05 - 0174

MINNESOTA SENATE

SUBCOMMITTEE ON ETHICAL CONDUCT

CONDUCT
OF
SENATOR MICHAEL J. JUNGBAUER

FINAL REPORT

February 18, 2005

Contents

A resolution relating to ethical conduct; conduct of Senator Michael J. Jungbauer.

WHEREAS, the Subcommittee on Ethical Conduct of the Committee on Rules and Administration, in response to a complaint submitted by Senator John C. Hottinger, dated May 5, 2004, met on May 11, 2004, and June 28, 2004, to consider whether the conduct of Senator Michael J. Jungbauer in sending out an e-mail notification of a certain press conference violated any administrative policy of the Senate and thus constituted improper conduct within the meaning of Senate Rule 56.3; and

WHEREAS, the Subcommittee on Ethical Conduct, based on clear and convincing evidence, has found the following facts:

1. On or about April 6, 2004, Senator Jungbauer received a paper copy of a media advisory distributed by Jeffrey Davis. The media advisory read:

"**MEDIA ADVISORY**

Press Conference Scheduled: Citizens Group Threatens to Retire Incumbent Senators if They Fail to Pass the Defense of Marriage Amendment

Group hopes effort will help pass a Defense of Marriage Amendment defining marriage as "the union of one man and one woman."

What: A press conference will be held to announce the formation of a program that encourages Minnesota citizens to pledge their financial support to defeating DFL Senators in 2006 if the DFL-controlled Senate continues to block the Defense of Marriage amendment from being put to voters in the fall election.

Who: Jeff Davis and other local citizens

When: Wednesday, April 7, 9:30 am

Where: Minnesota State Office Building, Room 181, 100 Constitution Ave, St. Paul

Contact: Jeff Davis, 651-633-6733"

2. At the time he received the media advisory, Senator Jungbauer did not know Jeffrey Davis.

3. At the time he received the media advisory, Senator Jungbauer did not know the citizens group, Minnesota Citizens in Defense of Marriage, that was sponsoring the press conference, or that it was a registered political committee headed by Jeffrey Davis.

4. Senator Jungbauer, in reading the media advisory, did not read the words "a program that encourages Minnesota citizens to pledge their financial support to defeating DFL Senators in 2006" to mean a program of soliciting campaign contributions.

5. On April 6, 2004, Senator Jungbauer gave the media advisory to his legislative assistant, Karysse Trandem. He instructed her to type it up and send it out to his Defense of Marriage Amendment e-mail distribution list, which contained about 1700 names of supporters and opponents.

6. Senator Jungbauer added an introduction to the e-mail message that said:

"Dear Defense of Marriage Supporters,

I have just received word of an important upcoming press conference that I would like to make you aware of. Tomorrow at 9:30 am this press conference (see below) will be held in the State Office Building (the building just west of the Capitol). Any support you show for this will make a difference, whether it be through attending, finding someone to attend in your place, or offering prayer support. Please maintain your strength on this issue!

Mike"

7. Ms. Trandem did as she was instructed, completing the task that same day, using her Senate computer and the Senate's e-mail system.

8. Ms. Trandem, in typing the media advisory, did not read the words "a program that encourages Minnesota citizens to pledge their financial support to defeating DFL Senators in 2006" to mean a program of campaign fundraising.

9. Neither Senator Jungbauer nor Ms. Trandem attended the press conference on April 7, 2004.

10. Senate Policy 1.45, **Campaign Activity Policy**, defines "campaign activity" as including "soliciting contributions to a political committee or political fund . . . ." and says that "Senate equipment or supplies may not be used for campaign activities."

11. Senate Policy 1.50, **Communication Equipment Policy**, provides that "Senate communications equipment is for purposes of the Senate and the Legislature. It may not be used for any . . . political campaign."

12. Senate Policy 1.60, **Senate Information Systems User Policy**, ¶ 1.5, **Not for Commercial or Campaign Use**, provides that "Computer equipment, computer programs, and data communication facilities connected to the Senate Network or any state computer are to be used for purposes of the Senate and the Legislature. They may not be used for any . . political campaign."

AND, WHEREAS, the Subcommittee on Ethical Conduct, based on clear and convincing evidence, has drawn the following conclusions:

1. The press conference conducted on April 7, 2004, by Jeffrey Davis on behalf of the political committee Minnesota Citizens in Defense of Marriage was part of a "political campaign" within the meaning of Senate Policies 1.50 and 1.60.

2. Senator Jungbauer's instructions to his legislative assistant to distribute an e-mail message that he composed to a list of about 1700 names on his Senate distribution list to publicize the press conference of April 7, 2004, and urge citizens to attend and otherwise support the press conference was an unintentional use of Senate communications equipment and the Senate Network for a political campaign in violation of Senate Policies 1.50 and 1.60, ¶ 1.5.

3. This violation of Senate administrative policies constitutes improper conduct within the meaning of Senate Rule 56.3.

4. Neither Senator Jungbauer nor Ms. Trandem understood that the press conference would include political campaign activity.

5. Senator Jungbauer failed to exercise due care in deciding to instruct Ms. Trandem to distribute his e-mail message promoting the press conference.

NOW, THEREFORE,

BE IT RESOLVED, by the Subcommittee on Ethical Conduct:

1. Senator Michael J. Jungbauer shall make a written apology to the Senate and his constituents in a form submitted to and accepted by the Subcommittee on Ethical Conduct.

2. Upon acceptance of the form of the apology, Senator Jungbauer must deliver a copy of the apology to every member of the Senate.

3. Upon delivery of the apology, the complaint be dismissed.

MICHAEL J. JUNGBAUER
Senator District 48
Room 115. State Office Building
100 Rev. Dr. Martin Luther King, Jr. Blvd.
St. Paul. MN 55155-1206
Phone: (651) 296-3733
E-mail: sen.michael.jungbauer@senate.mn

Senate
State of Minnesota

November 17, 2004

Senator James Metzen
312 Deerwood Court
South St. Paul, MN 55075

Dear James,

As part of this year's flood of correspondence on the Defense of Marriage constitutional amendment, I received a media advisory regarding a press conference at the State Capitol on the proposal.

After glancing at the media advisory, I asked my legislative assistant to e-mail it out to my distribution list of citizens who are interested in this issue.

I subsequently learned that the media advisory included a plea for financial pledges to pro DOMA candidates.

Because the press conference was held in the Capitol complex, I assumed it was solely based on the policy and status of the Defense of Marriage Act. If I had understood that it entered any gray ethical area or touched on campaign activity, I never would have passed on the media advisory.

I erred by distributing information to constituents without realizing it was political in nature. I apologize to my fellow senators and the citizens I serve for my mistake.

The separation of campaigns from government is an essential principle that I strongly support. The taxpayers should never have to foot the bill for anyone's political ambitions.

I aim to hold myself to the highest moral standards – this situation was a mistake, plain and simple. In the future, I certainly will be more careful to not let my passion for an issue or the haste of session distract me from carefully monitoring all communication that leaves my office.

Sincerely,

State Senator Mike Jungbauer

JOHN C. HOTTINGER
Senator, 23rd District

317 State Capitol Building
75 Rev. Dr. Martin Luther King, Jr. Blvd.
St. Paul, MN 55155-1606
Phone: (651) 296-6153
Fax: (651) 225-7571

Senate
State of Minnesota

IN RE Complaint Under Rule 55.3 Against Senator Michael Jungbauer For Improper Conduct

TO; Senator James Metzen
Chair, Senate Subcommittee on Ethical Conduct

Dear Senator Metzen,

Pursuant to Rules 55.3 and 56.3, I respectfully submit to you, as Chair of the Senate Subcommittee on Ethical Conduct, and to the other members of the Senate Subcommittee on Ethical Conduct, the following Complaint of improper conduct relating to Senator Michael Jungbauer for the Subcommittee's consideration and determination.

Factual Background

1. On March 12, 2004, **Aaron Hall** registered a principal campaign committee with the Campaign Finance and Public Disclosure Board for State Senate for Senate District 51 as a Republican. (See Exhibit A attached.)

2. Prior to March 30, 2004, **Aaron Hall** received permission from Speaker of the House **Steven Sviggum** to use Room 181 of the State Office Building on April 7, 2004, from 9:30 a.m. to 10:30 a.m.. (See Exhibit B attached.)

3. As of April 5, 2004, **Jeffrey Davis** had registered a principal campaign committee with the Campaign Finance and Public Disclosure Board for State Senate for Senate District 50 as a Republican. (See Exhibit C attached.)

4. On April 6, 2004, **Sen. Michael Jungbauer** used the Senate e-mail system to promote the press conference being held in Room 181 of the State Office Building on April 7, 2004, at 9:30 a.m. This press conference was the purpose for which **Aaron Hall** reserved the room and was organized by **Jeffrey Davis.** (See Exhibit D attached.)

5. The e-mail from **Sen. Michael Jungbauer** specifically noted that the press conference would include an effort to obtain financial support for defeating DFL Senators who vote against the proposed constitutional amendment to define marriage.

6. At the press conference on April 7, 2004, **Jeffrey Davis** and his organization, Minnesota Citizens in Defense of Marriage, circulated petitions soliciting donations for the campaign committees of up to 35 Senate candidates who will run in opposition to DFL Senators in 2006. This was the program reference in **Senator Jungbauer**'s e-mail of April 6. These solicitations ranged from requesting $175 per donor to $8,750 per donor. (See Exhibit E attached.)

7. **Minnesota Citizens in Defense of Marriage** is registered with the Campaign Finance and Public Disclosure Board as a political committee under the provisions of Mn. Statutes 10A.11, Registration Number 60039. The chairperson of that committee if **Jeffrey Davis.** (See Exhibit F attached.)

From the facts stated, it appears that Sen. Michael Jungbauer committed the following instances of:

Improper Conduct

1. On the face of the e-mail from **Sen. Jungbauer** it is apparent that he knew at the time he used State Senate equipment that he was soliciting financial and political support for Republican Senate candidates and a registered political committee. This action is in violation of Senate policy as outlined in the **Minnesota Senate Policies for Senators and Staff manual.**

2. **Sen. Jungbauer** has used Senate equipment to solicit campaign donations for candidates. It is clear from reading his e-mail that

this was the intent and purpose of the press conference he referred to in his e-mail. His actions are violation of the Senate's Code of Conduct.

3. **Sen. Jungbauer**'s actions violated the **Minnesota Senate Policies on Conduct and Ethics policy 1.45 Campaign Activity Policy**. This provision prohibits the solicitation of contributions to a political committee or political fund by an employee or member. It is also a violation of this provision to assist in preparing a written campaign plan for a candidate. This was one of the purposes for the press conference **Sen. Jungbauer** was directing supporters to. It is also a violation of this provision to use Senate equipment or supplies for campaign activity which **Sen. Jungbauer** did by using the State Office Building and Senate computer system to solicit political funds.

4. While it appears that **Speaker Sviggum** may have also violated similar restrictions, those actions are not within the jurisdiction of the Senate subcommittee.

5. **Sen. Jungbauers**'s actions violated the **Minnesota Senate Policies on Conduct and Ethics policy 1.50 Communications Equipment Policy** which clearly states that "Senate communications equipment is for the purposes of the Senate and the Legislature. It may not be used for any commercial purpose or for any political campaign." Solicitation of campaign donations is a violation of the policy.

6. **Sen. Jungbauers**'s actions violated the **Minnesota Senate Policies on Conduct and Ethics policy 1.60 Senate Information System User Policy, 1.5 Not for Commercial or Campaign Use.** This provision states in part that "They (computer equipment) may not be used for any commercial purpose nor for any political campaign." Solicitation of campaign donations is a violation of the policy.

7. Each of these actions, individually and cumulatively are improper conduct pursuant to each of the provisions of Senate Rule 56.3.

Requested Actions

As a result of the demonstrated violations of Senate policies and the improper conduct noted, I would request the following actions be taken by the Subcommittee:

1. Investigate the actions taken by **Sen. Jungbauer** and take appropriate action.

2. Obtain the e-mail list distributed by Sen. Jungbauer to determine if any violations of Chapters 10A or 211B were committed by making these solicitations.

3. Forward the result of you determinations to the Minnesota Campaign Finance and Public Disclosure Board and the Ramsey County Attorney for appropriate action, if warranted.

4. Take such further action as deemed warranted in the circumstances.

Respectfully submitted,

John Hottinger

Sen. John Hottinger

State of Minnesota

County of Ramsey

This instrument was sworn to and acknowledged before me on May 5, 2004 by John Hottinger.

Margaret F Romero

A Notary Public

MARGARET F. ROMERO
NOTARY PUBLIC – MINNESOTA
My Comm. Expires Jan. 31, 2005

Principal Campaign Committee Registration Information

Candidate Information

Candidate Name: Aaron Hall
Address: 8789 Dunkirk Ct NE
Blaine, MN 55449
Telephone: (763)786-3731
Email: aaronhall@hotpop.com
Public Subsidy: No

Registration Number: 15584
Office: Senate District 51
Party: RPM
Web Address: www.aaronhall.com
Aff.of Contribution: No

Committee Information

Committee Name: Aaron Hall Senate Team
Address: 8789 Dunkirk Ct NE
Blaine, MN 55449
Daytime Phone: (763)786-3731

Chair: Aaron Hall
Address: 8789 Dunkirk Ct NE
Blaine, MN 55449
Daytime Phone: (763)786-3731

Treasurer Name: Aaron Hall
Address: 8789 Dunkirk Ct NE
Blaine, MN 55449
Daytime Phone: (763)786-3731
Depository(ies) Information: TCF Bank
12751 Nicollet Ave S
Burnsville, MN 55337

Dpty Treas(if any):
Address:
Daytime Phone:

Exhibit A

Steven Sviggum
Speaker of the House

District 28B
Dodge, Goodhue, Olmsted
Steele and Waseca Counties

Minnesota House of Representatives

Exhibit B

MEMO

From: Speaker's Office
Cyndee Fields, Leadership Legislative Assistant, 296-5408
RE: State Office Building Room Schedule
March 29, 2004 to April 4, 2004

DATE	COMMITTEE/GROUP	ROOM	TIME
Monday			
April 5th	Metro Transit Board	118	11am – 12pm
	Association of MN Counties	118	12pm – 1pm
	League of Conservation Voters	181	10am – 11am
	Page Orientation	5	8:30pm – 10am
	Revisors	300N	9:30am – 11am
	Housing MN	500S	11:30am – 12:30pm
Tuesday			
April 6th	MN Historical Society	118	10am – 1:45pm
	Pat Murphy	118	2:30pm – 4:30pm
	Somali Leadership	181	11am – 12pm
	Taxes	200	All day
	AA	300N	12pm – 1pm
	Revisors	300N	10am – 12pm
	Aviation Committee	500N	8am – 11am
	Rep. Slawik	**300S**	**5pm – 7pm**
Wednesday			
April 7th	**Fellowship Meeting**	**300N**	**7am – 8am**
	North Metro Mayors	300N	4:30pm – 6:30pm
	Ways & Means	200	All day
	Debra Sauke	118	1pm – 2pm
	Aaron Hall	181	9:30am – 10:30am
	Secretary of State	181	2pm – 5:30pm
Thursday			
April 8th	**Rep. Sykora**	**400S**	**7:30am – 8:15am**
	Taxes	200	10:15am – 12pm
	Ways & Means	200	All day
	Revisors	546	1pm – 3pm
	Rep. Meslow	300N	10am – 2pm
	MN State College Assoc.	346	3pm – 4pm
	Midwest Chaplin	118	9:30am – 12:30pm
	School Choice Coalition	300S	9:30am – 11:30am
	Rep. Hoppe	500N	11am – 12pm

Friday ***April 9th***	***Closed***
Saturday ***April 10th***	***NOTHING SCHEDULED AS OF 4/6/04***
Sunday ***April 11th***	***NOTHING SCHEDULED AS OF 4/6/04***

*** Committee's have been assigned rooms. **Please check with Chairman or CA for committee schedule**

Principal Campaign Committee Registration Information

Candidate Information

Candidate Name: Jeffrey Davis
Address: 2530 Wexford Court
New Brighton, MN 55112
Telephone: (651)633-6773
Email:
Public Subsidy: No

Registration Number: 16055
Office: Senate District 50
Party: RPM
Web Address:
Aff.of Contribution: No

Committee Information

Committee Name: (Jeffrey J) Davis for Senate District 50
Address: 2530 Wexford Court
New Brighton, MN 55112
Daytime Phone: (651)633-6773

Chair: Gene Delaune
Address: 2828 Linden Dr
New Brighton, MN 55112
Daytime Phone: (651)631-8448

Treasurer Name: Dean Barr
Address: 20846 Lofton Ave N
Marine St Croix, MN 55047
Daytime Phone: (612)492-6440

Dpty Treas(if any):
Address:
Daytime Phone:

Depository(ies) Information: Wells Fargo
1200 Silver Lake Rd
New Brighton, MN 55112

Exhibit C

From:"Sen.Mike Jungbauer" <Sen.Mike.Jungbauer@senate.mn>
To:DOMA Supporter
Subject: Defense of Marriage Press Conference

Dear Defense of Marriage Supporters,

I have just received word of an important upcoming press conference that I would like to make you aware of. Tomorrow at 9:30 am this press conference (see below) will be held in the State Office Builidng (the building just west of the Capitol). Any support you show for this will make a difference, whether it be through attending, finding someone to attend in your place, or offering prayer support. Please maintain your strength on this issue!

