

Holtzman Vogel

HOLTZMAN VOGEL BARAN TORCHINSKY & JOSEFIAK PLLC

CONFIDENTIAL

January 25, 2022

State of Maine Commission on Governmental Ethics and Election Practices

Attn: Jonathan Wayne

135 State House Station

Augusta, ME 04333-0135

Submitted via email to: Jonathan.Wayne@maine.gov

RE: ALEC's Supplemental Submission

Mr. Wayne,

Thank you for your January 20, 2022 correspondence informing us of the Commission's January 26th hearing. We appreciate that your January 19, 2022 letter to the Commission included our previous correspondence, and we hope that the Commissioners give it its due attention. We disagree, however, with your assertion "that ALEC *would not* commit to voluntarily cooperating with the Commission's investigation because of ongoing concerns with its legitimacy." ALEC's November 30, 2021 correspondence reiterated that ALEC *cannot* respond to the Staff's request for access to the ALEC CARE software until the Staff answers fundamental questions about the investigation. ALEC has steadfastly maintained that it is "committed to resolving this matter as quickly and as efficiently as possible," *id.*, and it remains willing to work with the Staff and the Commission towards that end. But ALEC also believes that it should not be burdened with an investigation when threshold questions—such as whether jurisdiction exists—remain unanswered. We ask that the Commission address these outstanding issues so that ALEC may decide how to proceed.

Additionally, as the Commission is aware, CMD has submitted substantively similar complaints against ALEC in at least eight states.¹ In our November 30, 2021 correspondence, we noted that the Boards or Commissions of several states have dismissed those complaints. We would like to provide further information about those decisions, and to reiterate that no Board or Commission has found that ALEC violated their respective election laws in those cases.

¹ ALEC's September 17, 2021 Response at 4; Decl. of Gillham ¶¶ 14–15. CMD previously announced that it was "filing campaign finance complaints in 15 states." *Watchdogs Filing Complaints in 15 States Against ALEC for Illegal Campaign Scheme*, EXPOSED BY CMD, July 26, 2021, www.exposedbycmd.org/2021/07/26/watchdogs-filing-complaints-in-15-states-against-alec-for-illegal-campaign-scheme/ (last visited Jan. 21, 2022). ALEC has not been contacted by the relevant authorities in each of the states named in the article, but it is apparent from the complaints linked to the article that they are essentially the same. *See id. available at* www.documentcloud.org/projects/state-alec-complaints-204099/.

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In Minnesota for example, representatives from CMD appeared before the Board at its October 6, 2021 meeting and “argued that the sole purpose of the Voter Gravity software is to help candidates win elections, that the ALEC CARE software is virtually identical to the Voter Gravity software, and that, therefore, the sole purpose of the ALEC CARE software is to help legislators win re-election.” Ex. A at 3. On November 3, 2021, however, “the Minnesota Campaign Finance and Public Disclosure Board” determined “that probable cause does not exist to believe that violations occurred as alleged in the complaint filed by [CMD] and Common Cause Minnesota.” Exs. A & B.

Although previously “the Board chair [had] determined that the complaint stated prima facie violations of the corporate contribution prohibition in Minnesota Statutes,” the Board ultimately decided that “[t]he totality of the evidence in the record, however, does not establish probable cause to believe that ALEC made, or offered or agreed to make, a contribution to promote or defeat the candidacy of an individual for election to a political office in Minnesota.” Ex. A at 2, 5. In particular, the Board noted that “ALEC’s consistent description of the terms under which the software is offered to members, its repeated warnings not to use the software for campaign purposes, and the lack of any evidence showing that those warnings have been disregarded in Minnesota, or elsewhere, support ALEC’s claim that it offers the ALEC CARE software to legislators only for non-campaign purposes.” *Id.* at 6. Consequently, the Minnesota Board dismissed the complaint against ALEC and two Minnesota state legislators. *Id.* at 7.

The Ohio Elections Commission also found that no violation occurred, Exs. C & D, and the Wisconsin Ethics Commission similarly “found that the complaint did not raise a reasonable suspicion that a violation of law occurred,” Ex. E. Although these decisions were promulgated without explanatory opinions,² they bear on the weight that should be accorded to CMD’s allegations, as each of CMD’s complaints against ALEC are virtually identical.³ And the fact that no other Board or Commission has found a violation likewise indicates that CMD’s allegations are baseless.

As a final point, ALEC believes that CMD’s coverage surrounding its complaints speaks to its motives. After filing their carbon copy complaints, CMD moved with alacrity to publicly besmirch ALEC’s name.⁴ Correspondingly, when the Commission voted to authorize an

² At its upcoming February 16th hearing, the Wisconsin Ethics Commission may decide to issue a written finding.

³ See *Watchdogs Filing Complaints in 15 States Against ALEC for Illegal Campaign Scheme*, EXPOSED BY CMD, July 26, 2021, www.exposedbycmd.org/2021/07/26/watchdogs-filing-complaints-in-15-states-against-alec-for-illegal-campaign-scheme/ (last visited Jan 21., 2022); see also www.documentcloud.org/projects/state-alec-complaints-204099/.

