

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

ORDER FOR A FORMAL INVESTIGATION

IN THE MATTER OF DOUG WARDLOW AND THE DOUG WARDLOW FOR ATTORNEY GENERAL
COMMITTEE

Background

On July 18, 2022, the Campaign Finance and Public Disclosure Board received a complaint submitted by Kent Kaiser regarding Rescue Minnesota and the Doug Wardlow for Attorney General committee. Rescue Minnesota is an independent expenditure political committee. Doug Wardlow for Attorney General is the principal campaign committee of Doug Wardlow.

The complaint alleged that Rescue Minnesota violated Minnesota Statutes section 10A.121, which prohibits an independent expenditure political committee from making an approved expenditure for, or otherwise making a contribution to, a candidate. The complaint asserted that Thomas Datwyler served as treasurer of both the Wardlow committee and Rescue Minnesota in 2022. The complaint noted and Board records reflect that Mr. Datwyler filed a campaign finance report for the Wardlow committee on June 14, 2022, after Rescue Minnesota was registered with the Board on June 8, 2022.

The complaint alleged that Rescue Minnesota purchased radio advertisements supporting Mr. Wardlow's candidacy for attorney general in July 2022. The complaint included a media tracking report showing that approximately \$21,300 in radio advertisements were purchased on behalf of Rescue Minnesota and would be broadcast during the period from July 5 through July 18, 2022.

The complaint alleged and provided evidence that Rescue Minnesota purchased two Facebook advertisements supporting Mr. Wardlow in July 2022.¹ Public data from Facebook's Ad Library reflects that a third advertisement supporting Mr. Wardlow was also purchased by Rescue Minnesota.² Each of the three Facebook advertisements included a photograph of Mr. Wardlow, text stating "Doug Wardlow for AG," and the text "RESCUE MINNESOTA" alongside a logo. Each of the Facebook advertisements included two disclaimers, with one displayed toward the top of the advertisement and one displayed toward the bottom of the advertisement. Each disclaimer contained the same text, "Paid for by Rescue Minnesota". The Facebook advertisements each included hyperlinks directing users to the website of the Wardlow committee and to Rescue Minnesota's Facebook page. Rescue Minnesota's Facebook page did not include the committee's address.³ Public data from Facebook's Ad

¹ [facebook.com/ads/library/?id=940009923366262](https://www.facebook.com/ads/library/?id=940009923366262); [facebook.com/ads/library/?id=451198436474740](https://www.facebook.com/ads/library/?id=451198436474740).

² [facebook.com/ads/library/?id=1018129278840394](https://www.facebook.com/ads/library/?id=1018129278840394)

³ [facebook.com/RescueMinnesota](https://www.facebook.com/RescueMinnesota)

Library indicates that Facebook was paid a total of \$12,275 for those three advertisements, which ran during the period from July 6 through July 18, 2022.⁴

The complaint argued that because Mr. Datwyler served as treasurer of the Wardlow committee during the 2021-2022 election segment, he was Mr. Wardlow's agent and was therefore included within the expanded definition of the term candidate that applies to Minnesota Statutes sections 10A.175 through 10A.177. The complaint asserted that expenditures made by Rescue Minnesota in 2022 were coordinated expenditures under Minnesota Statutes section 10A.176, subdivision 3, because they were made by an independent expenditure political committee in which the candidate, which for purposes of that section includes the candidate's agent, was a treasurer after January 1, 2022. A coordinated expenditure is a type of approved expenditure that is a contribution to the candidate on whose behalf it is made, and is not an independent expenditure. The complaint thereby argued that Rescue Minnesota falsely characterized communications in support of Mr. Wardlow as independent expenditures.

