

**STATE OF MINNESOTA
CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD**

**PRIMA FACIE
DETERMINATION**

IN THE MATTER OF THE COMPLAINT OF RACHEL ROMANSKY REGARDING THE PERRY NOUIS FOR MINNESOTA COMMITTEE

On October 19, 2020, the Campaign Finance and Public Disclosure Board received a complaint submitted by Rachel Romansky regarding the Perry Nouis for Minnesota committee. Perry Nouis for Minnesota is the principal campaign committee of Perry Nouis, a candidate for Minnesota House District 44A. The complaint alleges multiple violations of Minnesota Statutes Chapters 10A and 211B.

The complaint alleges that the Nouis committee mailed a flier promoting Mr. Nouis's candidacy and a separate piece of campaign material promoting the candidacy of multiple state, federal, and local candidates, including Mr. Nouis and state senate candidate Greg Pulles, in the same envelope to Plymouth residents in District 44A. The complaint includes a photograph appearing to depict Mr. Nouis preparing the materials to be mailed that was posted on the Nouis committee's Facebook page on October 5, 2020. The complaint also includes photocopies of the campaign material and an envelope received by Mrs. Romansky, which displayed the Nouis committee's name and mailing address on the return address label. The piece of campaign material promoting multiple candidates included a disclaimer that stated "Independently Prepared & Paid for by G. Wegner, a Concerned Plymouth Citizen." The complaint alleges that G. Wegner is George Wegner, the spouse of the Nouis committee's chair, Carol Wegner.

The complaint also claims that the Nouis committee used its website to promote the candidacies of other state and federal candidates by displaying images with the names of those candidates, many of which were hyperlinked to the websites of the candidates. The complaint includes screenshots of cached versions of the Nouis committee's website dated August 13, and June 9, 2020.

The complaint alleges that the value of the mailed campaign material promoting multiple candidates and the images posted on the Nouis committee's website promoting other candidates were coordinated expenditures under Minnesota Statutes section 10A.176, subdivisions 6 and 7. The complaint alleges that the mailing and the Nouis committee's website constituted contributions from the Nouis committee to the candidates named in those materials in violation of Minnesota Statutes section 10A.27, subdivision 9. The complaint does not allege or assert any facts indicating that Mr. Wegner or the Nouis committee coordinated their efforts with any other candidate.

The complaint alternatively alleges that the mailing and the website constituted independent expenditures made by the Nouis committee in violation of Minnesota Statutes section 10A.25, subdivision 3a. That provision prohibits the principal campaign committee of a candidate who

has signed the public subsidy agreement from making independent expenditures. Mr. Nouis filed his public subsidy agreement with the Board on May 24, 2020. The mailed piece of campaign material promoting multiple candidates included several instances of the word “vote” and a sentence stating “[i]f you want stable, sound, local, state and federal government...Safe, Effective, Clean and Hopeful...vote to let these fine people represent us.”

The complaint next alleges violations of the contribution limits established by Minnesota Statutes section 10A.27, subdivision 1. The basis for this allegation is the assertion that the Nouis committee accepted a contribution from Mr. Wegner valued in excess of \$1,000 and that the candidates named in the mailing accepted contributions valued in excess of their applicable contribution limits from the Nouis committee and/or Mr. Wegner. The complaint refers to the Facebook photograph appearing to depict Mr. Nouis preparing the materials to be mailed to argue that hundreds of copies were mailed and that first-class postage stamps were applied to the envelopes by the Nouis committee.

The complaint also alleges circumvention under Minnesota Statutes section 10A.29. That provision prohibits attempts to redirect a contribution, or make a contribution on behalf of another, in order to circumvent Chapter 10A. The complaint alleges that the piece of campaign material promoting multiple candidates was produced by Mr. Wegner and was then mailed to Plymouth residents by the Nouis committee. The complaint is unclear as to which provision of Chapter 10A the Nouis committee allegedly sought to circumvent, but the complaint does refer to Minnesota Statutes section 10A.27, subdivision 9, which prohibits a principal campaign committee from making a contribution to another candidate. As evidence of circumvention, the complaint again refers to the photograph appearing to depict Mr. Nouis preparing the materials to be mailed.

The complaint next alleges that the Nouis committee knowingly provided false information to voters by disseminating lawn signs and a flier that implied that Mr. Nouis currently represents District 44A in the Minnesota House of Representatives. Knowingly providing false information is governed by Minnesota Statutes section 211B.06.

The complaint also alleges that at least three advertisements were placed by the Nouis committee in a local newspaper that lacked the text “PAID ADVERTISEMENT” in violation of Minnesota Statutes section 211B.05.

