

# Office of the Minnesota Secretary of State

## Minnesota Public Benefit Corporation / Annual Benefit Report

Minnesota Statutes, Chapter 304A



Read the instructions before completing this form

Must be filed by March 31

Filing Fee: \$55 for expedited service in-person, \$35 if submitted by mail

The Annual Benefit Report covers the 12 month period ending on December 31 of the previous year.

Notice: Failure to file this form by March 31 of this year will result in the revocation of the corporation's public benefit status without further notice from the Secretary of State, pursuant to Minnesota Statutes, Section 304A.301

1. File Number 1201862200035

2. Corporate Name: (Required) The Forum for Constitutional Rights, GBC

3. The public benefit corporation's board of directors has reviewed and approved this report.

4. In the field below, enter the information required by section 304A.301 subd. 2 or 3 for the period covered by this report, (see instructions for further information); Note: Use additional sheets if needed. (Required)

Please see attached supplement.

5. I, the undersigned, certify that I am the chief executive officer of this public benefit corporation. I further certify that I have signed this document no more than 30 days before the document is delivered to the secretary of state for filing, and that this document is current when signed. I further certify that I have completed all required fields, and that the information in this document is true and correct and in compliance with the applicable chapter of Minnesota Statutes. I understand that by signing this document I am subject to the penalties of perjury as set forth in Section 609.48 as if I had signed this document under oath.

  
Signature of Public Benefit Corporation's Chief Executive Officer

2/26/24

Date (Must be dated within 30 days before the report is delivered to the Secretary of State for Filing)

### Email Address for Official Notices

Enter an email address to which the Secretary of State can forward official notices required by law and other notices:

Check here to have your email address excluded from requests for bulk data, to the extent allowed by Minnesota law.

List a name and daytime phone number of a person who can be contacted about this form:

Matt Ehling

651-335-2037

Contact Name

Phone Number

Entities that own, lease, or have any financial interest in agricultural land or land capable of being farmed must register with the MN Dept. of Agriculture's Corporate Farm Program.

Does this entity own, lease, or have any financial interest in agricultural land or land capable of being farmed?

Yes  No

**The Forum For Constitutional Rights, GBC**  
**Information Required by Minn. Stat. § 304A.301, subd 3.**  
**(Supplement to 2023 Annual Benefit Report)**

The Forum For Constitutional Rights, GBC, is a Minnesota general public benefit corporation, organized to provide a general public benefit through its operations.

The Forum For Constitutional Rights, GBC (FCR) was registered by the Minnesota Secretary of State on December 21, 2020. Calendar year 2023 was FCR's fourth year in business, and third full year of operations.

FCR's articles describe the corporation's general public benefit purpose as follows:

“The Forum For Constitutional Rights, GBC ... shall be a general public benefit corporation organized and operated to pursue a general public benefit, focused on providing public education about constitutional history and constitutional rights, including but not limited to First Amendment rights. Public education activities undertaken by the Corporation may include, but are not limited to, publishing and filing of amicus briefs in court cases pertaining to First Amendment and free speech issues.”

To carry out this purpose, FCR engages in commercial activity in order to generate revenue sufficient to support the following activities:

1. Publishing books, pamphlets, electronic media, or similar, related to U.S. Constitutional history (either state or federal), or related public affairs issues that pertain to constitutional rights, governmental power, or other constitutional matters;
2. Filing amicus (friend-of-the-court) briefs in state and federal litigation that involve state or federal constitutional issues - including free speech issues.

FCR is non-partisan in its focus, and seeks to elevate the discourse about constitutional matters by highlighting the enduring principles that flow from America's constitutional tradition — such as free speech and due process protections. FCR seeks to maintain support for these ideas across the political spectrum, in order to ensure that these foundational concepts remain central to America's civic life.

In its amicus briefing practice, FCR supports plaintiffs irrespective of their political persuasion or other political considerations, and focuses solely on whether plaintiffs are

seeking to protect and secure rights and principles guaranteed by the Constitution of the United States of America, or by the constitutions of the individual states.

### **Third-Party Standard**

Certification: The board of directors of FCR ("Board") certifies that it has chosen a third-party standard as required by Minn. Stat. § 304A.301 to guide its operations. The third-party standard applies to FCR's operations described in this report. The chosen third-party standard was derived from the following source:

1. The Constitution of the United States of America, including all amendments ratified and adopted by the people of the United States of America.

