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STATE OF MINNESOTA  
IN COURT OF APPEALS  
A10-2162

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Steve Abrahamson and Tim Kotzian,

Petitioners,

vs.

The St. Louis County School District, Independent School District No. 2142,  
Bob Larson, Tom Beaudry, Darrell Bjerklie, Gary Rantala, Andrew Larson,  
Chet Larson, and Zelda Bruns, in their capacity as School Board Members,

Respondents,

The Minnesota Office of Administrative Hearings,

Respondent.

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PETITIONERS' PRINCIPAL BRIEF

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## TABLE OF CONTENTS

TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES .....	iii
ISSUES PRESENTED .....	vii
STATEMENT OF THE CASE .....	1
STATEMENT OF FACTS .....	4
I. The School Board and District acted in a manner that promoted the passage of a capital-improvement ballot question requiring campaign finance reporting, yet the OAH dismissed the Petitioners’ Complaint.....	4
II. To meet the <i>prima facie</i> standard the OAH suggests the Petitioners must meet the clear and convincing standard to civilly convict under Minn. Stat. § 211B.06 at the time a complaint is filed.....	8
III. The OAH’s finding certain statements not violative of Minn. Stat. § 211B.06, misconstrued the Complaint’s issue of the misuse of public moneys prohibiting the expression of opposing views as reportable under Minn. Stat. § 211A. ....	11
Relief Requested .....	12
Standard of Review.....	12
Decisions of the Office of Administrative Hearings.....	12
Statutory Interpretation.....	13
LEGAL ARGUMENT AND AUTHORITIES .....	14
I. The St. Louis County School District School Board acted as a committee and since the District is a quasi-public corporation, they are subject to Minnesota campaign finance reporting laws. ....	14

A. The statutory definition of “committee” includes either a “corporation” or an “association of persons acting together” which of itself is inclusive of a designated group of people acting as a board to fall within the scope of campaign financing laws. ....	15
B. School Districts are quasi-public corporations, not subdivisions of government under Minn. Stat. §§ 211A and 211B.....	20
II. The St. Louis School District expended moneys for the promotion of the 2009 ballot questions, going beyond its statutory authority for election expenditures and is required under the law to report those expenditures.....	25
A. The School District’s disbursements and contributions fall within the statutory requirements for reporting under Minnesota’s campaign laws.....	27
B. The use of tax moneys to promote the passage of a ballot question is an improper use of public funds and since used to campaign for the ballot question, are reportable.....	30
III. The OAH opinions relating to District statements alleged as false, misapplied the law in declaring Abrahamson had failed to meet the <i>prima facie</i> threshold to avoid dismissal.....	39
CONCLUSION.....	46

## TABLE OF AUTHORITIES

### Statutes

Minn. Stat. § 1.26.....	23
Minn. Stat. § 10A.01 .....	19
Minn. Stat. § 118A .....	23
Minn. Stat. § 123A.55 .....	22, 23
Minn. Stat. § 123B.....	7
Minn. Stat. § 13.02.....	23
Minn. Stat. § 14.62.....	13
Minn. Stat. § 200.02.....	22
Minn. Stat. § 204B.32 .....	passim
Minn. Stat. § 211A .....	passim
Minn. Stat. § 211B .....	passim
Minn. Stat. § 466.01.....	22
Minn. Stat. § 471.345.....	22
Minn. Stat. § 6.465.....	23
Minn. Stat. § 645.08.....	16
Minn. Stat. § 645.16.....	13

### Cases

<i>Am. Family Ins. Group v. Schroedl</i> , 616 N.W.2d 273 (Minn. 2000).....	13
<i>Am. Tower, L.P. v. City of Grant</i> , 636 N.W.2d 309 (Minn. 2001).....	13
<i>Amaral v. Saint Cloud Hosp.</i> , 598 N.W.2d 379 (Minn. 1999) .....	17, 18

<i>Astoria Quality Drugs, Inc. v. United Pacific Ins. Co. of New York</i> , 163 A.D.2d 82, 557 N.Y.S.2d 339 (1990) .....	44
<i>Bank v. Brainerd School Dist</i> , 49 Minn. 106, 51 N.W. 814 (1892).....	20
<i>Bank v. Egan</i> , 240 Minn. 192, 60 N.W.2d 257 (1953).....	39
<i>Barry v. St. Anthony-New Brighton Independent School Dist. 281</i> , 781 N.W.2d 898 (Minn. App. 2010) .....	9, 39
<i>Behrens v. City of Minneapolis</i> , 271 N.W. 814 (Minn. 1937).....	40
<i>Buckley v. Valeo</i> , 424 U.S. 1 (1976).....	19
<i>Cease and Desist Order Issued to D. Loyd</i> , 557 NW.2d 209 (Minn. App. 1996) .....	16
<i>Chafoulias v. Peterson</i> , 668 N.W.2d 642 (Minn. 2003) .....	40
<i>Citizens to Protect Pub. Funds v. Bd. of Educ. of Parsippany-Troy Hills Tp.</i> , 98 A.2d 673 (N.J. 1953) .....	35
<i>Compare, e.g., Collins v. USAA Prop. and Cas. Ins. Co.</i> , 580 N.W.2d 55 (Minn. App. 1998) .....	44
<i>District of Columbia Common Cause v. District of Columbia</i> , 858 F.2d 1 (D.C.Cir.1988) .....	37
<i>Dollar v. Town of Cary</i> , 569 S.E.2d 731 (N.C.App. 2002).....	37
<i>Erickson v. Sunset Mem'l Park Ass'n</i> , 259 Minn. 532, 108 N.W.2d 434, 441 (1961) .....	18
<i>Frank's Nursery Sales, Inc. v. City of Roseville</i> , 295 N.W.2d 604 (Minn. 1980).....	17
<i>Garrison v. Louisiana</i> , 379 U.S. 64 (1964) .....	40
<i>Hawley v. Wallace</i> , 137 Minn. 183, 16 N.W. 127 (1917).....	39
<i>In re Consolidation of School Districts in Freeborn County</i> , 246 Minn. 96, 74 N.W.2d 410 (1956 ).....	20

<i>Minnesota Citizens Concerned for Life, Inc. v. Kelly</i> , 291 F.Supp.2d 1052 (D. Minn. 2003).....	14, 19
<i>Muehrign v. School Dist. No. 31 of Stearns County</i> , 224 Minn. 432, 28 N.W.2d 655 (1947).....	21
<i>No Power Line, Inc. v. Minnesota Env'tl. Quality Council</i> , 262 N.W.2d 312 (Minn. 1977).....	13
<i>Owens v. Federated Mut. Implement &amp; Hardware Ins.</i> , 328 N.W.2d 162 (Minn. 1983).....	17
<i>Palm Beach County v. Hudspeth</i> , 540 So.2d 147 ( <i>Fla.App. 1989</i> ).....	37
<i>Phillips v. Maurer</i> , 67 N.Y.2d 672, 490 NE.2d 542 (N.Y. 1986).....	36
<i>Reserve Min. Co. v. Herbst</i> , 256 N.W.2d 808 (Minn. 1977).....	13
<i>Riley v. Jankowski</i> , 713 N.W.2d 379 (Minn. App.), <i>review denied</i> (July 2006).....	39, 40
<i>Schulz v. State</i> , 86 N.Y.2d 225, 654 N.E.2d 1226 (N.Y. 1995).....	36
<i>Smith v. Dorsey</i> , 599 So.2d 529 (Miss. 1992).....	36
<i>St. Amant v. Thompson</i> , 390 U.S. 727 (1968).....	40
<i>St. George v. St. George</i> , 304 N.W.2d 640 (Minn. 1981).....	15
<i>St. Otto's Home v. Minn. Dep't of Human Servs.</i> , 437 N.W.2d 35 (Minn. 1989).....	13
<i>State v. Minnesota Transfer Ry. Co.</i> , 80 Minn. 108, 83 N.W. 32 (1900).....	21
<i>Stern v. Kramarsky</i> , 84 Misc.2d 447, 375 N.Y.S.2d 235 (N.Y.1975).....	36
<i>Village of Blaine v. Independent School District No. 12, Anoka County</i> , 272 Minn. 343, 138 N.W.2d 32 (1965).....	21

**Attorney General Opinions**

Minn. Atty. Gen. Op. 159a-3 (May 24, 1966) ..... 34  
Minn. Atty. Gen. Op. (Mar. 3, 1953) ..... 31  
Minn. Atty. Gen. Op. (Sept. 12, 1957) ..... 31

**Other Authorities**

Stephen S. Ashely, *Bad Faith Actions Liability & Damages* §  
10:26 (West Group 1997)..... 40  
Henry Bosley Woolf, *Webster’s New Collegiate Dictionary*, 1331  
(G.& C. Merriam Co. 1981)..... 42  
Edward H. Ziegler, Jr., *Government Speech and the Constitution:  
The Limits of Official Partisanship*, 21 B.C.L.Rev. 578, 580  
(1980) ..... 33

## ISSUES PRESENTED

### I.

Minnesota's campaign finance reporting laws define a "committee" as two or more persons acting together to promote a ballot question. A school district board has more than two members. Is a school board a committee if it directs or approves expenditures of taxpayer moneys for use to disseminate statements and materials to promote the passage of a ballot question, and therefore must report those expenditures or contributions in accordance with campaign finance reporting laws?

