STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0622

Harry Niska, complainant,
Respondent,

vs.

Bonn Clayton,
Relator,

Office of Administrative Hearings,
Respondent.

Filed March 10, 2014
Affirmed in part and reversed in part
Ross, Judge

Office of Administrative Hearings
File No. 68-0320-30147

David W. Asp, Lockridge Grindal Nauen, P.L.L.P., Minneapolis, Minnesota (for respondent Niska)

Peter A. Swanson, Golden Valley, Minnesota (for relator)

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Considered and decided by Ross, Presiding Judge; Peterson, Judge; and Halbrooks, Judge.

U N P U B L I S H E D O P I N I O N

ROSS, Judge

Bonn Clayton distributed campaign material falsely indicating that the Republican Party of Minnesota endorsed three candidates for the Minnesota Supreme Court in the November 2012 election. His material also incorrectly stated that Justice Barry Anderson voted against former Governor Tim Pawlenty in a highly publicized supreme court case addressing the governor's unallotment authority. A panel of administrative law judges decided that Clayton violated Minnesota Statutes sections 211B.02 and 211B.06 (2012). Clayton appeals by writ of certiorari on constitutional and factual grounds. Because section 211B.02 is constitutional on its face and as applied to Clayton, and because sufficient evidence supports the panel's finding that Clayton violated it, we affirm in part. But because the panel received insufficient evidence to prove that Clayton acted with reckless disregard for the truth in making a false statement in violation of section 211B.06, we reverse in part.

FACTS

Bonn Clayton has held various positions in the Republican Party of Minnesota (RPM) since 1969. Most recently, Clayton served as a member of the First Judicial District Republican Committee. He also served as a member of the Judicial District Republican Chairs Committee (Chairs Committee) formed in 2005. The Chairs Committee met monthly to coordinate events in the state's various judicial districts, promote the judicial planks of the Republican platform, and develop strategy supporting judicial candidates.

The Chairs Committee has little power under the RPM constitution. Before each convention, the RPM forms a judicial election committee to investigate and report on appellate judicial candidates. The judicial election committee reports its findings at the convention. Convention delegates vote on whether to endorse any candidate. If the vote is affirmative, the delegates vote on specific candidate endorsements. The RPM endorses only candidates receiving 60% of the convention vote.

Clayton served as a member of the 2012 judicial election committee and presented the committee report at the convention. The convention delegates voted in favor of making judicial endorsements, but after reconsideration following a discussion about whether to endorse Tim Tingelstad over incumbent Justice David Stras, the convention voted by a two-to-one margin to overturn its previous decision to endorse any candidate. Clayton, who unsuccessfully lobbied the convention delegates to endorse Tingelstad, was present for that vote.

Despite knowing the convention's decision not to endorse any judicial candidate, Clayton sent an email to roughly 7,000 state Republicans on October 18, 2012, promoting a website, judgeourjudgesmn.org, that implied a different result:

> Dear Judicial District Delegates and Alternates,
>
> Just before every election, Party leaders begin to get many calls from voters wondering who they should vote for in the Minnesota Judicial races.
>
> So, we have put together a Voters' Guide, which we hope will be helpful.
>
> Just go to our website www.judgeourjudgesmn.org.

> It's just a new website, so it's still very simple. We currently have the names of our three recommended candidates for Supreme Court . . . .
>
> Please also send this link to all of your [basic political organizational unit's] precinct delegates and alternates and Caucus Attendees, so that Republican voters will be able to vote for the right candidates. And send the link to anybody else you can think of!
> . . . .
> Bonn Clayton, Convener
> Judicial District Republican Chairs
> Republican Party of Minnesota.

On the promoted website, Clayton posted a "2012 Minnesota Judicial Voters' Guide." The guide "strongly recommended" that Minnesota republicans vote for three supreme court candidates (Dan Griffith, Tim Tingelstad, Dean Barkley), although it never used the term "endorse" or "endorsement." The home page represented that the website was sponsored by the "Republican Party of Minnesota – Judicial District Chairs Committee." The bottom of the page stated, "Prepared and paid for by: Republican Party of Minnesota – Judicial District Republican Chairs." Clayton's name was also listed at the bottom, and his signature line designated, "Republican Party of Minnesota." Another page of the website gave a biography of Tingelstad with similar implications that the RPM supported his candidacy.