Mike

Senator Mike Jungbauer
115 State Office Bldg
St. Paul, MN 55155
651-296-3733
sen.michael.jungbauer@senate.mn

MEDIA ADVISORY

Press Conference Scheduled: Citizens Group Threatens to Retire Incumbent Senators if They Fail to Pass the Defense of Marriage Amendment

Group hopes effort will help pass a Defense of Marriage Amendment defining marriage as "the union of one man and one woman."

What: A press conference will be held to announce the formation of a program that encourages Minnesota citizens to pledge their financial support to defeating DFL Senators in 2006 if the DFL-controlled Senate continues to block the Defense of Marriage amendment from being put to voters in the fall election.

Who: Jeff Davis and other local citizens

When: Wednesday, April 7, 9:30am

**Where: Minnesota State Office Building, Room 181,
100 Constitution Ave, St. Paul**

Contact: Jeff Davis, 651-633-6773

Senator Mike Jungbauer
115 State Office Bldg
St. Paul, MN 55155
651-296-3733
sen.michael.jungbauer@senate.mn

Exhibit D

FOR IMMEDIATE RELEASE
April 7, 2004

Contact: Jeff Davis
651.633.6773

New Group of Minnesota Citizens Stand Strong in Defense of Marriage

St. Paul, Minnesota (April 7, 2004) -- Today a non-partisan grassroots group of Minnesota citizens announced plans to encourage State DFL Senators to support a Constitutional Amendment defining marriage as "the union of one man and one woman". The group is called "Minnesota Citizens in Defense of Marriage". Its mission is to encourage Minnesota Senators to let the voters decide whether the Minnesota State Constitution should define marriage as "the union between one man and one woman".

Minnesota Citizens in Defense of Marriage has announced an Internet-based, grass-roots petition drive to gauge citizen support for the "Defense of Marriage" constitutional amendment (which would constitutionally define marriage as between one man and one woman), enable voters to directly contact their legislators and to sign petitions publicly declaring an intent to financially support candidates who support letting the people decide this issue.

The group has also organized two unique petition drives: "35 for 35" and "Multitudes for Marriage". The "35 for 35" Petition seeks the signatures of 35 citizens who will publicly declare an intention to contribute $250 directly to 35 Senate candidates who support the Defense of Marriage Amendment (at $250 per candidate, such contributions would total $8,750 per contributor). Citizens who sign the "Multitudes for Marriage" petition can show their support by declaring an intention to contribute as little as $5 directly to candidates who support the Defense of Marriage Amendment.

Minnesota Citizens in Defense of Marriage is a volunteer-run, grass-roots organization that does not itself make contributions directly to candidates or conduct independent expenditures. The organization is not controlled by or associated with any candidate or campaign committee. The ballot question is described by founder Jeff Davis as "an outlet through which voters can encourage Minnesota' State Senate to let the people decide."

"In the 5 days since we began contacting people, we have already obtained 7 commitments on our '35 for 35' petition", says Jeff Davis, the group's founder. "We expect the level of interest to increase significantly over the next few days as people become aware of our efforts. Most Minnesotans believe in protecting the traditional definition of marriage, as evidenced by the Star Tribune poll of April 6, 2004. But it appears our DFL Senators are not listening. We have heard rumors that they are blocking e-mails on this topic and allowing their voicemail boxes to remain full in order to stem the flood of communications they are receiving from their constituents on this issue. We are intent on sending a clear message to these DFL Senators -- support this Amendment or prepare to be voted out of office in 2006".

The group has established a website www.mnmarriage.com that provides background on the issue, encourages people to take action and provides petition signature forms.

Exhibit E

35 for 35 Petition Form

Supporting a Minnesota Defense of Marriage Amendment

☐ **Yes, I support letting the voters decide on whether to approve a Minnesota Constitutional Amendment defining marriage as "the union of one man and one woman, with no other relationship being recognized as marriage or its legal equivalent".**

Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Fax: _____ email: _____

In the event the Minnesota Senate fails to pass a Constitutional Amendment bill defining marriage as "the union of one man and one woman, with no other relationship being recognized as marriage or its legal equivalent". by May 17, 2004, then --

I intend to financially support the campaigns of up to 35 Senate candidates who will run in opposition to the incumbent DFL Senators during the 2006 Minnesota Senate election.

I intend to contribute $250 per candidate (a total of $8,750 for 35 candidates), directly payable to the candidates' campaign committees, provided the candidate publicly supports this definition of marriage.

May we include your name on our publicly available list of individuals that have indicated their support?
☐ Yes ☐ No

Signature: _____ Date: _____

Please fax a signed copy of this form to (501) 647-7108
Thank you for helping to defend marriage

www.mnmarriage.com

This form does not constitute a binding contract and is not authorized or approved by any candidate or candidate's committee. I understand that Minnesota Citizens in Defense of Marriage does not collect, deliver or otherwise facilitate campaign contributions to any political candidates.

Multitudes for Marriage Petition Form

Supporting a Minnesota Defense of Marriage Amendment

☐ **Yes, I support letting the voters decide on whether to approve a Minnesota Constitutional Amendment defining marriage as "the union of one man and one woman, with no other relationship being recognized as marriage or its legal equivalent".**

Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Fax: _____ email: _____

In the event the Minnesota Senate fails to pass a Constitutional Amendment bill defining marriage as "the union of one man and one woman, with no other relationship being recognized as marriage or its legal equivalent" by May 17, 2004, then --

I intend to financially support the campaigns of up to 35 Senate candidates who will run in opposition to the incumbent DFL Senators during the 2006 Minnesota Senate election, provided these candidates publicly support this definition of marriage within their platform. I intend to contribute (check one):

- ☐ $5 per candidate, for a total of $175
- ☐ $10 per candidate, for a total of $350
- ☐ $20 per candidate, for a total of $700
- ☐ $50 per candidate, for a total of $1750
- ☐ $100 per candidate, for a total of $3500

May we include your name on our publicly available list of individuals that have indicated their support?
☐ Yes ☐ No

Signature: _____ Date: _____

Please fax a signed copy of this form to (501) 647-7108
Thank you for helping to defend marriage

www.mnmarriage.com

This form does not constitute a binding contract and is not authorized or approved by any candidate or candidate's committee. I understand that Minnesota Citizens in Defense of Marriage does not collect, deliver or otherwise facilitate campaign contributions to any political candidates.

Political Committees and Political Funds Registration Information

Registration Number: 60039

Committee Name: Minn Citizens in Defense of Marriage

Address: 2530 Wexford Court
New Brighton, MN
55112

Daytime Phone: (651)633-6773

Chair: Jeffrey Davis

Address: 2530 Wexford Court
New Brighton, MN
55112

Daytime Phone: (651)633-6773

Treasurer Name: Jeffrey Davis

Address: 2530 Wexford Court
New Brighton, MN
55112

Daytime Phone: (651)633-6773

Depository(ies) Information: Wells Fargo

6th & Marquette
Minneapolis, MN 55402

Dpty Treas(if any):

Address:

Daytime Phone:

Exhibit F

MINNESOTA SENATE

SUBCOMMITTEE ON ETHICAL CONDUCT

CONDUCT
OF
SENATOR MICHAEL J. JUNGBAUER

HEARING ON COMPLAINT
JUNE 28, 2004

Transcribed October 15, 2004

Proceedings held on the 28th day of June, 2004, before the Minnesota Senate Subcommittee on Ethical Conduct, Room 125, State Capitol.

Subcommittee Members:

Senator James P. Metzen, Chair

Senator Dennis R. Frederickson, Vice Chair

Senator Mee Moua

Senator Thomas M. Neuville

Subcommittee Staff:

Peter S. Wattson, Senate Counsel

Faye E. Sparks, Committee Administrator

Brian Martinson, Legislative Assistant

APPEARANCES

Senator John Hottinger

Senator Michael J. Jungbauer

Karysse Trandem

STATE OF MINNESOTA)

) ss.

COUNTY OF RAMSEY)

CERTIFICATE

I, Brian Martinson, an employee of the Minnesota Senate, do hereby certify that the foregoing is a true and accurate transcript of the proceedings as taken by me on the dates and times stated, in the matter of the conduct of Senator Michael J. Jungbauer.

Brian Martinson

Dated: 11-09, 2004.

Subscribed and sworn to before me this 9th day of November, 2004.

Margaret J Collins

Notary Public

MARGARET J. COLLINS
NOTARY PUBLIC - MINNESOTA
RAMSEY COUNTY
My Commission Expires Jan. 31, 2005

SENATOR METZEN: I call the Subcommittee on Ethical Conduct to order. You should have — There's an agenda — Front table there. We will follow the agenda. Mr. Wattson will give us a brief report on the Senate policy and campaign activity. And, you can follow the list where we're gonna go from there. But — Mr.Wattson.

PETER WATTSON: Mr. Chairman, members, if you'll take a look in your loose-leaf notebook. Find the first tab. You'll find a set of senate policies that this committee is charged with enforcing, and if you'll turn in a few pages you get to policy number 1.45, which is labeled the campaign activity policy. Let me just call your attention to some parts of that policy that seem relevant to this particular complaint. First, would be that first sentence.

SENATOR METZEN: Wait a second. Where? 1.45

PETER WATTSON: 1.45

SENATOR METZEN: I've got 1.35. Conflicts

PETER WATTSON: Another couple pages.

SENATOR MOUA: This section was passed out at the last meeting and —

SENATOR METZEN: Ok, so it's in the two.

PETER WATTSON: Keep going

SENATOR METZEN: So it is not under the first — Everybody else have it? I don't.

SENATOR MOUA: I have it.

SENATOR NEUVILLE: I don't have it either.

SENATOR METZEN: How many? 3.5

SENATOR NEUVILLE: 1.350

SENATOR MOUA: This section was copied and was passed out last time we had a meeting. It was stapled together. I think we just. It's probably lost some where.

SENATOR NEUVILLE: This was in the information we got at the last meeting?

SENATOR MOUA: Yes.

SENATOR METZEN: All right, we can —

SENATOR MOUA: Do you want to take mine?

SENATOR METZEN: Everybody else have copy of that 1.45?

SENATOR FREDERICKSON: I have.

SENATOR METZEN: You do. You don't. I don't. It deals with campaign activity policy, obviously. I got it in a different; it says this provision prohibits solicitation of contributions to a political committee or political fund by an employee or member. It is also a violation of the provision to assist in preparing a written campaign plan for a candidate. I think that summarizes, what that, what 1.45 states, I believe. So why don't we, we can continue on and then we'll get a copy of it.

PETER WATTSON: Mr. Chairman, then getting back to policy 1.45, the "Campaign Activity Policy." The first clause says, "Campaign activity includes soliciting contributions to a political committee or political fund." Then, down on the bottom third of the page, "Use of Senate Facilities in Campaigns," policy number one says, "Senate equipment or supplies my not be used for campaign activities." Then turning to policy 1.50, "Communication Equipment," the first two sentences say, "Senate communications equipment is for purposes of the Senate and of the Legislature. It may not be used for any commercial purpose or any political campaign." The next policy in your packet should be an excerpt from the Senate Information System User Policy. On the lower right hand corner you will see it is numbered 1.60. About two-thirds down the page you'll find policy number 1.5. It says, "Not for Commercial or Campaign Use." That includes a statement that "Computer equipment, computer programs, and data communications facilities connected to the Senate Network or any state computer are to be used for purposes of the Senate and of the Legislature. They may not be used for any commercial purposes nor for

relevant to this complaint.

SENATOR METZEN: So what's relative is 1.45, 1.50, 1.60

PETER WATTSON: Yes, Sir.

SENATOR METZEN: Ok.

PETER WATTSON: Mr. Chairman, moving to the next item, Subcommittee Procedure, behind tab number two you should have a copy of the Senate Rules relating to this subcommittee, it includes rules 55 to 58. On the first page, rule 55.4 talks about what the subcommittee has done so far, and that is, "Within 30 days after receiving a complaint, the subcommittee must meet and either make a finding of no probable cause, vote to defer action until a certain time, or proceed with its investigation." The subcommittee met on May 11th and found that there was probable cause and determined to proceed with its investigation. That is what you are doing today. Then if you'll go to the bottom of that page, 55.7, it says, "If, after investigation, the subcommittee finds the complaint substantiated by the evidence, it shall recommend to the Committee on Rules and Administration appropriate disciplinary action." Turning to the next page under rule 56, the "Standards of Ethical Conduct", the third paragraph, 56.3 says, "Improper conduct includes conduct that violates a rule or administrative policy of the Senate, that violates accepted norms of Senate behavior, that betrays the public trust, or that tends to bring the Senate into dishonor or ill-repute." The next document you should have in your folder, in your three-ring binder, is the rules of procedure that the subcommittee previously adopted and they have been amended up to date as of January 3rd 1996. Now, since these rules were last amended the Senate Rules have been renumbered. Now, I'll point out a couple of areas where you may need to change the rule reference and we may want to amend the rules to include those changes today. Rule number one says that the proceedings of the subcommittee will be conducted in accordance with Senate Rule 75. That should be Senate Rule 55 through 58. Going

down to rule five, "Witnesses will be called at the request of any member of the Subcommittee. Number six says that the public must be notified. Number seven, "All evidence produced by a witness will be under oath," and as witnesses come up to testify the chairman will put them under oath. Rule eight shows the evidence of — the order of presenting evidence: first by the complainant, then by the accused, then by the subcommittee and then rebuttal by either the subcommittee, the complainant, or the accused. Number nine shows the order of procedure on the testimony of each witness, and this is a little bit different than under the way it would be in a court. First there's testimony by the witness. Then examination of the witness by members of the subcommittee or subcommittee counsel and only after that has happened is there cross examination of the witness by the accused, or in the case of witnesses for the accused, by the complainant. Rule number 10 says, "The Subcommittee will consider all evidence that is competent, relevant, and material, and will not be strictly bound by the rules of evidence applicable to judicial proceedings." Number 11, "All witnesses are entitled to appear with counsel." Number 12 says that the meetings will be taped and that they will be made available to the public through the library. Where it says, "As provided in rule 65," that should be as provided in rule 50. Number 13 says that "portions. . . will be transcribed at the request of any member of the subcommittee." And I think in most of our past investigations we have transcribed each of the hearings at which witnesses have testified. So, that I believe is the plan for today's testimony, and a witness may get a copy of that testimony. Number 15 says, "The Subcommittee — will make findings of fact and recommendations to the Senate in accordance with rule 75." That should be rule 55. Number 16, our standard of proof is that findings will be based on clear and convincing evidence. 17, "The burden of proving a violation of rule 75," that should be rule 55 through 58, "is on the complainant." And after the subcommittee completes its work evidence will be returned to its proper owner. Those are the rules as they have been

rules references?

