

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

**PRIMA FACIE  
DETERMINATION**

IN THE MATTER OF THE COMPLAINT OF THE MINNESOTA DFL REGARDING THE KIM CROCKETT FOR SECRETARY OF STATE COMMITTEE AND THE AMERICAN PRINCIPLES PROJECT PAC-MINNESOTA FUND

On October 24, 2022, the Campaign Finance and Public Disclosure Board received a complaint submitted by the Minnesota DFL regarding the Kim Crockett for Secretary of State Committee and the American Principles Project PAC-Minnesota Fund. The Kim Crockett for Secretary of State Committee is the principal campaign committee of Kim Crockett. The American Principles Project PAC-Minnesota Fund (APP PAC) is an independent expenditure political fund, assigned Board registration number 30743. The APP PAC was registered with the Board on October 26, 2022, two days after the complaint was filed.

The complaint alleges and provides evidence that the APP PAC issued a tweet on October 21, 2022, advocating for the defeat of Secretary of State Steve Simon. The tweet contained a 30-second video with text stating “VOTE AGAINST STEVE SIMON.”<sup>1</sup> The video included a text disclaimer stating that it was an independent expenditure paid for by the “AMERICAN PRINCIPLES PROJECT PAC – MINNESOTA FUND.” The complaint alleges and provides evidence that Ms. Crockett retweeted that tweet, thereby increasing its audience to include her Twitter followers. The complaint alleges that the video embedded in the tweet is also being broadcast on television.

The complaint alleges that the retweet undermines the independence of the expenditure and made it a coordinated expenditure because Ms. Crockett participated in the distribution of the final product. The complaint asserts:

By retweeting the campaign material the Crockett Campaign expressly consented to not only that specific expenditure but also to the subsequent publication of similar campaign materials affecting the race. The candidates and the campaign are saying to American Principles, “we like what you are doing, keep it up.” This endorsement of the campaign material means that all subsequent campaign material distributed by American Principles supporting the election of Kim Crockett or advocating for the defeat of Secretary of State Simon are “coordinated expenditures” and must be reported as contributions subject to the \$4,000 contribution limit.<sup>2</sup>

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<sup>1</sup> [twitter.com/approject/status/1583524243936976896](https://twitter.com/approject/status/1583524243936976896)

<sup>2</sup> The applicable individual contribution limit is \$2,000 rather than \$4,000.

## Determination

An expenditure generally consists of “a purchase or payment of money or anything of value, or an advance of credit, made or incurred for the purpose of influencing the nomination or election of a candidate” and an “expenditure made for the purpose of defeating a candidate . . . is considered made for the purpose of influencing the nomination or election of that candidate . . . or any opponent of that candidate.” Minn. Stat. § 10A.01, subd. 9.

Minnesota Statutes section 10A.01, subdivision 18, defines the term independent expenditure, in relevant part, as follows:

"Independent expenditure" means an expenditure expressly advocating the election or defeat of a clearly identified candidate or local candidate, if the expenditure is made without the express or implied consent, authorization, or cooperation of, and not in concert with or at the request or suggestion of, any candidate or any candidate's principal campaign committee or agent or any local candidate or local candidate's agent. An independent expenditure is not a contribution to that candidate or local candidate.

“To be an independent expenditure, a communication and all of the processes leading to its eventual publication must meet the requirements of the independent expenditure definition cited above.” In the Matter of the Investigation of Expenditures Made by the Minnesota DFL Senate Caucus Party Unit (Dec. 17, 2013), at 6<sup>3</sup> The independence of an expenditure is not destroyed by using campaign material in the public domain when there is no evidence that a candidate or their agent provided consent to, or cooperated with, an entity in making that entity's expenditure. In the Matter of the Complaint of the Republican Party of Minnesota Regarding the Minnesota DFL Party and the Mark Dayton for a Better Minnesota Committee (Jan. 6, 2015), at 3.<sup>4</sup>

Minnesota Statutes section 10A.01, subdivision 4, defines the term approved expenditure as follows:

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

Minnesota Statutes section 10A.175 defines several terms for purposes of that section through section 10A.177. The term candidate “means a candidate as defined in section 10A.01, subdivision 10, the candidate's principal campaign committee, or the candidate's agent.” The term agent “means a person serving during an election segment as a candidate's chairperson,

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<sup>3</sup> Available at [cfb.mn.gov/pdf/bdactions/1296\\_Findings.pdf](http://cfb.mn.gov/pdf/bdactions/1296_Findings.pdf).

<sup>4</sup> Available at [cfb.mn.gov/pdf/bdactions/1331\\_Probable\\_cause\\_determination.pdf](http://cfb.mn.gov/pdf/bdactions/1331_Probable_cause_determination.pdf).

deputy chairperson, treasurer, deputy treasurer, or any other person whose actions are coordinated.” The term coordinated “means 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. A coordinated expenditure is an approved expenditure under section 10A.01, subdivision 4.” Finally, the term spender means “an individual, an association, a political committee, a political fund, an independent expenditure political committee, an independent expenditure political fund, or a party unit.”

