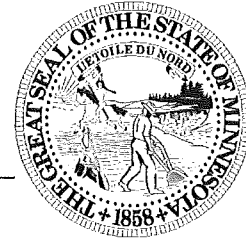


Campaign Finance & Public Disclosure Board



16 SEP 19 AM 9:57

190 Centennial Office Building, 658 Cedar St, St Paul, MN 55155

www.cfboard.state.mn.us

Complaint for Violation of the Campaign Finance and Public Disclosure Act

All information on this form is confidential until a decision is issued by the Board.
A photocopy of the entire complaint, however, will be sent to the respondent.

Information about complaint filer

Name of complaint filer	David Meisinger		
Address	1242 Ottawa Ave	Email address	dtmeisingerdev@yahoo.com
City, state, and zip	West St Paul, MN 55118	Telephone (Daytime)	612.366.1361

Identify person/entity you are complaining about

Name of person/entity being complained about	Patrick Armon for City Council
Address	281 E Arion
City, state, zip	West St Paul, MN 55118
Title of respondent (If applicable)	
Board/Department/Agency/District # (If legislator)	

Signature of person filing complaint

9/19/16

Date

Send completed form to:

Campaign Finance & Public Disclosure Board
190 Centennial Office Building
658 Cedar Street
St. Paul, MN 55155

If you have questions:

Call 651-539-1190, 800-657-3889, or for TTY/TDD communication contact us through the Minnesota Relay Service at 800-627-3529. Board staff may also be reached by email at cf.board@state.mn.us.

This document is available in alternative formats to individuals with disabilities by calling 651-539-1180, 800-657-3889, or through the Minnesota Relay Service at 800-627-3529.

Give the statutory cite to the section of Chapter 10A, Chapter 211B, or Minnesota Rules you believe has been violated:

211B.04

You will find the complete text of Chapter 10A, Chapter 211B, and Minnesota Rules chapters 4501 - 4525 on the Board's website at www.cfboard.state.mn.us.

Nature of complaint

Explain in detail why you believe the respondent has violated the campaign finance and public disclosure laws. Attach an extra sheet of paper if necessary. Attach any documents, materials, minutes, resolutions, or other evidence to support your allegations.

The 'Patrick Armon for City Council' campaign has violated the statute 211B.04(b) by failing to put a disclaimer on campaign material substantially in the form required. The form required was to include an address. The yard signs (Exhibit A) and the Facebook post (Exhibit B) made on September 16, 2016 from Laurie Satrom Armom, (the candidates wife) clearly do not include an address. There are at least two dozens yard signs installed at various properties around Ward 1 that do not have the required disclosure.

Precedent for this being a violation of 211B.04 can be found in Petersen vs. Phillips (Exhibit C) as well as Wunderlich vs. Walsh (Exhibit D).

I ask for an expedited hearing and I ask that Patrick Armon's campaign signs to be removed immediately until such time they include the proper disclaimer.

Minnesota Statutes section 10A.022, subdivision 3, describes the procedures required for investigating complaints. A full description of the complaint process is available on the Board's website.

Briefly, the Board will notify you when it has received your complaint. The Board must send a copy of the complaint to the respondent. Complaints and investigations are confidential. Board members and staff cannot talk about an investigation except as required to carry out the investigation or to take action in the matter. After the Board issues a decision, the record of the investigation is public.

The law requires a complaint to go through two stages before the Board can begin an investigation: a prima facie determination and a probable cause decision. If the complaint does not pass one of the stages, it must be dismissed.

The Board has 10 business days after receiving your complaint to determine whether the complaint is sufficient to allege a prima facie violation of the campaign finance laws. If the Board determines that the complaint does allege a prima facie violation, the Board has 45 days to decide whether probable cause exists to believe a violation that warrants a formal investigation has occurred. Both you and the respondent have the right to be heard on the issue of probable cause before the Board makes this decision. The Board will notify you if the complaint moves to the probable cause stage.

If the Board determines that probable cause does not exist, the Board will dismiss the complaint. If the Board determines that probable cause exists, the Board will start an investigation. The Board will send you monthly updates regarding the status of the investigation. At the end of the investigation, the Board will offer you and the respondent the opportunity to be heard before the Board makes a final decision.

In most cases, the Board will issue findings, conclusions, and an order as its decision. For a spending or contribution limits violation, the Board can enter into a conciliation agreement with the respondent instead of issuing findings, conclusions, and an order. The Board's final decision will be sent to you and posted on the Board's website.

