

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

NOV 17-4 AM 9:16

CAMPAIGN FINANCE &  
PUBLIC DISCLOSURE BOARD

Common Cause Minnesota (“Common Cause”) files this complaint against the Republican Party of Minnesota (“RPM”) for violating Minn. Stat. §§ 10A.025, 10A.17, 10A.20 and 10A.29.

The RPM violated Minnesota law by funneling over \$719,000 in legal fees related to the gubernatorial recount from unknown sources through a shell company called Count Them All Properly. In doing so, the RPM circumvented the statutorily-required disclosure of these contributions, and it failed to properly report the contribution.

**Relevant Documents Attached to This Complaint**

1. Attachment A – *Report of Receipts and Expenditures* filed by the RPM on January 31, 2011, which was obtained from the CFDB’s web site.
2. Attachment B – Articles of Organization for Count Them All Properly, Inc.
3. Attachment C – Politics in Minnesota article, “Sutton admits signing agreement for gov recount legal fees, failing to tell other party officials.”
4. Attachment D – Printout from the Emmer for Governor web site describing how to support the recount effort financially.
5. Attachment E – Republican Party of Minnesota unpaid vendor list.
6. Attachment F – Federal Elections Commission Conciliation Agreement with the Republican Party of Minnesota.
7. Attachment G – CFDB Conciliation Agreement with Margaret for Governor and DFL State Central Committee.

**Factual Background**

**1. The Interested Parties.**

- A. The Republican Party of Minnesota.

The RPM is registered with the Campaign Finance and Disclosure Board (“CFDB”) as a party unit. (Attachment A.).

- B. Count Them All Properly, Inc.

Count Them All Properly, Inc. is a Minnesota Business Corporation that was formed on December 3, 2010 (Attachment B.). In its Articles of Organization, Count Them All Properly, Inc. (CTAP, Inc.) does not state a purpose of the corporation.

Count Them All Properly, Inc. is not registered with the CFDB as a political committee or political fund.

## 2. The Relationship Between the Interested Parties.

The RPM set up a separate corporate account to pay for the GOP recount effort. This was reported by Tom Scheck of Minnesota Public radio on February 1, 2011.

*The Republican Party of Minnesota and Republican Tom Emmer's campaign for governor will not disclose the money it raised to help with the recount. Republican Party of Minnesota Chair Tony Sutton said today that the group created a separate corporate account, Count Them All Properly Inc., for their recount efforts. He said they won't disclose the amount of money raised or by whom -- and state and federal laws don't require them to release it.*

*That's counter to Sutton's past comments where he said they would run their recount funds through The Minnesota Republican Party. Those funds would have been disclosed if Sutton and others accepted the funds through the Republican Party's main account.*

*When asked about the discrepancy between his past statement and the decision to not disclose the funds, Sutton said "We changed our minds."<sup>1</sup>*

Shortly after the resignation of RPM chair Tony Sutton, it was revealed in media reports that the Mr. Sutton signed an "agreement legally obliging the party to cover the full cost of the recount legal fees." (Attachment C.) Both Mr. Sutton and one of the GOP attorneys on the recount, Tony Trimble, confirmed that the document exists.

*But Trimble claimed that the agreement — which he declined to provide to PIM, citing attorney/client privilege — was not at all ambiguous regarding the Republican Party's bottom-line responsibility to pay the fees.*

*"We have a written agreement with the Republican Party of Minnesota to pay that fee, and as chairman, Tony Sutton signed the agreement," Trimble said. "[The Republican Party is] fully committed to pay that fee — not a little of it, all of it."<sup>2</sup>*

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<sup>1</sup> Scheck, Tom. "MNGOP won't disclose recount fundraising" MPR News February 1, 2011 [http://minnesota.publicradio.org/collections/special/columns/polinaut/archive/2011/02/mngop\\_wont\\_disc.shtml](http://minnesota.publicradio.org/collections/special/columns/polinaut/archive/2011/02/mngop_wont_disc.shtml)

<sup>2</sup> Demko, Paul and Briana Bierschbach. "Sutton admits signing agreement for gov recount legal fees, failing to tell other party officials" Politics in Minnesota December 7, 2011 <http://politicsinminnesota.com/2011/12/sutton-admits-signing-agreement-for-gov-recount-legal-fees-failing-to-tell-other-party-officials/>

## VIOLATIONS OF MINNESOTA LAW

### **1. RPM Has Conspired to Circumvent Minnesota's Disclosure law.**

The RPM funneled contributions through Count Them All Properly, Inc. to avoid disclosure of contributions and possibly receive illegal corporate contributions that a political party is forbidden from receiving.

The CFDB defined what circumvention is in the case of Margaret (Kelliher) for Governor Committee in 2010. There the board said, "In considering the matter of circumvention, it is important to recognize that if the act of redirection and the purpose of avoiding limits or disclosure requirements both exist, a violation has occurred. It is not necessary that the participants knew that what they were doing was prohibited. A violation of Section 10A.29 may occur even if the participants believed that their course of conduct was permitted under Chapter 10A." That is exactly what has happened in this case.

In public statements made by Mr. Sutton to MPR<sup>3</sup>, he clearly understood that Minnesota law required disclosure of contributions to the Republican Party of Minnesota. However, he misinterpreted state law when he thought that he could funnel money to pay for the recount through a separate corporation. The statement shows how the political party initially decided to have these expenses paid for by the RPM, then said that "we changed our minds" and decided to funnel the money through CTAP, Inc. In fact, Mr. Sutton knew that this action was a violation because the RPM was the association that made the complaint against Kelliher for Governor campaign in 2010.

It is clear in these statements that the RPM created CTAP, Inc. for the purpose of avoiding disclosure of the contributions and expenditures. There are a variety of motives that the RPM would have in creating this scheme. The most likely is that it wanted to hide the expenditures from both the public and Republican Party members to make it appear that the party was in better financial standing. In addition, they likely wanted to shield donors from public scrutiny. But, most concerning is the possibility that the fund accepted illegal corporate contributions that the political party cannot accept.

It is these motives that fueled the RPM to create a corporate account called CTAP, Inc. However, that business corporation was not created until December 3, 2010, which was more than a month into the recount and only four days before the recount ended on December 7, 2010. This is the clearest evidence that the RPM was in fact the client and not CTAP, Inc. for all the legal expenses and other costs associated with the recount. Starting on November 8, it was reported that the GOP named its legal team by hiring Ben Golnik<sup>4</sup>, Michael Toner<sup>5</sup>, Eric

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<sup>3</sup> Scheck, Tom. "MNGOP won't disclose recount fundraising" *MPR News* February 1, 2011  
[http://minnesota.publicradio.org/collections/special/columns/polinaut/archive/2011/02/mngop\\_wont\\_disc.shtml](http://minnesota.publicradio.org/collections/special/columns/polinaut/archive/2011/02/mngop_wont_disc.shtml)

<sup>4</sup> "Emmer for Governor, Republican Party of Minnesota Announce New Recount Hires" MN GOP November 8, 2010  
<http://www.mngop.com/news.asp?artid=498>

Magnuson,<sup>6 7</sup> and Tony Trimble.<sup>8</sup> All the media reports identify the client as the RPM. In fact, a press release on November 17, 2010 on the RPM website states, “Emmer for Governor and the state party have filed a petition with the Minnesota Supreme Court asking the court to ensure that reconciliation has occurred in each of Minnesota’s 4,136 precincts.”<sup>9</sup> Then on November 18, 2010 the RPM took further legal action.<sup>10</sup>

Those lawyers could not have signed a contract with CTAP, Inc. because it did not exist until December 3<sup>rd</sup>. The Secretary of States website says that “The corporation does not exist until the Secretary of State reviews, approves and files the articles of incorporation.”<sup>11</sup> It is clear that the RPM was in fact the client and those attorneys began to bill the RPM for their time. Before December 3<sup>rd</sup>, the RPM legal team conducted the vast majority of its work and thus accrued the overwhelming majority of its legal expenses. Here are some of the major activities that the legal team engaged in before December 3<sup>rd</sup>:

- Filed one major lawsuit<sup>12</sup> on November 17 with the Minnesota Supreme Court.
- Observed the manual recount of the election.

The meeting of the state canvassing board was the only legal battle that was not complete by December 3, 2010. Based on these facts, the attorneys were required to send receipts to the RPM and the RPM should have disclosed that expenditure on its *Report of Receipts and Expenditures for 2010*.

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<sup>5</sup> Black, Sam. “Emmer, GOP name recount legal team” Minneapolis/Saint Paul Business Journal November 8, 2010 <http://www.bizjournals.com/twincities/news/2010/11/08/emmer-gop-name-recount-legal-team.html>

<sup>6</sup> Pugmire, Tim. “GOP adds Magnuson to recount team” MPR News November 9, 2010 [http://minnesota.publicradio.org/collections/special/columns/polinaut/archive/2010/11/gop\\_adds\\_magnus.shtml](http://minnesota.publicradio.org/collections/special/columns/polinaut/archive/2010/11/gop_adds_magnus.shtml)

<sup>7</sup> “Eric Magnuson Names Lead Litigator for Emmer for Governor, Republican Party of Minnesota” MN GOP November 9, 2010 <http://www.mngop.com/news.asp?artid=499>

<sup>8</sup> Weiner, Jay. “GOP saber-rattling Tony Sutton vows aggressive recount fight” MinnPost November 3, 2010 [http://www.minnpost.com/stories/2010/11/03/23035/gops\\_saber-rattling\\_tony\\_sutton\\_vows\\_aggressive\\_recount\\_fight](http://www.minnpost.com/stories/2010/11/03/23035/gops_saber-rattling_tony_sutton_vows_aggressive_recount_fight)

<sup>9</sup> “Emmer for Governor, Republican Party of Minnesota petition Minnesota Supreme Court to Ensure Number of Total Votes Matches Voters” MN GOP website November 17, 2010 <http://www.mngop.com/news.asp?artid=505>

<sup>10</sup> “Emmer for Governor, Republican Party of Minnesota Propose Revisions to Recount Plan” MN GOP website November 18, 2010 <http://www.mngop.com/news.asp?artid=506>

<sup>11</sup> Minnesota Secretary of State website. <http://www.sos.state.mn.us/index.aspx?page=172>

<sup>12</sup> “Tom Emmer and the Republican Party of Minnesota are asking the Minnesota Supreme Court to delay a recount in Minnesota’s contested race for governor.”  
Scheck, Tom. “GOP sues over ballots in Minn. Gov race” MPR News November 17, 2010 <http://minnesota.publicradio.org/display/web/2010/11/17/gop-lawsuit/>

In addition, the RPM paid for some recount expenses like those to county officials for making copies of election materials. While other expenses did not go reported, such as legal expenses. This shows evidence of coordination between the two entities, that will be confirmed by examining the contract that the RPM signed with recount attorney's.

The CFDB should find that RPM materially contributed to the circumvention of Chapter 10A and impose the maximum penalty of \$3,000 per violation. A violation would occur with each instance a contribution or expenditure made to CTAP, Inc. In the Kelliher case, the board stated "the Board's usual policy is to base penalties on the amount of the violation." Common Cause Minnesota urges the board to follow that policy and determine the fine after the board examines the contributions received made by CTAP, Inc. Based on public statements made by the RPM December 20, 2011, that amount should be around \$719,000<sup>13</sup>.

## 2. Failing to receive approval from treasurer

The RPM failed to receive written authorization from the treasurer of the committee. In the Politics in Minnesota article, RPM treasurer David Sturrock said, "he was not aware the party had entered into such an agreement. 'This is new information to me,' he said. 'I'd like to know more about the information involved before I can have any opinion on it.'"<sup>14</sup>

According to Minn. Stat. § 10A.17, subd. 1, a party unit may not expend money unless the expenditure is authorized by the treasurer or deputy treasurer of that party unit. The RPM violated that statute when the RPM treasurer, David Sturrock, did not approve the expenditure of \$450,000 in legal fees to Trimble and Associates according to the public statements.<sup>15</sup>

The CFDB should impose a penalty of \$1,000 for violating Section 10A.17, subd. 1 & 2, for each instance that authorization was not received. The public statements above prove at least one instance, but Common Cause Minnesota believes that there may be more based on large number of expenditures that failed to be reported on the *Report of Receipts and Expenditures*.

In a statement to the Star Tribune, Mr. Sturrock said. "I was neither consulted nor informed about ... 2010 recount costs. Also, the unreported obligations identified by the current financial review were not known to me."<sup>16</sup>

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<sup>13</sup> Scheck, Tom. "Republican official: MN GOP debt load 'some ugly stuff'" MPR News December 30, 2011 <http://minnesota.publicradio.org/display/web/2011/12/30/mn-gop-debt-load/>

<sup>14</sup> Demko, Paul and Briana Bierschbach. "Sutton admits signing agreement for gov recount legal fees, failing to tell other party officials" Politics in Minnesota December 7, 2011 <http://politicsinminnesota.com/2011/12/sutton-admits-signing-agreement-for-gov-recount-legal-fees-failing-to-tell-other-party-officials/>

<sup>15</sup> Ibid

<sup>16</sup> Helgeson, Baird. "State GOP \$2 million in debt" Star Tribune December 30, 2011 <http://www.startribune.com/politics/statelocal/136461988.html>

However, it is also possible that the treasurer was aware of these expenditures and then knowingly filed a false statement with the CFDB.

