

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

**PROBABLE CAUSE
DETERMINATION**

IN THE MATTER OF THE COMPLAINT OF NEIL A. SHAH, M.D., REGARDING THE MINNESOTA
DEMOCRATIC-FARMER-LABOR PARTY

On October 20, 2022, the Campaign Finance and Public Disclosure Board received a complaint submitted by Dr. Neil Shah regarding the Minnesota Democratic-Farmer-Labor Party (Minnesota DFL). The Minnesota DFL is a major political party and its state central committee is the Minnesota DFL State Central Committee, Board registration number 20003.

The complaint alleges that during the 2021-2022 election cycle segment the Minnesota DFL provided voter lists “including the names, addresses, e-mail addresses, and telephone numbers of thousands of Minnesota voters” to 64 candidates for state senator and 129 candidates for state representative. The complaint asserts that those lists were provided via a database known as the Voter Action Network (VAN). The complaint states that the Minnesota DFL provided VAN access to candidates for state senator for a flat fee of \$800 and to candidates for state representative for a flat fee of \$400. The complaint includes a copy of page 19 of the 2022 pre-primary report of receipts and expenditures of the Minnesota DFL State Central Committee, which reflects that the Minnesota DFL was paid \$800 each by the principal campaign committees of two candidates for state senator, and \$400 each by the principal campaign committees of five candidates for state representative, for “VAN Access.” The pricing reflected on that page is consistent with the remainder of the report.

The complaint alleges that VAN access was provided “at a cost far below market value, resulting in an in-kind campaign donation” to each recipient candidate. The complaint includes an invoice for a product sold by i360, LLC, known as its base plan, which includes voter information for a monthly fee of \$300. The complaint asserts that the \$300 monthly fee reflected in the invoice represents the cost of “full access to the names and addresses of the people occupying the population of a Minnesota Senate,” apparently referring to residents of a single state senate district. The complaint also includes an email from the executive director of the Republican Party of Minnesota, indicating that the Republican Party of Minnesota’s voter data is valued at \$0.13 “per record” when sold to a candidate who does not have a valid user agreement with the party and who does not share enhanced records with the party.

The complaint alleges that the Minnesota DFL did not report making in-kind contributions to its legislative candidates consisting of the alleged difference between the fair market value of the VAN access provided to each candidate and the amount paid by each candidate’s principal campaign committee. The Board’s records show that the Minnesota DFL State Central Committee has reported making only one in-kind contribution to a candidate during the period from January 1, 2021, through October 24, 2022, and that contribution was unrelated to VAN access. The complaint likewise alleges that none of the DFL legislative candidates reported

receiving an in-kind contribution from the Minnesota DFL consisting of VAN access. Board records reflect that only one candidate has reported an itemized in-kind contribution from the Minnesota DFL State Central Committee during the period from January 1, 2021, through October 24, 2022, and that contribution was unrelated to VAN access and was not received by a legislative candidate.

On November 2, 2022, the Board's vice chair determined that the complaint states a prima facie violation of the reporting requirements in Minnesota Statutes section 10A.20, subdivision 3, by the Minnesota DFL State Central Committee. The Board's vice chair determined that the complaint does not state a prima facie violation of Minnesota Statutes section 10A.27, subdivision 2, because it does not allege that any specific principal campaign committee exceeded the aggregate political party and dissolving principal campaign committee contribution limit. The Board's vice chair determined that the Minnesota DFL State Central Committee is not subject to a civil penalty under Minnesota Statutes section 10A.28, subdivision 2, based on the facts alleged in the complaint, because it does not contain evidence that the Minnesota DFL made contributions to any candidate that facially exceeded that limit. The Board's vice chair also determined that the complaint does not state a prima facie violation of Minnesota Statutes section 10A.025, subdivision 2, because it does not allege that any individual signed a report or statement knowing that it was false or omitted required information, and does not allege that any individual knowingly providing false or incomplete information to a treasurer.

