

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

**PRIMA FACIE
DETERMINATION**

IN THE MATTER OF THE COMPLAINT OF KENT KAISER REGARDING RESCUE MINNESOTA AND THE DOUG WARDLOW FOR ATTORNEY GENERAL COMMITTEE

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 alleges that Rescue Minnesota violated Minnesota Statutes section 10A.121. This statute prohibits independent expenditure committees from contributing to, or making approved expenditures for, a candidate. The complaint asserts and provides evidence that Thomas Datwyler served as treasurer of both the Wardlow committee and Rescue Minnesota in 2022. The complaint notes 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. Board records indicate that Mr. Datwyler was the treasurer of the Wardlow committee from December 20, 2021, through July 12, 2022. Board records indicate that Mr. Datwyler was the treasurer of Rescue Minnesota from June 8, 2022, through July 8, 2022.

The complaint alleges that Rescue Minnesota purchased radio advertisements supporting Mr. Wardlow's candidacy for attorney general in July of 2022. The complaint includes a media tracking report indicating that approximately \$21,300 in radio advertisements were purchased during the time period from July 5 to July 18, 2022.

The complaint alleges and provides evidence that Rescue Minnesota also purchased Facebook advertisements supporting Mr. Wardlow in July 2022. The complaint includes screenshots of at least two distinct Facebook advertisements. Each of the Facebook advertisements include a photograph of Mr. Wardlow, text stating "Doug Wardlow for AG," and the text "RESCUE MINNESOTA" alongside a logo. Each of the Facebook advertisements include two disclaimers, with one displayed toward the top of the advertisement and one displayed toward the bottom of the advertisement. Each disclaimer contains the same text, "Paid for by Rescue Minnesota".

The complaint argues 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 contends 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.

The complaint also contends that Rescue Minnesota falsely characterized communications in support of Mr. Wardlow as independent expenditures. On July 25, 2022, Rescue Minnesota's current treasurer filed the committee's 2022 pre-primary report of receipts and expenditures with the Board. The report discloses \$39,950 in independent expenditures made in support of Mr. Wardlow and does not disclose any approved expenditures or other contributions made to any candidate.

Determination

Minnesota Statutes section 10A.01, subdivision 9 defines the term expenditure, in relevant part, to mean "a purchase or payment of money or anything of value, or an advance of credit, made or incurred for the purpose of influencing the nomination or election of a candidate or a local candidate or for the purpose of promoting or defeating a ballot question." Minnesota Statutes section 10A.01, subdivision 4, states that

"Approved expenditure" means an expenditure made on behalf of a candidate or a local candidate by an entity other than the candidate's principal campaign committee or the local candidate, if the expenditure is made with the authorization or expressed or implied consent of, or in cooperation or in concert with, or at the request or suggestion of the candidate or local candidate, the candidate's principal campaign committee, or the candidate's or local candidate's agent. An approved expenditure is a contribution to that candidate or local candidate.

Minnesota Statutes section 10A.175, subdivision 5, provides that the term coordinated "means with the authorization or expressed or implied consent of, or in cooperation or in concert with, or at the request or suggestion of the candidate. A coordinated expenditure is an approved expenditure under section 10A.01, subdivision 4."

Minnesota Statutes section 10A.175, subdivision 3, states that the term candidate "means a candidate as defined in section 10A.01, subdivision 10, the candidate's principal campaign committee, or the candidate's agent." Minnesota Statutes section 10A.175, subdivision 2, provides that the term agent "means 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." Those definitions apply to Minnesota Statutes sections 10A.175 to 10A.177, pursuant to Minnesota Statutes section 10A.175, subdivision 1.

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.

Minnesota Statutes section 10A.121 prohibits independent expenditure political committees from making approved expenditures.

Minnesota Statutes section 10A.20, subdivision 3 requires that campaign reports filed with the Board include approved expenditures, which must be listed as donations in kind.

The complaint alleges and Board records indicate that Mr. Datwyler was the Wardlow committee's treasurer during a portion of 2022. The complaint alleges and Board records indicate that Mr. Datwyler was Rescue Minnesota's treasurer during a portion of 2022, and Board records indicate that Mr. Datwyler was the Wardlow committee's treasurer for the entirety of the time that he was Rescue Minnesota's treasurer. The complaint alleges and provides evidence that Rescue Minnesota made expenditures in 2022 supporting Mr. Wardlow's candidacy for attorney general and that those expenditures were made after and while Mr. Datwyler was treasurer for the Wardlow committee. The chair therefore concludes that the complaint states a prima facie violation of Minnesota Statutes section 10A.121 by Rescue Minnesota.

The complaint alleges, and Rescue Minnesota's 2022 pre-primary report of receipts and expenditures indicates, that Rescue Minnesota characterized the communications referenced in the complaint as independent expenditures rather than as approved expenditures. The chair therefore concludes that the complaint states a prima facie violation of the reporting requirements in Minnesota Statutes section 10A.20, subdivision 3 by Rescue Minnesota.

The complaint asserts that the Wardlow committee "illegally coordinated the activity of Rescue Minnesota through the dual role of Datwyler, resulting in approved expenditures," but the complaint does 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. Investigation of the facts alleged in the complaint may reveal a potential violation by the Wardlow committee. However, Minnesota Statutes section 10A.022, subdivision 3, provides that when an "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." The chair therefore concludes that the complaint does not state a prima facie violation of Chapter 10A or of those sections of Chapter 211B under the Board's jurisdiction by the Doug Wardlow for Attorney General committee.

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.121 and 10A.20 alleged in the complaint have occurred and warrant a formal investigation. The complainant and Rescue Minnesota 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.



Faris Rashid, Chair
Campaign Finance and Public Disclosure Board

Date: July 26, 2022