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Sent via email

January 11, 2022

The Honorable Jerome Powell
Chair
Board of Governors for the Federal Reserve System
20th Street and Constitution Avenue Northwest
Washington, DC 20551

Dear Chair Powell:

Since its inception in 1913, the Federal Reserve System has consistently recognized the need to avoid being identified with political activities to ensure the System remains independent and insulated from politics. Despite this history, the Minneapolis Federal Reserve Bank, under the leadership of President Neel Kashkari, launched a grass roots lobbying campaign in 2019 to amend the education clause of the Minnesota constitution. This campaign is in clear violation of Federal Reserve Board policies on political activity and potentially violates the federal Anti-Lobbying Act. Moreover, it upsets the Constitution's separation of powers between the states and federal government.

To protect the state of Minnesota from improper federal influence and to protect the political independence of the Federal Reserve System, we ask that you exercise your general powers of supervision over the Minneapolis Fed to stop this unlawful grass roots lobbying campaign.

Minneapolis Fed Launches a Controversial Political Campaign to Amend the Minnesota State Constitution

In October 2019, Mr. Kashkari published a commentary in the *Star Tribune* with retired Minnesota Supreme Court Justice Alan Page announcing their partnership to “develop a fundamentally different approach to closing Minnesota’s [education] achievement gaps.”¹ This commentary highlighted the results of a Minneapolis Fed report on the performance of Minnesota’s schools and highlighted the persistent achievement gap that exists for children of color and with low incomes.²

¹ Neel Kashkari and Alan Page, “Educational disparities still plague Minnesota students,” *Star Tribune*, October 13, 2019, available at <https://www.startribune.com/educational-disparities-still-plague-minnesota-students/562859282/>.

² Rob Grunewald and Anusha Nath, *A Statewide Crisis: Minnesota’s Education Achievement Gaps*, Federal Reserve Bank of Minneapolis (October 2019), available at <https://www.minneapolisfed.org/policy/education-achievement-gaps/executive-brief>.

This is the type of research Federal Reserve Banks regularly publish to educate the public. Yet, unlike other research, the Minneapolis Fed used this research to launch a political campaign to amend the state constitution. By January 2020, just ahead of the state legislative session, the bank's website announced: "Armed with compelling research from Minneapolis Fed economists ... former Supreme Court Justice Alan Page and Minneapolis Fed President Neel Kashkari are leading a broad-based effort to amend the Minnesota constitution and guarantee a quality education for all of Minnesota's children."³

Proponents of the Page-Kashkari amendment argue the current constitutional framework does not provide strong enough guarantees to close the state's achievement gap. The bank's website states that Minnesota's Supreme Court interprets the constitutional "language to mean that students have a fundamental right to an *adequate* education system," and then argues: "No parent aspires for their child to have an *adequate* education."⁴ The proposed amendment, it says, would create "a fundamental right to a quality public education ... as measured against uniform achievement standards."⁵

The proposed amendment has stirred up a passionate debate among Minnesotans. An informational hearing in the Minnesota House Education Policy Committee in March 2021 attracted written testimony from over 100 people and organizations.⁶ Opponents of the amendment argue it would jettison the current constitutional framework without providing a specific remedy or policy to close the achievement gap. Moreover, opponents worry it "would open a Pandora's box of lawsuits."⁷

Bank's Resources Fund Lobbying Activities

Mr. Kashkari and the Minneapolis Fed are still leading the campaign and using the bank's resources to fund classic grass roots lobbying activities. The bank's official website includes a web page devoted to the amendment, which is regularly updated and prominently advertised on the home page. The web page explicitly states, "The Federal Reserve Bank of Minneapolis is proud to partner with a diverse, bipartisan coalition of people and organizations in support of the Page amendment."⁸ This is a clear call for citizens to support the amendment, which is reinforced by calls to sign up for regular email updates, Tweets from the bank, and more commentaries by Kashkari published in local newspapers.

³ Federal Reserve Bank of Minneapolis website, "A Statewide Crisis: Minnesota's education achievement gaps demand a bold approach," December 4, 2019, archived at <https://web.archive.org/web/20200120192414/https://www.minneapolisfed.org/policy/education-achievement-gaps>

⁴ Federal Reserve Bank of Minneapolis website, "Closing Minnesota's achievement gaps: Why a constitutional amendment?", at <https://www.minneapolisfed.org/policy/education-achievement-gaps/why-a-constitutional-amendment> (accessed on January 5, 2022).

⁵ Id.

⁶ Minnesota House of Representatives, Education Policy Committee Meeting Minutes, March 8, 2021, available at <https://www.house.leg.state.mn.us/committees/minutes/92006/88774>.