### 3. Filing a False Statement

The RPM committee filed numerous false statements with the Campaign Finance Disclosure Board by omitting from its *Report of Receipts and Expenditures* numerous expenditure for the legal fees and copying costs associated with the recount. The RPM *Report of Receipts and Expenditures* for 2010 does not list a single unpaid expenditures for 2010. Through media reports and public statements made by RPM chair Tony Sutton, we know the RPM had outstanding debt of \$500,000 from the 2010 election.<sup>17</sup>

Specially, there was considering press attention that the RPM was delinquent in paying bills from numerous counties for materials sent to the RPM recount effort. The Winona Daily News reported that “party officials are slowly settling debts with about two dozen counties, one at a time.”

It appears that these receipts were not reported on the RPM 2010 *Report of Receipts and Expenditures*. Media reports identified four counties that were not paid by the middle of 2011 for recount costs: Brown County (\$1,441)<sup>18</sup>, Winona County (\$3,000)<sup>19</sup> Yellow Medicine (\$192)<sup>20</sup>, Goodhue (\$2,020)<sup>21</sup>. For those four counties, those recipients were not reported on the 2010 *Report of Receipts and Expenditures*. The law clearly requires the RPM to report “each receipt of over \$100 during the reporting period” Minn. Stat. § 10A.20, subd. 3(e). Those four counties sent receipts to the RPM in the months of November and December of 2010, thus requiring that they be reported in the 2010 *Report of Receipts and Expenditures* for the RPM.

Then on December 11, 2011, the RPM through an internal review identified \$415,211 in debt that had never been reported. During the press conference, Mike Vekich admitted that the expenses were from 2009, 2010, and 2011. Any expenditures that were made in 2009 and 2010 represent a clear violation of the law. The CFDB should identify which of these expenditures (Attachment E) were made in 2009 and 2010 through a review of the RPM records. In addition,

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<sup>17</sup> “Overall, the party still owes about \$500,000 from the last election. Most of the remaining debt is owed to attorneys, consultants and polling companies, according to the GOP.” Helgeson, Baird. “GOP still owes some counties for recount” *Star Tribune* May 28, 2011 <http://www.startribune.com/politics/statelocal/122776349.html>

<sup>18</sup> Moniz, Josh. “Brown County still awaits GOP payment for recount” *The New Ulm Journal* May, 2 2011 <http://www.nujournal.com/page/content.detail/id/524062.html>

<sup>19</sup> Anderson, Patrick. “GOP still owes counties for 2010 recount” *Winona Daily News* June 1, 2011 [http://www.winonadailynews.com/news/local/article\\_d3045d10-8bfc-11e0-bf59-001cc4c03286.html](http://www.winonadailynews.com/news/local/article_d3045d10-8bfc-11e0-bf59-001cc4c03286.html)

<sup>20</sup> Helgeson, Baird. “GOP still owes some counties for recount” *Star Tribune* May 28, 2011 <http://www.startribune.com/politics/statelocal/122776349.html>

<sup>21</sup> *ibid*

this list of unpaid vendors may not be the complete list of violations. Any vendors that were paid back in 2011 did not appear on this list, such as the expenses to the county governments identified earlier.

That is why the CFDB must conduct a thorough audit of the RPM finances. Only then will the CFDB uncover all the expenditures that should have been disclosed in 2010.

Not only did the RPM fail to report expenditures that it made, but is also failed to disclose the contributions that were circumvented through the CTAP, Inc. A political committee is required to file a *Report of Receipts and Expenditures* with the CFDB on specified dates. The report must disclose the name, address, and employer, or occupation if self-employed, of each individual or association that has made one or more contributions to the reporting entity. Minn. Stat. § 10A.20, subd. 3(b).

An individual who signs and certifies to be true a report or statement submitted to the CFDB knowing it contains false information or who knowingly omits required information is guilty of a gross misdemeanor and subject to a civil penalty imposed by the CFDB of up to \$3,000. Minn. Stat. § 10A.025, subd. 2.

The RPM should have reported all the contributions that were received from CTAP, Inc. because the RPM redirected all contributions to the recount effort through this dummy corporation. In fact, there was no way for the public to know how to give to CTAP, Inc. because it did not have a website or produce any information on how people could send contributions. However, the Emmer for Governor website (Attachment D) encouraged people to contact the RPM if they were interested in making contributions to support the recount effort. In addition, Mr. Sutton's public comments to Don Davis of the Fargo Forum confirm that the RPM was in fact soliciting contributions to pay for the recount effort.<sup>22</sup> While it appears that some contributions to the recount effort were reported on the RPM *Report of Receipts and Expenditures* for 2010. Until the books of CTAP, Inc. are examined, it is difficult to know exactly what contributions went unreported in 2010.

The CFDB should find that an act of filing a false statement has occurred and impose the maximum penalty of \$3,000 for each instance.

It also appears that the person that was required to file a report did not in fact maintain the records on the matters to be reported as required by Minnesota Statute 10A.025 subd. 3. In the resignation letter of the RPM treasurer, David Sturrock states, "If future Secretary-Treasurers are to be meaningful assets to the Republican Party they will need to be informed more fully, and consulted more frequently, than has the been case over the past few administrations. In

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<sup>22</sup> "Howe said that the unpaid bills reflect poorly on the party and suggested that all 109 Republican lawmakers contribute. Sutton said he would accept any donation."

Davis, Don. "Slow, but sure, GOP says it is repaying counties for recount" *Fargo Forum* June 7, 2011 [http://capitolchat.areavoices.com/2011/06/07/slow-but-sure-gop-says-it-is-repaying-counties-for-recount/?utm\\_source=twitterfeed&utm\\_medium=twitter](http://capitolchat.areavoices.com/2011/06/07/slow-but-sure-gop-says-it-is-repaying-counties-for-recount/?utm_source=twitterfeed&utm_medium=twitter)

particular, they need to know when the party is entering into major financial commitments. For example, I was neither consulted nor informed about the attorney's regarding 2010 recount costs. Also, the unreported obligations identified by the current financial review were not known to me. If this resignation ensures that future Secretary-Treasurers receive the access and authority their position merits, then my departure will be a sacrifice happily borne."<sup>23</sup> This statement makes it clear that RPM treasurer did not maintain the proper records to file accurate reports with the state. These laws exist so that those responsible for the accuracy of the reports cannot later plead ignorance to the false statements made on those reports.

The CFDB should find that treasurer David Sturrock failed to maintain the records as required by state law and recommend criminal prosecution to the Ramsey County Attorney. A treasurer job is to maintain the records and it is clear through the public statements of Mr. Sturrock that he in fact did not maintain the records of the RPM, a job that he willingly accepted.

### **Requested Actions**

#### **1. Expedited Consideration**

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

#### **2. Penalties**

In sum, Common Cause Minnesota asks the Minnesota Campaign Finance Disclosure CFDB to find that the Republican Party of Minnesota has violated Sections 10A.025, 10A.17, 10A.20, and 10A.29.

We urge the Campaign Finance and Disclosure Board to assess the following penalties:

- Assess a civil penalty of \$3,000 for circumvention for each instance.
- Assess a civil penalty of \$3,000 for lack of proper authorization for each instance.
- Assess a civil penalty of \$3,000 for filing a false statement for each instance.

In addition, if the board finds that a corporate contribution was made to the RPM, we ask that any evidence be immediately sent to the Ramsey County attorney to investigate a violation of State Statute 211B.15, a ban on corporate political contributions.

In 2010, Common Cause filed a similar complaint against an independent expenditure group for failing to register and disclose contributions. The CFDB allowed the groups to file their late reports, to become compliant, therefore avoiding any penalties. The CFDB said,

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<sup>23</sup> Scheck, Tom. "Sturrock resigns as Secretary-Treasurer of the MNGOP" MPR News December 30, 2011  
[http://minnesota.publicradio.org/collections/special/columns/polinaut/archive/2011/12/sturrock\\_resign.shtml](http://minnesota.publicradio.org/collections/special/columns/polinaut/archive/2011/12/sturrock_resign.shtml)



“The Board notes the potential for circumvention of the disclosure requirements is equally real with associations that are not political committees. These may include unincorporated associations, for-profit and nonprofit corporations, trade associations, and unions. The Board will continue to monitor the mechanisms used to move money through the campaign finance system. In particular, the Board will monitor the use of multi-tier transactions that may lead to less disclosure than required by law or that may be used for the purpose of circumventing disclosure requirements.”

Unfortunately, this statement was not sufficient to dissuade the RPM to create this scheme to funnel money into the party. In our investigation, it is clear the RPM has done a very poor job of tracking expenditures and contributions. Common Cause believes that this activity warrants a full audit of the RPM financial records. Only through that process, will the CFDB understand the true scope of the problem. In addition, the Federal Elections Committee fined the RPM for failing to disclose over \$100,000 in debt and illegally transferring over \$500,000 into its federal account.<sup>24</sup> The similarities between this complaint and that case are striking. This type of behavior cannot continue to be repeated.

Considering the nature of the scheme and the intent of the parties to create a shell company in order to hide the source of contributions, we encourage the CFDB to seek the maximum penalties to send a clear message that these attempts to undermine disclosure will not be tolerated.

Common Cause Minnesota



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<sup>24</sup>Pugmire, Tim. “Minnesota GOP pays FEC penalty” *MPR News* August 19, 2011  
[http://minnesota.publicradio.org/collections/special/columns/polinaut/archive/2011/08/minnesota\\_gop\\_p.shtml](http://minnesota.publicradio.org/collections/special/columns/polinaut/archive/2011/08/minnesota_gop_p.shtml)

State of Minnesota

**SECRETARY OF STATE**

CERTIFICATE OF INCORPORATION

I, Mark Ritchie, Secretary of State of Minnesota, do certify that: Articles of Incorporation, duly signed and acknowledged under oath, have been filed on this date in the Office of the Secretary of State, for the incorporation of the following corporation, under and in accordance with the provisions of the chapter of Minnesota Statutes listed below.

This corporation is now legally organized under the laws of Minnesota.

Corporate Name: Count Them All Properly, Incorporated

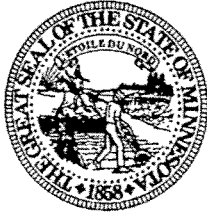
Corporate Charter Number: 4080491-2

Chapter Formed Under: 302A

This certificate has been issued on 12/03/2010.



*Mark Ritchie*  
Secretary of State.



DC-OR



MINNESOTA SECRETARY OF STATE
MINNESOTA BUSINESS CORPORATION
ARTICLES OF INCORPORATION

Minnesota Statutes, Chapter 302A
Filing Fee \$160.00

READ THE INSTRUCTIONS BEFORE COMPLETING THIS FORM.

The undersigned incorporator(s) is an (are) individual(s) 18 years of age or older, and adopts the following articles of incorporation:

Note: A professional corporation governed under Chapter 319B must include an attachment with the following information: (This information is only required if this is a professional corporation.)

- 1. Statement that the Minnesota firm elects to operate and acknowledges that it is subject to Minnesota Statutes, Chapter 319B.01 to 319B. 12.
2. List the professional service the corporation is authorized to provide under Chap. 319B, subd 19.

ARTICLE I - BUSINESS NAME

Name of Corporation: (Required) (Must include a corporate or professional designation in their name.)

Count Them All Properly, Incorporated

ARTICLE II - REGISTERED OFFICE AND AGENT

The Registered Office Address of the Corporation is: (Required)

6043 Hudson Road, Suite 300 Woodbury, MN 55125
Street Address (A PO Box by itself is not acceptable) City State Zip

The Registered Agent at the above address is:

Daniel G. Puhl

Agent's Name (A registered agent is not required.)

ARTICLE III - SHARES

The corporation is authorized to issue a total of 100 shares. (Must authorize at least one share.)

ARTICLE IV - INCORPORATORS

I, the undersigned, certify that I am signing this document as the person whose signature is required, or as agent of the person(s) whose signature would be required who has authorized me to sign this document on his/her behalf, or in both capacities. I further certify that I have completed all required fields, and that the information in this document is true and correct and in compliance with the applicable chapter of Minnesota Statutes. I understand that by signing this document I am subject to the penalties of perjury as set forth in Section 609.48 as if I had signed this document under oath.

Daniel G. Puhl 791 Holly Avenue St. Paul, MN 55125
Incorporator's Name Street Address City State Zip Signature

Incorporator's Name Street Address City State Zip Signature

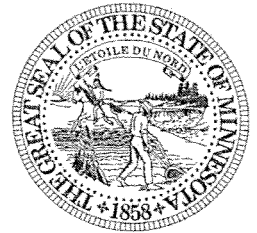
List a name, daytime phone number, & e-mail address of a person who can be contacted about this form.

