

Bond Case Briefs

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BALLOT INITIATIVES - MICHIGAN

League of Women Voters of Michigan v. Secretary of State

Supreme Court of Michigan - December 29, 2020 - N.W.2d - 2020 WL 7765755

Voters, ballot-question committee, and nonpartisan voting rights group brought action against Secretary of State, seeking declaration that statutory changes to procedures governing petition drives were unconstitutional.

Legislature brought separate action against Secretary of State seeking a declaration that the statutes were constitutional. After the cases were consolidated, the Court of Claims determined some, but not all, of the statutes were unconstitutional. Voters, committee, and group appealed, and the Court of Appeals affirmed in part, but concluded all the challenged statutes were unconstitutional. Legislature sought leave to appeal and moved to intervene in the other case.

The Supreme Court held that:

- Legislature was an aggrieved party, as required to intervene and appeal;
- As a matter of first impression, case was moot on appeal as to ballot-question committee;
- Voters and voting rights group lacked standing to seek declaration as to statutes' constitutionality;
- The Supreme Court would vacate the lower courts' decisions regarding statutes' constitutionality; and
- Attorney General opinion concluding that statutes were unconstitutional did not confer standing on Legislature to bring separate action.

Legislature's claim or defense and main action, brought by voters, ballot-question committee, and voting rights group to challenge constitutionality of statutes governing petition drives, had question of law or fact in common, as required for Legislature's permissive intervention on appeal; main action and Legislature both sought declaratory judgment as to constitutionality of certain statutes.

Legislature was an aggrieved party, as required to intervene and appeal action that had resulted in declaration that certain statutes governing petition drives were unconstitutional; even though neither Attorney General nor any other party appealed, lower courts had concluded that Legislature had no standing to pursue its case and considered and rejected Legislature's arguments that statutes were constitutional, and failing to allow Legislature's intervention would have enabled executive branch to nullify Legislature's work by declining to contest lower-court rulings.

Supreme Court would deem Legislature's motion to intervene for purposes of appeal as timely in declaratory judgment action, even though Legislature did not file motion before deadline for application for leave to appeal case involving challenge to statutes governing petition drives, where Legislature participated in case below, Legislature had filed motion to intervene earlier when plaintiffs sought to bypass Court of Appeals, and Supreme Court explicitly permitted Legislature to file another motion to intervene after the expedited deadline for appealing had expired.

Case that sought declaration that certain statutes governing petition drives were unconstitutional was moot on appeal as to ballot-question committee, where committee voluntarily stopped

circulating its petition with intent to put it on ballot due to COVID-19 pandemic, a Supreme Court decision on matter would only have served to instruct committee as to the law should committee choose to pursue a petition in the future, and committee did not have anything at stake in dispute.

Issue in case, in which ballot-question committee sought declaration that certain statutes governing petition drives were unconstitutional, was not likely to recur or to evade review, and thus Supreme Court would not hear appeal of case, as to committee, pursuant to mootness exception; committee, which voluntarily stopped circulating its petition with intent to put it on ballot due to COVID-19 pandemic, did not assert that it intended to resume petition drive later, and Supreme Court heard and could easily have decided case before relevant election.

Voters and voting rights group lacked standing to seek declaration as to constitutionality of statutes governing petition drives, despite contention that voters and group's members wished to exercise their rights to support placement of proposals on general election ballot by signing petitions; ballot-question committee voluntarily stopped circulating its particular petition due to COVID-19 pandemic, and voters and members did not allege that they had any concrete plans to sign any other petition, much less shown that their signatures would not be counted due to statutes.

Supreme Court would vacate lower courts' decisions declaring that certain statutes governing petition drives were unconstitutional, after determining that case was moot as to one plaintiff and remaining plaintiffs lacked standing, where case had been a procedural mess from beginning, with Attorney General declining to defend constitutionality of statutes, Legislature bringing its own action rather than intervening, Court of Claims adjudicating a dispute with no actual controversy as required by declaratory judgments rule, and Court of Appeals issuing a published opinion when no appealing party was aggrieved by lower-court judgment.

Attorney General opinion concluding that statutes governing petition drives were unconstitutional did not confer standing on Legislature to bring action seeking declaration that statutes were constitutional; allowing standing based on any formal opinion concluding that an act was unconstitutional would go far beyond view that a legislative body could defend the constitutionality of an act that has already been struck down by a court when the executive refuses to do so.