

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

Robert Schmidt and Stephan Flister,  
Complainants,  
vs.

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

Candidate Rebecca Cave and the  
Maplewood Firefighters Association,  
Inc.,

Respondents.

The above-entitled matter came on for an evidentiary hearing on Monday, October 1, 2007, before a panel of three Administrative Law Judges: Beverly Jones Heydinger (Presiding Judge), Bruce H. Johnson, and Kathleen D. Sheehy. The hearing record closed at the conclusion of the hearing that day.

Robert Schmidt, Chairman, Maplewood Voters Coalition, P.O. Box 9849, Maplewood, MN 55109-0849, and Stephan Flister, Member, Maplewood Voters Coalition, P.O. Box 9849, Maplewood, MN 55109-0849, (Complainants) appeared on their own behalf without counsel.

Rebecca Cave (Respondent), 2020 Prosperity Road, Maplewood, MN 55109, appeared on her own behalf without counsel.

Mark Wersal, Attorney at Law, Wersal Law Office, P.A., P.O. Box 26186, 7841 Wayzata Blvd., Suite 201, Minneapolis, MN 55426, appeared on behalf of the Maplewood Firefighters Association, Inc. (MFA).

**NOTICE**

This is the final decision in this case, as provided in Minn. Stat. § 211B.36, subd. 5. A party aggrieved by this decision may seek judicial review as provided in Minn. Stat. §§ 14.63 to 14.69.

**STATEMENT OF ISSUES**

Did Respondent Rebecca Cave violate Minn. Stat. § 211B.02 by claiming on her “candidate profile” that she was endorsed by “Maplewood Fire?”

The panel concludes that the Complainants have established by a preponderance of the evidence that Respondent Cave violated Minnesota Statutes § 211B.02.

Did Respondent Maplewood Firefighters Association, Inc. violate Minn. Stat. § 211B.02 by stating on its lawn signs that “Maplewood Fire” endorses Rebecca Cave’s candidacy?

The panel concludes that the Complainants have established by a preponderance of the evidence that Respondent Maplewood Firefighters Association, Inc. violated Minn. Stat. § 211B.02.

Based upon the entire record, the panel makes the following:

### **FINDINGS OF FACT**

1. Robert Schmidt and Stephan Flister are members of the Maplewood Voters Coalition. The Maplewood Voters Coalition was formed in April 2007 as a voluntary association of Maplewood residents whose purpose is to inform voters about issues concerning the City of Maplewood and to endorse candidates for various Maplewood elective offices.<sup>1</sup>

2. Rebecca Cave is an incumbent running for re-election to the Maplewood City Council.

3. The Maplewood Fire Department is made up of approximately 12 full-time firefighters and 80 paid-per-call firefighters. The Maplewood Fire Department does not endorse any candidate for political office.<sup>2</sup>

4. The union representing the full-time firefighters is the Minnesota Professional Firefighters Association (MPFA). As of October 1, 2007, the MPFA had not endorsed any candidates for Maplewood City Council.<sup>3</sup>

5. The Maplewood Firefighters Association, Inc. (MFA) is a non-profit corporation that was formed in 2005 by Maplewood pay-per-call firefighters. Ms. Cave’s husband, George Cave, is a Maplewood pay-per-call firefighter and the Secretary of MFA.<sup>4</sup>

6. Erik Hjelle is a Maplewood City Council member, a founder and member of MFA and its witness in this proceeding.

7. MFA is an independent voluntary organization that works on behalf of Maplewood’s paid-per-call firefighters. It is not a union and is not the collective bargaining representative for any of Maplewood’s firefighters. None of the full-time firefighters is a member of MFA. It is not clear how many of Maplewood’s

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<sup>1</sup> Testimony of Flister.

<sup>2</sup> Exs. 3 and 5.

<sup>3</sup> Ex. 8; Testimony of Hjelle.

<sup>4</sup> Testimony of Hjelle; Ex. 4.