Laurie Satrom Armon

13 hrs

URGENT!!!! Hello small red truck who has been stealing my husband Patrick Armon's yard signs off of Oakdale and Butler. You have stolen at least 10 now, so you don't need to steal any more of them. These signs were paid for by contributors and our supporters are not happy knowing that you are vandalizing their property. While his opponents have been practicing dirty campaigning, Pat has been getting dirty helping cleaning up Thompson Lake. So, if see anyone sees this guy, please get the license plate number and call it in. If the wife isn't happy no one is happy!

<https://www.facebook.com/PatArmonforWSP/?fref=ts>

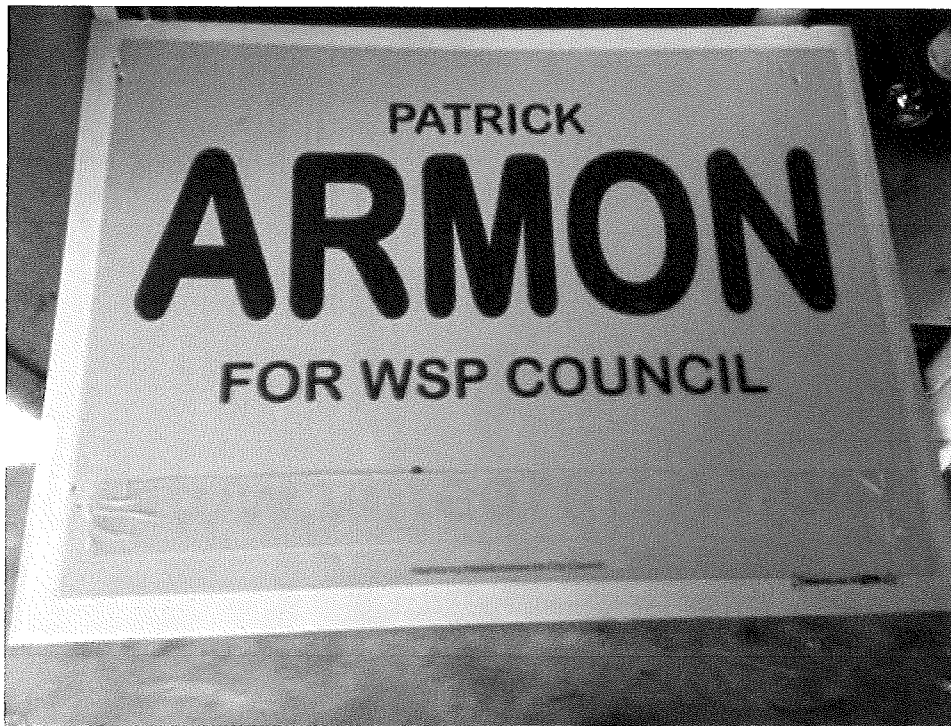


Exhibit A

EXHIBIT B

Dear

Paid for by Patrick Armon for City Council

2014 WL 2156988 (Minn.Off.Admin.Hrgs.)

Office of Administrative Hearings

State of Minnesota

SHARON PETERSEN, COMPLAINANT

v.

LINDA PHILLIPS, RESPONDENT

OAH 60-0325-31334

April 10, 2014

FINDINGS OF FACT, CONCLUSIONS AND ORDER

*1 The above-entitled matter came before a panel of Administrative Law Judges on April 7, 2014. The panel members, James E. LaFave (Presiding Judge), Stacy P. Bouman, and Jeanne M. Cochran reviewed the record created at the probable cause hearing and the submissions of the Parties to determine the appropriate penalty for Respondent's admitted violation of Minn. Stat. § 211B.04. The record closed on April 7, 2013.

The Complainant Sharon Petersen represented herself without counsel.

Robert Suk, Robert G. Suk Law Offices, P.A., represented the Respondent Linda Phillips.

STATEMENT OF THE ISSUES

1. Did the Respondent violate Minn. Stat. § 211B.04(b) by failing to put a disclaimer on campaign material substantially in the form required?
2. If so, what penalty is appropriate?

SUMMARY OF CONCLUSIONS

The Panel concludes that the Complainant has established by a preponderance of the evidence that Respondent Linda Phillips failed to put a disclaimer on campaign materials identifying who prepared and paid for the materials in violation of Minn. Stat. § 211B.04. The Panel concludes further that a civil penalty of \$250 is appropriate.

