

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

**Findings, Order, and Memorandum in the Matter of the Investigation of Expenditures
Made by the Minnesota DFL State Central Committee**

Background

This matter originated with the filing of four complaints on January 21, 2014, by the Republican Party of Minnesota (RPM) alleging that the Minnesota Democratic Farmer Labor State Central Committee (DFL) and four DFL House candidates and their associated principal campaign committees violated Minnesota Statutes Chapter 10A as a result of classifying printed communications as independent expenditures when the communications were not, in fact, independent of the affected candidates. The allegations related to communications advocating the elections of Tom Degree, Laurie Halverson, Tim Faust, and Patti Fritz.

All of the complaints alleged that printed campaign communications paid for by the DFL and identified by the DFL as independent expenditures were made with the "active participation" of the candidates and, therefore, were not independent expenditures. The allegations were based on the photographs used in the mailings. The RPM claimed the photographs were not available on any candidate committee website and could not be found as publicly available images on the internet. Because the photos were not available in the public domain and appeared "staged", the complaints concluded that the images were evidence of cooperation between the candidates and the DFL in producing the communications.

Board staff initially researched the public availability of the images used in the subject independent expenditures. Those images that could be found publicly and were available prior to the alleged mailing of the subject independent expenditures were removed from consideration. However, based on the allegations in the complaints and on the fact that Board staff could not locate public copies of all the images used in the communications, the Executive Director, under authority delegated by the Board, accepted the complaint. The DFL and the candidates named in the complaints were notified of the filing of the complaints in letters dated February 7, 2014. In a letter dated February 21, 2014, the Board requested information to determine the independence of the subject expenditures.

On March 17, 2014, Charles N. Nauen of the law firm of Lockridge Grindal Nauen P.L.L.P. informed the Board that he would be representing the DFL and the candidates and responded to the Board's request for information. Mr. Nauen stated that:

The DFL House Caucus maintained a wall separating its independent expenditures from activities undertaken in conjunction with candidates. The independent-side of the caucus identified the candidates it would support with independent expenditures, retained consultants to prepare the literature, and made all decisions regarding the timing, content, format, and substance of the independent expenditures. Zach Rodvold, the DFL House Caucus Campaign Director was primarily responsible for the caucus's independent expenditure activities.

On April 11, 2014, and at the request of Board staff, Zach Rodvold submitted an affidavit regarding the independence of the subject expenditures. Mr. Rodvold stated:

Staff on the independent-side of the Caucus and the media consultants retained by the Caucus reviewed candidates' websites, social media postings, and other publicly available resources for images that could be used in independent expenditures. Staff on the independent-side of the Caucus also reviewed the candidates' websites, social media postings, and press releases for public events where the Caucus could obtain additional photographs of candidates for use in the independent expenditures.

...

Once an opportunity was identified, the independent side of the caucus arranged for a volunteer to attend the event and take photographs of the candidate. The photographs were never provided to or shared with the campaigns.

...

The public events were arranged by the candidates for campaign-related purposes, were open to the public, and were promoted on the candidates' websites, social media posts, or through press releases. The independent-side of the Caucus did not request or suggest that the candidates schedule the public events.

Regarding Tom Degree, Mr. Rodvold informed the Board that the photos which Board staff could not confirm as publicly available were obtained during a local "Tour of District 39B promoted on Tom DeGree's campaign website with the times Degree would appear at each location." On August 13, 2012, Mr. Degree held the publicly-advertised community event to interact with voters in his district, during which one of the stops was Lake Elmo Elementary where Mr. Degree is a teacher and where Mr. Degree had arranged for students from his fourth grade class from the previous year to attend the event and to appear in photographs taken for his campaign.

The DFL sent a volunteer, Jessica Nyman, to capture photos of Mr. Degree at the various stops on his local tour, and Mr. Rodvold stated that "Nyman did not interact with DeGree or the students or provide any direction regarding the photos. Nyman did not identify herself or state why she was taking the photographs." Mr. Rodvold further asserted that the "Tour of District 39B was not arranged for the purpose of obtaining images for use in independent expenditures by the DFL nor was the tour arranged at the request or suggestion of the independent-side of the Caucus."

Regarding Laurie Halverson, Mr. Rodvold stated that the photos which Board staff could not confirm as publicly available were similarly obtained after "the independent-side of the Caucus identified a schedule of constituent meetings posted on Laurie Halverson's campaign Facebook page." The constituent meetings were held on August 28, 2012, and were advertised publicly in advance.

Mr. Nauen informed the Board that "Halverson recalls that one individual identified herself as being associated with the DFL Party, but there was no discussion regarding why the individual was taking photographs or the use to which the photographs would be put." Mr. Rodvold further stated that the "constituent meetings were not arranged for the purpose of obtaining images for use in independent expenditures by the DFL nor were they arranged at the request or suggestion of the independent-side of the Caucus."

