

February 23, 2010

**VIA EMAIL TO [gary.goldsmith@state.mn.us](mailto:gary.goldsmith@state.mn.us)**  
Executive Director Gary Goldsmith  
Campaign Finance & Public Disclosure Board  
Suite 190  
658 Cedar Street  
St. Paul, MN 55155

**Re: Republican Party of Minnesota Complaint Regarding RT for Minneapolis  
Committee Expenditures, February 23, 2010**

Dear Mr. Goldsmith:

We have been retained to represent the RT for Minneapolis Committee ("Mayoral Committee") and the Rybak for Governor Committee ("Gubernatorial Committee") in connection with the above-referenced complaint by the Republican Party of Minnesota ("RPM"). We submit that there is nothing in the complaint of that constitutes probable cause to believe a violation has occurred.

By order issued November 5, 2009, the Board directed that Mayor Rybak register a principal campaign committee for the office of Governor, which registration would be retroactive to May 19, 2009. The Gubernatorial Committee was registered on November 5, 2009. The Board also ordered that the Gubernatorial Committee reimburse the Mayoral Committee for the cost of a survey and make report thereof. As disclosed in its report submitted February 1, 2010, the Gubernatorial Committee has done so.

While the RPM's complaint refers to the Board's order of November 5, and implies that the current complaint is somehow connected, the complaint makes no allegation of fact that, if true, would constitute probable cause. The RPM alleges that the Mayoral Committee disclosed the purchase of a statewide list, which it did. The RPM further alleges, without any factual support, that it is somehow self-evident that the Mayoral Committee could not have had a legitimate reason to purchase a list including names outside Minneapolis, except to promote a gubernatorial campaign.

This allegation does not constitute probable cause, or even common sense. The Mayoral Committee had a right under Minnesota law, the Minnesota Constitution, and the First

Attorneys & Advisors  
main 612.492.7000  
fax 612.492.7077  
[www.fredlaw.com](http://www.fredlaw.com)

Fredrikson & Byron, P.A.  
200 South Sixth Street, Suite 4000  
Minneapolis, Minnesota  
55402-1425

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Amendment to the United States Constitution to obtain lists of potential supporters -- whether inside or outside of Minneapolis -- for the purpose of communicating with them for political support and funds. *See* Minn. Stat. § 10A.37 (“Nothing in this chapter may be construed to abridge the right of an association to communicate with its members.) There is no statute or Board rule, nor could there be one, that committee members may not communicate outside the geographic limits of the elective office at stake.

The Board’s findings and order dated November 5, 2009, concerned a statewide poll which the Board determined had “little relevance to running for office in Minneapolis.” By contrast, a list of names, email addresses, and other information, whether from a political party or otherwise, purchased for the purpose of political association and fundraising, was highly relevant to running for office in Minneapolis. That the RPM disagrees with the judgment or strategy behind this particular expenditure does not, and cannot, establish probable cause.<sup>1</sup>

Freedoms of speech and association protected by the First Amendment have their “fullest and most urgent application precisely to the conduct of campaigns for political office.” *Buckley v. Valeo*, 424 U.S. 1, 15 (1976) (citation omitted). How campaigns spend their money to communicate is part of the First Amendment’s “open marketplace of ideas.” *See New York State Board of Elections v. Lopez Torres*, 552 U.S. 196, 208 (2008). When, as here, a complaint challenges directly a committee’s purchase and use of lists for political association and fundraising, which are at the core of the First Amendment, the Board should proceed with great caution, so as not to chill these protected activities. *See NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 460 (1958) (group association protected; lists of members need not be disclosed). Absent clear probable cause to believe that the law has been violated, members of a political committee should not be required to justify or even discuss their decisions to communicate and associate with, and seek political support and solicit contributions from, other Minnesotans.

Finally, we note that, not only has the Mayoral Committee properly disclosed the purchase of the list, the Gubernatorial Committee has done so as well. The Gubernatorial Committee purchased the list for its own associational and fundraising purposes, and has disclosed that by its report filed on February 1, 2010.

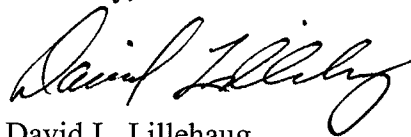
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<sup>1</sup> That the Mayoral Committee retained the services of a professional fundraiser is not evidence that the statewide list was not used for fundraising.

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For these reasons, the Mayoral Committee and the Gubernatorial Committee request that the Board determine that the RPM complaint provides no probable cause to believe a violation has occurred.

Sincerely,



David L. Lillehaug

*Attorney*

**Direct Dial:** 612.492.7321

**Email:** dlillehaug@fredlaw.com

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