Based on the record and proceedings herein, the undersigned panel of Administrative Law Judges makes the following:

FINDINGS OF FACT

1. The Complainant Sharon Petersen was the incumbent candidate for Salem Township Clerk in the March 11, 2014, township election.
2. The Respondent Linda Phillips ran against Ms. Petersen for the position of Township Clerk.
3. Prior to the election, Respondent prepared and disseminated to residents of Salem Township a campaign flyer promoting her candidacy. A copy of the campaign material at issue appears below:

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

4. The advertisement lacked a disclaimer substantially in the form required by Minn. Stat. § 211B.04. Instead, it stated only: "Approved by Linda Phillips."

5. The Respondent also had advertisements promoting her candidacy published in the local *Byron Review* newspaper on February 25 and March 4, 2014. Respondent provided the text for the advertisement to an employee at the newspaper. The text did not include a disclaimer and the Respondent did not inform the newspaper who had prepared and paid for the advertisement.

6. The advertisement that was published on February 25, 2014, promoted both Respondent's campaign and her husband's campaign for Salem Township Supervisor. The advertisement read:

Elect

Jay Phillips, Salem Twp Supervisor

"The right experience, the right choice"

Linda Phillips, Salem Twp Clerk

"Because principal matters ..."

Vote: March 11, 2014¹

7. Respondent's February 25, 2014, campaign advertisement lacked a disclaimer substantially in the form required by Minn. Stat. § 211B.04.

*2 8. The advertisement that the Respondent placed in the March 4, 2014, edition of the *Byron Review* was identical to the one published in the February 25th edition, except that at the bottom of the advertisement, in smaller font, the phrase "Paid Advertisement" was included.

9. The Complainant filed this Campaign Complaint on February 27, 2014, and a probable cause hearing was held on March 6, 2014.

10. By Order dated March 11, 2014, the Presiding Administrative Law Judge found there was probable cause to believe the Respondent violated Minn. Stat. § 211B.04 with respect to her campaign flyer and newspaper advertisements.² The Administrative Law Judge gave the parties until March 19, 2014, to notify him as to whether they wished waive their right to an evidentiary hearing and submit the matter to the Panel for a determination based on the record created at the probable cause hearing and on their submissions.

11. On March 11, 2014, the Complainant won the election for Salem Township Clerk. The Complainant received 299 votes, and the Respondent received 205.³

12. On March 17, 2014, the Respondent, through her counsel, submitted a letter in which she waived her right to an evidentiary hearing and admitted violating Section 211B.04 as alleged with respect to the campaign flyers and newspaper advertisements. The Complainant waived her right to an evidentiary hearing on March 19, 2014.

13. The Parties also agreed to allow the panel to determine the matter based on the record created at the probable cause hearing and the submissions of the parties.

14. In correspondence dated March 17, 2014 Respondent admitted to the violations.

Based upon the foregoing Findings of Fact, the undersigned panel of Administrative Law Judges makes the following:

CONCLUSIONS

1. The Administrative Law Judge panel is authorized to consider this matter pursuant to Minn. Stat. § 211B.35.
2. Minn. Stat. § 211B.01, subd. 2, defines “campaign material” to mean “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.”
3. The campaign flyer that the Respondent mailed to Township residents and the newspaper advertisements were campaign material within the meaning of Minn. Stat. § 211B.01, subd. 2. They were disseminated for the purpose of influencing the township election.
4. The campaign flyer and newspaper advertisements were required to have disclaimers substantially in the form set forth in Minn. Stat. § 211B.04.
5. Minn. Stat. § 211B.04, as amended in 2010, provides in relevant part, as follows:
 - (a) A person who participates in the preparation or dissemination of campaign material other than as provided in section 211B.05, subdivision 1, that does not prominently include the name and address of the person or committee causing the material to be prepared or disseminated in a disclaimer substantially in the form provided in paragraph (b) or (c) is guilty of a misdemeanor.

