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BALLOT INITIATIVE - VIRGINIA

[Williams v. Legere](#)

Court of Appeals of Virginia, Norfolk - May 2, 2023 - S.E.2d - 2023 WL 3183162

City resident who circulated petition for referendum on question of whether school board members were to be elected directly by city voters filed motion for emergency declaratory judgment, a temporary injunction, and writ of mandamus, seeking to enjoin city registrar and officials on city election board from enforcing statutory residency requirement for circulator and witnesses of referendum petition and challenging the constitutionality of the witness-circulator residency requirement.

The Circuit Court granted city's motion to intervene and dismiss, granted election board's demurrer, and denied resident's motions. Resident filed petition for review with the Supreme Court as to the denial of injunction, which was denied. Resident appealed the denials of the other requested relief to the Court of Appeals.

The Court of Appeals held that:

- As a matter of first impression, witness-circulator residency requirement significantly burdened resident's right to political speech secured by First Amendment, and thus strict scrutiny, rather than rational basis review, applied to resident's constitutional challenge to the requirement, and
- Exception to mootness doctrine for disputes capable of repetition, yet evading review applied to the proceeding.

Statute imposing locality residency requirement on witnesses and circulators of referendum petitions constituted a restriction on political speech that was a clear deprivation of a right guaranteed in the First Amendment, and thus strict scrutiny, rather than rational basis review, applied to city resident's constitutional challenge to the validity of the witness-circulator residency requirement; requirement limited the number of registered voters that resident, as proponent of referendum petition, could reach and decreased the likelihood that she would be able to get her initiative on the ballot, and the requirement substantially restricted resident's ability to engage in core political speech.

Exception to mootness doctrine for disputes capable of repetition, yet evading review applied to proceeding brought by city resident, as proponent of referendum petition, for declaratory judgment and writ of mandamus, challenging constitutionality under First Amendment of statutory residency requirement for witnesses and circulators of referendum petitions; although deadline to get resident's referendum on ballot had long since passed, resident expressed an intent to file future referendum petitions and had reasonable expectation that city would enforce the residency requirement in the future.