

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1664**

Evan Siljander,
Relator,

vs.

Teri Lachermeier,
Respondent,

Sean Deringer,
Respondent,

Kimi Paumen,
Respondent.

**Filed July 24, 2023
Affirmed in part, reversed in part, and remanded
Jesson, Judge**

Office of Administrative Hearings
File No. OAH 8-0325-38770

Evan Siljander, St. Paul, Minnesota (pro se relator)

Teri Lachermeier, Buffalo, Minnesota (pro se respondent)

Sean Deringer, Maple Lake, Minnesota (pro se respondent)

Kimi Paumen, Buffalo, Minnesota (pro se respondent)

Considered and decided by Smith, Tracy M., Presiding Judge; Jesson, Judge; and
Bryan, Judge.

NONPRECEDENTIAL OPINION

JESSON, Judge.

Shortly before the November 2022 election, relator Evan Siljander filed a complaint against respondents Teri Lachermeier, the mayor of Buffalo, and two others, alleging that their campaign materials and fundraising practices violated the Fair Campaign Practices Act (the Act). Minn. Stat. §§ 211B.01-.37 (2022). An administrative law judge dismissed the complaint without a hearing, concluding that the complaint failed to set forth a prima facie case for violations of the Act. *See* Minn. Stat. § 211B.33. Because we conclude that Siljander's complaint does not set forth a prima facie violation of the portions of the Act governing bribery, treating, and solicitation, we affirm in part. *See* Minn. Stat. § 211B.13. But because we conclude that Siljander's complaint sets forth a prima facie case that Lachermeier's Twitter profile page, Facebook profile page, and certain social-media posts may violate the Act's provisions governing required disclaimers, we reverse in part and remand for further proceedings. *See* Minn. Stat. § 211B.04.

FACTS

On October 23, 2022, Siljander filed a complaint with the Minnesota Office of Administrative Hearings alleging that respondents Teri Lachermeier, Sean Deringer, and Kimi Paumen violated the Act during Lachermeier's mayoral campaign. *See generally* Minn. Stat. § 211B. At the time of the complaint, Lachermeier was the incumbent mayor of Buffalo campaigning for re-election. Paumen was a member of Lachermeier's campaign committee. Deringer was the incumbent Wright County Sheriff.

Siljander's complaint alleges, first, that Lachermeier, Deringer, and Paumen violated the Act by providing voters with alcoholic beverages at two campaign events—a joint campaign fundraiser with Deringer held at Lachermeier's home and a fundraiser at a local pub. Siljander attached to the complaint copies of the public Facebook invitation¹ for the event at Lachermeier's home and a Facebook post about the event at the local pub. Second, the complaint alleges that respondents violated the Act by failing to include the required disclaimers on various campaign materials. Disclaimers explain who prepared and paid for the campaign material. *See* Minn. Stat. § 211B.04. According to the complaint, Lachermeier's Twitter profile page, Facebook profile page, campaign website, fundraising website, and social-media posts lacked the required disclaimers. Attached to the complaint were screenshots of:

- Lachermeier's Twitter profile page, which contained a link to Lachermeier's campaign website, terilachermeier.com;
- Lachermeier's Facebook profile page, which included a link to TeriLachermeier.com;
- the homepage of Lachermeier's campaign website, terilachermeier.com, which included the disclaimer "Paid and Prepared for by Teri Lachermeier for Mayor";
- donation pages from Lachermeier's fundraising websites, which include the disclaimers "Paid for by Teri Lachermeier for Mayor" and "Prepared and paid for by Teri Lachermeier for Mayor"; and
- various social-media posts from Lachermeier's Twitter and Facebook accounts, only some of which contained a disclaimer on the post itself.

¹ The Facebook invitation for the event at Lachermeier's home invited the public to "Come join me and Sheriff Sean Deringer for appetizers, beer, and wine."

An administrative law judge dismissed the complaint without a hearing, concluding that it failed to provide sufficient facts and details to set forth a prima facie case for violations of the Act.

Siljander appeals.

DECISION

The fundamental issue before us is whether the administrative law judge erred by determining that Siljander failed to allege prima facie violations of the Act by respondents. To address this issue, we begin with an overview of the complaint process under the Act before proceeding to Siljander's allegations.

