

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

Sheryl Hill,

Complainants,

vs.

Tom and Cindy Notch, Citizens for  
Common Sense, and Wake Up  
Westonka,

Respondents.

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

**TO: Sheryl Hill, 1220 Morningview Drive, Mound, MN 55364; and Tom and Cindy Notch, 1250 Morningview Drive, Mound, MN 55364.**

On October 17, 2006, Sheryl Hill filed a Complaint with the Office of Administrative Hearings alleging that Tom and Cindy Notch, Citizens for Common Sense, and Wake Up Westonka violated Minn. Stat. §§ 211A.02, 211A.06, 211B.05, 211B.06, 211B.07, and 211B.13. After reviewing the Complaint and attached exhibits, the undersigned Administrative Law Judge has determined that the Complaint sets forth prima facie violations of Minn. Stat. § 211B.06.

**THEREFORE, IT IS 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 **3:30 p.m. on October 23, 2006**. The hearing will be held by call-in telephone conference. You must call: **1-888-677-3757** at that time. Follow the directions and enter the numeric pass code "**17585**" when asked for the meeting number. The probable cause hearing will be conducted pursuant to Minn. Stat. § 211B.34. Information about the probable cause proceedings and copies of state statutes may be found online at [www.oah.state.mn.us](http://www.oah.state.mn.us) and [www.revisor.leg.state.mn.us](http://www.revisor.leg.state.mn.us).

At the probable cause hearing all parties have the right to be represented by legal counsel, by themselves, or by a person of their choice if that choice is not otherwise prohibited as the unauthorized practice of law. In addition, the parties have the right to submit evidence, affidavits, documentation and argument for consideration by the Administrative Law Judge. Parties should provide to the Administrative Law Judge all evidence bearing on the case, with copies to the opposing party, before the telephone conference takes place. Documents may be faxed to Presiding Judge Eric L. Lipman at 612-349-2665.

At the conclusion of the probable cause hearing, the Administrative Law Judge will either: (1) dismiss the complaint based upon 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. If the presiding Administrative Law Judge dismisses the complaint, the complainant has the right to 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 in order 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 100 Washington Avenue South, Suite 1700, Minneapolis, MN 55401, or call 612/341-7610 (voice) or 612/341-7346 (TTY).

Dated: October 20, 2006

s/ Eric L. Lipman  
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ERIC L. LIPMAN  
Administrative Law Judge

**MEMORANDUM**

The Complaint concerns an operating levy and long term bond referendum proposal for the Westonka School District (ISD 277). The Complainant is a Westonka Parent Volunteer whose children attend school in the Westonka School District. The Respondents are active members of Citizens for Common Sense (CCS), a grassroots organization opposed to the levy referendum. Wake Up Westonka is the domain name of the organization's website. Tom Notch is the Communications Chairperson for CCS.

The Complaint alleges that the Respondents violated Minn. Stat. § 211A.02, 211A.06, 211B.05, 211B.06, 211B.07 and 211B.13. There are 47 alleged violations in all. Each allegation will be addressed below.

## **Minn. Stat. § 211B.05**

### **Allegation 1**

The Complaint alleges that the Respondents violated Minn. Stat. § 211B.05, by publishing and distributing numerous opinions in flyers, letters to the editor of the local newspaper, *The Laker*, and on their website (*wakeupwestonka.com*), that were not clearly identified as a paid advertisement or editorial opinion.

Minn. Stat. § 211B.05 provides as follows:

Subdivision 1. Acceptance of paid advertisements. A newspaper, periodical, or magazine may not intentionally accept for insertion in the newspaper, magazine, or periodical a political advertisement unless the words "PAID ADVERTISEMENT," and the disclaimer required under section 211B.04 are included at the beginning or end of the advertisement. The disclaimer must be in a legible text size and font. A radio station, television station, or cable system may not accept for broadcast a political advertisement unless the words "PAID ADVERTISEMENT" are included at the beginning or end of the advertisement.

Subd. 2. Advertising rates. Rates charged for advertising to support or oppose a candidate or ballot question must be the same as the charges made for any other political candidate and may be no greater than charges made for any other comparable purpose or use according to the seller's rate schedule.