Decision of OAH: School boards do not fall within the statutory definition of "committee" as either a corporation or an association and therefore the reporting requirements under Minnesota's campaign finance laws, Minn. Stat. § 211A do not apply.

Apposite Statutes or Cases: Minn. Stat. § 211A; *Village of Blaine v. Independent School District No. 12, Anoka County*, 272 Minn. 343, 138 N.W.2d 32 (1965)

### II.

Under Minn. Stat. § 204B.32, school districts holding separate elections from state elections must pay for specific, limited expenses: for election judges, sergeants-at-arms, printing ballots, equipping polling places, and other clerk expenses. Citizens alleged the district spent moneys to promote an election ballot. Is the district's use of taxpayer dollars to promote the passage of a ballot question fall outside the statutory exemptions for election-related expenditures requiring their reporting under Minnesota campaign finance laws?

Decision of the OAH: Even if school districts were considered committees for reporting purposes under Minnesota campaign finance laws, Minn. Stat. § 211A, the expenditures were not "disbursements" under the law because they fall within statutory exemptions for election-related expenditures.

Apposite Statutes or Cases: Minn. Stat. § 211A.01; Minn. Stat. § 211B.01; *Amaral v. Saint Cloud Hosp.*, 598 N.W.2d 379, 384 (Minn. 1999).

### III.

Complainants alleged certain disseminated statements to the public were false and actionable. The law requires complainants to acknowledge under oath in their OAH complaint the subjective intent of the respondent's statements made to survive a *prima facie* challenge and determination of the ALJ before proceeding. Without discovery or hearing, may a complainant, without more, submit a verified complaint claiming the respondent knew he made a false statement or knew it was probably false when made?

Decision of the OAH: The statements disseminated were not false and thus, the complainants did not meet the *prima facie* requirement under Minnesota law resulting in the dismissal of the complaint.

Apposite Statutes or Cases: Minn. Stat. § 211B.06; *Barry v. St. Anthony-New Brighton Indep. Sch. Dist.* 282, 781 N.W.2d 898 (Minn. App. 2010); *Riley v. Jankowski*, 713 N.W.2d 379 (Minn. App.), *review denied*, (Minn. 2006).

## STATEMENT OF THE CASE

Petitioners Steve Abrahamson and Tim Kotzian filed a complaint with the Minnesota Office of Administrative Hearings under Minnesota's Campaign Financial Reporting and Fair Campaign Practices laws. The complaint involved the conduct of the St. Louis County School District and School Board members regarding a special bond referendum ballot question.<sup>1</sup>

The complaint made factual allegations that the School District authorized campaign expenditures of public moneys to promote the passage of the ballot through a Board passed budget. By passing the District's budget, it approved all expenditures and receipt of contributions relating to the dissemination of published materials to promote the passage of the ballot question. This triggered reporting requirements under Minnesota's campaign finance laws. The allegations also described the content of the School Board - and District- disseminated messages to the public and identifying the statements made as false.

The Administrative Law Judge agreed that the Petitioners made specific factual allegations to support their claim of using public moneys to

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<sup>1</sup> The Complaint is filed under the signatures of the Petitioners, under oath: "I, (Petitioner's name), under penalty of perjury, swear or affirm that the statements I have made in this complaint are true and correct based upon the information made available to me and as asserted to the best of my knowledge." Petitioners' OAH Complaint. 16, Pttrs. App.32-33.

promote the ballot. Essentially, the Petitioners filed a *prima facie* complaint required under Minnesota campaign finance laws. However, the ALJ dismissed the Complaint. The decision stated three reasons for the dismissal:

(1) that School Board members are neither a candidate nor a committee under Minn. Stat. § 211A or § 211B and as subdivisions of government not required to report contributions or disbursements through the reporting requirements of that chapter;

(2) that the district's use of taxpayer dollars alleged to promote the passage of a ballot question fell within statutory exemptions for election-related expenditures and thus, did not require reporting under Minnesota campaign finance laws; and

(3) the evidence to support claims that the disseminated published statements were false did not meet the clear and convincing standard necessary to be actionable.

Abrahamson and Kotzian argue that because the School Board members acted together to promote the passage of the ballot question, they did act as a committee as defined under Minn. Stat. § 211B.01, triggering campaign finance reporting requirements. The committee designation is appropriate because under *these particular campaign finance laws*, school districts are quasi-public corporations, not subdivisions of government. Thus, when they expend taxpayer moneys to promote (or defeat) ballot questions in campaigns, and are outside the election-related exempted expenditures, they

must file campaign expenditure reports as every other person or entity must do under Minnesota's campaign laws.

Finally, Abrahamson and Kotzian argue that the ALJ cannot summarily dismiss a complaint, made under oath, at a preliminary stage when the statutory elements governing false speech require both objective and subjective determinations of clear and convincing evidence. In other words, to establish a *prima facie* case, for the Petitioners to meet the "clear and convincing" evidentiary standard they must, under oath, state the subjective intent of the respondents necessary to *civilly prosecute* them under Minn. Stat. § 211B.06. Not knowing the subjective intent of a potential violator requires conjecture. Conjecture encourages hyperbole and thus, down a slippery slope leading to making false statements under oath.

Overall, the ALJ's summary dismissal of the Petitioners Complaint should not withstand judicial scrutiny.

After the ALJ dismissed the Petitioners' complaint, they appealed to this Court through a writ of certiorari.

## STATEMENT OF FACTS

**I. The School Board and District acted in a manner that promoted the passage of a capital-improvement ballot question requiring campaign finance reporting, yet the OAH dismissed the Petitioners' Complaint.**

Petitioners Abrahamson and Kotzian filed a complaint with the Office of Administrative Hearings on essentially two claims, backed by several specific factual allegations — violations of campaign reporting laws and disseminating false statements under Minn. Stat. §§ 211A and 211B. The St. Louis County School District, through its School Board members, authorized the approval of the district's budget, the expenditures and contributions that ultimately supported efforts to promote the passage of a ballot question on December 8, 2009.<sup>2</sup> The ballot sought approval for the School District to authorize the issuance of up to \$78.8 million dollars in general-obligation school-building bonds for capital improvements.<sup>3</sup>

In addition, Abrahamson and Kotzian outlined, with specificity, the contractual relationship between the District and Johnson Controls, Inc.<sup>4</sup> The contract provided, among other things, the development of district plans,

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<sup>2</sup> OAH Complt. (Nov. 4, 2009); Pttrs. App. 17-249.

<sup>3</sup> *Id.* Ex. C, Pttrs. App. 57-61.

<sup>4</sup> OAH Complt. 3, Pttrs. App. 19.

reports, and studies.<sup>5</sup> Abrahamson contended that Johnson acted as an agent of the District and assisted the District in the preparation of materials to promote the passage of the December ballot question.<sup>6</sup>

The School Board and District's campaign activities to promote the passage of the ballot question as complained of were apparently sufficient for consideration as violations of Minn. Stat. § 211A. This statute requires the reporting of those expenditures and contributions once the aggregate amount of \$750 is achieved. The OAH Administrative Law Judge found Abrahamson alleged specific facts to support these claims:<sup>7</sup>

In this case, the [Petitioners] have alleged specific facts to support that claim that the Respondents disseminated publications and otherwise acted to promote passage of the December 2009 ballot question. For example, the School District disseminated newsletters to residents of the district that encouraged voters to vote yes on the ballot question and highlighted the benefits to children and families if the bond referendum were to pass.<sup>8</sup>

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<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> See, Minn. Stat. § 211B.33, subd. 2 (a): "If the administrative law judge determines that the complaint does not set forth a prima facie violation of chapter 211A or 211B, the administrative law judge must dismiss the complaint." As explained later, here, the ALJ dismissed the complaint on other grounds.

<sup>8</sup> *Abrahamson v. The St. Louis School District*, 2010 OAH Or. and Memo., 4 (Minn. Off. Adm. Hrings. Nov. 9, 2010), Pttrs. App. 4.

However, the OAH determined that the School District is not subject to campaign finance reporting requirements under Minn. Stat. § 211A. The OAH found the School District had not acted as a “committee” and as a political subdivision of government it is not required to report contributions or disbursements under § 211A.<sup>9</sup>

The OAH further explained that even if the District was considered a “committee,” the expenditures at issue fell within the statutory exemption for election-related expenditures.<sup>10</sup> Although not citing the particular statute allowing for an “exemption,” one statute does so: Minn. Stat. § 204B.32. The statute authorizes the school district to pay for specific election-related expenditures:

[T]he compensation prescribed for election judges and sergeants-at-arms, the cost of printing the school district ballots, providing ballot boxes, providing and equipping polling places and all necessary expenses of the school district clerks in connection with school district elections not held in conjunction with state elections...<sup>11</sup>

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<sup>9</sup> *Id.*

<sup>10</sup> *Id.* 5 (*citing* Pttrs. Compl. 5-6), Pttrs. App. 21-22. Minn. Stat. § 211A.01, subd. 6 states that “[d]isbursement” does not include payment by a county, municipality, school district, or other political subdivision for election-related expenditures required or authorized by law.”