The Act regulates campaign practices and financing. Prior to 2004, county attorney offices were tasked with investigating all alleged violations of the Act. Minn. Stat. § 211B.32 (2003); *see also* Hon. Raymond Krause, *Minnesota's OAH: 30 Years of Innovation in Administrative Review*, Bench & Bar of Minn., Feb. 2006, at 20. Because this process used significant time and resources, the legislature amended the Act to provide that complaints alleging a violation of the Act must be filed with the Minnesota Office of Administrative Hearings. Minn. Stat. § 211B.32, subd. 1; Krause, *supra*, at 20. This new system allowed complaints to be addressed more expediently before the elections took place. Krause, *supra*, at 20.

Each complaint filed with the Minnesota Office of Administrative Hearings "must be in writing, submitted under oath, and detail the factual basis for the claim that a violation of law has occurred." Minn. Stat. § 211B.32, subd. 3. To ensure complaints are promptly

considered during elections, once a complaint is filed, the administrative law judge assigned to review the complaint must make a preliminary determination for its disposition within three business days. Minn. Stat. § 211B.33, subd. 1. “If the administrative law judge determines that the complaint does not set forth a prima facie violation” of the Act, they must dismiss the complaint. Minn. Stat. § 211B.33, subd. 2(a). In order to set forth a prima facie case, the complaint must include evidence or allege facts that, if accepted as true, would be sufficient to prove that a violation of the Act has occurred. *Barry v. St. Anthony-New Brighton Indep. Sch. Dist.* 282, 781 N.W.2d 898, 902 (Minn. App. 2010). If the administrative law judge determines that the complaint sets forth a prima facie case, the matter proceeds to a probable-cause hearing. Minn. Stat. § 211B.33, subd. 2(b).

At the probable-cause hearing, if the administrative law judge determines that the complaint is frivolous or that there is no probable cause to believe that a violation of the Act occurred, they must dismiss the complaint. Minn. Stat. § 211B.34, subd. 2(a). If there is probable cause, the chief administrative law judge must schedule the complaint for an evidentiary hearing before a panel of three administrative law judges. Minn. Stat. § 211B.34, subd. 2(b); Minn. Stat. § 211B.35, subd. 1. At the evidentiary hearing, the panel must determine whether the alleged violation occurred, and then it must dismiss the complaint, issue a reprimand, find that a statement made in campaign material was false, impose a civil penalty, or refer the complaint to a county attorney. Minn. Stat. § 211B.35, subd. 2.

Here, the process ended with the administrative law judge's determination that the complaint failed to set forth a prima facie case. Our review of that decision is governed by Minnesota Statutes section 14.69 (2022), which provides that we may affirm the agency's decision or remand for further proceedings. *See* Minn. Stat. § 211B.36, subd. 5. We may also modify the decision "if the substantial rights of the petitioners may have been prejudiced because the administrative finding, inferences, conclusion, or decisions are" in violation of constitutional provisions, in excess of the statutory authority or jurisdiction of the agency, made upon unlawful procedure, affected by other error of law, unsupported by substantial evidence in view of the entire record as submitted, or arbitrary or capricious. Minn. Stat. § 14.69. This standard of review places this case in a similar posture as a motion to dismiss under rule 12 of the Minnesota Rules of Civil Procedure. *See Abrahamson v. St. Louis Cnty. Sch. Dist.*, 819 N.W.2d 129, 133 (Minn. 2012). Accordingly, we "consider only the facts alleged in the complaint, accepting those facts as true and must construe all reasonable inferences in favor of" the complainant. *Bodah v. Lakeville Motor Express, Inc.*, 663 N.W.2d 550, 553 (Minn. 2003).

Siljander argues that the administrative law judge erred by determining that his complaint failed to set forth prima facie violations by respondents of (1) the provisions of the Act governing required disclaimers on campaign materials and (2) the provisions of the Act governing bribery, treating, and solicitation. We address each argument in turn.

I. The administrative law judge appropriately dismissed the allegations regarding Lachermeier's fundraising and campaign websites but erred by determining that the complaint failed to set forth a prima facie case regarding a lack of disclaimers on all Lachermeier's social-media accounts and posts.

