

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

FINDINGS, CONCLUSIONS, AND ORDER

IN THE MATTER OF THE COMPLAINT OF MATT WERDEN REGARDING ACTION 4 LIBERTY AND THE
DR. NEIL SHAH FOR GOVERNOR COMMITTEE

Background

Original Complaint and Prima Facie Determination

On May 4, 2022, the Campaign Finance and Public Disclosure Board received a complaint submitted by counsel for Matt Werden regarding Action 4 Liberty and the Dr. Neil Shah for Governor committee. Action 4 Liberty is a nonprofit 501(c)(4) association not registered with the Board. Action 4 Liberty PAC is a political committee registered with the Board. Dr. Neil Shah for Governor was the principal campaign committee of Dr. Neil Shah.

The complaint alleged that Action 4 Liberty violated Minnesota Statutes section 211B.15, subdivision 2, by making prohibited corporate contributions to the Shah committee, and the Shah committee violated the same statute by accepting those contributions. The complaint asserted that during the time period of August 6 through November 3, 2021, at least eight emails were sent by or on behalf of the Shah committee from the email address neil@electneil.com (Shah emails). The complaint alleged and contained evidence that those emails each included five or more hyperlinks that routed internet traffic to or through the internet domain action4liberty.com. The complaint included copies of the Shah emails as well as lists of the URLs contained within the hyperlinks in each email. The URLs each began with https://www.action4liberty.com/, then contained additional characters, which the complaint alleged consisted of Urchin Tracking Module (UTM) parameters and identifiers. The complaint alleged and contained evidence that some of the hyperlinks contained within the Shah emails routed users through Action 4 Liberty’s internet domain, and then automatically redirected them to the Shah committee’s contribution webpage, hosted by Anedot.¹

The complaint further asserted that during the time period from July 27, 2021, through February 21, 2022, at least four emails mentioning Dr. Shah were sent by or on behalf of Action 4 Liberty using the email address jake@action4liberty.com (Action 4 Liberty emails). Each of those emails stated that it was sent by Jake Duesenberg, who is the president of Action 4 Liberty and the chair of the Action 4 Liberty PAC.

The complaint noted that both the Shah emails and the Action 4 Liberty emails each contained text at the bottom stating “Created with NationBuilder, software for leaders.” The complaint argued that the emails showed that Action 4 Liberty provided the Shah committee “with its

¹ secure.anedot.com/50abec70-246e-4f71-b4a2-c868366ab853/electshahjd

membership email lists and/or access to its membership.” The complaint asserted that Action 4 Liberty made campaign expenditures that “were not independent because its links are incorporated in Dr. Shah’s e-mails, and the links route users to Dr. Shah’s official website.”

On May 12, 2022, the Board chair determined that the complaint alleged prima facie violations of Minnesota Statutes section 211B.15, subdivision 2, as to Action 4 Liberty and the Dr. Neil Shah for Governor committee, and of Minnesota Statutes section 10A.20, subdivision 3, as to the Shah committee.

Supplemental Complaint and Prima Facie Determination

On May 25, 2022, the Board received a supplemental complaint submitted by counsel for Mr. Werden. The supplemental complaint relied on the factual assertions made in the original complaint and alleged that Action 4 Liberty violated Minnesota Statutes section 10A.27, subdivision 13, by making contributions to the Shah committee in excess of \$200 without providing a disclosure statement as required of an association not registered with the Board. The supplemental complaint alleged that the Shah committee violated the same statute by accepting those contributions without the required disclosure statement.

On May 26, 2022, the Board chair determined that the supplemental complaint alleged a prima facie violation of Minnesota Statutes section 10A.27, subdivision 13, as to Action 4 Liberty and the Shah committee.

Initial Responses

On May 26, 2022, the Shah committee provided a written response to the original complaint. The committee stated that it “did not receive any contributions including in-kind contributions from Action 4 Liberty.” The committee explained that it “hired and paid substantial sums to RPR Consulting, a third-party consulting firm, to perform a variety of consulting and campaign services.” The committee stated that “[t]hese services included, but were not limited to, acquiring email lists and drafting and sending email marketing. It is the Campaign’s understanding that RPR paid Action 4 Liberty to enter various list-sharing agreements to be used by RPR Consultants.”² The committee noted that it incurred over \$146,000 in campaign expenditures payable to RPR Consultants in 2021 and that those expenditures were included within the committee’s 2021 year-end report of receipts and expenditures. That report included 14 separate campaign expenditures payable to RPR Consultants, each of which were described as “Other Services.”³ All but one of the 14 expenditures was disclosed with text explaining that

² The original complaint and written responses to the complaint variously name the consulting business paid by the Shah committee as RPR Consulting or RPR Consultants. According to the [website](#) of the Arizona Corporation Commission, the legal name of the business referenced in the complaint appears to be RPR Consultants, Inc.

³ The Shah committee’s original 2021 year-end report may be viewed at the following address by selecting the Reports and Data tab: cfb.mn.gov/reports-and-data/viewers/campaign-finance/candidates/18697.

each expenditure was for “DIGITAL, STRATEGY, SOCIAL MEDIA AND COMMUNICATIONS.” The committee’s 2021 year-end report does not contain any references to Action 4 Liberty.

Within its response the Shah committee argued that because the committee’s

emails were not created by, paid for, or controlled by Action 4 Liberty, and because the Campaign has no knowledge of nor had knowledge of or control over disclaimers or practices included in any Action 4 Liberty emails created and sent independently from the Campaign, and because there was no coordination between the Campaign and Action 4 Liberty, the Werden Complaint makes no credible claims against the Campaign and should be dismissed.

With its written response the committee provided a copy of an invoice issued by Action 4 Liberty to Shawn Dow of “RPR Consulting, INC” that includes the cost “for use of email service” for the month of August 2021. According to the Arizona Corporation Commission, Shawn Dow is a director of, and shareholder in, RPR Consultants, Inc.

On June 10, 2022, Jeffrey O’Brien, counsel for Action 4 Liberty, provided a written response to the original and supplemental complaints. Mr. O’Brien stated that the Shah emails “were sent via Action 4 Liberty’s Nationbuilder account, but Action 4 Liberty was paid by RPR for the use of the account.” Mr. O’Brien said that “Action 4 Liberty engaged in an arms-length transaction with RPR and was paid for the use of” assets referred to as Action 4 Liberty’s “digital backbone” within the original complaint. Mr. O’Brien asserted that “Action 4 Liberty did not give anything to the Shah for Governor committee. Rather, Action 4 Liberty rented its NationBuilder account and other information to RPR Consulting, Inc., a private consulting firm, for a price negotiated between the parties.”

Within Action 4 Liberty’s response, Mr. O’Brien argued that no prohibited contribution occurred because Action 4 Liberty did not make a contribution to the Shah committee. Mr. O’Brien noted that the Board has “declared that the sale of any product or service for fair market value does not and will not constitute a contribution.” In support of that statement Mr. O’Brien referenced three advisory opinions issued by the Board, including Advisory Opinion 369,⁴ affirming that a political committee may sell internet-based services to candidates without making a contribution if the cost of those services reflects the fair market value of equivalent services available to candidates on the open market; Advisory Opinion 320,⁵ affirming that a corporation may provide goods or services to political entities registered with the Board and that the goods or services provided will not constitute an in-kind contribution if the corporation charges fair market value; and Advisory Opinion 270,⁶ stating that if an individual sells a product to a political party unit for less than the full retail value of that product, the difference is an in-kind contribution from the individual to the party unit.