SENATOR FREDERICKSON: Mr. Chairman, Mr. Wattson, since these were rules adopted by a previously constituted subcommittee do we need to readopt them?

PETER WATTSON: Mr. Chairman, Senator Frederickson, I think that would be in order.

SENATOR METZEN: With the corrections.

SENATOR FREDERICKSON: Mr. Chairman, I would move to adopt the rules with the corrected references.

SENATOR METZEN: Yup, discussion on that motion? All those in favor signify by saying aye.

SUBCOMMITTEE MEMBERS: "Aye."

SENATOR METZEN: Opposed? Motion prevails. Ok, I think we'll move on to brief remarks from Senator Hottinger, who appeared at the first meeting but he's here again. And, welcome to the committee. And does Mr. Hottinger need to be sworn in or just —

PETER WATTSON: He is going to be presenting evidence, yes.

SENATOR METZEN: Ok, Yeah. Do you solemnly swear that the evidence, raise your hand, yeah, that you shall give relevant to the cause now under consideration shall be worth — the whole truth — the — shall be the whole truth so help you god?

SENATOR HOTTINGER: Yes, I do.

SENATOR METZEN: Senator Hottinger.

SENATOR HOTTINGER: Thank you Mr. Chairman and members. In the *in-camera* session I provided the information and also the verified complaint, which is in front of the committee. I, I don't know, counsel, if we mark exhibits or what the process is in that regard but in any case I would like to formally present the verified complaint I made relating to Senator Jungbauer's conduct. My testimony will be as reflected in that complaint. The essence of the

claim is that Senator Jungbauer violated the policies outlined by counsel by sending an e-mail using Senate equipment notifying people of a press conference to be held on April 7, 2004, the express purpose of which was to raise campaign funding and to defeat senatorial candidates. That, I believe, is a violation of the rules outlined noted by counsel and contained in the complaint. The factual background is as follows and there are attached documents referencing them. On March 12, 2004, Mr. Aaron Hall registered a principal campaign committee with the Campaign Finance and Public Disclosure Board for State Senate in Senate District 51 as a Republican. Attached is Exhibit A, to the complaint, is that campaign registration information obtained from the state Campaign Finance and Public Disclosure Board. Prior to April 30, 2004, Mr. Hall received permission form the Speaker of the House, Steven Sviggim, to use 181 of the State Office Building on April 7, 2004 from 9:30 to 10.30 in the morning. Attached is Exhibit B is the official notice from the Speaker's office indicating the use of Room 181 on Wednesday April 7th by Mr. Hall, the authorization. As of April 5, 2004, a person by the name of Jeffery Davis had registered a principle campaign committee with the Campaign Finance and Public Disclosure Board for State Senate District 50 for State Senate as a Republican and attached is Exhibit C is the campaign finance reference to Mr. Hall's registration. On April 6th, Senator Jungbauer used the Senate e-mail system to promote a press conference being held in Room 181, the press conference that Aaron Hall had reserved the room for of the State Office Building on April 7th 2004 at 9:30 in the morning. The press conference, what was what Mr. Hall reserved the room for and was organized by Mr. Jefferson Davis. Attached is verification of that information is Senator Jungbauer's e-mail, which he acknowledged it was sent, and it's marked Exhibit D. It was e-mail that went to DOMA supporters to the defense of marriage press conference and urging people to attend. As part and parcel of that e-mail sent by Senator Jungbauer it was specifically noted that the press conference would include an effort to obtain financial support for defeating DFL Senators who voted against a proposed constitutional

acknowledged at the last hearing, which was part of that e-mail specifically states that the press conference will be held to announce the formation of a program that encourages Minnesota citizens to pledge financial support to defeating DFL Senators in 2006 if the DFL Senate continues to block the defense of marriage amendment being put to the voters in the fall election. It was a specific effort to raise money for a political campaign. At the press conference on April 7th, Mr. Davis and his organization, Minnesota Citizens in the Defense of Marriage, circulated petitions soliciting donations for the campaign committees of up to 35 Senate candidates who will run in opposition to DFL Senators in 2006. This was the program that Senator Jungbauer's e-mail referenced. The sol-so- sol, [*clears throat*], excuse me, solicitations according to the information passed out to the press and the attendees at the press conference is outlined in exhibits. Exhibit E contains three pages as to what was passed out at that press conference. The Minnesota Citizens in the Defense of Marriage registered with the Campaign Finance and Public Disclosure Board. The chairperson of that committee is Mr. Davis. That's attached. That information is attached as Exhibit F. Those are the facts in which the complaint I make is being put in front of this committee. The complaint is that by using the e-mail system of the Senate, the Senate equipment, to promote a press conference that was held in House facilities, and that's a different issue whether or not that was appropriate use of House facilities in the first place, but to use the Senate e-mail to promote that sort of press conference, which is raising money for political purpose and a political fund that is registered with the campaign office, is a clear violation of the statute or of the Senate Rules. It is also, it is my belief, a violation of statute. The, Senators we all are responsible for the actions that our staff takes at our direction. Senator Moe discovered that when a complaint was filed against him a number of years ago, where two of his staff were also indicted because they did the offending action. So, it's the, the, the e-mail came from Senator Jungbauer's office. Whether he personally did it or was done at his direction,

I suggest, is secondary to the issue related here, which is a violation by a Senator, of Senate cam, or Senate Rules on campaign activity and the use of, or the use of Senate equipment. That's my statement, Mr. Chairman and members.

SENATOR METZEN: There any questions of the witness at this time? Senator Neuville.

SENATOR NEUVILLE: Just so we have it on the record, this Exhibit E, which includes the stuff that was passed out on April 7th , did you have somebody there that personally received this?

SENATOR HOTTINGER: There — Chairman and Senator, Senator Neuville, I received it from somebody who was there. I did not — I — direct somebody to be there. But there — As — as you know, Senator Neuville, these press conferences are monitored by staff people from all sides, and there was someone there who picked this up for review.

SENATOR NEUVILLE: All right.

SENATOR METZEN: Further question at this time of Mr. Hottinger? Senator Frederickson.

SENATOR FREDERICKSON: Mr. Chairman and Senator Hottinger, I am going to ask a question about the material at the news conference or at the event. Do you think a member of the Senate has a responsibility as to what is distributed at a gathering like that? Now if, for example if — if I were to a news conference at, that did not involve fundraising or political activity and another but another member of the group, with which I am associated, distributed something like this would I be in vi- — in your opinion, would I be in violation of our Senate Rules.

SENATOR HOTTINGER: Mr. Chairman, Senator Frederickson.

SENATOR METZEN: Senator.

SENATOR HOTTINGER: Thank you Mr. Chairman. Senator Frederickson, under that factual circumstance I don't believe you probably would be. First of all, it is not using Senate equipment to promote the press conference. The gravamen of my complaint is that Senator

Jungbauer in the e-mail he sent out specifically noted pledging [illegible]

attachment of what was actually passed out is more a confirmation of statements made in Senator Jungbauer's e-mail. That in and of itself, in my judgment, would not be a complaint to be made. However, I think prudence would dictate that before a senator promotes something either for himself, herself or someone else that they find out whether or not improper activity is going to take place, but the gravamen of my complaint is that the e-mail that was sent out specially indicated that financial support would be raised, would be gathered at the press conference.

SENATOR METZEN: Thank you Senator Hottinger. Senator Jungbauer would you wish to appear before the committee at the point we have a wit- — we have a —

SENATOR HOTTINGER: Excuse me Chairman; I think Senator Jungbauer can ask me questions at this point also, under the proceedings as I understand them.

SENATOR METZEN: Ok, Senator Jungbauer?

SENATOR HOTTINGER: Thank you Mr. Chairman and members.

SENATOR METZEN: We do have a witness, Karyssee Trandem, who we will probably hear from in a minute. Senator Jungbauer, do you solemnly swear, raise your right hand please, do you solemnly swear that that the evidence you shall give relative to the cause now under consideration shall be the whole truth, nothing but the truth, so help you god?

SENATOR JUNGBAUER: I do.

SENATOR METZEN: Senator Jungbauer.

SENATOR JUNGBAUER: Thank you. Mr. Chair, committee members, I'd like to thank you for allowing me the opportunity to address you today. While I believe my intentions and actions were proper, I respect the purpose of your committee and I welcome your assessment. As I said the first time we met, the Defense of Marriage Act was a major focal point of the 2004 session. It was far and away the issue I have received the most correspondence on during my time in the Senate, so I have worked hard to keep both proponents and opponents appraised of

any developments. The reason we are here today is I made a decision to inform my concerned constituents of an event at the State Capitol. The press conference was being held by a group of individual citizens on state-owned property on a very important policy issue. I think it is important to note that while we are looking at the media advisory it does say specifically it is a citizens' group. It does not say any specific groups; it doesn't say the specific names of the people that were involved there, so I was not aware of who put that specific press conference together. While the press conference did encourage certain grassroots activity it certainly was not a fundraiser. No money exchanged hands, there was no admissions fee, the event simply encouraged citizens to get involved in helping to pass a law. I did not help organize this event; in fact I didn't even attend it. I simply saw it as a development in the defense of marriage debate and felt that both sides of the issue would be interested to know about. As Senator Hottinger brought up the Minnesota Citizens in Defense of Marriage, I again, as I presented last meeting, right in their statement it, it says — I have right here and I don't know if you still have a copy of that — the Minnesota Citizens in the Defense of Marriage does not engage in any campaign activity on behalf of candidates for office. It does not collect, deliver or otherwise facilitate campaign contributions to political candidates. So, I have that available again from their Web site and issues on what they do. I do want to point out though, since our last meeting I had a chance to sit down with my legislative assistant, Karysse, and she informed me that she actually retyped a hard copy of the press advisory and then forwarded to our e-mail list. I thought it was e-mail before, it was in my inbox. I thought that it was an e-mail; I want to make that clear that again it was a hard copy that got retyped and sent out on the e-mail list. The press advisory was an e-mail as I remember but I trust Karysse and fully and certain — she was better focused more fully on that event. It was a hectic time of session, but whether it was an electronic message or paper message that we passed on, I would simply like to reiterate that we were simply trying to keep constituents informed on developments of the issue that they cared most about. Again, I

would like to make it clear that I appreciate what the ethics committee does for a job. You have every right to ask for more information whenever you are concerned about a situation. It is good to have a group of ethical watchdogs. However, I think that after you have a chance to look at the details of the situation you'll agree that I acted properly and within the policies of the S ite. Thank you.

SENATOR METZEN: Any questions of a — Mr. Jungbauer, Senator Jungbauer as time? Senator Neuville.

SENATOR NEUVILLE: Senator Jungbauer, do you have that media advisory whatever it is from the citizens?

SENATOR JUNGBAUER: The Web site, I got that highlighted.

SENATOR NEUVILLE: Is that something we can make an exhibit.

SENATOR METZEN: We haven't seen that one yet, or have we?

SENATOR MOUA: No.

SENATOR JUNGBAUER: I did, I did pass that out at the last meeting.

SENATOR METZEN: Did you?

SENATOR JUNGBAUER: Yes.

SENATOR NEUVILLE: Well, I don't know that I have a copy of that.

SENATOR MOUA: I don't either.

SENATOR METZEN: Senator Moua?

SENATOR MOUA: Mr. Chair, I don't have a copy of that.

SENATOR METZEN: I don't either.

SENATOR NEUVILLE: Mr. Chair

SENATOR METZEN: Senator Neuville.

SENATOR NEUVILLE: Senator Jungbauer, if this Web site says that they, they don't collect, deliver or facilitate campaign contributions then how do you explain that and what went out on this media advisory? This does appear that they are trying to raise financial support.

SENATOR JUNGBAUER: Mr. Chair, Senator Neuville.

SENATOR METZEN: Senator Jungbauer.

SENATOR JUNGBAUER: I guess when I looked over the media advisory and it's saying a citizens group I made the assumption that there's no specific people involved at that point and that they were just encouraging grassroots activity to accomplish that which they were trying to accomplish.

SENATOR METZEN: Well, exhibit E appears to me like — it talks about contributions, you know

SENATOR JUNGBAUER: Which is the —

SENATOR METZEN: Senator Hottinger said was passed out at the —

SENATOR JUNGBAUER: Mr. Chair, which is Exhibit E.

SENATOR METZEN: under the complaint of a —

SENATOR JUNGBAUER: Ok.

SENATOR METZEN: Mr. Jungbauer.

SENATOR NEUVILLE: Oh, I see. Mr. Chair, it appears the distinction is they don't give any money to political candidates. So, they're an issues group. Apparently they're raising money for — as an issues group.

SENATOR JUNGBAUER: Mr. Chair, I had —

SENATOR METZEN: Yeah, go ahead.

SENATOR JUNGBAUER: I had no knowledge of what they were going to hand out, of what they were press conferencing. Again, I saw it said citizens' group. I thought it was just a

grassroots effort on a political issue and I simply forwarded it. Again, it was the biggest issue and continues to be the biggest issue that we receive e-mails on today.

SENATOR METZEN: Yeah, that's what I was reading, pledging their support to defeating DFL Senators. I mean to defeat 35 of them. That is obviously, certainly political and secondly soliciting money.

SENATOR JUNGBAUER: Mr. Chair and members, also if you — You think it is on the Web site, it says it is issues orientated and if the issue comes to a vote on the Senate floor it will cease to exist. All they were looking to do is get a vote.

SENATOR FREDERICKSON: Mr. Chairman

SENATOR METZEN: Senator Frederickson.

SENATOR FREDERICKSON: Mr. Chairman, Senator Jungbauer, just an observation from the Web site that declares they do not otherwise facilitate campaign contributions — that looks to be in direct contradiction to what they did in this or proposed to do in this news release, third paragraph. They intend to contrib. — to contribute $250 directly to 35 candidates to a defense of marriage amendment. And at $250 per candidate the contributions total $8750. So their actions contradict what they have on their Web site.

SENATOR METZEN: That's kind of where I was going, down that path. They say one thing but then the document is very clear to me. Senator Neuville.

SENATOR NEUVILLE: Well, actually on closer look, it looks like the last two of those exhibits do have a disclaimer on them. This form is not a binding contract; it is not authorized by any candidate or committee, and this group, the Citizens in the Defense of Marriage, does not collect, deliver or otherwise contribute to candidates, which is consistent with the Web site. And it looks like what they are really trying to do is get people to promise to make those contributions themselves. So, it does appear that the Minnesota Citizens in Defense of Marriage group isn't collecting money themselves that they can then use to defeat DFL candidates or anyone else, or

that they would give to any candidate. They are just trying to mobilize candidates to do it themselves.

