

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

**PRIMA FACIE
DETERMINATION**

IN THE MATTER OF THE COMPLAINT OF STEVE TIMMER REGARDING THE REPUBLICAN PARTY OF MINNESOTA, KEITH DOWNEY, PAT ANDERSON, AND PATRICK BURNS:

The undersigned Chair of the Minnesota Campaign Finance and Public Disclosure Board has made a prima facie determination that the complaint submitted in the aforementioned matter is insufficient to allege a violation of Chapter 10A or of those sections of Chapter 211B under the Board's jurisdiction.

The complaint alleges that respondents' actions against Michelle MacDonald, the Republican Party of Minnesota (RPM)-endorsed judicial candidate for the Minnesota Supreme Court, included the following:

1. Threats of economic reprisal, unless she rescind the endorsement; and
2. Threats of and/or actual physical coercion, unless she rescind the endorsement.

Determination:

Minnesota Statutes section 10A.36 provides the following:

An individual or association must not engage in economic reprisals or threaten loss of employment or physical coercion against an individual or association because of that individual's or association's political contributions or political activity. . . .

The complaint does not include any allegations by the complainant himself, who states that "I do not know any of these facts of personal knowledge; I rely on media reports, especially those of Michael Brodkorb . . ." Thus, the allegations of the complaint consist of various media reports that are publically available online. In a sense, the complainant is saying that the evidence speaks for itself, his editorial characterizations of that evidence aside. As a result, the Chair includes those sources in determining whether the allegations of the complaint are sufficient to allege a violation of the cited statute.

Apparently to bring the alleged conduct within the scope of the statute, the complainant states that "[s]eeking an endorsement, winning it, and running for office are obviously 'political activity.'" Implied in this statement is the allegation that the actions complained about were engaged in "because of" Ms. MacDonald's political activity. For the purposes of this determination, the Board assumes, without making a legal

determination, that the communications and actions of the respondents were "because of" Ms. MacDonald's political activity.

Economic Reprisals

As an initial matter, the statute states that an individual or an association must not "engage in" economic reprisals against an individual or an association. The language of the statute, however, does not include threats of economic reprisal as a violation. This reading is supported by the fact that immediately following the economic reprisal prohibition, the statute states that an individual or an association must not "threaten" loss of employment or physical coercion against an individual or an association. Given the proximity of these two clauses, and the fact that they are descriptive of the three types of activities that are prohibited by the section, the only logical inference is that threatening economic reprisals does not constitute a violation of the statute.

The only allegations of economic reprisal contained in the complaint and its attachments relate to *threats* of economic reprisal. In the complaint itself, Mr. Timmer summarizes the economic reprisal claims on page 6 by stating, "[but] especially outrageous are the threats to Ms. MacDonald's law practice and reputation. These are overt and obvious threats of economic reprisal." Moreover, in the complaint filed by Ms. MacDonald before the Office of Administrative Hearings, which was attached as a supplement to the complaint, the most pertinent claim is paragraph 43, which states, "I told my Husband, Tom, I was afraid, and Patrick was threatening my family, my reputation and my business."

These allegations relate solely to the threat of economic reprisal. There are no allegations in the complaint, its attachments, or its references to online materials that respondents "engaged in" any form of economic reprisal against Ms. MacDonald. Therefore, the complaint does not state a prima facie violation with respect to the first allegation.

Physical Coercion

Unlike economic reprisals, the threat of physical coercion constitutes a violation of section 10A.36. Coercion is typically defined as the act of making another individual do something, against their will, by using force or threats. Physical is typically defined as the relating to the body of a person instead of the mind. See, e.g., Merriam-Webster; Black's Law Dictionary. Therefore, physical coercion necessitates an actual use of force against an individual.

Although the statute prohibits a "threat" of physical coercion, for the purpose of this determination only, the Chair assumes that actual physical coercion even without a preliminary threat would also constitute a violation. The complaint and its attachments, including Ms. MacDonald's complaint to the Office of Administrative Hearings and complainant's references to online sources, appear to deal with two claims of physical coercion. First, Mr. Burns' communications with Ms. MacDonald are claimed to be threats of physical coercion. Second, it appears that Mr. Timmer claims that Ms. MacDonald removal from the RPM's state fair booth

amounted to actual physical coercion or, perhaps, was the result of threatened physical coercion.

On page 6 of the complaint, Mr. Timmer summarizes Mr. Burns' alleged threats of physical coercion with what he appears to believe are the most egregious instances that constitute violations. The complaint states that Mr. Burns told Ms. MacDonald, "[the RPM] are going to squash you like a bug . . ." and "it won't get better for you from here." The Board recognizes that "squash you like a bug" is an idiom in the American vernacular that suggests a negative consequence but is not meant to be taken literally as a threat of physical violence. Therefore, the inclusion of Mr. Burns' statements as an allegation of a threat of physical coercion is insufficient to state a prima facie violation of that part of the statute.

Finally, Mr. Timmer states that Ms. MacDonald was "frog marched out of the RPM booth at the state fair[.]" The term "frog marched" is defined in many dictionaries and generally means to grab and force someone to walk forward by pushing from behind, often with their arms held together behind them. However, Mr. Timmer's acknowledgement that he has no personal knowledge of the events makes his characterization of them insufficient to allege physical coercion. Instead, the Chair considered the allegations of the complaint made through complainant's references to online materials. Footnote 6 of the complaint incorporates a Star Tribune article that contains video of the incident at the state fair. The Board has reviewed the video, as it is considered part of the allegations of the complaint, and there cannot fairly be claimed any threatened or actual physical coercion. At no point in the video is there a threatened or actual use of force against Ms. MacDonald.

The complaint and its attachments do not contain any other allegations that respondents threatened any use of physical force against Ms. MacDonald. Therefore, the complaint does not state a prima facie violation with respect to the second allegation. As both allegations fail to state a prima facie violation of Chapter 10A or of those sections of Chapter 211B under the Board's jurisdiction, the complaint is dismissed.

/s/ Deanna Wiener
Deanna Wiener, Chair
Campaign Finance and Public Disclosure Board

Dated: 9/30/2014