

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

**PROBABLE CAUSE
DETERMINATION**

IN THE MATTER OF THE COMPLAINT OF KENT KAISER REGARDING RESCUE MINNESOTA

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, which 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.

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 through 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 two distinct Facebook advertisements¹. Public data from Facebook's Ad Library reflects that a third advertisement was also purchased by Rescue Minnesota.² Each of the three 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". Public data from Facebook's Ad Library indicates that Facebook was paid a total of \$12,275 for those three advertisements, the advertisements were collectively displayed between 495,000 and 575,000 times in total,³ and the advertisements ran during the period from July 6 through July 18, 2022.

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 These figures are based on Facebook's metric known as impressions, which measures the total number of times that an advertisement is displayed and may include an advertisement being displayed to the same individual more than once.

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, Mr. Olson filed Rescue Minnesota's 2022 pre-primary report of receipts and expenditures with the Board. The report disclosed \$39,950 in independent expenditures made in support of Mr. Wardlow and did not disclose any approved expenditures or other contributions made to any candidate.

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 the 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 treasurer, thereby replacing Mr. Datwyler.

An FCC public inspection file contains a radio advertisement purchase agreement that was purportedly signed by Mr. Wardlow on August 4, 2022, listing Mr. Datwyler as his committee's treasurer, despite the fact that Mr. Datwyler had reportedly been replaced by Mr. Boles as the Wardlow committee's treasurer on July 10, 2022. FCC public inspection files indicate that radio advertisements purchased on behalf of Rescue Minnesota continued to run through primary election day, August 9, 2022.

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. On August 12, 2022, the Board received a written response submitted by Mr. Olson on behalf of Rescue Minnesota. Mr. Olson argued that Mr. Datwyler provided accounting services to Rescue Minnesota and to the Wardlow committee, which "are explicitly exempted from the definition of 'consulting services'" under Minnesota Statutes section 10A.175, subdivision 4. Mr. Olson appears to contend that because Mr. Datwyler provided accounting services, he necessarily did not provide consulting services.

Mr. Olson also stated that:

More importantly, Mr. Datwyler had absolutely no role in developing and no prior knowledge of Rescue Minnesota's expenditure activity regarding Doug Wardlow. Mr. Datwyler provides professional accounting services to hundreds of political entities across the country. When Mr. Datwyler was contracted to provide accounting services to Rescue Minnesota, he had no knowledge that Rescue Minnesota would independently support Doug Wardlow for Attorney General. When Mr. Datwyler became aware of Rescue Minnesota's July spending in support of Wardlow, Mr. Datwyler took immediate steps to replace himself as the treasurer for both Rescue Minnesota and the Doug Wardlow for Attorney General Committee to avoid any actual or apparent impropriety.

Determination

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." An approved expenditure is a contribution to the candidate on whose behalf the expenditure is made. Minn. Stat. § 10A.01, subd. 4. Minnesota Statutes section 10A.121 prohibits an independent expenditure political committee from making an approved expenditure or otherwise making a contribution to a candidate.

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." 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." Those definitions apply to Minnesota Statutes sections 10A.175 through 10A.177. Minn. Stat. § 10A.175, subd. 1. 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.

Minnesota Statutes section 10A.176, subdivision 4 provides that unless certain specified conditions are met, an expenditure “made during an election segment for consulting services from a consultant who has also provided consulting services to the candidate or the candidate's opponent during that same election segment” is a coordinated expenditure. Minnesota Statutes section 10A.175, subdivision 4 defines the term consulting services to mean “the following services involving campaign strategy: polling, communications planning and design, advertising, and messaging. Consulting services does not mean printing or mailing campaign material, legal services that do not involve campaign strategy, accounting services, or costs for the use of a medium for communications purposes.”

Minnesota Statutes section 10A.17, subdivision 1 provides that a political committee “may not expend money unless the expenditure is authorized by the treasurer or deputy treasurer of that committee.” 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.

There is no dispute that Mr. Datwyler was the Wardlow committee's treasurer during portions of 2021 and 2022. There does not appear to be any dispute that Mr. Datwyler was Mr. Wardlow's agent and therefore the equivalent of the candidate for purposes of Minnesota Statutes sections 10A.175 through 10A.177, pursuant to Minnesota Statutes section 10A.175, subdivisions 1 through 3. There is also no dispute that Mr. Datwyler was Rescue Minnesota's treasurer during a portion of 2022.

