

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

**PROBABLE CAUSE  
DETERMINATION**

IN THE MATTER OF THE COMPLAINT OF THE MINNESOTA DEMOCRATIC-FARMER-LABOR PARTY  
REGARDING THE JIM SCHULTZ FOR MINNESOTA ATTORNEY GENERAL COMMITTEE AND THE  
MINNESOTA FOR FREEDOM POLITICAL FUND

On October 18, 2022, the Campaign Finance and Public Disclosure Board received a complaint submitted by Charles Nauen, counsel for the Minnesota Democratic-Farmer-Labor party (Minnesota DFL), regarding Jim Schultz for Minnesota Attorney General and Minnesota for Freedom (MN Freedom). Jim Schultz for Minnesota Attorney General is the principal campaign committee of James Schultz. MN Freedom is an independent expenditure political fund.<sup>1</sup> The Republican Attorneys General Association is the supporting association of MN Freedom.

The complaint asserts and provides evidence that MN Freedom purchased \$847,600 in television advertisements during September and October of 2022 that advocated the defeat of Attorney General Keith Ellison. An independent expenditure political fund may make independent expenditures for or against a candidate, but may not make approved expenditures on behalf of, or otherwise make a contribution to, a candidate.<sup>2</sup> The complaint alleges that the advertisements purchased by MN Freedom were not expenditures made independently of the Schultz committee, and instead were approved expenditures made in coordination with the Schultz committee.

The complaint provides evidence that National Media submitted a political broadcast agreement for an advertisement purchased on behalf of the Schultz committee, and submitted five political broadcast agreements for advertisements purchased on behalf of MN Freedom, copies of which were included with the complaint.<sup>3</sup> National Media operates under at least two assumed names, but will generally be referred to herein as National Media.

The political broadcast agreement for an advertisement purchased by the Schultz committee was signed by Steve Syckes, who is identified by the agreement as an “agent for Jim Schultz for Minnesota Attorney General,” and was submitted using a National Association of Broadcasters (NAB) form known as PB-19.<sup>4</sup> Three of the political broadcast agreements for advertisements bought on behalf of MN Freedom were signed by Steve Syckes, as representative for MN

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<sup>1</sup> The fund’s Board registration number is [30733](#). This independent expenditure political fund is distinct from a separate political fund of the same name, Board registration number [30698](#), the registration of which was terminated as of the end of 2018.

<sup>2</sup> [Minn. Stat. § 10A.121](#).

<sup>3</sup> The Schultz committee agreement is attached to the complaint as Exhibit 1. The MN Freedom agreements and orders are attached to the complaint as Exhibits 2-6.

<sup>4</sup> An example Form PB-19 is available at [nab.org/performanceTaxResources/PB-19\\_Performance\\_Tax.pdf](http://nab.org/performanceTaxResources/PB-19_Performance_Tax.pdf).

Freedom, and were submitted using Form PB-19.<sup>5</sup> Two of the political broadcast agreements for advertisements bought on behalf of MN Freedom do not appear to include a signature or name of an agent for MN Freedom, but the complaint alleges that those agreements pertained to the same content as the agreements signed by Mr. Syckes.

The complaint states that because Mr. Syckes is an agent for the Schultz committee he cannot also provide services placing the MN Freedom advertisements without coordination. The complaint asserts that the alleged coordination destroyed the independence of the advertisements purchased by MN Freedom and those advertisements were therefore prohibited approved expenditures made on behalf of Mr. Schultz.<sup>6</sup> The complaint states that MN Freedom should not be allowed to claim an exception that allows a candidate's committee and an independent expenditure fund to use the same consultant without coordination, because that exception does not apply unless separate personnel are assigned to the candidate committee and to the independent expenditure political fund, among other requirements.<sup>7</sup>

The complaint further alleges that because an approved expenditure is a contribution to the candidate on whose behalf it was made, the television advertisements purchased by MN Freedom caused the Schultz committee to accept contributions far in excess of the \$2,500 individual contribution limit applicable to a candidate for attorney general during the 2021-2022 election cycle segment.<sup>8</sup>

On October 26, 2022, the Board's vice chair determined that the complaint states a prima facie violation of Minnesota Statutes section 10A.121, subdivision 2, by MN Freedom, and of Minnesota Statutes section 10A.27, subdivision 1, by the Schultz committee and by MN Freedom. The Board's vice chair determined that the complaint does not state a prima facie violation of the prohibition on corporate contributions under Minnesota Statutes section 211B.15, because the complaint does not name any corporation that allegedly violated that provision and a principal campaign committee cannot violate Minnesota Statutes section 211B.15, subdivision 2, unless a corporation was prohibited from making the contribution in question.

On November 4, 2022, the Board received a letter and several exhibits supplementing the complaint of the Minnesota DFL. Within the letter Mr. Nauen asserted that MN Freedom purchased television advertisements advocating the defeat of Attorney General Ellison in addition to those referenced in the complaint. The letter included as exhibits two advertisement agreements and seven invoices involving advertisements purchased by National Media on behalf of MN Freedom. The advertisement agreements were each signed by Jonathan Ferrell as a representative of National Media. The invoices collectively total \$908,150, but at least one appears to be duplicative of an order included with the complaint.<sup>9</sup> Copies of the letter and

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<sup>5</sup> These agreements are attached to the complaint as Exhibits 2, 5, and 6.

<sup>6</sup> See [Minn. Stat. § 10A.175, subd. 5](#); [Minn. Stat. § 10A.121, subd. 2](#).

<sup>7</sup> See [Minn. Stat. § 10A.176, subd. 4 \(b\)](#).

<sup>8</sup> See [Minn. Stat. § 10A.01, subd. 4](#); [Minn. Stat. § 10A.27, subd. 1](#).

<sup>9</sup> KSTP order # 436528/10486301, labeled Exhibit 3 to the complaint.

exhibits were provided to counsel for the Schultz committee, R. Reid LeBeau II, and to counsel for MN Freedom, Charles Spies and Katherine Reynolds, on November 15, 2022.

On November 28, 2022, MN Freedom provided a written response to the complaint and provided affidavits signed by Mr. Syckes and by Robin Roberts, president of National Media. The Schultz committee provided a written response to the complaint on December 22, 2022. In response to follow-up questions from Board staff, MN Freedom provided additional information on December 22, 2022, including a copy of a firewall policy labeled as that of American Media and Advocacy Group (AMAG), an assumed name of National Media, signed by Mr. Syckes on January 13, 2022.

MN Freedom denied making coordinated expenditures of behalf of Mr. Schultz. MN Freedom asserted that Mr. Syckes did not serve as its consultant, but rather served as a financial clerk for National Media. MN Freedom stated that Mr. Syckes “had no information regarding [MN Freedom’s] decisions regarding its advertisements. All he did was sign the paperwork.” MN Freedom provided an affidavit signed by Mr. Syckes in which he stated

2. I am a management / administrative employee. I am not responsible for political strategy whatsoever.
3. I have not ever provided advice or participated in decisions regarding the timing, location, intended audience, or the volume of distribution of campaign advertising purchased by Minnesota for Freedom (“MFF”) or anyone else.
4. MFF did not authorize me personally to sign advertisement agreements on behalf of MFF, nor did I sign any advertisement agreements on behalf of MFF.

