

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

Bill Braun

v.

City of Woodbury

**ORDER FINDING NO  
PRIMA FACIE VIOLATION  
AND DISMISSING COMPLAINT**

**TO: Parties.**

On October 28, 2014, Bill Braun, a candidate for election to the Woodbury City Council, filed a campaign complaint with the Office of Administrative Hearings.

The Complaint alleges that City officials violated Minn. Stat. §§ 211B.07; .09; .10, subd. 1, with respect to his candidacy for election to the city council.

The Chief Administrative Law Judge assigned this matter to the undersigned Administrative Law Judge pursuant to Minn. Stat. § 211B.33.

After reviewing the complaint and the attached documents, and for the reasons set out in the attached Memorandum, the Administrative Law Judge finds that the complaint fails to set forth a prima facie violation of the Fair Campaign Practices Act.

**ORDER**

**IT IS ORDERED THAT:**

The complaint filed by Bill Braun against the City of Woodbury is **DISMISSED**.

Dated: October 31, 2014

s/Eric L. Lipman

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ERIC L. LIPMAN  
Administrative Law Judge

## NOTICE

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

## MEMORANDUM

To assert a *prima facie* violation of the Fair Campaign Practices Act, the Complainant must allege sufficient facts to show that a violation of law has occurred.<sup>1</sup>

To set forth a *prima facie* case that entitles a party to a later hearing, the party must either submit evidence or allege facts that, if accepted as true, would be sufficient to prove a violation of Minnesota Statutes chapters 211A or 211B.<sup>2</sup>

For purposes of a *prima facie* determination, the tribunal must accept the facts that are alleged in the Complaint as true without further proof.<sup>3</sup>

A complaint must be dismissed if it does not include evidence or allege facts that, if they were accepted as true, would prove a violation of Minnesota Statutes chapters 211A or 211B.<sup>4</sup>

### Factual Background

The Complainant, Mr. Braun, is employed as a Paid-on-Call Firefighter and Emergency Medical Technician with the city of Woodbury.<sup>5</sup>

Mr. Braun asserts that following his filing of his candidacy for office on July 29, 2014, written warnings regarding insubordination and misuse of government property, issued to him in August and September of 2014, were efforts to have him withdraw his candidacy.<sup>6</sup>

The Administrative Law Judge will address each of Mr. Braun's claims below.

### Undue Influence on Voters Prohibited (Minn. Stat. § 211B.07)

Minn. Stat. § 211B.07 provides:

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<sup>1</sup> Minn. Stat. § 211B.32, subd. 3.

<sup>2</sup> *Barry, et al., v. St. Anthony-New Brighton Independent School District, et al.*, 781 N.W.2d 898, 902 (Minn. Ct. App. 2010).

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

<sup>4</sup> *Id.*

<sup>5</sup> See, COMPLAINT, at Exhibits 1, 3, and 4.

<sup>6</sup> COMPLAINT, at 2.

A person may not directly or indirectly use or threaten force, coercion, violence, restraint, damage, harm, loss, including loss of employment or economic reprisal, undue influence, or temporal or spiritual injury against an individual to compel the individual to vote for or against a candidate or ballot question. Abduction, duress, or fraud may not be used to obstruct or prevent the free exercise of the right to vote of a voter at a primary or election, or compel a voter to vote at a primary or election. Violation of this section is a gross misdemeanor.

In this case, Mr. Braun does not allege any facts that could lead the tribunal to conclude that he was issued a written reprimand, or warned regarding possible other workplace discipline, in order to compel his “vote for or against a candidate or ballot question.”

The facts alleged in the Complaint are thus readily distinguishable from those in *Fritz v. Hanfler*.<sup>7</sup> In *Hanfler*, persons receiving welfare assistance were specifically told by the candidate that failure to cast a vote for him could result in loss of their public assistance. The Court found that there was an intentional, deliberate attempt to coerce *a specific vote* – and that such practices are “a menace to good government and to the liberties of the people.”