⁴ See, e.g., David Armiak, *Bradley Foundation Bankrolls Controversial ALEC Voter Software*, EXPOSED BY CMD, Aug. 20, 2021, www.exposedbycmd.org/2021/08/20/bradley-foundation-bankrolls-controversial-alec-voter-software/ (last visited Jan. 21, 2022).

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investigation, CMD issued a release within hours of the Commission’s decision.⁵ But when the above states dismissed CMD’s complaints, CMD moved on in apathetic silence. This selective coverage provides some insight into CMD’s complaints against ALEC. To date, CMD has not announced any negative rulings regarding its complaints. As ALEC stated in its Response, “[t]hese complaints evidence a concerted campaign to harass ALEC, as well as a pattern of less than reputable tactics.” Response at 4. ALEC therefore asks the Commission to take the Minnesota, Ohio, and Wisconsin decisions into consideration, and to decide to take no further action on the Complaint.⁶

Nothing in this response should be interpreted as a waiver of any assertion of privilege, objection, defenses, or arguments that ALEC may have. In fact, ALEC preserves all privileges, objections, defenses, or arguments that it may have.

ALEC thanks the Commission for its time and consideration.

Sincerely,



Jason Torchinsky
Counsel to ALEC

⁵ *Maine Ethics Commission Will Investigate ALEC Campaign Software Scheme*, EXPOSED BY CMD, Sep. 29, 2021, <https://www.exposedbycmd.org/2021/09/29/maine-ethics-commission-will-investigate-alec-campaign-software-scheme/> (last visited Jan. 21, 2022).

⁶ ALEC also wishes to amend the statement in its November 30, 2021 correspondence that the Texas Ethics Commission dismissed the complaint against ALEC. On August 2, 2021, the Texas Ethics Commission issued two separate letters: one stating that the complaint was sufficient and a separate letter stating that it was not. Now that the clerical error has been uncovered, ALEC is responding to that complaint.

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

**PROBABLE CAUSE
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) corporation that is not registered with the Board. It has dues-paying 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 a principal campaign committee registered with the Board.

The complaint concerns ALEC CARE (Constituent Analytics Research Exchange) software, which is customer relationship management software developed by the company Voter Gravity. The complaint and its attachments contain information purported to show that ALEC CARE refers to individuals as voters and includes data and features that could benefit candidates, such as a person's party affiliation, voting history, and election precinct, and the ability to create door-knocking and phone-calling lists as well as get-out-the-vote functions. Other information included with the complaint shows that Voter Gravity markets similar software to candidates as a voter contact tool for political campaigns.

The complaint includes information showing that legislative members of ALEC have free access to ALEC CARE. Other information provided with the complaint establishes that ALEC's legislative members pay dues of \$100 per year and that Sen. Kiffmeyer and Rep. Garofalo, as state chairs, are members of ALEC. The information also shows that ALEC has assigned a \$3,000 value to this member benefit and that purchasing comparable software from Voter Gravity would cost a state legislative campaign committee \$99 per month.

The complaint alleges that by providing free access to this type of voter management software as a member benefit, ALEC made in-kind campaign 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 states that although ALEC provided free access to ALEC CARE to Sen. Kiffmeyer and Rep. Garofalo, the complainants did not have sufficient knowledge 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.

On August 6, 2021, the Board chair determined that the complaint stated prima facie violations of the corporate contribution prohibition in Minnesota Statutes section 211B.15, subdivision 2, and the reporting requirements in Minnesota Statutes section 10A.20, subdivision 3. The complaint and the prima facie determination were provided to the respondents on August 6, 2021. On August 10, 2021, a letter seeking answers to four specific questions was sent to Sen. Kiffmeyer and Rep. Garofalo.

Sen. Kiffmeyer submitted a response on August 16, 2021. Sen. Kiffmeyer stated that neither she nor her committee had ever used the ALEC CARE software. On August 23, 2021, Reid LeBeau, counsel for Rep. Garofalo, submitted a response stating that neither Rep. Garofalo nor his committee had ever used the ALEC CARE software.

On September 7, 2021, Jason Torchinsky, counsel for ALEC, submitted ALEC's response to the complaint. In the response, ALEC states that ALEC CARE is constituent management software made available to ALEC members. The response contains a link to the ALEC website,¹ which describes the ALEC CARE software as follows:

CARE is a web-based system that helps you better communicate with your constituents, gain insight into your communities and enables you to know your district more intimately than anyone else.

ALEC members can utilize a suite of tools to improve legislative interactions, track district events, and solicit direct feedback from constituents with customized surveys through text messaging and automated phone calls.

