

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

FINDINGS, CONCLUSIONS, AND ORDER

IN THE MATTER OF THE COMPLAINT OF RACHEL ROMANSKY REGARDING THE PERRY NOUIS FOR MINNESOTA COMMITTEE

Background

On October 19, 2020, the Campaign Finance and Public Disclosure Board received a complaint submitted by Rachel Romansky regarding the Perry Nouis for Minnesota committee. Perry Nouis for Minnesota is the principal campaign committee of Perry Nouis, a candidate for Minnesota House District 44A.

The complaint alleged that the Nouis committee mailed a flier promoting Mr. Nouis and a separate piece of campaign material promoting the candidacy of multiple state, federal, and local candidates, including Mr. Nouis and state senate candidate Greg Pulles, in the same envelope to Plymouth residents in District 44A. The piece of campaign material promoting multiple candidates included a disclaimer that stated “Independently Prepared & Paid for by G. Wegner, a Concerned Plymouth Citizen.” G. Wegner is George Wegner, the spouse of the Nouis committee’s chair. The campaign material promoting multiple candidates included several instances of the word “vote” and a sentence stating “[i]f you want stable, sound, local, state and federal government...Safe, Effective, Clean and Hopeful...vote to let these fine people represent us.”

The complaint also claimed that the Nouis committee used its website to promote the candidacies of other state and federal candidates by displaying images with the names of those candidates and the office each candidate sought, which were hyperlinked to the websites of the candidates.¹ The website included images with the names of two other state-level candidates, Greg Pulles and Gary Porter.

The complaint alleged that the value of the mailed campaign material promoting multiple candidates and the images posted on the Nouis committee’s website promoting other candidates were coordinated expenditures under Minnesota Statutes section 10A.176, subdivisions 6 and 7. The complaint alleged that the mailing and the website constituted contributions from the Nouis committee to the candidates named in those materials in violation of Minnesota Statutes section 10A.27, subdivision 9. The complaint did not allege or assert any facts indicating that Mr. Wegner or the Nouis committee coordinated their efforts with any other candidate.

¹ web.archive.org/web/20200813035511/https://perrynouisformn.com/CD3%20Candidates/index.htm

The complaint alternatively alleged that the mailing and the website constituted independent expenditures made by the Nouis committee in violation of Minnesota Statutes section 10A.25, subdivision 3a. That provision prohibits the principal campaign committee of a candidate who has signed the public subsidy agreement from making independent expenditures. Mr. Nouis filed his public subsidy agreement with the Board on May 24, 2020.

The complaint next alleged violations of the contribution limits established by Minnesota Statutes section 10A.27, subdivision 1. The basis for that allegation was the assertion that the Nouis committee accepted a contribution from Mr. Wegner valued in excess of \$1,000 and that the candidates named in the mailing accepted contributions valued in excess of their applicable contribution limits from the Nouis committee and/or Mr. Wegner.

The complaint also alleged circumvention under Minnesota Statutes section 10A.29, dissemination of false campaign material in violation of Minnesota Statutes section 211B.06, and placement of newspaper advertisements without the text "PAID ADVERTISEMENT" in violation of Minnesota Statutes section 211B.05.

Lastly, the complaint alleged that the Nouis committee prepared or disseminated campaign material without a disclaimer in the form required by Minnesota Statutes section 211B.04. The complaint referenced the committee's website, which displayed the following disclaimer: "This site is paid for by Perry Nouis for Minnesota, on behalf of conservative Americans deeply concerned about the future of the United States. It is not approved by, or coordinated with, any other candidate or candidate's committee." The committee's mailing address was displayed directly to the right of the disclaimer text on its website. The complaint referenced an advertisement printed in two editions of the Sun Sailor Newspaper,² which contained the following disclaimer: "Paid for by Perry Nouis for Minnesota Committee." The committee's website address was displayed directly above the disclaimer text within the newspaper advertisements. The complaint also referenced lawn signs with the following disclaimer: "Paid for by perrynouisformn.com."