Selection of Standard: The Board selected FCR's third-party standard upon FCR's organization in 2020, and FCR continued to rely on that standard during the 2023 operating year.

Determination: The Board has determined that the entity that promulgated the third-party standard adopted by FCR (the people of the United States of America) is independent from FCR. The United States Constitution ("USC") is based on principles promulgated during debates that occurred after the American Revolutionary War, and it - and its amendments - have been ratified and adopted by successive generations of American citizens during the two-plus centuries that have followed. FCR is not, and has not been, a party to the debates over, or ratification of, the USC or any of its amendments.

Application of Standard: The Board certifies that FCR is applying the third-party standard in a manner consistent with the standard's application in FCR's prior report. Further detail on the application of the standard is provided in the "narrative of operations" section of this report.

### **Narrative of Operations**

Pursuit of public benefit: 2023 was FCR's third full calendar year of operations, and the corporation undertook four key initiatives related to its public benefit purpose:

1. Filing amicus briefs in Minnesota and federal court cases;
2. Tracking and prioritizing ongoing constitutional law-related litigation for future amicus participation;
3. Gathering material and conducting research for future IA Publishing

manuscript offerings;

4. Investigating an additional avenue of activity for FCR.

All publishing and legal activities undertaken by FCR were related to the pursuit of FCR's general public benefit purpose, as further described herein.

Achievement of public benefit: FCR's activities achieved and/or supported its public benefit purpose in the following ways:

1(a). Consistent with its mission to file amicus briefs in significant constitutional law cases, FCR filed a friend-of-the-court brief in the *Energy Transfer LP v. Greenpeace International* case, when the case was before the Minnesota Court of Appeals.

The *Energy Transfer* case involves an attempt by corporate entity Energy Transfer LP to compel the disclosure (via subpoena) of video recordings and other materials from Unicorn Riot, a video collective that documented protest activity around the Dakota Access pipeline. (The pipeline was designed and built by Energy Transfer LP.)

Unicorn Riot declined to comply with the subpoenas, citing protections offered by the Minnesota Free Flow of Information Act (MFFIA). Under the MFFIA, a person "who is or has been directly engaged in the gathering, procuring, compiling, editing, or publishing of information for the purpose of transmission, dissemination or publication to the public" is protected from the compelled disclosure of information in many circumstances, subject to limited statutory exceptions.

The MFFIA and other state-level "shield laws" act to facilitate the free-flow of information, including by members the news media, by protecting them from subpoenas that could disclose sources, reveal unpublished story notes, and similar.

While frequently used by the legacy news media, the MFFIA does not solely cover "traditional" news reporters, but any person who falls within the statute's broad ambit of "publishing information" for "dissemination or publication to the public." The question of whether the MFFIA protects Unicorn Riot from Energy Transfer's subpoenas is at issue in the *Energy Transfer* case, which the Minnesota Court of Appeals took up in 2023. (Energy Transfer appealed a district court decision which held that Unicorn Riot was covered by the MFFIA, and that the MFFIA's statutory exceptions did not apply to Unicorn Riot in this instance.)

FCR's amicus brief focused on ensuring that the Court of Appeals understood that the

MFFIA's broad scope covers all manner of publishers — including unconventional, ideological publishers like Unicorn Riot. The MFFIA's protections were designed to encourage the sort of robust reportage and publishing envisioned by the framers of the First Amendment, and FCR's brief makes the case that the statute should continue to be interpreted broadly. Other amici focused on issues related to the MFFIA's statutory exceptions, which are being asserted in the case. Oral argument in the case occurred on February 14, 2024.

1(b). FCR also filed an amici brief (along with the Fourth Amendment advocacy organization Restore the Fourth) in the case *Federal Bureau of Investigation v. Yonas Fikre*.

In the facts underlying *Fikre*, U.S. citizen Yonas Fikre was placed on the “no-fly list” after holding a fundraiser for the Portland mosque he attended. Litigation over Fikre's inclusion on the no-fly list ensued; continued for several years; and then the FBI issued a declaration stating the Fikre was no longer on the no-fly list, and would “not be placed on the No Fly List in the future based on the currently available information.” The government then sought to get the case dismissed on the grounds that it was moot.

In *City of Mesquite v. Aladdin's Castle* (1982) the U.S. Supreme Court held that a lawsuit shall not be considered moot unless it is “absolutely clear” that the challenged conduct could not reasonably be expected to recur. Given the fact that the operation of the federal no-fly list is highly opaque, and given the nature of the relief that Mr. Fikre sought through his lawsuit (including declaratory relief related to the government's original actions), it is not “absolutely clear” at all from the Fikre declaration that the government would not — at some future point — decide to place Mr. Fikre back on the no-fly list, based upon the government's original procedures, which Fikre claims are constitutionally deficient.

