OAH 82-0320-38786

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Erwin Roger Rud,

Complainant,

vs.

Michelle Louise Helene Fischbach,

Respondents.

ORDER OF DISMISSAL

On October 28, 2022, Erwin Roger Rud (Complainant) filed a Fair Campaign Practices Complaint (Complaint) with the Office of Administrative Hearings. The Complaint alleges that Congresswoman Fischbach (Respondent) violated various provisions of the Fair Campaign Practices Act and the United States Constitution in connection with her campaign for reelection. Congresswoman Fischbach is the incumbent member of the U.S. House of Representatives for Minnesota's Seventh Congressional District.

The Chief Administrative Law Judge assigned this matter to Administrative Law Judge Barbara J. Case pursuant to Minn. Stat. § 211B.33 (2022).

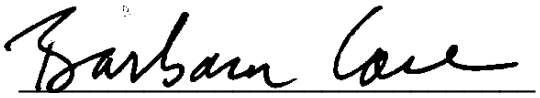
After reviewing the Complaint and for the reasons set forth in the Memorandum below, the Administrative Law Judge finds that the Complaint either does not establish prima facie violations of the Fair Campaign Practices Act and that she lacks subject-matter jurisdiction over consider the constitutional claims.

Therefore, based upon the record in this case, the Administrative Law Judge issues the following:

ORDER

The Complaint filed by Erwin Roger Rud against Congresswoman Michelle Fischbach is **DISMISSED**.

Dated: November 2, 2022



BARBARA J. CASE
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. § 211B.36, subd. 5 (2022), this Order is the final decision in this matter. A party aggrieved by this decision may seek judicial review as provided in Minn. Stat. §§ 14.63-.69 (2022).

MEMORANDUM

I. Background and Allegations

Respondent Michelle Fischbach is a United States Congresswoman representing Minnesota's Seventh Congressional District. She is seeking reelection to that office in the general election to be held on November 8, 2022. Complainant alleges that Respondent violated Minn. Stat. §§ 211B.06, 211B.07, 211B.13 (2022), and the United States Constitution, in connection with her campaign for reelection to Congress.[1]

Complainant alleges that:

(1) Respondent violated Minn. Stat. § 211B.06, by disseminating false campaign material related to the 2020 United States Presidential election;[2]

(2) Respondent violated Minn. Stat. § 211B.07, by disseminating false claims about the 2020 Presidential election in order to cause duress and compel voters to vote for her;[3]

(3) Respondent violated Minn. Stat. § 211B.13, by posting a request for donations to former "President Trump's Election Defense Fund" on her campaign website to induce voters to vote for her;[4] and

(4) Respondent violated her oath to uphold and support the United States Constitution by repeating false claims about the validity of the 2020 Presidential election results and by supporting groups that sought to violently prevent the peaceful transfer of power on January 6, 2021.[5]

II. Standard for Prima Facie Determination

To establish a prima facie violation of the Fair Campaign Practices Act, a complainant must allege sufficient facts to show that a violation of law has occurred.[6] The

[1] Complaint (Oct. 28, 2022).
[2] *Id*. at 2-10.
[3] *Id*. at 10-21.
[4] *Id*. at 22-25.
[5] *Id*. at 25-29, *citing* U.S. Const., Amdt. 14, § 3.
[6] Minn. Stat. § 211B.32, subd. 3.

complaining party must submit evidence or allege facts that, if accepted as true, would be sufficient to prove a violation of Minn. Stat. §§ 211A.01-.14, 211B.01-.37 (2022).[7]

For purposes of a prima facie determination, this tribunal must accept the facts that are alleged in the Complaint as true, without independent substantiation, provided that those facts are not patently false or inherently incredible.[8] In determining whether a complaint alleges sufficient facts to state a prima facie case, reasonable inferences must be drawn in the light most favorable to the complainant.[9]

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 Minn. Stat. §§ 211A.01-.14, 211B.01-.37.[10]

III. Statute of Limitations

Fair Campaign Practices complaints must be filed with the Office of Administrative Hearings within one year after the occurrence of the act or failure to act that is the subject of the complaint, unless the act or failure to act involves fraud, concealment, or misrepresentation that could not be discovered during that one-year period.[11]

IV. Analysis

A. False Campaign Material (Minn. Stat. § 211B.06)

Minn. Stat. § 211B.06 provides in relevant part:

> A person is guilty of a gross misdemeanor who intentionally participates in the preparation, dissemination, or broadcast of paid political advertising or campaign material with respect to the personal or political character or acts of a candidate, or with respect to the effect of a ballot question, that is designed or tends to elect, injure, promote, or defeat a candidate for nomination or election to a public office or to promote or defeat a ballot question, that is false, and that the person knows is false or communicates to others with reckless disregard of whether it is false.