On October 26, 2020, the Board chair determined that the complaint stated prima facie violations of the prohibition on independent expenditures under Minnesota Statutes section 10A.25, subdivision 3a, the individual contribution limit under Minnesota Statutes section 10A.27, subdivision 1, and the disclaimer requirement under Minnesota Statutes section 211B.04, by the Nouis committee. The chair determined that the complaint did not state a prima facie violation of the prohibition on making contributions to other candidates because it did not allege that the Nouis committee had coordinated its efforts with any other candidate. The chair also determined that the complaint did not state a prima facie violation of the circumvention prohibition because it did not assert any facts indicating that Mr. Wegner was prohibited from contributing directly to any of the candidates involved and it contained photographic evidence that the Nouis committee had not tried to hide its role in mailing the

² local.hometownsource.com/places/view/174423/join_me_in_defending_.html;
local.hometownsource.com/places/view/176253/join_me_in_defending_.html.

campaign material in question. Lastly, the chair dismissed the alleged violations of the prohibition on false campaign material under Minnesota Statutes section 211B.06 and the paid advertisement notice requirement under Minnesota Statutes section 211B.05, because the Board does not have investigative authority with respect to those provisions.

On November 9, 2020, the Board received a written response from Mr. Nouis to both the complaint and a letter from Board staff seeking answers to questions raised by the complaint. Mr. Nouis stated that Mr. Wegner contacted him in late September and emailed him a draft copy of the piece of campaign material promoting multiple candidates. The response says that Mr. Nouis provided minimal feedback regarding the draft and after some minor corrections were made by Mr. Wegner, Mr. Nouis contacted a vendor to have copies printed. Mr. Nouis explained that his committee paid for the printing but was reimbursed by Mr. Wegner. The Nouis committee's 2020 pre-general report of receipts and expenditures itemized a \$734.83 cash expenditure to account for the cost of printing and a \$734.83 cash contribution from Mr. Wegner to account for the reimbursement, as well as a separate \$100 cash contribution from Mr. Wegner. In his response Mr. Nouis stated that Mr. Wegner did not contribute more than \$1,000 to the Nouis committee.

Mr. Nouis stated that he mailed 1,675 envelopes containing both a flier promoting his candidacy and the piece of campaign material drafted by Mr. Wegner promoting multiple candidates. The Nouis committee spent \$1,050.92 for the envelopes, labels, and postage used to mail those materials. In response to a question from Board staff asking why the piece of campaign material promoting multiple candidates did not include a disclaimer stating it was paid for by the Nouis committee, Mr. Nouis stated:

There was no additional cost incurred by including Mr. Wegner's flyer in my mailing to Precinct 13 residents. Because his flyer included a disclaimer that it was prepared and paid for by him, it did not occur to me at the time that mailing it could be interpreted as a form of in-kind contribution to other candidates. My interpretation was that Mr. Wegner had written campaign material that included support for my campaign and that he had identified that material as his.

With respect to the Nouis committee's website, Mr. Nouis stated that no expenses were incurred to add images including the names of other candidates.

In response to a question from Board staff regarding the disclaimers displayed on the Nouis committee's website, advertisements in the Sun Sailor newspaper, and lawn signs, Mr. Nouis stated that the committee's "campaign materials have contained disclaimers substantially in the form required" by statute. Mr. Nouis provided copies of four pieces of campaign material that included a disclaimer in the form required by statute. Regarding the campaign material referenced in the complaint, Mr. Nouis stated:

My lawn signs contained disclaimers. According to this statute, if a disclaimer includes a committee's website, "and if the committee's website includes the committee's mailing address," the disclaimer is in compliance. My signs,

website, campaign literature, and newspaper ad disclaimers included my website.