Board records show that on December 19, 2021, Mr. Datwyler submitted by email an amended registration and statement of organization dated December 19, 2021, naming Mr. Datwyler as the Wardlow committee's treasurer. Board records show that on June 8, 2022, Mr. Datwyler submitted by email a new registration and statement of organization dated June 8, 2022, naming Mr. Datwyler as both the chair and treasurer of Rescue Minnesota. Board records show that on July 12, 2022, Jason Boles submitted by email an amended registration and statement of organization dated July 10, 2022, naming Mr. Boles as the Wardlow committee's treasurer, thereby replacing Mr. Datwyler. Board records show that on July 14, 2022, Andrew (Andy) Olson submitted by email an amended registration and statement of organization dated July 8, 2022, naming Mr. Olson as Rescue Minnesota's chair and treasurer, thereby replacing Mr. Datwyler.

On July 26, 2022, the Board's chair determined that the complaint stated prima facie violations of Minnesota Statutes section 10A.121 and of the reporting requirements in Minnesota Statutes section 10A.20, subdivision 3, by Rescue Minnesota. The complaint asserted that the Wardlow committee "illegally coordinated the activity of Rescue Minnesota through the dual role of Datwyler, resulting in approved expenditures," but the complaint did not cite any specific statute or rule allegedly violated by the Wardlow committee. Minnesota Statutes section 10A.121 provides for the imposition of a civil penalty against an independent expenditure political committee that makes an approved expenditure, but does not provide for the imposition of a civil penalty against the principal campaign committee that benefits from the prohibited expenditure. The Board's chair therefore determined that the complaint did not state a prima facie violation by the Wardlow committee, and dismissed the portion of the complaint that asserted a violation by the Wardlow committee.

Copies of the complaint and prima facie determination were provided to the Wardlow committee on July 27, 2022. Board records show that the Wardlow committee has not reported the receipt

⁴ [facebook.com/ads/library/?view_all_page_id=106397702127556](https://www.facebook.com/ads/library/?view_all_page_id=106397702127556)

of any donations in kind during the period from January 1, 2021, through July 18, 2022, with the exception of one \$795 donation in kind made by an individual. The Board's subsequent investigation of the complaint revealed that Rescue Minnesota paid a total of \$24,000 to produce and broadcast the radio advertisements and paid a total of \$15,950 to produce and place the Facebook advertisements. The Board's investigation also revealed that the advertisements each identified Mr. Wardlow and included express advocacy.

Analysis

Coordinated Expenditures

An approved expenditure is a contribution to the candidate on whose behalf the expenditure is made. Minn. Stat. § 10A.01, subd. 4. A coordinated expenditure is a type of approved expenditure and is not an independent expenditure. Minn. Stat. § 10A.175, subd. 5. Minnesota Statutes section 10A.175 defines several terms for purposes of that section through section 10A.177, which pertain to coordinated expenditures. The term spender means "an individual, an association, a political committee, a political fund, an independent expenditure political committee, an independent expenditure political fund, or a party unit." The term candidate is defined as "a candidate as defined in section 10A.01, subdivision 10, the candidate's principal campaign committee, or the candidate's agent." The term agent is defined as "a person serving during an election segment as a candidate's chairperson, deputy chairperson, treasurer, deputy treasurer, or any other person whose actions are coordinated." Minnesota Statutes section 10A.01, subdivision 16 provides that with the exception of a special election, "the period from January 1 of the year prior to an election year through December 31 of the election year is the 'election segment' of the election cycle."

Minnesota Statutes section 10A.176, subdivision 1, states that "[a]n expenditure described in this section that expressly advocates for the election of the candidate or the defeat of the candidate's opponent is a coordinated expenditure and is not independent under section 10A.01, subdivision 18." Minnesota Statutes section 10A.176, subdivision 3 provides that:

An expenditure is a coordinated expenditure if the expenditure is made on or after January 1 of the year the office will appear on the ballot by a spender that:

(1) is not a party unit; and

(2) is an association, political committee, political fund, independent expenditure political committee, or independent expenditure political fund, in which the candidate was a chairperson, deputy chairperson, treasurer, or deputy treasurer on or after January 1 of the year the office will appear on the ballot.

