

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

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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."¹

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."²

¹ 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

² 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 MPR³, 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 Golnik⁴, Michael Toner⁵, Eric

³ 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

⁴ "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,^{6 7} and Tony Trimble.⁸ 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.”⁹ Then on November 18, 2010 the RPM took further legal action.¹⁰

Those lawyers could not have signed a contract with CTAP, Inc. because it did not exist until December 3rd. 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.”¹¹ It is clear that the RPM was in fact the client and those attorneys began to bill the RPM for their time. Before December 3rd, 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 3rd:

- Filed one major lawsuit¹² 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*.

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

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

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

⁸ Weiner, Jay. “GOP saber-rattling Tony Sutton vows aggressive recount fight” [MinnPost](http://www.minnpost.com/stories/2010/11/03/23035/gops_saber-rattling_tony_sutton_vows_aggressive_recount_fight) November 3, 2010
http://www.minnpost.com/stories/2010/11/03/23035/gops_saber-rattling_tony_sutton_vows_aggressive_recount_fight

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

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

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

¹² “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](http://minnesota.publicradio.org/display/web/2010/11/17/gop-lawsuit/) 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 \$719,000¹³.

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.'"¹⁴

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.¹⁵

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."¹⁶

¹³ 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/>

¹⁴ 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/>

¹⁵ Ibid

¹⁶ 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.¹⁷

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)¹⁸, Winona County (\$3,000)¹⁹ Yellow Medicine (\$192)²⁰, Goodhue (\$2,020)²¹. 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,

¹⁷ “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>

¹⁸ 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>

¹⁹ 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

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

²¹ *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.²² 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

²² "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

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."²³ 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,

²³ 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

“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.²⁴ 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.

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²⁴Pugmire, 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