (BCRA) is unconstitutional, the case was decided by a three-judge district court panel and that panel's decision was reviewable only by direct appeal to the United States Supreme Court.⁵

¹ 52 U.S.C. § 30116 (j).

² 11 C.F.R. § 116.11 (c) (1).

³ 11 C.F.R. § 116.11 (c) (2).

⁴ *Ted Cruz for Senate v. Fed. Election Comm'n*, 542 F. Supp. 3d 1 (D.D.C. 2021).

⁵ See 52 U.S.C. § 30110 note.

United States Supreme Court Decision

On May 16, 2022, the United States Supreme Court affirmed the district court panel by a 6-3 vote, holding that BCRA Section 304⁶ violates the First Amendment. The Court held that “[b]y restricting the sources of funds that campaigns may use to repay candidate loans, Section 304 increases the risk that such loans will not be repaid. That in turn inhibits candidates from loaning money to their campaigns in the first place, burdening core speech.” The Court declined to decide which level of scrutiny applies to the challenged provisions, determining that they could not survive review under strict or closely drawn scrutiny because the government failed to “prove at the outset that it is in fact pursuing a legitimate objective.” The Court emphasized that it “has recognized only one permissible ground for restricting political speech: the prevention of ‘*quid pro quo*’ corruption or its appearance.” The Court noted that it has “consistently rejected attempts to restrict campaign speech based on other legislative aims.”

In explaining why Section 304 does not serve a legitimate interest, the Court said that “the loan-repayment limitation is yet another in a long line of ‘prophylaxis-upon-prophylaxis approach[es]’ to regulating campaign finance.” The Court noted that individual contributions to federal candidates are already capped at \$2,900 per election. The Court stated that “[b]ecause the Government is defending a restriction on speech as necessary to prevent an anticipated harm, it must . . . point to ‘record evidence or legislative findings’ demonstrating the need to address a special problem,” while noting that the Court has “never accepted mere conjecture as adequate to carry a First Amendment burden.” The Court went on to say that “the Government is unable to identify a single case of *quid pro quo* corruption in this context—even though most States do not impose a limit on the use of post-election contributions to repay candidate loans.” The Court stated that media reports and anecdotes cited by the FEC were insufficient because they “merely hypothesize that individuals who contribute after the election to help retire a candidate’s debt might have greater influence with or access to the candidate,” and “[t]hat is not the type of *quid pro quo* corruption the Government may target consistent with the First Amendment.” The Court stated that the FEC “may not seek to limit the appearance of mere influence or access” and while the “line between *quid pro quo* corruption and general influence may seem vague at times . . . the distinction must be respected in order to safeguard basic First Amendment rights.”

The FEC referenced a poll in which most respondents considered it likely that a person who made a contribution to a candidate after an election would expect “a political favor in return.” However, the Court faulted the poll for not asking the same question regarding contributions made before an election. Also, the Court said that the poll “failed to define the term ‘political favor,’ leaving unclear the critical issue whether the respondents associated such contributions with the direct exchange of money for official acts, which Congress may regulate, or simply increased influence and access, which Congress may not.”

With respect to the FEC’s argument that using post-election contributions to repay a personal loan from the candidate is tantamount to a gift, the Court stated that the “comparison is meaningful only if the baseline is that the campaign will default. The Government, however, provides no reason to believe that most or even many winning candidates—the only candidates

⁶ 52 U.S.C. § 30116 (j).

with whom its anticorruption interest is concerned—expect not to be repaid by their campaigns.” The Court noted that two out of every three winning federal candidates have been able to repay their personal loans, and for such a candidate

post-election contributions bear little resemblance to a gift, because there is less of a chance that his campaign will default. Such contributions instead restore the candidate to the status quo ante, a position to which he legitimately expected to return. As for losing candidates, they are of course in no position to grant official favors, and the Government does not provide any anticorruption rationale to explain why post-election contributions to those candidates should be restricted.

In closing the majority opinion states that “the Government has not shown that Section 304 furthers a permissible anticorruption goal, rather than the impermissible objective of simply limiting the amount of money in politics.”

Potential Impact on Chapter 10A

The decision does not appear to have a direct impact on Chapter 10A, which does not contain restrictions on the use of contributions received after election day or what funds a candidate committee may use to repay loans from the candidate. Also, the decision does not address what level of scrutiny applies to such restrictions. The decision does bolster previous opinions generally holding that restrictions on campaign speech may only target *quid pro quo* corruption or the appearance thereof, including those issued in *Thompson v. Hebdon*,⁷ *McCutcheon v. FEC*,⁸ *Citizens United v. FEC*,⁹ *SpeechNow.org v. FEC*,¹⁰ *Davis v. FEC*,¹¹ and *FEC v. National Conservative Political Action Committee*.¹²

⁷ *Thompson v. Hebdon*, 140 S. Ct. 348 (2019).

⁸ *McCutcheon v. FEC*, 572 U.S. 185 (2014) (recognizing that *FEC v. Beaumont*, 539 U.S. 146 (2003) was overruled by *Citizens United v. FEC*).

⁹ *Citizens United v. FEC*, 558 U.S. 310 (2010) (explicitly overruling *McConnell v. FEC*, 540 U.S. 93 (2003) and *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652 (1990)).

¹⁰ *SpeechNow.org v. FEC*, 599 F.3d 686, 695 (D.C. Cir. 2010) (recognizing that *FEC v. Colorado Republican Federal Campaign Committee*, 533 U.S. 431 (2001) was abrogated by *Citizens United v. FEC*).

¹¹ *Davis v. FEC*, 554 U.S. 724 (2008).

¹² *FEC v. Nat'l Conservative Pol. Action Comm.*, 470 U.S. 480 (1985).

CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD
June 2022
ACTIVE FILES

Candidate/Treasurer/ Lobbyist	Committee/Agency	Report Missing/ Violation	Late Fee/ Civil Penalty	Referred to AGO	Date S&C Personally Served	Default Hearing Date	Date Judgment Entered	Case Status
Jenny Rhoades		Candidate Statement of Economic Interest due 6/15/20—filed after lawsuit served.	\$100 LFF \$1,000CP	9/23/20	6/29/21 1/1/22	4/4/22		Rhoades has missed deadlines for filing her answer that the court has successively set for April 18, May 6, May 10, and May 24.
Jae Hyun Shim		Statement of Economic Interest due 1/25/2021	\$100 LFF \$1,000CP	9/7/21	2/9/22			Shim filed the statement on February 25. Matter placed on hold while the Board provides Shim an opportunity to pay the late fee and civil penalty.