Lastly, the complaint alleges that the Nouis committee prepared or disseminated campaign material without a disclaimer in the form required by Minnesota Statutes section 211B.04, subdivision 1. The complaint includes a photograph of a lawn sign that contains a disclaimer stating “Paid for by perrynouisformn.com.” The complaint includes a screenshot of the Nouis committee’s website, which contains a disclaimer that reads “This site is paid for by Perry Nouis for Minnesota, on behalf of conservative Americans deeply concerned about the future of the United States. It is not approved by, or coordinated with, any other candidate or candidate's committee.” The committee’s mailing address is displayed directly to the right of the disclaimer text on its website according to the screenshot included in the complaint. The complaint

includes a photograph of an advertisement in the Sun Sailor newspaper that contains a disclaimer stating "Paid for by Perry Nouis for Minnesota Committee." The committee's website address was displayed directly above that disclaimer text according to the photograph included in the complaint. The piece of campaign material promoting multiple candidates contained a disclaimer stating "Independently Prepared & Paid for by G. Wegner, a Concerned Plymouth Citizen."

Determination

Coordinated Expenditures

Minnesota Statutes section 10A.176, subdivision 6, states that an expenditure is a coordinated expenditure if "the spender provides information to the candidate regarding the expenditure's contents, intended audience, timing, location or mode, volume, or frequency" and "the information is provided to the candidate before the expenditure is communicated to the public." Minnesota Statutes section 10A.176, subdivision 7, states that an expenditure is a coordinated expenditure if the expenditure is made with the candidate's participation in "any of the processes required for the creation and development of the expenditure, including budgeting decisions, media design, acquisition of graphics and text, production, and distribution of the final product" or "any decision regarding the content, timing, location, intended audience, volume of distribution, or frequency of the expenditure." In order to be a coordinated expenditure under one of the provisions above, an expenditure must expressly advocate "for the election of the candidate or the defeat of the candidate's opponent" pursuant to Minnesota Statutes section 10A.176, subdivision 1.

Coordinated expenditures are not generally prohibited. However, a coordinated expenditure is an approved expenditure pursuant to Minnesota Statutes section 10A.175, subdivision 5, and an approved expenditure is a contribution pursuant to Minnesota Statutes section 10A.01, subdivisions 4, 11, and 13. Therefore, coordinated expenditures are subject to the restrictions applicable to contributions.

The complaint alleges and provides evidence that Mr. Nouis was involved in the distribution of the piece of campaign material promoting multiple candidates, including himself. The complaint includes a copy of the piece of campaign material promoting multiple candidates which appears to have been printed and mailed for the purpose of influencing the election of state candidates. That material contains a disclaimer stating it was prepared and paid for by "G. Wegner." Consequently, the costs incurred to produce and distribute the material appear to have been coordinated expenditures with respect to the Nouis committee, and thereby contributions to the Nouis committee from Mr. Wegner.

The complaint, however, does not assert any facts or provide any other evidence indicating that the Nouis committee coordinated its efforts with any of the other candidates named in the campaign material or on the Nouis committee's website. Although the campaign material and the website included photographs of the other candidates, photographs can easily be obtained

from public sources, such as other websites. The chair therefore concludes that the complaint does not assert facts that, if true, would demonstrate that coordinated expenditures under Minnesota Statutes section 10A.176 occurred that resulted in a contribution to any candidate other than Mr. Nouis.

Contributions to Other Candidates

With one exception not applicable to the complaint, Minnesota Statutes section 10A.27, subdivision 9, prohibits a principal campaign committee from making a contribution to another state candidate, and a principal campaign committee may never make a contribution to a federal or local candidate. Because the complaint does not sufficiently allege that coordinated expenditures were made to any candidate other than Mr. Nouis, the chair concludes that the complaint does not state a prima facie violation of Minnesota Statutes section 10A.27, subdivision 9.

Independent Expenditures

Minnesota Statutes section 10A.25, subdivision 3a, states that a candidate who signed the public subsidy agreement “must not make independent expenditures.” Minnesota Statutes section 10A.01, subdivision 18, defines “independent expenditure” to mean “an expenditure expressly advocating the election or defeat of a clearly identified candidate, if the expenditure is made without the express or implied consent, authorization, or cooperation of, and not in concert with or at the request or suggestion of, any candidate or any candidate's principal campaign committee or agent. An independent expenditure is not a contribution to that candidate.”

