

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

**PROBABLE CAUSE
DETERMINATION**

IN THE MATTER OF THE COMPLAINT OF DONAVON INDOVINO CAWLEY REGARDING THE VOTE
DUCKWORTH (ZACH) COMMITTEE

On October 30, 2020, the Campaign Finance and Public Disclosure Board received a complaint submitted by Donavon Indovino Cawley regarding the Vote Duckworth (Zach) committee. Vote Duckworth (Zach) is the principal campaign committee of Zach Duckworth, a candidate for Minnesota Senate District 58. On November 10, 2020, the Board chair determined that the complaint stated prima facie violations of Minnesota Statutes sections 10A.27, subdivision 9, and 10A.20, subdivision 3, by the Duckworth committee. The Board chair dismissed alleged violations of the recordkeeping and billing provisions in Minnesota Statutes sections 10A.13 and 10A.18.

The complaint alleges that the Duckworth committee ran a Facebook advertisement supporting Seth Lewis, an Illinois House of Representatives candidate. The complaint includes a screenshot indicating that the advertisement began running on October 26, 2020, and included the language “Paid for by Vote Duckworth” in the disclaimer. The advertisement consisted of a 15-second video featuring Mr. Lewis that appears to have been prepared by Mr. Lewis’s campaign committee, Citizens for Seth Lewis.¹ Public information provided by Facebook indicates that less than \$100 was spent to disseminate the advertisement. The complaint alleges that the advertisement was a contribution from the Duckworth committee to a candidate in a different state made in violation of Minnesota Statutes section 10A.27, subdivision 9.

The complaint also alleges that the Duckworth committee failed to disclose several expenditures or noncampaign disbursements as required by Minnesota Statutes section 10A.20, subdivision 3. The complaint asserts that the committee failed to disclose expenditures made for Facebook advertisements in August, September, and October of 2020. Public information provided by Facebook indicates that the Duckworth committee incurred expenditures totaling over \$4,400 for advertisements during the time period from June 10 through October 19, 2020.² The Duckworth committee’s 2020 pre-general report, which is inclusive of that time period, disclosed expenditures paid to Facebook totaling only \$699.99. The report also disclosed an expenditure of \$2,500 dated October 15, 2020, paid to a vendor that offers digital advertising services, which may have included some of the committee’s Facebook advertisements.

The complaint likewise alleges that the committee failed to disclose the fee paid when filing Mr. Duckworth’s affidavit of candidacy.

¹ [facebook.com/ads/library/?id=393677601668834](https://www.facebook.com/ads/library/?id=393677601668834)

² [facebook.com/ads/library/?view_all_page_id=897840073747223](https://www.facebook.com/ads/library/?view_all_page_id=897840073747223)

Lastly, the complaint alleges that the committee failed to timely and accurately disclose the cost of the committee's website. The complaint includes a screenshot indicating that the committee's website is hosted by NationBuilder and the domain name was registered in August 2018. The committee disclosed an expenditure of \$700 paid to NationBuilder dated August 17, 2020, described as "database management." That expenditure was first disclosed on the committee's 2020 pre-general report.

The complaint and the Board chair's prima facie determination were provided to the Duckworth committee on November 10, 2020. The Duckworth committee has not timely provided a response and has not filed an amended report of receipts and expenditures. The Board considered this matter at its meeting on December 2, 2020.

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.

Contribution to a Candidate in Another State

Minnesota Statutes section 10A.27, subdivision 9, paragraph (d), states in part that a "candidate or the treasurer of a candidate's principal campaign committee must not make a contribution from the principal campaign committee to a candidate for political subdivision office in any state." For purposes of that provision, payment of the cost of disseminating an advertisement prepared by another candidate is a contribution to that candidate. Given the Duckworth committee's apparent payment to post the Lewis committee's advertisement on Facebook, probable cause exists to believe that the Duckworth committee violated the prohibition on contributions to candidates in other states.

Reporting

Pursuant to Minnesota Statutes section 10A.20, subdivision 3, reports of receipts and expenditures must contain itemized and summary information disclosing contributions received and expenditures and noncampaign disbursements made during each reporting period. In-kind contributions and corresponding in-kind expenditures or noncampaign disbursements must be disclosed in accordance with their fair market value if that value exceeds \$20. An expenditure or noncampaign disbursement is considered to occur at the time when an obligation to pay that expense is incurred. An expenditure or noncampaign disbursement that has been incurred but has not yet been paid is reported as an unpaid bill.

There is probable cause to believe that the Duckworth committee did not report all of its expenditures and noncampaign disbursements. Public information provided by Facebook indicates that the Duckworth committee did not fully disclose expenditures incurred for its Facebook advertisements. Payment of a candidate's filing fee is a noncampaign disbursement and the Duckworth committee's 2020 pre-general and pre-primary reports did not disclose any noncampaign disbursements aside from payment processing fees.

Finally, the domain name voteduckworth.com was used by Mr. Duckworth in 2018 when campaigning for local office. The website was later changed to promote Mr. Duckworth's candidacy for state senator. The timeliness and accuracy of the disclosure of the cost of the committee's website therefore depends not on when the domain name was registered but rather when the website was transferred to Mr. Duckworth's new committee. The committee registered with the Board on January 24, 2020. Any value that was transferred from Mr. Duckworth's local candidate committee to his new principal campaign committee, such as the amount paid in advance for a year-long subscription, would constitute an in-kind contribution from the local committee to the state-level principal campaign committee, unless the state-level committee paid for that value. A principal campaign committee is prohibited from accepting a contribution from a local candidate committee pursuant to Minnesota Statutes section 10A.27, subdivision 9, paragraph (d), and a local candidate committee is likewise prohibited from making such a contribution pursuant to Minnesota Statutes section 211A.13. Because the committee has not disclosed any in-kind contributions and did not itemize any expenditures that appear to be related to its website aside from the \$700 expenditure dated August 17, 2020, probable cause exists to believe that the committee's 2020 pre-primary and pre-general reports are also inaccurate or incomplete with respect to the cost of the committee's website.

Order:

1. Probable cause exists to believe that the Duckworth committee made a contribution to a candidate in another state in violation of Minnesota Statutes section 10A.27, subdivision 9, paragraph (d).
2. Probable cause exists to believe that the Duckworth committee violated the reporting requirements in Minnesota Statutes section 10A.20, subdivision 3.

3. An investigation is ordered.

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

Date: December 2, 2020