At its meeting on December 2, 2020, the Board considered the probable cause determination in this matter. The Board determined that there was not probable cause to believe that a violation of the individual contribution limit occurred because there was no basis to believe that Mr. Wegner made contributions in excess of \$1,000 to the Nouis committee. The Board determined that there was probable cause to believe that the Nouis committee violated the prohibition on independent expenditures as well as the disclaimer requirement. The Board ordered an investigation of those allegations. Board staff then sent a letter to the Nouis committee asking for information about the cost of the committee's website, newspaper advertisements, and lawn signs.

On December 14, 2020, the Board received a written response from Mr. Nouis to the letter from Board staff and the probable cause determination. Mr. Nouis stated that he did not "have reason to believe my disclaimers were inadequate as I received DFL mailers at home and saw DFL candidate social media ads that contained similar disclaimers." Mr. Nouis also reiterated his belief that a disclaimer complies with Minnesota Statutes section 211B.04 if it includes a website address and that website includes the committee's mailing address. Mr. Nouis stated that his committee paid a total of \$57.12 for hosting of its website, which included domain name registration, and paid a total of \$404 for the two Sun Sailor newspaper advertisements referenced in the complaint. Mr. Nouis explained that his committee purchased 150 lawn signs that did not include the committee's name within the disclaimer, but only 32 of those signs were disseminated. The prorated cost to purchase those 32 signs with wire stakes, including shipping and tax, was \$150.97.

Analysis

Independent Expenditures

Minnesota Statutes section 10A.25, subdivisions 1 and 3a, provide that the principal campaign committee of a candidate who has signed a public subsidy agreement is prohibited from making independent expenditures. Minnesota Statutes section 10A.01, subdivision 18, defines "independent expenditure" to mean

an expenditure expressly advocating the election or defeat of a clearly identified 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 candidate or any candidate's principal campaign committee or agent. An independent expenditure is not a contribution to that candidate.

In addition, a principal campaign committee that disseminates campaign material supporting both the committee's candidate and one or more other candidates must comply with Minnesota Rules 4503.1000, subpart 2, which states that a "candidate who produces and distributes campaign materials ... which include images of, appearances by, or references to one or more

other candidates, and which mention the candidacy of the other candidates or include a direct or indirect appeal for the support of the other candidates must collect from each of the other candidates a reasonable proportion of the production and distribution costs.”

Mr. Nouis explained that the Nouis committee was reimbursed for the cost of printing the campaign material promoting multiple candidates by Mr. Wegner, and did not incur any additional expense to include a copy of that material in each envelope containing a flier promoting Mr. Nouis’s candidacy. However, regardless of whether the Nouis committee incurred any additional expense to include the material drafted by Mr. Wegner, the committee paid for the postage necessary to disseminate that material. A principal campaign committee that distributes an independent expenditure for other candidates has made an expenditure that the entity that produced the independent expenditure material now does not need to make. The distribution of the independent expenditure is needed for the material to have any effect on the election, and the value of the distribution of the independent expenditure cannot be avoided by including other campaign literature with the independent expenditure.

Similarly, Mr. Nouis stated that no additional expenses were incurred to post images promoting the other candidates to the Nouis committee’s website. However, the Nouis committee paid for the dissemination of those images by paying for the hosting of its website. As with the mailing, a committee cannot avoid the prohibition on independent expenditures simply by stating that the inclusion of images with links to other candidates’ websites resulted in no additional expense to the committee.

Minnesota Statutes section 10A.28, subdivision 1, provides that the Board may impose “a civil penalty up to four times the amount by which the expenditures exceeded the limit” if a “candidate subject to the expenditure limits in section 10A.25 ... permits the candidate’s principal campaign committee to make expenditures or permits approved expenditures to be made on the candidate’s behalf in excess of the limits imposed by section 10A.25, as adjusted by section 10A.255.” The prohibition on independent expenditures is an expenditure limit because it limits the type of expenditures that a principal campaign committee is permitted to make if the candidate has signed the public subsidy agreement.³

