

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

**PROBABLE CAUSE
DETERMINATION**

IN THE MATTER OF THE COMPLAINT OF KENNETH TOOLE REGARDING THE DOUGKERNHOUSE6B COMMITTEE

On July 22, 2022, the Campaign Finance and Public Disclosure Board received a complaint submitted by Kenneth Toole regarding Douglas Kern, a candidate for Minnesota House of Representatives District 6B. DougKernHouse6B (Kern committee) is the principal campaign committee of Mr. Kern.

The complaint alleges violations of Minnesota Statutes section 211B.04, which regulates the use of disclaimers on campaign material. The complaint alleges, and provides evidence, that multiple pieces of campaign material prepared or disseminated by the Kern committee did not contain a disclaimer in the form required by statute.

On July 29, 2022, the Board chair determined that the complaint alleged a prima facie violation of Minnesota Statutes section 211B.04. On the same date Mr. Kern provided a written response to the complaint acknowledging a violation of the disclaimer requirement. In response to questions from Board staff, Mr. Kern provided additional information via email on August 4, 2022, regarding the cost of the campaign material referenced in the complaint, how widely it was disseminated, and why it did not include a disclaimer in the form required by statute.

In general, Mr. Kern stated that he considered the campaign material he had seen in past years and sought to emulate what he had seen, assuming it was correct. Mr. Kern did not realize that with the exception of broadcast campaign material, disclaimers need to include the committee's mailing address or website address, and that if the website address is used, the website must include the committee's mailing address.

The Board considered this matter at its meeting on August 15, 2022. Mr. Toole and Mr. Kern each appeared before the Board remotely via Webex. During the meeting Mr. Toole alleged violations of the disclaimer requirement not asserted in his complaint, regarding postcards mailed on August 5, 2022, two Facebook pages, and bumper stickers. Mr. Toole asserted that the Kern committee failed to promptly remedy the violations alleged in the complaint. Additionally, Mr. Toole alleged violations of the reporting requirements in Minnesota Statutes section 10A.20, subdivision 3, that were not referenced in the complaint. Specifically, Mr. Toole stated that the Kern committee did not report an in-kind contribution related to a banner used at community events, which was paid for by an individual and donated to the committee. Also, Mr. Toole said that the Kern committee failed to report in-kind contributions accounting for the value of items donated to the Kern committee and then sold at a garage sale.

On August 15, 2022, Mr. Toole provided the Board with additional photographs and stated that he received the postcard on August 8, 2022. Mr. Toole stated that the photographs of signs that he provided were taken on August 6, 10, and 11, 2022.

During the August 15, 2022 Board meeting, Mr. Kern said that he was the chair of his local Republican party unit for 14 years but he had never been a candidate. Mr. Kern explained that he looked at other's campaign material and largely copied the format that they used for their disclaimers. Mr. Kern acknowledged that he should have more carefully reviewed materials published by the Board regarding compliance with the disclaimer requirement. The Board then laid the matter over until its next meeting in order to consider the additional allegations and provide Mr. Kern with an opportunity to respond. Mr. Kern provided a written response to the additional allegations on August 26, 2022.

Billboards

The complaint includes a photograph of a billboard containing a picture of Mr. Kern and the following text:

Thank You Senator Carrie Ruud for Endorsing
AUG 9th DOUG ****
PRIMARY KERN
FAITH • FAMILY • FREEDOM • LIFE
MN HOUSE 6B
AMERICA FIRST

Paid for by Doug Kern
House 6 B

The disclaimer did not include the Kern committee's mailing address or website address. Mr. Kern stated that his committee had electronic billboard signs that were displayed at four locations, which rotated with other advertisements, starting in mid-June of 2022. Mr. Kern stated that a total of \$2,025.20 had been billed for those billboards. Mr. Kern stated that the vendor was contacted the same day that he received a copy of the complaint, July 29, 2022, and he believes that the billboards included a complete disclaimer for an eight-day period leading up to the primary election on August 9, 2022.