SENATOR METZEN: You think that that last sentence on the bottom, that disclaimer, kind of negates the stuff up above they are talking about. I guess I'm kind of missing something there. I — I mean you ask for one thing and at the end you kind of say, well —

SENATOR NEUVILLE: Well, Mr. Chair —

SENATOR METZEN: I understand what's printed, but —

SENATOR NEUVILLE: If you look at what's printed, it says, "I intend to financially support." It does not say, "I intend to give any money to the Minnesota in Defense of Marriage group." What — what it appears they are seeking here is a promise from individuals that they, themselves will contribute. That appears to be fairly clear. I don't know if that is a significant distinction or not but —

SENATOR METZEN: That is what I am wrestling with here too. I don't know if that clears the deck here or not. But — Senator Moua.

SENATOR MOUA: Well, go ahead on this issue.

SENATOR METZEN: Senator Frederickson.

SENATOR FREDERICKSON: Mr. Chairman, I was just going to point out too, parallel to what Senator Neuville said, on the fourth paragraph of that same news release they reiterate that they don't make contributions directly to candidates or conduct independent expenditures. Now I don't know that — that's — holds any relevance to whether Senate rules have been broken or not?

SENATOR METZEN: Senator Moua.

SENATOR MOUA: Mr. Chair, I — I was looking over the materials and I think I have reached the same place were we are at right now that there seems to be inconsistency of information from the same source, from the Web site, from the information that was released. I

himself and I — I wanted to pass it out for members of the subcommittee to look at because it's where we're discussing. They're sort — Actually, I need another page for Senator Jungbauer. Can we share?

SENATOR JUNGBAUER: Mr. Chair, if I might?

SENATOR METZEN: Senator Jungbauer.

SENATOR JUNGBAUER: Thank you, Mr. Chair, members at this point to — of forwarding this media advisory I had never met Jeff Davis. I did not know who he was or anybody else associated with this. So, when it says Jeff Davis and other local citizens, I was, again, forwarding on some information on a grassroots event to get people involved on the issue whether or not they handed out other things, whether or not their organization contradicts what they say. I don't quite understand how that fits in.

SENATOR METZEN: Senator Moua.

SENATOR MOUA: Mr. Chair, thank you. I'd like to finish what I started by passing out the documents. I'd like to point the members attention to a — the second paragraph, the beginning of the second paragraph, which is the reference to again the program, which is what we are talking about, the whole press conference is about. Clearly, in their own words, in their own press release, they clearly state that this new program that they put together to try to raise funds is distinct from their current position programs. And then it specifically references the program raised over 130,000 to date, as well as an extensive database of supporters on this issue. And so, as much as we try to parse out the disclaimers that they've put on these documents as well as the disclaimers that we're trying to parse out on the — itself. In their own press release the are owning up to the production of this money and they are owning up to the production of the database. I mean, I just think somehow the inconsistency — we may try to parse out words but — clearly is a program that this organization has put together that actively engage in. They

claim ownership for the dollars that are raised and the purpose it is going towards. I don't know. So, I will just leave for the members to look at.

SENATOR METZEN: Senator Jungbauer.

SENATOR JUNGBAUER: Mr. Chair and members, I also notice that the — what Senator Moua just distributed on May 12th 2004. So, it's, it's over a month after the media advisory that I sent out. So, again not having knowledge of what's going on or if groups were formed or no groups being announced on the media advisory, it is hard for me to look back and say I should have known what they were going to do.

SENATOR MOUA: Well, Mr. Chair, we just look at some information printed from their Web site that we don't know when it was uploaded or when the Webmaster uploaded the information to say that we don't or that this organization does not collect, deliver or otherwise facilitate campaign contributions for candidates. I don't mean to be suspicious, but if we are allowing different information to come in to help us better understand or have a better clarification I — I — I understand what you are saying. But, my point is that what we are talking about is not so much your connection to them but them as an organization and what their role is and this is a press release from the organization, even after the press conference, claiming that they've been very successful in raising funds for a political purpose.

SENATOR METZEN: Senator Jungbauer.

SENATOR JUNGBAUER: Mr. Chair, again, when I went on to their Web site it was after the complaint. So, I had no idea until after the complaint came who was responsible for these different organizations and wasn't involved in the organization. Again, just passing on grassroots information. I printed off that information after the complaint was filed. I went to see who, what the whole organization was about. In between that time I had heard about the group. I had not worked with the group.

SENATOR METZEN: Senator Neuville.

Hottinger's complaint has nothing to do with the Minnesota in Defense of Marriage, it has to do with Senator Jungbauer's action and whether or not when he did the action that he did he violated Senate rules. And so, I — I — this shouldn't be relevant because it is dated after the complaint. But secondly, Senator Moua, I have a little concern about us submitting evidence. We are supposed to be the judges here. We're not supposed to be the ones submitting evidence. So I, with all due respect, I don't think we should be doing this. We should be letting the complainant and the respondents submit the information to us. What they think is —

SENATOR METZEN: I don't — I don't — maybe Mr. Wattson wants to comment on this, but this isn't exactly like a courthouse. Did you have — In other words, is what the senator's presenting — is that ok to do here today, in your judgment, Mr. Wattson?

PETER WATTSON: Mr. Chairman, I think that is up to the subcommittee. The rules assign the subcommittee the task of investigating. The subcommittee is conducting an investigation and whether they want to do to their own sleuthing or whether they want to rely exclusively on the evidence submitted by the parties, I think that is up to the subcommittee to decide.

SENATOR MOUA: Well —

SENATOR METZEN: Yeah, I — I personally think is all right but Senator Neuville. We want the facts and whatever works —

SENATOR NEUVILLE: Well, I understand, but I don't want to be in a position where I have to cross —

SENATOR METZEN: Sure.

SENATOR NEUVILLE: Examine Senator Moua. Well, I mean —

SENATOR METZEN: You can if you want.

SENATOR NEUVILLE: She is, she is going to be one of the people making —

SENATOR METZEN: Yeah, I understand.

SENATOR NEUVILLE: A decision here. So that's —

SENATOR MOUA: Well, Mr. Chair, I would be glad to withdraw this it's a — it's just a piece of information, I — you know I —

SENATOR METZEN: Well, ok. We're — I think what we're dealing with here this morning — I keep getting back to 1.45, 1.50 1.60 — I think these are the points, and whether there was equipment used — state equipment — for these activities, and I think that's where we're at.

SENATOR METZEN: Senator Frederickson.

SENATOR FREDERICKSON: Mr. Chairman, Senator Jungbauer, I think the essence of the complaint is the Exhibit D, the e-mail that was sent out. Did you write the first part of that e-mail or did your legislative assistant? Now, there is the first section of it and then there is in broad print, "Media Advisory." And I am curious of the origins of those two. Because the — the first part is written without any reference that I can see to raising money for a candidate or even talking about defeating or supporting a specific candidate.

SENATOR METZEN: The second part does, of course.

SENATOR FREDERICKSON: The second part does. So I am — I would like to get a better understanding of how the first part was drafted and then how this second part, the media advisory, came to be, how it came to be typed into the body of this rather than just an attachment. Could you talk a little bit about that process?

SENATOR METZEN: Senator Jungbauer.

SENATOR JUNGBAUER: Mr. Chairman and members. Again, the media advisory was in my inbox. I looked at it. We were trying to keep people informed of what was going on. So, talking it over with my legislative assistant just putting something together saying here is what's going on and forwarding it, forwarding that information. So anything from the media advisory

that's just a direct, exact, something that somebody else put out. We didn't prepare —

make up any of the words for it or alter any words, that's how it came to us.

SENATOR FREDERICKSON: Mr. Chairman.

SENATOR METZEN: That's — would you admit that that's kind of political though?

SENATOR JUNGBAUER: Mr. Chair, members, in — in reading again, citizens group and encouraging people to do something — I am very proactive in getting people involved in the political process. I don't see anything that relates to candidates, that relates to specific groups of people, and I guess at the time I didn't see anything other than an issues oriented, grassroots type of meeting going on at the Capitol Complex.

SENATOR FREDERICKSON: Mr. Chairman.

SENATOR METZEN: Senator Frederickson.

SENATOR FREDERICKSON: The part I'm — I'm looking at the part that was written in Senator Jungbauer's office rather than him reproducing something somebody else wrote. In the one sentence it says, "any support you show for this will make a difference whether that be through attending, finding someone else to attend in your place, or offering prayer support." That's the thoughts of Senator Jungbauer and his legislative staff in their mind. But now where, where they cross the line I think is with the media advisory. In hindsight it would have been better judgment to have not included that in the e-mail the part where they draft —

SENATOR METZEN: The fact remains, it's all there.

SENATOR FREDERICKSON: It's all there. That is true.

SENATOR METZEN: It's all there.

SENATOR FREDERICKSON: It's all there.

SENATOR METZEN: Senator Neuville.

SENATOR NEUVILLE: Mr. Chair, Senator Jungbauer, you might have talked about this when we met *in camera*, but did you say that you did review this before it went out or did your secretary just send it out per instructions or on her own?

SENATOR METZEN: Senator Jungbauer.

SENATOR JUNGBAUER: Mr. Chair, members, I looked at it, albeit rather quickly. So, I guess I wasn't detail oriented in thinking about it. It was again something else that was on the issue. We were trying to forward everything that was on the issue, and so I instructed my legislative assistant to forward it.

SENATOR NEUVILLE: So, you did see it before it went out?

SENATOR METZEN: You're taking responsibility for the —

SENATOR JUNGBAUER: I did see it, Yes.

SENATOR METZEN: Any further questions of Senator Jungbauer at this time? We have Karysee Trandem

FAYE SPARKS: Karysse.

SENATOR METZEN: Karysse, excuse me. Like a car. Car - ysse. Welcome to the committee. Raise your right hand please. Do you solemnly swear that evidence you shall give relative to this cause now under consideration shall be the whole truth, nothing but the truth, so help you god?

KARYSSE TRANDEM: Yes, I do.

SENATOR METZEN: Spell your name for the — the record please.

KARYSSE TRANDEM: Mr. Chairman, members, it is Karysse, K-a-r-y-s-s-e, Trandem, T-r-a-n-d-e-m.

SENATOR METZEN: Ok. Welcome to the committee and you may tell us, I suspect, your involvement or what your situation is in regard to this complaint. So, thank you and relax,

Welcome to the committee, thank you.

KARYSSE TRANDEM: Mr. Chairman, members. Senator Jungbauer, on the day he received the media advisory in his inbox, came over to my desk and was flipping thro[illegible] his mail and saw that about the defense of marriage. And I think, knowing how many e-[illegible]ls we had received about people's concerning about this issue, he asked me to forward this [illegible] as a — just as sort of a heads up to those people. And so I typed it in and sent it out.

SENATOR METZEN: Ok, any questions of Ms. Trandem. So you typed it in. I suspect as told to do or instructed. Moving fast, but nonetheless you — instructed to do, I guess. Ok, any— Senator Neuville.

SENATOR NEUVILLE: Mr. Chair. Was there any discussion about the contents of this media advisory? Did you talk about it with Senator Jungbauer or ask him any questions about — is this — whether this was a fundraiser type of thing or a financial type of thing?

KARYSSE TRANDEM: Mr. Chair, Senator Neuville, no. I just — it was quick and fast. We didn't. I didn't really read the advisory at all. I just typed — typed it in. I think neither of us were really looking at it closely or with a fine tooth comb.

SENATOR NEUVILLE: Well, when you read it, what was your impression as to the type of meeting it was?

KARYSSE TRANDEM: When I —

SENATOR NEUVILLE: When you typed it up.

KARYSSE TRANDEM: Mr. Chair.

SENATOR METZEN: Senator Trandem.

KARYSSE TRANDEM: My impression was, it was a grassroots organization of a couple citizens calling other citizens to — to get together and rally to bring the defense of marriage up to a vote on the Senate floor.

SENATOR METZEN: And, you probably weren't aware of any of the — you don't sit down at night and read the rules, do ya? You weren't aware that this could be a violation of a —

KARYSSE TRANDEM: I didn't see it as —

SENATOR METZEN: Ok.

KARYSSE TRANDEM: — campaigning or raising funds or for that purpose at all.

SENATOR METZEN: Senator Moua.

SENATOR MOUA: Miss Trandem, did you — did you go to the press conference?

KARYSSE TRANDEM: Mr. Chair, Senator Moua, no, I didn't. I didn't. It was just so quick. It was — yeah.

SENATOR MOUA: And, have you ever met Jeffery Davis or know him from some other context?

KARYSSE TRANDEM: Mr. Chair, Senator Moua, no. I've never met him. I don't know him at all.

SENATOR METZEN: Further questions of the — the witness. Would you have an estimate of how many e-mails you sent out?

KARYSSE TRANDEM: Mr. Chairman, maybe 1,700 were on the list that received the e-mail.

SENATOR METZEN: Senator Moua.

SENATOR MOUA: The — the individuals who were on the e-mail, how — was that — did you put together the database for the e-mail?

KARYSSE TRANDEM: Mr. Chair, Senator Moua, generally it was people who had e-mailed us in support of the defense of marriage, but there were people from both sides of the issue that were on the list.

SENATOR METZEN: 1,700, quite a big number. Any further questions of the — the witness? Ok, thank you. I guess we could take a minute or two on the rebuttal situation. If anybody wanted to, Senator Hottinger and the Senator Jungbauer and kind of —

SENATOR HOTTINGER: Thank you. Mr. Chair and members, my rebuttal, if it is a rebuttal, is mostly some comments to some of the questions raised to Senator Jungbauer. The Senate rules are a test of Senate responsibility and Senate core responsibility. Senator Jungbauer has very appropriately, and to his credit, acknowledged that he did in fact direct that this e-mail be sent, and is not just trying — as — as we hope no one would, to just say it was a staff member. And I thank Senator Jungbauer for his frankness. The gravamen again, of the complaint, is in Exhibit D, as noted by Senator Frederickson, and I also would share the point of Senator Neuville that the makeup of this group is really secondary and only confirming importance, because what the information about the group is merely confirms what the e-mail says. And, what you need to judge, I suggest, what the e-mail says. It was sent to 1,700 people by Senator Jungbauer. It specifically refers to the media advisory, which is part of the e-mail, says the press conference, see below, and suggests in the e-mail, in the first part, Senator Frederickson that you noted, "Any support you show for this will make a difference, whether it's through attending, finding someone to attend in your place or offering prayer support. Please maintain your strength on this issue." So it was an advocacy e-mail. That advocacy e-mail was for attention, attendance at a press conference, whether it was by a group, a concerned citizen, four or five people, is secondary to the issue, I suggest, in front of the committee. "A press conference will be held to announce the formation of a program that encourages Minnesota citizens to pledge their financial support to defeating DFL senators. . ." under certain conditions. The e-mail solicits support for a press conference that solicits campaign contributions. That is a violation that, I suggest, is a violation of Senate rules that is precisely what the e-mail said. Whether that is retyping what someone else said or not, I suggest, is essentially not pertinent to

the issue in front of this committee. So, I emphasize what the e-mail says, the violation of the Senate rule. And the e-mail specifically says that a program for raising money for soliciting campaign funds is what that press conference was about. I think that — that focus on what the complaint is about is all I would like to resurface in front of this subcommittee here. I would certainly answer any questions in that regard or on anything else.

SENATOR METZEN: Questions of Senator Hottinger? Thank you very much. Senator Jungbauer, any closing thoughts? Senator Jungbauer.

