

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

**PROBABLE CAUSE
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. On October 26, 2020, the Board chair determined that the complaint stated prima facie violations of Minnesota Statutes sections 10A.25, subdivision 3a; 10A.27, subdivision 1; and 211B.04 by the Nouis committee. The Board chair dismissed alleged violations of Minnesota Statutes sections 10A.27, subdivision 9, and 10A.29. The Board chair also dismissed alleged violations of Minnesota Statutes sections 211B.06 and 211B.05, as the Board does not have investigative authority with respect to those provisions.

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 residents of Plymouth Precinct 13. The piece of campaign material promoting multiple candidates included a disclaimer that stated "Independently Prepared & Paid for by G. Wegner, a Concerned Plymouth Citizen." G. Wegner is George Wegner, the spouse of the Nouis committee's chair, Carol Wegner. The campaign material promoting multiple candidates included several instances of express advocacy, including use 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 alleges that the value of the mailed campaign material promoting multiple candidates was a coordinated expenditure under Minnesota Statutes section 10A.176, subdivisions 6 and 7, and thereby a contribution from Mr. Wegner to the Nouis committee. The complaint asserts that the value of the contribution exceeded \$1,000 and was accepted by the Nouis committee in violation of the individual contribution limit established by Minnesota Statutes section 10A.27, subdivision 1.

The complaint also alleges 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. Screenshots included in the complaint show that the images included the names of two state legislative candidates, followed by the office sought by each candidate.¹

¹ web.archive.org/web/20200813035511/https://perrynouisformn.com/CD3%20Candidates/index.htm

The complaint 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.

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. 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." On the screenshot, the committee's mailing address is displayed directly to the right of the disclaimer text. The complaint also includes a photograph of an advertisement in the Sun Sailor newspaper that contains a disclaimer stating "Paid for by Perry Nouis for Minnesota Committee." In the newspaper advertisement, the committee's website address is displayed directly above the disclaimer text. According to the website of the publisher of the Sun Sailor newspaper, the advertisement was placed in both the September 16 and September 30, 2020, editions of that newspaper.² As noted above, the mailed campaign material promoting multiple candidates contained a disclaimer stating "Independently Prepared & Paid for by G. Wegner, a Concerned Plymouth Citizen."

On November 9, 2020, the Board received a written response from Mr. Nouis to both the complaint and a letter from Board staff seeking answers to questions raised by the complaint. Mr. Nouis stated that Mr. Wegner contacted him in late September and emailed him a draft copy of the piece of campaign material promoting multiple candidates. Mr. Nouis provided minimal feedback regarding the draft and after some minor corrections were made by Mr. Wegner, Mr. Nouis contacted a vendor to have copies printed. Mr. Nouis explained that his committee paid for the printing but was reimbursed by Mr. Wegner. The Nouis committee's 2020 pre-general report of receipts and expenditures itemized a \$734.83 cash expenditure to account for the cost of printing and a \$734.83 cash contribution from Mr. Wegner to account for the reimbursement, as well as a separate \$100 cash contribution from Mr. Wegner. In his response Mr. Nouis stated that Mr. Wegner did not contribute more than \$1,000 to the Nouis committee.

Mr. Nouis stated that he mailed 1,675 envelopes containing both a flier promoting his candidacy and the piece of campaign material drafted by Mr. Wegner promoting multiple candidates. The Nouis committee spent \$1,050.92 for the envelopes, labels, and postage used to mail those materials. In response to a question from Board staff asking why the piece of campaign material promoting multiple candidates did not include a disclaimer stating it was paid for by the Nouis committee, Mr. Nouis stated:

² local.hometownsource.com/places/view/174423/join_me_in_defending_.html;
local.hometownsource.com/places/view/176253/join_me_in_defending_.html.

There was no additional cost incurred by including Mr. Wegner's flyer in my mailing to Precinct 13 residents. Because his flyer included a disclaimer that it was prepared and paid for by him, it did not occur to me at the time that mailing it could be interpreted as a form of in-kind contribution to other candidates. My interpretation was that Mr. Wegner had written campaign material that included support for my campaign and that he had identified that material as his.

With respect to the committee's website, Mr. Nouis stated that no expenses were incurred to add images including the names of other candidates.

In response to a question from Board staff regarding the disclaimers displayed on the Nouis committee's lawn signs, website, and advertisement in the Sun Sailor newspaper, Mr. Nouis stated that the committee's "campaign materials have contained disclaimers substantially in the form required" by statute. Mr. Nouis provided copies of four pieces of campaign material that included a disclaimer in the form required by statute. Regarding the campaign material referenced in the complaint, Mr. Nouis stated:

My lawn signs contained disclaimers. According to this statute, if a disclaimer includes a committee's website, "and if the committee's website includes the committee's mailing address," the disclaimer is in compliance. My signs, website, campaign literature, and newspaper ad disclaimers included my website.

At its meeting on December 2, 2020, the Board considered this matter.

Analysis

When the Board chair 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, given the evidence available, there is sufficient justification to initiate a formal Board investigation of the allegations in the complaint.

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 respondent, 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.