<sup>11</sup> Minn. Stat. § 204B.32(d) (West 2010).

Abrahamson's campaign expenditure allegations never referenced any of the above-specified exemptions as violating the law.<sup>12</sup> Instead, the allegations asserted as improper the expenditures of public moneys relating to the publication of "newsletters" and other similar publications to promote the ballot question<sup>13</sup> Additionally, allegations asserted the use of the District's bulk mailing postage permit as an expenditure of public moneys — through the approval of the Board, acting as a committee in approving the District's budget, all of which required reporting under Minnesota's campaign finance laws.<sup>14</sup>

Despite the gulf between the alleged reportable campaign expenditures and statutory exemptions the OAH referenced, the OAH excused the District's campaign reporting requirements and found them met with the availability of the district's financial statements through mechanisms of other statutes.<sup>15</sup> However, where those specific campaign expenditures or contributions (easily found through the Minn. Stat. § 211A reporting

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<sup>12</sup> OAH Complt., Pttrs. App. 17-33.

<sup>13</sup> *Id.* Exs. D-H, Pttrs. App. 29-61.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* 5 n.17, *citing* Minn. Stat. § 123B.10, subd. 1, and §§ 123B.75-77.

requirements<sup>16</sup>) in a \$26 million school budget, the OAH neither explained, nor factually supported.<sup>17</sup>

**II. To meet the *prima facie* standard the OAH suggests the Petitioners must meet the clear and convincing standard to civilly convict under Minn. Stat. § 211B.06 at the time a complaint is filed.**

Abrahamson filed a complaint with the OAH under Minn. Stat. § 211B.32:

The complaint must be in writing, *submitted under oath*, and detail the factual basis for the claim that a violation of law has occurred....<sup>18</sup>

The Complaint alleged that the Respondents disseminated false campaign material to promote the passage of the December 2009 ballot question.<sup>19</sup>

Abrahamson made the allegations under Minn. Stat. § 211B.06.<sup>20</sup> The statute prohibits the intentional participation in the preparation, dissemination, or broadcast of campaign material designed to promote or defeat a ballot question that is false and which the person knows is false or

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<sup>16</sup> See, e.g., Pttrs. App. 14-16.

<sup>17</sup> See, e.g., Pttrs. App. 117-204 (Ex. M); *Abrahamson*, Or. and Memo. 1-11, Pttrs. App. 1-11.

<sup>18</sup> Emphasis added.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

communicates the statements to others with reckless disregard of whether the statements are false.<sup>21</sup>

The OAH stated the legal framework for its analysis:

[T]he complaint has the burden at the hearing to prove by clear and convincing evidence that the respondent either published the statements knowing the statements were false, or that it “in fact entertained serious doubts” as to the truth of the publication or acted “with a high degree of awareness” of its probable falsity.”<sup>22</sup>

Abrahamson isolated four statements applicable for civil prosecution under Minn. Stat. § 211B.06 that fall within three general areas.<sup>23</sup> The areas the alleged false statements refer to include (1) dissolution of the school district; (2) projected deficit; (3) and promises of educational improvements unrelated to the capital revenue ballot question.<sup>24</sup> To establish his factual basis for a violation of the law, Abrahamson took the published statements

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<sup>21</sup> *Abrahamson*, Or. and Memo. 6, Pttrs. App. 6. Although the OAH stated “at the hearing” it does follow the essence of the framework for a *prima facie* analysis established under *Barry v. St. Anthony-New Brighton Independent School Dist.* 281, 781 N.W.2d 898, 902 (Minn. App. 2010); “a complaint must be dismissed if it does not include evidence or allege facts that, if accepted as true, would be sufficient to prove a violation of chapter 211A or 211B.” The application of this standard is discussed below.

<sup>22</sup> *Id.*

<sup>23</sup> OAH Complt. 7-13, Pttrs. App. 23-29.

<sup>24</sup> *Id.*

and their content and in context as a whole.<sup>25</sup>

The OAH Complaint requires petitioners to make their allegations under oath as “true and correct based upon the information made available to [petitioner] and asserted to the best of [petitioner’s] knowledge.”<sup>26</sup> Although asserting a violation of Minn. Stat. § 211B.06, neither Abrahamson nor Kotizan could truthfully state they had knowledge of the District representatives’ intent or state of mind when the alleged false statements were made. In other words, it would require them to state what they could not under oath “the respondent either published the statements knowing the statements were false, or that it ‘in fact entertained serious doubts’ as to the truth of the publication or acted ‘with a high degree of awareness’ of its probable falsity.”<sup>27</sup>

The OAH however, dismissed Abrahamson’s allegations finding the statements as inferences, misleading, or unrealistic, but not false.<sup>28</sup>

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<sup>25</sup> *Id.*

<sup>26</sup> *Id.* 16, App. 32.

<sup>27</sup> *Abrahamson*, Or. and Memo. 6, Pttrs. App. 6.

<sup>28</sup> *Id.* 7-10, Pttrs. App. 7-10.

**III. The OAH's finding certain statements not violative of Minn. Stat. § 211B.06, misconstrued the Complaint's issue of the misuse of public moneys prohibiting the expression of opposing views as reportable under Minn. Stat. § 211A.**

Of the remaining three statements complained of as cited in the OAH Complaint, while admittedly "opinion," Abrahamson alleged that the District failed to provide any opportunity to allow the dissemination of opposing views to the ballot question.<sup>29</sup> In other words, the District used public moneys to promote the passage of a ballot question, using publications exclusive to the District, without opportunities to convey opposing viewpoints.<sup>30</sup> Here, the OAH failed to address this specific issue. Abrahamson did not allege the statements as false, meaning violative of Minn. Stat. § 211B.06:

While Board Member Rantala was free to state his opinion on this question in a letter to the editor or as a private citizen, its appearance in a [school disseminated] publication paid for with tax dollars requires financial disclosure. The School District publication provided no opportunity for those on the other side of the debate to express their opinions.<sup>31</sup>

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<sup>29</sup> OAH Compl. 13-15; Pttrs. App. 29-31. Although all statements were numbered consecutively, 1-7, and may have caused some confusion since the first four statements concerned violations of Minn. Stat. § 211B.06, the Complaint's paragraphs following statements 5-7 do state the nature of the claim asserted for those three statements. *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* Pttrs. App. 29.

The improper use of public moneys is reportable when related to promoting a ballot question. Instead, the ALJ, *sue sponte*, combined them with the first four above-referenced allegations of false statements.<sup>32</sup> In so doing, the ALJ found the OAH Complaint deficient in meeting the *prima facie* threshold under Minn. Stat. 211B.06 for these three cited opinion statements.

### **Relief Requested**

As a matter of law, the conclusions of the OAH regarding the Petitioners Abrahamson and Kotzian's underlying complaint should be reversed. The matter should be remanded to the OAH for an evidentiary hearing and further disposition in accordance with this Court's decision.

### **Standard of Review**

#### **Decisions of the Office of Administrative Hearings**

On writ of certiorari, this Court will determine whether the agency violated the constitution, exceeded its authority, engaged in unlawful procedure, erred as a matter of law, issued a decision unsupported by

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<sup>32</sup> *Abrahamson*, 2010 OAH Or. and Memo., 13-15; Pttrs. App. 13-15.

substantial evidence, or acted arbitrarily or capriciously.<sup>33</sup> Thus, the reviewing court defers to the agency's expertise in fact finding, and will affirm the agency's decision if it is lawful and reasonable.<sup>34</sup> When reviewing questions of law, however, this Court is not bound by the agency's decision and need not defer to the agency's expertise.<sup>35</sup>

### Statutory Interpretation

Statutory interpretation is a question of law that the court will review de novo.<sup>36</sup> The object of statutory interpretation is to effectuate and ascertain the intention of the legislature.<sup>37</sup> And, the court will interpret a statute, whenever possible, to give effect to all of its provisions, reading and construing a statute as a whole, and interpreting "each section in light of the surrounding sections to avoid conflicting interpretations."<sup>38</sup>

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<sup>33</sup> Minn. Stat. § 14.62 (2004).

<sup>34</sup> *Reserve Min. Co. v. Herbst*, 256 N.W.2d 808, 824-26 (Minn. 1977).

<sup>35</sup> *St. Otto's Home v. Minn. Dep't of Human Servs.*, 437 N.W.2d 35, 39- 40 (Minn. 1989); *No Power Line, Inc. v. Minnesota Env'tl. Quality Council*, 262 N.W.2d 312, 320 (Minn. 1977).

<sup>36</sup> *Am. Tower, L.P. v. City of Grant*, 636 N.W.2d 309, 312 (Minn. 2001).

<sup>37</sup> Minn. Stat. § 645.16 (2008).

<sup>38</sup> *Am. Family Ins. Group v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000).