Subd. 3. Compensation prohibited, except for paid advertisement. An owner, publisher, editor, reporter, agent, broadcaster, or employee of a newspaper, periodical, magazine, radio or television broadcast station, or cable system may not directly or indirectly solicit, receive, or accept a payment, promise, or compensation, nor may a person pay or promise to pay or in any manner compensate an owner, publisher, editor, reporter, agent, broadcaster, or employee directly or indirectly for influencing or attempting to influence voting at an election or primary through printed material in the newspaper or periodical, or radio, television, or cable broadcast, except as a "PAID ADVERTISEMENT" as provided in this section.

Subd. 4. Unpaid material identification. Unpaid material published in a newspaper, magazine, or other publication that is: (1) in unique typeset or otherwise differentiated from other unpaid material, (2) designed to influence or attempt to influence the voting at any election or the passage or defeat of legislation, and (3) not placed on the editorial page must be clearly identified as an editorial opinion.

The Administrative Law Judge concludes that the Complainant has failed to allege a prima facie violation of Minn. Stat. § 211B.05. This statute places certain duties on news organizations, as defined in subdivisions 1 and 3 of the statute; and there is no showing (or claim) that Respondents are one of the specified organizations. Because Respondents are not regulated by Minn. Stat. § 211B.05, this allegation is dismissed.

### **Minn. Stat. § 211B.06**

The Complainant alleges that several pieces of campaign material prepared and disseminated by the Respondents contained false statements of fact in violation of Minn. Stat. § 211B.06. Section 211B.06 prohibits the intentional preparation or dissemination of false campaign material with respect to the effect of a ballot question. In *Kennedy v. Voss*,<sup>1</sup> the Minnesota Supreme Court observed that the statute is directed against the evil of making false statements of fact and not against unfavorable deductions, or inferences based on fact - even if the inferences are “extreme and illogical.”<sup>2</sup> The Court pointed out that the public is protected from such extreme and illogical inferences by the ability of other speakers to rebut these claims during the campaign process.<sup>3</sup>

A challenged statement’s specificity and verifiability, as well as its literary and public context, are also factors to be considered when distinguishing between fact and opinion.<sup>4</sup> In some cases, a reviewing tribunal will look beyond the literal phrase that was published to what a reasonable reader would have understood the author to have said. Expressions of opinion, rhetoric, and figurative language are generally protected speech if, in context, the reader would understand that the statement is not a representation of fact.<sup>5</sup>

### **Allegation 2**

The Complainant alleges that Respondents violated Minn. Stat. § 211B.06 by failing to put the date that the information was published on their website or references to “accountable authors.”

A failure to date material on a website or identify its authors is not a violation of Minn. Stat. § 211B.06. Moreover, even if this allegation was more accurately identified as a violation of the disclaimer requirement of Minn. Stat. § 211B.04, the Minnesota

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<sup>1</sup> 304 N.W.2d 299 (Minn. 1981).

<sup>2</sup> 304 N.W.2d at 300.

<sup>3</sup> *Id.*

<sup>4</sup> *Diesen v. Hessburg*, 455 N.W.2d 446, 451 (Minn. 1990).

<sup>5</sup> *Jadwin v. Minneapolis Star and Tribune*, 390 N.W.2d 437, 441 (Minn. App. 1986), *citing Old Dominion Branch No. 496, National Assoc. of Letter Carriers v. Austin*, 418 U.S. 264, 284-86 (1974); *Greenbelt Coop. Publishing Assoc. v. Bresler*, 398 U.S. 6, 13-14 (1970). *See also Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 16-17 (1990); *Hunter v. Hartman*, 545 N.W.2d 699, 706 (Minn. App. 1996).

Court of Appeals ruled recently that Minn. Stat. § 211B.04 is unconstitutional on its face.<sup>6</sup> This allegation is dismissed.

### **Allegation 3**

The Complainant alleges that the statement on the homepage of CCS' website that "this bond is not affordable to homeowners, renters and business owners" violates section 211B.06. The Complainant asserts that this statement "is an opinion, not a fact." The Administrative Law Judge agrees, and because it is an opinion, it cannot violate Minn. Stat. § 211B.06. Section 211B.06 is directed only against false statements of fact. The Complainant has failed to allege a prima facie violation with respect to this allegation, and it is dismissed.

