

# Complaint and Memorandum

This is a complaint for violation of Minn. Stat. sec. 10A.36 (2013) against the Republican Party of Minnesota, its chair Keith Downey, RPM executive committee member (Fourth Congressional District) Pat Anderson, perhaps additional members of the executive committee presently unknown to me, and attorney Patrick Burns. I am a Minnesota resident, and I intend to vote in November in the Supreme Court race.

## THE STATUTE OFFENDED

[Minn. Stat. sec. 10A.36 \(2013\)](#) states:

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. This subdivision does not apply to compensation for employment or loss of employment if the political affiliation or viewpoint of the employee is a bona fide occupational qualification of the employment. An individual or association that violates this section is guilty of a gross misdemeanor. [emphasis added]

There are three kinds of prohibited conduct: economic reprisals, loss of employment, or physical coercion. They are disjunctive; loss of employment is only one of them. That is the only kind *not* present here. Seeking an endorsement, winning it, and running for office are obviously “political activity.”

I am informed by the Board’s staff that no complaint has ever been made under section.

## STANDING TO COMPLAIN

The facts underlying this complaint are so notorious they hardly need explication from me. Before summarizing them, though, I want to address standing to complain.

There is no standing requirement in Chapter 10A of the Minnesota Statutes. But it is almost certainly known to the Board and the staff that I am not a Republican. So what is this to me?

If a duly endorsed candidate of any party is hounded from the race by a group of insiders, it ought to be of concern to the people who made the endorsement (the convention delegates), the political party organization, and to the general public, too, who rely on an endorsement as a brand or trademark of the candidate. This is true for both supporters and opponents of any political party.

It also alarms me that a candidate would be threatened with loss of a professional livelihood and reputation over her political participation.

I do not support Michelle MacDonald's candidacy for the Supreme Court. I think the idea of a political party endorsing candidates for judicial office invites chaos in the judiciary. There are states around the country where we can look to confirm that. Ms. MacDonald's endorsement is, in fact, a demonstration of the imprudence of endorsing judicial candidates generally, and of the Republican Party of Minnesota's method of doing it, in particular.

Having made an endorsement, though, it is unseemly that a group of insiders could undo the endorsement, or try to, because it has become inconvenient, embarrassing, or politically disadvantageous.

It is the right of the convention delegates, members of the Republican Party, and the public to an open and democratic endorsement process that the Board should vindicate here. The reason there no standing requirement in Chapter 10A is because the Board is protecting public rights, not private ones.

#### THE FACTS

What follows is a tale of the attempted subversion of the democracy of a political convention.

I do not know any of these facts of personal knowledge; I rely on media reports, [especially those of Michael Brodkorb<sup>1</sup>](#), a former co-chair of the Republican Party of Minnesota, a web writer, and a contributor to the Minneapolis Star Tribune. I believe that his reporting is entirely credible.

Michelle MacDonald was endorsed by the Republican Party as a candidate for the Supreme Court at its convention in Rochester in May. Questions have arisen about the information available to the convention delegates about Ms. MacDonald's [pending charges of driving while intoxicated<sup>2</sup>](#), and her [contempt citation in Dakota County Court<sup>3</sup>](#), but it is clear that the committee considering her endorsement and recommending it to the convention, and perhaps others in the RPM's leadership were aware of these facts.

As the media began reporting about Ms. MacDonald, her party endorsement became more unsettling to the party's executive committee and to the party's chair, Keith Downey. That expressed itself in a number of ways by the party distancing itself from its endorsed candidate; for example, Ms. MacDonald's photo did not appear with those of other endorsed candidates

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<sup>1</sup> <http://politics.mn/2014/08/24/mn-gop-made-formal-offer-to-macdonlad/>

<sup>2</sup> <http://www.startribune.com/politics/statelocal/264034801.html>

<sup>3</sup> <http://politicsinminnesota.com/2014/06/gops-supreme-court-endorsement-puts-spotlight-on-macdonald/#ixzz358BxwyRM>

on the party's website. She was excluded from a post-convention fly around, and she was denied access to the party's major donor list.<sup>4</sup>

But the issue came to a head when Ms. MacDonald announced that she intended to make several appearances at the RPM booth at the state fair. The party's executive committee decided, apparently by email vote, to adopt a "new rule" about candidate booth appearances: no endorsed candidate with a criminal charge pending could occupy the booth.<sup>5</sup> The real purpose of this bill of attainder is laughably obvious.