## LEGAL ARGUMENT AND AUTHORITIES

### I. **The St. Louis County School District School Board acted as a committee and since the District is a quasi-public corporation, they are subject to Minnesota campaign finance reporting laws.**

Minnesota Chapters 211A and 211B govern campaign financial reporting and campaign practices for activities related to the promotion or defeat of ballot questions, such as school district bond issue referendums. Both Chapters have definitions important to the issues before this Court.<sup>39</sup> These include the terms “ballot question,”<sup>40</sup> “committee,”<sup>41</sup> “contribution,”<sup>42</sup> and “disbursement.”<sup>43</sup>

One of the central issues to this case concerns the inclusiveness of the definition “committee.” While the OAH agreed that Abrahamson pled specific facts to support his claim requiring reporting under Minn. Stat. § 211A, the

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<sup>39</sup> The United States District Court for Minnesota in 2003 found Minn. Stat. § 211A.01, subd. 2 governing campaign material as unconstitutional. *Minnesota Citizens Concerned for Life, Inc. v. Kelly*, 291 F.Supp.2d 1052 (D. Minn. 2003), rev’d in part, 427 F.3d 1106 (8<sup>th</sup> Cir. 2005). Neither decision implicates the present issues before this Court.

<sup>40</sup> Minn. Stat. § 211A.01, subd. 2 (2010) (“‘Ballot question’ means a proposition placed on the ballot to be voted on by the voters of one or more political subdivisions but not by all the voters of the state.”).

<sup>41</sup> Minn. Stat. §§ 211A.01, subd. 4 (2010); 211B.01, subd. 4 (2006).

<sup>42</sup> Minn. Stat. § 211A.01, subd. 5. (2010).

<sup>43</sup> Minn. Stat. §§ 211A.01, subd. 6; 211B.01, subd. 5 (2010).

OAH determined that Respondents St. Louis School District and its Board members were not a “committee” within the meaning of Minn. Stat. § 211A, and therefore not required to report contributions or disbursements under that chapter.<sup>44</sup> Under both Chapters 211A and 211B, “committee” means:

[T]wo or more persons acting together or a corporation or association acting to influence the nomination, election, or defeat of a candidate or to promote or defeat a ballot question. Promoting or defeating a ballot question includes efforts to qualify or prevent a proposition from qualifying for placement on the ballot.<sup>45</sup>

The St. Louis School District acted as a committee to promote the December ballot question.

- A. The statutory definition of “committee” includes either a “corporation” or an “association of persons acting together” which of itself is inclusive of a designated group of people acting as a board to fall within the scope of campaign financing laws.**

A statute must be construed in accordance with the statutory definition of the included term.<sup>46</sup> Where the legislature has defined a term, the court “may not look at the term’s common or trade usage to determine its meaning

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<sup>44</sup> *Abrahamson*, Or. and Memo. 5, App. 5.

<sup>45</sup> Minn. Stat. §§ 211A.01, subd. 4 (2010); 211B.01, subd. 4 (2010).

<sup>46</sup> *St. George v. St. George*, 304 N.W.2d 640, 643 (Minn. 1981).

within the statute.<sup>47</sup> Under Minn. Stat. § 211A.01, subd. 4 governing campaign finance reporting, a committee is defined as a corporation or a group of people acting together to promote a ballot question:

“Committee” means a corporation or association or persons acting together ... to promote or defeat a ballot question....<sup>48</sup>

Likewise, the definition of committee under Minn. Stat. § 211B.01, subd. 4, governing fair campaign practices is similar but is more precise regarding the number of actors that form a “committee,” here two persons:

“Committee” means two or more persons acting together or a corporation or association acting to ... promote or defeat a ballot question.

In other words, for this particular set of campaign finance laws, “committee” is *not* synonymous with “political committees.” Furthermore, it cannot be argued that a school district board are not members of a “committee” even if this Court concludes a district is not a “quasi-corporation.” The definition of “committee” does not require the existence of a corporation to form the committee. It is not a pre-requisite that a “committee” derive from a corporation to trigger an association of persons

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<sup>47</sup> *Cease and Desist Order Issued to D. Loyd*, 557 NW.2d 209, 212 (Minn. App. 1996), *citing* Minn. Stat. § 645.08(1) (“requiring that words defined in chapter be construed according to such definition”).

<sup>48</sup> Minn. Stat. § 211A.01, subd. 4.

acting to promote a ballot question requiring the filing of a campaign finance report under Minn. Stat. § 211A.

When interpreting a statute, the court will first look to see whether the statute's language on its face is clear or ambiguous.<sup>49</sup> "A statute is only ambiguous when the language therein is subject to more than one reasonable interpretation."<sup>50</sup> The basic canons of statutory construction instruct that courts should construe words and phrases according to their plain and ordinary meaning.<sup>51</sup> Furthermore, a statute should be interpreted, whenever possible, to give effect to all of its provisions.<sup>52</sup>

Since the legislature defined "committee," the Court is obligated to apply the definition accordingly. Under both Minn. Stat. §§ 211A.01, subd. 4, and 211B.01, subd. 4, the legislature used the disjunctive word "or" between "corporation" and "persons acting together" and "two or more persons acting together." This reflects the legislature's intent to show separate distinct circumstances of when a "committee" is formed to effect Minnesota's laws

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<sup>49</sup> See *Amaral v. Saint Cloud Hosp.*, 598 N.W.2d 379, 384 (Minn. 1999).

<sup>50</sup> *Id.*

<sup>51</sup> See *Frank's Nursery Sales, Inc. v. City of Roseville*, 295 N.W.2d 604,608 (Minn. 1980).

<sup>52</sup> *Amaral*, 598 N.W.2d at 384 ("no word, phrase, or sentence should be deemed superfluous, void, or insignificant"), citing *Owens v. Federated Mut. Implement & Hardware Ins.*, 328 N.W.2d 162, 164 (Minn. 1983).

governing campaign reporting. Construing the provision in the context of the campaign finance reporting laws under Minn. Stat. §§ 211A and 211B will not result in an absurd result or unjust consequence,<sup>53</sup> but effectuate the intent of the legislature.<sup>54</sup>

Had the legislature intended “committee” under Minn. Stat. §§ 211A and 211B to be defined differently or even consistent with Minnesota’s other election laws, it would have done so, but purposely did not. It should be noted that the vast majority of “ballot questions” in the state originate through school districts. Cities and counties rarely initiate referenda. Thus, since Minn. Stat. §§ 211A and 211B include “ballot questions” it denotes the legislature’s intent that the law apply to school district referenda. Given this it would seem that the legislature would have explicitly exempted school districts from this reporting requirement had it intended to do so.

More importantly, it would appear odd for the legislature to require private individuals, associations, or groups to report on their political activities regarding ballot questions, while public-funded entities such as school boards would be exempt. The burden of disclosure should be higher for public entities than for private individuals — and, at the very least equal

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<sup>53</sup> *Erickson v. Sunset Mem’l Park Ass’n*, 259 Minn. 532, 543, 108 N.W.2d 434, 441 (1961).

<sup>54</sup> *Amaral*, 598 N.W.2d at 385-86.

footing in such political election contests. Here, the OAH is turning this principle on its head and there is no other legal challenge before this Court regarding for instance, its constitutionality.<sup>55</sup>

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<sup>55</sup> Although no constitutional challenge is made regarding the statute at issue regarding the definition of “committee,” Petitioners’ counsel feels ethically obligated to bring to this Court’s attention the matter of *Minnesota Citizens Concerned for Life, Inc. v. Kelley*, 698 N.W.2d 424 (Minn. 2005). There, the Minnesota Supreme Court narrowed the construction of the definition of “political committee” as it relates to groups obligated to report under Minn. Stat. § 10A.01, et seq. In a constitutional challenge to the definition under the First Amendment of the United States Constitution and the United States Supreme Court decision in *Buckley v. Valeo*, 424 U.S. 1 (1976) in federal court, who in turn certified the question to the Minnesota Supreme Court for adjudication, the State Supreme Court answered the following certified question in the affirmative:

Whether the use of the phrase “to influence the nomination or election of a candidate or to promote or defeat a ballot question” and related phrases in Minn. Stat. § 10A.01, subds. 27 and 28 may be narrowly construed to limit the application of those statutes to groups that expressly advocate the nomination or election of a particular candidate or the promotion or defeat of a ballot question.

*Minnesota Citizens Concerned for Life*, 698 N.W.2d at 430. Under Minn. Stat. § 10A.01, subd. 27 “political committee” means,

[A]n association whose major purpose is to influence the nomination or election of a candidate or to promote or defeat a ballot question, other than a principal campaign committee or a political party unit.

The Supreme Court’s decision is inapplicability here. Minn. Stat. § 10A.01 is an entirely different set of laws that do not overlap to the reporting and civil prosecution requirements of Minn. Stat. §§ 211A and 211B. Again, had the legislature desired a different definition of “committee” under Minn. Stat. §§

What is certain under the instant facts, is that the St. Louis County School Board expressly advocated the promotion of the ballot questions through financial support, using public funds and in-kind contributions through district employees, to ensure a successful campaign.

**B. School Districts are quasi-public corporations, not subdivisions of government under Minn. Stat. §§ 211A and 211B.**

Under Minnesota statutory law (unless otherwise specifically declared) and under Minnesota common law, school districts are public corporations:

“[d]istricts shall be classified as common, independent, or special districts, each of which is a public corporation...”<sup>56</sup>

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211A and 211B, it would have done so, but did not. In the instant case, the St. Louis County District Board did advocate as a committee through its actions to disburse public funds beyond its authority to conduct an election for the purpose of promoting the 2009 ballot question. Therefore, it is obligated to report campaign finances under Minn. Stat. §§ 211A and subject to civil prosecution under § 211B.