⁴ cfb.mn.gov/pdf/advisory_opinions/AO369.pdf

⁵ cfb.mn.gov/pdf/advisory_opinions/AO320.pdf

⁶ cfb.mn.gov/pdf/advisory_opinions/AO270.pdf

Mr. O'Brien provided copies of the same invoices provided by the Shah committee. Each of the invoices provided by Mr. O'Brien were redacted to exclude the amounts billed and paid. With respect to the Action 4 Liberty emails Mr. O'Brien stated that the "emails all relate to the issue advocacy which Action 4 Liberty is known for" and that "Dr. Shah's presence within these emails is merely coincidental and nowhere is he 'endorsed.'"

On June 21, 2022, the Board sent a letter to the Shah committee seeking the total amount that RPR Consultants or Shawn Dow was paid by the committee for access to and use of Action 4 Liberty's NationBuilder account. That information was sought in order to verify Action 4 Liberty's statement that fair market value had been paid for the use of Action 4 Liberty's NationBuilder account and the data stored therein.

On June 28, 2022, Darrin Rosha, counsel for the Shah committee, provided a written response to the letter seeking additional information. The Shah committee included copies of two invoices showing that Action 4 Liberty was paid a total of \$2,191.10 by RPR Consultants for the use of components of its NationBuilder account. The committee stated that RPR Consultants was billed "for the use of Action 4 Liberty's NationBuilder account to send e-mails to Action 4 Liberty's lists that the Campaign rented but did not possess." Mr. Rosha explained to Board staff that the parties reached an agreement whereby payment of the two invoices would be considered payment in full for the services Action 4 Liberty provided over a period of approximately three months in 2021. Each invoice included a \$100 flat fee for the use of Action 4 Liberty's email list and a \$500 flat fee for use of Action 4 Liberty's phone list. Approximately 45% of the total amount invoiced was paid through a 10% commission on the amount of contributions the Shah committee received as a result of using Action 4 Liberty's email list.

Within its response the Shah committee explained that it had its own NationBuilder account and decided to use its own lists and cease using Action 4 Liberty's email list after the invoices were paid because it "determined it received a better return from doing so." The committee argued that this decision "demonstrates that the [Shah committee] not only paid fair market value for the services Action 4 Liberty provided including use of the email platform, it determined it was paying more than necessary based on its own growing lists and NationBuilder account."

Probable Cause Hearing

The Board considered this matter at its meeting on July 6, 2022. R. Reid LeBeau II, counsel for the complainant, appeared before the Board. Mr. O'Brien appeared before the Board on behalf of Action 4 Liberty.

Mr. LeBeau argued that the services provided by Action 4 Liberty to the Shah committee spanned a period of seven months and extended far beyond renting lists containing contact

information of potential supporters. Mr. LeBeau asserted that the value of those services was likely far greater than \$2,191, the amount the Shah committee has stated was paid to Action 4 Liberty.

With respect to the Action 4 Liberty emails, Mr. LeBeau argued that the similarity of the UTM parameters and identifiers embedded within the hyperlinks in the Shah emails and the Action 4 Liberty emails demonstrates that those emails came from the same source, which is evidence of coordination between the Shah committee and Action 4 Liberty. Mr. LeBeau also asserted that the fact that Action 4 Liberty served as a vendor of services provided to the Shah committee is evidence of coordination in the content and production of the Action 4 Liberty emails.

During the July 6, 2022, Board meeting Mr. O'Brien argued that RPR Consultants paid Action 4 Liberty fair market value for the use of its NationBuilder account, thus there was no prohibited contribution. Mr. O'Brien stated that RPR Consultants and Action 4 Liberty "figured out what percentage of the time for a particular month that the consultant was going to be using the program and prorated the monthly fee based on that." In response to a question from a Board member asking him to explain the use of the term prorated, Mr. O'Brien explained that Action 4 Liberty "pays a monthly fee to NationBuilder . . . to have this account." Mr. O'Brien further explained that "the parties determined how much of the time for that month that the consultant was going to be using the account under this rental and charged the consultant for that percentage of time for that month." Mr. O'Brien stated that "if the consultant was going to be using it - estimated to be using it 10% of the time, they paid 10% of the monthly fee."

With respect to the Action 4 Liberty emails, Mr. O'Brien characterized those emails as promotion of Action 4 Liberty and its issue advocacy, rather than an endorsement of or attempt to support Dr. Shah's candidacy for governor. Mr. O'Brien noted that the August 3, 2021, email attached to the original complaint as Exhibit E named other gubernatorial candidates in addition to Dr. Shah.

Unless otherwise noted, subsequent references to the complaint are inclusive of both the original complaint and the supplemental complaint.

Probable Cause Determination

The Board made a probable cause determination at its meeting on July 6, 2022, and initiated a formal investigation. The Board determined that there was probable cause to believe that the price paid by the Shah committee for access to the Action 4 Liberty NationBuilder account was less than fair market value, and therefore represented a corporate contribution from Action 4 Liberty, and that the Dr. Neil Shah for Governor committee accepted that contribution in violation of Minnesota Statutes section 211B.15, subdivision 2. The Board determined that there was probable cause to believe that Action 4 Liberty made a contribution in excess of \$200 and that the Dr. Neil Shah for Governor committee accepted that contribution without a disclosure statement in violation of Minnesota Statutes section 10A.27, subdivision 13. The Board determined that there was probable cause to believe that both the Dr. Neil Shah for Governor

committee, and either Action 4 Liberty or the Action 4 Liberty PAC, violated the reporting requirements in Minnesota Statutes section 10A.20. Lastly, the Board determined that there was not probable cause to believe that the Action 4 Liberty emails were coordinated with the Shah committee, and thereby dismissed that allegation without prejudice. A written determination was signed by the Board's chair and distributed to the respondents and complainant on July 12, 2022.

Formal Investigation

July 2022 Requests and Responses

On July 14, 2022, Board staff sent letters to Action 4 Liberty and the Shah committee seeking information needed to determine whether fair market value was paid for the use of Action 4 Liberty's email list and phone list. The information sought included the number of email addresses and phone numbers included within the lists used by the Shah committee, whether additional emails were sent on behalf of the Shah committee in addition to those referenced in the complaint, and whether Action 4 Liberty received any commission on contributions received by the Shah committee after the period covered by an invoice Action 4 Liberty issued on October 6, 2021. The letter sent to Action 4 Liberty also asked its counsel to confirm that his representations to the Board during the probable cause hearing were accurate in terms of stating that the amount of time RPR Consultants spent logged in to Action 4 Liberty's NationBuilder account was used to determine the amount billed.

Counsel for Action 4 Liberty provided a response on July 28, 2022, and counsel for the Shah committee provided a response on August 2, 2022. Contrary to what Action 4 Liberty's counsel said during the probable cause hearing, each respondent stated that RPR Consultants did not have direct access to Action 4 Liberty's NationBuilder account. Action 4 Liberty stated that

RPR did not have access or log in credentials to A4L's Nationbuilder account. The NationBuilder platform was only used to take an email script and click send. Texting, phone calls, voter information, etc. was not part of the service. The phone list usage was not done with access or within the A4L's NationBuilder platform.

In response to questions regarding the number of email addresses contained within the list used to send the Shah emails and whether additional emails were sent on behalf of the Shah committee in addition to those referenced in the complaint, Action 4 Liberty stated that RPR Consultants did not have access to its NationBuilder account, rather than addressing the substance of the questions posed. In response to a question regarding whether the 10% commission applied to contributions made by individuals contacted by phone and whether Action 4 Liberty received any commission on contributions received by the Shah committee after the period covered by the invoice issued on October 6, 2021, Action 4 Liberty failed to provide a direct answer and instead stated that "A4L's terms with RPR Consultants changed during the relationship, the parties had on-going negotiations and both parties agreed that the terms were satisfactorily met upon payment of the October 6th invoice."

