

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

**PROBABLE CAUSE
DETERMINATION**

IN THE MATTER OF THE COMPLAINT OF CHRISTINE FISCHER REGARDING THE WESTROM (TORREY)
FOR SENATE COMMITTEE

On November 9, 2022, the Campaign Finance and Public Disclosure Board received a complaint submitted by Christine Fischer regarding the Westrom (Torrey) for Senate Committee.¹ The Westrom (Torrey) for Senate Committee is the principal campaign committee of Senator Torrey Westrom, a candidate for Minnesota Senate District 12. The complaint refers to the Westrom committee's 2022 pre-general report of receipts and expenditures, which included a \$1,000 payment to Matthew Franzese for legal services with the explanation "harassment restraining order for protection of candidates family." The expense was classified as a noncampaign disbursement. The complaint alleges that the payment was for "a personal expense of Senator Westrom's wife and is not permitted under Minnesota campaign finance law." On November 29, 2022, the Board chair determined that the complaint states a prima facie violation of Minnesota Statutes section 211B.12.

The Westrom committee requested that further consideration of this matter be postponed to afford adequate time to prepare a response. On December 15, 2022, the Board voted to lay this matter over until its meeting scheduled for March 2023. On February 15, 2023, Senator Westrom provided a written response. Senator Westrom asserted that the \$1,000 expense was "related to the conduct of election campaigns" and was also a noncampaign disbursement for legal services or for security expenses for a candidate, thus the payment was permitted by Minnesota Statutes section 211B.12.

Copies of an order and memorandum issued by the Douglas County District Court on October 19, 2022, were included with both the complaint and the response of the Westrom committee. The memorandum states that Anna Westrom, Senator Westrom's spouse, filed petitions for harassment restraining orders (HROs) on August 22, 2022, and an evidentiary hearing was held on September 19, 2022. The court granted in part the relief sought by Ms. Westrom and issued HROs against Ashley Jo Klingbeil and Ms. Fischer.² Ms. Klingbeil was a candidate for Minnesota Senate District 12 and was one of Senator Westrom's opponents in the 2022 general election. Ms. Fischer served as the treasurer and chair of Ms. Klingbeil's principal campaign committee, Klingbeil (Ashley) for Senate.³ The memorandum issued by the

¹ Reports and other information regarding the Westrom committee is available at cfb.mn.gov/reports-and-data/viewers/campaign-finance/candidates/17373.

² The order and memorandum issued by Judge Timothy M. Churchwell addressed two related actions captioned Westrom v. Klingbeil, No. 21-CV-22-1503, and Westrom v. Fischer, No. 21-CV-22-1504.

³ Reports and other information regarding the Klingbeil committee is available at cfb.mn.gov/reports-and-data/viewers/campaign-finance/candidates/18975.

Douglas County District Court recounts the events that preceded the issuance of the HROs and is summarized below.

The memorandum states that after redistricting in early 2022, Senator Westrom and Ms. Westrom moved from Elbow Lake to an address near Lake Mary, to reside within the redrawn Senate District 12. Ms. Klingbeil and Ms. Fischer believed that Senator Westrom had not established residency within the redrawn district as of six months prior to the 2022 general election and therefore was not eligible to run for the office of state senator in that district. See Minn. Stat. § 204B.06, subd. 4a (4). In July and early August of 2022, Ms. Klingbeil and Ms. Fischer took photographs and video of each residence. The memorandum states that in July

Fischer admittedly entered upon the Lake Mary premises. Respondent Fischer did not have permission to enter upon the property. Respondent Fischer looked through windows and tried to open a door. Respondent Fischer admittedly entered upon the Lake Mary property several other times without permission. While upon the premises, Respondent Fischer took photographs and video footage of the interior of the Lake Mary residence.

The memorandum states that Ms. Klingbeil went to the Westrom's Elbow Lake property several times, and on one occasion in early August took video footage while the minor son of Senator Westrom and Ms. Westrom was outside. The recorded video footage, including video depicting the minor son of Senator Westrom and Ms. Westrom, was published on the internet. Ms. Fischer also "posted comments on Facebook about the children's bus stop."

On August 8, 2022, Ms. Fischer and Ms. Klingbeil filed a petition with the Minnesota Supreme Court asking that Senator Westrom's name be removed from the general election ballot on the basis of his residency.⁴ The Court appointed Court of Appeals Judge Diane B. Bratvold to serve as referee and make factual determinations. On August 30, 2022, Judge Bratvold issued findings of fact and conclusions of law concluding that "Westrom has resided at the Lake Mary property since May 7, 2022, . . . [t]hus, Westrom has satisfied the residency requirement to run for senator in Senate District 12."⁵ On September 27, 2022, the Minnesota Supreme Court denied the petition filed by Ms. Fischer and Ms. Klingbeil.⁶

After considering the HRO petitions, the Douglas County District Court barred Ms. Klingbeil and Ms. Fischer from entering upon the premises of the Lake Mary property or the Elbow Lake property, and barred them from posting photographs or video of Ms. Westrom or her children on the internet, until December 15, 2022. Within his response to the complaint filed with the Board, Senator Westrom said that his principal campaign committee initially contacted the Grant and Douglas County Sheriff's offices to complain about trespassing by Ms. Klingbeil and Ms. Fischer. Senator Westrom stated that notices were then issued warning Ms. Klingbeil and Ms. Fischer to refrain from entering the Lake Mary and Elbow Lake properties. Senator

⁴ See [Minnesota Statutes section 204B.44](#). The action was captioned *Fischer v. Simon*, No. A22-1112.