Complainant maintains that Respondent disseminated false campaign material relating to the 2020 Presidential election.[12] Complainant identifies statements Respondent made or posted on her campaign website between November 2020 and May 2021 that he maintains were factually false and disseminated with reckless disregard as

[7] *Barry v. St. Anthony-New Brighton Indep. Sch. Dist. 282*, 781 N.W.2d 898, 902 (Minn. Ct. App. 2010).
[8] *Id*.
[9] *Abrahamson v. St. Louis Cty. Sch. Dist*., 819 N.W.2d 129, 136 (Minn. 2012).
[10] *Barry,* 781 N.W.2d at 902.
[11] Minn. Stat. § 211B.32, subd. 4.
[12] Complaint at 2-10.

to whether they were false.[13] The statements concern allegations of voter fraud and other irregularities in the 2020 Presidential election.[14]

Complainant's section 211B.06 claims are not actionable for two reasons. First, the statements at issue were made more than a year before Complainant filed his Complaint and are therefore beyond the one-year statute of limitations.[15]

More importantly, even if the claims were timely, they must be dismissed because Minn. Stat. § 211B.06 has been invalidated by the federal courts. In 2014, the United States Court of Appeals for the Eighth Circuit determined that there was no way, consistent with First Amendment guarantees of free speech, to narrowly construe this statute. Accordingly, it declared the prohibitions on false campaign speech void and unenforceable.[16] Because Minn. Stat. § 211B.06 cannot provide a basis for relief, the claim is dismissed.

B. Undue Influence (Minn. Stat. § 211B.07)

Minn. Stat. § 211B.07 prohibits undue influence on voters. It states:

> A person may not directly or indirectly use or threaten force, coercion, violence, restraint, damage, harm, loss, including loss of employment or economic reprisal, undue influence, or temporal or spiritual injury against an individual to compel the individual to vote for or against a candidate or ballot question. Abduction, duress, or fraud may not be used to obstruct or prevent the free exercise of the right to vote of a voter at a primary or election, or compel a voter to vote at a primary or election. Violation of this section is a gross misdemeanor.

To establish a prima facie violation of Minn. Stat. § 211B.07, Complainant must allege facts that could lead the tribunal to conclude that Respondent used or threatened to use "force, coercion, violence, restraint, damage, harm, loss, including loss of employment or economic reprisal, undue influence, or temporal or spiritual injury" against individuals to compel them to vote for or against a candidate.[17]

The Merriam Webster Dictionary defines "compel" to mean "to drive or urge forcefully or irresistibly," or "to cause to do or occur by overwhelming pressure."[18] "Undue influence" has been defined to mean: "coercion, amounting to a destruction of one's free will, by means of importunities, flatteries, insinuations, suggestions, arguments,

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[13] *Id*.
[14] *Id*.
[15] Minn. Stat. § 211B.32, subd. 2.
[16] *See 281 Care Committee v. Arneson*, 766 F.3d 774, 789 (8th Cir. 2014), cert. denied 135 S. Ct. 1550 (2015) ("Stated most simply, § 211B.06 does not survive strict scrutiny because it tends to perpetuate the very fraud it is allegedly designed to prohibit. For this reason, among others, the restriction is neither narrowly tailored nor necessary").
[17] Minn. Stat. § 211B.07.
[18] *See "Compel,"* Meriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/compel (last visited Oct. 29, 2022).

or any artifice not amounting to duress. It is ordinarily of an insidious nature and exercised by one in close confidential relation to the victim."[19]

The conduct Complainant cites in support of his undue influence claim again concerns statements and campaign website postings Respondent made in 2020 and 2021.[20] The statements and postings repeat concerns raised by former President Trump about the validity and integrity of the 2020 Presidential election results.[21] For example, Complainant asserts that in 2020 Respondent posted a request on her campaign website that voters call a hotline to report irregularities or concerns about the election in order to help the "Army for Trump."[22] Complainant contends that this statement amounted to undue influence on voters.[23] Complainant maintains that Respondent's statements regarding alleged voter fraud and irregularities caused voters to feel intimidated and threatened.[24] According to the Complaint, Respondent "used her undue influence during the 2020 election to compel individuals to either voter for [Respondent] or Trump or to feel duress . . ."[25]

Complainant's alleged violations of section 211B.07 are beyond the one-year statute of limitations and are, therefore, time-barred.[26] Even if Complainant's alleged violations of section 211B.07 were timely, Complainant has failed to allege any facts to support finding that Respondent used or threatened force, coercion, violence, damage, harm, loss, or undue influence to compel persons to vote for or against a particular candidate in violation of Minn. Stat. § 211B.07.

