

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

James R. Krause,

Complainant,

vs.

Robert "Bob" J. Loonan,

Respondent.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER**

This matter came on for an evidentiary hearing on July 18, 2022, before the following panel of Administrative Law Judges: Christa L. Moseng (Presiding Judge), Ann C. O'Reilly, and Jessica A. Palmer-Denig. The hearing convened to consider a Fair Campaign Practices Complaint (Complaint) filed on June 22, 2022. The record closed on July 29, 2022, upon submission of the parties' written argument.

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

STATEMENT OF THE ISSUES

1. Did Complainant demonstrate by a preponderance of the evidence that Respondent violated Minn. Stat. § 211B.02 (2020), by falsely implying that he had the support or endorsement of the Minnesota Republican Party and the Minnesota Chamber of Commerce?
2. Did Complainant demonstrate by a preponderance of the evidence that Respondent violated Minn. Stat. § 211B.03 (2020), by using the term "re-elect" in campaign material when he is not the incumbent candidate?
3. If so, what penalty is appropriate?

SUMMARY OF CONCLUSIONS

Complainant established that Respondent falsely implied that he had the support or endorsement of a major political party and an organization in violation of Minn. Stat. § 211B.02. Complainant further established that Respondent violated Minn. Stat. § 211B.03 by using the term "re-elect" on campaign material.

The Panel concludes that a penalty in the amount of \$750 for each violation (\$1,500 total penalty) is appropriate.

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

FINDINGS OF FACT

1. 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

2. Respondent was a member of the Minnesota House of Representatives representing District 55A. He was first elected to the seat in 2014, and was re-elected in 2016.² He sought re-election again in 2018 but lost to Erik Mortensen in the primary election.³ Respondent ran for the same seat again in 2020 and again lost in the primary election to Erik Mortensen.⁴

3. In 2022, legislative district boundaries in Minnesota were redrawn. Respondent now seeks election to the newly drawn House District 54A seat.⁵

4. On March 5, 2022, the Scott County Republican Party of Minnesota (Scott County GOP) held an endorsing convention.⁶

5. Complainant is a member of the Minnesota Republican Party and attended the Scott County GOP House District 54A endorsing convention as a delegate.⁷

6. Respondent did not earn the endorsement of the delegates at the convention.⁸ Instead, the delegates passed a vote of “No Endorsement” for the Minnesota House District 54A seat.⁹ As a result, no candidate for the Minnesota House District 54A seat has the Minnesota Republican Party’s endorsement.¹⁰

7. Erik Mortensen is a Minnesota State Representative and currently represents Minnesota House District 55A.¹¹ He is seeking election to the newly drawn Minnesota House District 54A seat in the primary election to be held on August 9, 2022.¹²

8. Representative Mortensen attended the Scott County GOP House District 54A endorsing convention as an elected delegate.¹³

¹ Complaint (June 22, 2022).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*; Testimony (Test.) of Erik Mortensen.

⁷ Test. of James Krause (Probable Cause Hearing Digital Recording (June 29, 2022) (on file with Minn. Office Admin. Hearings)).

⁸ Complaint at 2; Test. of E. Mortensen.

⁹ Complaint at 2; Test. of E. Mortensen.

¹⁰ Complaint at 2; Test. of E. Mortensen.

¹¹ Test. of E. Mortensen.

¹² *Id.*

¹³ *Id.*

9. Representative Mortensen has known Respondent for several years.¹⁴ He “shadowed” Respondent at the State Capitol for a day in 2017.¹⁵ He has also debated Respondent several times at candidate forums during the 2018 and 2020 election cycles.¹⁶

10. On Saturday, June 18, 2022, Representative Mortensen was door knocking in the Shakopee area within the boundaries of newly drawn House District 54A.¹⁷ Representative Mortensen observed Respondent’s campaign material at the front doors of at least two homes on the 900 block of Spencer Street.¹⁸ At one of the homes, the resident answered the door and gave Representative Mortensen Respondent’s campaign material to take with him.¹⁹