Website

The complaint includes a screenshot of a portion of the Kern committee's website,¹ which included a disclaimer stating "Prepared & Paid for by the DougKernHouse6B Campaign Committee." The disclaimer did not include the Kern committee's mailing address. Mr. Kern stated that he paid \$246 initially for the website and that another individual paid \$250 as an in-kind contribution for additional services to develop the website. The website was updated after the complaint was filed to include the committee's mailing address within the disclaimer.

¹ dougkernhouse6b.com

Postcards

Photographs provided by Mr. Toole on August 15, 2022, depict a two-sided postcard with an August 5, 2022 postmark. Mr. Toole stated that he received the postcard on August 8, 2022. One side of the postcard contained text stating “VOTE DOUG KERN AUGUST 9th” and directed recipients to the Kern committee’s website, DougKernHouse6B.com. The other side of the postcard included a disclaimer stating “Paid for by the DougKernHouse6B Campaign.” Neither side included the Kern committee’s mailing address.

Within his response Mr. Kern referred to the exception to the disclaimer requirement for “personal letters, or similar items that are clearly being distributed by the candidate,” pursuant to Minnesota Statutes section 211B.04, subdivision 3, paragraph (a). Mr. Kern also stated “I thought it would be fine as it did have the Website on the reverse side . . . which I thought would satisfy the incomplete portion of the Disclaimer so I allowed it to be sent out.”

Professionally Produced Lawn Signs

The complaint includes a photograph of a lawn sign containing the following text:

AUGUST 9th PRIMARY
DOUG *****
KERN
FAITH*FAMILY*FREEDOM*LIFE
MN HOUSE 6B
AMERICA FIRST
PAID BY DOUG KERN HOUSE 6B CAMPAIGN

The disclaimer did not include the Kern committee’s mailing address or website address. Mr. Kern stated that lawn signs were purchased at a cost of \$1,144 and approximately 100 signs were disseminated starting in late June of 2022. Mr. Kern said that after he was notified of the complaint, labels containing the committee’s website address were applied to the lawn signs and he provided photographs depicting the labels applied to the signs. The labels contained a disclaimer stating:

PREPARED & PAID FOR BY THE
DOUGKERNHOUSE6B CAMPAIGN
DOUGKERNHOUSE6B.COM

Hand-Painted Signs

Photographs provided by Mr. Toole on August 15, 2022, depict five hand-painted signs. Two of the signs each contained the following text, except that one did not include the letter N between “Rocks” and “Cows”:

KERN
HOUSE 6B
VOTE AUG 9
ROCKS N COWS

Those two signs do not appear to have included a disclaimer. Two additional signs contained the following text:

VOTE AUG 9
KERN
HOUSE 6B

Those two signs included a disclaimer stating "PAID FOR BY DOUG KERN HOUSE 6B" with no address listed. One additional sign contained the following text:

KERN
HOUSE 6B

That sign does not appear to have included a disclaimer.

Mr. Kern stated that the hand-painted signs were created using materials he owned so there was no cost involved. He said that approximately four 4 by 6 foot signs and six 2 by 4 foot signs were made. Mr. Kern stated that he removed his signs from 6 a.m. to 5 p.m. on August 10, 2022. Mr. Kern explained that if some signs were not removed at that time, "it is possible they were at a private residence I didn't know of."

Vehicle Magnet Signs

The complaint includes photographs of a sign displayed on a vehicle containing the following text:

Doug *** MN HOUSE 6B
KERN
FAITH*LIFE*FREEDOM
AMERICA FIRST POLICIES
AUGUST 9TH PRIMARY
VOTE KERN

The sign included a disclaimer printed in very small text stating "PD BY DOUGKERNHOUSE 6B." The disclaimer did not include the Kern committee's mailing address or website address. Mr. Kern stated that six copies of the vehicle magnet sign were purchased for a total of \$246 in mid-May of 2022. Mr. Kern said that four of the signs were displayed on the personal vehicles

of himself and his spouse. Mr. Kern explained that size 8 or 9 font was used for the disclaimer and he is unsure why the disclaimer text appears smaller than intended.

