

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

James R. Krause,

Complainant,

vs.

Robert "Bob" J. Loonan,

Respondent.

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

On June 22, 2022, James R. Krause (Complainant) filed a Fair Campaign Practices Complaint (Complaint) with the Office of Administrative Hearings. The Complaint alleges that Robert "Bob" J. Loonan (Respondent) violated Minn. Stat. §§ 211B.02, .03 (2020) in connection with his campaign for election to the Minnesota House of Representatives District 54A seat. Respondent is a candidate for election from District 54A, which is subject to a primary election to be held on August 9, 2022.

Following a review of the Complaint and attached documents, the undersigned Administrative Law Judge has determined that the Complaint sets forth prima facie violations of Minn. Stat. §§ 211B.02, .03. For the reasons detailed in the Memorandum below, Complainant is permitted to proceed to a probable cause hearing on these claims.

THEREFORE, IT IS HEREBY 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 **10:30 a.m. on Wednesday, June 29, 2022**. The hearing will be held by telephone conference. At the appointed time, the parties are directed to call in to the telephone conference using the following procedure:

- (a) Telephone **866-705-2554** and, when prompted,
- (b) Enter the conference code: **790480#**.

The probable cause hearing will be conducted pursuant to Minn. Stat. § 211B.34 (2020). 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.

At the probable cause hearing, all parties have the right to be represented by legal counsel or appear on their own behalf. In addition, the parties have the right to submit evidence, affidavits, documentation, and argument for consideration by the Administrative Law Judge. By **4:00 p.m. on Tuesday, June 28, 2022**, the parties shall provide to the

Administrative Law Judge all evidence bearing on the case, with copies of the same items provided to the opposing party.

Any document filed with the Office of Administrative Hearings, or any documents that a party wishes to make part of the hearing record, may be filed in one of the following ways: (1) by **eFiling** through the Office of Administrative Hearings' eFiling system; (2) by **mail**; (3) by **facsimile**; or (4) by **personal delivery**.

The eFiling system is accessible at: <http://mn.gov/oah/forms-and-filing/efiling/>.

The Office of Administrative Hearings' facsimile number is: (651) 539-0310.

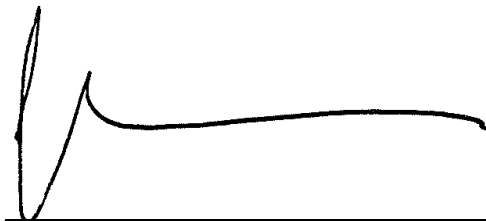
At the conclusion of the probable cause hearing, the Administrative Law Judge will either: (1) dismiss the Complaint based on a determination that the Complaint is frivolous, or that there is no probable cause to believe that the violation of law alleged in the Complaint has occurred; or (2) determine 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 (2020).

If the Administrative Law Judge dismisses the Complaint, the Complainant may seek reconsideration of the decision on the record by the Chief Administrative Law Judge pursuant to Minn. Stat. § 211B.34, subd. 3.

Any party who needs an accommodation for a disability to participate in this hearing process may request one. Examples of reasonable accommodations include wheelchair accessibility, an interpreter, or Braille or large-print materials. If any party requires an interpreter, the Administrative Law Judge must be promptly notified. To arrange an accommodation, contact the Office of Administrative Hearings at P.O. Box 64620, St. Paul, MN 55164-0620, or call 651-361-7900 (voice) or 651-361-7878 (TDD).

A failure by any party to participate and appear by telephone at the probable cause hearing may result in a finding of default, and the Complaint may be dismissed or disposed of pursuant to Minn. Stat. § 211B.35, subd. 2.

Dated: June 27, 2022

A handwritten signature in black ink, appearing to read 'CHRISTA L. MOSENG', written over a horizontal line.

CHRISTA L. MOSENG
Administrative Law Judge

MEMORANDUM

Respondent is a candidate for the Minnesota House of Representatives District 54A seat in the primary election to be held on August 9, 2022. 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. In 2022, new legislative district boundaries were enacted. Respondent is seeking election to the newly drawn House District 54A seat.

