

## STATE OF MINNESOTA

## COURT OF APPEALS

Appellate Case No. A09-1093

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Paul A. Barry and David J. Spano

Petitioners,

v.

The St. Anthony-New Brighton Independent School District 282,  
Jane Eckert, David Evans, Barry Kinsey, Don Siggelkow, Leah Slye, and  
Mike Volna, in their capacity as School Board Members,

Respondents,

The Minnesota Office of Administrative Hearings,

Respondent.

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**PETITIONERS' REPLY BRIEF AND SUPPLEMENTAL APPENDIX**

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*Counsel for Petitioners:*

Erick G. Kaardal, #229647  
Mohrman & Kaardal, P.A.  
33 South Sixth Street, Suite 4100  
Minneapolis, Minnesota 55402  
Telephone: 612-341-1074

*Counsel for Respondent*  
*The Minnesota Office of*  
*Administrative Hearings:*

Kenneth E. Raschke, Jr.  
Office of the Attorney General  
State of Minnesota  
445 Minnesota Street, Suite 1800  
St. Paul, Minnesota 55101

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

*Counsel for Respondents*

*The St. Anthony-New Brighton Independent School District 282,*

*Jane Eckert, David Evans, Barry Kinsey, Don Siggelkow, Leah Slye, and Mike Volna, in their capacity as School Board Members:*

James E. Knutson

Knutson Flynn & Deans

1155 Centre Pointe Drive, Suite 10

Mendota Heights, Minnesota 55155

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## Introduction

The question before this court is simple: When a school board approves district resources to participate in an election campaign to promote the passage of a ballot question, expending public money unavailable to those in opposition to that same ballot question, should campaign finance reporting laws apply to that entity? The St. Anthony-New Brighton Independent School District,<sup>1</sup> despite acknowledging expenditures — thus involvement in a ballot question campaign — believe that school districts should be allowed to skirt campaign finance reporting laws. Additionally, to further deny the public of access to specific detailed campaign information St. Anthony suggests, as did the Office of Administrative Hearings, that disclosure through the district's annual budget as sufficient. This is a fiction since the annual budget disclosure<sup>2</sup> does not give the detail required under

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<sup>1</sup> References to "St. Anthony" is inclusive of all Respondents identified with the exception of the Minnesota Office of Administrative Hearings who did not make an appearance in this appeal.

<sup>2</sup> *Compare*, Minn. Stat. § 123B.10, subd 1, an example cited by the OAH opinion at 3. Minn. Stat. § 123B.10, subd. 1 hardly complies with necessary reporting of information the law requires for engaging in election campaigns:

- (a) Every board must publish revenue and expenditure budgets for the current year and the actual revenues, expenditures, fund balances for the prior year and projected fund balances for the current year in a form prescribed by the commissioner within one week of the acceptance of the final audit by the board, or November 30, whichever

the campaign financial report where every contributor and contribution is itemized, every disbursement including the date, purpose, and amount, and any corporate project expenditures.<sup>3</sup>

In the instant appeal, Barry's and Spano's underlying complaint to the OAH outlined the school district's admissions of participation in a ballot question campaign. The decision of the board, acting within the statutory definition of a committee, triggered the necessity of filing reports under the law for the financing of that campaign. As a matter of public policy, campaign finance laws allow citizens and the state to know potential abuses of the law. For instance, in the instant case,

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is earlier. The forms prescribed must be designed so that year to year comparisons of revenue, expenditures and fund balances can be made.

(b) A school board annually must notify the public of its revenue, expenditures, fund balances, and other relevant budget information. The board must post the materials in a conspicuous place on the district's official Web site, including a link to the district's school report card on the Department of Education's Web site, and publish a summary of the information and the address of the district's official Web site where the information can be found in a qualified newspaper of general circulation in the district.