Individual contribution limit

The principal campaign committee of a candidate for attorney general may not accept

contributions made by a political committee in excess of \$2,500 during the 2021-2022 election cycle segment. Minn. Stat. § 10A.27, subd. 1. If Rescue Minnesota made \$39,950 in approved expenditures on behalf of Mr. Wardlow, the Wardlow committee exceeded the individual contribution limit with respect to Rescue Minnesota by \$37,450.

Reporting

Minnesota Statutes section 10A.20, subdivision 3, requires that a principal campaign committee's periodic campaign reports disclose the total sum of contributions received and disclose the name, address, and Board registration number of each political committee that has made contributions totaling more than \$200 within a calendar year, along with the amount and date of each contribution. "An approved expenditure must be listed as a donation in kind" and "is considered consumed in the reporting period in which it is received." Minn. Stat. § 10A.20, subd. 3 (c). "Material 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." Minn. Stat. § 10A.025, subd. 4.

Pursuant to Minnesota Statutes section 10A.022, subdivision 3d, the executive director must submit to the Board a matter to be considered for formal investigation, unless the matter arises from a complaint. In this case a complaint was filed alleging that Rescue Minnesota made prohibited coordinated expenditures on behalf of Mr. Wardlow. The potential violations referenced above do not arise directly from that complaint because the complaint did not allege that the Wardlow committee violated any contribution limit or reporting requirements, and the Board's chair determined that the complaint did not state a prima facie violation with respect to the Wardlow committee. However, the Board's investigation of the complaint revealed the total amount spent by Rescue Minnesota and the content of the radio advertisements. "When the board investigates the allegations made in a written complaint and the investigation reveals other potential violations that were not included in the complaint, the board may investigate the potential violations not alleged in the complaint only after making a determination . . . that probable cause exists to believe a violation that warrants a formal investigation has occurred." Minn. Stat. § 10A.022, subd. 3 (b).

On November 29, 2022, copies of the written submission, a draft copy of this order, and a notice explaining that the committee had the right to appear before the Board when the matter would be considered by the Board on December 15, 2022, were sent to Mr. Wardlow and the Wardlow committee's treasurer. On December 8, 2022, the Board's executive director submitted this matter to the Board.

Minnesota Rules 4525.0340, subpart 2, provides that upon receipt of a submission for investigation, the Board must take one of the following actions:

- A. provide guidance and direct the executive director to begin or to continue a staff review;
- B. dismiss the matter without prejudice;
- C. order a formal investigation of the matter; or
- D. issue findings, conclusions, and an order resolving the matter.

The Board is required to consider any information provided or argument made by the respondent. The Board must consider a variety of factors regarding which action to take and the Board is required to make a written determination unless the action taken consists of directing the executive director to continue an existing staff review. The Board considered this matter during the executive session of its meeting on December 15, 2022.

Coordination between a principal campaign committee and an independent expenditure political committee is a serious violation because it may result in prohibited corporate contributions. However, there is no evidence in the record to suggest that Rescue Minnesota is a corporation or received corporate contributions. The Wardlow committee's potential violations consist of failing to report the receipt of donations in kind made by Rescue Minnesota and accepting contributions made by Rescue Minnesota far in excess of the \$2,500 individual contribution limit. A formal investigation would allow the Board to compel the Wardlow committee, if necessary, to file one or more reports that include donations in kind made by Rescue Minnesota and the Board has sufficient resources to conduct a formal investigation. However, Minnesota Statutes section 10A.28, subdivision 3, provides that if the Board finds that there is reason to believe a principal campaign committee violated a contribution limit, the Board "must make every effort for a period of at least 14 days after its finding to correct the matter by informal methods of conference and conciliation and to enter a conciliation agreement with the person involved."

Order

1. A formal investigation is ordered regarding possible violations of Minnesota Statutes sections 10A.27, subdivision 1, and 10A.20, subdivision 3, by Doug Wardlow and the Doug Wardlow for Attorney General committee, except that the Board will attempt, for a period of at least 14 days from the date of this order, to enter into a conciliation agreement to resolve the matter.

/s/ Faris Rashid
Faris Rashid, Chair
Campaign Finance and Public Disclosure Board

Date: December 15, 2022