Within his affidavit, Mr. Syckes acknowledged signing advertisement agreement forms related to “media buys” for MN Freedom, but said that signing advertisement agreement forms “is an administrative, ministerial act rather than a substantive one.” MN Freedom similarly asserted that signing an advertisement agreement form, in itself, is insufficient to establish coordination. MN Freedom noted that the FEC has considered the issue and a controlling block of commissioners characterized signing such an agreement as a “purely administrative act” in part because “[t]he form does not, for example, include the details of an ad buy schedule, that is information added *separately and later in time* by the broadcaster. The form neither contains nor reveals any information about the discrete details of an ad buy, including the so-called ‘flight’ or airing schedule.”<sup>10</sup>

Within his affidavit Mr. Roberts stated

3. Red Eagle participated in decisions regarding the timing, location, intended audience, and the volume of distribution of campaign advertising purchased by [MN Freedom]. However, Red Eagle’s robust firewall policy applied to ensure that information related to media buying for [MN Freedom] was not

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<sup>10</sup> Statement of Reasons of Vice Chair Allen Dickerson and Commissioner James E. “Trey” Trainor, III in the Matters of Nat’l Rifle Ass’n, *et al.* (Dec. 23, 2021), at 8, available at [eqs.fec.gov/eqsdocsMUR/7654\\_37.pdf](https://eqs.fec.gov/eqsdocsMUR/7654_37.pdf).

communicated or provided to any Red Eagle or National Media staff member who may have been participating in decisions regarding the timing, location, intended audience, or distribution of campaign advertising for any other client engaged in the 2022 election for Minnesota Attorney General.

4. Over the course of the 2022 election cycle, National Media and Red Eagle staff members reviewed and completed thousands of PB-18 forms.<sup>11</sup> The completion of PB-18 forms is a purely administrative and ministerial task.

MN Freedom stated that Mr. Syckes had no specific authorization to sign advertising agreements on its behalf, but rather MN Freedom “gave permission to National Media . . . to sign any necessary agreements,” and “[w]ho National Media . . . chose to sign such agreements was within” National Media’s discretion. MN Freedom acknowledged that Mr. Syckes signed advertisement agreements “on behalf of [MN Freedom] on select occasions.” MN Freedom argued that the ministerial act of signing a routine form does not constitute consulting. MN Freedom said that “[i]f, for example, [MN Freedom] and the Schultz campaign both used FedEx as a delivery service, the signing of the FedEx envelope is clearly not the sort of ‘consulting’ contemplated by Minnesota campaign finance law and would not be coordination.”

MN Freedom asserted that “questions regarding Mr. Syckes’ knowledge of the contents of the PB-19 form have no relevance to the legal issue at hand” and explained that much of the information within the agreements attached to the complaint as Exhibits 2, 5, and 6 was added after each form was signed by Mr. Syckes. Specifically, MN Freedom said that National Media “did not complete the sections on the form referencing the names of the candidates referred to, the offices sought by each candidate, and/or the political matters of national important [sic] referenced in the advertisements.” MN Freedom explained that it “did not see the advertisements at issue here prior to circulation, so it would have been unable to complete those sections.” MN Freedom said “[i]t is routine for the buyer to leave those fields blank, as the buyer does not see the advertisements prior to circulation and would therefore be unable to complete those sections.” MN Freedom further stated that National Media acted as a media buyer and “placed advertisements for [MN Freedom], but did not develop or produce advertisements.”

The firewall policy states that if management determines that its “engagement for a client could cause, contribute to, or result in coordination or the appearance of coordination between prospective, existing or prior clients in regard to political and issue-oriented communications, then work may not be performed by any AMAG employee or consultant for any affected client until AMAG implements appropriate ‘firewall’ procedures to address coordination concerns.” The policy explains steps that will be taken to prevent coordination if coordination concerns arise. MN Freedom has not stated whether those steps were taken in this instance. MN Freedom stated that the policy was “distributed to all personnel and clients covered by the policy.”

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<sup>11</sup> MN Freedom later clarified that NAB Forms PB-18 and PB-19 are similar and stated that Form PB-18 is used for political candidate advertisements while Form PB-19 is used for non-candidate/issue advertisements.

The Schultz committee asserted that Mr. Syckes did not serve as its consultant. The Schultz committee stated that it engaged OnMessage, Inc.<sup>12</sup> “to produce and place advertisements” and it “was not involved in, nor did it direct, OnMessage with regard to the manner and means by which OnMessage engaged subcontractors for the purpose of placing advertisements.” The Schultz committee said that it believes that OnMessage engaged National Media as a media buyer and stated that “at no time did any member of the Schultz Committee communicate with [National] Media or Mr. Syckes.” The Schultz committee argued that Mr. Syckes signed advertisement agreement forms “on behalf of the Schultz Committee as a purely administrative function” and that “[a]t no time was Mr. Syckes authorized by the Schultz Committee to act as, or represent himself as, an agent of the Schultz Committee.”

The Schultz committee stated that “[a]ll discussions that the Schultz campaign undertook regarding the timing, location, intended audience, or the volume of distribution of campaign advertising purchased by the Schultz Committee were done internally within the Schultz campaign or between the Schultz Committee and OnMessage.” The Schultz committee expressed its understanding that National Media “was engaged by OnMessage as the media buyer” and “placed advertisements for OnMessage, but did not produce advertisements or otherwise participate in the development of advertisements or undertake any other role other than as the media buyer.”

On December 28, 2022, Board staff provided to each party to the complaint a draft probable cause determination to be considered by the Board at its meeting scheduled for January 4, 2023. The draft probable cause determination, if adopted as drafted, would have found probable cause to believe that MN Freedom and the Schultz committee violated the individual contribution limit under Minnesota Statutes section 10A.27, subdivision 1, and that MN Freedom violated the prohibition on approved expenditures by an independent expenditure political fund under Minnesota Statutes section 10A.121. If adopted as drafted, the determination would have ordered a formal investigation if attempts to enter into conciliation agreements to resolve the matter pursuant to Minnesota Statutes section 10A.28, subdivision 3, were unsuccessful.

The Schultz committee and MN Freedom requested time to provide a written response regarding the draft probable cause determination. During its meeting on January 4, 2023, the Board voted to lay this matter over until its next meeting.

On January 18, 2023, MN Freedom and the Schultz committee provided separate written responses regarding the draft probable cause determination that was distributed to the parties on December 28, 2022. MN Freedom asserted that the draft determination “impermissibly expands the scope of the Complaint . . . and proposed investigation to National Media’s entire operation” by disregarding “the narrow basis for the Complainant’s allegations” and “recommending an investigation into whether *National Media*, not Mr. Syckes, should be considered a ‘shared consultant.’” MN Freedom argued that because “Mr. Syckes did not provide consulting services to” MN Freedom, whether he “implemented or followed an internal

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<sup>12</sup> [cis.scc.virginia.gov/EntitySearch/BusinessInformation?businessId=58916](https://cis.scc.virginia.gov/EntitySearch/BusinessInformation?businessId=58916)

firewall policy is irrelevant” (emphasis omitted). With respect to advertising agreements submitted by National Media that formed the basis of the complaint, MN Freedom stated that Mr. Syckes “did not fill in any information regarding [MN Freedom] (this was handled by other staff of National Media as part of the onboarding process) or the contents of the advertisement (this was handled by the media station),” and stated that “[a]ll Mr. Syckes did was sign the form.” MN Freedom sought dismissal of the complaint.

Within its written response, the Schultz committee offered three objections to the draft probable cause determination that was distributed to the parties on December 28, 2022. First, the Schultz committee stated that the draft determination “assumes that a candidate may violate Minn. Stat. § 10A.27, Subd. 1 without the candidate’s knowledge of facts constituting a violation of the statute,” which “is contrary to Minnesota law.” Second, the Schultz committee asserted that absent a finding of knowledge on the part of the candidate,

the Board would be concluding that because Mr. Schultz engaged an independent contractor of the Schultz Committee, OnMessage, and because OnMessage engaged National Media, who in turn requested Mr. Syckes to sign an immaterial, administrative form, then Mr. Syckes acted as the Schultz Committee’s “agent” even though Mr. Schultz did not know that Mr. Syckes existed and had not even engaged the company for which he worked. This giant logical leap is without statutory basis.

