

Minnesota

Campaign Finance and Public Disclosure Board Meeting

Wednesday, March 2, 2022
10:00 A.M.
Conducted remotely via Webex due to COVID-19 pandemic

REGULAR SESSION AGENDA

1. Approval of February 2, 2022, minutes
2. Chair's report
 - a. 2022 meeting schedule
3. Executive director report
 - a. Board direction on withdrawal of complaints
4. Advisory Opinion 455 – Layover
5. Memo FEC v Cruz
6. Enforcement report
7. Legal report
8. Other business

EXECUTIVE SESSION

Immediately following regular session

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

.....
February 2, 2022

Meeting conducted remotely though Webex due to COVID-19 pandemic

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MINUTES

The meeting was called to order by Chair Rashid.

Members present: Flynn, Leppik, Rashid, Soule, Swanson

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

MINUTES (December 1, 2021)

After discussion, the following motion was made:

Member Flynn's motion:

To approve the December 1, 2021, 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 10:00 a.m. on Wednesday, March 2, 2022.

EXECUTIVE DIRECTOR REPORT

Mr. Sigurdson presented members with a memorandum regarding this matter that is attached to and made a part of these minutes. Mr. Sigurdson first told members about the reports that had been filed with the Board in January. Mr. Sigurdson said that approximately 99% of the lobbyist reports had been filed on time and that only five reports remained outstanding. Mr. Sigurdson stated that 91% of the campaign finance reports were in but that 128 reports remained outstanding. Mr. Sigurdson said that this number was not unusual because many candidate committees have no activity during a non-election year and therefore do not realize that they need to file reports. Mr. Sigurdson stated that staff would reach out to see if any of these committees wanted to terminate. Mr. Sigurdson next told members that 96% of the economic interest statements had been filed on time but that 127 statements remained outstanding. Mr. Sigurdson said that there was a two-week grace period before the late fee would begin for outstanding statements.

Mr. Sigurdson then told members that Ms. Pope would be retiring effective March 1, 2022. Mr. Sigurdson briefly reviewed the projects Ms. Pope had worked on during her tenure, and acknowledged that her retirement represented a major loss for the Board. The vacant position will be posted in March.

Mr. Sigurdson next stated that in January he had testified before a cyber security joint legislative commission about the Board's IT systems and security. Mr. Sigurdson said that the Board is one of the few state agencies whose IT systems and staff are not consolidated under MNIT, the state's IT agency. Mr. Sigurdson explained that the Board was excluded from the MNIT consolidation when it occurred because there were concerns about an executive agency having access to the data collected by an independent board. Mr. Sigurdson said that because MNIT charges agencies for its services, operating under MNIT also is expensive. Mr. Sigurdson stated that there is a strong possibility that the Board's IT operations would be consolidated under MNIT, at least to the extent that servers and data storage would be moved to a MNIT data center. Mr. Sigurdson stated that because the costs associated with a transfer to MNIT are significant, those costs could not be absorbed in the Board's current budget but he was hopeful that the Board's appropriation would be adjusted. Mr. Sigurdson told members that a transfer to MNIT could be beneficial because the Board's IT staff currently had too much on their plates. Mr. Sigurdson said that consolidation would allow MNIT to take over the routine IT functions, thereby giving Board IT staff more time to focus on Board-specific projects such as the online version of Campaign Finance Reporter.

Mr. Sigurdson then reviewed issues related to the legislative session. Mr. Sigurdson stated that all members, other than Member Flynn, needed to be confirmed by the legislature and reviewed the applicable confirmation deadlines. Mr. Sigurdson said that the new person appointed to fill the vacant position on the Board also would need to be confirmed during the session. Mr. Sigurdson stated that the legislature might wait until after that appointment had been made and then hold one confirmation hearing for all members. Mr. Sigurdson also said that he had been working with the Minnesota Governmental Relations Council (MGRC) to resolve its issues with the lobbying recommendations and that he expected this proposal to be heard in the house. Mr. Sigurdson said that there was no interest in hearing the Board's economic interest proposals but that the Board's campaign finance proposal on modifying the definition of express advocacy was expected to be incorporated into other bills. Mr. Sigurdson stated that he would update the Board on the status of bills related to Chapter 10A at upcoming meetings.

ENFORCEMENT REPORT

A. Consent items

1. Approval of administrative termination of lobbyist Faarax Dahir Sheikh-Noor (4845)

Mr. Olson told members that Mr. Sheikh-Noor had died in July 2021. Mr. Olson said that Mr. Sheikh-Noor had been the sole lobbyist registered on behalf of the Business Advocacy Services Corporation and reportedly had not incurred any lobbying disbursements after May 31, 2021, the end of the period covered by his most recent disbursement report. Mr. Olson said that Board staff had terminated Mr. Sheikh-Noor's lobbyist registration effective May 31, 2021.

2. Approval of administrative termination of lobbyist Steve Peterson (4611)

Mr. Olson told members that Mr. Peterson was gravely ill, was no longer engaged in lobbying, and was unable to complete a disbursement report or termination statement. Mr. Olson said that Mr. Peterson was one of two lobbyists registered on behalf of the East Itasca Joint Sewer Board and his last disbursement report covered the period ending on December 31, 2020. Mr. Olson stated that because Mr. Peterson was unable to complete a disbursement report or termination statement, Board staff had terminated his lobbyist registration effective December 31, 2020.