⁵ The referee's findings are available via P-MACS at macsnc.courts.state.mn.us/ctrack/document.do?document=7814fc38b53b42cfbb4a505a6ed44d96e9e51d1c78a2905d7fdd2da41e9dd14c.

⁶ *Fischer v. Simon*, 980 N.W.2d 142 (Minn. 2022).

Westrom said that the Douglas County Sheriff's Office also suggested seeking an HRO, and the committee then sought legal advice from Mr. Franzese. Senator Westrom explained that both he and Ms. Westrom met with Mr. Franzese, who explained that "one of the best ways to stop the politically motivated harassment was to prevail on an HRO for Anna Westrom and the Westrom children, as the order would then extend to the family home of the candidate, thereby protecting the Committee and volunteers."

The Douglas County District Court stated that

Without any further circumstances or context, it is intrusive and violative of a family's sense of privacy. Here, the effect is magnified when the Court considers Respondent's admission they intended to post the materials online to create a groundswell of public review regarding Petitioner's spouse, the children's father. Posting the information online was intended to do more than inform the public: it was intended to generate public criticism. While posting information intended to draw public and political criticism may be appropriate if directed solely at a public figure, here Senator Westrom, it becomes indefensible to direct the content at family members with the intent of creating public criticism or further harassment.

Senator Westrom asserted that Ms. Klingbeil and Ms. Fischer engaged in the conduct referenced in the HRO petitions to try to help Ms. Klingbeil win the election for Senate District 12, so that conduct and the Westrom committee's response was "related to the conduct of election campaigns" within the meaning of Minnesota Statutes section 211B.12. Senator Westrom referred to a Grant County Herald article published in August 2022, in which Ms. Klingbeil stated that Senator Westrom was not eligible to run for office in District 12.⁷

Senator Westrom argued that legal expenses related to the HRO petitions were also permissible as a noncampaign disbursement for legal services. Senator Westrom cited Advisory Opinion 328 in support of that contention.⁸ Senator Westrom said that the conduct of Ms. Klingbeil and Ms. Fischer directly related to his viability as a candidate. Senator Westrom explained that they sought to have his name removed from the general election ballot and also sought to sow negative public opinion, which had the potential to affect his public service and the perception of his integrity as a candidate. Senator Westrom also stated that he called and spoke with Board staff on October 28, 2022, and after explaining the situation was told that "it should be an allowable expense labeled as a" noncampaign disbursement for legal services.

Lastly, Senator Westrom argued that legal expenses related to the HRO petitions were permissible as a noncampaign disbursement for security expenses for a candidate. In support of that contention Senator Westrom quoted Senator Mark Koran's explanation of the new noncampaign disbursement category during a Senate State Government Finance and Policy and Elections Committee hearing held in 2021, prior to the enactment of legislation creating the category for security expenses. Senator Koran stated that the new category would deal with

⁷ *Klingbeil claims Westrom doesn't live in new District 12*, Grant County Herald, Aug. 12, 2022, grantcountyherald.com/news/klingbeil-claims-westrom-doesnt-live-in-new-district-12.

⁸ See *Advisory Opinion 328* (June 26, 2001).

“changes in elected officials and candidates seeking office around safety and security for their home and their persons, as well as their financial protection.”⁹

The Board considered this matter at its meeting on March 1, 2023. Ms. Fischer appeared before the Board via Webex.

Analysis

When the Board chair or their 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 respondents, 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 211B.12 provides, in relevant part, as follows:

Use of money collected for political purposes is prohibited unless the use is reasonably related to the conduct of election campaigns, or is a noncampaign disbursement as defined in section 10A.01, subdivision 26. The following are permitted expenditures when made for political purposes:

(1) salaries, wages, and fees;

...

(7) other expenses, not included in clauses (1) to (6), that are reasonably related to the conduct of election campaigns. In addition, expenditures made for the purpose of providing information to constituents, whether or not related to the conduct of an election, are permitted expenses. Money collected for political purposes and assets of a political committee or political fund may not be converted to personal use.

