

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

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**November 6, 2020**

**Meeting conducted remotely though Webex due to COVID-19 pandemic**

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**MINUTES**

The meeting was called to order by Chair Haugen.

Members present: Flynn, Haugen, Leppik, Rashid, Rosen, Swanson

Others present: Sigurdson, Engelhardt, Olson, Pope, staff; Hartshorn, counsel

**MINUTES** (October 7, 2020)

After discussion, the following motion was made:

Member Flynn's motion:

To approve the October 7, 2020, minutes as drafted.

Vote on motion:

A roll call vote was taken. All members voted in the affirmative.

**CHAIR'S REPORT**

**A. 2020 meeting schedule**

The next Board meeting is scheduled for 10:00 a.m. on Wednesday, December 2, 2020.

**EXECUTIVE DIRECTOR REPORT**

Mr. Sigurdson presented members with a memorandum regarding this matter that is attached to and made a part of these minutes. Mr. Sigurdson told members that pre-general election campaign finance reports were due on October 26, 2020, and that only nine reports remained outstanding. Mr. Sigurdson said that approval had been granted to fill the programs administrator position and that interviews for that position would be held over the next week. Mr. Sigurdson also stated that due to COVID-19, the office continued to be closed to the public. Mr. Sigurdson said that because no reports were due until January, he planned to schedule only one staff member per day in the office.

**A. Yearly update on reconciliation of contributions between registered entities**

Mr. Sigurdson told members that in 2013, the Star Tribune had found that it could not reconcile approximately \$20 million in contributions made between entities registered with the Board. Mr. Sigurdson said that staff then worked to reconcile those contributions. In 2015, the Board directed staff to end the efforts to reconcile past contributions and to report annually to the Board regarding the reconciliation for the previous year. Mr. Sigurdson said that for the 2019 reports, 99.93% of the

contributions reported had been reconciled. Mr. Sigurdson stated that compliance officer, Melissa Stevens, had led the reconciliation efforts remotely and that he was very satisfied with the outcome.

## **B. Draft language for lobbyist legislative recommendations**

Mr. Sigurdson told members that the Minnesota Governmental Relations Council (MGRC) task force had raised two issues with the legislative recommendations for the lobbyist program. Mr. Sigurdson said that the first issue was that the members of the task force believed that they would need to set up new time management systems to determine which matters constituted 25% of their efforts. Mr. Sigurdson said that the MGRC also had explained that the time spent on an issue alone did not always convey the importance of that issue to a principal because a minor matter could consume more time than another more important effort. The second area of concern was having to report bill numbers. Mr. Sigurdson said that proposals often are included in many bills to increase their odds of passage. In addition, individual proposals often are folded into omnibus bills, which include many topics. Mr. Sigurdson also pointed out that tracking lobbying efforts by bill number requires expertise that the average person may not have.

Mr. Sigurdson said that new language had been drafted to address these concerns. Mr. Sigurdson told members that the new proposal tracked effort rather than time and subject matter rather than bill number. Mr. Sigurdson said that two additional changes had been made to the proposal. The first was that a lobbyist would report only a general subject of lobbying interest on the registration form and then would provide specific subjects of lobbying on periodic lobbyist reports. The second change was to require lobbyists to report all agencies and metropolitan governmental units that were lobbied during the reporting period.

Kathy Hahne from the MGRC then addressed the Board. Ms. Hahne expressed appreciation for the opportunity to work with the Board on the proposal. Ms. Hahne stated that the task force had not had time to circulate the proposal to all MGRC members or to prepare a formal response. Ms. Hahne said that her preliminary reaction was that the proposal was moving in the right direction.

Members then discussed the proposal. One topic of discussion was whether some members of the public might benefit if bill and docket numbers were disclosed in addition to subject areas. Members directed Mr. Sigurdson to continue working on the proposal. Mr. Sigurdson said that he would incorporate the feedback from members and bring amended language for consideration at the December meeting.

