

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

William Braun,

Complainant,

vs.

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

Respondents.

**NOTICE OF DETERMINATION OF
PRIMA FACIE VIOLATION
AND
NOTICE OF AND ORDER FOR
PROBABLE CAUSE HEARING**

On September 16, 2016, William Braun filed a Complaint with the Office of Administrative Hearings alleging that the City of Woodbury, by and through its police officers, violated Minn. Stat. § 211B.045 (2016) by preventing the posting and directing the removal of William Braun's campaign lawn signs within the City of Woodbury.

Following a review of both the Complaint and the documents Mr. Braun submitted in support, the undersigned Administrative Law Judge has determined that the Complaint sets forth prima facie violations of Minn. Stat. § 211B.045. For the reasons detailed in the Memorandum below, Mr. Braun is permitted to proceed to a probable cause hearing on these claims.

THEREFORE, IT IS HEREBY ORDERED AND NOTICE IS GIVEN that this matter is scheduled for a probable cause hearing to be held by telephone before the undersigned Administrative Law Judge at **10:00 a.m. on Thursday, September 22, 2016**. The hearing will be held by call-in telephone conference. At the appointed time, the parties are directed to:

- (a) Telephone **1-888-742-5095**
- (b) Enter the Conference Code: **454 161 2416#**

The probable cause hearing will be conducted pursuant to Minn. Stat. § 211B.34 (2016). Information about the probable cause proceedings and copies of state statutes may be found online at <http://mn.gov/oah> and www.revisor.leg.state.mn.us.

At the probable cause hearing, all parties have the right to be represented by legal counsel or appear on their own behalf. In addition, the parties have the right to submit evidence, affidavits, documentation, and argument for consideration by the Administrative Law Judge. By **3:00 p.m. on Wednesday, September 21, 2016**, the parties shall provide to the Administrative Law Judge all evidence bearing on the case, with copies of the same items to the opposing party. **Mr. Braun is specifically directed to provide pictures of the campaign signs in question to the City of Woodbury and the Administrative Law Judge by that deadline.**

Any document filed with the Office of Administrative Hearings, or any documents that a party wishes to make part of the hearing record, may be filed in one of the following ways: (1) by **e-Filing** through the Office of Administrative Hearings' e-Filing system; (2) by **mail**; (3) by **facsimile** (if less than 50 pages total); or (4) by **personal delivery**. (See 2015 Minn. Laws. Ch. 63, § 7; Minn. R. 1400.5550, subp. 5 (2015)).

The e-Filing system is accessible at: <http://mn.gov/oah/forms-and-filing/efiling/>

The Office of Administrative Hearings' facsimile number is: (651) 539-0310.

At the conclusion of the probable cause hearing, the Administrative Law Judge will either: (1) dismiss the Complaint based on a determination that the Complaint is frivolous, or that there is no probable cause to believe that the violation of law alleged in the Complaint has occurred; or (2) determine that there is probable cause to believe that the violation of law alleged in the Complaint has occurred and refer the case to the Chief Administrative Law Judge for the scheduling of an evidentiary hearing. Evidentiary hearings are conducted pursuant to Minn. Stat. § 211B.35 (2016).

If the Administrative Law Judge dismisses the Complaint, the Complainant has the right to seek reconsideration of the decision on the record by the Chief Administrative Law Judge pursuant to Minn. Stat. § 211B.34, subd. 3.

Any party who needs an accommodation for a disability to participate in this hearing process may request one. Examples of reasonable accommodations include wheelchair accessibility, an interpreter, or Braille or large-print materials. If any party requires an interpreter, the Administrative Law Judge must be promptly notified. To arrange an accommodation, contact the Office of Administrative Hearings at P.O. Box 64620, St. Paul, MN 55164-0620, or call 651-361-7900 (voice) or 651-361-7878 (TDD).

Dated: September 20, 2016


JAMES E. LAFAVE
Administrative Law Judge

MEMORANDUM

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.045.¹

Standard for Prima Facie Determinations

To establish 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.² The complaining party must submit evidence or allege facts that, if accepted as true, would be sufficient to prove a violation of Chapter 211A or 211B (2016).³

For purposes of a prima facie determination, the tribunal must accept the facts that are alleged in the Complaint as true, without independent substantiation, provided that those facts are not patently false or inherently incredible.⁴ A complaint must be dismissed if it does not include evidence or allege facts that, if accepted as true, would be sufficient to prove a violation of Chapter 211A or 211B.⁵

Posting of Campaign Signs

The City of Woodbury is one of several Minnesota municipalities that have ordinances regulating the posting of noncommercial signs, including campaign signs. Woodbury's ordinance permits the posting of noncommercial political signs from 100 days before an election until ten days following the election.⁶

The Fair Campaign Practices Act provides an exemption from 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.

¹ See CAMPAIGN COMPLAINT (Sept. 16, 2016).

² Minn. Stat. § 211B.32, subd. 3 (2016).

³ *Barry and Spano v. St. Anthony-New Brighton Independent School District 282*, 781 N.W.2d 898, 902 (Minn. Ct. App. 2010).

⁴ *Id.*

⁵ *Id.*

⁶ Woodbury, MN, Sign Ordinance, § 18.5-19(17) (2016).

Because this year is a general election year, campaign signs of any size may be posted in any number beginning June 26, 2016, until ten days after the general election on November 8, 2016. Outside of that time period, a municipality may continue to regulate the posting of noncommercial signs.

Mr. Braun asserts in his complaint that, on September 9, 2016, four uniformed City of Woodbury police officers stopped “professional sign installers” from installing any of his campaign signs within the City of Woodbury and threatened the installers with criminal charges. Mr. Braun also asserts that the installers were permitted to install other signs so long as the signs did not include the word “Braun.”

The Administrative Law Judge finds that the Complaint has alleged sufficient facts to support a prima facie violation of Minn. Stat. § 211B.045. This matter will, therefore, proceed to a probable cause hearing as indicated in this Order.

J. E. L.