The response also contains links to three short videos available on YouTube that briefly demonstrate how features of the ALEC CARE software can be used for constituent services.²

The response further provides that "as a condition of using the software, ALEC prohibits usage for election campaign purposes." ALEC states that there is a warning on the ALEC CARE login page that reads, "By signing in, you agree this system will not be used for any campaign related purpose." ALEC maintains that members cannot access the software without agreeing to this condition and that the organization emphasizes this condition in all of its ALEC CARE trainings

¹ <https://www.alec.org/membership-type/legislative-membership/>

² See What is a Digital Constituent Service? https://www.youtube.com/watch?v=uoBF9a4_ue8; What is ALEC CARE? <https://www.youtube.com/watch?v=sbOpHimIm0s>; ALEC CARE SMS <https://www.alec.org/app/uploads/2018/07/CARE-Video-SMS.mp4>; ALEC CARE TAGS <https://www.alec.org/app/uploads/2018/07/CARE-Video-Tags.mp4>

and onboarding processes. ALEC argues that because it prohibits its members from using ALEC CARE for campaign purposes, it has not made a contribution, or offered or agreed to make a contribution, to anyone to promote or defeat the election or nomination of a candidate as provided in Minnesota Statutes section 211B.15, subdivision 2.

The ALEC response also includes a sworn statement from an ALEC CARE administrator. The administrator states that ALEC CARE logs show that Sen. Kiffmeyer has never established an ALEC CARE account or used the system and that Rep. Garofalo has activated his ALEC CARE account but has never used that account or accessed the software. Based on this lack of use, ALEC argues that it has not made any contributions to the legislators.

Complainants supplemented the complaint with a joint memorandum submitted on September 13, 2021. In their memorandum, complainants argue that the main thrust of the complaint is against ALEC given the evidence of the electoral nature of the ALEC CARE software. The memorandum admits that the complainants lack direct evidence of who in Minnesota has used the software for their campaigns. Complainants also argue that ALEC uses ALEC CARE as a recruitment tool for new members. Attached to the memorandum is a copy of an email from ALEC to a new state legislative chair that describes ALEC CARE as “a CRM that allows legislators to communicate effectively with their constituents.” Another attachment is a sample recruitment letter that describes ALEC CARE as follows:

- Web-based system to encourage interaction between elected officials and constituents
- Customize constituent profiles, set up push text messages, and visualize data trends to better engage with your community
- Utilize CARE to improve legislative interactions, track district events, and solicit feedback from constituents

The Board considered this matter at its meeting on October 6, 2021. David Armiak, research director for the Center for Media and Democracy, and Arn Pearson, executive director of the Center for Media and Democracy, addressed the Board on behalf of the complainants. Annastacia Belladonna-Carrera, executive director of Common Cause Minnesota, appeared in support of the complaint. Mr. Armiak and Mr. Pearson argued that the sole purpose of the Voter Gravity software is to help candidates win elections, that the ALEC CARE software is virtually identical to the Voter Gravity software, and that, therefore, the sole purpose of the ALEC CARE software is to help legislators win re-election. The complainants maintained that ALEC’s claim that it limits the use of the software to non-campaign purposes was a pretext that should be disregarded by the Board. Finally, the complainants agreed that based on their review of the information submitted, there was not probable cause to believe that Sen. Kiffmeyer or Rep. Garofalo had violated the corporate contribution prohibition.

Jason Torchinsky and John Cycon, counsel for ALEC, appeared before the Board on ALEC’s behalf. Mr. Torchinsky argued that ALEC CARE was designed as a constituent management tool and that ALEC offers the ALEC CARE software to its members solely for that purpose. Mr. Torchinsky reiterated that ALEC emphasizes the limitation on the use of ALEC CARE in all

trainings and onboarding processes and requires users to certify at every login that the software will not be used for campaign purposes. Mr. Torchinsky stated that ALEC would need to stop any improper use of ALEC CARE for campaign purposes to be consistent with the organization's 501(c)(3) Internal Revenue Service tax status. Mr. Torchinsky further stated that any indication of the use of ALEC CARE for campaign purposes therefore would result, at a minimum, in the suspension of the member's ALEC CARE account and consultation with counsel to determine whether reimbursement was required. Mr. Torchinsky told Board members that ALEC had not needed to determine what other remedial measures should be taken for misuse of the software because ALEC had not had any reports of anyone in Minnesota, or in any other state, using ALEC CARE for campaign purposes.

After hearing the presentations, Board members wanted additional time to adequately review the written and oral submissions in the matter. The Board therefore determined under Minnesota Rules 4525.0150, subpart 4, that a continuance was necessary to equitably resolve the matter and laid the probable cause determination in this matter over to the next meeting.

Because the matter had been continued, all parties were given the opportunity to submit additional written and oral presentations to the Board. On October 14, 2021, complainants submitted information clarifying that Exhibit 12 provided with the complaint contained pictures of screens accessed within the ALEC CARE software. At the November 3, 2021, meeting, Mr. Armiak and Mr. Pearson made a presentation on behalf of complainants.

Analysis

When the Board chair makes a finding that a complaint raises a prima facie violation, the full Board then must determine whether probable cause exists to believe an alleged violation that warrants an investigation has occurred. Minn. Stat. § 10A.022, subd. 3 (d). A probable cause determination is not a complete examination of the evidence on both sides of the issue. Rather, it is a determination of whether, given the evidence available, there is sufficient justification to initiate a formal Board investigation of the allegations in the complaint.