## **ENFORCEMENT REPORT**

### **A. Discussion item**

#### **1. Balance Adjustment Request – Citizens to Elect Paul Yang (18354)**

Mr. Olson told members that requests for cash balance adjustments of over \$200 must be approved by the Board. Mr. Olson said that this principal campaign committee had a 2018 ending cash balance of \$5,743.90, but that the balance in the committee's bank account at the end of 2018 actually was \$6,241.39. The committee registered with the Board in June 2018 and reported over \$54,000 in receipts and almost \$49,000 in disbursements in 2018. Mr. Olson stated that the committee's treasurer had reviewed the committee's bank statements and other financial records but had been unable to

reconcile the committee's 2018 year-end report. The committee was asking that its 2018 ending cash balance be adjusted upward by \$497.49, from \$5,743.90 to \$6,241.39. Mr. Olson said that the treasurer had provided documentation showing that \$6,241.39 was the balance in the committee's bank account at the end of 2018 and was the amount listed as the beginning cash balance on the committee's 2019 year-end report.

After discussion, the following motion was made:

Member Rashid's motion: To approve the requested balance adjustment.

Vote on motion: A roll call vote was taken. All members voted in the affirmative.

**B. Waiver requests**

Name of Candidate or Committee	Late Fee & Civil Penalty Amount	Reason for Fine	Factors for waiver and recommended action	Board Member's Motion	Motion	Vote on Motion
John (Thompson) for 67A (18495)	\$100 LFF	2020 Pre-general	Treasurer mistakenly filed amended pre-primary report via CFR software on due date rather than pre-general report. After realizing error, correct report was filed 2 days late. Committee reported cash balance of \$12,257 as of 10/19/20. RECOMMENDED ACTION: Waive	Member Flynn	To approve the staff recommendation.	A roll call vote was taken. All members voted in the affirmative.
62nd Senate District DFL (20483)	\$100 LFF	2020 Pre-general	Former treasurer did not provide new treasurer with party unit's CFR data when new treasurer took over in mid-2020. New treasurer didn't realize he lacked data needed to file report until days before deadline and had difficulty contacting Board staff. Report was due 10/26/2020 and paper report was filed 2 days late. Party unit reported cash balance of \$791 as of 10/19/2020. RECOMMENDED ACTION: Reduce LFF to \$50	Member Flynn	To approve the staff recommendation.	A roll call vote was taken. All members voted in the affirmative.

Alarm PAC (30306)	\$100 LFF	2020 Pre-general	Supporting association's internet was down for several days. Service was restored on due date, but person responsible for report forgot to file no-change statement, which was filed 2 days late. Fund reported cash balance of \$2,907 as of 10/19/2020. RECOMMENDED ACTION: Reduce LFF to \$50	Member Flynn	To approve the staff recommendation.	A roll call vote was taken. All members voted in the affirmative.
Antonio Nerios (House candidate)	\$30 LFF	Original EIS	Candidate filed affidavit of candidacy 6/1/2020, making EIS due 6/15/2020. Candidate states that he thought EIS needed only if he reached \$750 threshold for registering candidate committee. EIS was filed 7/20/2020. RECOMMENDED ACTION: No action	No motion		
Roger Steinkamp MN Senate (18607)	\$50 LFF	2020 Pre-general	Candidate planned to finish report on due date but completed report on morning after deadline. Committee reported cash balance of \$14,556 as of 10/19/2020. RECOMMENDED ACTION: No action	No motion		

**C. Informational items**

**1. Payment of civil penalty for corporate contribution**

Cass County RPM, \$400

**2. Payment of civil penalty for exceeding individual contribution limit**

Brad Kovach Committee to Elect for House, \$250  
 John Heinrich for House, \$100

**3. Partial payment of civil penalty for spending limit violation**

Doug Wardlow for Attorney General, \$100

**4. Payment of civil penalty for contribution from unregistered association without required disclosure**

Communications Workers of America Minnesota State Council, \$100

**5. Payment of late filing fee for 2020 pre-primary 24-hour notice**

Firefighters Association of Minneapolis Political Fund, \$250  
Minnkota Power Action Committee, \$50  
Torkelson (Paul) for State Representative, \$50

**6. Payment of late filing fee for September 2020 report of receipts and expenditures**

OAK PAC, \$25  
Libertarian Party of Minnesota, \$25  
Firefighters Association of Minneapolis Political Fund, \$25

**7. Payment of late filing fee for 2020 pre-primary report of receipts and expenditures**

13th Senate District DFL, \$100  
Carpenters Local 930 PAC, \$50

**8. Payment of late filing fee for June 2020 report of receipts and expenditures**

Women's Victory Fund (Women PAC), \$325

**9. Payment of late filing fee for 2020 1<sup>st</sup> quarter report of receipts and expenditures**

Women's Victory Fund (Women PAC), \$100

**10. Payment of late filing fee for 2018 pre-general report of receipts and expenditures**

MSCA-PAC, \$50

**11. Payment of late filing fee for lobbyist disbursement report due 6/15/2020**

Ronald Dicklich, \$100  
Edward Cooper, \$75

**12. Payment of late filing fee for original EIS**

Arjun Kataria, \$100

**13. Forwarded anonymous contributions**

Kari Dziedzic for State Senate, \$375  
Bergstrom (Donna) Volunteer Committee, \$150

