

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

William Braun,

Complainant,

**ORDER OF DISMISSAL**

vs.

City of Woodbury, Woodbury Police Officers  
A. Doe, B. Doe, C. Doe and E. Doe

Respondents.

This matter came before Administrative Law Judge James E. LaFave for a probable cause hearing on September 22, 2016. The record closed that day.

William Braun (Complainant) appeared on his own behalf and without counsel. Mark J. Vierling, Eckberg, Lammers, P.C., appeared on behalf of the City of Woodbury and the unnamed police officers (Respondents).

On September 9, 2016, Mr. Braun filed a complaint alleging the Respondents violated Minn. Stat. § 211B.045 (2016) of the Minnesota Fair Campaign Practices Act by removing or preventing Mr. Braun's campaign signs from being installed. By way of an order dated September 19, 2016, the Administrative Law Judge determined that Mr. Braun had set forth enough facts in the complaint to state that a violation of law had occurred. The probable cause hearing was held to determine whether there was a dispute requiring resolution at an evidentiary hearing.

Based upon the Complaint and the hearing record, and for the reasons set forth in the Memorandum below:

**IT IS ORDERED:**

Mr. Braun's complaint is **DISMISSED**.

Dated: September 28, 2016

  
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JAMES E. LAFAVE  
Administrative Law Judge

## NOTICE OF RECONSIDERATION RIGHTS

Minnesota Statutes, section 211B.34, subdivision 3 (2016), provides that the Complainant has the right to seek reconsideration of this decision on the record by the Chief Administrative Law Judge. A petition for reconsideration must be filed with the Office of Administrative Hearings within two business days after this dismissal. If the Chief Administrative Law Judge determines that the assigned Administrative Law Judge made a clear error of law and grants the petition for reconsideration, the Chief Administrative Law Judge will schedule the complaint for an evidentiary hearing under Minn. Stat. § 211B.35 (2016) within five business days after granting the petition.

If the Complainant does not seek reconsideration, or if the Chief Administrative Law Judge denies a petition for reconsideration, then this order is the final decision in this matter under Minn. Stat. § 211B.36, subd. 5 (2016), and a party aggrieved by this decision may seek judicial review as provided in Minn. Stat. §§ 14.63-.69 (2016).

## MEMORANDUM

### Factual Background

The Complainant, William Braun, is a candidate for election to the Woodbury City Council. Mr. Braun alleges that the City of Woodbury, by and through its police officers, prevented the posting and directed the removal of his campaign lawn signs within the City of Woodbury in violation of Minn. Stat. § 211B.045.<sup>1</sup>

In addition to being a candidate for the Woodbury City Council, Mr. Braun is in the real estate business.<sup>2</sup> As part of his real estate business, Mr. Braun posts commercial real estate signs.<sup>3</sup> Separate from the issue in this case, a dispute has arisen between the City and Mr. Braun over the posting of Mr. Braun's real estate signs.<sup>4</sup> The City has taken the position that the signs depicted in Ex. 3 are "litter" and has informed Mr. Braun, they will be removed from all public right-of-ways.<sup>5</sup> Mr. Braun has professional sign installers place both his campaign signs<sup>6</sup> and his commercial real estate signs.<sup>7</sup>

On September 9, 2016, one of Mr. Braun's sign installers emailed Mr. Braun to inform him "the city of Woodbury has shut down the placement of your signs. They had

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<sup>1</sup> See CAMPAIGN COMPLAINT (Sept. 16, 2016).

<sup>2</sup> Testimony (Test.) of William Braun.

<sup>3</sup> *Id.*; see, e.g., Exhibit (Ex.) 3. (Attached hereto).

<sup>4</sup> Test. of W. Braun; Test. of Matt Novak (City of Woodbury Code Enforcement Officer); see email from Matt Novak to William Braun (Aug. 10, 2016, 1:30 p.m. CDT).

<sup>5</sup> Test. of M. Novak.

<sup>6</sup> Examples of Mr. Braun's campaign signs are attached as Exs. 4 and 5.

<sup>7</sup> Test. of W. Braun.

four squad cars pull my guy over. Threatened to issue misdemeanor ticket for each sign placed.”<sup>8</sup> The email was the basis for this campaign complaint against the City.