Within its response Action 4 Liberty offered a number of objections to the questions posed and made a variety of legal arguments. Action 4 Liberty conceded that the Board has the “authority to determine whether a contribution occurred” but argued that “determining its own fair market value for a particular good or service . . . is outside of its purview and jurisdiction.” Action 4 Liberty stated that “[t]here is a distinct and significant line between determining whether a contribution has been made and conversely determining what fair market value is. CFB cannot and should not put itself in the shoes of determining the latter.” Action 4 Liberty stated that

A4L’s services are unique to its mission and the activities that it undertakes in the State of Minnesota which are related to Minnesota-specific issues, and more particularly, issues focused on protecting the liberties of individuals and businesses in the local community. To the best of A4L’s knowledge and belief, there simply is not an equivalent or similarly situated group in Minnesota for which a comparison could be properly made, as the services at issue here pertain to information which pertains to individuals who value and support A4L’s interests and goals. While there may be other groups that provide e-mail and/or phone list rentals or services, the rates for such companies are for services and/or members that are necessarily distinct from those of A4L, as they not only reach different groups of individuals but individuals that may hold wholly distinguishable values and beliefs such that the value of services rendered here would have little to no comparable effect with another entity or organization. An inextricable consideration in determining fair market value is the value that each buyer and seller places on the value of the good or service.

It is equally significant to clarify that the contracted services that A4L provided to RPR Consultants was the first time that it had ever provided such services or entered into such a Data Agreement. Consequently, there are no past transactions or rates upon which A4L could rely as precedent to provide the CFB with historical rates or service agreements in this matter. As often is the case in small business transactions, it is often a learning experience for a seller in initially offering a product for sale, and said cost often varies or is modified over time. It is also the case that parties in any transaction negotiate for a rate that they both believe to be appropriate given the product’s respective value and cost to each party. Given the nature of the services sold in this matter, there is no market equivalent that A4L could readily point to or upon which the CFB could rely to determine an existing market equivalent for such services. As such, the CFB should properly rely upon the agreement between the parties in this transaction and deem such as the proper fair market value for the transaction.

Within its response the Shah committee stated that it “does not know the number of e-mail addresses or corresponding information such as phone numbers that may have been maintained within the list.” The committee explained that “[e]-mails were created by the Campaign and provided to Action 4 Liberty to be sent by Action 4 Liberty to their NationBuilder list.” In response to the question “Did RPR Consultants use Action 4 Liberty’s NationBuilder account to send any emails on behalf of the Shah committee aside from the eight emails referenced in the original complaint?”, the committee failed to provide a substantive answer and instead asserted that the question was unclear due to the use of the word “use” in referring to

Action 4 Liberty's NationBuilder account, to which RPR Consultants did not have direct access. The Shah committee provided direct and substantive answers to several other questions.

Neither respondent provided the number of email addresses contained within the list used to send the Shah emails or the number of phone numbers contained within the list referenced in the invoices issued by Action 4 Liberty to RPR Consultants. Also, neither respondent stated whether additional emails were sent on behalf of the Shah committee, using Action 4 Liberty's email list, in addition to the eight Shah emails referenced in the complaint.

During its meeting on August 15, 2022, the Board granted the Board's executive director authority to issue administrative subpoenas in this matter.⁷

August 2022 Requests and Responses

On August 22, 2022, Board staff sent letters to Action 4 Liberty and the Shah committee seeking additional information, including copies of any "emails sent by Action 4 Liberty on behalf of the Shah committee and/or RPR Consultants that were in addition to the eight emails referenced in the original complaint," any "documentation of how many email addresses were included within the list used to send the eight emails referenced in the original complaint," and any "documentation of how many phone numbers were included within the phone list referenced in" the invoices issued by Action 4 Liberty to RPR Consultants. Board staff also asked that Mr. Duesenberg and a representative of the Shah committee be made available for a formal interview.

Counsel for Action 4 Liberty and counsel for the Shah committee provided separate responses on September 6, 2022. Action 4 Liberty restated the objections and legal arguments made previously, and in response to each of seven specific requests for information, stated that it "objects to this request on grounds that the information sought is not relevant to a determination of fair market value for the services rendered." In response to questions seeking documentation regarding the number of email addresses included within the list used to send the Shah emails, and documentation regarding how many phone numbers were included within the phone list referenced in the invoices issued to RPR Consultants, Action 4 Liberty also stated that it "objects to this request on grounds that A4L considers this information to be its proprietary information, the public disclosure of which would have a material adverse impact on A4L's business which outweighs the CFB's interest in obtaining this information." Action 4 Liberty declined to voluntarily make Mr. Duesenberg available for a formal interview.

The Shah committee issued a "general reply" stating that

⁷ [Minnesota Statutes section 10A.022, subdivision 2](#), provides that "[i]n all matters relating to its official duties, the board has the power to require testimony under oath, to permit written statements to be given under oath, and to issue subpoenas and cause them to be served. If a person does not comply with a subpoena, the board may apply to the District Court of Ramsey County for issuance of an order compelling obedience to the subpoena. A person failing to obey the order is punishable by the court as for contempt." [Minnesota Rules 4525.0600, subpart 6](#), provides that "[t]he board may issue subpoenas when necessary to advance an investigation or audit."

Due to the time that has passed since the end of the Campaign's operations, none of the requested campaign-related data is accessible beyond what has already been presented to the Board. The Campaign's accounts were closed and all relevant data in the Campaign's possession was previously provided to the Board. Any requests about the volume of phone numbers or other contact information cannot be provided by the Campaign as the Campaign never possessed that data. The remaining Board requests are obviated by the structure of the Campaign's agreement at issue.

Within its response the Shah committee did not specifically address the request that a representative of the committee be made available for a formal interview. Neither respondent provided the number of email addresses contained within the list used to send the Shah emails or the number of phone numbers contained within the list referenced in the invoices issued by Action 4 Liberty to RPR Consultants. Also, neither respondent stated whether additional emails were sent on behalf of the Shah committee, using Action 4 Liberty's email list, in addition to the eight Shah emails referenced in the complaint.

September 2022 Administrative Subpoenas

The Board's executive director issued administrative subpoenas to Mr. Duesenberg and Dr. Shah on September 16, 2022. Counsel for the Shah committee accepted service of the subpoena on behalf of the Shah committee and Dr. Shah. Counsel for Action 4 Liberty declined to accept service on behalf of Mr. Duesenberg and Action 4 Liberty. The subpoena directed to Mr. Duesenberg was personally served on September 22, 2022.

The administrative subpoenas demanded the same information sought within the letters sent to respondents' legal counsel on August 22, 2022.⁸ The administrative subpoenas demanded that Mr. Duesenberg appear for a deposition on October 10, 2022, and that Dr. Shah appear for a deposition on October 12, 2022.

In late September and early October of 2022, counsel for the Shah committee and Action 4 Liberty each asserted within emails and letters provided to Board staff that a complaint filed with the Board alleging a violation of Minnesota Statutes Chapter 211B must be submitted under oath.⁹ During this time period Action 4 Liberty was represented by Jennifer Crancer, a member of the same firm as Mr. O'Brien. The Shah committee argued that the complaint filed in this matter was invalid because while it contained the address of the complainant's legal counsel, it did not contain an address for the complainant, Mr. Werden.¹⁰ The Shah committee also

⁸ [Minnesota Rules 4525.0500, subpart 6](#), provides that "[t]he board may not issue a subpoena for the production of documents or witness testimony until a respondent has had at least 14 days to respond to a written request for the documents or testimony."

