OAH 5-0325-38799

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

C. T. Marhula,

Complainant,

v.

Dave Wall, Nicole Jaranson, Anna Manecke, Marie Richey, Justin Hoover, and Dan Larson,

Respondents.[1]

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

This Fair Campaign Practices complaint (Complaint) is pending before the following panel of three Administrative Law Judges: Jim Mortenson (Presiding Judge), James E. LaFave, and Kimberly Middendorf (collectively, Panel).

The matter was submitted to the Panel based on the record created at the probable cause hearing and the underlying record, including the Complaint, the Prima Facie Determination, the Probable Cause Order, and final written submissions from the parties. The hearing record closed on December 19, 2022.

C. T. Marhula (Complainant) appeared on his own behalf without legal counsel. Dave Wall, Nicole Jaranson, Anna Manecke, Marie Richey, Justin Hoover, and Dan Larson (Respondents) appeared on their own behalf without legal counsel.

STATEMENT OF THE ISSUES

1. Did Respondents disseminate campaign material that lacked a disclaimer in violation of Minn. Stat. § 211B.04?

2. If so, what penalty is appropriate?

SUMMARY OF CONCLUSIONS

Complainant established by a preponderance of the evidence that Respondents violated Minn. Stat. § 211B.04 by participating in the preparation and dissemination of campaign material that lacked a disclaimer. For this violation, the Panel concludes a

[1] Because it has not been shown to be a "person" for purposes of Minn. Stat. § 211B.04 (2022), votebemidji.com was deleted from the caption of this case.

collective penalty in the amount of $250 for Respondent candidates and $100 for Respondent Larson is appropriate.

Based on the record and proceedings herein, the undersigned panel of Administrative Law Judges makes the following:

FINDINGS OF FACT

1. Respondents Wall, Jaranson, Manecke, Richey, and Hoover were candidates for School Board for Independent School District 31 (School Board) in the general election held on November 8, 2022.[2] ISD 31 serves Bemidji Area Schools.

2. All five Respondent candidates are friends, and all were first-time candidates.[3]

3. Respondent candidates all operated their own campaigns, but they maintained a shared campaign website.[4] "Votebemidji.com" was the name of their campaign website.[5]

4. There were 23 candidates running for the School Board in the November 8, 2022, general election.[6]

5. Respondent Dan Larson supported the candidacies of Respondents Wall, Jaranson, Manecke, Richey, and Hoover.[7] Respondent Larson offered to arrange and pay for two billboards promoting their candidacies for School Board.[8]

6. Respondent Larson asked the five Respondent candidates to provide him with photographs of themselves that he could use on the billboards.[9] Respondent Larson prepared the campaign material displayed on the two billboards.[10] The billboards were posted at a busy intersection in Bemidji and promoted Respondents' candidacies.[11] One billboard was a traditional static billboard, and the other was a digital billboard.[12]

7. The billboards encouraged voters to vote for the individual Respondent candidates.[13] The digital billboard promoted all five of the candidates.[14] The static billboard promoted only Respondents Wall, Richey, and Hoover.[15]