Corporate contribution prohibition

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).

For purposes of the corporate contribution prohibition, the term “corporation” includes “a non-profit corporation that carries out activities in this state.” Minn. Stat. § 211B.15, subd. 1. The term “contribution” includes “an expenditure to promote or defeat the election or nomination of a candidate to a political office that is made with the authorization or expressed or implied consent of, or in cooperation or in concert with, or at the request or suggestion of, a candidate . . .” Minn. Stat. § 211B.15, subd. 2 (c).³ Finally, the Board has jurisdiction only over alleged corporate contributions made to promote or defeat the candidacy of an individual for nomination, election, or appointment to a political office in Minnesota, and only to the extent that the individual is a candidate within the meaning of Minnesota Statutes Chapter 10A. Minn. Stat. § 10A.022, subd. 3.

Initially, the complaint and its attachments include information showing that ALEC is a non-profit corporation and that it has Minnesota members. These facts establish probable cause to believe that ALEC is an entity subject to the provisions in Minnesota Statutes section 211B.15.

The record also establishes probable cause to believe that the ALEC CARE software has monetary value, that Sen. Kiffmeyer and Rep. Garofalo are members of ALEC who have access to the software as a member benefit, and that the dues paid by the legislators do not cover the full value of the software.

The totality of the evidence in the record, however, does not establish probable cause to believe that ALEC made, or offered or agreed to make, a contribution to promote or defeat the candidacy of an individual for election to a political office in Minnesota. Complainants have submitted evidence showing that Voter Gravity is customer relationship management software designed for candidates, that ALEC CARE appears to be based on the Voter Gravity software, and that ALEC CARE therefore has information and contact features that could be useful to an election campaign. But the same information and contact features also could be useful to legislators for constituent services purposes. It is the nature of customer relationship management software that its customer information and communication features can be used for many purposes.

In addition, Minnesota Statutes section 211B.15, subdivision 2, does not focus solely on how the recipient could use the contribution in question to determine whether a violation has occurred. Instead, the statute looks at the contributor and provides that a violation occurs when the corporation makes, or offers or agrees to make, the contribution to promote or defeat the candidacy of an individual for election. Here, the communications attributed to ALEC, including

³ Minnesota Statutes section 10A.01, subdivision 11 (a), defines the term “contribution” in pertinent part to mean “money, a negotiable instrument, or a donation in kind that is given to a political committee, political fund, principal campaign committee, or a party unit.” The term “donation in kind” is defined in relevant part as “anything of value that is given, other than money or negotiable instruments.” Minn. Stat. § 10A.01, subd. 13. Although Chapter 211B does not incorporate by reference these definitions, the definition of contribution in Minnesota Statutes section 211B.15, subdivision 2, clearly covers in-kind contributions.

its website, the videos on the internet, the emails to its state chairs, the sample recruitment letter, and the ALEC CARE log in page, all state that the ALEC CARE software is a customer relationship management tool being offered to legislators to help them communicate with and serve their constituents. The record also contains information showing that ALEC consistently warns its members not to use the ALEC CARE software for campaign purposes and that members must agree to this condition every time that they log in to the software. ALEC also has a remedy in place, the loss of user privileges and reimbursement, for any member who violates the conditions of ALEC's software offer. The lack of any evidence in the record of any use of ALEC CARE for campaign purposes in Minnesota, or in any other state, suggests that these warnings and potential remedies have been effective in limiting the use of ALEC CARE to the terms of ALEC's offer.

Complainants argue that because ALEC CARE is a version of Voter Gravity, which is campaign software, ALEC's condition that the ALEC CARE software be used only for non-campaign purposes must be a pretext that the Board should disregard. There may be some cases where the fact that an item can be used for only one campaign-related purpose may be dispositive. But here, it is the nature of the contribution in question, customer relationship management software, that it can be used for many purposes. Further, as stated above, ALEC's consistent description of the terms under which the software is offered to members, its repeated warnings not to use the software for campaign purposes, and the lack of any evidence showing that those warnings have been disregarded in Minnesota, or elsewhere, support ALEC's claim that it offers the ALEC CARE software to legislators only for non-campaign purposes. The Board therefore concludes that in this case, there is not probable cause to believe that that ALEC made, or offered or agreed to make, a contribution to promote or defeat the candidacy of an individual for nomination, election, or appointment to a political office in Minnesota.

