

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

**AMENDED PROBABLE CAUSE
DETERMINATION**

IN THE MATTER OF THE COMPLAINT OF JAMES C. PARSONS REGARDING THE THEIS (TAMA) FOR SENATE COMMITTEE

On November 4, 2022, the Campaign Finance and Public Disclosure Board received a complaint submitted by James Parsons regarding the Theis (Tama) for Senate committee, Board registration number 18895. Theis (Tama) for Senate is the principal campaign committee of Representative Tama Theis, a candidate for Minnesota Senate District 14. On November 21, 2022, the Board chair determined that the complaint states a prima facie violation of the reporting requirements under Minnesota Statutes section 10A.20, subdivision 3. The Board chair determined that the complaint did not state a prima facie violation of Minnesota Statutes section 10A.025, subdivision 2, because it did not allege that Representative Theis certified a report knowing that it was false or omitted required information.

On November 23, 2022, the Board received a supplemental complaint submitted by Mr. Parsons. The supplemental complaint alleges that Representative Theis certified her committee's original 2022 pre-general report of receipts and expenditures knowing that it was false or omitted required information. On November 28, 2022, the Board's vice chair determined that the supplemental complaint states a prima facie violation of Minnesota Statutes section 10A.025, subdivision 2, by Representative Theis. For purposes of this probable cause determination the original and supplemental complaints will be referenced collectively as the complaint.

The 2022 pre-general report covers the period from January 1 through October 24, 2022. Board records reflect that the Theis committee's original 2022 pre-general report was filed on the due date, October 31, and an amended report was filed on November 2, 2022. Each report was certified and filed by Representative Theis, who is the committee's treasurer.

The complaint alleges that the Theis committee purchased radio advertisements from Townsquare Media that aired during the period from September 12, 2022, through the date the original complaint was filed. The complaint asserts that thousands of dollars in expenditures related to those advertisements should have been, but were not, included within the Theis committee's original or amended 2022 pre-general report of receipts and expenditures. The complaint alleges that the Theis committee thereby violated the reporting requirements within Minnesota Statutes section 10A.20, subdivision 3.

The complaint contains hyperlinks to the FCC public inspection files of five radio stations, including KZRV-FM (96.7 The River),¹ WJON-AM (AM 1240),² KMXK-FM (Mix 94.9),³ WWJO-FM (98.1 Minnesota's New Country),⁴ and KXSS-AM (AM 1390 Granite City Sports).⁵ The FCC public inspection files pertain to radio advertisements scheduled to run from September 12 through November 5 or 7, 2022. The FCC public inspection files include five invoices totaling \$2,603 for the amounts billed for advertisements that aired through September 30, 2022. Each invoice reflects that the amount billed was paid on or before October 25, 2022. The billing address on each invoice appears to match the address that Representative Theis provided for herself when the Theis (Tama) for Senate committee was registered with the Board in April 2022. The FCC public inspection files also include five contracts signed by Representative Theis on June 29, 2022, with the radio stations listed above, each of which is owned by Townsquare Media. The complaint alleges, and Board records reflect, that the Theis committee's 2022 pre-general report, as amended, does not include expenditures or advances of credit paid or payable to Townsquare Media.

Representative Theis was provided a letter from Board staff and copies of the original complaint and the Board Chair's prima facie determination on November 22, 2022. The letter stated that "if you become aware of an inaccuracy within a previously filed report, an amended report must be filed within ten days pursuant to Minnesota Statutes section 10A.025, subdivision 4." The Board has not received an amended 2022 pre-general report from Representative Theis that includes expenditures or advances of credit paid or payable to Townsquare Media.

The complaint also alleges, and Board records reflect, that the amended pre-general report filed on November 2 includes \$46,856.28 in campaign expenditures that were not included within the original report that was filed two days earlier. The amended report includes campaign expenditures totaling \$60,228.75, meaning that 77.8% of the campaign expenditures included within the amended report were not included in the original report, despite those reports covering the same time period. The amended report also includes \$1,372 in receipts that were not included within the original report.

