

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

**PROBABLE CAUSE
DETERMINATION**

IN THE MATTER OF THE COMPLAINT OF GEORGE SELVESTRA REGARDING THE COMMITTEE TO ELECT JOSH HEINTZEMAN

On August 11, 2022, the Campaign Finance and Public Disclosure Board received a complaint submitted by George Selvestra regarding Representative Joshua Heintzeman, a candidate for Minnesota House of Representatives District 6B. The Committee to Elect Josh Heintzeman is the principal campaign committee of Representative Heintzeman.

The complaint alleges violations of Minnesota Statutes section 211B.04, which regulates the use of disclaimers on campaign material. The complaint alleges that signs promoting Representative Heintzeman’s candidacy were displayed along State Highway 210 and State Highway 371 and that those signs lacked a disclaimer. The complaint states that some of the signs were attached to a sign promoting other candidates and that some of the signs were displayed individually.

The complaint includes two photographs. Each photograph depicts a sign containing the text:

REPUBLICAN ENDORSED
JOSH
HEINTZEMAN
VOTE AUGUST 9TH

The signs displayed in the photographs do not appear to include a disclaimer.

On August 15, 2022, the Board chair determined that the complaint alleged a prima facie violation of Minnesota Statutes section 211B.04. Counsel for the Heintzeman committee, R. Reid LeBeau II, provided a written response to the complaint on September 21, 2022.

Mr. LeBeau stated that “[d]uring this primary season, the sign locations were modified to include a banner and footer which stated ‘Republican Endorsed’ and ‘Vote Aug. 9.’” Mr. LeBeau said that “[t]he signs were handmade and originally included a handwritten disclaimer at the bottom of the sign.” Mr. LeBeau explained that because the “VOTE AUGUST 9TH” footer covered the original disclaimer, “at the same time as adding the banner and footer to the sign locations, the campaign affixed a sticker to all signs which included the required disclaimer.”

Mr. LeBeau provided photographs of two of the signs and a close-up photograph of the disclaimer text printed on one of the stickers. Each of the pictured signs includes a hand-written disclaimer as well as a sticker toward the bottom of the sign. The stickers include the text “John Heintzeman for Minnesota House of Representatives” and much smaller, vertically-oriented text,

stating “Prepared and Paid for by the Committee to Elect Josh Heintzeman • JoshHeintzeman.com.” The committee’s website¹ includes a complete disclaimer that contains the committee’s mailing address.

Mr. LeBeau stated that the committee acted reasonably to ensure that the signs included disclaimers when it realized that the original disclaimers on the signs would be covered, and that there was no actual confusion regarding who prepared and paid for the signs.

The Heintzeman committee did not provide any photographs depicting a sign that simultaneously included the footer and a visible disclaimer. However, Mr. LeBeau stated that “[a]ll signs with the footer obstructing the pre-written disclaimer were affixed with a sticker containing the required disclaimer information.” With respect to the photographs submitted with the complaint, Mr. LeBeau said that the stickers may have been destroyed by weather conditions or removed by a person, but the committee has “checked the signs regularly to ensure that a sticker is affixed.”

The Board considered this matter at its meeting on October 5, 2022. Mr. LeBeau appeared before the Board on behalf of the Heintzeman committee.

Analysis

When the Board chair 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. Minn. Stat. § 10A.022, subd. 3 (d). 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 respondent, any benefit to be gained from a formal investigation, the availability of Board resources, and whether the violation has been remedied. Minn. R. 4525.0210, subp. 5. 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. Minn. R. 4525.0210, subp. 6.

Minnesota Statutes section 211B.04, subdivision 1, generally requires a principal campaign committee to include a disclaimer on campaign material at the time that campaign material is prepared and disseminated. The disclaimer must be substantially in the form “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

¹ joshheintzeman.com

address.” Campaign material with a disclaimer that is covered or otherwise obstructed and not visible will not provide the disclosure required by this statute.

There is no dispute as to whether the signs referenced in the complaint are campaign material requiring a disclaimer. The Heintzeman committee provided evidence that the signs in question included the required disclaimer when they were produced. The committee acknowledges that when the signs were erected with the “VOTE AUGUST 9TH” footers, the original disclaimers were covered and no longer visible. To resolve that problem the Heintzeman committee stated that it applied stickers containing the required disclaimer to the signs with a footer that covered the original disclaimer. However, the complaint included photographs of signs that lacked a visible disclaimer, showing that at some point at least some of the signs did not contain a disclaimer that was visible.

The Board believes that it is possible for both the complainant and the Heintzeman committee to be accurate in their description of the signs in question. The original disclaimer painted on the signs was not visible when the “VOTE AUGUST 9TH” footer was placed on the signs. The Heintzman committee recognized that the signs were no longer in compliance with Minnesota Statutes section 211B.04, and tried to resolve that problem by placing a sticker with the committee’s disclaimer on the signs. However, the photographs provided with the complaint provide evidence that either some signs were initially disseminated without a disclaimer, or the sticker with the disclaimer became dislodged from the signs after they were erected with the “VOTE AUGUST 9TH” footer. If the stickers were placed on the signs when the footers were affixed, and the stickers were visible, then the signs were not prepared or disseminated without a disclaimer in violation of Minnesota Statutes section 211B.04. The Heintzeman committee has not provided any photographs that depict a sign with the “VOTE AUGUST 9TH” footer and a visible disclaimer, demonstrating that the stickers were visible. Further information will be needed to resolve the complaint.

Aside from the banner and footer, the signs depicted in the complaint feature the same design as other signs and graphics produced by the Heintzeman committee, including those featured on its website and within photographs on its social media pages. For that reason, it is unlikely that any lack of a visible, legible disclaimer caused significant confusion as to who prepared and paid for the signs. The committee has been registered with the Board since 2014 and has no previous violation of the disclaimer requirement. The Board has limited resources and it is unclear what new information would be gained by conducting a formal investigation. Considering the foregoing factors, the Board concludes that a formal investigation is not warranted, but that there is probable cause to believe that campaign signs documented in the complaint lacked the required disclaimer. A staff review is ordered to further the investigation.

Order:

1. Although probable cause exists to believe that campaign signs prepared and disseminated by the Committee to Elect Josh Heintzeman lacked a visible disclaimer substantially in the

form required by Minnesota Statutes section 211B.04, a formal investigation is not warranted.

2. The Board's executive director is directed to initiate a staff review regarding the allegations contained in the complaint pursuant to Minnesota Rules 4525.0320. If the staff review establishes that no violation occurred, the staff review must be closed. If the staff review establishes that a violation occurred and the investigation cannot be resolved by conciliation agreement, the executive director is directed to prepare findings to resolve the matter.

/s/ Faris Rashid
Faris Rashid, Chair
Campaign Finance and Public Disclosure Board

Date: October 5, 2022