

*This opinion is nonprecedential except as provided by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
A22-1099**

In the Matter of the Professional Engineer License of
Charles Marohn.

**Filed April 10, 2023
Affirmed
Wheelock, Judge**

Minnesota Board of Architecture, Engineering, Land Surveying,
Landscape Architecture, Geoscience and Interior Design
File No. 2020-0043

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relator Charles Marohn)

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Surveying, Landscape Architecture, Geoscience and Interior Design)

Considered and decided by Ross, Presiding Judge; Gaïtas, Judge; and Wheelock,
Judge.

NONPRECEDENTIAL OPINION

WHEELOCK, Judge

Relator challenges the constitutionality of respondent professional board's order
disciplining him for inaccurately holding himself out to the public as a professional
engineer and for failing to truthfully answer questions on two separate licensing

applications.¹ Because relator's false information on his licensing applications to the board is not speech that the First Amendment protects, we affirm.

FACTS

The facts underlying this appeal are largely undisputed. Relator Charles Marohn received a professional engineering license from respondent Minnesota Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience and Interior Design (the board) in 2000. After receiving his license, Marohn formed his own engineering firm and provided professional engineering services for 12 years. In 2009, Marohn founded Strong Towns, a nonprofit organization that encourages local governments to invest less money in infrastructure projects. In 2012, Marohn closed his engineering firm to focus on Strong Towns and related advocacy. Between 2012 and 2016, Marohn renewed his professional engineering license despite no longer providing or promoting professional engineering services.

In June 2018, Marohn failed to renew his engineering license, possibly because he did not receive a renewal notice at a new address. Marohn was therefore not licensed as a professional engineer between July 2018 and June 2020. In June 2020, a colleague advised Marohn that his license was expired. Marohn immediately took steps to become licensed again.

On June 17, 2020, Marohn applied to the board to have his license reinstated for the 2018-2020 licensing period and to renew his license for the 2020-2022 licensing period.

¹ Relator also makes a statutory-interpretation argument that, for reasons explained herein, we decline to address.

The application form included an affidavit section that asked Marohn to verify that he had “not represented himself as . . . [a] professional engineer . . . without proper licensure or certification, either verbally or on any printed matter, in the State of Minnesota.” Marohn verified that he had not done so on the two separate licensing applications for the 2018-2020 and 2020-2022 licensing periods. The board reinstated Marohn’s license for 2020-2022 later that month.

In March 2020, before Marohn became aware that he was unlicensed, another engineer complained to the board about Marohn’s lack of an active license. The complaint asserted that, during the period in which Marohn’s license was expired, Marohn had referred to himself as a professional engineer on multiple occasions and that Marohn had benefited financially from this false designation. In July 2020, the board informed Marohn of the complaint.

The board’s complaint committee investigated and concluded that Marohn had violated Minn. Stat. § 326.02, subds. 1, 3 (2022),² by holding himself out as a professional engineer while unlicensed. The committee also determined that Marohn had violated Minn. R. 1805.0200, subps. 1(B), 2, 4(C) (2021), when he represented on his license applications that he had not referred to himself as a professional engineer during the period he was unlicensed. After Marohn and the board unsuccessfully negotiated for stipulated

² We cite the most recent version of Minn. Stat. § 326.02 because it has not been amended substantively as to the issues in this case. *See Interstate Power Co. v. Nobles Cnty. Bd. of Comm’rs*, 617 N.W.2d 566, 575 (Minn. 2000) (stating that, generally, “appellate courts apply the law as it exists at the time they rule on a case”). For the same reason, we also cite the current versions of other statutes and rules in this opinion.

discipline, the matter continued on to a contested-case proceeding before an administrative-law judge (ALJ).

The ALJ heard arguments from both parties on their motions for summary disposition. Marohn argued to the ALJ that the relevant statutes and regulations prevented him from referring to himself as a professional engineer only while promoting or providing engineering services. He also asserted that his conduct was protected by the First Amendment. The complaint committee's position was that Marohn had violated applicable statutes and regulations by representing himself as a professional engineer during the time his license was expired and by providing false information on his license applications. The ALJ rejected Marohn's statutory- and regulatory-interpretation arguments, declined to consider Marohn's constitutional arguments, and found that Marohn had violated Minn. Stat. § 326.02, subds. 1, 3, by representing himself as a professional engineer while unlicensed and Minn. R. 1805.0200, subps. 1(B), 2, 4(C), based on his statements in his license applications. The ALJ therefore recommended summary disposition in favor of the complaint committee.