80 paid-per-call firefighters are members of the MFA. Approximately 20 paid-per-call firefighters attended MFA's most recent meeting.<sup>5</sup>

8. Ms. Cave is endorsed by the MFA.

9. Prior to the September 11, 2007, primary election, Ms. Cave filled out and submitted a "candidate profile" for publication on the *Star Tribune's* website and in its Voter's Guide. In her candidate profile, Ms. Cave listed that she was endorsed by: "Maplewood Police; Maplewood Fire."<sup>6</sup> The candidate profile was posted on the *Star Tribune's* website on September 4, 2007.

10. The *Star Tribune* Voter's Guide appeared in the September 5, 2007, edition of the *Star Tribune* North Metro section, which includes Anoka and Ramsey counties as well as the cities of Brooklyn Park, Brooklyn Center, Crystal, Champlin and New Hope.<sup>7</sup> The North Metro section has a circulation of 48,500.<sup>8</sup>

11. After the complaint in this matter was filed on September 6, 2007, Ms. Cave received a telephone call from a representative of the *Star Tribune* notifying her that it had received a complaint regarding her "Maplewood Fire" endorsement claim on her candidate profile. In response to that complaint and after discussing the matter with Ms. Cave, the *Star Tribune* representative changed the wording of Ms. Cave's endorsements on her candidate profile posted on the *Star Tribune's* web page to read: "Maplewood Police; Maplewood Firefighters Association, Inc."<sup>9</sup> The change to Ms. Cave's candidate profile was made on or about September 7, 2007.

12. Ms. Cave claimed at the probable cause hearing in this matter that she wrote that she was endorsed by "Maplewood Fire" instead of the "Maplewood Firefighters Association" because the space provided for endorsements on the candidate profile form was limited.<sup>10</sup>

13. Other candidates for Maplewood City Council listed several organizations in the endorsement section of the *Star Tribune's* candidate profile form and were not limited by space restrictions.<sup>11</sup>

14. Ms. Cave also submitted a written response to a questionnaire from the St. Paul Area Chamber of Commerce in which she stated that she had received "the Maplewood Police and Maplewood Fire endorsements."<sup>12</sup>

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<sup>5</sup> Testimony of Hjelle.

<sup>6</sup> Exs. 2, 40, 41, and 43. (At some point in time, Ms. Cave received an endorsement from the Maplewood Police Officer's Union (LELS #153)).

<sup>7</sup> Exs. 40, 43, and 44B.

<sup>8</sup> Ex. 44A.

<sup>9</sup> Ex. 38.

<sup>10</sup> Testimony of Cave at probable cause hearing.

<sup>11</sup> Exs. 41A and 42.

<sup>12</sup> Exs. 6A, 45A, 45B, 45C, 46, 48A and 48B.

15. Ms. Cave's campaign literature that was disseminated prior to the September 11, 2007, primary election stated that she is endorsed by "the Maplewood Firefighters' Association, Inc."<sup>13</sup>

16. In support of Ms. Cave's candidacy, the MFA prepared and paid for lawn signs that stated the following:

**MAPLEWOOD**  
***POLICE AND FIRE***  
**ENDORSE**  
**Rebecca Cave**  
**MAPLEWOOD CITY COUNCIL**<sup>14</sup>

17. The MFA included a disclaimer on the bottom of the lawn signs that stated in small font size: "Prepared and paid for by Maplewood Firefighters Association, Inc. Dale Solheid Treasurer, 581 Dorland Rd., Maplewood, MN 55119."<sup>15</sup>

18. Mr. Hjelle participated in the design and preparation of the MFA lawn signs.<sup>16</sup>

19. Members of the MFA placed approximately 35 lawn signs around the City of Maplewood prior to the September 11, 2007, primary election.<sup>17</sup>

20. For an extended period of time before this election campaign, the City of Maplewood's Fire Department has been using the phrase "Maplewood Fire" to identify itself. The phrase "Maplewood Fire" is displayed on the Department's fire trucks, uniform badges/shields, station buildings, and in its written material posted on its web page.<sup>18</sup> The home page of the Maplewood Fire Department's web site displays the "Maplewood Fire" shield/logo and states the following:

*Maplewood Fire* is a combination paid-per-call and full-time department. There are 80 paid-per-call firefighters that respond from their homes to answer approximately 3,200 medical, fire and rescue calls per year. . . . There are also 12 full-time firefighters.<sup>19</sup>

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<sup>13</sup> Exs. 31 and 34.