The Board historically has imposed a civil penalty equal to one times the amount of the violation when a principal campaign committee has exceeded an expenditure limit for the first time. In this case the Nouis committee spent \$1,050.92 to mail two pieces of campaign material, only one of which was an independent expenditure. Because the two pieces of campaign material were enclosed within the same envelopes, half of the cost of mailing that material will be included in calculating a civil penalty. Because Mr. Wegner reimbursed the Nouis committee for

³ In a 2005 enforcement action the Board stated that Minnesota Statutes section 10A.25 does not provide for the imposition of a civil penalty for a violation of the prohibition on independent expenditures. However, in that instance the candidate in question reimbursed his principal campaign committee for the cost of an independent expenditure and the Board did not consider whether a civil penalty could be imposed under Minnesota Statutes section 10A.28, subdivision 1. [Findings Regarding \(Thomas\) Neuville for Senate Volunteer Committee \(June 7, 2005\)](#).

the cost of printing the independent expenditure material, that expense will not be included in calculating the civil penalty. The Nouis committee also spent a total of \$57.12 for its website, a small portion of which contained independent expenditure material supporting two other state candidates. Considering those factors, the Board will impose a civil penalty of \$550 for the violation of the prohibition on independent expenditures.

Disclaimers

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.” Minn. Stat. § 211B.04, subd. 1. Campaign material is defined in Minnesota Statutes section 211B.01, subdivision 2, as “any literature, publication, or material that is disseminated for the purpose of influencing voting at a primary or other election, except for news items or editorial comments by the news media.” The disclaimer for a written independent expenditure must state “This is an independent expenditure prepared and paid for by (name of entity participating in the expenditure), (address). It is not coordinated with or approved by any candidate nor is any candidate responsible for it.” Minn. Stat. § 211B.04, subd. 2.

Mr. Nouis argues that if a disclaimer includes a website address and the website includes the committee’s mailing address, the disclaimer complies with Minnesota Statutes section 211B.04. That is correct insofar as the address is concerned. However, the disclaimer must also include other elements, namely the language “prepared and paid for by” followed by the name of the committee. The disclaimer displayed on the committee’s website included additional language, including some that is used to identify independent expenditures, and did not include a mailing address within the disclaimer text as required by statute. The disclaimer that appeared in the advertisement in the Sun Sailor newspaper likewise did not include an address in the disclaimer text. “Paid for by perrynouisformn.com,” the disclaimer text that appeared on the lawn sign depicted in the complaint, omits the committee’s name.

The disclaimer displayed on the mailed campaign material promoting multiple candidates did not include Mr. Wegner’s first name, the name of the Nouis committee, an address, or the text stating that it was “not coordinated with or approved by any candidate nor is any candidate responsible for it,” as required by Minnesota Statutes section 211B.04, subdivision 2. Although the Nouis committee was reimbursed for the cost of printing that material, the Nouis committee directly paid for the cost to disseminate the material. The Nouis committee therefore should have been identified as one of two entities that paid for the independent expenditure.

The Board may impose a civil penalty of up to \$3,000 for a violation of Minnesota Statutes section 211B.04. 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.⁴

Given their content, it is unlikely that the lack of a complete disclaimer on the committee's website, newspaper advertisements, and lawn signs caused confusion as to who prepared and paid for that material. However, the printed campaign material promoting multiple candidates may have caused confusion because it contained a disclaimer that did not identify the Nouis committee at all, did not include Mr. Wegner's full name, did not include an address, and did not include language required for independent expenditures. Mr. Nouis 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 that requirement. Not including the cost to print the campaign material promoting multiple candidates and including only half of the cost of the mailing that contained that material, the Nouis committee spent over \$1,000 to prepare and disseminate the different types of campaign material that did not include disclaimers in the form required by statute. The newspaper advertisements were likely seen by thousands of individuals and the printed campaign material promoting multiple candidates was sent to 1,675 addresses, while only 32 of the lawn signs in question were disseminated. Considering those factors, the Board will impose a civil penalty of \$300 for the disclaimer violations.