After discussion, the following motion was made:

Member Soule'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 item

1. Administrative termination of lobbyist Jordan Craig (4536)

Mr. Olson told members that the American Forest & Paper Association was asking that the lobbyist registration of Mr. Craig be terminated as he had ceased to be employed by that principal as of September 16, 2021. Mr. Olson said that the principal had tried to contact Mr. Craig to ask him to file a termination statement, but that Mr. Craig had not done so. Mr. Olson stated that Mr. Craig was the principal's sole lobbyist registered with the Board. The principal had stated in writing that no lobbyist disbursements had occurred after the period covered by the lobbyist disbursement report filed in June 2021. Mr. Olson said that the Board did not have valid contact information for Mr. Craig. Mr. Olson stated that staff was asking the Board to deem the statement from the principal as sufficient to satisfy Mr. Craig's reporting obligation and to approve terminating his registration effective May 31, 2021.

After discussion, the following motion was made:

Member Leppik's motion:

To approve the administrative termination as requested by staff.

Vote on motion:

A roll call vote was taken. All members voted in the affirmative.

C. Informational Items

1. Partial payment of civil penalties for conversion to personal use and false certification

Tamara Jones, \$372

2. Payment of civil penalty for exceeding aggregate special source contribution limit

Neighbors for Dan (Wolgamott), \$350

3. Payment of late filing fee for 2020 pre-primary 24-hour notice

Athena Hollins for State Representative, \$50

4. Partial payment of late filing fee for lobbyist disbursement report due 1/15/2020

Marcus Marcus, \$300 (\$150 x 2)

5. Payment of late filing fee for 2020 annual EIS

Chris Gerlach, \$20

6. Partial payment of late filing fee for original EIS

Jaden Partlow, \$320 (\$160 x 2)

7. Forwarded anonymous contributions

Caitlin Cahill for Minnesota House, \$30

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 since the legal report had been prepared, additional activity had occurred in five matters. Mr. Hartshorn stated that Sandra Blaeser had filed her statements of economic interest and had offered to pay the outstanding late fees and civil penalties, which would resolve the matter. Mr. Hartshorn said that summary judgement had been entered for the Board in the Chilah Brown matter and that a default judgement had been entered for the Board in the Laitinen matter. Mr. Hartshorn stated that Jenny Rhoades had notified him that she planned to attend the upcoming default judgement hearing to contest that matter. Mr. Hartshorn finally said that a summons and complaint had been served in the Shim matter. Mr. Hartshorn then answered a question from a member regarding the legal report.

OTHER BUSINESS

Members took a few moments to thank Ms. Pope for her service and to wish her well in retirement. Ms. Pope thanked the members for their good wishes and said that it had been a pleasure working with them and with Board staff, particularly Mr. Sigurdson and Ms. Engelhardt.

EXECUTIVE SESSION

The chair recessed the regular session of the meeting and called to order the executive session. Upon recess of the executive session, the chair had nothing to report into regular session.

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

Respectfully submitted,

Jeff Sigurdson
Executive Director

Attachments:
Executive director report
Legal report

DRAFT



MINNESOTA

CAMPAIGN FINANCE BOARD

Board Meeting Dates for Calendar Year 2022

Meetings are at **10:00 A.M.** unless otherwise noted.

2022

Wednesday, April 6

Wednesday, May 4

Wednesday, June 1

Wednesday, July 6

Wednesday, August 3

Wednesday, September 7

Wednesday, October 5

Wednesday, November 2

Wednesday, December 7



MINNESOTA CAMPAIGN FINANCE BOARD

Date: February 23, 2022

To: Board Members

From: Jeff Sigurdson, Executive Director

Telephone: 651-539-1189

Re: Executive Director's Report – Board Operations

Year-end Reports

All three major program areas; campaign finance, lobbying, and economic interest statements had year-end filing requirements in January. In addition, the Lobbyist Principal report for 2021 is due on March 15. A brief status update follows:

Lobbying Program. The lobbyist disbursement report covering the period of June 1 through December 31, 2021, was due on January 18, 2022. Of the 2,181 reports due only one report is still outstanding, and staff is working with that individual to file a termination report.

The lobbyist principal report notification was sent to 1,458 associations.

Campaign Finance Program. The year-end report of receipts and expenditures for 2021 was due on January 31, 2022. Of the 604 reports expected from candidate committees forty are still outstanding. Of the 314 party units required to file five are still outstanding. Finally, of the 215 political committees required to file three are still outstanding. Notification of the filing deadline were sent to 206 political funds, but political funds are required to file a report only if they had financial activity during 2021. Of the 206 political funds 178 have filed a year-end report.

Economic Interest Statement. The annual certification by public officials for 2021 was due on January 31, 2022. Of the 3,054 public officials expected to file seventeen are still outstanding.

Appointment and Confirmation of Board Members

David Asp was appointed to the Board effective February 16, 2022, for a term ending in January of 2026. He fills a Board position requiring a member who has not been a public official, held any political party office other than precinct delegate, or been elected to public office for which party designation is required by statute in the three years preceding the member's appointment to the Board. Mr. Asp supports the Republican party.

Mr. Asp is a partner at Lockridge Grindal Nauen PLLP where his practice focuses on litigation, particularly litigation involving health care and administrative law. Mr. Asp has been an active volunteer on the board of several community and non-profit organizations, and has volunteered

with political campaigns, party units, and political committees. He graduated from Augsburg College and the University of Minnesota Law School.

Mr. Asp and Mr. Swanson are scheduled for a confirmation hearing before the House State Government Finance and Elections committee on February 24, 2022. Ms. Leppik and Mr. Rashid are scheduled for a confirmation hearing before the same committee on March 1, 2022. Hearing dates for the Senate State Government Finance and Policy and Elections have not been set as of the date of this memo.

Mr. Soule was confirmed by the full Senate on February 21, 2022. Mr. Soule's appointment will need to be confirmed by the full House within the next six legislative days (a day in which either the House of Senate is in session) in order to meet the 45 legislative day deadline for confirmation by both bodies.