<sup>14</sup> Ex. 1.

<sup>15</sup> Ex. 13.

<sup>16</sup> Testimony of Hjelle.

<sup>17</sup> Testimony of Hjelle at probable cause hearing.

<sup>18</sup> Exs. 8A, 8B, 9A, 9B, 10A, and 10B.

<sup>19</sup> Ex. 8A (emphasis added).

21. Some Maplewood residents interpreted MFA's signs to mean that the Maplewood Fire Department had endorsed Ms. Cave for City Council.<sup>20</sup> The Maplewood Voters Coalition received emails questioning the meaning of the phrase "Maplewood Fire" on the lawn signs,<sup>21</sup> and Will Rossbach, another candidate for Maplewood City Council, was asked by a number of residents why Maplewood's Fire Department had endorsed Ms. Cave.<sup>22</sup> In addition, the Maplewood City Manager received one call from a resident complaining about the use of the phrase "Maplewood Fire" on the lawn signs.<sup>23</sup>

22. The MFA has used the phrase "Maplewood Fire" on baseball caps and T-shirts. After a meeting with the Maplewood Fire Chief in 2005, some MFA members, including Mr. Hjelle, understood that so long as they did not use the word "Department," they could use the phrase "Maplewood Fire" on clothing and other merchandise.<sup>24</sup>

23. After the probable cause hearing in this matter, the MFA removed the lawn signs at issue. Sometime thereafter, "Citizens for Rebecca Cave" prepared and disseminated new lawn signs in support of Ms. Cave's candidacy that state:

**FIRE\* POLICE\*\***  
**ENDORSE**  
**REBECCA CAVE**  
**Maplewood City Council**<sup>25</sup>

24. A disclaimer running along the bottom of these new lawn signs states in small font size: "Prepared and paid for by Citizens for Rebecca Cave, 2020 Prosperity, Maplewood, MN 55109. \*Maplewood Firefighters Association, Inc. is a nonprofit organization and is not affiliated with the City of Maplewood. \*\*Maplewood Police Officers Union (LELS #153)."

25. On September 18, 2007, Mr. Hjelle filed a request on his own behalf to reserve the name "Maplewood Fire" with the Minnesota Secretary of State's Office. Mr. Hjelle also filed forms with the Minnesota Secretary of State's Office purporting to register for trademark the phrase "Maplewood Fire" and the Maplewood Fire logo design used by the City of Maplewood.<sup>26</sup>

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<sup>20</sup> Testimony of Rossbach, Flister and Copeland. Ex. 6B.

<sup>21</sup> Testimony of Flister.

<sup>22</sup> Testimony of Rossbach.

<sup>23</sup> Testimony of Copeland.

<sup>24</sup> Testimony of Hjelle.

<sup>25</sup> Ex. 49; Testimony of Hjelle.

<sup>26</sup> Exs. 50 and 51; Testimony of Hjelle.

26. As an elected official and named party in two prior campaign practices complaints in which violations were found, Mr. Hjelle is familiar with the law governing fair campaign practices.<sup>27</sup> Ms. Cave is also an elected official who has been supported by MFA in the past.<sup>28</sup>

Based upon the foregoing Findings of Fact, the panel makes the following:

### CONCLUSIONS

1. Minn. Stat. § 211B.35 authorizes the panel of Administrative Law Judges to consider this matter.

2. Minn. Stat. § 211B.02 provides in relevant part 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.

3. The burden of proving the allegations in the complaint is on the Complainants. The standard of proof of a violation of Minn. Stat. § 211B.02 is a preponderance of the evidence.<sup>29</sup>

4. The Complainants have demonstrated by a preponderance of the evidence that Respondent Rebecca Cave violated Minn. Stat. § 211B.02 by knowingly making a false claim implying that she was endorsed by the Maplewood Fire Department.

