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Committee of Petitioners for Repeal of Ordinance Number 522 (2013) of Borough of West Wildwood v. Frederick

Superior Court of New Jersey, Appellate Division - May 15, 2014 - A.3d - 2014 WL 1923275

In May 2013, the Borough of West Wildwood passed an ordinance authorizing the issuance of bonds to finance various capital improvements. Following publication of the ordinance, the Committee of Petitioners for the Repeal of Ordinance No. 522 (2013) of the Borough of West Wildwood, sought repeal of the ordinance via referendum. The Committee procured sixty-two signatures and submitted the petition to the Acting Municipal Clerk of the Borough. The Clerk rejected the petition, identifying specific notarial defects and explaining plaintiff failed to comply with the applicable statute, which mandated names and addresses of five committee members be affixed to the petition when circulated. Plaintiff resubmitted the petition after correcting the noted deficiencies; however, Frederick again returned the petition stating the corrections were insufficient to cure the defects.

Committee filed a complaint in lieu of prerogative writs, demanding presentation of the referendum to voters in the November 2013 election. Following a hearing, the trial court entered judgment directing the Borough to place the question challenging the ordinance on the 2013 general election ballot. The Borough's request to stay the order was granted.

On appeal, the Borough challenge the Law Division's consideration of the plaintiff's complaint, arguing the protest was untimely. Alternatively, Borough challenged the judge's findings on two issues: first, that the Committee not required to affix the names and addresses of five members on the petition prior to its circulation; and second, that the Clerk's rejection of the petition on the basis of notarial errors was arbitrary and capricious.

The appeals court affirmed, concluding a voter protest of a bond ordinance is governed by the procedures set forth in the Home Rule Act, which does not require listing the Committee of Petitioners found in the referendum provisions governing ordinance challenges, other than those for capital improvement indebtedness, in a municipality formed under the Walsh Act.