Daniel G. Puhl STATE OF MINNESOTA 763-291-0606 puhl16@comcast.net
Contact Name DEPARTMENT OF STATE Phone Number E-Mail Address

DEC 03 2010

Monk Fitchie
Secretary of State

**Office of the Minnesota Secretary of State**  
**Notice of Change of Registered Office/Registered Agent**  
*Minnesota Statutes, Chapter 5.36*



Read the instructions before completing this form. Note: See instructions for filing fees.

1. Entity Name: (Required)

Count Them All Properly, Incorporated

2. New Registered Office Address:

165 Western Ave N #210 St. Paul MN 55102  
Street Address (*A post office box by itself is not acceptable*) City State Zip Code

3. New Registered Agent:

Mary Igo

If you do not wish to designate an agent, you must list "NONE" in this box. An entity formed under the laws of another jurisdiction must designate a registered agent in Minnesota. **DO NOT LIST THE ENTITY NAME.**

4. If the business entity has changed their agent or the registered office address, this change was authorized by a resolution approved by the affirmative vote of a majority of the governing body of the business entity as required by Section 5.36, Subd. 3. If the agent has changed their name or their address, then a copy of the change has been sent to the business entity or their legal representative as required by Section 5.36, Subd. 5. In compliance with Section 5.36, the address of the registered office and the address of the business office of the registered agent(s) are identical.

5. I, the undersigned, certify that I am signing this document as the person whose signature is required, or as agent of the person(s) whose signature would be required who has authorized me to sign this document on his/her behalf, or in both capacities. I further certify that I have completed all required fields, and that the information in this document is true and correct and in compliance with the applicable chapter of Minnesota Statutes. I understand that by signing this document I am subject to the penalties of perjury as set forth in Section 609.48 as if I had signed this document under oath.

Mary Igo  
Signature of Authorized Person or Authorized Agent

12/8/2012  
Date

**Email Address for Official Notices**

Enter an email address to which the Secretary of State can forward official notices required by law and other notices:  
mary.igo@gmail.com

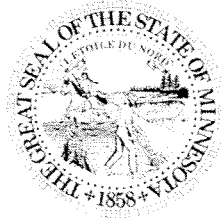
Check here to have your email address excluded from requests for bulk data, to the extent allowed by Minnesota law.

List a name and daytime phone number of a person who can be contacted about this form:

Mary Igo 612-290-9327  
Contact Name Phone Number

**Entities that own, lease, or have any financial interest in agricultural land or land capable of being farmed must register with the Department of Agriculture.**

Does this entity own, lease, or have any financial interest in agricultural land or land capable of being farmed?  
Yes  No



**Work Item 456701200028**  
**Original File Number 4080491-2**

STATE OF MINNESOTA  
OFFICE OF THE SECRETARY OF STATE  
FILED  
12/15/2011 4:30 PM

*Mark Ritchie*

Mark Ritchie  
Secretary of State

Attachment C

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## legal fees, failing to tell other party officials

by Paul Demko and Briana Bierschbach

Published: December 7, 2011

Time posted: 4:57 pm

Tags: [David Sturrock](#), [Eric Magnuson](#), [Jeff Johnson](#), [Kelly Fenton](#), [Mark Dayton](#), [Michael Brodkorb](#), [Michael Toner](#), [recount](#), [Scott Dutcher](#), [Tom Emmer](#), [Tony Sutton](#), [Tony Trimble](#)



Tony Sutton (Staff photo: Peter Bartz-Gallagher)

Amid internal controversies over the Republican Party of Minnesota's outstanding debts following state Chair **Tony Sutton**'s resignation last week, party officers and insiders have maintained that the state GOP is not legally required to pay back nearly \$500,000 in legal fees racked up during the 2010 gubernatorial election recount.

But although it was apparently unknown to them, a top GOP recount attorney says that claim is false.

On Wednesday one of the GOP attorneys on the recount, **Tony Trimble**, told PIM that then-RPM Chairman Sutton signed an agreement legally obliging the party to cover the full cost of the recount legal fees, reportedly around \$450,000. And

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late Wednesday afternoon, Sutton confirmed the existence of an agreement that he says he does not recall disclosing to other party officials. But Sutton went on to claim that he believes the party is only responsible for the debt in the event that the recount fund in question, incorporated as Count Them All Properly Inc., ceases to exist.

"As long as the recount fund exists," Sutton said, "that's the legal entity responsible, period. At least that's my impression."

Sutton said that prior to his resignation, he recommended working out a monthly payment plan to retire the debt currently held by Count Them All Properly. But when pressed as to who was responsible for leading that effort, he replied, "I don't know at this point."

Asked if he had disclosed the existence of a written agreement regarding the recount debt to other top GOP officials, Sutton answered: "I'm not sure I ever talked to them about it, quite frankly."

But Trimble claimed that the agreement – which he declined to provide to PIM, citing attorney/client privilege – was not at all ambiguous regarding the Republican Party's bottom-line responsibility to pay the fees.

"We have a written agreement with the Republican Party of Minnesota to pay that fee, and as chairman, Tony Sutton signed the agreement," Trimble said. "[The Republican Party is] fully committed to pay that fee – not a little of it, all of it."

Speaking to PIM reporters for a story about party finances this week ("[Sutton resignation puts focus on state GOP debt, discord](#)"), multiple members of the state GOP executive committee said Sutton repeatedly told members the party was not legally required to pay the recount funds, and that all recount work was separate from the actions of the party.

"I'll tell you what has been told to the executive committee: The party has no legal liability on the recount fund debt," executive committee member **Scott Dutcher** said earlier this week. "I personally asked [Tony Sutton] about that question numerous times and every time [the answer was] that the party has no legal liability."

RPM Secretary/Treasurer **David Sturrock** echoed that sentiment in an interview with PIM/Capitol Report earlier this week, as did former Deputy Party Chair **Michael Brodkorb**, who stepped down in October to work on state Sen. **Mike Parry's** run for Congress.

Contacted about Trimble's assertion on Wednesday afternoon, Sturrock said he was not aware the party had entered into such an agreement. "This is new information to me," he said. "I'd like to know more about the information involved before I can have any opinion on it."

Brodkorb, when asked about Trimble's claim at the Capitol Wednesday, appeared visibly disconcerted. "It is the first time that I was made aware of such a document," he said. "It was always presented in executive committee... and in statements by our secretary/treasurer that this was a separate legal fund and that the party was not responsible for those recount bills. This document completely contradicts the public statements that were made."

He continued: "I'm assuming that these documents are valid and accurate. I'm not making any presumption that the documents are not accurate. Literally when I spoke to Secretary/Treasurer Sturrock a few moments ago, this was the first I'd ever heard about it."






Asked later if he thought Sutton may have deceived him, Brodkorb chose his words carefully. "I'm very loyal to Tony," he said. "I'm still recovering from the information that I've heard here. ... I need to have a dialogue with him. Clearly to say that I am shocked is an understatement."

The recount costs would only add to an already daunting debt load facing the party. At the end of October, the RPM had unpaid bills of more than \$500,000,

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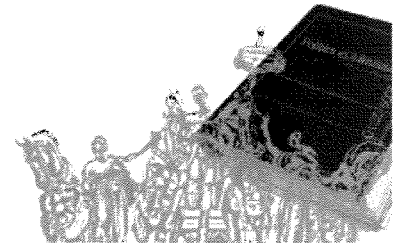
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according to the party's most recent FEC filing. That doesn't include a recent FEC fine, for which the party still owes more than \$100,000. All told, the additional recount costs could put the party's debt closer to the \$1 million mark.

"If the documents are valid," said Brodkorb, "and all indications are that they are... the magnitude and the scope... of the debt has grown at an incredibly exponential rate, an incredibly exponential rate. But I have hope and faith, even in light of this new information that has come out, that our party will recover and that we'll be in a strong position."

"But clearly this was information that was not communicated."

The party is also still recovering from a tumultuous weekend in which Sutton abruptly resigned from his post Friday evening. Delegates also elected a new deputy chair - **Kelly Fenton** - at the state central committee meeting the following day and opted in a near-unanimous voice vote to table the budget proposal. An internal financial review of the party's debts - led by executive committee member **Jeff Johnson** - is being undertaken.

Trimble said that about half of the recount costs are owed to Trimble's firm, Trimble and Associates, while the remainder is due to attorney and former state Supreme Court Chief Justice **Eric Magnuson** and to Washington, D.C. lawyer **Michael Toner**, who also worked on the GOP recount legal team.

When reached by phone, Magnuson said all questions regarding the unpaid legal fees must go through his client, whom he identified as the Republican Party of Minnesota.

 [More >](#)

[< Tony Sutton's letter of resignation](#)

[AG's office: Limited options on unionization suit; Dayton will contest order >](#)

## One Response to "Sutton admits signing agreement for gov recount legal fees, failing to tell other party officials"

**Leslie Davis** Says:  
December 8th, 2011 at 9:38 pm

I can't help gloating because you were so rotten to me.  
A Real Republican.  
Leslie Davis

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Your name: \*

E-mail: \*

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## A Message from Tom Emmer

After over 16 months of campaigning, Election Day has now passed. Jacquie and I can't express enough what an honor and a privilege it has been to run for governor.

We have campaigned on a positive message of government living within its means, lower taxes, and job creation. The response we received has been overwhelming, and we appreciate all the support.

As the certification and potential recount process begins, allow us one last opportunity to thank you for the hard work, dedication, time, treasure and effort you have put into this campaign.

My family and I are blessed to have the support of so many throughout this great state. If you wish to volunteer your time or make a donation to assist the recount efforts, please contact the Republican Party of Minnesota.

Should we prevail, I look forward to the privilege of serving all Minnesotans as we move our great state in a positive direction.

Continue to the Emmer for Governor website

# Attachment E

## Republican Party of Minnesota Vendors Listing

409-PRAXAIR DISTRIBUTION	\$ 1,205
AMATO & ASSOCIATES	\$ 3,008
A.J. SCHAAKE CO	\$ 67
ALL AMERICAN STORAGE	\$ 700
AMERIPRISE FINANCIAL	\$ 7,637
ASSURANT EMPLOYEES BENEFITS	\$ 151
AUTO OWNERS	\$ 122
AVVR	\$ 51,949
BARBARA LINERT	\$ 63
BRYAN CAVE LLP	\$ 68,395
BUSINESS DATA RECORDS	\$ 350
CAPITAL DIRECT	\$ 1,554
CARDINALS FEC COMPLIANCE	\$ 89,997
CARDMEMBER SERVICES	\$ 8,881
CHRISTIAN DAROUNI	\$ 35
CITY OF ST PAUL	\$ 27
COFFEE MILL	\$ 215
DAVID STURROCK	\$ 517
DAVID THOMPSON	\$ 7,700
DELTA DENTAL	\$ 317
DIRECT MAIL SYSTEMS	\$ 51,753
FLS CONNECT LLC	\$ 84,335
FRANK MAGID	\$ 67,500
FUNDRAISING ASSOC	\$ 20,250
GOLNIK STRATEGIES	\$ 8,000
HEALTHPARTNERS	\$ 7,722
HUB PROPERTIES TRUST	\$ 34,441
IRON CITY PROPERTIES	\$ 600
JOEL CARY	\$ 1,118
LEVENTHAL PLLC	\$ 253
KIERAN'S PUB	\$ 797
LEXISNEXIS	\$ 4,497
MEDIA TRACKING	\$ 845
MINNEAPOLIS CLUB	\$ 3,212
MN DEPT OF HEALTH	\$ 45
NEXTERA	\$ 83
P2B STRATEGIES	\$ 19,566
PINNACLE DIRECT. INC	\$ 25,180
PINNACLE LIST COMPANY	\$ 4,236
POPP.COM	\$ 10,590
PUBLIC OPINION STRATEGIES	\$ 17,500
QWEST	\$ (52)
RAPIT PRINT	\$ 11,936
RBA CONSULTING	\$ 4,775
RESOLUTION GRAPHICS	\$ 6,846
SIEMAN'S	\$ 11,435
SILENT KNIGHT	\$ 322
SMD COPY SYSTEMS	\$ 950

Republican Party of Minnesota  
Vendors Listing

SOUTHWEST PUBLISHING	\$ 22,416
ST CLOUD RADISON	\$ 1,037
STAPLES ADVANTAGE	\$ 1,552
STROTHER COMMUCIATIONS	\$ 52,446
THE TARRANCE GROUP	\$ 26,127
TRIMBLE & ASSOCIATES	\$ 69,505
UPS STORE #2636	\$ 1,669
VERIZON WIRELESS	\$ 2,506
WILEY REIN LLP	\$ 18,795
WOOLEY'S RESTAURANT	\$ 4,146
ZAYO ENTERPRISE NETWORK	\$ 1,670
	<hr/>
TOTAL VENDOR'S PAYABLE	\$ 843,497

**BEFORE THE FEDERAL ELECTION COMMISSION**

1  
2  
3 In the Matter of )  
4 ) MUR 5926  
5 Republican Party of Minnesota and )  
6 David E. Sturrock, in his official )  
7 capacity as treasurer )  
8 )  
9

**CONCILIATION AGREEMENT**

10  
11  
12  
13 This matter was initiated by a signed, sworn, and notarized complaint by Citizens for  
14 Responsibility and Ethics in Washington (“CREW”), Melanie Sloan, and Diane Gerth, and  
15 pursuant to information ascertained by the Federal Election Commission (“Commission”) in the  
16 normal course of carrying out its supervisory responsibilities. The Commission found probable  
17 cause to believe that the Republican Party of Minnesota (“RPM” or “Committee”) and David  
18 E. Sturrock, in his official capacity as treasurer, (collectively, “Respondents”) violated 2 U.S.C.  
19 §§ 434(b) and 441a(f), and 11 C.F.R. §§ 102.5(a) and 106.7(f).