11. Representative Mortensen took Respondent’s campaign literature, folded it, and put it in his pocket before walking away from the home to look at it more closely.²⁰

12. The campaign material was in brand new condition.²¹ It is a two-sided piece and promotes Respondent’s candidacy for State Representative.²² It includes the words “Re-elect Bob Loonan!” and “Republican endorsed.”²³ It also includes logos of the Republican Party, the Minnesota Chamber of Commerce Leadership Fund, and the National Federation of Independent Business (NFIB).²⁴

13. Scanned images of the front and back sides of Respondent’s campaign material appear below:²⁵

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

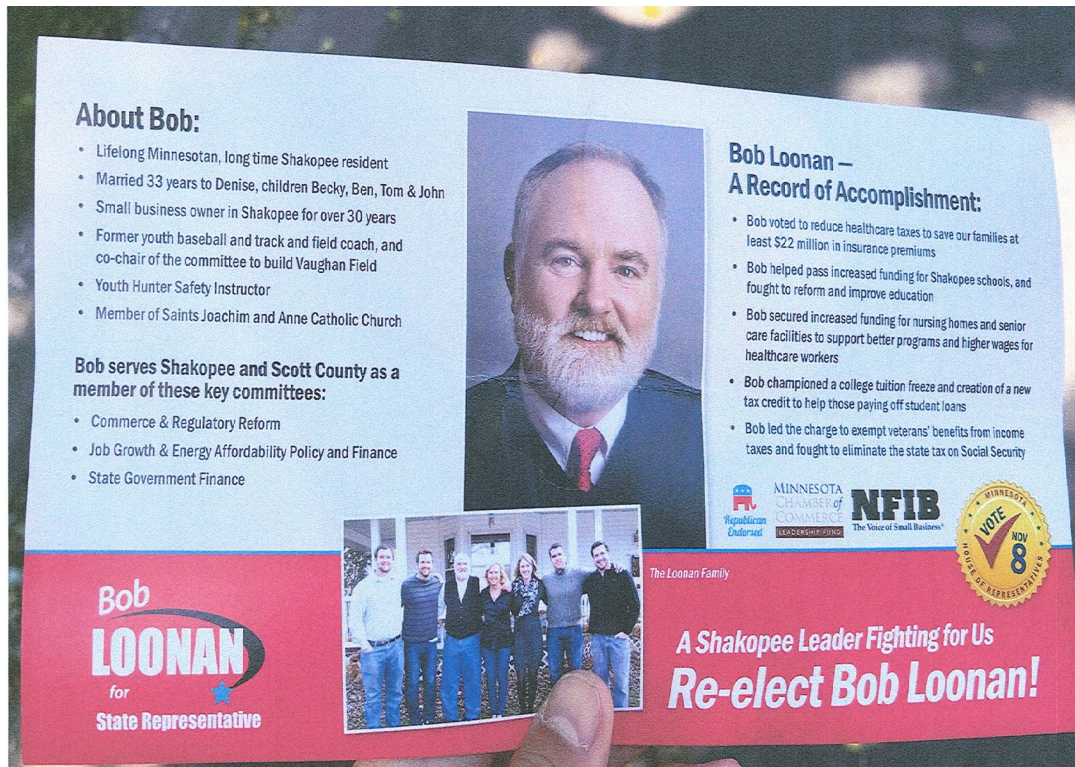
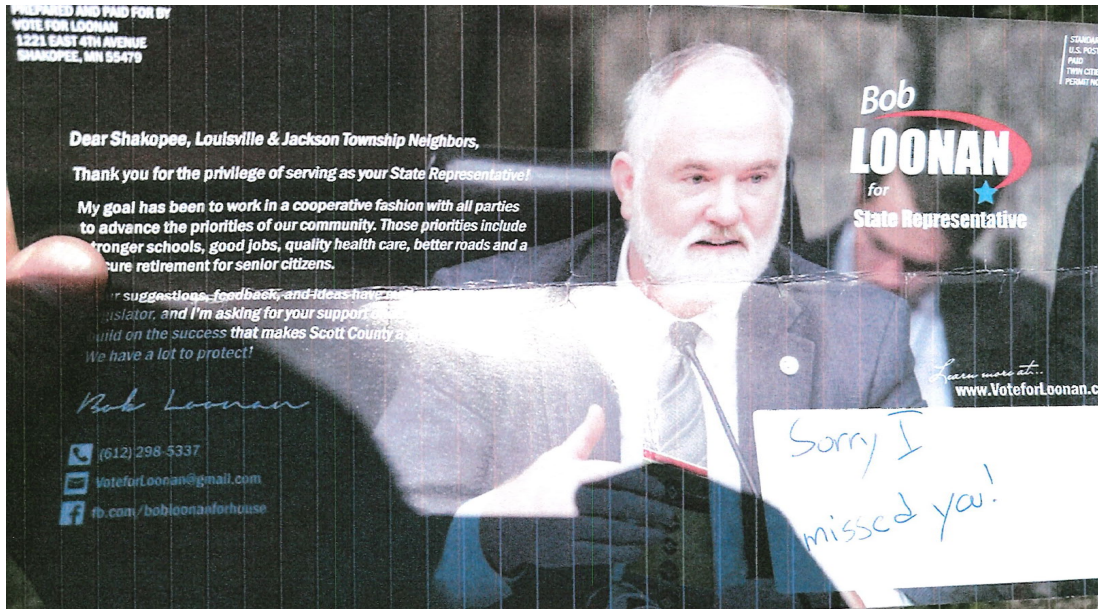
²¹ *Id.*