Third, the Schultz committee argued that “the services provided by Mr. Syckes to the Schultz Committee do not constitute ‘consulting’ under Minnesota law, nor do the services provided by National Media more broadly.” The Schultz committee sought dismissal of the complaint. The responses provided by MN Freedom and the Schultz committee are considered more fully within the analysis section below.

On February 7, 2023, counsel for National Media provided another affidavit signed by Mr. Roberts, president of National Media. Within his affidavit Mr. Roberts stated that “Red Eagle placed advertisements for [MN Freedom], but did not have any involvement whatsoever with crafting the campaign strategy for [MN Freedom]. Red Eagle did not plan or design any communications or advertisements for [MN Freedom].” Mr. Roberts stated that all National Media followed its “firewall policy, and there is no evidence to the contrary.” Mr. Roberts stated that the firewall policy “is signed by each staff member” and “the staff who specifically participated in work for either Minnesota for Freedom or the Schultz for Attorney General Campaign . . . were informed verbally of the need to maintain firewalled operations with regard to that work.”

Within his affidavit Mr. Roberts explained the roles played by several members of National Media’s staff regarding MN Freedom. Mr. Roberts stated that Kurt Pickhardt, an account manager, “communicated with Minnesota for Freedom staff and was given specific criteria by Minnesota for Freedom staff for the placement of ads in Minnesota. These instructions consisted of flight dates, media markets, and budgets.” Mr. Roberts said that Ben Angle, the “media supervisor on Minnesota for Freedom’s account,” “developed the media plan per

instructions from Pickhardt.” Mr. Roberts stated that “Leigh Brame served as the buyer and purchased the media for Minnesota for Freedom’s Account, implementing the media plan she was provided by Ben Angle.”

Within his affidavit Mr. Roberts explained the roles played by several other members of National Media’s staff regarding the Schultz committee and OnMessage, the Schultz committee’s “media consultant.” Mr. Roberts stated that “Kathleen Jones served as media supervisor and worked solely at the direction of” OnMessage and “did not interact directly with the Schultz campaign.” Mr. Roberts said that “Michelle Morie Benton served as the buyer and purchased the media for the Schultz campaign, implementing the plan she was provided by Kathleen Jones.” Mr. Roberts stated that Mr. Syckes was the only staff member “who had any contact with the ‘work’ for both Minnesota for Freedom” and the Schultz committee.

The Board considered this matter at its meeting on February 8, 2023. Mr. Spies and Ms. Reynolds appeared before the Board via Webex on behalf of MN Freedom. Mr. LeBeau and Mitchell Williamson appeared before the Board on behalf of the Schultz committee. David Zoll appeared before the Board on behalf of the Minnesota DFL.

## **Analysis**

When the Board chair or their designee 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.<sup>13</sup> 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 a complaint raises sufficient questions of fact which, if true, would result in the finding of a violation.

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 respondents, any benefit to be gained from a formal investigation, the availability of Board resources, and whether the violation has been remedied.<sup>14</sup> 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.<sup>15</sup>

Pursuant to Minnesota Statutes section 10A.01, subdivision 18

"Independent expenditure" means an expenditure expressly advocating the election or defeat of a clearly identified candidate or local candidate, if the expenditure is made without the express or implied consent, authorization, or cooperation of, and not in concert with or at the request or suggestion of, any

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<sup>13</sup> [Minn. Stat. § 10A.022, subd. 3 \(d\)](#).

<sup>14</sup> [Minn. R. 4525.0210, subp. 5](#).

<sup>15</sup> [Minn. R. 4525.0210, subp. 6](#).

candidate or any candidate's principal campaign committee or agent or any local candidate or local candidate's agent.

Pursuant to Minnesota Statutes section 10A.01, subdivision 4

"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.

An independent expenditure political fund may make independent expenditures, but is prohibited from making an approved expenditure or otherwise making a contribution to a candidate.<sup>16</sup> Specifically,

a) An independent expenditure political committee or independent expenditure political fund is subject to a civil penalty of up to four times the amount of the contribution or approved expenditure if it does the following:

(1) makes a contribution to a candidate, local candidate, party unit, political committee, or political fund other than an independent expenditure political committee or an independent expenditure political fund; or

(2) makes an approved expenditure.

(b) No other penalty provided in law may be imposed for conduct that is subject to a civil penalty under this section.<sup>17</sup>

An expenditure described within Minnesota Statutes section 10A.176, that expressly advocates for the election of a candidate or the defeat of a candidate's opponent, is a coordinated expenditure and is not an independent expenditure. Subdivision 4 of that section provides that

(a) An expenditure is a coordinated expenditure if the expenditure is 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.

(b) This subdivision does not apply when the following conditions are met:

(1) the consultant assigns separate personnel to the spender and the candidate;

(2) the consultant has a written policy that describes the measures that the consultant has taken to prohibit the flow of information between the personnel

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<sup>16</sup> [Minn. Stat. § 10A.121.](#)

<sup>17</sup> [Minn. Stat. § 10A.121, subd. 2.](#)



providing services to the spender and the personnel providing services to the candidate;

(3) the written policy has been distributed to all personnel and clients covered by the policy, including the candidate and the spender;

(4) the consultant has implemented the measures described in the written policy; and

(5) no information has been shared between the spender and the personnel that provided services to the spender and the candidate and the personnel providing services to the candidate.<sup>18</sup>

A “candidate who permits the candidate's principal campaign committee to accept contributions in excess of the limits imposed by section 10A.27” is “subject to a civil penalty of up to four times the amount by which a contribution exceeds the applicable limits.”<sup>19</sup>

### Statutory construction

“The first step of statutory interpretation is to ‘determine whether the statute's language, on its face, is ambiguous.’”<sup>20</sup>

The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature. Every law shall be construed, if possible, to give effect to all its provisions. When the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit.<sup>21</sup>

“In ascertaining the intention of the legislature” it may be presumed that “the legislature does not intend a result that is absurd, impossible of execution, or unreasonable.”<sup>22</sup> Statutes should be read as a whole and each section should be interpreted in light of surrounding sections in order to avoid conflicting interpretations.<sup>23</sup> “The rules of construction forbid adding words or meaning to a statute that were intentionally or inadvertently left out.”<sup>24</sup> “When the Legislature uses limiting or modifying language in

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<sup>18</sup> [Minn. Stat. § 10A.176, subd. 4](#). Prior to the enactment of Minnesota Statutes sections 10A.175 through 10A.177 in 2018, the Board issued two advisory opinions regarding consulting services and their potential to destroy the independence of expenditures that would otherwise be independent expenditures. Those opinions include [Advisory Opinion 338 \(Apr. 23, 2002\)](#) and [Advisory Opinion 400 \(July 22, 2008, amended Mar. 1, 2016\)](#).

<sup>19</sup> [Minn. Stat. § 10A.28, subd. 2](#).

<sup>20</sup> [Hagen v. Steven Scott Mgmt., Inc., 963 N.W.2d 164, 169 \(Minn. 2021\)](#) (*quoting* [Am. Tower, L.P. v. City of Grant, 636 N.W.2d 309, 312 \(Minn. 2001\)](#)).

<sup>21</sup> [Minn. Stat. § 645.16](#).

<sup>22</sup> [Minn. Stat. § 645.17](#).

<sup>23</sup> [Roberts v. State, 945 N.W.2d 850, 853 \(Minn. 2020\)](#) (*citing and quoting* [State v. Scovel, 916 N.W.2d 550, 554 \(Minn. 2018\)](#)).

