

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

**PRIMA FACIE
DETERMINATION**

IN THE MATTER OF THE COMPLAINT OF NEIL A. SHAH, M.D., REGARDING THE MINNESOTA
DEMOCRATIC-FARMER-LABOR PARTY

On October 20, 2022, the Campaign Finance and Public Disclosure Board received a complaint submitted by Dr. Neil Shah regarding the Minnesota Democratic-Farmer-Labor Party (Minnesota DFL). The Minnesota DFL is a major political party and its state central committee is the Minnesota DFL State Central Committee, Board registration number 20003.

The complaint alleges that during the 2021-2022 election cycle segment the Minnesota DFL provided voter lists “including the names, addresses, e-mail addresses, and telephone numbers of thousands of Minnesota voters” to 64 candidates for state senator and 129 candidates for state representative. The complaint asserts that those lists were provided via a database known as the Voter Action Network (VAN). The complaint states that the Minnesota DFL provided VAN access to candidates for state senator for a flat fee of \$800 and to candidates for state representative for a flat fee of \$400. The complaint includes a copy of page 19 of the 2022 pre-primary report of receipts and expenditures of the Minnesota DFL State Central Committee, which reflects that the Minnesota DFL was paid \$800 each by the principal campaign committees of two candidates for state senator, and \$400 each by the principal campaign committees of five candidates for state representative, for “VAN Access.” The pricing reflected on that page is consistent with the remainder of the report.

The complaint alleges that VAN access was provided “at a cost far below market value, resulting in an in-kind campaign donation” to each recipient candidate. The complaint includes an invoice for a product sold by i360, LLC, which includes voter information for a monthly fee at a base price of \$300. The complaint asserts that the \$300 monthly fee reflected in the invoice represents the cost of “full access to the names and addresses of the people occupying the population of a Minnesota Senate,” apparently referring to residents of a single state senate district. The complaint also includes an email from the executive director of the Republican Party of Minnesota, indicating that the Republican Party of Minnesota’s voter data is valued at \$0.13 “per record” when sold to a candidate who does not have a valid user agreement with the party and who does not share enhanced records with the party.

The complaint alleges that the Minnesota DFL did not report making in-kind contributions to its legislative candidates consisting of the alleged difference between the fair market value of the VAN access provided to each candidate and the amount paid by each candidate. That allegation is supported by the Board’s records, showing that the Minnesota DFL State Central Committee has reported making only one in-kind contribution to a candidate during the period from January 1, 2021, through September 20, 2022, and that contribution was unrelated to VAN access. The complaint likewise alleges that none of the DFL legislative candidates reported

receiving an in-kind contribution from the Minnesota DFL consisting of VAN access. Board records reflect that only one candidate has reported an in-kind contribution in excess of \$200 received from the Minnesota DFL State Central Committee during the period from January 1, 2021, through July 18, 2022, and that contribution was unrelated to VAN access and was not received by a legislative candidate.

The complaint alleges that as a result of receiving an in-kind contribution from the Minnesota DFL consisting of the unpaid value of VAN access, many of the legislative candidates will exceed their aggregate political party and dissolving principal campaign committee contribution limit. The complaint states that “any list access provided to statewide candidates” may have likewise caused those candidates to exceed their aggregate limit.

Determination

Reporting

The term party unit includes the “state committee” of a political party. Minn. Stat. § 10A.01, subd. 30. The term principal campaign committee means a committee formed by a candidate pursuant to Minnesota Statutes section 10A.105.

Minnesota Statutes section 10A.01, subdivision 9, defines the term contribution, in relevant part, to mean “money, a negotiable instrument, or a donation in kind that is given to a political committee, political fund, principal campaign committee, local candidate, or party unit.”

Minnesota Statutes section 10A.01, subdivision 13, defines the term donation in kind to mean “anything of value that is given, other than money or negotiable instruments. An approved expenditure is a donation in kind.”

“A donation in kind must be disclosed at its fair market value.” Minn. Stat. § 10A.20, subd. 3 (c). “‘Fair market value’ means the amount that an individual would pay to purchase the same or similar service or item on the open market.” Minn. R. 4503.0100, subp. 3a. If the amount paid for goods or services is less than fair market value, the difference between what was paid and what the goods or services would have cost on the open market represents a contribution to the committee that received the goods or services.

Under Minnesota Statutes section 10A.20, subdivision 3, party units and principal campaign committees are required to report all contributions made and received on their campaign finance reports, including in-kind contributions that exceed \$20. Further, Minnesota Statutes 10A.20, subdivision 3, requires contributions made or received in excess of \$200 per recipient or contributor within a calendar year to be itemized.