SENATOR JUNGBAUER: Thank you, Mr. Chair, members. As I look through the e-mail and I look through 1.45, campaign activity report. "Campaign activity includes soliciting contributions." As I look through 1.50 it talks about commercial purpose or political campaign. I — I — I get back to — it's all about getting people involved politically. This is an issue — is an issues oriented thing. I wasn't trying to solicit any contributions. I still read through this and I have a hard time thinking in terms of its supporting political contributions. Except to the point of trying to get citizens involved at a grassroots level by saying, this is how you need to get involved if you are about an issue. So, I still maintain it is about a citizens group trying to get involved. It makes no mention of specific groups, just the issue and trying to get people activated on the issue.

SENATOR METZEN: Well, that media advisory thing there I think — the second part of Exhibit D does —

SENATOR JUNGBAUER: Well, Mr. Chairman, members —

SENATOR METZEN: I guess it kind of crosses the line on what you're trying to tell the committee.

SENATOR JUNGBAUER: Where —

SENATOR METZEN: White and black on this — you know this — Senator Jungbauer.

SENATOR JUNGBAUER: Where, ahh — Mr. Chair and members — where I focus on is — is the group hopes the effort to pass the Defense of Marriage Amendment defining marriage as the union between one man and one women. That's one issue that I'm —

SENATOR METZEN: I understand.

SENATOR JUNGBAUER: — very strong on. It's my major issue. That's where my focus was. Can we move this on? It was not my intent nor do I — I still have a hard time seeing how it can be construed as my intent to raise funds and campaign and political activity around this.

SENATOR METZEN: They don't mention specific groups but I think it — it kind of does. 35 DFL senators, you know. Any further questions of the — Senator Jungbauer at this?

SENATOR JUNGBAUER: Thank you, Mr. Chair, members.

SENATOR METZEN: Thank you.

SENATOR HOTTINGER: Excuse me, Mr. Chairman, just a — I have another obligation I am supposed to be at. Is there any need for me to stay as far as — I don't need to hear the committee's deliberations, but if you have any questions, I don't want to leave if you might have any of them?

SENATOR METZEN: Any question of ahh —

SENATOR HOTTINGER: I just want permission to absent myself, if that's ok

SENATOR METZEN: You're permitted to a — to leave.

SENATOR HOTTINGER: Thank you, Mr. Chairman.

SENATOR METZEN: What a — would the committee like to do at this point? Would you like to deliberate a little more at this time or would you like to take all of it under advisement, if you will, and come back? Or, delaying something is no good either.

SENATOR NEUVILLE: Mr. Chair, do deliberations have to be in public or can we do that in executive session, as well?

SENATOR METZEN: Mr Wattson.

PETER WATTSON: Mr. Chair, Senator Neuville, they have to be public.

SENATOR NEUVILLE: Ok.

SENATOR FREDERICKSON: Mr. —

SENATOR METZEN: Senator Frederickson.

SENATOR FREDERICKSON: Mr. Chairman, I think it would be helpful if Mr. Wattson would go through the range of remedies or the range of actions that the subcommittee might take in disposing of this case. It's been a little while since I've been —

SENATOR METZEN: Yeah, I — I think that, that's, that was a — I was thinking of that coincidentally. Yeah, thinking of that this morning — the range and the penalties. If you will, Senator or Mr. Wattson.

PETER WATTSON: Mr. Chairman, if you'll turn in your three-ring binders to the tab, the green tab number four, behind that you should see a memorandum from me to Senator Flynn from June of 1994, entitled "Appropriate Disciplinary Action." That's the first of the memos that lays out the possibilities. It starts with the most severe, which would be expulsion from the Senate under article IV section 7 of the constitution that —. Any recommendation of this subcommittee goes first to the Rules Committee and from the Rules Committee to the floor and a motion, a motion to expel, would be made on the floor and would require 2/3 of the members of the Senate, that would be 45 members, to expel. Turning to the next page, are various ways to censure a member and it discusses primarily the forms of censure that have been visited upon members of the U.S. Senate and House of Representatives, but there also some mentions of Minnesota cases. First, is condemnation, words of condemnation. Second, would be words of censure. Third, would be words of denunciation. On the third page you'll see, point number three is a reprimand and a reference to some of the reprimands that have been issued to the — some of the members of the U.S. Senate and House of Representatives and to Senator Solon

with he was a member of the Minnesota Senate. Next page, number four is an apology, this one is something that the subcommittee has often demanded, a public apology to the Senate. Fifth, would be payment of a fine. That is a common penalty imposed by the Campaign Finance Board for violations of campaign spending laws, but I don't believe the Minnesota Senate has ever imposed a fine. Sixth, would be restitution. Where there was a finding that improper payment, or rather improper use had been made of the Senate's telephone system Senator Solon was required to repay the Senate for the amount of his excess telephone charges. Number seven is a variety of losses of privileges including removal as a committee chair, removal from committee membership, a reduction in staff or a reduction in miscellaneous privileges. The next memorandum, March 25, 1998, from me to Senator Junge, when she was chair of the subcommittee, talks about disciplinary action against a lobbyist. That's not something that we're involved with here but you'll see that the sanctions that occurred have been similar, including reprimand and apology. The next memorandum dated June 27, 1996, from me to Senator Junge, discusses sanctions that don't require action by the full Senate, including censure, removal of committee membership, and denial of reimbursement for certain expenses, denial of administrative services, and loss of seniority. These are less severe punishments that can be taken on the authority of the Rules Committee without a vote of the whole Senate. And finally, you'll see a memorandum from July 3rd 1996, from me to Senator Junge, discussing sanctions that don't require even actions by the Rules Committee and basically it involved taking away some of the telephone privileges for Senator Chmielewski and limiting the reimbursement for some of his expenses he incurred during the interim. The next few pages have a table of examples of how other senates in the United States and other houses in the United States have disciplined their members. Those are some examples. I think beyond that next tab — have you come to the end of that green tab?— the next thing is the blue tab — are examples of discipline that have been imposed following the recommendation of this subcommittee on members of the Minnesota

Senate. The first one there should be a resolution reprimanding Senator Sam Solon. And then a couple of pages in you'll see a resolution reprimanding representative Kevin Chandler. A couple more pages, from January 16, 1996, you'll see Senate Resolution 89, reprimanding Senator Solon again on the telephone problem; demanding his apology, removing him from the Committee on — of — Rules and Administration and acknowledging that he had resigned his committee chairmanship and had made restitution. Next, is a resolution that was adopted by the subcommittee on June 27, 1996, relating to Senator Chmielewski. And note, with this resolution, as with the others, the first part of it sets forth the facts as noted by the subcommittee, what happened, and then after several pages of that we have the resolving clause and the, the recommendations of discipline, reprimand for Senator Chmielewski. The next one should be the discipline of John Berglund. Where — he was a lobbyist — and the subcommittee found as matters of fact that he had done some improper things and demanded that he make an apology and when the apology was given to the person that he had offended, as well as to the Senate as a whole, then the complaint was dismissed. Next would be the discipline of Senator Dallas Sams — that's from February 1, 1999 — again you'll see several pages of facts that were found by the subcommittee before coming to page 130 of the journal, where the senator was reprimanded, required to make a public apology to the Senate, his constituents and the public, and was removed from his position on the Human Resources Finance Committee. I think that completes the discipline that's been handed out by this subcommittee over the years.

SENATOR METZEN: Ok, that describes it fairly well. It looks like to me anyway, the — the options available — If we go to one of those, if we chose to go to one of those options, I guess. What is the — One of the problems we have, I — I don't want to go too fast. This is all very, obviously very serious stuff, allegations. Very important that — to deliberate — at the same token, I hate to stretch it. People are very busy in the summer time and it is difficult to pull us all together and then —. But, I would at this point look to the committee, if you would like to

and then make our decision? Or, if we are ready this morning?

SENATOR FREDERICKSON: Mr. Chairman, I think we could have a little discussion and see if we can come to some consensus.

SENATOR METZEN: Ok.

SENATOR FREDERICKSON: Mr. Chairman, I think if you look at the media advisory that was included in Exhibit D, it would appear that there was a violation of Senate rules. We've heard the conditions under which this was compiled and that the media advisory was copied from another source. The body of the e-mail I don't think would be a violation of Senate rules. Nevertheless, I think there was a violation of Senate rules but, it was a significant one, but a not a very severe one, let's say. I am thinking of the lower level, either dismissing it or perhaps requiring a letter of apology, maybe to the Rules Committee.

SENATOR METZEN: Well, there was directed, eight, 1700 e-mails soliciting support and money, we know that. That, I think, in my opinion, factual. Senator Moua, Senator Neuville.

SENATOR NEUVILLE: Well, Mr. Chair —

SENATOR METZEN: Thoughts on this?

SENATOR NEUVILLE: My thoughts are that it's very close to the line as well. I am not persuaded that it is — factually — was soliciting because what the campaign activity thing says is you have to solicit funds to a campaign committee or a political fund and it looks like what this group did, it didn't solicit money. They were soliciting promises. That is a very close question.

SENATOR METZEN: aahh, uuhhhmm.

SENATOR NEUVILLE: But it does appear from the evidence that Senator Hottinger submitted that this defense of marriage group didn't collect money itself and doesn't make contributions to candidates itself. The petition that, that they apparently circulated at this press

conference was asking people to promise in a non-binding, non-contractual way. So, is that soliciting? Yeah. But, is it soliciting to a political committee or political fund? It's a close call. There's no identified political committee or fund that its trying to raise money for. The closest it comes —

SENATOR METZEN: Well, it does identify the defeat of —

SENATOR NEUVILLE: It does, It does identify —

SENATOR METZEN: I mean that's clear —

SENATOR NEUVILLE: — that it would be, the people it would be against. But it's not binding. So, it was a creative way for this group to try to do things. Maybe more persuasive to me is this appears to be an act of carelesness on Senator Jungbauer's part. He got this media advisory, didn't look at it closely, didn't have a discussion with his L.A. about the fact that there might be a financial aspect to it. He didn't go to the press conference. They didn't know Jeff Davis beforehand. So, I mean I — I would tend — my thought is that — is along Senator Frederickson's. And — and — and remember too that we have to find this by clear and convincing, which is more than the — is a higher standard than we had to find the probable cause. Clear and convincing, at least in the legal court, means highly likely or highly certain, not beyond a reasonable doubt, but highly certain and it is a close call. But I — I wouldn't say it's conclusive, despite the e-mail that went out.

SENATOR METZEN: I am not in your business, but you mention the word "carelessness" and I don't know that that's a defense of the law. But, I — my first reaction would be kind of — no.

SENATOR NEUVILLE: Well —

SENATOR METZEN: If you did something wrong, you did something wrong.

SENATOR NEUVILLE: It kind of —

SENATOR METZEN: I don't know how you define it.

SENATOR NEUVILLE: Mr. Chair, it depends on whether we think that it requires some intent or some knowledge. I mean, he's acknowledged that this e-mail went out with his knowledge, but did he have knowledge of the solicitation or possible solicitation of money? I don't know if that's implicit in the word "solicit" or not whether or not there has to be an intent to actually receive or ask for money. I doesn't appear to me that there was an intent on Senator Jungbauer's part to ask for money.

SENATOR FREDERICKSON: Mr. Chairman

SENATOR METZEN: Senator Frederickson

SENATOR FREDERICKSON: Mr. Chairman, Senator Neuville used a couple words that. that I have been trying to use also and that's "careless" and "intent" in looking at this e-mail that went out. I think if Senator Jungbauer or his staff had written the whole thing, drafted the whole thing, personally I then think then there would have been clear intent that they were soliciting financial support. But they didn't do that. Where — the part that they personally drafted was the first part, which it doesn't talk about any financial —

SENATOR METZEN: But they approved it and printed it. So —

SENATOR FREDERICKSON: Mr. Chairman, I am getting to that.

SENATOR METZEN: Yeah.

SENATOR FREDERICKSON: I'm getting to that.

SENATOR METZEN: It's there, yeah.

SENATOR FREDERICKSON: So, this — the — the content of the media advisory comes more under the being careless and not paying attention to detail rather than a clear intent to solicit financial support.

SENATOR METZEN: Well, I personally, am kind of coming down somewhere on the number four level. Where I think there is some — I don't think — I believe there was some wrong doing here and there was state equipment. The letter is pretty clear. I guess I —

somewhere in there where you need to sit up here and tell someone you did something wrong. I don't think it gets to the level — quite frankly, I don't know how we're supposed to deliberate. I am just telling you how I feel. I don't think we — it rises to the level of expulsion. Did he do wrong? Yeah. In my opinion. Does it reach those higher levels? I guess we sit here kind of as a jury and I guess we can — maybe I am visiting too much, but it's kind of, where I am coming down. But, I think there was reason enough here that, there was clearly some problems with 1.44, 1.50, 1.60 and I think 17 e-mails at the taxpayers' expense warrants something. That's my remarks at this time. We could take his committee chairmanships away or — which freshman Republicans don't — yeah or freshman, any kind of freshman.

SENATOR NEUVILLE: Just a —

SENATOR METZEN: Senator.

SENATOR NEUVILLE: Just, I want to see if any member of the committee thinks. Do you think a person can solicit without intent? Campaign activity means soliciting contributions to a campaign committee or political fund. Do you think that the word solicit suggest that the person has to have intent to solicit or can he do it, or can a senator do it, accidentally?

SENATOR METZEN: I don't, I think. I think the intent was there to get some folks together and then pass out another release at the get-together. That's the next step, where you're asking for the dough, and whether he was knowledgeable of that next step, I don't know. But it is the first step that I really believe that I have some problems with.

SENATOR NEUVILLE: Does anybody, Mr. Chair, does anybody believe it would be helpful to have Jeff Davis testify? Or is that not significant in anybody's thought process?

SENATOR METZEN: I don't need to hear from him, I don't think. Mr. Jungbauer has told us he's never met the gentleman.

SENATOR JUNGBAUER: I actually met him two days after I got a copy of the complaint.

SENATOR METZEN: Senator Frederickson.

SENATOR FREDERICKSON: Mr. Chairman, I would move that we request Senator Jungbauer write a letter of apology to the chair of the Rules Committee and when he has done that that the complaint be dismissed.

SENATOR METZEN: There is a motion on the floor. Is that — Mr. Wattson: Do we have to lay out some can — parameters in the letter? Or does Senator Jungbauer just do it? Or that it's a loose apology and he can word it? Or how does that work?

PETER WATTSON: Mr. Chairman, the subcommittee has done that in different ways in the past. In several cases, as I drew your attention to, there has been an apology and the subcommittee I don't think has gotten into the details of that apology. In the case of John Berglund. there were extensive negotiations with Mr. Berglund on both the findings of fact and sort of the nature of the apology. The apology itself was his own creation. But, he was extensively involved, over a period of several days as I recall, in a crafting the findings of fact that the Subcommittee had adopted before he then sent his letter of apology.

SENATOR METZEN: Yeah, I don't know if that makes sense or not. If you just say, Oh, I apologize. I did something wrong. Or, some of us might feel — you better admit or tell us the things you did wrong. Now, does that make sense? Or I don't know? But, here we are. Senator Frederickson.

SENATOR FREDERICKSON: I would expect that in that, in that letter there would be some acknowledgement that he violated that Senate Rule.

SENATOR METZEN: We're in the deliberation portion of the meeting, but I don't know if it would be right or wrong if Senator Jungbauer would care, could he make another comment? I think you can kind of see where at least three of the members or some of us are going. It is fair to say that, that is how some of us feel. Now if you're gonna — you want to make a comment?

Maybe that's — so called out of court settlement today or if you want to continue on or seek advice or whatever. Does that make sense? Senator Moua.

SENATOR MOUA: Mr. Chair, Mr. Wattson, What? I am a little bit confused about the different types of letters of apologies.

