OAH 22-0320-38463

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

James R. Krause,

Complainant,

vs.

Robert “Bob” J. Loonan,

Respondent.

ORDER ON PROBABLE CAUSE

This matter came before Administrative Law Judge Christa L. Moseng for a probable cause hearing held by telephone on June 29, 2022. The hearing addressed a campaign complaint (Complaint) filed under the Fair Campaign Practices Act. The hearing record closed at the conclusion of the proceeding.

Complainant James R. Krause (Complainant) appeared on his own behalf and without legal counsel. Rondell Reid LeBeau II, Jacobson, Magnuson, Anderson & Halloran, P.C., appeared on behalf of Robert “Bob” J. Loonan (Respondent).

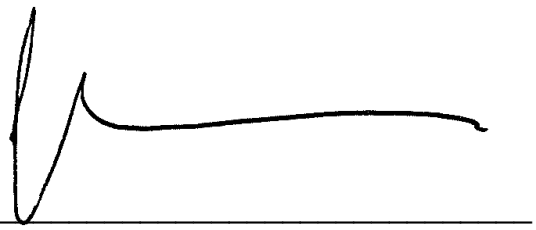
Based upon the record and proceedings in this matter, and for the reasons explained in the attached Memorandum incorporated herein, the Administrative Law Judge makes the following:

ORDER

1. There is probable cause to believe Respondent violated Minn. Stat. §§ 211B.02, .03 (2020) as alleged in the Complaint.

2. This matter will be referred to the Chief Administrative Law Judge for assignment to a panel of three administrative law judges (panel), pursuant to Minn. Stat. § 211B.35 (2020).

Dated: July 5, 2022



CHRISTA L. MOSENG
Administrative Law Judge

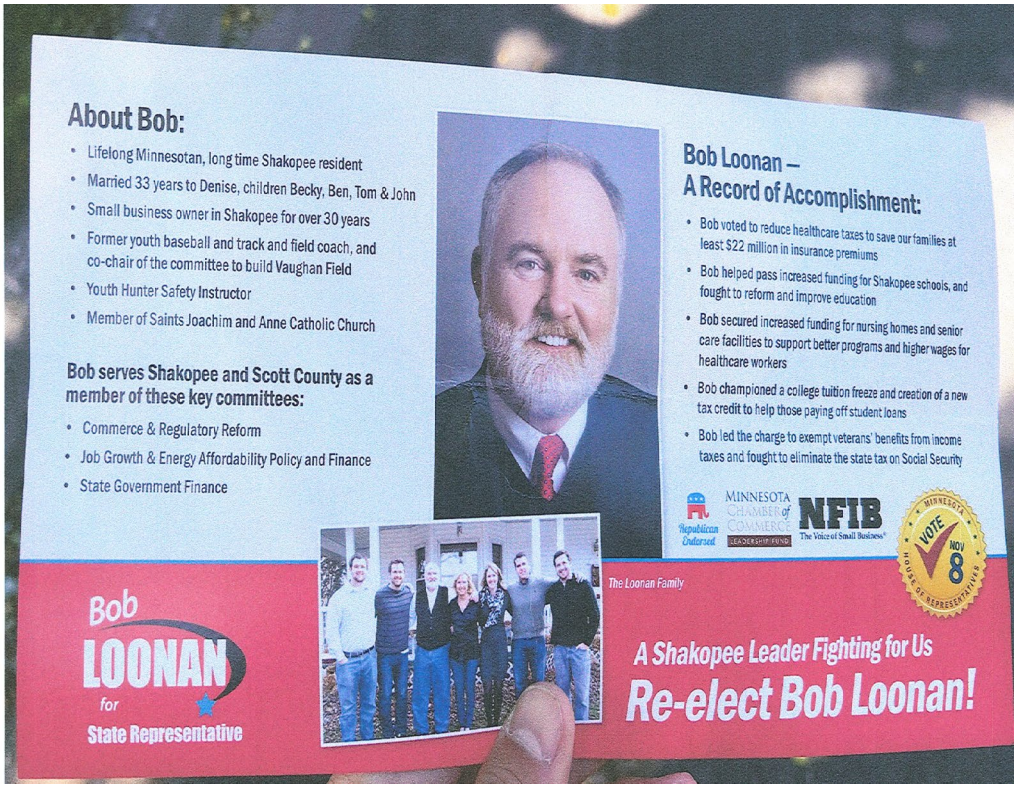
MEMORANDUM

I. Factual and Procedural Background

Respondent is a candidate for the Minnesota House of Representatives District 54A seat in the primary election to be held on August 9, 2022.[1] According to the Complaint, Respondent was a member of the House of Representatives representing District 55A but lost re-election to that seat in 2018.[2] In 2022, new legislative district boundaries were enacted. Respondent is seeking election to the newly drawn House District 54A seat.[3]