The RPM began receiving inquiries expressing confusion about the email and whether the RPM had endorsed judicial candidates. So the RPM sent out an email the following day explaining that it had not endorsed any judicial candidates. It directed readers to its own voters' guide. Clayton's website was shut down for fewer than 10 days.

Clayton continued to promote the website. He sent an email on October 28 to the same 7,000 addressees announcing that the website was back online. Although Clayton never referenced the "Republican Party of Minnesota" in this email, the website still indicated that it was an RPM product. The RPM's legal counsel, Richard Morgan, sent Clayton an email the next day asking Clayton to remove "Republican Party of Minnesota" from the website and advise all email recipients that any reference to the RPM was mistaken. Clayton changed the statement on the website to "First Judicial District Republican Committee of the Republican Party of Minnesota" and asked Morgan if the change was acceptable. Morgan told him it was not and that the RPM would file a complaint.

Clayton sent four additional emails to the same 7,000 addressees without referencing the RPM. One of the emails urged voters to elect Dean Barkley to the supreme court to replace Justice Barry Anderson. Clayton asserted that Justice Anderson had voted against Governor Pawlenty's unallotment authority, referring to the supreme court decision *Brayton v. Pawlenty*, 781 N.W.2d 357 (Minn. 2010). The statement was false.

RPM state convention delegate Harry Niska filed a complaint with the Office of Administrative Hearings (OAH), alleging that Clayton falsely indicated that the RPM endorsed three candidates and made false statements about multiple candidates, violating Minnesota Statutes sections 211B.02 and 211B.06 (2012). The case was decided by an administrative law judge (ALJ) panel.

The three-member ALJ panel heard testimony indicating substantially the facts above. It decided that Clayton violated section 211B.02 (making a false endorsement), based on Clayton's website, and 211B.06 (making a false statement about a candidate), based on the email wrongly reporting Justice Anderson's position in *Brayton*. The OAH fined Clayton $600 for each violation. Clayton appeals the OAH's determination by writ of certiorari.

D E C I S I O N

Clayton appeals the OAH's decision on four grounds. He maintains that Niska lacked standing to complain to the OAH and that the panel did not have sufficient evidence to find that he violated either statute. He also challenges the constitutionality of Minnesota Statutes section 211B.06 (2012) as applied to him and section 211B.02 (2012) on its face and as applied to him.

I

We reject Clayton's contention that Niska lacked standing to complain to the OAH. Minnesota Statutes section 211B.32 (2012), which governs sections 211B.02 and 211B.06, does not restrict who may file an election complaint. It states passively only that "[a] complaint alleging a violation must be filed with the office." Minn. Stat. § 211B.32, subd. 1. It indicates a temporal restriction ("within one year"), *id.*, subd. 2, and a formal restriction ("in writing, submitted under oath, [and factually detailed]"), *id.* subd. 3. But it says nothing restricting or defining the class of complainants. The statute does not on its face support Clayton's argument.

Relying on caselaw, Clayton asserts that a person has standing to file a complaint only when standing is "conferred by statute or [when the court recognizes] a particular relationship between a person and an actionable controversy." (Quotation omitted.) Clayton cites *In re Sandy Pappas Senate Committee*, 488 N.W.2d 795, 797 (Minn. 1992), in support. Clayton misreads *Pappas*. *Pappas* addressed whether a person who complained to the Minnesota Ethical Practices Board had standing to challenge the board's decision that deemed the accused committee's violations to be merely unintentional and inadvertent. *Id.* at 796–97. It had nothing to do with the complainant's standing to file his complaint in the first place. *Id.* at 797–98 (distinguishing standing for judicial review of an agency decision from the ability to participate in an agency proceeding); *see also In re Decertification of Exclusive Representative Certain Emps. of Univ. of Minn., Unit 9*, 730 N.W.2d 300, 304 (Minn. App. 2007) ("[P]articipation in an agency proceeding does not guarantee standing to seek review of the agency's decision.").