Individual Contribution Limit

Minnesota Statutes section 10A.27, subdivision 1, states that during a two-year election segment, a candidate for state representative “must not permit the candidate's principal campaign committee to accept aggregate contributions made or delivered by any individual, political committee, political fund, or association not registered with the board in excess of” \$1,000. Mr. Nouis explained that Mr. Wegner paid the Nouis committee \$734.83 as a reimbursement for the cost to print the campaign material promoting multiple candidates. The Nouis committee disclosed a separate cash contribution of \$100 that Mr. Wegner made to the committee in September 2020. There is no basis to believe that Mr. Wegner made any additional contributions to the Nouis committee. The Board therefore concludes that there is not probable cause to believe that a violation of the individual contribution limit has occurred.

Independent Expenditures

Minnesota Statutes section 10A.25, subdivisions 1 and 3a, provide that when a candidate has signed a public subsidy agreement, that candidate’s principal campaign committee cannot 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.

In addition, a principal campaign committee that disseminates campaign material supporting both the committee’s candidate and one or more other candidates must comply with Minnesota Rules 4503.1000, subpart 2, which states that a “candidate who produces and distributes campaign materials ... which include images of, appearances by, or references to one or more other candidates, and which mention the candidacy of the other candidates or include a direct or indirect appeal for the support of the other candidates must collect from each of the other candidates a reasonable proportion of the production and distribution costs.”

Mr. Nouis explained that the Nouis committee was reimbursed for the cost of printing the campaign material promoting multiple candidates by Mr. Wegner, and did not incur any additional expense to include a copy of that material in each envelope containing a flier promoting Mr. Nouis’s candidacy. However, regardless of whether the Nouis committee incurred any additional expense to include the material drafted by Mr. Wegner, the committee paid for the postage necessary to disseminate that material. A principal campaign committee may not mail two pieces of campaign material, with one of those pieces being a general campaign expenditure, and the other being an independent expenditure for other candidates, and avoid the prohibition on independent expenditures by stating that inclusion of the independent expenditure material resulted in no additional expense to the committee, or was not of benefit to the candidates promoted in the independent expenditure. If that practice were

permissible, candidates who sign the public subsidy agreement could easily bypass the prohibition on independent expenditures.

Similarly, Mr. Nouis stated that no additional expenses were incurred to post images promoting the other candidates to the Nouis committee's website. However, those images could be considered independent expenditures based on their inclusion within a website paid for by the Nouis committee. As with the mailing, a committee cannot avoid the prohibition on independent expenditures simply by stating that inclusion of the links to the other candidate websites resulted in no additional website expense to the committee. For these reasons, the Board concludes that there is probable cause to believe that the Nouis committee violated the prohibition on independent expenditures.

Disclaimers

Minnesota Statutes section 211B.04, subdivision 1, generally requires principal campaign committees to include a disclaimer on campaign material that prominently states "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. Campaign material is defined in Minnesota Statutes section 211B.01, subdivision 2, as "any literature, publication, or material that is disseminated for the purpose of influencing voting at a primary or other election, except for news items or editorial comments by the news media." The disclaimer for a written independent expenditure must state "This is an independent expenditure prepared and paid for by (name of entity participating in the expenditure), (address). It is not coordinated with or approved by any candidate nor is any candidate responsible for it." Minn. Stat. § 211B.04, subd. 2.

In his response Mr. Nouis argued that if a disclaimer includes a website address and the website includes the committee's mailing address, the disclaimer complies with Minnesota Statutes section 211B.04. That is correct insofar as the address is concerned. However, the disclaimer must also include other elements, namely the language "prepared and paid for by" followed by the name of the committee. "Paid for by perrynouisformn.com," the disclaimer text that appeared on the lawn sign depicted in the complaint, omits the committee's name. The disclaimer displayed on the committee's website included additional language, including some that is used to identify independent expenditures, and did not include an address within the disclaimer text as required by statute. The disclaimer that appeared within the advertisement in the Sun Sailor newspaper likewise did not include an address within the disclaimer text.

The disclaimer displayed on the mailed campaign material promoting multiple candidates did not include Mr. Wegner's first name, the name of the Nouis committee, an address, or the text stating that it was "not coordinated with or approved by any candidate nor is any candidate responsible for it," as required by Minnesota Statutes section 211B.04, subdivision 2. Although the Nouis committee was reimbursed for the cost of printing that material, the Nouis committee directly paid for the cost to disseminate the material. The Nouis committee therefore should have been identified as one of two entities that paid for the independent expenditure. For these

reasons, the Board concludes that there is probable cause to believe that the Nouis committee violated the disclaimer requirements on its campaign material.

Order:

1. The allegation that the Nouis committee accepted contributions in excess of \$1,000 from George Wegner in violation of Minnesota Statutes section 10A.27, subdivision 1, is dismissed for lack of probable cause.
2. Probable cause exists to believe that the Perry Nouis for Minnesota committee made independent expenditures in violation of Minnesota Statutes section 10A.25, subdivision 3a.
3. Probable cause exists to believe that the Nouis committee prepared and disseminated campaign material lacking a disclaimer substantially in the form required by Minnesota Statutes section 211B.04.
4. An investigation is ordered for the purpose of preparing findings resolving this matter.

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

Date: December 2, 2020