

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

**PRIMA FACIE  
DETERMINATION**

IN THE MATTER OF THE COMPLAINT OF THE CENTER FOR MEDIA AND DEMOCRACY AND COMMON CAUSE MINNESOTA REGARDING THE AMERICAN LEGISLATIVE EXCHANGE COUNCIL, SENATOR MARY KIFFMEYER, AND REPRESENTATIVE PAT GAROFALO

On July 27, 2021, the Campaign Finance and Public Disclosure Board received a complaint submitted by the Center for Media and Democracy and Common Cause Minnesota regarding the American Legislative Exchange Council (ALEC), Senator Mary Kiffmeyer, and Representative Pat Garofalo. ALEC is a national 501(c)(3) association that is not registered with the Board. It has both corporate and legislative members. Sen. Kiffmeyer and Rep. Garofalo are members of the Minnesota Legislature and ALEC's Minnesota state chairs. Both Sen. Kiffmeyer and Rep. Garofalo have registered principal campaign committees with the Board.

The complaint concerns ALEC CARE (Constituent Analytics Research Exchange) software, training, and assistance. The complaint alleges that by providing free access to ALEC CARE as a member benefit, ALEC made in-kind contributions to Sen. Kiffmeyer and Rep. Garofalo in violation of the corporate contribution prohibition in Minnesota Statutes section 211B.15, subdivision 2. The complaint maintains that if Sen. Kiffmeyer and Rep. Garofalo used the ALEC CARE software for their campaigns, then their campaign committees accepted a prohibited corporate contribution. Finally, the complaint alleges that if Sen. Kiffmeyer and Rep. Garofalo used the ALEC CARE software for their campaigns, they failed to disclose that in-kind contribution on their committees' campaign finance reports in violation of the reporting requirements in Minnesota Statutes section 10A.20, subdivision 3.

The complaint includes information showing that ALEC legislative members pay dues of \$100 per year and that Sen. Kiffmeyer and Rep. Garofalo, as state chairs, are members of ALEC. Attachments to the complaint show that members of ALEC have free access to ALEC CARE, which is data management software allegedly developed by the company Voter Gravity. The complaint includes information showing that ALEC assigns a \$3,000 value to this member benefit and that purchasing comparable software from Voter Gravity would cost Sen. Kiffmeyer and Rep. Garofalo \$99 per month.

The complaint and its attachments contain information showing that ALEC CARE includes data and features that primarily benefit candidates, such as a person's income, party affiliation, voting history, and election precinct, and the ability to create door-knocking and phone calling lists and goals as well as get out the vote functions. Other information included with the complaint shows that Voter Gravity markets the software mainly to candidates as a voter contact tool for political campaigns and that the software is integrated with the Republican National Committee's voter database.

The complaint states that although ALEC provided free access to ALEC CARE to Sen. Kiffmeyer and Rep. Garofalo, the complainants do not possess sufficient information to determine whether the legislators used the software for their campaigns. The complaint provides that neither Sen. Kiffmeyer nor Rep. Garofalo have reported the receipt of the ALEC CARE software on their campaign finance reports.

## **Determination**

Minnesota Statutes section 211B.15, subdivision 2, paragraph (a), provides as follows:

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

The statute also prohibits a committee or individual from accepting a contribution that a corporation is prohibited from making. Minn. Stat. § 211B.15, subd. 2 (b). The corporate contribution prohibition applies to both for-profit and non-profit corporations. Minn. Stat. § 211B.15, subd. 1. The term “contribution” includes donations in-kind. Minn. Stat. § 10A.01, subd. 11 (a).

The complaint and the attachments contain evidence that Sen. Kiffmeyer and Rep. Garofalo are members of ALEC. The complaint and the attachments also contain evidence that ALEC provided access to ALEC CARE to its members, which would include Sen. Kiffmeyer and Rep. Garofalo, and that this access was worth nearly \$3,000 more than the annual dues paid by the legislators. The difference between the fair market value of the software and the amount paid for access to the software may represent an in-kind contribution to ALEC members. Finally, the complaint and the attachments include information showing that ALEC CARE contains data and features that primarily are of use to candidates in election campaigns. The chair therefore concludes that the complaint states a prima facie violation of the corporate contribution prohibition in Minnesota Statutes section 211B.15, subdivision 2.

Minnesota Statutes section 10A.20, subdivision 3, requires candidate committees to report all contributions received on their campaign finance reports, including in-kind contributions that exceed \$20. The complaint and the Board’s records reflect that neither Sen. Kiffmeyer’s committee nor Rep. Garofalo’s committee have reported receiving any itemized contributions from ALEC. The chair therefore concludes that the complaint states a prima facie violation of the reporting requirements in Minnesota Statutes section 10A.20, subdivision 3.

Pursuant to Minnesota Statutes section 10A.022, subdivision 3, this prima facie determination is made by a single Board member and not by any vote of the entire Board. This prima facie determination does not mean that the Board has commenced, or will commence, an investigation

or has made any determination of a violation by any of the individuals or entities named in the complaint.

Pursuant to Minnesota Statutes section 10A.022, subdivision 3, within 45 days of the date of this determination, the Board will make findings and conclusions as to whether probable cause exists to believe that the violations of Minnesota Statutes sections 10A.20 and 211B.15 alleged in the complaint have occurred and warrant a formal investigation. The complainants and the respondents named in this prima facie determination will be given an opportunity to be heard by the Board prior to any decision on probable cause.

Until the Board makes a public finding or enters into a conciliation agreement, this matter is subject to the confidentiality requirements of Minnesota Statutes section 10A.022, subdivision 5.

/s/ Stephen Swanson  
Stephen Swanson, Chair  
Campaign Finance and Public Disclosure Board

Date: August 6, 2021