SENATOR METZEN: That's where I was going.

SENATOR MOUA: Can you clarify for me a little bit the different categories of apologies that there are?

PETER WATTSON: Mr. Chair, Senator Moua, I don't think there have been different categories of apologies. There have been different forms of reprimands, different kinds of words of reprimand. I don't believe the subcommittee discussion so far has talked about any reprimand. We've just talked about an apology.

SENATOR MOUA: Could you speak on reprimand, Mr. Chair, Mr. Wattson?

PETER WATTSON: One of the things that the U.S. Senate has fought over is whether the words of reprimand should say so-and-so is censured, or so-and-so is denounced, or so-and-so is condemned.

SENATOR MOUA: I guess, Mr. Wattson, Mr. Chair and Mr. Wattson, my question there is sort of — I mean, this is where my confusion is, as part of the so called reprimand, then one of the actions for the reprimand is the apology. Is that — looking at the Senator Solon example here, I am unclear as to the chronology of events. Or, you know, could there be two separate issues where there is an apology and then a reprimand? Is a reprimand then much more formal in terms of a resolution on the Senate floor? Whereas the apology, you know — did his apology come from his own will or did, was it dictated by the subcommittee and was it formalized in some way? I just —

SENATOR METZEN: I think that is why he is up there now. I understand, I think, the last part of your question was, do we just mandate he's gotta do it? I mean, I think its gotta be —

guess — voluntarily buying into this thing. I think that is where you're going, senator or Mr. Wattson.

PETER WATTSON: Mr. Chairman, if I could answer Senator Moua's question. The reprimand is a separate issue from the apology. These have often occurred in the same disciplinary proceeding, but they're separate forms of discipline.

SENATOR METZEN: Now the apology would, would mean something to the press versus going to the Rules Committee and saying I screwed up or something.

PETER WATTSON: Mr. Chairman, just taking a look at Senator Sams's discipline as a most recent example. He was required — he was reprimanded — required to make an apology to the Senate, his constituents and the public, and then he was removed from some positions. So, you can say to whom he must make the apology.

SENATOR METZEN: Ok, Senator Neuville, what are your — Senator Frederickson? Do we have a motion on the floor?

SENATOR FREDERICKSON: Mr. Chairman, that's right. And I think you were going to ask Senator Jungbauer how he would —

SENATOR METZEN: React to that —

SENATOR FREDERICKSON: — react to that and how he might —

SENATOR METZEN: Senator Jungbauer.

SENATOR JUNGBAUER: Mr. Chair and members, I would like to start by saying I am learning a lot by coming before this committee because in reading what I forwarded I read with a specific intent around an issue, and in your discussion I can see how you can see something different than what I could see at the time. So, I can see and would be able to fashion an apology around specific issues of, of how it's interpreted as raising funds. Although, I had no intent or didn't read that into it, in terms of where it was going. But, I am definitely learning that you have

to read something with a lot of different ideas in mind and how it could be construed by other people. Whatever the committee finds I would — I understand where you're coming from here.

SENATOR METZEN: Well, I think what we're kind of getting at here, or at least I'm getting at, is you don't just write a letter of apology making it look like it's something we told you to do, and then it's — You know? Then — you gotta admit that, quite frankly in my judgment, you did something wrong.

SENATOR JUNGBAUER: Yes, yes.

SENATOR METZEN: Now if you're going to write the thing and it's going to be all wishy-washy or something like that maybe there is such a thing that the committee can look at and approve his apology in a day or two, or three, or no, or what? Or just give him an understanding this morning that we expect — in other words if you apologize and then just keep defending your position —

SENATOR JUNGBAUER: Right, it doesn't —

SENATOR METZEN: It doesn't pan out. I then — then I think we just go further here. But, it's either gotta be a true — Is that kind of the understanding? And that's where I'm coming from.

SENATOR JUNGBAUER: Mr. Chair and members, I think I understand exactly what you are saying and —

SENATOR METZEN: I figured you did but I thought I better make it clear that it's not a wishy-washy so — to speak kind of — any? — You know, we're not in session anyway so it would be for another. I hope we are in special session, but that's another issue. But, I don't know. But, I think the apology to press and to the Rules Committee —

SENATOR FREDERICKSON: Mr. Chair, my motion is to the Rules Committee, and what the news media chooses to do with it is up — is out of our hands.

SENATOR METZEN: Senator Moua.

SENATOR MOUA: Well you know, Mr. Chair, part of my discomfort and concern about this issue is that I think if, if anybody sent out this e-mail with the media advisory off the DFL and putting in Republican senators it would — it would — it would hit all of us at a more visceral level. Clearly, the absolute identification of specifically targeting DFL senators, I mean, I kind of take it personally because I am a DFL senator, but the absolute identification of it I think is what inflames this media advisory so much, for all of us. I mean, I think that for any of us this would raise a concern. And I just — I think that if what I am sensing from my colleagues is that, you know, that this does not rise to the level of a reprimand, maybe, it does not rise to the level of expulsion or anything else and that we're going to have a discussion about the apology and the nature of the apology, which I would go along with the committee's consensus on that. But I think in the nature of the apology I'd like to have a further discussion about how that is crafted. I think this isn't just about Democrats or Republican. The fact that it's so blatantly and explicitly partisan in its advocation — For something like this to take place really is, I mean, it sort of cuts against this institution and who we are as senators. And I think an apology sent to the Rules Committee may not be sufficient. I think we need to look at the apology maybe to the Senate, to the public and to the constituents, both for and against, to the 17,000 — 1700 to whom this was sent out. But I, I'd like to have an opportunity to look at it. To have Mr. Wattson to talk about the other apologies. In particularly, I'm interested in looking at how it was crafted in its apology both to the Senate and to his constituents. I think it — it, you know outside of the specifics of the rules the reason why we set these things in place is to protect us as an institution and to lend the integrity of what we do as legislators. I think Senator Jungbauer and all of us around here would feel that part of what we do in trying to do our job is to, you know, protect us as an institution, to lend credibility and integrity to what we do and something like this seems to cut against that. Not that it is specifically in the rules, but I think the nature of the apology, if we

are going to dismiss the complaint, really should address, I think, that larger perception and that larger issue. And I think in this issue, if we are going to include a dismissal, the complaint — the nature of the apology should address the Republican, Republicans and the constituents of them.

SENATOR METZEN: Yeah, I think that's — I think we're on this same page there. I think that is the way I tried to put it a little while ago. It is a — it's a — a serious thing. It's a serious matter. We can't as a unit, as a body, can't start going down this, this road to you know. Senator Frederickson.

SENATOR FREDERICKSON: Mr. Chairman, procedurally, Mr. Wattson are you going, are you or staff going to make an official record of this proceedings and our findings?

PETER WATTSON: Mr. Chairman, Senator Frederickson, the normal procedure would be for the staff to make a transcript of the proceedings and prepare a — ultimately a packet of materials that include the complaint, any evidence that may have come in here today, plus that transcript of the proceeding today. I would use that transcript and your discussion here today to lay out a series of findings of fact. And then there would be some resolutions by the subcommittee, "Therefore, be it resolved, that the subcommittee recommends that an apology be given by Senator Jungbauer and that following the receipt of the apology the complaint will be dismissed." That is what we had done with the John Berglund case.

SENATOR FREDERICKSON: Ok, Mr. Chairman, I would withdraw my previous motion and I would — would move that after staff has compiled a committee report, it be shared with Senator Jungbauer to — for an opportunity for him to make factual changes or factual — point out factual errors if there are any and (tape switching) staff findings and the letter of apology.

SENATOR METZEN: We would get it, obviously, before the full committee to know, know what Senator Jungbauer is responding to.

findings of facts with the senators and lobbyist involved for the purpose of correcting any factual errors that may have gotten into the record.

SENATOR METZEN: Any discussion on that motion and recommendation of Senator Frederickson. He withdrew the original motion. Discussion on that? Senator Jungbauer, you understand Senator Frederickson's new motion?

SENATOR JUNGBAUER: Mr. Chair, members, yes, I do understand Senator Frederickson's new motion.

SENATOR MOUA: Mr. Chair.

SENATOR METZEN: Senator Moua.

SENATOR MOUA: Senator Fredrickson, just for clarification. The information will be submitted to us along with a letter of apology for our review and opportunity to comment on it or —

SENATOR FREDERICKSON: Mr. Chair, Senator Moua that would be my expectation.

SENATOR METZEN: Yeah, I think that makes sense. I mean sitting here — I think we have the right to kind of monitor and look at what —

SENATOR FREDERICKSON: Well, Mr. Chairman.

SENATOR METZEN: Senator Fredrickson.

SENATOR FREDERICKSON: And that also gives Senator Jungbauer an opportunity too, to correct the record at that point, if there was something in error in the record, it would give him a chance comment on it, so it's —

SENATOR METZEN: All right, any further discussion? Anybody else wish to be heard on this matter and on this motion? Seeing none, all those in favor of the Frederickson motion signify by saying "Aye."

SUBCOMMITTEE MEMBERS: "Aye."

SENATOR METZEN: Opposed? Motion prevails. Committee is adjourned.

Minnesota Citizens In Defense of Marriage

About Us

Minnesota Citizens in Defense of Marriage (MCDM) is a non-partisan, grassroots group of Minnesotans supporting a State Constitutional Amendment bill defining marriage as "the union of one man and one woman, with no other relationship being recognized as marriage or its legal equivalent".

MCDM is not a homosexual hate group -- we subscribe to the belief that all individuals are entitled to the respect and acceptance they deserve as members of our society. However, this does not mean that we need to agree with those who would seek to redefine the institution of marriage.

Our message is simple -- **the people of Minnesota should be allowed to vote on matters of constitutional importance**. We need to elect state legislators who understand this basic premise of our democracy.

MCDM provides an outlet through which Minnesota citizens can publicly declaring their plans to financially support the campaigns of candidates who will challenge those Legislators who stand in opposition this Amendment.

MCDM is established as a Minnesota non-profit corporation, registered with Minnesota Campaign Finance and Public Disclosure Board as a ballot question committee.

MCDM is a volunteer organization; no officers or directors receive compensation. Donations made to MCDM are used exclusively to cover our operating expenses, including advertising, printing, postage, website maintenance, and other miscellaneous expenses.

MCDM does not engage in any campaign activity on behalf of candidates for office; it does not collect, deliver or otherwise facilitate campaign contributions to political candidates. MCDM is an issue-driven organization and is formed exclusively to encourage the general public to hold their elected officials accountable for supporting the Minnesota Defense of Marriage Amendment bill.

Contact us at:

About The Founder

Jeff Davis, President of MCDM, founded the organization after becoming frustrated in his repeated attempts to communicate with his State Senator regarding the proposed Defense of Marriage legislation. After hearing similar experiences from other Minnesotans, Mr. Davis became determined to develop an alternative outlet through which his voice, together with the voices of other Minnesotans, would be heard.

Mr. Davis is a retired Partner from Accenture, a global business consulting firm. He does part-time consulting work in the Twin Cities metro area and resides with his wife and

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three children in St. Paul.

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Not authorized by any political candidate or committee.

~~FOR IMMEDIATE~~ RELEASE
May 12, 2004

Contact: Jeff Davis
651.633.6773

New Program Announced for State Senators Willing to Break Party Lines and Support the Defense of Marriage Amendment

St. Paul, Minnesota (May 12, 2004) - Today Minnesota Citizens in Defense of Marriage (MCDM) announced plans to launch a new program in support of State Senators willing to break liberal party ranks and support the Defense of Marriage Amendment. "Its obvious that liberal Senate leadership is attempting to control the actions of its Senate caucus members on this issue", said Jeff Davis, President of MCDM. "We find it curious that conservative Senators that have historically been strong supporters of family values are now siding with the left-wing extremists within their party. We understand that Senate majority leadership has required all caucus members to take a unity oath not to break party ranks on this issue, even in simple procedural votes. We want to assure these Senators that if they demonstrate consistent support for our position on marriage, they deserve and will receive our undivided support."

The new program is distinct from MCDM's current petition program, which allows Minnesotans to declare their intent to financially support candidates who would challenge the 35 Senators that have blocked a vote on this legislation. This program has raised over $130,000 to date as well as an extensive database of supporters. "This issue is not going to go away; Minnesotans are going to hold their legislators accountable on this issue", said Davis. "We know there are State Senators that want to support the Defense of Marriage Amendment, but are afraid to do so for fear of losing their party's support. We want to assure these Senators that we will be there to support them if they are penalized by their party for allowing the people of Minnesota to decide the question of marriage."

#####

Passed out by Sen. Moua

A resolution relating to ethical conduct: conduct of Senator Michael J. Jungbauer.

WHEREAS, the Subcommittee on Ethical Conduct of the Committee on Rules and Administration, in response to a complaint submitted by Senator John C. Hottinger, dated May 5, 2004, met on May 11, 2004, and June 28, 2004, to consider whether the conduct of Senator Michael J. Jungbauer in sending out an e-mail notification of a certain press conference violated any administrative policy of the Senate and thus constituted improper conduct within the meaning of Senate Rule 56.3; and

WHEREAS, the Subcommittee on Ethical Conduct, based on clear and convincing evidence, has found the following facts:

1. On March 12, 2004, Aaron Hall registered a principal campaign committee with the Campaign Finance and Public Disclosure Board for Senate District 51 as a Republican.

2. Before March 30, 2004, Aaron Hall received permission from Speaker of the House Steve Sviggum to use Room 181 of the State Office Building on April 7, 2004, from 9:30 a.m. to 10:30 a.m.

3. As of April 5, 2004, Jeffrey Davis had registered a principal campaign committee with the Campaign Finance and Public Disclosure Board for Senate District 50 as a Republican.

4. Minnesota Citizens in Defense of Marriage is a political committee founded by Jeffrey Davis and registered with the Campaign Finance and Public Disclosure Board, registration number 60039. Jeffrey Davis is its chair and treasurer.

5. On or about April 6, 2004, Senator Jungbauer received a paper copy of a media advisory distributed by Jeffrey Davis. The media advisory read:

"**MEDIA ADVISORY**

Press Conference Scheduled: Citizens Group Threatens to Retire Incumbent Senators if They Fail to Pass the Defense of Marriage Amendment

Group hopes effort will help pass a Defense of Marriage Amendment defining marriage as "the union of one man and one woman."

What: A press conference will be held to announce the formation of a program that encourages Minnesota citizens to pledge their financial support to defeating DFL Senators in 2006 if the DFL-controlled Senate continues to block the Defense of Marriage amendment from being put to voters in the fall election.

Who: Jeff Davis and other local citizens

When: Wednesday, April 7, 9:30 am

Where: Minnesota State Office Building, Room 181, 100 Constitution Ave, St. Paul

Contact: Jeff Davis, 651-633-6733"

6. The press conference described in the media advisory was the purpose for which Aaaron Hall reserved Room 181 and was organized by Jeffrey Davis on behalf of Minnesota Citizens in Defense of Marriage.

7. At the time he received the media advisory, Senator Jungbauer did not know Jeffrey Davis or that he was a Republican candidate for Senate District 50.

8. At the time he received the media advisory, Senator Jungbauer did not know the citizens group, Minnesota Citizens in Defense of Marriage, that was sponsoring the press conference, or that it was a registered political committee headed by Jeffrey Davis.

9. Senator Jungbauer, in reading the media advisory, did not read the words "a program that encourages Minnesota citizens to pledge their financial support to defeating DFL Senators in 2006" to mean a program of soliciting campaign contributions.

