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SCHOOL TAX REFERENDUM - DELAWARE

Young v. Red Clay Consolidated School District

Court of Chancery of Delaware - October 7, 2015 - A.3d - 2015 WL 5895838

After voter referendum to increase school-related property taxes paid by owners of non-exempt real estate located within school district passed in special election, owners who opposed tax increase but did not vote filed suit against district, asserting under § 1983 that district deprived owners of their right to vote without due process of law and of equal protection, and that district violated Elections Clause of state constitution by discouraging and raising impediments to voting by elderly and disabled residents. District filed motion to dismiss for failure to state a claim.

The Court of Chancery held that:

- District's interventions in special election was not constitutionally-protected government speech under First Amendment right to advocate;
- Elections Clause was not equivalent to government speech doctrine, and thus it was not appropriate to interpret Clause in lockstep with cases applying doctrine;
- Elections Clause had meaning independent from federal protections for voting rights developed under Fourteenth Amendment;
- Owners sufficiently pled that district's interventions affected result of election, as would support voiding result;
- Attorney General's decision not to bring charges against school district did not dispose of owners' civil claim;
- Owners stated a claim under § 1983 for due process and equal protection violations; and
- Owners stated a claim for violation of Elections Clause.

School district's interventions in special election, during which voters passed referendum to increase school-related property taxes paid by owners of non-exempt real estate located within school district, was not constitutionally-protected government speech under First Amendment right to advocate. Government speech doctrine responded to Free Speech Clause claims, and did not mean that there were no restraints on government speech.

State constitutional Elections Clause was not equivalent to government speech doctrine under First Amendment, and thus it was not appropriate to interpret Elections Clause in lockstep with federal jurisprudence applying doctrine. Government speech doctrine only responded to Free Speech Clause claims and did not provide defense to claim under state law, federal parallel for Elections Clause was not the Free Speech Clause and cases applying government speech doctrine, but rather was federal regime of implied constitutional protection for voting rights that developed under Due Process and Equal Protection Clauses, and Elections Clause was both separate from and more protective of electoral rights than implied federal regime.

Elections Clause of state constitution had meaning independent from federal regime of implied constitutional protection for voting rights developed under Due Process and Equal Protections Clauses, and thus it was not appropriate to interpret Elections Clause in lockstep with federal jurisprudence developed under Fourteenth Amendment. Unlike state constitution, federal

constitution did not explicitly provide individual with right to vote or explicit guarantee of free elections, history of Elections Clause indicated that it had meaning independent from Fourteenth Amendment, and differences in structure between federal and states constitutions demonstrated independent meaning of Elections Clause.

Complaint filed by residents who opposed increase in school-related property taxes but did not vote in special election in which increase was passed sufficiently pled that school district's interventions affected result of election in resident's action seeking to void result, based on district's alleged actions in discouraging and raising impediments to voting by elderly and disabled residents. According to complaint, district affected outcome by systematically encouraging and facilitating voting by residents with school-aged children who were more likely to vote in favor of increase, and that district's family-focused get-out-the-vote events reduced turnout by elderly and disabled voters by interfering with their ability to access polls.

Failing to contact Department of Elections on day of special election, in which residents voted on and passed referendum to increase school-related property taxes paid by owners of non-exempt real estate located within school district, did not preclude owners who opposed tax increase but did not vote in special election from bringing civil action against district, seeking to invalidate election. Statutory provisions create post-election day private rights of actions.

Attorney General's decision not to bring criminal charges against school district did not dispose of civil claim filed by residents to invalidate special election, alleging that district discouraged and raised impediments to voting by elderly and disabled residents on referendum to increase school-related property taxes paid by owners of non-exempt real estate located within district. Assuming that Attorney General concluded that there was insufficient evidence to prove guilt beyond a reasonable doubt as to criminal conduct, that assessment did not mean that evidence did not establish electoral misconduct under preponderance-of-the-evidence standard for purposes of civil claim, and Attorney General had no authority to enforce civil election violations.

School district residents who opposed increase in school-related property taxes but did not vote on referendum that proposed increase stated a claim under § 1983 against district for due process and equal protection violations based on district's electoral interventions as a whole. Although district's interest in fostering informed electorate was sufficient to justify engaging in government campaign speech, complaint alleged that district's intervention in election by providing rewards for voting designed to appeal to demographic group that district believed was likely to support tax increase had purpose and effect of discouraging voting by identifiable group district believed would oppose increase, and for pleading purposes, district's desire to educate electorate did not justify selective get-out-the-vote efforts.

In challenging school district's electoral interventions as a whole, district residents who opposed increase in school-related property taxes but did not vote on referendum that proposed increase stated a claim against district for violation of Elections Clause of state constitution. Residents contended that district provided selective rewards for voting, which allegedly made election less free and equal, residents alleged that district violated Elections Clause based on its government campaign speech, which included engaging in electioneering in close proximity to voting rooms, and complaint alleged that district engaged in selective get-out-the-vote efforts directed towards an identifiable group, which had negative effects on the elderly and disabled.

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