The supplemental information provided by Mr. Toole included a photograph of two of the vehicle magnets, to which the Kern committee's website address had been added using a marker, below the existing disclaimer text. Mr. Kern confirmed that the committee's hand-painted signs and vehicle magnets were modified with a marker to include a compliant disclaimer. Mr. Kern explained that because he was notified of the disclaimer issues only 10 days before the primary election, his committee did not have time to reproduce its campaign material and the committee sought to remedy "the error by using a permanent marker." Mr. Kern reasoned that the text applied with a marker only had to last until the primary election on August 9 and he removed his committee's signs immediately after the primary election.

Banner Used at Community Events

The complaint includes a photograph of a banner displayed at community events that appears to have included the following text:

Vote August 9th 2022 Primary Election
Doug Kern
House District 6B
AMERICA FIRST

The complaint includes a screenshot of a tweet² containing a photograph of the same banner being carried in a parade in Nisswa, Minnesota. The banner did not include a disclaimer. Mr. Kern stated that the banner was an in-kind contribution paid for by an individual who paid \$150 for its production. Mr. Kern stated that he did not consider the possibility that the banner was required to include a disclaimer. Mr. Kern explained that the banner was displayed at a community event called Arts in the Park and was also carried in three parades in Nisswa, Pequot Lakes, and Brainerd, and was not used subsequent to those events.

Facebook Pages

On August 15, 2022, Mr. Toole alleged that Mr. Kern used two separate Facebook pages to disseminate campaign material and that neither page included a disclaimer. Mr. Kern provided screenshots of one of the two pages. Each page appears to have been a personal page titled "Doug Kern."³ One page contains several posts promoting Mr. Kern's candidacy and displays the username "DougKernHouse6B."⁴ The second page contained one post published August 8, 2022, that promoted Mr. Kern's candidacy.⁵ Neither page appears to have included a

² twitter.com/CarrieRuud/status/1543779969066754050

³ facebook.com/DougKernHouse6B; facebook.com/profile.php?id=100004553261444

⁴ facebook.com/profile/100078641629524/search/?q=6B

⁵ facebook.com/permalink.php?story_fbid=pfbid0263gqnhggqrRygdKWQtLgb3QC6VAq1B2RnZUXkPvayYFsficoQ4BzDutsZshPh3Xyl&id=100004553261444

disclaimer when the complaint was filed. Mr. Kern stated that the first page was modified “to make our Web Address Prominent.” After the complaint was filed, a disclaimer was added to that page’s Intro section, which states “Prepared & Paid for by DougKernHouse6B Campaign,” with the committee’s website address displayed directly above the disclaimer.

Post Regarding Mission Township Parade

The complaint includes a screenshot of what appears to be a portion of a Facebook post containing the following text:

We will be meeting for the Parade in Mission Township TOMORROW Morning--Oak Spur Rd in Mission Township at 10:00 to set up. Here is a Link on how to get there.

Wear your Trump Shirts/Hats, Rocks & Cows for Trump/Kern will be the theme. Come be bold & Walk or Ride with pride, we are still Blessed to be Free.

<https://goo.gl/maps/6iN6vrBXpK34VQMP7>

I AM RUNNING FOR HOUSE 6B
AND APPRECIATE YOUR VOTE AUGUST 9TH
Doug Kern for House 6B
218-820-2021

DougKernHouse6b@gmail.com

The portion of the text displayed in the screenshot did not include a disclaimer. The same text appeared within a post on one of Mr. Kern’s Facebook pages on June 10, 2022.⁶ A link to that Facebook page is included within the Kern committee’s website.

Bumper Stickers

On August 15, 2022, Mr. Toole alleged that the Kern committee violated the disclaimer requirement by disseminating bumper stickers containing a disclaimer that lacked an address.

Reporting

The Kern committee’s 2022 pre-primary report of receipts and expenditures (amendment 1), filed on July 26, 2022, did not include any in-kind contributions. The report included a \$217 receipt classified as miscellaneous income and described as “rummage sale for campaign \$.” Mr. Toole asserted that the report should have included in-kind contributions accounting for both the donated banner displayed at community events and the items that were donated and sold at the garage sale.