**PRIMA FACIE DETERMINATION**

Mr. Olson presented members with a memorandum regarding this matter that is attached to and made a part of these minutes. Mr. Olson told members that when the Board chair determines that a complaint does not state a prima facie violation, the chair must dismiss the complaint without prejudice. After a dismissal, the matter is public and the dismissal is reported to the full Board for informational

purposes at the next regularly scheduled meeting. Mr. Olson said that Chair Haugen had determined that a complaint filed by C.T. Marhula regarding Greg Kuhn, a candidate for Bemidji City Council, had not stated a prima facie violation of any provision under the Board's jurisdiction. Mr. Olson stated that the complaint alleged that campaign material promoting Mr. Kuhn's candidacy did not include the disclaimer required by Minnesota Statutes section 211B.04. Mr. Olson said that although the Board had jurisdiction to investigate disclaimer violations for state-level candidates, it had no jurisdiction over these violations by a local candidate. Mr. Olson said that on October 1, 2020, the chair therefore concluded that the complaint did not allege a prima facie violation of any statute under the Board's jurisdiction and dismissed the complaint without prejudice.

### **LEGAL COUNSEL'S REPORT**

Mr. Hartshorn presented members with a legal report that is attached to and made a part of these minutes. Mr. Hartshorn had nothing to add to the grid on the legal report. Mr. Hartshorn told members that now that the November election was over, he would be able to turn his attention to the new cases on the grid.

### **OTHER BUSINESS**

There was no other business to report.

### **EXECUTIVE SESSION**

The chair recessed the regular session of the meeting and called to order the executive session. Upon recess of the executive session, the chair had the following to report into regular session:

Findings, conclusions, and order in the matter of the complaint of Christina Ogata regarding the Campaign Committee of Elliot W. Engen

There being no other business, the meeting was adjourned by the chair.

Respectfully submitted,



Jeff Sigurdson  
Executive Director

#### Attachments:

Executive director's report

Memorandum regarding prima facie determination – no violation

Legal report

Findings, conclusions, and order in the matter of the complaint of Christina Ogata regarding the Campaign Committee of Elliot W. Engen



# MINNESOTA CAMPAIGN FINANCE BOARD

**Date:** October 30, 2020

**To:** Board Members

**From:** Jeff Sigurdson, Executive Director

**Telephone:** 651-539-1189

**Re:** Executive Director's Report

**Campaign Finance Reports** The pre-general report of receipts and expenditures for all state candidates on the general election ballot, all political committees, all political party units and all political funds that had activity during the reporting period, was due on October 26, 2020. The Board currently has not received 3 of the expected 400 reports from candidate committees (99.25% filed) or 37 of the expected 732 reports from all other types of committees and funds (95% filed).

The 24-hour reporting period for large contributions opened on October 20, and will close on November 2, 2020. As of the date of this memo the Board has received 189 24-hour notifications which are immediately available for public review at <https://cfb.mn.gov/reports-and-data/viewers/campaign-finance/large-contribution-notices/>.

## **Board Operations**

**Staffing:** Minnesota Management and Budget (MMB) has granted the Board an exception to the general hiring freeze for state employees in order to fill the position of program administrator left vacant by the retirement of Marcia Waller. This position is responsible for processing all registrations for lobbyists, candidates, and political committees. In addition, the position is responsible for administering the lobbyist and lobbyist principal reporting periods. Staff will be conducting interviews for the position in early November.

**Impact of COVID-19:** MMB has informed all state agencies that it expects telecommuting to be used if possible through June of 2021. The Centennial Office Building remains closed to the general public, as is the Board's office. Some staff work must still occur at the Board office. However, with the end of the pre-election reporting periods, I expect that the number of staff working in the office will decrease to one or two on most days.

**Yearly Update on Reconciliation of Contributions between Registered Committees** To ensure the accuracy of reported contributions made by registered committees and funds to other registered committees and funds, staff conducts a yearly reconciliation of contributions.

