

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

FINDINGS, CONCLUSIONS, AND ORDER

IN THE MATTER OF THE FAITH IN MINNESOTA FUND

Background

In April 2019, Board staff became aware of a website and Facebook page each titled Greater Than Fear.¹ Publicly available data from Facebook indicated that over 150 independent expenditure advertisements were run via the Greater Than Fear Facebook page during a two-week period preceding the 2018 general election.² The advertisements each contained a disclaimer that stated “Paid for by Education Minnesota, Faith in Minnesota, and SEIU Minnesota.” The advertisements did not include an address or the independent expenditure language specified in Minnesota Statutes section 211B.04, subdivision 2. The advertisements each contained links to both the Greater Than Fear Facebook page and the Greater Than Fear website. The Facebook page did not include a disclaimer or any information that identified the association responsible for the page, but did include a link to the Greater Than Fear website. The website did not include a disclaimer in the statutory format or a mailing address, but did include barely visible text identifying the website as “A project of Education Minnesota, Faith in Minnesota, and SEIU Minnesota.”

The Faith in Minnesota Fund is an independent expenditure political fund that was registered with the Campaign Finance and Public Disclosure Board in July 2018. Its supporting association is Faith in Minnesota, a 501(c)(4) nonprofit organization. The 2018 year-end report of receipts and expenditures filed by the Faith in Minnesota Fund itemized independent expenditure advertisements supporting three candidates, two of whom were named in the advertisements ran via the Greater Than Fear Facebook page.

In June 2019, Board staff notified Faith in Minnesota that the Board would consider opening a formal investigation regarding the apparent lack of proper disclaimers on independent expenditures prepared and disseminated by Faith in Minnesota. The Board opened a formal investigation at its meeting on June 26, 2019. In response, counsel for Faith in Minnesota explained that the association

was aware of the disclaimer requirement for independent expenditures included in Minn. Stat. § 211B.04, and it attempted to comply with the requirement by instructing its vendor to include the statutorily required disclaimer in Facebook’s partially customizable disclaimer window. Unfortunately, the window did not permit the vendor to include the entire text of the disclaimer that is required by statute. Accordingly, the disclaimer was shortened to what the Fund, its coalition partners, and its vendor understood to be the most important substantive information in the disclaimer rule: “Paid for by Education Minnesota, Faith in Minnesota, and SEIU Minnesota.” Throughout the campaign, the Fund engaged what it believed to be an expert vendor in this area and worked with more experienced coalition partners in an effort to ensure that it was complying with the applicable rules.

¹ greaterthanfear.us; facebook.com/greaterthanfear

² facebook.com/ads/library/?view_all_page_id=528226220973181

When asked why the disclaimer on the independent expenditure advertisements disseminated via the Greater Than Fear Facebook page mentioned two organizations in addition to Faith in Minnesota, counsel for Faith in Minnesota stated that

Education Minnesota and SEIU Minnesota did not pay for any portion of the advertisements. Rather, Education Minnesota and SEIU Minnesota were named in the disclaimer because the Greater than Fear Video was part of a larger coalition effort (i.e. the Greater than Fear Campaign), and the Faith in Minnesota Fund wanted these organizations to get credit for their efforts. Education Minnesota and SEIU did make contributions to the 501(c)(4) organization Faith in Minnesota towards the larger Greater than Fear Campaign efforts, but none of those funds were earmarked for the Fund nor for any specific campaign advertisements.

During the course of the investigation, Board staff learned that Faith in Minnesota also prepared and disseminated over 80 independent expenditure advertisements via a separate Facebook page, titled Faith in Minnesota,³ during a 10-day period preceding the 2018 primary election.⁴ Although those advertisements each contained a disclaimer that stated “Paid for by Faith in Minnesota,” none of them contained an address or the statutory language identifying the communication as an independent expenditure. The advertisements each contained a link to the Faith in Minnesota Facebook page, which did not include a disclaimer in the form specified in statute or a mailing address, but did include a phone number and a link to Faith in Minnesota’s website.⁵

With respect to the independent expenditure advertisements that lacked a disclaimer in the statutory format, Faith in Minnesota paid \$9,024.51 to disseminate advertisements via the Faith in Minnesota Facebook page and paid \$8,074.74 to disseminate advertisements via the Greater Than Fear Facebook page. Facebook’s metric known as reach, which measures the number of unique users to whom an advertisement is presented, indicates that approximately 457,088 users viewed the independent expenditure advertisements disseminated via the Faith in Minnesota Facebook page and approximately 401,685 users viewed the independent expenditure advertisements disseminated via the Greater Than Fear Facebook page, for a total of 858,773.