The complaint alleges and provides evidence that the Nouis committee mailed campaign material promoting the candidacy of another state candidate as well as several federal and local candidates. The complaint also alleges and provides evidence that the Nouis committee promoted the candidacies of two other state candidates and multiple federal candidates on its website by posting images with their names and hyperlinks to their websites. The mailed literature and website each contain words of express advocacy. The chair therefore concludes that the complaint states a prima facie violation of Minnesota Statutes section 10A.25, subdivision 3a.

Individual Contribution Limit

The Nouis committee may not accept contributions totaling more than \$1,000 from an individual during the 2019-2020 election cycle segment. The complaint alleges and provides evidence that the Nouis committee accepted a contribution from Mr. Wegner in the form of the campaign material promoting multiple candidates, including Mr. Nouis. The complaint alleges that more than \$1,000 was spent to produce and disseminate that material and includes a photograph depicting Mr. Nouis preparing the mailing. The chair therefore concludes that the complaint states a prima facie violation of Minnesota Statutes section 10A.27, subdivision 1.

Circumvention

Minnesota Statutes section 10A.29 prohibits an individual or association from attempting to circumvent Chapter 10A “by redirecting a contribution through, or making a contribution on behalf of, another individual or association.”

If the complaint is alleging that Mr. Wegner was the true source of a contribution and that the Nouis committee redirected that contribution to other candidates, then the complaint does not assert any facts indicating that Mr. Wegner was prohibited from making a contribution directly to any of the candidates involved and was therefore attempting to circumvent Chapter 10A. If the complaint is alleging that the Nouis committee was the true source of a contribution and that Mr. Wegner redirected the contribution to other candidates, then there was no circumvention because the complaint contains clear evidence that the Nouis committee did not attempt to avoid revealing itself as the association that mailed the campaign material in question. The chair therefore concludes that the complaint does not state a prima facie violation of Minnesota Statutes section 10A.29.

False Campaign Material

Minnesota Statutes section 10A.022, subdivision 3, states that the Board may investigate alleged or potential violations of Chapter 10A, as well as “an alleged or potential violation of section 211B.04, 211B.12, or 211B.15.” The complaint alleges that the Nouis committee provided false information by implying that Mr. Nouis currently serves in the Minnesota House of Representatives. False campaign material is governed by Minnesota Statutes section 211B.06. Because the Board does not have investigative authority with respect to an alleged violation of Minnesota Statutes section 211B.06, the chair concludes that the portion of the complaint making that allegation does not state a prima facie violation.

Paid Advertisements in News

The complaint also alleges that newspaper advertisements placed by the Nouis committee lacked the text “PAID ADVERTISEMENT” in violation of Minnesota Statutes section 211B.05. Because the Board does not have investigative authority with respect to an alleged violation of Minnesota Statutes section 211B.05, the chair concludes that the portion of the complaint making that allegation does not state a prima facie violation.

Disclaimer Requirement

Minnesota Statutes section 211B.04 requires a principal campaign committee to include on its campaign material a disclaimer substantially in the form provided in Minnesota Statutes section 211B.04, subdivision 1. Except in the case of broadcast media or independent expenditures, the required disclaimer format is “Prepared and paid for by the committee, (address).” “The address must be either the committee's mailing address or the

committee's website, if the website includes the committee's mailing address.” Minn. Stat. § 211B.04, subd. 1. The complaint alleges and provides evidence that the Nousis committee prepared and disseminated campaign material that lacked a disclaimer substantially in the form required by statute. The chair therefore concludes that the complaint states a prima facie violation of Minnesota Statutes section 211B.04.

Pursuant to Minnesota Statutes section 10A.022, subdivision 3, this prima facie determination is made by a single Board member and not by any vote of the entire Board. This prima facie determination does not mean that the Board has commenced, or will commence, an investigation or has made any determination of a violation by any of the individuals or entities named in the complaint.

Pursuant to Minnesota Statutes section 10A.022, subdivision 3, within 45 days of the date of this determination, the Board will make findings and conclusions as to whether probable cause exists to believe that the violations of Minnesota Statutes sections 10A.27, subdivision 9, 10A.25, subdivision 3a, and 211B.04, subdivision 1, alleged in the complaint warrant a formal investigation. The complainant and the respondent named in this prima facie determination will be given an opportunity to be heard by the Board prior to any decision on probable cause.

Until the Board makes a public finding or enters into a conciliation agreement, this matter is subject to the confidentiality requirements of Minnesota Statutes section 10A.022, subdivision 5.

/s/ Gary Haugen
Gary Haugen, Chair
Campaign Finance and Public Disclosure Board

Date: October 26, 2020