

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

**PRIMA FACIE
DETERMINATION**

IN THE MATTER OF THE COMPLAINT OF JON ERIK KINGSTAD REGARDING DOUG WARDLOW, UPPER MIDWEST LAW CENTER, DOUGLAS SEATON, ENERGY POLICY ADVOCATES, MATTHEW HARDIN, GOVERNMENT ACCOUNTABILITY AND OVERSIGHT, P.C., AND CHRISTOPHER HORNER

On October 21, 2021, the Campaign Finance and Public Disclosure Board received a complaint submitted by Jon Erik Kingstad regarding Doug Wardlow, a candidate for attorney general, the Upper Midwest Law Center and its president, Douglas Seaton, Energy Policy Advocates and one of its directors, Matthew Hardin, and Government Accountability and Oversight, P.C. and one of its directors, Christopher Horner. The complaint also refers to Mr. Wardlow's principal campaign committee, Doug Wardlow for Attorney General, which registered with the Board in 2017.

The complaint alleges that the Upper Midwest Law Center (UMLC), Energy Policy Advocates (EPA), and Government Accountability and Oversight, P.C. (GAO) are corporations as defined by Minnesota Statutes section 211B.15, subdivision 1. The complaint alleges that Mr. Wardlow has been a member of the UMLC's Advisory Legal Panel, which according to materials provided with the complaint assesses potential lawsuits that may be filed by the UMLC. The complaint states that in 2019 the UMLC, GAO, EPA, Mr. Hardin, and Mr. Horner initiated a lawsuit against Minnesota Attorney General Keith Ellison under the Minnesota Government Data Practices Act.¹ The complaint states that in 2020 the UMLC and EPA initiated a second lawsuit against Attorney General Ellison under the Minnesota Government Data Practices Act.² The complaint alleges that Mr. Wardlow "consented to and approved or cooperated in the consent and approval of" expenditures allegedly made by the UMLC, EPA, and GAO in furtherance of those lawsuits.

The complaint alleges that the two lawsuits "were for the purpose of promoting the candidacy of Douglas Wardlow for Minnesota Attorney General in any 2022 primary election and the 2022 general election and to defeat Keith Ellison." In support of that allegation, the complaint asserts that the lawsuits sought documents to arouse suspicion that Attorney General Ellison hired attorneys, using funds ultimately provided by Bloomberg Philanthropies and Michael Bloomberg, "for the purpose of advancing lawsuits related to environmental and climate change litigation." The complaint states that the second lawsuit raised concerns regarding "the possible use of state power to advance private interests." The complaint asserts and provides evidence that the UMLC promotes itself as opposed to attorneys paid for by Michael Bloomberg working in the Office of the Minnesota Attorney General.

¹ Energy Policy Advocates v. Ellison, et al., case no. 62-CV-19-5899.

² Energy Policy Advocates v. Ellison, et al., case no. 62-CV-20-3985.

The complaint includes a copy of a press release issued by the UMLC in June 2021 heralding its success in obtaining a Minnesota Court of Appeals decision partially reversing an order dismissing the lawsuit they filed on behalf of EPA in 2019. The press release asserts that Attorney General Ellison “has allowed outside special interests to embed attorneys in the Minnesota Attorney General’s office to work on their agenda.”

The complaint alleges that Mr. Wardlow has and intends to continue to campaign on the message that Attorney General Ellison has politicized the Office of the Minnesota Attorney General, specifically regarding climate change issues. The complaint alleges and provides evidence that Mr. Seaton has similarly argued that Attorney General Ellison has politicized his office.

The complaint asserts that the UMLC, EPA, and GAO are corporations and are not exempt, under Minnesota Statutes section 211B.15, subdivision 15, from the general prohibition of corporate political contributions pursuant to Minnesota Statutes section 211B.15, subdivision 2. The complaint alleges that the UMLC, EPA, or GAO, or some combination of those organizations, incurred expenses made in furtherance of the two lawsuits referenced above, or offered the free services of their officers, employees, or members in support of those lawsuits. The complaint asserts that because Mr. Wardlow was a member of the UMLC’s Advisory Legal Panel and allegedly consented to or approved of the lawsuits, and the purpose of the lawsuits allegedly was to support the candidacy of Mr. Wardlow or to defeat the candidacy of Attorney General Ellison, any expenses incurred by the UMLC, EPA, or GAO in furtherance of the litigation were approved expenditures and therefore were prohibited corporate contributions made to Mr. Wardlow’s campaign.

The complaint appears to allege that one or more entities named in the complaint may have violated Minnesota Statutes section 10A.29, which prohibits attempts to circumvent Minnesota Statutes Chapter 10A.