Although chapter 211B says nothing to restrict who may lodge an administrative complaint, the legislature elsewhere provides broadly that "[a]ny eligible voter" may contest an election, Minn. Stat. § 209.02, subd. 1 (2012), or initiate a recall, *see* Minn. Stat. § 211C.03 (2012). Considering chapter 211B's silence and its context with these other statutes, we hold that the legislature intended at the very least that "any eligible voter" may file a complaint under chapter 211B. Clayton does not deny that Niska was an eligible voter.

Clayton separately contends that the OAH lacked jurisdiction over the complaint because the dispute was an internal party issue and Niska did not exhaust all intra-association remedies. Courts will uphold organizational rules requiring members to solve disputes internally unless those rules violate the law or provide merely an illusory process. *See Rensch v. Gen. Drivers, Helpers & Truck Terminal Emps. Local No. 120*, 268 Minn. 307, 313–16, 129 N.W.2d 341, 345–47 (1964); *Peters v. Minn. Dept. of Ladies of Grand Army of Republic*, 239 Minn. 133, 135–36, 58 N.W.2d 58, 60 (1953). Requiring members to exhaust intra-association remedies respects the contractual obligations of the organization and its members and avoids undue governmental interference with private associations. *Rensch*, 268 Minn. at 313, 129 N.W.2d at 345–46.

But the rule of law developed in *Rensch* and *Peters* does not apply on our facts. Those cases interpreted organizational constitutional provisions that required members to resolve disputes internally. By contrast, Clayton does not identify any provision of the RPM constitution with that sort of requirement. Instead he broadly asserts that disputing party factions should be left to resolve their differences among members. He cites no authority for the proposition, and, in any event, the proposition overlooks the fact that the complaint does not expose a mere intraparty squabble; it claims a violation of law. Clayton's jurisdictional arguments fail.

II

Clayton contends that the evidence fails to prove that he violated Minnesota Statutes section 211B.06 because Niska did not provide clear and convincing evidence that Clayton made a false statement and that the statement was made with reckless

disregard to its truth. *See* Minn. Stat. §§ 211B.06, subd. 1, 211B.32, subd. 4. We will reverse the administrative decision if Clayton meets his burden to demonstrate that the findings were not supported by substantial evidence. *See Fine v. Bernstein*, 726 N.W.2d 137, 142 (Minn. App. 2007), *review denied* (Minn. Apr. 17, 2007). To prevail, he must show that the record as a whole lacks evidence that a reasonable person would accept as adequate support for the panel's conclusion. *See id.*

Clayton admits that his statement characterizing Justice Barry Anderson's position in the *Brayton* case was false, but he contends that he did not act with reckless disregard for the truth. We have treated the reckless-disregard language in section 211B.06 as being synonymous with actual malice in defamation cases. *Riley v. Jankowski*, 713 N.W.2d 379, 398–99 (Minn. App. 2006), *review denied* (Minn. July 19, 2006). Actual malice requires more than mere "recklessness" generally applied to civil cases. *Chafoulias v. Peterson*, 668 N.W.2d 642, 654 (Minn. 2003). A complainant must demonstrate that the respondent made a false statement while subjectively believing the statement to be false or "probably false." *Id.* at 655. It is insufficient to show only that "a reasonably prudent man would [not] have published[] or would have investigated before publishing," *St. Amant v. Thompson*, 390 U.S. 727, 731, 88 S. Ct. 1323, 1325 (1968), or merely that a person failed to investigate, *Chafoulias*, 668 N.W.2d at 655.

To determine whether sufficient evidence of Clayton's disregard for the truth exists, we look at the sources of Clayton's information, the information he received, the reliability of his sources, and whether he had any sources at all. *See In re Charges of Unprofessional Conduct Involving File No. 17139*, 720 N.W.2d 807, 814 (Minn. 2006).