A review of St. Anthony's web site as a matter of public information, did not reveal the conspicuous availability of any detailed budget information or minimum requirements under this law other than a 2007 audit. *See, <http://www.stanthony.k12.mn.us/district/pdf/2007-audit.pdf>*. A 2007 audit does not meet the requirements of either Minnesota's campaign finance laws, nor in this case the OAH's suggested "mechanisms other than 211A" to obtain "other financial information." Op. at 3; Petitioners Appendix at 3 ("App. 3").

<sup>3</sup> Petitioners Supplemental Appendix at 1-3 ("Supp. App. \_\_\_").

whether the school district misappropriated public funds as distributions or contributions in favor of the ballot question.

Regardless of St. Anthony's position as argued, the campaign finance reporting laws of Minnesota do not exempt a school district when its board acts as a committee to involve the district in campaign promotion to pass ballot questions.

### Argument

- I. **The statutory definition of "committee" includes either a "corporation" or an "association of persons acting together" which of itself is inclusive of a designated group of people acting as a board to fall within the scope of campaign financing laws.**

A statute must be construed in accordance with the statutory definition of the included term.<sup>4</sup> Where the legislature has defined a term, the court "may not look at the term's common or trade usage to determine its meaning within the statute."<sup>5</sup> Under Minn. Stat. § 211A.01, subd. 4 governing campaign finance reporting, a committee is defined as a corporation or a group of people acting together to promote a ballot question:

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<sup>4</sup> *St. George v. St. George*, 304 N.W.2d 640, 643 (Minn. 1981).

<sup>5</sup> *Cease and Desist Order Issued to D. Loyd*, 557 NW.2d 209, 212 (Minn. App. 1996), *citing* Minn. Stat. § 645.08(1) ("requiring that words defined in chapter be construed according to such definition").

“Committee” means a corporation or association or persons acting together ... to promote or defeat a ballot question....<sup>6</sup>

Likewise, the definition of committee under Minn. Stat. § 211B.01, subd. 4 governing fair campaign practices is similar but is more precise regarding the number of actors that form a “committee,” here two persons:

“Committee” means two or more persons acting together or a corporation or association acting to ... promote or defeat a ballot question.

Respondent St. Anthony argues that a school district board are not members of a “committee” because the Respondents are not a corporation.”<sup>7</sup> But St. Anthony misinterprets the definition of “committee” as requiring the existence of a corporation to form the committee. Barry and Spano argued that the school district is responsible for reporting under Minnesota’s campaign laws either as a corporation or as a committee or both. But contrary to St. Anthony’s argument, it is not a pre-requisite that a “committee” derive from a corporation to trigger an association of persons acting to promote a ballot question to file a campaign finance report.

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<sup>6</sup> Minn. Stat. § 211A.01, subd. 4.

<sup>7</sup> Respondents’ Brief at 5. (“Resp. Br. \_\_\_”).

St. Anthony fails to instruct this Court regarding statutory construction. When interpreting a statute, the court will first look to see whether the statute's language on its face, is clear or ambiguous.<sup>8</sup> "A statute is only ambiguous when the language therein is subject to more than one reasonable interpretation."<sup>9</sup> The basic canons of statutory construction instruct that courts should construe words and phrases according to their plain and ordinary meaning.<sup>10</sup> Furthermore, a statute should be interpreted, whenever possible, to give effect to all of its provisions.<sup>11</sup>

Since the legislature defined "committee," the Court is obligated to apply the definition accordingly. Under both Minn. Stat. §§ 211A.01, subd. 4, and 211B.01, subd. 4, the legislature used the disjunctive word "or" between "corporation" and "persons acting together" and "two or more persons acting together." This reflects the legislature's intent to show separate distinct circumstances of when a "committee" is formed to effect Minnesota's laws governing campaign reporting. Construing

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<sup>8</sup> See *Amaral v. Saint Cloud Hosp.*, 598 N.W.2d 379, 384 (Minn. 1999).

<sup>9</sup> *Id.*

<sup>10</sup> See *Frank's Nursery Sales, Inc. v. City of Roseville*, 295 N.W.2d 604,608 (Minn. 1980).

