

Bond Case Briefs

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REFERENDA - MISSOURI

MacMann v. Matthes

United States Court of Appeals, Eighth Circuit - December 9, 2016 - F.3d - 2016 WL 7174117

City residents brought state court action alleging that city violated their rights under city charter, Missouri Constitution, and First and Fourteenth Amendments by interfering with their participation in a municipal referendum process to appeal two ordinances passed by city council in connection with a student-housing development project.

City removed action to federal court. The United States District Court for the Western District of Missouri entered summary judgment in city's favor. Residents appealed.

The Court of Appeal held that:

- Under Missouri law, rights of city residents to challenge ordinances were governed by city charter rather than by provision of Missouri Constitution conferring on Missouri citizens right to challenge by referendum laws enacted by state legislature;
- Under Missouri law, city did not violate city residents' rights established under charter by enacting second ordinance after referendum process had been initiated in response to city's first ordinance;
- Under Missouri law, city did not violate city residents' rights established under city charter by issuing construction-related permits;
- City did not violate city residents' First Amendment rights by introducing second ordinance;
- City residents did not have protected property interest in participation in referendum process; and
- Provision of second ordinance conditioning repeal of first ordinance on residents' abstention from referendum process did not violate First Amendment.

Under Missouri law, city residents' right to challenge two ordinances passed by city council in connection with a student-housing development project were governed by city charter rather than by provision of Missouri Constitution conferring on Missouri citizens the right to challenge by referendum laws enacted by the state legislature.

Under Missouri law, city did not violate city residents' rights, established under city charter, to approve or reject at the polls any ordinance passed by the city council by enacting second ordinance in connection with a student-housing development project after municipal referendum process had been initiated in response to city's first, materially identical ordinance in connection with the project. Charter required suspension of further action under an ordinance subject to a referendum petition only after the referendum petition had been certified by city clerk, city council adopted second ordinance before referendum on it had been certified, and once referenda on ordinances were certified, city council reconsidered and repealed the ordinances.

Under Missouri law, city did not interfere with city residents' referendum rights, established by city charter, by issuing construction-related permits for student-housing development projects while municipal referendum process challenging ordinances passed by city council in connection with the projects was ongoing. Although city charter granted residents power to approve or reject by

referendum any ordinance passed by the council, city charter did not grant residents any right to challenge the issuance of permits by city administrative departments, and city issued permits as part of its ministerial duties once valid permit applications were submitted.

City did not violate city residents' First Amendment right to free speech or to petition the government when, after referendum process was initiated, in accordance with city charter, regarding city ordinance in connection with a student-housing development project, city council introduced a second ordinance that was materially identical to first ordinance. Neither the referendum process itself nor the city's conduct in responding to the referendum process interfered in any way with the message the residents sought to communicate, restricted their ability to circulate either referendum petition, regulated the content of their speech, or infringed on their ability to communicate with other voters or the manner by which they could so communicate.

City residents did not have protected property interest in participation in referendum process for challenging city ordinances, and thus city did not violate residents' Due Process rights when, after municipal referendum process was initiated, in accordance with city charter, regarding city ordinance in connection with a student-housing development project, city council introduced a second ordinance that was materially identical to the first ordinance and authorized permits for the project. Under Missouri law, any opportunity to participate in the municipal referendum process was subject to the procedures set forth in the city charter.

Provision of second ordinance passed by city council in connection with a student-housing development project, conditioning repeal of city's first, identical ordinance, on city residents' abstention from referendum process under city charter, did not violate First Amendment. There was no constitutional right at stake in the referendum process.