²² *Id.*: Exhibit (Ex.) 1, 2 (front and back of campaign material).

²³ Exs. 1-2.

²⁴ Ex. 2.

²⁵ Exs. 1-2.



14. The campaign material appears to be material Respondent prepared for his 2016 campaign. It states that “Bob serves” as a member of the following Minnesota House committees: Commerce & Regulatory Reform, Job Growth & Energy Affordability

Policy and Finance, and State Government Finance.²⁶ Respondent has been out of office for four years and does not currently serve as a member on Minnesota House committees.

15. The material urges voters to vote for Respondent for State Representative on November 8th.²⁷ In 2016, the Minnesota primary and general elections were held on August 9th and November 8th respectively. Likewise, in 2022, the primary election will be held on August 9th and the general election will be held on November 8th.²⁸

16. Representative Mortensen did not see who disseminated Respondent's campaign material on June 18, 2022.²⁹

17. Within ten minutes of observing and being given the campaign material, Representative Mortensen proceeded one block to Shakopee Avenue, intending to cross the street at an uncontrolled intersection.³⁰ A car approached the intersection at a slow rate of speed.³¹ Representative Mortensen hesitated before crossing the street to allow the car to pass.³² The car drove slowly past and Representative Mortensen saw Respondent sitting in the passenger seat of the car.³³

18. On June 20, 2022, Complainant contacted the Minnesota Chamber of Commerce and asked for a list of candidates the Chamber of Commerce was endorsing for the Minnesota House of Representatives in the 2022 election cycle.³⁴ RaeAnna Buchholz, Policy Associate with the Minnesota Chamber of Commerce, responded to Complainant's inquiry by email that same day.³⁵ Ms. Buchholz stated that the Chamber of Commerce would be making its endorsing announcements "within a few weeks."³⁶ Therefore, as of June 18, 2022, the Chamber had not endorsed any candidates for the upcoming election.

19. Complainant filed the Complaint against Respondent on June 22, 2022.³⁷

20. By Order dated June 27, 2022, the Presiding Administrative Law Judge found that the Complaint alleged prima facie violations of Minn. Stat. §§ 211B.02, and 211B.03, on the part of Respondent and set the matter on for a probable cause hearing to be conducted by telephone on June 29, 2022.³⁸

²⁶ Ex. 2.

