



Nonprofit Alert: Disclaimer Requirements Apply to All Forms of Non-Media Communications Disseminated for the Purpose of Influencing an Election

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Disclaimer Requirements Apply to All Forms of Non-Media Communications Disseminated for the Purpose of Influencing an Election

By Brian Dillon & Sarah Duniway

The Minnesota Campaign Finance and Public Disclosure Board (Board) recently issued a memorandum^[1] that serves as an important reminder for all nonprofit organizations during this election season. In its memorandum, the Board confirmed that non-media communications disseminated for the purpose of influencing an election in Minnesota generally constitute "campaign material" that must include a disclaimer identifying the person or entity who prepared, disseminated, and paid for the communication. The Board also signaled that it will broadly construe the statutes that trigger the disclaimer requirement. For example, a communication could be found to have an election-influencing purpose even if it is distributed at no cost to the sponsor, contains no express advocacy, and does not solicit votes or contributions. In light of the Board's memorandum, nonprofit organizations that address election or campaign related issues on web or Facebook pages, or in emails, blog posts or other forms of social media, should carefully review the content of those communications and make informed decisions about whether a disclaimer is required.

The Board's memorandum follows on the heels of a recent opinion issued by the Minnesota Office of Administrative Hearings. In *Wunderlich v. Jude*, OAH 60-0325-31602, a three-judge panel determined that a Facebook page created by a candidate for county attorney constituted "campaign material" that required a disclaimer. Because the candidate did not include a disclaimer on the Facebook page, the panel recommended that a civil penalty be assessed.

Under Minnesota law, "campaign material" is broadly defined to include "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." Minn. Stat. § 211B.01, subd. 2. If a publication meets this definition, it must include the customary "prepared and paid for by" disclaimer required under Minn. Stat.



§ 211B.04(a) and (b). The general purpose of this disclaimer is to identify who prepared, disseminated and paid for the communication, so that the general public knows who is responsible for its content.

In *Wunderlich*, the panel found the Facebook page at issue was disseminated for the purpose of influencing the candidate's election, met the definition of "campaign material," and therefore required a disclaimer. In support of its conclusion, the panel noted that the Facebook page generally promoted the candidate's accomplishments and re-election campaign, and linked to favorable newspaper articles about the candidate and initiatives she had undertaken while county attorney. These findings were determinative, even though the candidate did not pay to create the page, did not expressly advocate for herself on the page, did not link to her campaign website on the page, and did not solicit votes or contributions on the page.

The *Wunderlich* case and the Board's memorandum serve as important reminders for all nonprofit organizations during this election season. Before putting campaign or election related material into the public domain, such organizations should carefully review the content of their communications and determine whether they could be found to have an election-influencing purpose. If they have such a purpose, the communication must include the customary disclaimer. And, of course, a nonprofit must ensure that any such communications are consistent with any limitations that may apply arising from its tax-exempt status, particularly if it is a 501(c)(3) organization.

If you have questions about this or any other aspect of Minnesota campaign finance law, please feel free to contact Brian Dillon or Sarah Duniway.

[1] The memorandum is available at www.cfboard.state.mn.us/issues/Disclaimers_on_social_media.pdf.