Siljander argues that Lachermeier's fundraising website, campaign website, Facebook profile page, Twitter profile page, and a myriad of individual Facebook and Twitter posts do not contain the required disclaimers under the Act.

To address this issue, we turn to the Act. The Act generally requires disclaimers on campaign materials. Minn. Stat. § 211B.04, subd. 1. The Act defines campaign materials to include "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." *Id.* Disclaimers must include the name and address of the person or committee disseminating the campaign materials. Minn. Stat. § 211B.04, subd. 1(a). There is no dispute before us that neither the exhibits attached to Siljander's complaint constitute campaign materials nor about the adequacy of the wording of the disclaimers shown on those exhibits. But Siljander argues that some of the exhibits lack required disclaimers.

Not all campaign materials require disclaimers. Disclaimers are not required on "online banner ads and similar electronic communications that link directly to an online page that includes the disclaimer." Minn. Stat. § 211B.04, subd. 3(c)(3). In addition, the disclaimer requirements "are satisfied for an entire website or social media page when the disclaimer . . . appears once on the home page of the site." Minn. Stat. § 211B.04, subd. 4. With these disclaimer exceptions in mind, we examine the exhibits reflecting

Lachermeier's fundraising website, campaign website, Facebook profile page, Twitter profile page, and social-media posts from her Twitter and Facebook accounts.

Regarding Lachermeier's fundraising and campaign websites, as the administrative law judge properly determined, the copies of these websites, attached to Siljander's complaint, show the required disclaimers on the websites—that they were prepared and paid for by Teri Lachermeier.

Turning to Lachermeier's Facebook and Twitter page, because these are social-media websites, the disclaimer requirement would be satisfied by having the disclaimer "once on the home page of the site." *Id.* However, the copies of Lachermeier's Facebook profile page and Twitter profile page attached to Siljander's complaint do not contain such disclaimers. Instead, they appear to contain a link to Lachermeier's campaign website, which has the disclaimer. At this preliminary stage, this factual allegation raises the question of whether a link to an online page containing the disclaimer satisfies the statutory exception for when a disclaimer appears on the homepage of the social-media site. *Id.* As a result, Siljander's complaint sets forth a prima facie case for a violation with regard to Lachermeier's Facebook profile page and Twitter profile page.

Below, the administrative law judge did not explicitly address whether Lachermeier's fundraising website and Twitter profile page constituted social-media pages for which—under the Act—the disclaimer requirement is met by having the disclaimer on a home page, as opposed to every individual post. *Id.* Instead, the administrative law judge concluded that the posts met the disclaimer exception because they were "online banner ads and *similar electronic communications.*" Minn. Stat. § 211B.04, subd. 3(c)(3)

(emphasis added). This was error. Online banner ads and similar electronic communications satisfy the disclaimer requirement by containing a *direct* link to an online page that contains the disclaimer. *Id.* We observe no direct links to an online page on the individual social-media posts attached to the complaint. Accordingly, these posts should be analyzed under the portion of the Act that governs social-media pages. *See* Minn. Stat. § 211B.04, subd. 4.

Finally, we turn to the copies of the social-media posts from Lachermeier’s Facebook and Twitter accounts, some of which do not include disclaimers. We disagree with Siljander’s contention that the Act requires that each individual social-media post must contain a disclaimer. Rather, the Act provides that the disclaimer requirements for “an entire website or social media page” are satisfied when the disclaimer “appears once on the home page of the site.” *Id.* But as explained above, the home page of the social-media page needs the disclaimer. And the copies of these pages attached to the complaint do not include them. Therefore, because the complaint sets forth a prima facie violation of the disclaimer requirement for Lachermeier’s Facebook profile page and Twitter profile page, that violation implicates certain posts from those accounts as well.²

² Siljander further argues that the term “home page” from the Act is unclear and unconstitutional. We review the constitutionality of a statute de novo. *ILHC of agan, LLC v. County of Dakota*, 693 N.W.2d 412, 421 (Minn. 2005). But “the use of general language in a statute does not make it vague.” *Hard Times Cafe, Inc. v. City of Minneapolis*, 625 N.W.2d 165, 171-72 (Minn. App. 2001). A party challenging the constitutionality of a statute for vagueness “must show the [ordinance] lacks specificity as to [its] own behavior rather than some hypothetical situation.” *Id.* at 172 (quotation omitted). Siljander fails to do so here. We further observe that if the statute were unconstitutional, it would not be enforced against respondents.