The complaint alleges and the Board’s records reflect that the Minnesota DFL State Central Committee has not reported making any in-kind contributions to legislative candidates within the current election cycle segment consisting of VAN access. The complaint alleges and the Board’s records reflect that instead, the Minnesota DFL State Central Committee has reported

that the principal campaign committees of several candidates for state representative paid \$400 for VAN access while the principal campaign committees of several candidates for state senator paid \$800 for VAN access. The complaint alleges and includes evidence that the amounts paid by those committees was less than the fair market value of the VAN access received by each committee. The Vice Chair therefore concludes that the complaint states a prima facie violation of the reporting requirements in Minnesota Statutes section 10A.20, subdivision 3, by the Minnesota DFL State Central Committee.

The complaint refers to a total of 64 candidates for state senator and 129 candidates for state representative without naming those candidates or their principal campaign committees. Exhibit 2 of the complaint contains the names of seven legislative candidates. The complaint asks the Board to “impose the maximum fine . . . on Respondent and on each Legislative Candidate’s committee that received contributions from Respondent that exceed the prescribed limits for contributions from a political party unit and that failed to report the in-kind contribution from Respondent” However, the complaint identifies the Minnesota DFL as the sole “Respondent” to the complaint. “Respondent” means the subject of a complaint, an investigation, or an audit.” Minn. R. 4525.0100, subp. 8. The complaint also refers to statewide candidates but does not allege that any statewide candidate received an in-kind contribution from the Minnesota DFL. The Vice Chair therefore concludes that the complaint does not state a prima facie violation of the reporting requirements in Minnesota Statutes section 10A.20, subdivision 3, by any principal campaign committee. As explained in more detail below, the Board may address reporting problems that are discovered during the course of any ensuing investigation that is ordered by the Board.

Aggregate Political Party and Dissolving Principal Campaign Committee Contribution Limit

“A candidate must not permit the candidate's principal campaign committee to accept contributions from any political party units or dissolving principal campaign committees in aggregate in excess of ten times the amount that may be contributed to that candidate as set forth in subdivision 1.” Minn. Stat. § 10A.27, subd. 2. For legislative candidates the aggregate limit applicable to the 2021-2022 election cycle segment is \$10,000 and for constitutional office candidates the aggregate limit ranges from \$20,000 to \$40,000 during that period depending on the office sought.

Minnesota Statutes section 10A.28, subdivision 2, provides that the Board may impose a civil penalty against “a candidate who permits the candidate's principal campaign committee to accept contributions in excess of the limits imposed by section 10A.27,” and may impose a civil penalty against “a political party unit that makes a contribution in excess of the limits imposed by section 10A.27, subdivisions 2 and 8.” When determining whether a party unit has made a contribution that would subject it to a civil penalty imposed pursuant to Minnesota Statutes section 10A.28, subdivision 2, “the Board does not hold the donor party unit responsible for knowing how much the candidate has received from other party units and terminating principal campaign committees. Rather, the Board finds a violation if the donor party unit exceeds the

applicable limit counting only its own contributions.” In the Matter of the Investigation of Expenditures Made by the Minnesota DFL Senate Caucus Party Unit (Dec. 17, 2013) at 9 n. 5.¹

The complaint alleges that as a result of receiving an in-kind contribution from the Minnesota DFL, many DFL legislative candidates will exceed the aggregate political party and dissolving principal campaign committee contribution limit. However, the complaint does not allege that any specific principal campaign committee has exceeded that limit. The complaint asserts that any VAN access provided to statewide candidates may have caused those candidates to exceed their aggregate limit. However, the complaint does not allege or include evidence that any statewide candidate received VAN access.

The complaint also asks the Board to penalize the Minnesota DFL for allegedly making contributions that caused DFL legislative candidates to exceed their aggregate limit. However, as noted above, the Minnesota DFL State Central Committee is not responsible for knowing whether a candidate will exceed their aggregate limit by virtue of accepting a contribution from that party unit, unless contributions from that party unit alone would cause a candidate to exceed their aggregate limit. Aside from VAN access, the complaint does not include evidence that any legislative candidate accepted a contribution from the Minnesota DFL State Central Committee during the current election cycle segment. According to reports filed with the Board by that party unit, it made only one contribution to a legislative candidate during the current election cycle segment through September 20, 2022. Based on the information included in the complaint, the Board could conclude that the Minnesota DFL is subject to a civil penalty under Minnesota Statutes section 10A.28, subdivision 2, only if it made a contribution to a legislative candidate that exceeded the \$10,000 limit on its face.

The complaint relies on the \$300 monthly base price of a commercial product in order to allege that the value of VAN access to a legislative candidate is \$300 per month.² Even if that estimate is accurate and the Minnesota DFL State Central Committee provided VAN access to a legislative candidate for free starting on January 1, 2021, the value from that date through the date the complaint was filed would not exceed \$10,000.