The complaint includes a list of itemized expenditures that were included in the amended 2022 pre-general report filed November 2, but not in the original 2022 pre-general report filed October 31, 2022. Some of those expenditures were reportedly made in July, August, or September, weeks or months before the report was due on October 31, 2022, and some were for several thousand dollars. The complaint asserts that "it is not reasonable to believe" that those

¹ publicfiles.fcc.gov/fm-profile/KZRV/political-files/2022/state/theis-tama/d8d266da-8670-8462-8c25-af083dc36ed6

² publicfiles.fcc.gov/am-profile/WJON/political-files/2022/state/theis-tama/d390da1f-01bd-661a-be45-ee613ea02061

³ publicfiles.fcc.gov/fm-profile/KMXK/political-files/2022/state/theis-tama/7226f4c1-8fae-cdff-db87-c465012f1d56

⁴ publicfiles.fcc.gov/fm-profile/WWJO/political-files/2022/state/theis-tama/2c283e17-93c8-c413-df6b-03064f910760

⁵ publicfiles.fcc.gov/am-profile/KXSS/political-files/2022/state/theis-tama/87013e08-1fca-d9c2-ef12-feed2ac1e53a

expenditures “were not known to the candidate and treasurer (the same person, in this case) at the time the pre-General report was submitted.”

On December 5, 2022, the Board received a statement from R. Reid LeBeau II, legal counsel for the Theis committee. Mr. LeBeau stated that Mr. Parsons “has not submitted sufficient evidence to support that any alleged omission was made knowingly” and that Mr. Parsons is asking the Board to assume that Representative Theis falsely certified her committee’s original 2022 pre-general report “by the mere face that [she] lawfully amended a report.” Within the statement, Mr. LeBeau does not directly dispute the allegation that Representative certified her committee’s original 2022 pre-general report to be true while knowing that it contained false information or omitted required information. Instead, Mr. LeBeau makes a legal argument and a public policy argument.

The legal argument consists of an explanation of how someone could, hypothetically, forget to include expenditures when filing a report with the Board, or fail to include expenditures due to a delay in receiving an invoice or billing statement. The public policy argument is that a principal campaign committee is allowed, and required, to amend its report after learning that its original report did not properly disclose certain contributions or expenditures, and concluding that a report was falsely certified on the basis of an amended report would disincentivize individuals from amending reports for fear of being penalized for false certification.

The Board considered this matter at its meeting on December 15, 2022. Mr. Parsons appeared before the Board. The Board again considered this matter at its meeting on January 4, 2023, solely for the purpose of amending the probable cause determination made on December 15, 2022, which errantly stated that Mr. LeBeau appeared before the Board during its December meeting.

Analysis

When the Board chair or their designee makes a finding that a complaint raises a prima facie violation, the full Board then must determine whether probable cause exists to believe an alleged violation that warrants an investigation has occurred. Minn. Stat. § 10A.022, subd. 3 (d). A probable cause determination is not a complete examination of the evidence on both sides of the issue. Rather, it is a determination of whether a complaint raises sufficient questions of fact which, if true, would result in the finding of a violation.

If the Board finds that probable cause exists, the Board is required to determine whether the alleged violation warrants a formal investigation, considering the type and magnitude of the alleged violation, the knowledge of the respondents, any benefit to be gained from a formal investigation, the availability of Board resources, and whether the violation has been remedied. Minn. R. 4525.0210, subp. 5. If the Board finds that probable cause exists but does not order a formal investigation, the Board is required to either dismiss the complaint or order a staff review. Minn. R. 4525.0210, subp. 6.

Reporting

Minnesota Statutes section 10A.20, subdivision 3, requires that a principal campaign committee's periodic campaign reports include all expenditures made, advances of credit incurred, and contributions and other receipts received through the end of the applicable reporting period. Minnesota Statutes section 10A.025, subdivision 4, provides that "[m]aterial changes in information previously submitted and corrections to a report or statement must be reported in writing to the board within ten days following the date of the event prompting the change or the date upon which the person filing became aware of the inaccuracy." The invoices referenced in the complaint indicate that the Theis committee incurred at least \$2,603 in campaign expenditures for radio advertisements aired in the month of September 2022 on stations owned by Townsquare Media. Those expenditures were not included within the Theis committee's original or amended 2022 pre-general reports. Therefore, the Board concludes that there is probable cause to believe that the Theis committee failed to disclose certain expenditures or advances of credit within its 2022 pre-general report in violation of Minnesota Statutes section 10A.20, subdivision 3. The Theis committee has not filed an amended 2022 pre-general report that includes expenditures or advances of credit paid or payable to Townsquare Media, despite being notified of the requirement to promptly amend a report that is inaccurate. Therefore, the Board concludes that there is probable cause to believe that Representative Theis violated Minnesota Statutes section 10A.025, subdivision 4.