⁷ Katherine Kersten, "Constitutional amendment on schools won't help, will hurt," *Star Tribune*, February 18, 2020, available at <https://www.startribune.com/katherine-kersten-constitutional-amendment-on-schools-won-t-help-will-hurt/567776562/>.

⁸ Federal Reserve Bank of Minneapolis website, "Page amendment: Every child deserves a quality public education," at <https://www.minneapolisfed.org/policy/education-achievement-gaps> (accessed on January 5, 2022).

Kashkari and the bank's staff also participated in legislative hearings and they clearly participated and testified in their capacity as employees of the Minneapolis Fed. Leading up to the March 2021 House Education Policy Committee Hearing, Kashkari sent a letter to committee members that began "Thank you for welcoming the Federal Reserve Bank of Minneapolis to speak on behalf of H.F. 874, a bill introduced by Vice Chair Hodan Hassan and Representative Ron Kresha that would amend the Minnesota Constitution to make a quality public education a fundamental right for all children."⁹ Kashkari also enlisted a senior vice president with the bank to join him to offer "our perspective" in favor of the amendment at the hearing.¹⁰

In the clearest example of grass roots lobbying, the bank continues to hold a series of "community conversations" across the state that provide a public platform for school board members, teachers, and legislators to rally support for the amendment. Participants in these meetings direct people to the Our Children website, the 501(c)(4) advocacy organization devoted "to build support to pass the Page Amendment."¹¹ In addition, meeting participants often include a call to contact your legislator. For instance, in response to a question on how to help, Alan Page concludes the Farmington event by saying, "the easiest and the most obvious is to contact your legislators, let them hear from you."¹² In fact, in some presentations they name bill sponsors and ask people to call and thank them.¹³ The *Minnesota Reformer* reports that these events have reached thousands.¹⁴

Bank's Lobbying Violates Federal Reserve Policy

The Minneapolis Fed's lobbying campaign clearly violates the Federal Reserve Board's long-standing policy against bank directors' and officers' involvement in controversial political activities. As the Board explained in comments on a bill to Congress in 1949: "Throughout its history the System has been at pains to abstain from partisanship of any character and the Board has enforced a rule that directors and officers of the 12 Federal Reserve banks and their 24

⁹ Neel Kashkari, Letter to Chair Richardson, Republican Lead Erickson, and Members of the House Education Policy Committee, March 5, 2021, available at https://www.house.leg.state.mn.us/comm/docs/lhIBOT_IZ0Cdne6wTDJg.pdf.

¹⁰ Neel Kashkari and Alene Tchourumoff, Testimony to the Minnesota House Education Policy Committee, March 8, 2021, available at <https://www.house.leg.state.mn.us/hjvid/92/893564> (testimony begins at about 17:30).

¹¹ Our Children MN website, "About the Team," at <https://ourchildrenmn.com/about/about-the-team/> (accessed on January 5, 2022).

¹² See e.g., Federal Reserve Bank of Minneapolis, "Page amendment: A community conversation with the Farmington school board on educating all of our children," February 2, 2021, available at <https://www.minneapolisfed.org/events/2021/page-amendment-a-community-conversation-with-the-farmington-school-board-on-educating-all-of-our-children>; and Federal Reserve Bank of Minneapolis, "Page amendment: A community conversation with Twin Cities Diversity in Practice about educating all of our children," June 9, 2021, available at <https://www.minneapolisfed.org/events/2021/page-amendment-a-community-conversation-with-twin-cities-diversity-in-practice>.

¹³ See e.g., Federal Reserve Bank of Minneapolis, "Page amendment: A community conversation with the Minnesota Parent Union on educating all of our children," February 10, 2021, available at <https://www.minneapolisfed.org/events/2021/page-amendment-a-community-conversation-with-the-minnesota-parent-union-on-educating-all-of-our-children>.

¹⁴ Deena Winter, "Fed bank president defiant in face of criticism of his lobbying on state education," *Minnesota Reformer*, August 5, 2021, available at <https://minnesotareformer.com/2021/08/05/fed-bank-president-defiant-in-face-of-criticism-of-his-lobbying-on-state-education/>.

branches *must not be identified with partisan or political activity.*¹⁵ This policy barring engagement in certain political activities, as the Board explains in their policies governing bank directors, “has demonstrated its usefulness throughout the history of the Federal Reserve System in preserving the political independence of the System, which is an essential element to the System's ability to conduct its monetary policy, crisis management, financial institution supervision, payments and other activities in a nonpartisan manner.”¹⁶

Mr. Kashkari and the Minneapolis Fed are not only identified with controversial political activity, they are the face of this activity. The Minneapolis Fed’s code of conduct could not be clearer, “although an employee may participate or become involved in issues of general public concern or debate, the employee's association with the Bank must not be publicized in connection with any political activity.”¹⁷ Clearly, employees are not to associate the Bank with positions in public debates and yet, that is exactly what Mr. Kashkari and bank employees are doing. The code further instructs, “an employee may not engage in political activity while on duty or on Bank premises.”¹⁸ Clearly, this activity is happening on duty at the Bank.

