



Republican Party of Minnesota

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COMPLAINT AGAINST MARK DAYTON FOR A BETTER MINNESOTA AND THE MINNESOTA DFL PARTY

filed with
The Minnesota Campaign Finance and Public Disclosure Board
190 Centennial Office Building
658 Cedar Street
St. Paul, Minnesota 55155-1603

The Republican Party of Minnesota (“RPM”) files this Complaint against the Mark Dayton for a Better Minnesota campaign for Governor (“Dayton Campaign”) and the Minnesota DFL Party (“DFL Party”) for an unlawful approved expenditure by the DFL Party in support of the Dayton Campaign in violation of Minn. Stat. § 10A. Based on the short amount of time remaining before the election, RPM requests an expedited determination by the Board.

ALLEGATION: On or about July 18, 2014, a video promoting the candidacy of Mark Dayton titled “On the Campaign Trail” was published to the internet by Mark Dayton of a Better Minnesota. See <https://www.youtube.com/watch?v=RcYuRasnMs>. At around :26 seconds, there is a clip of Governor Dayton speaking to two young women near a playground. The positioning of the subjects, the location, and the interaction of the people in the clip establish that the video images were created with the knowledge and participation of Governor Dayton.



On the Campaign Trail



GovernorMarkDayton

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Published on Jul 18, 2014

On or about September 15, 2014, a commercial promoting the candidacy of Mark Dayton titled “We Know” began airing on Minnesota television stations and through the internet. See <https://www.youtube.com/watch?v=RcYuRasnMs>. The commercial contains the disclaimer “THIS IS AN INDEPENDENT EXPENDITURE. NOT APPROVED BY ANY CANDIDATE, NOR IS ANY CANDIDATE RESPONSIBLE FOR IT. PREPARED AND PAID FOR BY THE MINNESOTA DFL PARTY, 255 EAST PLATO BLVD, ST. PAUL, MN 55107.” At :25 to :28 of the thirty second commercial, it features the exact same footage used in the earlier “On the Campaign Trail” video published by Mark Dayton of a Better Minnesota.



We Know



1,419

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Published on Sep 15, 2014

Though the contrast, saturation, and sharpness of the two clips differ, these are the exact same video clips based on the alignment of landmarks in the frame. The clips either originated from the same source footage or the DFL party “captured” the footage for “We Know” by using technology to copy the clip from a playback of the “On the Campaign Trail.” This playback could have been from any video source including broadcast or the internet.

On or about October 27, 2014, a commercial released by Mark Dayton for a Better Minnesota titled “Rising” began airing on Minnesota television stations and throughout the internet. See <https://www.youtube.com/watch?v=PcKH8pDQ9Ns&feature=youtu.be>. The commercial contains the disclaimer “PREPARED AND PAID FOR BY MARK DAYTON FOR A BETTER MINNESOTA.” At :20 to :22 of the thirty second commercial uses footage from the same shoot involving Governor Dayton and the two women sitting on the step, but with a slightly wider camera angle. This underscores the value the Dayton Campaign places in the footage it originally used in July.



Rising



GovernorMarkDayton



256 views

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Published on Oct 28, 2014

STANDARD: Under Minnesota campaign finance statutes and precedent established by the Board, the DFL Party and the Dayton Campaign have engaged in an illegal “approved expenditure” in coordinating in the production and airing of campaign commercials amounting to a campaign contribution of hundreds of thousands of dollars. Under Minn. Stat. § 10A.01, Subd. 4, Subd. 4. **Approved expenditure:**

"Approved expenditure" means an expenditure made on behalf of a candidate by an entity other than the principal campaign committee of the candidate, if the expenditure 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 the candidate, the candidate's principal campaign committee, or the candidate's agent. An approved expenditure is a contribution to that candidate.

Based on previous conclusions of law by the Board, a probable cause finding that a candidate consented to an expenditure by or coordinated with an entity other than the primary campaign committee does not require an expressed agreement for the expenditure. Rather, the Board reviews the facts surrounding the expenditure and the actions of the candidate and independent group required to complete the expenditure. The Board further reviews the subsequent actions of the candidate, including whether the candidate requested the independent entity to cease an expenditure when discovering the use of coordinated material. *See, e.g. “Findings in the Matter if a Complaint Regarding the Tim Pawlenty for Governor Campaign and the Republican Party of Minnesota, October 10, 2002.”*

If coordination or consent between a candidate and an independent entity is found, the amount spent on the expenditure is counted as a contribution to the candidates committee, which may exceed the permissible limit and require a fine in relation to that amount. A political committee, including the DFL Party, is subject to a civil penalty of up to four times the amount of an approved expenditure that violates those limits.