Absent probable cause to believe that ALEC made, or offered or agreed to make, a prohibited corporate contribution, there is not probable cause to believe that either Sen. Kiffmeyer or Rep. Garofalo accepted a contribution that ALEC was prohibited from making. In addition, the record shows that Sen. Kiffmeyer never accessed the ALEC CARE software and that Rep. Garofalo never accessed the software after initially creating his account. The fact that a candidate did not use an item is not always dispositive of whether the candidate accepted that item as an in-kind contribution.⁴ Some factors that the Board may consider in determining whether a candidate accepted an in-kind contribution may be taking possession of the in-kind contribution, exercising dominion over the in-kind contribution, storage of the in-kind contribution, and publication of the in-kind contribution. In this case the legislators' nonexistent or very limited interactions with the ALEC CARE software show that neither of them accepted that member

⁴ *In the Matter of People PAC (MN), The People PAC, and 15 Principal Campaign Committees*, (Nov. 6, 2019), the Board determined that a video posted independently by its producer was a contribution to a candidate even though she had rejected the finished product and never used it in her campaign. This decision was based on the fact that the candidate agreed to the production of the video and participated in the video shoot. Consequently, under Chapter 10A, the costs related to the video became approved expenditures, and therefore in-kind contributions, at the time when she agreed to those expenditures, not when the video was completed or posted.

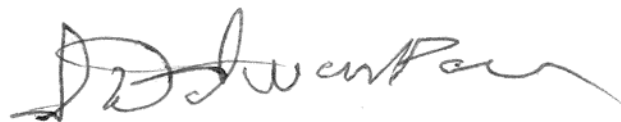
benefit for any purpose. Consequently, there is not probable cause to believe that either Sen. Kiffmeyer or Rep. Garofalo accepted a prohibited contribution from ALEC.

Reporting

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. As determined above, neither Sen. Kiffmeyer nor Rep. Garofalo received any contributions from ALEC. Because the legislators had no contributions from ALEC to disclose on their committee's campaign finance reports, there is not probable cause to believe that any reporting violations occurred in this matter.

Order:

1. The allegation that the American Legislative Exchange Council violated the corporate contribution prohibition in Minnesota Statutes section 211B.15, subdivision 2, is dismissed without prejudice because there is not probable cause to believe that this violation occurred.
2. The allegation that Senator Mary Kiffmeyer and Representative Pat Garofalo accepted a corporate contribution in violation of Minnesota Statutes section 211B.15, subdivision 2, is dismissed without prejudice because there is not probable cause to believe that this violation occurred.
3. The allegation that Senator Mary Kiffmeyer and Representative Pat Garofalo violated the reporting requirements in Minnesota Statutes section 10A.20, subdivision 3, is dismissed without prejudice because there is not probable cause to believe that this violation occurred.



Stephen Swanson, Chair
Campaign Finance and Public Disclosure Board

Date: November 3, 2021

November 3, 2021

Jason Torchinsky
Shawn Sheehy
John Cycon
Holtzman Vogel Baran Torchinsky
& Josefiak PLLC

Sent via email to:
jtorchinsky@HoltzmanVogel.com
ssheehy@HoltzmanVogel.com
jcycon@HoltzmanVogel.com

Good afternoon,

At its meeting on November 3, 2021, the Minnesota Campaign Finance and Public Disclosure Board adopted the enclosed probable cause determination. The determination states that probable cause does not exist to believe that violations occurred as alleged in the complaint filed by the Center for Media and Democracy and Common Cause Minnesota against the American Legislative Exchange Council (ALEC), Senator Mary Kiffmeyer, and Representative Pat Garofalo.

Please contact me with any questions or concerns you have regarding this matter.

Respectfully,



Megan Engelhardt
Assistant Executive Director
651-539-1182 / megan.engelhardt@state.mn.us

Enclosure: Probable cause determination

**MINUTES
OF
THE OHIO ELECTIONS COMMISSION**

Meeting of October 7, 2021

The Ohio Elections Commission came to order at 10:00 A.M. on Thursday, October 7, 2021, in Room 1948 on the nineteenth floor of the Riffe Center, located at 77 South High St., Columbus, Ohio and all members of the Commission were present.

MEMBERS PRESENT

D. Michael Crites, Chair
Otto Beatty, Vice Chair
Dennis B. Brommer
Catherine A. Cunningham
Natasha Kaufman
Scott Norman
Charleta B. Tavares

STAFF PRESENT

Philip C. Richter, Staff Attorney
Christopher Hughes, Administrative Assistant

Chair Crites called the meeting to order. After a roll call vote, all members of the Commission were present. Mr. Norman then moved approval of the minutes of the meeting of September 23, 2021. Ms. Tavares seconded the motion. The motion passed 7 – 0.

HEARING

Purdy v. Simeone, et al. (Case No. 2021G-001). Mr. Richter introduced the case to the Commission and informed them that he had received from the complainant, Catherine Purdy, a request to have the case withdrawn from the Commission's consideration. He described a telephone conversation that he had with the complainant and the e-mail which he had received with the specific request that he had forwarded to them for their consideration. Mr. Richter recommended to the Commission that they allow the withdrawal of the matter and that action to do so was necessary. Mr. Beatty then moved to allow the withdrawal of the case by the complainant. Mr. Brommer seconded the motion. The motion passed 7 – 0.