The reconciliation identifies cases where the amount of contributions reported being made and received do not match, which is then used by staff to contact committees to resolve the discrepancies. The attached memo reviews the history behind the reconciliation process, and provides that over 99.9% of the contributions reported in 2019 now reconcile.

**Legislative Recommendations for the Lobbying Program:** As I reviewed for the Board at the October Board meeting, the Minnesota Governmental Relations Council (MGRC) appointed a task force to review and respond to the Board's legislative proposal for the lobbying program as drafted in January of this year. The task force provided me with feedback in September that focused on two primary concerns; how will a lobbyist determine which actions on behalf of a principal required at least 25% of the total effort for the principal and therefore must be reported, and whether reporting a bill or administrative rule revisor number is providing useful information to the public.

Attached to this memo is draft legislative language that addresses those two concerns, but from my perspective, still provides significantly better disclosure on the subjects of concern for the lobbying entity. I would emphasize that the recommendations are still in draft form. I do not intend for the Board to take any formal action at the November meeting. However, I would hope for a Board discussion on the direction the recommendations are taking. Staff is also working on mockups of reporting forms and screens that reflect the registration and reporting changes that would occur if the proposal is adopted. Board member direction and comment on this draft will be incorporated into a version for consideration at the December meeting. If the Board decides to propose the lobbying recommendations to the legislature I would then have December to contact members of the legislature and explain the proposal.

The following is a brief comparison of the major differences between this draft and the recommendations presented in January.

**Registration:** The current requirement for lobbyist registration is that a lobbyist list the subject areas of interest for the entity represented. The problem is that there are no standards for the subject description, which has led to over 2,300 distinct subjects listed at the time of registration. This number of subjects foils any attempt to provide a searchable index of principals by subject of interest. A more limited, but still inclusive, set of subjects would allow the public to search the 1,450 principals represented by lobbyists to find those that, for example, are interested in wind energy, or any other subject before public officials. The January proposal contained a two-step process where the lobbyist selected a subject from a set list, and then supplemented with additional information on the specific subject. After further analysis, staff believes that a searchable index of subjects can be created using a simpler system that requires selection of the subject from a set list without asking for additional detail at the time of registration.

**Tracking of lobbyist time for reporting of major subjects of interest:** The members of the task force provided that very few lobbyists track their time. Instead contract lobbyists are usually paid a retainer fee for services provided. Setting up a time tracking system equivalent to those commonly used by attorneys would be, in their view, cost prohibitive and unduly burdensome.



Further, the task force is concerned that using time alone to determine the 25% reporting threshold could be misleading. For example, a principal may have had two major goals for the session, but using time alone as the standard could lead to a lobbyist reporting a time consuming, but relatively trivial effort to add a minor amendment but not reporting a significant issue that was achieved in a comparatively short period of time. To address this issue the revised recommendations require the lobbyist to use a reasonable, good faith estimate of the total effort for the entity represented, but does not rely specifically on time, or require tracking of time spent lobbying.

Method used to identify issues that require 25% or more of the lobbying effort for the entity: The second major concern expressed by the task force is that the January recommendations require the lobbyist to identify the bill number, administrative rule revisor number, Public Utilities Commission docket number, or metropolitan governmental unit ordinance number that met the 25% of lobbying threshold. Members of the MGRC task force felt that emphasis on specific bill numbers would not be particularly useful public disclosure, as many bills are folded into omnibus bills that are remarkably broad in subject matter, or the key language of interest to the principal is moved into multiple bills in an effort to be included in a bill that moves forward. Further, relying on bill numbers (or ordinance numbers, docket numbers, or revisor numbers) could obscure the issues of concern to the principal because it requires the public to know what was in the bill. Even immediately after a legislative session identifying subjects within a given bill requires specialized knowledge. Over the passage of time, it would require significant research to understand the content of the bills reported by the lobbyist.

The attached version of the recommendations requires identification of specific subjects of interest within the legislation, administrative rule, or metropolitan governmental action. The use of specific subjects will again allow for indexing so that in retrospect the public will be able to identify all principals that had a significant effort regarding a subject before public officials during the reporting period.

Additional disclosure: This version of the recommendations provides that a lobbyist who engages in administrative lobbying or lobbying of metropolitan governmental units must identify those agencies and metropolitan governmental units even if the effort does not reach the 25% threshold. Under current statute metropolitan governmental unit and administrative lobbying are just broad categories, with no identification of the city, county, or agency subject to lobbying efforts.