Minnesota Statutes section 10A.176, subdivision 7, provides that:

An expenditure is a coordinated expenditure if the expenditure is made with the candidate's participation in the following:

- (1) any of the processes required for the creation and development of the expenditure, including budgeting decisions, media design, acquisition of graphics and text, production, and distribution of the final product; or
- (2) any decision regarding the content, timing, location, intended audience, volume of distribution, or frequency of the expenditure.

A coordinated expenditure is an approved expenditure, therefore it is a contribution to the candidate on whose behalf it was made and is subject to the individual contribution limit. The individual contribution limit applicable to a candidate for secretary of state during the 2021-2022 election cycle segment is \$2,000. Minn. Stat. § 10A.27, subd. 1 (a) (3).

Minnesota Statutes section 10A.121, subdivision 1, provides that independent expenditure political funds may make independent expenditures, while subdivision 2 provides penalties for certain actions by an independent expenditure political fund. The statute provides that

a) An independent expenditure political committee or independent expenditure political fund is subject to a civil penalty of up to four times the amount of the contribution or approved expenditure if it does the following:

- (1) makes a contribution to a candidate, local candidate, party unit, political committee, or political fund other than an independent expenditure political committee or an independent expenditure political fund; or
- (2) makes an approved expenditure.

(b) No other penalty provided in law may be imposed for conduct that is subject to a civil penalty under this section.

The term approved expenditure is defined in a manner designed to prevent a candidate from communicating with an association about an independent expenditure in support of that candidate or against that candidate’s opponent that the association may intend to make. Minnesota Statutes sections 10A.175 through 10A.177 describe relationships, communication, and other connections that would cause an expenditure to be a coordinated expenditure and not an independent expenditure. Those provisions do not prohibit all relationships between candidates and entities that may make independent expenditures. For example, Minnesota

Statutes section 10A.177 provides that a candidate may, without destroying the independence of any subsequent expenditure, provide “to a spender names of potential donors, as long as the spender does not state or suggest to the candidate that funds received from use of the donor list will be used for independent expenditures to benefit the candidate.” Minnesota Statutes section 10A.177 provides that a spender may make a contribution to a candidate that it is not otherwise prohibited from making, without destroying the independence of any future expenditure related to that candidate, and an independent expenditure may include a link to a candidate’s website or social media page. Minnesota Statutes section 10A.177 also provides that a spender may use “a photograph, video, or audio recording obtained from a publicly available source or public event” without destroying the independence of an expenditure.


Minnesota Statutes section 10A.176, subdivision 7, classifies an expenditure as coordinated if it “is made with the candidate’s participation in... (1) any of the processes required for the creation and development of the expenditure, including budgeting decisions, media design, acquisition of graphics and text, and distribution of the final product.” In this case any expenditures made by the APP PAC likely consisted almost entirely of the cost to produce the video embedded within the tweet.

The complaint does not allege that the Crockett committee made an expenditure in order to retweet the tweet of the APP PAC or otherwise disseminate the video included in that tweet. The complaint does not allege that the Crockett committee coordinated with APP PAC prior to, or during, any of the processes used to create and develop the expenditures, as provided in Minnesota Statutes section 10A.176, subdivision 7. The complaint does not allege that the Crockett committee communicated with APP PAC after those expenditures were made, or after the expenditures had been released to the public domain. The complaint does not allege that the Crockett committee communicated with the APP PAC prior to the APP PAC’s expenditures being made or coordinated its actions with the APP PAC while those expenditures were being made. Without more, retweeting a tweet that contains content that is an independent expenditure, that is in the public domain, at no cost, does not constitute making an expenditure with the candidate’s participation within the meaning of Minnesota Statutes section 10A.176, subdivision 7. Therefore, expenditures made by the APP PAC are not coordinated expenditures by virtue of Ms. Crockett retweeting the tweet referenced in the complaint.

Having concluded that the tweet referenced in the complaint was not a coordinated expenditure based on the facts alleged in the complaint, the question that remains is whether the tweet or its content was nonetheless an approved expenditure. The complaint asserts that by retweeting the tweet, the Crockett committee consented to the APP PAC’s expenditures. However, consent cannot be given after the fact, or in this case, after the independent expenditure has been released to the public. Further, retweeting the content of one expenditure by a spender does not by itself constitute consent to any expenditure that may be made in the future by that same spender. Without more, retweeting a tweet that contains a video does not constitute consent to make future expenditures containing that video within the meaning of Minnesota Statutes section 10A.01, subdivision 4.

The alleged violation of the individual contribution limit and any alleged violation of the prohibition on contributions by independent expenditure political funds, stated by the complaint, is premised upon the assertion that the APP PAC made a contribution to the Crockett committee. Because the facts alleged in the complaint do not support that assertion, the complaint does not state a prima facie violation of Minnesota Statutes sections 10A.27, subdivision 1, or 10A.121.

Pursuant to Minnesota Statutes section 10A.022, subdivision 3, paragraph (c), this prima facie determination is made by a single Board member and not by any vote of the entire Board. Based on the above analysis, the Vice Chair concludes that the complaint does not state a prima facie violation of Chapter 10A or of those sections of Chapter 211B under the Board's jurisdiction. The complaint is dismissed without prejudice.

  
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George W. Soule, Vice Chair  
Campaign Finance and Public Disclosure Board

Date: November 4, 2022