

MINNESOTA CAMPAIGN FINANCE  
AND PUBLIC DISCLOSURE BOARD

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In the Matter of the (Tim) Pawlenty  
for Governor Committee, 15475

**CONCILIATION AGREEMENT**

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THIS CONCILIATION AGREEMENT is entered into as of this 21<sup>st</sup> day of October, 2002, between the Campaign Finance and Public Disclosure Board (Campaign Board), a Minnesota state agency, organized and existing in accordance with Minn. Stat. § 10A.02, and following, on the one hand; and the Pawlenty for Governor Committee (Pawlenty Committee), a principal campaign committee registered with the Campaign Board in accordance with Minn. Stat. § 10A.105, and Tim Pawlenty (Pawlenty), a candidate for governor, on the other hand.

**RECITALS**

WHEREAS, Nancy Jorgenson, Chair of the Independence Party, filed a complaint (Jorgenson Complaint) against the Pawlenty Committee and the Republican Party of Minnesota (RPM) on September 20, 2002. The Jorgenson Complaint asserted, among other things, that a series of RPM television ads that began airing on September 9, 2002 (TV ads), were not independent expenditures within the meaning of Minn. Stat. § 10A.01, subd. 18 (2002) and, hence, were a violation of Minn. Stat. § 10A.27, subd. 1 (a) (1) and possibly Minn. Stat. § 10A.25, subd. 2; and

WHEREAS, the Campaign Board sent a confidential letter dated September 23, 2002, to the Pawlenty Committee stating that the Campaign Board was conducting an investigation to determine whether the transactions described in the Jorgenson Complaint met the definition of

independent expenditures under Minn. Stat. § 10A.01, subd. 18 or if they constituted a violation of Minn. Stat. § 10A.17, subd. 4; and

WHEREAS, on October 3, 2002, the Campaign Board conducted a closed session in which the Pawlenty Committee presented testimony to the Campaign Board. Subsequently, depositions were taken of Randall Skoglund and Patrick McCarthy; and

WHEREAS, the Pawlenty Committee presented legal arguments asserting, among other things: that the TV ads aired by the RPM are independent expenditures and protected free speech; that no actual coordination of the expenditures occurred between the Pawlenty Committee and the RPM; that upon discovery that McCarthy had sold video materials to Skoglund, the Pawlenty Committee expressed surprise to McCarthy and instructed him not to do it again; and, therefore, the Jorgenson Complaint should be dismissed for lack of probable cause.

WHEREAS, on October 10, 2002, the Campaign Board released its document entitled "FINDINGS IN THE MATTER OF A COMPLAINT REGARDING THE TIM PAWLENTY FOR GOVERNOR CAMPAIGN AND THE REPUBLICAN PARTY OF MINNESOTA (Campaign Board Findings)." The Campaign Board Findings concluded, among other things, that probable cause existed to believe that the Pawlenty Committee acquiesced in and thereby ratified coordination by its agent, that the TV ads were therefore not an independent expense, and issued an order directing the Pawlenty Committee to report the cost of expenditures referenced in the Jorgenson Complaint as in-kind contributions and in-kind campaign expenditures on behalf of the Pawlenty Committee and directing its staff to enter into the mandatory conciliation process with the Pawlenty Committee; and

WHEREAS, by letter dated October 10, 2002, Campaign Board staff notified the Pawlenty Committee that it was initiating the conciliation process required under Minn. Stat. § 10A.28, subd. 3 (2002); and

WHEREAS, the Pawlenty Committee voluntarily agreed to participate in the conciliation process and requested a meeting with the Campaign Board to facilitate conciliation; and

WHEREAS, the Campaign Board met with the Pawlenty Committee, and Tim Pawlenty and their attorney on October 14, 2002, to attempt conciliation of its order, and to seek resolution of the disputed claims between the parties; and

WHEREAS, the Republican Party of Minnesota provided the Campaign Board with evidence that the cost of the two TV ads in question was \$669,066; and

WHEREAS, the Pawlenty Committee presented evidence that a third TV ad known as "Taxman and Roger" was not a coordinated expenditure; and

WHEREAS, at the end of the conciliation process, the parties to this Agreement reached an agreement to resolve the order and disputed claims between the parties.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, and other good and valuable consideration, the parties agree as follows:

1. The Pawlenty Committee agrees to pay a civil penalty of \$100,000.00 to be paid to the Campaign Board and deposited in the General Fund of the State. The Campaign Board acknowledges receipt of the fine from the Pawlenty Committee. It is agreed that the civil penalty is deemed a noncampaign expenditure and shall not be assessed against Tim Pawlenty individually.

2. The Pawlenty Committee shall report on the pre-general election Report of Receipts and Expenditures in-kind contributions totaling \$500,000.00 from the RPM which it

will not return to the RPM. The Pawlenty Committee shall report in-kind campaign expenditures of \$500,000.00 for the TV ads referenced in the Jorgenson Complaint. It is agreed that the TV ad which is entitled "Roger and Taxman" is an independent expenditure and the Pawlenty Committee is not required to report it.

3. The Pawlenty Committee agrees to use its best efforts to retrieve any and all materials created for or on behalf of the Pawlenty Committee and transferred by Patrick McCarthy to Randall Skoglund on August 27, 2002.

4. It is agreed by the parties that this Conciliation Agreement shall be a bar to any civil proceeding under Minn. Stat. § 10A.28, subs. 3 and 4. It is further agreed that the Campaign Board shall not refer this matter to a county attorney for criminal prosecution.

5. It is agreed that the Pawlenty Committee and Tim Pawlenty waive their right to appeal the Campaign Board's decision.

6. It is agreed that the Pawlenty Committee and Tim Pawlenty reserve their right in any subsequent proceeding brought by a third party to either assert the Conciliation Agreement as an affirmative defense, and/or raise all defenses asserted in this proceeding.

7. In addition to the provisions of paragraph 4, the parties hereby release and forever discharge each other and their representatives, employees, agents, independent contractors, successors and assigns and all other persons, firms, and corporations from any and all civil liability, actions, causes of action, claims and demands, known and unknown, arising out of or related to: the Jorgenson Complaint; the Campaign Board's investigation thereof; the Campaign Board's Findings; and any conduct by the Pawlenty Committee or Tim Pawlenty regarding the subject of independent expenditures, up to the date of this Agreement. However, the Campaign Board reserves the right to investigate and seek all available remedies for any conduct occurring

after the date of this Conciliation Agreement, or not released in the previous sentence and resulting from or revealed by any report made by the Pawlenty Committee.

8. It is agreed and understood that the agreements of the Pawlenty Committee and Tim Pawlenty in this Conciliation Agreement shall not be construed as an admission of liability and it is agreed by the parties that it is a compromise of disputed claims.

9. It is agreed and understood that the specific terms of this Conciliation Agreement are deemed confidential until executed by the parties hereto. Upon execution of the Agreement by all parties hereto, this Conciliation Agreement shall become a matter of public record, and the statutory requirement of confidentiality shall no longer apply to the Conciliation Agreement in accordance with Minn. Stat. § 10A.02, subd. 11 and Minn. Stat. § 10A.28, subd. 3.

Dated: October 21, 2002

CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD

By: Douglas A. Kelley  
Its: CHAIRMAN

PAWLENTY FOR GOVERNOR COMMITTEE

By: Tim J. A. Conn  
Its: Campaign Manager

[Signature]  
Tim Pawlenty

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