Ms. MacDonald did appear at the booth on the first day of the fair, and since she violated the "new rule," [she was removed](#)<sup>6</sup> by 'plain-clothed "conflict resolution experts".' Ms. MacDonald vowed to return. In addition to other weakness as a candidate in the party's eyes, she had a new one: she doesn't scare easily.

Lamentable as this episode is, it may not be a violation of sec. 10A.36 by itself. But it clearly led to the violations, and it demonstrates that some people in the party were willing to get physical with MacDonald.

After dustup at the fair, [Michael Brodkorb reports on his website](#)<sup>7</sup> about text and voice contacts of Ms. MacDonald by attorney Patrick Burns, working with at least one member of the RPM's executive committee, Pat Anderson, and purporting to represent the RPM, about a "formal offer" from the RPM to MacDonald to relinquish her endorsement and end her candidacy:

According to phone and text message records provided by MacDonald to politics.mn, Burns called MacDonald 14 times between Friday, August 22, 2014 to Saturday, August 23, 2014. During the same time span, Burns sent MacDonald approximately 22 text messages. All of the communications were focused on the offer from the Republican Party of Minnesota.

According to [Michael Brodkorb in a radio interview](#)<sup>8</sup> with the Daily Report, the messages were "rough." [They included](#)<sup>9</sup> (link to a recording of a telephone conversation between Patrick Burns and Michelle MacDonald):

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<sup>4</sup> MacDonald interview with Ron Rosenbaum on August 28, 2014; podcast available at <http://www.holdingcourtpodcast.com/podcasts/>

<sup>5</sup> MacDonald interview with Ron Rosenbaum on August 28, 2014; podcast available at <http://www.holdingcourtpodcast.com/podcasts/>

<sup>6</sup> <http://www.startribune.com/politics/statelocal/272171951.html>

<sup>7</sup> <http://politics.mn/2014/08/24/mn-gop-made-formal-offer-to-macdonlad/>

<sup>8</sup> <https://soundcloud.com/the-daily-report-1/michael-brodkorb-michelle-macdonalds-gop-run-in>

<sup>9</sup> <https://soundcloud.com/mbrodkorb/michelle-macdonald-phone-call-august-23-2014>

You've got a 12 o'clock deadline, according to what I can get out of the folks over at the committee [The Republican Party State Executive Committee], so what decision do you want to make?

They're [The Republican Party of Minnesota] going to squash you like a bug. That's what they want to do.

I'm trying to help you, by saving you before a noon deadline.

Draft me a letter, have it addressed to Downey and we'll make a call and we'll tell them [The Republican Party of Minnesota] to stop what they want to do. I have no idea what it is, but I've been warned. It's not going to get better from here on out.

They [The Republican Party of Minnesota] wants your resignation of the endorsement.

[Mr. Burns told Ms. MacDonald that her reputation and her business would be further damaged if she did not repudiate the party's endorsement.](#)<sup>10</sup> (MacDonald interview with Ron Rosenbaum on August 28, 2014; the discussion is in the last ten minutes or so of the hour long interview.)

Here is a voice mail from Patrick Burns to Michelle MacDonald on August 23, 2014 telling her to "[get out of the race.](#)"<sup>11</sup>

I have been searching my admittedly limited vocabulary for the right adjective to describe this, and I can only come up with one: *thuggish*.

In a statement released by Mr. Burns, [he acknowledges working with RPM executive committee member Pat Anderson](#) in working to obtain the endorsement repudiation by Michelle MacDonald.<sup>12</sup>

It is reported that the party chair, Keith Downey, disavows knowledge of these activities, but shortly after the high noon deadline on Saturday, August 23<sup>rd</sup> came and went, the chairman did publish an [email highly critical and scornful of Ms. MacDonald.](#)<sup>13</sup>

The timing could be pure coincidence. But I doubt it. The involvement of the RPM party chair's role in the unremitting pressure on Ms. MacDonald seems evident.