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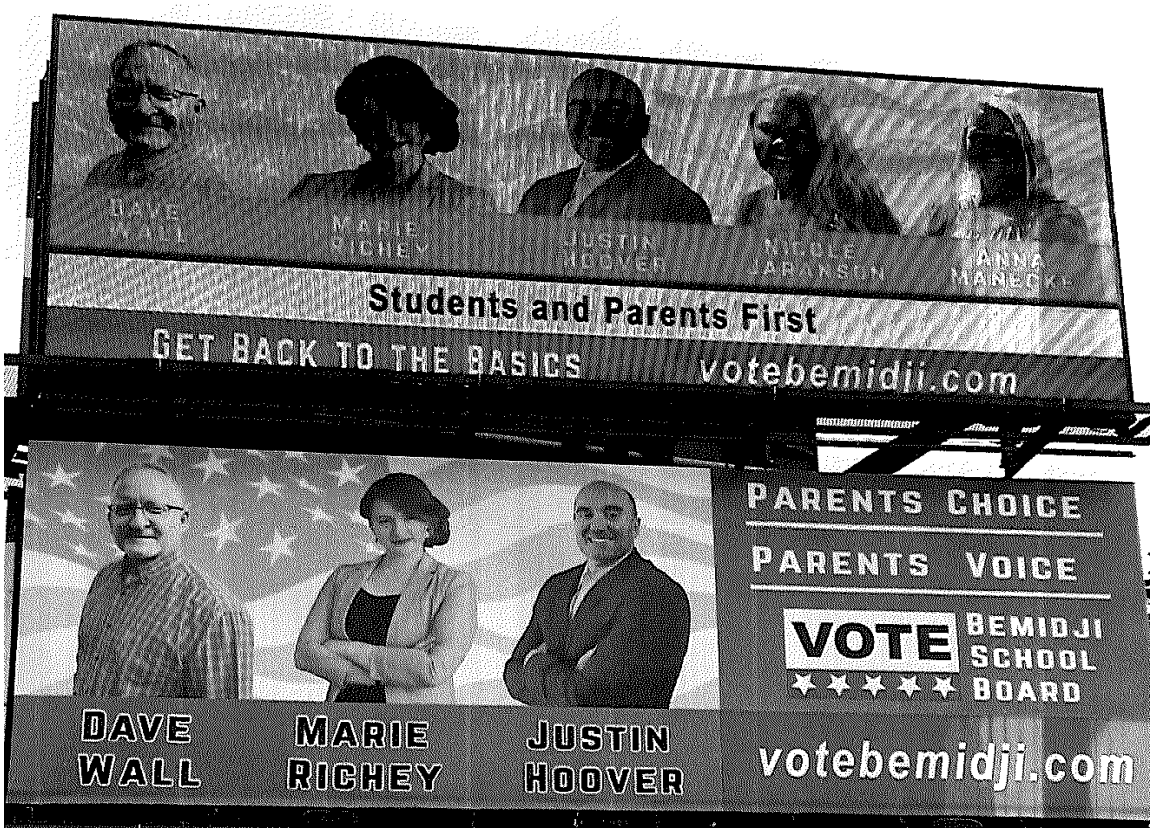
[2] Complaint (Nov. 2, 2022). Testimony (Test.) of Marie Richey.
[3] Test. of M. Richey.
[4] *Id*.
[5] *Id*; Complaint at Exhibits (Ex.) 1, 2.
[6] Test. of M. Richey.
[7] *Id*.; Test. of Dan Larson.
[8] Test. of M. Richey.
[9] *Id*.
[10] *Id*.; Test. of D. Larson.
[11] Test. of M. Richey; Test. of D. Larson; Test. of C.T. Marhula.
[12] Complaint at Exs. 1, 2; Test. of D. Larson.
[13] Complaint at Exs. 1, 2.
[14] *Id*.
[15] *Id*.

8. The billboards did not include a disclaimer indicating who or what committee prepared and paid for the material.[16] Both billboards included Respondents' campaign website address: "votebemidji.com."[17]

9. Respondent Larson never prepared a campaign billboard before and was not familiar with the disclaimer requirements.[18] Respondent Larson thought including the campaign website address was sufficient.[19]

10. The votebemidji.com website did include a proper disclaimer at the bottom of the home page.[20]

11. An image of the static and digital billboards appears below:



12. Each candidate reported on their individual campaign financial reports the cost of the campaign billboards as an in-kind contribution from Respondent Larson.[21] Respondent candidates each reported one-fifth of the cost of the digital billboard as an

[16] *Id.*
[17] *Id.*
[18] Test. of D. Larson.
[19] *Id.*
[20] Test. of M. Richey; Respondents' Ex. A.
[21] Test. of M. Richey; Test. of D. Larson.

in-kind contribution.[22] Respondents Wall, Richey, and Hoover also reported one-third of the cost of the static billboard as an in-kind contribution.[23]

13. On November 2, 2022, Complainant filed this Complaint against Respondents.[24] Complainant alleges that the billboards lack disclaimers in the required form.[25]

14. By Order dated November 7, 2022, the Presiding Judge found that the Complaint established a prima facie violation of Minn. Stat. § 211B.04 and set this matter on for a probable cause hearing to be conducted by telephone on November 10, 2022.[26]

15. Once Respondents received notice of the Complaint, Respondent Richey contacted Larson.[27] Within hours of being notified of the Complaint, Respondent Larson corrected both billboards by including a disclaimer that read: "Prepared and paid for by Daniel Larson, P.O. Box 88, Bagley, MN 56621."[28]

16. On November 10, 2022, the Presiding Judge convened the probable cause hearing, at which all parties appeared. During the probable cause hearing, Respondent Richey spoke on behalf of the Respondent candidates.[29] Respondents acknowledged the billboards lacked the required disclaimer, but they noted that both billboards did include their campaign website address – votebemidji.com.[30]

17. By Order dated November 16, 2022, the Presiding Judge found probable cause to believe that Respondents violated Minn. Stat. § 211B.04 by failing to include disclaimers on the billboards substantially in the form required.[31] The parties were given until November 28, 2022, to notify the Office of Administrative Hearings whether they were willing to forgo an evidentiary hearing and submit this matter to a panel of administrative law judges based on the record and subsequent written argument.[32]