20 NOW, THEREFORE, the Commission and the Respondents, having duly entered into  
21 conciliation pursuant to 2 U.S.C. § 437g(a)(4)(A)(i), do hereby agree as follows:

22 I. The Commission has jurisdiction over the Respondents and the subject matter of this  
23 proceeding.

24 II. Respondents have had a reasonable opportunity to demonstrate that no action should be  
25 taken in this matter.

26 III. Respondents enter voluntarily into this agreement with the Commission.

27 IV. The pertinent facts and law in this matter are as follows:

28 1. RPM is a political committee within the meaning of 2 U.S.C. § 431(4). RPM is a  
29 state committee of a political party within the meaning of 2 U.S.C. § 431(15).

1           2. David E. Sturrock is the current treasurer of RPM. Mr. Sturrock was not the  
2 treasurer when the conduct that gave rise to this matter occurred.

3           3. The Federal Election Campaign Act of 1971, as amended (“the Act”), requires  
4 committees to disclose the nature and amount of outstanding debts and obligations in their  
5 reports. *See* 2 U.S.C. § 434(b)(8).

6           4. Debts and obligations must be continuously reported until they are extinguished.  
7 11 C.F.R. § 104.11(a). Debts of \$500 or less must be reported no later than 60 days after the  
8 obligation is incurred, while debts of more than \$500 must be reported as of the date the  
9 obligation is incurred. 11 C.F.R. § 104.11(b).

10          5. Section 104.11(b) of the Commission’s regulations provides that regularly  
11 recurring administrative expenses will be treated as debt when payment is due. If a committee  
12 does not pay an employee for services rendered to the committee in accordance with an  
13 employment contract or a formal or informal agreement to do so, the unpaid amount may be  
14 treated as debt owed by the committee to the employee, or the employee can sign a written  
15 agreement to convert his or her status to a volunteer. 11 C.F.R. § 100.74. If the unpaid amount  
16 is treated as debt, the committee must continue to report the debt in accordance with 11 C.F.R.  
17 §§ 104.3(d) and 104.11 until the debt is extinguished, until the Commission has completed a  
18 review of a debt settlement plan pursuant to 11 C.F.R. § 116.7(f), or until the employee agrees to  
19 become a volunteer, whichever occurs first. 11 C.F.R. § 116.6.

20          6. Between January 15, 2006 and May 31, 2006, or ten pay periods, RPM withheld  
21 retirement contributions totaling \$7,623 from four employees. During this time period, RPM did  
22 not make any payments to Ameriprise Financial Services (“AFS”), the vendor that maintained  
23 RPM employees’ retirement accounts.

1           7. On June 6 and 16, 2006, RPM made two “catch up” payments to AFS totaling  
2 \$12,243. Beginning June 30, 2006, all funds withheld by RPM were forwarded on a monthly  
3 basis.

4           8. RPM failed to report \$7,623 in withheld employee retirement contributions as debt  
5 without either a debt settlement plan or volunteer services agreement in violation of  
6 2 U.S.C. § 434(b).

7           9. RPM failed to disclose at least \$994,319 in outstanding debt to vendors during  
8 2006 in violation of 2 U.S.C. § 434(b). Of this total, RPM has not disclosed \$552,867 in debts  
9 owed to four of its vendors during calendar year 2006, and RPM disclosed \$441,452 in May  
10 2008 when it filed amendments to its 2006 disclosure reports. The majority of this \$441,452 in  
11 additional debts was disclosed on multiple amended 2006 reports because they were repaid after  
12 several reporting periods. The total of \$441,452 is the total of the increases in debt on each  
13 report. The amended reports disclosed a total of \$83,277.49 in unique debt that had not been  
14 disclosed on the original reports.

15           10. RPM also failed to report unreimbursed staff expense reports as outstanding debt  
16 in violation of 2 U.S.C. § 434(b).

17           11. The Act provides that no person shall make contributions to a state party  
18 committee’s federal account in any calendar year which in the aggregate exceed \$10,000, and  
19 prohibits the state committee from knowingly accepting such contributions. 2 U.S.C. § 441a(a)  
20 and (f).

21           12. Under Minnesota campaign finance law, there is no contribution limit for  
22 permissible sources giving to political parties. *See* Minnesota Statute Chapter 10A, Section 27.

1           13. Where a committee has established both a federal and a non-federal account, only  
2 funds subject to the limitations and prohibitions of the Act shall be deposited into such separate  
3 federal account. 11 C.F.R. § 102.5(a)(1)(i).

4           14. A state party committee may transfer funds from its non-federal account to its  
5 federal account solely to meet allocable expenses, such as administrative costs that are not  
6 directly attributable to a clearly identified federal candidate. 11 C.F.R. § 106.7(f). Under this  
7 provision, the committee must pay the entire amount of an allocable expense from its federal  
8 account and transfer funds from its non-federal account to the federal account solely to cover the  
9 non-federal share of that allocable expense. 11 C.F.R. § 106.7(f)(1)(i).

10           15. RPM incurred \$2,736,692 in administrative expenses during the 2006 election  
11 cycle. The federal share of these expenses totaled \$574,342 and the non-federal share totaled  
12 \$2,162,350. During this same time period, RPM made 51 transfers from its non-federal account  
13 totaling \$2,723,202.

14           16. RPM made \$560,852 in excessive transfers from its non-federal account to its  
15 federal account for allocated administrative expenses in violation of 2 U.S.C. § 441a(f) and  
16 11 C.F.R. §§ 102.5(a) and 106.7(f).

17           17. RPM contends that the errors and omissions in its 2006-2008 reports were not  
18 intentional and in 2007-2008 RPM acted proactively to address the issues involved by retaining  
19 an accounting firm to conduct a comprehensive audit of its financial records. In 2008 RPM  
20 further acted proactively to address the issues involved by filing more than 50 amendments to its  
21 reports. However, these amendments did not disclose all previously undisclosed debt. RPM has  
22 taken affirmative steps to ensure that such errors and omissions do not occur again by retaining a

1 compliance company to prepare its reports, as well as federal campaign finance counsel that  
2 serves as counsel to a number of Republican state party committees.

3 V. Respondents committed the following violations:

- 4 1. Respondents violated 2 U.S.C. § 434(b) by failing to report debts and obligations.
- 5 2. Respondents violated 2 U.S.C. § 441a(f) and 11 C.F.R. §§ 102.5(a) and 106.7(f) by  
6 making excessive transfers from the Committee's non-federal account to its federal account for  
7 allocated administrative expenses.

8 VI. Respondents will pay a civil penalty to the Federal Election Commission in the amount of  
9 One Hundred and Seventy Thousand Dollars (\$170,000) pursuant to 2 U.S.C.

10 § 437g(a)(5)(A). The civil penalty will be paid as follows:

- 11 1. A payment of Twenty Thousand Dollars (\$20,000) is due no more than thirty (30)  
12 days from the date this Agreement becomes effective;

- 13 2. Thereafter, ten consecutive monthly installment payments of Fifteen Thousand  
14 Dollars (\$15,000) each;

- 15 3. Each such installment shall be paid within thirty (30) days of the due date of the  
16 previous installment.

- 17 4. In the event that any installment payment is not received by the Commission by the  
18 fifth day after which it becomes due, the Commission may, at its discretion, accelerate the  
19 remaining payments and cause the entire amount to become due upon ten days written notice to  
20 the Respondents. Failure by the Commission to accelerate the payments with regard to any  
21 overdue installment shall not be construed as a waiver of its right to do so with regard to future  
22 overdue installments.



1 VII. 1. Respondents will cease and desist from violating 2 U.S.C. §§ 434(b) and 441a(f) and  
2 11 C.F.R. §§ 102.5(a) and 106.7(f).

3 2. Respondents will take the following steps:

4 A. Require RPM personnel responsible for preparing RPM's reports and complying  
5 with the Act and Commission regulations to attend a Commission-sponsored training program  
6 during 2011-2012. Respondents shall submit to the Commission evidence of registration and  
7 attendance at such event.  
8

9 B. Prepare an internal training manual, prepared by experienced federal campaign  
10 finance counsel, to assist appropriate personnel in understanding the reporting requirements of  
11 the Act and Commission regulations. Within five months of the effective date of this  
12 Agreement, Respondents shall submit to the Commission a copy of their internal training  
13 manual.

14 C. Retain experienced federal campaign finance counsel to review RPM reports  
15 before they are filed with the Commission.

16 VIII. Respondents will amend the relevant 2006 disclosure reports to accurately reflect debts and  
17 obligations referenced at paragraphs IV.8 and IV.9 within 60 days.

18 IX. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1)  
19 concerning the matters at issue herein or on its own motion, may review compliance with  
20 this agreement. If the Commission believes that this agreement or any requirement thereof  
21 has been violated, it may institute a civil action for relief in the United States District Court  
22 for the District of Columbia.

23 X. This agreement shall become effective as of the date that all parties hereto have executed  
24 same and the Commission has approved the entire agreement.

1 XI. Respondents shall have no more than 30 days from the date this agreement becomes  
2 effective, unless otherwise specified, to comply with and implement the requirements  
3 contained in this agreement and to so notify the Commission.

4 XII. This Conciliation Agreement constitutes the entire agreement between the parties on the  
5 matters raised herein, and no other statement, promise, or agreement, either written or oral,  
6 made by either party or by agents of either party, that is not contained in this written  
7 agreement shall be enforceable.

8 FOR THE COMMISSION:

9 Christopher Hughey  
10 Acting General Counsel

11

12

13 BY:

14 Kathleen M. Guith  
15 Acting Associate General Counsel for Enforcement

\_\_\_\_\_  
Date

16

17

18 FOR THE RESPONDENTS:

19

20

21

22 Michael E. Toner

23 Counsel

24 Republican Party of Minnesota

\_\_\_\_\_  
Date

## FEDERAL ELECTION COMMISSION

In the matter of:      Republican Party of Minnesota  
                                 Anthony G. Sutton, Treasurer              MUR No:  
                                 Marina Taubenberger

### COMPLAINT

1.        Citizens for Responsibility and Ethics in Washington ("CREW"), Melanie Sloan and Diane Gerth bring this complaint before the Federal Election Commission ("FEC") seeking an immediate investigation and enforcement action against the Republican Party of Minnesota ("RPM"), Anthony G. Sutton, treasurer, and Marina Taubenberger for direct and serious violations of the Federal Election Campaign Act ("FECA").

#### Complainants

2.        Complainant CREW is a non-profit corporation, organized under section 501(c)(3) of the Internal Revenue Code. CREW is committed to protecting the right of citizens to be informed about the activities of government officials and to ensuring the integrity of government officials. CREW is dedicated to empowering citizens to have an influential voice in government decisions and in the governmental decision-making process. CREW uses a combination of research, litigation, and advocacy to advance its mission.

3.        In furtherance of its mission, CREW seeks to expose unethical and illegal conduct of those involved in government. One way CREW does this is by educating citizens regarding the integrity of the electoral process and our system of government. Toward this end, CREW monitors the campaign finance activities of those who run for federal office and publicizes those who violate federal campaign finance laws. Through its website, press releases and other methods of distribution, CREW also files complaints

with the FEC when it discovers violations of the FECA. Publicizing campaign finance violators and filing complaints with the FEC serves CREW's mission of keeping the public informed about individuals and entities that violate campaign finance laws and deterring future violations of campaign finance law.

4. In order to assess whether an individual, candidate, party, political committee or other regulated entity is complying with federal campaign finance law, CREW needs the information contained in receipts and disbursements reports that political committees must file pursuant to the FECA, 2 U.S.C. § 434(a)(2); 11 C.F.R. § 104.1. CREW is hindered in its programmatic activity when an individual, candidate, party, political committee or other regulated entity fails to disclose campaign finance information in reports of receipts and disbursements required by the FECA.

5. CREW relies on the FEC's proper administration of the FECA's reporting requirements because the FECA-mandated reports of receipts and disbursements are the only source of information CREW can use to determine if an individual, candidate, party, political committee or other regulated entity is complying with the FECA. The proper administration of the FECA's reporting requirements includes mandating that all reports of receipts and disbursements required by the FECA are properly and timely filed with the FEC. CREW is hindered in its programmatic activity when the FEC fails to properly administer the FECA's reporting requirements.

6. Complainant Melanie Sloan is the executive director of Citizens for Responsibility and Ethics in Washington, a citizen of the United States and a registered voter in and resident of the District of Columbia. Diane Gerth is a citizen of the United States and a registered voter in and resident of Minnesota. As registered voters, Ms.