At the probable cause hearing, Mr. Braun testified that he did not know where the installers were placing his signs and that he did not know if the City police officers took down his real estate signs<sup>9</sup> or his campaign signs.<sup>10</sup> Officer John Altman was one of the City police officers who stopped and spoke with Mr. Braun’s sign installers.<sup>11</sup> The installers were placing signs in a public right-of-way.<sup>12</sup> The officers spoke generally with the sign installers about what sign placement was permitted and not permitted under the City code.<sup>13</sup> The sign installers work for several different clients but there was no discussion about the signs of a specific client.<sup>14</sup> The officers’ concern was focused only on the prohibition against posting signs in a right-of-way.<sup>15</sup>

Ultimately, the police removed Mr. Braun’s real estate signs, depicted in Ex. 3, from a public right-of-way.<sup>16</sup> None of Mr. Braun’s campaign signs were removed by the police and no signs were removed from private property.<sup>17</sup>

## Legal Analysis

The purpose of a probable cause hearing is to determine whether there are sufficient facts in the record to believe that a violation of law has occurred as alleged in the Complaint.<sup>18</sup> The Office of Administrative Hearings looks to the standards governing probable cause determinations under Minn. R. Crim. P. 11.03 and by the Minnesota Supreme Court in *State v. Florence*.<sup>19</sup> Based upon these standards, the judge must determine whether, given the facts disclosed in the record, it is fair and reasonable to require the Respondents to go to hearing on the merits.<sup>20</sup>

A judge’s function at a probable cause hearing does not extend to an assessment of the relative credibility of conflicting testimony. As applied to these proceedings, a probable cause hearing is not a preview or a mini-version of a hearing on the merits; its function is simply to determine whether the facts available establish a reasonable belief that the Respondents have committed a violation. At a hearing on the merits, a panel has the benefit of a more fully developed record and the ability to make credibility determinations in evaluating whether a violation has been proved, considering both the record as a whole and the applicable evidentiary burdens and standards.

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<sup>8</sup> Email from Ron Tyler to William Braun (Sept. 9, 2016, 3:09 p.m. CDT).

<sup>9</sup> See Ex. 3.

<sup>10</sup> Test. of W. Braun; see Exs. 4 and 5.

<sup>11</sup> Test. of Officer John Altman.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> Test. of M. Novak.

<sup>17</sup> *Id.*

<sup>18</sup> Minn. Stat. § 211B.34, subd. 2 (2016).

<sup>19</sup> 239 N.W.2d 892 (Minn. 1976).

<sup>20</sup> *Id.* at 902.

The Fair Campaign Practices Act prohibits municipal regulation of noncommercial signs during general election years. Minnesota Statutes, section 211B.045 states:

All noncommercial signs of any size may be posted in any number beginning 46 days before the state primary in a state general election year until ten days following the state general election. Municipal ordinances may regulate the size and number of noncommercial signs at other times.

This statute creates a “safe harbor” for the posting of noncommercial signs during a specified portion of any year in which there is a state general election. Municipalities must permit the posting of campaign signs of any size and number for that period of time regardless of any ordinances to the contrary.

At the probable cause stage of the proceeding, Mr. Braun has the burden to present evidence sufficient to withstand a motion to dismiss. Mr. Braun argues that because the City removed his signs and prevented other signs from being placed, the City “regulated” the number of his campaign signs to zero in violation of the Fair Campaign Practices Act.

Mr. Braun, however, failed to introduce evidence sufficient to carry his burden of proof. He admits he does not know if the City removed any of his campaign signs. Further, Mr. Braun did not put forth evidence that the City prevented the placing of any of his campaign signs. As a result, the record lacks sufficient evidence to believe the City violated Minn. Stat. § 211B.045.

Instead, the evidence showed the City only removed signs posted in a state right-of-way. Minnesota law forbids the placing of political campaign signs in a state right-of-way.<sup>21</sup> The City’s removal of signs in the right-of-way did not violate Minn. Stat. § 211B.045.

The issue of whether the City properly removed Mr. Braun’s real estate signs is not before this tribunal. Because Mr. Braun has failed to introduce evidence sufficient to prove a violation of Minn. Stat. § 211B.045, his complaint is dismissed.

**J. E. L.**

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<sup>21</sup> Minn. Stat. §160.27 (2016); see Ex. 2.