PRELIMINARY REVIEW

Nakeshia Nickerson, et al. (Case No. 2021R-284). Mr. Richter outlined the case and recommended that the Commission find a violation and impose a fine of \$50. He explained that the respondent specifically requested that the matter be addressed ahead of its regularly scheduled time at the meeting of October 28, 2021. As an accommodation to the complainant, and at her request, Mr. Richter placed the matter on today's agenda. Commission members asked questions of Mr. Richter, who explained the basis for his recommendation to impose a fine, but indicated to the members that if they wanted to make a different finding, that he would offer no objection. At the conclusion of the comment period, Mr. Norman moved to find a violation but for good cause not impose a fine or refer the matter for further prosecution. Ms. Tavares seconded the motion. The motion passed 7 – 0.

Gabrail v. Zibritosky (Case No. 2021D-008). Mr. Richter introduced the case to the Commission, informed them that a response had been filed and that he had provided all materials to the Commission for their review. He stated that his recommendation was to find a violation and impose a fine of \$50. Mr. Norman moved to accept Mr. Richter's recommendation to find a violation and impose a fine of \$50. Mr. Brommer seconded the motion. The motion passed 7 – 0.

RECONSIDERATION

Friends of Janis Evans, et al. (Case No. 2018R-579). Mr. Richter informed the Commission that this matter was before the Commission for reconsideration of its previous finding of October 31, 2018. Mr. Richter informed the Commission that it was his recommendation to reconsider the matter, vacate the previous imposition of the per diem fine but instead to impose a fine of \$100. Commission

members asked questions of Mr. Richter, who explained the basis for his recommendation to impose a fine. At the conclusion of the comment period, Mr. Norman moved to reconsider the matter, vacate the previous imposition of the per diem fine and instead impose a fine of \$100. Ms. Kaufman seconded the motion. The motion passed 7 – 0.

Before taking up consideration of the remainder of the agenda items, Chair Crites informed the Commission members that he was obligated to recuse himself from consideration from the next Preliminary Review matter and that it was also necessary for him to continue his recusal from today's scheduled hearing. He stated that he would be exiting the meeting room as these matters were addressed by the Commission. Commission members then addressed whether it was necessary to obligate Chair Crites to remain for the remainder of the meeting. A discussion was held among Commission members and Mr. Richter as to whether it was possible to excuse the Chair from the final items on today's agenda. Mr. Richter indicated that it was possible to excuse his presence. Ms. Cunningham then moved to allow Chair Crites to be excused from the remainder of the Commission meeting. Ms. Tavares seconded the motion. The motion passed 6 – 0. Vice Chair Beatty then assumed the Chair for the remainder of the meeting.

PRELIMINARY REVIEW

Pearson, et al. v. American Legislative Exchange Council, et al. (Case No. 2021G-007). Mr. Richter introduced the case to the Commission, informed them that responses had been received from all respondents and that all materials had been provided to the members in advance of the meeting for their consideration. Catherine Turcer, one of the complainants, was present, sworn and made a statement to the Commission. Donald Brey, counsel for respondent, Robert McColley, was present and made a statement to the Commission. Mr. Brey explained the circumstances involving Mr. McColley's actions with regard to the software at issue in the complaint and informed the Commission that the software had never been accessed by Mr. McColley. Mr. Brey also requested that the matter be found frivolous. Mr. Brey responded to questions from Commission members, informing them that Mr. McColley's staff had also never used the software. Mr. Brey deferred some questions of the Commission as he represented no other respondents in the matter and so his knowledge of certain circumstances was limited to his reading of the responses submitted by the remaining respondents. Commission members offered comment on the case and also asked questions of Mr. Richter, who answered those questions and also stated his recommendation to find no violation. At the conclusion of the question and answer period, Mr. Norman moved to find no violation in the case. Ms. Cunningham seconded the motion. The motion passed 4 – 2 (Mr. Brommer and Ms. Tavares voted no. Chair Crites recused.).

HEARING

Hicks v. Freeman, et al. (Case No. 2020G-019). Chair Crites had been excused from this portion of the meeting. Mr. Richter introduced the case to the Commission members. Vice Chair Beatty informed the persons present at the meeting that the hearing would be concluded at 3:00 p.m. as Commission members had other obligations that necessitated concluding at this time. If the matter was still under consideration, the hearing would be continued to a future date. The Vice Chair also stated that Mr. Norman would act on any objections that may be made during the presentation of the case. He also informed the complainant and counsel for the respondent that opening statements would be limited to 5 minutes for each side. Lastly, Vice Chair Beatty stated that there would be a separation of witnesses for the hearing. All witnesses who were not parties to the case, or a representative of a party, were asked to leave the meeting room and wait to be called to testify.

The complainant, Christopher Hicks, offered an opening statement explaining his case and what he would demonstrate to the Commission. Mr. Brey, counsel for the respondent made an opening statement. Mr. Hicks then called Mr. Freeman to testify. Mr. Brey offered an objection. Mr. Hicks responded that he believed his due process rights would be violated if Mr. Freeman was not called to

testify concerning his original submission to the Commission. Mr. Brey then stated that Mr. Freeman was invoking his rights pursuant to Article 1, Section 10 of the Ohio Constitution. Commission members offered additional comment on the issue. Mr. Norman stated that the issue had been decided at the previous Motion Hearing of the Commission, noted Mr. Hicks comments, and directed the complainant to call his next witness.