²⁷ *Id.*

²⁸ Test. of J. Krause (Probable Cause Hearing Digital Recording (June 29, 2022) (on file with Minn. Office Admin. Hearings)).

²⁹ Ex. 2.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ Ex. 3.

³⁵ *Id.* (Email from RaeAnn Buchholz to James Krause (June 20, 2022, 11:17 a.m. CST)).

³⁶ *Id.*

³⁷ Complaint (June 22, 2022).

³⁸ See Notice of Determination of Prima Facie Violation and Notice of and Order for Probable Cause Hearing (June 27, 2022).

21. During the probable cause hearing, Respondent, through his counsel, conceded that it was likely the campaign material had been created for Respondent's 2016 campaign.³⁹

22. By order dated July 5, 2022, the Presiding Administrative Law Judge found there was probable cause to believe Respondent violated Minn. Stat. §§ 211B.02, and .03, and that the matter should be assigned to a panel of administrative law judges for a final determination.⁴⁰

23. By Order dated July 6, 2022, the Chief Administrative Law Judge assigned this matter to the Panel and set this matter on for an evidentiary hearing to be held on July 18, 2022.⁴¹

24. The record closed on July 29, 2022, with the filing of the parties' written argument.

25. Any portion of the Memorandum below that constitutes a Finding of Fact is incorporated as such herein.

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 (2020).

2. Complainant bears the burden to prove a violation of Minn. Stat. §§ 211B.02, and 211B.03, by a preponderance of the evidence.⁴²

3. Minn. Stat. § 211B.01, subd. 2 (2020), 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. Minn. Stat. § 211B.02, provides as follows:

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 or party unit or of an organization. A person or candidate may not state in written campaign material that the candidate or ballot question has the support or endorsement of an individual without first getting written permission from the individual to do so.

³⁹ Probable Cause Hearing Digital Recording (June 29, 2022) (on file with Minn. Office Admin. Hearings)).

⁴⁰ Order on Probable Cause (July 5, 2022).

⁴¹ See Notice of Panel Assignment and Order for Evidentiary Hearing (July 6, 2022).

⁴² Minn. Stat. § 211B.32, subd. 4 (2020).

5. The Minnesota Republican Party is a major political party for purposes of Minn. Stat. § 211B.02.⁴³

6. The Minnesota Chamber of Commerce qualifies as an “organization” for purposes of Minn. Stat. § 211B.02.⁴⁴

7. Complainant established by a preponderance of the evidence that Respondent disseminated or was responsible for the dissemination of the campaign material observed at homes in the Shakopee area on June 18, 2022.

8. Complainant established by a preponderance of the evidence that Respondent violated Minn. Stat. § 211B.02, by knowingly and falsely implying that he had the endorsement of the Minnesota Republican Party and the Minnesota Chamber of Commerce.

9. It is appropriate to impose a civil penalty against Respondent in the amount of \$750 for his violation of Minn. Stat. § 211B.02.

10. Minn. Stat. § 211B.03, prohibits a person or candidate, in the event of redistricting, from using the term “reelect” in a campaign for elective office “unless the candidate is the incumbent of that office and the office represents any part of the new district.”⁴⁵

11. Because Respondent is not the incumbent candidate of any part of the newly redrawn Minnesota House of Representatives District 54A seat, he is prohibited from using the term “re-elect” in his campaign.

12. Complainant established by a preponderance of the evidence that Respondent violated Minn. Stat. § 211B.03, by using the term “re-elect” in a campaign for elective office on or about June 18, 2022.

13. It is appropriate to impose a civil penalty against Respondent in the amount of \$750 for his violation of Minn. Stat. § 211B.03.

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

Based upon the record herein, and for the reasons stated in the following Memorandum, the Panel makes the following:

⁴³ See Minn. Stat. § 200.02, subd. 7 (2020) (defining “major political party”).

⁴⁴ See *American Heritage Dictionary* 1275 (3d ed. 1992) (defining “organization” as a “group of persons organized for a particular purpose; an association.”)