5. The Complainants have demonstrated that Respondent MFA violated Minn. Stat. § 211B.02 by knowingly making a false claim implying that Rebecca Cave has the endorsement of the Maplewood Fire Department.

6. Respondent Rebecca Cave shall be fined \$1,000 for the violation.

7. Respondent MFA shall be fined \$1,000 for the violation.

Based upon the record herein, and for the reasons stated in the following Memorandum, the panel of Administrative Law Judges makes the following:

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<sup>27</sup> See, *Rosbach v. Hjelle and Hjelle & Associates, Inc.*, OAH File No. 11-6361-17155-CV (Order June 6, 2006); *Koppen v. Maplewood Firefighters Association and Hjelle*, OAH File No. 7-6361-16947-CV (Order March 1, 2006).

<sup>28</sup> *Id.*

<sup>29</sup> Minn. Stat. § 211B.32, subd. 4.

## ORDER

IT IS ORDERED:

That having been found to have violated Minn. Stat. § 211B.02, Respondents shall each pay a civil penalty of \$1,000 by November 15, 2007.<sup>30</sup>

Dated: October 4, 2007

/s/ Beverly Jones Heydinger  
BEVERLY JONES HEYDINGER  
Administrative Law Judge

/s/ Bruce H. Johnson  
BRUCE H. JOHNSON  
Administrative Law Judge

/s/ Kathleen D. Sheehy  
KATHLEEN D. SHEEHY  
Administrative Law Judge

## MEMORANDUM

Minn. Stat. § 211B.02 provides in relevant part that a person or candidate may not knowingly make, directly or indirectly, a false claim stating or implying that a candidate has the support or endorsement of a major political party or party unit or of an organization. For a violation to be established, the complainant must show that the respondent knowingly stated or implied a false claim of endorsement. The issue before the panel is whether, by stating on the lawn signs and candidate profile that Rebecca Cave was endorsed by "Maplewood Fire," Respondents knowingly falsely implied that Ms. Cave was endorsed by the Maplewood Fire Department.

In *Schmitt v. McLaughlin*,<sup>31</sup> 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. To hold otherwise, according to the court, would render the word "imply"

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<sup>30</sup> The check should be made payable to "Treasurer, State of Minnesota" and sent to the Office of Administrative Hearings, P.O. Box 64620, St Paul, Minnesota 554164-0620.

<sup>31</sup> 275 N.W.2d 587 (Minn. 1979).

meaningless.<sup>32</sup> Accordingly, a false implication of support or endorsement is as much a violation as an overtly false claim.

Further, in determining whether the candidate's false implication of support was made knowingly, the Court has declined to interpret "knowingly" to mean "deliberately."<sup>33</sup> Instead, the Court has held that a candidate may be said to have "knowingly" violated the statute "if he knew that his literature falsely claimed or implied that he had party support or endorsement."<sup>34</sup> In order to make this determination, the Court explained that the candidate's testimony must be examined together with the circumstances surrounding the preparation of the campaign material. In *Matter of Ryan*,<sup>35</sup> the Court found it significant that the candidate, who had used the initials "DFL" without the precise modifying language authorized by the *Schmitt* case, was an experienced party regular who had run in a number of elections and concluded he consciously took the risk that his interpretation of the law was not correct.<sup>36</sup>

The panel stresses that the conclusions reached here are based on the specific facts unique to this Maplewood City Council race – namely that the Maplewood Fire Department identifies itself and is known to the public as "Maplewood Fire," and that both candidate Rebecca Cave and Erik Hjelle are members of the Maplewood City Council who are familiar with the manner in which the Department identifies itself and the distinctions between it and the MFA.