If Board members are interested in reviewing the January lobbying recommendations they are online at [https://cfb.mn.gov/pdf/legal/Lobbying\\_Proposal.pdf](https://cfb.mn.gov/pdf/legal/Lobbying_Proposal.pdf)

### **Attachments**

Yearly update on reconciliation of contributions between registered committees  
Draft language for lobbying legislative proposals



# MINNESOTA CAMPAIGN FINANCE BOARD

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**DATE:** October 30, 2020  
**TO:** Board members  
**FROM:** Andrew Olson, Legal/Management Analyst **TELEPHONE:** (651) 539-1190  
**RE:** Prima facie determination finding no violation

Complaints filed with the Board are subject to a prima facie determination made by the Board chair in consultation with staff. If the Board chair determines that a complaint states a violation of Chapter 10A or the provisions of Chapter 211B under the Board's jurisdiction, the complaint moves forward to a probable cause determination by the full Board.

If, however, the chair determines that a complaint does not state a prima facie violation, the chair must dismiss the complaint without prejudice. When a complaint is dismissed, the complaint and the prima facie determination become public data. The following complaint was dismissed by the chair and the prima facie determination is provided here as an informational item to the other board members. No further action of the Board is required.

## **Complaint regarding Greg Kuhn**

On September 28, 2020, the Board received a complaint submitted by C.T. Marhula regarding Greg Kuhn, a candidate for Bemidji City Council. The complaint alleged that campaign material promoting Mr. Kuhn's candidacy did not include the disclaimer required by Minnesota Statutes section 211B.04.

The Board has jurisdiction to investigate a violation of the disclaimer requirement if the alleged violation involves a candidate for state constitutional office, state legislator, or state judge. The complaint did not allege or provide reason to believe that Mr. Kuhn is a state-level candidate. On October 1, 2020, the chair therefore concluded that the complaint did not allege a prima facie violation of any statute under the Board's jurisdiction and dismissed the complaint without prejudice.

### Attachments:

Complaint  
Prima facie determination

**CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD  
November 2020**

**ACTIVE FILES**

Candidate/Treasurer/ Lobbyist	Committee/Agency	Report Missing/ Violation	Late Fee/ Civil Penalty	Referred to AGO	Date S&C Served by Mail	Default Hearing Date	Date Judgment Entered	Case Status
Sandra (Sandi) Blaeser		2018 Public Official Statement of Economic Interest  2019 Public Official Statement of Economic Interest	\$100 LFF and \$1,000 CP  \$100 LFF and \$1,000 CP	9/23/20				File received from Board 9/11/2020
Chilah Brown Michele Berger	Brown (Chilah) for Senate	Unfiled 2016 Year- End Report of Receipts and Expenditures  Unpaid late filing fee on 10/31/16 Pre- General Election Report	\$1,000 LFF \$1,000 CP  \$50 LFF	3/6/18	8/10/18			Removed from hold 9/14 at Board's request.
Alyssa Eichman	Swing Right PAC	Unfiled 2018 Year- End Report of Receipts and Expenditures  Late Filing of 2018 Pre-General Report due 10/29/18; filed on 10/30/18	\$1,000 LFF \$1,000 CP  \$50 LFF	9/29/20				File received from Board 10/5/2020
Kelly Gunderson		Candidate Statement of Economic Interest due 6/16/20	\$100 LFF \$1,000CP	9/23/20				File received from Board 9/23/2020





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

**FINDINGS, CONCLUSIONS, AND ORDER**

IN THE MATTER OF THE CAMPAIGN COMMITTEE OF ELLIOTT W ENGEN

**Background**

On September 10, 2020, the Campaign Finance and Public Disclosure Board received a complaint submitted by Christina Ogata regarding the Campaign Committee of Elliott W Engen. The Campaign Committee of Elliott W Engen is the principal campaign committee of Elliott Engen, a candidate for Minnesota House of Representatives District 38B.

The complaint alleged a violation of Minnesota Statutes section 211B.04, which regulates the use of disclaimers on campaign material. The complaint alleged that the committee's lawn signs did "not include a mailing address or a website address where you could find the mailing address." The complaint included a partial photograph of a lawn sign with a disclaimer that stated "PAID FOR BY COMMITTEE TO ELECT ELLIOTT W ENGEN" and did not include a mailing or website address.