The independent expenditure advertisements ran via the Greater Than Fear Facebook page utilized graphics and a video that were paid for by Faith in Minnesota. The cost to produce the video was \$14,000. The video was also used by Faith in Minnesota in Facebook advertisements that were not independent expenditures. Of the total of \$8,595.63 Faith in Minnesota paid for Facebook to run advertisements containing the video, \$2,484.30, or 29%, was for three independent expenditure advertisements that lacked a disclaimer in the statutory format. Counsel for Faith in Minnesota explained that

a broad coalition of 22 organizations throughout the state used and shared the Video in connection with a set of messages, talking points, and branded images. Before October 23—taking into consideration dissemination by just the Fund and one of its coalition members—the Video reached more than 387,000 people and was shared over 22,000 times on Facebook and Twitter. The Video was distributed far more widely by the other coalition members. None of these reaches or shares referred to the election or defeat of a specific candidate.

³ [facebook.com/FaithInMN](https://www.facebook.com/FaithInMN)

⁴ [facebook.com/ads/library/?view_all_page_id=1700040490027062](https://www.facebook.com/ads/library/?view_all_page_id=1700040490027062)

⁵ [faitinmn.org](https://www.faitinmn.org)

Faith in Minnesota paid \$1,500 for graphic design work that included graphics used both in independent expenditure advertisements and in other communications that were not independent expenditures. Of the five illustrations that were included in that price, four, including a logo, were utilized in independent expenditure communications, and one illustration was only used in communications that were not independent expenditures.⁶ Faith in Minnesota paid \$5,590.44 for Facebook to run 148 independent expenditure advertisements containing the graphics. Faith in Minnesota also spent \$9,006 on newspaper advertisements and \$2,300.47 on posters, signs, handouts, and banners containing the graphics, which were not independent expenditures. The amount Faith in Minnesota spent on independent expenditure advertisements on Facebook containing the graphics at issue in this investigation represents no more than 49% of the total spent by Faith in Minnesota on communications including those graphics. The graphics were also utilized by an organization allied with Faith in Minnesota to produce t-shirts that cost approximately \$12,400 and were not independent expenditures. Counsel for Faith in Minnesota stated that the graphics

were shared far and wide by the Fund and its allies, primarily in connection with nonpartisan education and issue advocacy. Like the Greater than Fear video, the Facebook graphics were used ubiquitously throughout the Greater than Fear campaign, such that their value was de minimis [sic] for any single use.

None of the total amount that Faith in Minnesota paid to produce the video and graphics was disclosed on the periodic reports filed by the Faith in Minnesota Fund as those costs were not considered, by Faith in Minnesota, to be part of its independent expenditures.

During the investigation, Board staff also asked why Faith in Minnesota did not timely file a 2018 pre-primary report or 24-hour notices regarding large contributions received during the period immediately preceding the 2018 primary election. Faith in Minnesota explained that a registration form for the Faith in Minnesota Fund was provided to Board staff in early July of 2018, however, Board staff did not provide a Board registration number until September 20, 2018. Without a registration number, the Faith in Minnesota Fund was unable to file a 2018 pre-primary report or the 24-hour notices. Board staff acknowledges that the delay in processing the registration of the Faith in Minnesota Fund prevented the fund from filing the 2018 pre-primary report and 24-hour notices in a timely manner.