Our decision here does not mean that a violation of the Act occurred. And we acknowledge that sorting through the 66 pages of materials attached to the complaint within the three-day period allocated by the Act to the administrative law judge presented a significant challenge. But that does not change our standard of review. *See Abrahamson*, 819 N.W.2d at 133 (explaining that the posture of a campaign-finance case is similar to a motion to dismiss under rule 12). Accordingly, we conclude that Siljander's complaint has alleged sufficient facts and details at this preliminary stage to set forth a prima facie case for violation of the Act with regard to Lachermeier's Facebook profile page, Twitter profile page, and certain posts from those accounts that do not contain the disclaimer. Therefore, we reverse and remand for a hearing concerning whether there is probable cause to believe that pages and posts from those accounts violate the disclaimer requirements.

II. The administrative law judge appropriately determined that the complaint did not set forth a prima facie violation of the Act governing bribery, treating, and solicitation.

Siljander further contends that the administrative law judge erred by concluding that his complaint failed to set forth a prima facie violation of the Act when it alleged that respondents served alcohol at two campaign events in exchange for votes. According to Siljander, this conduct violated the portion of the Act prohibiting bribery, treating, and solicitation, which prevents candidates from giving or promising money or other valuable things in exchange for votes. Minn. Stat. § 211B.13, subd. 1.

This portion of the Act provides:

A person who willfully, directly or indirectly, advances, pays, gives, promises, or lends any money, food, liquor, clothing, entertainment, or other thing of monetary value, or who offers, promises, or endeavors to obtain any money, position, appointment, employment, or other valuable consideration, to or for a person, in order to induce a voter to refrain from voting, or to vote in a particular way, at an election, is guilty of a felony. . . . Refreshments of food or nonalcoholic beverages having a value up to \$5 consumed on the premises at a private gathering or public meeting are not prohibited under this section.

Id. Siljander argues that the administrative law judge erred by determining that respondents did not violate the final sentence of this section—“Refreshments of food or nonalcoholic beverages having a value up to \$5 consumed on the premises at a private gathering or public meeting are not prohibited under this section.” *Id.* Siljander appears to assert that this sentence creates a per se rule that disallows candidates from providing voters alcoholic drinks at fundraisers. We disagree.

Rather than reading a sentence in isolation to create a per se rule against candidates providing alcohol to voters, we construe the statute as a whole. *Schmidt ex rel. P.M.S. v. Coons*, 818 N.W.2d 523, 527 (Minn. 2012). We examine this sentence relied on by Siljander in light of its context within a statute that specifically concerns bribery, treating, and solicitation. We read this final sentence, which follows a section of the statute that prohibits candidates from inducing voters, as a safe harbor. A candidate has not committed bribery, treating, or solicitation by offering food or alcoholic beverages valued at less than five dollars. Minn. Stat. § 211B.13, subd. 1. It would be contrary to this context to interpret this sentence as a per se rule against candidates

providing voters alcohol absent any other evidence of bribery, treating, or solicitation. Moreover, as the administrative law judge highlighted, reading this sentence to impose such a per se rule would be legally inconsistent with another law that expressly permits the provision of food and beverages in this context. *See* Minn. Stat. § 10A.01, subd. 26(a)(5) (2022) (stating that proper noncampaign disbursements include payments for food and beverages); *see also* *Avis Budget Car Rental LLC v. County of Hennepin*, 937 N.W.2d 446, 452 (Minn. 2020) (stating that courts do not read statutes in isolation).

In sum, we discern no error in the administrative law judge’s determination that the complaint did not set forth a prima facie violation where it merely alleged that Lachermeier, Deringer, and Paumen provided food and beverages at campaign events.

Because Siljander’s complaint sets forth a prima facie case that Lachermeier’s Twitter profile page, Facebook profile page, and certain social-media posts violated the Act, we reverse in part and remand for further proceedings. Because Siljander’s complaint does not set forth a prima facie violation of the portions of the Act governing bribery, treating, and solicitation, we affirm in part.

Affirmed in part, reversed in part, and remanded.