*3 (b) Except in cases covered by paragraph (c), the required form of disclaimer is: “Prepared and paid for by the ... committee, ... (address)” for material prepared and paid for by a principal campaign committee, or “ “Prepared and paid for by the ... committee, ... (address), in support of ... (insert name of candidate or ballot question)” for material prepared and paid for by a person or committee other than a principal campaign committee.
 - (c) In the case of broadcast media, the required form of disclaimer is: “ “Paid for by the ... committee.”
 - (d) Campaign material that is not circulated on behalf of a particular candidate or ballot question must also include in the disclaimer either that it is “in opposition to ... (insert name of candidate or ballot question ...)”; or that “this publication is not circulated on behalf of any candidate or ballot question.”
 - (e) This section does not apply to objects stating only the candidate's name and the office sought, fund-raising tickets, or personal letters that are clearly being sent by the candidate.
 - (f) This section does not apply to an individual or association who acts independently of any candidate, candidate's committee, political committee, or political fund and spends only from the individual's or association's own resources a sum that is less than \$2,000 in the aggregate to produce or distribute campaign material that is distributed at least seven days before the election to which the campaign material relates.⁴

6. Newspapers are obligated under Minn. Stat. § 211B.05, subd. 1, to include the phrase “PAID ADVERTISEMENT” at the beginning or end of any advertisement accepted for publication.
7. The burden of proving the allegations in the complaint is on the Complainant. The standard of proof of a violation of Minn. Stat. § 211B.04 is a preponderance of the evidence.⁵
8. The campaign flyer and newspaper advertisements did not substantially comply with the disclaimer requirement contained in Minn. Stat. § 211B.04(b).
9. Respondent's campaign flyer does not meet the exception for “personal letters” at Minn. Stat. § 211B.04(e).
10. The Complainant has established by a preponderance of the evidence that Respondent violated Minn. Stat. § 211B.04 by failing to include a disclaimer on her campaign flyer and advertisements substantially in the form required.
11. The attached Memorandum explains the reasons for these Conclusions and is incorporated by reference.

Based on the record herein, and for the reasons stated in the following Memorandum, the panel of Administrative Law Judges makes the following:

ORDER

IT IS ORDERED:

That having been found to have violated Minn. Stat. § 211B.04, Respondent Linda Phillips shall pay a civil penalty of \$250 by July 15, 2014.⁶

Dated: April 10, 2014

James E. LaFave
Presiding Administrative Law Judge
*4 Jeanne M. Cochran
Administrative Law Judge
Stacy P. Bouman
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. § 211B.36, subd. 5, this is the final decision in this case. Under Minn. Stat. § 211B.36, subd. 5, a party aggrieved by this decision may seek judicial review as provided in Minn. Stat. §§ 14.63 to 14.69.

MEMORANDUM

Campaign material is defined to mean “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.”⁷ The campaign flyer and newspaper advertisements at issue in this case meet the definition of “campaign material” because they were disseminated for the purpose of influencing voting at the township election. As a result, the flyer and advertisements were required to include a disclaimer substantially in the form provided in Minn. Stat. § 211B.04(a) and

(b).⁸ The purpose of the disclaimer requirement is to “identify who or what committee prepared, disseminated and paid for the campaign material.”⁹

It is not evident when looking at Respondent's campaign material who or what committee prepared or paid for the pieces. Without a disclaimer, the recipient of the flyer and readers of the newspaper are left to guess whether Ms. Phillips or some other person or group prepared and disseminated the material.

The Respondent concedes that she violated the disclaimer requirement. She emphasizes, however, that she had never run for public office before and, despite reading the campaign manual, believed she was doing everything properly with respect to her campaign flyer and advertisements. She admitted, however, she was confused as to the requirements of Minn. Stat. § 211B.04. Respondent also states that she believed the newspaper would include the required disclaimer language on the advertisements. Yet, the Respondent does not explain how the newspaper would have known who prepared and paid for the advertisements without her supplying that information. Respondent points out that she did not benefit from the violation as she lost the election. She asks that the Panel issue her a reprimand.

The Complainant noted that Ms. Phillips testified she did not want her address on her campaign material. Ms. Phillips stated that she wanted to keep her address private because she was concerned that a bad actor might take some action against her. The Complainant, on the other hand, asserted that Ms. Phillips wanted to keep her address private to avoid revealing that she lives on a street that needs repaving. A key issue in the campaign was whether to resurface certain township roads and who should pay for the expense. Further, Complainant questions Ms. Phillips veracity when Ms. Phillips testified she made the flyer in question. Complainant submitted copies of similar flyers used in prior campaigns that have the same format and layout used by Ms. Phillips in her flyer.¹⁰

***5** The Panel concludes that the Complainant has established by a preponderance of the evidence that the Respondent violated Minn. Stat. § 211B.04(b) by not including a disclaimer on her campaign materials substantially in the form required by the statute. While the Respondent claims that she was confused after reading the campaign material as to whether she was required to put the disclaimer on the flyer and newspaper advertisement, the Respondent's confusion does not excuse her failure to comply with the statute. The Respondent had an obligation to obtain clarification and ensure compliance with the requirements of the statute for the flyer and the advertisement. As a first time candidate, the Respondent should have sought out the advice she needed to ensure compliance with respect to both the flyer and advertisement. The Respondent also should have inquired as to whether the newspaper would include the required disclaimer on the advertisement. The Respondent's failure to do so meant that the voters in Salem Township did not know who prepared these campaign materials, in direct contravention of the purposes of Minn. Stat. § 211B.04(b). The Panel recognizes, however, that the violation had little adverse effect on the township election, but the statutory requirements are, nonetheless, applicable and necessary in maintaining fair campaigns.