Update on Legislation

So far only the House State Government Finance and Elections committee has considered bills that would modify Chapters 10A or 211B. I am still in communication with committee members and staff on HF 2173, which contains the Board's recommendations for the lobbyist program. A list of the bills heard, or scheduled to be heard follows:

Bill Number	Author	Topic	Status
HF 2683	Drazkowski	A lobbyist would be required to file an economic interest statement within five days after becoming a lobbyist. Lobbyists would also be required to file the annual economic interest statement.	Scheduled to be heard in the House State Government Finance and Elections committee on February 24, 2022
HF 2747	Klevorn	Lobbyist would not be able to contribute to a principal campaign committee, legislative caucus or a political committee in exchange for access to a meeting space. The affect of this bill would be to counter act Advisory Opinion 454.	Not yet scheduled for a hearing.
HF 3190	Long	The definition of express advocacy modified to include the functional equivalent test. Independent expenditure disclaimers must list	Heard in the House State Government Finance and Elections committee on February 15, 2022. The bill was laid over for future consideration.

		the three top contributors to the committee that made the independent expenditure. The Board is directed to adopt rules on small electronic communication disclaimer requirements.	
HF 3557	Marquart	Terminating principal campaign committees allowed to donate to school boards.	Scheduled to be heard in the House State Government Finance and Elections committee on February 24, 2022



MINNESOTA CAMPAIGN FINANCE BOARD

Date: February 23, 2022

To: Board members

From: Jeff Sigurdson, Executive Director

Telephone: 651-539-1189

Re: Request for Guidance – withdrawal of a complaint before the prima facie determination

Staff recently was asked whether a complainant could withdraw a complaint before the prima facie determination had been made. Because the applicable statutes and rules do not provide a clear answer to this question, staff is asking for Board guidance on this issue.

Applicable law

Minnesota Statutes section 10A.022, subdivision 3, paragraph (a), provides as follows:

The [B]oard may only investigate an alleged violation if the [B]oard:

- (1) receives a written complaint alleging a violation;
- (2) discovers a potential violation as a result of an audit conducted by the board; or
- (3) discovers a potential violation as a result of a staff review.¹

“Upon receipt of a written complaint filed with the [B]oard, the [B]oard chair . . . shall promptly make a determination as to whether the complaint alleges a prima facie violation.” Minn. Stat. § 10A.022, subd. 3 (c). If the complaint does not allege a prima facie violation, the complaint must be dismissed. If the complaint does allege a prima facie violation, the complaint then moves to the probable cause determination phase of the process. No provisions in the statute discuss the withdrawal of a complaint.

Minnesota Rules 4525.0100, subpart 2a, defines a complaint as follows:

“Complaint” means a written statement, including any attachments, that:

- A. alleges that the subject named in the complaint has violated Minnesota Statutes, chapter 10A, or another law under the [B]oard’s jurisdiction; and
- B. complies with the requirements in part 4525.0200, subpart 2.

¹ The executive director must initiate a staff review 1) into a matter when directed to do so by the Board; or 2) when a preliminary inquiry into the information provided on a report filed with the Board suggests that there has been a violation of a law under the Board’s jurisdiction. Minn. R. 4525.0320, subp. 2.

Minnesota Rules 4525.0200, subpart 2, sets forth the form of a complaint and provides as follows:

Complaints must be submitted in writing. The name and address of the person making the complaint must be included on the complaint and it must be signed by the complainant or an individual authorized to act on behalf of the complainant. A complainant shall list the alleged violator and the alleged violator's address if known by the complainant and describe the complainant's knowledge of the alleged violation. Any evidentiary material should be submitted with the complaint. Complaints are not available for public inspection or copying until after the [B]oard makes a finding.

Minnesota Rules 4525.0200, subpart 1, provides who may complain:

A person who believes a violation of Minnesota Statutes, chapter 10A, or another provision of law placed under the [B]oard's jurisdiction by Minnesota Statutes, section 10A.022, subdivision 3, or rules of the [B]oard has occurred may submit a written complaint to the [B]oard.

Past Board actions

Under the statutes and rules listed above, the Board has never accepted an anonymous complaint or a complaint that did not have a signature. In 2014, in response to a hypothetical question from the complainant, the former executive director determined that even if the complainant had a right to withdraw the complaint, the investigation would proceed because the Board had made a prima facie determination in the matter. The executive director reasoned that the independent decision by the Board that the complaint alleged a prima facie violation would be sufficient justification to continue the matter, even without the complainant's participation. No formal decision was made on the question, however, because the complainant never asked to withdraw the complaint.²

As executive director, I have allowed two complainants to withdraw their complaints before the prima facie determination. One situation involved a complaint alleging a violation by a local candidate who was not under the Board's jurisdiction. The second complaint involved a disclaimer violation that was under the Board's jurisdiction. The complaint, however, was sent by email after business hours and was followed less than 30 minutes later by a second email asking to withdraw the complaint. If this potential complainant had been more familiar with technology, the first email could have been recalled and staff never would have known about the attempted complaint.

Potential considerations

Staff is confident in concluding that after a prima facie determination has been made, a complainant cannot withdraw a complaint. The fact that the Board has formally determined that the complaint alleges a prima facie violation of the campaign finance laws is sufficient justification to proceed with the investigation even if the complainant no longer wants to participate. Indeed, most complainants do not participate in the probable cause determination hearing, and no complainant has the right to participate in any formal investigation that results

² In 2014, the Board was required to send a copy of the complaint to the respondent before the prima facie determination. The respondent then had the right to submit material to be considered by the chair when making the prima facie decision. See Minn. Stat. § 10A.02, subd. 11 (2014). This provision was repealed in 2015. 2015 Minn. Laws ch. 73, § 1.

from the probable cause determination. In addition, Minnesota Statutes section 10A.022, subdivision 3, paragraph (d), requires the Board to proceed with a probable cause determination in the matter. Finally, the respondent would already know the identity of the complainant at this point because that information would have been in the prima facie determination.