Mr. Hicks called Megan Fitzmartin to testify. Ms. Fitzmartin was sworn to offer testimony and responded to questions from Mr. Hicks. During Ms. Fitzmartin's testimony, Mr. Hicks offered Complainant's Exhibits 22A, 22B, 23, 12 & 13. Objections were offered by respondent's counsel to Exhibits 23 and 12 which were overruled. Mr. Hicks also introduced Respondent's Exhibit W. Mr. Brey conducted cross-examination of the witness, after which Mr. Hicks conducted re-direct examination. Commission members then asked questions of Ms. Fitzmartin, after which Mr. Brey asked additional questions in response to certain Commission member questions. Ms. Fitzmartin was released.

Mr. Hicks then called Rob Secaur to offer testimony in the case. Mr. Secaur was sworn to offer testimony and responded to questions from Mr. Hicks. During his testimony, Mr. Secaur was presented with Complainant's exhibits 10B and Respondent's exhibits M, R, S & T. Mr. Brey conducted cross-examination. Commission members and Mr. Richter asked questions of the witness after which Mr. Hicks asked some additional questions. Follow up questions were asked of the witness by Commission members, Mr. Hicks and Mr. Brey, after which the witness was released. Mr. Hicks then called R.J. Mancini to offer testimony in the case. Mr. Mancini was sworn to offer testimony and responded to questions from Mr. Hicks. During his testimony, Mr. Mancini was presented with Complainant's exhibits 2, 9, 24 and 25B. Mr. Brey conducted cross-examination of the witness, after which Mr. Hicks conducted re-direct examination. Commission members then asked questions of Mr. Mancini. Mr. Mancini was released.

Mr. Hicks called Scott Schweitzer to offer testimony to the Commission. Mr. Schweitzer was sworn and offered testimony. During his testimony, Mr. Schweitzer identified Complainant's exhibits 5 from the original complaint, 2, 12, 13, 14, 15, 22A, 23 & 25B. Mr. Brey presented multiple objections during Mr. Hicks questioning two of which were sustained and one was overruled. When Mr. Hicks concluded, Mr. Brey conducted cross-examination, after which Mr. Hicks conducted re-direct examination and asked the witness to identify Complainant's exhibit 13. Mr. Brey asked additional questions of the witness and then all of the Commission members asked questions. Both Mr. Hicks and Mr. Brey asked questions based on the Commission member's questions. Mr. Schweitzer was then excused.

After this witness, the time at which the Commission had declared it would pause its consideration of the case for this meeting had arrived and so it discussed the date on which the hearing would re-convene. The witnesses that had been subpoenaed, but not yet called to testify, were asked to appear and the Commission determined to continue the hearing at its next regularly scheduled meeting on October 28, 2021. The time of the meeting was addressed, and the Commission members determined to start that meeting at 9:00 instead of the standard 10:00 meeting time. Mr. Richter and Mr. Hughes indicated that additional notices would be sent to inform the parties in those matters already scheduled to be addressed at that meeting of the time change, as well as Chair Crites.


Ms. Tavares moved adjournment. Ms. Kaufman seconded. The motion was approved 6 - 0.

The court reporter for today's meeting was Allison Coss of US Court Reporters.

APPROVED:

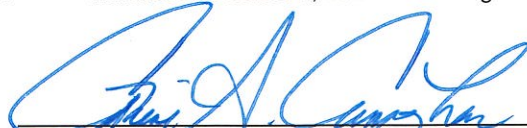


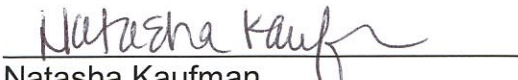
D. Michael Crites, Chair



Otto Beatty III, Vice Chair


Dennis B. Brommer


Catherine A. Cunningham


Natasha Kaufman


Scott Norman


Charleta B. Tavares



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Chairman

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Dennis Brommer

Catherine A. Cunningham

Natasha D. Kaufman

A. Scott Norman

Charleta B. Travares

Philip C. Richter
Executive Director

Fax: (614) 728-9408

ORDER OF THE OHIO ELECTIONS COMMISSION

Re: Case No. 2021G-007
Pearson, et al. v. American Legislative
Exchange Council, et al.

AMERICAN LEGISLATIVE EXCHANGE COUNCIL
2900 CRYSTAL DR. 6TH FLOOR
ARLINGTON, VA 22202

On 10/7/2021 after careful consideration of the evidence, the Ohio Elections Commission adopted the following finding(s) in the above referenced matter:

THE COMMISSION FOUND NO VIOLATION.

If the decision in this case involves the imposition of a specific fine amount, payment of the fine must be made no later than 30 days after the date of this letter. Payment should be made payable and sent to the Ohio Elections Commission Fund at the above address. Unpaid fines will be sent to the Ohio Attorney General for collection.