⁹ See [Minn. Stat. § 211B.32, subd. 3](#), which applies to complaints filed with the Office of Administrative Hearings, rather than complaints filed with the Board.

¹⁰ See [Minn. R. 4525.0200, subp. 2](#); see also [Minn. R. 4501.0100, subp. 2](#). The complaint was signed by Mr. Werden's attorney, Rondell Reid LeBeau II, and included Mr. LeBeau's business mailing address.

attacked the Board's probable cause determination, asserting that the burden of proof is on the complainant.¹¹

Counsel for Action 4 Liberty argued that the subpoena directed to Mr. Duesenberg was procedurally improper, exceeded the scope of the Board's authority and the issues presented in the complaint, sought privileged information, was unduly burdensome, and required disclosure of confidential and proprietary information. Counsel for Action 4 Liberty further argued that the timing of the subpoena was improper, the timing of the Board's probable cause determination was improper, and the Board's failure to resolve its investigation within 60 days after the probable cause determination required dismissal of the complaint. Counsel for Action 4 Liberty asked that the subpoena directed to Mr. Duesenberg be withdrawn, and the Board's executive director declined that request. Each respondent demanded that the complaint be dismissed.

Counsel for the Shah committee and Action 4 Liberty were each invited to appear before the Board at its meeting on October 5, 2022, to present their arguments as to why the subpoenas were improper or why the investigation should be closed. Mr. Rosha appeared before the Board on behalf of the Shah committee and Dr. Shah and argued that the complaint should be dismissed on the basis that it was required to be submitted under oath and that it did not include the complainant's personal address. Counsel for Action 4 Liberty declined to appear before the Board.

During its meeting on October 5, 2022, the Board denied the respondents' requests to dismiss the complaint, directed Board staff to ask the complainant's legal counsel to provide the complainant's address for inclusion within the record, and authorized legal action to compel compliance with the administrative subpoenas. Letters were sent to counsel for each respondent the same day seeking production of the information demanded within the administrative subpoenas and confirmation of whether Mr. Duesenberg and Dr. Shah would appear for the depositions scheduled for October 10 and 12, respectively. Counsel for Action 4 Liberty confirmed that Mr. Duesenberg would not appear for his scheduled deposition. Counsel for the Shah committee confirmed that Dr. Shah would not appear for his scheduled deposition. Neither respondent produced records responsive to the administrative subpoenas.

On October 10, 2022, counsel for the complainant provided the complainant's home address. That address was provided to counsel for each respondent the same day.

Legal Action by Action 4 Liberty and Mr. Duesenberg Seeking Declaratory Judgement

On October 14, 2022, the Board was served with a summons and complaint seeking a court order declaring that the Board's investigation and the administrative subpoena served on Mr. Duesenberg violated Minnesota Statutes Chapter 211B and section 10A.022, declaring that the Board's investigation violated Action 4 Liberty's freedom of association and freedom of

¹¹ See [Minn. Stat. § 211B.32, subd. 4](#), which applies to complaints filed with the Office of Administrative Hearings, rather than complaints filed with the Board.

speech and expression under the First Amendment and Article 1, Section 2, of the Minnesota Constitution, and terminating the investigation with respect to Action 4 Liberty. The Board was also served with a motion for a temporary restraining order that would quash the administrative subpoena served on Mr. Duesenberg and prevent the Board from continuing its investigation with respect to Action 4 Liberty. The complaint and motion for a temporary restraining order were filed with the Ramsey County District Court on the same day that they were served on the Board.¹²

On October 27, 2022, the Board filed a memorandum opposing the motion for a temporary restraining order. Within its memorandum the Board argued that the oath requirement stated in Minnesota Statutes section 211B.32, subdivision 3, applies to complaints filed with the Office of Administrative Hearings pursuant to that statute, rather than to complaints filed with the Board pursuant to Minnesota Statutes section 10A.022, subdivision 3. The Board explained that the original and supplemental complaint each contained the address of Mr. Werden's legal counsel, and while it is not clear whether inclusion of the complainant's attorney's address satisfied Minnesota Rules 4525.0200, subpart 2, the Board initially did not seek a separate address for Mr. Werden because the Board intended to contact Mr. Werden through his attorney. The Board noted that the respondents were subsequently provided Mr. Werden's home address, and argued that the complaint filed by Action 4 Liberty and Mr. Duesenberg with the court does not support the conclusion that the proper remedy for a defect in a complaint filed with the Board is permanent injunctive relief barring the Board from conducting an investigation.

The Board asserted that its chair acted properly in making prima facie determinations regarding both the original complaint and the supplemental complaint, because the requirement to have a different Board member make a prima facie determination applies only when the initial determination is "that the complaint does not allege a prima facie violation."¹³ The Board argued that contrary to the assertion of Action 4 Liberty, a type of investigation known as a staff review was never conducted in this matter, and the Board is not obligated to adopt recommendations made by its staff. The Board asserted that no statutory deadlines were violated in making the probable cause determination or in failing to resolve the investigation within 60 days after the probable cause determination, because the Board has statutory authority to, and did, extend those deadlines.¹⁴ Moreover, the Board noted that the deadline for making the probable cause determination was extended with the express consent of Action 4 Liberty.

The Board argued that it has the authority to determine the fair market value of the goods and services provided by Action 4 Liberty, in part because such a determination is essential in order to ascertain whether an in-kind contribution occurred. The Board asserted that Action 4

¹² The action was captioned Action 4 Liberty and Jake Duesenberg v. Minnesota Campaign Finance and Public Disclosure Board, file no. 62-CV-22-5562. Documents filed during the litigation were not available to the public due to the plaintiffs' unopposed request that the filings be non-public, pursuant to [General Rules of Practice Rule 11.04](#) and [Minnesota Statutes section 10A.022, subdivision 5](#).

¹³ See [Minn. Stat. § 10A.022, subd. 3 \(c\)](#).

¹⁴ See [Minn. Stat. § 10A.022, subd. 3 \(d\)-\(e\)](#). At the time the probable cause determination was made, the statutory deadline was 45 days after the prima facie determination, absent an extension.

Liberty's arguments regarding the subpoenas violating court rules were meritless because it cited no authority supporting the conclusion that court rules apply to administrative subpoenas. The Board contended that it complied with the timing requirements regarding issuance of an administrative subpoena and that Action 4 Liberty was provided ample time to voluntarily produce the records sought.¹⁵ The Board also defended the constitutionality of its investigation.

A hearing on the plaintiffs' motion for a temporary restraining order was held before Judge Timothy Mulrooney on November 3, 2022. On January 3, 2023, the Ramsey County District Court issued an order denying the motion. On January 5, 2023, Action 4 Liberty and Mr. Duesenberg voluntarily dismissed their lawsuit.

February 2023 Administrative Subpoenas

On January 10, 2023, Board staff sent a letter to counsel for Action 4 Liberty and Mr. Duesenberg asking whether they intended to now comply with the administrative subpoena served on Mr. Duesenberg in September 2022. No response was received.

The Board's executive director issued three new administrative subpoenas on February 24, 2023, with one directed to Mr. Duesenberg and two directed to Action 4 Liberty at two different addresses. The subpoenas each demanded production of the same records sought within the subpoena served on Mr. Duesenberg in September 2022. Each subpoena also demanded that Mr. Duesenberg appear for a deposition on March 23, 2023. The subpoena directed to Mr. Duesenberg was served on Mr. Duesenberg on March 8, 2023. One of the subpoenas directed to Action 4 Liberty was served on Action 4 Liberty on March 13, 2023.