For these reasons, the Panel concludes that a \$250 civil penalty is appropriate in this case.

J.E.L.
S.P.B.
J.M.C.

Footnotes

- 1 Exs. 3 and 4. (Emphasis in the original).
- 2 The Administrative Law Judge dismissed allegation regarding law signs. *See*, PROBABLE CAUSE ORDER OAH 60-0325-31334 (March 11, 2014).
- 3 *See*, *Rochester Post Bulletin* (March 12, 2014); [http:// www.postbulletin.com/news/local/township-election-results/article_a1da6d3a-726c-500a-bee0-579f3dd13cda.html](http://www.postbulletin.com/news/local/township-election-results/article_a1da6d3a-726c-500a-bee0-579f3dd13cda.html)

- 4 Minn. Stat. § 211B.04; Minn. Laws 2010 ch. 397, § 15. The amendment is applicable to campaign material “prepared and disseminated” on or after June 1, 2010.
- 5 Minn. Stat. § 211B.32, subd. 4.
- 6 The check should be made payable to “Treasurer, State of Minnesota” and sent to the Office of Administrative Hearings, P.O. Box 64620, St. Paul MN 55164-0620.
- 7 Minn. Stat. § 211B.01, subd. 2.
- 8 Minn. Stat. § 211B.04; Minn. Laws 2004 ch. 293, art. 3, §§ 1 and 2.
- 9 *Hansen v. Stone*, OAH Docket No. 4-6326-16911 (Oct. 28, 2005).
- 10 *See*, Letter from Sharon Peterson to the Honorable James LaFave, the Honorable Jeanne M. Cochran and the Honorable Stacy P. Bouman, Exhibits (April 3, 2014).

2014 WL 2156988 (Minn.Off.Admin.Hrgs.)

End of Document

© 2016 Thomson Reuters. No claim to original U.S. Government Works.

2014 WL 6709858 (Minn.Off.Admin.Hrgs.)

Office of Administrative Hearings

State of Minnesota

STEPHEN WUNDERLICH, COMPLAINANT

v.

JOSEPH WALSH, RESPONDENT

OAH 68-0325-31872

October 23, 2014

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

*1 The above-entitled Fair Campaign Practices Complaint is pending before the following Panel of three Administrative Law Judges: Jeanne M. Cochran (Presiding Judge), Barbara L. Neilson, and Barbara J. Case.

The matter was submitted to the Panel based on the record created at the Probable Cause hearing and the underlying record, including the Complaint, the Prima Facie Determination, the Probable Cause Order, and written submissions from the parties. The OAH record closed on October 22, 2014.

Stephen Wunderlich (Complainant) appeared on his own behalf without counsel. Joseph Walsh, Esq. (Respondent) appeared on his own behalf.

STATEMENT OF THE ISSUES

1. Did the Respondent demonstrate that Minnesota Statutes § 211B.04 is unconstitutional as applied to the facts of this case?
2. Did the Complainant demonstrate that the Respondent violated Minn. Stat. § 211B.04(b) by failing to include a disclaimer on his campaign material substantially in the form required by the statute?
3. If so, what penalty is appropriate?

SUMMARY OF CONCLUSIONS

The Respondent failed to demonstrate that Section 211B.04 is unconstitutional as applied to the facts of this case. In addition, the Complainant established by a preponderance of the evidence that the Respondent failed to include a disclaimer on his campaign material substantially in the form required under Minn. Stat. § 211B.04(b). For this violation, the Panel concludes a civil penalty of \$250 is appropriate.

Based on the record and proceedings herein, the undersigned panel of Administrative Law Judges makes the following:

FINDINGS OF FACT

1. The Respondent, Joseph Walsh, is a candidate for the office of Mille Lacs County Attorney in the November 4, 2014, general election.

