Rights to Reject Nonbinding Advisory Petitions

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Vermont Supreme Court Upholds Municipalities' Rights to Reject Nonbinding Advisory Petitions

On occasion, there comes a case that works its way up to the Vermont Supreme Court which involves such an important issue of municipal law, policy, or administration – with the potential to significantly impact a considerable portion of municipalities across the state – that the VLCT Board of Directors approves submission of an amicus curiae (friend of the court) brief to represent our members' interests. The Municipal Assistance Center (MAC) researches and writes the brief on behalf of the VLCT Board. Robert A. Skiff, Jr. et al. v. South Burlington School District, 2018 VT 117, was such a case. The Vermont Supreme Court decided that South Burlington residents could not force their school district to put the question of naming its school sports teams to a district-wide vote. The Skiff case is of particular interest to VLCT's membership because school districts are considered "municipalities" under Vermont law, and the laws governing a school district's decision whether to warn a nonbinding, advisory article (i.e., 17 V.S.A. §§ 2642 and 2643) are the same that govern cities, towns, and villages.

The facts of the Skiff case have been well publicized and do not bear much repeating. Suffice it to say that the South Burlington School Board decided to retire the "Rebels" name for the district's athletic teams. A group of South Burlington residents presented the board with a petition signed by five percent of the district's voters requesting a district-wide, non-binding, advisory vote on whether to retain the Rebel team name. The school board refused and the residents sued in Chittenden County Superior Court for an order forcing the district to hold a vote on the question alleging that the district deprived them of their constitutional right to instruct their representatives.

The superior court sided with the residents, but the Vermont Supreme Court reversed on appeal, holding that "the ''right to instruct' in Article 20 of the Vermont Constitution is an individual right [not a collective one] and does not require the district to present

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a petitioned advisory article to voters." Because the right of individuals, the Court noted, is limited in a representative form of government, it is the school board – which has been given the authority to act by the legislature – that has discretion to submit the advisory ballot to a district-wide vote. The recourse for individual voters is at the ballot box, not the courthouse. "If the public is dissatisfied with the performance of school directors, 'they may, in due course, replace their school directors at the end of their respective terms.'"

In past cases, the Court had ruled that voter-backed petitions did not have to be honored if they were unrelated to municipal business. "We hold that it was not the legislative intent in enacting 24 V.S.A. Sec. 705, to compel the selectmen of a town to hold a special town meeting upon application of five per cent of the voters for a useless, frivolous or unlawful purpose." Royalton Taxpayers' Protective Ass'n v. Wassmansdorf, 128 Vt. 153 at 160 (1969). This petition, residents argued, was not "useless" because it would help inform the school board. Such a reading of the word "useless" was too broad for the Court which opted for a narrower interpretation. "'[U]seless' as used in the case means something that would have no binding effect." Since the school board, not the voters, had the authority to decide the name of the district's sports teams, a district-wide vote would have no legal effect and the petition could be rejected. "The statute does not include a right to include articles for a vote over which voters may have an opinion, but ultimately do not have the power to decide."

Ultimately, the Court's ruling is more notable for what it does not do than what it does. It does not erase the nearly half century of clear precedential guidance that Vermont courts have provided municipalities on how to handle voter-backed petitions. Everything is as it was before; the status quo has been maintained. In light of the Skiff case, MAC's guidance with respect to voter-backed petitions remains unchanged. If a voter-backed petition does not deal with a matter over which municipal voters have been given authority in statute, the legislative body may choose how to respond to

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that petition, including refusing to place it on the warning or placing it under the nonbinding, advisory section of the warning.

The Skiff case is archived at www.vermontjudiciary.org/sites/default/files/documents/op18-054.pdf.

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