Sloan and Ms. Gerth are entitled to receive information contained in reports of receipts and disbursements required by the FECA, 2 U.S.C. § 434(a)(2); 11 C.F.R. § 104.1. Ms. Sloan and Ms. Gerth are harmed when an individual, candidate, party, political committee or other regulated entity fails to report campaign finance activity as required by the FECA. See FEC v. Akins, 524 U.S. 11, 19 (1998), quoting Buckley v. Valeo, 424 U.S. 1, 66-67 (1976) (political committees must disclose contributors and disbursements to help voters understand who provides which candidates with financial support). Ms. Sloan and Ms. Gerth are further harmed when the FEC fails to properly administer the FECA's reporting requirements, limiting their ability to review campaign finance information.

#### Respondents

7. The Republican Party of Minnesota is a state committee within the meaning of 2 U.S.C. § 431(15) of FECA and, as such, is registered with the FEC. Anthony G. Sutton is the current treasurer of RPM. Mr. Sutton succeeded Marina Taubenberger, who served as treasurer of RPM throughout the 2005-2006 election cycle and, therefore, was the treasurer of RPM at the time of the events described in this complaint.

#### Factual Allegations

8. On June 2, 2007, the *Minneapolis-St. Paul Star Tribune* reported that former RPM finance director Dwight Tostenson had written a confidential memorandum to the RPM State Executive Committee on February 15, 2007 in which he alleged that RPM had “[u]nderstated its debts – ‘\$100,000 plus’ on [its] FEC reports . . . .” Dan Browning and Pat Doyle, Internal Complaints Roil State GOP Office, *Minneapolis-St. Paul Star Tribune* (June 2, 2007) (attached as Exhibit A). The *Star Tribune* obtained a copy of the Tostenson memorandum and posted it on its web site. Confidential Memorandum from

Dwight Tostenson to RPM State Executive Committee (Feb. 15, 2007) (attached as Exhibit B).

9. In his memorandum, Dwight Tostenson alleged that, beginning in May 2006, he had reported to the Chairman of RPM that “based upon my research and experience, I believe that the Party ha[s] been, among other things, violating FEC law by under-reporting the Party’s outstanding obligations/expenses . . . .” Exhibit B. Specifically, Mr. Tostenson provided “a list of suspected illegal activities that were brought to the Chairman’s attention numerous times since May 2006,” including (1) “Underreporting of our debts and obligations of significant amounts (\$100,000 plus) on our FEC and EPB reports,” and (2) “Significant delays in the payment of staff expense reports. FEC rules require that all expense checks be paid within 30 days or reported as a contribution.” Id. When questioned about the allegations in his memorandum by reporters for the *Star Tribune*, Mr. Tostenson said, “Do I stand by my memo of Feb. 15<sup>th</sup>, 2007? I will tell you . . . I stand by my memo and the information that is contained in it.” Exhibit A.

10. Mr. Tostenson concluded his memorandum by requesting that the RPM Executive Committee, “Conduct a full investigation and audit into the issues brought to your attention in this and other staff communications and then address those issues by holding those responsible for any illegal activity accountable, to minimize the Party’s political and legal liability.” Exhibit B. The *Star Tribune* reported that the treasurer of RPM, Marina Taubenberger, “voluntarily left the party organization in mid March” – approximately one month after Mr. Tostenson sent his confidential memorandum to the RPM State Executive Committee. Exhibit A.

## COUNT I

11. FECA and FEC regulations require State committees, including RPM, to disclose on their periodic reports to the FEC “the amount and nature of outstanding debts and obligations owed by” the State committee. 2 U.S.C. § 434(b)(8); 11 C.F.R. § 104.3(d). Moreover, FEC regulations require that State committees report debts and obligations which remain outstanding continuously until they are extinguished. 11 C.F.R. § 104.11(a). Debts of \$500 or less must be reported not later than 60 days after the obligation is incurred. 11 C.F.R. § 104.11(b). Debts of more than \$500 must be reported as of the date the obligation is incurred. Id.

12. RPM and Marina Taubenberger committed multiple violations of 2 U.S.C. § 434(b)(8) and 11 C.F.R. §§ 104.3(d), 104.11(a) & (b) by repeatedly failing to disclose debts and obligations totaling more than \$100,000 from at least as early as May 2006 and continuing through at least February 2007.

## COUNT II

13. FEC regulations state that, “The payment by an individual from his or her personal funds, including a personal credit card, for the costs incurred in . . . obtaining goods or services that are used by or on behalf of” a State committee are contributions by that individual unless the individual is reimbursed within 60 days after the closing date of the billing statement on which the charges first appear if the payment was made using a personal credit card, or within 30 days after the date on which the expenses were incurred if a personal credit card was not used. 11 C.F.R. § 116.5(b)(2). A state committee is required to treat such an obligation owed to committee staff as an outstanding debt until reimbursed. 11 C.F.R. § 116.5(c).

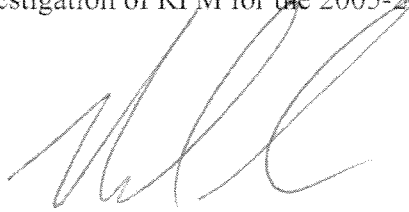
14. RPM and Marina Taubenberger committed multiple violations of 11 C.F.R. § 116.5 by failing to report unreimbursed staff advances as contributions and by failing to report unreimbursed staff advances as outstanding debts from at least as early as May 2006 and continuing through at least February 2007.

### COUNT III

15. The Commission may conduct an audit and field investigation of any state committee required to file a report under 2 U.S.C. § 434 if a review of the reports filed by the state committee fail to meet the threshold requirements for substantial compliance with FECA. 2 U.S.C. § 438(b). RPM and Marina Taubenberger repeatedly filed reports that failed to accurately disclose the debts and obligations of RPM over an extended period of time beginning at least as early as May 2006 and extending through at least February 2007. Failing to disclose these debts and obligations, despite repeated warnings that the failure to do so violated FECA and FEC regulations, constitutes failure to meet the threshold requirements for substantial compliance with FECA. Accordingly, the Commission should conduct an audit and field investigation of RPM for the 2005-2006 election cycle.



WHEREFORE, Citizens for Responsibility and Ethics in Washington requests that the Federal Election Commission conduct an investigation into these allegations, declare the respondents to have violated FECA and applicable Commission regulations, impose sanctions appropriate to these violations and take such further action, including, but not limited to, an audit and field investigation of RPM for the 2005-2006 election year, as may be appropriate.



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Citizens for Responsibility and  
Ethics in Washington  
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**Verification**

Citizens for Responsibility and Ethics in Washington, acting through Melanie Sloan, hereby verifies that the statements made in the attached Complaint are, upon information and belief, true.

Sworn pursuant to 18 U.S.C. § 1001



Melanie Sloan

Sworn to and subscribed before me this 16<sup>th</sup> day of July, 2007.



Notary Public

NAOMI SELIGMAN STEINER  
NOTARY PUBLIC DISTRICT OF COLUMBIA  
My Commission Expires June 30, 2011

## **EXHIBIT A**

1 of 1 DOCUMENT

Star Tribune (Minneapolis, MN)

June 3, 2007 Sunday  
Metro Edition

## Internal complaints roil state GOP office; Staff members who asked the leadership to address questions of how money was used say they were ignored or faced retaliation.

**BYLINE:** Dan Browning, Pat Doyle, Staff Writers

**SECTION:** NEWS; Pg. 1A

**LENGTH:** 1352 words

At least two staff members have left the Minnesota Republican Party since February after they complained that the party misused employee retirement money, improperly reported its finances and ignored or retaliated against staff who reported the problems.

The departures included former finance director and GOP stalwart Dwight Tostenson. He wrote in a Feb. 15 confidential memo that state GOP chairman Ron Carey fired him after he repeatedly pressed the chairman to address what Tostenson regarded as serious financial problems in the state GOP office.

"Since I started reporting these suspected violations, I have felt increasing harassment and other types of retaliation," Tostenson, the party's chief fundraiser, wrote in the memo to the party's executive committee.

Carey on Friday denied any retaliation and said any problems identified in the memo have been fixed.

"We've looked at all the issues that he raised, and where there was corrective action required, we took corrective action," Carey said. "Dwight and I came to a mutual, amicable agreement for our separation."

Tostenson's four-page memo detailed his longstanding complaints and efforts to get Carey to resolve them. In it, he urged the committee to direct Carey to conduct a full investigation and audit. The Star Tribune obtained a copy of the memo.

Carey said Friday that he has asked the committee for permission to commission an external audit.

The controversies arise as the party is gearing up for the 2008 election season, when it will play host to the Republican National Convention and attempt to reverse its setbacks of last November, when the GOP suffered heavy losses in legislative contests and a drubbing in a U.S. Senate race while narrowly reelecting Gov. Tim Pawlenty.

Carey, who's running for reelection this week as party chairman, blamed the leak of Tostenson's memo on political enemies within the Republican Party who are out to get him on the eve of the Republican state central committee meeting.

But he didn't accuse Tostenson of having political motives for writing his memo.

Retirement deposits disputed

A key element of Tostenson's memo deals with his accusation that the party appears to have violated federal law by repeatedly delaying the deposit of employee payroll contributions into their retirement accounts. He said the "misappropriation" helped cover party expenses before the money was deposited.

"As reported on our payables at the state executive meetings last summer there was as much as \$12,000 not deposited at any one time," he wrote. "This represented months of paycheck withholdings by the Party which had not been deposited

within the 30-day legally required time limit."

The party offers Simple Individual Retirement Accounts for some employees. Federal law requires that money deducted from employees' checks for those accounts be deposited as soon as possible, and in no case later than 30 days after the month when it was withheld.

In cases of tardy deposits, employers may be required to make the plan whole by paying back any lost investment earnings. If they had mixed the employees' retirement money with general operating funds they could be required to pay an excise tax.

Party records show that money was withheld for employee retirement plans from September 2005 through May 2006, but Federal Election Commission (FEC) records reflect no deposits into the accounts during that period. In June 2006, the party made two makeup payments totaling \$12,243 into the accounts.

The delay in depositing the money could have benefitted the party by giving it temporary access to the employees' funds.

Carey didn't explain why the retirement money wasn't deposited promptly.

"There seemed to be some gray areas as to what was the requirement," Carey said. Asked to explain the gray areas, he said, "I really would prefer not to get into the weeds on something like that.

"We investigated what the requirements were and made sure we were immediately in full compliance with that," he said.

Carey did not directly respond to Tostenson's claim that the employees' money was used temporarily to cover party expenses.

He characterized Tostenson's Feb. 15 memorandum as a rehashing of problems resolved in the summer of 2006. However, Tostenson's memo says the complaints were unresolved after the November election, and FEC records reflect no deposits in January 2007 into retirement accounts. On Feb. 9 - the same day Tostenson says he was fired - the party recorded an atypically large deposit, according to FEC filings.

Carey said Tostenson has agreed the problems were resolved, and cited a March 13 letter from Tostenson to the executive committee. Tostenson said in the letter that he was confident Carey and a party lawyer "are addressing all matters raised within my memorandum ..."

Tostenson declined to elaborate on his memo Friday, but said: "Do I stand by my memo of Feb. 15th, 2007? I will tell you ... I stand by my memo and the information that is contained in it."

In addition to raising concerns about retirement accounts, Tostenson's memo said Carey was warned numerous times that the party:

- Understated its debts - "\$100,000 plus" - on FEC reports and to the state campaign finance agency.
- Delayed payment of staff expense reports and commissions.
- Failed to make timely payments to vendors.

A GOP source who talked to Tostenson about concerns raised in his memo said the party is required to report overdue bills as debts and obligations on FEC reports, and did not always do so.

Carey said "We feel like we're compliant with FEC regulations." The FEC, he said, has "... brought nothing to our attention that we are out of compliance in this area."

In his memo, Tostenson also urged the party leaders to hold "those responsible for any illegal activity accountable, to minimize the Party's political and legal liability."

He wrote that suspected illegal activities were brought to Carey's attention numerous times since May 2006. "He asked me to wait until after the election, at which time he assured me he would correct the numerous issues," Tostenson wrote.

After the November election, he said, Carey gave him permission to send documents to the party attorney supporting his claims. Two weeks later Carey told Tostenson that they were cutting his pay by 40 percent, which Tostenson believed was retaliation.

Carey did not directly answer questions about the alleged retaliation.

Watercooler discussions

Another staff member who left the party after raising concerns was Larissa Presho, a former finance assistant, who worked more than a decade for the party. In a Jan. 16th e-mail to Carey and other party leaders, she raised serious concerns about the behavior of the deputy treasurer, Marina Taubenberger.

The newspaper obtained a copy of Presho's e-mailed memo. In it, she said that Taubenberger had encouraged her to mislead state revenue auditors and also encouraged her and another employee to mislead insurance auditors.

Her e-mail says employees did not carry out Taubenberger's suggestions on insurance and taxes. Carey said the party did nothing improper.

Presho also wrote that she refused an offer of \$5,000 from Taubenberger to marry a Colombian living illegally in the U.S., so that he could remain in the country.