<sup>56</sup> Minn. Stat. § 123A.55 (2008); *In re Consolidation of School Districts in Freeborn County*, 246 Minn. 96, 74 N.W.2d 410 (1956 ) (School districts, although not municipal corporations, are at least public corporations); *Bank v. Brainerd School Dist*, 49 Minn. 106, 51 N.W. 814 (1892) (school districts are corporations with limited powers, organized for public purposes, and the duties of the trustees or boards of education, entrusted with the management and care of the property of those districts, are public and administratively only); Op. Atty.Gen., 622-I-8, July 21, 1953 (a school district when organized becomes a public corporation).

The Minnesota Supreme Court described the school district as a public corporation clothed with governmental power for education with limited powers as dictated through the legislature:

The legislature has provided by law for school districts, which it has constituted public corporations clothed with governmental power to perform the public duty of providing public schools...The legislature is vested with discretionary power to prescribe the manner of the government of public corporations.<sup>57</sup>

And the exercise of that power is limited:

By statute, certain duties are delegated to school boards to be exercised by them in their corporate capacity as such.<sup>58</sup>

The courts have continually affirmed the description of school districts as public corporations. In a 1966 Supreme Court decision for instance, the Court found school districts as “at least public corporations”<sup>59</sup> and further stated that they are “quasi-public corporations, governmental agencies with limited powers. They are arms of the state and are given corporate powers solely for the exercise of public functions for educational purposes.”<sup>60</sup>

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<sup>57</sup> *Muehrign v. School Dist. No. 31 of Stearns County*, 224 Minn. 432, 435, 28 N.W.2d 655, 657 (1947) (citations omitted).

<sup>58</sup> *Id.* at 224 Minn. 436, 28 N.W.2d 658.

<sup>59</sup> *Village of Blaine v. Independent School District No. 12, Anoka County*, 272 Minn. 343, 350, 138 N.W.2d 32, 38 (1965).

<sup>60</sup> *Id.*, 272 Minn. 351, 138 N.W.2d 38 (citation omitted). *See also, State v. Minnesota Transfer Ry. Co.*, 80 Minn. 108, 114, 83 N.W. 32, 34 (1900) (defining a railroad as a quasi public corporation, the Minnesota Supreme

Likewise, under Minn. Stat. § 211B.01, the definition of a school district is subject to the applicability of the definition used in Chapter 200.<sup>61</sup> Minn. Stat. § 200.02, subd. 19 defines a school district as “an independent, special, or county school district.” Minn. Stat. § 200.02 is consistent with Minn. Stat. § 123A.55 defining a “school district” as a public corporation.

The OAH, on the other hand, believes differently. Citing the Municipal Tort Liability Act and Uniform Municipal Contracting Law<sup>62</sup> — both inapplicable here — as declared in its November 2009 decision: “[a] school district is a political subdivision of the state ....”<sup>63</sup> The OAH is only partially correct, *but not* in the context of Minnesota campaign finance and reporting laws under Minn. Stat. §§ 211A and 211B within the context of the definition of “committee.” When the Minnesota legislature intends to exclude school districts as “public” or “quasi-public corporations,” it will define them as a “political subdivision” but only for specific statutory purposes.

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Court outlined a similar, and cogent explanation of a quasi public corporate role, “[t]he general rule is that ‘a railroad company is a quasi public corporation, and all its rights and powers are conferred upon it, not merely for the benefit of the corporation itself, but also in trust for the benefit of the public....’”

<sup>61</sup> Minn. Stat. § 211B.01, subd. 1 (2006).

<sup>62</sup> *Abrahamson*, Or. and Memo. 4 n.12, *citing*, Minn. Stat. §§ 466.01 and 471.345, Pttrs. App. 4.

<sup>63</sup> *Id.*

For instance, for purposes of depositing and investing local public funds under Chapter 118A, a school district is identified as a “government entity.”<sup>64</sup> For purposes of Minnesota’s Government Data Practices Act, a school district is defined as a “political subdivision.”<sup>65</sup> For matters directly related to the State Auditor, the definition of a “political subdivision” also includes school districts.<sup>66</sup> And, as a last example, under Chapter 1 governing enemy attacks and temporary relocation of seats of government, a “political subdivision” definition includes school districts.<sup>67</sup>

Thus, if the legislature intended to define a school district as an entity other than a public corporation under Minn. Stat. § 123A.55, for a specific applicable law, it would have done so as the previous examples reflect. But, under governing campaign finance and reporting laws, the legislature did not. Nowhere in the governing statutes — and the OAH decision did not cite authority to the contrary — are school districts precluded from obligations associated with the expenditure of funds as a “public corporation,” for campaigns associated with ballot questions.

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<sup>64</sup> Minn. Stat. § 118A.01, subd. 2 (2005).

<sup>65</sup> Minn. Stat. § 13.02, subd. 11 (2005).

<sup>66</sup> Minn. Stat. § 6.465, subd. 2 (2009).

<sup>67</sup> Minn. Stat. § 1.26, subd. 1 (2009).

Consistent with legislative enactments to use definitions for specific purposes to distinguish a school district as a “public corporation” or as a “political subdivision” in only one section under the campaign finance laws is there a definition for “corporations.” And, that definition is specifically limited to the applicability of corporate contributions:

**Definitions.** For purposes of this section, “corporation” means:

- (1) a corporation organized for profit that does business in this state;
- (2) a nonprofit corporation that carries out activities in this state; or
- (3) a limited liability company formed under chapter 322B, or under similar laws of another state, that does business in this state.<sup>68</sup>

Because the language of this subdivision limits the applicability to a specific type of corporation — for profit, nonprofit, and limited liability— to one section of the law, it does not mean this definition is to be used throughout the entire statute as a definitive meaning when the word “corporation” is found in the definition of “committee.” If the legislature sought to limit the definition of corporation as used within the definition of “committee,” it would have done so as it did under Minn. Stat. § 211B.15, subd. 1.

Instead, to ensure compliance with Minnesota’s campaign laws of all persons and entities regarding disclosure of campaign activities, the

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<sup>68</sup> Minn. Stat. § 211B.15, subd.1 (2010) (Original bold; emphasis added).

definition of “committee” is not limited. In other words, if the legislature wanted to exclude a school district as a public corporation from reporting under Minn. Stat. §§ 211A and 211B, it would have said so. Here, it did not. But, to refer to a school district as a “political subdivision” as the OAH decision suggests, is to misconstrue the law, contrary to Supreme Court precedent, and contrary to legislative intent.

Therefore, the definition of “committee” under Minn. Stat. §§ 211A.01, subd. 4 and 211B.01, subd. 4, includes a school district as a “public corporation” and therefore they are subject to the requirements of Minnesota’s campaign finance and reporting laws.

**II. The St. Louis School District expended moneys for the promotion of the 2009 ballot questions, going beyond its statutory authority for election expenditures and is required under the law to report those expenditures.**

While school districts may expend certain moneys in connection with an election such as ballot questions, there are limitations to those “public expenses” as expressed under Minn. Stat. § 204B.32:

(d) *The school districts shall pay the compensation prescribed for election judges and sergeants-at-arms, the cost of printing the school district ballots, providing ballot boxes, providing and equipping polling places and all necessary expenses of the school district clerks in connection with school district elections not held in conjunction with state elections. When school district elections are held in conjunction with state elections, the school district shall pay the costs of printing the school district ballots,*

providing ballot boxes and all necessary expenses of the school district clerk. ...<sup>69</sup>

The OAH decision asserted that “[e]ven if the school district were properly considered a ‘candidate’ or ‘committee’ subject to the filing requirements of chapter 211A, the specific expenses at issue fall within statutory exemption for election-related expenditures and are not ‘disbursements’ for purposes of campaign finance reporting.” The OAH failed to cite any supporting authority or statutory exemption.

Minnesota Statute § 204B.32 is apparently the only statute applicable to the OAH conclusion.<sup>70</sup> Nevertheless, Abrahamson claims of expenditures are outside any statutory exemption inclusive of that found within Minn. Stat. § 204B.32(d).<sup>71</sup>

The OAH accepted Abrahamson’s factual allegations as supporting their claims regarding the District’s use of public moneys for the publication of newsletters and other similar publications to promote the ballot.<sup>72</sup> Likewise, the OAH did not disagree with similar allegations that expenditures included District’s use of its postage permit to disseminate

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<sup>69</sup> Minn. Stat. § 204B.32 (d) (1992) (emphasis added).

<sup>70</sup> *Abrahamson*, Or. and Memo. 4, Pttrs. App. 4.

<sup>71</sup> No other statutory exemptions were found applicable to the instant case.

<sup>72</sup> OAH Compl. 4, Pttrs. App. 20.

publications to promote the passage of the ballot question.<sup>73</sup> Nor did the OAH ignore the alleged District expenditures of public moneys through a contractor acting as the District's agent, Johnson Controls, Inc., to promote the passage of the ballot question.<sup>74</sup>

Instead, the OAH lumped these campaign expenditures as within statutory exemptions.<sup>75</sup> The OAH surmised that costs associated with producing publications to promote passage of the ballot question or its dissemination are not "disbursements." The conclusion is an inaccurate interpretation of statutory law.