Niska testified that Clayton was an "authority figure on judicial elections and judicial candidates" in the Republican party. He emphasized that the *Brayton* decision was highly publicized and that politically interested people likely heard about it. He also testified that Justice Anderson's decision to join the dissent in supporting Pawlenty's claim of unallotment authority was similarly well publicized. Niska conceded, however, that he had no evidence that Clayton knew that Justice Anderson had joined the dissenting opinion or that Clayton maintained serious doubts about Justice Anderson's position. Niska merely repeated that Justice Anderson's vote was easily ascertainable but that Clayton did not avail himself of the accessible information.

Clayton called witnesses who testified that they believed as he had about Justice Barry Anderson's position in the case. One witness expressed confusion given that two Andersons then sat on the supreme court, observing that "an Anderson voted for it and an Anderson voted against it." Clayton's witnesses also testified that the consensus at a Chairs Committee meeting was that Justice Barry Anderson had opposed Pawlenty's position. And it was only after that meeting that Clayton sent his email representing that Justice Barry Anderson had voted against Pawlenty. Clayton testified that he had not read *Brayton* and could not recall the exact article in the Star Tribune on which he claimed to have based his erroneous belief.

The panel concluded that Clayton acted with reckless disregard for the truth because it discredited Clayton's testimony that his belief came from a Star Tribune article. It found his testimony incredible because it was vague while his recollections on other matters were clear, deeming his stated belief therefore "not plausible." In making

its credibility determination, the panel relied heavily on the facts that Clayton "could have discovered that the statement was untrue by doing minimal research," that "[t]he *Brayton* decision was issued in 2010, two years before [Clayton's] statement," and that the decision had been "widely publicized." We generally defer to an ALJ panel's credibility determinations. *See In re Excess Surplus Status of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d 264, 278 (Minn. 2001). But what purports to be a credibility analysis here reveals that the panel effectively penalized Clayton for failing to investigate, not that it believed he had investigated and knew his statement to be false. But failure to adequately investigate a statement does not equate to actual malice. That a person never read the newspaper account that he cites to support his erroneous belief does not establish reckless disregard for the truth. It may show mistake, confusion, or carelessness, but the statute does not prohibit political advertisements that reflect mere flippancy or even negligence as to truth. Additionally, that Clayton had a lapse in memory regarding one event while he clearly recalls other events is not implausible, nor does it demonstrate that he knew his statement was false or probably false. Anyone with a less-than-perfect memory will recall some things precisely and other things in a fog.

The panel's credibility assessment rests exclusively on express factors that reveal the panel's legal error. Because the objectively flawed credibility assessment is the *only* support offered or relied on to prove actual malice, we hold that the record does not establish that Clayton acted with actual malice. We therefore reverse the panel's decision that Clayton violated section 211B.06. Because we reverse on this ground, we need not

consider the contention that section 211B.06 is unconstitutional on its face or as applied here.

III

Clayton's next argument is that the panel did not receive substantial evidence that he violated section 211B.02. He appears to assert that the ALJ panel erred by concluding that his actions constituted a false endorsement. A person who promotes a candidate by including the initials or the name of a major party without clarifying that the candidate is merely a member of the party violates section 211B.02 if he knows that the candidate is not also endorsed by the party. *See In re Ryan*, 303 N.W.2d 462, 465–66 (Minn. 1981) (holding that placing the terms "DFL" and "LABOR ENDORSED" on campaign materials violated the statute); *Schmitt v. McLaughlin*, 275 N.W.2d 587, 591 (Minn. 1979) (finding the use of the initials "DFL" would falsely imply endorsement or support). Clayton used the term "Republican Party of Minnesota" on multiple documents and on his website while promoting candidates who lacked the party's endorsement. Clayton attended the state Republican convention and knew that the party had not endorsed his preferred candidates. The ALJ panel had ample evidentiary support for its finding that his actions knowingly and falsely implied that the RPM endorsed the candidates.