⁶ [facebook.com/DougKernHouse6B/posts/pfbid02eLJDdpkjL8Mrq17d5JxapTyKRMHALbZQauQSrkrV6pm9XPKP1jm4rygQJ9uWJDPdl](https://www.facebook.com/DougKernHouse6B/posts/pfbid02eLJDdpkjL8Mrq17d5JxapTyKRMHALbZQauQSrkrV6pm9XPKP1jm4rygQJ9uWJDPdl)

Mr. Kern filed an amended 2022 pre-primary report on August 19, 2022, which included an in-kind contribution and corresponding in-kind expenditure accounting for the value of the banner that was displayed at community events. At the direction of Board staff, Mr. Kern amended his committee's 2022 pre-primary report again on August 26, 2022, to address the proceeds from the garage sale. Mr. Kern explained that he sold items that he personally owned, then used the proceeds for his campaign. Therefore, at the direction of Board staff, Mr. Kern reclassified \$217 in miscellaneous income as a \$217 monetary contribution from himself to his committee.

The Board considered this matter at its meeting on September 7, 2022. Mr. Toole and Mr. Kern each appeared before the Board remotely via Webex.

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 that prominently states "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 address." Minn. Stat. § 211B.04, subd. 1. Campaign material is defined in Minnesota Statutes section 211B.01, subdivision 2, as "any literature, publication, or material that is disseminated for the purpose of influencing voting at a primary or other election, except for news items or editorial comments by the news media." However, bumper stickers are exempt from the disclaimer requirement. Minn. Stat. § 211B.04, subd. 3 (c) (1). The disclaimer requirement also does not apply to "personal letters," but the Kern committee has not provided information suggesting that the postcards mailed on August 5, 2022, were personal letters.

Based on the complaint, the supplemental information, and the responses provided by the Kern committee, there is probable cause to believe that violations of the disclaimer requirement occurred. With one exception, there is no dispute as to whether the material referenced in the

complaint and supplemental information was campaign material requiring a disclaimer, and the Kern committee has not disputed that the inclusion of the committee's address within the disclaimers was required. The bumper stickers referenced in the supplemental information provided by Mr. Toole are exempt from the disclaimer requirement. Minn. Stat. § 211B.04, subd. 3 (c) (1).

The Kern committee has acknowledged the violations and made efforts to modify its campaign material to include a complete disclaimer. Given their content and format, including a partial disclaimer on some of the campaign material and the prominent display of a photograph of Mr. Kern within the committee's billboards, website, postcards, vehicle magnet signs, and Facebook pages, as well as the proximity of the candidate to the banner that was displayed at community events, it is unlikely that the lack of a complete disclaimer caused confusion as to who prepared and paid for the campaign material referenced in the complaint. Also, the committee's website provided the committee's email address as well as a form that could be used to send a message to the committee, the postcards included the committee's website address, the post regarding the Mission Township parade included the committee's email address and phone number, and each of the committee's Facebook pages provided a means to contact the committee. While the cost to produce and disseminate the campaign material referenced in the complaint was over \$4,000, the majority of that cost was for the committee's billboards, website, and lawn signs, each of which included a disclaimer but lacked the committee's address. The Kern committee registered with the Board in April 2022 and has no prior violations of the disclaimer requirement.

There is also probable cause to believe that violations of the reporting requirements in Minnesota Statutes section 10A.20, subdivision 3, occurred. However, those violations were remedied when Mr. Kern filed an amended 2022 pre-primary report on August 26, 2022.

Considering the foregoing factors, the Board concludes that a formal investigation is not warranted.

Order:

1. The allegation that the DougKernHouse6B committee violated Minnesota Statutes section 211B.04 by preparing or disseminating bumper stickers is dismissed without prejudice because there is not probable cause to believe that a violation occurred.
2. The allegation that the DougKernHouse6B committee violated the reporting requirements in Minnesota Statutes section 10A.20, subdivision 3, is dismissed because although there is probable cause to believe that a violation occurred, no further investigation is warranted due to the committee's filing of an amended report.
3. Although probable cause exists to believe that the DougKernHouse6B committee prepared and disseminated campaign material lacking a disclaimer substantially in the form required by Minnesota Statutes section 211B.04, a formal investigation is not warranted.

4. The Board's executive director is directed to initiate a staff review regarding the remaining disclaimer allegations pursuant to Minnesota Rules 4525.0320, for the purpose of concluding the investigation by conciliation agreement with the DougKernHouse6B committee. If 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: September 7, 2022