18. The parties agreed to submit this matter on the record with subsequent written submissions.

19. The Chief Administrative Law Judge assigned this matter to the undersigned Panel by Order dated December 9, 2022.[33]

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[22] Test. of M. Richey; Test. of D. Larson.
[23] Test. of M. Richey; Test. of D. Larson.
[24] Complaint.
[25] *Id*.
[26] Notice of Determination of Prima Facie Violation and Notice and Order for Probable Cause Hearing (Nov. 7, 2022).
[27] Test. of M. Richey.
[28] Test. of D. Larson; Respondents' Ex. A.
[29] Test. of M. Richey.
[30] *Id*.
[31] Probable Cause Order (Nov. 16, 2022).
[32] *Id*.
[33] Notice of and Order for Panel Assignment (Dec. 9, 2022).

20. The record in this matter closed on December 19, 2022, the deadline for submitting written argument.[34]

Based upon the foregoing Findings of Fact, the undersigned Panel of Administrative Law Judges makes the following:

CONCLUSIONS OF LAW

1. The Panel is authorized to consider this matter pursuant to Minn. Stat. § 211B.35 (2022).

2. Complainant bears the burden of proving the allegations in the Complaint. The standard of proof of a violation of Minn. Stat. § 211B.04 is a preponderance of the evidence.[35]

3. Minn. Stat. § 211B.01, subd. 2 (2022), defines "campaign material" to mean "any literature, publication, or material that is disseminated for the purpose of influencing voting at a primary or other election, except for news items or editorial comments by the news media."

4. Respondents' billboards promoted the candidacies of Respondents Wall, Jaranson, Manecke, Richey, and Hoover. The billboards were, therefore, campaign material within the meaning of Minn. Stat. § 211B.01, subd. 2.

5. Minn. Stat. § 211B.04 makes it unlawful for a person to participate in the preparation or dissemination of most types of campaign material that does not prominently disclose the person or committee causing the material to be prepared or disseminated.[36]

6. Pursuant to Minn. Stat. § 211B.04, subd. 1(b), the required form of disclaimer is: "Prepared and paid for by the ..... committee, ... (address)." The address in a disclaimer must be either the committee's mailing address or the committee's website, if the website includes the committee's mailing address.[37]

7. For campaign websites and social media pages, the disclaimer requirement is satisfied when the disclaimer appears once on the home page of the website or social media page.[38]

8. Respondents' billboards did not state who prepared and paid for them. The billboards lacked disclaimers substantially in the form required by Minn. Stat. § 211B.04, subd. 1(b).

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[34] *Id*.
[35] Minn. Stat. § 211B.32, subd. 4 (2022).
[36] *See* Minn. Stat. § 211B.04, subd. 1(a) and (b).
[37] *Id*.
[38] *Id*. at subd. 4.

9. Complainant established by a preponderance of the evidence that Respondents violated Minn. Stat. § 211B.04, subd. 1(b), by participating in the preparation and dissemination of campaign material lacking a disclaimer substantially in the form required.

10. For this violation, it is appropriate to impose a $100 civil penalty against Respondent Larson and a collective civil penalty in the amount of $250 against Respondents Wall, Jaranson, Manecke, Richey, and Hoover.

11. The attached Memorandum explains the reasons for these Conclusions of Law and is incorporated by reference.

Based on the record herein, and for the reasons stated in the following Memorandum, the Panel of Administrative Law Judges makes the following:

ORDER

1. By **4:30 p.m.** on **Friday, January 27, 2023**, Respondent Larson shall pay a civil penalty of $100 and Respondents Wall, Jaranson, Manecke, Richey, and Hoover shall pay a collective civil penalty of $250 for violating Minn. Stat. § 211B.04.

2. The penalty shall be paid by check made payable to: Treasurer, State of Minnesota," and remitted to the Office of Administrative Hearings. The docket number, 5-0325-38799, should be included on the check memo line.

Dated: December 22, 2022

JIM MORTENSON
Presiding Administrative Law Judge

JAMES E. LAFAVE
Administrative Law Judge

KIMBERLY MIDDENDORF
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. § 211B.36, subd. 5 (2022), this is the final decision in this case. Under Minn. Stat. § 211B.36, subd. 5, a party aggrieved by this decision may seek judicial review as provided in Minn. Stat. §§ 14.63-.69 (2022).

