7-0320-22993-CV

STATE OF MINNESOTA

OFFICE OF ADMINISTRATIVE HEARINGS

Bruce Schwichtenberg,
Schwichtenberg for Senate,

Complainant,

v.

Julianne Ortman, Ortman for Senate Committee,

Respondents.

AMENDED

NOTICE OF DETERMINATION OF PRIMA FACIE VIOLATION AND NOTICE OF AND ORDER FOR PROBABLE CAUSE HEARING

TO: Above Parties on the Attached Service List:

On August 1, 2012, Bruce Schwichtenberg filed a Campaign Complaint with the Office of Administrative Hearings alleging that Senator Julianne Ortman and/or her campaign committee violated Minnesota Statutes § 211B.02 by falsely implying on campaign material that she has the Republican Party endorsement for the Minnesota Senate District 47 seat in the August 14, 2012 primary election. After reviewing the Complaint and attached exhibits, the undersigned Administrative Law Judge has determined that the Complaint sets forth *prima facie* violations of Minn. Stat. § 211B.02. This determination is described in more detail in the attached Memorandum.

THEREFORE, IT IS ORDERED AND NOTICE IS GIVEN that a probable cause hearing regarding the alleged violations of Minn. Stat. § 211B.02, shall be held by telephone before the undersigned Administrative Law Judge at **10:30 a.m.** on **Tuesday, August 7, 2012.** The hearing will be held by call-in telephone conference. You must call: **1-888-742-5095** at that time. When the system asks for your numeric pass code, enter **"989-214-7284#"** on your phone and you will be connected to the conference. The probable cause hearing will be conducted pursuant to Minnesota Statutes § 211B.34. Information about the probable cause proceedings and copies of state statutes may be found online at http://mn.gov/oah and www.revisor.leg.state.mn.us .

At the probable cause hearing, all parties have the right to be represented by legal counsel, by themselves, or by a person of their choice if that choice is not otherwise prohibited as the unauthorized practice of law. In addition, the parties have the right to submit evidence, affidavits, documentation and argument for consideration by the Administrative Law Judge. Parties should provide to the Administrative Law Judge all evidence bearing on the case, with copies to the opposing party, before the

telephone conference takes place. Documents may be emailed to Judge Luis at Richard.Luis@state.mn.us or faxed to 651-361-7936.

At the conclusion of the probable cause hearing, the Administrative Law Judge will either: (1) dismiss the complaint based on a determination that the complaint is frivolous, or that there is no probable cause to believe that the violation of law alleged in the complaint has occurred; or (2) determine that there is probable cause to believe that the violation of law alleged in the complaint has occurred and refer the case to the Chief Administrative Law Judge for the scheduling of an evidentiary hearing. Evidentiary hearings are conducted pursuant to Minnesota Statutes § 211B.35. If the Administrative Law Judge dismisses the complaint, the complainant has the right to seek reconsideration of the decision on the record by the Chief Administrative Law Judge pursuant to Minnesota Statutes § 211B.34, subdivision 3.

Any party who needs an accommodation for a disability in order to participate in this hearing process may request one. Examples of reasonable accommodations include wheelchair accessibility, an interpreter, or Braille or large-print materials. If any party requires an interpreter, the Administrative Law Judge must be promptly notified. To arrange an accommodation, contact the Office of Administrative Hearings at P.O. Box 64620, St. Paul, MN 55164-0620, or call 651-361-7900 (voice) or 651-361-7878 (TDD).

Dated: August 6, 2012

/s/ Richard C. Luis
RICHARD C. LUIS
Administrative Law Judge

MEMORANDUM

The Complainant, Bruce Schwichtenberg, and Respondent, Julianne Ortman, are Republican Party candidates for the Minnesota Senate District 47 (Carver County) seat in the August 14, 2012, primary election. Neither has the endorsement of the Republican Party. According to the Complaint, the Senate District 47 Republicans decided not to endorse either candidate at the endorsing convention as both failed to obtain the necessary 60 percent of the votes after five rounds of balloting.

The Complaint alleges that Senator Ortman has placed campaign lawn signs throughout the district promoting her candidacy. The lawn signs state:

Vote August 14
Julianne Ortman
Republican for Minnesots Senate

The Complaint contends that by using the word "Republican" on her campaign signs, Senator Ortman has violated Minn. Stat. § 211B.02 by falsely implying that she has the Republican Party endorsement.

Minn. Stat. § 211B.02 provides in relevant part as follows:

> **211B.02 False Claim of Support**.
>
> A person or candidate may not knowingly make, directly or indirectly, a false claim stating or implying that a candidate or ballot question has the support or endorsement of a major political party unit or of an organization.

The issue presented in this case is whether, by using the word "Republican" on her campaign lawn signs, the Respondents knowingly falsely implied that Senator Ortman has the endorsement of the Republican Party of Minnesota in violation of Minn. Stat. § 211B.02.

In *Schmitt v. McLaughlin,*[1] the Minnesota Supreme Court held that a candidate's use of the initials "DFL" falsely implied that the candidate had the endorsement of the DFL party in violation of Minnesota election law.[2] The court explained that, while candidates have a right to inform voters of their party affiliation "by the use of such words as 'member of' or 'affiliated with' in conjunction with the initials 'DFL'," the use of the initials without such modifiers would imply to the average voter that the candidate had the endorsement or, at the very least, the support of the DFL party. To hold otherwise, according to the court, would render the word "imply" meaningless."[3]

The Administrative Law Judge concludes that the Complaint does allege sufficient facts to support finding a *prima facie* violation of Minn. Stat. § 211B.02 as against the Respondents. This matter will proceed to a probable cause hearing as indicated in this Order.

R.C.L.

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[1] 275 N.W.2d 587, 591 (Minn. 1979) (discussing Minn. Stat. § 210A.02, predecessor to Minn. Stat. § 211B.02).
[2] *Accord In the Matter of the Election of Ryan*, 303 N.W.2d 462 (Minn. 1981).
[3] 275 N.W.2d at 591.