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CHARTER AMENDMENTS - TEXAS

Hotze v. Turner

Supreme Court of Texas - April 21, 2023 - S.W.3d - 2023 WL 3027869

Citizen who had helped to initiate city charter amendment to govern limitations in increases in city revenues, which amendment was approved by voters in the same election in which they approved a council-proposed amendment on the same topic, brought action against city for a declaratory judgment that both the citizen-initiated and the council-proposed amendment were in effect, which was a dispute that stemmed from associated election ordinance's "primacy clause" that stated that the council-proposed amendment would prevail over the citizen-initiated amendment if the voters approved the council-proposed amendment by more votes than the citizen-initiated one, which is what occurred.

The 333rd District Court denied city's plea to the jurisdiction. The Houston Court of Appeals affirmed. The 333rd District Court entered partial summary judgment that "primacy clause" rendered citizen-initiated ordinance ineffective and, after a bench trial, entered judgment that city had fully complied with council-proposed ordinance.

Citizen appealed the summary-judgment order, and city cross-appealed. The Houston Court of Appeals affirmed the summary judgment. Voter petitioned for review.

The Supreme Court held that:

- An election challenge was not the exclusive remedy for citizen seeking to challenge the council-proposed amendment;
- Council-proposed amendment's "primacy clause" violated state statute that required a municipality to adopt a charter amendment that was approved by voters at an election;
- As a matter of apparent first impression understate statute governing adoption of amendments to municipal charters, the amendments became effective when the city declared them to have been adopted; and
- State statute governing adoption of amendments to municipal charters does not require a municipality to achieve the impossible by giving effect to two conflicting charter amendments adopted at the same election.

An election challenge was not the exclusive remedy for citizen seeking to challenge the effectiveness of voter-approved city charter amendment that been proposed by city council, which challenge stemmed from associated election ordinance's "primacy clause" that stated that the council-proposed amendment would prevail over the citizen-initiated amendment if the voters approved the council-proposed amendment by more votes than the citizen-initiated one, which is what occurred, and thus citizen could bring challenge as a declaratory-judgment action; citizen's challenge concerned the city's decision not to enforce parts of its charter as it existed after the election.

Election ordinance's "primacy clause" that stated that if a city council-proposed amendment to city charter received more votes at the election than a citizen-initiated amendment, then the council-proposed amendment would take effect, even if voters approved both amendments, violated state

statute that required a municipality to adopt a charter amendment that was approved by voters at an election, and thus the “primacy clause” was void for conflicting with state law.

Pursuant to state statute that provided that a city charter or an amendment did not take effect until the governing body of the municipality entered an order in the records of the municipality declaring that the charter or amendment was adopted, voter-approved amendment to home rule city’s charter became effective when city declared amendment to have been adopted, despite argument that the effective date was a matter for the city’s discretion; the proposition that an adopted amendment could be added to the city charter without ever becoming effective absent further city approval was incompatible with the statute.

Statute governing adoption of amendments to a municipality’s charter does not require a municipality to achieve the impossible by giving effect to two conflicting charter amendments adopted at the same election.

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