Analysis

Disclaimer Requirement

There is no disagreement that the advertisements in question were independent expenditures. Minnesota Statutes section 211B.04, subdivision 2, requires a written independent expenditure to include a disclaimer that states "This is an independent expenditure prepared and paid for by . . . (name of entity participating in the expenditure), . . . (address). It is not coordinated with or approved by any candidate nor is any candidate responsible for it." Minnesota Statutes section 10A.34, subdivision 4, provides that the Board may impose a civil penalty of up to \$3,000 for a violation of Minnesota Statutes section 211B.04. Minnesota Statutes section 10A.17, subdivision 4, likewise requires entities that make

⁶ The graphics and video can be viewed at shortyawards.com/11th/greater-than-fear-winning-progressive-change-in-minnesota.

independent expenditures to “publicly disclose that the expenditure is an independent expenditure” by including a disclaimer “statement in substantially the form provided in section 211B.04, subdivision 2.”⁷

Production Costs of Media Used in Independent Expenditures

Faith in Minnesota argues that none of the costs incurred to produce the video and graphics used in independent expenditure advertisements disseminated via the Greater Than Fear Facebook page should be included when calculating the amount spent on independent expenditures. The basis of that argument is that the video and graphics were widely used in communications that were not independent expenditures and the fractional value of the production costs was de minimis for any particular use. However, with the exception of in-kind expenditures that are the product of an in-kind contribution valued at \$20 or less,⁸ there is no de minimis exception or threshold with respect to calculating the amount spent on independent expenditures or any other type of disbursement under Chapter 10A. Regardless of the amount, the cost to produce materials used in independent expenditure communications must be included when calculating the amount spent on independent expenditures.⁹

Faith in Minnesota incurred the costs to produce the video and graphics. When the video and graphics were utilized in independent expenditure advertisements, that use constituted an in-kind contribution from Faith in Minnesota to the Faith in Minnesota Fund. An in-kind contribution’s value is its fair market value.¹⁰ The fair market value of the video and graphics paid for by Faith in Minnesota did not decrease as a result of being used in communications that were not independent expenditures. Moreover, Faith in Minnesota would have been billed the same amount for the video and graphics regardless of whether they were ultimately used in independent expenditure communications, used in advertisements that were not independent expenditures, or not used at all. When an in-kind contribution consists of an item or service purchased in an arms-length transaction and that item or service has not changed in value, the fair market value is the purchase price. Because one of the five illustrations for which Faith in Minnesota paid a total of \$1,500 was not utilized by Faith in Minnesota in independent expenditure communications, 20% of the total cost of the graphics is deducted for purposes of determining the value of the in-kind contribution that consisted of the graphics used in independent expenditure communications.

The three independent expenditure advertisements disseminated via the Greater Than Fear Facebook page that contained the video each expressly advocated for the election of only one candidate, Tim Walz. Therefore, the Faith in Minnesota Fund should have disclosed an in-kind independent expenditure of \$14,000 in support of Tim Walz for Governor consisting of the cost of the video. How the value of the graphics should have been allocated between candidates for purposes of reporting in-kind independent expenditures by the Faith in Minnesota Fund is complicated by the number of independent expenditure advertisements that contained the graphics and the number of candidates that were identified within those advertisements.

Each of the 148 independent expenditure advertisements disseminated via the Greater Than Fear Facebook page that contained the graphics supported Tim Walz and Keith Ellison, and 140 of them also

⁷ [Minn. Stat. § 10A.17, subd. 4](#), was amended effective June 1, 2018, by [2018 Minn. Laws Ch. 119 \(S.F. 3306\)](#), to explicitly reference [Minn. Stat. § 211B.04, subd. 2](#).

⁸ [Minn. Stat. § 10A.13, subd. 1](#).

⁹ See [Minn. Stat. § 10A.20, subd. 3 \(h\)-\(i\)](#).

¹⁰ [Minn. Stat. § 10A.20, subd. 3 \(c\)](#).

supported one of 18 candidates for state representative. In order to avoid needlessly complicating the amendments that will need to be made to its 2018 year-end report, the Board will instruct the Faith in Minnesota Fund to disclose in-kind independent expenditures supporting Tim Walz and Keith Ellison, each consisting of 1/3 of the amount spent on graphics that were utilized in independent expenditures. The Board will instruct the Faith in Minnesota Fund to allocate the remainder equally between the 18 candidates for state representative that were identified within those advertisements.

Amount of Civil Penalty

When determining the appropriate amount of a civil penalty to be imposed for a disclaimer violation, the Board considers several factors, including the willfulness and gravity of the violation and any history of past violations.¹¹ To ensure that civil penalties for violations of the disclaimer requirement are proportional, the Board also considers the amount of money spent to produce and disseminate the communications that lacked a proper disclaimer as well as the estimated audience of those communications.