**A. The School District's disbursements and contributions fall within the statutory requirements for reporting under Minnesota's campaign laws.**

Under Minn. Stat. § 211B.01, subd. 5, a disbursement "means an act through which money, property, office, or position or other thing of value is directly or indirectly promised, paid, spent, contributed, or lent, and any money, property, office, or position or other thing of value so promised or transferred." Likewise, under Minn. Stat. § 211A.01, subd. 6, disbursement means, "money, property, office, position, or any other thing of value that passes or is directly or indirectly conveyed, given, promised, paid, expended,

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<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Abrahamson*, OAH Or. and Memo. 5, Pttrs. App. 5.

pledged, contributed, or lent. ‘Disbursement’ does not include payment by a county, municipality, school district, or other political subdivision for *election-related expenditures required or authorized by law.*”<sup>76</sup>

The expenditures “required or authorized by law” are those associated with a ballot question election; they are specific as they are limited: election judges and sergeants-at-arms, the cost of printing the school district ballots, providing ballot boxes, providing and equipping polling places and all necessary expenses of the school district clerks.<sup>77</sup> None of the expenditures complained of fall within any one of these categories. Therefore, the expenditures are not exempt and are reportable under Minn. Stat. § 211A.

Meanwhile, opposing counsel may assert that the inclusion of “school district” within this definition between county, municipality, or other political subdivision means an intent of the legislature to identify “school district” as a subdivision of government.<sup>78</sup> Such an argument would fail. The comma between each entity reflects a separate and distinct identity and not an encompassing grouping of similar entities of “subdivisions of government.” And, again as previously argued, if the legislature wanted to exclude school

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<sup>76</sup> (Emphasis added); *see also, Abrahamson*, OAH Or. and Memo. 5, App. 5.

<sup>77</sup> Minn. Stat. § 204B.32.

<sup>78</sup> The OAH made no mention of this its decision.

districts from complying with these specific campaign laws, it would have done so.

However “disbursement” is defined, it does not detract from the statutory obligations to report when a school district, acting as a committee either as a public corporation or as persons acting together to promote or defeat a ballot question. The failure to do so is subject to civil prosecution. Neither does the definition of disbursement contemplate a school district *not* reporting for expenditures beyond those required or authorized by law under Minn. Stat. § 204B.32.

Minnesota Statute § 204B.32 is specific regarding election-related expenditures — election judges, sergeants-at arms, printing costs of ballots, ballot boxes, providing and equipping polling places, and other necessary expenses “of the school district clerks” related to the “school district elections *not held in conjunction with state elections.*”<sup>79</sup> Expenses related to those of the “district clerks” for election purposes, hardly contemplates a full-scale referendum campaign with expenditures as Abrahamson alleged.<sup>80</sup>

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<sup>79</sup> Minn. Stat. § 204B.32 (1992) (emphasis added).

<sup>80</sup> The unauthorized expenditures also raises issues related to ultra vires contracts between the School District and others regarding disbursements for the promotion of the ballot questions. If the District expended moneys beyond the limited authority under Minn. Stat. § 204B.32, the Board members have

The St. Louis School Board members approved. The District spending public moneys for the December 2009 referendum election. As required under Minnesota law, a committee that receives contributions or makes disbursements of more than \$750 in a calendar year must file a campaign financial report.<sup>81</sup> The St. Louis School District did not.

**B. The use of tax moneys to promote the passage of a ballot question is an improper use of public funds and since used to campaign for the ballot question, are reportable.**

Abrahamson complained of the District's use of tax moneys to promote the December 2009 ballot question labeling it prohibitive, if not illegal.<sup>82</sup> Each publication promoted the passage through marketing devices of positive reinforcement and dire consequences, inclusive of ploys of at least one published-editorial plea from a sophomore high school student to "VOTE YES" on the ballot question.<sup>83</sup>

Abrahamson cited three statements as representative of the District's promotional efforts via misuse of public moneys:

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done so outside of their respective authority and limited powers concerning the conduct of the election process.

<sup>81</sup> Minn. Stat. § 211A.02, subd.1 (2010).

<sup>82</sup> See, e.g., OAH Compl. Exs. D-H, Pttrs. App. 64-96.

<sup>83</sup> OAH Compl. Ex. G (App.44), Pttrs. App. 79.

- “[I]f we don’t pass this bond referendum we’ll be putting our schools in hospice.”<sup>84</sup>
- Other options would not resolve the District’s financial challenges.<sup>85</sup>
- Unfortunately, no matter how you look at these options if a ‘no’ vote prevails, the board has little choice other than to close schools....”<sup>86</sup>

The District further compounded its’ error by failing to invite, encourage, or publish the dissenters’ opposition but used public funds for its exclusive use in its campaign.<sup>87</sup> Abrahamson also noted the contractual relationship, expenditures, and contributions of the District’s agent, Johnson Controls, Inc., using for instance, Johnson’s prepared materials for District planning purposes and incorporating segments of the materials as campaign promotional materials.<sup>88</sup>

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<sup>84</sup> OAH Compl. 13, P. 29.

<sup>85</sup> *Id.* 14, P. 30.

<sup>86</sup> *Id.*

<sup>87</sup> *See, e.g.*, OAH Compl. 5-6, P. 21-22.

<sup>88</sup> *Id.* 5, P. 21. Abrahamson did allege that Johnson Controls provided campaign assistance in the District’s promotional efforts. Here, the argument is *not* that a school district cannot hire a consultant to draft plans or write reports for decision-making purposes. (*See e.g.*, Atty. Gen. Op. Mar. 3, 1955; Atty. Gen. Op. Sept. 17, 1957, P. 257-61). However, after obtaining the reports the District selectively used parts to incorporate in its’ promotional campaign materials advocating passage of the December bond ballot question. Abrahamson contends that using the information for one

The OAH mistakenly lumped the above categories of statements into an analysis under Minn. Stat. § 211B.06, determining the statements as not false and therefore not violative of that statute. However, Abrahamson sought to use these statements of examples of the District's promotions of the ballot question. As such, the activities of the District in using taxpayer moneys is reportable under Minn. Stat. § 211A, or in the alternative unlawful but reportable.

The District's expenditures in 2009 for the December 2009 ballot election reflected a position that it may freely spend taxpayers moneys to conduct an election campaign, to influence voters, provide one-sided arguments during an election campaign, and otherwise use its prestige, authority, and resources to convince voters to pass the bond referendum. The government's use of public resources to manufacture citizen support for a partisan viewpoint on political issues raises serious questions concerning the integrity of the democratic process. It is a truism that, if a governing structure based upon widespread genuine citizen opinions is to survive as a

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purpose — decision-making — does not excuse the District's use of it as part of promotional efforts to pass the ballot without reporting it under Minn. Stat. § 211A as a contribution (i.e., in-kind since the District had previously paid for the work under contract with Johnson Controls). *Compare*, Pptrs. App. 30 and 38 to 74 and 112. Chart prepared by Johnson and Ehlers and Associates (a financial advisory firm) that is used in promoting the ballot question).

viable democracy, it must place legal restraints on the government's ability to manipulate the formulation and expression of that opinion:

Although more subtle than censorship, official partisanship thorough [sic] the affirmative act of disseminating propaganda in support of a partisan viewpoint may pose as great or greater danger to political rights of free expression.<sup>89</sup>

There are instances, therefore, in which government funds are used lawfully to express views on matters of importance, where taxpayers may disagree with those views. With respect to structured political questions such as ballot questions, however, the law must draw a line between publicly financed government communications informing the public of the internal workings of government, such as studies, hearings, debates, rules, and decisions, and publicly financed government campaigns which interfere with the external political process by attempting to affect the outcome of citizen opinion and elections.<sup>90</sup>

There is no binding authority on point. There is no constitutional challenge before the Court. But, if expenditures or contributions of public moneys occurred, as Abrahamson contends, they must be reported in accordance with Minn. Stat. § 211A or, alternatively, if illegally expended,

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<sup>89</sup> Edward H. Ziegler, Jr., *Government Speech and the Constitution: The Limits of Official Partisanship*, 21 B.C.L.Rev. 578, 580 (1980).

<sup>90</sup> Id. at 585.

the practice must cease. Furthermore, the only statute providing for the authority of election-related expenditures is found under Minn. Stat. § 204B.32. Yet, as previously discussed above, the authority is specific and narrowly limited to the expenses *for* the electoral process, *not* to exhort from the voters a favorable vote to pass the ballot question. In other words, monetary disbursements for the holding of an election are submitted to the electorate are in no sense analogous to the expenditure of money to influence voters prior to that election.

The Minnesota Attorney General's Office opined on the topic of district expenditures of public moneys for ballot question elections in 1966.<sup>91</sup> Similar to the instant case, the proposed bonds were for the construction and modification of school buildings.<sup>92</sup> Specifically, two questions on this topic were related to whether or not a school district could pay for the printing and the mailing of literature to voters in the name of the school board urging the passage of the bond question, as long as the expenses were reasonable.<sup>93</sup> The Attorney General answered "no" to both questions.