### **Allegation 4**

The CCS website has a chart that purports to show the minimum tax impact over 24 years of Ballot Question 2. The chart appears under the title: "What will it cost me?" The Complainant alleges that CCS' calculations over-inflate the property tax impact.

The Administrative Law Judge concludes that the Complainant has stated a prima facie violation with respect to this allegation. If the evidence at a hearing were to establish that the tax impact figures are false and Respondents knew the numbers were false or communicated them with reckless disregard as to whether they were false, this may be sufficient to demonstrate a violation of Minn. Stat. § 211B.06.

### **Allegation 5**

On the homepage of the CCS' website is a list of "4 Reasons to VOTE NO to the \$57,985,000 School Bond Question." The second reason listed states: "This bond is an inflated \$58 million solution to a \$15 million problem." A link leads readers to CCS' proposed \$15 million dollar alternative solution to the problems facing the school district. The Complainant alleges that the statement and information are "grossly misleading and unfair" since this proposal is not an option on the ballot.

The Administrative Law Judge concludes that the Complainant has failed to allege a prima facie violation of Minn. Stat. § 211B.06. Again, the statement and information reflect the opinion of CCS and are not false statements of fact. Minn. Stat. § 211B.06 is directed against factually false statements; not opinions. This allegation is dismissed.

### **Allegation 6**

On the homepage of the CCS' website is the following statement: "The facility assessment behind this bond request came out of a flawed process that resulted in a charade." A link leads readers to information concerning the work of a task force, which the Complainant maintains contains defamatory and unsubstantiated comments.

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<sup>6</sup> *Riley v. Jankowski*, No. A05-1125 (Minn. App. April 26, 2006), *review denied*, (Minn. July 20, 2006).

Again, the Complainant has failed to allege a false statement of fact. Stating that the process was “flawed” and resulted in a “charade” is an opinion and is not a violation of Minn. Stat. § 211B.06. This allegation is dismissed.

### **Allegation 7**

The third reason listed on the homepage of the CCS’ website for voting against the school bond is as follows: “Grandview Middle School is very serviceable and should not be abandoned [demolished] and sold.” The Complainant maintains that this is a false statement. According to the Complainant, the district plans to vacate and sell the school but there has never been a plan to abandon the school.

The Administrative Law Judge concludes that the Complainant has failed to allege a prima facie violation of Minn. Stat. § 211B.06 with respect to this allegation. Again the statement reflects CCS’ opinion that the middle school should not be abandoned and sold. CCS is not stating as a fact that the middle school will be abandoned and sold. This allegation is dismissed.

### **Allegation 8**

The fourth reason listed on the homepage of the CCS’ webpage for voting against the school bond is as follows: “As was the case with last year’s bond, the Westonka School District Administration is again allowing themselves to be unduly influenced by self-enriching vendors.” The Complainant maintains that the first clause of the sentence is false because there was no bond last year. According to the Complainant the school board considered a bond vote last year “but pulled it before the election.” The Complainant maintains that the rest of the sentence is also false because CCS does not identify the “self-enriching vendor” and no bids have been sent or accepted at this point with respect to the current proposed referendum projects.

The Administrative Law Judge concludes that the reference to “last years bond” is not a false statement of fact given that the district did consider a bond proposal and a reasonable reader would understand the statement in that context. The remaining sentence to the effect that School District Administrators were “unduly influenced,” is opinion. This allegation is dismissed.

### **Allegation 9**

The CCS’ website contains the following statement: “Westonka spends a paltry 38.9% on Regular Education Classroom Instruction.” The Complainant finds this claim misleading because it omits the fact that Westonka spends 20.8% on special education. According to the Complainant when the special education spending is added to the regular education spending, Westonka’s 59.7% spending is comparable to other school districts.

The Administrative Law Judge concludes that the Complainant has failed to allege a prima facie violation of Minn. Stat. § 211B.06. The Complainant does not allege that CCS’ statement that the district spends 38.9% on regular education

spending is false. The fact that Complainants believe that other statistics – namely figures on Special Education spending – are needed to give meaning to claims about Regular Education Classroom Instruction spending, does not render Respondents' claims false. This allegation is dismissed.