Candidates for elective office have a First Amendment right to speak out on disputed issues and express themselves on matters of public importance.[27] And while the claims of voter fraud in the 2020 Presidential election have been rejected by numerous courts, Respondent's opinions and statements related to the 2020 Presidential election do not support a claim of undue influence on voters in violation of section 211B.07.

Complainant's alleged violations of Minn. Stat. § 211B.07 are dismissed.

C. Prohibition on Bribery and Solicitation (Minn. Stat. § 211B.13)

Minn. Stat. § 211B.13, subd. 1, provides:

> A person who willfully, directly or indirectly, advances, pays, gives, promises, or lends any money, food, liquor, clothing, entertainment, or other thing of monetary value, or who offers, promises, or endeavors to obtain

[19] *Leuba v. Bailey*, 251 Minn. 193, 201, 88 N.W.2d 73, 79 (Minn. 1958); *In re Welfare of N.M.C.*, 447 N.W.2d 14, 16 (Minn. Ct. App. 1989).
[20] Complaint at 10-21.
[21] *Id*.
[22] *Id*. at 12.
[23] *Id*. at 12.
[24] *Id*.
[25] *Id*. at 21.
[26] *See* Minn. Stat. § 211B.32, subd. 2.
[27] *See Republican Party of Minnesota v. White*, 536 U.S. 765, 781 (2002) (citations omitted).

> any money, position, appointment, employment, or other valuable consideration, to or for a person, in order to induce a voter to refrain from voting, or to vote in a particular way, at an election, is guilty of a felony.

Minn. Stat. § 211B.13 is an anti-bribery statute. It prohibits giving something of monetary value or promising something of "valuable consideration" to a person in order to induce a voter to vote in a particular way at an election.[28] Despite the civil nature of these proceedings, Minn. Stat. § 211B.13 is also a criminal statute, violation of which is a felony. As a result, application of the rule of strict construction of penal statutes is required.[29]

Complainant alleges that on November 6, 2020, Respondent posted on her campaign website a solicitation for donations to former "President Trump's Defense Fund."[30] By doing this, Complainant contends that Respondent endeavored to obtain money for former President Trump in order to induce voters to vote for her.[31]

This allegation is beyond the one-year statute of limitations and is, therefore, not actionable. Even if the claim was timely, it is insufficient to support a prima facie violation of section 211B.13. The statute prohibits a person from giving, loaning, or promising to give something of monetary value to induce a voter to vote in a particular way. Complainant has not alleged that Respondent gave or promised to give money or something of value to induce voting. Instead, the Complaint alleges only that Respondent encouraged others to donate to former President Trump's legal defense fund.

Because the claim is untimely and does not sufficiently allege improper influence over a voter, the alleged violation of Minn. Stat. § 211B.13 claim is dismissed.

D. Constitutional Claims

Finally, Complainant alleges that Respondent violated her oath of office to support and defend the U.S. Constitution by repeating false claims of election fraud related to the 2020 Presidential election.

The Administrative Law Judge's jurisdiction with respect to campaign complaints, is limited to alleged violations of Minn. Stat. §§ 211A.01 - .14 or 211B.01 - .37. The Judge does not have jurisdiction to hear and adjudicate campaign practice claims arising under any other chapters of Minnesota Statutes or the United States Constitution. Therefore, Complainant's alleged violations of the United States Constitution were not considered and must be dismissed for lack of subject-matter jurisdiction.

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[28] *See In the Matter of the Contest of General Election*, 264 N.W.2d 401, 403 (Minn. 1978) (describing the standard for two different campaign-related statutes).
[29] *Id*.
[30] Complaint at 22.
[31] *Id*. at 23-24.

V. Conclusion

Complainant failed to establish prima facie violations of Minn. Stat. §§ 211B.06, 211B.07, and 211B.13. Therefore, the Complaint is **DISMISSED** in its entirety.

B. J. C.