10. On April 6, 2004, Senator Jungbauer gave the media advisory to his legislative assistant, Karysse Trandem. He instructed her to type it up and send it out to his Defense of Marriage Amendment ~~Supporter~~ e-mail distribution list, which contained about 1700 names.

11. Senator Jungbauer added an introduction to the e-mail message that said:

"Dear Defense of Marriage Supporters,

I have just received word of an important upcoming press conference that I would like to make you aware of. Tomorrow at 9:30 am this press conference (see below) will be held in the State Office Building (the building just west of the Capitol). Any support you show for this will make a difference, whether it be through attending, finding someone to attend in your place, or offering

prayer support. Please maintain your strength on this issue!

Mike"

12. Ms. Trandem did as she was instructed, completing the task that same day, using her Senate computer and the Senate's e-mail system.

13. Ms. Trandem, in typing the media advisory, did not read the words "a program that encourages Minnesota citizens to pledge their financial support to defeating DFL Senators in 2006" to mean a program of campaign fundraising.

14. Neither Senator Jungbauer nor Ms. Trandem attended the press conference on April 7, 2004.

15. At the press conference on April 7, 2004, Jeffrey Davis and his organization, Minnesota Citizens in Defense of Marriage, circulated petitions soliciting donations for the campaign committees of "up to 35 Senate candidates who will run in opposition to the incumbent DFL Senators during the 2006 Minnesota Senate election . . . ."

16. Senate Policy 1.45, **Campaign Activity Policy**, defines "campaign activity" as including "soliciting contributions to a political committee or political fund . . . ." and says that "Senate equipment or supplies may not be used for campaign activities."

17. Senate Policy 1.50, **Communication Equipment Policy**, provides that "Senate communications equipment is for purposes of the Senate and the Legislature. It may not be used for any . . . political campaign."

18. Senate Policy 1.60, **Senate Information Systems User Policy**, ¶ 1.5, **Not for Commercial or Campaign Use**, provides that "Computer equipment, computer programs, and data communication facilities connected to the Senate Network or any state computer are to be used for purposes of the Senate and the Legislature. They may not be used for any . . political campaign."

AND, WHEREAS, the Subcommittee on Ethical Conduct, based on clear and convincing evidence, has drawn the following conclusions:

1. The press conference conducted on April 7, 2004, by Senate District 50 Republican candidate Jeffrey Davis on behalf of the political committee Minnesota Citizens in Defense of Marriage was a "campaign activity" within the meaning of Senate Policy 1.45.

2. The press conference conducted on April 7, 2004, by Senate District 50 Republican candidate Jeffrey Davis on behalf of the political committee Minnesota Citizens in Defense of Marriage was part of a "political campaign" within the meaning of Senate Policies 1.50 and 1.60.

3. Senator Jungbauer's instructions to his legislative assistant to distribute an e-mail message that he composed to a list of about 1700 names on his Senate distribution list to publicize the press conference of April 7, 2004, and urge citizens to attend and otherwise support the press conference caused Senate communications equipment and the Senate Network to be used for campaign activity and a political campaign in violation of Senate Policies 1.45, 1.50, and 1.60, ¶ 1.5.

4. This violation of Senate administrative policies constitutes improper conduct within the meaning of Senate Rule 56.3.

5. Neither Senator Jungbauer nor Ms. Trandem understood that the press conference was going to be a campaign fundraising event, though both should have understood that from reading the media advisory before they distributed Senator Jungbauer's e-mail message promoting the press conference.

6. Senator Jungbauer failed to exercise due care in deciding to instruct Ms. Trandem to distribute his e-mail message promoting the press conference.

NOW, THEREFORE,

BE IT RESOLVED, by the Subcommittee on Ethical Conduct:

1. Senator Michael J. Jungbauer shall make a written apology to the Senate, his constituents, and the public, in a form submitted to and accepted by the Subcommittee on Ethical Conduct.

2. Upon acceptance of the form of the apology, Senator Jungbauer must deliver a copy of the apology to every member of the Senate and to every news reporter accredited under Senate Rule 16 to report from the Senate floor.

3. Upon delivery of the apology, the complaint be dismissed.

MINNESOTA SENATE

SUBCOMMITTEE ON ETHICAL CONDUCT

CONDUCT
OF
SENATOR MICHAEL J. JUNGBAUER

HEARING ON COMPLAINT
NOVEMBER 17, 2004

Transcribed February 2, 2005

Proceedings held on the 17th day of November, 2004, before the Minnesota Senate Subcommittee on Ethical Conduct, Room 125, State Capitol.

Subcommittee Members:

Senator James P. Metzen, Chair

Senator Dennis R. Frederickson, Vice Chair

Senator Mee Moua

Senator Thomas M. Neuville

Subcommittee Staff:

Peter S. Wattson, Senate Counsel

Faye E. Sparks, Committee Administrator

Brian Martinson, Legislative Assistant

APPEARANCES

Senator John Hottinger

Senator Michael J. Jungbauer

STATE OF MINNESOTA)

) ss.

COUNTY OF RAMSEY)

CERTIFICATE

I, Brian Martinson, an employee of the Minnesota Senate, do hereby certify that the following is a true and accurate transcript of the proceedings as taken by me on the dates and times stated, in the matter of the conduct of Senator Michael J. Jungbauer.

Brian Martinson

Dated: February 18, 2005.

Subscribed and sworn to before me this 18th day of February, 2005.

Notary Public

MARGARET J. COLLINS
Notary Public-Minnesota
My Commission Expires Jan 31, 2010

Subcommittee discussions regarding the conduct of Senator Jungbauer.

SENATOR METZEN: On continuation of the Jungbauer — findings and resolution to the — to the (inaudible) you should all have the November 10th resolution in front of you and I think subsequently we need some changes here Peter. Should we deal with that now or —?

PETER WATTSON: Fine.

SENATOR METZEN: We'll pass — this is a — dated November 17th and again the first page or two or three — three and half I would guess — say is the — the facts the way we interpreted them and Mr. Wattson, our counsel, typed them up and I think there's been — pretty much agree — this is all the things that were said — discussed at the first meeting. And then on the back, page four, is the — how I believe we talked about — the resolution to the issue. Mr. Wattson did you have any other comments on the — the handouts or did I fairly describe — accurately the way — I— they are in writing.

PETER WATTSON: Well, Mr. Chairman just to point out for the benefit of the members who have the November 10th draft and — and had comments on it. The two changes made; one in the findings and one in the conclusions. The first one is on page two, item 10 or paragraph 10, that the November 10th draft refers to the mailing list as the supporters e-mail distribution list but apparently it included both opponents as well as supporters so this draft drops the reference to supporter from that line. The other change was in the conclusion on page four, it is paragraph number five in the November 10th draft, that had said that "neither Senator Jungbauer nor Miss Trandum understood that the press conference was going to be a campaign fundraising event" and the request for a change was to make that read as it does now "that it would include a request for financial support." And as to the findings and the conclusion, those were the only two requests for change that I heard about.

SENATOR NEUVILLE: Mister

SENATOR METZEN: Senator Neuville

SENATOR NEUVILE: Mr. Chair I — I apologize because this is late but I have a totally amended draft that I'd like to — and it is working off the November 10th draft. The changes that a — working off that November 10th one. The changes that a — that I'm suggesting basically take out the references of that press conference because I — I view that as being irrelevant. The — the violation that we're dealing with and I think what the record reflects is that Senator Jungbauer — neither Senator Junbauer nor his L.A. knew who Jeff Davis was before that e-mail went out, didn't know that it was a political group and did not attend it. So, the fact that — I mean I don't dispute that Jeff Davis was — had a registered committee and was — has a senate district, but Jungbauer did not know that and so it is really not relevant. The relevant issue here is that he sent out an e-mail that contained language that was political activity and — and that's, to me, the — the improper conduct that we would be finding. Now he — he claims — both he and his L.A. also claim they didn't read that part but they nevertheless sent that out. And so, it still is a violation of the policy and — and improper conduct. So, most of the changes that I'm making here just deal with that issue, and then as far as the findings are concerned I'm recommending that we delete number two. My recollection of Senator Frederickson's motion was that we would find that he has to make a written apology and I think Senator Frederickson said to the chair of the Rules Committee and I am also suggesting we have him deliver that to the minority leader but I don't recall that we talked about number two as — as being required. Frankly, Senator Jungbauer might want to deliver his apology to other people too, but I think for our purposes if he delivers it to majority and minority leaders, after we've accepted it, I think that should be sufficient. The key finding that I am recommending that we make is that he violated rule 1.5 which is a — which is, "using communications equipment for purposes that it may not be used for (inaudible)." I think that's what we found by clear and convincing evidence and the

other stuff that I'm proposing that we strike, just isn't needed in this — in this document. And again, I apologize. I — I frankly, I just went over this.

SENATOR METZEN: This is one of the reasons I wanted to talk to ya the other day.

SENATOR NEUVILLE: I — I — I apologize. I understand.

SENATOR METZEN: I think this is appropriate, but —

SENATOR NEUVILLE: No — I

SENATOR METZEN: But to come in at the last minute with a lot of lines and a lot of chopping up.

SENATOR NEUVILLE: I understand. Frankly, Mr. Chairman, I only did this morning. So, I — I've been —

SENATOR METZEN: You were sleeping probably — when you were wide awake — you know what I mean.

SENATOR NEUVILLE: Yeah.

SENATOR METZEN: Well I don't know about the others I — and — and another issue we have not seen — I have not seen the apology either. So, it wouldn't — do you have that with you today?

SENATOR JUNGBAUER: I have a draft with me.

SENATOR METZEN: I thought that we talked about the resolution that — pull out the tape — just jumping to the end —we did talk about notifying all the senators. I know in the past a lot of these were resolved where people would stand on the Senate floor and apologize and we went — in my judgment a step down from that if you will by letting every member know. That's what I got out of the last meeting. Now just to say you notify two, three people — so I — you could see where I am coming from already on that issue. Because I — I — you know— we can do it January third or fourth or something on the floor but I— I don't know — but I — that's why we're here, I thought, kind of compromising. But anyway —

SENATOR NEUVILLE: Well — well, Mr. Chair

SENATOR METZEN: That's one issue out of about 12 or 15 that are thrown at us — thrown at us this — this fast. So, I gotta —

SENATOR NEUVILLE: The — the — these proceedings are public and when he submits his apology letter here anybody can come get it, but I think in terms of his formal requirement after he — after we approve the apology letter. Well, if he formally delivers it. I think that's sufficient publicity, if you will, of his apology. And I think that was Senator Frederickson's motion, wasn't it?

SENATOR FREDERICKSON: Mr. Chair, Senator Neuville, my motion was that he deliver it to the chair of the Rules Committee.

SENATOR METZEN: Well, I — I just think that we either have to take a break — and Senator Hottinger, who brought the complaint in a deserves to —

SENATOR MOUA: Miss — the —

SENATOR METZEN: Apparently on that — the transcript here you withdrew the motion — the previous motion to refer it to the Rules Committee chairman.

SENATOR MOUA: Mr. Chair.

SENATOR METZEN: Senator Moua.

SENATOR MOUA: Well, it was my understanding that we would reconvene to see the letter of apology and draft the resolution. I didn't think that we would — had already decided what we were going to do with the resolution or to whom it would be disseminated to. I thought that was the question that was in reserve. Coming here today I expected to have a discussion on the resolution and, you know, on where this would go and it certainly seems to me that Senator Neuville is also of the same understanding with — you know — you were suggesting that we make these changes. That this resolution wasn't drafted in accordance what — with what we had resolved would be in the resolution but that a resolution would be presented and we would

have the opportunity to discuss what the form of the resolution would look like along with seeing a copy of the letter of apology. Am I incorrect in thinking that?

SENATOR METZEN: No, I think you — I think you're very correct and this is a — I mentioned early we should see that letter of apology too that's got to be part of this and the resolution I think that is from things that I thought I heard and from the transcript and consultation with Mr. Wattson and I guess my finger prints are on this part of it too but — ok is this the — ok, take a minute to —

SENATOR METZEN: Well, I — I — I just — repeat I am in the opinion that I guess I'd have to — me anyway — I would have to look at this for a minute or two or — for a while or something and see what the ramifications really — you know if there is — to pick up all these issues in five, 10 minutes I — I — I am not prepared to do it, but Senator Frederickson.

SENATOR FREDERICKSON: Mr. Chairman, what are you thinking of like a recess until one o'clock or are you thinking of meeting on another day?

SENATOR METZEN: Well, we all owe it to the public to get the thing done, I know that. Senator Jungbauer would like to — I don't know?

SENATOR NEUVILLE: Mr. Chair, I'd like to suggest that we take a recess for like 30 minutes and see if we can — maybe that is enough time.

SENATOR METZEN: Hammer it out.

SENATOR NEUVILLE: Hammer it out and — and then come back and take action

SENATOR METZEN: Senator Hottinger.

SENATOR HOTTINGER: Mr. Chair, I am not a member of the committee but I'd like to make a couple of very brief comments because I can't stay that long.

SENATOR METZEN: That's fair that you can speak up as far — isn't it — obviously — yeah, ok.

SENATOR HOTTINGER: Mr. Chair, again I'd — John Hottinger, State Senator. I haven't had a chance to review, at all, Senator Neuville's suggestions but I have had a chance to look briefly at the (inaudible) Senator Jungbauer and heard (inaudible) Senator Neuville's proposal. I — I have two thoughts that I would like the committee you to consider. Number one, as the person who brought this complaint, if this committee – if this committee determines it's a violation of Senate rules, which you have; I would be quite offended if every Senator did not receive an apology letter. I think Senator Jungbauer is receiving a fair resolution. I think that — I accept the testimony that he did not think this through or know exactly what was going to take place at the press conference, but I also do know that what he sent out said it was going to be a pledge for financial support to defeating Senators. I — I don't think that can be ignored. Whether he read it or not is irrelevant. What he should address is the issue and we don't absolve ourselves of responsibility by sending something out and then claiming that we didn't read it. And so, I — I think that — two things that I am asking you to consider that every Senator, I don't care much about the news media, as Senator Neuville's pointed out this is a public meeting, but every senator receive an apology and not on the Senate floor like others have had to do, but just a private letter. The second thing, in briefly looking at Senator Jungbauer's letter of apology I am, I am concerned about his recitation of where he stands on the issue because that is not relevant to the apology as he send out. I think that for the most part the letter does talk about the findings of this committee and I think that's a legitimate part of the apology including the mitigating factors that the committee considered and Senator Jungbuaer presented. But, this isn't a campaign letter, it is an apology letter. It's not a letter showing his support for an issue or his effort to continue to fight for the causes he diligently believes in. It is a letter: This is what happened. This is the reason. These are the mitigating factors and given those considerations I apologize for what took place. So, those are my only —

SENATOR METZEN: Senator Jungbauer, I — Senator Hottinger, I got that out of the apology letter myself. That there's a little — maybe you could work on that. A little too much editorializing . . .

SENATOR JUNGBAUER: OK

SENATOR METZEN: You know, get to the meat and potatoes of this thing and not be explaining — you're little too political, I think. The first two or three paragraphs — but you know my — I think that's what ya — Senator Hottinger is talking about too. And, where do we refer to this financial support? What page is that and —

SENATOR HOTTINGER: Well, Mr. Chairman, I don't know. I am only relying on what — Senator Neuville's very brief description of his suggested changes which I have not seen. But I — I — and the change made in the November 17th was very a appropriate that it be called a financial disclosure instead of a campaign fundraising request. I think that is a better description of what took place but there was something and I — I said I haven't seen it, but Senator Neuville indicated not referring to the press conference or maybe I just misheard. My bigger concern is — is that this be an apology to Senators in addition to the leaders of the two caucuses because I think it is appropriate. That we are —we are a — we are a group of 67 peoples, and it's valuable in this kind of instance to at least acknowledge that.

