

Bond Case Briefs

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BALLOT INITIATIVE - SOUTH DAKOTA

Thom v. Barnett

Supreme Court of South Dakota - November 24, 2021 - N.W.2d - 2021 WL 5501582 - 2021 S.D. 65

County sheriff and superintendent of South Dakota Highway Patrol filed statutory election contest and separate declaratory judgment action against Secretary of State, claiming amendment to South Dakota Constitution to pass laws regarding hemp as well as laws ensuring access to marijuana for medical use was presented to voters in violation of requirements for amendments to Constitution.

Proponents of amendment intervened. The Circuit Court dismissed election contest, but determined amendment was submitted to voters in violation of Constitution. All parties appealed.

The Supreme Court held that:

- Circuit Court properly dismissed election contest;
- Sheriff and superintendent did not have standing in their official capacities to bring declaratory judgment action; but
- In matter of first impression, the Governor, through issuance of executive order, ratified declaratory judgment action, thereby curing any standing defects;
- Amendment's submission to voters violated single subject and separate votes requirements of South Dakota Constitution; and
- Provisions of amendment could not be excised under doctrine of separability and, thus, amendment was void in its entirety.

Circuit Court properly dismissed election contest brought by county sheriff and superintendent of South Dakota Highway Patrol, which claimed amendment to South Dakota Constitution to pass laws regarding hemp as well as laws ensuring access to marijuana for medical use was presented to voters in violation of requirements for amendments to Constitution, absent showing of any irregularity in election process caused by violation of election law.

County sheriff and superintendent of South Dakota Highway Patrol did not have standing in their official capacities to bring declaratory judgment action, challenging amendment to South Dakota Constitution to pass laws regarding hemp as well as laws ensuring access to marijuana for medical use, where neither sheriff nor superintendent sustained any actual or threatened injury as result of amendment; they could suffer no injury by carrying out amendment's mandate, and no violation of duty could be imputed to them by reason of their compliance.

Governor, through issuance of executive order, ratified action brought by county sheriff and superintendent of South Dakota Highway Patrol, seeking declaratory judgment that amendment to South Dakota Constitution to pass laws regarding hemp as well as laws ensuring access to marijuana for medical use was presented to voters in violation of requirements for amendments to Constitution, thereby curing any standing defect in action; order made clear the Governor intended to challenge amendment, she authorized action, desired that it continue, affirmed it in all respects and intended to be bound by result of action, and proponents of amendment would not sustain any prejudice if

ratification were permitted.

Amendment to South Dakota Constitution to pass laws regarding hemp, as well as laws ensuring access to marijuana for medical use contained provisions embracing at least three separate subjects each with distinct objects and purposes and, thus, submission of amendment to voters violated single subject and separate votes requirements of South Dakota Constitution; although the stated object or purpose of amendment was legalization and regulation of marijuana, including its recreational, medical and agricultural uses, the amendment included development of comprehensive plan for legalization and regulation of marijuana, a mandate that legislature adopt laws ensuring discrete group of qualifying persons have access to medical marijuana, and a mandate that legislature regulate the cultivation, processing and sale of hemp, requirements that were not dependent upon or connected with each other.

Provisions of amendment to South Dakota Constitution regarding hemp and ensuring access to marijuana for medical use could not be excised, under doctrine of separability, to retain provisions governing development of comprehensive plan for legalization and regulation of marijuana and, thus, amendment was void in its entirety due to violation of Constitution's single subject and separate votes requirements; Constitution required proponents of amendment to prepare amendment so that different subjects could be voted on separately, and simply severing certain provisions might not reflect actual will of voters.