Finally, the complaint appears to allege that expenses incurred by the UMLC, EPA, or GAO may have constituted a bribe prohibited by Minnesota Statutes section 609.42.

Determination

Minnesota Statutes section 10A.01, subdivision 9, defines the term expenditure, in relevant part, to mean “a purchase or payment of money or anything of value, or an advance of credit, made or incurred for the purpose of influencing the nomination or election of a candidate or for the purpose of promoting or defeating a ballot question.” “An expenditure made for the purpose of defeating a candidate is considered made for the purpose of influencing the nomination or election of that candidate or any opponent of that candidate.” Minn. Stat. § 10A.01, subd. 9. Minnesota Statutes section 10A.01, subdivision 4, defines the term approved expenditure to mean “an expenditure made on behalf of a candidate by an entity other than the principal campaign committee of the 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, the candidate's principal campaign committee, or the candidate's agent. An approved expenditure is a contribution to that candidate.”

Minnesota Statutes section 211B.15, subdivision 1, defines the term corporation to mean “(1) a corporation organized for profit that does business in this state; (2) a nonprofit corporation that carries out activities in this state; or (3) a limited liability company formed under chapter 322C, or under similar laws of another state, that does business in this state.” Minnesota Statutes section 211B.15, subdivision 2, provides that:

- (a) A corporation may not make a contribution or offer or agree to make a contribution directly or indirectly, of any money, property, free service of its officers, employees, or members, or thing of monetary value to a political party, organization, committee, or individual to promote or defeat the candidacy of an individual for nomination, election, or appointment to a political office.
- (b) A political party, organization, committee, or individual may not accept a contribution or an offer or agreement to make a contribution that a corporation is prohibited from making under paragraph (a).
- (c) For the purpose of this subdivision, "contribution" includes an expenditure to promote or defeat the election or nomination of a candidate to a political office that 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, a candidate or committee established to support or oppose a candidate but does not include an independent expenditure authorized by subdivision 3.

A corporation that has violated the prohibition on corporate contributions “is subject to a civil penalty of up to ten times the amount of the violation, but in no case more than \$10,000, imposed by the Campaign Finance and Public Disclosure Board.” Minn. Stat. § 211B.15, subd. 7. An individual representative of a corporation who has violated the prohibition while acting on behalf of the corporation is likewise “subject to a civil penalty of up to ten times the amount of the violation, but in no case more than \$10,000, imposed by the Campaign Finance and Public Disclosure Board.” Minn. Stat. § 211B.15, subd. 6. An individual or other entity that has accepted a contribution or an offer or agreement to make a contribution prohibited by Minnesota Statutes section 211B.15 is subject to a civil penalty imposed by the Board of up to \$3,000. Minn. Stat. § 10A.34, subd. 4.

Article III, section 1 of the Minnesota Constitution provides that “[t]he powers of government shall be divided into three distinct departments: legislative, executive and judicial. No person or persons belonging to or constituting one of these departments shall exercise any of the powers properly belonging to either of the others except in the instances expressly provided in this constitution.” The Minnesota Judicial Branch provides remedies for litigants subjected to frivolous claims, including a court’s authority to impose sanctions against frivolous litigants.³ In order to investigate the allegations made in the complaint, the Board would need to inquire into

³ See, e.g., Minn. R. Civ. P. 11, Minn. R. Gen. Prac. 9.

the purpose with which the entities named in the complaint pursued two lawsuits filed against the Office of the Attorney General and Keith Ellison, in his official capacity as Attorney General. Organizations and individuals engage in litigation for a variety of purposes, and those purposes may include seeking to obtain information that may later be used by in a political campaign. However, the power to inquire into the motives with which litigation is pursued is reserved to the Minnesota Judicial Branch and the doctrine of separation of powers precludes the Board from acting as a de facto gatekeeper to the judicial system by entertaining complaints that seek to challenge the motives underlying a lawsuit.

Having determined that the litigation brought by the UMLC on behalf of EPA is not subject to Board review as a potential contribution to the Wardlow committee, the complaint fails to state a prima facie violation of Minnesota Statutes section 211B.15, subdivision 2. The complaint also fails to state a prima facie violation of Minnesota Statutes section 10A.29.

The Board does not have investigative authority with respect to Minnesota Statutes section 609.42.

Pursuant to Minnesota Statutes section 10A.022, subdivision 3, this prima facie determination is made by a single Board member and not by any vote of the entire Board. Based on the above analysis, the undersigned Board member concludes that the complaint does not state a prima facie violation of Chapter 10A or of those sections of Chapter 211B under the Board's jurisdiction. The complaint is dismissed without prejudice.

/s/ Stephen Swanson
Stephen Swanson, Chair
Campaign Finance and Public Disclosure Board

Date: November 1, 2021