Carey said he discussed this immigration matter with the party's legal counsel. "We didn't feel like we had any obligation to pursue this," he said. "It's something that I don't think is relevant to the operation of the party. I mean, there's watercooler discussions about a lot of things that people have on personal issues."

Asked about Tostenson's memo, Taubenberger declined to comment and referred a reporter to the party. Taubenberger voluntarily left the party organization in mid March, the party said.

Presho voluntarily resigned a month later. She said party leaders never asked her about the January e-mail.

Pat Doyle - 651-222-1210 pdoyle@startribune.com Dan Browning - 612-673-4493 dbrowning@startribune.com

READ THE MEMO ONLINE

To read the Feb. 15 memo that Dwight Tostenson sent to the executive committee of the Minnesota Republican Party, go to [www.startribune.com/a2884](http://www.startribune.com/a2884).

**LOAD-DATE:** June 5, 2007

**LANGUAGE:** ENGLISH

**GRAPHIC:** PHOTO

**PUBLICATION-TYPE:** Newspaper

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**EXHIBIT B**

## Confidential Memo

To: RPM State Executive Committee

From: Dwight Tostenson

Date: February 15, 2007

Re: 2007 Budget

### Background:

I feel the professional obligation to bring some concerns to your attention. My staff and I, over my tenure of more than a decade, have always worked in the best interest of the Party. While at the Party I have had the opportunity to work under four Chairmen. My allegiance is now and always has been to the State Executive Committee, State Central Committee and the Party as an institution. If my motives were anything else, I would not be writing this memo.

First a little background information. My employment contracts have always (except for one year) included performance bonuses based on exceeding our net dollar budgets. Upon my return in July of 2005 from a short hiatus, my contract was to pay me 2.5% of gross Major Donor revenue monthly. (10% is the going rate.) This was to compensate me for taking on Major Donor fundraising responsibilities and directing staff in that regard in 2005 and 2006.

I have always overseen Major Donor fundraising, but in the past we had hired a consultant, Zandra Wolcott, to execute this function. And as a consultant she received 10% commissions on major donor money she raised. After Zandra's departure in the fall of 2004 and upon my return in July of 2005, we decided I would perform this function (in addition to my other responsibilities) with the assistance of staff who also received small commissions. In 2005 our staff was inexperienced but broke historic records for a non-election year, generating just short of \$1 million dollars in Major Donor revenue. After some staff turnover in May of 2006, Chris Gerlack came on board in June and together with the help of the Governor and Chairman we ended the year raising just under \$2 million dollars in major donor revenue. This is a fundraising record for Major Donor revenue in an election year. In the two consecutive years after I took on the Major Donor fundraising responsibility we have had record years.

### Overview:

After the election I obtained the permission of the Chairman to forward to RPM counsel, Matt Haapoja, copies of emails I had sent to the Chairman over the course of many months.

These e-mails informed our Chairman that based upon my research and experience, I believe that the Party had been, among other things, violating FEC law by under-reporting the Party's outstanding obligations/expenses and by using retirement funds withheld from employees paychecks to pay Party expenses instead of depositing those funds on a timely basis into the employees SRA retirement accounts.

The misappropriation of employees' SRA (Retirement Accounts) money, which was withheld from our payroll checks and not deposited into our account, I believe is a violation of federal law. As reported on our payables at the State Executive meetings last summer there was as much as \$12,000 not deposited at any one time. This represented months of paycheck withholdings by the Party which had not been deposited within the 30 day legally required time limit. As one of the Party's oldest employees, I take full advantage of the maximum contribution limits to my SRA as I plan for my retirement. So the action of not depositing these funds as required impacts me more than any other employee, as a larger amount of my paycheck is withheld.



I have been told that over the last few months that RPM legal counsel is working on a response to the issues brought to the Chairman's attention. However, I was told not to contact Party Counsel regarding these issues. In a meeting with the Chairman and the Executive Director, Ben Golinik on Tuesday, November 28, just two weeks after I sent RPM counsel the documentation, the Chairman informed me that my compensation package would no longer include commissions for major donors or a net dollar performance bonus structure for 2007. He informed me my total compensation package would be reduced to a \$75,000 per year salary with no bonuses or commissions. This is an amount less than I have earned in any year in the last decade. Using 2006 numbers it would be a decrease in compensation of about 40%.

Singling me out for a dramatic compensation reduction, after we have raised a historic level of revenue (both in Major Donor and in aggregate) in 2006, in a very challenging political environment - combined with the non-payment of commissions already earned - leads me to believe that this change in my compensation package was retaliatory for insisting the Party address what I believe are illegalities, reporting compliance violations and harassment issues.

I have repeatedly, over the past year, requested payment of 2005 and 2006 commissions on Major Donor revenue which I have earned, but was not paid until my termination on Friday, February 9<sup>th</sup> 2007. The total paid me at that time was \$60,244.

#### Summary:

Since I started reporting these suspected violations, I have felt increasing harassment and other types of retaliation. I was repeatedly asked by the Chairman not to respond to this hostile behavior or bring it to others' attention. He asked me to wait until after the election, at which time he assured me he would correct the numerous issues. His solution was to first reduce my compensation and when I didn't quit he terminate my employment along with our Call Center Director, Greg Rueff.

The following is a list of suspected illegal activities that were brought to the Chairman's attention numerous times since May of 2006:

1. Underreporting of our debts and obligation of significant amounts (\$100,000 plus) on our FEC and EPB reports.
2. Significant delays in the payment of staff expense reports. FEC rules require that all expense checks be paid within 30 day or reported as a contribution.
3. Misappropriation of retirement money withheld from employee paychecks and not deposited into their SRA's in the 30 day required by law. Some delays exceeded five months.
4. According to a January 16, 2007 complaint by Larissa Presho, apparent Tax Evasion, Insurance Fraud and other issues.

The following is a list of issues brought to the Chairman's attention which may not be illegal, but do create an unpleasant work environment and hostile relations with RPM vendors, with whom staff must deal with daily:

1. Not paying vendors on a timely basis, berating them when they call for payment and then refusing to pay interest charges owed them for services rendered in good faith.
2. Significant delays (16+ months) in the paying of Staff on commissions earned. I wasn't paid on any commissions until the day my employment was terminated. Others had to wait for months instead of receiving those payments on a monthly basis per their contract.
3. Our policy of not paying staff for interest charges incurred on their personal Credit Cards when expense reports (some in excess of \$5,000) go unpaid for months (some up to four months). This has cost me and other staff hundreds of dollars just in the past year.

I respectfully request that members of the Executive Committee direct the Chairman to:

- Conduct a full investigation and audit into the issues brought to your attention in this and other staff communications and then address those issues by holding those responsible for any illegal activity accountable, to minimize the Party's political and legal liability.
- Review the policies outlined above and then establish as Party Policy the use of the RPM's line of credit and bank loans, if needed, to provide the cash to pay staff and vendors on a timely basis, with interest if owed.
- Provide me with a reconciliation of my SRA from the year 2000 forward and deposit into my SRA account all money owed to me for my withholdings and employer matches 1) not yet made this year and also 2) withholdings and matches still not made from past years, with interest.
- Help me minimize my tax liabilities for 2007 by allowing me to contribute to my SRA the maximum amount for 2007 from my final check of \$60,244 paid to me on my termination date of Friday, February 9<sup>th</sup>.
- Help me provide for my family as I transition to a new job with a six months severance package including insurance and letter of recommendation that is reflective of my 12 years of service to the Party and our cause.

**Conclusion:**

I believe that the reduction in my compensation in December and then termination in February was not for "non-performance" (which is clearly dispelled by the \$60,000 owed to me at the time of my termination), but is in fact a retaliatory action by the Party resulting from my efforts to protect the Party and Chairman from legal and political fallout resulting from the issues I have raised in this memo. I was a loyal Party employee to the end and had hoped to transition to other employment with dignity and with minimal impact to our Party and my personal finances. Unfortunately that will not be the case now. I'm not the only employee who has endured the unprofessional and, in my opinion, harassing behavior from those within this organization, but I was the most senior and by far the most vocal. As a former member of the State Executive Committee, State Central Committee and former Congressional District Chair and local Party leader, I feel it is my obligation as a professional and former staff to bring these concerns to the Executive Committee's attention, as you have the oversight responsibility for both policy and operations.

I have enjoyed working for you and with my finance team over the years. As a loyal Republican and former staff person I believe these issue of harassment, retaliation and nonpayment of compensation earned must be addressed. Contracts should be honored, all debts should be reported, employees' retirement funds should not be misappropriated, and co-workers should be treated with respect. Thank you for your time and for your commitment to our Party.

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

**Findings in the Matter of the Complaint against the Margaret (Kelliher) for Governor Committee and the Minnesota Democratic Farmer Labor Party State Central Committee**

**Evidence Used In These Findings**

On December 11, 2009, the Campaign Finance and Public Disclosure Board (the Board) received a complaint from the Republican Party of Minnesota (RPM) regarding the Margaret (Kelliher) for Governor Committee (the Kelliher Committee). The complaint alleges that the Kelliher Committee collected contributions from individuals on behalf of the Minnesota Democratic Farmer Labor Party State Central Committee (the DFL) with the understanding that the DFL would use the contributions for the benefit of the Kelliher Committee. Specifically, the contributions were allegedly used by the DFL to offset the cost of the Kelliher Committee's use of a voter file known as the Voter Activation Network (the VAN file). The complaint further alleges that the contributions violated the prohibition on earmarking contributions and may have violated individual and aggregate contribution limits. The complaint was supported by newspaper articles about the contributions in question.

Also on December 11, 2009, the Board received a letter from Jamie Tincher, Campaign Manager for the Kelliher Committee. In her letter Ms. Tincher notifies the Board of a possible violation of state campaign finance law by the Kelliher Committee and states, "In August 2009, I had discussions with Andrew O'Leary, Executive Director of the Minnesota DFL Party. In those discussions, I asked if, and Mr. O'Leary affirmed, that the Margaret for Governor campaign could solicit contributions for the DFL Party, and the DFL Party could use those contributions to offset the expense of providing access for the Margaret for Governor campaign to the DFL voter file. ...Based on that information, the campaign informed its supporters that the supporters could pursue this option if they chose." Ms. Tincher also provided that she was now aware that this action was a potential violation of state statute, and that the Kelliher Committee was in the process of making payments to the DFL to replace the contributions that had been credited as payment for access to the VAN file.

On December 15, 2009, the Board received a letter from Andrew O'Leary, Executive Director for the DFL. Mr. O'Leary's letter confirmed that he had informed Ms. Tincher that the Kelliher Committee could, "pay the fee that the DFL Party was charging for access to its voter file by helping the Party raise funds from sources outside the Kelliher campaign, I was operating under the mistaken belief that the Party had received a legal opinion...that such an arrangement was permissible. The Party accordingly credited some such fundraising toward the Kelliher campaign's fee for the voter file." Mr. O'Leary further disclosed that he realized that the arrangement with the Kelliher Committee was a potential violation of campaign statutes when, "A second gubernatorial campaign approached me in December of 2009 about paying its fee for the voter file under a similar arrangement, but asked me for confirmation of the opinion that I believed the Party had received. I could not find any such opinion and, upon consulting legal counsel, learned that the arrangement was not permissible." To correct the situation Mr. O'Leary states that the Kelliher Committee replaced the contributions used as payment for access to the VAN file, and that the DFL had offered to refund to the donors the contributions that had been credited as payment for the VAN file. Of those contributions \$1,500 had been returned to three donors who were aware that the money would be used to pay for the Kelliher Committee's VAN file

access, the remaining contributors declined the refund because they were not aware when they made their contributions that the money would be used for any specific purpose by the DFL.

On December 15, 2009, the Board notified the Kelliher Committee and the DFL of the complaint, and asked for additional information on the actions and contributions described in the letters from Ms. Tincher and Mr. O'Leary. In order to conduct a complete investigation of the complaint the Board asked Ms. Tincher and Mr. O'Leary to provide a deposition under oath on the matter.

In the Executive Session of the January 12, 2009, Board meeting Ms. Tincher appeared before the Board with legal counsel to make statements and answer questions. Mr. Weinblatt, legal counsel for the DFL, appeared to make a statement on behalf of his client.

### **Testimony Provided by Jaime Tincher**

Ms. Tincher voluntarily agreed to provide sworn testimony on December 21, 2009. Legal counsel was provided to Ms. Tincher by Jay Benanav and Jane Prince from Weinblatt and Gaylord PLC.

To develop a background for the investigation Ms. Tincher was asked a series of questions on her relationship to the DFL and the timeline for the actions under investigation. Ms. Tincher provided that she had been employed by the DFL in 2005 to develop and manage the VAN file. Ms. Tincher was supervised by Andrew O'Leary, Executive Director of the DFL. Ms. Tincher left the DFL to accept the position of campaign manager for the Kelliher Committee on August 3, 2009. The Kelliher Committee registered with the Board on August 13, 2009.

As Campaign Manager, Ms. Tincher acknowledged that she was responsible for knowing the campaign finance regulations as they applied to the Kelliher Committee. Ms. Tincher stated she knew the 2009 individual and aggregate contribution limits for a campaign for Governor. Ms. Tincher provided that the Kelliher Committee reached the aggregate contribution limit of \$95,800 on November 29, 2009.