The board adopted the ALJ's findings of fact and conclusions of law, and it granted summary disposition in favor of the complaint committee. The board found that Marohn had committed ten violations: eight violations of Minn. Stat. § 326.02, subds. 1, 3, for referring to himself as a professional engineer while unlicensed and two violations of Minn. R. 1805.0200, subps. 1(B), 2, 4(C), for making false statements to the board in his license applications.

The board ordered that Marohn be censured, reprimanded, and fined \$1,500. In determining the fine, the board considered the factors outlined in Minn. Stat. § 14.045, subd. 3 (2022). The board considered the intentionality of Marohn’s violations and concluded that “this factor, especially with regard to Marohn’s renewal applications, weighs in favor of a censure and reprimand and a civil penalty.” The board also considered the number of violations, which it concluded also weighed in favor of censure, reprimand, and a fine. Finally, the board considered whether Marohn received an economic benefit from the violations and concluded that there was no evidence of any specific economic benefit, but the violations likely conferred an economic benefit from prestige. Thus, it found the economic-benefit factor “slightly favors imposing discipline but does not weigh heavily in the board’s consideration.” The board concluded: “Given the number of violations and that they were intentional—especially the false information provided to the board in [Marohn’s] renewal application—a civil penalty is warranted in addition to censure and reprimand.”

Marohn appeals by writ of certiorari.

DECISION

The board’s decision following a contested-case hearing is subject to review under the Minnesota Administrative Procedure Act (MAPA), Minn. Stat. §§ 14.001-.69 (2022). Minn. Stat. § 14.63; *Eneh v. Minn. Dep’t of Health*, 906 N.W.2d 611, 613 (Minn. App. 2019). This court may affirm the decision of the agency, remand the case for further proceedings, or reverse or modify the decision if the substantial rights of the petitioner may have been prejudiced because the administrative findings, inferences, conclusions, or

decisions are, among other things, in violation of constitutional provisions. Minn. Stat. § 14.69.

Marohn argues that the board's decision violates his First Amendment speech rights in two ways. First, he argues that the board violated his First Amendment rights by imposing discipline under Minn. Stat. § 326.02, subd. 3(b), based on his referring to himself as a professional engineer while engaged in political advocacy. Second, he asserts that the board violated his First Amendment rights by imposing discipline under Minn. R. 1805.0200, subps. 1(B), 2, and 4(c), based on his making false statements to the board in his license applications.

Generally, we avoid ruling on a constitutional issue if we can decide the appeal on an alternative basis. *State v. Bourke*, 718 N.W.2d 922, 926 (Minn. 2006). Here, Marohn makes two constitutional arguments. We decline to address Marohn's first constitutional argument because we can affirm the board's decision and imposition of discipline by addressing only his second constitutional argument. We affirm the board's order based solely on our conclusion that the board did not violate Marohn's First Amendment rights by disciplining him for his two violations of Minn. R. 1805.0200, subp. 2.

The United States and Minnesota Constitutions guarantee the right to free speech. U.S. Const. amend. I; Minn. Const. art. I, § 3. Under the First Amendment, a government "has no power to restrict expression because of its message, its ideas, its subject matter, or its content." *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015) (quotation omitted); see also *State v. Casillas*, 952 N.W.2d 629, 636 n.3 (Minn. 2020) (stating that the Minnesota Constitution's free-speech provisions provide "protections co-extensive with those under

the United States Constitution” (quotation omitted)). “Content-based laws—those that target speech based on its communicative content—are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests.” *Reed*, 576 U.S. at 163. “Government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed.” *Id.*

Only limited categories of speech are excluded from First Amendment protection. *See United States v. Alvarez*, 567 U.S. 709, 717-18 (2012) (Kennedy, J., plurality opinion) (collecting cases). Even false speech is protected in most circumstances. *Id.* at 718. This comports with the free-speech principle that the “erroneous statement is inevitable in free debate.” *New York Times Co. v. Sullivan*, 376 U.S. 254, 271 (1964). However, the United States Supreme Court has acknowledged that statutes may permissibly restrict one’s ability to utter false speech, including by punishing (1) the dissemination of false information to a government official or agency, (2) the false representation that one is speaking with the authority of the government, and (3) the provision of perjurious testimony. *Alvarez*, 567 U.S. at 720-21. The Court reasoned that “testimony under oath has the formality and gravity necessary to remind the [speaker] that his or her statements will be the basis for official governmental action, action that often affects the rights and liberties of others.” *Id.* at 721.