Complainant filed the Complaint against Respondent on June 22, 2022. The Complaint alleges that Respondent violated Minn. Stat. § 211B.02 by disseminating campaign material that falsely claimed or implied that his candidacy is "Republican endorsed" and endorsed by the Minnesota Chamber of Commerce.[4] Complainant further alleges that Respondent violated Minn. Stat. § 211B.03 by using the term "re-elect" in the campaign material when Respondent is not the incumbent candidate.[5]

A scanned image of the campaign material appears below:



[1] Complaint (June 22, 2022).
[2] *Id.*
[3] *Id.*
[4] *Id.*
[5] *Id.*

The campaign material includes three logos. The first appears to be the National Republican Party logo with the statement "Republican endorsed." The second is the Minnesota Chamber of Commerce Leadership Fund logo. The third is the National Federation of Independent Business (NFIB) logo.[6] The flyer also includes the statement: "Re-elect Bob Loonan!"[7]

By Order dated June 27, 2022, the Administrative Law Judge found that the Complaint established prima facie violations of Minn. Stat. §§ 211B.02, .03 and set this matter on for a probable cause hearing to be conducted by telephone on June 29, 2022.[8]

During the probable cause hearing, Complainant testified that Respondent dropped off the campaign literature at the home of a Shakopee resident on June 18, 2022.[9] Complainant does not know how many other pieces of this literature were disseminated throughout the district by Respondent or his campaign.[10] Complainant argued that the inclusion of the three logos and use of the term "re-elect" could lead voters to wrongly assume that Respondent is the incumbent candidate for the House District 54A seat and that he is endorsed by the Minnesota GOP, the Minnesota Chamber of Commerce, and the NFIB.[11]

Complainant stated that he is an active member of the Minnesota Republican Party and that he was a delegate at the Republican Party's March 5, 2022 endorsing convention.[12] Complainant testified that Respondent failed to earn the endorsement of the delegates at the convention.[13] Instead, Complainant states that the delegates passed a vote of "No Endorsement" for this race.[14] Complainant also asserted that he contacted the Minnesota Chamber of Commerce and confirmed that it had not endorsed Respondent's candidacy.[15]

Respondent argued that the campaign literature is from a previous campaign and that there is no reliable evidence of how the literature was obtained. Respondent asserted that Complainant's testimony concerning the provenance of the literature is hearsay and that, absent testimony of the resident who received the material, it is insufficient to establish probable cause to believe Respondent violated sections 211B.02, .03 as alleged.[16]

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[6] *Id*., Attachment 1.
[7] *Id*.
[8] Notice of Determination of Prima Facie Violation and Notice and Order for Probable Cause Hearing (June 27, 2022).
[9] Testimony (Test.) of James Krause (Probable Cause Hearing Digital Recording (June 29, 2022) (on file with Minn. Office Admin. Hearings)).
[10] *Id*.
[11] *Id*.
[12] *Id*.
[13] *Id*.
[14] *Id*.
[15] *Id*.; *See* Complaint, Attachment 2.
[16] Probable Cause Hearing Digital Recording (June 29, 2022) (on file with Minn. Office Admin. Hearings)

II. Legal Standard

The purpose of a probable cause hearing is to determine whether there are sufficient facts in the record to believe that a violation of law has occurred as alleged in the complaint.[17] The Administrative Law Judge must decide whether, given the facts disclosed in the record, it is fair and reasonable to require the respondent to address the claims in the complaint at a hearing on the merits.[18] If the Administrative Law Judge is satisfied that the facts appearing in the record, including reliable hearsay, would preclude the granting of a motion for a directed verdict in a like civil case, the campaign violation complaint should be allowed to proceed.[19]

