

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Jeff Davis,

Complainant,
vs.

ORDER OF DISMISSAL

Minnesota DFL Party,

Respondent.

On November 1, 2006, Jeff Davis filed a Complaint with the Office of Administrative Hearings alleging the Minnesota DFL Party violated Minn. Stat. § 211B.06. The Chief Administrative Law Judge assigned this matter to the undersigned Administrative Law Judge on November 1, 2006, pursuant to Minn. Stat. § 211B.33. A copy of the Complaint and attachments were sent by United States mail to the Respondent on November 1, 2006.

After reviewing the Complaint and attachments, the Administrative Law Judge finds that the Complaint does not state prima facie violations of Minn. Stat. § 211B.06. Therefore, the Complaint is dismissed.

Based upon the Complaint and the supporting filings and for the reasons set out in the attached Memorandum,

IT IS ORDERED:

That the Complaint filed by Jeff Davis against the Minnesota DFL Party is DISMISSED.

Dated: November 2, 2006

/s/ Beverly Jones Heydinger
BEVERLY JONES HEYDINGER
Administrative Law Judge

NOTICE

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

MEMORANDUM

Dean Johnson is running for re-election to the Minnesota State Senate (District 13). The Complaint alleges that the Minnesota DFL Party (Respondent) prepared and paid for two pieces of campaign literature in support of Senator Johnson that contained false statements of fact. The first campaign piece concerns Senator Johnson's views on marriage and "traditional values."¹ The piece states generally that Senator Johnson believes that marriage is between one man and one woman, and that he will "continue to defend traditional marriage." The Complaint alleges that the following statements in this campaign piece are false: (1) "We can have faith in him to continue to defend marriage."; and (2) "Dean Johnson has always known that marriage is between one man and one woman. And Dean Johnson will make sure that remains the law in Minnesota."

According to the Complaint, "it is a well established fact that Senator Majority Leader Dean Johnson has been one of the chief obstructionists" to passing the Minnesota Marriage Amendment, which would define marriage as between one man and one woman in the Minnesota Constitution. The Complainant argues that over the past three years, Senator Johnson has voted on three separate occasions to block the marriage amendment bill from coming to a vote in the State Senate.² The Complainant maintains that Senator Johnson used his influence to "repeatedly kill the marriage amendment bill."³ Based on these actions, the Complainant alleges that the statements identified above concerning Senator Johnson's defense of traditional marriage contained in the campaign piece are false and violate Minn. Stat. § 211B.06.

The second campaign piece paid for by the Respondent that the Complainant alleges contains false statements of fact describes Senator Johnson as being "pro-life."⁴ The Complainant alleges that this campaign piece is false because over his past four-year term in office, Senator Johnson has received only a 50% rating from Minnesota Citizens Concerned for Life (MCCL).⁵ According to the Complainant, Senator Johnson is not a pro-life candidate and the advertisement's claims to the contrary violate Minn. Stat. § 211B.06.

Minn. Stat. § 211B.06 prohibits a person from intentionally preparing or disseminating false campaign material that the person knows is false or

¹ Complaint Ex. 1.

² Complaint Ex. 3, 4 and 5.

³ Complaint Ex. 6.

⁴ Complaint Ex. 2.

⁵ Complaint Exs. 7, 8 and 9.

communicates to others with reckless disregard as to whether it is false. In *Kennedy v. Voss*,⁶ the Minnesota Supreme Court observed that the statute is directed against the evil of making false statements of fact and not against unfavorable deductions, or inferences based on fact. Expressions of opinion, rhetoric, and figurative language are generally protected speech if, in context, the reader would understand that the statement is not a representation of fact.⁷ A challenged statement's specificity and verifiability, as well as its literary and public context, are factors to be considered when distinguishing between fact and opinion.⁸

The statements identified in the first campaign piece, "We can have faith in him to continue to defend marriage;" "Dean Johnson has always known that marriage is between one man and one woman. And Dean Johnson will make sure that remains the law in Minnesota;" are all expressions of opinion and not false statements of fact. Minn. Stat. § 211B.06 is directed against false statements of fact; not opinions. Even if Senator Johnson opposed the marriage amendment bill, that does not render the above statements false. In other words, Senator Johnson may still define marriage as between one man and one woman, and simply feel that amending the constitution is not a good idea or not necessary. Regardless, the statements reflect opinion and do not come within the purview of Minn. Stat. § 211B.06. The Complainant has failed to allege a prima facie violation of Minn. Stat. § 211B.06 with respect to the statements in this campaign piece.

Similarly, the description of Senator Johnson as "pro-life" in the second campaign piece is an expression of opinion and not a statement of fact that can be verified as either true or false. Even if Senator Johnson failed to support some pro-life legislation and earned only a 50% rating from MCCL over his past four-year term as the Complainant alleges, that alone is insufficient to render the phrase "pro-life" false. The term has no precise meaning and is open to interpretation. This allegation is not sufficient to state a prima facie violation of section 211B.06. The Complaint is dismissed.

B.J.H.

⁶ 304 N.W.2d 299 (Minn. 1981).

⁷ *Jadwin v. Minneapolis Star and Tribune*, 390 N.W.2d 437, 441 (Minn. App. 1986), citing *Old Dominion Branch No. 496, National Assoc. of Letter Carriers v. Austin*, 418 U.S. 264, 284-86 (1974); *Greenbelt Coop. Publishing Assoc. v. Bresler*, 398 U.S. 6, 13-14 (1970). See also *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 16-17 (1990); *Hunter v. Hartman*, 545 N.W.2d 699, 706 (Minn. App. 1996).

⁸ *Diesen v. Hessburg*, 455 N.W.2d 446, 451 (Minn. 1990).