Implicit in the Supreme Court’s reasoning is that the government has a compelling interest in receiving accurate and truthful information in relation to official governmental functions. Because the board’s license-application process aids the board in ensuring the

safe practice of engineering in the state, the board has a compelling interest in receiving truthful and accurate information regarding the statements its applicants make to the public regarding their licensure status. *See In re Application of Hansen*, 275 N.W.2d 790, 792-93 (Minn. 1978) (quoting *Goldfarb v. Va. State Bar*, 421 U.S. 773, 792 (1975) (“[T]he States have a compelling interest in the practice of professions within their boundaries, and that as part of their power to protect the public health, safety, and other valid interests they have broad power to establish standards for licensing practitioners and regulating the practice of professions.”)).

Marohn made statements in his 2018-2020 and 2020-2022 license applications that the board determined were false. It is not disputed that Marohn referred to himself as a professional engineer during the period when he was unlicensed. Each application, under a section marked “Affidavit,” asked Marohn to verify that he had not “represented [himself] as [a] . . . professional engineer . . . without proper licensure.” Marohn confirmed on each application that he had not. The application form required Marohn to verify his answers with a signature and “swear/affirm that [he] read the foregoing renewal application[s] and that the statements [were] true and correct.” This verification, akin to taking an oath to provide truthful testimony at trial, implicates the *Alvarez* Court’s reasoning that speech given under oath should indicate to the speaker that their speech will form the basis for government action. We therefore conclude that Marohn’s false statements on his applications fall within a narrow category of false speech that is not accorded First Amendment protection.

Marohn contends that he should be excused for having made these false statements because he made them while holding an honest and good-faith belief that he was answering the question truthfully based on his subjective interpretation of the relevant statutes and rules. But the question that he answered falsely on both applications was straightforward and did not call for interpretation based on any statutes or rules. It asked simply whether Marohn had represented himself as a professional engineer during a specific period. Marohn swore that he had not, even though he had. The applications' instructions informed Marohn that he could supplement his answers with an explanation. Marohn therefore had two ways to answer accurately. First, he could have disclosed that he had represented himself as a professional engineer within the specified period and offered no further explanation. Or second, he could have stated that he had not so represented himself but then supplemented this answer by explaining that he was responding based on his understanding of the statutes and rules or his assertion of his constitutional rights. Instead, Marohn chose to make false statements.

Marohn's false statements that he had not represented himself as a professional engineer without proper licensure or certification, sworn by him to be truthful, are not protected by the First Amendment because they were made to an official government agency that would rely on them as "the basis for official governmental action." *Alvarez*, 567 U.S. at 721. Therefore, we conclude that the board did not violate the First Amendment by disciplining Marohn for his violations of Minnesota Rule 1805.0200.

And we further conclude that these violations are sufficient, by themselves, to support the discipline the board imposed. The board has the authority to, among other

available actions, impose a fine of up to \$10,000 per violation upon any person who violates a statute or rule that the board has issued or is empowered to enforce. Minn. Stat. § 326.111, subs. 4(a), 6(a) (2022). The record supports the board’s finding that Marohn committed two violations of Minnesota Rule 1805.0200 by providing false information to the board in two different applications. Marohn faced a fine of up to \$20,000 for these two violations. In determining the appropriate discipline, the board emphasized the intentionality of Marohn’s violation, “especially with regard to Marohn’s renewal applications.” And the board indicated that any economic gain Marohn derived from the eight other violations played a lesser role in its consideration. At oral argument, counsel for the board agreed that the \$1,500 penalty imposed would be appropriate for Marohn’s two violations of Minn. R. 1805.0200. We add that Marohn does not challenge the particular discipline imposed by the board, instead arguing that he should have been subject to no discipline at all. On this record, we conclude that Marohn’s two violations of Minn. R. 1805.0200 amply supported the discipline the board imposed. We therefore do not reach Marohn’s arguments challenging the board’s order as to the eight violations of Minn. Stat. § 326.02(b).

Affirmed.