

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

CONCILIATION AGREEMENT

In the matter of Rescue Minnesota (41301);

1. Rescue Minnesota is an independent expenditure political committee. On July 18, 2022, the Board received a complaint submitted by Kent Kaiser alleging that Rescue Minnesota made coordinated expenditures on behalf of the Doug Wardlow for Attorney General committee related to advertisements in violation of Minnesota Statutes section 10A.121. The complaint also alleged that Rescue Minnesota violated the reporting requirements in Minnesota Statutes section 10A.20, subdivision 3. On July 26, 2022, the Board's chair determined that the complaint stated prima facie violations of the prohibition on approved expenditures and the reporting requirements. On September 7, 2022, the Board found that there was probable cause to believe that those violations occurred and ordered an investigation. On December 15, 2022, the Board ordered that the investigation be expanded to include potential violations by the Wardlow committee, unless the respondents agree to enter into conciliation agreements to resolve the matter pursuant to Minnesota Statutes section 10A.28, subdivision 3.

2. Minnesota Statutes section 10A.176 applies to expenditures containing express advocacy. Minnesota Statutes section 10A.176, subdivision 3, provides that "[a]n 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 . . . is an . . . independent expenditure political committee . . . in which the candidate was a . . . treasurer . . . on or after January 1 of" that same year. Minnesota Statutes section 10A.175 provides that for purposes of section 10A.176, the term candidate includes the candidate's agent and the term agent includes a candidate's treasurer, so the treasurer of a principal campaign committee is treated the same as the candidate. A coordinated expenditure is an approved expenditure, which is a contribution to the candidate on whose behalf it was made, under Minnesota Statutes sections 10A.175, subdivision 5, and 10A.01, subdivision 4.

3. Thomas Datwyler was the treasurer of the Wardlow committee from December 2021 until July 2022. Mr. Datwyler was the treasurer of Rescue Minnesota from when it registered with the Board in June 2022 until the end of that month. The office of attorney general was on the ballot in 2022. Rescue Minnesota made \$39,950 in expenditures for radio and Facebook advertisements expressly advocating for the election of Mr. Wardlow. The radio advertisements aired from July 5-18 and August 6-9, 2022, and the Facebook advertisements were disseminated from July 6-18, 2022.

4. Mr. Datwyler, through his legal counsel, stated that the only task he completed for Rescue Minnesota was filing its registration and statement of organization. Mr. Datwyler said that his understanding of Rescue Minnesota's purpose was to support Republican candidates in the general election. Mr. Datwyler stated that he became aware of the advertisements in question

when he received an invoice via email. Mr. Datwyler promptly thereafter resigned as the treasurer of each committee. Mr. Datwyler said that he provided no information to Rescue Minnesota about the Wardlow committee's plans, strategies, or needs. The Wardlow committee, through its legal counsel, stated that the Wardlow committee did not have advance knowledge of the advertisements purchased by Rescue Minnesota. Rescue Minnesota stated that Mr. Datwyler had no prior knowledge of Rescue Minnesota's expenditures supporting Mr. Wardlow and was not informed in advance of the committee's intent to make expenditures supporting Mr. Wardlow. However, because Mr. Datwyler served as treasurer of each committee in 2022, the \$39,950 in expenditures that Rescue Minnesota made supporting Mr. Wardlow's candidacy were coordinated expenditures made on behalf of the Wardlow committee.

5. In two separate letters to Rescue Minnesota, Board staff asked whether radio advertisements supporting Mr. Wardlow continued to be broadcast after Rescue Minnesota was notified of the complaint and prima facie determination on July 27, 2022, and if so, why those advertisements were broadcast despite the risk that the Board would conclude that Rescue Minnesota was prohibited from making those expenditures. Rescue Minnesota has not provided a substantive response to that question. Publicly available data from FCC public inspection files indicates that over 300 radio spots paid for by Rescue Minnesota aired on at least 15 different stations during the period from August 6-9, 2022, representing approximately half of the total radio spots purchased by Rescue Minnesota in support of Mr. Wardlow.

6. An independent expenditure political committee that violates Minnesota Statutes section 10A.121 is "subject to a civil penalty of up to four times the amount of the contribution or approved expenditure" and "[n]o other penalty provided in law may be imposed for conduct that is subject to a civil penalty under [that] section." The Board has not previously found any committee or fund to have violated that provision. A civil penalty equal to or exceeding the amount of the violation would not be appropriate in this instance because this is a first-time violation and the amount of the violation is not directly correlated with the gravity of the violation.¹ The evidence in the record indicates that Mr. Datwyler did not share nonpublic information about the Wardlow committee with any other personnel acting on behalf of Rescue Minnesota, and did not share nonpublic information about Rescue Minnesota with any other personnel acting on behalf of the Wardlow committee. Therefore, the Board concludes that it would be disproportionate to use the dollar amount of the violation as a basis for the penalty in this agreement.

7. The parties agree that Rescue Minnesota made coordinated expenditures on behalf of Mr. Wardlow in violation of Minnesota Statutes section 10A.121, and in excess of the \$2,500 individual contribution limit under Minnesota Statutes section 10A.27, subdivision 1. Rescue Minnesota agrees to the imposition of a civil penalty of \$1,000 for its violation of Minnesota Statutes section 10A.121. Payment is due within 30 days of the date the agreement is signed by both parties.

¹ [Minnesota Statutes section 14.045, subdivision 3](#), lists factors that agencies must consider when setting the amount of a fine including the gravity, willfulness, and number of violations; the offender's past violations and economic benefit; and any other factor that justice requires.

8. Rescue Minnesota agrees to file, within 10 business days of the date the agreement signed by both parties, an amended termination report that omits the \$39,950 in coordinated expenditures.²

9. If Rescue Minnesota 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/ Andrew Olson
Andrew Olson, Treasurer
Rescue Minnesota

Dated: March 8, 2023

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

Dated: March 1, 2023

² Coordinated expenditures are contributions to the candidate on whose behalf they were made. However, in this instance, requiring that the \$39,950 in coordinated expenditures be classified as an in-kind contribution to the Wardlow committee could result in reports that are misleading. The coordination between the Wardlow committee and Rescue Minnesota was the result of a common treasurer, that treasurer provided no services to Rescue Minnesota other than submitting a registration form, and such a minimal level of coordination does not warrant compelling Rescue Minnesota to classify the expenditures as approved expenditures within its termination report.