The evidence here established that the phrase "Maplewood Fire" is used by the Maplewood Fire Department to identify itself. The phrase is displayed on its fire trucks, uniform badges, shield logos, station houses, and in written material posted on its web page. In fact, the home page of the Maplewood Fire Department's web site states that "Maplewood Fire" is a combination paid-per-call and full-time *department*. In addition, the Complainants presented evidence that several Maplewood residents were confused by the endorsement claim and interpreted the claim to mean that the Maplewood Fire Department had endorsed Ms. Cave. The panel is persuaded that the phrase "Maplewood Fire [Endorsed]" falsely implies to the average Maplewood voter that the candidate had the endorsement of the Maplewood Fire Department or the union representing the full-time firefighters. Furthermore, an endorsement by those charged with protecting the public is valuable precisely because it suggests some degree of official support, which in this case did not exist.

The panel has concluded with regard to MFA that this was a knowingly false claim. Erik Hjelle testified on behalf of MFA. He is a founder and current member of MFA, as well as a sitting member of the Maplewood City Council. As such he is keenly aware of the distinctions between the MFA, the MPFA, and the Maplewood Fire Department, and he is well aware of the Department's use of the

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<sup>32</sup> 275 N.W.2d at 591.

<sup>33</sup> *In the Matter of Ryan*, 303 N.W.2d 462, 467 (Minn. 1981).

<sup>34</sup> *Id.* at 467.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at 468. (Minn. Stat. § 210A.02 is the predecessor to Minn. Stat. § 211B.02.)

term “Maplewood Fire.” He testified repeatedly that by using the phrase “Maplewood Police and Fire Endorse Rebecca Cave,” he intended to communicate that Ms. Cave had the support of all Maplewood firefighters. Neither Hjelle nor the MFA have the authority to speak for the Department or the MPFA, and the evidence is undisputed that neither of these organizations has agreed to endorse Ms. Cave. This is a knowingly false claim or implication of endorsement. Moreover, the disclaimer indicating that the MFA paid for the signs does not, as Hjelle argues, clarify the identity of the endorsing organization.

Mr. Hjelle testified that he relied on the Fire Chief’s apparent permission to allow paid-per-call firefighters to use the phrase “Maplewood Fire” on T-shirts and other apparel as the basis for believing that he could use the same phrase in an endorsement. This extrapolation is unreasonable and illogical, as are his efforts to seek trademark protection, on his own behalf, for a phrase and logo used by the City of Maplewood to identify its Fire Department.

Ms. Cave chose not to testify at the evidentiary hearing and did not explain the circumstances surrounding her claim to be endorsed by “Maplewood Fire.” The panel has concluded that she also knew the implication of the phrase was false. At the probable cause hearing, Ms. Cave stated that she used the phrase “Maplewood Fire” instead of the Maplewood Firefighters Association, because the space for listing endorsements on the candidate profile form was limited. The evidence presented at the hearing, however, established that other candidates for Maplewood City Council were able to list more and longer endorsements without any space restrictions. Moreover, Ms. Cave is a Maplewood City Council member familiar with the Department’s use of the term “Maplewood Fire,” and an experienced candidate. Her campaign literature distributed prior to the primary, her dealings with the *Star Tribune* regarding correction of the endorsement listed on her candidate profile, and her new lawn signs reflect her awareness of the distinctions between the MFA, the MPFA, and the Maplewood Fire Department. Given that her only explanation for why she claimed to be endorsed by “Maplewood Fire” was space limitation, an explanation that does not ring true, and absent any other testimony from her, the panel concludes that the preponderance of the evidence establishes that Ms. Cave knowingly implied she was endorsed by the Maplewood Fire Department in violation of Minn. Stat. § 211B.02.

Having found that the Respondents violated Minn. Stat. § 211B.02, the Panel may make one of several dispositions.<sup>37</sup> The panel may issue a reprimand, may impose a civil penalty of up to \$5,000, and may refer the complaint to the appropriate county attorney for criminal prosecution. The panel concludes that both Respondent Cave and Respondent MFA’s violations were committed knowingly, were ill-considered, had some impact on voters and were difficult to counter before the primary election. As such, the panel assesses a civil penalty against each Respondent in the amount of \$1,000.

**B.J.H., B.H.J., K.D.S.**

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<sup>37</sup> Minn. Stat. § 211B.35, subd. 2.