### **Allegation 10**

The CCS website includes information on the tax impact of the bond referendum. The Complainant alleges that CCS has inflated the tax consequences thereby rendering the data false. Specifically, the Complainant maintains that the tax impact on a home valued at \$150,000 would be \$430 over 10 years and not \$915 as stated by CCS.

The Administrative Law Judge concludes that the Complainant has alleged a prima facie violation with respect to this allegation. If the evidence at a hearing were to establish that the tax impact figures are false and Respondents knew the numbers were false or communicated them with reckless disregard as to whether they were false, this may be sufficient to demonstrate a violation of Minn. Stat. § 211B.06.

### **Allegations 11 and 12**

CCS claims on its website that “Westonka ISD 277 collects more revenue than 95% of all other districts in the entire state of MN.” The website includes a chart attributed to the Minnesota State Auditor’s Office that shows the amounts of revenue received per student by 11 West metro school districts. Westonka is shown as receiving the most revenue per student. Although the chart only shows the west metro school districts, the statement above the chart reads: “Westonka receives more revenue per student than 95% of all other MN School Districts.”

The CCS website also states that “Westonka ISD 277 receives \$25,438,045 in total revenues for 2004/2005 fiscal year from Fed, State, Local taxes. That’s \$11,460 per K-12 student attending. Higher funding than 95% of all other school districts in the entire State of MN. Source: State of MN, Dpt. Of Ed; Pgm Finance.” A link to the Minnesota Department of Education Revenue Summary Report follows this information.

The Complainant alleges that the Respondents have not established or “validated” the claim that Westonka receives higher revenue per student than 95% of all the districts in Minnesota. According to the Complainant, the information only shows that Westonka receives the most revenue per student in the west metro area.

The issue is whether the Respondents’ statements are factually false. The Respondents have provided charts and data from the Minnesota State Auditor’s Office and the Minnesota Department of Education. According to the referenced chart from the State Auditor’s Office, Westonka receives more revenue per student than 95% of the school districts in Minnesota. More importantly, the Complainant has failed to allege that the statement is false; only that it has not been verified. The Complaint does not state a prima facie violation of Minn. Stat. § 211B.06 and these allegations are dismissed.

### **Allegation 13**

The Complainant alleges that Tom and Cindy Notch have stated in writing that the referendum is “too expensive for senior citizens and other residents on tight budgets, at a time when area food shelves report more people are seeking their help to get through times of financial crisis.” According to the Complainant, this statement is an unfair fear tactic.

This statement identified by the Complainant is an opinion and not a statement of fact. As such, it cannot violate Minn. Stat. § 211B.06. This allegation is dismissed.

### **Allegations 14 and 15**

The CCS website contains the following statements: “Westonka School Board set the new Superintendent’s compensation at \$150,202. The Superintendent’s base salary is the same as the Governor of the State of Minnesota.” The Complainant does not claim that this statement is false. Instead, the Complainant points out that the Westonka’s Superintendent’s compensation ranked 43<sup>rd</sup> of 48 school districts in the seven-county metropolitan area. The CCS website also lists and criticizes the School Board’s approval of annual compensation for former Westonka Superintendents through 2009. The Complainant again does not claim that the information is false. Instead she maintains that such criticisms are unjust as the School Board must comply with previously negotiated contracts that call for deferred compensation payments.

The Complainant has failed to allege prima facie violations of Minn. Stat. § 211B.06 with respect to these statements. These allegations are dismissed.

### **Allegations 16, 17 and 19**

The CCS’ website lists a number of questions and answers regarding the school bond proposal that the Complainant alleges are “misleading.” The statements at issue in Allegations 16-20 are:

“Won’t this plan make traffic congestion on Cty Rd 110 a lot worse?  
Yes!”

“What happens to Grandview? It gets abandoned and sold  
[probably demolished]”

“If it is so important to get 8<sup>th</sup> graders out of the high school and back in middle school, why are they putting 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, & 8<sup>th</sup> graders into a building attached to MW High school? Doesn’t that make it even worse?  
Probably.”