The question of whether a complaint may be withdrawn before the prima facie determination, however, is not as clear. As stated above, nothing in statute or rule provides whether a complainant can, or cannot, withdraw a complaint. The lack of any language allowing withdrawal could support the conclusion that the decision to submit a complaint is irrevocable “upon receipt of a written complaint filed with the Board.” Minn. Stat. § 10A.022, subd. 3 (c). On the other hand, the absence of statutory language could support the conclusion that a complaint may be withdrawn before the prima facie determination is made. In addition, the complainant’s request to withdraw the complaint before any action has been taken on it arguably turns that complaint into an anonymous one. Because an anonymous complaint is not a valid complaint, the Board should not consider it. Although there is no equivalent provision in Chapter 10A, a Fair Campaign Practices complaint filed with the Office of Administrative Hearings may be withdrawn “[a]t any time before an evidentiary hearing under section 211B.35 begins” pursuant to Minnesota Statutes section 211B.36, subdivision 2.

Potential problems arise from both interpretations. If a complaint cannot be withdrawn, there may be repercussions to the complainant from the respondent or from members of the public after the identity of the complainant is known. There also seems to be little point in prohibiting the withdrawal of a complaint if the allegation involves local or federal candidates outside of the Board’s jurisdiction.

But if a complaint can be withdrawn, the Board could be put in the position of knowing about a potential violation but not having a complaint to prompt an investigation of that violation. If staff later brings the possible violation to the Board to start an investigation under its own initiative, this approach could create a de facto way of filing an anonymous complaint.

Staff is asking the Board for direction on whether to allow a complaint to be withdrawn and, if so, under what circumstances. In particular, staff would like direction for the scenarios provided below. In all cases the scenario occurs before a prima facie determination has been made.

- May the executive director allow a complaint to be withdrawn if the alleged violation is outside of the Board’s jurisdiction?
- May the executive director allow withdrawal of a complaint if the request is made within 24 hours of receipt of the original complaint?
- May the executive director allow a complaint to be withdrawn if it was submitted on behalf of an organization by an individual who was not authorized to do so?
- May the executive director allow a complaint to be withdrawn if the alleged violation is cured? For example, a complaint that alleges that a political fund has failed to report independent expenditures, but subsequent to the complaint an amendment is filed by the political fund that discloses the independent expenditures listed in the complaint.



MINNESOTA

CAMPAIGN FINANCE BOARD

Date: February 22, 2022

To: Board members

From: Jeff Sigurdson, Executive Director

Telephone: 651-539-1189

Re: Advisory opinion 455 – Contributions from a committee registered with the Federal Election Commission

The request for this advisory opinion was received on February 22, 2022. Because the request was received the day before the Board mailing there was not enough time to prepare a draft advisory opinion for consideration at the March meeting. The opinion request will need to be formally laid over to the April 6th Board meeting because Minnesota Statutes section 10A.02, subdivision 12, requires advisory opinions to be issued within 30 days after receipt unless a majority of the Board agrees to extend this time limit.

This is a non-public advisory opinion request; the public version of the Board opinion eventually released in response to the request will not identify the requestor. The regular session meeting materials made available to the public will not include the attached copy of the request.

Attachments:

Advisory Opinion Request



MINNESOTA CAMPAIGN FINANCE BOARD

Date: February 23, 2022

To: Board members

From: Andrew Olson, Legal/Management Analyst

Telephone: 651-539-1190

Re: FEC v. Cruz, [No. 21-12](#) ([argued](#) before the United States Supreme Court Jan. 19, 2022)

Federal Limit on Loan Repayment using Funds Contributed After an Election

The committee of a federal candidate may 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 must do so within 20 days of the election.² Any personal loan balance that exceeds \$250,000 as of 20 days after the election must be treated as a contribution from the candidate, meaning that it will 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 and may not be repaid. 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 The panel, citing the approach taken by the Court in *McCutcheon v. FEC* in 2014, explained that:

First, we assess whether the loan-repayment limit burdens political speech and thus implicates the protection of the First Amendment. Second, because we conclude that the limit burdens political speech, we must carefully scrutinize the government's interests and the fit between that

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).

interest and the regulatory means chosen to effectuate it. Even under the less exacting test of closely drawn scrutiny, we find the government fails to demonstrate that the loan-repayment limit serves an interest in preventing quid pro quo corruption or its appearance. Moreover, the loan-repayment limit has only a tenuous connection to the asserted government interest in preventing corruption and thus lacks the close tailoring necessary under the First Amendment.⁵

The panel held that “the loan-repayment limit burdens candidates who wish to make expenditures through personal loans because the limit constrains the repayment options available to the candidate” and “imposes a ‘drag’ on the candidate’s First Amendment activity by discouraging the personal financing of campaign speech.”⁶ The panel noted that “[w]hile it is true that the loan-repayment limit is not a ban on personal financing, the First Amendment’s protection has never been limited to direct restrictions on expenditures”⁷

The panel did not decide whether to apply strict or closely drawn scrutiny to the challenged limit, concluding that the limit fails under either standard. The panel held that “[t]he government’s interest in eliminating corruption is limited to quid pro quo corruption, in other words, ‘dollars for political favors.’”⁸ The panel stated that “the FEC has not identified a single case of actual quid pro quo corruption in this context” and explained that “the FEC’s few state examples involve only concerns that candidates will be too responsive to the influence of special interests or concerns about contributions unrelated to the repayment of candidate loans.”⁹

The panel went on to hold that even if the FEC had asserted an important government interest furthered by the limit, the “government’s rationale for the loan-repayment limit fits about as well as a pair of pandemic sweatpants.”¹⁰ The panel explained that the limit is overinclusive because it applies to both winning and losing candidates and that it is underinclusive because “there are no restrictions on post-election contributions made to retire other types of campaign debt.”¹¹ The panel noted that the FEC “has advanced no reason why a contribution made to an incumbent before the election poses no risk of corruption, but the same contribution made after the election to a winning candidate (now incumbent) and applied to pre-election debt poses a unique and heightened concern of quid pro quo corruption.”¹² The panel also held that the FEC failed to explain why the limit should be \$250,000, stating that “a campaign committee can accept just over eighty-six maximum contributions after the election to repay a candidate loan” and “[i]t is hardly clear why the eighty-seventh or eighty-eighth contributor poses a particular danger of quid pro corruption.”¹³

⁵ *Id.* at 5.