IV

Clayton contends that section 211B.02 is unconstitutional on its face. A statute's constitutionality is a question of law, which we review de novo. *Riley*, 713 N.W.2d at 386. While statutes generally carry a presumption of constitutionality, a statute restricting speech does not; the burden rests with the government to demonstrate that a speech-

restricting statute is constitutional. *Hornell Brewing Co. v. Minn. Dept. of Pub. Safety*, 553 N.W.2d 713, 716 (Minn. App. 1996).

Without dispute, section 211B.02 restricts speech:

> A person or candidate may not knowingly make, directly or indirectly, a false claim stating or implying that a candidate . . . has the support or endorsement of a major political party or party unit or of an organization.

Clayton contends that this content-based restriction is facially unconstitutional because it is not narrowly tailored to its objective. Content-based speech restrictions will be upheld only if they pass strict scrutiny. *United States v. Playboy Entm't Grp.*, 529 U.S. 803, 813, 120 S. Ct. 1878, 1886 (2000). To survive strict scrutiny, a law must be narrowly tailored to serve a compelling government interest. *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 340, 130 S. Ct. 876, 898 (2010). To be narrowly tailored, the statute must be the "least restrictive means among available, effective alternatives." *Ashcroft v. ACLU*, 542 U.S. 656, 666, 124 S. Ct. 2783, 2791 (2004). The Supreme Court has held that obscenity, defamation, fraud, incitement, and speech integral to criminal conduct are constitutionally unprotected categories of speech, and statutes restricting them serve a compelling government interest. *See United States v. Stevens*, 559 U.S. 460, 468–69, 130 S. Ct. 1577, 1584 (2010). Absent from these categories is merely "false speech," such as Clayton's.

False speech has traditionally received little protection, *see Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46, 52, 108 S. Ct. 876, 880 (1988); *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 340–41, 94 S. Ct. 2997, 3007 (1974), but it has never been deemed

categorically unprotected, *United States v. Alvarez*, 132 S. Ct. 2537, 2547 (2012) (plurality opinion); *id.* at 2553 (Breyer, J., concurring); *id.* at 2563 (Alito, J., dissenting). Penalizing all falsehoods theoretically discourages open debate and chills speech. *Gertz*, 418 U.S. at 340–41, 94 S. Ct. at 3007. The Supreme Court has intimated that false statements are unprotected only when the statements are associated with related harms, such as defamation or fraud. *Alvarez*, 132 S. Ct. at 2544–45 (plurality opinion).

But false political speech can be electorally toxic. During the election season, "false statements, if credited, may have serious adverse consequences for the public at large." *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 349, 115 S. Ct. 1511, 1520 (1995). Section 211B.02 prohibits only those false statements that state or imply a false endorsement that may mislead the public and harm the political process. *See Schmitt*, 275 N.W.2d at 591. The state's interest in preventing electorate confusion is therefore compelling. *See McIntyre*, 514 U.S. at 344, 349, 115 S. Ct. at 1517, 1520; *Talley v. California*, 362 U.S. 60, 63–64, 80 S. Ct. 536, 538 (1960). We repeat here that avoiding false speech that misleads the public regarding elections is a compelling interest. We turn to Clayton's arguments that 211B.02 is not narrowly tailored to this compelling interest.

Overbreadth

Clayton first argues that the statute is not narrowly tailored because it is overbroad and therefore not the least restrictive means to serve the government's interest. A statute that limits speech is unconstitutionally overbroad "if a substantial amount of protected speech is prohibited or chilled" by the state's constitutional application of a statute. *Ashcroft v. Free Speech Coal.*, 535 U.S. 234, 255, 122 S. Ct. 1389, 1404 (2002). To