<sup>11</sup> *Amaral*, 598 N.W.2d at 384 ("no word, phrase, or sentence should be deemed superfluous, void, or insignificant"), citing *Owens v. Federated Mut. Implement & Hardware Ins.*, 328 N.W.2d 162, 164 (Minn. 1983).

the provision in the context of the campaign finance reporting laws under Minn. Stat. §§ 211A and 211B will not result in an absurd result or unjust consequence,<sup>12</sup> but effectuate the intent of the legislature.<sup>13</sup>

Had the legislature intended “committee” under Minn. Stat. §§ 211A and 211B to be defined differently or even consistent with Minnesota’s other election laws, it would have done so, but purposely did not. And there is no other legal challenge before this Court regarding for instance, its constitutionality.<sup>14</sup> What is certain under the

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<sup>12</sup> *Erickson v. Sunset Mem’l Park Ass’n*, 259 Minn. 532, 543, 108 N.W.2d 434, 441 (1961).

<sup>13</sup> *Amaral*, 598 N.W.2d at 385-86.

<sup>14</sup> St. Anthony nor the Minnesota Attorney General on behalf of the OAH, cross-appealed and neither party raised a constitutional issue relating to the definition of “committee.” Nevertheless, counsel for Barry and Spano feels obligated ethically to bring to this Court’s attention the matter of *Minnesota Citizens Concerned for Life, Inc. v. Kelley*, 698 N.W.2d 424 (Minn. 2005). There, the Minnesota Supreme Court narrowed the construction of the definition of “political committee” as it relates to groups obligated to report under Minn. Stat. § 10A.01, et seq. In a constitutional challenge to the definition under the First Amendment of the United States Constitution and the United States Supreme Court decision in *Buckley v. Valeo*, 424 U.S. 1 (1976) in federal court, who in turn certified the question to the Minnesota Supreme Court for adjudication, the State Supreme Court answered the following certified question in the affirmative:

Whether the use of the phrase “to influence the nomination or election of a candidate or to promote or defeat a ballot question” and related phrases in Minn. Stat. § 10A.01, subs. 27 and 28 may be narrowly construed to limit the application of those statutes to groups that expressly advocate the nomination or election of a particular candidate or the promotion or defeat of a ballot question.

instant facts, is that the St. Anthony school board expressly advocated the promotion of the ballot questions through financial support, using public funds and in-kind contributions through district employees, to ensure a successful campaign.

**II. St. Anthony's efforts to cross-pollinate definitions between "committee" and other statutory provisions is to defeat the intent of the legislature to ensure campaign activities are reported.**

St. Anthony seeks to bootstrap the definition of "ballot question" to deflect Barry's and Spano's arguments regarding the definition of school district as a quasi-public corporation and thus as a "corporation" falling within the Minn. Stat. §§ 211A's and 211B's definition of "committee." The attempt of St. Anthony should fail.

The definition of "ballot question" defines not only what a "ballot question" is — "a proposition placed on the ballot to be voted upon" — but also who may vote on that ballot. In this case, only those voters

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*Minnesota Citizens Concerned for Life*, 698 N.W.2d at 430. Under Minn. Stat. § 10A.01, subd. 27 "political committee" means,

[A]n association whose major purpose is to influence the nomination or election of a candidate or to promote or defeat a ballot question, other than a principal campaign committee or a political party unit.