With respect to the first question and answer, the Complainant maintains that the Respondents cannot substantiate their claim that traffic congestion on County Road 110 will get “a lot worse.” As for the second question and answer, the Complainant asserts that Respondents’ claim that the school board will “abandon” the building is an

exaggeration of the board’s plan to “vacate and sell the building.” With respect to the third question and answer, the Complainant contends that it refers to an earlier bond proposal and ignores the fact that the school district has pledged to make every effort, through building design and the scheduling of activities, to ensure that middle school students and high school students do not mix during the school day.

The Administrative Law Judge concludes that these questions and answers (Allegation 16, 17 and 20) reflect opinion and not false statements of fact. As such, the Complainant has failed to allege prima facie violations of Minn. Stat. § 211B.06 and these allegations are dismissed.

**Allegation 18**

The CCS website also listed the following question and answer regarding the school bond proposal:

“If this is approved, will we still be paying taxes for previously made improvements to Grandview while someone else owns it? Yes.”

The Complainant states that it is her understanding that if the Grandview Middle School building is sold, the school board will pay down the debt from the proceeds of the sale. This argument, however, does not address whether homeowners will still be paying property taxes for the prior bond that funded the previously made improvements after a sale. The Administrative Law Judge concludes that the Complainant has failed to allege a prima facie violation of Minn. Stat. § 211B.06 with respect to this question and answer. This allegation is dismissed.

**Allegation 21**

The CCS website also listed the following question and answer regarding the school bond proposal: “What’s in it for elementary schools? Not 1 square foot is added to elementary schools.” The Complainant alleges this is “misleading and inaccurate” because “space deficiencies will be remedied at Shirley Hills and Hilltop Elementary schools through upgrades and remodeling.” The Complainant also asserts that all youth in the Westonka School District will be able to “play soccer, football . . . and other activities on the field expansions at the high school, which can be considered additional space for these students.”

The Complainant has failed to allege that Respondents’ claim that “not 1 square foot is added to the elementary schools” is false. What Complainant does maintain is that other facts – namely a description of remodeling plans – are needed to place Respondents’ claim in context. The statute, however, only prohibits dissemination of false statements of fact; not incomplete presentations. This allegation is dismissed.

**Allegations 22, 23, 25, 27, 28, 29, 30, 31, 32, and 33**

The CCS website also lists the following questions and answers:

What's in it for ECFE?<sup>7</sup> Nothing.

Co-curricular Assessment: how can you get more for \$15 Million than \$58 Million.

Does this plan meet desired goals? No

Was the Facility Task Force that studied ISD 277 facilities a Charade? Yes.

Isn't there a more cost effective way to achieve grade reconfiguration? Yes.

If this bond is approved, won't future levy renewals be harder to pass? Probably

If future levy renewals in 2012 & 2014 aren't passed, won't the number of students per class go up? Yes.

Didn't ISD 277 say that they would expect the Task Force to craft a plan that made economic sense? Yes. Does this plan make economic sense? No.

This bond is only half of what last year's was, isn't that a good deal? No!

Will ISD 277 be back in a couple years for a new elementary school? Probably

All of these statements are opinions, and not statements of fact. The Complainant alleges that for a variety of reasons the statements are misleading, confusing and unfair. That may be so, but they reflect the Respondents' viewpoint and are not statements of fact that are susceptible of being proved true or false. As previously noted, the Minnesota Supreme Court has held that opinions and inferences based on fact, even extreme and illogical ones, do not come within the purview of Minn. Stat. § 211B.06.<sup>8</sup> The Administrative Law Judge concludes that the Complainant has failed to establish prima facie violations of Minn. Stat. § 211B.06 with respect to these allegations, and therefore these allegations are dismissed.

## **Allegation 24**

The CCS website also lists the following question: "Do we pay less school taxes than other neighboring districts?" A link to this question sends readers to the Minnesota State Auditor's Office chart that lists Westonka as receiving the most revenue per student than the other west metro school districts. The Complainant alleges that the

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<sup>7</sup> Early Childhood Education.

<sup>8</sup> *Kennedy v. Voss, supra*, 304 N.W.2d at 300.

question is misleading because the chart reflects revenue received from the State and does not relate to taxes.