False Certification

Minnesota Statutes section 10A.025, subdivision 2, provides that "[a]n individual shall not sign and certify to be true a report or statement knowing it contains false information or knowing it omits required information." While forgetting to include a contribution or an expenditure is not unusual, forgetting to include \$46,856.28 in expenditures made by a principal campaign committee during the applicable reporting period is both unusual and indicative of the report falsely being certified as true. Mr. LeBeau has not affirmatively stated that Representative Theis did not, in fact, certify her committee's original 2022 pre-general report to be true while knowing that it was false or omitted required information.

Mr. LeBeau has instead argued that an individual could, hypothetically, omit an expenditure or advance of credit due to a delayed invoice or billing statement. However, Mr. LeBeau has not asserted that the Theis committee's original 2022 pre-general report omitted an expenditure or advance of credit due to any such delay. Moreover, this hypothetical explanation is not supported by the invoices referenced in the complaint. The invoices issued by the radio stations owned by Townsquare Media, for example, each reflect that the balance owed for radio advertisements aired during the month of September was paid on or before October 25, 2022. The Theis committee's 2022 pre-general report was due, and was filed, on October 31, 2022, so at least with respect to those amounts, there does not appear to have been any delay in Representative Theis being informed of the amount her committee had been billed, and had paid, that prevented the inclusion of those expenditures within the committee's report. Even if Representative Theis did not receive those invoices, they were paid prior to the report being

filed, so she only needed to refer to her committee's own financial records in order to ascertain the amount paid.

Mr. LeBeau has also offered a public policy argument in favor of not finding false certification when a committee has promptly amended its original report. This argument is sound to the extent that it generally encourages prompt corrections to previously filed reports, without penalty. However, ignoring the content of an amended report when considering whether a treasurer falsely certified an original report covering the same time period may undermine another important policy objective, which is ensuring that reports are complete and accurate to the best of a treasurer's knowledge when filed. If there is no potential penalty for knowingly filing a report that omits tens of thousands of dollars of expenditures, so long as the report is promptly amended to include the expenditures that were omitted from the original report, both the reporting deadlines established by statute and the requirement to certify each report as true, become illusory. Based on the foregoing analysis, the Board concludes that there is probable cause to believe that Representative Theis violated Minnesota Statutes section 10A.025, subdivision 2.

In determining whether a formal investigation is warranted, the Board must consider a variety of factors. Minn. R. 4525.0210, subp. 5. False certification is a serious violation. False certification undermines the value of reports filed with the Board, it is classified as a gross misdemeanor offense, and it subjects both the individual violator and any committee affiliated with that violator to a civil penalty of up to \$3,000 each. Minn. Stat. § 10A.025, subd. 2 (d)-(e). Representative Theis was first elected to the Minnesota House of Representatives in 2013. Board records reflect that she has served as the treasurer of her principal campaign committee for state representative for many years,⁶ and has served as the treasurer of her principal campaign committee for state senator. Due to the severity of the possible violation, formal findings, conclusions, and orders are preferable to informal resolution of the matter and the Board has adequate resources to conduct an investigation.

Order:

1. Based on the forgoing analysis, probable cause exists to believe that the Theis (Tama) for Senate committee violated the reporting requirements of Minnesota Statutes section 10A.20, subdivision 3.
2. Based on the forgoing analysis, probable cause exists to believe that Representative Tama Theis violated Minnesota Statutes section 10A.025, subdivision 4.
3. Based on the forgoing analysis, probable cause exists to believe that Representative Tama Theis violated Minnesota Statutes section 10A.025, subdivision 2.
4. A formal investigation is ordered to investigate the foregoing possible violations. The Board's executive director may issue subpoenas as needed to conduct the investigation,

⁶ Tama Theis for Minnesota House, Board registration number [17635](#).

pursuant to Minnesota Statutes section 10A.022, subdivision 2, and Minnesota Rules 4525.0500, subpart 6.

/s/ George W. Soule
George W. Soule, Chair
Campaign Finance and Public Disclosure Board

Date: January 4, 2023