Similarly, the Minnesota Court of Appeals’ decision in *Menne v. Phillips*, is instructive. In that case, the appellate panel found no violation of section 211B.07 had occurred, despite the fact that the incumbent office holder used threatening language to those who posted lawn signs in support of his opponent. The incumbent distributed flyers stating that if the lawn signs supporting his opponent were not removed it would “not go unnoticed in the future.”<sup>8</sup> The Court of Appeals found that the “vaguely ominous-sounding language” used in the flyer did not violate section 211B.07. In this way, *Menne* instructs that there must be a clear nexus between the coercive behavior and casting a ballot in a particular way.

In this case, while Mr. Braun regarded the written reprimand and warnings of possible workplace discipline in the future, as chilling his candidacy for the city council, he does not assert that his supervisors attempted to coerce a specific vote. Mr. Braun thus fails to allege a violation of Minn. Stat. § 211B.07.

### **Prohibited Public Employee Activities (Minn. Stat. § 211B.09)**

Minn. Stat. § 211B.09 provides:

An employee or official of the state or of a political subdivision may not use official authority or influence to compel a person to apply for membership in or become a member of a political organization, to pay or promise to pay a political contribution, or to take part in political activity. A

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<sup>7</sup> *Fritz v. Hanfler*, 263 N.W. 910, 911 (Minn. 1935).

<sup>8</sup> *Menne v. Phillips*, 2008 WESTLAW 2102721 at \*2-3 (Minn. Ct. App. 2008) (unpublished).

political subdivision may not impose or enforce additional limitations on the political activities of its employees.

The complaint fails to state a violation of Minn. Stat. § 211B.09 because it does not allege that a city official compelled Mr. Braun to join, contribute to, or undertake, any political activity.<sup>9</sup>

To the contrary, the exhibits attached to the complaint suggest that city officials attempted to enforce strict separations between the use of government resources and campaigns for elective office.<sup>10</sup> Mr. Braun fails to allege a violation of Minn. Stat. § 211B.09.

### **Inducing or Refraining from Candidacy (Minn. Stat. § 211B.10)**

Minn. Stat. § 211B.10, subd. 1, prohibits conferring a reward, or the promise of a future reward, as an inducement to cease being a candidate for public office. The Complaint does not allege that any city official gave Mr. Braun items of value, or promised to do so, in return for his withdrawal as a candidate for City Council.

This case is thus different than the one presented in *Naumann v. Stai*.<sup>11</sup> In that case, the Complaint alleged that the Respondent withdrew as a candidate for Mayor of Harris, Minnesota, after two city residents offered him \$400 in cash, favorable zoning treatment for the withdrawing candidate's business, and appointment to another city office.<sup>12</sup>

Mr. Braun has not alleged a violation of Minn. Stat. § 211B.10, subd. 1.

For all of these reasons, Mr. Braun has failed to allege a prima facie violation of the Fair Campaign Practices Act. Accordingly, the Complaint is dismissed in its entirety.

**E. L. L.**

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<sup>9</sup> Compare e.g., *Burns v. Valen*, 400 N.W. 2d 123, 127 (Minn. Ct. App. 1987) (the display of campaign literature by government employees at the county courthouse did not “compel” fellow employees to participate in campaign activities); *Wigley v. Orono Public Schools*, OAH Docket No. 3-6326-19653-CV (2008) (Complainants failed to allege sufficient facts that would support finding a *prima facie* violation of Minn. Stat. § 211B.09 where they “alleged no facts to support finding that the Respondents used forceful or overwhelming pressure to compel anyone to create and disseminate campaign material or to take part in some other political activity”) (<http://www.oah.state.mn.us/aljBase/632619653.primafacie.htm>).

<sup>10</sup> See, COMPLAINT, at Exs. 2 and 3.

<sup>11</sup> OAH Docket No. 8-6312-17565-CV, 2006 W.L. 2952733 (October 9, 2006) (Order on *Prima Facie* Review).

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