⁶ *Id.* at 8-9.

⁷ *Id.* at 9.

⁸ *Id.* at 12.

⁹ *Id.* at 12-13.

¹⁰ *Id.* at 16.

¹¹ *Id.* at 17.

¹² *Id.*

¹³ *Id.* at 18-19.

FEC Position on Appeal

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 is reviewable only by direct appeal to the United States Supreme Court.¹⁴ The FEC argued that the statutory limit imposed no burden on the speech of the Cruz committee, and imposes at best a modest burden on the speech of other candidate committees. The FEC noted that the extent to which candidates made loans in excess of \$250,000 to their own committees did not change appreciably after the statutory limit was imposed, and personal loans in excess of \$250,000 actually increased for Senate candidates. The FEC also pointed out that contribution limits impose a far greater burden on speech, yet have routinely been upheld when challenged under the First Amendment.

With respect to the value of the interest served by the limit, the FEC stated that “when a campaign uses a contribution to repay the candidate’s loan, every dollar given by the contributor ultimately goes into the candidate’s pocket,” thereby posing “a far greater threat of corruption than a payment that merely adds to a campaign’s treasury (and that can accordingly be used only for campaign purposes).”¹⁵ The FEC compared post-election contributions used to repay personal loans from the candidate to gifts, which office holders are generally prohibited from accepting. The FEC asserted that “[l]ike a gift made directly to the candidate, a contribution that repays an earlier candidate loan results in a dollar-for-dollar increase in the candidate’s personal assets.”¹⁶

The FEC also argued that post-election contributors are different in important respects from pre-election contributors.

A post-election contributor usually will be aware that his contribution will personally enrich the candidate, since a campaign may accept post-election contributions only to repay debt. And more than 90% of campaign debt consists of candidate loans (as opposed to loans from third-party lenders). A pre-election donor may believe that his contribution will incrementally improve the favored candidate’s chances of prevailing in the election, but a post-election donor can be reasonably confident that the contribution will help the candidate on a personal level. That knowledge magnifies the risk of a *quid pro quo*.

A post-election contributor also usually will know whether the recipient of the contribution has prevailed in the election. The contributor therefore can know—rather than merely hope—that the recipient will be in a position to do him official favors. That difference “between a bet and a bet on a sure thing” further increases the risk that the contribution will be part of a *quid pro quo*.¹⁷

The FEC went on to observe that

¹⁴ See 52 U.S.C. § 30110 note.

¹⁵ *Id.* at 33-34.

¹⁶ *Id.* at 35.

¹⁷ *Id.* (internal citations omitted).

The most obvious legitimate reasons for contributing money are (1) pooling funds with other donors to facilitate political speech, (2) symbolically expressing support for a candidate, and (3) increasing, at least marginally, the likelihood that the favored candidate will prevail. A post-election contribution serves none of those purposes. It does not facilitate additional political speech, for the campaign is over. Its symbolic value as an expression of support is minimal, since any such message is conveyed after the opportunity to sway voters has ended. And it does not increase the likelihood that the favored candidate will prevail, for the election has already occurred. A post-election contribution is thus more likely than a pre-election contribution to be motivated by an expectation of special favors or a fear of retaliation.¹⁸

The FEC encouraged the Court to reject the conclusions of the three-judge panel regarding overinclusiveness and underinclusiveness. The FEC contended that the Cruz committee had no right to assert that the statute is overinclusive by including nonwinning candidates because Senator Cruz won his 2018 election. With respect to underinclusiveness, the FEC noted that the Court has previously held “that there is ‘no constitutional basis for attacking contribution limits on the ground that they are too high.’”¹⁹ The FEC also argued that the Cruz committee lacked standing to challenge the statutory limit and its implementing regulation because 1) the committee had repaid much of the loan balance using pre-election contributions; and 2) the committee could have repaid the entire loan balance but chose not to in order to create the facts necessary for the legal challenge.

Cruz Committee Position on Appeal

The Cruz committee urged the Court to apply strict scrutiny because the limit restricts the speech of candidates, in particular, rather than the speech of all contributors or other spenders.²⁰ The committee asserted that “a candidate who lends money to his own campaign is exercising his core First Amendment right,” the statutory limit significantly restricts the “sources of funding that committees can use to repay candidate loans,” and the limit thereby “increases the risk that these loans will not be repaid in full, or perhaps at all.”²¹

For a candidate who wishes to spend more than \$250,000 on behalf of his own election but can afford to do so only if he is reasonably assured of repayment after election day, the loan-repayment limit, by design and inevitable effect, will deter the candidate from making the expenditure at all.²²

The committee argued that there is no need for empirical evidence because “the burden imposed on candidate spending by the loan-repayment limit is plain on its face as a matter of

¹⁸ *Id.* at 36.

¹⁹ *Id.* at 47, quoting *Davis v. Fed. Election Comm'n*, 554 U.S. 724, 737 (2008).

²⁰ *Brief of Appellees Ted Cruz for Senate, et al.*, at 39-40.

²¹ *Id.* at 40-41.