SENATOR METZEN: Yeah and others, like you mentioned Senator Hottinger, have had to — have done it a different way. They had to stand-up on the Senate floor and that — so this would be — but —

SENATOR HOTTINGER: I appreciate the committee giving me the chance to comment.

SENATOR METZEN: Yeah I — a — I kind of agree I think — at least — I'm one vote, but kind of what the Senator's talking about the — we could fix up this letter somewhat. We can — we still can — I still think every Senator in this body — they all were duly elected. They all should understand what you did and not have to read about things in the newspaper. And this

financial support issue Mr. Neuville, if you could? So, those are the kinds of things that at least one vote here is thinking about. If we could come back here in about 30 or 40 minutes and work on some of this stuff.

SENATOR FREDERICKSON: Mr. Chairman should we assume then that you and Senator Neuville perhaps with counsel —

SENATOR METZEN: Probably. We'll get together.

SENATOR FREDERICKSON: are going to get together. Senator Moua and I can go and have a cup of coffee or something. So we don't have — and then maybe Senator Neuville can share with me the essence of your discussion and you can share with Senator Moua, and we can reconvene.

SENATOR METZEN: I would hope can — we're close enough to get — to rather — ok.

SENATOR NEUVILLE: Sounds good

SENATOR METZEN: We're all — Tom do you want to stay hear with Peter and I, and Faye you can stay too. Actually —

(Senator Metzen reconvened the meeting and asked senate counsel, Peter Wattson, to describe the changes made during the recess. The tape begins with Mr. Wattson's description of the changes)

PETER WATTSON: The first change is to delete paragraphs one through four of the findings on the November 10th draft.

SENATOR METZEN: And the discussion why or that — it's not needed. Just so were clear on that. That's what Senator Neuville wanted. It's part of the transcript anyway so its public information that people can have anyway, but if you want to —

SENATOR NEUVILLE: I don't think I have to add too much more. I kind of stated the argument previously.

SENATOR METZEN: Earlier. Ok. Then go on.

PETER WATTSON: The next thing is to delete from the November 10th draft, paragraph number six of the findings which refers to that press conference. The next — on what was paragraph seven of the findings is to delete the reference that Jeffery Davis was a Republican candidate for Senate District 50. Next, on paragraph 10 of the November 10th findings on the third line delete "supporter" in describing the distribution list and then on the last line after "names" delete "of supporters and opponents." Next on page three, paragraph number 15 of the from November 10th draft is deleted. Again, that relates to the press conference. Look at the bottom of the page the first paragraph of conclusions, related to the press conference, is deleted. On the top of page four in the second paragraph, the paragraph itself referring to the press conference remains but the reference to "Senate District 50 Republican candidates" is deleted. In paragraph three, in the fourth line down, where it says, this action "caused Senate communications equipment and the Senate Network to be used for campaign activity," the "caused" is deleted and instead it says the conduct "was an unintentional use of Senate communications equipment and the Senate Network for" and then the reference to campaign activity is deleted. It says, this "was an unintentional use of the Senate communications equipment and the Senate Network for a political campaign in violation of Senate policies" and then delete 1.45, which is campaign activity but keep in 1.50 and 1.60, which are political campaign, using Senate equipment for a political campaign.

SENATOR NEUVILLE: Can I stop you there? What is that little "paragraph 1.5" at the end — of that paragraph?

PETER WATTSON: That's the number of the paragraph.

SENATOR NEUVILLE: In 1.60

PETER WATTSON: Senate policy 1.60 is in the Senate Information Systems user policy and it runs for 10 or 15 pages and as committee it is just paragraph 1.5 that is relevant here.

SENATOR NEUVILLE: OK

PETER WATTSON: The next change is to the conclusion, number five, to delete the language on — starting on the end of the first line — "was going to be a campaign fundraising event, though both should have understood that having read the media advisory before they distributed Senator Jungbauer's email promoting the press conference" and insert instead "would include political activity." So the revised sentence would read "neither Senator Jungbauer nor Miss Trandum understood that the press conference would include political campaign activity." Next change is to the resolving clauses, in clause number one the reference to the apology to the public is deleted and in clause two the reference to delivering a copy of the apology to news reporters is deleted. So, those are the changes that were made from the November 10th draft, and you can see those incorporated in the new November 17th draft.

SENATOR MOUA: Mr. Chair.

SENATOR METZEN: Senator Moua

SENATOR MOUA: Mr. Wattson, can you point out to me, where do we make the conclusion that the — the press conference then — you know where do we make the connection — well, we made the conclusion that the press conference is campaign activity or is a campaign — it's — it's a campaign activity. I guess I want to make — I want to make that last paragraph where we said that — oh, sending out the e-mail — oh, that's the conclusion. Sending out the e-mail was an unintentional use of Senate communication equipment. That's the conclusion then?

PETER WATTSON: Yes.

SENATOR MOUA: Okay. I missed that one.

SENATOR METZEN: Any further discussion on the resolution? Is this the — Senator Jungbauer you understand the changes and what —

SENATOR JUNGBAUER: Yes, I do.

SENATOR METZEN: Senator Neuville, Senator Frederickson, Senator Moua, do you all —

SENATOR FREDERICKSON: Mr. Chair, I concur with the changes

SENATOR NEUVILLE: So, do (*clears throat*) so, do I.

SENATOR MOUA: So, do I, Mr. Chair

SENATOR METZEN: Ok, do we — maybe we should discuss the apology before we act on either one just in case there — has everybody had the chance to look at the — Senator Neuville I thought you — I know you mentioned something on paragraph two or five. You were think that the last "moment of inattention" — I don't want to put words in your mouth but you were suggesting that —

SENATOR NEUVILLE: yeah

SENATOR METZEN: that he admits that he made a mistake

SENATOR NEUVILLE: Yeah — I — Senator Jungbauer, how would you feel about that change?

SENATOR JUNGBAUER: On which?

SENATOR NEUVILLE: Where you say in paragraph five of your revised letter where you say "moment of inattention" why don't you just say "my mistake." I think its — we're — it's consist with the proposed resolution. What were trying is — what at least I'm trying to say with this resolution is while your actions my have been unintentional, they were nevertheless a mistake and you might as well just use that word.

SENATOR JUNGBAUER: yup

SENATOR METZEN: *(jumbled and inaudible with Senator Junbauer speaking)*

SENATOR JUNGBAUER: *(jumbled and inaudible with Senator Metzen speaking)*

SENATOR JUNGBAUER: I accept that language.

SENATOR METZEN: any other suggestion of the —

SENATOR FREDERICKSON: Mr. Chair just as an observation on the last paragraph, Senator Jungbauer does say this was a mistake.

SENATOR NEUVILLE: Yeah, right.

SENATOR FREDERICKSON: It's parallel.

SENATOR METZEN: So, it's consistent. I see what you're saying.

SENATOR JUNGBAUER: No. Yes.

SENATOR MOUA: Mr. Chair

SENATOR METZEN: Senator Moua

SENATOR MOUA: I have two minor suggestions for Senator Jungbauer to consider. In paragraph one, the second line says "I received a press release from a group of concerned citizens". I am wondering if we could just delete, "from a group of concerned citizens who were holding." It would just say, "I received a press release regarding a press conference at the State Capitol on the proposal." Without editorializing on concerned citizens or not, it just makes it simpler. And then in the third — in the third paragraph it says "I have subsequently learned the event did include what could be seen as a plea..." I think the event included a plea for financial pledges. It is not "could be seen." I mean, the language explicitly asks for financial pledges, both in the press release and so just— just — instead of graying it out and saying what could be seen, why don't we just say, "I have subsequently learned the event included a plea for financial pledges."

SENATOR JUNGBAUER: (simultaneously with Senator Moua) a plea for financial pledges. Yup that right there.

SENATOR MOUA: included

SENATOR JUNGBAUER: yup, just cross that out yup that's — I did this one too.

SENATOR MOUA: If you're all right with that?

SENATOR METZEN: Senator Jungbauer

SENATOR JUNGBAUER: No, I guess senators I have a question on paragraph number three because I guess, not having gone to the press conference, did we ever establish that they did ask for —?

SENATOR MOUA: Mr. Chair, I don't think paragraph three is questioning that he knew it before hand. But, I think that it is part of the conclusions and findings including, now rereading the media advisory. I mean it is not saying that you knew that they were going to ask for financial pledges you are — said you didn't know when you cursorily glanced at it, but subsequently, as in these proceedings, we've looked at it with closer attention. We did glean from — from the information it did include a plea for financial support. So, I don't think by saying that that you are saying that you knew before hand. You are just saying that subsequent to that we have information that it did include pleas for financial pledges, which is what was in the media advisory and in the information that was passed out.

SENATOR JUNGBAUER: Senator Moua it is just when I am making a statement here it infers that I had the first hand knowledge that it still happened and even going through the testimony we did not have anyone testify on the actually press conference or anything. So, I am kind of making the assumption that somebody knew or somebody went there and that that happened, but I don't know first hand it happened, myself. So, to say that and seeing the evidence in here that it did happen and that at that point in the press conference they were actually asking —

SENATOR METZEN: What does the word "subsequently" do there? That paragraph — doesn't that say that you don't know it at the time.

SENATOR MOUA: Well. Mr. Chair in the press conference it says "A press conference will be held to announce the formation of a program to encourage Minnesota citizens to pledge their financial support."

SENATOR METZEN: Yup.

SENATOR MOUA: Now if that is what it says in the press release that's the press release is — we're not — We took out everything pertaining to the press conference. We said that that — we weren't going to talk about the press conference. So, we are just basing the conclusion and the apology on what was in the media release that was sent out from Senator Jungbauer's office. The text of what was sent out did say that there was going to be a pledge for financial support. I am not saying that Senator Jungbauer knew about that when he sent out the press release, but subsequent to that as we re-looked at it that's what it said in the press conference.

SENATOR METZEN: Its there

SENATOR MOUA: You know—

SENATOR METZEN: Its there. Senator Neuville did you have a —

SENATOR NEUVILLE: I did. I think that Senator Moua's point is well taken. The impropriety occurred when you sent the e-mail out. And, I think what you are trying to suggest is that it's not what actually happened at the press conference, it is that you looked at what you sent out after the fact contained language in it seeking pledges. So, maybe we could rewrite that sentence just to clari — we could say, "I subsequently learned that the media release —"

SENATOR MOUA: Right.

SENATOR NEUVILLE: "for the event included —"

SENATOR METZEN: The press release or the media release.

SENATOR NEUVILLE: "inclu—"

SENATOR MOUA: Sure, sure.

SENATOR NEUVILLE: "included a plea for financial pledges to pro DOMA."

SENATOR METZEN: Yeah refer to paragraph two in the press release.

SENATOR NEUVILLE: So you're — what you're — what — what we're trying to suggest to you is what you learned is that your e-mail after the fact — you — you read it more closely — after you sent it out.

SENATOR JUNGBAUER: Yes, and senators that does make more sense than saying I learned that the event included something because I don't have any firsthand knowledge of what went on at the event. I have first hand knowledge of what I did wrong in sending out this e-mail that says these things. Yes.

SENATOR MOUA: So, just in — after, as Mr. Wattson had made the corrections, after "learned" just insert "that the media advisory for the event included pleas for financial support," and that should clarify what the reference is to.

SENATOR METZEN: Ok. And also, in paragraph one, I think there are a lot of words there that we needed — I agree with — Do we want to restate that paragraph one? That takes out 10, 12 words that are kind of editorializing and I personally agree with that. Was it groups of — groups materials paragraph two that — that did we do anything with that?

SENATOR FREDERICKSON: Mr. Chairman what paragraph are you in?

SENATOR METZEN: Paragraph one, two, three, four — the last couple of words. "Groups materials" is that — is that all right?

FAYE SPARKS: We took it out of the first sentence.

SENATOR METZEN: What's that? We took it out of the first sentence. Oh.

SENATOR NEUVILLE: Yeah. Instead of "materials" we should say "never passed on this group's media release."

SENATOR METZEN: What? It doesn't seem to read —

SENATOR MOUA: media release

SENATOR NEUVILLE: the media release

SENATOR MOUA: the media release

SENATOR METZEN: Yeah, Yeah. I think we should be consistent.

SENATOR MOUA: Because we took the references to the group out of the first paragraph so — yeah.

PETER WATTSON: It would be the release or the advisory

SENATOR MOUA: Yeah, advisory.

SENATOR NEUVILLE: "passed on this media release"

SENATOR METZEN: And then I think we're — Senator Neuville we talked about your suggested change there to the letter on paragraph two, three, four.

SENATOR NEUVILLE: The fifth paragraph.

SENATOR METZEN: Any other changes or suggestions on the letter of apology? My observation is that this panel has agreed on the facts and findings and the resolution and we also agreed on the letter of the apology. Mr. Wattson do we have a motion on each one separately, I would guess?

PETER WATTSON: Mr. Chairman, yes, but could I just clarify the changes as I understand them?

SENATOR METZEN: Sure. Yeah.

PETER WATTSON We've talk about media advisory, press release, media release — I wonder if we shouldn't just always talk about a media advisory since that is what it was labeled.

SENATOR METZEN: It should be the same on everything

PETER WATTSON: With that the changes as I understand it from Senator Jungbauer's letter in the first paragraph, second line, delete "press release from a group of concerned citizens who were holding" and insert "media advisory regarding."

SENATOR METZEN: If you don't agree, excuse me, you need to speak up. If this is not your understanding, OK.

PETER WATTSON: And in the third paragraph after "learned" insert "that the media advisory for" and that — and delete "did include what could be seen as" and insert "included"

SENATOR NEUVILLE: Could you just read that sentence as it's corrected?

PETER WATTSON: "I have subsequently learned that the media advisory for the event included a plea for financial pledges to pro DOMA candidates."

SENATOR NEUVILLE: I thought we were taking out "the event" we were just going to say I subse— "I subsequently learned that the media advisory"

PETER WATTSON: Oh, just delete "for the event"

SENATOR NEUVILLE: Isn't that what we were talking about Senator Moua? It's the media advisory itself as opposed to the event. That the media advisory included a plea.

PETER WATTSON: Yes.

SENATOR METZEN: Paragraph two, do you want the "press release" changed to "media advisory" also? OK.

PETER WATTSON: Then on paragraph four, in the last line, delete "group's materials" and insert "media advisory".

SENATOR METZEN: OK

PETER WATTSON: And in paragraph five, the last three words — delete "moment of inattention," and insert "mistake." And that's all I have.

SENATOR METZEN: Any questions, concerns, or observations? OK. If we are in agreement we will take — maybe we should move on them separately. Then we will need a motion on the first — what do you call it findings of — resolution?

PETER WATTSON: Resolution

SENATOR METZEN: Senator Neuville moves —

SENATOR NEUVILLE: I'll make the motion that we approve the — the resolution, the latest version.

SENATOR METZEN: Is there a second on that? All those in favor signify by saying aye.

SUBCOMMITTEE MEMBERS: Aye

SENATOR METZEN: Motion prevails unanimously. On the letter of apology, accepting the letter as we — we revised somewhat.

SENATOR MOUA: I will move on the acceptance of the letter of apology.

SENATOR METZEN: Senator Moua and — we don't need a second. All those in favor signify by saying aye.

SUBCOMMITTEE MEMBERS: Aye

SENATOR METZEN: Motion prevails on a unanimous vote. Thank you for your help and conduct at this hearing and Senator — resolution to a — a problem here and we're — we're— we're finished.