Minnesota Statutes section 10A.01, subdivision 26, paragraph (a), provides a list of purchases and payments that, when made by a principal campaign committee, are noncampaign disbursements, including those listed in clauses (1) and (28):

⁹ *Hearing on S.F. 603 Before the S. State Government Finance and Policy and Elections Comm.*, 92nd Minn. Leg., 2021 Reg. Sess. (Feb. 16, 2021), at 51:30, available at www.lrl.mn.gov/media/file?mtgid=1012552. Identical language appeared within [S.F. 603](#), of which Senator Koran was the lead author, and [S.F. 1255](#), of which Senator Mary Kiffmeyer was the lead author. Similar language was later included in the omnibus state government finance bill, [H.F. 1952](#), which was enacted into law.

(1) payment for accounting and legal services;

...
(28) during a period starting January 1 in the year following a general election and ending on December 31 of the year of general election, total payments of up to \$3,000 for security expenses for a candidate, including home security hardware, maintenance of home security hardware, identity theft monitoring services, and credit monitoring services.

A noncampaign disbursement is not a campaign expenditure. Minn. Stat. § 10A.01, subd. 9. The Board “must determine whether an activity involves a noncampaign disbursement within the meaning of this subdivision.” Minn. Stat. § 10A.01, subd. 26 (b). “Itemization of an expense which is classified as a noncampaign disbursement must include sufficient information to justify the classification.” Minn. R. 4503.0900, subp. 3. Because noncampaign disbursements may divert to other purposes money donated to promote the nomination or election of a candidate, noncampaign disbursement categories are construed narrowly.¹⁰

The Board has not made a determination in an enforcement matter or issued an advisory opinion regarding the noncampaign disbursement category for security expenses created in 2021. The statute text includes a list of permissible security expenses and there is no indication that the list is exhaustive. The word security is not defined within Minnesota Statutes Chapter 10A. It is commonly defined as “[f]reedom from danger or risk; safety,”¹¹ or as “the quality or state of being secure,” such as “freedom from danger” or “freedom from fear or anxiety.”¹²

Senator Westrom resides with Ms. Westrom. The HROs obtained by Mr. Franzese barred Ms. Klingbeil and Ms. Fischer from entering upon the Lake Mary and Elbow Lake properties. The HROs were issued in large part due to Ms. Fischer physically entering the Lake Mary property on multiple occasions without permission. Because the services provided by Mr. Franzese were intended to help secure the home of Senator Westrom and his family against intrusion, the amount paid by the Westrom committee was for security expenses of a candidate within the meaning of Minnesota Statutes section 10A.01, subdivision 26, paragraph (a), clause (28). The 2022 pre-general and year-end reports of the Westrom committee explained that the expense was for obtaining an HRO against an opponent to protect the security of the candidate’s family, which is sufficient to justify the classification of the expense as a noncampaign disbursement for security expenses.

The Board has previously stated that a principal campaign committee may not pay for legal fees unless the legal services provided benefit the committee.¹³ Prior to the Board having jurisdiction

¹⁰ See, e.g., [Advisory Opinion 318 \(Oct. 13, 1999\)](#); [Findings, Conclusions, and Order in the Matter of the Joe Atkins for State Representative Committee \(May 27, 2016\)](#); [Findings, Conclusions, and Order in the Matter of the Joe Hoppe Volunteer Committee \(May 27, 2016\)](#).

¹¹ *Black's Law Dictionary* (11th ed. 2019).

¹² *Security*, Merriam-Webster Dictionary, www.merriam-webster.com/dictionary/security.

¹³ [Findings, Conclusions, and Order in the Matter of the complaint of Steve Drazkowski regarding the Neighbors for Ilhan \(Omar\) committee \(June 6, 2019\)](#).

over Minnesota Statutes section 211B.12, it issued advisory opinions stating that the cost of civil litigation that is not related to a candidate's election or to the candidate's principal campaign committee may not be classified as a noncampaign disbursement.¹⁴ In one instance in which a candidate incurred legal fees that were necessary to defend the candidate against allegations regarding the candidate's conduct while serving in office, that "had the potential to affect the future service of the candidate as an elected official and the public perception of the integrity of the candidate," the Board concluded that the candidate's principal campaign committee could pay for the legal fees as a noncampaign disbursement.¹⁵ However, the Board cautioned that a principal campaign committee may not pay "for legal services of a candidate if the services were for the personal benefit of the candidate."

In this instance the payment referenced in the complaint was for security expenses for a candidate, and was thereby a permitted noncampaign disbursement. Therefore, the Board need not decide whether the same expense was alternatively permissible as a noncampaign disbursement for legal services or as some other type of expenditure permitted by Minnesota Statutes section 211B.12.

Order:

1. The allegation that the Westrom (Torrey) for Senate Committee used money in a manner prohibited by Minnesota Statutes section 211B.12 is dismissed without prejudice because there is not probable cause to believe that this violation occurred.

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

Date: March 1, 2023

¹⁴ [Advisory Opinion 318 \(Oct. 13, 1999\)](#); [Advisory Opinion 314 \(Oct. 13, 1999\)](#).

¹⁵ [Advisory Opinion 328 \(June 26, 2001\)](#).