²² *Id.* at 41.

law.”²³ Moreover, the committee contended that the FEC’s analysis of the purported impact of the limit was flawed. First, the committee argued that after the statutory limit was imposed, there was a clustering of candidate loans at the \$250,000 threshold, suggesting that candidates were inhibited from exceeding that amount for fear of not being repaid. Second, the committee noted that the FEC cited stability in the value of personal loans made by candidates to their own committee after the BCRA was enacted as evidence that the statutory limit did not inhibit candidate lending, but total spending on Senate and House campaigns more than doubled during that same time period without a corresponding increase in personal loans made by candidates.

The Cruz committee argued that even under closely-drawn scrutiny, the statutory limit fails both because it was not designed to serve an anti-corruption rationale and because it cannot be justified on that basis post-hoc. The committee asserted that the statutory limit was designed to level the playing field for candidates of differing wealth and to protect incumbents, rather than combat corruption. The committee contended that the individual contribution limit adequately addresses any risk of corruption, and striking the statutory limit on the repayment of personal loans with post-election contributions would merely result in those contributions being subjected to the same limit as pre-election contributions.

The committee argued that the statutory limit is a prophylaxis-upon-prophylaxis approach that does not comport with the FEC’s stated rationale because it applies only to post-election contributions used to repay personal loans, rather than all post-election contributions. The committee asserted that under the FEC’s stated rationale pre-election contributions to incumbents pose the same risk of corruption as post-election contributions. The committee illustrated this point by noting that a contributor could have given the Cruz committee a \$2,800 contribution the day after the 2018 general election, designated either as a post-election contribution for the 2018 election or as a pre-election contribution for the 2024 election, and it would be irrational to conclude that such a contribution would have a corrupting effect based on one type of designation but not the other.

The Cruz committee contended that even if the limit served an anti-corruption interest, it was not narrowly tailored. First, the committee stated that it may bring a facial overbreadth challenge regardless of whether the limit violated the committee’s First Amendment rights. Second, the committee argued that the limit is severely underinclusive because post-election contributions used to repay personal loans of candidates “are *indistinguishable* from many other types of pre- and post-election contributions that are subject only to general base-contribution limits,” “demonstrating that the specific post-election contributions it targets do not give rise to any special risk of quid pro quo corruption that is not addressed by the \$2,900 limit on ordinary contributions.”²⁴ The committee also argued that it has standing to challenge the statutory limit and its implementing regulation because 1) it received sufficient post-election contributions to repay the entirety of the \$260,000 in personal loans using those contributions; and 2) it had debts to other creditors that limited the funds from pre-election contributions that were available to repay the loans.

²³ *Id.* at 43.

²⁴ *Id.* at 55.

Potential Impact on Chapter 10A

In January 2022 the United States Supreme Court held oral argument in the case.²⁵ Justices asked questions pertaining to both the standing issues and the merits of the case. A decision will likely be forthcoming in the next few months. It is unlikely that a decision will have a direct impact on Chapter 10A, because it does not contain any restrictions on the use of contributions received after election day or what funds a candidate committee may use to repay loans from the candidate. However, the level of scrutiny applied and the Court's analysis of the anti-corruption interest asserted by the FEC may apply more broadly to other types of restrictions on the amount and timing of contributions and how candidate committees may spend campaign funds.

²⁵ Audio and a transcript of the argument are available at www.supremecourt.gov/oral_arguments/audio/2021/21-12.



MINNESOTA CAMPAIGN FINANCE BOARD

Date: February 23, 2022

To: Board members
Counsel Hartshorn

From: Andrew Olson, Legal/Management Analyst

Subject: Enforcement report for consideration at the March 2, 2022 Board meeting

A. Waiver Requests

#	Committee/ Entity	Late Fee/ Civil Penalty	Report Due	Factors	Prior Waivers	Recommended Action
1	Randy Brock for House (18636)	\$150 LFF	2021 Year- End	Report due 1/31/2022. Treasurer mistakenly filed another copy of the 2020 year-end report prior to the due date. After discovering the error the treasurer immediately filed a 2021 no-change statement on 2/8/2022, listing a cash balance of \$8,857.	No	Waive
2	Friends Helping Katy (Westlund) (18625)	\$200 LFF	2021 Year- End	Report due 1/31/2022. Treasurer was unable to prepare the report. Candidate did not realize that the report had not been filed until after the due date. After realizing the report was late the candidate immediately filed a termination report with an ending cash balance of \$93.	No	Waive
3	51st Senate District RPM (20424)	\$125 LFF	2021 Year- End	Report due 1/31/2022 was filed 2/7/2022. Treasurer's medical issues made it difficult to complete the report on time and she also had difficulty using the CFR software. The party unit reported a cash balance of \$4,103 as of the end of 2021.	\$200 LFF for 2020 pre-primary report waived in Oct. 2020 due to medical issues.	Waive
4	Todd County RPM (20386)	\$200 LFF	2021 Year- End	Report due 1/31/2022. Report was completed late as the treasurer was attending to his wife's medical issues. After the paper report was completed on 2/4/2022, the treasurer had difficulty attempting to email a copy of the report to Board staff and it was not received until 2/10/2022. The party unit reported a cash balance of \$2,170 as of the end of 2021.	\$100 LFF for 2012 pre-primary report waived in Sept. 2012 due to difficulty using CFR software.	Waive

5	Wabasha County RPM (20455)	\$300 LFF	2021 Year-End	Report due 1/31/2022 was filed 2/16/2022. New treasurer took over in March 2021 and the party unit's registration was not updated in a timely manner so the new treasurer did not receive notices regarding the year-end report. The party unit reported a cash balance of \$8,536 as of the end of 2021.	No	Reduce to \$150
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B. Informational Items