On March 17, 2023, Mr. Duesenberg emailed Board staff stating that Action 4 Liberty had retained new legal counsel, Erick Kaardal. On March 22, 2023, Mr. Kaardal stated in a letter that "Mr. Duesenberg respectfully declines your invitation to appear or produce the documents requested." Within the letter Action 4 Liberty asserted that even if it made a contribution to the Shah committee, the contribution was legal because Minnesota's prohibition on corporate contributions under Minnesota Statutes section 211B.15, subdivision 2, is facially unconstitutional under the First Amendment.¹⁶ On that basis Action 4 Liberty asserted that the subpoena was "overly burdensome because the subpoena is not tailored to any *illegal* acts of Action 4 Liberty. Simply stated, § 211B.15 is not applicable to Action 4 Liberty."

¹⁵ See [Minn. R. 4525.0500, subp. 6](#).

¹⁶ The basis for this assertion was a 2010 federal district court decision concluding, in the wake of the United States Supreme Court's decision in *Citizens United v. FEC*, that Minnesota Statutes section 211B.15, subdivision 2, was unconstitutional "insofar as it prohibits or otherwise purports to restrict or limit [a corporation's] acceptance of contributions for the purpose of making independent expenditures or otherwise making corporate independent expenditures from its general treasury funds on behalf of or in opposition to candidates for political office. . . ." [Minnesota Chamber of Com. v. Gaertner, 710 F. Supp. 2d 868, 874 \(D. Minn. 2010\)](#). Minnesota Statutes section 211B.15 was amended three weeks thereafter to address its constitutional infirmities. See [2010 Minn. Laws. ch. 397, §§ 16-18, 20](#).

Deposition of Dr. Shah

In late March of 2023, Board staff contacted counsel for the Shah committee and explained that the Board would likely pursue legal action to enforce the subpoena issued in September 2022 unless Dr. Shah agreed to appear for a deposition. Dr. Shah then agreed to appear for a deposition, which was conducted on April 21, 2023. Dr. Shah testified that his campaign initially sought data regarding potential voters from the Republican Party of Minnesota, and while the party agreed to provide a list of party officers such as the chairs of local party units, it refused to provide access to its data regarding individual voters and contributors.

Dr. Shah testified that Shawn Dow of RPR Consultants or another consultant, Chasen Bullock, suggested reaching out to Action 4 Liberty to help with fundraising at the beginning of the Shah campaign. Dr. Shah said that “Action 4 Liberty is probably the largest group in the state” that attracts individuals who are libertarians or constitutional conservatives, “[s]o it made sense that they would have the highest proportion of people that we would want to contact.” Dr. Shah said that he met Mr. Duesenberg in the spring of 2021 and ran into him at various political events.

Dr. Shah testified that he believed the original idea was that eight emails would be sent on behalf of the Shah committee, which is the total number that he believed were sent.¹⁷ Dr. Shah explained that his campaign could not see how many names were included on the email list because the emails were being sent on the campaign’s behalf by Action 4 Liberty, and the Shah campaign did not have access to Action 4 Liberty’s email system. Dr. Shah also explained that one downside to the arrangement was that the Shah campaign had no way of knowing which individuals clicked which links within the emails, and therefore was not able to build a targeted list of potential supporters based on their interactions with the emails. With respect to the Shah committee’s perspective on the value of the email list, Dr. Shah testified that the committee’s consultants felt that Action 4 Liberty’s terms were reasonable but “the value of this list was unknown to us when we started.”

Dr. Shah explained that the value of the list was limited because the campaign didn’t receive any data regarding who opened the emails or who clicked on which links within the emails, except for when someone clicked on a link and then made a contribution to the Shah committee. Dr. Shah stated that within a month his committee concluded that it had “grossly overpaid” for the value provided and engaged in a series of conversations with Action 4 Liberty. Dr. Shah explained that Action 4 Liberty agreed to stop taking its 10% commission on contributions made by individuals who clicked a link within one of the “last couple of emails” sent on behalf of the Shah committee. Dr. Shah said his “recollection is that the raise on those last emails was even less impressive than” the amount raised as a result of the previous emails.

Dr. Shah explained that the Shah committee’s valuation of the arrangement was based on the assessment of its “consultants who have worked on a number of national campaigns and what they had seen for kind of these list agreements.” Dr. Shah said that

¹⁷ The Board later learned that a total of 18 emails were sent, rather than eight.

This one was odd in that we never got to see any of the list. So it was a much lower value proposition than sometimes -- so, for example, the 10 percent number they were -- some people were reticent on that because they felt that it was too high for getting almost no data, access to data. We just basically had an email forwarding service. Send an email and money may or may not come back. But no other data comes back. Or very little that you can trace. So some people thought that should be lower, but we thought it was a reasonable number to start with. If everything went great, we could have adjusted it as the relationship progressed.

Dr. Shah also asserted that the data received by Action 4 Liberty as a result of recipients clicking on links within the emails was likely valuable to Action 4 Liberty.

When asked whether RPR Consultants knew how many individuals were on the email list, Dr. Shah stated "I don't think that they did. I don't think anyone knew." With respect to the phone list Dr. Shah testified that the list was used to place phone calls and while his committee did not have direct access to the list, he believed that the list "was roughly a couple hundred names." Dr. Shah stated that the emails and phone calls were each intended to solicit both contributions and volunteers. Dr. Shah said he was not sure whether the phone list was used to send text or multimedia messages. Dr. Shah stated that Action 4 Liberty did not receive any commission for contributions made by individuals contacted by phone.

April 2023 Request for Limited Information from Action 4 Liberty and Response

On April 28, 2023, Board staff sent a letter to Action 4 Liberty seeking three pieces of information. Specifically, Action 4 Liberty was asked to provide the number of email addresses included within the list used to send the Shah emails, the number of phone numbers included within the list provided to RPR Consultants, and the total amount of contributions that the Shah committee received from contributors who used a link contained within one of the Shah emails.

On May 22, 2023, Action 4 Liberty provided a letter in response, refusing to provide the limited information sought. Action 4 Liberty referenced Dr. Shah's deposition testimony and stated that

In light of the admissions of the Shah campaign through the testimony of Dr. Neil Shah, Action 4 Liberty will decline to provide the requested information regarding the number of emails and phone numbers provided to the Dr. Neil Shah for Governor committee. Furthermore, it is a burdensome request.

As for the request regarding the total number of contributions the Dr. Neil Shah for Governor committee received from contributors who utilized a hyperlink, please see the Shah committee. Any use of the hyperlink is not a contribution from Action 4 Liberty as defined under Minnesota law. Therefore, no response is necessary.

Legal Action by Board to Enforce Subpoenas Directed to Action 4 Liberty and Mr. Duesenberg

On June 22, 2023, the Board filed with the Ramsey County District Court an application seeking an order compelling compliance with the administrative subpoenas served on Action 4 Liberty and Mr. Duesenberg.¹⁸ The application and accompanying filings were mailed to counsel for Action 4 Liberty and Mr. Duesenberg on June 22, and were personally served on Mr. Duesenberg on June 28, 2023. The Ramsey County District Court issued an order on June 28, 2023, granting the application and ordering Action 4 Liberty and Mr. Duesenberg to comply with the administrative subpoenas within 10 days. Action 4 Liberty and Mr. Duesenberg requested a hearing before the court and asked that the deadline to comply with the court order be extended. During the course of this litigation, Action 4 Liberty and Mr. Duesenberg were represented by William Mohrman, a member of the same firm as Mr. Kaardal.