DISCUSSION: The purpose behind Minnesota's campaign finance law is to ensure transparency in the conduct of elections and to enforce spending limitations established by the Legislature. Established limits on independent expenditures are based on the intent to prevent independent entities from circumventing limitations on individual and party unit contributions directly to a candidate. Were candidates permitted to coordinate with or consent to campaign activities by party units or other independent individuals or entities, the limits on contributions to a candidate's campaign committee would be rendered meaningless.

During the 2002 campaign for Governor in Minnesota, the Republican Party ran a commercial supporting the candidacy of Tim Pawlenty that showed the candidate speaking directly into the camera. When the Independence Party of Minnesota filed a complaint with the Board, the Republican Party defended the commercial as an independent expenditure by showing that the Republican Party had purchased the footage from the production company that had shot the footage after the Pawlenty Campaign decided not to use the footage. The Independence Party did not provide evidence of communication with or consent by the Pawlenty campaign for use of the footage.

After conducting discovery, the Board found that probable cause existed that the commercial was an approved expenditure, not an independent expenditure. Factors in the Board's decision included the actions required by the candidate in making the footage and the fact that neither the candidate nor his committee protested to the party or to the production company when the Republican Party began airing the footage, which was created by the Pawlenty campaign.

This matter is nearly identical. The Coordinated Clip could not be produced without the consent of Governor Dayton or the young women in the footage. It is undoubtedly a staged shoot, not spontaneous footage taken of Governor Dayton appearing at a public event. Quite likely, the participants in the video signed a legal release allowing their likenesses to be used. The approved nature of the expenditure was clear enough when the Coordinated Clip was used by the Dayton Campaign in July for the "On the Campaign Trail" video. A month later, the DFL Party used *the same clip* in its own campaign commercial. "We Know." This reuse of specially created footage easily meets the Board's probable cause standard that the Dayton Campaign either provided the DFL Party with the footage or at the very least consented to its use.

The Dayton Campaign and the DFL Party may claim that the footage was simply made available in the public domain and was captured and used by the DFL Party in its commercial. This still shows consent, even if implied, because the campaign would have retained proprietary ownership of the clip. It is critical to note that the Dayton Campaign has never objected to the use of the Coordinated Clip by the DFL Party. Presumably the Dayton Campaign valued the investment it made in filming the clip because it again used footage from the same video shoot in October. Moreover, if the participants in the video did indeed sign releases allowing their

likenesses to be used, were those releases granted to the Dayton Campaign, the DFL Party, or both? If not to both, why would the DFL Party simply assume it could use footage to which it was not granted the rights?

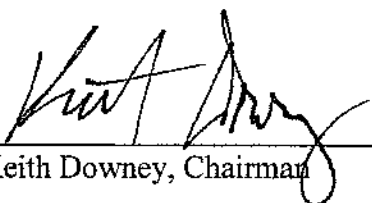
If the Board were to make the unlikely finding that the Coordinated Clip was simply taken from the public domain, the Board must establish a rule that clarifies when material made by a candidate may be picked up by an independent entity and used as an independent expenditure. Permitting the DFL Party to use the Dayton Campaign's materials simply because they are publicly available would eviscerate the prohibition on campaign contributions from independent entities. For example, a campaign could make a commercial and post it on YouTube, and then a party unit or other entity could take the footage, add its own disclaimer, and spend unlimited dollars running the commercial for the candidate. This simply cannot and should not be the rule.

As a candidate, Mark Dayton obviously participated in the making of the Coordinated Clip that has been used in a heavily funded campaign commercial paid for by the DFL Party. Whether the Coordinated Clip was made by the DFL Party with the candidate's knowledge and consensual participation or whether the Coordinated Clip was made by the Dayton Campaign and provided to the DFL Party, the consent and/or coordination by Dayton Campaign in the use of the Coordinated Clip makes the "We Know" commercial an approved expenditure in violation of Minnesota campaign finance law. A finding that the commercial is an approved expenditure is further supported by the absence of any objection by the Dayton Campaign to the DFL Party's use of the Coordinated Clip.

Adherence to the restriction on approved expenditures by an independent party entity is especially important in this campaign. As the most recent disclosures show, relatives of Mark Dayton have given the DFL Party hundreds of thousands of dollars in this campaign cycle, including over \$840,000.00 from Mark Dayton's former spouse, Alida Messinger. Permitting the DFL Party to use those funds to promote the very same materials being used by the Dayton Campaign would render the limitation on candidate contributions meaningless.

CONCLUSION: The Board must find Probable Cause that use of the Coordinated Clip is an approved expenditure by the DFL Party on behalf of candidate Mark Dayton. The cost of the commercial and its airing should be counted against the Dayton Campaign with any amount in excess of the limit of such contributions assessed as a fine against the Dayton Campaign. The DFL Party should further be fined in an amount four times the total of the cost of the production and airing of the commercial containing the Coordinated Clip.

REPUBLICAN PARTY OF MINNESOTA

 10-31-2014
Keith Downey, Chairman