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<sup>91</sup> Minn. Atty. Gen. Op. 159a-3 (May 24, 1966), Pptrs. App. 250-54.

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

The Attorney General relied on a 1953 New Jersey decision in *Citizens to Protect Pub. Funds v. Bd. of Educ. of Parsippany-Troy Hills Tp.*,<sup>94</sup> written by then William J. Brennan, Jr. before his accession to the United States Supreme Court, that while not of our jurisdiction, is and remains persuasive. There, a district published a booklet in New Jersey exhorted “Vote Yes” on several pages and warned of consequences “if you don’t Vote Yes.” While the court upheld the right of the school board to present the facts to the voters, it admonished the use of funds that advocated only one side of the issue without affording the dissenters an opportunity to present their side:

In that manner the board made use of public funds to advocate one side only of the controversial question without affording the dissenters the opportunity by means of that financed medium to present their side, and thus imperiled the propriety of the entire expenditure. The public funds entrusted to the board belong equally to the proponents and opponents of the proposition, and the use of the funds to finance not the presentation of facts merely but also arguments to persuade the voters that only one side has merit, gives the dissenters just cause for complaint. The expenditure is then not within the implied power and is not lawful in the absence of express authority from the Legislature.<sup>95</sup>

We agree with this interpretation. The scope of the District’s school board authority to disseminate information, at the taxpayer’s expense, cannot be patently designed to exhort the electorate to cast their ballots in favor of a

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<sup>94</sup> *Citizens to Protect Pub. Funds v. Bd. of Educ. of Parsippany-Troy Hills Tp.*, 98 A.2d 673 (N.J. 1953).

<sup>95</sup> *Id.* at 677.

bond referendum as advocated by the board. In other words, “[t]o educate, to inform, to advocate or to promote voting on any issue may be undertaken, provided it is not to persuade nor to convey favoritism ....”<sup>96</sup>

Likewise, the Supreme Court of Mississippi, in *Smith v. Dorsey*,<sup>97</sup> addressed the issue of the expenditure of public funds. In that case, taxpayers brought a lawsuit against school board members for spending time, money, and resources to promote passage of a bond referendum. The Supreme Court upheld, in relevant part, the lower court's ruling that the authority of a public entity are only those statutorily given:

Nothing in our statutory or common law authorizes in a public entity's use of public funds to actively campaign for a favored position on a bond issue. A school board, or any public entity, has only those powers expressly provided by statute and those which are vested by necessary implication.<sup>98</sup>

Even if the District and School Board members contended that such a campaign was necessary in response to “distortions in the community generated by [others] concerning the impact of a bond referendum” the

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<sup>96</sup> *Phillips v. Maurer*, 67 N.Y.2d 672, 490 N.E.2d 542, 543 (N.Y. 1986) (citing *Stern v. Kramarsky*, 84 Misc.2d 447, 452, 375 N.Y.S.2d 235 (N.Y. 1975); *See, also, e.g., Schulz v. State*, 86 N.Y.2d 225, 654 N.E.2d 1226 (N.Y. 1995).

<sup>97</sup> *Smith v. Dorsey*, 599 So.2d 529 (Miss. 1992).

<sup>98</sup> *Id.* at 535.

argument should fail as the *Dorsey* court held; the school district may not expend taxpayer funds to influence the voters.<sup>99</sup>

Although not controlling, other courts such as in North Carolina, Florida, and District of Columbia have opined that government entities may not use public funds to engage in partisan political campaigns.<sup>100</sup> The OAH decision tried to justify the District's public expenditures and its partisan campaign upon broad statutory authority.

The OAH's analysis is not only wrong, but fundamentally dangerous. It is not the fact that the District wants to see the bond measure pass, or

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<sup>99</sup> *Id.* at 540.

<sup>100</sup> See, e.g., *Dollar v. Town of Cary*, 569 S.E.2d 731, 733 (N.C.App. 2002). ("Local government advertising on particular issues is allowed where the advertising is of an informational nature...Where the advertising, however, is designed to promote a viewpoint on an issue in order to influence an election, it is impermissible." The determination of whether advertising is informational or promotional is a factual question, and factors such as the style, tenor, and timing of the publication should be considered.); *Palm Beach County v. Hudspeth*, 540 So.2d 147, 153 (*Fla.App. 1989*) (To the extent that a proposed expenditure of public funds infringes upon or tends to infringe upon the political power reserved to the people, that expenditure will be deemed constitutionally impermissible.); In *District of Columbia Common Cause v. District of Columbia*, 858 F.2d 1 (D.C.Cir.1988) held that where the D.C. Circuit held that expenditures made by the city government in a campaign to defeat a ballot proposal were illegal: "We hold that the individual appellees have standing as municipal taxpayers to challenge expenditures by the District of Columbia government to *influence* the outcome of an initiative. On the merits, we conclude that the expenditures were illegal." *Id.* at 11.

even that it declares that it would like to see the bond measure pass. Rather, it is the actions of initiating and operating, particularly using public funds and resources, a partisan political campaign to support (or oppose) an election that should be left to the free election of the voters:

Official partisanship by public agencies in connection with these political processes can only demean, distort and eventually destroy, if not the democratic process itself, at least public confidence in the process....

If a republican form of government allows its democratic processes to be undermined by official partisanship it will fast lose the purpose of its power in the fact of its power.<sup>101</sup>

Allowing for official partisanship of the District with taxpayer moneys will undermine the public confidence in the democratic process, and as a matter of law should not be allowed. Regardless, at a minimum, the very use of public moneys should be reported under Minn. Stat. § 211A, a statutory requirement that is not burdensome,<sup>102</sup> but encourages transparency in ballot election contests of all participants in the contest, to allow the public to see how and from whom those disbursements or contributions are made. It is nothing more than a part in the experiment of democratic government that any school district should welcome.

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<sup>101</sup> H. Ziegler, Jr., at 618-19 (1980).

<sup>102</sup> See, Campaign Financial Report, Office of the Minnesota Secretary of State <http://www.sos.state.mn.us/index.aspx?page=138#Campaign>, Pttrs. App. 14-16.

**III. The OAH opinions relating to District statements alleged as false, misapplied the law in declaring Abrahamson had failed to meet the *prima facie* threshold to avoid dismissal.**

This Court has concluded that for a person to sustain an OAH complaint under Minn. Stat. § 211B.06 under a *prima facie* standard the complainant must, if the facts are “accepted as true, would be sufficient to prove a violation of chapter ...211B.”<sup>103</sup> The statute prohibits the preparation and dissemination of false campaign material. The prohibition has two elements: (1) a person must intentionally participate in the preparation or dissemination of false campaign material; (2) the person developing or disseminating the material must know that the item is false, or act with reckless disregard as to whether it is false.

The first element of the statute, the test is objective.<sup>104</sup> The second element of the statute is subjective.<sup>105</sup>

Thus, Abrahamson, in his verified OAH Complaint, must prove that the District and School Board members “entertained serious doubts” as to the

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<sup>103</sup> *Barry v. St. Anthony-New Brighton Indep. Sch. Dist.* 282, 781 N.W.2d 898, 902 (Minn. App. 2010).

<sup>104</sup> See *Hawley v. Wallace*, 137 Minn. 183, 186, 16 N.W. 127, 128 (1917); *Bank v. Egan*, 240 Minn. 192, 194, 60 N.W.2d 257, 259 (1953); *Riley v. Jankowski*, 713 N.W.2d 379 (Minn. App.) *review denied* (Minn. 2006).

<sup>105</sup> *Riley*, 713 N.W.2d at 398.

truth of the publication or acted “with a high degree of awareness” “of its probable falsity.”<sup>106</sup> Because the complainants make the allegations under oath, the OAH complaint acts much like affidavits that are used to prove or disprove the asserted claims: “Verified pleadings may be considered as affidavits tending to prove or disprove the claims of the respective parties.”<sup>107</sup> Here, similar to civil litigation, “the verified complaint has the drawback of committing the plaintiff to a version of the facts before discovery has even begun. The verified complaint thus provides the defense attorney with a potential means by which to impeach the plaintiff.”<sup>108</sup>

While an OAH Complaint alleging a violation of Minn. Stat. § 211B for civil prosecution is not a defamation action, the Minnesota Supreme Court has determined that “the plain language [of the statute] includes the definition of actual malice set forth in [*Chafoulias v. Peterson*], and we see no reason why actual malice should be analyzed differently here than in a defamation action.”<sup>109</sup> In short, “reckless disregard does not mean reckless in

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<sup>106</sup> *St. Amant v. Thompson*, 390 U.S. 727, 731 (1968); *Garrison v. Louisiana*, 379 U.S. 64,74 (1964). See also, *Riley*, 713 N.W. 2d at 398.

<sup>107</sup> *Behrens v. City of Minneapolis*, 271 N.W. 814, 816 (Minn. 1937).

<sup>108</sup> See, e.g., Stephen S. Ashely, *Bad Faith Actions Liability & Damages* § 10:26 (West Group 1997).