On September 15, 2020, the Board chair determined that the complaint alleged a prima facie violation of Minnesota Statutes section 211B.04. The same day, Mr. Engen spoke with Board staff and stated that his committee would add the committee's address to its lawn signs. On September 20, 2020, Ms. Ogata supplemented her complaint by alleging that the Engen committee's "website and print literature also do not include the campaign mailing address." Board staff reviewed the Engen committee's website and as of September 21 and 22, 2020, the website contained prominent text stating "ELLIOT ENGEN FOR STATE REPRESENTATIVE" and included Mr. Engen's telephone number and an email address, but did not include a disclaimer or the committee's mailing address. Ms. Ogata provided photographs of a two-sided piece of campaign literature disseminated by the Engen committee. One side of that literature included a disclaimer that stated "Paid for and prepared by the campaign committee of Elliott Engen." The reverse side included the committee's mailing address.

On September 26, 2020, Mr. Engen provided a written response to the supplemented complaint. Mr. Engen stated that his "committee has (and continues to) remedy the inadvertent oversight by placing labels on each of the signs which provides a campaign website/ mailing address." Regarding the committee's website and the campaign literature referenced by Ms. Ogata, Mr. Engen stated that "the displayed address and website are provided pursuant to Minnesota Statute section 211B.04 as evidenced by Ms. Ogata's exhibit." Mr. Engen spoke with Board staff on September 28, 2020, and explained that his committee's website had been modified to include the committee's mailing address. On September 29, 2020, Mr. Engen stated that approximately 100 lawn signs had been disseminated with a disclaimer lacking an address.

At its meeting on October 7, 2020, the Board considered this matter and Ms. Ogata appeared before the Board to address her complaint. The Board determined that while there was probable cause to believe that the disclaimer violations alleged in the supplemented complaint occurred, a formal investigation was not warranted considering the factors listed in Minnesota Rules 4525.0210, subpart 5. The Board directed the executive director to initiate a staff review for the purpose of drafting these findings and determining an appropriate civil penalty, if any.

On October 7, 2020, Mr. Engen provided photographs documenting the efforts taken by his committee to address the issues raised in the supplemented complaint. Mr. Engen included photographs of labels applied to the committee's initial batch of lawn signs. The labels contain the required disclaimer text including both the committee's mailing address and website address. Mr. Engen included a photograph of one of the committee's new batch of lawn signs, which were printed with a complete disclaimer including the committee's mailing and website addresses. Mr. Engen included a photograph of campaign literature disseminated by the committee, which was different from the literature identified in the supplemental complaint. The newer piece of campaign literature included a complete disclaimer with the committee's mailing address displayed within the disclaimer text. Mr. Engen also included screenshots of the committee's website, which had been modified again to include the committee's mailing address within the disclaimer text.

On October 9, 2020, Ms. Ogata alleged in an email to Board staff that as of that date, lawn signs disseminated by the Engen committee continued to be displayed at 17 different locations within the house district without a disclaimer containing the committee's address. On October 13, 2020, Board staff sent a letter to Mr. Engen informing him of Ms. Ogata's allegation and the specific locations she identified. Because the Engen committee had not clearly stated how quickly labels containing a complete disclaimer had been added to its lawn signs or whether a portion of the lawn signs continued to be displayed without a complete disclaimer, the letter asked Mr. Engen to "please explain, as of October 9, how many of the approximately 100 signs in question had labels applied with the complete disclaimer and how many had yet to have a label applied."

Mr. Engen spoke with Board staff on October 13 and explained that as of that day, the committee had applied labels containing a complete disclaimer to approximately 75% of the signs that were disseminated without a complete disclaimer. Mr. Engen stated that some of the labels had worn off or had been damaged by weather conditions and that as of October 13, the committee had not been able to locate all of the signs that were disseminated without a complete disclaimer. Mr. Engen also explained that the committee was in the process of purchasing waterproof labels. In an email to Board staff on October 19, Mr. Engen stated that waterproof labels had been applied to the committee's signs. On October 20 Board staff asked Mr. Engen via email to confirm whether waterproof labels had been applied to all or nearly all of the approximately 100 signs, and to also clarify how many signs had labels applied to them as of October 9, the date that Ms. Ogata stated that multiple signs continued to be displayed without a complete disclaimer. Mr. Engen did not provide any further response.