Regardless of the court's decision or its applicability to the instant proceeding, if at all, Barry and Spano would submit that the St. Anthony School Board did advocate as a committee through its actions to disburse public funds beyond its authority to conduct an election for the purpose of promoting the ballot questions in 2008. And, therefore, it is obligated to report campaign finances under Minn. Stat. §§ 211A and 211B.

within the boundaries proscribed by the legislature<sup>15</sup> of the district governed by a school board — “voters of one or more political subdivisions but not by all the voters of the state.”<sup>16</sup> These are election districts.<sup>17</sup> St. Anthony seeks this Court to defy specific statutory *and* Supreme Court mandates regarding school districts. As previously identified in Barry’s and Spano’s principal brief, school districts are public corporations:

“[D]istricts shall be classified as common, independent, or special districts, *each of which is a public corporation.*”<sup>18</sup>

The legislature has proved by law for school districts, which it has constituted public corporations clothed with governmental power to perform public duty of providing public schools....<sup>19</sup>

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<sup>15</sup> See *City of Winona v. School District No. 82*, 40 Minn. 13, 4 N.W. 539 (1889); *Common School District No. 85 v. County of Renville*, 141 Minn. 300, 170 N.W. 216 (1918) (School district boundaries may be enlarged, diminished, or abolished in such manner and through such instrumentalities as the legislature may prescribe).

<sup>16</sup> Minn. Stat. § 211A.01, subd. 2.

<sup>17</sup> See Minn. Stat. § 205A.12, subs. 1 and 2.

<sup>18</sup> Minn. Stat. § 123A.55 (2008) (Emphasis added). Minn. Stat. § 123A is part of Minnesota’s Education Code Chapters 120-129B. Minnesota’s campaign finance reporting laws falls under chapter 200. Minn. Stat. § 205A.01, subd. 1, defines the scope of the definitions under chapter 200, and under subd. 2 defines “school district” as “an independent or special school district, as defined in section 120A.05.” Minn. Stat. § 120A.05 defines “common district” and “independent district” as “any school district validly created and existing as a [common or independent] school district or joint common school district as of July 1, 1957, or pursuant to the terms of the Education Code.” Thus, the definition of “school district” under the Education Code found at Minn. Stat. § 123A.55 is applicable to chapter 200 for purposes of statutory interpretation.

To suggest, as St. Anthony does, that “[i]f a school district is not a ‘political subdivision’ then the voters of a school district cannot vote on a ballot question”<sup>20</sup> defies logic and common sense. Eligible voters of that election district, identified as a school district — the defined election boundary — can vote for a ballot question, have done so, and will continue to do so. Voters residing outside those boundaries, obviously, are not eligible to vote. St. Anthony’s suggested interpretation would contradict basic statutory construction canons that seek to avoid an absurd interpretation, result, or consequence. Barry’s and Spano’s arguments merely seek to have the rule of law applied for the reporting of campaign finances applicable to the entity (or committee) actively promoting a ballot question, immersing itself in that campaign through disbursements and contributions.

St. Anthony, in other words, believes that a school district defined as a public corporation is mutually exclusive of a school district with defined election boundaries, wherein board members are elected. That is not the case.

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<sup>19</sup> *Muehrign v. School Dist. No. 31 of Stearns County*, 224 Minn. 432, 435 , 28 N.W.2d 655, 657 (1947) (citations omitted); *Village of Blaine v. Independent School District No. 12, Anoka County*, 272 Minn. 343, 350, 138 N.W.2d 32, 38 (1965) (School districts are “at least public corporations”).

<sup>20</sup> Resp. Br. 6.

St. Anthony, without elaboration, also tries to bootstrap the second sentence of Minn. Stat. § 211A.01, subd.4 as interfering with the independent decision-making process of the school board on passing on to, or denying ballot questions from reaching the voters:

Promoting or defeating a ballot question includes efforts to qualify or prevent a proposition from qualifying for placement on the ballot.<sup>21</sup>

The second sentence of Minn. Stat. § 211A.01, subd. 4 has never been interpreted by any Minnesota court. But, St. Anthony's suggestion that the board "would be prohibited from taking any action" is to create an absurd result violative of statutory construction. Nevertheless, the question is not before the Court. Barry and Spano have made no allegation that St. Anthony sought to qualify or prevent a proposition from reaching the ballot. The issue in the instant case is whether a school district should abide by Minnesota's campaign finance laws when it involves itself in the ballot question election campaign, expends money in doing so, or makes other contributions to that campaign. In short, St. Anthony's reference and discussion on this particular sentence is misplaced and inapplicable to this Court's final disposition.