Faith in Minnesota acknowledged that it was aware of the disclaimer requirement for independent expenditures under Minnesota Statutes section 211B.04 and that the disclaimer displayed on the advertisements in question excluded much of the language required by statute. Faith in Minnesota also acknowledged that the disclaimer displayed on the advertisements disseminated via the Greater Than Fear Facebook page stated that those advertisements were paid for by Education Minnesota and SEIU Minnesota, in addition to Faith in Minnesota, despite the fact that the advertisements were paid for solely by Faith in Minnesota. Faith in Minnesota spent a total of \$32,299.25 to produce and disseminate over 230 separate independent expenditure advertisements that lacked a disclaimer in the statutory format. Those advertisements reached an estimated audience of 858,773. While many of the Facebook advertisements prepared and disseminated by Faith in Minnesota utilized the same graphics or video as other advertisements, each advertisement individually constituted an independent expenditure that required a disclaimer under Minnesota Statutes section 211B.04

The independent expenditure advertisements in question were disseminated as part of two distinct efforts. The first included advertisements disseminated via the Faith in Minnesota Facebook page immediately prior to the 2018 primary election, all of which supported the same candidate. The second effort included advertisements disseminated via the Greater Than Fear Facebook page immediately prior to the 2018 general election, which supported a total of 20 separate candidates.

Faith in Minnesota's knowledge of the disclaimer requirement, the inaccuracy of the disclaimer that was provided, the amount of money spent on the communications in question, the size of the audience for those communications, and the number of violations of the disclaimer requirement were factors considered by the Board when imposing the civil penalty.

2018 Pre-Primary Report and 24-Hour Notices

Because Board staff did not timely process the registration of the Faith in Minnesota Fund and provide a Board registration number, the Board will not impose any late filing fees for the Faith in Minnesota Fund's

¹¹ See [Minn. Stat. § 14.045, subd. 3.](#)

2018 pre-primary report or 24-hour notices regarding large contributions received prior to the 2018 primary election.

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

Findings of Fact

1. Faith in Minnesota was formed in 2017 and began making independent expenditures subject to Chapter 10A in 2018 via the Faith in Minnesota Fund. Faith in Minnesota has no history of past violations of the disclaimer requirement.
2. Faith in Minnesota prepared and disseminated over 80 independent expenditure advertisements via a Facebook page titled Faith in Minnesota with a disclaimer that stated "Paid for by Faith in Minnesota." Those advertisements each included a link to the Faith in Minnesota Facebook page, which did not include a mailing address or the disclaimer language specified in statute, but did include a phone number and website address for Faith in Minnesota and provided a means to contact Faith in Minnesota through Facebook. It was clear from the disclaimer on those advertisements that the advertisements were paid for by Faith in Minnesota.
3. The independent expenditure advertisements in question, disseminated via the Faith in Minnesota Facebook page, collectively ran from August 5, 2018, through August 15, 2018.
4. The independent expenditure advertisements in question, disseminated via the Faith in Minnesota Facebook page, reached approximately 457,088 users.
5. Faith in Minnesota paid \$9,024.51 to disseminate the independent expenditure advertisements in question via the Faith in Minnesota Facebook page.
6. Faith in Minnesota prepared and disseminated 151 independent expenditure advertisements via a Facebook page titled Greater Than Fear with a disclaimer that stated "Paid for by Education Minnesota, Faith in Minnesota, and SEIU Minnesota." Those advertisements each included links to both that Facebook page and the Greater Than Fear website. Neither the Facebook page nor the website contained additional identifying information beyond what was included in the disclaimer, but did provide a means for individuals to contact the administrator of the Greater Than Fear social media accounts. The Greater Than Fear website included the text "A project of Education Minnesota, Faith in Minnesota, and SEIU Minnesota."
7. The disclaimer on the independent expenditure advertisements disseminated via the Greater Than Fear Facebook page stated that the advertisements were "Paid for by Education Minnesota, Faith in Minnesota, and SEIU Minnesota." Although Faith in Minnesota received donations from those organizations to support the Greater Than Fear campaign, the donations were not designated for the Faith in Minnesota Fund or for communications containing express advocacy. The advertisements were paid for solely by Faith in Minnesota.
8. The independent expenditure advertisements disseminated via the Greater Than Fear Facebook page collectively ran from October 23, 2018, through November 6, 2018.