The response from Rescue Minnesota states that Mr. Datwyler provided accounting services, which appears to be intended to argue that Mr. Datwyler did not provide consulting services, because Minnesota Statutes section 10A.175, subdivision 4 states that accounting services do not constitute consulting services. The Board chair's prima facie determination was based on Minnesota Statutes section 10A.176, subdivision 3, which pertains to the relationship between a spender and a candidate, not Minnesota Statutes section 10A.176, subdivision 4, which pertains to a spender's and candidate's use of a common consultant. The complaint asserts that Mr. Datwyler provided consulting services to both committees. However, Minnesota Statutes section 10A.176, subdivision 4, pertains to an expenditure that is made “for consulting services,” not an expenditure that is made to purchase radio and Facebook advertisements. The evidence provided with the complaint supports the assertion that Rescue Minnesota made expenditures for radio and Facebook advertisements supporting Mr. Wardlow, rather than the contention that both Rescue Minnesota and the Wardlow committee paid Mr. Datwyler for consulting services. Moreover, paragraph 8 of the complaint quotes most of Minnesota Statutes section 10A.176, subdivision 3, verbatim, and paragraphs 9-11 of the complaint explain why Mr. Kaiser believes that Mr. Datwyler was Mr. Wardlow's agent and was the equivalent of the candidate for purposes of Minnesota Statutes sections 10A.175 through 10A.177. Those statements set forth the factual and legal predicate supporting the contention that the radio and Facebook advertisements purchased by Rescue Minnesota were coordinated expenditures pursuant to Minnesota Statutes section 10A.176, subdivision 3.

The response from Rescue Minnesota interprets the prima facie determination as having been based substantially on the fact that Mr. Datwyler was the treasurer of both committees “for an overlapping period of about one month.” That interpretation is imprecise and requires clarification. Under Minnesota Statutes section 10A.176, subdivision 3, what matters is whether the spender made an expenditure in the same election year in which the candidate served as the spender’s treasurer, chair, etc., whether the office sought by the candidate is on the ballot during that year, and whether the expenditure contains express advocacy. No overlap of duties by a treasurer, chair, or deputy treasurer or chair, is necessary in order for an expenditure to be deemed a coordinated expenditure. For purposes of Minnesota Statutes section 10A.176, the definition of the term candidate is expanded to include the candidate’s agent, which includes any person who has served as the candidate’s treasurer, chairperson, etc. “during an election segment,” pursuant to Minnesota Statutes section 10A.175, subdivisions 2-3. Rescue Minnesota does not appear to dispute that Mr. Datwyler served as the Wardlow committee’s treasurer during a portion of 2022, that Mr. Datwyler served as Rescue Minnesota’s treasurer during a portion of 2022, that 2021-2022 is an election segment for the Wardlow committee, that the office of attorney general is on the ballot in 2022, or that Rescue Minnesota made expenditures expressly advocating the election of Mr. Wardlow.

Rescue Minnesota argued that Mr. Datwyler “had no knowledge that Rescue Minnesota would independently support Doug Wardlow for Attorney General.” However, Mr. Datwyler’s knowledge has no bearing on whether Rescue Minnesota made expenditures in support of Mr. Wardlow within the same election year in which an individual deemed to be the equivalent of Mr. Wardlow himself served as its treasurer. Although Mr. Datwyler’s knowledge may be relevant in assessing the gravity and willfulness of any violation by Rescue Minnesota, it plays no role in determining whether a violation of Minnesota Statutes section 10A.121 occurred by virtue of an expenditure that is deemed a coordinated expenditure and therefore an approved expenditure pursuant to Minnesota Statutes section 10A.176, subdivision 3.

If the expenditures referenced in the complaint were approved expenditures, Rescue Minnesota was required to classify those expenditures as approved expenditures, rather than as independent expenditures, within its 2022 pre-primary report of receipts and expenditures.

For the forgoing reasons, the Board concludes that there is probable cause to believe that Rescue Minnesota made an approved expenditure in violation of Minnesota Statutes section 10A.121, and violated the reporting requirements in Minnesota Statutes section 10A.20, subdivision 3.

Order:

1. Probable cause exists to believe that Rescue Minnesota made an approved expenditure on behalf of Doug Wardlow in violation of Minnesota Statutes section 10A.121.
2. Probable cause exists to believe that Rescue Minnesota violated the reporting requirements in Minnesota Statutes section 10A.20, subdivision 3.

3. An investigation is ordered.

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

Date: September 7, 2022