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<sup>21</sup> Minn. Stat. §§ 211A.01, subd. 4, and 211B.01, subd. 4.

St. Anthony also brings forth a more problematic issue regarding seemingly conflicting terms of use for “committee” within the statute itself.<sup>22</sup> Minn. Stat. § 211A.05, subd. 1 requires the treasurer of the committee “formed to promote or defeat a ballot question who intentionally fails to file a report required by section 211A or ... is guilty of a misdemeanor.” St. Anthony contends that the school board members cannot be a committee as defined under Minn. Stat. § 211A.01, subd. 4 “because they were not formed to promote a ballot question.”<sup>23</sup> Although on its face the terms seem in conflict, they are not.

First, the facts reflect the school district admission that it expended money in the promotion of the ballot question:<sup>24</sup>

It has come to my attention that you [Barry] have requested the expenses as they related to our [St. Anthony school district] referendum campaign. The expenses are listed below.<sup>25</sup>

St. Anthony does not deny the district expended the money for the campaign nor that the authorizations came from the school board.

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<sup>22</sup> Resp. Br. 7-9.

<sup>23</sup> Resp. Br. 9.

<sup>24</sup> App. 12-13.

<sup>25</sup> App. 12.

Second, as a school board, the members acted as a committee to engage in the promotion of the ballot questions in 2008 — “our referendum campaign.” St. Anthony suggests, wrongly, that a group of persons acting together to influence the promotion of a ballot question, must reconfigure, reform, or re-formulate itself into another separate “committee” to come under Minn. Stat. § 211A.01, subd. 4 and thus, Minn. Stat. § 211A.05, subd. 1. In other words, St. Anthony cannot hide behind the present existing board, that acted together — a formulation of an effort — to allow the district to expend tax funds on its referendum campaign and to skirt the law that requires persons acting together to report campaign financing activities. Simply, the statute does not require a re-formation of an existing entity or group of individuals to fall within the scope of campaign finance laws.

St. Anthony further seeks to embody the definition of “candidate”— a person seeking election to a “school district, or other political subdivision” as quintessential evidence that a school district is a “political subdivision.” The definition of a candidate for office has no relation to the acts or actions of “persons acting together...to promote or defeat a ballot question.”<sup>26</sup> Again, as Barry and Spano previously

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<sup>26</sup> Minn. Stat. §§ 211A.01, subd. 4 and 211B.01, subd. 4.

argued, a school district defined as a public corporation does not mutually exclude the identity of an election district for which a candidate seeking to run for office. If the public corporation acts in a manner to promote the election of a ballot question (or even a candidate), the corporation is required to file campaign finance reports under Minn. Stat. § 211A and, if it fails to do so, suffer the consequences of Minn. Stat. § 211B.

Again, the admitted facts of this case reflect the intent of St. Anthony — it engaged in “our referendum campaign. The expenses are listed below.”<sup>27</sup> Whether St. Anthony is viewed as a public corporation or as board members acting together, the standards for a legislatively defined “committee” under Minn. Stat. §§ 211A.01, subd. 4 and 211B.01, subd. 4 are met.

**III. St. Anthony’s argument that it expended expenditures beyond those authorized by law are excluded from campaign finance reporting has no merit under the circumstances of the instant case.**

St. Anthony relies on two Attorney General opinions to suggest the expenditures for “our referendum campaign” are authorized by law. In particular, St. Anthony suggests that expenses for “professional

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<sup>27</sup> App. 12.

services” as listed are within the law.<sup>28</sup> Because the OAH did not find Barry and Spano had met the requirements of a prima facie case, no hearing or other evidence is available in the record for this Court to reach a disposition on the matter as a matter of law. Nevertheless, St. Anthony’s reliance on these Attorney General opinions is misplaced.

