

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

**CONCILIATION AGREEMENT**

In the matter of the Dr. Scott Jensen for Governor committee (18690);

1. The Dr. Scott Jensen for Governor committee (Jensen Committee) is the principal campaign committee for Dr. Jensen's campaign for the office of governor and for Matt Birk's campaign for lieutenant governor. On April 4, 2022, the Board received a complaint submitted by Charles Nauen on behalf of the Minnesota Democratic-Farmer-Labor Party alleging, in part, that specific Facebook advertisements promoting Matt Birk for lieutenant governor violated Minnesota Statutes section 211B.04, which regulates the use of disclaimers on campaign material. On April 14, 2022, the Board chair determined that the complaint alleged prima facie violations that would be considered by the Board at a hearing to determine if there was probable cause to investigate the allegations. Legal counsel for the Jensen Committee, Nicholas Morgan, submitted a response to the complaint on April 22, 2022, and appeared before the Board at its meeting on May 4, 2022. On May 9, 2022, at a special meeting, the Board found that there was probable cause to believe that a violation of Minnesota Statutes section 211B.04 had occurred, and directed the Board's executive director to open a staff review to conclude the investigation.

2. Minnesota Statutes section 211B.04, subdivision 1, requires the inclusion of a disclaimer on campaign material that identifies the person or committee responsible for the material. The disclaimer must be substantially in the form of "Prepared and paid for by the . . . committee, . . . (address)." In place of providing a mailing address the disclaimer may provide a website address if the mailing address is available on the website. The statute also provides that "online banner ads and similar electronic communications that link directly to an online page that includes the disclaimer" do not have to contain a disclaimer on the campaign material. 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 Board may impose a civil penalty of up to \$3,000 for a violation of Minnesota Statutes section 211B.04.

3. The five Facebook advertisements identified in the complaint all announce that Matt Birk is joining Dr. Jensen's campaign for governor as his running mate for lieutenant governor. The advertisements all are identified with, and link to, the Matt Birk Facebook profile page. The five Facebook advertisements each contain the statement "Paid for by Matt Birk for Lt. Governor". The initial Facebook advertisement was released on March 10, 2022, and the combined cost of the Facebook advertisements was approximately \$4,152.

4. The Jensen Committee paid for the Facebook advertisements referenced in the complaint. Mr. Morgan's response to the complaint explained that the statement "Paid for by Matt Birk for Lt. Governor" was placed on the advertisements as a way to identify expenditures made by the Jensen Committee to secure Mr. Birk's endorsement by the Republican Party for the office of

lieutenant governor. Expenditures made by the Jensen Committee to secure the lieutenant governor endorsement can be used to increase the base campaign spending limit for the Jensen Committee by five percent. A campaign committee that wishes to claim the five percent increase must keep records of the expenditures that were used to support the campaign of the lieutenant governor candidate. However, there is no requirement to identify those expenditures to the public.

5. The Jensen Committee maintains that Facebook advertisements are a type of electronic communication that may provide a disclaimer through a direct link to an online page that contains the disclaimer required for campaign material. The five Facebook advertisements link to the Matt Birk profile page on Facebook. The "Intro" section of the Matt Birk profile page provides that the page is for a political candidate, that "Dr Scott Jensen for Governor is responsible for this Page", the mailing address for the Jensen Committee, and the website address mattbirk.com, which is the campaign website for Mr. Birk. The mattbirk.com website contains the disclaimer for the Jensen Committee.

The Board accepts that campaign material delivered through a Facebook advertisement may use a direct link to an online page that contains a disclaimer substantially in the form provided in Minnesota Statutes section 211B.04. The Board further recognizes that Facebook requires the use of the term "...is responsible for this Page" on the "Intro" section, and will not allow the substitution of the "Prepared and paid for by..." language provided in statute. A Facebook advertisement that links to a profile page that acknowledges the campaign committee responsible for the page, provides the committee's mailing address or a website address that contains the committee's mailing address, and provides this information in the "Intro" or "About" sections of the profile page, has substantially complied with the requirements of Minnesota Statutes section 211B.04.

However, in this case, the violation to be addressed is not the information found on the Matt Birk profile page. A violation occurred because the disclaimer that was provided on the Facebook advertisements, "Paid for by Matt Birk for Lt. Governor" did not accurately identify that the Jensen Committee was responsible for the advertisements, as required by Minnesota Statutes section 211B.04, subdivision 1.

6. In determining the appropriate penalty for a violation of the disclaimer requirement the Board considers multiple factors such as whether it was clear who was responsible for the campaign material and how to contact them, whether the violation has been remedied, whether there were prior violations of the disclaimer requirement, the cost of the campaign material and how widely it was disseminated, whether the violation was self-reported, and whether the violation was willful. The content of the Facebook advertisements makes it clear that Matt Birk is running for lieutenant governor as a part of Dr. Jensen's campaign for governor. The Facebook advertisements contain a link to an online page that discloses that the Jensen Committee is responsible for the page, and provides the Jensen Committee's mailing address and a link to a website that contains the disclaimer for the Jensen Committee. Therefore, while the "Paid for by Matt Birk for Lt. Governor" disclaimer on the advertisements is inaccurate, it is doubtful that

the disclaimer caused widespread confusion as to who was creating the campaign material. This is the Jensen Committee's first violation of the disclaimer requirement. The approximate cost of the Facebook advertisements is \$4,152. The advertisements collectively yielded over 332,000 impressions, which is the number of times the advertisements were displayed. The violation was not self-reported, but rather was discovered as a result of the complaint.

7. The parties agree that the Jensen Committee violated the disclaimer requirement under Minnesota Statutes section 211B.04. Based on the factors listed above, the committee agrees to the imposition of a civil penalty of \$250. Payment is due within 30 days of the date the agreement is signed by both parties.

8. If the committee does not comply with the provisions of this agreement, this matter may be reopened by the Board and the Board may take such actions as it deems appropriate.

/s/ Scott Jensen  
Dr. Scott Jensen  
Dr. Scott Jensen for Governor

Dated: May 27, 2022

/s/ George Soule  
George Soule, Vice Chair  
Campaign Finance and Public Disclosure Board

Dated: June 1, 2022