Regardless of which government statistics best answer the question raised by CCS, it is just that; a question. The query and the chart do not amount to a false statement of fact. This allegation is dismissed.

### **Allegations 26 and 42**

The CCS website also lists the following question and answer: “Will my taxes go down when the existing bond is paid for in 2013? No.” A link to this question and answer leads readers to a chart showing the estimated tax rate for capital and debt service levies and proposed new debt on the proposed \$58 million bond issue over the next 24 years. In addition, at another point on the website CCS, states “Debt structure – why our taxes won’t go down when current debt is retired.” This sentence also has a link to the same chart.

In both of these allegations, the Complainant maintains that the information is misleading and argues that the Respondents cannot say as a statement of fact that school taxes will increase.

Because the statement concerns what will happen in the future, a reasonable reader in the Westonka School District would understand this claim to be speculation, inference and argument based upon present-day facts. The Complainant’s argument that CCS cannot “prove or validate that taxes will not go down” is certainly correct – but it also hobbles her claim. Because none of us can know the future, Complainant cannot establish that the CCS prediction is demonstrably false. Under the statute, it is her burden to demonstrate that CCS’ claim is false; not CCS’ burden to show that its claim is beyond dispute. The Complainant has failed to allege a prima facie violation of Minn. Stat. § 211B.06 with respect to this question and answer. These allegations are dismissed.

### **Allegation 34**

The CCS website also lists the following question and answer: “Is it true that ISD 277 gets \$25 Million annually in local, state, & federal funds? Yes.” This question and answer has a link that leads readers to a Minnesota Department of Education Revenue Summary Report that shows that the Westonka School District received \$23,940,340 in total funds for “data year 4-05.” The Complainant alleges that the Respondents’ claim that Westonka School District receives \$25 million annually is a false statement of fact.

According to the Minnesota Department of Education’s Report on Total Revenues for School District for Fiscal Year 2005,<sup>9</sup> the Westonka School District did receive over \$25 million in total revenue. The Administrative Law Judge concludes that the statement at issue appears to be true, but more importantly, the Complainant has

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<sup>9</sup> “School Districts and Charter Schools Total Revenues FY 2005,” Line 208, Column X, Minn. Dep’t of Ed. (2006) (<http://education.state.mn.us/mde/static/2005TotalRevenues.xls>).

failed to allege facts that would support finding a prima facie violation of Minn. Stat. § 211B.06. Therefore, this allegation is dismissed.

### **Allegation 35**

The CCS website also lists the following question and answer: “Did ISD 277 only educate 71% of children who live in the district? Yes.” The Complainant does not allege that this is a false statement of fact. Instead, she argues that the Respondents have failed to substantiate this claim. Again in fair campaign practices complaints, the burden is on the Complainant to demonstrate that this is a false statement of fact. It is not the Respondents’ burden to substantiate their claims. Here, the Complainant has failed to allege sufficient facts to support finding a prima facie violation of Minn. Stat. § 211B.06 with respect to this question and answer. This allegation is dismissed.

### **Allegation 36**

The CCS website also lists the following question and answer: “Did ISD 277 spend \$\$\$ on driveways when they knew their roofs were leaking? Yes.” Again, the Complainant does not allege that this is a false statement of fact, but instead requests factual support for the CCS claim. Because the Complainant does not allege that this is a false statement of fact, this allegation is dismissed.

### **Allegation 37**

The CCS website also lists the following question and answer: “Is it true that ISD 277 spent \$233,371 on last year’s bond debacle? Yes.” The Complainant is not challenging the amount allegedly spent. Instead, she objects to the Respondents’ reference to last year’s bond study as a “debacle” and maintains that the information garnered by last year’s study is being used in the current plan. The Complainant states that referring to last year’s study as a debacle is not a “fact.”

The Complainant is correct that Respondents’ reference to last year’s bond effort as a “debacle” is an opinion and not a fact. As such, this characterization does not violate Minn. Stat. § 211B.06 and this allegation is dismissed.

### **Allegations 38 and 39**

The CCS website also lists the following questions and answers:

Does ISD 277 “outsource” its busing, maintenance & janitorial to private co’s? Details soon.