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

Findings of Fact

1. Perry Nouis filed a public subsidy agreement with the Board pursuant to Minnesota Statutes section 10A.322 on May 24, 2020.
2. The Perry Nouis for Minnesota committee printed and mailed a piece of campaign material promoting multiple candidates including Mr. Nouis and Greg Pulles.
3. The mailed campaign material promoting multiple candidates contained several instances of the word "vote" and a sentence stating "[i]f you want stable, sound, local, state and federal government...Safe, Effective, Clean and Hopeful...vote to let these fine people represent us."
4. The campaign material promoting multiple candidates included the following disclaimer: "Independently Prepared & Paid for by G. Wegner, a Concerned Plymouth Citizen."
5. The Nouis committee mailed 1,675 copies of the campaign material promoting multiple candidates to Plymouth Precinct 13 residents in the same envelopes as a flier promoting Mr. Nouis's candidacy, at a cost of \$1,050.92 to the committee, not including the cost of

⁴ Minnesota Statutes section 14.045, subdivision 3, lists factors that agencies must consider when setting the amount of a fine including the gravity, willfulness, and number of violations; the offender's past violations and economic benefit; and any other factor that justice requires.

printing. Mr. Wegner reimbursed the Nouis committee for the cost of printing the material promoting multiple candidates, which was \$734.83.

6. The Nouis committee included on its website images containing the names of, and offices sought by, other candidates, including state candidates Greg Pulles and Gary Porter. Those images were hyperlinked to the websites of the individual candidates.
7. The Nouis committee's website displayed the following disclaimer: "This site is paid for by Perry Nouis for Minnesota, on behalf of conservative Americans deeply concerned about the future of the United States. It is not approved by, or coordinated with, any other candidate or candidate's committee." The committee's mailing address was displayed directly to the right of the disclaimer text on its website.
8. The Nouis committee did not incur any expense specifically to include images promoting other candidates on its website, but did pay a total of \$57.12 for hosting of the website.
9. The Nouis committee did not collect payment from any other candidate for a reasonable share of the production and distribution costs of the campaign materials described above pursuant to Minnesota Rules 4503.1000, subpart 2.
10. The Nouis committee did not coordinate its activities regarding the campaign materials described above with any other candidate.
11. The Nouis committee purchased an advertisement printed in two editions of the Sun Sailor Newspaper that contained the following disclaimer: "Paid for by Perry Nouis for Minnesota Committee." The committee's website address was displayed directly above the disclaimer text within the newspaper advertisements.
12. The Nouis committee paid a total of \$404 for the two advertisements described above. The print circulation of the Sun Sailor Newspaper is approximately 24,728.⁵
13. The Nouis committee purchased and disseminated 32 lawn signs that displayed the following disclaimer: "Paid for by perrynouisformn.com."
14. The Nouis committee paid \$150.97 for the lawn signs described above.
15. The mailed campaign material promoting multiple candidates and the committee's website, newspaper advertisements, and lawn signs, were prepared and disseminated for the purpose of influencing the election of candidates.

⁵ hometownsource.com/site/contact_us_-_sun_sailor.html

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

Conclusions of Law

1. The expenses incurred by the Perry Nouis for Minnesota committee related to the mailed campaign material promoting multiple candidates and its website were independent expenditures made in violation of Minnesota Statutes section 10A.25, subdivision 3a.
2. The Nouis committee violated Minnesota Statutes section 211B.04 when it prepared and disseminated the mailed campaign material promoting multiple candidates, its website, two newspaper advertisements, and lawn signs, 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 \$550 is assessed against the Perry Nouis for Minnesota committee for violating the prohibition of independent expenditures under Minnesota Statutes section 10A.25, subdivision 3a.
2. A civil penalty in the amount of \$300 is assessed against the Nouis committee for violating the disclaimer requirement in Minnesota Statutes section 211B.04.
3. The Nouis committee is directed to forward to the Board payment of the civil penalties, by check or money order payable to the State of Minnesota, within 30 days of the date of this order.
4. If the Nouis 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.
5. 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: January 8, 2021