MEMORANDUM

Under the Fair Campaign Practices Act, it is unlawful to prepare or disseminate most types of campaign material without prominently disclosing the name and address of the person or committee causing the material to be prepared or disseminated.[39] "Campaign material" is defined as "any literature, publication, or material that is disseminated for the purpose of influencing voting at a primary or other election."[40] The purpose of the disclaimer requirement is to inform the electorate about election-related spending[41] by identifying "who or what committee prepared, disseminated and paid for the campaign material."[42]

The two billboards promoted the candidacies of Respondents' Wall, Jaranson, Manecke, Richey, and Hoover. The billboards meet the definition of "campaign material" and were, therefore, required to include a disclaimer "substantially in the form" provided in Minn. Stat. § 211B.04, subd. 1(b).[43] Respondent candidates participated in the preparation of the billboards by submitting photographs of themselves to Mr. Larson following his request.

During the probable cause hearing, Respondents admitted that the campaign billboards lacked disclaimers in the form required. Respondents explained that all five candidates were running for public office for the first time and that they mistakenly believed including their campaign website address satisfied the disclaimer requirement. But neither the billboards nor their campaign website disclosed that Larson had prepared and paid for the billboards.

Complainant established by a preponderance of the evidence that Respondents violated Minn. Stat. § 211B.04(b) by failing to include a required disclaimer on the campaign billboards.

To ensure consistency in the application of administrative penalties across types of violations of the Fair Campaign Practices Act, the Office of Administrative Hearings uses a "penalty matrix" to guide decision-making. The matrix categorizes violations based

[39] Minn. Stat. § 211B.04, subd. 1(a), (b).
[40] Minn. Stat. § 211B.01, subd. 2.
[41] *See Lewison v. Hutchinson*, 929 N.W.2d 444, 448-49 (Minn. Ct. App. 2019).
[42] *Hansen v. Stone*, No. 4-6326-16911, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER at 4 (Minn. Office Admin. Hearings Oct. 28, 2005).
[43] *See* Minn. Stat. § 211B.04, subd. 3.

upon the willfulness of the misconduct and the impact of the violation upon voters and is set forth as follows:[44]

Willfulness	Gravity of Violation		
	Minimal/no impact on voters, easily countered	Some impact on several voters, difficult to correct/counter	Many voters misled, process corrupted, unfair advantage created
Deliberate, multiple violations in complaint, history of violations, clear statute, unapologetic	$600 - 1,200	$1,200 – 2,400 and/or Refer to County Attorney	$2,400 – 5,000 and/or Refer to County Attorney
Negligent, ill-advised, ill-considered	$250 - 600	$600 - 1,200	$1,200 – 2,400 and/or Refer to County Attorney
Inadvertent, isolated, promptly corrected, vague statute, accepts responsibility	$0 - 250	$400-600	$600 - 1,200

Because every case is unique, however, the Panel may depart from the presumptive penalty listed in the matrix.[45]

Complainant points out that all candidates are provided a Campaign Manual when they file for office and should familiarize themselves with the laws governing campaign practices. Complainant asserts that ignorance of the law is and should not be a defense. Complainant urges the Panel to impose a penalty of $1,200 each for the disclaimer violation. He maintains it was willful and difficult to counter.

In a joint submission, Respondents state that their failure to include a disclaimer on the billboards was a good faith mistake and one that they deeply regret. Respondents contend that they made every effort to carefully abide by the laws governing campaign practices and financial reporting. Respondents assert that they mistakenly believed that including their campaign website address on the billboards was sufficient to comply with the disclaimer requirement.

The billboards lacked the required disclaimer. The Panel concludes that the failure to include disclaimers on the campaign billboards was an inadvertent error that was promptly corrected. Based on the facts of this case, the correct disclaimer was what was ultimately included on the billboards – "prepared and paid for by Daniel Larson (address)." The fact that the billboards included the candidates' campaign website address and that that website had a disclaimer on its home page is not material because it was Larson, and not the candidates, who prepared and paid for the billboards.

Respondents are apologetic and accept responsibility. The Panel notes the violation likely had minimal impact on voters. Nevertheless, the law requires campaign

[44] *See* Penalty Matrix (https://mn.gov/oah/self-help/administrative-law-overview/fair-campaign.jsp); *Fine v. Bernstein*, 726 N.W.2d 137, 149-50 (Minn. Ct. App.), *review denied* (Minn. 2007).
[45] *Id.*

material include a disclaimer substantially in the form provided under section 211B.04, subdivision 1(b). Participants in the electoral process, including those assisting candidates, are required and presumed to know the laws governing campaign practices, which are published in publicly available statutes.[46]

The Panel concludes that a penalty of $100 for Respondent Larson and a single collective penalty of $250 for the Respondent candidates is a sufficient sanction to address the violation.

J. R. M., J. E. L., K. J. M.

[46] *Lewison v. Hutchinson*, 929 N.W.2d at 449.