Why does the School Board almost always vote unanimously? Great question.

Complainant charges that these questions are “slanted,” “unfair” and reveal “a lack of responsibility.” Yet, the Respondents are merely raising questions; not making

statements of fact. The Complaint has failed to establish prima facie violations of Minn. Stat. § 211B.06 with respect to these allegations and they are dismissed.

#### **Allegation 40**

The CCS website also lists the following in its list of questions and answers:

In 2003, ISD 277 had a \$170,000 balance in a fund that had been previously approved by taxpayers for capital building project purposes. Instead of doing what was required by law and refunding the \$170,000 to taxpayers, ISD 277 approached the MN Legislature. The MN Legislature subsequently passed a special law to allow ISD 277 to transfer refundable “capital money” back into the “general operating fund.” Click to see statute.

An Internet “hyperlink” follows these statements and leads readers to the Minnesota Session law that permitted the Westonka School District to permanently transfer the lesser of \$170,000 or its actual fund balance from its debt redemption fund to its general fund without making a levy reduction, notwithstanding Minn. Stat. §§ 123B.70, 123B.80 and 475.61.

The Complainant does not allege that the statements identified in Allegation 40 are false. Instead, she states that she has an “issue with the way this is presented.” She also criticizes CCS for not providing enough information about what happened in 2003 for her to make an informed judgment. She also asserts that in 2003, the District refinanced bonds at a lower interest rate and reduced school taxes by more than \$1 million over the life of the bonds.

The Complainant has failed to allege that the paragraph identified in this allegation contains false statements of fact. It appears, based on the statute provided in the link, that the Respondents’ statements are true. Nevertheless, absent a claim that the statements are factually false, and not simply a complaint that the Respondents have not provided the information she would like to know, the allegation fails to allege a prima facie violation of Minn. Stat. § 211B.06. This allegation is dismissed.

#### **Allegation 40A (numbered incorrectly as 39)**

The CCS website contains the following statement in the section entitled “Doc’s, Thank You’s, Letters, and Donations”:

A \$15 Million Solution that meets needs & doesn’t saddle children with debt.

A link to this sentence leads readers to CCS’ proposed \$15 million alternative to the levy and bond referendum. The Complainant contends that the statement is false because children do not pay for school debt; adults do. The Complainant also objects to the Respondents presenting their alternative plan when it is not an option on the ballot.

The challenged sentence is not a false statement of fact. It is a characterization and prediction regarding the effect of approving the ballot measure. Implications and opinions do not fall within the purview of Section 211B.06, and there is no allegation that the implication is false. Moreover, nothing in chapter 211B prohibits the Respondents from suggesting an alternative to bond referendum. The Complaint fails to establish a prima facie violation of Minn. Stat. § 211B.06 with respect to this allegation and this allegation is dismissed.

#### **Allegation 41**

The CCS website contains the following statement: “A \$15 Million plan gets you more than ISD 277’s \$58 Mil plan.” The sentence contains an internet “hyperlink” that leads readers to CCS’ proposed alternative \$15 Million plan, which it calls “Option 5.” The Complainant maintains that this statement is confusing because “Option 5” was “voted down,” and would leave other needs unmet.

The sentence reflects the Respondents’ assessment of possible alternatives and does not violate Minn. Stat. § 211B.06. This allegation is dismissed.

#### **Allegation 43**

Posted on the CCS website are “Citizen Letters.” One letter is purported to have been a letter to the editor printed in the neighborhood newspaper, *The Laker*, from a Bruce McIntyre of Mound. Another is purported to be a letter to the editor of the same newspaper from Respondent Tom Notch. The Complainant objects to the fact that Mr. McIntyre identified himself as a 28 year District 277 teacher when he has not taught since 1992. The Complainant also objects to Respondent Notch’s statement in his letter that Westonka receives more revenue than 95% of all other school districts in Minnesota, and his opinion that the \$58 Million plan will “force 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> graders into a facility directly attached to the high school.”