1. Payment of civil penalty for exceeding party unit aggregate contribution limit

Raines (Brian) for 34A, \$100

2. Payment of late filing fee for 2021 year-end report of receipts and expenditures

BAILPAC, \$200

3. Payment of late filing fee for 2020 year-end report of receipts and expenditures

BAILPAC, \$750

4. Payment of late filing fee for 2020 pre-general 24-hour notice

Raines (Brian) for 34A, \$250

5. Partial payment of late filing fee for original EIS

Jaden Partlow, \$160

6. Payment of late filing fee for 2019 Annual EIS

Sandra Blaeser, \$100

7. Payment of civil penalty for 2019 Annual EIS

Sandra Blaeser, \$1,000

8. Payment of late filing fee for 2018 Annual EIS

Sandra Blaeser, \$100

9. Payment of civil penalty for 2018 Annual EIS

Sandra Blaeser, \$1,000

10. Forwarded anonymous contributions

Carver County RPM, \$70

From: Lucy Bahn <bahn.lucy@gmail.com>
Sent: Tuesday, February 08, 2022 2:41 PM
To: Stevens, Melissa (CFB) <melissa.stevens@state.mn.us>
Subject: Fwd: Campaign Finance Filing

Hi Melissa,

I noticed after my 2021 report was not posted that the report was not initialized to 2021. I thought I had filed correctly, but I missed a step in filing and was not aware.

Thanks,

Lucy Bahn
Treasurer, Randy Brock for House Campaign Committee

----- Forwarded message -----

From: <gary.bauer@state.mn.us>
Date: Sun, Jan 30, 2022 at 5:54 PM
Subject: Campaign Finance Filing
To: <lucy@lucybahn.com>

This message confirms receipt by the Campaign Finance & Public Disclosure Board of your campaign finance report described below. This message only confirms that the report was received. The Board has not yet reviewed the report for compliance with campaign finance laws. Thank you for filing electronically.

Registration Number: 18636
Committee Name: Randy Brock for House
Report Year: 20
Report Type: Year-End Report
File Size: 14946304
File Received: Sunday, Jan 30 2022 05:18:38 PM

Please Note:

When a board report is filed using the Campaign Finance Reporter software, it may take up to 24 hours for the Board's systems to process the report. Upon successfully receiving a board report an email will be sent to the email address listed as the committee email address as an e-filing confirmation. One day after receiving this conformation, users should perform a download of information from the Board, which will update the indicator that the report was sent/received.

While using the software, a download may be performed at any time by performing the following:

- On the top menu bar select Tools > File Transfer
- Check the Download Committee Information circle in the Download File Selection, check the All Files circle
- Click the Begin Transfer button

From: Lucy Bahn <LucyBahn@outlook.com>
Sent: Tuesday, February 08, 2022 2:32 PM
To: Stevens, Melissa (CFB) <melissa.stevens@state.mn.us>
Subject: Randy Brock for House Report

Hi Melissa,

I filed a report for 2021 on Jan 20, 2022, for the Randy Brock for House Campaign Committee and received confirmation of receipt. It has not yet been posted and I wonder if there is an issue.

The receipt stated it was for year "20".

Thanks,

Lucy Bahn
(507)292-7744

From: 360 Design Service <360kitchens@gmail.com>
Sent: Sunday, February 20, 2022 8:54 PM
To: Olson, Andrew (CFB) <Andrew.D.Olson@state.mn.us>
Subject: Re: Katy Westlund Request for Late filing Fee Exemption

Dear CFB Board,

Thank you for your service as CFB members, please consider my request on a waiver of fees.

My treasurer is on leave, which has rendered her unable to complete the paperwork by the due date.

As such, I do not have an active treasurer for the time being.

I was unaware it wasn't filed and didn't receive the notice to file until I checked the PO Box on February 8th, 2022. I apologize for the inconvenience.

There was a letter in the envelope stating that "if you are not running in 2022 the following dates did not apply."

I am not running for office in 2022, and the vast majority of donations I received were small from teachers and friends, and retired people who do not make very much money.

Many of us are struggling, I would like to run again in the future as a service to the hard working people in my area.

I, as well as the people who were able to donate would be grateful for an exemption or removal of all late fees.

Thank you for your consideration in this circumstance that was beyond my control.

Katy Westlund

Hi Melissa,

Thank you for your help last week. I was finally able to submit the report with Gary's help. I didn't seem to be able to edit or add data any more and was unable to submit the report. Gary told me to reboot, and that seemed to fix the problem. Previous to that, I was unable to get into the CFR because my MS Office expired and I had problems trying to renew it, and had to have a grandson come and help me.

The Expenses come out perfect and match the bank totals. But the Deposits are \$50 short of what the bank has. I typically photocopy the checks with the deposit slip before I deposit them and I have checked thru my copies and my receipt books and I'm not finding that deposit. I checked my monthly reports that I do for the senate district and I can see the check number, but not who the donor was. I'm checking with my bank to see if they may be able to find out who the \$50 was from..

This is my 7th year as treasurer, and I was doing okay until my mastectomy in 2020, and then required 2 more surgeries after that due to infections. I've been on several antidepressants since then and now, I have developed a tremor that makes it difficult to write legibly.

In spite of being fully vaccinated, I tested positive for Coved about 6 weeks ago. I feel so much anxiety over the growing crime, things going on in the schools, the rising cost of food and gas, and now, it looks like we could end up getting into a war. It's really difficult for me to concentrate, and I've become very forgetful and easily confused.

I was hoping I could get someone to take over for me as treasurer, but the chair said there is no one else that can do it. So, I'm afraid you are stuck with me for another year. I'm hoping that with redistricting, there may be someone else who can take it over.

I apologize for all the extra work caused due to my being late, but I'm doing the best I can. I did send the User report and my Bank entries earlier.

Thanks again for all your help. Please call me if you have any questions.