A judge's function at a probable cause hearing does not extend to an assessment of the relative credibility of conflicting testimony.[20] As applied to these proceedings, a probable cause hearing is not a preview or a mini-version of a hearing on the merits; its function is simply to determine whether the facts available establish a reasonable belief that a respondent has committed a violation.[21]

III. Analysis

Pursuant to Minn. Stat. § 211B.02, a candidate may not knowingly make a false claim stating or implying that the candidate has the support or endorsement of a major political party or of an organization. Minn. Stat. § 211B.03 prohibits candidates from using the term "reelect" in an election following re-districting unless the candidate is the incumbent for a seat that previously covered at least part of the district.

Complainant testified that on June 18, 2022, Respondent dropped off the campaign material at the home of a resident of House District 54A. That testimony, combined with the use of the term "re-elect" and the inclusion of the logos and "Republican endorsed" claim on Respondent's campaign material, are sufficient to support finding probable cause that Respondent violated Minn. Stat. §§ 211B.02, .03 as alleged. Campaign material bearing the Republican Party logo with the words "Republican Endorsed" and a logo of the Minnesota Chamber of Commerce Leadership Fund may falsely imply to voters that Respondent has the endorsement of a major political

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[17] *See Weinberger v. Maplewood Review*, 668 N.W.2d 667, 664 (Minn. 2003) ("[I]n civil cases probable cause constitutes a bona fide belief in the existence of the facts essential under the law for the action and such as would warrant a person of ordinary caution, prudence and judgment, under the circumstances, in entertaining it") (quoting *New England Land Co. v. DeMarkey*, 569 A.2d 1098, 1103 (Conn. 1990)) (internal punctuation omitted); *see also State v. Florence*, 239 N.W.2d 892, 903-04 (Minn. 1976) (explaining operation of probable cause standard in criminal context).

[18] *See In re Hortman v. Republican Party of Minn.*, No. 15-0320-17530, PROBABLE CAUSE ORDER at 3 (Minn. Office Admin. Hearings, Oct. 2, 2006).

[19] In civil cases, a motion for a directed verdict presents a question of law regarding the sufficiency of the evidence to raise a fact question. The court must view all the evidence presented in the light most favorable to the adverse party and resolve all issues of credibility in the adverse party's favor. *See, e.g.,* Minn. R. Civ. P. 50.01; *Midland National Bank v. Perranoski*, 299 N.W.2d 404, 409 (Minn. 1980); *LeBeau v. Buchanan*, 236 N.W.2d 789, 791 (Minn. 1975).

[20] *State v. Florence*, 239 N.W.2d 892, 903 (Minn. 1976). *See also State v. Hegstrom*, 543 N.W.2d 698, 702 (Minn. Ct. App. 1996), *review denied* (Minn. Apr. 16, 1996).

[21] *Florence*, 239 N.W.2d at 903.

party and an organization. And use of the term "re-elect" when Respondent is not the incumbent in this race would to violate Minn. Stat. § 211B.03.

The Administrative Law Judge is satisfied that the facts in the record support the alleged campaign violations proceeding to an evidentiary hearing. Contrary to Respondent's assertion, administrative law judges may consider reliable hearsay when determining whether there is probable cause to believe a respondent committed the violation alleged.[22] Viewed in the light most favorable to the Complainant, the testimony that Respondent dropped off the literature at a Shakopee home is sufficient to require the matter to proceed to a hearing. At the evidentiary hearing, Complainant will have the burden of proving Respondent committed the alleged violations by a preponderance of the evidence.

IV. Conclusion

There is probable cause to conclude Respondent violated Minn. Stat. §§ 211B.02, .03. These alleged violations will proceed to an evidentiary hearing before a panel of three administrative law judges for a final determination.

The Chief Administrative Law Judge will issue an order assigning this matter to a panel of judges and setting it on for an evidentiary hearing to be held at the Office of Administrative Hearings.

C. L. M.

[22] *See* Minn. Stat. § 211B.36, subd. 1 (2020) (providing that the administrative law judge may consider any evidence and argument submitted until a hearing record is closed); Minn. R. 1400.7300 (2021).