violate the Constitution, however, the overbreadth must substantially sweep outside the statute's plainly legitimate aim. *United States v. Williams*, 553 U.S. 285, 292, 128 S. Ct. 1830, 1838 (2008). We will not invalidate a statute merely because a challenger can predict or envision circumstances in which the statute might be applied unconstitutionally. *Broadrick v. Oklahoma*, 413 U.S. 601, 615–16, 93 S. Ct. 2908, 2917–18 (1973); *see N.Y. State Club Ass'n v. City of New York*, 487 U.S. 1, 14, 108 S. Ct. 2225, 2234 (1988) (requiring the challenger to demonstrate "from the text of [the law] and from actual fact that a substantial number of instances exist in which the Law cannot be applied constitutionally"). Unconstitutional overbreadth also does not occur when the overbreadth can be "cured through case-by-case analysis of the fact situations to which its sanctions . . . may not be applied." *Broadrick*, 413 U.S. at 615–16, 93 S. Ct. at 2918. Applying the overbreadth doctrine to invalidate a statute is a "strong medicine" that should be "used sparingly and only as a last resort." *N.Y. State Club Ass'n*, 487 U.S. at 14, 108 S. Ct. at 2234 (quotation omitted).

Clayton gives two reasons why he believes the law is overbroad—it prohibits constitutionally protected false speech associated with free debate and it prohibits factually accurate statements that imply a false endorsement. We read the law differently. Section 211B.02 prohibits speakers from "knowingly mak[ing], directly or indirectly, a false claim stating or implying that a candidate . . . has the support or endorsement of a" party or organization. It punishes speech only when the speaker knows that it will lead others to believe wrongly that a candidate has the support of a party or organization. *In re Ryan*, 303 N.W.2d at 467. It prohibits only those statements that can be read as

endorsements. *Schmitt*, 275 N.W.2d at 591; *see In re Contest of Election in DFL Primary Election Held on Tuesday, September 13, 1983*, 344 N.W.2d 826, 830–31 (Minn. 1984). The statute therefore prohibits only claims of support and only when those claims are false.

So construed, the statute does not prohibit or chill a "substantial amount" of protected speech. *See Williams*, 553 U.S. at 297, 128 S. Ct. at 1841. Clayton contends that section 211B.02 may chill speech because speakers may fear punishment if they make a false statement. He is correct that allowing false statements may benefit the marketplace of ideas, *Alvarez*, 132 S. Ct. at 2544–45 (plurality opinion), but Clayton's concern with respect to section 211B.02 is misplaced. By prohibiting only "knowingly" false speech, the statute does not touch on inadvertent falsehoods that contribute to the free expression of ideas.

Clayton overstates the case by urging that prohibiting statements that "imply" false endorsements violates the Constitution because factually accurate statements might imply false support. We are aware of no circumstance in which the statute has been applied to punish a speaker for a string of true statements that merely implied a false endorsement. And the supreme court's limitation that the statute does not punish words of mere association undermines the argument further. Clayton does not convince us that section 211B.02 presents "a realistic danger that the statute itself will significantly compromise recognized First Amendment protections of parties not before the Court." *Members of City Council of L.A. v. Taxpayers for Vincent*, 466 U.S. 789, 801, 104 S. Ct. 2118, 2126 (1984). He also has not presented any less restrictive alternatives that would

appropriately serve the government's interest. The statute is not unconstitutionally overbroad.

Underinclusion

Clayton also argues that the statute fails strict scrutiny because it is underinclusive. A statute is unconstitutionally "underinclusive" if it prohibits some speech for a compelling government interest but does not prohibit other speech that also impedes the government interest and the distinction is viewpoint based. *See R.A.V. v. City of St. Paul*, 505 U.S. 377, 387, 112 S. Ct. 2538, 2545 (1992). Clayton specifically argues that because section 211B.02 refers only to "*major* political parties," "party units," and "organizations" but not to "*minor* political parties," it is unconstitutionally underinclusive. The argument fails on the mistaken premise that false endorsements about minor political parties are not governed by section 211B.02.

We ascribe meaning to statutorily undefined words based on "their common and approved usage." Minn. Stat. § 645.08(1) (2012). "Organization" is not defined in Minnesota Statutes section 200.02 (2012). But it is a simple word with a common usage that encompasses political parties, including minor political parties. When the words of a statute are explicit and unambiguous, the legislature has asked us to accept the statute as written. *See* Minn. Stat. § 645.16 (2012). Clayton reasonably observes that the term "organization," construed based on its plain meaning, might render the term "major political party" superfluous—a result that may itself suggest an ambiguity. *See Am. Family Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000). He urges us to apply the interpretive doctrine *expressio unius est exclusio alterius* (the expression of one thing

is the exclusion of another) to avoid the superfluous result. Under that doctrine, when a statute lists certain terms but not others, the interpreting court should infer that the list is exclusive unless the context indicates otherwise. *See State v. Caldwell*, 803 N.W.2d 373, 383 (Minn. 2011); *see also* Minn. Stat. § 645.19 (2012).

