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REFERENDA - OHIO

[State ex rel. Hasselbach v. Sandusky County Board of Elections](#)

Supreme Court of Ohio - September 18, 2019 - N.E.3d - 2019 WL 4464762 - 2019 -Ohio-3751

City electors filed petition for writ of mandamus to compel county board of elections to place referendum petition concerning city zoning ordinance that rezoned parcel from “single-family residential” to “multi-family residential” on general election ballot, following board’s exclusion of petition after finding that ordinance was properly passed as emergency measure and was therefore not subject to referendum.

Parcel owner, which was private developer, was permitted to intervene.

The Supreme Court held that:

- Jurisdictional-priority rule did not bar electors’ claim for mandamus relief;
- Electors did not have adequate remedy at law;
- Laches did not bar electors’ claim;
- Electors complied with statute requiring filing of certified copy of ordinance with city auditor;
- Any noncompliance with financial-disclosure statute did not invalidate electors’ petition; and
- Ordinance was not properly enacted as emergency measure.

Jurisdictional-priority rule did not bar claim by two city electors seeking writ of mandamus to compel county board of elections to place referendum petition concerning city zoning ordinance that rezoned parcel on general election ballot, though one elector had first filed complaint in court of common pleas seeking declaratory judgment and injunctive relief against city on ground that zoning ordinance was void; two actions involved different causes of action and different parties, and the actions did not present same “whole issue,” as they sought different relief, and involved different theories, different causes of action, and a different defendant/respondent.

City electors did not have adequate remedy at law by way of one elector’s previously filed action in court of common pleas seeking declaratory judgment and injunctive relief against city on ground that city zoning ordinance that rezoned parcel was void, and thus electors were not precluded from seeking mandamus relief to compel county board of elections to place referendum petition concerning zoning ordinance on general election ballot; remedy elector pursued in common pleas court different from writ electors sought from Supreme Court, and while practical goal of both cases might be to stop parcel owner’s project from moving forward, object in mandamus action was to have ordinance presented to city electors for approval for disapproval, and common-pleas action was not adequate to provide that remedy.

Laches did not bar claim by city electors seeking mandamus relief to compel county board of elections to place referendum petition concerning city ordinance rezoning parcel on general election ballot, though electors delayed 11 days in bringing action following board’s decision excluding

electors' referendum petition, and parcel owner asserted that delay caused it material prejudice by extending uncertainty regarding litigation over ordinance; even if uncertainty of litigation could constitute prejudice, if electors had filed mandamus action several days earlier, owner likely would have been in same position, and electors' delay in filing mandamus action did not cause uncertainty surrounding zoning ordinance.

Certification by city's safety service director that attached reproduction of ordinance was "true, correct and complete" copy of ordinance satisfied requirement that city electors file certified copy of challenged zoning ordinance with city auditor prior to circulating referendum petition, though owner of parcel affected by ordinance asserted that certification was inadequate; contrary to owner's arguments, electors were not required to make certification themselves, given that ordinance was drafted and passed by city council, electors, not director, filed certified copy of ordinance, director was not required to parrot statutory language that it was "true and exact reproduction" of ordinance, and director was not required to compare ordinance against referendum proposal for purposes of proper attestation.

Any noncompliance by circulators of referendum petition regarding city zoning ordinance with statute requiring filing of financial-disclosure statements under certain circumstances would not invalidate referendum petition, since consequence of noncompliance was set out in separate statute providing that failure to file required financial-disclosure statement resulted in fine, and no statute specified that violation of financial-disclosure statute invalidated underlying petition.

Statements in city ordinance rezoning parcel owned by private developer from single-family residential to multi-family residential, that passing ordinance as emergency measure was warranted based on public peace, health, safety, and welfare, and that the emergency was the immediate undertaking of the project to avoid an increase in project cost, failed to sufficiently set forth the reasons for necessity of passing ordinance as emergency measure, and thus ordinance was subject to referendum; conclusory phrase about public peace, health, safety, and welfare could be applied to any ordinance, there was no apparent connection between municipal interests and project costs of private developer, and ordinance did not attempt to connect developer's project costs with city's public peace, health, or safety.