## **Analysis**

Minnesota Statutes section 211B.04, subdivision 1, generally requires principal campaign committees to include a disclaimer on campaign material that prominently states “Prepared and paid for by the . . . committee, . . . (address).” “The address must be either the committee's mailing address or the committee's website, if the website includes the committee's mailing address.” 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.”

When the original complaint was received, the Engen committee’s lawn signs did not include the committee’s mailing or website address. When the supplemental complaint was received, the committee’s website did not include a disclaimer or the committee’s mailing address. The committee also disseminated a two-sided piece of campaign literature that did not include the committee’s address within the disclaimer text, but instead displayed the committee’s mailing address on the reverse side. 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 there is any basis for concluding that the violation was willful.<sup>1</sup> The Board may impose a civil penalty of up to \$3,000 for a violation of Minnesota Statutes section 211B.04.

**Based on the above background and analysis, the Board makes the following:**

### **Findings of Fact**

1. The Campaign Committee of Elliott W Engen prepared and disseminated lawn signs, a website, and a piece of campaign literature promoting the candidacy of Mr. Engen for the purpose of influencing voting at an election.
2. Approximately 100 lawn signs displayed a disclaimer that did not include the committee’s mailing or website address.
3. As of the date the supplemental complaint was received, the website did not include any disclaimer or the committee’s mailing address.
4. The two-sided piece of campaign literature referenced in the supplemental complaint contained a disclaimer that did not include the committee’s mailing or website address within the disclaimer text, but did include the committee’s mailing address on the reverse side.

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<sup>1</sup> Minnesota Statutes section 14.045, subdivision 3, lists factors that agencies should 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.



5. The committee's 2020 pre-primary report of receipts and expenditures disclosed a \$500 expenditure for lawn signs and itemized expenditures totaling \$746.05 for campaign literature, excluding business cards which do not require a disclaimer. The report did not disclose any itemized expenditures related to the committee's website.
6. Given their content, it is unlikely that the lack of a complete disclaimer on the committee's lawn signs, website, and campaign literature caused confusion as to who prepared and paid for that material. Although the committee's lawn signs did not include an address or any other contact information, they included a partial disclaimer stating the lawn signs were paid for by the Engen committee. For some period of time the website did not include any disclaimer. However, the website and campaign literature each contained prominent text stating the candidate's name and the office sought, as well as a telephone number and email address for the committee. The campaign literature also included the committee's mailing and website addresses and the website included a form that could be used to send a message to the committee.
7. After being notified of the complaint, the Engen committee began modifying its lawn signs to display a complete disclaimer including the committee's address. The committee had difficulty locating some of the signs and stated that many of the labels that were applied wore off or were damaged by weather. The committee has applied waterproof labels to its signs, but has never confirmed how quickly and how completely labels were applied to the approximately 100 signs there were initially disseminated without a complete disclaimer.
8. The committee has modified its website to include a complete disclaimer with the committee's mailing address within the disclaimer text. The committee also provided documentation showing that after being notified of the complaint, it began including the committee's mailing address within the disclaimer text when printing campaign literature.
9. Mr. Engen is a first-time candidate, his committee has no history of past violations of the disclaimer requirement, and there is no evidence in the record indicating that the committee willfully violated the disclaimer requirement.

**Based on the above analysis and findings of fact, the Board makes the following:**

#### **Conclusions of Law**

1. The lawn signs, website, and campaign literature prepared and disseminated by the Campaign Committee of Elliott W Engen were campaign material under Minnesota Statutes section 211B.01, subdivision 2.
2. The Engen committee violated Minnesota Statutes section 211B.04, subdivision 1, when it prepared and disseminated lawn signs, a website, and a piece of campaign literature without disclaimers in the form required by statute.

**Based on the above findings of fact and conclusions of law, the Board issues the following:**

**Order**

1. A civil penalty in the amount of \$300 is assessed against the Campaign Committee of Elliott W Engen for violating the disclaimer requirement in Minnesota Statutes section 211B.04.
2. The Engen committee is directed to forward to the Board payment of the civil penalty, by check or money order payable to the State of Minnesota, within 30 days of the date of this order.
3. If the Engen committee does not comply with the provisions of this order, the Board's executive director may request that the attorney general bring an action on behalf of the Board for the remedies available under Minnesota Statutes section 10A.34.
4. The Board investigation of this matter is concluded and hereby made a part of the public records of the Board pursuant to Minnesota Statutes section 10A.022, subdivision 5.

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

Date: November 6, 2020