A hearing was held before Judge Patrick Diamond on August 7, 2023. During the hearing Action 4 Liberty represented that it would comply with the subpoenas if any materials or testimony provided was subject to a permanent protective order preventing public disclosure of that information. On August 21, 2023, Action 4 Liberty filed a brief seeking a protective order from the court. Within its brief Action 4 Liberty argued that it is entitled to a protective order under the First Amendment because its “reputation in the community as a trusted organization is paramount,” the “disclosure of data and documents can cause irreparable harm to Action 4 Liberty as a non-profit that relies on generous donations of individuals or other organizations to survive as an organization at the cutting edge of many disputed issues in the country today,” and its “information could be used to [sic] by organizations opposed to Action 4 Liberty’s viewpoints to argue that Action 4 Liberty is a goliath organization exercising outsized influence in Minnesota politics or a paper tiger with no influence.” Action 4 Liberty’s brief cited a 2007 Minnesota Supreme Court opinion holding that a court has inherent authority to issue a protective order after applying a two-part test.¹⁹

On August 28, 2023, the Board filed a supplemental memorandum in support of its application for an order compelling compliance with the subpoenas. The Board argued that a court’s inherent authority to issue a protective order “is limited to managing the judicial process and may only be extended beyond the judicial process to remedy constitutional violations or abuses of agency discretion.” The Board noted that Action 4 Liberty failed to support its request for a protective order with evidence of potential harm and asserted that the type of harm that would justify a protective order could not occur as a result of the information sought by the Board. The Board asserted that none of its “inquiries seek the names, addresses, or contact information of Action 4 Liberty’s members,” and “[b]ecause the identities of Action 4 Liberty’s members will remain secure, these individuals cannot reasonably fear threats, harassment, or reprisal.” The Board also explained that if the protective order sought by Action 4 Liberty was granted, “the

¹⁸ The action was captioned Minnesota Campaign Finance and Public Disclosure Board v. Action 4 Liberty and Jake Duesenberg, file no. 62-CV-23-3399. Many documents filed during the litigation were not available to the public due to the Board’s unopposed request that the filings be confidential, pursuant to [General Rules of Practice Rule 11.04](#) and [Minnesota Statutes section 10A.022, subdivision 5](#).

¹⁹ See [In re GlaxoSmithKline PLC](#), 732 N.W.2d 257 (Minn. 2007).

Board will be unable to publicly disclose *why* it concluded that fair market value was or was not paid for the goods and services purchased from Action 4 Liberty,” which would “fly in the face of clear legislative policy preferences and the public interest, while it would only prevent harms that lie somewhere between nominal and nonexistent.”

On November 27, 2023, the Ramsey County District Court issued an order granting the Board’s application for an order compelling compliance with the administrative subpoenas and denying the motion of Action 4 Liberty and Mr. Duesenberg for a protective order. Within its order the court stated that Action 4 Liberty’s assertion of a chill on its associational interest was weak, at best, and was “backed by no evidence.” The court noted that the state’s interest in disclosure is substantial, and held that Action 4 Liberty “must comply with the administrative subpoena the CFB has issued.” With respect to the motion for a protective order, the court stated that the motion was premature because the information in question had yet to be produced. The court also said that “[i]t is one thing to exercise inherent authority and discretion in an area in which statutes are silent and provide no guidance. It is quite another to prohibit public disclosure in a situation in which the very purpose of the existing statutory scheme is to require disclosure.”

On December 8, 2023, Board staff again sent a letter to counsel for Action 4 Liberty and Mr. Duesenberg demanding that records responsive to the Board’s administrative subpoenas be produced. On December 22, 2023, Action 4 Liberty provided 76 pages of documents responsive to the subpoenas. On February 2, 2024, Board staff spoke with Mr. Mohrman by phone and clarified three questions regarding the information contained within the documents.

The documents produced by Action 4 Liberty show that the list used to send the Shah emails contained approximately 44,494 email addresses and the phone list purchased from Action 4 Liberty contained phone numbers for approximately 262 individuals. Although Dr. Shah stated during his deposition that eight emails were sent on behalf of the Shah committee using Action 4 Liberty’s email list, the actual number of emails was 18.²⁰ Contrary to what the Shah committee stated in June 2022, it did not cease using Action 4 Liberty’s email list after the second invoice was paid by RPR Consultants in 2021. Rather, three emails were sent on behalf of the Shah committee using that list in January and February of 2022. Neither respondent provided the total amount of contributions that the Shah committee received from individuals who clicked a link within one of the Shah emails. However, based on the invoices provided by the Shah committee, the total was \$9,911, plus any contributions received after the period covered by the second invoice, dated October 6, 2021. Action 4 Liberty was paid a total of \$2,191.10, including commissions, for use of its email list and phone list.

²⁰ The emails were sent August 3, 6, 12, 20, and 24, September 1, 2, 9, 15, and 28, October 6, 10, 14, and 19, and November 3, 2021, and January 13 and 20, and February 1, 2022.

Analysis

Corporate Contributions

Minnesota Statutes section 211B.15, subdivision 1, defines the term corporation to mean “(1) a corporation organized for profit that does business in this state; (2) a nonprofit corporation that carries out activities in this state; or (3) a limited liability company formed under chapter 322C, or under similar laws of another state, that does business in this state.” Minnesota Statutes section 211B.15, subdivision 2, provides that:

- (a) A corporation may not make a contribution or offer or agree to make a contribution directly or indirectly, of any money, property, free service of its officers, employees, or members, or thing of monetary value to a political party, organization, committee, or individual to promote or defeat the candidacy of an individual for nomination, election, or appointment to a political office.
- (b) A political party, organization, committee, or individual may not accept a contribution or an offer or agreement to make a contribution that a corporation is prohibited from making under paragraph (a).
- (c) For the purpose of this subdivision, "contribution" includes an expenditure to promote or defeat the election or nomination of a candidate to a political office that is made with the authorization or expressed or implied consent of, or in cooperation or in concert with, or at the request or suggestion of, a candidate or committee established to support or oppose a candidate but does not include an independent expenditure authorized by subdivision 3.

Contributions Made by an Unregistered Association Without Required Disclosure Statement

Minnesota Statutes section 10A.27, subdivision 13, clause (a), provides that a principal campaign committee “must not accept a contribution of more than \$200 from an association not registered under this chapter unless the contribution is accompanied by a statement that meets the disclosure and reporting period requirements imposed by section 10A.20,” and the committee “that accepts the contribution must include a copy of the written statement or website with the report that discloses the contribution to the board.”

The Board’s analysis of the prohibitions on corporate contributions and contributions in excess of \$200 from an unregistered association without a disclosure statement hinges on whether a contribution occurred. Therefore, the allegations as to each statute are considered together.

Fair Market Value

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.” Pursuant to Minnesota Statutes section 10A.20, subdivision 3, paragraph (c), a “donation in kind must be disclosed at its fair market value.” Minnesota Rules 4503.0100, subpart 3a, defines the phrase fair market value to mean “the amount that an individual would pay to purchase the same or similar service or item on the open market.”