<sup>24</sup> [Genin v. 1996 Mercury Marquis, 622 N.W.2d 114, 117 \(Minn. 2001\)](#) (*citing* [Phelps v. Commonwealth Land Title Ins. Co., 537 N.W.2d 271, 274 \(Minn.1995\)](#)).

one part of a statute, but omits it in another, we regard that omission as intentional and will not add those same words of limitation or modification to parts of the statute where they were not used.”<sup>25</sup>

#### Scope of this determination, standard of proof, and other procedural issues

Within its written response provided on January 18, 2023, MN Freedom argued that the draft probable cause determination provided to the parties on December 28, 2022, “expands the scope of analysis and proposed investigation to National Media’s entire operation” despite the complaint focusing “solely on Mr. Syckes and *his* alleged role as a ‘shared consultant.’” The complaint’s only use of the word consultant appears within a footnote anticipating that the respondents may assert that they were “allowed to utilize the same consultant pursuant to Minn. Stat. 10A.176, subd. 4,” which the complaint argues is not the case because “Steve Syckes purchased advertising time for both the Schultz Campaign and MN for Freedom.”

The complaint is imprecise in identifying the alleged consultant and asserts that “Steve Syckes is involved in the dissemination of campaign material for both the Schultz Campaign and MN for Freedom.” However, it does not focus solely on Mr. Syckes, nor does it clearly label him and only him as the alleged consultant. The complaint is supplemented by a letter and several exhibits, which were provided to MN Freedom and the Schultz committee on November 15, 2022. The letter asserts that “this is not the first time Red Eagle Media<sup>26</sup> and Jonathan Ferrell have flirted with violations of the laws prohibiting coordination between candidates and independent expenditure groups.” The letter does not apply the label consultant to any entity or individual. However, it is clear from the letter that the Minnesota DFL is alleging that coordination occurred due to National Media’s role as a common vendor. The letter claims that “Red Eagle and Ferrell were at the center of a series of complaints filed with the Federal Election Commission regarding extensive coordination involving the purchasing of advertising time in connection with the 2016 election,” and that those complaints “involved conduct similar to what occurred here, with candidates and outside groups using common vendors where ‘certain employees of those vendors were on both sides of the asserted ‘firewalls.’”

The Board is not required to apply a pleading standard to the complaint requiring precision with respect to the alleged violations. After the Board’s chair or their designee has determined that “a complaint alleges a prima facie violation,” the question that the Board must address is “whether probable cause exists to believe the alleged violation that warrants a formal investigation has occurred,” not whether the complaint clearly identifies the precise mechanism that facilitated the alleged violation.<sup>27</sup> Minnesota

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<sup>25</sup> [State v. Schwartz, 957 N.W.2d 414, 419 \(Minn. 2021\)](#) (quoting [General Mills, Inc. v. Comm’r of Revenue, 931 N.W.2d 791, 800 \(Minn. 2019\)](#)).

<sup>26</sup> Red Eagle Media Group is an assumed name of National Media.

<sup>27</sup> See [Minn. Stat. § 10A.022, subd. 3 \(c\)-\(d\)](#).

Statutes Chapter 10A does not define the term probable cause, nor does it establish a standard of proof, state who has the burden of proof, or limit the information that the Board may consider in making a probable cause determination. In the past the Board has concluded that “[a] probable cause finding requires something more than mere suspicion but less than actual proof.”<sup>28</sup> On multiple occasions that Board has explained that a probable cause determination “is a determination of whether a complaint raises sufficient questions of fact which, if true, would result in the finding of a violation.”<sup>29</sup> When making findings and conclusions following an investigation, the Board has applied a preponderance of the evidence standard, under which “the Board must be convinced by the evidence and the reasonable inferences that may be drawn from that evidence that it is more likely that a particular fact exists than that it does not exist.”<sup>30</sup>

Within its written response provided on January 18, 2023, MN Freedom stated that the draft probable cause determination provided to the parties on December 28, 2022, “claims that by [Mr. Syckes] signing the PB-19s, it raises concern that National Media is not following its own firewall policy, and thus recommends bootstrapping an expansive investigation into National Media. To initiate a widespread investigation under these pretenses is unwarranted and a violation of [MN Freedom’s] (and National Media’s) due process rights.” MN Freedom also stated that MN Freedom “had no opportunity to respond to these internally-created allegations prior to the” draft probable cause determination provided to the parties on December 28, 2022. MN Freedom argued that “despite National Media never being named as a Respondent in this matter, the Board, by moving forward with the Recommendation, would be authorizing an investigation into their entire internal operations. National Media should have an opportunity to respond before the Board authorizes such a widespread investigation.” The response does not cite any legal authority in support of these assertions.

Prior to making a probable cause determination, “any party against whom a complaint is filed must be given an opportunity to be heard by the board prior to the board’s determination as to whether probable cause exists to believe a violation that warrants a formal investigation has occurred.”<sup>31</sup> That opportunity has been afforded to MN Freedom and to the Schultz committee. Both the Schultz committee and MN Freedom were provided time to prepare a written response to the draft probable cause determination provided to the parties on December 28, 2022, which is not customary and is not required by Chapter 10A. To the extent that any party was caught by surprise upon receiving the draft probable cause determination that the Board intended to consider in January 2023, it has been afforded ample opportunity to respond.

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<sup>28</sup> [In the matter of the complaint of the Republican Party of Minnesota, regarding the Minnesota DFL State Central Committee, et al. \(July 5, 2016\).](#)

<sup>29</sup> [Id.; In the Matter of the Complaint of Matt Stevens regarding the Duff \(Alan\) 4 House committee, et al. \(Sept. 7, 2016\).](#)

<sup>30</sup> [Findings, Conclusions, and Order in the Matter of the Complaint of Steve Drazkowski regarding the Neighbors For Ilhan \(Omar\) Committee \(June 6, 2019\); Findings, Conclusions, and Order in the Matter of the Complaint of Brian Wojtalewicz regarding Tim Miller, et al. \(Jan. 9, 2018\).](#)

<sup>31</sup> [Minn. Stat. § 10A.022, subd. 3 \(d\).](#)

On November 28, 2022, MN Freedom provided to the Board the affidavits of Mr. Roberts, president of National Media, and Mr. Syckes, an accountant employed by National Media. On February 7, 2023, National Media provided to the Board another affidavit of Mr. Roberts. National Media is aware of the complaint and has had the opportunity to provide any information that it feels is relevant to MN Freedom or the Schultz committee. However, Chapter 10A does not provide a vendor to a respondent to a complaint with a right to respond or to otherwise participate in the Board's probable cause determination. The Board may seek information directly from National Media during any investigation that follows this probable cause determination, but National Media is not a respondent in this matter<sup>32</sup> and is not alleged to have done anything that would subject it to a penalty imposed under Chapter 10A.

### Definition of consulting services

Pursuant to Minnesota Statutes section 10A.175, subdivision 4

"Consulting services" means 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.

In order to be a coordinated expenditure by virtue of Minnesota Statutes section 10A.176, subdivision 4, an expenditure must involve express advocacy and be made for consulting services. Within its written response provided on January 18, 2023, the Schultz committee stated that National Media did not provide consulting services. The Schultz committee argued that

neither the complaint nor the responses from involved parties indicate any services that could be considered "consulting services" were contracted by the Schultz Committee or OnMessage from National Media. In fact, the Schultz Committee had an entirely separate company for ad preparation—OnMessage. National Media was contracted—not by the Schultz Committee but by OnMessage—for the standard media buyer role to execute the ad buy planned by the Schultz Committee and their consultants at OnMessage.

The Schultz committee asserted that the services provided by National Media consisted of "the use of a medium for communications purposes," the cost of which is excluded from the definition of consulting services. To illustrate its point, the Schultz committee stated "[p]ut more bluntly, would the costs for television advertisement be excluded as a 'medium for communications purposes'? Of course not."