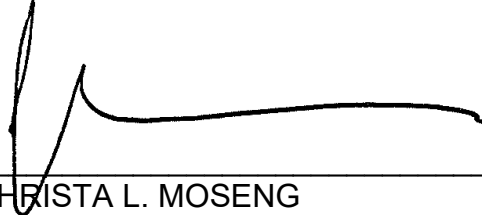
⁴⁵ Minn. Stat. § 211B.03.

ORDER

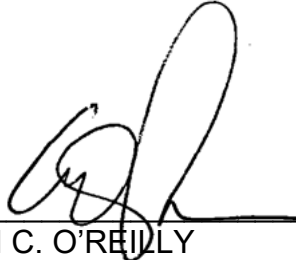
1. By **4:30 p.m. on Friday, September 2, 2022**, Respondent shall pay a total civil penalty of \$1,500 for violating Minn. Stat. §§ 211B.02, and 211B.03.

2. The penalty shall be paid by check made to the order of: "Treasurer, State of Minnesota," and remitted to the Office of Administrative Hearings. The docket number, 22-0320-38463, should be included on the check.

Dated: August 3, 2022



CHRISTA L. MOSENG
Presiding Administrative Law Judge



ANN C. O'REILLY
Administrative Law Judge



JESSICA A. PALMER-DENIG
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

Complainant established by a preponderance of the evidence that Respondent disseminated or was responsible for disseminating the campaign material that Representative Mortensen observed and obtained on June 18, 2022. Representative Mortensen saw the material at the front doors of at least two homes while door knocking on the 900 block of Spencer Street in Shakopee. In addition, Mortensen saw Respondent in the same area at nearly the same time on that day. The material was most likely prepared for Respondent's 2016 campaign. Because the date of the general election for both 2016 and 2022 happen to be the same, it is very likely Respondent was reusing old campaign material.

To satisfy the preponderance of the evidence standard, it must be more probable that a fact exists than the contrary.⁴⁶ This is a lower evidentiary standard than beyond a reasonable doubt.⁴⁷ Complainant can meet this burden by showing it is more likely that Respondent distributed this material on June 18, 2022, than not.

The existence of Respondent's campaign material at homes in House District 54A on June 18, 2022, and Respondent's presence in that neighborhood at the same time and on the same day the material was distributed, makes it more probable that Respondent disseminated the campaign material or caused the campaign material to be disseminated on June 18, 2022. It is not plausible that some unknown person saved Respondent's six-year-old campaign literature and disseminated it at homes in the district on June 18, 2022, without Respondent's knowledge.

Further, the record contains no other explanation for the Panel to consider. While Respondent does not have the burden of proof, if an alternative theory exists, Respondent would have been the one to provide evidence to support it. Respondent did not attend the hearing, provide any testimony, or call any witnesses at any point in the case, depriving the Panel of any evidence from which it could draw a different conclusion.⁴⁸

Instead, Respondent urges the Panel to not credit the testimony of Representative Mortensen arguing that he is a conflicted witness who stands to benefit should the Panel find Respondent violated election laws. Respondent suggests Mortensen's testimony and the filing of the Complaint were motivated by Mortensen's desire to hurt Respondent's election prospects and improve his own election position.

The Panel finds Representative Mortensen's testimony to be credible. Moreover, the motivation for filing a complaint is immaterial to determining whether Respondent violated Minn. Stat. §§ 211B.02, and 211B.03. Any individual has the right to file a complaint under the Fair Campaign Practices Act if they believe a person or committee

⁴⁶ *City of Lake Elmo v. Metropolitan Council*, 685 N.W.2d 1, 4 (Minn. 2004).

⁴⁷ See *Carrillo v. Fabian*, 701 N.W.2d 763, 774 (citing *Addington v. Texas*, 441 U.S. 418, 423-24, 99 S.Ct. 1804, 60 L.Ed.2d 323 (1979)).

⁴⁸ Respondent was represented by counsel at the evidentiary hearing but did not attend the hearing himself.

has violated a provision of the Act.⁴⁹ And the Panel is not persuaded that Representative Mortensen or another person retained Respondent's old campaign literature for six years in order to frame him this campaign season.