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<sup>10</sup> MacDonald interview with Ron Rosenbaum on August 28, 2014; podcast available at <http://www.holdingcourtpodcast.com/podcasts/>

<sup>11</sup> <https://soundcloud.com/mbrodkorb/patrick-burns-voice-mail-to-michelle-macdonald-august-23-2014>

<sup>12</sup> <http://www.scribd.com/doc/238034459/Patrick-Burns-Statement-Michelle-MacDonald-MN-GOP-August-28-2014>

<sup>13</sup> <http://www.scribd.com/doc/237577491/MN-GOP-E-mail-Re-Michelle-MacDonald-August-23-2014>

## ANALYSIS

Since this is a complaint of first impression under the statute, there are no decisions to provide guidance as to the meaning here of “coercion” or “reprisal.” The Board is left to construe the words according to how the words have been defined in other contexts, and according to their plain meaning.

Coercion is a word that appears in the law in many contexts, criminal law and criminal sexual conduct law, especially. But it appears in a more civil context, too.

The term "coercion" is somewhat difficult to define with sufficient exactness to apply to all cases. It is said to be compulsion, force, or duress. It is said to exist where one, by the unlawful act of another, is induced to do or perform some act under circumstances which deprive him of the exercise of his free will. 11 C.J. 946, 947. This definition is adopted in State ex rel. Young v. Ladeen, 104 Minn. 252, 116 N.W. 486, 16 L.R.A. (N.S.) 1058. In State ex rel. Smith v. Daniels, 118 Minn. 155, 136 N.W. 584, coercion is stated to be either physical force, used to compel a person to act against his will, or implied legal force, where one is so under subjection of another that he is constrained to do what his free will would refuse, and that coercion is usually accomplished by indirect means, such as threats or intimidation. Coercion, as a misdemeanor, is defined by section 10431, G.S. 1923, which provides that every person who, with intent to compel another to do or abstain from doing an act which such other person has a legal right to do, or abstain from doing, shall wrongfully and unlawfully attempt to intimidate such person by threats or force, shall be guilty of a misdemeanor.

To sustain an action for damages on the ground of coercion, there must be some wrongful or unlawful act, acts, or conduct, on the part of the defendant sufficient to constrain the plaintiff, against his will, to do or refrain from doing something which he has a legal right to do or refuse to do, and resulting in damage to him. The acts or conduct complained of need not be "unlawful" in the technical sense of that term. It is sufficient if same is wrongful in the sense that it is so oppressive under given circumstances as to constrain one to do what his free will would refuse.

First State Bank v. Federal Reserve Bank, 174 Minn. 535, 219 N.W. 908, 61 A.L.R. 467 (Minn., 1928).

The term “economic reprisal” probably finds its most common use in the law when discussing the unlawful consequences of reporting discrimination, or the consequences of disclosing association membership, *e.g.*, NAACP v. Alabama, 357 U.S. 449 (1958). In other words, losing your job or some other economic advantage for political group membership or activity.

Minnesota also has a statute that makes it a felony to make:

*a threat to unlawfully injure a trade, business, profession, or calling;*

Minn. Stat. sec. 609.27 subd. 1 (3) (2013).

Threats like “squash like a bug,” and “it won’t get better for you from here,” especially after being frog marched out of the RPM booth at the state fair, and the constant pressure applied to Michelle MacDonald, are words and acts of physical coercion, or the threat of it, and intimidation; that’s another word one finds a lot in discussion about coercion and reprisal: intimidation.

But especially outrageous are the threats to Ms. MacDonald’s law practice and reputation. These are overt and obvious threats of economic reprisal.

As a lawyer himself, Patrick Burns must have known the cudgel he wielded as an agent for others. Who those others include, in addition to executive committee member Pat Anderson, is a subject that the Board should investigate.

#### CONCLUSION

I leave it to the Board to fashion a remedy; but it certainly ought to include a finding of the opprobrium these parties have brought on themselves, and censure by the Board.

August 29, 2014

Respectfully submitted,

Steven J. Timmer

Parties referred to and complained of:

Republican Party of Minnesota and Keith Downey  
2200 East Franklin Avenue, Suite 201  
Minneapolis, Minnesota 55404

Pat Anderson Gallwas  
5 Apple Orchard Ct.  
Dellwood, Minnesota 55110-1200

Patrick Burns  
8401 Wayzata Blvd., Suite 300  
St. Louis Park, Minnesota 55426

N.B. Because he is so extensively linked, and may be contacted by the Board's staff, I am providing a copy of this complaint to Michael Brodkorb.