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<sup>32</sup> See [Minn. R. 4525.0100, subp. 8.](#)

The Schultz committee appears to interpret Minnesota Statutes section 10A.175, subdivision 4, to exclude services provided by a media buyer such as National Media from the definition of consulting services, and to not exclude from that definition the cost of broadcasting television advertisements. The text of the statute leads to the opposite conclusion. A key component of the definition is language requiring that the services involve campaign strategy in order to constitute consulting services. National Media's website promotes its services, including "audience segmentation," "strategic targeting," "campaign optimization," and "competitive tracking," and states that it will "research, plan, and manage media campaigns across all mediums to ensure that your message is seen by the right people."<sup>33</sup> Mr. Roberts, who is president of National Media, stated in his first affidavit that National Media "participated in decisions regarding the timing, location, intended audience, and the volume of distribution of campaign advertising purchased by" MN Freedom. Within his second affidavit Mr. Roberts stated that an employee of National Media, Kathleen Jones, served "as media supervisor and worked solely at the direction of" OnMessage, a vendor working on behalf of the Schultz committee. Mr. Roberts said that another National Media employee, Michelle Morie Benton, "served as the buyer and purchased the media for the Schultz campaign, implimenting the media plan she was provided by Kathleen Jones." Therefore, there is reason to believe that the services provided by National Media to the Schultz committee via OnMessage and directly to MN Freedom involved campaign strategy and fall within the definition of consulting services by virtue of consisting of communications planning and design, advertising, or messaging, rather than merely representing "costs for the use of a medium for communications purposes."

While OnMessage appears to have provided consulting services to the Schultz committee, that does not preclude the conclusion that National Media also provided consulting services to the Schultz committee via OnMessage. The term consulting services includes "communications planning and design, advertising, and messaging," and is not limited to the production of advertisements.<sup>34</sup> The Schultz committee asserted that there is no evidence in the record "indicating that services beyond paying 'costs for the use of a medium for communications purposes' were provided to the Schultz Campaign" by National Media. However, the Schultz committee also stated that "National Media was contracted . . . for the standard media buyer role to execute the ad buy planned by the Schultz Committee and their consultants at OnMessage," so the committee's assertion appears to be premised upon the incorrect conclusion that all services provided by a media buyer such as National Media are excluded from the definition of consulting services. Moreover, the second affidavit of Mr. Roberts demonstrates that the services National Media provided to the Schultz committee via OnMessage involved campaign strategy.

MN Freedom provided an analogy regarding an individual signing for the receipt of parcels on behalf of both a candidate and an independent expenditure political fund to illustrate its argument that the services provided in this instance did not consist of consulting services under Minnesota law. That argument may be convincing with respect to the tasks performed

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<sup>33</sup> [natmedia.com](http://natmedia.com)

<sup>34</sup> [Minn. Stat. § 10A.175, subd. 4.](#)

specifically by Mr. Syckes. However, the Board is not convinced that the argument extends to all of the services provided by National Media to MN Freedom and to the Schultz committee. The evidence that National Media provided consulting services includes the agreements and orders attached as exhibits to the complaint; the agreements and invoices attached as exhibits to the letter from counsel for the Minnesota DFL supplementing the complaint, which was provided to MN Freedom and the Schultz committee on November 15, 2022; the September 2022 and 2022 pre-general reports of receipts and expenditures filed by MN Freedom disclosing over \$1.4 million in expenditures paid to National Media (dba Red Eagle Media) through October 24, 2022, all of which were classified as independent expenditures for Mr. Schultz or against Mr. Schultz's sole general election opponent, Attorney General Keith Ellison; the responses of MN Freedom and the Schultz committee describing National Media as a media buyer; National Media's website describing the services that it provides; the first affidavit of Mr. Roberts stating that the services provided to MN Freedom by National Media involved "decisions regarding the timing, location, intended audience, and the volume of distribution of campaign advertising purchased . . ."; and the second affidavit of Mr. Roberts explaining that National Media staff were involved in developing media plans and implementing those plans.

Costs paid solely for the broadcasting of television and radio advertisements, or for the dissemination of advertisements via billboards, websites, and other platforms, do not constitute consulting services. Those services do not, in themselves, involve campaign strategy, and their cost falls within the exclusion of "costs for the use of a medium for communications purposes." Costs incurred to disseminate communications occur after strategic decisions have been made regarding where, when, and how widely or frequently a communication should be disseminated, and which demographic groups should be targeted, which is why those expenses are distinguished from expenses involving campaign strategy. To the extent that costs paid by MN Freedom to National Media consisted of the amounts that National Media paid to broadcast the advertisements on television, those costs will be excluded from the calculation of expenditures made for consulting services.

Based on the foregoing analysis, there is reason to believe that the services provided by National Media to the Schultz committee via OnMessage and to MN Freedom involved campaign strategy and extended beyond paying for the "costs for the use of a medium for communications purposes."<sup>35</sup>

#### Provision of consulting services

In order for consulting services purchased by an entity such as MN Freedom to result in coordination by virtue of Minnesota Statutes section 10A.176, subdivision 4, the consultant must have "provided consulting services to the candidate or the candidate's opponent during that same election segment." MN Freedom noted that the FEC has considered the issue of a common vendor signing advertising agreements and two commissioners characterized signing a Form PB-18 agreement as an administrative act that is insufficient to provide the basis for an

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<sup>35</sup> See [Minn. Stat. § 10A.175, subd. 4.](#)

investigation of alleged coordination. Within their statement of reasons FEC Vice Chair Dickerson and Commissioner Trainor said that an individual's

purely administrative act of signing Form PB-18, a form that often "was prepared by others" and shorn of any useful information about that the ad at the time of his signature, then, is totally insufficient evidence to believe that he held within his head "information [] material to the creation, production, or distribution of the[se] communication[s]," let alone that he then conveyed that information to another actor.<sup>36</sup>

That conclusion is apparently relevant to the determination of whether coordination occurred under federal law by virtue of a common vendor.<sup>37</sup> However, such a conclusion is not necessarily relevant under Minnesota law, because Chapter 10A does not require a finding that a consultant used or conveyed nonpublic information in order to conclude that an expenditure was a coordinated expenditure by virtue of a common consultant. If a consultant provides consulting services to a candidate, and to a spender regarding an expenditure expressly advocating the election of that candidate or the defeat of that candidate's opponent, within the same election segment, the services provided to the spender constitute a coordinated expenditure, unless the conditions within Minnesota Statutes section 10A.176, subdivision 4, paragraph (b), have been met.

Mr. Roberts stated in his first affidavit that a "robust firewall policy applied to ensure that information related to media buying for [MN Freedom] was not communicated or provided to any . . . National Media staff member who may have been participating in decisions regarding the timing, location, intended audience, or distribution of campaign advertising for any other client engaged in the 2022 election for Minnesota Attorney General." However, Mr. Syckes signed at least one advertising agreement on behalf of the Schultz committee, then signed advertising agreements on behalf of MN Freedom. Minnesota Statutes section 10A.176, subdivision 4, requires the assignment of separate personnel to the spender and the candidate and does not contain exceptions for certain types of personnel, such as those who perform administrative tasks.

Within its written response provided on January 18, 2023, MN Freedom argued that because Mr. Syckes did not provide consulting services, whether he "implemented or followed an internal firewall policy is irrelevant" (emphasis omitted). MN Freedom asserted that "only individuals that provide consulting services are required to establish and abide by an internal firewall policy under Minnesota law." MN Freedom did not cite any legal authority in support of those contentions, aside from Minnesota Statutes section 10A.176, subdivision 4, paragraph (b), which is not limited, by its terms, to personnel who provide consulting services. If MN

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<sup>36</sup> Statement of Reasons of Vice Chair Allen Dickerson and Commissioner James E. "Trey" Trainor, III in the Matters of Nat'l Rifle Ass'n, *et al.* (Dec. 23, 2021), at 8, available at [eqs.fec.gov/eqsdocsMUR/7654\\_37.pdf](https://eqs.fec.gov/eqsdocsMUR/7654_37.pdf) (brackets in original).