2. The Respondent prepared and disseminated campaign lawn signs promoting his candidacy that do not include a disclaimer substantially in the form provided by Minn. Stat. § 211B.04(b).¹ The lawn signs state: "Vote Joe Walsh Mille Lacs County Attorney."²

3. The Respondent also prepared a campaign banner and displayed it at parades and at a booth during the Mille Lacs County Fair.³ The banner did not include a disclaimer in the form provided by Minn. Stat. § 211B.04(b).⁴ The banner states: "Vote Joe Walsh Mille Lacs County Attorney Honesty Integrity Trust."⁵

4. The Respondent also prepared and disseminated campaign t-shirts and stickers promoting his candidacy that lacked disclaimers in the form provided by Minn. Stat. § 211B.04(b).⁶ The t-shirts and stickers state: "Vote Joe Walsh County Attorney Honesty Integrity Trust."⁷

5. The Complainant, Stephen Wunderlich, filed this campaign complaint against the Respondent on September 22, 2014.

*2 6. Sometime after the Complaint was filed, the Respondent affixed stickers to the lawn signs and banner that bear the required disclaimer.⁸ The Respondent also hand-wrote disclaimers on his remaining stickers.⁹

Based upon the foregoing Findings of Fact, the undersigned Panel of Administrative Law Judges makes the following:

CONCLUSIONS OF LAW

1. The Administrative Law Judge Panel is authorized to consider this matter pursuant to Minn. Stat. § 211B.35.

2. Minn. Stat. § 211B.01, subd. 2, defines "campaign material" to mean "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."

3. The Respondent's lawn signs, banner, t-shirts and stickers are campaign material within the meaning of Minn. Stat. § 211B.01, subd. 2.

4. Minn. Stat. § 211B.04, as amended in 2010, provides in relevant part:

(a) A person who participates in the preparation or dissemination of campaign material other than as provided in section 211B.05, subdivision 1, that does not prominently include the name and address of the person or committee causing the material to be prepared or disseminated in a disclaimer substantially in the form provided in paragraph (b) or (c) is guilty of a misdemeanor.

(b) Except in cases covered by paragraph (c), the required form of disclaimer is: "Prepared and paid for by the committee, (address)" for material prepared and paid for by a principal campaign committee, or "Prepared and paid for by the committee, (address), in support of (insert name of candidate or ballot question)" for material prepared and paid for by a person or committee other than a principal campaign committee.

(c) In the case of broadcast media, the required form of disclaimer is: "Paid for by the committee."

* * *

(e) This section does not apply to objects stating only the candidate's name and the office sought, fund-raising tickets, or personal letters that are clearly being sent by the candidate.

(f) This section does not apply to an individual or association who acts independently of any candidate, candidate's committee, political committee, or political fund and spends only from the individual's or association's own resources a sum that is less than \$2,000 in the aggregate to produce or distribute campaign material that is distributed at least seven days before the election to which the campaign material relates.

* * *

5. The Complainant bears the burden of proving the allegations in the complaint. The standard of proof of a violation of Minn. Stat. § 211B.04 is a preponderance of the evidence.¹⁰

6. The Respondent's lawn signs, banner, t-shirts and stickers did not include a disclaimer substantially in the form required by Minn. Stat. § 211B.04(b).

7. The Complainant has established by a preponderance of the evidence that the Respondent violated Minn. Stat. § 211B.04(b) by failing to include a disclaimer on his lawn signs, banner, t-shirts and stickers.

*3 8. The Respondent failed to establish that Minn. Stat. § 211B.04 is unconstitutional as applied to the facts of this case.

9. Based on the above violation, it is appropriate to impose a civil penalty in the amount of \$250.

10. The attached Memorandum explains the reasons for these Conclusions and is incorporated by reference.

Based on the record herein, and for the reasons stated in the following Memorandum, the panel of Administrative Law Judges makes the following:

ORDER

IT IS ORDERED:

That having been found to have violated Minn. Stat. § 211B.04, Respondent Joseph Walsh shall pay a civil penalty of \$250 by December 15, 2014.¹¹

Dated: October 23, 2014

Jeanne M. Cochran
Presiding Administrative Law Judge
Barbara L. Neilson
Administrative Law Judge
Barbara J. Case
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. § 211B.36, subd. 5, this is the final decision in this case. Under Minn. Stat. § 211B.36, subd. 5, a party aggrieved by this decision may seek judicial review as provided in Minn. Stat. §§ 14.63 to 14.69.