Candice Reyes
SD51 Treasurer
651-330-0058

From: Bill Hatch <bh19wed72@gmail.com>

Sent: Tuesday, February 15, 2022 4:34 PM

To: Engelhardt, Megan (CFB) <megan.engelhardt@state.mn.us>

Subject: Seeking a weaver of the \$200 fine levied against Todd County Republican Party BPOU. Due to the medical issues of my wife which requires a great deal of attention, I was unable to file on time. Please dismiss the fine.

Thank you, William B. Hatch
Treasurer for Todd County BPOU.

From: Bill Hatch (via Google Docs) <drive-shares-dm-noreply@google.com>
Sent: Thursday, February 10, 2022 1:05 PM
To: CFBE-mail <cfb.reports@state.mn.us>
Subject: Document shared with you: "William Hatch Board Paperwork 2.4.2022"

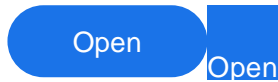
bh19wed72@gmail.com shared a document



bh19wed72@gmail.com has invited you to **edit** the following document:



 William Hatch Board Paperwork 2.4.2022



If you don't want to receive files from this person, [block the sender](#) from Drive

Google LLC, 1600 Amphitheatre Parkway, Mountain View, CA 94043, USA
You have received this email because bh19wed72@gmail.com shared a document with you from Google Docs.

Google™

From: [Sylvan Shores](#)
To: bh19wed72@gmail.com
Subject: Board Paperwork
Date: Friday, February 04, 2022 2:23:38 PM
Attachments: [William Hatch Board Paperwork 2.4.2022.pdf](#)

Bill,

Your board paperwork, forward to cfb.reports@state.mn.us

-
Kayla Benson
Sylvan Shores
Office Administrator
Phone: 218-894-1065
Email: sylvanshores@outlook.com
40302 Paradise Dr.
Browerville MN
www.sylvanshores.com

From: [Linda Dickey](#)
To: [Stevens, Melissa \(CFB\)](#)
Subject: Request to waive fees
Date: Thursday, February 17, 2022 7:36:38 PM

This message may be from an external email source.

Do not select links or open attachments unless verified. Report all suspicious emails to Minnesota IT Services Security Operations Center.

Thank you Melissa for forwarding this email.

To whom it may concern:

I would like to request a reversal of fees. These fees were charged to the Wabasha County BPOU for not submitting the annual report. I started my position as treasurer in March of 2021. I guess we missed one of the important steps in transitioning responsibilities and that was filling out the form that records changes in positions. We thought we had done all that we needed to do to make me the treasurer and remove Dan Murphy. I found out that since we didn't have the right information submitted we missed reminders and important information that would have helped with our end of the year duties. We did not realize that we were to complete and submit an annual report. I keep the check book up to date. My wife has been assisting me with data entry. We did have a big fundraiser in December which slowed us down a bit, however if we had known we were to submit a report we would have been more diligent to complete it on time.

Thank you for considering our request.

Dave Dickey
Wabasha County BPOU
Treasurer

**CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD
March 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
Marcus Harcus	MN Campaign for Full Legalization	Original Statement of Economic Interest, due 6/16/20	\$100 LFF \$1,000 CP	10/5/20	4/27/21			Harcus agreed to a payment plan with a final payment February. The Board requested hold status until fees and penalties are paid.
		Lobbyist Disbursement Report due 6/15/20	\$1,000 LFF \$1,000 CP					
		Lobbyist Disbursement Report due 1/15/20	\$1,000 LFF \$1,000 CP					
		Late Filing of Lobbyist Disbursement Report due 1/15/19; filed on 6/16/19	\$1,000 LFF					
		Late Filing of Lobbyist Disbursement Report due 6/15/18, filed on 6/27/18	\$200 LFF					
		Annual Lobbyist Principal Report, due 3/16/20	\$1,000 LFF \$1,000 CP					

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
Jaden Partlow		Candidate Statement of Economic Interest due 6/15/20	\$100 LFF \$700CP	9/23/20	6/18/21			Partlow agreed to payment plan with final payment in February. Board requested hold status until fees and penalties are paid.
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		In Feb. 3 phone call, Rhoades stated she intends to appear and contest the default judgment motion.
Jae Hyun Shim		Statement of Economic Interest due 1/25/2021	\$100 LFF \$1,000CP	9/7/21	2/9/22			

CLOSED FILES

Candidate/Treasurer/ Lobbyist	Committee/Agency	Report Missing/ Violation	Late Fee/ Civil Penalty	Referred to AGO	Date S&C Served by Mail	Default Hearing Date	Date Judgment Entered	Case Status
Sandra (Sandi) Blaeser		2018 Public Official Statement of Economic Interest 2019 Public Official Statement of Economic Interest	\$100 LFF and \$1,000 CP \$100 LFF and \$1,000 CP	9/11/20	6/3/21	2/3/22 (summary judgment; cancelled due to settlement on eve of hearing)	2/17/22	Settled. Blaeser filed her annual statements and paid her fees and penalties. The parties stipulated to dismissal February 9.
Chilah Brown Michele Berger	Brown (Chilah) for Senate	Unfiled 2016 Year-End Report and unpaid late filing fee on 10/31/16 Pre-General Election Report	\$1,000 LFF \$1,000 CP \$50 LFF	3/6/18	8/10/18 1/8/21 2/18/21	11/15/21 (summary judgment)	2/2/22	Summary judgment ordered in favor of Board.

Candidate/Treasurer/ Lobbyist	Committee/Agency	Report Missing/ Violation	Late Fee/ Civil Penalty	Referred to AGO	Date S&C Served by Mail	Default Hearing Date	Date Judgment Entered	Case Status
Steve Laitinen		2018 Public Official Statement of Economic Interest	\$100 LFF and \$1,000 CP	9/23/20	6/14/21	1/27/22	2/2/22	Default judgment ordered in favor of Board.
		2019 Public Official Statement of Economic Interest	\$100 LFF and \$1,000 CP					

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