<sup>37</sup> See 11 C.F.R. § 109.21 (d) (4) (iii), stating that in order for coordination to occur by virtue of a common vendor, the vendor must use or convey nonpublic information that "is material to the creation, production, or distribution of the communication."

Freedom's interpretation is correct, the requirement to assign separate personnel in order to avoid coordination would effectively be limited to apply only to specific personnel who provide consulting services within the meaning of Minnesota Statutes section 10A.175, subdivision 4. No such limitation appears within the text of the statute. As is noted above, Minnesota's "rules of construction forbid adding words or meaning to a statute that were intentionally or inadvertently left out."<sup>38</sup>

The complaint and the responses of MN Freedom provide reason to believe that National Media did not assign separate personnel to MN Freedom and the Schultz committee, at least with respect to Mr. Syckes. The complaint and the responses of MN Freedom provide reason to believe that National Media either did not implement at least some the measures described in its firewall policy, or that its firewall policy was inadequate to prevent coordination. In summary, there is reason to believe that National Media failed to satisfy some of the five conditions that it was required to satisfy in order to provide consulting services to both the Schultz committee and MN Freedom without causing coordinated expenditures.

MN Freedom stated that National Media

did not see any of the advertisements that were the subject of the PB-19 forms included as Exhibits 2, 5, and 6, nor did [it] see any advertisement placed by [MN Freedom] during the 2022 election cycle prior to the advertisement's distribution, and [it] did not complete the sections on the form referencing the names of the candidates referred to, the offices sought by each candidate, and/or the political matters of national important [sic] referenced in the advertisements.

A lack of knowledge on the part of National Media concerning the content of the MN Freedom advertisements may be relevant in determining the gravity of any violation and will be considered by the Board if it determines that a violation occurred.<sup>39</sup> However, if National Media provided consulting services to both MN Freedom and the Schultz committee, unless the conditions within Minnesota Statutes section 10A.176, subdivision 4, paragraph (b), were satisfied, any such lack of knowledge is immaterial to determining whether there is probable cause to believe that a violation occurred.

#### Definition of agent

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."<sup>40</sup> 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."<sup>41</sup> 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

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<sup>38</sup> [Genin, 622 N.W.2d at 117.](#)

<sup>39</sup> [See Minnesota Statutes section 14.045, subdivision 3.](#)

<sup>40</sup> [Minn. Stat. § 10A.175, subd. 2.](#)

<sup>41</sup> [Minn. Stat. § 10A.175, subd. 3.](#)



expenditure is an approved expenditure under section 10A.01, subdivision 4.”<sup>42</sup> The definitions within Minnesota Statutes section 10A.175 apply to Minnesota Statutes sections 10A.175 through 10A.177,<sup>43</sup> which further distinguish coordinated and noncoordinated expenditures.

The Schultz committee stated that it did not interact with National Media directly. Within its written response provided on January 18, 2023, the Schultz committee argued that absent a finding that Mr. Schultz was aware of the facts that allegedly constitute a violation of the individual contribution limit, the Board could conclude that National Media provided consulting services to the candidate only if it first concludes that Mr. Sykes was the Schultz committee’s agent because he acted on behalf of National Media, which acted on behalf of OnMessage, which acted on behalf of the Schultz committee. The term agent includes a principal campaign committee’s officers “or any other person whose actions are coordinated,” 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,” and the term candidate includes both a candidate, as that term is defined by Minnesota Statutes section 10A.01, subdivision 10, and a “candidate’s principal campaign committee, or the candidate’s agent.”<sup>44</sup>

Importantly, the expanded definition of candidate within subdivision 3 applies to the definition of coordinated in subdivision 5, pursuant to Minnesota Statutes section 10A.175, subdivision 1. Because the term candidate is defined, for purposes of Minnesota Statutes sections 10A.175 through 10A.177, to include a candidate’s agent, any person whose actions are coordinated is the candidate’s agent and is thereby treated the same as the individual candidate, regardless of whether that person’s actions were coordinated directly by the individual candidate, by the candidate’s principal campaign committee, by a vendor hired by the candidate or their principal campaign committee, by a subcontractor hired by a vendor hired by the individual candidate or their principal campaign committee, etc. The number of agents that exist between an individual candidate and a consultant may have a bearing on the knowledge of the individual candidate, and may therefore be a factor in considering the willfulness and gravity of any violation of the individual contribution limit, which must be considered by the Board when considering the amount of any civil penalty to be imposed.<sup>45</sup> However, the number of agents that were involved has no bearing on whether National Media provided consulting services to the Schultz committee. Stated differently, an entity cannot, through the use of vendors and subcontractors to those vendors, indirectly engage in activity that it is prohibited from engaging in directly.

Based on the forgoing analysis, there is reason to believe that National Media provided consulting services to both the Schultz committee and MN Freedom, without satisfying the conditions in Minnesota Statutes section 10A.176, subdivision 4, causing the expenditures referenced in the complaint to be coordinated expenditures and thereby approved expenditures made by MN Freedom in violation of Minnesota Statutes section 10A.121, to the extent that those expenditures were not “costs for the use of a medium for communications purposes.”

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<sup>42</sup> [Minn. Stat. § 10A.175, subd. 5.](#)

<sup>43</sup> [Minn. Stat. § 10A.175, subd. 1.](#)

<sup>44</sup> [Minn. Stat. § 10A.175.](#)

<sup>45</sup> [See Minn. Stat. § 14.045, subd. 3.](#)

## Construction of the phrases “must not permit” and “who permits”

If the office sought is attorney general, “a candidate must not permit the candidate's principal campaign committee to accept aggregate contributions made or delivered by any . . . political fund . . . in excess of” “\$2,500 in the election segment of an election cycle for the office sought.”<sup>46</sup> A “candidate who permits the candidate's principal campaign committee to accept contributions in excess of” that limit is subject to a civil penalty.<sup>47</sup> Within its written response provided on January 18, 2023, the Schultz committee noted that the word permit is not defined within Chapter 10A and provided definitions from two dictionaries. The Britannica Dictionary defines the word permit to mean “to allow (something) to happen,” “to give permission for (something),” “to allow (someone) to do or have something,” or “to make something possible.”<sup>48</sup> The Merriam-Webster Dictionary defines the word permit to mean “to consent to expressly or formally,” “to give leave,” or “to make possible.”<sup>49</sup> The Schultz committee argued that someone “cannot ‘consent to’ something, ‘allow it to happen,’ or ‘give permission’ for conduct, without knowledge of that conduct,” and asserted that “in order to ‘permit’ an illegal contribution” in violation of the individual contribution limit, “a candidate must *know* about it.”

The words permit, permits, and permitted each appear several times within Chapter 10A. Within Minnesota Statutes section 10A.27, the phrase must not permit is used five times in stating that a candidate must not allow their principal campaign committee to accept contributions or loans that exceed specified limits. Within Minnesota Statutes section 10A.28, the word permits is used three times in stating that a candidate is subject to a civil penalty if they permit excess expenditures to be made or permit excess contributions to be accepted. A principal campaign committee whose candidate who has signed a public subsidy agreement “must not . . . permit approved expenditures to be made on behalf of the candidate” in excess of the candidate’s spending limit,<sup>50</sup> and a candidate who “permits approved expenditures to be made on the candidate's behalf in excess of the” candidate’s spending limit is subject to a civil penalty<sup>51</sup>. There are several instances within Chapter 10A in which no violation may occur, or no civil penalty may be imposed, unless an individual or entity acts knowingly or knowingly fails to act.<sup>52</sup> Minnesota Statutes section 10A.27, which pertains to contribution limits, and section 10A.28, which pertains to penalties for exceeding contribution and spending limits, are devoid of similar language requiring that the recipient of a contribution act knowingly in order for a violation of a contribution limit to occur, or in order for the Board to impose a civil penalty for such a violation.

