

Municipal Campaign Signs in a Neighboring Municipality

O’Boyle v. City of Delray Beach
(Donald M. Middlebrooks, S.D. Fla. 9:14-cv-80270)

A municipal candidate’s federal complaint alleged that a neighboring municipality was wrongfully taking down the candidate’s campaign signs in the defendant’s municipality. The district judge set the case for hearing on a Friday, four days after the complaint was filed, but the defendant city sought time to find outside counsel because an assistant city attorney was named in the complaint. The judge reset the hearing for the following Monday, but he urged the parties to come to a temporary agreement. A stipulated temporary restraining order forbade the defendant city from taking down the plaintiff’s signs in locations where campaign signs were permitted. Months later, the judge awarded the defendant city summary judgment because the taking down of the plaintiff’s signs resulted from a single city worker’s error that subsequently was corrected.

Subject: Campaign activities. *Topic:* Campaign materials.

A candidate in a March 11, 2014, election for town commissioner in Gulf Stream, Florida, filed a federal complaint in the Southern District of Florida on February 24 against the neighboring City of Delray Beach, alleging that the city’s officials were wrongfully removing the candidate’s campaign signs from locations within the city, and alleging that other Gulf Stream candidates’ signs were not removed.¹ With his complaint, the candidate—an experienced filer in the court—filed a motion for a temporary restraining order.²

On the following day, Judge Donald M. Middlebrooks set the case for hearing on February 28.³ Because an assistant city attorney was named in the complaint, the city informed the court that it would need time to appoint outside counsel.⁴ Judge Middlebrooks reset the hearing for March 3 to accommodate the possible conflict, but he also instructed “the Parties to meet and confer to determine whether an interim agreement can be reached,” which “would obviate the need for an emergency hearing.”⁵ On March 3, Judge Middlebrooks signed a stipulated temporary restraining order preventing Delray Beach from removing the candidate’s signs from locations where other campaign signs are permitted.⁶

1. Complaint, *O’Boyle v. City of Delray Beach*, No. 9:14-cv-80270 (S.D. Fla. Feb. 24, 2014), D.E. 1.

2. Temporary-Restraining-Order Motion, *id.* (Feb. 24, 2014), D.E. 4.

3. Order, *id.* (Feb. 25, 2014), D.E. 7; Interview with Hon. Donald M. Middlebrooks, May 31, 2016.

Tim Reagan interviewed Judge Middlebrooks for this report by telephone.

4. Notice, *O’Boyle*, No. 9:14-cv-80270 (S.D. Fla. Feb. 27, 2014), D.E. 11.

5. Order, *id.* (Feb. 27, 2014), D.E. 12.

6. Temporary Restraining Order, *id.* (Mar. 3, 2014), D.E. 20; see Marisa Gottesman, *Candidate Wins Sign Squabble*, F. Lauderdale, Sun-Sentinel, Mar. 4, 2014, at 1B.

Following additional briefing, Judge Middlebrooks awarded summary judgment to the city on October 20, finding that the removal of the candidate's signs was a city worker's error that was subsequently corrected.⁷ The candidate's appeal was voluntarily dismissed.⁸

For the March 11 election, the plaintiff was the single challenger to five incumbents for five at-large positions, and all of the incumbents prevailed.⁹

7. Opinion, *O'Boyle*, No. 9:14-cv-80270 (S.D. Fla. Oct. 20, 2014), D.E. 44.

8. Order, *O'Boyle v. City of Delray Beach*, No. 14-15192 (11th Cir. Apr. 28, 2015).

9. See Larry Barszewski, *Municipalities Ready for Voters*, F. Lauderdale Sun-Sentinel, Mar. 11, 2014, at 1B; *Gulf Stream*, Palm Beach Post, Mar. 12, 2014, at 4B.