

Bond Case Briefs

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VOTING - NEW JERSEY

Tumpson v. Farina

Supreme Court of New Jersey - July 31, 2014 - A.3d - 2014 WL 3743792

Citizen's group brought action against city and its clerk, after clerk refused to file petition they submitted that sought to have its petition seeking to have amended rent control ordinance submitted to voters for referendum, asserting violation of the Faulkner Act and seeking injunctive relief prohibiting city from enforcing the ordinance. Group then filed motion to enforce litigants rights. The Superior Court granted motion, required clerk to certify petition as valid, and prohibited city from enforcing ordinance pending outcome of referendum in general election, at which voters ultimately rejected group's challenge of ordinance. City and clerk appealed and group cross-appealed.

The Supreme Court of New Jersey held that:

- Clerk's refusal to accept petition for referendum violated right to referendum in Faulkner Act;
- Right to referendum was substantive right protected by Civil Rights Act; and
- Refusal to accept petition deprived citizens of substantive right.

City clerk in a Faulkner Act municipality's refusal to accept for filing a petition for referendum on the ground that the petition did not have a sufficient number of qualifying signatures violated the right to referendum guaranteed by the Faulkner Act; the various intersecting provisions of the Act contemplated a two-step process for validating a referendum petition, which provided that, if the initial petition was found insufficient, then a corrective, supplemental petition could be filed, but the statutory scheme did not indicate that one kind of deficiency in an initial petition empowered the clerk to refuse to file the petition and to forgo giving the particulars in which the petition was defective.

Power of citizens to approve or reject at the polls any ordinance through the referendum process constituted a "substantive right" protected by the Civil Rights Act, such that a deprivation of the right entitled the citizens to an award of attorney's fees under the Act.

City clerk's refusal to accept for filing petition for referendum in violation of the right to referendum guaranteed by the Faulkner Act constituted a deprivation of city citizens' substantive rights, and therefore citizens were entitled to award of attorney's fees pursuant to Civil Rights Act, where, although the citizens succeed in judicially compelling the clerk to process the referendum petition and place the ordinance on the ballot, the deprivation was complete when clerk initially refused to file the petition.