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<sup>46</sup> [Minn. Stat. § 10A.27, subd. 1.](#)

<sup>47</sup> [Minn. Stat. § 10A.28, subd. 2.](#)

<sup>48</sup> [britannica.com/dictionary/permit](https://www.britannica.com/dictionary/permit)

<sup>49</sup> [merriam-webster.com/dictionary/permit](https://www.merriam-webster.com/dictionary/permit)

<sup>50</sup> [Minn. Stat. § 10A.25, subd. 2.](#)

<sup>51</sup> [Minn. Stat. § 10A.28, subd. 1.](#)

<sup>52</sup> See [Minn. Stat. § 10A.025, subs. 2 \(b\)-\(c\), 3 \(b\)-\(c\)](#); [Minn. Stat. § 10A.11, subd. 7](#); [Minn. Stat. § 10A.12, subd. 6](#); [Minn. Stat. § 10A.13, subd. 1](#); [Minn. Stat. § 10A.16](#); [Minn. Stat. § 10A.17, subd. 5](#); [Minn. Stat. § 10A.271, subd. 3.](#)

The Schultz committee accurately asserted that the draft probable cause determination provided to the parties on December 28, 2022, effectively stated “that candidates are ‘strictly liable’ for any violation of” the individual contribution limit. The Schultz committee made various arguments regarding why the Board should interpret Minnesota Statutes section 10A.27, subdivision 1, to include a knowledge requirement on the part of the candidate, rather than imposing strict liability.

First, the Schultz committee argued that its interpretation is supported by case law. The Schultz committee cited cases based on state law adjudicated in state court in California and Maryland that are not applicable to the issues before the Board. The Schultz committee also cited multiple Minnesota cases that support the proposition that the rule of strict construction, also known as the rule of lenity, requires that ambiguous penal statutes be interpreted in a manner that is favorable to a criminal defendant or a child in a juvenile delinquency matter.

Within its response the Schultz committee claimed that “violations of Minn. Stat. § 10A.27 are criminal misdemeanors,” citing a statute providing that “[a] matter that is under the board’s jurisdiction pursuant to this section and that may result in a criminal offense must be finally disposed of by the board before the alleged violation may be prosecuted by a city or county attorney.”<sup>53</sup> However, that provision does not classify any violation of Chapter 10A as a criminal offense. The limited number of provisions within Chapter 10A that provide for the imposition of criminal penalties, following prosecution by a county or city attorney and a guilty plea or verdict, contain language stating as much. Moreover, “[u]nless otherwise provided, a violation of [Chapter 10A] is not a crime.”<sup>54</sup> Contrary to the belief of the Schultz committee, a violation of the individual contribution limit is not a crime and Minnesota Statutes sections 10A.27 and 10A.28 contain no language to the contrary. Likewise, a violation of Minnesota Statutes section 10A.121 is not a crime.

Another case cited by the Schultz committee involved the Minnesota Supreme Court’s reversal of a trial court that invalidated the election of a city council candidate on the basis that the candidate’s campaign material contained a false claim of party support and constituted a defamatory circular.<sup>55</sup> The Court stated that the statutes the candidate was deemed to have violated

are criminal statutes, violations of which are gross misdemeanors. Therefore, the rule of strict construction of penal statutes must be applied notwithstanding the civil nature of the proceeding before us. Even in this civil proceeding the consequences of a violation are severe since the decision of the voters is

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<sup>53</sup> [Minn. Stat. § 10A.022, subd. 7.](#)

<sup>54</sup> [Minn. Stat. § 10A.34, subd. 3.](#)

<sup>55</sup> [Matter of Contest of Gen. Election on Nov. 8, 1977, 264 N.W.2d 401, 403 \(Minn. 1978\).](#) The statutes in question were Minnesota Statutes sections 210A.02 and 210A.04, the 1976 versions of which are available at [revisor.mn.gov/statutes/1976/cite/210A/pdf](http://revisor.mn.gov/statutes/1976/cite/210A/pdf). Those statutes were the predecessors to Minnesota Statutes sections [211B.02](#) and [211B.06](#).

judicially set aside, and under the statute they have no opportunity to vote for a disqualified candidate in an election to fill the vacancy.<sup>56</sup>

Less than two years prior to publishing that opinion, the Court described the rule of strict construction of penal statutes as stating the proposition that “[b]efore a person may be subject to criminal liability it must be reasonably certain that the statute or ordinance renders his conduct a criminal offense.”<sup>57</sup>

The case involving the 1977 election is distinguishable from this matter in several respects. First, the relief ordered by the trial court was “severe,” invalidated an election rendering a city council seat vacant, and resulted in an individual being disqualified from being elected to fill the vacant seat. Nothing comparable to invalidating an election or barring a candidate from being elected in the future could reasonably result from the Minnesota DFL’s complaint in this matter. Second, the construction of the statutes at issue was unrelated to any candidate’s knowledge or intent. Instead, the Court considered whether the phrase political party, or unit thereof, within Minnesota Statutes section 210A.02, was inclusive of individuals such as Senator Hubert Humphrey and Vice President Walter Mondale, and whether Minnesota Statutes section 210A.04 prohibited the dissemination of misleading, self-laudatory statements, or merely prohibited defamatory statements. Third, violations of Minnesota Statutes sections 210A.02 and 210A.04 were classified as gross misdemeanor offenses.<sup>58</sup>

Even if a violation of the individual contribution limit was a crime, the rule of strict construction would not require the application of a knowledge requirement. In 2000 the Minnesota Supreme Court considered whether the phrase “to keep or allow to be kept” in a penal statute prohibiting open containers of alcohol in vehicles required that the alleged violator have knowledge of the open container in order to be found guilty of the offense.<sup>59</sup> The Court noted that the legislature included knowledge requirements within other statutes pertaining to motor vehicles by using the word knowingly, and had the opportunity to include a knowledge requirement within the statute at issue, but declined to do so.<sup>60</sup> The Court stated that “[t]he phrases ‘it shall be unlawful’ or ‘no person shall’ appear throughout the traffic code and have never been understood to require a showing of intent to prove a violation of the statute,” and the Court noted “that other provisions of the traffic code that use such language are strict liability offenses.”<sup>61</sup>

In summary, the Schultz committee’s interpretation of the phrase must not permit is not supported by the case law that it cited. Even if the rule of strict construction was applicable to this matter, the Minnesota Supreme Court has “held that the rule of strict construction does not require this court to assign the narrowest possible interpretation to the statute or to adopt a

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<sup>56</sup> *Id.* (internal footnotes omitted).

<sup>57</sup> [State v. Larson Transfer & Storage, Inc.](#), 246 N.W.2d 176, 182 (Minn. 1976) (citing [State v. Kuluvar](#), 123 N.W.2d 699 (Minn. 1963)).

<sup>58</sup> Minn. Stat. § 210A.42 (1976); [Matter of Contest of Gen. Election on Nov. 8, 1977](#), at 403.

<sup>59</sup> [State v. Loge](#), 608 N.W.2d 152 (Minn. 2000).

<sup>60</sup> *Id.*, at 157.

<sup>61</sup> *Id.*

construction that would render the statute or one of its subdivisions meaningless.”<sup>62</sup> As was the case in *Loge*, if a knowledge requirement was read into Minnesota Statutes sections 10A.25, 10A.27, and 10A.28 “there would be a substantial, if not insurmountable, difficulty of proof.”<sup>63</sup>

If, in order to find a violation or impose a civil penalty, the Board was required to conclude that an individual candidate had knowledge of the specific contribution or expenditure that caused the candidate’s principal campaign committee to exceed a contribution limit under Minnesota Statutes section 10A.27, or any spending limit applicable to the candidate under Minnesota Statutes section 10A.25, the knowledge requirement would eviscerate those limits. A principal campaign committee, and any spender making coordinated expenditures, could ensure that the individual candidate remains unaware of certain contributions and expenditures in order to exceed the applicable limits with impunity.