Ms. Tincher stated that gaining access to VAN file for the Kelliher Committee was a necessary step to run a competitive campaign for Governor. Ms. Tincher stated that she did not recall discussing the need for the campaign to access the VAN file with the candidate or other campaign staff, and that arranging access to the VAN file was a decision within her authority as Campaign Manager. To verify the cost of using the VAN file and to arrange for access Ms. Tincher met with Andrew O'Leary in his office in early August. Ms. Tincher could not recall the exact date of the meeting but believed that it occurred after she was hired on August 3, 2009, and no later than the registration date of the Kelliher Committee on August 13, 2009.

In response to a question on content of the meeting with Mr. O'Leary on the VAN file Ms. Tincher stated, "I believe that the way that the conversation went, I confirmed with him the price for the voter file, which was \$13,000. I asked if there was an option; could we pay for that in increments and payment plan. And he said, yes, we could do that. And I asked him if contributors could contribute directly to the Party to pay for our costs for the voter file. And he confirmed that that was an option."

Ms. Tincher did not recall Mr. O'Leary stating that he had a legal opinion or external advice on the question of offsetting the cost of the VAN file with contributions raised for the DFL. Ms. Tincher did not recall any discussion with Mr. O'Leary as to why the Committee would want to pay for the VAN file with donations raised for the DFL rather than paying for the VAN file directly

with money raised by the Kelliher Committee. Other than Mr. O'Leary, Ms. Tincher stated that she did not talk to anyone else about the concept of offsetting the cost of the VAN file with contributions to the DFL. Ms. Tincher stated that no written agreement between the Kelliher Committee and the DFL regulating use of the VAN file or stating the amount and method of payment for access to the file exists. Ms. Tincher did not recall the exact date, but believed that the Kelliher Committee gained access to the VAN file either the day of the meeting with Mr. O'Leary, or very shortly thereafter.

In response to a series of questions on how supporters of the Kelliher Committee were informed that they could benefit the campaign by contributing to the DFL Ms. Tincher responded that there was no mailing or organized telephone effort to direct contributions from donors to the DFL. Ms. Tincher also stated, "I do recall, in a meeting in late August of supporters, I did mention contribution to the DFL as an option. ...And then in limited conversations with individuals, I recall mentioning that was an option that --if they so choose." Ms. Tincher further provided that the Kelliher Committee did not have a list of individuals that it specifically wanted to notify of the option, and that the goal of the fundraising effort was to raise money for the campaign, not the DFL.

In response to a question on why a specific donor was not asked to contribute directly to the Kelliher Committee instead of the DFL Ms. Tincher replied, "I'm sure that I did request that he contribute to the Margaret for Governor campaign. Again, this was an option that I was -- that I believed that was open to donors to do. So I wouldn't have -- because I was under the assumption that this was something that they could do, there would have been no reason for me to not request, if he wanted to be helpful in that way, to do that. ... it wasn't based on whether they had contributed to the campaign or not. It was just, that was an option that I thought was available for people to do."

In response to a question as to why the Kelliher Committee would suggest contributors donate to the DFL when the Committee needed donations Ms. Tincher answered, "It is the case, with the many candidates that are in the race, there are some individuals that do not want to support one particular candidate at this point. And we did, in fact, have two people that that (were) in the scenario. And so in those cases, we let them know that that was another way that they could be helpful to the Committee." Ms. Tincher further elaborated on why individuals would prefer to help the campaign by contributing to the DFL rather than publically supporting the Kelliher Committee, "I mean it's -- particularly in August, there were just a lot of people that, you know, were undecided on candidates. So it wasn't out of the ordinary."

In response to questions on the method contributions raised for the DFL were attributed to the Kelliher Committee Ms. Tincher provided that members of the Kelliher Committee hand delivered a total of seven checks to the DFL. All seven of the checks were made payable to the DFL, and were then used by the DFL to offset the cost of the Kelliher Committee using the VAN file. The total amount of the seven checks was \$7,500.

Ms. Tincher was asked how she became aware that using contributions to the DFL to offset the cost of accessing the VAN file may violate state statute. Ms. Tincher replied, "December 1st, I believe, I received a phone call from Andy O'Leary. And he informed me at that point that he had checked with his lawyer, and that we actually were not allowed to do that. So at that point, we started taking steps to figure out what we needed to do to correct the situation. With the three checks... it was our understanding that those were directed to go to the voter file; that that was what the intention of those individuals was. So we felt like we needed to -- that the Party

should reimburse or refund that money. There were four other contributions that...the campaign had conversations with them...But at that time those four individuals made it very clear that their contributions - that they did not want a refund, that their contributions were intended for the DFL Party to use as it sees fit.”

To correct the error Ms. Tincher stated that the Kelliher Committee returned two of the three contributions received from the donors who contributed to the DFL with the knowledge that their contribution would be used to pay for access to the VAN file. The two contributions were refunded within 60 days of being received by the Kelliher Committee. One contribution was not refunded because it was over 60 days from the date it was received by the Kelliher Committee and therefore under Minnesota Statute is deemed accepted by the campaign. Contributions raised by the Kelliher Committee from the four donors who did not know that their contribution to the DFL would be used to pay for access to the VAN file were not refunded. Ms. Tincher also stated that the Kelliher Committee has paid the DFL the full \$13,000 for the use of the VAN file with committee funds.

In response to an opportunity to add to her deposition Ms. Tincher stated, “Again, it was a mistake. It was not something that from August to December, we knew that we shouldn’t do. As soon as we found out about it, we did seek to correct the situation.” On behalf of his client Mr. Benanav stated, “I just want to put in a little context. Clearly, there was a mistake made here. I think we all recognize that. But I would classify it as a blunder. ...There was no intent here to evade the law. This was not secretive. ...this was an option given to other people, frankly, based on faulty advice. If either one of them had called a lawyer, they would have gotten different advice. They didn’t. It was a mistake. I think they recognize that.”

### **Testimony and Evidence Provided by Andrew O’Leary**

Mr. O’Leary voluntarily agreed to provide sworn testimony on December 22, 2009. Legal counsel was provided to Mr. O’Leary by Alan Weinblatt from Weinblatt and Gaylord PLC.

During the deposition Mr. O’Leary confirmed that he met with Ms. Tincher in early August to discuss the Kelliher Committee gaining access to the VAN file, although he could not specify the exact date. Mr. O’Leary also confirmed that the price charged to the Kelliher Committee for accessing the VAN file was \$13,000.

In response to a question as to what Ms. Tincher said at the meeting Mr. O’Leary responded, “As it relates to the voter file, she informed me that they wanted to, in fact, purchase access to the voter file. She knew, from her employment with us, that the price was \$13,000. She then asked if it was possible for her to send donors our way to cover the cost, which at the time I believed was permissible. So I said yes.”

When asked to elaborate on his understanding of what Ms. Tincher meant when she asked if the Kelliher Committee could use donations to the DFL to cover the cost of the VAN file Mr. O’Leary answered, “We have – obviously, a lot of our candidates and elected officials fundraise for the Party. In her role as Speaker, the Speaker had done that in the past as well. So I took it to mean that they were going to fundraise from donors into the Minnesota DFL Party, and then that would offset the cost of her voter file fee.”

When asked on what basis he advised Ms. Tincher that such an arrangement was permissible Mr. O’Leary replied, “I was under the now-mistaken impression that I had a legal opinion from

2006 saying that it was. It turned out that I did not.” Mr. O’Leary further explained, “The voter file, in its current form, was created in 2006. We were -- we, the Party, were investing tens of thousands of dollars into the development of this voter file, as well as paying tens of thousands of dollars in salaries. So I believe it was the first time that the DFL Party was going to be charging large amounts of money for access to the voter file. So I had asked for an opinion -- or I thought I had asked for an opinion, so that when I went to candidates to let them know how expensive it was going to be, to give them options on how to pay for it.” During his testimony Mr. O’Leary acknowledged that he was aware that there are statutory limits on the amount that an individual may contribute to a candidate, including gubernatorial candidates.

Mr. O’Leary explained that checks delivered to the DFL by the Kelliher Committee were credited to the cost of the VAN file. In response to a question about whether other DFL staff members were aware of how the Kelliher Committee was paying for the VAN file Mr. O’Leary answered, “I do not recall specific conversations, but I do believe that I did inform other members of staff that this was how the Speaker was going to be paying her voter file fees.” Mr. O’Leary confirmed that in total seven donations to the DFL were credited to the Kelliher Committee. Mr. O’Leary provided photocopies of the seven checks to the Board at the deposition.

Mr. O’Leary was then asked to recall how he became aware that the arrangement with the Kelliher Committee might be a problem and what actions then transpired. Mr. O’Leary answered, “Brian Melendez received an e-mail from ... the Rukavina for Governor campaign. And he had some campaign finance questions. Brian forwarded the e-mail to me; asked me to handle. I called [the representative of the Rukavina Campaign]. He asked about this -- he asked about the way that we had set up for the Speaker to pay for her voter file, and asked me why I thought it was legal. And I told him. And I told him that I thought that I had a legal opinion, at which point he said he would like to see the legal opinion so that the Rukavina campaign could do the same thing. ...I called Alan Weinblatt, our attorney, after looking through my 2006 file of opinions...I called Alan and asked him. We discussed it. At that point, he advised me that this was not permissible. .... So I immediately called Brian Melendez, the chair, told him what had happened. I then called the Kelliher campaign, and told them that it appeared that the way that we were funding the voter file was not legal. And Jaime and I set up a follow-up phone call. ....And then on the morning of December 2, I contacted the Rukavina campaign to let them know that it appeared that this was not permissible.”

Mr. O’Leary was then asked if he advised the Kelliher Committee of any steps to take based on his new understanding of the statutory requirements. Mr. O’Leary replied, “... yes, I did. I told them that we were going to have to uncredit any checks that they had brought in for the voter file, and they were going to need to replace that with money directly from their campaign account.” During his testimony Mr. O’Leary stated that the Kelliher Committee finished paying the \$13,000 price for the VAN file with campaign funds on December 14, 2009.

In response to a series of questions Mr. O’Leary provided the process used to contact the seven contributors whose checks had been credited for payment for the VAN file, “We informed them that their contributions to the DFL was a part of this, and then asked them their intention with that contribution. ...there were three donors who felt that their donation was specifically to offset the Speaker’s voter file fees. ...Those are the three donations that we refunded. The other four donors indicated that their checks were for the Party, for unrestricted general Party use. And those are the four donations we decided to keep.” Mr. O’Leary provided the Board with photocopies of the checks used to return the three contributions to the donors who expected their donation to be used for purchasing the VAN file.

In response to an opportunity to add to his deposition Mr. O’Leary stated, “This was... solely a mistake on my part. I broke probably my second most important rule in politics, which was giving legal advice without talking to legal counsel, which was my mistake.” In response to a question from Mr. Weinblatt on whether Ms. Tincher relied on his opinion in making the arrangements to have donors contribute directly to the DFL, Mr. O’Leary replied, “Yes, I believe so.”

**Contributions**

The timing and amount of contributions received by the Kelliher Committee and the DFL from each of the seven donors is listed in the table below. The maximum 2009 contribution to a gubernatorial candidate from an individual was \$500. Each of the donors gave the maximum contribution amount to the Kelliher Committee. Three of the seven made the maximum contribution to the Kelliher Committee prior to making a contribution to the DFL. The Kelliher Committee returned two of the contributions from individuals who also donated to the DFL knowing that the contribution would be used for the VAN file. The DFL returned all three contributions from individuals who knew their contribution to the DFL would be used for the VAN file. Neither the Kelliher Committee nor the DFL returned the contributions from individuals who did not know that their DFL contribution would be used for the VAN file.

Contributor Knew DFL Donation Would be Used for VAN File	Donation to Kelliher Committee		Donation to DFL	
	Date	Amt	Date	Amt
Yes	August 20, 2009	\$500	September 10, 2009	\$500
Yes	November, 2009	\$500	September 10, 2009	\$500
Yes	November, 2009	\$500	August 5, 2009	\$500
No	August 25, 2009	\$500	September 9, 2009	\$1,000
No	September 24, 2009	\$500	September 20, 2009	\$2,000
No	August 11, 2009	\$500	September 24, 2009	\$1,000
No	August 25, 2009	\$500	August 24, 2009	\$2,000
	<b>Total</b>	<b>\$3,500</b>	<b>Total</b>	<b>\$7,500</b>

**Board Analysis**

There is no doubt from the testimony and correspondence provided during the investigation that the activity alleged in the RPM complaint did occur. Namely, seven donations to the DFL raised by the Kelliher Committee were credited to help pay off an obligation of the Kelliher Committee. Depending on various factors, this activity could have resulted in violations of (1) the prohibition of earmarked contributions; (2) the prohibition of circumvention of the provisions of Minnesota Statutes Chapter 10A by directing contributions through another association; (3) the limit on the amount of contributions that a principal campaign committee may accept from an individual; and (4) the limit on the aggregate amount of contributions that a principal campaign committee may



accept from special sources, which include political committees or funds, lobbyists, and those giving more than \$250 to a gubernatorial committee in 2009. Each of the above potential violations was considered by the Board.

