OAH 8-0325-36036

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Calandra Revering,

Complainant,

vs.

Elena Ostby,

Respondent.

**ORDER FINDING NO PRIMA FACIE VIOLATION AND DISMISSING COMPLAINT**

On April 3, 2019, Calandra Revering (Complainant) filed a Fair Campaign Practices Complaint (Complaint) with the Office of Administrative Hearings. The Complaint alleges that Ramsey County District Court Judge Elena Ostby violated Minn. Stat. § 211B.045 (2018) by not removing a campaign sign within ten days after the November 6, 2018, general election.

The Chief Administrative Law Judge assigned this matter to the undersigned Administrative Law Judge pursuant to Minn. Stat. § 211B.33 (2018).

After reviewing the Complaint and the documents submitted by Complainant in support, and for the reasons set forth in the attached Memorandum, the undersigned Administrative Law Judge finds that the Complaint does not establish a prima facie violation of Minn. Stat. § 211B.045.

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

**ORDER**

The Complaint filed by Calandra Revering against Elena Ostby is **DISMISSED**.

Dated: April 5, 2019

ERIC L. LIPMAN
Administrative Law Judge

## NOTICE

Under Minn. Stat. § 211B.36, subd. 5 (2018), 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 (2018).

## MEMORANDUM

Respondent Elena Ostby was a candidate for election to the Ramsey County District Court during the 2018 general election. The Complaint alleges that Respondent violated Minn. Stat. § 211B.045 by failing to remove a campaign sign promoting her candidacy for Ramsey County District Court Judge within ten days after Election Day.

According to the Complaint, the sign remains posted on the side of a building located on the corner of West 7th Street and Otto Avenue in St. Paul months after the 2018 balloting concluded.[1] The building houses a restaurant, J.R. Mac's Grill and Pub. The sign urges voters to "Re-Elect Incumbent Judge Elena Ostby" and includes a photo of Respondent.[2]

### I. Standard for Prima Facie Determination

To establish a prima facie violation of the Fair Campaign Practices Act, the complainant must allege sufficient facts to show that a violation of law has occurred.[3] The 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 (2018).[4]

For purposes of a prima facie determination, the judge 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.[5] 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.[6]

### II. Analysis

The Fair Campaign Practices Act prohibits municipal regulation of noncommercial signs during general election years. Minn. Stat. § 211B.045 states the following:

> All noncommercial signs of any size may be posted in any number beginning 46 days before the state primary in a state general election year until ten days following the state general election. Municipal ordinances may regulate the size and number of noncommercial signs at other times.

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[1] Exhibit (Ex.) 1.
[2] *Id.* (image of sign included with Complaint).
[3] Minn. Stat. § 211B.32, subd. 3 (2018).
[4] *Barry and Spano v. St. Anthony-New Brighton Indep. Sch. Dist. 282*, 781 N.W.2d 898, 902 (Minn. Ct. App. 2010).
[5] *Id*.
[6] *Id*.

The restrictions of Minn. Stat. § 211B.045 regulate the activities of municipalities, not candidates or their supporters. The statute creates a "safe harbor" for posting noncommercial signs during a specified portion of any year in which there is a state general election. Municipalities must permit campaign signs of any size and number to be posted for that period regardless of any local ordinances to the contrary.

This law does not, as the Complaint alleges, prohibit candidates or committees from posting campaign signs for a longer period outside the safe harbor. Nor does it require candidates or committees to remove their campaign signs within ten days after the state general election.

Moreover, the statute is directed at regulating noncommercial campaign signs. The sign in this matter appears to be a commercial billboard.[7]

The Complaint might state a violation of St. Paul ordinances, but even that is not clear from the text of the Complaint. No local ordinance is cited by Ms. Revering. This would not, however, change the result in this case. Any violation of St. Paul's advertising ordinances is beyond the jurisdiction of the Office of Administrative Hearings to consider under the Fair Campaign Practices Act.[8]

Because Minn. Stat. § 211B.045 is directed at municipalities, and no other provision of Minn. Stat. §§ 211A.01-.14 or 211B.01-.37 requires candidates or committees to remove their campaign signs within ten days after the state general election, the Complaint is dismissed.

**E. L. L.**

[7] Ex. 1. Commercial outdoor advertising is regulated by municipalities. *See, e.g.,* St. Paul, Minn., Leg. Code § 64.401 (2018).

[8] *See* Minn. Stat. § 211B.32, subd. 2(a) (OAH jurisdiction under the Fair Campaign Practices Act is limited to "complaint[s] alleging a violation of [Minnesota Statutes] 211A and 211B").