Second, the Schultz committee argued that its interpretation of the phrase must not permit is supported by the use of the words approved and coordinated when describing approved and coordinated expenditures within Chapter 10A. However, the terms approved expenditure and coordinated expenditure each have specific, technical meanings defined by Chapter 10A.<sup>64</sup> Moreover, the meaning of those terms is independent of the meaning of the phrase must not permit within Minnesota Statutes section 10A.27.

Third, the Schultz committee stated that the Board has recognized the “necessity of ‘knowledge’” within probable cause determinations made in other matters. However, none of the matters referenced by the Schultz committee involved Minnesota Statutes sections 10A.27, subdivision 1, or 10A.121, and none of those matters involved alleged coordinated expenditures or approved expenditures.

Fourth, the Schultz committee asserted that its position regarding a knowledge requirement is supported by the 2022 State of Minnesota Campaign Manual, published by the Office of the Minnesota Secretary of State. In the process of summarizing and quoting statutes within Minnesota Statutes Chapters 211A and 211B, the manual uses the words knowledge, knowingly, intentionally, “and other synonyms over 30 times.”<sup>65</sup> However, the fact that many statutes applicable to political campaigns prohibit individuals or entities from knowingly or intentionally engaging in certain conduct does not support the Schultz committee’s interpretation of Minnesota Statutes section 10A.27, subdivision 1. To the contrary, it demonstrates that the legislature chose to include a knowledge component when drafting some statutes, and chose not to include a knowledge component when drafting other statutes, such as Minnesota Statutes sections 10A.27, 10A.28, and 10A.121.

Fifth, the Schultz committee offered a policy argument, stating that

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<sup>62</sup> *Loge*, 608 N.W.2d at 156 (citing *State v. Zacher*, 504 N.W.2d 468, 473 (Minn. 1993)).

<sup>63</sup> See *Loge*, 608 N.W.2d at 157.

<sup>64</sup> See Minn. Stat. § 10A.01, subd. 4; Minn. Stat. § 10A.01, subd. 9, Minn. Stat. § 10A.175, subd. 5; Minn. Stat. § 10A.176; Minn. Stat. § 10A.177.

<sup>65</sup> The campaign manual is available at [sos.state.mn.us/media/4908/minnesota-campaign-manual.pdf](https://sos.state.mn.us/media/4908/minnesota-campaign-manual.pdf).

It would be wrong to find significant financial and reputational liability without a candidate's knowledge of facts leading to the violation. If the knowledge requirement was ignored, it would be possible for a party seeking to undermine a candidate to engage a major consultant used by the candidate and, either through a common malicious intent or through error on the part of the consultant, create attending liability for the candidate despite the candidate's ignorance of the scheme. Minnesota law, and extraordinary personal consequences for candidates and others, should not turn on any game of "gotcha"—it should result from a candidate *knowingly* taking actions in violation of Minnesota statute's dictates. Such a result would be yet another reason in this polarized and complex time for good people to shun engagement in our civic processes.

If in the future the Board is faced with a situation in which a spender has attempted to sabotage a candidate by utilizing a common consultant, the Board may decline to investigate the matter<sup>66</sup> or take the sabotage into consideration when assessing the severity of any violation<sup>67</sup>. However, none of the parties to this matter have alleged that sabotage occurred. Whether Minnesota Statutes section 10A.27, subdivision 1, or any other provision within Chapter 10A, should include a knowledge component is a question properly reserved to the legislature. However, the knowledge of the candidate, including his principal campaign committee and agents, may be a factor in considering the willfulness and gravity of any violation of the individual contribution limit, which must be considered by the Board upon considering the amount of any civil penalty to be imposed.<sup>68</sup>

Based on the forgoing analysis, there is reason to believe that Mr. Schultz permitted his principal campaign committee to accept contributions, and MN Freedom made contributions, in excess of the individual contribution limit.

### Conclusion

The allegations in the complaint warrant further investigation. The investigation will seek to determine whether coordinated expenditures were made, and if so, whether the resulting violations were violations solely related to failing to satisfy all of the conditions within Minnesota Statutes section 10A.176, subdivision 4, or whether the resulting violations were substantive violations involving the use or transfer of nonpublic information.

Coordination between a candidate and an independent expenditure political fund destroys the independence of expenditures made by the fund that benefit the candidate. If an expenditure that supports a candidate by advocating the defeat of that candidate's opponent is coordinated and thereby is not independent, it is an approved expenditure on behalf of the candidate. An independent expenditure political fund may not make approved expenditures on behalf of a

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<sup>66</sup> See Minn. R. 4525.0210, subps. 5-6.

<sup>67</sup> See Minn. Stat. § 14.045, subd. 3.

<sup>68</sup> *Id.*

candidate. Based on the foregoing analysis, the Board concludes that there is probable cause to believe that MN Freedom made approved expenditures on behalf of Mr. Schultz in violation of Minnesota Statutes section 10A.121.

An approved expenditure is a contribution to the candidate on whose behalf it is made. The evidence in the record indicates that the advertisements referenced in the complaint, purchased by MN Freedom, exceeded the \$2,500 individual contribution limit for the office of attorney general. Based on the foregoing analysis, the Board concludes that there is probable cause to believe that MN Freedom made, and the Schultz committee accepted, contributions in excess of the contribution limit imposed by Minnesota Statutes section 10A.27, subdivision 1.

In determining whether a formal investigation is warranted, the Board must consider a variety of factors.<sup>69</sup> Making prohibited approved expenditures as an independent expenditure political fund is a serious violation because it undermines the separation between candidates and committees and funds that are permitted to accept corporate contributions, and because it may result in violations of contribution and spending limits. Exceeding a contribution limit is also a serious violation when the excess amount is as large as is alleged in the complaint in this matter. Mr. Schultz was a first-time candidate. However, his committee involved experienced campaign finance and compliance professionals, as did MN Freedom, which is the political fund of the Republican Attorneys General Association. The Schultz committee and MN Freedom have identified substantial mitigating factors. However, due to the overall severity of the possible violations and the respondents' denial of the alleged violations, formal findings, conclusions, and orders are more suitable than informal resolution of the matter and the Board has adequate resources to conduct an investigation.

Because the Board finds that there is reason to believe that a contribution limit was violated under Minnesota Statutes section 10A.27, the Board "must make every effort for a period of at least 14 days after its finding to correct the matter by informal methods of conference and conciliation and to enter a conciliation agreement with the person involved."<sup>70</sup>

Based on the forgoing analysis, the Board issues the following:

**Order:**

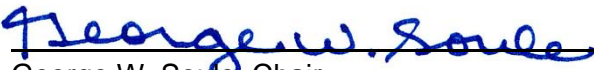
1. Probable cause exists to believe that Minnesota for Freedom violated Minnesota Statutes section 10A.121.
2. Probable cause exists to believe that the Jim Schultz For Minnesota Attorney General committee violated Minnesota Statutes section 10A.27, subdivision 1.

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<sup>69</sup> [Minn. R. 4525.0210, subp. 5.](#)

<sup>70</sup> [Minn. Stat. § 10A.28, subd. 3.](#)

3. Probable cause exists to believe that Minnesota for Freedom violated Minnesota Statutes section 10A.27, subdivision 1.
4. A formal investigation is ordered to investigate the foregoing possible violations, except that the Board will attempt, for a period of at least 14 days from the date of this order, to enter into conciliation agreements to resolve the matter. If the respondents and the Board do not enter into conciliation agreements to resolve the matter, the Board's executive director may issue subpoenas as needed to conduct the investigation, pursuant to Minnesota Statutes section 10A.022, subdivision 2, and Minnesota Rules 4525.0500, subpart 6.

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

Date: February 11, 2023