The Complaint alleges that Respondent violated Minn. Stat. § 211B.02 by falsely claiming or implying in campaign material that his candidacy is “Republican endorsed” and endorsed by the Minnesota Chamber of Commerce. Complainant further alleges that Respondent violated Minn. Stat. § 211B.03 by using the word “re-elect” in campaign material when Respondent is not the incumbent candidate.

I. Standard for Prima Facie Determinations

To establish a prima facie violation of the Fair Campaign Practices Act, which entitles a party to a hearing, the complainant must allege sufficient facts to show that a violation of law has occurred.¹ 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 (2020).²

For purposes of a prima facie determination, the tribunal 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.³ In determining whether a complaint alleges sufficient facts to state a prima facie case, reasonable inferences must be drawn in the light most favorable to the complainant.⁴ 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-.37.⁵

II. Facts Alleged in the Complaint

Complainant attached a copy of Respondent’s campaign material in support of his Complaint.⁶ The material appears to be a two-sided flyer.⁷ On one side of the flyer is a bullet-point list of Respondent’s “accomplishments.”⁸ Under that list appears 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.

¹ Minn. Stat. § 211B.32, subd. 3.

² *Barry v. St. Anthony-New Brighton Indep. Sch. Dist.*, 282, 781 N.W.2d 898, 902 (Minn. Ct. App. 2010).

³ *Id.*

⁴ *Abrahamson v. St. Louis Cty. Sch. Dist.*, 819 N.W.2d 129, 136 (Minn. 2012).

⁵ *Barry*, 781 N.W.2d at 902.

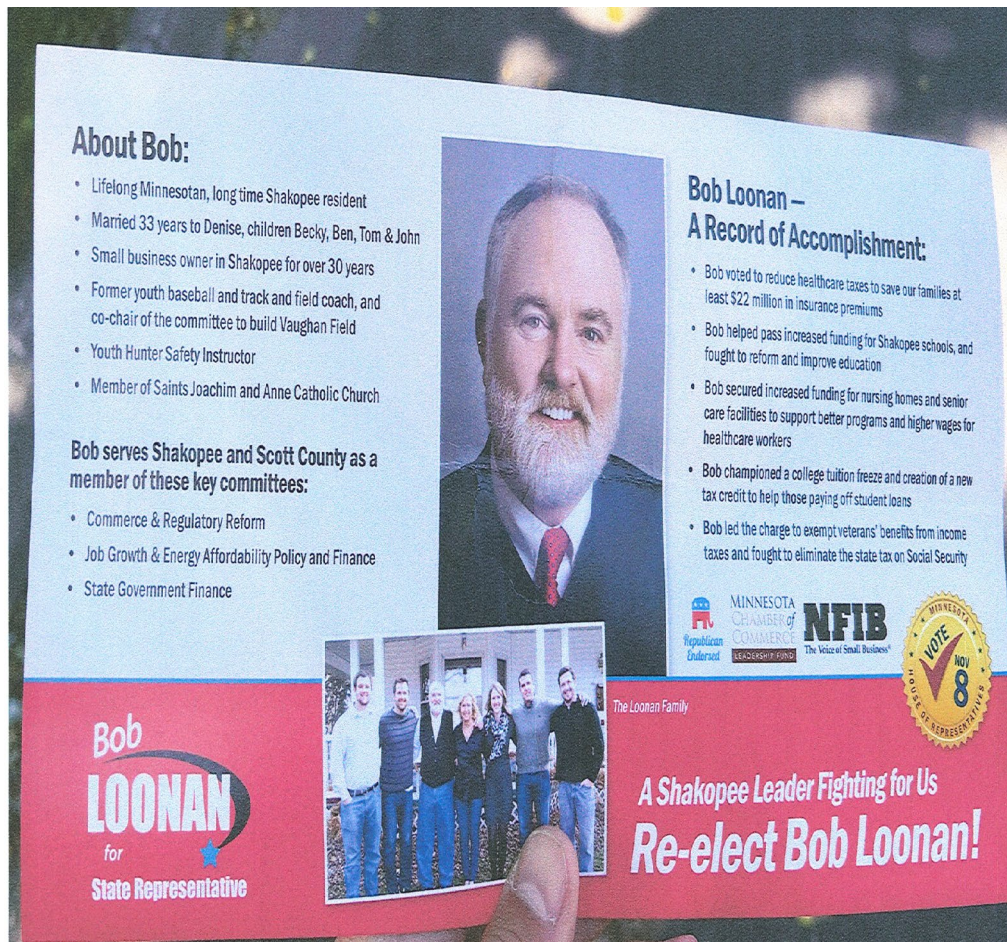
⁶ Complaint Attachment 1.

