

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

Nick Foucault

Complainant,

vs.

FairVote Minnesota

Respondent.

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

On November 2, 2015, Nick Foucault (Complainant) filed a campaign complaint with the Office of Administrative Hearings (OAH). The complaint alleges that FairVote Minnesota (Respondent or FairVote) violated Minn. Stat. § 211A.02, subd. 2, items (3), (4), (5), (6) (2014) by failing to provide full and complete campaign finance disclosures relating to the city of Duluth's ranked-choice voting ballot question in the November 3, 2015, general election.

After reviewing the complaint, the undersigned Administrative Law Judge has determined that the complaint sets forth a prima facie violation of Minn. Stat. § 211A.02, subd. 2(3), (4), (5), (6). This determination is described in more detail in the attached Memorandum.

**THEREFORE, IT IS ORDERED AND NOTICE IS GIVEN** that this matter is scheduled for a probable cause hearing to be held by telephone before the undersigned Administrative Law Judge at **11:00 a.m. on Monday, November 9, 2015**. At that time, the parties are directed to:

- (a) Telephone **1-888-742-5095**
- (b) Enter the Conference Code: **249 440 7275#**

The probable cause hearing will be conducted pursuant to Minn. Stat. § 211B.34 (2014). 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](http://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 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. By **9:30 a.m. on November 9, 2015**, the parties shall provide to the Administrative Law Judge all evidence bearing on the case, with copies to the opposing party. Documents may be e-mailed to Judge LaFave at [James.LaFave@state.mn.us](mailto:James.LaFave@state.mn.us) or faxed to 651-539-0310.

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 Minn. Stat. § 211B.35 (2014).

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 Minn. Stat. § 211B.34, subd. 3.

Dated: November 4, 2015

s/James E. LaFave

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JAMES E. LAFAVE  
Administrative Law Judge

## MEMORANDUM

The Complainant alleges that FairVote, in its campaign finance reports, failed to disclose its total cash on hand, the total amount of its contributions and disbursements, the amount, date and purpose of the disbursements and the names and addresses of the persons contributing to its campaign efforts in violation of Minn. Stat. § 211A.02, subd. 2 (3), (4), (5), (6).

### Standard of Review

To set forth a prima facie case that entitles a party to a hearing, the party must either submit evidence or allege facts that, if unchallenged or accepted as true, would be sufficient to prove a violation of chapter 211A or 211B (2014).<sup>1</sup> For purposes of a prima facie determination, the tribunal must accept the facts alleged as true and the allegations do not need independent substantiation.<sup>2</sup> A complaint must be dismissed if

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<sup>1</sup> *Barry, et al. v. St. Anthony-New Brighton Independent School District, et al.*, 781 N.W.2d 898, 902 (Minn. Ct. App. 2010).

<sup>2</sup> *Id.*

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.<sup>3</sup>

## Analysis

Under Minn. Stat. § 211A.02, subd. 1, candidates or committees who receive contributions or make disbursements of over \$750 in a calendar year must file financial reports with the appropriate “filing officer.”<sup>4</sup> In addition to an initial financial report, a candidate or committee must also file a report 30 days after a general or special election.<sup>5</sup>

A “disbursement” is defined as “money, property, office, position, or any other thing of value that passes or is directly or indirectly conveyed, given, promised, paid, expended, pledged, contributed, or lent.”<sup>6</sup> “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>7</sup>

A “contribution” is defined to mean “anything of monetary value that is given or loaned to a candidate or committee for a political purpose.”<sup>8</sup> “Contribution” does not include a service provided without compensation by an individual.<sup>9</sup>

Minnesota Statutes, section 211A.02, subdivision 2, requires campaign financial reports to include the following:

- (1) the name of the candidate or ballot question;
- (2) the printed name, address, telephone number, signature, and e-mail address, if available, of the person responsible for filing the report;
- (3) the total cash on hand designated to be used for political purposes;
- (4) the total amount of contributions and disbursements for the period from the last previous report to five days before the current report is due;
- (5) the amount, date, and purpose for each disbursement; and
- (6) the name, address, and employer, or occupation if self-employed, of any individual or committee that during the year has made one or more contributions that in the aggregate exceed \$100, and the amount and date of each contribution. The filing officer must restrict public access to the address of any individual who has made a contribution that exceeds \$100 and who has filed with the filing officer a written statement signed by the

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<sup>3</sup> *Id.*

<sup>4</sup> Minn. Stat. § 211A.01, subd. 7, defines “filing officer” to mean the officer authorized by law to accept affidavits of candidacy or nominating petitions for an office or the officer authorized by law to place a ballot question on the ballot.

<sup>5</sup> Minn. Stat. § 211A.02, subd. 1(b)(3).

<sup>6</sup> Minn. Stat. § 211A.01, subd. 6.

<sup>7</sup> *Id.*

<sup>8</sup> Minn. Stat. § 211A.01, subd. 5.

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

individual that withholding the individual's address from the financial report is required for the safety of the individual or the individual's family.

The Complaint states that FairVote has filed six campaign financial reports with the city of Duluth since April of 2015. The Complaint also states that despite reporting total expenditures of over \$113,000, FairVote has only documented contributions of \$600 from two individuals. In addition, the Complaint asserts that FairVote has failed to disclose the amount, date and purpose of its disbursements, and has failed to disclose the amount of its cash on hand.

The Administrative Law Judge finds that the complaint alleges sufficient facts to support finding prima facie violations of Minn. Stat. § 211A.02, subd. 2(3), (4), (5), (6). This matter will proceed to a probable cause hearing where the Administrative Law Judge will determine whether the facts establish a reasonable belief that FairVote committed a violation that would require it to go to an evidentiary hearing on the merits.<sup>10</sup>

**J. E. L.**

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<sup>10</sup> *State v. Florence*, 239 N.W.2d 892, 902 (Minn. 1976).