Opinions of the Attorney General are not binding on the courts, although “they are nevertheless entitled to careful consideration where they are of long standing and accompanied by administrative reliance thereon.”<sup>29</sup> In the instant case, the Attorney General Opinions relied upon have not been relied upon by the OAH or any other administrative body for the purposes of Minn. Stat. §§ 211A or 211B. Furthermore, upon closer reflection, the questions posed and answered by the Attorney General are not applicable to the instant factual scenario.

Although St. Anthony failed to provide this Court with the Attorney General Opinions it cites, they are found in Barry’s and Spano’s Supplemental Appendix attached hereto. The opinions are instructive. First, the Attorney General 1955 opinion answers the

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<sup>28</sup> App. 12-13.

<sup>29</sup> *Government Research Bureau v. St. Lousi County*, 258 Minn. 350, 357, 104 N.W.2d 411, 416 (1960); see also *Star Tribune Co. v. University of Minnesota Board of Regents*, 683 N.W.2d 274, 289 (Minn. 2004).

question whether a school district can contract with others to do surveys to obtain information helpful to that school district.<sup>30</sup> The answer is yes.<sup>31</sup> That issue is not before this Court.

The second Attorney General opinion dated September 1957, answers the question whether a school district may expend funds for printed literature, newspaper space, and radio time “to conduct an educational program” to inform the public to exercise their judgment to approve or disapprove a proposed program:

If the voters of the district will have to exercise their judgment on the subject matter contained in the survey, then the facts and data of the survey should be made known to them; they should not be left uniformed or misinformed.<sup>32</sup>

Again, the question is not whether the school board has the authority to expend moneys for such voter educational programs. But rather, whether when the board or school district acts to engage in “[their] referendum campaign” the disbursements promoting the ballot question are legitimate, are documented, and are within the law or beyond that which is authorized by law. The reporting of campaign finances under Minn. Stat. §§ 211A and 211B furthers the intent of the legislature to protect the integrity of the election process.

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<sup>30</sup> Supp. App. 4-5, Op. Atty. Gen. (1955).

<sup>31</sup> *Id.*

<sup>32</sup> Supp. App. 6-7, Op. Atty. Gen. (1957).

St. Anthony's factual admissions reflect the use of public money to promote a ballot question from an entity with theoretically unlimited resources – the school district. Without the check of campaign finance reporting, there is no balance, no transparency for the public. As the school district dips into the public funds to promote ballot questions, the voters within the same election district boundaries are prohibited from dipping into the same well to oppose the ballot question.

Opponents must seek funding from other sources and, fall within the scope of Minnesota's campaign finance disclosure laws. Thus, while those opponents apparently must accept the use of public funds to promote a ballot question they oppose, the opponents school districts have a reasonable expectation that the school district when using public funds to promote a ballot question be required to comply with campaign finance disclosure laws.

### **Conclusion**

The intent of the Minnesota legislature regarding campaign finance reporting is to ensure transparency and integrity of election campaigns. When school districts involve themselves directly in a referendum election campaign to promote or defeat a ballot question, they should be treated as any other "committee" acting as a corporation — which it is — or as persons acting together — as a school board, and

be subject to the rule of law. A school district is a public corporation. School board members may act together as a committee and when they allow the district to expend money for the promotion of a ballot question, they must comply with all applicable election laws, here, Minn. Stat. §§ 211A and 211B.

The arguments promoted by St. Anthony in its responsive brief are unpersuasive, incomplete, and contrary to the applicable canons of statutory construction. To adopt St. Anthony's view is to defeat the intent of the Minnesota legislature and defeat the plain meaning of campaign finance laws in this state. For these reasons and the reasons set forth in Barry's and Spano's principal brief, the OAH decision should be reversed, and if necessary, this matter remanded for further disposition.

**MOHRMAN & KAARDAL, P.A.**



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Erick G. Kaardal, 229647  
33 South Sixth Street, Suite 4100  
Minneapolis, Minnesota 55402  
Telephone: 612-341-1074

Dated: August 27, 2009.

*Attorney for Petitioners*