In order to arrive at the merits of Mr. Fikre's claims — one way or another — Mr. Fikre's lawsuit would need to proceed to the merits stage, as allowed by the precedent established in *City of Mesquite*. FCR's concern with the *FBI w. Fikre* case is that, if decided in favor of the FBI, it would undermine the important precedent established by *City of Mesquite* and would weaken the voluntary cessation doctrine. That doctrine is essential to court review of, among other things, constitutional claims brought by individuals, as it prohibits the government from strategically “mooting” cases to evade court review. Accordingly, FCR filed an amici brief in conjunction with Restore the Fourth, focused on preserving a robust voluntary-cessation doctrine. FCR's amicus brief was filed at the United States Supreme Court, and the Court heard oral argument on January 8, 2024.

2. FCR has conducted research regarding amicus briefs that FCR may wish to file in future months. FCR has identified a Minnesota case related to attorney fees in eminent domain cases — *State of Minnesota, by its Commission of Transportation v. David Schaffer, Joseph Hamlin*.

The Board has determined that FCR's pursuit of amicus participation in this case (which is related to the vindication of Fifth Amendment constitutional claims, and analogous claims under the Minnesota Constitution) is consistent with FCR's mission, and aligns with the third-party standard that guides FCR's work.

3. Consistent with its mission to engage in publishing activities that pertain to constitutional history, constitutional rights, or governmental power, FCR conducted further research relating to the late M. Gene Wheaton, an individual who was central to the exposure of the "Iran-Contra" scandal of the mid-1980s. That scandal involved multiple questions pertaining to constitutional law, as well as governmental power. Mr. Wheaton, and the various historical matters he intersected with, was the subject of "The Wheaton Papers: Volume 1" released by 1A Publishing in 2022. (1A Publishing is a "dba" name used by FCR for its publishing operations.) FCR's current research into Mr. Wheaton's activities will be made available in a subsequent, second volume of the "The Wheaton Papers."

FCR also continued work on two other manuscripts to be released by 1A Publishing — including a historical overview of important federal constitutional law cases, and an examination of a specific high-security U.S. military facility, and the impact of its secrecy protocols on governmental processes.

The Board has determined that FCR's pursuit of publishing projects that pertain to constitutional rights, constitutional history, and governmental power is consistent with FCR's mission, and aligns with the third-party standard that guides FCR's work.

4. During 2023, FCR investigated an additional avenue of possible activity, related to filing amicus briefs in cases pertaining to copyright matters stemming from the development of artificial intelligence (AI) programs. The development of so-called "large language model" AI programs like "CHAT GPT" has been based, in large part, on those programs ingesting — and "training" on — web-hosted text content, including content protected by U.S. copyright. Copyright in U.S. law stems from the U.S. Constitution's Article I, Clause 8 that relates to "intellectual property." That article states that "to promote the Progress of Science and useful Arts" authors have "for limited times ... the exclusive Right to their respective Writings and Discoveries."

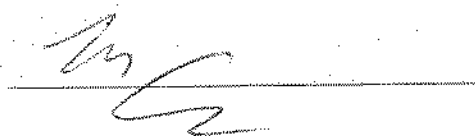
When AI tools "train" on material protected by copyright without the permission of the

copyright holder, such activity violates U.S. copyright, and disadvantages authors. FCR is examining whether to file amicus briefs on behalf of authors and other copyright holders who have been damaged by such activity. In the event that FCR begins filing such briefs, FCR has reserved the Minnesota "dba" name "The Center For Technology Regulation" for use in such filings.

Circumstances that hindered efforts: During 2023, FCR encountered no circumstances that hindered efforts toward achieving its public purpose.

Certification of Approval: As required by Minn. Stat. § 304A.301, the Board certifies that it has reviewed and approved this report.

Signed,



Matt Ehling  
Chair, Board of Directors  
The Forum For Constitutional Rights

February 26, 2024



**Work Item 1461815400039**  
**Original File Number 1201862200035**

STATE OF MINNESOTA  
OFFICE OF THE SECRETARY OF STATE  
FILED  
**03/08/2024 11:59 PM**

*Steve Simon*

Steve Simon  
Secretary of State