But the doctrine is only an interpretive guide, not a syntactic straightjacket, and it does not apply here. Clayton asks us to apply the doctrine to infer that, by listing "major political party" without expressly listing "minor political party," the legislature purposefully excluded false endorsements of minor political parties from the statute. An inference arising from the doctrine is "justified [only] when the language of the statute supports such an inference." *Caldwell*, 803 N.W.2d at 383. As a whole, the statutory language here cannot support the inference. *See id.* (explaining that applying *expressio unius est exclusio alterius* "is not justified when the omitted term is encompassed by the enumerated terms"). The omitted term "minor political party" is encompassed by the enumerated term "organization" because political parties—major or minor—are of course organizations.

The legislature also asks courts to interpret any ambiguous statute in a manner that avoids "absurd" or "unreasonable" results. Minn. Stat. § 645.17(1) (2012). Clayton's reading of the statute, which would penalize a person for falsely claiming the political support or endorsement of *every* individual, *every* political party, and *every* conceivable organization *except only* "minor political parties" invites an absurd and unreasonable result. Recall that section 211B.02 has broad express reach to protect entities and even individuals from being falsely dubbed as supporters of any candidate. It prohibits any

person from "knowingly mak[ing] . . . a false claim stating or implying that a candidate . . . has the support or endorsement of a major political party or party unit or of an organization," or from "stat[ing] in written campaign material that the candidate . . . has the support or endorsement of an individual without first getting written permission." Minn. Stat. § 211B.02. What sense is there in punishing a campaign worker for falsely claiming the support of the International Falls Chamber of Commerce ("a membership-driven *organization* committed to providing a voice for [the International Falls] business community"[1]) but not for falsely claiming the support of the Green Party of Minnesota ("a grassroots *organization*"[2] that is also a Minnesota *minor political party*)? How can we suppose that the legislature intended to allow a candidate to falsely claim the support of the Libertarian Party of Minnesota, another "minor political party," but to penalize her for falsely claiming the support of her next door neighbor, an "individual"?

We reject Clayton's request to infer an absurd, supposedly unconstitutional rendering of the statute, which, on its face, unambiguously seeks to protect the electorate from false statements of organizational and individual political endorsement.

V

Clayton also makes an as-applied challenge to the ALJ panel's determination that he violated section 211B.02. We review the challenge de novo. *See In re Individual 35W Bridge Litig.*, 806 N.W.2d 820, 829 (Minn. 2011).

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[1] Int'l Falls Area Chamber Com., http://ifallschamber.com (last visited Feb. 26, 2014) (emphasis added).

[2] Green Party Minn., http://mngreens.org (last visited Feb. 26, 2014) (emphasis added).

Clayton contends that section 211B.02 was unconstitutionally applied to him because it did not require the RPM to engage in counterspeech to rebut his falsehoods. When applying strict scrutiny, the government's restriction "must be the least restrictive means among *available, effective* alternatives." *Alvarez*, 132 S. Ct. at 2551 (emphasis added) (quotation omitted). Unlike in *Alvarez*, where a plurality of the Court struck down a law prohibiting anyone from falsely claiming to be a medal-of-honor recipient because evidence in that case showed that "counterspeech, . . . [and] refutation, can overcome the lie," *id.* at 2549, that lie-defeating solution is inadequate here. At stake in *Alvarez* was the dishonest speaker's reputation; at stake under the statute in this case is an accurately informed electorate. The state need not rely on media corrections to vindicate its interest in protecting the electorate from falsehoods and safeguarding the integrity of its elections. Clayton's as-applied challenge fails.

Affirmed in part and reversed in part.