Most concerning, they are using the bank’s funding to pay for these political activities. Bank revenues that should be directed to other operating expenses or returned to the Treasury are being spent on politically controversial research, messaging and communications, web site maintenance, and events. The fact that the Federal Reserve Act requires banks to return excess revenues to the Treasury suggest Minneapolis Fed employees may be violating federal law.

Campaign Potentially Violates the Federal Anti-Lobbying Act

Congress enacted the Anti-Lobbying Act in 1919 to prohibit federal employees from using federal appropriations to lobby Congress.¹⁹ It amended the law in 2002 to substitute civil penalties, ranging from \$10,000 to \$100,000, in place of criminal penalties. Most pertinent to Kashkari and his staff, the prohibition now extends to lobbying with the purpose of influencing any government policy at every level of government, not just members of Congress. Therefore, federal law now prohibits lobbying to influence state legislators and citizen votes on a ballot measure.

While the Minneapolis Fed’s actions are clearly lobbying, whether they are using a federal appropriation is not clear. The banks have long maintained that they are not funded by federal appropriations. Instead, the bank’s revenue largely derives from interest on government securities. But Congress authorized Fed banks to charge interest, forced member banks to participate in the system, and carefully directs how Fed banks can use the revenue. In effect, the bank’s revenue stream operates as a continuing appropriation. As the Comptroller General of the United States once explained, it “has consistently held that the term ‘appropriated funds’

¹⁵ Progress on Hoover Commission Recommendations, Report of the Committee on Expenditures in the Executive Departments, October 12, 1949 (emphasis added).

¹⁶ Board of Governors of the Federal Reserve System, Policies Governing Directors Political Activity, available at <https://www.federalreserve.gov/aboutthefed/directors/PDF/political-activity.pdf>.

¹⁷ Federal Reserve Bank of Minneapolis, Code of Conduct, as revised June 15, 2009, available at <https://www.minneapolisfed.org/~media/files/about/codeofconduct.pdf?la=en>.

¹⁸ Id.

¹⁹ 18 U.S.C. § 1913.

includes not only funds appropriated by Congress out of the Treasury, but also other funds specifically made available by statute for obligation and expenditure by a government entity.”²⁰

While it’s not clear how a court would rule, this is a case where strong facts—a Fed Bank clearly abusing its independence—may weigh in favor of a court finding a violation. Whether or not the bank’s revenue is technically an appropriation, the behavior of the Minneapolis Fed does call into question whether the interest earned on government securities should be considered an appropriation. Why treat interest payments to the Fed any different than user fee payments to enter a National Park? Of course, avoiding these questions is exactly why the Fed restricts engaging in certain political activity.

Constitutional Concerns

Beyond this potential violation of the Anti-Lobbying Act, the Minneapolis Fed’s lobbying activities raise serious constitutional concerns. Under the U.S. Constitution, states hold dual sovereignty with the federal government. Justice Sandra Day O’Connor noted in *Gregory v. Ashcroft* that this is a fundamental principle of federalism “every schoolchild learns.”²¹ She further instructed, “[p]erhaps the principal benefit of the federalist system is a check on abuses of government power,” explaining that “a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front.”²²

Even modest steps taken by the Minneapolis Fed to directly influence state law upend this healthy balance. By using the Fed’s budget and clout, Kashkari and bank employees directly interfere with the state of Minnesota’s sovereign right and responsibility to operate independently from the federal government. Indeed, the Fed is trying to influence an education policy that is entirely reserved to state lawmakers.

Meddling in state affairs is not among the limited powers the Constitution grants to the federal government. State sovereignty could lose all meaning if the federal government is empowered to freely wage and fund campaigns to align states with federal policy.

Fed’s Independence Compounds the Constitutional Concerns

The Minneapolis Fed compounds these constitutional concerns because, by design, it operates independently. Because Congress authorizes the bank to collect revenue by charging interest independent from a direct Congressional appropriation, it operates largely outside the checks and balances that limit other federal agencies.

The Fed received this independence to allow it to freely set monetary policy apart from short-term political influence. Yet, the Minneapolis Fed is using this independence to testify in St. Paul and organize citizens to call state legislators. If this is lawful, then there is virtually no limit on the Minneapolis Fed’s state lobbying activity given the agency’s lack of accountability and

²⁰ Comptroller General of the United States, B-217578, Comments on Saint Lawrence Seaway Development Corporation Use of Appropriated Funds, October 16, 1986, available at <https://www.gao.gov/assets/b-217578.pdf>.