By disseminating campaign material that includes the logo of the Republican Party and the words "Republican Endorsed," Respondent falsely implied that he had the Minnesota Republican Party endorsement. Respondent is not endorsed by the Minnesota Republican Party in the primary election. The Minnesota Republican Party has not endorsed any candidate for the Minnesota House District 54A seat in the primary election. Likewise, by disseminating campaign material that includes the logo of the Minnesota Chamber of Commerce Leadership Fund, Respondent falsely implied he was endorsed by the Minnesota Chamber of Commerce. Complainant established that, as of June 20, 2022, Respondent was not endorsed by the Minnesota Chamber of Commerce. Complainant demonstrated by a preponderance of the evidence that Respondent knowingly falsely implied he was endorsed by the Republican Party and the Minnesota Chamber of Commerce in violation of Minn. Stat. § 211B.02.

By disseminating the campaign material including the statement "Re-elect Bob Loonan," Respondent also violated Minn. Stat. § 211B.03. When new districts have been created as a result of redistricting, Minn. Stat. § 211B.03, prohibits a candidate from using the term "re-elect" unless the candidate is the incumbent for at least a portion of the newly drawn district. While Respondent represented a portion of the district for two terms, he is not the incumbent in the August 2022 primary election for the newly drawn Minnesota House District 54A. Therefore, Respondent is prohibited from using the term "re-elect" in his campaign.

Imposition of a penalty for these violations is appropriate. 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.⁵⁰ The matrix categorizes violations based upon the willfulness of the misconduct and the impact of the violation upon voters.⁵¹

In considering the penalty, the Panel notes that this case is distinguishable from *Forney v. Bourn*.⁵² In that case, an older version of a candidate's website from a prior campaign was accessible for five days due to a technical error related to specific browsers.⁵³ The candidate's prior website listed certain endorsements the candidate did not have in her current campaign.⁵⁴ In *Forney*, the panel concluded that the candidate did not "knowingly" make a false claim of endorsement because the technical error was

⁴⁹ See Minn. Stat. § 211B.32.

⁵⁰ 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).

⁵¹ 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).

⁵² OAH No. 11-0325-209454, FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER (Minn. Office Admin. Hearings, March 19, 2010).

⁵³ *Id.*

⁵⁴ *Id.*

unintentional.⁵⁵ By contrast, in this case, Respondent affirmatively disseminated old campaign literature with inaccurate endorsements door to door.

The Panel finds Respondent's conduct in disseminating campaign literature that included the word "re-elect" and that falsely implied endorsements by the Republican Party and Minnesota Chamber of Commerce was deliberate and unapologetic. As Minnesota courts have noted, states have a compelling interest in protecting the electorate from falsehoods and safeguarding the integrity of their elections.⁵⁶ At stake under section 211B.02 is an accurately informed electorate.⁵⁷ Claiming falsely to have endorsements, particularly the endorsement of a major political party, may have misled some voters to wrongly believe that Respondent is the Republican Party's endorsed candidate in the primary election, and using the word "re-elect" could lead voters to believe that he is the incumbent for this seat. This type of misinformation is difficult to counter, particularly so close to an election. Respondent is not a first-time candidate, as he has run for election several times and served as a Minnesota lawmaker for two terms. The statutes governing campaign practices are clear. At this point, Respondent is well aware of his obligations as a candidate.

The Panel concludes that a penalty in the amount of \$750 for each violation, for a total penalty of \$1,500, is appropriate.

C. L. M., A. C. O., J. P. D.

⁵⁵ *Id.*

⁵⁶ See *Linert v. MacDonald*, 901 N.W.2d 664, 669 (Minn. Ct. App. Sept. 11, 2017) (citing *Niska v. Clayton*, No. A13-0622, 2014 WL 902680, at *10 (Minn. Ct. App. Mar. 10, 2014), *review denied* (Minn. June 25, 2014)).

⁵⁷ *Id.*