The “Citizen Letters” identified by the Complainant reflect opinion, and are not prohibited by Minn. Stat. § 211B.06. Moreover, Complainant does not challenge Mr. McIntyre’s claim that he taught for 28 years – only that he should have included his present employment status. A demand for other facts does not state a violation of Minn. Stat. § 211B.06. This allegation is dismissed.

#### **Minn. Stat. § 211A.02**

#### **Allegations 44 and 46: Failure to File Required Reports**

The Complainant also alleges that the Respondents have received contributions of over \$750, or made disbursements in excess of \$750, related to the ballot question,

but have failed to file financial reports as required by Minn. Stat. § 211A.02, subd. 1(a).<sup>10</sup>

Specifically, the Complainant estimates that the development and hosting of the CCS website required in-kind contributions of more than \$750. Moreover, she notes that the CCS site thanks many businesses for their in-kind donations of banners, research work, and web help. Lastly, the Complainant alleges that Respondent Cindy Notch has a “pile of donation checks are paper clipped together” from “hundreds” of separate donations.

Minn. Stat. § 211A.02, subd. 1 requires a “committee” that receives contributions or makes disbursements of more than \$750 in a calendar year to submit an initial report with the filing officer within 14 days after the committee receives or makes disbursements of over \$750. A “Committee” is defined, in part, as an association or persons acting together to promote or defeat a ballot question.<sup>11</sup> CCS meets this definition.

While this is a point as to which other judges have differed, the Administrative Law Judge concludes that the Complainant has the legal standing to claim a violation of Minn. Stat. § 211A.02.<sup>12</sup> Additionally, the Administrative Law Judge concludes that the Complainant has alleged facts that support finding a prima facie violation of Minn. Stat. § 211A.02.

### **Minn. Stat. § 211B.07 and Minn. Stat. § 211B.13**

#### **Allegations 45 and 47: Undue Influence of Voters**

Minn. Stat. § 211B.07 prohibits a person from using threats or undue influence to compel an individual to vote for or against a ballot question. Minn. Stat. § 211B.13 prohibits a person from offering something of monetary value or endeavoring to obtain something of value in order to induce a voter to vote in a particular way. The Complainant alleges that CCS will only consent to provide a record of their financial information if a citizen or party makes a donation to their campaign. The Complainant contends that CCS is essentially bribing citizens by offering financial disclosure information in exchange for a donation. The Complainant maintains that this conduct on the part of CCS also amounts to unduly influencing voters.

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<sup>10</sup> While the Complainant stylizes her allegation as a variation of Minn. Stat. § 211A.06, there are no facts accompanying the allegation to support a finding that this statute was violated. The facts set forth in her complaint state a violation of Minn. Stat. § 211A.02. Tribunals in Minnesota are obliged to “construe pleadings liberally in favor of the pleader and judge them by their substance not their form.” See, *Basich v. Board of Pardons*, 493 N.W.2d 293, 295 (Minn. App. 1992).

<sup>11</sup> Minn. Stat. § 211A.01 (4) (2004).

<sup>12</sup> *But compare, Rossbach v. Hjelle*, OAH Docket No. 11-6361-17155-CV, slip op. at 2-3 (March 7, 2006) (The ALJ dismissed a citizen-complainant under Minn. Stat § 211A.02 on the grounds that persons other than the filing officer do not have standing to assert violations of this statute) (<http://www.oah.state.mn.us/aljBase/636117155.primafacie.ord.htm>).

The Complainant has failed to allege a prima facie violation of either Minn. Stat. § 211B.07 or 211B.13. The Complainant has alleged no facts to support a finding that by restricting disclosure of expenses, beyond that which is required by statute, to those who contribute to CCS, it is bribing or unduly influencing persons to vote against the school ballot question. To the extent that Allegations 45 and 47 make complaints under Minn. Stat. §§ 211B.07 or 211B.13, they are dismissed.

### **Conclusion**

In summary the Administrative Law Judge finds the Complaint alleges prima facie violations of Minn. Stat. § 211B.06 with respect to the statements concerning the tax impact of the bond and levy referendum contained in Allegations 4 and 10. The Complaint also alleges a prima facie violation of Minn. Stat. § 211A.02 in portions of Allegations 44 through 47. All of the other allegations are dismissed.

E.L.L.