The complaint alleges in the alternative that the Minnesota DFL made facially excessive contributions consisting of VAN access provided to legislative candidates because the Republican Party of Minnesota’s voter data is valued at \$0.13 “per record” when sold to a candidate in the absence of a valid user agreement. The complaint asserts that each “record” or “entry” consists of all contact information and other data regarding a specific individual. The complaint alleges that voter lists provided to candidates by the Republican Party of Minnesota typically contain “80,000 entries in a typical senate district.” The complaint thereby estimates that the fair market value of VAN access is \$10,400. Even if that estimate is accurate, that would not necessarily result in a violation of the aggregate limit by any legislative candidate based on the information alleged in the complaint. The complaint alleges that candidates for

¹ cfb.mn.gov/pdf/bdactions/1296_Findings.pdf

² The complaint does not distinguish between candidates for state senator and candidates for state representative with respect to the estimated value of VAN access.

state senator paid \$800 for VAN access. \$10,400 minus \$800 equals \$9,600, which is not in excess of the \$10,000 limit. The complaint alleges that candidates for state representative paid \$400 for VAN access. \$10,400 minus \$400 equals \$10,000, which likewise is not in excess of the \$10,000 limit.³

Moreover, the complaint does not include evidence regarding the number of entries or records within the VAN database for any senate district in Minnesota. While the complaint includes some evidence that the value of VAN access exceeded the amounts paid by the principal campaign committees of DFL legislative candidates, it does not contain evidence indicating that the value of that access exceeded \$10,800 for any candidate for state senator or \$10,400 for any candidate for state representative.⁴ The Vice Chair therefore concludes that the complaint does not state a prima facie violation of Minnesota Statutes section 10A.27, subdivision 2, and does not state a prima facie violation of any other provision that would subject the Minnesota DFL to a civil penalty under Minnesota Statutes section 10A.28, subdivision 2.

Investigation of the facts alleged in the complaint may reveal potential violations by principal campaign committees of the reporting requirements and the aggregate political party and dissolving principal campaign committee contribution limit. Minnesota Statutes section 10A.022, subdivision 3, provides that when an “investigation reveals other potential violations that were not included in the complaint, the board may investigate the potential violations not alleged in the complaint only after making a determination . . . that probable cause exists to believe a violation that warrants a formal investigation has occurred.”

False Certification

The complaint asks the Board to impose penalties “for submission of false or incomplete information.” Minnesota Statutes section 10A.025, subdivision 2, provides in relevant part that

- (b) An individual shall not sign and certify to be true a report or statement knowing it contains false information or knowing it omits required information.
- (c) An individual shall not knowingly provide false or incomplete information to a treasurer with the intent that the treasurer will rely on that information in signing and certifying to be true a report or statement.
- (d) A person who violates paragraph (b) or (c) is subject to a civil penalty imposed by the board of up to \$3,000. A violation of paragraph (b) or (c) is a gross misdemeanor.

³ While the complaint does not distinguish between state senator and state representative candidates in terms of the estimated fair market value of VAN access, the value to a candidate for state representative would likely be substantially less than the value to a candidate for state senator within the same Senate district, because a substantial portion of the data would pertain to individuals residing outside their House district.

⁴ These amounts reflect the \$10,000 aggregate contribution limit, plus the amount paid for VAN access by each DFL legislative candidate, according to the complaint, which was \$800 for candidates for state senator and \$400 for candidates for state representative.


(e) The board may impose an additional civil penalty of up to \$3,000 on the principal campaign committee or candidate, party unit, political committee, or association that has a political fund that is affiliated with an individual who violated paragraph (b) or (c).

The complaint does not allege that any individual signed a report or statement knowing that it was false or omitted required information. The complaint does not allege that any individual knowingly provided false or incomplete information to a treasurer. The Vice Chair therefore concludes that the complaint does not state a prima facie violation of Minnesota Statutes section 10A.025, subdivision 2.

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. This prima facie determination does not mean that the Board has commenced, or will commence, an investigation or has made any determination of a violation by any of the individuals or entities named in the complaint.

Pursuant to Minnesota Statutes section 10A.022, subdivision 3, within 45 days of the date of this determination, the Board will make findings and conclusions as to whether probable cause exists to believe that the violations of Minnesota Statutes section 10A.20 alleged in the complaint have occurred and warrant a formal investigation. The complainant and the respondent named in this prima facie determination will be given an opportunity to be heard by the Board prior to any decision on probable cause.

Until the Board makes a public finding or enters into a conciliation agreement, this matter is subject to the confidentiality requirements of Minnesota Statutes section 10A.022, subdivision 5.



George W. Soule, Vice Chair
Campaign Finance and Public Disclosure Board

Date: November 2, 2022