If a vendor receives compensation that is less than the fair market value of goods or services provided to a candidate or principal campaign committee, the difference is likely an in-kind contribution.²¹ A committee is not required to always pay the full advertised price or to refrain from negotiating the price of goods or services in order to prevent accepting an in-kind contribution.²² If comparable goods or services are available on the open market at the same or lower cost, there is reason to believe that a price constitutes the fair market value.²³ In determining the value of goods or services a committee must use a reasonable method that considers any market rates and other relevant factors, and the committee must be able to explain that method to the Board.²⁴

As noted by both Action 4 Liberty and the Shah committee, it may be difficult to ascertain the fair market value of a list containing contact information when the list is highly unique to the organization to which it belongs and the list has not previously been sold or rented to others. That difficulty may be heightened when the buyer and seller are ideologically aligned, such as is the case with political parties that only provide contact lists to members of their own party.

Whether a reasonable method was used to value the goods and services provided by Action 4 Liberty may be assessed by considering the following questions. First, were the goods or services purchased in an arms-length transaction on the open market? Second, are there comparable examples that may be referenced to help determine the fair market value of the goods or services provided? Third, if the goods or services were not purchased in an arms-length transaction on the open market, did the sale price reflect a commercially reasonable basis for the value of the item purchased?

In December 2023 the Board learned, for the first time, the number of email addresses included within the list used to send the Shah emails and the number of individuals included within the phone list purchased from Action 4 Liberty. The quantity of information included within a contact list directly impacts the value of the list. In this instance, if the total amount paid to Action 4 Liberty (\$2,191.10) is divided by the sum of the number of email addresses (44,494) plus the number of individuals included within the phone list (262) (resulting in a total of 44,756 records), the result is a price of approximately 4.9 cents per record.

²¹ There may be exceptions to this general rule, such as personal gifts given to an individual who is a candidate. See [Advisory Opinion 404 \(Apr. 7, 2009\)](#).

²² [Findings and Order in the Matter of a Complaint regarding the Carla Nelson Volunteer Committee \(Sept. 15, 2006\)](#).

²³ *Ibid.*

²⁴ See [Advisory Opinion 408 \(May 4, 2010\)](#).

Action 4 Liberty and the Shah committee each provided information supporting the conclusion that their interaction involved an arms-length transaction. Despite their ideological alignment, the terms of the arrangement were negotiated before and during the course of the arrangement, Dr. Shah testified that his committee's consultants initially felt that the terms of the arrangement were reasonable, and Dr. Shah testified that his committee ultimately terminated the arrangement because his committee did not feel that it was receiving sufficient value from the goods and services provided. However, the transaction appears to have occurred within a closed market rather than the open market. Action 4 Liberty stated that it had never before sold or rented its contact information to another organization, and the evidence in the record supports the conclusion that the transaction likely occurred due to the ideological alignment and familiarity between Action 4 Liberty and Dr. Shah.

Transactions that occur within a closed market are not uncommon within political campaigns because some vendors, including political parties, only provide goods and services to a limited audience that aligns with their ideology and interests. The Board addressed the issue of whether fair market value was paid within closed market transactions in late 2022 after Dr. Shah filed a complaint against the Minnesota Democratic-Farmer-Labor Party (Minnesota DFL) alleging that fair market value was not paid by principal campaign committees for access to the Minnesota DFL's Voter Action Network database (VAN).²⁵ The Board concluded that there was not probable cause to believe that fair market value was not paid for that access because the Minnesota DFL charged principal campaign committees using a formula that allowed the party to recover its costs in building and maintaining the VAN database. During the 2021-2022 election cycle segment, application of that formula yielded a base price of 1.5 cents per voter record within the VAN database.

There are notable differences between the VAN database and Action 4 Liberty's email and phone lists. For example, the Minnesota DFL's VAN database consists largely of data that may be purchased from the Minnesota Secretary of State by any registered voter for \$46.²⁶ The VAN database primarily consists of the names, addresses, and voting history of registered voters, while the lists provided by Action 4 Liberty consisted of email addresses and names with phone numbers. Also, Action 4 Liberty's email list was used to send a limited number of emails on behalf of the Shah committee during a limited period of time, and the Shah committee was not able to obtain a copy of the list. Despite those differences, the data received is at least somewhat comparable, and Action 4 Liberty was paid substantially more, per record, by RPR Consultants, than the Minnesota DFL was paid by principal campaign committees for access to its VAN database.

In this matter, the Board concludes that payments made by the Shah committee to Action 4 Liberty via RPR Consultants represented at least the fair market value for access to Action 4 Liberty's email and phone lists. Several facts support this conclusion, but two are most

²⁵ [Probable Cause Determination in the Matter of the Complaint of Neil A. Shah, M.D., regarding the Minnesota Democratic-Farmer-Labor Party \(Dec. 15, 2022\).](#)

²⁶ See Minn. Stat. § 201.091, subd. 5 and sos.state.mn.us/election-administration-campaigns/data-maps/registered-voter-list-requests.

significant. First, the Shah committee has produced evidence showing an arm's length transaction occurred. Although there was no written contract, the Shah committee initially relied on industry consultants to conclude that the price was commercially reasonable. The committee eventually determined that the cost exceeded the list's value to the campaign, which further demonstrates the committee's independent assessment of market value. Second, even though there is not a directly analogous situation involving Action 4 Liberty's lists—Action 4 Liberty represents that it has not sold or rented the lists to any other entity—the Board concluded during the same election cycle in *The Matter of the Complaint of Neil A. Shah, M.D., regarding the Minnesota DFL* (Dec. 15, 2022) that a reasonable fair market value for access to voter lists created largely from public sources was approximately 1.5 cents per voter record. So the fact that Action 4 Liberty independently developed the email lists through its own work—not publicly available information—supports a finding that the lists have a higher fair market value. Because the Shah committee paid at least fair market value for access to the email and phone lists, Action 4 Liberty did not make a prohibited in-kind contribution to the committee, and the Shah committee did not violate statutory rules relating to receipt and reporting of contributions from an unregistered association.

Reporting

Minnesota Statutes section 10A.20, subdivision 3, paragraph (h) requires a principal campaign committee to itemize expenditures for each vendor to whom expenditures “have been made by or on behalf of the reporting entity within the year in excess of \$200, together with the amount, date, and purpose of each expenditure, including an explanation of how the expenditure was used.” Minnesota Statutes section 10A.025, subdivision 4, provides that “corrections to a report or statement must be reported in writing to the board within ten days following . . . the date upon which the person filing became aware of the inaccuracy.”

The Shah committee's 2021 year-end report does not list Action 4 Liberty as a vendor for the committee. The committee viewed Action 4 Liberty as a subcontractor for RPR Consultants, and included payments made to Action 4 Liberty within the \$146,554 in itemized expenditures that were paid or payable to RPR Consultants. The committee concluded this was correct because invoices from Action 4 Liberty were sent to RPR Consultants, and payments to Action 4 Liberty were made through RPR Consultants.

The Board's review of statements by Dr. Shah on the committee's relationship with Action 4 Liberty leads to the conclusion that Action 4 Liberty, while paid through the contract with RPR Consultants, did not act as a subcontractor of RPR Consultants but as a direct vendor with the campaign. The factors that support the Board's determination include the following: Dr. Shah said that the decision to purchase use of Action 4 Liberty's email and phone lists was made by the Shah committee based on the recommendation of political consultants for the committee. Dr. Shah was personally involved in the negotiations with Action 4 Liberty for the use of the lists, and the amount and manner in which Action 4 Liberty would be compensated for the use of the lists. Dr. Shah further stated that the committee had direct contact with Action 4 Liberty, and that the committee provided the content for the emails sent using Action 4 Liberty's email list. Finally,

when Dr. Shah and the committee decided that the Action 4 Liberty lists were not providing good value for the committee, it was the Shah committee that expressed dissatisfaction to Action 4 Liberty, and the Shah committee negotiated the termination of the agreement.