<sup>109</sup> *Riley*, 713 N.W.2d at 399, citing *Chafoulias v. Peterson*, 668 N.W.2d 642, 654-55 (Minn. 2003).

the ordinary sense of extreme negligence. Instead, reckless disregard requires that the defendant make a statement while subjectively believing that the statement is probably false.”<sup>110</sup>

Thus, for the complainants to meet the *prima facie* standard, they must acknowledge under oath they know the *subjective* intent of each respondent at the time of filing. The acknowledgement must affirm that the complainants know that each respondent knew the statements made and disseminated were false or were probably false at the time they were made.

The OAH dismissed Abrahamson’s first allegation regarding the District’s statement “if the plan [the ballot question] is not approved, the school district would enter into ‘statutory operating debt’ by June 2011, which means the State of Minnesota recognizes that the school district can no longer balance its expenditures and revenues and would need to dissolve,”<sup>111</sup> that is, “statutory operating debt.”<sup>112</sup> The OAH concluded that “[w]hether or not the State *recognizes* school districts that enter into statutory operating debt as ones that *would need* to dissolve, is not a statement that can be proven true or false.”<sup>113</sup> But, that is not the statement the District made.

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<sup>110</sup> *Id.* 713 N.W. 2d at 398-99.

<sup>111</sup> OAH Compl. 7, Pptrs. App. 23.

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

The statement reflects a definitive state of occurrence of “statutory operating debt” — by June 2011 (the end of the District’s budgetary year) — if the voters fail to approve the plan. Likewise, the District stated that once this point is reached, it “would need to dissolve.” The word “would” is the past tense of “will.”<sup>114</sup> Thus, contrary to the OAH’s opinion, the statement reflects far more than an “inference” or a “pessimistic possibility.”<sup>115</sup> In fact, contrary to the OAH’s opinion that the District did not “state [it] will dissolve or will be required to dissolve if it enters into statutory operating debt,”<sup>116</sup> it is *exactly* what the District declared by using the past tense of “will” with “would.” And, as Abrahamson asserted, a district entering into statutory operating debt does not lead to dissolution and then resulting in district children going to neighboring school districts.<sup>117</sup> Therefore, Abrahamson met the necessary objective standard to move the matter to an evidentiary hearing (“the claimant has the burden at the hearing to prove by clear and convincing evidence that the respondent either published the statements

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<sup>114</sup> Henry Bosley Woolf, *Webster’s New Collegiate Dictionary*, 1331 (G.& C. Merriam Co. 1981).

<sup>115</sup> OAH Compl. 7, App. 23.

<sup>116</sup> *Id.*

<sup>117</sup> *Id.* “Children in the school district would then go to the neighboring school districts.” Once again, the District used the past tense of “will” with “would.”

knowing the statements were false.”<sup>118</sup>) The fact the statements were made objectively shows the intent of stating them as fact.

In a similar context, Abrahamson alleged the District’s statement of a “[p]rojected annual deficit in 2011-12 [of] \$4.1 million” as false under Minn. Stat. § 211B.06.<sup>119</sup> The OAH opined that “[t]he Fair Campaign Practices Act does not prohibit Respondents from disseminating campaign material that others regard as pessimistic or uncharitable.”<sup>120</sup> Abrahamson hardly characterized the projection as “pessimistic” but outright false. He demonstrated that before the District promoted the passage of the ballot question using a \$4.1 million deficit for 2011-12, the deficits were not growing, but decreasing.

The District Board approved a 2009-10 budget with an actual total deficit of \$833,000.<sup>121</sup> Abrahamson further concluded that from the documentation and promotional material that the District’s agent, Johnson Controls would also obtain a financial benefit from the ballot’s passage, thereby creating a taint upon the statements made.<sup>122</sup> Finally, the District’s

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<sup>118</sup> OAH Or. and Memo. 6, Pttrs. App. 6.

<sup>119</sup> OAH Compl. 9, App. 25.

<sup>120</sup> *Abrahamson* Or. and Memo. 8, Pttrs. App. 8.

<sup>121</sup> OAH Compl. 9, Pttrs. App. 25.

<sup>122</sup> *Id.*

Business Manager admitted that the budget projections were not realistic and had an alternative motive.<sup>123</sup>

However, the OAH opined that “[w]hether or not the [District’s] predictions are reliable are matters that are committed to the judgment... of the voters....”<sup>124</sup> Over-dramatized statements that omit factual and available data in the hands of the entity holding the information from the public to promote the passage of a ballot question, are false statements. A person or entity such as the District here, who knowingly and willfully made false statements and through omission concealed material facts with intent to defraud the voter should not be allowed to avoid governing campaign laws against false statements to promote or defeat ballot questions.<sup>125</sup> Therefore, Abrahamson has again met the objective *prima facie* test under Minn. Stat. § 211B.06.

In addition, the District understood the December 2009 ballot question was for capital construction or improvement projects. The District also knew that state law prohibited the use of these funds for programming. Yet, the

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<sup>123</sup> *Id.* 10, Pttrs. App. 26.

<sup>124</sup> *Abrahamson*, Or. and Memo. 8, Pttrs. App. 8.

<sup>125</sup> Compare, e.g., *Collins v. USAA Prop. and Cas. Ins. Co.*, 580 N.W.2d 55, 57 (Minn. App. 1998) citing *Astoria Quality Drugs, Inc. v. United Pacific Ins. Co. of New York*, 163 A.D.2d 82, 557 N.Y.S.2d 339, 340 (1990) (public policy prohibits insured from recovering for fraudulent conduct).

District falsely stated that passage of the bond referendum would result in new opportunities for education, unrelated to the actual moneys expended for school construction.<sup>126</sup> The opportunities included better learning materials (up-to-date textbooks and learning materials); learning centered on the individual student (through personalized learning and learning that is growth oriented and achievement based); focus on life skills (this includes life-career skills, work skills, social skills, healthy lifestyle choices, critical thinking); expanded elementary level programming (third-graders as fluent readers, character education, learning at student's pace); solid core programming (where students will be expected to achieve state standards); and enhanced potential for electives.<sup>127</sup> By the District's publication of these listings, it represented the alignment of unrelated school district obligations to its children (whether or not a ballot question election was pending) with the passage of the ballot question.

In other words, the District here attempts to assert that but for the ballot question, children would receive less than what is already expected. The OAH opined that the District's "claims of educational improvements that will result from the passage of the ballot question may be unrealistic or

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<sup>126</sup> OAH Complt. 10-12, Pttrs. App. 26-28.

<sup>127</sup> *Id.*

speculative, but that does not make them factually false.”<sup>128</sup> But, if the allegations of Abrahamson are taken as true, then the statements are false since the District “can in no way assure” the promises made.<sup>129</sup> As Abrahamson noted, none of the moneys from the bond issuance can be used for textbooks, educational materials, teacher hiring, or new programming.<sup>130</sup> Therefore, the District’s statements used to promote the ballot’s passage are false and meet the objective test under Minn. Stat. § 211B.06.

## CONCLUSION

School districts are public corporations. If they choose to take actions to promote or defeat ballot questions, and make disbursements or receive contributions to that political campaign, they are obligated to file campaign finance reports like everyone else. The Board authorizing such actions acts as a committee or as persons acting together to promote the ballot campaign.

The filing of reports is hardly over-burdensome, but encourages transparency in election contests of all participants in the contest, to allow the public to see how and from whom those disbursements or contributions are made. The Respondents should welcome the transparency necessary in

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<sup>128</sup> *Abrahamson Or. and Memo.* 9-10, *Pttrs. App.* 9-10.

<sup>129</sup> *Id.* 9, *Pttrs. App.* 9.

<sup>130</sup> *Id.*

political campaigns if and when they choose to actively participate in the promotion or defeat of ballot questions.

Likewise, if the District and School Board members are participating in the election process, it should be without the active advocacy resulting in false statements. Balanced representation is achievable, but when the District uses its taxpayer monetary resources to advocate to promote or defeat a ballot question, it must not prohibit the call from opposition voices. And, it should not have unbridled use of closed forums or use of false statements without opportunities for others to voice their opposition.

The OAH decision should be reversed and the matter remanded for further action in accordance with the disposition of this matter.

**MOHRMAN & KAARDAL, P.A.**



Dated: February 14, 2011.

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**STATE OF MINNESOTA**  
**IN COURT OF APPEALS**

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Steve Abrahamson and Tim Kotzian,

Petitioners,

vs.

The St. Louis County School District, Independent School District No. 2142,  
Bob Larson, Tom Beaudry, Darrell Bjerklie, Gary Rantala, Andrew Larson,  
Chet Larson, and Zelda Bruns, in their capacity as School Board Members,

Respondents,

The Minnesota Office of Administrative Hearings,

Respondent.

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**LR 7.1(c) WORD COUNT COMPLIANCE CERTIFICATE**

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I, Erick G. Kaardal, certify that the Petitioner's Principal Brief complies with Local Rule 7.1(c).

I further certify that, in preparation of this memorandum, I used Microsoft Word 2007, and that this word processing program has been applied specifically to include all text, including headings, footnotes, and quotations in the following word count.

I further certify that the above referenced memorandum contains 10,548 words.

**MOHRMAN & KAARDAL, P.A.**

Dated: February 14, 2011



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