Regarding Tim Faust, Mr. Rodvold stated that "all of the images used in the independent expenditures supporting Tim Faust were obtained prior to the 2012 election cycle and were, in fact, used in independent expenditures supporting Tim Faust in 2010." Although Mr. Rodvold

could not confirm the details regarding the manner in which the images were obtained he nevertheless asserted that, consistent with the caucus' practices, the images would have been obtained from either publicly available sources or at public events. Mr. Rodvold stated that "Faust did not cooperate in connection with the [caucus] obtaining photographs for use in independent expenditures in 2010; nor did he or anyone acting on his behalf cooperate in connection with, or consent to, independent expenditures featuring those same photographs in 2012."

Finally, regarding Patti Fritz, Mr. Rodvold stated that "some of the photographs used in the independent expenditures supporting Patti Fritz, like the images of Tim Faust, were obtained prior to the 2012 election cycle." Although Mr. Rodvold could not confirm the details regarding the manner in which the images were obtained he nevertheless asserted that, consistent with the caucus' practices, the images would have been obtained from either publicly available sources or at public events.

The remaining photos of Patti Fritz which Board staff could not confirm as publicly available were obtained from public events throughout her community and publicly-advertised in advance on her Facebook page. On September 11, 2012, Ms. Fritz held meet-and-greets with constituents at three locations in her community at specified times. Mr. Rodvold stated that "the independent-side of the Caucus arranged for a volunteer, Catherine Thompson, to attend portions of the event to take photographs of Fritz. ... The meet-and-greet events were not arranged for the purpose of obtaining images for use in independent expenditures by the DFL nor were they arranged at the request or suggestion of the independent-side of the Caucus."

Board Analysis

An "expenditure" in Minnesota campaign finance law is a "purchase or payment . . . for the purpose of influencing the nomination or election of a candidate . . ." Minn. Stat. § 10A.01, subd. 9.

An independent expenditure is a form of expenditure that is defined in terms of conduct that is not associated with the expenditure. The definition is as follows:

"Independent expenditure" means 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.

Minn. Stat. § 10A.01, subd. 18

The allegations of the complaints asserting that the subject expenditures were not independent are based on the RPM's inability to find the subject photographs publicly available online and on the RPM's conclusion that the photographs were staged. On that basis, the RPM claims that the subject photographs could be obtained by the DFL only with a level of candidate participation that is prohibited if the resulting communications are to be considered independent of the candidates.

The issue before the Board, therefore, is whether the facts surrounding the means by which the photographs were obtained constitutes cooperation between the DFL and the subject

candidates or otherwise results in some violation of one of the other relationships that are prohibited for independent expenditures.

The evidence supports a conclusion that the candidates scheduled public meetings without input or communication from the DFL independent expenditure staff and that the candidates had no involvement in the creation or distribution of the subject independent expenditures. The candidates did not request that the DFL attend their events to take pictures. Some candidates were unaware of the DFL's attendance and no candidate had knowledge of the proposed use of the subject photographs. Therefore, the subject independent expenditures cannot be considered as being made with the cooperation of any of the candidates. Neither do the facts suggest that there was candidate action that would defeat the independence of the expenditures for any of the other reasons specified in the statute.

The sworn statement provided by the DFL supports a conclusion that the DFL independent expenditure staff acted independently of the candidates when they or their volunteers attended candidates' public events to obtain their own photographs.

**Based on the Board's investigation,
the Board makes the following:**

Findings of Fact

1. During the 2012 elections, the DFL made expenditures that were reported as independent expenditures for the development, production, and mailing of printed literature. Each piece of literature urged voters to vote for the subject candidate or against the candidate's opponent.
2. The cost of these communications was reported as independent expenditures by the DFL.
3. The DFL desired to include images of the candidates in each piece of literature. Where the DFL was able to obtain these images from existing public sources or from prior campaign literature, they did so. Where the DFL was unable to obtain the desired images, they obtained images at public events held by the candidates.
4. In the cases of those candidates where images were obtained at public events, the candidate had no prior knowledge of the DFL's planned attendance or that the pictures would ultimately be used for the subject independent expenditures.
5. The candidates had no involvement in decisions or discussions regarding whether the DFL would make the subject independent expenditures on their behalf. The candidates also did not have any involvement in decisions or discussions regarding the timing, substance, or form of the subject independent expenditures made by the DFL.

Based on the Findings of Fact and the provisions of Minnesota Statutes Chapter 10A, the Board makes the following:

Conclusions of Law

In this matter, the subject independent expenditures were made without the cooperation or involvement of the various candidates and, thus, were properly classified as independent expenditures by the DFL.

Based on the preceding Findings of Fact and Conclusions of Law, the Board issues the following:

Order

The Board investigation of this matter is hereby made a part of the public records of the Board pursuant to Minnesota Statutes section 10A.02, subdivision 11. This matter is concluded.

Dated: April 22, 2014

/s/ Deanna Wiener

Deanna Wiener, Chair
Campaign Finance and Public Disclosure Board