²¹ *Gregory v. Ashcroft*, 501 US 452, 457 (1991).

²² *Id.* at 458.

unlimited funding stream. If activists within the Fed can allocate \$100,000 to its current grass roots campaign, nothing would prevent a \$1 million campaign, or more.

Clearly, the U.S. Constitution does not allow Congress to establish an independent government entity to collect interest from private banks to fund campaigns to influence changes in state law.

Lobbying Undermines the Bank's Credibility

When confronted with criticisms from former Fed officials, Mr. Kashkari strongly defends the bank's lobbying efforts. He cites the bank's congressionally mandated goal of maximum employment and argues the Page-Kashkari Amendment is a tool to accomplish that because education is the most important determinant to meet that goal. Yet nearly every state policy impacts employment, from corporate taxation to electricity regulation to public welfare programs. If the Fed banks can influence state lawmakers to achieve full employment, then there is no limit to their meddling in state politics.

In an interview with the *Minnesota Reformer*, Mr. Kashkari responds to critics of the bank's lobbying efforts by claiming they can't argue on the substance and so must "reach for arguments like this."²³ He further criticizes his opposition by claiming "[t]here are a lot of people who don't care about the education disparities in Minnesota."²⁴ Ironically, this response reveals how it's Mr. Kashkari who can't argue the substance and defend the bank's lobbying. Instead, he resorts to suggesting his critics don't care. Incredibly, on his Minneapolis Fed letterhead, Mr. Kashkari also resorted to telling highly regarded law professor Myron Orfield, a critic of the amendment, that his views "appear to be grounded in racism."²⁵ It's hard to read Mr. Kashkari's words as anything but a smear to bully and undermine an opponent. Whether or not you agree with his policies, the racism label does not stick on someone who has written as expansively on racial inequities in housing and schools as Prof. Orfield.

Mr. Kashkari's hostile response to critics reveals how he's set the Minneapolis Fed squarely on one side of a highly controversial, politicized issue. Sen. Pat Toomey has also raised serious concerns with Kashkari over the bank's engagement with politically and emotionally charged topics through their Racism and the Economy series. In a letter to Kashkari, Sen. Toomey specifically cautioned him "on the reputational damage being inflicted on the Minneapolis Fed and the Federal Reserve as a whole by pursuing a highly politicized social agenda unrelated to monetary policy."²⁶

Unfortunately, the public now has good cause to question whether the Minneapolis Fed is advancing a political agenda through its research and education arm. It's one thing to produce research on a particular economic policy from an independent perspective as the Fed regularly

²³ Deena Winter, "Fed bank president defiant in face of criticism of his lobbying on state education," *Minnesota Reformer*, August 5, 2021, available at <https://minnesotareformer.com/2021/08/05/fed-bank-president-defiant-in-face-of-criticism-of-his-lobbying-on-state-education/>.

²⁴ Id.

²⁵ Neel Kashkari, Letter to Myron Orfield, March 2, 2020, available at https://www.house.leg.state.mn.us/comm/docs/lhIBOT_IZ0Cdne6wTDJg.pdf.

²⁶ Sen. Pat Toomey, Letter to Neel Kashkari, May 23, 2021, available at https://www.banking.senate.gov/imo/media/doc/toomey_to_minneapolis_fed.pdf.

provides—such as research on the minimum wage or the housing market—but that independence falls away when research turns to advocacy.

The employees and officers at the Federal Reserve Bank of Minneapolis who led the bank into a public debate over amending the Minnesota constitution are clearly violating the bank's own code of conduct. For this reason alone, the Federal Reserve Board and the directors of the bank should take immediate action to require the bank to cease and desist any activities related to the Page-Kashkari amendment. This includes the removal of all content related to the amendment from the bank's website, including the underlying research reports. The Board should also refer this issue to the Office of Inspector General and the Government Accountability Office to review whether the Minneapolis Fed employees or officers are violating the Anti-Lobbying Act or any other federal rule or policy.

Your prompt attention to this matter will help the Federal Reserve System regain credibility in the Ninth District and avoid any future embarrassment that might risk the political independence of the System.

Sincerely,

/s/

Peter J. Nelson,
Senior Policy Fellow
Center of the American Experiment

cc: Richard H. Clarida, Vice Chair, Board of Governors of the Federal Reserve System
Lael Brainard, Member, Board of Governors of the Federal Reserve System
Michelle Bowman, Member, Board of Governors of the Federal Reserve System
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Mark Bialek, Inspector General, Board of Governors of the Federal Reserve System
Neel Kashkari, President, Federal Reserve Bank of Minneapolis