If the disposition of this case involves a daily fine amount, you must contact the office in which you file your campaign finance reports and file the report. In addition, to have the daily fine reconsidered, you must file a notarized statement with the Commission. The filings and affidavit must be received within 30 days after the date of this letter. All properly notarized affidavits must include a statement above the notary public's signature that the document was "sworn to and signed" in the presence of the notary public and the date on which it was done.

If the decision in this case does not involve the imposition of a fine, there is no further action required of you by the Commission.

Not all decisions of the Commission are appealable. However, if the decision in this case is appealable, and adverse to your interests under the law, this case may be appealed pursuant to Ohio Revised Code §119.12. Within 15 days after the mailing of this Order, a Notice of Appeal must be filed with the Commission as well as at the Clerk's office for the Franklin County Court of Common Pleas.

In all cases, please use the OEC case no. listed at the top of this letter when corresponding with the Commission. If you have any questions, please feel free to contact the Commission staff at (614) 466-3205.

It is hereby certified that the foregoing is a true and exact reproduction of the original Order of the Ohio Elections Commission for this case as entered on its journal.

BY ORDER OF THE OHIO ELECTIONS COMMISSION

Philip C. Richter, Executive Director and Staff Attorney
ORDER MAILED & EFFECTIVE: November 24, 2021

Subject: RE: Supplemental Filing - 2021-ETH-68
Date: Wednesday, December 15, 2021 at 9:36:20 AM Eastern Standard Time
From: ETH Complaints
To: John Cycon
Attachments: image001.jpg

Atty. Cycon:

I am writing to advise you that on December 14, 2021, the Wisconsin Ethics Commission considered the complaint against your client, the American Legislative Exchange Council (2021-ETH-68). After reviewing the materials presented, the Commission found that the complaint did not raise a reasonable suspicion that a violation of the law occurred. As required by [WIS. STAT. § 19.49\(2\)\(b\)3.](#), the complaint has now been dismissed.

If you have any questions, please contact our Commission Administrator, Daniel Carlton, at (608) 267-0715.

Sincerely,

David P. Buerger
Staff Counsel
Wisconsin Ethics Commission
Campaign Finance | Lobbying | Ethics
<https://ethics.wi.gov> | (608) 266-8123 | Twitter: [@EthicsWi](#)

From: John Cycon <jcycon@HoltzmanVogel.com>
Sent: Monday, October 04, 2021 12:22 PM
To: ETH Complaints <ethics.complaints@wi.gov>
Subject: Re: Supplemental Filing - 2021-ETH-68

**CAUTION: This email originated from outside the organization.
Do not click links or open attachments unless you recognize the sender and know the content is safe.**

Thank you David. We appreciate the consideration.

Best,
John

John Cycon
Mobile: (202) 941-6621
jcycon@HoltzmanVogel.com // www.HoltzmanVogel.com

Holtzman Vogel

HOLTZMAN VOGEL BARAN TORCHINSKY & JOSEFIAK PLLC

PRIVILEGED AND CONFIDENTIAL

This communication and any accompanying documents are confidential and privileged. They are intended for the sole use of the addressee. If you receive this transmission in error, you are advised that any disclosure, copying, distribution, or the taking of any action in reliance upon this communication is strictly prohibited. Moreover, any such disclosure shall not compromise or waive the attorney-client, accountant-client, or other privileges as to this communication or otherwise. If you have received this communication in error, please contact me at the above email address. Thank you.

DISCLAIMER

Any accounting, business or tax advice contained in this communication, including attachments and enclosures, is not intended as a thorough, in-depth analysis of specific issues, nor a substitute for a formal opinion, nor is it sufficient to avoid tax-related penalties. If desired, Holtzman Vogel, PLLC would be pleased to perform the requisite research and provide you with a detailed written analysis. Such an engagement may be the subject of a separate engagement letter that would define the scope and limits of the desired consultation services.

From: ETH Complaints <ethics.complaints@wi.gov>

Date: Monday, October 4, 2021 at 12:05 PM

To: John Cycon <jcycon@HoltzmanVogel.com>

Subject: Supplemental Filing - 2021-ETH-68

Mr. Cycon:

The Ethics Commission received the attached supplemental filing from the Complainants in this matter on September 30th. Upon preliminary review, our Administrator, Chair, and Vice Chair have jointly decided that due to the late hour of this supplemental information, the Commission will be rescheduling its consideration of this matter to its following meeting, which will be held on December 14th. This will provide our staff with additional time to review the materials submitted and allow your client an opportunity to file any additional response before the Commission proceeds. If your client wishes to file any supplemental response to this additional material, please do so no later than November 2nd.

If you have any questions, please feel free to contact me directly at (608) 267-0951.

Sincerely,

David P. Buerger

Staff Counsel

Wisconsin Ethics Commission

Campaign Finance | Lobbying | Ethics

<https://ethics.wi.gov> | (608) 266-8123 | Twitter: [@EthicsWi](https://twitter.com/EthicsWi)