MEMORANDUM

The Fair Campaign Practices Act¹² defines campaign material to mean “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.”¹³ Campaign material is required, under Minn. Stat. § 211B.04(a) and (b), to include a disclaimer identifying the name and address of the person or committee that prepared or disseminated the material. The purpose of the disclaimer requirement is to “identify who or what committee prepared, disseminated and paid for the campaign material.”¹⁴

The Panel finds that the Respondent's lawn signs, banner, t-shirts and stickers were disseminated for the purpose of influencing voting and meet the definition of campaign material under Section 211B.01, subd. 2.¹⁵ The messages displayed on all of these items urged voters to vote for the Respondent in the upcoming election for Mille Lacs County Attorney.¹⁶

There is an exception to the disclaimer requirement for objects “stating only the candidate's name and the office sought.”¹⁷ The Respondent argued at the probable cause hearing that his lawn signs should be deemed “objects” that are not required to have a disclaimer. The signs, however, state more than just the Respondent's name and the office sought. The signs state: “Vote Joe Walsh Mille Lacs County Attorney.”¹⁸ In addition, unlike objects, such as pencils, that have an intrinsic value separate from their promotional message, the campaign signs' only purpose is to promote the candidate. The panel finds that Mr. Walsh lawn signs meet the definition of “campaign material” and are not “objects” within the meaning of Minn. Stat. § 211B.04(e). Therefore, Respondent's lawn signs, banner, t-shirts and stickers were required to have a disclaimer substantially in the form provided at § 211B.04(b).

*4 The Respondent also argues that the disclaimer requirement is unconstitutional as applied to the facts of this case. The Respondent asserts that the Complainant brought the complaint “for the unconstitutional purpose of preventing political speech.” The Respondent concedes that the purpose of the disclaimer requirement is to identify who prepared and paid for the campaign material. He maintains, however, that the Complainant was well aware that it was either the Respondent or his campaign committee that prepared and paid for the campaign material at issue. The Respondent points out that his “full name” is prominently featured on all the campaign material and the material was worn or disseminated by his friends, family or volunteers. According to the Respondent, the Complainant's true purpose in bringing the complaint was to deplete the Respondent's “financial and temporal resources” in order to hinder his campaign and enhance the campaign of his opponent.

As a general rule, neither an administrative law judge nor an administrative agency has authority to declare a statute unconstitutional on its face, since that power is vested in the judicial branch of government.¹⁹ An administrative law judge or an agency may properly consider, however, whether a statute is unconstitutional as applied to the particular facts of a case.²⁰ To the extent that constitutionality, as applied, requires a generation of facts and findings within a particular subject matter area, administrative agencies may render a decision on a constitutional question which would be of assistance to a reviewing court.²¹

In this case, there is no factual record to demonstrate that application of Minn. Stat. § 211B.04(b) to Respondent's campaign material will have the effect of chilling the Respondent's speech. The Respondent contends that the Complainant is attempting to use the statute to “prevent a candidate from pure political speech for the purpose of name

recognition.”²² The Respondent fails to identify, however, any facts to support his claim that including a disclaimer on his campaign material as required by statute “prevents” or prohibits his “pure political speech.”

Moreover, the Panel notes that while the disclaimer requirements in Minn. Stat. § 211B.04 were found to be unconstitutional by the Minnesota Court of Appeals in *Riley v. Jankowski*,²³ the U.S. Supreme Court rejected both facial and as-applied challenges to similar federal disclaimer requirements in *Citizens United v. FEC*.²⁴ The Court held that such disclaimer provisions place no significant burden on First Amendment rights and help citizens make informed choices in the political marketplace.²⁵ Following the *Citizens United* decision, the Minnesota Legislature amended Minn. Stat. § 211B.04 effective June 1, 2010, to apply to all campaign material prepared and disseminated on or after that date.²⁶

*5 The Panel concludes that the Respondent has failed to demonstrate that Minn. Stat. § 211 B.04 is unconstitutional as applied to the facts in this case. In addition, the Panel finds Respondent's claim that it was clear that either he or his committee prepared and paid for the campaign material because his “full name was prominently featured on all the items” to be without merit. It is typical for candidates' full names to be prominently displayed on campaign material. It would be difficult to promote a candidate without identifying the candidate's name. Identifying the name of the candidate, however, is not the same as disclosing who prepared or paid for the campaign material. Without a disclaimer, anyone reading the material is left to speculate as to the identity of the person or group that prepared and paid for the material.

