

Bond Case Briefs

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REFERENDA - OHIO

State ex rel. Pennington v. Bivens

Supreme Court of Ohio - September 13, 2021 - N.E.3d - 2021 WL 4145035 - 2021-Ohi-3134

Petitioners filed petition for writ of mandamus seeking to compel city attorney or city council to certify sufficiency of zoning-amendment referendum petition and to compel city council to submit referendum petition to electors at the general election.

The Supreme Court held that:

- Statutory precirculation requirement did not apply to referendum petition;
- Laches did not bar petitioners from obtaining relief, in absence of actual, material prejudice to respondents from delay; but
- Award of attorney fees to petitioners as successful party in taxpayer suit was not warranted under the circumstances.

Petitioners were not required to comply with statute requiring submission of certified copy of zoning ordinance to city auditor before circulating zoning-amendment referendum petition, under terms of city charter; statutory procedures for circulating referendum petition did not apply to municipality, such as city, that had adopted its own charter containing referendum provision for its own ordinances and other legislative measures, city charter incorporated only those general laws that were applicable to the municipality and that did not conflict with charter's provisions, city charter allowed circulation without submission to auditor, which statute prohibited, such that there was conflict and charter controlled, and charter left no room for statutes to overlay additional procedures.

Laches did not bar petitioners from obtaining writ of mandamus to compel city attorney to certify sufficiency of zoning-amendment referendum petition so that city council could refer zoning amendment to electors at general election, though city attorney and city council asserted that petitioners' unreasonable delay in filing action caused matter to become expedited election matter and resulted in Supreme Court issuing separate scheduling order requiring them to submit their answer even earlier than date in default expedited briefing schedule; matter was fully briefed well in advance of deadline for preparing absentee ballots, case presented relatively straightforward issues, none of which required extensive discovery, and respondents were able to file answer three days early.

Award of attorney fees was not warranted to petitioners, as successful party on petition for writ of mandamus to compel city attorney to certify sufficiency of zoning-amendment referendum petition so that city council could refer zoning amendment to electors at general election, under statutes governing fee awards in taxpayer suits, where precedent lent support to city attorney's position that petitions were not sufficient because petitioners failed to comply with statutory requirement to file certified ordinance with city auditor before circulating the petitions.