9. The independent expenditure advertisements disseminated via the Greater Than Fear Facebook page reached approximately 401,685 users.
10. Faith in Minnesota paid \$8,074.74 to disseminate independent expenditure advertisements via the Greater Than Fear Facebook page.
11. Faith in Minnesota paid \$14,000 to produce a video that was utilized in three independent expenditure advertisements disseminated via the Greater Than Fear Facebook page.
12. Faith in Minnesota paid \$1,200 to produce graphics that were utilized in 148 independent expenditure advertisements disseminated via the Greater Than Fear Facebook page.
13. The total amount spent by Faith in Minnesota for the video, graphics, and dissemination of the independent expenditure advertisements in question was \$32,299.25, and the total estimated audience of those advertisements was 858,773.
14. The independent expenditure advertisements in question were disseminated as part of two distinct efforts. The first included advertisements disseminated via the Faith in Minnesota Facebook page immediately prior to the 2018 primary election, all of which supported the same candidate. The second effort included advertisements disseminated via the Greater Than Fear Facebook page immediately prior to the 2018 general election, which supported a total of 20 separate candidates.
15. None of the advertisements in question included a link to a web page that contained a disclaimer with the language specified in Minnesota Statutes section 211B.04, subdivision 2.
16. Faith in Minnesota was aware of the disclaimer requirement for independent expenditures and knew that the disclaimers that appeared within the advertisements in question did not include the language specified in Minnesota Statutes section 211B.04, subdivision 2. Specifically, the disclaimers did not include the correct participants in some cases, did not include an address, and did not include the independent expenditure language.

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

Conclusions of Law

1. Faith in Minnesota violated Minnesota Statutes section 211B.04, subdivision 2, when the association prepared and disseminated multiple independent expenditure advertisements via Facebook that did not include a disclaimer substantially in the form required by that provision.
2. The Faith in Minnesota Fund received an in-kind contribution with a fair market value of \$15,200 from Faith in Minnesota, consisting of the costs to produce the video and graphics that were used in independent expenditure advertisements disseminated via the Greater Than Fear Facebook page. The Faith in Minnesota Fund made in-kind independent expenditures totaling the same amount, which should have been disclosed on the Faith in Minnesota Fund's 2018 year-end report of receipts and expenditures pursuant to Minnesota Statutes section 10A.20, subdivision 3.

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

Order

1. A civil penalty of \$6,000 is imposed against Faith in Minnesota pursuant to Minnesota Statutes section 10A.34, subdivision 4, for its violations of the disclaimer requirement in Minnesota Statutes section 211B.04, subdivision 2.
2. Faith in Minnesota is directed to forward payment of the civil penalty to the Board, by check or money order payable to the State of Minnesota, within 30 days of the date of this order.
3. The Faith in Minnesota Fund must file, within ten days of the date of this order, an amended 2018 year-end report of receipts and expenditures that includes an in-kind contribution of \$15,200 from Faith in Minnesota consisting of the value of the video and graphics, as well as additional in-kind independent expenditures totaling \$15,200 to account for the use of the video and graphics in independent expenditure advertisements. The \$14,000 spent on the video must be reported as a single in-kind independent expenditure supporting Tim Walz for Governor. Of the \$1,200 paid for the graphics utilized in independent expenditure communications, the Faith in Minnesota Fund must report two in-kind independent expenditures of \$400 each supporting Tim Walz for Governor and Keith Ellison for Attorney General, and should divide the remaining \$400 equally between the 18 candidates for state representative identified in those advertisements. If the Faith in Minnesota Fund exceeded the \$200 itemization threshold with respect to independent expenditures made in support of any candidate, the independent expenditures supporting that candidate must be itemized.
4. If Faith in Minnesota 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.
5. 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.

/s/ Margaret Leppik
Margaret Leppik, Chair
Campaign Finance and Public Disclosure Board

Date: November 6, 2019