On November 23, 2022, the Board received a written response to the complaint from the Minnesota DFL's legal counsel. The Minnesota DFL cited Advisory Opinion 408, which states that when determining the fair market value of an in-kind contribution, a reasonable method must be used and "[a] method is reasonable if it takes into account markets and other relevant factors. A committee valuing a transaction must be able to explain its method of valuation and show why the method was reasonable."¹

The Minnesota DFL argued that its method is reasonable and explained that when determining the value of VAN access, it has long used a formula "designed to capture the actual cost of the data to the Party and to divide that cost among the campaigns using the data." The formula calculates the cost of the data per voter by adding together costs related to two Minnesota DFL employees who administer the VAN system, and costs related to purchasing data and software licenses used in the VAN system, then dividing that total by the product of the number of voter records multiplied by the average number of candidates appearing on each ballot who have VAN access. The Minnesota DFL stated that the formula yielded a base price of 1.5 cents per voter record for the 2021-2022 election cycle segment. The Minnesota DFL said that the value of VAN access for a legislative candidate was calculated by multiplying the base price of 1.5 cents by the number of voters within the database, 3,550,000, and then dividing that total of 5,325,000 by the number of districts of the same kind depending on whether the candidate is a candidate for state senator or for state representative. That calculation yields a value of \$794.78 for a candidate for state senator and \$397.39 for a candidate for state representative.

¹ [Advisory Opinion 408 \(May 4, 2010\)](#), at 3.

Those amounts were rounded up and the Minnesota DFL charged candidates for state senator and candidates for state representative \$800 and \$400, respectively, for VAN access during the 2021-2022 election cycle segment.

The Minnesota DFL explained that candidates only have VAN access during their campaign, therefore they rent the data rather than purchasing it outright. The Minnesota DFL explained that VAN access is available only to candidates who have signed a user agreement requiring them “to update the VAN with data they collect about voters on the campaign trail, and thus, candidates put value back into the system.” The Minnesota DFL argued that the price it charges for VAN access is consistent with prices charged by other state Democratic parties. For example, the Minnesota DFL asserts that the “Oklahoma Democratic Party charged state senate and house candidates \$600 and \$350, respectively, for access to the VAN for 12 months” while the “Delaware Democratic Party charged state senate and house candidates \$350 and \$250, respectively, for access to the VAN for 12 months.”²

The Minnesota DFL also stated that “any registered voter in Minnesota may purchase a list of registered voters from the Minnesota Secretary of State for \$46” and while that list is “not as detailed as the VAN, which includes information regarding the voters’ modeled party affiliation . . . and are not presented in a user-friendly and easily accessible format like the VAN, the fact remains that the base underlying data regarding voters and their voting history is readily available at a low cost.”³

The Minnesota DFL argued that the evidence included with the complaint is not indicative of the fair market value of VAN access. The Minnesota DFL stated that the i360 base plan referenced in the complaint includes access to “highly sophisticated data gathering from multiple online sources, such as social media, credit bureaus, consumer data, and general ‘web presence’ to create detailed profiles of potential voters” and “access to data modeling, voter contact tools, and other advanced features to target voters.”⁴ The Minnesota DFL asserted that “[t]his type of product, which is owned by a for-profit enterprise, is certainly far more sophisticated than the VAN, which is simply a list of voter names, addresses, phone numbers, voting history, and projected party affiliation based on candidates’ interactions with the voters while campaigning and other information maintained by the Party (e.g., has the voter volunteered with the Party in the past).”

The Minnesota DFL stated that the email included with the complaint from the executive director of the Republican Party of Minnesota to an unknown candidate “does not establish the fair market value of a voter record.” The Minnesota DFL noted that the price of 13 cents per voter record stated in the email is the cost of buying the data without a current user agreement with

² See okdemocrats.org/van; www.deldems.org/votebuilder.

³ See [Minn. Stat. § 201.091, subd. 4, 5](#); www.sos.state.mn.us/election-administration-campaigns/data-maps/registered-voter-list-requests.

⁴ See www.i-360.com/political-products/i360-voter-consumer-data; www.i-360.com/political-products/plans-pricing; Mike Allen and Kenneth P. Vogel, *Inside the Koch data mine*, Politico (Dec. 8, 2014), www.politico.com/story/2014/12/koch-brothers-rnc-113359; Philip Elliott, *Meet the Koch Brothers’ Data Guru*, Time (July 31, 2016), time.com/4432432/koch-brothers-voter-data.

the Republican Party of Minnesota and “rather than reflecting the true fair market value of accessing the data, the 13 cents appears to be intended to penalize the candidate for retaining the data.”

The Board considered this matter at its meeting on December 15, 2022. David Zoll appeared before the Board on behalf of the Minnesota DFL.