### **Earmarking of Contributions**

Minnesota Statutes, Section 10A.16 prohibits the “earmarking” of contributions. Specifically, the statute states that:

“An individual, political committee, political fund, principal campaign committee, or party unit may not solicit or accept a contribution from any source with the express or implied condition that the contribution or any part of it be directed to a particular candidate other than the initial recipient. An individual, political committee, political fund, principal campaign committee, or party unit that knowingly accepts any earmarked contribution is guilty of a gross misdemeanor and subject to a civil penalty imposed by the board of up to \$3,000.”

The Board has consistently interpreted the phrase “directed to a particular candidate” as being the equivalent of “used for the benefit of a particular candidate”. (See Advisory Opinion 370; Advisory Opinion 356).

The testimony is clear that the DFL violated the prohibition on earmarking contributions when it accepted the seven contributions with the express condition that they be used to benefit the Kelliher Committee. For the DFL it is irrelevant that four of the donors were not aware that their donation to the DFL would be used to benefit the Kelliher Committee. The “condition” that the contributions be used to benefit a particular candidate was imposed by the express agreement between the DFL and the Kelliher Committee and did not require the knowledge of the original donor. Therefore, the total amount of earmarked contributions accepted by the DFL in this matter is \$7,500.

However, the knowledge of the donor as to how the contribution would be used by the DFL is relevant when considering if the actions of the Kelliher Committee violated the prohibition on earmarked contributions, and if so, whether the violation may result in a civil penalty. In response to the solicitation of the Kelliher Committee three donors each made a contribution to the DFL intending that it would be used to pay for the VAN file. The contributions were earmarked by the donors prior to delivery to the Kelliher Committee. The Kelliher Committee then accepted the contributions on behalf of the DFL, in violation of the earmarking prohibition. The total amount of the contributions earmarked by the donors and accepted by the Kelliher Committee is \$1,500.

With respect to the other four contributions delivered to the DFL by the Kelliher Committee there is no reason to believe that any conditions were placed on the donations by the original donors. Each of those donors believed they were making a general contribution to the DFL. Although the Kelliher Committee had an agreement with the DFL that the contributions would be used for the direct benefit of the Committee, there was no knowledge of that agreement by the donors. Therefore, the statutory standard that a contribution is “earmarked” when there is an “express or implied condition” that the contribution is used to benefit a particular candidate at the time the contribution is solicited or received is not met. The Board concludes that the Kelliher Committee did not violate the earmarking provision in soliciting \$6,000 in contributions to the DFL from the four donors.

Although the statutes permit a penalty of up to \$3,000 for each earmarked contribution, the Board's usual policy is to base penalties on the amount of the violation. Accordingly, the order in these Findings will impose a penalty of \$7,500 against the DFL and \$1,500 against the Kelliher Committee for the acceptance of earmarked contributions.

### **Circumvention of Minnesota Statutes Chapter 10A.**

Minnesota Statutes, Section 10A.29 prohibits circumvention of Chapter 10A. Specifically the statute states:

"An individual or association that attempts to circumvent this chapter by redirecting a contribution through, or making a contribution on behalf of, another individual or association is guilty of a gross misdemeanor and subject to a civil penalty imposed by the board of up to \$3,000."

There are no court cases to provide legal definitions of the word "circumvention" in the specific context in which it is used in Chapter 10A. However, statutes are to be construed using the common meaning of their words, if possible. Generally, to circumvent something means to get around or avoid it. Circumvention generally includes a strategy or plan. See, e.g., Oxford English Dictionary, Second Edition "to evade or find a way around (a difficulty, obstacle, etc.)"; Miriam-Webster Dictionary: "to manage to get around, especially by ingenuity or stratagem".

Minnesota Statutes, Section 10A.29 not only requires circumvention before it is applicable, but it also specifies the stratagem: "redirecting a contribution through . . . another . . . association". With respect to contributions, the provisions of Minnesota Statutes Chapter 10A that might be circumvented by a candidate's committee redirecting a contribution through another association are contribution limits and disclosure requirements.

In practical application, the prohibition of Minnesota Statutes, Section 10A.29 could be restated as follows:

An association may not attempt to avoid contribution limits or disclosure requirements by redirecting contributions through an association other than the ultimate beneficiary.

Violation of the statute requires an act: the redirection of contributions; and a purpose: the avoidance of Chapter 10A requirements, usually those relating to limits or disclosure.

An act, such as the act of redirection will usually be demonstrated by the evidence about what happened surrounding the transactions. The purpose, on the other hand, will not often be the subject of direct evidence (although in the immediate matter, a purpose of avoiding disclosure is acknowledged). In most cases, purpose can only be determined by viewing all of the evidence.

In considering the matter of circumvention, it is important to recognize that if the act of redirection and the purpose of avoiding limits or disclosure requirements both exist, a violation has occurred. It is not necessary that the participants knew that what they were doing was prohibited. A violation of Section 10A.29 may occur even if the participants believed that their course of conduct was permitted under Chapter 10A.

The testimony shows that the Kelliher Committee staff knew and understood the limit on contributions that it could accept from a single individual as well as the limit on aggregate special source contributions. The staff also knew that there were some donors who had already

contributed their limit to the Committee. Ms. Tincher testified that having donors give to the DFL for the benefit of the Committee was merely to provide another option for donors. Mr. O'Leary also testified that he was aware that there are limits as to how much an individual may contribute to a gubernatorial candidate. Mr. O'Leary explained that he thought that using contributions to the DFL to pay for a candidate's use of the VAN file was an option available because of the high cost of using the file. However, by providing that "option" the Kelliher Committee and the DFL formed a means to circumvent the individual contribution limits and disclosure provisions of Minnesota Statutes Chapter 10A.

Of the seven contributions made to the DFL that were credited for the Kelliher Committee four were facially in excess of the amount that could be accepted by a gubernatorial campaign in 2009. Additionally, two of those four donors had already contributed their limit to the Kelliher Committee. One of the remaining three contributions to the DFL was made after the donor had already made the maximum contribution to the Kelliher Committee.

Ms. Tincher also testified that the other two donors were willing to financially support the Committee, but were not ready to publicly commit to a particular candidate. The redirection of their contributions to the DFL would allow the donors and the Committee to avoid, and therefore circumvent, the disclosure requirements of Minnesota Statutes Chapter 10A by masking their support of a particular candidate as a contribution to the DFL Party.

The Board notes that both the Kelliher Committee and the DFL were cooperative in providing information to the Board during this investigation. Nonetheless, members of the DFL staff and the Kelliher Committee were aware of the contribution limits and disclosure obligations of Chapter 10A, and put in place an option for donors that rendered ineffective those statutory provisions. The evidence supports a conclusion that avoidance of these provisions was the underlying purpose of the option.

Therefore, all seven contributions constitute a prohibited circumvention of the provisions of Chapter 10A by the DFL and the Kelliher Committee. Although the statutes permit a penalty of up to \$3,000 for each instance of circumvention, the Board's usual policy is to base penalties on the amount of the violation. Accordingly, the order in this Finding will impose a penalty of \$7,500 against the DFL and \$7,500 against the Kelliher Committee for violating the provisions on circumvention.

### **Individual and Aggregate Contribution Limits Violations**

Minnesota Statutes, Section 10A.27 provides contribution limits for candidates regulated by Chapter 10A. The statute provides a limit on the amount of a contribution from an individual, and an overall limit on the amount of contributions that a candidate may receive from lobbyists, political committees and funds, and individuals who make large contributions. The overall limit is commonly referred to as the aggregate or special source limit. The 2009 individual contribution limit for a gubernatorial candidate was \$500. The aggregate limit in 2009 for a gubernatorial candidate was \$98,500. As a political party the DFL is not regulated by this statute and does not have individual or aggregate contribution limits.

The contributions grid, included above, shows that the Kelliher Committee did not accept directly into its account a contribution from the seven donors that exceeded the individual donor limit. According to the testimony of Ms. Tincher, the Kelliher Committee tracked the aggregate limit, and was aware it had reached that limit on November 29, 2009.

The Board has jurisdiction to determine whether the Committee's participation in the earmarking of contributions justifies a conclusion that the seven earmarked contributions should also be treated as contributions to the Committee as well as to the DFL. Such a conclusion would result in additional penalties to the Kelliher Committee.

In view of the Board's imposition of significant penalties for violation of the earmarking and circumvention statutes, the Board declines to use this matter to make the determination of whether earmarked contributions should also be counted against a principal campaign committee's individual contribution limits.

Based on the evidence, it is unclear whether earmarked contributions to the DFL would have put the Committee over its limit on contributions from special sources if those earmarked contributions were also considered contributions to the Committee. For the reasons stated above, the Board declines to determine if the Kelliher Committee exceeded the 2009 aggregate contribution limit as a result of these transactions.

**Based on the above Statement of the Evidence, the Board makes the following:**

**Findings Concerning Probable Cause**

1. There is probable cause to believe that the Kelliher Committee violated the prohibition on soliciting and accepting earmarked contributions found in Minnesota Statutes, section 10A.16, when it solicited, accepted and transferred contributions to the DFL for the purpose of benefiting the Kelliher Committee.
2. There is probable cause to believe that the DFL violated the prohibition on accepting earmarked contributions found in Minnesota Statutes, section 10A.16, when it accepted contributions for the purpose of benefiting the Kelliher Committee.
3. There is probable cause to believe that the Kelliher Committee and the DFL Party violated the prohibition on circumvention of the provisions of Chapter 10A found in Minnesota Statutes, section 10A.29, when contributions to benefit the Kelliher Committee were redirected through the DFL.

**Based on the above Findings, the Board issues the following:**

**Order**

1. The Board imposes a civil penalty of \$1,500 against the Margaret (Kelliher) for Governor Committee for accepting earmarked contributions in violation of Minnesota Statutes, section 10A.16, and a further civil penalty of \$7,500 for circumvention of the provisions on Chapter 10A as prohibited in Minnesota Statutes, section 10A.29.
2. The Margaret (Kelliher) for Governor Committee is directed to forward payment of the \$9,000 in civil penalties to the Board by check or money order made payable to the State of Minnesota, within 30 days of receipt of this order.

3. The Board imposes a civil penalty of \$7,500 against the Minnesota Democratic Farmer Labor Party State Central Committee for accepting earmarked contributions in violation of Minnesota Statutes, section 10A.16, and a further civil penalty of \$7,500 for circumvention of the provisions on Chapter 10A as prohibited in Minnesota Statutes, section 10A.29.
4. The Minnesota Democratic Farmer Labor Party State Central Committee is directed to forward payment of the \$15,000 in civil penalties to the Board by check or money order made payable to the State of Minnesota, within 30 days of receipt of this order.
5. If the Margaret (Kelliher) for Governor Committee and the Minnesota Democratic Farmer Labor Party State Central Committee do not comply with the provisions of this order, the Board's Executive Director may request that the Attorney General bring an action for the remedies available under Minnesota Statutes, section 10A.34.
6. The Board investigation of this matter is hereby made a part of the public records of the Board pursuant to Minnesota Statutes, section 10A.02, subdivision 11, and upon payment by the civil penalty imposed herein, this matter is concluded.

Signed: January 12, 2010

A handwritten signature in cursive script, reading "A. Hilda Bettermann", written over a horizontal line.

A. Hilda Bettermann, Chair  
Campaign Finance and Public Disclosure Board

## Relevant Statutes

### **10A.16 EARMARKING CONTRIBUTIONS PROHIBITED.**

An individual, political committee, political fund, principal campaign committee, or party unit may not solicit or accept a contribution from any source with the express or implied condition that the contribution or any part of it be directed to a particular candidate other than the initial recipient. An individual, political committee, political fund, principal campaign committee, or party unit that knowingly accepts any earmarked contribution is guilty of a gross misdemeanor and subject to a civil penalty imposed by the board of up to \$3,000.

### **10A.27 CONTRIBUTION LIMITS.**

Subdivision 1. **Contribution limits.** (a) Except as provided in subdivision 2, a candidate must not permit the candidate's principal campaign committee to accept aggregate contributions made or delivered by any individual, political committee, or political fund in excess of the following:

- (1) to candidates for governor and lieutenant governor running together, \$2,000 in an election year for the office sought and \$500 in other years;

...Subd. 11. **Contributions from certain types of contributors.** A candidate must not permit the candidate's principal campaign committee to accept a contribution from a political committee, political fund, lobbyist, or large contributor, if the contribution will cause the aggregate contributions from those types of contributors to exceed an amount equal to 20 percent of the expenditure limits for the office sought by the candidate, provided that the 20 percent limit must be rounded to the nearest \$100. For purposes of this subdivision, "large contributor" means an individual, other than the candidate, who contributes an amount that is more than \$100 and more than one-half the amount an individual may contribute.

### **10A.29 CIRCUMVENTION PROHIBITED.**

An individual or association that attempts to circumvent this chapter by redirecting a contribution through, or making a contribution on behalf of, another individual or association is guilty of a gross misdemeanor and subject to a civil penalty imposed by the board of up to \$3,000.