

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

**CONCILIATION AGREEMENT**

In the matter of the DougKernHouse6B committee (18902);

1. DougKernHouse6B is the principal campaign committee of Douglas Kern, a candidate for Minnesota House of Representatives District 6B. On July 22, 2022, the Board received a complaint submitted by Kenneth Toole alleging that the committee violated Minnesota Statutes section 211B.04, which regulates the use of disclaimers on campaign material. On July 29, 2022, the Board chair determined that the complaint alleged a prima facie violation of the disclaimer requirement. On August 15, 2022, Mr. Toole supplemented his complaint, alleging additional violations of the disclaimer requirement and violations of the reporting requirements under Minnesota Statutes section 10A.20, subdivision 3. Mr. Kern filed amended 2022 pre-primary reports on August 19 and 26, 2022, resolving the reporting issues identified by Mr. Toole. On September 7, 2022, the Board found that there was probable cause to believe that violations of the disclaimer requirement occurred and directed the Board's executive director to open a staff review to conclude the investigation. The Board also found that although there was probable cause to believe that violations of the reporting requirements occurred, those violations were remedied by the filing of amended reports.
2. Minnesota Statutes section 211B.04, subdivision 1, requires the inclusion of a disclaimer on campaign material that prominently states "Prepared and paid for by the . . . committee, . . . (address)." "The address must be either the committee's mailing address or the committee's website, if the website includes the committee's mailing address." Campaign material is defined in Minnesota Statutes section 211B.01, subdivision 2, as "any literature, publication, or material that is disseminated for the purpose of influencing voting at a primary or other election, except for news items or editorial comments by the news media." The Board may impose a civil penalty of up to \$3,000 for a violation of Minnesota Statutes section 211B.04.
3. The committee purchased electronic billboard signs displayed at four locations, which rotated with other advertisements, at a cost of \$2,025.20, starting in mid-June of 2022. When the complaint was filed the billboards included a disclaimer stating "Paid for by Doug Kern House 6 B." The vendor was contacted after Mr. Kern received a copy of the complaint and the committee believes that the billboards contained a disclaimer that included the committee's address for approximately the eight-day period immediately preceding the primary election on August 9, 2022.
4. The committee developed a website at a cost of \$496. When the complaint was filed the website included a disclaimer stating "Prepared & Paid for by the DougKernHouse6B Campaign Committee." The website was updated after Mr. Kern received a copy of the complaint to include the committee's mailing address within the disclaimer.

5. The committee purchased 6,000 two-sided postcards, 1,000 of which were mailed on approximately August 5, 2022, with most of the remaining postcards disseminated at one or more events, at a total cost of \$673.35 including postage. The postcards included a disclaimer stating "Paid for by the DougKernHouse6B Campaign." The reverse side of the postcards included the committee's website address.

6. The committee disseminated approximately 100 professionally produced lawn signs starting in late June of 2022, purchased at a cost of \$1,144, that included a disclaimer stating "PAID BY DOUG KERN HOUSE 6B CAMPAIGN." After Mr. Kern received a copy of the complaint labels containing a complete disclaimer including the committee's website address were applied to the lawn signs that the committee was able to locate.

7. Hand-painted signs including approximately four four-by-six foot signs and six two-by-four foot signs were produced by the committee at no cost. At least one hand-painted sign did not include a disclaimer and others included a disclaimer stating "PAID FOR BY DOUG KERN HOUSE 6B."

8. The committee purchased six vehicle magnet signs at a cost of \$246 in mid-May of 2022. Four of the signs were displayed on the personal vehicles of Mr. Kern and his spouse. The signs included a disclaimer printed in very small text stating "PD BY DOUGKERNHOUSE 6B." After Mr. Kern received a copy of the complaint the committee's website address was written on the signs.

9. The committee received a \$150 in-kind contribution consisting of a banner that was displayed at four community events including an art fair and three parades. The banner did not include a disclaimer. The banner was not displayed after Mr. Kern received a copy of the complaint.

10. The committee disseminated campaign material consisting of Facebook posts via two Facebook pages. One of the two pages included a single post consisting of campaign material and that post included a complete disclaimer. The other Facebook page did not include a disclaimer within the Intro section or on the About page when the complaint was filed. Several posts disseminated via that page containing campaign material did not include a disclaimer, while several other posts included a partial disclaimer such as "Pd for by the DougKernHouse6B Campaign." After Mr. Kern received a copy of the complaint the Intro section of that page was modified to include a disclaimer and the committee's website address, and several individual Facebook posts published after the complaint was filed included a complete disclaimer as well.

11. Mr. Kern explained that although he had been the chair of his local party unit for several years, he had never been a candidate. Mr. Kern explained that he looked at others' campaign material and largely copied the format that they used for their disclaimers. Mr. Kern did not realize that with the exception of broadcast campaign material, disclaimers need to include the committee's mailing address or website address, and that if the website address is used, the website must include the committee's mailing address. With respect to the postcards mailed after the complaint was filed, Mr. Kern stated that he thought the disclaimer was sufficient

despite lacking the committee's address because the committee's website address was included on the reverse side.

12. In determining the appropriate penalty for a violation of the disclaimer requirement the Board considers multiple factors such as whether it was clear who was responsible for the campaign material and how to contact them, whether the violation has been remedied, whether there were prior violations of the disclaimer requirement, the cost of the campaign material and how widely it was disseminated, whether the violation was self-reported, and whether the violation was willful.

13. The banner, one of the Facebook pages, and one or more of the hand-painted signs did not include a disclaimer. Although it did not include contact information, the banner was displayed at events at which Mr. Kern was present. The Facebook page in question was named "Doug Kern" and included a prominent photograph of Mr. Kern, posts published via that page included the Kern committee's website and email address and Mr. Kern's phone number, and posts published via that page were written in the first-person, indicating that the posts were written by Mr. Kern. The other campaign material referenced in the complaint that required a disclaimer included a disclaimer that lacked the committee's address. Therefore, with the possible exception of a small number of hand-painted signs, it is unlikely that the lack of complete disclaimers caused confusion as to who prepared the committee's campaign material.

14. The disclaimer violations identified in the complaint were generally remedied to the extent possible within the short timeframe between when the complaint was provided to Mr. Kern and the August 9, 2022, primary election. This is the committee's first violation of the disclaimer requirement. The cost of the campaign material referenced in the complaint was approximately \$4,734. While the postcards were mailed or handed to approximately 4,000 recipients, it is impossible to discern the number of individuals who viewed the billboards, website, signs, banner, and Facebook page. The violations were not self-reported, but rather were discovered as a result of the complaint. The violations were not willful.

15. The parties agree that the DougKernHouse6B committee inadvertently violated the disclaimer requirement under Minnesota Statutes section 211B.04. Based on the factors listed above, the committee agrees to the imposition of a civil penalty of \$300. Payment is due within 30 days of the date the agreement is signed by both parties.

16. If the committee does not comply with the provisions of this agreement, this matter may be reopened by the Board and the Board may take such actions as it deems appropriate.

/s/ Doug Kern  
Douglas Kern  
DougKernHouse6B

Dated: October 20, 2022

/s/ Faris Rashid  
Faris Rashid, Chair  
Campaign Finance and Public Disclosure Board

Dated: October 5, 2022