

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Karen Robinson and Steve Jevning,

Complainants,

PROBABLE CAUSE
ORDER

vs.

Elizabeth Glidden, Volunteers for
Elizabeth Glidden,

Respondents.

The above-entitled matter came on for a telephone probable cause hearing as provided by Minn. Stat. § 211B.34, before Administrative Law Judge Kathleen D. Sheehy on October 31, 2005, to consider a complaint filed by Karen Robinson and Steve Jevning on October 26, 2005. The record closed at the conclusion of the hearing.

Steve Jevning, 3856 Pleasant Avenue South, Minneapolis, MN 55409, participated on his own behalf.

Elizabeth Glidden, 4007 Blaisdell Avenue South, Minneapolis, MN 55409, appeared on her own behalf and for Volunteers for Elizabeth Glidden, with Douglas A. Hedin, Esq., Hedin & Glidden, PA, 250 Talmadge Building, 1219 Marquette Avenue South, Minneapolis, MN 55403, .

Based upon the record and all of the proceedings in this matter, including the Memorandum incorporated herein, the Administrative Law Judge makes the following:

ORDER

IT IS HEREBY ORDERED:

1. That there is probable cause to believe that Elizabeth Glidden and Volunteers for Elizabeth Glidden violated Minnesota Statute § 211B.02 by using the initials "DFL" on campaign brochures.

2. That this matter is referred to the Chief Administrative Law Judge for assignment to a panel of three administrative law judges pursuant to Minnesota Statute § 211B.35.

Dated: November 1, 2005

/s/ Kathleen D. Sheehy

KATHLEEN D. SHEEHY
Administrative Law Judge

MEMORANDUM

Elizabeth Glidden is a candidate for election to the Eighth Ward City Council seat. The complainant, Steve Jevning, is a member of the campaign committee of Marie Hauser, Glidden's opponent. Neither Glidden nor Hauser received endorsement by the DFL party, although both are affiliated with the DFL.

Before the primary election, Glidden distributed brochures containing photographs of herself along with the words "ELIZABETH GLIDDEN (DFL) FOR EIGHTH WARD CITY COUNCIL" on the front.¹ The initials (DFL) are in a smaller font size than her name or the rest of the phrase. These brochures were duplicated and used on several pages of Glidden's website.² After the primary, Glidden prepared new brochures in essentially the same format but containing the words "ELIZABETH GLIDDEN (DFLer) FOR EIGHTH WARD CITY COUNCIL" on the front.³ Again, "DFLer" is in a smaller font size than the rest of the phrase. Glidden's campaign has continued to use the leftover brochures produced before the primary by putting stickers that say "Vote November 8th" over a section that says "Vote in the Primary Election on September 13" on the old brochures. On the back of all of the brochures Glidden identifies organizations that have endorsed or supported her.

Minn. Stat. § 211B.02 provides as follows:

211B.02 False Claim of Support.

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.

In *Schmitt v. McLaughlin*,⁴ the Minnesota Supreme Court held that a candidate's use of the initials "DFL" would imply to the average voter that the candidate had the endorsement, or, at the very least, the support of the DFL party. The court explained that candidates have a right to inform voters of their party affiliation "by the use of such words as 'member of' or 'affiliated with' in conjunction with the initials 'DFL'".⁵

Glidden argues that by separately identifying organizations that have endorsed her or expressed support for her, she has not suggested endorsement

¹ Exs. 2 & 3.

² Ex. 4 at 3, 5, 7, & 9.

³ Exs. 5 & 6.

⁴ 275 N.W.2d 587, 591 (Minn. 1979) (discussing Minn. Stat. § 210A.02, predecessor to Minn. Stat. § 211B.02).

⁵ 275 N.W.2d at 591.

by the DFL in violation of the statute. In *Ryan v. Lefebvre*,⁶ however, in response to a candidate's argument that he had complied with *Schmitt* by using other modifying language, the court held that "the modifying language should be either synonymous with or a paraphrase of the approved words" in *Schmitt*.⁷ Glidden also testified that she was not aware of the *Schmitt* and *Ryan* cases before producing the literature, that the Hauser campaign had not contacted her to object to the brochures, and that the first time she became aware that use of the initials "DFL" was an issue in the campaign was when she received a copy of the complaint.

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.⁸ The material facts in this case are not in dispute. Glidden prepared and disseminated campaign literature in which the initials DFL appear in small print by her name on the front of the brochure. The language clarifying Glidden's endorsements is on the back of the brochure. Glidden did not use the modifying language required by *Schmitt* and *Ryan*, and the Administrative Law Judge must accordingly find that there is probable cause to believe that use of the initials "DFL" next to Glidden's name suggests the endorsement or support of the DFL party in violation of Minn. Stat. § 211B.02. This matter will be referred to the Chief Administrative Law Judge for assignment to a panel of three administrative law judges.

K.D.S.

⁶ 303 N.W.2d 462 (Minn. 1981).

⁷ 303 N.W.2d at 466.

⁸ Minn. Stat. § 211B.34, subd. 2.