⁷ *Id.*

⁸ *Id.*

The third is the National Federation of Independent Business (NFIB) logo.⁹ The flyer also includes the statement: “Re-elect Bob Loonan!”¹⁰

A scanned image of the campaign material appears below:



According to the Complaint, there is no “Republican endorsed” candidate for the Minnesota House District 54A seat in the 2022 election. Instead, Complainant asserts that at the March 5, 2022, Republican Party endorsing convention, the delegates passed a vote of “No Endorsement” for this race.¹¹ Complainant also asserts that as of at least June 20, 2022, the Minnesota Chamber of Commerce has not endorsed any candidate for House District 54A.¹² To support this claim, Complainant attached a June 20, 2022, email from a RaeAnna Buchholz, Policy Associate with the Minnesota Chamber of

⁹ *Id.*

¹⁰ *Id.*

¹¹ Complaint at 2.

¹² *Id.*

Commerce¹³. In the email, Ms. Buchholz states that the Chamber of Commerce will be making its endorsing announcements “within a few weeks.”¹⁴

III. Prima Facie Analysis

A. False Endorsement Claim

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.¹⁵

The first sentence of section 211B.02 prohibits candidates from falsely claiming or implying that they have the support or endorsement of a major political party or of an organization. Complainant contends Respondent’s claim to be “Republican endorsed,” and use of a Minnesota Chamber of Commerce logo falsely claim or imply that Respondent has the support or endorsement of the Minnesota Republican Party and the Minnesota Chamber of Commerce. The Minnesota Chamber of Commerce qualifies as an “organization” under Minn. Stat. § 211B.02.¹⁶

The Administrative Law Judge finds that Complainant has alleged sufficient facts to support finding prima facie violations of section 211B.02. 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 party and an organization.

B. Use of the Term Re-Elect

Minn. Stat. § 211B.03 provides as follows:

A person or candidate may not, in the event of redistricting, use 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.

¹³ Complaint Attachment 2.

¹⁴ *Id.*

¹⁵ Minn. Stat. § 211B.02.

¹⁶ See *City of Grant by and through Points v. Smith*, A16-1070, 2017 WL 957717, at 6 (Minn. Ct. App. Mar. 13, 2017) (noting that the common meaning of the word “organization,” in the sense it is used in section 211B.02 is “[a] group of persons organized for a particular purpose; an association,” or “[a] structure through which individuals cooperate systematically to conduct business.” *American Heritage Dictionary* 1275 (3d ed. 1992)).

The statute prohibits use of 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.

At this stage of review, the Administrative Law Judge is required to accept the facts alleged as true. Even if the newly drawn House District 54A seat includes part of the former House District 55A district, Respondent is not the incumbent candidate. The Administrative Law Judge concludes that Complainant has alleged sufficient facts to support finding a prima facie violation of section 211B.03.

IV. Conclusion

Accepting the facts alleged in the Complaint as true, the Administrative Law Judge finds that Complainant has set forth prima facie violations of Minn. Stat. §§ 211B.02 and 211B.03 on the part of Respondent. These claims will proceed to a probable cause hearing as indicated in this Order.

C. L. M.