A subcontractor is, by common definition, an entity hired by, and responsible to, a contractor. In this case, both the decision to contract with Action 4 Liberty for use of the lists, and the subsequent decision to end the contract with Action 4 Liberty, were made by Dr. Shah and his committee. Based on these facts, the Board concludes that Action 4 Liberty was not a subcontractor to RPR Consultants. Action 4 Liberty's relationship with the Shah committee was that of a vendor, and it should be disclosed as such on the 2021 year-end report.

The initial complaint filed with the Board in this matter was based in large part on the absence of any payments to Action 4 Liberty by the Shah committee on the 2021 year-end report. The prima facie determination made by the Board's chair was also based primarily on the absence of Action 4 Liberty as a vendor within the Shah committee's 2021 year-end report. Although speculative, the lengthy investigation conducted to resolve the allegations in the complaint may not have been needed if Action 4 Liberty was listed as a vendor for the Shah committee within its 2021 year-end report.

The Board recognizes that this constitutes a clarification of how it evaluates the relationship between a contractor receiving payment from a campaign committee and the campaign committee's relationship with subcontractors retained and/or paid by the contractor. Instances of similar direct relationships between campaign committees and subcontractors will result in requests by the Board for payments to the subcontractor to be separately disclosed. The Board also understands that it is not unusual for campaign committees to interact with subcontractors retained by a contractor, and that interaction alone does not convert a subcontractor into a contractor.

Based on this clarification, the Board finds that the Shah committee's 2021 year-end report should include additional information to comply with reporting requirements. When the Board has previously concluded that a report failed to include all of the information required to be disclosed, it has provided the filer with an opportunity to supply any information that was omitted and has considered the amended report to remedy deficiencies in the report.

Data Privacy

Within its order issued November 27, 2023, granting the Board's application for an order compelling compliance with the administrative subpoenas, the Ramsey County District Court noted that the Board may refrain from making certain portions of the record of an investigation public if it "determines that the record of the investigation contains statements, documents, or other matter that, if disclosed, would unfairly injure the reputation of an innocent individual."²⁷ The record of this investigation includes very little identifying information about individuals other

²⁷ See [Minn. Stat. § 10A.022, subd. 5 \(b\)](#).

than those directly involved in the matter investigated. Neither respondent nor the complainant, have asserted that material within the record would unfairly injure the reputation of any specific individual if made available to the public. Therefore, the Board has no basis to conclude that any portion of the record of this investigation should be withheld from public view pursuant to Minnesota Statutes section 10A.022, subdivision 5, paragraph (b).

Based on the above background and analysis, the Board makes the following:

Findings of Fact

1. Dr. Neil Shah for Governor was the principal campaign committee of Dr. Neil Shah. The committee terminated its registration with the Board, retroactive to the end of 2022, by filing a termination report on November 7, 2023.
2. Action 4 Liberty is a nonprofit 501(c)(4) association not registered with the Board.
3. In 2021 the Shah committee used Action 4 Liberty's email list and phone list. Payments to Action 4 Liberty were made through RPR Consultants. RPR Consultants paid Action 4 Liberty a total of \$2,191.10 on behalf of the Shah committee. Of that amount, \$991.10 was for a 10% commission on most of the contributions received by the Shah committee as a result of using Action 4 Liberty's email list.
4. Action 4 Liberty's email list was used to send a total of 18 emails on behalf of the Shah committee. Those emails were sent August 3, 6, 12, 20, and 24, September 1, 2, 9, 15, and 28, October 6, 10, 14, and 19, and November 3, 2021, and January 13 and 20, and February 1, 2022. The emails included several hyperlinks including a link that redirected individuals to a webpage hosted by Anedot where they could make contributions to the Shah committee.
5. The Shah committee received at least \$9,911 in contributions from individuals who clicked on a link within one of the 18 emails.
6. Action 4 Liberty's email list contained approximately 44,494 email addresses.
7. Action 4 Liberty's phone list contained phone numbers for approximately 262 individuals.
8. RPR Consultants paid Action 4 Liberty based on two invoices, dated September 4 and October 6, 2021. The Shah committee was dissatisfied with the value it had received and following negotiation, Action 4 Liberty and the Shah committee agreed to consider the amount paid for those two invoices to be payment in full for the goods and services provided by Action 4 Liberty.

9. Action 4 Liberty was paid approximately 4.9 cents per record by RPR Consultants. That price was calculated by the Board by dividing the total amount paid by the sum of the number of email addresses within the email list and the number of individuals included within the phone list.
10. Action 4 Liberty had not previously sold or rented out its email list or phone list, and unlike commercial databases or lists, the composition of those lists is highly unique to Action 4 Liberty.
11. The arrangement involving the Shah committee, RPR Consultants, and Action 4 Liberty, was an arms-length transaction but appears to have been conducted within a closed market.
12. The amount paid to Action 4 Liberty, per record, was substantially more than has been paid by principal campaign committees when purchasing access to at least somewhat comparable contact information for individuals that is stored within databases managed by political parties.
13. Within its 2021 year-end report of receipts and expenditures, the Shah committee included 14 itemized expenditures totaling \$146,554.78 paid or payable to RPR Consultants, which include payments to Action 4 Liberty for use of its contact lists by the Shah committee. Action 4 Liberty is not disclosed as a vendor for the Shah committee in the report.
14. The Board has no reason to believe that public disclosure of the complete record of this investigation will unfairly injure the reputation of an innocent individual.

Based on the above analysis and findings of fact, the Board makes the following:

Conclusions of Law

1. Action 4 Liberty was paid fair market value for use of its email list and phone list. As a result, no in-kind contribution was made by Action 4 Liberty consisting of the value of those lists.
2. Action 4 Liberty and the Dr. Neil Shah for Governor committee did not violate Minnesota Statutes sections 211B.15, subdivision 2, or 10A.27, subdivision 13, as alleged in the complaint.
3. Action 4 Liberty and the Shah committee did not violate the reporting requirements within Minnesota Statutes section 10A.20, subdivision 3, regarding contributions, because the contribution alleged in the complaint did not occur.
4. Action 4 Liberty provided the use of its contact lists as a vendor to the Shah committee in 2021, and based on the extent of the direct relationship between the Shah committee and

Action 4 Liberty, Action 4 Liberty should be disclosed on the Shah committee's 2021 year-end report under Minnesota Statutes section 10A.20, subdivision 3, paragraph (h).

5. No portion of the record of this investigation needs to be withheld from public view under Minnesota Statutes section 10A.022, subdivision 5, paragraph (b).

Based on the above findings of fact and conclusions of law, the Board issues the following:

Order

1. Within 30 days of the date of this order, the Dr. Neil Shah for Governor committee must file an amendment to the 2021 year-end reports of receipts and expenditures that disclose payments made to Action 4 Liberty. The amended report may be a letter amendment that is limited to the Action 4 Liberty expenditures that should be itemized within Schedule B1-CE of the report.
2. If the Shah committee does not comply with this order, the Board's executive director may request that the attorney general bring an action on behalf of the Board for the remedies available under Minnesota Statutes section 10A.34.
3. The findings, conclusions, and order on this matter issued by the Board on March 8, 2024 are rescinded.
4. The investigation of this matter is concluded and hereby made a part of the public records of the Board pursuant to Minnesota Statutes section 10A.022, subdivision 5.



David Asp, Chair
Campaign Finance and Public Disclosure Board

Date: June 5, 2024