The Panel finds that the Complainant has established by a preponderance of the evidence that the Respondent violated Minn. Stat. § 211B.04(b) by not including a disclaimer on his campaign material substantially in the form required by the statute. The Panel concludes further that the violation was negligent with minimal impact on the upcoming election. In addition, the Panel notes that once this Complaint was filed, the Respondent added the appropriate disclaimer to his lawn signs and banner.

The Panel concludes that a civil penalty in the amount of \$250 is appropriate in this case. Unlike *Wunderlich v. Jude*,²⁷ where the panel found the disclaimer violation to be an isolated incident warranting only a \$100 penalty, the Respondent in this case failed to include the required disclaimer on several types of campaign material. Because the Respondent's violation reflects carelessness or negligence on his part, rather than an isolated mistake, a \$250 penalty is warranted.

In assessing this penalty, the Panel rejects the Respondent's argument that imposing a penalty for his violation of Section 211 B.04 would unconstitutionally limit his free speech rights by restricting his ability to spend money on future political communication. The Respondent cites *Citizens United*²⁸ in support of his position. The Respondent's reliance on *Citizens United* is misplaced. The Panel is not restricting the amount of money the Respondent may spend on his political communication. The Panel is imposing a penalty for his violation of the Fair Campaign Practices Act as permitted under Minn. Stat. § 211B.35, subd. 2. Moreover, as discussed above, the U.S. Supreme Court upheld federal disclosure requirements in *Citizens United* and determined that such requirements do not place a significant burden on First Amendment rights.

J.M.C., B.L.N., B.J.C.

Footnotes

- 1 Complaint Exhibits (Ex.) I, L-N.
- 2 Id. The Probable Cause Order incorrectly stated that the lawn signs stated: “Vote Joe Walsh Mille Lacs County Attorney Honesty Integrity Trust.” Unlike the banner, t-shirts, and stickers, the lawn signs stated only: “Vote Joe Walsh Mille Lacs County Attorney.”
- 3 Complaint Exs. I and J; Affidavit (Aff.) of Joe Walsh at ¶ 7.

4 Complaint Exs. I and J.
5 *Id.*
6 Complaint Exs. F, G and L.
7 *Id.*
8 Aff. of J. Walsh at ¶¶ 6-7 (Ex. A).
9 *Id.* at ¶ 8.
10 Minn. Stat. § 211 B.32, subd. 4.
11 The check should be made payable to “Treasurer, State of Minnesota” and sent to the Office of Administrative Hearings,
P.O. Box 64620, St. Paul MN 55164-0620.
12 Minn. Stat. Ch. 211B.
13 Minn. Stat. § 211B.01, subd. 2.
14 *Hansen v. Stone*, OAH Docket No. 4-6326-16911 (Oct. 28, 2005) at 4.
15 Complaint Exs. F-J, and L-N.
16 *Id.*
17 Minn. Stat. § 211B.04(e).
18 Complaint Exs. I, and L-N (emphasis added).
19 *See e.g., Neeland v. Clearwater Memorial Hosp.*, 257 N.W.2d 366, 368 (Minn. 1977); *Starkweather v. Blair*, 245 Minn. 371,
394-95, 71 N.W.2d 869, 884 (1955); *In the Matter of Rochester Ambulance Service*, 500 N.W.2d 495 (Minn. Ct. App. 1993).
G. Beck, *Minnesota Administrative Procedure* § 11.5 (2d ed. 1998).
20 G. Beck, *Minnesota Administrative Procedure* § 11.5 (2d ed. 1998).
21 *Id.*
22 Respondent's Reply Memorandum at 4.
23 713 N.W.2d 379 (Minn. Ct. App.) *rev. denied* (Minn. 2006).
24 558 U.S. 310 (2010).
25 *McConnell v. Federal Election Comm'n*, 540 U.S. 93, 196 (2003) (precluding facial challenges); *Citizens United v. Federal*
Election Comm'n, 558 U.S. at 367-368 (2010) (rejecting an as-applied challenge). *See also McIntyre v. Ohio Elections*
Commission, 514 U.S. 334 (1995) (holding an Ohio statute, as applied to the petitioner, conflicted with the First Amendment
right to speak anonymously).
26 *See* 2010 Minn. Laws, ch. 397.
27 OAH 60-0325-31602 (August 8, 2014).
28 558 U.S. at 367-368, (2010) (rejecting as applied challenge).

2014 WL 6709858 (Minn.Off.Admin.Hrgs.)

End of Document

© 2016 Thomson Reuters. No claim to original U.S. Government Works.