Analysis

When the Board chair or the chair’s designee makes a finding that a complaint raises a prima facie violation, the full Board then must determine whether probable cause exists to believe an alleged violation that warrants an investigation has occurred. Minn. Stat. § 10A.022, subd. 3 (d). A probable cause determination is not a complete examination of the evidence on both sides of the issue. Rather, it is a determination of whether a complaint raises sufficient questions of fact which, if true, would result in the finding of a violation.

If the Board finds that probable cause exists, the Board is required to determine whether the alleged violation warrants a formal investigation, considering the type and magnitude of the alleged violation, the knowledge of the respondent, any benefit to be gained from a formal investigation, the availability of Board resources, and whether the violation has been remedied. Minn. R. 4525.0210, subp. 5. If the Board finds that probable cause exists but does not order a formal investigation, the Board is required to either dismiss the complaint or order a staff review. Minn. R. 4525.0210, subp. 6.

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. An approved expenditure is a donation in kind.” A donation in kind is commonly referred to as an in-kind contribution.

“A donation in kind must be disclosed at its fair market value.” Minn. Stat. § 10A.20, subd. 3 (c). “‘Fair market value’ means the amount that an individual would pay to purchase the same or similar service or item on the open market.” Minn. R. 4503.0100, subp. 3a. If the amount paid for goods or services is less than fair market value, the difference between what was paid and what the goods or services would have cost on the open market represents a contribution to the committee that received the goods or services. Findings and Order in the Matter of a Complaint regarding the Carla Nelson Volunteer Committee (Sept. 15, 2006), at 3.⁵ “If a comparable service is available from other vendors at the same or lower cost there is reason to believe that the cost paid by a candidate’s committee for a service is within the definition of fair market value.” *Ibid.* Under Minnesota Statutes section 10A.20, subdivision 3, a party unit is required to

⁵ cfb.mn.gov/pdf/bdactions/914_Findings.pdf

disclose all contributions made, except for in-kind contributions of \$20 or less, and contributions in excess of \$200 per recipient within a calendar year must be itemized.

The Minnesota DFL has provided the formula it uses to determine the amount charged to candidates for state senator and state representative for VAN access. The formula accounts for the costs the Minnesota DFL incurs to acquire and maintain the data, the approximate number of voter records that pertain to each district, and the number of candidates with overlapping districts who will pay to access the same data. That formula is designed to allow the Minnesota DFL to recover its costs but not profit from the sale of VAN access.

The Minnesota DFL has demonstrated that the data and software included with the VAN access it has provided to Minnesota DFL legislative candidates is not comparable to the data and software included with i360's base plan subscription. Data provided by i360 includes substantially more data points and includes data drawn from more varied sources. Also, i360's base plan subscription includes access to software tools such as advanced analytics that are not included with VAN access.

As the Minnesota DFL has argued, the email included with the complaint valuing data held by the Republican Party of Minnesota at 13 cents per voter record is not a sound basis for valuing what Minnesota DFL legislative candidates purchase when obtaining VAN access. That figure represents the cost of buying data outright without a user agreement and without any responsibility to add value to the database.

The Minnesota DFL has demonstrated that what its legislative candidates paid for VAN access is similar to what state legislative candidates in other states were charged by their state Democratic parties for access to comparable data and software.

The Minnesota DFL explained that those granted access to the VAN list are contractually required to add data they collect to the database, resulting in a reciprocal exchange of value. The valuation of access to such a database maintained by a state party is somewhat unique because the candidates who are afforded access are contractually required to add value to the database by recording their contacts with voters and enhancing records stored within the database. As a result, political parties may receive compensation not only in the form of money, but also in the form of more robust and accurate data.

Considering the alleged facts and the arguments in the record, there is not probable cause to believe that the Minnesota DFL made an in-kind contribution to any state legislative candidate during the 2021-2022 election cycle segment consisting of the unpaid value of VAN access. Because there is not probable cause to believe that in-kind contributions were made as alleged in the complaint, there is not probable cause to believe that the Minnesota DFL State Central Committee failed to report the alleged contributions.

Order:

1. The allegation that the Minnesota DFL State Central Committee failed to report in-kind contributions made to state legislative candidates during the 2021-2022 election cycle segment in violation of Minnesota Statutes section 10A.20, subdivision 3, is dismissed without prejudice because there is not probable cause to believe that this violation occurred.



Faris Rashid, Chair
Campaign Finance and Public Disclosure Board

Date: 12/15/22